

# Holland & Knight

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September 24, 2020

## **VIA IZIS**

Zoning Commission for the  
District of Columbia  
441 4th Street, N.W., Suite 210S  
Washington, D.C. 20001

**Re: Z.C. Case No. 20-09 - Applicant's Response to Opposition Letter  
Consolidated PUD and Zoning Map Amendment  
2419 25<sup>th</sup> Street, SE (Square 5740, Lot 337)**

Dear Members of the Commission:

On behalf of Wagner, LLC (the "Applicant"), we hereby submit the following responses to the letter dated September 23, 2020, from Mr. Leonard Watson, Sr., and included in the record at Exhibit 25.

**Response to Comments 1-2 – COVID-19 Should Discourage Construction of Senior Housing.** Despite Mr. Watson's reference to the Covid-19 pandemic, there is a critical need for affordable senior housing in the District of Columbia. The proposed PUD includes 67 new residential units, 100% of which will be affordable to seniors earning up to or less than 60% of the Median Family Income. As set forth in the OP report, the project would provide "affordable senior housing, which is in demand in the District and would be developed on a vacant site." *See* Exhibit 21, p. 8 (emphasis added).

Developing new affordable senior housing is also fully consistent with many goals and objectives of the Comprehensive Plan, including the acknowledgement that there "will be need for a broad range of senior living environments, serving residents across the income spectrum." 10-A DCMR § 516.2. *See also* Policy H-4.2.2: *Housing Choice for Seniors*; Policy H-4.2.3: *Neighborhood-Based Senior Housing*; and Action H-4.2.B: *Incentives for Senior Housing*. The OP Report supports this position, stating that the project is "not inconsistent with the Comprehensive Plan, which supports the creation of more affordable housing for seniors." *See* Exhibit 21, p. 8.

More specifically, the District’s 2019-2022 State Plan on Aging,<sup>1</sup> published by the D.C. Office of Aging, emphasizes the “importance of affordable housing in the senior community” with housing being one of the highest priorities for the aging community. *See* State Plan on Aging, p. 28. The State Plan on Aging also states that the “Bowser Administration is committed to ensuring DC continues to be the best city in the world to age” identifying the goal of “producing and preserving more affordable housing units, including senior apartments” as a top priority. State Plan on Aging, p. 9.

The Applicant also met with the Department of Aging and Community Living (“DACL”) as part of its interagency meeting on July 10, 2020, during which it received feedback from DACL directly. DACL expressed its support for the affordable senior project, requesting only that the Applicant provide information on the percentage of handicap-accessible units and providing units at less than 60% of the MFI. The Applicant responded to both of these items. *See* Applicant’s 20-day Supplemental Prehearing Submission (Exhibit 20, p. 8).

Moreover, if the project is approved the Applicant has two years to file a building permit application and three years to begin construction. Hopefully, a Covid-19 vaccine will be widely available well before delivery of this project. Approval of this project should not be denied or postponed due to the current pandemic, particularly given that there is a significant and ongoing demand for affordable senior housing in the District.

**Response to Comment 3 – Building Height.** Mr. Watson stated that his property is located “approximately thirty (30) yards behind the site where the proposed five (5) story senior building, including basement, is to be built.” However, as shown on Exhibit A, Mr. Watson’s house is approximately 90 feet from the closest portion of the proposed building, which is oriented towards the corner of Wagner and 25<sup>th</sup> Streets. Moreover, the building steps down significantly as it moves west. As shown on Exhibit A, the building is five stories along 25<sup>th</sup> Street and steps down to three stories (from the building height measuring point) and 43 feet (from the adjacent grade) for the portion of the building that is closest to Mr. Watson’s home.

**Response to Comment 4 – Parking Concerns.** Mr. Watson states that the parking area for the project “will present a serious problem for our community.” The project is required to provide six parking spaces, and is providing four spaces plus a carshare space, which pursuant to 11-C DCMR § 708.2 is the equivalent of seven zoning-complaint parking spaces. Thus, the Applicant is not seeking any parking relief as part of this application. Moreover, the Applicant transportation expert prepared a detailed Transportation Statement that was scoped in accordance with the District Department of Transportation (“DDOT”) Comprehensive Transportation Review (CTR) guidelines. The Transportation Statement includes an assessment of the transportation mode split, trip generation, transit services and facilities, pedestrian and bicycle facilities, identification of car share availability, safety analysis, loading management plan, transportation demand management plan, and curbside management. The Applicant’s transportation expert found that the “[p]rojected traffic levels are minimal and would not have any adverse impacts on the roadway network.” *See* Exhibit 19, p. 30. The Applicant also committed to an extensive

