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Richard Berkley, Esq., Chairperson
City of Albany Board of Zoning Appeals
200 Henry Johnson Blvd.
Albany, New York 12210

RE: 563 New Scotland Avenue
Application AV #044 – Area Variance

Dear Mr. Berkley and Members of the Board of Zoning Appeals,

I am writing with regard to the area variance request for 563 New Scotland Avenue to construct a five (5) story building along New Scotland Avenue in a MU-NC zone.

While I and my constituents are supportive of some significant development at this location – especially if they can be assured that the Post Office will remain in this location – most residents I have heard from have expressed significant and legitimate concerns regarding the excessive height and density of this project as proposed.

With 188 units planned for this small location and 6 intersections within less than 1,200 feet (less than ¼ mile), they are rightfully concerned that this project will add to an already out of control traffic problem on the New Scotland corridor – for which there is no viable solution in sight. This traffic issue is not one that can be ignored and sloughed off to the Traffic Engineering Dept . The traffic problems along New Scotland Avenue have been getting progressively worse over the past decade and potential solutions are estimate in the millions of dollars and not feasible. In reality, the current proposed solutions will do little to solve the problems without creating other problems.

While the developer has suggested this development will not add to the traffic problems because they *assume* a fair number of the residents will be walking to work across the street at St. Peter's, it is undeniable that with over 260 parking spaces there will be considerable traffic emanating from this location. The impact of this should not be minimized. Even now, drivers frequently find it challenging to get by the Onderdonk and S Allen intersections....whether they are driving along New Scotland Avenue, or trying to enter New Scotland Avenue from either Onderdonk or S Allen.

It is also undeniable that this development will significantly and negatively alter the character of the neighborhood.

All of the properties in this MU-NC zone are currently only 1 to 2 stories tall. This lot and the properties immediately adjoining it have been appropriately zoned as MU-NC which only allows 3 ½ story buildings because it is in a predominantly residential area and MU-NC zones typically have a mix of buildings from 1-3 stories tall.

It is important to look at the instructive illustrations provided in the USDO (page 28 – 375-2 (D)(2) which were added in our ReZoneAlbany effort to help people understand exactly what kind of buildings would be allowed in an MU-NC zone, what it would look like – what the DESIRED CHARACTER of an MU-NC is intended to be. That illustration shows a stretch of buildings that are exclusively 2 and 3 story buildings. **NOT ONE of the buildings in that illustration is more than 3 stories tall.** This illustration makes it clear that the granting of a variance that will allow a 5 story building in this location will result in an undesirable change in the character of the neighborhood.

The fact that it is an *undesired change* is evident from the number of nearby residents who have overwhelmingly spoken out against the size and density of this development.

The developer and his agents have been insultingly dismissive of residents concerns suggesting this is only a half story variance because they are taking advantage of the incentive for blue and green roofs that allow an extra story.

In this regard, it is important to note that:

1. The Planning Dept itself has recommended the USDO be amended to eliminate the blue/green roof incentive til the end of the year while its efficacy is studied. Thus, it is acknowledged that there is questionable benefit to the community from their already increased height to 4 ½ stories, and under current thinking, they should only be entitled to a 3 ½ story building in this location as of right.

2. The extra half story included in the base MU-NC standards for the maximum building height of 3 ½ stories was included to help address the fact older buildings often have an extra half story in the rear of a building or have made use of pitched attic space and make sure they are not deemed "illegal" under the new zoning system. It was not meant to accommodate an entire extra floor in new construction. So, by all rights, it is expected that new construction in an MU-NC zone would naturally only be 3 stories....with any applicable incentive making it 4 stories.

3. The express language in the USDO makes it clear that the incentives for extra stories are not to be combined to add more than a single story. This shows a clear intent that the USDO intended to prevent no more than one story to be added to any structure within any given district. The addition of another story via a variance is clearly at odds with the entire intent of the USDO and the intent of the MU-NC zone.

