

E-MAIL:
CONH@HITCHLAW.COM

CORNISH F. HITCHCOCK
ATTORNEY AT LAW
5301 WISCONSIN AVENUE, N.W., SUITE 350 D.C. OFFICE OF ZONING
WASHINGTON, D.C. 20015-2015
(202) 364-1050 • FAX: 364-9960

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August 14, 2006

VIA HAND DELIVERY

Carol J. Mitten, Chairman
DC Office of Zoning
One Judiciary Square
441 4th Street NW
Suite 210S
Washington, DC 20001

RE: Zoning Commission Case 05-26, 2950 Tilden Street NW (Lot 800, Square 2234)

Dear Chairperson Mitten,

Enclosed please find the following submissions of the Tilden Street Coalition, a party in opposition to the proposed planned unit development ("PUD") and Zoning Map amendment for the property located at 2950 Tilden Street, NW. The submissions are as follows:

1. The Tilden Street Coalition's proposed findings of fact and conclusions of law.
2. A response by the Coalition's transportation expert to the applicant's post-hearing submission.
3. The Coalition's response to the applicant's post-hearing submission regarding the Kennedy-Warren court case.

If there are any questions regarding the application, please do not hesitate to contact me.

Sincerely,

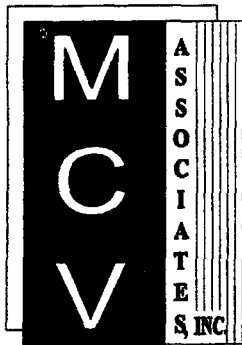


Cornish F. Hitchcock
Attorney for the Tilden Street Coalition

cc: Phil J. Feola, Esq.
ANC 3F

ZONING COMMISSION
District of Columbia

CASE NO. 05-26
EXHIBIT NO. 155



4605-C Pinecrest Office Park Drive
Alexandria, Virginia 22312-1442
(703) 914-4850
FAX (703) 914-4865
Email - mcv@mcvainc.com
www.mcvainc.com

PLANNING . ENGINEERING . INFORMATION TECHNOLOGY

MEMORANDUM

TO: Cornish F. Hitchcock

FROM: Joe Mehra, P.E.

SUBJECT: 2950 Tilden Street, NW

DATE: July 25, 2006

JOB: J-559

I have reviewed the Supplemental Traffic Analysis, dated July 12, 2006 submitted by Wells and Associates, LLC. Unfortunately, they have still not presented a "true picture" of the traffic impacts from the proposed development and continues to have errors and inconsistencies. The Figure 1 shows 11 percent of the traffic to the proposed development coming from the east. However, in Figure 1 they show no vehicles arriving on Tilden Street from the east at 29th Street intersection. This 11% traffic will most likely make u-turns at Connecticut Avenue to access the site. This is a potentially hazardous movement and may result in an increase in crashes at the highest accident location (based on the DDOT Connecticut Avenue Transportation Study, See the attached page for a summary of accidents from this study). These u-turns are also not shown in the Figure. This error and inconsistency is carried through on Figure 2, which shows that the site does not attract any traffic on Tilden Street from the east.

The crash rate at an intersection is a function of the number of vehicles entering the intersection. The proposed development could generate as many as 350 vehicle trips on a daily basis. The majority of these trips will go through the intersection of Tilden Street and Connecticut Avenue. This increase in vehicle trips through the intersection could result in an increase in crashes.

The Supplemental study recommends changing (reducing) the traffic signal timing on Connecticut Avenue and increasing on Tilden Street to improve the levels of service for Tilden Street traffic. There is a fundamental flaw in this theory. Changes in signal

timing on Connecticut Avenue at Tilden Street will impact signal timings at adjacent intersections and probably the Connecticut Avenue corridor. This change has to be verified with further analysis to see if it is feasible.

In conclusion, Wells and Associates has not conducted a traffic study that would meet the Institute of Transportation Engineers SITE Impact Study Guidelines, which is a Standard Practice in the Industry.

Please call me if you have any questions.

