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October 15, 2020

VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

**Re: Z.C. Case No. 20-09 - Applicant's Post-Hearing Submission
Consolidated PUD and Zoning Map Amendment
2419 25th Street, SE (Square 5740, Lot 337)**

Dear Members of the Commission:

On behalf of Wagner, LLC (the "Applicant"), we hereby submit the additional information and materials requested by the Zoning Commission (the "Commission") at the September 24, 2020, public hearing regarding the above-referenced case.

1. Updated Architectural Plans and Elevations

At the public hearing the Commission requested that the Applicant reevaluate the design of the building's front entrance. As shown in the revised Architectural Plans and Elevations (the "Plans") attached hereto as Exhibit A, the Applicant updated the corner entrance by removing the column and recessed entry and pulling the main entrance forward to make it more visible and inviting. The Applicant also extended the brick façade material up to the 4th floor and added lighting to the underside of the canopy. *See* Plans, Sheets G12-G14, A01, A02, A09, A11, A13, A19. To simplify the north and east elevations, the Applicant also revised the tops of the bay windows to be symmetrical. *See* Plans, Sheets A09, A11.

The Plans also include an updated zoning tabulation chart and gross floor area ("GFA") diagram to demonstrate the change to the corner entrance. As shown on the GFA diagrams, the Applicant made minor adjustments to the GFA of the upper floors to offset the additional GFA added at the corner entrance. *See* Plans, Sheets G10-G11. As a result, there is no change to the project's total FAR from that which was previously proposed.

The Commission also requested more information on the fiber cement panel proposed for the building, including examples of where the same material has been used successfully in the past

and details on the corner joint element. The Applicant notes, as described above, that it has revised the building design at the primary corner and has replaced a significant amount of the initially proposed fiber cement panel with brick. Nonetheless, Sheet A18 of the Plans includes photographs of other projects with fiber cement panels, all of which were built within the past 2-7 years. Sheet A17 of the Plans includes an outside corner detail of the fiber cement panel with reveal trim and an outside corner reveal profile of the reveal trim. The Plans also include updated elevations, renderings, and materials board, which more accurately depict the fiber cement panel color, which is slightly darker than it appeared in the plans previously submitted to the case record. *See Plans, Sheets A09-A15.*

Finally, in response to the Commission's request at the public hearing, the Applicant will provide power in the bicycle storage room for electric bicycles. *See Plans, Sheet A01.*

2. Solar

At the public hearing the Commission asked the Applicant to study integrating solar panels above the green roof areas. The Applicant evaluated a variety of options and spoke with several solar consultants regarding the feasibility and cost implications of integrating solar panels above the proposed green roof areas.

As indicated in the letter dated October 13, 2020 from SaveSolar, a District based company that finances and builds solar assets (Exhibit B), SaveSolar reviewed the solar installation costs for the project and determined that the Applicant's initial proposal of providing approximately 375 square feet of solar would cost approximately \$16,800 (or approximately \$3.50 per watt). SaveSolar also reviewed a conceptual plan that would locate solar panels above approximately 2,200 square feet of green roof. If implemented, this plan would result in an additional cost of approximately \$85,600 (or approximately \$4.50 per watt), which is a 22% cost premium over traditional solar panels. Therefore, although technically feasible, the Applicant is not proposing to add more solar panels to the project given the substantial cost implications for a project that is 100% affordable.

Moreover, the project has been designed to integrate a host of sustainable features and will be designed to achieve the minimum number of points necessary to meet the 2015 Enterprise Green Communities Criteria for New Construction, or the equivalent thereof under any future Enterprise Green Community standards. Sustainable elements will include the planting of new trees and other landscape elements, providing a green roof that will reduce stormwater runoff and help to insulate the building and reduce energy usage, and installing bioretention areas planted with native and adaptive plant species to capture runoff from the roof. The project will also include energy-efficient light fixtures and Energy Star appliances to reduce the building's energy demand and low-flow fixtures to reduce water usage. Sustainable transportation methods will also be encouraged by providing short- and long-term bicycle parking, power in the bike room for electric bikes, and a dedicated on-site car-share space for use by residents of the Project and the surrounding neighborhood.

4. Parking Study

The Commission requested that the Applicant study the current utilization of on-street parking surrounding the PUD site. In response, the Applicant's transportation consultant conducted a parking study to determine the existing on-street parking supply and occupancy within a two block radius of the site, which is consistent with DDOT guidance. As indicated in the memorandum from the Applicant's transportation consultant (Exhibit C), a total of 105 parking spaces are located within the two block radius and include (i) RPP spaces; (ii) spaces with no parking restrictions; and (iii) spaces with rush hour and/or school day restrictions. See Exhibit C, Figure 1 and Table 1. The parking study found the following:

- Weekday peak parking occupancy (Wednesday at 8pm): 37 on-street spaces occupied (35%) and 68 on-street parking spaces available (65%).
- Weekend peak parking occupancy (Sunday at 1pm): 35 on-street parking spaces occupied (33% of total) and 70 on-street parking spaces available (67%).