4. While the developer and his agents point to the St Peter's hospital in defense of their proposal to build 5 stories, it is important to note that St. Peter's was built long before any of Albany's zoning codes, it is set back from the street at least 50 feet, thereby lessening the visual and shadowing impact of such a tall building, and provides a clear and unequivocal public health and economic benefit to residents in the area.

Thus, it is clear that the granting of a variance to allow a 5 story building is inconsistent with the intent of the USDO, and the at odds with the current and intended character of the neighborhood.

By virtue of the foregoing and the intent that new construction in MU-NC zones be limited to 3 stories, the requested variance for a 5 story building is also irrefutably substantial (one of the criteria in the USDO that must be considered by the BZA in deciding whether to grant a variance.)

This analysis might be different if the entire proposed development was not so dense. The density of the development exacerbates the negative impacts of this development. By cramming 188 units and commercial space in such a small area, it increases the traffic problems, overall adverse impact on the neighborhood, significantly changes the character of the neighborhood, and adversely impacts the property values of nearby residences.

I have been appalled to learn that the developer and his agents have threatened abutting property owners with increasing the number buildings on the property to 5, increasing the number of rental unit by 40, and indicating they would eliminate the Post Office from the plans if they do not get their way rather than the developer considering alternatives that would be not adversely impact nearby residents or adversely affect the overall character of the neighborhood – and plans that would benefit the neighborhood more.

The reality is this situation is self-created. There are other developments in the City that are financially viable without being as dense as this particular project. The proposed developer does not own the property at this point. He has no obligation to develop it and hence, his pursuit of this variance is not necessary and is self-created. I have heard that the reason he *needs* to plan such a dense development is because of the amount he has *voluntarily* offered to pay for the underlying parcel. (self-created) No data has been submitted or is available on-line regarding the cost of this property or for his construction costs and likely rents and profits. Without such data, the Board of Zoning Appeals and the public are completely unable to make any determinations with regard to the actual need for this variance or the proposed cramming in of additional units under the alternative proposal he has threatened to institute.

In closing, I am asking the Board of Zoning Appeals to apply the standards in USDO and in New York State law for the granting of an area variance and to consider the clear intent of the USDO to not authorize buildings that are more than a story taller than the maximum set forth in the USDO for MU-NC districts as well as the clearly stated intent in the beginning of the USDO that it is intended *to protect and preserve our neighborhoods.* I believe that the USDO and New York State law precludes the Board of Zoning Appeals from finding there is a legal basis for approving the variance.

Finally, with regard to the developer's strong arm tactics in telling nearby residents that they will cram in a 5th building and 40 units, increase the 2 story building to 3 and eliminate the post office, I believe this is a red herring as there is no way for them to accomplish that while also complying with the USDO requirement that any development shall ensure that "landscaping, screening, and/or buffering achieves at least the equivalent of 30 per cent lot coverage by vegetated material…" (USDO section 375-4(F)(3)(e). In looking at the proposed plans, it appears that at best, only about 5% of the lot will be covered with vegetation – and any

alternative increasing the number of buildings on the lot will exacerbate their inability to comply with this requirement. The Board of Zoning Appeals, the Planning Board and the Planning Department cannot and should not ignore the clear language and intent of this requirement in deciding to approve any development plan - or in deciding that the variance should be granted to avoid the punitive new plans the developer proposes to impose if the abutting property owners did not consent to a variance.

We revised the USDO to update it to be consistent with our expectations and desires as a community and to reduce the need for any variances. We should not now throw those new standards to the wind just because another developer wants to cram as much development into a piece of property to maximize his or her profits with little to no benefit to the community.

Please apply the standards in the USDO in a fair and equitable manner that takes into consideration the best interests of the thousands of residents who already live in Albany and are clearly invested in our community and City.

Sincerely,

s/ Judy L. Doesschate

Judy L. Doesschate

CC: Mayor Sheehan
Council Member Igoe
L. Alpert
B. Glass
J. Elson