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<sup>1</sup>[https://dacl.dc.gov/sites/default/files/dc/sites/dacl/page\\_content/attachments/DACL%20State%20Plan%20on%20Aging.pdf](https://dacl.dc.gov/sites/default/files/dc/sites/dacl/page_content/attachments/DACL%20State%20Plan%20on%20Aging.pdf)

Transportation Demand Management (“TDM”) plan to minimize traffic and parking impacts. *See* Exhibit 19, p. 28-29.

In reviewing the project and associated traffic study, DDOT also found that the proposed number of off-street parking spaces meets both the parking requirement and DDOT’s “preferred maximum parking rates which encourages a maximum of 0.40 spaces/unit parking ratio.” *See* Exhibit 22, p. 7. Indeed, DDOT states that because the “site has an excellent (low) parking ratio, is located within a ¼-mile of a Priority Network Corridor Metrobus Route, the projected vehicle trip generation was low, and the Applicant has committed to a robust Transportation Demand Management (TDM) plan.” *See* Exhibit 22, p. 7. *See also* OP Report, stating that the “Applicant’s traffic study shows that the project should not have a negative impact on the traffic and parking conditions in the area.” *See* Exhibit 21, p. 8. Thus, there is no evidence in the record to support Mr. Watson’s assertion that the project will generate parking issues for the community.

**Response to Comment 5 – No Community Meetings.** Mr. Watson claims that there has been “not one” community meeting for this project. However, the Applicant formally presented the proposed development to the affected ANC 8B twice – on June 16, 2020, and on July 21, 2020 – and has received a unanimous ANC vote in support for the project. *See* ANC Resolution at Exhibit 20C.

The ANC Resolution states that the ANC “strongly supports the proposal to develop the subject property with an affordable senior housing development. The ANC believes that the project will be a significant improvement to the vacant site and a much-needed amenity for the neighborhood without creating any adverse effects.” *See* Exhibit 20C, p. 1. The ANC Resolution also states that “the ANC is particularly pleased that the Applicant agreed to implement all of the public benefits and amenities suggested by the ANC” and that it is “extremely supportive of this project, including the benefits included in the CBA, and urges the Zoning Commission to approve it as expeditiously as possible.” *See* Exhibit 20C, p. 1. The ANC Resolution also states that the Applicant worked closely with Chairperson Johnson to develop a Community Benefits Agreement (“CBA”).” *See* Exhibit 20C, p. 1.

In addition, prior to filing the application, the Applicant made substantial efforts to contact the residents of 2437 Wagner Street, SE, particularly since Mr. Watson, Jr. is identified on the ANC 8B website as residing at that address and as the Single Member District (“SMD”) ANC representative for the site. As shown on the list attached hereto as Exhibit B, the Applicant made many efforts to contact Mr. Watson, Jr. via phone calls, emails, and by leaving a hand written letter at the property. After many unsuccessful attempts of reaching Mr. Watson, Jr., the Applicant began communicating directly with other members of ANC 8B, including Commissioner Wilson and the current chair, Commissioner Johnson, and as described above ANC 8B voted unanimously to support the project.

Furthermore, the Applicant sent a Notice of Intent to file the PUD application on February 12, 2020 to all of the property owners located within 200 feet of the perimeter of the site, which included the Watson property. *See* Exhibit 3I. The Applicant has also served a copy of every filing in this case on Mr. Watson, Jr. in his capacity as SMD Commissioner for the site. In addition, the Office of Zoning also sent notice of the public hearing to the Watson property. *See* Exhibits 16-

17. Thus, although the Applicant made diligent efforts to contact Mr. Watson, Jr. and the residents of the Watson property, the first and only communication in opposition to the project received from anyone was the letter submitted by Mr. Watson, Sr. into the record yesterday.

