

December 14, 2020

Via IZIS

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re: Posthearing Submission - BZA Case No. 20290 - 421 T Street, NW

Dear Chairman Hill and Board Members:

At the BZA hearing on December 9, 2020, the Board requested additional information from the Applicant, including (i) perspectives representing the intended addition; (ii) information regarding Zoning Commission case number 19-21 and changes therein to the applicable regulations; (iii) at the Applicant's option, discussion of the '*light, air, privacy, character, scale, and pattern*' criteria which no longer apply to U-320 conversion applications (since November 13, 2020); (iv) more details about trash location and collection; and (v) more details about window wells.

Perspectives. Perspectives of the existing structure and intended addition are included in BZA Exhibit 49C, pages SD4.1 (p 40) through SD4.6 (p 45) (and Exhibit A herein). These perspectives are represented in both the previous iteration and the proposed iteration. The "proposed" iteration is what was approved by the Historic Preservation Review Board.

ZC Case No. 19-21. In Zoning Commission Case No. 19-21, the Commission adopted revised regulations which removed all references to any "addition" to be constructed in conjunction with a U-320.2 conversion. Attached as Exhibit B is a copy of the applicable pages of the Final Rulemaking from the November 13, 2020 edition of the D.C. Register, showing the remaining three (3) criteria for approval of a U-320.2 conversion. The Commission actually removed all ten (10) subsections which related to the structure and any attendant addition, *including*:

(1) subsection "(j)" which provided:

"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."

and (2) subsection (k), which provided:

"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;”

The effect, and the obvious intent from the plain language of the amended Regulations, was to remove the evaluation of *matter-of-right* additions from the U-320.2 conversion analysis. This is in harmony with the jurisprudence of U-320.2 over the last three or four years, in which all potential impacts from the massing of a conversion-related addition were evaluated purely on the delta between the matter-of-right massing and any requested additional massing, whether that request be in the form of 10-foot rule relief, lot occupancy relief, or yard relief.¹

It is noteworthy that the regulations do not even require the submission of plans, photographs, or elevations and section drawings to represent the relationship of the structure to adjacent buildings.

The party opponent’s apparent position is that these items should effectively be ‘written’ back into the Zoning Regulations, by the BZA in this case, by using the general special exception criteria to espouse the same concept which was just explicitly removed by the Zoning Commission. Surely the Zoning Commission did not explicitly delete ten (10) subsections relating to additions so that such review would still take place in a potentially arbitrary manner under the general special exception requirements. (prior Regulations attached as Exhibit C)

Nevertheless, the Applicant has submitted shadow studies (as it was required under the regulations in effect at the time of filing)(Exhibit 49C) which conclusively show no undue impact to neighboring properties, as articulated persuasively in the Office of Planning report.

Trash Collection. Attached as Exhibit D is a submission by the Applicant regarding the expected trash collection services, including testimony regarding Mr. Agorsor’s meeting with the trash collection company on-site prior to the BZA hearing. Exhibit E is a copy of the contract for the trash collection services. Exhibit F is a plan page SD1.12 from BZA Exhibit 49C, which shows the location and configuration of the expected trash receptacles. Note that the Applicant has included the open ADA-parking space area as a passageway for the trash collection company to access and remove the trash. Also, plantings are proposed around the trash area as a buffer from the neighboring property.

Window Wells. The window wells are best represented on Plan Page SD2.6 (p 20) (Exhibit G herein). These are typical-type window wells, included on projects all over the District. They have no effect on the neighboring property and no connection to any special exception criteria. They are wholly within the Applicant’s property. Often, window wells may be found at the front of a

¹ The ten-foot rule, height, and architectural element provisions, among others, remain in the Zoning Regulations as requirements, pursuant to other Sections.

property rather than on the side. This adjustment was made in response to concerns from the Historic Preservation Office about making any alterations to the front of the building. At any rate, the only concern raised by the party opponent are construction-related issues with the window wells, which is an issue for DCRA to evaluate and approve or comment on, under the D.C. Building Code or other applicable law.

We hope that the Board finds this information responsive to its requests. Thank you as always for your consideration.

Respectfully Submitted,

Martin P Sullivan

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2020, an electronic copy of this Prehearing Submission was served on the following on behalf of the Applicant, Vitis Investments LLC.

Matthew Jesick
Office of Planning
matthew.jesick@dc.gov

Advisory Neighborhood Commission 1B

ANC 1B Office
1b@anc.dc.gov

James Turner, Chairperson
1B09@anc.dc.gov

Anita Norman, SMD
1B01@anc.dc.gov

ZPD Committee
ZPD@anc1b.org

Chetan Chandra & Meghann Teague
Party Status Opponents
cgchandra3@gmail.com
mteague@cooley.com

Martin P Sullivan

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP