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District of Columbia Board of Zoning Adjustment
(via e-mail: bzasubmissions@dc.gov)

Re: Letter in Opposition to Case Number 19751 (Application of MED Developers, LLC).

Dear Chairperson Hill and members of the BZA:

I write in opposition to the renewed application of MED developers, this time purportedly for a memory care facility, proposed to be located at 2619-2633 Wisconsin Ave., NW. I write now based on the current BZA schedule, in spite of the fact that the application now on file is hopelessly out of date and deficient and should be rejected for that reason alone.¹ I hope that you will see fit to reject the proposal on its merits when the merits are reached.

The primary reason for my opposition is the simple fact that the proposal does not conform to the future land use commitment for the area in the District's Comprehensive Plan. This building and its planned usage simply do not fit within the concept of Low Density Residential, and the formal R-1B zoning. In fact, it is one of a series of attempts by this developer (and a few absentee owners) to break the Comprehensive Plan for its own benefit, and to the detriment of those residents like us who have relied on the District's commitment through the Comprehensive Plan for their own investment in the District.

While the developer asserts that most of the building design would fit as of right if anyone buying the land would want to live in a single family home with that design, it is not a single family home, and no rational homeowner would want to live in a home designed to look like an industrial building. Few homeowners would wish to construct a building which consists of 40 vertical feet of living space plus a 12 foot penthouse for

¹ I note that as of this date the Exhibit B plans shown as filed by the applicant with the BZA are from an earlier iteration of the applicant's planning and are not at all consistent with the plans that have been provided to ANC3-C. This letter in opposition focuses on the more recent design submitted to ANC3-C.

machinery and an “English basement” cellar intended for full use. Instead, it is a center designed to house some 36 patients with varying stages of dementia, and with accompanying legions of caregivers, it is an institutional/industrial use designed to break the residential zoning. There is no advantage to the neighboring community if this proposal is approved; only disadvantage and risk to the neighbors. No advantage is even claimed by the developers, and none is perceived by us or by any of the neighbors to whom we have talked. The position taken by the developer is essentially that the operation would be not inconsistent with the buildings on the other side of Wisconsin Ave. and therefore it should be approved here. That assumes that the long-standing distinction in the Comprehensive Plan between the West side of Wisconsin, shown as High Density Residential and the Embassy of the Russian Federation (zoned R-5-D, RA-4) and the East side, shown as Low Density Residential (zoned R-1-B) was somehow an oversight. It was not an oversight, and most of the residents on the East side made their commitment to the District and purchased their homes in reliance on the difference.

We note that there are a few houses on the East side of Wisconsin between Davis and Garfield Streets that are owned by absentee landlords and rented, largely to students and similar residents. Some of these houses are owned by those who appear to be betting that the District will break the Comprehensive Plan and allow them to profit by using their land for a higher density usage. There are a number of other houses on the East side of Wisconsin in this area which are owner occupied, well maintained, and proudly stand with the rest of the neighborhood.

The obvious detriments from the grant of the application to the neighbors and the neighborhood include the loss of light and air caused by the building being designed to use almost every cubic inch permitted for a hypothetical single family home, the vast increase in traffic (and its associated pollution) through the narrow alley (where children now play) and cars which will inevitably try to find parking in the 9 allowed parking spaces before they deploy onto the nearby streets (almost all of which are time limited for non-residents). Trucks, EMS vehicles and ambulances will also need to use that alley if the facility is constructed. The design guarantees conflict and danger. Another obvious detriment is the increase in water runoff problems that already exist in heavy rain conditions which will result from the reduction of pervious surfaces to almost nothing.² Flooding out neighbors is hardly what the Comprehensive Plan envisions.

One earlier effort to violate the zoning regulations was successful (in the sense of getting a non-conforming building constructed) in this area; what is now the Kimpton

² The application on file, which is based on an earlier-proposed use, shows 59% pervious area. This appears to not take account of the parking and loading areas which are required by the current design as filed with ANC3-C.

hotel. That was a disgraceful violation of zoning standards, hardly an example to be followed.

Two special exceptions are sought by the developer, and there is no reason for either to be granted:

Subtitle C sec. 703.2. The application concedes that 19 parking spaces are required by code for the 36 resident operation now planned, and only 9 spaces are provided, leaving the neighborhood burdened by at least 10 additional cars.

The Applicant's Traffic Report asserts at p. 1 that:

At any time during a typical weekday or weekend day, there are at least 103 parking spaces within two (2) blocks of the subject site.

For those who live or park within the two block area studied (like the undersigned) this is totally inconsistent with our experience. While there are short periods when there might well be 10 or so spaces available (in particular immediately after the parking restrictions are lifted on Wisconsin Ave), it is certainly not true that there are always more than a hundred, and there are many times when residents now have to drive for several blocks to find an open space. This is particularly true on religious holidays, since there are many churches and synagogues in the area. The only times on which there are usually a significant number of parking spaces available are those in the middle of long weekend holidays.

More significantly, the traffic study as submitted is irrelevant; almost all of the parking in the area studied is limited to two hours for non-residents, so it cannot legally be used for the staff parking. Residents who have workmen or guests in their houses make heavy use of the Visitor Parking Pass program which the District uses for heavily impacted areas such as this one, but those are not (and should not be) available for staff in such a facility, as we understand it. Since everyone who intends to visit or work at the facility will first try to use the 9 spaces, everyone will use the alley access first and then try to find a space on the street. This is not likely to be acceptable for those providing services to residents, and will lead to dangerous traffic in the alley, as well as significantly increasing the traffic on the local streets cruising looking for an open parking space. It is illegal for the 18 staff members envisioned. I suggest that no exception can be granted here based on the assumption that 9 or more employees and all those providing services requiring more than two hours at the building will park illegally.