**Response to Comment 6 – No traffic or environmental impact studies.** Mr. Watson states there has been no traffic or environmental studies prepared for the project. However, as noted above, the Applicant’s transportation expert prepared a detailed Transportation Statement that was reviewed and approved by DDOT. Indeed, DDOT has indicated its support for the project, with three conditions all of which the Applicant has agreed to. *See Exhibit 22, p. 3.* Moreover, DDOT stated that because the project’s trip generation is “far below DDOT’s trip threshold” it did not require a further traffic analysis. *See Exhibit 22, p. 2.* DDOT also stated

- Based on the assumed mode split, the site is only anticipated to generate 7 AM and 9 PM peak hour vehicle trips. Far below DDOT’s trip threshold for further traffic analysis; and
- The trips generated by the project are expected to have a minimal impact on the transportation network. *See Exhibit 22, p. 2.*

With respect to environmental impacts, the Applicant met with the Department of Energy and the Environment (“DOEE”) as part of its interagency meeting on July 10, 2020, during which it received feedback from DOEE directly. DOEE expressed its support for the project as proposed, requesting only for additional information on the Enterprise Green Community standards and recommending installing of solar, the provision of a shelter-in-place flex space, and incorporating native plantings. The Applicant has clarified and agreed to all of DOEE’s requests. *See Applicant’s Supplemental Prehearing Submission, Exhibit 20, p. 8.* Consistent with standard procedures, the Applicant will continue to work with DOEE as it moves forward with permitting the project.

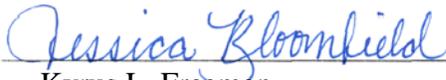
Moreover, the Zoning Commission has previously found that the assessment of a project’s environmental impacts “does not conclude with the Commission. Rather there is an entirely separate set of regulatory requirements under the D.C. Environmental Protection Act (the “Environmental Act”) and implementing regulations that require the evaluation of the potential environmental impacts before the issuance of a building permit. Further, the D.C. Court of Appeals has held that “implementation” of a zoning approval occurs when construction actually begins. (*See Foggy Bottom Ass’n v. D.C. Bd. Of Zoning Adjustment, 791 A.2d 64, 73 (D.C. 2002).*). Thus, the Applicant will be required to complete an Environmental Impact Screening Form (“EISF”) when submitting its building permit application. Various District agencies will analyze the different topics covered by the EISF including; water quality, sedimentation, and storm water management, watershed protection, air quality (which will take into account the results of the Applicant’s CTR), underground storage tanks, toxic substances, hazardous waste, and environmental justice. To the extent that a reviewing agency identifies impacts that exceed established thresholds, the Applicant will be required to work with that agency to avoid, minimize, and/or mitigate such impacts to the extent necessary before the Project is implemented. Further, to the extent that any mitigation measures identified by a reviewing agency require modifications to the Project that are not covered by flexibility granted in this Order, the Applicant would be required to seek a PUD modification from the Commission.” *See Z.C. Order No. 19-10, Findings of Fact Nos. 61-62.* The same conditions and approval process would apply to the subject PUD.

**Response to Comment 7 – No Need for More Affordable Senior Housing.** Mr. Watson states that there is no need for more senior affordable housing in his community. However, as noted above, developing new senior affordable housing is a high priority in the District, is supported by the Mayor, is promoted by the Office of Aging and DACL, and is encouraged in the Comprehensive Plan. Moreover, the project as proposed has been supported by the Office of Planning and by ANC 8B, which represent the community. Based on the foregoing analysis and the clear support for the project in the record, the Applicant submits that the proposed senior housing is appropriate for the site and will be a significant benefit to the surrounding community and the District’s aging residents.

The Applicant appreciates the Commission’s review of this project and we look forward to making a full presentation at the virtual public hearing.

Sincerely,

HOLLAND & KNIGHT LLP

By:   
Kyrus L. Freeman  
Jessica R. Bloomfield

Enclosures

cc: Certificate of Service  
Crystal Myers, D.C. Office of Planning (with enclosures via Email)  
Aaron Zimmerman, DDOT (with enclosures via Email)  
Kimberly Vacca, DDOT (with enclosures via Email)  
Commissioner Leonard Lee Watson Jr., ANC 8B01 (with enclosures via Email)

**CERTIFICATE OF SERVICE**

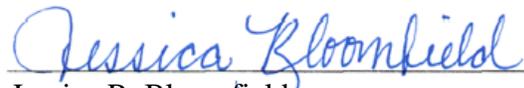
I hereby certify that on September 4, 2020, a copy of the foregoing Supplemental Prehearing Submission was served on the following via email:

Ms. Jennifer Steingasser  
D.C. Office of Planning  
1100 4<sup>th</sup> Street, SW – Suite E650  
Washington, DC 20024

