

Dawn Lea PhD RN
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Washington, DC 20007
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July 7, 2021

BY IZIS

Mr. Frederick L. Hill
Chairperson
Board of Zoning Adjustment
One Judiciary Square
441 4th Street, N.W.
Suite 210 – South
Washington, DC 20001

RE: BZA Application No. 20380
4457 MacArthur Boulevard, N.W.
Washington, D.C. 20007
Square 1363, Lot 57 (formerly Lot 962) (“4457 Property”)

The owners of property 4459 MacArthur Boulevard, N.W., adjacent to subject property at 4457 MacArthur Boulevard are representing themselves in opposition to case 20380. In response to documents submitted by Polygon LLC (applicant) to the website we remind the Board that the 4457 Property is part of the *same structure* as the 4459 Property. Given the age and unique unitary construction of the 4457 - 4459 structure, the construction of the proposed project will physically involve and impact the 4459 Property in ways that may cause a structural failure and collapse of 4459, not dissimilar to the collapse which occurred recently at 916 Kennedy St NW, Washington DC. The proposed redevelopment and extreme expansion in occupancy load and density of the 4457 Property cannot be viewed in isolation from the 4459 Property.

Typically, a responsible developer would have engaged the adjacent property owners prior to filing an application on September 14, 2020; yet no one representing the application contacted the owners of the 4459 Property directly regarding the proposed project. The applicant’s representative continued to exhibit a lack of timely responsiveness when attempting to schedule a meeting to mediate the situation as recommended by the Board. Finally, a date of July 13, 2021 was scheduled. (However, owner of the 4459 property does acknowledge the responsiveness when informed that the property with a ‘vacant’ status without maintenance of exterior (front yard) could incur citations and penalties from DCRA. The front yard was cut shortly after that email communication.)

As a reminder, the two properties were constructed as a single structure circa 1905. There is a common single flat metal roof, common attic (meaning we can access both properties

by going into the attic space of one of the properties and emerging inside the other property), and a common undivided front porch and front façade. The electrical wiring and plumbing for 4457 and 4459 run through the simple common wall between the properties and have joint connections with plumbing and air vents to the roof.



Figure 1 Electric, plumbing, vent inside the common wall 4457-4459

The stone foundation was constructed for a *single* building in a square configuration. At one time, there were interior doors connecting what is now the 4457 and 4459 MacArthur Boulevard, N.W. addresses. The properties constitute a single structure and remain inextricably linked together.

Regarding the application (case 20380) by Polygon Holdings LLC, the designs (note more than one) for the proposed 4457 Property, heavily impacts the continued use, enjoyment, privacy and occupancy of the 4459 Property in violation of *Subtitle F-5201 of the Zoning Regulations provides that an application for a special exception “shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular: . . . the privacy of use and enjoyment of neighboring properties shall not be unduly compromised.”* The proposed project will totally overwhelm the 4459 Property by the scale and proximity of the proposed multi-family development.

As previously mentioned, there is but a simple common wall between 4457 and 4459 that shares ventilation, plumbing, and electrical wiring (Figure 1). Please address specific actions planned during the development due to the lack of anything other than drywall and circa 1905 wall. Additional issues related to this are addressed in Dr. Aliabadi’s letter below. The common wall will be disturbed from the 4457 side of the structure and certain damages are to be predicted. *These requests during the initial BZA hearing from the 4459 owner have yet to be addressed.* Relocation of proposed 4457 development bathrooms away from the common wall of the 4459 Property were requested: this request has not been acknowledged nor addressed. The sun study was completed and included in Exhibit 61A by the applicant.

As noted in 4459 property owner’s prior comments, the deck previously identified at the rear of the 4457 building as shown in Exhibit 33c page 2 from the previously submitted site drawings, directly overlooked the patio at 4459 located between the house and the detached garage which is currently surrounded by seven foot fencing – the applicant was requested by BZA to address the issue of the deck. *It appears the ‘deck’ was placed at grade in the newest renderings by the architect, there are NOW two balconies off the rear of the proposed development which double the lack of privacy effect and hence DOUBLED the problematic issue. These balconies as now currently proposed eliminates any privacy for the 4459 Property.* My apologies for informality, but “really”? Deck? Terrace? Balcony? The pure unmitigated facts and visual representation, indicate that now, there are TWO problem areas (balconies) overlooking the private patio of the 4459 property rather than the one initially proposed ‘deck’.

