

May 12, 2022

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
Office of Zoning
441 4th Street, NW
Suite 200S
Washington, DC 20001

Re: **Letter in Support of BZA Application No. 20594: Nezahat and Paul Harrison**

Dear Mr. Hill and Members of the BZA,

I write to you and your colleagues as ANC Commissioner for single member district 3F03, and on behalf of my fellow Commissioners, to explain why ANC 3F voted to approve unanimously the two variances sought by Nezahat and Paul Harrison ("Applicants") in the above-referenced matter. Specifically, Applicants seek to build two single-family homes on a 30,618 square foot lot in zone R-8, where the minimum lot size requirement is 7,500 square feet, and have filed an application seeking relief from the following provisions:

1. The lot frontage requirements of Subtitle C, Section 303.2
2. The minimum lot dimensions of Subtitle D, Section 502.1

Since ANC 3F's vote to approve these variances, it is my understanding that several neighbors have obtained party status in the proceedings at the BZA level in order to oppose Applicants' plans, and others have submitted letters objecting to Applicants' plans. I also understand that the BZA hearing in this matter is scheduled for May 18, 2022. Additionally, Applicants have updated their submission and the code provision under which they are requesting relief, however that change does not impact ANC 3F's conclusions.

Please find below information about the exhaustive review process leading up to the November 16, 2021 meeting of ANC 3F at which all seven commissioners of ANC 3F voted unanimously to support the two variances sought by Applicants. Ultimately, BZA should know: (1) That ANC 3F's decision process took into account input both from neighbors who opposed and neighbors who supported Applicants' plans, and (2) Why the Commissioners of ANC 3F voted unanimously in favor of the two variances sought by Applicants.

Background and Review Process

After approximately six months of comprehensive review (which included meetings with neighbors, Applicants and their consultants) and site visits, the Commissioners of ANC 3F voted to approve the two variances sought by Applicants. Summarized below is a chronology detailing the review process of Applicants' request for the variances:

- In mid-April, 2021, Applicants contacted me in my capacity as ANC Commissioner for 3F03 to introduce their plans for their property at 3007 Albemarle Street (the "Property"). Applicants

purchased the Property in June 2020 and have since been working with a civil engineer, a building architect, and a landscape architect to develop plans that include razing the existing house (built in 1925) and building two separate single-family houses on the Property – one for their multi-generational family to live in and another to sell.

- In mid-June, 2021, at the request of neighbors (three of whom are now joined as parties to this matter and others who are now supportive of Applicants' plans), I participated in a group conference call to listen to their collective concerns about Applicants' plans to build on the Property. Applicants were not present on that call and, to my knowledge, were not invited by the neighbors to join that conversation.
- During the months that followed, I received emails from neighbors directly adjacent to the Property and some from neighbors beyond the 200-foot zone around the Property. The objections raised by neighbors were grounded in various concerns; chief among them were traffic safety, landscaping/privacy screening, and stormwater management.
- Over the summer and early fall of 2021, I was copied on the many emails that Applicants sent to neighbors within the 200-foot zone around the Property to notify them of their project and to address their concerns, including by sharing renderings of their building and landscaping plans.
- On September 13, 2021, Applicants invited neighbors to attend a site visit with their consultants - David Landsman (civil engineer, CAS), Kevin Campion (landscape architect, Campion Hruby), and Catarina Ferreira (architect, Architextual). At that meeting, Applicants were invited to share their thoughts and concerns about future plans to develop the Property. Having participated in that meeting, my observations are as follows:
 - Neighbors Brent Lee and Scott Seay, whose home sits uphill (above) the Applicants' Property, expressed concerns about post-development privacy screening and landscaping features. They seemed satisfied with the information shared by Applicants in that meeting and somewhat relieved that Applicants had hired Mr. Campion and Mr. Landsman, both of whom Messrs. Lee and Seay had worked with to devise landscape and stormwater management solutions at their own property.
 - Neighbor Marjorie Share, whose home is west of the Property, also expressed concerns about privacy screening and landscaping features post-development. Ms. Share shared her specific concerns with Applicants and their consultants during our walk-around. It is my understanding that Ms. Share and her husband, Joel Swerdlow, have had numerous constructive conversations since that meeting, have reviewed the landscape, building and stormwater management plans prepared by Applicants' consultants after that meeting, and are now supportive of Applicants' proposed project. In fact, Mr. Swerdlow sent me an email with a statement of support for Applicants' plans, which I read into the record at the October 19th, 2021 meeting of ANC 3F during a preview of the project and review of Applicants' request for a public space permit.

