

Ms. Brown and Mr. Evans:

Thank you for providing the memorandum dated July 3, 2023 on behalf of Trammell Crow Company / 4865 MacArthur Landlord LLC ("Developer"). The Office of the Zoning Administrator (the "OZA") has reviewed the memorandum and the arguments contained therein. While the OZA agrees that condition 2.c (the "Condition") of BZA Order 20308 does not impose an express payment obligation on the Developer, it does impose an enforceable obligation to construct the improvements approved by DDOT after the Developer fulfills the other obligation of the Condition: namely, to "actively seek" the six (6) enumerated improvements set forth in the Condition. Again, the OZA does not agree with the position of ANC 3D that the Developer is required to pay for the improvements, but it is the position of this Office that the plain language of the Condition makes the Developer responsible for the construction of the improvements.

The OZA acknowledges that as a practical consideration, the Developer's obligation to construct the improvements may become an obligation to bear financial responsibility for the improvements, should DDOT (or any other person or persons) not agree to bear the costs of construction. As previously noted in the OZA's July 3, 2023 correspondence, the source of funds for the cost of constructing the improvements is immaterial to the fulfillment of the condition.

As noted in your memorandum, the BZA "deliberately altered the language of [the Condition] in very precise terms...." Thus, the inclusion of an obligation to construct the enumerated improvements if approved by DDOT cannot be excised from the Order, nor can this specific provision be ignored. It is also clear from the full colloquy regarding the MOA's provisions during the hearing in this matter, that the BZA gave careful weight to what could and could not be adopted from the Memorandum of Agreement from the perspective of enforceability. Thus, the Condition was a product of deliberation, and evinces the Board's intention to make the construction of any improvements approved by DDOT an enforceable condition of the special exception.

Respectfully, given that the BZA specifically and intentionally altered the language of 4.e.iii of the Memorandum of Agreement to the language of the Condition, and upon application of the principles of statutory construction you espouse in the memorandum, the statement that "the Order cannot be inferred to mean that the Developer is required to construct the Condition 2.c improvement" is incorrect. No inference is necessary. The BZA included the express obligation to construct the improvements within the Condition.

Therefore, it remains the determination of the OZA that prior to the issuance of a Certificate of Occupancy for the Property, you must comply with the Condition imposed by the BZA, and all obligations therein.

Best regards,  
Kathleen

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On Thu, Jul 6, 2023 at 9:09 PM <[cbrown@brownlaw.law](mailto:cbrown@brownlaw.law)> wrote:

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Dear Matt and Kathleen,

Can we please schedule a time for a virtual meeting ASAP to (1) discuss this determination; (2) get clarification on the documentation needed given the fact that we have already actively pursued conditions 2c with DDOT; and (3) the community's position.

Thank you very much.

Best regards,

Carolyn Brown

On Mon, Jul 3, 2023 at 6:31 PM <[philip.evans@hklaw.com](mailto:philip.evans@hklaw.com)> wrote:

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Ms. Beaton – please find Developer's written memorandum which follows up on the meeting held between the parties approximately two weeks back. We look forward to further discussions after you have reviewed Developer's submission.

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On Mon, Jul 3, 2023 at 4:47 PM <[cbrown@brownlaw.law](mailto:cbrown@brownlaw.law)> wrote:

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Board of Zoning Adjustment  
CASE NO.21007  
EXHIBIT NO.16B