The garage building at 4457 which is slated to be demolished will impact the garage on the 4459 Property; when the 4457 garage was constructed, prior owners of 4457 asked permission to tie into the garage roof at the 4459 Property by eight (8) inches. A request was made to address how the overlap will be mitigated by Polygon LLC and *this has NOT been addressed.*

Owners at the 4459 Property respectfully request that previously identified issues (as cited in Exhibits 44, 45, 46) in addition to other issues not yet identified be addressed going forward as there are *no project management nor construction plans available for visualization by the owner of the 4459 Property.* Please refer to the letter from the 4459 owner’s structural engineer, in which a specific request is made for a full set of plans for the structural engineer representing the 4459 property to review.

Owners at 4459 Property have and continue to comment on the difficulties of redeveloping one-half of a common structure. The owners engaged a structural engineer to assess the impact to the 4459 Property with the proposed redevelopment of the 4457. (Note: Mr. duPont, the architect was present during this physical on site evaluation.) The synopsis of a

structural engineer's report is below and the full ten page report was previously submitted as Exhibit 46.

"Dear Ms. Lea,

Further to your request, I visited your property located at 4459 MacArthur Blvd NW, Washington, DC 20007. I checked the existing structure for applicable loads. Per my observation, the existing roof of the building is constructed with 2x6 @ 24" O.C. joists. The joists span approximately 14 ft between the supports. Per my attached calculations, the joists can barely carry the existing applicable snow load. The future development on the neighboring property will certainly add more snowdrift load to the roof which will be beyond the roof structural capacity.

Therefore, the roof structure will not be able to carry the future increased snow load and must be reinforced and strengthened if any additional load will be added.

Thank you for providing us with the opportunity to be of service.

Sincerely,

Yahya Aliabadi, PhD, PE
A & A Structures LLC"

The structural engineer's report has not changed as of July 7, 2021 despite a 'redesign' of the proposed development.