- Neighbor Deborah Hernandez, whose home is downhill from the Property, is one of two neighbors who has an easement to use the original pipestem driveway on the Property in order to access her garage. During our walk-around, Ms. Hernandez shared her concerns about stormwater running off the Property onto hers. She invited us into her yard to show us the extensive drainage systems that she has had installed at great expense. Following our meeting, she also sent me photographs of water that runs down from the Property and collects in large pools behind her garage during rainstorms.
- Neighbor Mary Lee, whose home is downhill from the Property, is the other neighbor who has an easement to use the original pipestem driveway in order to access her garage. During our walk-around, Ms. Lee did not allow us onto her Property because she did not have concerns about stormwater management. Her grievance was that Applicants are not willing to sell her a section of the middle of their driveway which she desires to purchase for the benefit of her adjacent garden.
- Finally, I note that Jack Baringer, whose home is directly adjacent to and east of the Property, sent me emails explaining that he has lived in his home since 1984 and does not “want or need this” – referring to Applicants’ plans for the Property. Mr. Baringer was invited to but did not attend the meeting on September 13, 2021, nor did he attend the subsequent meeting. He also asked me by email not to send him information about Applicants’ project to build two homes at the Property, and has accused me of being biased in favor of the Applicants. When I participated in the September 13th walk-around, I noted that: (1) Mr. Baringer’s auxiliary dwelling unit has a deck that extends over the property line and onto Applicants’ Property, and (2) An arrangement of river stones on Mr. Baringer’s property directs stormwater away from his site and onto Applicants’ Property.
- After listening to the concerns of neighbors directly adjacent to the Property, I encouraged Applicants to work closely with their neighbors to answer questions, provide information, and address the issues raised by neighbors. I also pressed Applicants to offer a comprehensive stormwater management plan, which repeatedly delayed Applicants’ appearance before ANC 3F.
- On November 4, 2021, Applicants convened another meeting with neighbors to share their stormwater management, landscape and building plans. Present at this meeting were Applicants’ consultants - Mr. Landsman, Mr. Campion and Ms. Ferreira. Neighbors Ms. Hernandez and Andy Orlin (who lives downhill from the Property) attended, as did I and then-Chair of ANC 3F03, Commissioner David Cristeal. It is my understanding that, while Ms. Share could not attend this meeting, Applicants have had several meetings over time with Ms. Share and her husband, Mr. Swerdlow, to discuss their project plans for the Property.
- The bulk of the November 4th meeting was focused on the stormwater management plan presented by Mr. Landsman, which was based on runoff calculations for water that currently flows onto the Property from adjacent properties, as well as water that originates on the

Property during rain storms. It is also my understanding that the stormwater management plan would put in place capture devices and measures that would actually reduce the longstanding problem of excess stormwater flowing into the yards of the homes that are located downhill from the Property and excess stormwater flowing onto Albemarle Street from the pipestem driveway that serves the Property – issues that were raised originally by Ms. Hernandez and subsequently by other neighbors downhill from the Property.

- During that meeting, Mr. Orlin and Ms. Hernandez noted that they are not stormwater experts and therefore have no way of knowing whether the stormwater management plan devised by Mr. Landsman would achieve the Intended results. I acknowledged that I am also not an expert in this field, and Mr. Landsman explained that the District's permitting process for the project would include a comprehensive review of (and possible revisions to) Applicants' stormwater management plan.
- In the days leading up to the November 16th meeting of ANC 3F, I heard for the first time from a few other neighbors directly adjacent to the property (who had not attended either of the two meetings) about their stormwater management concerns.
- During the entire process, I provided monthly updates and information to my fellow Commissioners. The extended review process culminated in Applicants' appearance at ANC 3F's monthly meeting on November 16, 2021, at which ANC 3F voted unanimously to approve the two variances being sought. Following that meeting, I received email messages from several neighbors applauding the process and outcome of the ANC review process. One resident who lives directly adjacent and downhill from the Property wrote "Yes, I would prefer to continue having a semi-wooded field in back of my home [address deleted], rather than a swimming pool, but I strongly feel that the Harrisons should have the right to undertake their development as long as their plans address the water issue and meet other City building and property development requirements."

ANC 3F's Decision

After the exhaustive six-month review process, the Commissioners of ANC 3F determined that the variances sought by Applicants meet the standards of review typically applied by the BZA in similar previous matters because:

1. The exceptional conditions of the Property, in particular the pipestem driveway dating back to 1924, necessitates relief from the lot frontage requirements of Subtitle C, Section 303.2;
2. Rigid application of DC's zoning regulations in this case would result in a "practical difficulty" in that Applicants would be barred from subdividing the lot to accommodate two single family homes on a property that is over 30,000 square feet – clearly not the intended consequence of Subtitle D, Section 502.1, which governs minimum lot dimensions in zone R-8; and

3. The Commissioners of ANC 3F did not find evidence that Applicants' project would cause substantial detriment to the public good or otherwise impair the intent, purpose and integrity of the city's zone R-8 plan. To the contrary, the Commissioners of ANC 3F unanimously agreed that Applicants' significant investment in addressing long-standing storm and groundwater problems (resulting from various properties in the area, including those owned by neighbors now joined as parties to this matter) are likely to improve water management conditions at and around the Property.

Amendment by Applicants

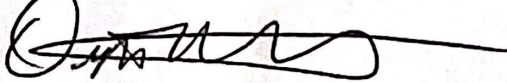
Subsequent to the ANC hearing, Applicants have amended their request for relief to apply for subdivision under the Subtitle C, § 305 "Theoretical Subdivision" provision. In understand that they have also withdrawn their request for an area variance from Subtitle B, § 314.2(c) for the minimum front setback distance. Other than moving the proposed western house south for the purpose of making it front setback compliant (thereby reducing its square footage and overall footprint), the project plans have remained substantively the same. I have reviewed the Theoretical Subdivision provision in light of its direction that the proposed development "shall not be likely to have an adverse effect on the present character and future development of the neighborhood." As the project design has remained largely the same and the Commissioners of ANC 3F had already considered this question in light of the variance standard's requirement that "granting the variance will do no harm to the public good or to the zone plan" there is no need for further review of the relief requested. Specifically, in well over two hours of public discussion spanning two public meetings of ANC 3F, the issues of: (i) yards and setbacks, (ii) building height, (iii) site access, traffic, parking, and pedestrian safety, (iv) lot coverage, (v) nonpermeable surface and stormwater management, (vi) screening including trees and landscaping, (vii) urban design, and (viii) the environment, were discussed and deliberated. Moreover, the footprint and mass of the proposed project would be allowed for an *as-of-right development*, so relief would not have an adverse effect on the neighbors or the neighborhood as a whole.

Conclusion

As the BZA conducts its review of Applicants' request for relief and considers the objections raised by parties who are now joined to this matter, the Commissioners of ANC 3F urge the BZA to take into account the extensive nature of the meetings, communications, and project plans reviewed by ANC 3F in reaching its decision to recommend that Applicants be granted the relief they are seeking. Moreover, the BZA should be wary of yielding to the collective will of a small group of neighbors who, in their desire to maintain the status quo of a large undeveloped green space (that is not owned or maintained by them), are now leveraging zoning rules and procedures to delay disposition of this matter – a tactic that has real-life consequences for a family seeking to build their home on the property they purchased nearly two years ago. Perhaps the point was best stated by an adjacent neighbor who emailed me shortly after the November 16th ANC 3F meeting to say "Yes, I would prefer to continue having a semi-wooded field in back of my home [address deleted], rather than a swimming pool, but I strongly feel that the Harrisons should have the right to undertake their development as long as their plans address the water issue and meet other City building and property development requirements."

For the reasons explained above, ANC 3F urges the BZA to grant the relief requested by Applicants so that the proposed project can proceed to the next phases of permitting by the requisite District agencies. Thank you for the opportunity to share ANC 3F's views and for your careful consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dipa Mehta', with a long horizontal stroke extending to the right.

Dipa Mehta, ANC Commissioner, 3F03

cc: Commissioner David Cristeal, 3F01
Commissioner Alex Appah, 3F02
Commissioner Stan Wall, 3F04
Commissioner Claudette David, 3F05
Commissioner Monika Nemeth, 3F06
Commissioner James Tandaric, 3F07