

September 8, 2020

VIA IZIS

D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Suite 200-S
Washington, D.C. 20001

Re: **BZA Case No. 20266 – 3400 Connecticut Partners LLC (the “Applicant”) –
BZA Application for 3400 Connecticut Avenue NW (Square 2069, Lots 817-
821) (the “Property”) – Post-Hearing Submission**

Dear Members of the Board:

Please accept for filing the enclosed post-hearing submission from the Applicant. The Applicant requests special exception relief pursuant to 11-C DCMR § 703.2 for relief from the parking requirements in order to create a new mixed-use project that will retain the existing 17 residential units, provide 35 additional new residential units, and provide 16,097 square feet of ground floor retail (the “Project”).

Set forth below is (1) an account of the contents included in this submission; and (2) an explanation of the relevancy of the ANC conditions to this order.

I. Proposed Findings of Fact and Conclusions of Law

At the public meeting held on August 5, 2020, the Board requested (1) an explanation of how the Project meets the special exception standards for parking relief; (2) identification of the contested findings of fact; and (3) identification of the contested conclusions of law. For

thoroughness in responding to the Board's request, the Applicant has included these items in the attached Exhibit A, which is a draft Findings of Fact and Conclusions of Law, which details how the Project meets the standards of special exception relief and includes the consolidated conditions agreed to by the Applicant.

II. ANC Conditions

The Applicant reaffirms its commitment to both the DDOT conditions and the conditions set forth in the Advisory Neighborhood Commission ("ANC") 3C Resolution, which are included in Exhibit A attached. The ANC conditions were crafted through close coordination between the community and the Applicant. During the public hearing, the Board raised some questions about the applicability and enforceability of some of the proposed conditions agreed to in the ANC's resolution. The ANC's conditions included parking conditions, including a restriction on Project residents' participation in the Residential Parking Permit ("RPP") program, and loading conditions. The ANC conditions are appropriate for the Board to include because they provide mitigation related to the Project's impacts associated with the requested parking relief and, relatedly, the Project's impacts on loading operations. Therefore, the conditions are appropriately related to the Project and the relief being sought.

Furthermore, the ANC conditions resemble other conditions approved by the Board in previous orders, including the RPP restriction. The Applicant believes this condition is an appropriate and enforceable condition, as discussed at the public hearing. Further, as Chairperson MacWood testified, the DC Council has taken action on emergency legislation to allow for the enforcement of property-specific RPP restrictions. Finally, the Office of Attorney General recently noted to the Board that where an Applicant has agreed to bind themselves by a

condition, even where that condition is not typical for the Board, it is appropriate for the Board to adopt such a condition.¹

Therefore, given the significant community coordination, the Applicant's commitment to the conditions agreed to with the ANC, the ANC's explicit request that the Board include all of the conditions noted in its resolution, and the overall appropriateness of the conditions as they relate to the relief requested, the Applicant requests the Board adopt both DDOT and the ANC's conditions, as detailed in Exhibit A.

III. Conclusion

We look forward to the virtual public meeting scheduled for September 30, 2020. If you have any questions, please do not hesitate to contact Allison at (202) 721-1106 or Meghan at (202) 721-1138. Thank you for your attention to and consideration of this application.

¹ See, January 31, 2018 Transcript, BZA Case No. 19681, p. 52-54:

MR. ANDRES: Yes we have. On that I did want to 25 note, one of the conditions, the first condition that the asked for was that we would limit the special exception to Children's National Medical Center as the user of the space. And that at such time that Children's is no longer the user of the space, the special exception would go away. And we would have to come back, or the property owner at that time would have to come back, and ask for relief again. We agreed to that condition. We did that with full knowledge, and the ANC's full knowledge that the Board has historically not adopted conditions that are tied to a specific user of property. There's a case law that goes back decades on that point. We talked with ANC about an alternative that would be acceptable based on past precedent, which is to limit the condition to a specific use. And in this case we offer pediatric medical care use. However, it was important to the ANC that we ask the Board to consider limiting the use to Children's. We've agreed as the Applicant, to bind ourselves. And so at this point, we'd, you know, we'd ask the Board to consider adopting the condition as we proposed it.

CHAIRPERSON HILL: Okay, Ms. Nagelhout. Can I ask a question about that? I mean, I thought that the condition was, can we do that? We can put the condition to the tenant?

MS. NAGELHOUT: *No, as the Applicant says, the Court of Appeals has said that the relief you grant runs with the land. You cannot restrict it to any particular user. On the other hand if that's what the Applicant is proposing to you that they want to do, I think you could adopt this condition. It's sort of a term, but instead of a term for a special kind of time, it's for this particular tenant.*

(Emphasis added)

Sincerely,

/s/
Allison C. Prince

/s/
Meghan Hottel-Cox

Enclosure

