TO: District of Columbia Board of Zoning Adjustment

SUBJECT: Case No. 20290, Application of Vitis Investments, LLC

FROM: Laura Richards and Larry Hargrove,
Committee of 100 on the Federal City

DATE: December 8, 2020

This case is proceeding under provisions of newly revised regulations in Zoning Commission case No. 19-21, regarding, *inter alia*, conversion of residential buildings to apartment use in RF districts. The originally scheduled October hearing was delayed at the request of the applicant, and in the meantime Order 19-21 became effective, on November 3, 2020.

We were among the several individuals and organizations who submitted written and/or oral testimony opposing certain aspects of the changes proposed by the Office of Planning in that case, on the ground that they diminished various protections afforded to residential landowners in RF districts that were adopted in Zoning Commission case 14-11. The Office of Planning repeatedly asserted that the amendments proposed in 19-21 would make no such changes, and there appears no evidence in the record that the Commission questioned this assertion by OP or otherwise took cognizance of the ample testimony to the contrary.

BZA No. 20290 may be the first case to be brought before the Board under the revisions adopted in ZC 19-21. We are now writing to bring to the Commission's attention the unfortunate fact that in this case, as a result of those revisions, some of the protections previously

enjoyed by the neighboring landowners against adverse effects from the conversion sought by the Applicant are no longer available.

Specifically, the Applicant is no longer required to demonstrate compliance with the bedrock protections formerly set out in §U-320.2:

. . .

(I) any addition [the altered property] shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(1) The light and air available to neighboring properties shall not be unduly affected;

2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and

(3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street or alley;

(j) In demonstrating compliance with Subtitle U § 320.2(I) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;

(k) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block; . . . .

We endeavored to bring this downgrading of the protections afforded to neighboring landowners to the OP's attention, most recently in a communication directly to OP in response to a report submitted by OP to the Commission on September 14, 2020, after closure of the record in 19-21. We received no response or acknowledgement, nor did OP bring this communication to the Commission's attention, as we had requested, and the Commission denied our request to reopen the record for this purpose.

The unavoidable result is now manifest in the present BZA case: the neighboring landowners no longer have the protections that they had before Order 19-21 took effect. They are barred from insisting that the project comply with the additional requirements formerly set out in U-320.2 (i)-(k), those provisions having been deleted, on OP's recommendation, by ZC 19-21, despite OP's assertions that that case made no such adverse changes in ZC 14-11 protections. Accordingly, OP's stated justification for its recommendation of approval of the Special Exception in this BA case, in its Report of November 24, 2020 does not – and could not -- contain any discussion as to whether the project meets those requirements.

In light of the unfortunate circumstances set out above, and for other compelling reasons already conveyed to the Zoning Commission in case 19-21, it is clear that the question of changes in the provisions of ZC 14-11, as well as the effectiveness of the implementation over the past six years of the reforms adopted in that case, should be promptly revisited.

We have examined the record in an attempt to understand how such a glaring error could have occurred, and can conclude only that in reorganizing and streamlining the regulations – the stated intent of the amendments – confusion occurred between the provisions governing

Subtitle D and Subtitle E. The result is that different standards for special exception relief now apply for the two categories.

The result is that so-called “technical” amendments have a substantive and highly prejudicial impact. The promulgation of a rule containing this facial error is particularly galling in light of the number of credible witnesses who attempted to point it out.