COZEN O'CONNOR

January 2, 2020

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VIA IZIS

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 210S
Washington, DC 20001

Re: Application No. 20144 (David Barth and Lisa Kays) – The Opposition Neighbors' Preliminary Comments

Chairperson Hill and Honorable Members of the Board:

The parties in opposition, Peter and Britt Bepler and Taylor and Sarah Nickel (collectively the "Opposition Neighbors" or the "Neighbors") live in homes on both sides of the Applicant's property.[1] The Neighbors strongly oppose the Applicant's request for:

- Substantial Lot Occupancy Relief: To build out to 69.75% Lot Occupancy – increasing the building footprint by 271.1 s.f. (Zone's maximum is 60%, and a variance is required for 70% lot occupancy)

- Rear Addition Relief: To build a 13.25' rear addition (Zone's maximum is 10')

- Accessory Dwelling Relief: To add a second story to the non-compliant garage.

The Neighbors have reviewed the Applicant's recent filing. Unfortunately, it raises more questions than it answers.

- How can the Applicant build a 10'- addition as a matter of right?: The existing improvements are already at 56.5% lot occupancy. A 10'-addition would exceed 66% lot occupancy. This is well beyond the Zone's 60% maximum, and cannot be permitted as a matter of right.

- How is the Applicant's project "de minimus"? They are asking for 69.75% lot occupancy – only .25% under the variance threshold. If they added another 4'-7", they would need a variance. In so doing, this application seeks to increase the building's footprint by 13.25% (271 square feet). This is not "de minimus."

- How is the impact on the neighbors' light and air and privacy not undue? Both the Beplers and the Nickels have invested substantially in their rear yards, which they have cultivated into outdoor living rooms. In particular, the Nickels have a permanent planting bed with a substantial garden shown in the photos attached at Exhibit "A". While the Applicant's sun studies are confusing, even the Applicant admits that the Nickel's property will be impacted by the addition. Further, the Applicant's project allows views directly into the both Neighbors' backyard entertaining areas. Plainly, the large project will have an adverse impact on the privacy, use and enjoyment of the Neighbors' rear yard spaces.

[1] The Beplers own 1830 15th Street to the south, and the Nickels own 1834 to the north.

Even if all relief is processed as a special exception[2], the Application fails the necessary test.[3] The Applicant's addition will tower over the Opposition Neighbors' gardens and backyards blocking light (especially to the Nickel's planted garden area) and reducing both Neighbors' privacy and use and enjoyment of their rear, outdoor portions of their homes.

Proposed Rear View from #1834

Also, the requested relief is not in harmony with the general purpose and intent of the RF-2 zone, which is to "**Preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide**." *See* Subtitle E § 400.2(e)(emphasis added).

Therefore, the Application violates Subtitle E § 5201.3(a) and (b) and it must be denied.

The Opposing Neighbors are not alone in their opposition to this Application. The Record includes 31 letters in opposition. Many of these letters are personalized, heartfelt requests from neighbors who relied on the Zone's limitations to protect their block and homes from excessively large additions such as this one.[4]

[2] Requests for Lot Occupancy exceeding 70% must be processed as a variance. The Applicant's building is a scant 4'-6" feet short of the 70% limit. It appears that the Applicant designed their building to be as large as possible without directly triggering the variance test, a decision that cannot be ignored in this highly contentious and strongly opposed case.

[3] The Applicant alone has the burden to prove its case. Subtitle X § 901.3 states, "The applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record. If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility."

[4] *See* BZA Exhibit Nos. 33, 37-38, 40-41, 66-67, 72-73 and 76. Also, the Dupont East Civic Action Association reviewed this Application at its November 18, 2019 public meeting and voted to oppose it. *See* BZA Exhibit No. 59.

Also, it is important that ANC 2B ended up not making a recommendation on this Application despite the fact that during the meeting, the ANC was provided a written resolution approving the project. The fact that the ANC ultimately took no action and did not adopt the previously written resolution of approval illustrates the substantial and overwhelming neighborhood opposition to this Application.

In closing, this project is just too big to be approved.

The Opposing Parties and others look forward to detailing the many reasons they oppose this large project at the January 15 hearing

Thank you for your attention to this matter

Sincerely,

COZEN O'CONNOR

BY: SAMANTHA L. MAZO

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2019, I had served a copy of Opposing Party's Prehearing Comments via e-mail, to the following:

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