Subtitle U sec. 203.1(f). There is no way in which this proposed institutional/industrial use can fit within the usages intended for an R-1B neighborhood. The applicant simply assumes that it might not be as detrimental as some other unspecified use might be. This is not a competent showing of anything, and should be rejected.

As we read Section 203(f)(4), it allows the BZA to approve a continuing care retirement community (as applied for by the applicant) if and only if “(4) The use and related facilities shall provide sufficient off-street parking spaces for employees, residents and visitors.” That requirement is admittedly not met here. Nor does the application meet the requirement that it show that “(5) The use, including any outdoor spaces provided, shall be located and designed so that it is not likely to become objectionable to neighboring properties because of noise, traffic, or other objectionable conditions.”

The proposed use as a continuing care retirement community appears to us to be highly unlikely to be successful (either financially or in attracting residents who have any choice in the matter), and should not be granted for several reasons. First, of course, the proposed building is inconsistent with the low density residential housing that otherwise exists in this successful, vibrant community, and will be detrimental to the neighborhood, simply because of its bulk, size, and institutional/industrial usage, as discussed above. Thus it is inconsistent with the “broad framework intended to guide the future land use planning decisions for the District.”³

But there are many characteristics of this proposal which suggest that no one involved really intends to maintain this building as a memory care facility, and that the real intent is to break the Comprehensive Plan with this proposal, and then to change the building, once constructed, into something else, such as a dorm facility for one of the universities in the area, or perhaps try again as a homeless shelter (for which it is also not properly designed).

1. The building is not well designed for its proposed (as currently claimed) use. For example, multistory memory care facilities are rare, in part because residents with dementia cannot be assumed to be self guiding in an emergency (or any other occasions outside their routine).⁴ Such residents, some of whom would be expected to use wheelchairs or mechanized scooters for mobility, need to establish settled routines if such a facility is to work. Yet there is only one elevator in this building. The developer has told the attendees at the one meeting it has had with neighbors that the two sets of stairs would accommodate all residents or be used as a holding area in case of a fire, which seems an unsatisfactory solution for seniors with dementia, although it might meet code for a college dorm. This has the potential for high risk for residents in the event of any emergency. Even without an emergency, a single elevator will fail from time to time. When that happens, each resident will have to be brought down to the dining area three

³ *Durant v. District of Columbia Zoning Comm’n*, 139 A.3d 880, 881, quoting *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n.*, 33 A.3d 382, 394 (D.C. 2011).

⁴ So far as we can tell, the proposed operator of this facility, Guest Services, Inc., claims to operate only two memory care facilities, each of which is a single story facility. One of these facilities appears to not yet be in operation.

times a day or more, and that is very difficult when no elevator is available, even for those who are relatively mobile and do not require wheelchairs.

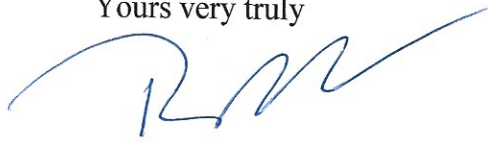
2. There is little space for residents to congregate, and inadequate dining space for a single sitting. There is no space for the assistants who will be needed to help feed those of the residents who have trouble feeding themselves.
3. Dementia progresses at rates which can be hard to predict, and memory care facilities should provide regular activities for residents who are still able to participate. Not all of them will function at the same level. It is not at all clear that there is space for those functions.
4. There is only a single toilet shown in the cellar area, where the bulk of the staff is to be located, and where all dining for residents will take place. Up to 36 seniors with dementia are highly likely to need to use toilet facilities at a higher rate than seniors without dementia. 18 staff will also need to use such facilities. A single toilet is clearly inadequate. The developer also admits that a toilet is needed on the first floor where none is currently shown in the plan submitted to ANC3-C.
5. The garden shown must be fenced and locked, as we understand the rule for memory care facilities, and as admitted by the developer. No fence is shown, and it is not clear that such a fence could be installed without changing access to the building.
6. When challenged as to the ability of the design to accommodate end of life (hospice) care for its residents, the operator (according to our notes) simply asserted that residents passing into hospice care would be removed from the facility and given hospice care elsewhere. The DC Code⁵ requires that hospice care capability be made available for residents in an ALR without having to be moved. Code sec. 44-105.04. That does not seem feasible in this design. As we are all aware, the announced closure of the Washington Home hospice facility removes the possibility of local hospice care in a separate facility in any event.

For the reasons stated above, I believe that the application should be rejected on its face. But if the Board does not agree with these reasons for rejection, I ask that it consider conditioning any approval given with 1) a requirement that the building be removed entirely if the proposed use as a memory care facility fails, or 2) a requirement that no construction take place until a Certificate of Occupancy is granted (which I understand requires that there be a significant number of real residents who have financially committed to the proposed facility). The concern that this proposal is

⁵ <https://code.dccouncil.us/dc/council/code/titles/44/chapters/1/subchapters/V/>.

intended as an unrealistic stalking horse to break the zoning and Comprehensive Plan protections for this neighborhood could at least be addressed in this fashion.

Yours very truly

A handwritten signature in blue ink, appearing to be 'R. McDiarmid', written in a cursive style.

Robert C. McDiarmid

cc: ANC 3-C (via e-mail: all@anc3c.org)