



ADVISORY NEIGHBORHOOD COMMISSION 3C
GOVERNMENT OF THE DISTRICT OF COLUMBIA

CATHEDRAL HEIGHTS □ CLEVELAND PARK
MASSACHUSETTS AVENUE HEIGHTS
McLEAN GARDENS □ WOODLEY PARK

Single Member District Commissioners

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04-Beau Finley; 05-Vacant; 06-Angela Bradbery
07-Maureen Kinlan Boucher; 08-Vicki Gersten; 09-Nancy MacWood

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Board of Zoning Adjustment
441 Fourth Street, NW
Room 200
Washington, DC 20001
via email to: bz submissions@dc.gov

Members of the Board of Zoning Adjustment:

We are members of Advisory Neighborhood Commission 3C (ANC 3C) and write in support of the Applicant in Case 20-266 “3400 Connecticut Partners LLC” for special exception relief from the parking requirements of the Zoning Regulations.¹ This special exception will facilitate creation of a new mixed-use project retaining the existing 17 residential units, providing 35 new homes, and providing 2,700 square feet of new ground floor retail for a total of 16,000 square feet of retail. We enthusiastically support the project as a whole and are persuaded that this special exception is necessary for the project’s completion.

Background

On July 20, ANC 3C voted 5-3 to adopt a resolution stating that “the ANC is conditioning support for the parking waiver on the Board of Zoning Adjustment (BZA) agreeing to add conditions to the zoning order that will address parking and loading issues, and if these conditions are not approved, the ANC opposes the request for a waiver.”² Despite our support for the waiver, we voted against this resolution because (a) we do not agree with our fellow commissioners’ stated conditions and (b) we urge the BZA to approve the waiver without the conditions.

¹ The views expressed in this letter reflect the views of the authors in their capacities as individual Advisory Neighborhood Commissioners. This letter has not been voted on by ANC 3C and does not represent the views of the Commission as a whole.

² ANC 3C Resolution 2020-006, *Regarding a Board of Zoning Application Case 20266 for Parking Waiver at 2911 Newark Street/3400 Connecticut Avenue NW, The Macklin* (Jul. 20, 2020).

Great Weight Does Not Mean Deference or Automatic Agreement

The ANC 3C resolution contains recommendations from ANC 3C to which BZA must give great weight. But, great weight does not mean deference or automatic agreement.³ Most of the conditions recommended in the ANC 3C resolution are plainly unreasonable, if not absurd. Unreasonable recommendations, when given great weight, do not somehow become reasonable; they simply become carefully-considered unreasonable recommendations.

ANC 3C's Resolution Contains Irrelevant and Inaccurate Background Information

In an attempt to lend credibility to its recommendations, the resolution includes background information. Unfortunately, much of this information is irrelevant or incorrect. For example, the resolution takes note that "the Mayor, in response to the COVID pandemic closed 28 parking spaces on the service road." While the District Department of Transportation (DDOT) has, in fact, temporarily closed the Connecticut Avenue service lane between Macomb and Ordway Streets NW, it is difficult to see what, if any, relevance that fact has to the applicant's request for a special exception. This closure has been accomplished simply by placing typical temporary road work barricades and ordinary "ROAD CLOSED" signs in the lane. Unless the COVID pandemic lasts far longer than even the most pessimistic projections, this temporary closure will be over long before construction of the applicant's project is complete.

The resolution also states that "there is a lack of parking supply in the neighborhood to meet the day to day demand particularly near the metro station and in the evenings." This is, at best, debatable. To be sure, *free* on-street motor vehicle parking is more difficult to come by in Cleveland Park than in a typical suburban American subdivision. But, Cleveland Park is not a suburban subdivision; it is an urban neighborhood in a major city. Compared to other urban neighborhoods, it is relatively easy to find free on-street parking in Cleveland Park. In addition, all but one of the single-family homes in the 2900 block of Newark Street NW (where the project is located) have off-street parking. And, there is a large surface parking lot located immediately outside the Cleveland Park Metro station (Sam's Park & Shop, 3529 Connecticut Avenue NW) that is rarely, if ever, full. By urban standards, there is ample parking available in the vicinity of the applicant's property.

ANC 3C's Recommended Conditions Are Unreasonable

In its resolution, our colleagues outline a number of unreasonable conditions and insist that, if every single one of their conditions is not included in a BZA order, "the ANC withdraws its support". During the virtual public meeting where this resolution was adopted, the resolution's author, Commissioner Nancy MacWood, was emphatic that the purpose of this language was to "immortalize" the conditions, by having them included in a BZA order to run with the property in perpetuity. Even if the conditions themselves were reasonable, this approach to imposing them on not only the applicant, but his successors in perpetuity, is absurd. Further, this approach threatens to clog the docket of the BZA: if these conditions are included in a BZA order, future owners of the property desiring relief from one of these conditions (e.g., to allow a move-out on a federal holiday, to answer the loading dock intercom at the front desk instead of the maintenance person's office) will need to seek zoning relief.

³ *Foggy Bottom Ass'n. v. District of Columbia Bd. of Zoning Adjustment*, 791 A.2d 64, 77 (D.C. 2002) ("The "great weight" requirement [...] does not mean that the BZA must accept the views of the ANC no matter what. All that the law demands is that the views of the ANC be specifically addressed, and not ignored or overlooked, in the BZA's decision."); *see also*, D.C. Code § 1-309.10(c)(3)(A) ("Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns.").

This attempt to hijack BZA and use it to micromanage day-to-day management of the applicant's property sets a dangerous precedent. Even if the applicant has arguably "agreed" to some or all of ANC 3C's conditions, the BZA must decide for itself whether it wants to take on, in perpetuity, the task of policing those conditions. We trust that BZA will not wish to do so. For this reason alone, the BZA should deem ANC 3C's recommended conditions unpersuasive under the circumstances and reject them all.

Parking Recommendations

The first set of conditions addresses parking. They provide that residents on the property "regardless of tenure" (i.e., including current residents of the existing building) "are not eligible to participate in [Residential Permit Parking] and [Visitor Permit Parking] programs" administered by DDOT. To be clear, ANC 3C recommends that the BZA enter an order prohibiting current and future residents from participating in a DDOT program. ANC 3C is clear that this prohibition is to apply to current residents; that is, ANC 3C recommends that the BZA kick out current participants (who may not be aware of this application process) from DDOT's permit parking programs and position itself as the arbiter of whether such a restriction may be lifted in the future. To state this aloud is to appreciate its absurdity.

The parking recommendations also demand that the applicant "offer at least eight parking spaces off-street and off-site for future residents to lease, assuming he has secured an agreement with a neighborhood parking garage". This requirement to lease private parking elsewhere would run in perpetuity, requiring future owners of the property to lease at least eight parking spaces forever, regardless of future needs.

Loading Recommendations

Not satisfied with its demands on parking – which is at least the subject of the applicant's special exception request – ANC 3C's resolution proceeds to demand that BZA "immortalize" a series of micro-managing loading policies for the property.

ANC 3C's Loading Conditions A and B dictate that trash pick-up should occur at the same date and time each week (presumably locking all future owners of the property into once-per-week trash pickup) in perpetuity. They also specify that apartment residents may only move in or out of the building from 9:30 AM to 4 PM and that such moves are prohibited on Sundays and holidays. We recognize that many apartment buildings have similar restrictions. We are unaware of any other building that, should the Board subject the applicant to these absurd conditions, would need to seek zoning relief to change their move-in hours (e.g., to change them to 10 AM to 4:30 PM) or allow a resident who cannot afford to take time off on a regular work day to move in on Columbus Day instead.

ANC 3C's Loading Condition C would micromanage the project's townhomes and commercial spaces in a similar manner to the apartment micromanaging outlined in Conditions A and B and, at first glance, seems equally unreasonable. But, we understand that the four townhomes are to be sold and fall under separate ownership from the site's apartment buildings. So, not only would a townhome owner need zoning relief to move out after 4 PM or on Columbus Day, they would be required to seek permission from an employee of a neighboring apartment building over whom they would exercise no authority or control before moving in or out, even during the BZA-ordered moving hours.

ANC 3C's Loading Conditions D and E would dictate when certain uses of a curbside parking/loading area or are not permitted. Given that the loading zone is on a public street and not under the applicant's legal control, it is not clear how this condition would operate. Does the BZA have authority to order

DDOT to sign a particular curbside space a certain way in an action to which DDOT is not a party? If so, would DDOT or future owners of the property need to seek BZA relief to change the uses of this DDOT-owned curbside space? Given that ANC 3C points to no authority for the BZA to take such an extraordinary action, the BZA should decline to assume that authority for itself.

ANC 3C's Loading Condition F would require, in perpetuity, that: (a) at least one maintenance person be on site to manage any conflicts at the loading areas; and (b) that "the alley loading area will be monitored with closed circuit video and an intercom system connected to the maintenance person(s)'s office." The specificity of this recommendation takes micromanaging to another level. If a future property owner wishes to have the loading area monitored with newer technology or have the intercom system answered by front desk staff rather than maintenance staff, they will need zoning relief.

ANC 3C's Loading Condition G recommends that the BZA order compliance with certain DDOT truck restrictions. It is not clear why ANC 3C is recommending that BZA, rather than DDOT, address this issue. It is not clear what, if any, authority BZA would have to enforce the conditions. Nevertheless, ANC 3C recommends that BZA include them in its order.

Conclusion

On its face, ANC 3C's resolution is simply not a good faith attempt to provide BZA with recommendations related to Case 20-266. Rather, ANC 3C has attempted to hijack Case 20-266 to impose its preferences on the applicant and the applicant's successors in interest. The purpose of ANC 3C's resolution is to use BZA to "immortalize" micromanagement of this property. For the reasons described exhaustively above, we urge the BZA to recognize that ANC 3C's resolution does not offer persuasive advice under these circumstances,⁴ reject ANC 3C's recommendations, and approve the applicant's special exception without conditions.

Respectfully,

/s/ Jason Fink
Commissioner (3C02)

/s/ Jimmy Dubois
Commissioner (3C03)

/s/ Beau Finley
Commissioner (3C04)

⁴ See, D.C. Code § 1-309.10(c)(3)(B).