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June 5, 2022

Frederick L. Hill, Chairman
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

Re: SMD ANC 3F03 Letter in Support, Case No. 20594

Dear Chariman Hill and Members of the Board:

This letter is written in response to Exhibit 111A in this case, a letter from Dipa Mehta, Commissioner, SMD ANC 3F03, expressing support for the above-referenced application. My clients, Jack Baringer, a party to this case, and his homeowner spouse, Michela Perrone, wish to register their strong objection to Commissioner Mehta's letter.

The Commissioner's letter goes into considerable detail to explain the ANC3F's support for the Application. This exercise, however, has at best marginal relevance to the decision the Board has to make in this case. As set forth in *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016)(emphasis added), District of Columbia law

does not require the BZA to give "great weight" to the ANC's recommendation but requires the BZA to give great weight to any issues and concerns raised by the ANC in reaching its decision. See D.C.Code 1-309.10(d)(3)(A) (2012 Repl.). ... While it may be helpful to an applicant seeking a variance or a special exception to have the support of the local ANC, **that body's recommendation in favor of a project does not provide any substantial support to justify the BZA's decision.**

Further, rather than even-handedly reviewing the "issues and concerns" raised by nearby property owners in the course of the ANC review, the letter reads more like an advocacy piece for disregarding those issues and concerns and approving the Application. Compounding this misdirected effort, Commissioner Mehta's letter (p.3) includes claims that my clients have encroached on the Applicant's property and directed stormwater runoff away from their property and onto the Applicant's property. These claims are both unsubstantiated and irrelevant to this

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proceeding. My clients strongly object to any reliance by the Board on these claims for that reason alone. They also deny that there is any merit to either accusation.

The foregoing considerations alone are sufficient to discredit Commissioner Mehta's letter as a reliable source for any information regarding this case. But any doubt about her bias toward the Applicant, in what should be a neutral appraisal of neighbor issues and concerns, is eliminated by the following passage from her letter (p.5):

[T]he 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 . . .

It matters little whether this reprehensible comment from an elected official is directed solely at my clients or includes others who have expressed concerns about the Application. Either way, it is highly offensive and inappropriate. In addition, it is groundless: no party in opposition has (a) expressed a "desire to maintain the status quo;" (b) asked for a delay in the Board's consideration of this case; or (c) done anything meriting the description "leveraging zoning rules and procedures," whatever inexplicable thought Ms. Mehta may have sought to convey with that intended aspersion.

Respectfully submitted,



David W. Brown
Counsel to Jack Baringer and
Michela Perrone

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 5, 2022, a copy of the attached letter was served on the following by email:

Elisa Vitale, D.C. Office of Planning, via email: Elisa.Vitale@dc.gov

Nezahat and Paul Harrison, Applicants, via email: paul@3lobos.com

ANC3F and Chair Claudette David, via email: commissioners@anc3f.com & 3f05@anc.dc.gov

ANC3F03 SMD Commissioner Dipa Mehta, via email: 3f03@anc.dc.gov

Party Deborah Hernandez via attorney Cynthia Giordano by email: Cynthia.Giordano@saul.com

Party Mary Lee via attorney Andrea Ferster by email: [aferster@railstotrails.org](mailto: aferster@railstotrails.org)

Party John F. Baringer via email: jfbaringer@gmail.com



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