Based on this survey, there is significant on-street parking available within the area immediately serving the PUD site. Given that the project includes the number of parking spaces required by the Zoning Regulations and that there is significant underutilized parking in the immediate neighborhood, the Applicant submits that the project will not result in any unacceptable impacts to on-street parking.

3. Response to Opposition Testimony and Continued Engagement

Mr. Leonard Watson, Sr. submitted written testimony in opposition to the application on September 23, 2020 (Ex. 25) and also testified in opposition to the project at the public hearing. The Applicant's responses to each of Mr. Watson's specific concerns raised in his September 23, 2020 letter are attached hereto as Exhibit D, which the Applicant filed electronically prior to the hearing but which was not included in the case record.

The Applicant engaged with Mr. Watson immediately following the hearing and sent hard copies of the architectural drawings via hand-delivery to his house on the day after the hearing. Despite a number of productive conversations between the Applicant and Mr. Watson, on October 12, 2020, Mr. Watson filed a second letter in opposition to the application, which largely focuses on alleged improper behavior of ANC 8B (Ex. 29). Mr. Watson's letter claims that the ANC failed to comply with the District's ANC rules and procedures, including providing proper notice of the project, identifying voting information by the participating commissioners, and selecting improper recipient organizations for the Applicant's public benefit contributions, and should therefore not be given great weight by the Commission.

The Applicant has no reason to believe that the ANC acted improperly and Mr. Watson's assertions about the ANC's non-compliance with ANC procedures are not substantiated by any evidence in the case record. The ANC's website clearly identifies the time and date for each public ANC meeting and provides contact information for the ANC commissioners. The Applicant formally presented the project at two duly noticed ANC meetings on June 16, 2020, and on July

21, 2020, and received a unanimous ANC vote in support for the project. *See* ANC Resolution at Exhibit 20C.

Indeed, the ANC Resolution states that the meeting at which they voted on the project was a “duly noticed and regularly scheduled virtual public meeting... with a quorum of commissioners present” and that “ANC 8B voted unanimously to support the application.” The ANC Chairwoman Johnson also submitted a subsequent email dated September 18, 2020 (Ex. 20C1) confirming that four commissioners are needed to be present for a quorum and that five commissioners were present at the public meeting during which the ANC voted to support the project. Commissioner Johnson’s email further stated that the “vote in support of this resolution was unanimous.”

Moreover, substantial notice of the application and public hearing details was also provided by the Applicant and the Office of Zoning to the public and Mr. Watson specifically in full compliance with the Zoning Regulations. The written notice provided detailed information regarding how to access the case record, how to participate as a witness, and who to contact with questions. The notice was provided as follows:

- On February 12, 2020, the Applicant mailed a Notice of Intent (“NOI”) to file the application to all property owners located within 200 feet of the perimeter of the site, which included Mr. Watson’s property (Ex. 3I). The NOI included contact information for the Applicant’s representative and a summary of the project;
- On April 27, 2020, the Office of Zoning sent a notice of filing the application to ANC 8B and Commissioner Leonard Watson, Jr. (who is the son of and has the same address as Mr. Watson) specifically (Ex. 7, 9);
- On May 5, 2020, the notice of the filing of the application was published in the *DC Register* (Ex. 8, 9);
- On June 26, 2020, notice of the scheduled public hearing was published in the *DC Register* (Ex. 16, 17);
- On July 13, 2020, the Applicant posted the property with notice of the public hearing (Ex. 18); and
- On July 17, 21 and 27, August 3, 7, 13, 19 and 25, and September 1, 4, 8, 14 and 18, the Applicant maintained the posted notice signs, replacing signs on six of those dates (Ex. 23).

The Applicant also made many attempts to contact the residents of Mr. Watson’s address, which is the closest home to the project site and the listed address for Mr. Watson, Jr., the SMD representative for the site. Indeed, the Applicant made phone calls, sent emails, and left a hand written letter at the Watson’s property (*see* Exhibit B attached to Exhibit D). After many unsuccessful attempts of reaching Mr. Watson, Jr., the Applicant began communicating directly with other members of ANC 8B, including Commissioner Johnson, and as described above ANC 8B voted unanimously to support the project.

With respect to Mr. Watson’s allegations that the Community Benefits Agreement (“CBA”) is flawed, the Applicant submits that it was fully vetted and supported unanimously by the ANC. *See* ANC Resolution (Ex. 20C) stating that the “CBA includes a variety of commitments by the Applicant. ANC 8B is extremely supportive of this project, including the benefits included

in the CBA.” The ANC identified the recipient organizations receiving funding from the CBA, which would support mental health services for youth in ANC 8B and assist with services for youth impacted by gun violence in ANC 8B. The Applicant has no reason to believe that the proposed services or organizations are unacceptable.¹

Despite the importance and relevance of the proffered community organization contributions and distribution of laptops, the Applicant would be willing to remove these as proffered “public benefits” under the PUD pursuant to Subtitle X § 305, since the application would still provide **substantial** public benefits and project amenities that far outweigh the degree of development incentives being requested, consistent with the standards of Subtitle X §§ 304.3 and 304.4. Even without specifically enumerating the community contributions in the Commission’s approval of this application, the application’s public benefits and project amenities would still include the following:

