Via IZIS

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

RE: Response to Post-hearing Submission by Applicant - BZA Case No. 20290

Dear Members of the Board of Zoning Administration:

This paper is submitted in response to the Applicant's Post-hearing Submission dated December 14, 2020.

I. Introduction: Items Requested

At the BZA hearing on December 9, 2020, the Board requested the following from the Applicant:

(1) specific information regarding trash collection plan and alley access, window wells, parking spaces, and compatibility/perspective with surrounding neighborhood;
(2) a summary of how the project meets light and air criteria of previous regulations; and
(3) clarification from ANC regarding support of the application.

In response, Applicant submitted: (i) perspectives of the intended addition; (ii) information regarding Zoning Commission case number 19-21 and changes to the applicable regulations; and (iii) the contract Applicant has signed with Tenleytown Trash along with a short statement on the proposal for alley access and other publicly available information from the Tenleytown Trash website.

We will first discuss the so-called "text amendment" ZC Case No. 19-21 and the impacts that statements from the Office of Planning and from the Applicant have had during the consideration of this Application at all stages. We do not intend to re-hash statements made prior to the December 9, 2020 hearing, but we do wish to point out the difficult position that the amendment has placed on neighboring property owners such as ourselves. We will also provide our own comments on the adverse effects of the proposed project including on the light, air, and other considerations. Finally, we provide our response to the Applicant's comments on a trash collection plan.

II. Amendment No. 19-21

Regarding Zoning Commission Case No. 19-21, the Applicant took the position in its Post-hearing response that the Zoning Commission could not have deleted ten subsections expecting

that the Board would undertake a "potentially arbitrary" review of the items that were previously present in those subsections under the general special exception requirements.

The Applicant ***mis-attributes*** to us the argument that the enumerated protections under the pre-amendment U-320.2 should still be considered under the Boards broader discretion for all special exceptions set forth in X-901.2. This argument does not stem from our imagination — it is the position of the Zoning Commission and the Office of Planning.

A. The Zoning Commission and the Office of Planning's view

The amendment has been repeatedly characterized by the Zoning Commission and the Office of Planning as merely removing "***redundant***" **or** "***duplicative***" provisions in the code and as ***not changing any actual requirements***.

As provided in Exhibit A, we asked the Office of Planning – specifically a staff member who worked on the text of the amendment – for further clarification and were provided the following response:

> "Although the criteria has been modified and specific issues [of U-320.2] are no longer highlighted, the general special exception criteria in X-900 provides you with the same opportunity to bring up matters of concern during the public hearing process and the ***applicant is required to fully address the impacts to adjacent properties and how they will or will not be mitigated***." (Exhibit B, page X; emphasis added).

The Office of Planning further told us that the Applicant is *required* to demonstrate that it will not adversely impact neighboring properties, and that ***"[a]dverse impact would include impacts to light and air and those to neighborhood character***." (Exhibit A, pdf page 2; emphasis added).

During the notice and comment period, the Office of Planning made similar comments:

> "***Conversions of existing residential buildings to apartment houses would continue to be subject to the special exception criteria in Subtitle X § 900, as they are currently.***" (ZC Case No. 19-21, Ex. 67, p. 4 – attached herewith as Exhibit B)

Indeed, in the Notice of Public Hearing, the Zoning Commission characterized the amendment to U-320.2 as removing only "*duplicative provisions*" and as reorganizing the section for "clarity":

Subtitle U: Use Permissions

- § 301 – to remove duplicative provisions (in favor of Subtitle E §§ 201.4, 205.4, 206, 303, 403, 503, 603, & 5203) and reorganize for clarity
- § 301.2(h) – relocated for clarity to § 301.3
- § 320.2 – to remove duplicative provisions (in favor of Subtitle E §§ 201.4, 205.4, 206, 303, 403, 503, 603, & 5203) and reorganize for clarity
- § 320.2(m) – relocated for clarity to § 301.4

(ZC Case No. 19-21, Ex. 4, p. 1 – attached herewith as Exhibit C)

Clearly, the use of the word "duplicative" signals that the Zoning Commission ***did not intend*** to change the meaning and effect of the regulations. However, it seems that (despite several comments in opposition attempting to flag the *actual* consequences of the amendment) the removed provisions were **not** merely "***duplicative***" – as the affect and application of the zoning regulations have been altered – evidenced by discussions in this case.