Table 6
Summary of Accident Data

Intersection	<u>Total Number of Accidents (Injuries)</u>			<u>AM Peak Hour Percentage</u>			<u>PM Peak Hour Percentage</u>			<u>Off-Peak Percentage</u>			Accident Type(s) (1999-2001)
	1999	2000	2001	1999	2000	2001	1999	2000	2001	1999	2000	2001	
Connecticut Avenue and Ablemarie Street	3 (1)	6 (0)	7 (4)	33	0	0	33	17	14	33	83	86	Head On - 1 Left Turn - 1 Other - 3 Parked - 2 Pedestrian - 1 Rear End - 6 Side Swiped - 2
Connecticut Avenue and Yuma Street	6 (4)	11 (5)	7 (3)	17	18	29	33	36	57	50	46	14	Left Turn - 4 Rear End - 7 Right Angle - 2 Side Swiped - 10
Connecticut Avenue and Windom Place	5 (3)	9 (2)	7 (3)	20	33	43	20	11	29	60	56	28	Fixed Object - 1 Left Turn - 1 Non-Collision - 1 Other - 4 Pedestrian - 2 Rear End - 5 Side Swiped - 7
Connecticut Avenue and Veazey Terrace	3 (1)	N/A	3 (2)	0	N/A	0	33	N/A	0	67	N/A	100	Fixed Object - 1 Other - 2 Rear End - 2 Side Swiped - 1
Connecticut Avenue and Van Ness Street	2 (1)	9 (5)	11 (5)	50	22	18	0	33	9	50	45	73	Left Turn - 2 Other - 3 Parked - 2 Pedestrian - 1 Rear End - 2 Right Angle - 3 Side Swiped - 9
Connecticut Avenue and Upton Street	8 (3)	7 (2)	6 (2)	12	0	33	38	29	17	50	71	50	Fixed Object - 2 Head On - 1 Left Turn - 6 Other - 2 Parked - 4 Right Angle - 5 Side Swiped - 3
Connecticut Avenue and Tilden Street	7 (7)	11 (5)	12 (3)	29	18	17	0	0	58	71	82	25	Fixed Object - 1 Head On - 1 Left Turn - 8 Other - 1 Parked - 2 Rear End - 9 Right Angle - 3 Side Swiped - 5
Connecticut Avenue and Sedgwick Street	4 (0)	2 (2)	6 (4)	25	0	0	25	50	33	50	50	67	Fixed Object - 1 Left Turn - 2 Other - 1 Parked - 2 Rear End - 3 Right Angle - 1 Side Swiped - 2
Reno Road and Albemarle Street	1 (0)	N/A	1 (0)	0	N/A	0	0	N/A	0	100	N/A	100	Right Angle - 2
Reno Road and Yuma Street	N/A	1 (1)	N/A	N/A	0	N/A	N/A	0	N/A	N/A	100	N/A	Right Angle - 1
Reno Road and Van Ness Street	N/A	N/A	3 (0)	N/A	N/A	0	N/A	N/A	0	N/A	N/A	100	Left Turn - 1 Rear End - 1 Right Angle - 1
Reno Road and Tilden Street	2 (0)	1 (1)	1 (0)	0	0	0	0	100	100	100	0	0	Fixed Object - 2 Side Swiped - 2
Linnean Avenue and Albemarle Street	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Linnean Avenue and Tilden Street	1 (0)	N/A	2 (0)	0	N/A	0	0	N/A	0	100	N/A	100	Fixed Object - 2 Rear End - 1

N/A: Not Available

Complete DCDPW Accident Summary Reports can be found in Appendix D

**CONSOLIDATED PUD AND ZONING MAP AMENDMENT,
2950 TILDEN STREET, N.W. (SQUARE 2234, LOT 800)**

Introduction and Overview.

The Commission received expert testimony on pertinent planning issues from the Tilden Street Coalition's expert (George Oberlander) and from Councilmember Phil Mendelsohn, the author of the Ward 3 Element. We will not repeat those points here, but limit this memorandum to the legal memorandum in the applicant's post-hearing submission (Ex. B to applicant's letter of July 12, 2006, hereinafter "K-W Memo").

There the applicant argues that the *Kennedy-Warren* decision requires the Commission to give no credence to elements of the Ward 3 Plan that suggest a use other than high-density residential. As we demonstrate below, the argument is overstated. At best, the *Kennedy-Warren* decision indicates that the Commission may give greater weight to the Lane Use Element of the Plan than to *general* statements of policy affecting Ward 3 “overall.” Nothing in the court’s ruling, however, indicates that the Commission may brush off parts of the Ward 3 Plan that deal *specifically* seek to *limit* certain uses within Ward 3 – as is plainly the case here. If anything, *Kennedy-Warren* requires the Commission explicitly to square its decision with provisions of the Ward 3 Element that limit specific types of development. Indeed, the Court vacated the initial PUD approval because, in the Court’s view, that order failed to address certain provisions in the Ward 3 Element that argued against approval of the project at issue there.

