

March 3, 2019

Dear Chairman and Members of the Board of Zoning Adjustment:

**RE: Conditions for proposed Jam Doung restaurant BZA Case #19887**

I write to you to share feedback on proposed conditions related to the application for a variance at 1724 North Capitol Street NW but also to express deep concern about the purported “neighborhood agreement” submitted by ANC5E, which represents an agreement with just two neighbors.

**Neighbor coordination background**

At the hearing on January 30, the applicants were asked by the Board to coordinate with neighbors to develop an agreement on conditions. This was interpreted by both Commissioner Holliday, our ANC Commissioner and by the applicants as “holding a meeting”. Despite input from neighbors that a weeknight evening meeting would be preferable, Commissioner Holliday went ahead and scheduled the meeting for January 16, a Saturday afternoon over a holiday weekend (President’s Day). This weekend was particularly problematic for families with young children like mine as, in addition to being during a holiday, it also took place during a time that many area schools (including DCPS) were closed for several days making it an ideal time to go out of town. Many families plan such trips weeks or months in advance.

I personally urged Commissioner Holliday not to schedule the meeting on a holiday weekend, which also was not convenient for Councilmember McDuffie’s office, or for any other ANC reps, but she did not respond.

The meeting took place anyway on February 16 and was attended by only THREE neighbors from Randolph Place or the immediate vicinity. Commissioner Holliday fails to note in the “Proposed Final Agreement between Neighbors/Owners” (exhibit 64) that the “neighbor agreement” was only endorsed by two neighbors total. Please note that those neighbors were not authorized to speak on behalf of the rest of the block. This is particularly a concern on contentious issues such as hours, noise and the roof deck and because this “agreement” goes way beyond what had previously been discussed or even prior testimony to the Board by the applicant.

**Inadequate coordination and misleading information from the ANC**

Unfortunately this case has been characterized by a pattern of misleading information and a lack of genuine outreach to neighbors, particularly on the part of the ANC. The support of Ward 5 Councilmember relies on and references the unanimous support of the ANC, however, it is very important that the Board understands that the ANC did not reach out to any neighbors before voting on this case and it was not listed on the published agenda prior to the vote on November 20 (see Exhibit 56A and 56C).

Not only this, but the discussion of this issue took less than 10 minutes and this led to lengthy testimony from the ANC and Commissioner Holliday, which among other things incorrectly states that this case arose due to a zoning change in 2016, from commercial to residential. As the Board and the Office of Planning are aware, this is not correct. This building was zoned as residential both prior to and since 2016, despite the history of non conforming use on the ground floor (although

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the salon has not been in regular operation for more than a decade, it also never operated as a regular business from the second floor<sup>1</sup>).

The meeting announcement for the February 16 meeting stated that the Board had “already approved the variance” (see Exhibit 64A). When asked to correct this statement so as not to unintentionally mislead neighbors about the status of the case Commissioner Holliday told me by email that a vote took place at the hearing on January 30 and the clerk even recorded absentee votes. She further made the remarkable claim that this vote appeared to have been “edited” out of the video of the proceedings.

ANC testimony also claims that failure to receive this variance would lead to significant hardship, however, neither the ANC nor the applicant has submitted any evidence to support this claim. Where is the proof that no-one else wanted to purchase this building, which was never listed for sale? Where are the financial numbers proving that this building, which was substantially renovated by the applicants last summer, can not be used for residential use?

Neither the ANC, nor the applicants have ever made any effort to distribute meeting notices other than electronically.

### **Neighbor survey**

At the January 19 meeting (which myself and several other neighbors attended) a detailed list of proposed conditions was developed which the applicants, Ms Stedman and Ms Hutchinson agreed to (Exhibit 55). None of the neighbors present wanted to sign that list on behalf of the rest of the block because no one was in the position of speaking on behalf of anyone but themselves. It was for this reason that a survey was discussed, in a spirit of cooperation and to make sure that the conditions discussed had wide ranging support from neighbors, not just those who were able to give up more than three hours on a Saturday on a holiday weekend (like the February meeting, the Jan 19 meeting also took place on a holiday weekend).

Commissioner Holliday and Ms Hutchinson and both her daughters were present at the January 19 meeting and none of them raised objections to a survey. They were fully aware that this was being considered and the content of the survey relied largely on conditions that they had previously agreed to. It was motivated by a genuine attempt by neighbors to coordinate and represent all views. The survey:

- Allowed for input from many neighbors and not only those who are available to attend a meeting
- Was distributed via the block listserv which has been in existence for more than a decade and includes most homes on the block. All Randolph Pl neighbors are welcome to join and

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<sup>1</sup> Ms Stedman explained at the neighborhood meeting on January 19 that their contention that the second floor was used as commercial rested on the claim that after the salon closed Ms McCoy continued to do hair occasionally in her residence on the second floor as she could no longer manage the stairs to get to the ground floor. Her bedroom was also on the second floor, Ms Hutchinson explained. This tallies with recollections of long term neighbors all of whom confirm that the salon operated as a business on street level only and upstairs was used as residences.

it is used regularly for block communication. Neighbors were encouraged to share the survey with anyone else on the block who might not be on the list.