Unfortunately, the Office of Planning's comments both during the comment period and made directly to the community (including us) have exacerbated the confusion. If one does not consider the legislative history of the amendment (i.e. the comments made by the Zoning Commission and by the Office of Planning), a plain reading of the amended regulations *might* suggest that the provisions under U-320.2 have been removed.

However, when the history of the amendment is properly considered and the ***explicit*** comments from the Office of Planning staff are reviewed, it is *abundantly clear* that the protections of U-320.2 were never *intended* to be removed. Indeed, as discussed above, the Office of Planning has taken the position that the protections are still in full effect under the "general special exception criteria in X-900." (Exhibit D, p.4, *supra*).

All of this is to say that the Applicant's argument that the Zoning Commission "did not explicitly delete ten subsections relating to additions so that review would still take place in a potentially arbitrary manner under the general special exception requirements [under X-900]" completely disregards (or at least does not consider) all of the comments made by the Zoning Commission and the Office of Planning discussed above.

In reality, the Zoning Commission seems to have done exactly what the Applicant thinks it did not – the Commission clearly *intended* the amendment to only remove "duplicative provisions" in order to improve "clarity." Despite the result of the amendment, the Commission's *intent* is clear and the Board should review this application with those intentions in full view and consideration. That is – the previously enumerated protections of U-320.2 must be considered.

B. The trickle-down effects of confusion – ANC, LPCA, ZPD

One of the results of the confusion created by the Amendment is that the local community bodies (e.g. ANC, LeDroit Park Civic Association (LPCA), ZPD, etc.) have been operating under a misunderstood, if not incorrect, perception of the regulations as amended. Because these bodies have misunderstood the regulations, their comments should be viewed with the proper lens.

At the committee meeting on October 27, 2020, the Zoning, Preservation, & Development ("ZPD") subcommittee voted against the proposed project, noting its negative effects on the neighboring properties and the fact that the proposed project would not provide sufficient benefit – in the form of inclusionary zoning units – to outweigh the negative effects.

Then, in front of the ANC in early November, the Applicant stated (not entirely incorrectly) that the regulations do not state the old protections, such as the light, air, and privacy.

But as discussed above, the explicit text of the regulations fails to paint the full picture. Unfortunately, the ANC is not (nor are they expected to be) an expert on the zoning regulations. They had to take the Applicant's word for it and ultimately considered the Application with the above-noted misperception. The ANC's statement on this application – which is no model of clarity itself – should be considered with all of these facts in mind.

C. The previously explicit protections serve as a guide

The 19-21 amendment has created a persistent confusion on what the effect of the amendment is. Many have characterized it as a "text only" amendment. But a plain reading of the regulations suggests otherwise. On the other hand, the Zoning Commission and the Office of Planning clearly did not intend to change the effect of the regulations.

The disturbing result is that property owners (such as ourselves) are at risk of bearing the brunt of the persistent confusion. Should some developers get a "pass" because of the effects of the amendment were not fully realized, if they manage to get their application in before the situation is clarified? Or, should the intent of the amendment, to <u>not</u> change the application of the law, be taken into account?

We urge the Board to continue to look to the previously enumerated protections as a guide for what it means to "adversely affect" neighboring properties, as set forth in X-901.2. We are not advocating for a re-writing of the regulations. Instead, we advocate for the Board to exercise its discretion, as suggested by the Office of Planning, and fully consider all of those protections that the regulations previously *required* and which the Zoning Commission did not intend to remove. Surely the intention of the amended regulations was not to remove these threshold considerations entirely so that there is no check whatsoever on conversion applications' serious effects on neighboring properties.

III. Adverse Effects

The previous regulations under 320.2(i) required Applicants to demonstrate that (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 visibly intrude upon the **character, scale, and pattern** of houses along the subject street or alley (emphasis added; *see* Exhibit 59C (of record), submitted by Applicants).

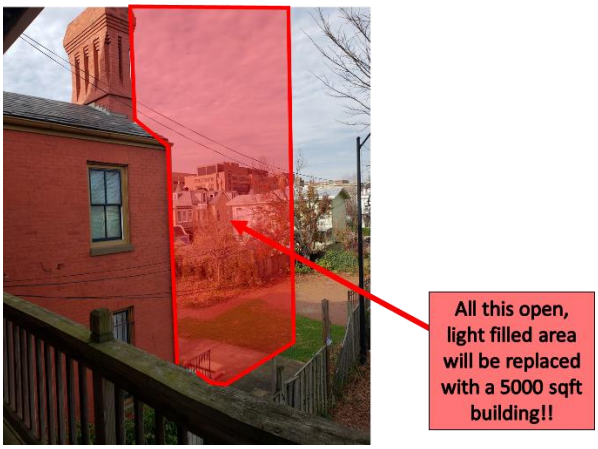
A. Substantial intrusion upon the character, scale, and pattern of houses along the subject street or alley

The Applicant submitted several perspectives that do not provide a realistic depiction of the pattern of existing homes that surround the property. The materials submitted by the Applicant show the *detailed* schematic view of the proposed project alongside depictions of the neighboring homes as *nothing more than* shaded boxes.

To complete the picture, we submit Exhibit D, which provides photographic views of the proposed project in the context of the surrounding buildings. The photographs show that the proposed project would be vastly out of character, scale, and pattern with the surrounding homes, including our own immediately adjacent house. Below are a few of photos we put together, but we encourage a full review of Exhibit D – which also explains the methodology for estimating the size of the proposed new structure.

i. Height

The photo below (taken from our back deck) shows how the proposed new structure will not only be completely out of scale with the surrounding homes, but also how the new structure – because of its sheer size – will occlude much of the light and air that all of the surrounding homes enjoy.



Further, the photo below helps to illustrate just how exceedingly tall the proposed structure will be. The existing house is the *only* three-story building on the entire block. While the Applicant's new structure will be shorter than the existing building, it will still be <u>three-full-stories</u> *above grade*. More importantly, it will be the ***second largest building on the block*** – second only to the existing structure!

Moreover, because the new structure will be unprecedentedly located in what-is-almost the middle of the entire block and because of its exceedingly tall height, *every single home on the block will have a view of the new, oversized building*. Page 7 of Exhibit D helps to illustrate this point.

The proposed project would create a new structure of almost 5,000 square feet connected to the existing 7,000 square foot building, for a total of nearly 12,000 square feet. Exhibit X further demonstrates that the proposed building, as viewed from every direction, is an outlier in size, location within the block, and visibility – it substantially visibly intrudes upon the character, scale and pattern of houses along not only the subject street and alley, but the entire 400 block of U street as well.

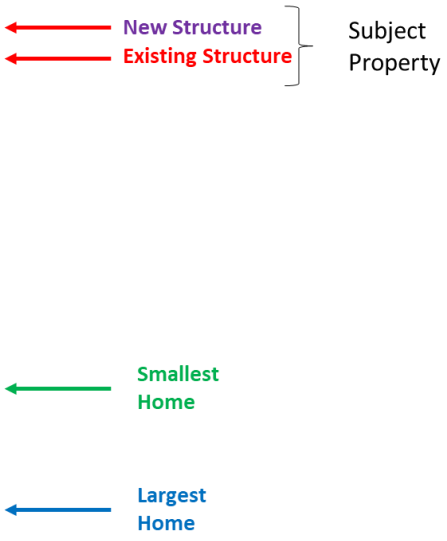
ii. Size

The table below provides the tax assessed living area[1] of all homes on the block including the subject property (421 T St). The tax assessed living area of all other houses ranges from **1,190 sqft** to **2,343 sqft**. The average size is about 1,668 sqft. The *existing* structure on 421 T street is already *twice the size* of the next largest home at (tax assessed) **4,841 sqft**. The proposed structure will add another **4,925**[2] **sqft**!!

[1] We note that the tax assessed living area is likely an under-estimate of the actual living square footage in each home. However, it is likely that all of the homes have been equally (or near equally) under-estimated. For example, the Applicant's state that the existing structure on their property is 7,000 sqft. In contrast, their tax assessed living area is only 4,841 sqft. Likewise, our own home at 417 T street, is likely closer to 2,400 sqft, but is tax assessed at 1,586 sqft. Thus, although the numbers here are not perfectly accurate, they are still very useful in to illustrate the vast disparity between the Applicant's proposed project and the existing homes on the block.

[2] We note again that the data in the table is *tax assessed* size. Because we do not know what the future tax assessed size of the proposed new structure will be, we have used Applicant's expected GFA of 4,925 sqft. *See* Ex. 49C, pdf page 12.

