

Palisades Citizens Association

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March 10, 2023

Mr. Mamadou Ndaw, Acting Zoning Administrator
Deputy Zoning Administrator
Office of the Zoning Administrator
D.C. Department of Buildings
1104 4th Street, S.W.
Washington, DC 20024

RE: BZA Order in Application No. 20308 of 4865 MacArthur Landlord, LLC
Complaint of Non-Compliance with Conditions of November 2020 BZA Order

Dear Mr. Ndaw:

At its March 1 meeting, Commissioners of Advisory Neighborhood Commission 3D voted unanimously to send you the attached letter, which requests the Office of Zoning to immediately direct the Developer, 4865 MacArthur Landlord LLC, to comply with the conditions established in the above referenced Board of Zoning Adjustment Order. A copy of the letter is attached.

The Palisades Community Association echoes the concerns conveyed in the ANC 3D letter and also **strongly urges action by the Office of the Zoning Administrator to ensure full compliance with the BZA order.** In particular, we ask that the Office of the Zoning Administrator take action to enforce Condition (2)(c) of the November 2020 Board of Zoning Adjustment (BZA) Order for Application No. 20308, the project at 4865 MacArthur Boulevard, NW.

Condition 2 of the above-referenced BZA Order specifically provides that 4865 MacArthur Landlord, LLC “shall implement the following traffic and pedestrian safety improvements around the perimeter of the Property.” The specific provisions are detailed in ANC 3D’s letter.

The Palisades Community Association remains concerned about traffic and pedestrian safety in the area that surrounds this development, and implementation of its commitments in the zoning order will help to mitigate anxiety and tangibly raise safety levels for the many neighbors who walk on our streets when there are no sidewalks. Neighbors walk to nearby restaurants, stores and our Farmers Market. The development is a little more than a year away from opening (the estimated completion window is Spring, 2024) and about 2400 feet of sidewalks, in front of 27 single-family houses, are required by the BZA Order.

Board of Zoning Adjustment
District of Columbia
CASE NO.21007
EXHIBIT NO.16A

The BZA Order was issued 28 months ago and there has been no movement toward compliance. The Developer's permit applications contain no plans for construction of these improvements. DDOT has told the Palisades Community Association and ANC 3D representatives that the Developer has not formally engaged with them on these improvements and that they must file an appropriate document, including graphics, which would **trigger the department's approval or disapproval**.

As the ANC 3D letter points out, the Developer says it cannot be made to construct the safety improvements without DDOT approval and DDOT says it cannot give approval until the Developer provides plans to approve or disapprove. This is a classic Catch-22, and we join our ANC in believing that it requires prompt intervention by the Zoning Administrator.

The Palisades Community Association requests that the Office of Zoning immediately direct 4865 MacArthur Landlord, LLC to comply with Condition 2, and to do so swiftly.

It is not in the public interest to allow this dispute to languish until the certificate of occupancy is pending, and either delaying occupancy of the project or requiring interested parties to enforce this condition through an appeal of the certificate of occupancy to the BZA.

All of us in the Palisades appreciate your prompt attention to this matter.

Sincerely yours,



Jennifer Wieroniey
President
Palisades Community Association

cc: Tricia Duncan, Advisory Neighborhood Commission 3D Chair
Bernie Horn, Advisory Neighborhood Commissioner 3D05
Matthew Frumin, DC Councilmember
Everett Lott, DC Department of Transportation Director
Matthew Marcou, DC Department of Transportation Chief of Staff
George Branyon, DC Department of Transportation
Aaron Zimmerman, DC Department of Transportation
William Brewer, Trammel Crow

Advisory Neighborhood Commission 3D

Government of the District of Columbia



March 1, 2023

Mamadou Ndaw, Acting Zoning Administrator
Office of the Zoning Administrator
DC Department of Buildings
1104 4th Street, S.W.
Washington, DC 20024

RE: Application No. 20308 of 4865 MacArthur Landlord, LLC
Complaint of Non-Compliance with Conditions of November 2020 BZA Order

Dear Mr. Ndaw:

Advisory Neighborhood Commission 3D requests that the Office of Zoning take action to enforce the Applicant's noncompliance with a BZA order for Application No. 20308, condition 2(c) for the project at 4865 MacArthur Boulevard, NW. Condition 2(c) of the above-referenced BZA order specifically provides that the Applicant "shall implement the following traffic and pedestrian safety improvements around the perimeter of the Property. This specific condition is as follows, and directs the applicant to:

c. Actively seek, in writing and orally, the following safety improvements near the R[1]1-B Building site, and if approved by DDOT, construct these improvements:

