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VIA IZIS

Mr. Anthony J. Hood, Chair  
District of Columbia Zoning Commission

Re: Z.C. Case No. 23-29: Applicant's Reply to BNCA 10/21 Report on Meetings

Dear Chairman Hood and Members of the Commission:

At the conclusion of the July 22, 2024 public hearing on this case, the Zoning Commission directed the Applicant to meet with the Bellevue Neighborhood Civic Association (“BNCA”) and asked both parties to report on the outcome of that meeting. Both the Applicant and the BNCA filed such reports (Exhibits 43 and 46, respectively).<sup>1</sup>

In its October 21<sup>st</sup> report, the BNCA describes the parties’ September 28<sup>th</sup> meeting. However, there are three aspects of this meeting report that warrant clarification. First, there were at least three supporters of the Project in attendance, including a current senior Martin’s View (“MV”) resident who spoke in support. Second, there is not yet a MV tenants association, and no one person is authorized to speak on behalf of the MV tenants. Third, DDOT did not call the Project’s proposed daycare dangerous. Rather, DDOT said that the Applicant should implement a robust transportation demand management (“TDM”) program to mitigate safety concerns, and the Applicant committed to such a TDM program.<sup>2</sup>

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<sup>1</sup> At its October 10, 2024 public meeting, the Zoning Commission removed the BNCA’s first report and the Applicant’s response to it from the record for including more information than for what the Commission left the record open. The Commission directed the BNCA to resubmit its report limited to only the outcome of the parties’ meetings and allowed the Applicant a response.

<sup>2</sup> Exhibit 24

**I. The Applicant has met numerous times and consistently engaged with the BNCA since the July 22<sup>nd</sup> public hearing.**

It is important to note that September 28<sup>th</sup> was not the Applicant's first meeting with the BNCA. While the BNCA acknowledges the other meetings between them,<sup>3</sup> the Applicant wants to clarify its extensive engagement and meetings with the BNCA since the public hearing on July 22<sup>nd</sup> and well before the September 28<sup>th</sup> meeting, as follows:

- July 23 – Call between BNCA Executive Committee and Applicant
- July 31 – Call between BNCA Executive Committee and Applicant
- August 13 – Call between BNCA Executive Committee and Applicant
- August 22 – Call between BNCA President Kemi Morten and Applicant
- September 9 – Call between Kemi Morten, Gene Edgecomb (developer and advisor), and Applicant
- September 12 – Call between BNCA Executive Committee and Applicant
- September 28 – In person meeting between BNCA and Applicant, also attended by Bellevue community members and Martin's View residents.

In addition to the numerous calls and meetings described above, the Applicant's team engaged in regular and extensive email contact with the BNCA. The Applicant and the BNCA have exchanged 180+ emails since July 22<sup>nd</sup>.

**II. The Applicant has addressed or responded to BNCA's concerns about the Project, but the Applicant is unable to agree to BNCA's unreasonable monetary demand.**

**A. *The PUD's proposed density is reasonable, not adversely impactful, and is necessary.***

The Applicant explained to the BNCA the reasons that reducing the density (number of units) in the Project is not possible and that the proposed density is necessary to the Project's feasibility. For the reasons described both in the Applicant's testimony at the public hearing and in filings in the record, the density of the Project is *appropriate* given its consistency with the FLUM and numerous Comprehensive Plan policies; *commensurate* with adjacent property context of institutional buildings and Fort Greble Park plus a distance of 110 feet from the nearest residential use; *capable of being accommodated* by the infrastructure and public facilities; and

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<sup>3</sup> Exhibit 46, p. 5

necessary to deliver the numerous and significant proffered public benefits.<sup>4</sup> The Applicant's proffered public benefits and mitigation commitments will outweigh and offset any potential adverse impacts from the Project's density.

It is for the same reasons that the Applicant is unwilling to provide to the BNCA a cost benefit analysis of constructing a smaller project. That is not relevant information, and it is not the BNCA's place to determine the appropriate financial return on the Project. Plus, it is not information the Applicant has anyway. The many and important public benefits that the Applicant has proffered are based on the Project as proposed and cannot be supported by a smaller project. In evaluating this PUD, the Zoning Commission is charged with judging, balancing, and reconciling the relative value of the Project's public benefits against the development incentives requested and the potential adverse effects.<sup>5</sup> As demonstrated by the Applicant and affirmed by the Office of Planning and ANC 8D, the Project's public benefits are commensurate with the development incentives and potential adverse effects.

*B. The Applicant designed the Project and made commitments to minimize or eliminate potential additional costs for returning MV residents.*

The Applicant made an additional public benefit proffer to subsidize the cost of utilities, up to \$100 per month, for all returning MV residents aged 65 and older in response to concerns about additional costs for returning residents expressed before the September 28<sup>th</sup> meeting (*i.e.*, the July 22 hearing testimony of Fred Nelson); this subsidy was not something that was first requested by the BNCA. When asked by the BNCA whether the proffered utilities subsidy would be available to seniors aged 60+, the Applicant stated that they would consider it and respond in writing, which the Applicant did by clarifying that their utilities subsidy will be available to seniors aged 65+ in its September 30 submission.<sup>6</sup> The Applicant did not renege on a promise to provide free utilities to seniors – as the Applicant never made such a promise – but the proffered \$100 per month subsidy is expected to cover the costs of all utilities for the returning senior (aged 65+) residents.

Furthermore, as the Applicant explained to the BNCA (and in the case record), the Project will not result in large cost increases to returning residents. The utilities subsidy is one of multiple other reasons justifying this: the 50% reduced parking rate for all returning residents; the much lower utility costs that accompany a LEED Gold project; the elimination of the \$50 per month per air conditioning unit fee that MV

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<sup>4</sup> Exhibits 40-40B

<sup>5</sup> Subtitle X § 304.3

<sup>6</sup> Exhibit 43. The Applicant is not bound to a particular District definition of a senior in voluntarily making this commitment.

residents currently pay; the expected community solar facility at the Project; and the availability of District utility assistance programs.<sup>7</sup>

*C. The BNCA's monetary contribution demand is unprecedented and unjustified.*

The Applicant has made a bona fide effort to address all of BNCA's concerns, which the Applicant has largely done. The Applicant remains amenable to supporting BNCA and its programs through an agreement and contribution. The Applicant made a reasonable offer, but the BNCA rejected it. The BNCA stated that there is no agreement unless the Applicant contributes \$3 million to the BNCA. The Applicant cannot agree to this amount because it is unprecedented for a contribution to a community organization as part of a PUD, and, more importantly, it is greatly out of proportion given the numerous and significant public benefits that the Applicant has already proffered. Despite the Applicant's best efforts, an agreement to support BNCA and its programs is not possible.

### III. Conclusion

The Zoning Commission should not reopen the hearing in this case. There is no basis for doing so. The Applicant has engaged with the BNCA many times, and the BNCA's concerns have been responded to and addressed. Based on the extensive evidence contained in the case record and the fulsome testimony delivered at the public hearing, this application satisfies the standards for approval of a PUD. Nevertheless, the Applicant is committed to continuing its community and tenant engagement as the Project progresses to construction and delivery. Now, three months after the public hearing, the Applicant urges the Commission to proceed with taking proposed action at its October 24, 2024 public meeting so that the Applicant does not jeopardize its contractual obligations regarding the MV property and so that the Applicant can deliver the PUD's many and substantial public benefits as soon as possible – which include 17% IZ, 8% 3-bedroom units, a daycare, LEED Gold, and Fort Greeble Park entrance improvements.

Sincerely,

/s/

Cary Kadlecik

/s/

Derick Wallace

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<sup>7</sup> Exhibits 40 & 43

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to the following by email on October 22, 2024:

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/s/  
Derick Wallace