House Number	Tax Lot	Living Area sqft.
T Street		
New Structure	n.a.	4,925
421	3090 0804	4,841
417	3090 0034	1,586
415	3090 0033	1,630
413	3090 0032	1,586
411	3090 0031	1,570
409	3090 0030	1,586
407	3090 0029	1,570
405	3090 0028	1,586
403	3090 0040	1,156
401	3090 0038	1,156
4th Street		
1908	3090 0036	1,421
1910	3090 0035	1,190
U Street		
400	3090 0010	1,826
402	3090 0009	1,260
404	3090 0008	1,772
406	3090 0007	2,343
408	3090 0006	2,046
410	3090 0808	2,050
412	3090 0803	1,924
414	3090 0802	1,774
416	3090 0801	1,764
418	3090 0800	2,238



From the perspectives submitted by the Applicant, the photos submitted herewith, and the data in the table above, it is clear that the proposed project would *overwhelm* and *dominate* the surrounding homes. We note that, at a combined proposed size of nearly 12,000 sqft, no matter whether the actual sizes or the "taxable assessed" sizes are used, the proposed structure will be completely out of character, scale, and pattern with the surrounding homes.

B. Privacy of use and enjoyment of neighboring properties

On the record and at the December 9, 2020 hearing, we and other neighboring property owners explained the undue adverse effects on privacy of use and enjoyment of neighboring properties that the proposed project would impose. The photos submitted herewith and discussed above make it clear that the new structure, which would loom over all of the neighboring properties, would unduly adversely affect the privacy of use and enjoyment of all of our homes.

In part, the undue adverse effects relate to the fact that there is simply no reasonable way to accommodate trash bins and trash pickup in the proposed location as discussed in more detail below. Moreover, the Applicant's proposed trash location is actually ***closer to*** the house of the adjacent property (33 ft away) than it is to their own proposed structure (40 ft away)[3]. This is direct evidence that the Applicant has not attempted to mitigate adverse effects to the ***neighboring*** homes; instead, they have only considered their own (or their tenants) enjoyment of the proposed new structure.

[3] Measurements determined based on Applicant's architectural elevations (Ex. 49C) of record.

In addition, street parking availability for the block would be unduly compromised, as the building would likely more than *double* the number of car-owning individuals who live on this block[4].

Moreover, the proposed structure would cause a crowded condition in the very narrow alley that is potentially dangerous for the current residents of the block. As an example, Exhibit E provided herewith is a letter from a disabled senior who lives on the block and relies on the alley for access to her vehicle, and who is worried about her continued access as well as her ability to continue to use her property in the manner she has used it for the past 25 years.[5]

C. HPRB

Based on the Applicant's comments both at the December 9, 2020 hearing and in the post-hearing submission, we expected that they will continue to argue that the Historic Preservation and Review Board ("HPRB") has opined on the compatibility of their proposed new structure with the surrounding homes. This is not true. The HPRB took action as to whether the proposal is "compatible with the character of the house and the historic district." (*See* HPRB Actions from December 3, 2020, attached Exhibit G, page 1). Although the HPRB action mentions "size" of the proposal, they only opined that "the design [was] successful in achieving compatibility with the ***historic district***" (emphasis added; *Id.*).

The "historic district" is not the same as the surrounding homes. That is, the HPRB action has *no bearing* on whether the proposal adversely affects the light, air, privacy of enjoyment, character, pattern, or scale of the *surrounding homes*. Moreover, it is worthwhile to note that the community that *actually* lives in the surrounding blocks of LeDroit Park as well as the broader ANC all voted against the proposal on historic grounds[6] – a testament to how the proposal would actually be perceived by those who live near it. Based on comments made by the Board in the December 9, 2020 hearing, we fully expect that the Board will reject the Applicant's recommendation to "defer" to the HPRB on character, pattern, and scale consideration.

IV. Light and air available to neighboring properties

In its post-hearing submission, the Applicant referred to their previously submitted shadow study and provided no further comments. In our view, the shadow study as presented is *clearly* insufficient as evidenced by the reasons provided in Exhibit F.