- i. Three-way stop signs and cross walks at V Street and 48th Place, N.W.; at V and 49th Streets, N.W.; and at V and 48th Streets, N.W.;*
- ii. A no-right-turn-for-trucks sign at 48th Place and V Street, N.W. intersection for trucks exiting 48th Place, N.W.;*
- iii. A crosswalk and a speed control measure on 48th Place and V Street near the intersection with U Street, N.W.;*
- iv. 15 mph signs near the library on V Street, N.W.;*
- v. A high-visibility crosswalk and crosswalk signal at U Street and MacArthur Boulevard, N.W.; and*
- vi. Sidewalk extensions along all of V, 48th, and 49th Streets, N.W.*

Background

The Developer is well into the construction of a large Balfour-branded senior living facility where, since 1927, a Safeway supermarket had previously operated. The Safeway parking lot had three entrances, two of them on or very near to MacArthur Boulevard. The third emptied into a small non-residential street, 48th Place. The Balfour facility closes off the two entrances on or near MacArthur and all traffic will be directed through one access point serving the main reception area, loading dock, and parking garage accessed through 48th Place, in addition, it adds a new 15-space parking lot which is accessed

from V Street, which is residential. As a result, the traffic patterns of the site effectively shift from the commercial side of the development towards the residential side.

Testimony before the BZA pointed out the traffic problem created by Balfour's plan. Cars from the Balfour site will likely drive west on V Street and north on 48th Street to access Foxhall Road and locations in that direction, while other cars will likely drive east on V Street and north on 49th Street to avoid a traffic light. This could be managed except for the fact that, for part of V and all of 48th and 49th Streets, **there are no sidewalks on either side**—pedestrians have no choice but to walk in the street. It's an obvious hazard which requires remediation.

The BZA Order

The BZA held a hearing and made a decision on November 4, 2020. The relevant section of the BZA Order is found on page 12 and reprinted below. The Developer has mostly built the sidewalks in (2)(a) and we expect them to comply with (2)(b). This Complaint is about noncompliance with (2)(c) and the specific language that has led to a dispute is in boldface.

To fully understand the “actively seek” clause, bolded above, one needs to realize that—except for this one clause—all of the language in Section 2 was incorporated word-for-word from an October 27, 2020 Memorandum of Understanding (MOU) negotiated between this ANC, working closely with the Palisades Community Association, and the Trammell Crow Company on behalf of the Developer.

In the MOU, this clause read: “Actively promote with the District Department of Transportation both in writing and orally the following safety improvements near the Project's site...” Obviously, this clause would not have committed the Developer to construct anything. By proactively changing the language of this clause, the BZA clearly intended much more than the MOU.

In addition, the transcript of the BZA meeting confirms that intent. On page 215, talking about this precise language—(2)(c) in the BZA Order is (4)(e) in the MOU—it says:

*CHAIRPERSON HILL: “...we are referencing paragraph 4(e) from the MOU, if DDOT approves it. So, you know, **if DDOT approves paragraph 4(e) of the MOU, then they have to do it. Okay?** That's the condition that I'm just making – that's the motion that I'm making and I'm going to ask for a second, Ms. John.”*

VICE CHAIR JOHN: “Second.”

(Boldface added.)

The Developer has argued to us that the clause in Section 2 does not require them to pay for these traffic improvements. As such, the Developer advised us that they put in a 311 request for these improvements. In other words, the Developer has been complying with the language of the MOU, not the BZA Order.

But that interpretation of Section 2 would be both illogical and unprecedented. That would be like the BZA awarding a construction job, paid for by the city. The BZA cannot, would not, and did not do that. This section is an explicit condition of the Special Exception; it only makes sense if the Developer is to pay for the improvements as long as DDOT approves such improvements.

The ANC 3D request

The BZA Order was issued 28 months ago and there's been no movement toward compliance. DDOT has told us that Trammel Crow has not formally engaged with them on these improvements and that Trammel Crow should file an appropriate document, including graphics, which would **trigger the department's approval or disapproval**. The Developer says it can't be made to construct the safety improvements without DDOT approval and DDOT says it cannot give approval until the Developer provides plans to approve or disapprove. This is a classic Catch-22, and we believe that it requires prompt intervention by the Zoning Administrator.

ANC3D therefore requests that the Office of Zoning immediately direct Trammel Crow to comply with Condition 2, and to do so promptly. It is not in the public interest to allow this dispute over compliance with the BZA order to languish until the certificate of occupancy is issued, and either delaying occupancy of the project or requiring interested parties to enforce this condition through an appeal of the certificate of occupancy to the BZA. At its duly noticed, regularly scheduled, public meeting on March 1, 2023, with a quorum present at all times, Advisory Neighborhood Commission 3D voted 7-0-0 to approve this letter.

Thank you for your attention.

Sincerely yours,



Tricia Duncan (Mar 9, 2023 16:38 EST)

Tricia Duncan, Chair

cc: George Branyon, DDOT
Aaron Zimmerman, DDOT
Matthew Frumin, Councilmember Ward 3
Jenny Wieroniey, Palisades Community Association
Bill Brewer, Trammell Crow Company