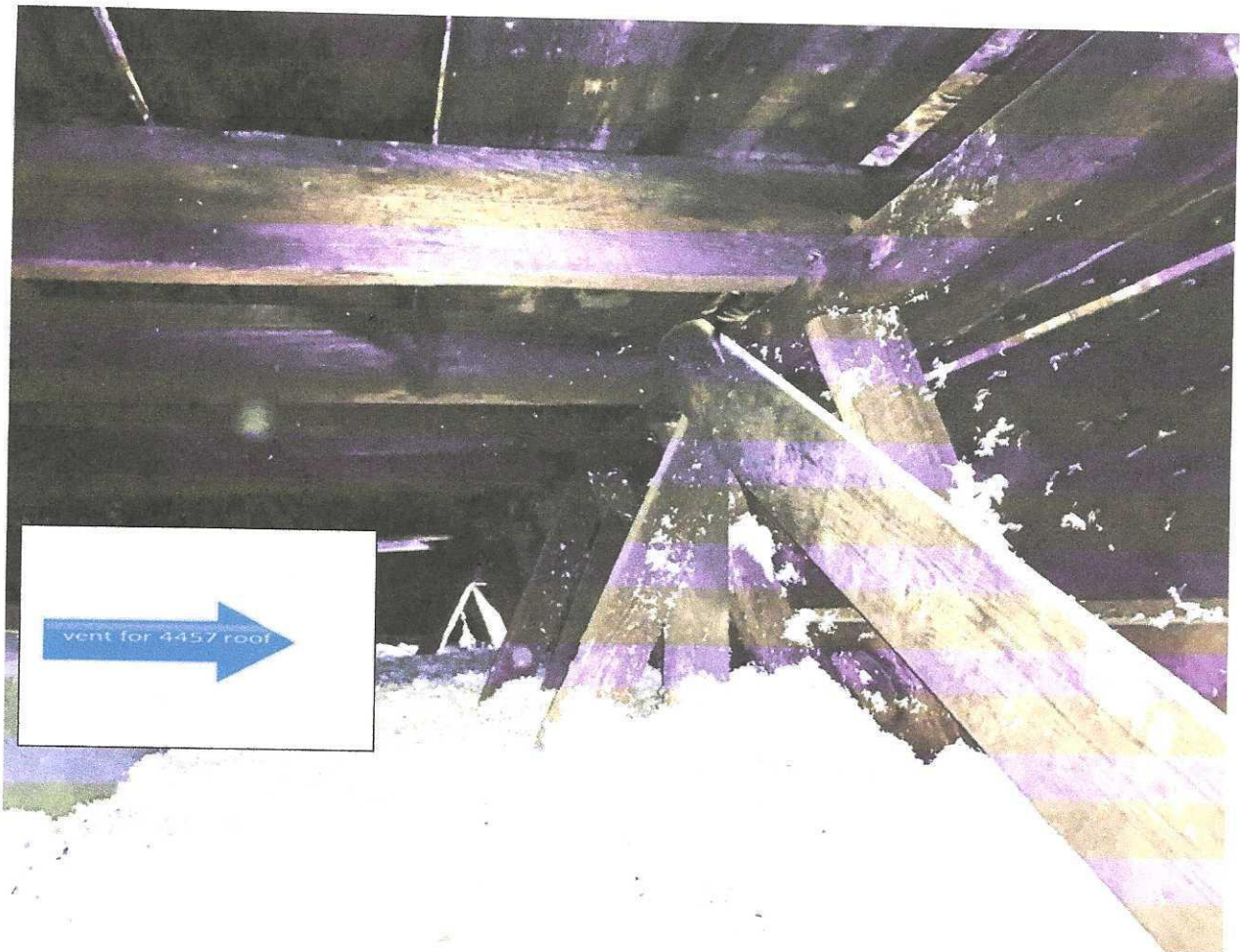


Figure 2 Common attic of 4457 – 4459 with arrow indicating the attic vent for 4457 when viewed through 4459 side of the attic.

The applicant's most recently revised plans were submitted to the 4459 Property owner's structural engineer who has evaluated the plans. There are critical issues that are in need of attention immediately. Please reference the letter dated July 7, 2021 from the structural engineer in which he stated:

“

A & A Structures LLC
22 Holly Leaf Ct. Bethesda MD 20817
Tell: 240-678-5399
aastructure@gmail.com

July 7, 2021

Ms. Dawn Lea
4459 MacArthur Blvd NW, Washington, DC 20007

Re: Review of drawings for 4457 MacArthur Blvd. NW

Dear Ms. Lea,

Per your request, I reviewed the submitted plans for your neighboring development at 4457 MacArthur Blvd. Washington DC 20007. I found the following concerns in the plans.

- 1- Despite set back on the last floor, the Snowdrift issue is not eliminated. The parapet on the upper floor will still cause snow drift accumulation. This is obvious in Isometric view 2 of Drawing 17, Cross Section 3 on Drawing 14, and Cross Section 2 on Drawing 13. The snowdrift horizontal length is 6.5 feet. Therefore, any obstacle placed within 6.5 feet of the property line will cause snowdrift accumulation.
- 2- The full set of plans are not submitted. The plans do not show the dimensions. The developer shall provide the full set for our review.
- 3- Per my observation in my site visit, the area at the rear of your property is missing studs and proper supports. Demolition of the neighbor's property will seriously jeopardize the wall and expose your interior space to weather, frost, humidity, and heat.
- 4- It is not clear how the underpinning will be done in the basement. The plans shall show the extent and depth of underpinning. Cross Section 2 of Drawing 13 and Cross Section 3 of Drawing 14 show the new foundation encroaches into your property. The new foundation section and plan are required to show the new footing will not pass beyond the surface of the party wall.

Should you have any questions or concerns please do not hesitate to contact me.

Thank you for providing me with the opportunity to be of service.

Sincerely,

Y. Alhababi

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As the Board can determine, issues raised at the initial hearing, are not addressed and in fact are magnified by the applicant with continued disregard of the safety and life residing at 4459 MacArthur Blvd NW, Washington, DC. Please pay particular attention to each item raised by Dr. Aliabadi, the structural engineer, as each item is critical with multifactorial impacts.

As an owner of 4459 Property, I respectfully bring attention to the 916 Kennedy St. NW, Washington DC building collapse and the impact on neighboring buildings. This will indeed happen again if the development at 4457 MacArthur Blvd NW is allowed to proceed and impact the 4459 MacArthur Blvd NW structure; this type of situation will be in the media again, and this time, rather than 916 Kennedy St NW, the media will be reporting on a collapse at 4459 MacArthur Blvd NW. Therefore, I request that each issue identified in the letter by Dr. Aliabadi, the structural engineer, be addressed item by item and post haste.

To be addressed during a mediation process (as recommended by the Board), scheduled for July 13, 2021, please reference the exhibit submitted by Greenstein, DeLorme & Luchs, P.C. as legal counsel for Foxhall Terrace LLC on July 7, 2021, the easement issues are not resolved by the applicant and are not likely to be resolved during the mediation meeting. There is literally no turn around capability from 4457 MacArthur Blvd NW. I respectfully request that someone please appear 'on-site' to visually inspect the situation. The lack of turn around capability was raised by Mr. Stephen duPont, architect, in the April 28 BZA hearing. This is not addressed in the most recently submitted documents by the applicant; Mr. Brown, representing Foxhall Terrace, has partially addressed this in his recently submitted exhibit.