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[4] As we discussed during our presentation at the BZA meeting, DDOT has not reviewed the current proposed project for its effect on parking in the area. The OP report explicitly states that DDOT had reviewed the *previous* proposal, which included 11 fewer bedrooms and an *entirely* different apartment configuration. The current proposal is an apartment building with a configuration that lends itself to multiple adults per unit and thus should have been re-reviewed by DDOT for adverse effects on neighborhood parking considerations.

[5] We recognize that the inclusion of this letter veers close to being outside of the scope of what the Board requested in these supplemental submissions. However, our neighbor, upon learning of the progress in this Application sincerely requested that we give her voice a platform. We include her letter as supporting evidence, but do not wish to unnecessarily burden the Board.

[6] The LPCA, ZPD subcommittee, and ANC 1b all voted to oppose the Applicant's proposal as being incompatible with the historic character of LeDroit Park. The HPRB took action that directly contradicted the communities expressed viewpoints.

Briefly, the shadow study is ***incomplete*** in that it fails to show the adverse effect on the properties that would be ***most affected*** with respect to light, which are those to the north of the subject property. From what the study *does* show, there would be a negative impact on our own backyard at 417 T St NW. Although the shadow study only provides estimations up to 5 pm in the summer (thus *not* presenting the 3+ additional hours of sunlight past 5 pm), the presented studies show that all of the late afternoon sunlight we currently enjoy in our backyard during the peak enjoyment of the summer would be *completely* erased.

As we noted above Exhibit F clearly presents all of these issues in an easily digestible format. In an attempt to shorten this submission, we have not included these here and we earnestly request a thorough review of our submitted exhibits.

V. Trash collection

The Applicant submitted a contract for trash collection services which indicates that it has contracted for a 2-yard trash collection dumpster to be emptied two times per week, and a 2 yard recycling dumpster to be emptied one time per week. Full stop. The rest of the Applicant's statements are only that – statements from the Applicant without any evidence to support their conjecture.

First, based on the number of bedrooms (and therefore occupants) it is entirely unclear if a 2-yard dumpster is enough. The Tenleytown contract only mentions "units" but makes no mention of the number of persons (who actually create trash).

Second, as we have discussed numerous times, in case submissions and during the hearing on December 9, 2020, the alley way that runs down the block is unusually narrow. While Tenleytown Trash *might* have other equipment available, we note that no *actual details* were provided in any documents from Tenleytown that show how the company – not the Applicant – actually plans to remove the trash. We want to emphasize that the ability to remove the trash is not in question – of course there will be some method to do so. The <u>important question</u> is *what is the actual plan??* Clearly, some methods of trash removal are worse than others. Some are more intrusive to the neighbors who surround the property, some are less so. Aside from seeing a contract for removal in general, we don't have any idea from Tenleytown itself what the plans are.

The Applicant does offer some conjecture about light trucks that might reverse through our narrow alleyway. But the submitted contract from Tenleytown speaks to none of that. Moreover, the hesitancy of the Applicant to provide plans raises concern. The Applicant was aware of the concerns regarding trash removal since the very first meeting with the public (nearly eight months ago). Until the post-hearing response, no details – at all – had ever been shared. Perhaps the Applicant simply did not have any plans, or perhaps they know that the neighbors will be unduly adversely impacted by the only workable plan that Tenleytown can propose. Only the Applicant knows why they were resistant to sharing a plan and why, even when asked by the Board, they are resistant to provide detailed plans now. Regardless of the reasons, the Applicant still has not provided an adequate level of detail on how, exactly, the trash will be removed. We, the immediately adjacent neighbors who live, eat, sleep, and work less than 20 feet from the alleyway, deserve a proper and thorough explanation.

All of this is to say that, the Board should not approve this Application without requiring the Applicant to both produce a detailed plan and work with the surrounding homes to find a workable and least impactful solution.

VI. Conclusion

The zoning regulations in the prior or current form still include protections for the surrounding homes. The prior regulations at least serve as a guideline for the Board to evaluate what amounts to something that "tends to affect adversely" the use of neighboring property. It is clear that the proposed new structure visually intrudes upon the character, scale, and pattern of the surrounding homes, that the plans for trash collection have not been adequately described, and that light, air, and privacy of the surrounding homes will be unduly adversely effected.

Accordingly, we sincerely urge the Board to reject this Application for relief in its present form.

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Thank you for your time and attention to our comments.

Respectfully Submitted,

Chetan Chandra & Meghann Teague
Parties in Opposition
Owners of 417 T Street NW