VIA EMAIL

Advisory Neighborhood Commission 8B  
c/o Commissioner Keeon Johnson  
ANC 8B Chair  
8B07@anc.dc.gov

VIA EMAIL

  
Jessica R. Bloomfield  
Holland & Knight LLP

**EXHIBIT A**

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**Subject:** FW: 2419 25th St SE - ANC 8B outreach

**From:** Charles Struse <cstruse@miller.group>  
**Sent:** Thursday, September 24, 2020 11:03 AM  
**To:** Freeman, Kyrus L (WAS - X75978) <Kyrus.Freeman@hklaw.com>  
**Cc:** Bloomfield, Jessica R (WAS - X75272) <Jessica.Bloomfield@hklaw.com>; Robert Miller <rmiller@millerdc.com>  
**Subject:** Fwd: 2419 25th St SE - ANC 8B outreach

*[External email]*

Kyrus,

See below for outreach correspondence from Robby Miller to Leonard Watson.

CHARLES STRUSE  
DIRECTOR, DEVELOPMENT  
M: 410.570.4400  
CSTRUSE@MILLER.GROUP  
[WWW.MILLER.GROUP](http://WWW.MILLER.GROUP)

----- Forwarded message -----

From: **Robert Miller** <[rmiller@millerdc.com](mailto:rmiller@millerdc.com)>

**2/3/20 - 2/6/20** - Phone # for 8B01 SMD Commissioner Leonard Watson Jr. not provided on ANC website, separately sourced 2 phone #'s - 202-678-3179 (landline), 301-630-6328 (spouse). Multiple calls made, none successful in reaching Commissioner Watson.

**2/6/20** - Emailed SMD Commissioner Watson to email address provided on ANC website, no reply received:

Robert Miller <[rmiller@millerdc.com](mailto:rmiller@millerdc.com)>

to 8B01, bcc: Charles

Hi Commissioner Watson - I am hoping to arrange a time to talk or get together with you regarding a project we are working on in your district at 2419 25th Street. Please let me know the best way to reach you, or when you may be available for lunch or a meeting. I greatly appreciate your time and attention - thank you.

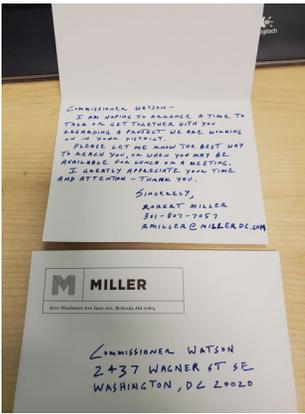
**2/12/20** - Call w ANC 8B Chairperson Charles Wilson 2/12. Primarily introductory, also expressed difficulty in reaching Commissioner Watson; Chairperson Wilson shared his own recent experience of difficulty in reaching Commissioner Watson.

**2/13/20** - Hand delivered note to residence of Commissioner Watson at address provided on ANC website, no reply received:

Robert Miller <[rmiller@millerdc.com](mailto:rmiller@millerdc.com)>

to Charles

For reference, below hand delivered 2/13 1030hrs to home address 2437 Wagner St SE.



3/2/20 - Call w ANC Chairperson Wilson regarding continued difficulty in reaching Commissioner Watson. Chairperson Wilson suggested we meet in person.

3/4/20 - Met Chairperson Wilson 11AM at Busboys & Poets, Martin Luther King Ave SE. Introductory. Shared early project information including concept drawings. Very nice meeting. Agreed to coordinate for brief project introduction at upcoming 3/17 ANC meeting - did not occur based on just instituted C19 restrictions.

Robert Miller

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COMMISSIONER WATSON -

I AM HOPING TO ARRANGE A TIME TO  
TALK OR GET TOGETHER WITH YOU  
REGARDING A PROJECT WE ARE WORKING  
ON IN YOUR DISTRICT.

PLEASE LET ME KNOW THE BEST WAY  
TO REACH YOU, OR WHEN YOU MAY BE  
AVAILABLE FOR LUNCH OR A MEETING.

I GREATLY APPRECIATE YOUR TIME  
AND ATTENTION - THANK YOU.

SINCERELY,

ROBERT MILLER

301-807-7057

RMILLER@MILLERDC.COM



**MILLER**

8120 Woodmont Ave Suite 160, Bethesda Md 20814

COMMISSIONER WATSON  
2437 WAGNER ST SE  
WASHINGTON, DC 20020

**EXHIBIT B**