To reiterate and impress upon the Board, the Office of Planning (BZA Exhibit 35) and the District Department of Transportation (BZA Exhibit 37) specifically relied upon the 10-foot driveway/easement of Foxhall Terrace LLC and the 12-foot rear reciprocal right of way at the rear of the 4459 Property to provide off street vehicular and truck access, parking, multiple residents moving in/out, contracted trash truck service (there is no clearly defined area for garbage receptacles large enough to accommodate 8 units and the proposed parking would make it near impossible for trash service to occur at the rear of the property), other service vehicles, and demolition/construction staging. Based upon Exhibit 37 submitted by DDOT,

*“DDOT’s practice is to accommodate vehicle loading in a safe and efficient manner, while at the same time preserving safety across non-vehicle mode areas and limiting any hindrance to traffic operations. For new developments, DDOT requires that loading take place in private space and that no back-up maneuvers occur in the public realm. **In this case, loading can take place in the rear of the property via the easement across 4459 and 4465 MacArthur Boulevard NW. Access to this building for loading and unloading, delivery and trash pick-up is an important consideration, and DDOT expects the Applicant to comply with DDOT’s standards for loading. Per Subtitle C § 901.1 of the Zoning Regulations, buildings with fewer than 50 units are not required to provide a loading berth. As such, future residents should use the rear of the property for move-in/moveouts or obtain “emergency no parking” signs from DDOT to reserve an on-street parking space. Since the site has more than three (3) units, the Applicant***

must contract a private trash collection service. Trash should be stored entirely on private property, out of the view of the sidewalk, and collected at the rear of the property via the easement.”

The owners of the 4459 Property continue to be and will always be strongly opposed to recommendations related to the responses by the Office of Planning (BZA Exhibit 35) and the District Department of Transportation (BZA Exhibit 37). As a reminder from the previous meeting, the 10-foot driveway belonging to Foxhall Terrace experiences heavy vehicular and bicycle traffic and also serves as the primary pedestrian walkway to MacArthur Boulevard for a large number of pedestrians; the additional traffic during demolition/construction and following completion of the property will create hazardous situations. As cited in the letter of opposition from Foxhall Terrace LLC, “these rights of way were created and maintained to provide limited single family access, not for an eight-unit multifamily dwelling at the 4457 Property.”

There are at least three recent historical facts related to the rear of the 4459 Property:

- (1) The owners of the 4459 Property have sustained significant damages by large vehicles doing construction at the 4457 Property with prior owners. These damages occurred on the non-easement area at the rear of the 4459 property. The garage roof and gutter have been damaged and the asphalt destroyed by large vehicles turning their wheels and grinding the asphalt into pebbles on the 4459 Property (not on the easement). Large vehicular traffic (i.e. moving trucks, construction trucks, nor any type of construction equipment can be accommodated in the twelve foot right of way without damage to the 4459 Property. I assure you, without a doubt, I have cameras in place and will contact Metropolitan Police Department to ticket and tow any vehicle illegally parked on the 4459 property in excess of easement use. That is a hard fact - prior damages have not currently repaired to provide proof of the limitations related to the property at the rear of 4459 property with photographic evidence.



Damage to garage/gutter at 4459 from prior construction at 4457

- (2) Historically, previous residents/tenants of the 4457 Property have had visitors and the entire easement and the non-easement personal of 4459 property behind the garage would be filled with vehicles thus denying access to or exit from the 4459 Property.
- (3) Moving trucks for 4457 occupy the property at the rear of 4459 in excess of the allowed 12 foot easement. The easement behind the 4459 Property garage will certainly be violated by multiple residents of the 4457 Property which proposes eight (8) units rather than a single family home. Again, leading to loss of access

and no exit for 4459 Property owners, with the same consequences. As one can see in the photograph below, moving in/out vehicles or any large vehicle cannot rely on the easement as proposed by DDOT and those vehicles park on the private property of 4459 and block the owner access to garage and residence. The owners of 4459 Property request that DDOT reconsider the general recommendations as detailed above. The owners of the 4459 property request the indulgence of the Board in providing the best means of communication with DDOT for a resolution to this issue.



Resident of 4457 moving truck to the rear of the garage at 4459, in violation of the easement for both 4459 and 4465.