Analysis.

Kennedy-Warren involved a PUD application for an addition to the Kennedy-Warren building, which was sited in an area designated for high-density residential use on the Generalized Land Use Map, a portion of the Land Use Element of the Plan. Some neighbors in that case argued that a high-density addition would be incompatible with various portions of the Ward 3 Element. It is important to separate the provisions of the Ward 3 Element upon which the neighbors relied because the analysis differed, depending on the provision at issue.

The Court of Appeals dealt first with several provisions that spoke only in general terms about the “overall” low-density character of Ward 3. 743 A.2d at ___, *citing* 10 DCMR §§ 1401.1(c) (new development should be “physically compatible” with the

Ward's "predominantly low- and moderate-density" character), 1406.2(d) (development should be "carefully controlled" to protect the existing scale), 1400.2(a)(2) (protecting low-density character of the ward a major theme of the ward plan).

In rejecting that argument, the Court of Appeals noted that the Land Use Element "unambiguously" permits high-density usage on the Kennedy-Warren site, whereas the sections cited by the neighbors "address only the *overall* low to moderate density character of Ward 3." *Id.* at ____ (emphasis added). The Court of Appeals repeated this point several paragraphs later (using the word "overall" for the third time), and it found no inconsistency between the proposed PUD and general provisions mandating "protection of the overall low- to moderate-density character" of the ward. *Id.* at ____, citing 10 DCMR § 112.4 ("residual" tension between ward plan and Land Use Element may be resolved in favor of the latter).

However, the Court used a somewhat different approach with respect to certain elements of the Ward 3 Element that affected *specific* portions of the Ward, not just the "overall" character of the ward. This is clear from the Court's analysis of objections raised by the neighbors involving three provisions of the Ward 3 Element:

· The Kennedy-Warren site was adjacent to Rock Creek Park, and section 1407.3(c) of the Ward 3 Element stated that development "adjacent to parks which are designated landmarks must be low density." The Court of Appeals overturned the Commission's approval of the PUD, based on the Commission's failure adequately to address this requirement in the Ward 3 Element or to explain how this requirement is limited "by other provisions of the Plan or by ameliorative measures." *Id.* at ____.

· The Court reversed the Commission on a separate “green space” provision of the Ward 3 Element, namely, the requirement in section 1409.(a)(3) that there be “stringent protection against infill at inappropriate locations,” including “swaths of green space fronting many apartment buildings” (such as the Kennedy-Warren) by means of “careful controls.” *Id.* at _____. The Court stated that if the “green space fronting the Kennedy-Warren is indeed an ‘inappropriate infill location,’ the P.U.D. in this case would appear to conflict with the Plan.” *Id.*

· Section 1407.3(c) of the Ward 3 Element seeks to limit developments adjacent to landmark parks, “where advisable,” to create a “green buffer” between a landmark park and the built environment. The Court upheld the Commission’s analysis rejecting the neighbors’ concerns about the effect of the new construction on the site, through adoption of a tree preservation plan, to be coordinated with the National Park Service, that would provide something of a buffer. *Id.* at _____. At no point did the Court suggest that this specific provision of the Ward 3 Element was inapplicable simply because the Generalized Land Use Map called for high-density development on the site.¹

In short, if a proposed PUD is inconsistent with specific elements of the Ward 3 Element, as opposed to generalized provisions dealing with the “overall” character of the Ward, then the proposed PUD is inconsistent with the Comprehensive Plan. Such a glaring inconsistency exists here.

¹ On remand, the Commission approved the PUD, relying on the “escape valve” language in both the low-density-near-parks provision and the buffer-space provisions of the Ward 3 Element. Specifically, the Commission cited a number of “ameliorative measures” that it had adopted in its PUD order as conditions of that would protect landmark parks and be consistent with section 1407.3(c) when “[r]ead in its entirety. Zoning Commission Order No. 831-A at p. 16, ¶¶ 8-9 (Dec. 11, 2000). Similarly, with respect to the green-space provision, the Commission noted how the PUD order had adopted “guidelines, conditions, and standards” sufficient to provide the “careful controls” contemplated by § 1409.4(a)(3). *Id.* at p. 18, ¶ 21.