- Superior Urban Design, Architecture, and Landscaping (11-X DCMR § 305.5(a) and (b));
- Site Planning and Efficient and Economical Land Utilization (11-X DCMR §§ 305.5(c));
- Streetscape Plans and Implementation (11-X DCMR §§ 305.5(l));
- Housing that Exceeds the Amount Required through Matter-of-Right Development under Existing Zoning (11-X DCMR § 305.5(f)(1));
- Senior Housing (11-X DCMR § 305.5(f)(2));
- Affordable Housing that Exceeds the Amount Required through Matter-of Right Development Under Existing Zoning (11-X DCMR § 305.5(g));
- Employment and Training Opportunities (11-X DCMR § 305.5(h)); and
- Transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the application (11-X DCMR § 305.5(o)).

In evaluating the project, the Office of Planning found that “the benefits, amenities and proffers would appear to be commensurate with the related map amendment and other requested flexibility through the PUD” (Ex. 21, p. 12). The Applicant’s expert in land use and zoning, Mr. Dettman, also testified at the public hearing that “looking at the development incentives that are being requested and balancing that with the public benefits and project amenities in this case, the project provides superior public benefits in the form of urban design, architecture, landscape, as well as site planning and efficient use of the site... probably the most significant public benefit in this project would be the proffer in housing as well as affordable housing... There’s also public benefits in the form of transportation infrastructure, the sidewalk extension, and the curb extension that the Applicant has agreed to do as well as a robust transportation management plan.” See Oct. 24, 2020 public hearing transcript (“Tr.”), pp. 23-24 and Applicant’s Powerpoint presentation (“Powerpoint”) at Exhibit 24, pp. 35-41.

Mr. Dettman also “conducted an extensive evaluation for potential impacts that could result from the project in the categories of the, organized according to the District elements in the

¹ Mr. Watson states in paragraph 7 of his letter that the Applicant has committed to spend up to \$20,000 for the purchase of laptops, and he rhetorically asks in paragraph 9 of his letter “what will happen to the remaining \$14,500 if 55 laptops are valued at an estimated \$5,500?” (Ex. 29, p. 2). However, the Applicant has committed to spend \$20,000 for new laptops that have cameras and come with or are able to install Microsoft Office. The Applicant’s commitment is to spend \$20,000 – not a specific number of laptops – and thus there will not be a “remaining \$14,500” as suggested by Mr. Watson.

comprehensive plan and overall I find that the potential impacts of the project are either favorable, capable of being mitigated, or in certain areas there would be no impact at all.” See Tr., pp. 24-25 and PowerPoint, pp. 35-41. Mr. Dettman therefore concluded that the “project will not cause any unacceptable impacts. The public benefits balance the degree of development incentives being requested.” See Tr., pp. 26-27.

Based on the foregoing evidence, including unanimous support from the ANC, support from the Office of Planning, and testimony at the public hearing regarding the project’s compliance with the PUD evaluation standards, the Applicant submits that the project’s public benefits and amenities (even if excluding the proffers in the CBA), far outweigh the degree of development incentives requested and any potential adverse effects even without the community contributions with which Mr. Watson takes issue. Moreover, the Applicant acted in good faith in dealing with the ANC, is pleased to have the ANC’s unanimous support for the project, and has no reason to believe that the ANC did not follow all required rules and procedures in dealing with this project.

Finally, the community opposition petition should not be given any weight by the Commission since it has no probative value for the following reasons:

- The signature pages do not identify the purpose for the signature and there is no identification on the signature pages that indicate the signatories knew the purpose of what they were signing;
- There is no indication that the signatories were provided any or accurate information about the project when they signed a blank sheet;
- The signature pages do not identify any specific reasons why those individuals allegedly oppose the project; and
- The signature pages do not provide information regarding why these individuals failed to attend the public hearing or submit testimony to the case record prior to the closing of the record to voice their alleged opposition and for the Applicant and the Commission to evaluate their alleged concerns.

5. Applicant’s Draft Findings of Fact and Conclusions of Law

Attached hereto as Exhibit E is a copy of the Applicant’s draft findings of fact and conclusions of law, as requested by the Commission at the close of the September 24, 2020 public hearing.

The Applicant appreciates the Commission’s continued review of the application.

Sincerely,

HOLLAND & KNIGHT LLP



Kyrus L. Freeman

Jessica R. Bloomfield

Enclosures

cc: Certificate of Service
Crystal Myers, D.C. Office of Planning (with enclosure via Email)
Aaron Zimmerman, DDOT (with enclosure via Email)
Kimberly Vacca, DDOT (with enclosure via Email)
Commissioner Leonard Lee Watson Jr., ANC 8B01 (with enclosure via Email)

CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's post-hearing submission were sent to the following on October 15, 2020:

Ms. Jennifer Steingasser
D.C. Office of Planning
1100 4th Street, SW – Suite E650
Washington, DC 20024

VIA EMAIL

Advisory Neighborhood Commission 8B
c/o Commissioner Keeon Johnson
ANC 8B Chair
8B07@anc.dc.gov

VIA EMAIL



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