

PUBLIC CITIZEN LITIGATION GROUP

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**BY EMAIL TO mmoldenhauer@washlaw.com
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December 22, 2015

Samantha Mazo, Esquire
Meredith Moldenhauer, Esquire
Griffin, Murphy, Moldenhauer & Wiggins
1912 Sunderland Place, N.W.
Washington, D.C. 20009

Dear Ms. Mazo and Moldenhauer:

In the hallway after the BZA hearing on ANC-1C's appeal of Bogdan Builders' permit, you threatened to seek a temporary restraining order seeking protection against what you claimed was "harassment" of your client. This followed my conversation with your client about his plans to despoil Lanier Heights with his construction projects, about the web sites that we are creating to discuss his plans, as well as the neighborhood's planned protests when his planned units come up for sale, and about his apparent unwillingness to sit down with his neighbors to agree on construction designs with which they could live.

I fully appreciate that the two of you are likely experts in the area of real estate law, the subject of this morning's hearing, but I wonder whether you have yet taken a careful look at law of "harassment" and how it applies in the context of speech on a matter of considerable public interest in the District of Columbia—that is to say, pop-up and cut-up development in the city's row house neighborhoods. Once you do that, I recommend that you consider the D.C. law issues against the backdrop of fundamental First Amendment principles which, under *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988), apply whatever the label you choose to affix to tort claims that ultimately come down to a claim of defamation. Additionally, you should take into consideration the impact of DC's anti-SLAPP law, *Doe No. 1 v. Burke*, 91 A.3d 1031 (D.C. 2014), as well as the obstacles that the First Amendment would erect against the issuance of a TRO, preliminary injunction, or even a permanent injunction against speech that criticizes your client.

In the event that you choose to proceed with such litigation, my address and phone number are on this letterhead so that you can give the advance notice that is required by Rule 65 as well as by the First Amendment under *Carroll v. Princess Anne*, 393 U.S. 175 (1968).

Sincerely yours,


Paul Alan Levy