The most pertinent provision is section 1404.3(a)(3) of the Ward 3 Element, which states: “Medium and high density residential uses . . . should be limited to major arterials.” Tilden Street is not a “major arterial,” however, and the proposed PUD is thus inconsistent with section 1404.3(a)(3). The quoted section contains language of limitation. It is similar to the limiting language contained in the three provisions just discussed in connection with the *Kennedy-Warren* decision, *i.e.*, limitations on development next to national parks, with “ameliorative measures” required for non-low-density development; limitations on “inappropriate” infill development; and limitations requiring a “green buffer” near a national park “where advisable.”

Simply put, there is no way to square this explicit limitation with the applicant’s intent to put an outsized building on Tilden Street. Moreover, there is no “escape valve” or exception in section 1404.3(a)(1)(B), as there were in some of the provisions at issue in *Kennedy-Warren*, which might allow the Commission to consider “ameliorative measures” or something similar. Indeed, as the traffic-related testimony before the Commission indicated, there are some features of the present PUD application that will worsen existing traffic and related conditions. The application proposes taking land now zoned R-2 (with the attendant parking requirements) and constructing a building with 100 parking spaces, thus dramatically increasing auto usage on Tilden Street. Indeed, Kenneth Laden of DDOT indicated that if the traffic projections turned out to be worse than expected, one solution would be to eliminate part of the green median strip in the middle of Tilden Street to permit left turns out of the building site onto Tilden Street.

There is another provision of the Ward 3 Plan that speaks directly to the issue, namely, section 1409.7(e), which states: “A significant complex of embassy compounds

or ambassadorial residences is concentrated along Tilden and Van Ness Streets. Special security considerations for these properties should be taken into account whenever the potential for new development on immediately adjacent properties exists. New high-rise structures adjacent to these properties . . . are inappropriate.”

This provision speaks directly to the development of the site at issue here. It is difficult to imagine a more explicit statement against development of this site in the manner proposed by the Applicant.

The applicant argues (K-W Memo at 6) that the Comprehensive Plan at most “authorizes” the Commission to resolve any discrepancy between the Land Use Element and the Ward 3 Element in favor of the former. As the applicant tacitly concedes, however, *Kennedy-Warren* does not require such a result, and the Commission should be reluctant to give *Kennedy-Warren* more significance than it warrants.

Government of the District of Columbia

Zoning Commission

ZONING COMMISSION ORDER NO. ____

Case No. 05-26

(Consolidated Planned Unit Development and
Zoning Map Amendment for Tilden 800 LLC
2950 Tilden Street, NW, Lot 800, Square 2234)
_____, 2006

PRELIMINARY STATEMENT

1. This proceeding concerns an application for consolidated and approval of a Planned Unit Development and related map amendment, filed on July 29, 2005 by Clark Realty Capital, LLC, on behalf Tilden 800 LLC (hereinafter called "Tilden" or the "Applicant").

2. The initial proposal was for construction of a residential development consisting of 49 new residential units comprising approximately 96,370 square feet to be known as 2950 Tilden Street, N.W. During the course of the proceeding, the proposal was changed to a five-story structure still retaining 49 residential units.

3. The Applicant also requested a related map amendment from R-2 to R-5-C for Square 2234, Lot 800.

4. Party status was requested by and granted to the Tilden Street Coalition ("TSC"), a group made up of citizens who live near the proposed PUD site and who presented uncontested evidence that they would be adversely affected by construction of the PUD based on loss of light and air, as well as increased traffic and noise during construction. Jacob and Susan Gillespie, who live immediately across the street from the construction site at 2931 Tilden Street and are TSC members, were denied separate party status, but participated through TSC. The Unit Owners Association of the apartment building at 3883 Connecticut Avenue, N.W. also sought and obtained party status. Advisory Neighborhood Commission ("ANC") 3F was automatically granted party status.

5. TSC and ANC3F, as parties in opposition, opposed the Applicant's proposal to build 49 townhouses, with the ANC voting unanimously on May 24, 2006, against the six-story version. The 3883 Connecticut Avenue association withdrew its opposition prior to presenting any testimony.

6. Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on June 5, 2006 and June 22, 2006.

1 TILDEN STREET COALITION'S
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

7. On July 21, 1999, the Applicant signed an agreement which stated its intention to build a nine-story apartment building (at 3883 Connecticut Avenue) and "eight duplex residences" (at 2950 Tilden Street). The agreement included a Conceptual Plan showing the eight townhouses on the Tilden Street lot. Clark Realty Capital LLC entered into this agreement (Recorder of Deeds No. 9000069958) as owners of the 3883 Connecticut Avenue property and the 2950 Tilden Street property with WK Investors LLC, 3901 Residents Association and others.

