

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.

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.

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.

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Board of Zoning Adjustment
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