- By circulating a survey which can be completed in the comfort of your own home, respondents are not influenced by whomever is standing in front of them on their doorstep asking for an immediate response
- Was completed by a very wide range of neighbors -- long time neighbors and new neighbors, older neighbors and younger neighbors, black, white, and other ethnicities, DC natives and newcomers -- with a robust response rate.
- Was aimed to gauge opinion among nearby neighbors only, on the unit block of Randolph Pl NW and its immediate vicinity.
- Was provided to Commissioner Holliday prior to the February 16 meeting to inform the discussion and to ensure that a wide range of views were taken into account.

The survey also took great steps to be comprehensive and unbiased by including the context with the survey including links and language from the BZA website and offering neighbors the opportunity to react to proposed conditions or propose their own. Exhibit 64, the purported neighbor agreement mischaracterizes the survey question on hours and how it was presented, and I urge the Board to read the survey instrument in its entirety to understand the full context of this thorough and comprehensive effort (see Exhibit 62).

This is the ONLY genuine and comprehensive effort that has taken place to get input from a wide range of neighbors in this case. ***Thirty neighbors responded – ten times as many as attended the meeting on February 16*** – and there were clear areas of agreement, the most important of which were dismissed and ignored in the subsequent “neighbor agreement” (Exhibit 64).

I urge the Board to place great weight on the survey (Exhibit 61) as it truly does represent the views of the neighbors who will be impacted by this proposed development.

### **Changes to Opening Hours**

Although the applicants have previously declared that they would open at 11am and close all day on Sundays (see exhibit 47 from Janet Stedman), the “agreement” submitted following the February 16 meeting (Exhibit 64) suggests that they changed their mind. This is the first time that the Board has been presented with the applicants’ plan to open at 8am every day, and to open on Sunday at all. Neighbors have not been given a fair opportunity to evaluate the impact of an 8am opening, or a Sunday opening. DDOT would need to issue a new report looking at the impact on morning rush hour and the record would need to be reopened for testimony on this condition.

No neighbors have been surveyed on this option, or on any options that involve opening outdoor space beyond 9pm as they were presented only with the more restrictive hours that the applicant had previously agreed to at the January 19 meeting in the survey.

I urge the Board not to approve any variance without conditions that prohibit opening at 8am or on Sundays.

## Conclusion

The Board should give great weight to the survey conducted by neighbors and all the conditions listed with majority agreement (see Exhibit 61). Personally, I urge the Board to incorporate the following conditions of particular importance into any agreement:

This is a residential neighborhood in a residential zone. Noise carries, particularly that from a rear roof deck or “outdoor terrace” which is directly adjacent to houses and back into the alley. I strongly oppose any outdoor hours after 9pm and any use of a roof deck or “outdoor terrace”. No existing restaurants in Bloomingdale currently have roof decks or second floor terraces.

Recommended conditions, (also supported by a majority of neighbors):

- All proposed outdoor seating areas close at 9 PM or earlier.
- Restaurant use, in addition to any other use(s), shall be prohibited on the second floor “outdoor terrace”.

The applicants propose a restaurant not a bar. It should have similar hours to other restaurants that are not also bars, such as Aroi Thai or Red Hen on nearby First Street NW (both close at 10pm during the week though Red Hen is open until 11pm on Fridays and Saturdays). It is a red herring to compare this proposed restaurant to Pub and the People as not only does Pub and the People operate in an existing commercial zone, but it is also primarily a pub (bar) not a restaurant.

In addition, I strongly oppose an 8am opening. The applicants’ existing business contributes to significant traffic disruption all afternoon and especially around rush hour. It would be unfathomable to grant permission to open at 8am without properly considering the potential impact on rush hour traffic, likewise any potential Sunday opening which may be opposed by local churches. I invite the Board to visit the intersection of North Capitol and Randolph place NW on a Friday afternoon to see for themselves the chaos created by Jam Doung customers illegally parking while they get their takeout. If they move to the building next door, we have to assume that Jam Doung’s current location will likely continue to operate as a takeout operation (perhaps by a different vendor) so the combined impact on traffic could be considerable.

Recommended condition, (also supported by a majority of neighbors):

- The hours of operation shall be limited to 11:00 am to 10:00 pm Monday through Thursday and 11:00 am to 11:00 pm Friday and Saturday. Sunday the restaurant shall not operate pursuant to the applicant’s statement that the restaurant would be closed on Sundays.

Thank you for your consideration. I trust that the Board will appropriately and thoroughly weigh all the evidence and ensure that a variance is not granted without appropriate conditions which fully address the bulk of neighbor concerns.

Yours sincerely,

Sophie Bethune

Randolph Place NW – neighbor within 200 feet