8. For a period time around October 29, 2001, the Clark Realty website displayed its plans for a 10-story apartment building at 3883 Connecticut and eight luxury townhouses fronting on Tilden Street, which the website stated were under construction.

9. On October 4, 2004, at an ANC Single-member Sub-district meeting, the Applicant presented a plan for a nine-story, 40-60 unit building at 2950 Tilden Street.

10. On July 29, 2005, the Applicant submitted a PUD proposal and zoning map amendment to R-5-C in order to develop a residential building with approximately 98,000 gross square feet above grade, two levels of underground parking, a FAR of 2.8, approximately 60 dwelling units and a lot occupancy of 57%. The building would have a height of five stories on the sides and six stories in the center section, approximately 67 feet tall, with an 18 foot mechanical penthouse on the roof. The front of the building would be set below grade level by 3 feet. The impervious surface is 100%.

11. On May 8, 2006, the Applicant presented a revised PUD proposal to ANC3F. A 49-unit building would be set back an additional 10 feet from the curb, to 32.5 feet as required by the Department of Transportation for the 2900 block of Tilden Street. The design of the building changed to six stories, 67 feet high on both sides and five stories in the center section, with overall square footage of approximately 87,500 square feet and no mechanical penthouse on the roof. The front of the building would be set below grade level by 3 feet. The parking garage would accommodate 110 cars. The driveway entrance to the garage would also serve as the loading dock, requiring trash trucks to back into the driveway to collect solid waste. A U-shaped patio area in the rear of the building would be approximately 96 feet wide. The center section would be 56 feet from the north wall of 3883 Connecticut. On the east and west wings of the building, the rear wall would be 25 feet from 3883 Connecticut, with a landscaped berm along the rear wall to the 20 foot easement between the two buildings. The impervious surface is 100%.

12. At the June 22, 2006 Zoning Commission hearing, the Applicant presented a five-story option, with the first floor at grade level. The 49-unit building would be 61 feet high, with two penthouses on the roof of 17 feet each for

stair and elevator access. The square footage would remain the same at 87,500 square feet, with a FAR of 2.52 and lot occupancy of 53%. The parking garage would accommodate 110 cars. The U-shaped patio area in the rear of the building would be approximately 72 feet wide. The rear east and west wings of the building moved 5 feet closer to the north wall of 3883 Connecticut, separated only by the 20 foot easement. The west wall moved 5 feet closer to neighboring 3945 Connecticut Avenue. The east wall has no windows overlooking the Embassy of Kuwait, but has four balconies and four terraces that overlook the embassy property. The impervious surface is 100%.

13. In a July 25, 2006 memo, the Office of Planning expressed concern about the scale of the proposed building and its proposed bulk. It recommended a five story building of no more than 60 feet that incorporates the mechanical equipment into the top-residential floor and garage levels.

FINDINGS OF FACT

1. The applicant is Tilden 800 LLC, a Clark Realty Capital LLC entity.
2. In 1960, the Chevy Chase Land Company purchased Lot 800 from the Newlands Company. In 1963, the Chevy Chase Land Company divided Lot 800 into two lots (800 and 802) and sold what is now Lot 802 to the Embassy of Kuwait. The Chevy Chase Land Company also owned two neighboring lots, Lot 4, now 3883 Connecticut, and Lot 2 containing the building at 3901 Connecticut Avenue, which was converted to condominiums in 1999.
3. In 1998, Clark Realty Capital LLC purchased Lot 800, Square 2234, now known as 2950 Tilden Street, and Lot 4, Square 2234, from the Chevy Chase Land Company. In 2000, Clark built a nine-story building, 3883 Connecticut Avenue on Lot 4. At the time of purchase, Lot 800 and Lot 4 were fully wooded lots, with no visible property line. Neither lot contained any structure.
4. Lot 800 measures 34,686 square feet with 247.76 feet fronting on Tilden Street, and is 140 feet deep. It has a slope of 9 feet from the street to the rear of the property. A designated 20 foot fire lane easement, serving 3883 Connecticut, exists along the rear of the property. The lot is 232 feet from the intersection of Connecticut Avenue and Tilden Street.
5. Tilden Street is a residential two-lane street, divided by a 25 foot wide median strip. Each lane is 25 feet wide. There is zoned parking on both sides of the street. Recently DDOT painted bicycle lanes on both sides of the street from Connecticut Avenue to Peirce Mill in Rock Creek Park.
6. Tilden Hall (3945 Connecticut) is situated to the west of the property. It is a five-story, 55 foot high, rental building owned by DARO Realty. It has 73 units and 18 exterior parking spaces and is set back 42 feet from the curb on Tilden Street. To the east is the two-story Embassy of Kuwait, set back approximately 58