- (4) A six inch diameter steel post embedded deeply into the ground at the very corner of the 4459 Property and is continually violated due vehicles accessing the ten (10) foot 4465 easement. If the steel post weren't there, this would result in vehicles further damaging the 4459 Property.



Evidence of limited easement width

Importantly, and an indication regarding the lack of scrupulous behavior towards citizens and property owners in Washington, DC, Polygon Holdings LLC actions identified below cannot be viewed in isolation from the Application for case 20380. I plead with the Board to take the following information into account in making your decisions.

As cited in Exhibit 22 (ANC3D letter to the BZA)

“Advisory Neighborhood Commission 3D respectfully requests that the Board of Zoning Adjustment cancel the hearing scheduled for February 10, 2021 hearing and require Applicant Polygon Holdings LLC to begin the application process anew once, and only if, it properly registers its Limited Liability Company with the District of Columbia Department of Consumer and Regulatory Affairs and obtains the authority to transact business in the District of Columbia and also if Applicant Polygon Holdings LLC obtains a Basic Business License with a Single Family Home Rental Endorsement since it is currently leasing the subject property to residential tenants.”

- It is my current understanding that the Board of Zoning Adjustment will now require business applicants to demonstrate they're properly authorized to operate in the District before considering their applications.

As indicated above, it is requested that the applicant's process begin *anew*, since they are *now* registered as an LLC within the District of Columbia. As noted in an ANC3D letter to the BZA dated April 7, 2021 (Exhibit 44) no one representing the application for case 20380 contacted the owners of 4459 Property to discuss the project prior to or since purchasing the property in July 2020. In this same letter, there exist a hyperlink of a February 3, 2021, ANC3D letter to Attorney General Racine and Acting Director Palacio requesting an investigation for Alleged Fair Housing Violations,

(https://resolutions.anc.dc.gov/AttachmentsFiles/13/OAG_OHR%20Letter%20-%20Final_TM_20210302052732PM.pdf) in addition to a request for the Office of Human Rights to investigate. The Equal Rights Center (ERC) also requested an investigation by the DC Office of the Attorney General. In a response letter to the ERC, this developer documented developing multiple properties in Washington, D.C. (while never having been registered in the District of Columbia); Polygon Holdings LLC was never registered until after this Application (20380) was filed - when the ANC3D sent a letter (Exhibit 28) to the BZA. Cyrus Damavandi, the real estate agent, which Polygon states has not been involved since facilitating the purchase property in July 2020 has in effect incriminated himself in an interview with The City Paper when admitting he was responsible for placing a sign in front of the 4457 Property. <https://washingtoncitypaper.com/article/507704/virginia-based-developer-accused-of-blockbusting-in-ward-3/>

The unscrupulous actions by this developer continue. There is NO evidence for regard of the safety or life of the owners at the 4459 property, nor the community at large.

- **The owners of 4459 Property very strongly continue to oppose the development of 4457 MacArthur Blvd NW by Polygon Holdings LLC: the 4459 property will literally collapse.**

- Because the Office of the Attorney General (OAG) and the Office of Human Rights (OHR) were asked to investigate potential violations of the Fair Housing Act of 1968, (by separate parties) the owners of the 4459 property request that confirmation be provided to the BZA by the aforementioned governmental agencies that the developer is deemed to be 'all clear' prior to any approval. When contacted, the OAG would not comment on cases under investigation. *The applicant's behavior referenced in Exhibit 44 (ANC letter to the BZA) is indicative of the divisive and disrespectful behavior of this developer, Polygon Holdings LLC, towards regulatory bodies in Washington DC, the community, and to the owners of abutting properties to their planned development at 4457 MacArthur Boulevard NW, Washington, DC.*

In conclusion, this proposed development is in violation of Zoning Regulations Section F-5201 which says that an application for a special exception

"shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular: . . . the privacy of use and enjoyment of neighboring properties shall not be unduly compromised."

Thank you for your time and consideration related to this letter in opposition to case 20380.

Sincerely,



Dawn Lea

Cc:

Mr. Jonathon Kirschenbaum (Jonathon.kirschenbaum@dc.gov)

Mr. J.P. Szymkowicz, ANC3D Commissioner (3D09@anc.dc.gov)

Martin P. Sullivan, Esq. (msullivan@sullivanbarros.com) representing Polygon Holdings LLC

Mr. John Patrick Brown, jpb@gdllaw.com representing Foxhall Terrace

Dr. Aliabadi, structural engineer hired for 4459 MacArthur Blvd NW, Washington DC

Mr. Stephen duPont, Jr. RA (architecture@sdpra.net)