feet from the curb, as the Applicant's architect, Suman Sorg, testified on June 5 (page 33). The Applicant's architectural drawings mistakenly indicate the Embassy is setback from the curb the same distance as 3945 Connecticut, which is 42 feet from the curb. The Applicant proposes to build to the property line on both the east and west sides of the lot, with a setback of 32.5 feet from the curb. The front of the proposed building will be 10 feet closer to the curb than either of its neighboring buildings.

7. To the south and rear of Lot 800 is the nine-story building, 3883 Connecticut, built by Clark Realty Capital in 2000. It has a panhandle driveway access to Connecticut Avenue running between 3801 and 3901 Connecticut Avenue. There is a designated 20 foot easement for a fire lane between Lot 800 and 3883 Connecticut. The Applicant proposes to build up to 20 inches from the easement line. The Office of Planning Report dated July 25, 2006 recommends setting the rear façade back 6 feet from the easement line and building a landscape screen.

8. Across Tilden Street facing Lot 800 are 25 semi-detached townhouses consisting of three and two stories. Twelve of the homes were built in 1906, among the oldest in Forest Hills. Four were constructed in 1916, three in 1922 and six in the 1970s. At northeast corner of Tilden and Connecticut is 4007 Connecticut, a condominium building of 59 units with zero parking places.

9. Party in opposition Tilden Street Coalition is an informal organization of neighbors within 200 feet of Lot 800, and other concerned nearby residents of single family homes and surrounding apartment buildings. The Coalition desires to retain the R-2 matter-of-right zoning to reflect the zoning on the north side of Tilden Street, a residential side street off Connecticut Avenue.

10. The Zoning Commission is required to give great weight to the opinion of the Advisory Neighborhood Commission (ANC) in which the site is located. ANC3F is automatically a party as the site is within their boundary. ANC3F opposes the Applicant's proposal.

Existing Zoning and the Comprehensive Plan

11. Lot 800 is and has been zoned R-2 since 1958. The neighboring lot to the east, Lot 802, owned by the Embassy of Kuwait, is also zoned R-2. Until 1963, the lots were one. At that time, the Chevy Chase Land Company divided them and sold one to the Embassy of Kuwait.

12. The applicant is requesting a related map amendment from R-2 to R-5-C. The differences are as follows:

- a. The R-2 District permits matter of right development of single-family semi-detached dwellings with a maximum lot occupancy of 40 percent and a maximum height of 3 stories within 40 feet.

b. The R-5-C District permits matter of right development of apartments with a maximum lot occupancy of 75 percent of the site with a maximum FAR of 4.0 and a maximum height of 75 feet. One space per three units is required for parking.

13. The Comprehensive Plan Generalized Land use Map shows the project site in brown, suggesting high-density residential use. This designation is apparently a carryover from the earlier, very generalized land use map, known as the “Matisse” map or “blob” map. The Commission has on prior occasions stated that there can be incorrect designations of a project site, e.g., Zoning Commission Order No. 921, Findings 11-12 (Sept. 17, 2001). In that situation, it is appropriate to look to other sources to determine the appropriateness of the requested rezoning.

14. It is possible the early Existing Land Use Maps followed the ownership of the lots. The Chevy Chase Land Company owned three neighboring lots, now known as 2950 Tilden Street, 3883 Connecticut and 3901 Connecticut. In designating the Land Use Map as high density for Lot 800, it is possible that Lot 800 was incorrectly included along with the two neighboring lots owned by the Chevy Chase Land Company. Both these neighboring lots have Connecticut Avenue addresses and are zoned for high density.

15. On July 31, 2006, City Councilmember Phil Mendelson submitted a letter and an accompanying map, which he referred to in his June 5 testimony as a “Matisse” map, the Comprehensive Plan Map from 1984. This land use map is a street-less map, with the exception of the major arterials, Connecticut Avenue and Wisconsin Avenue. At the time, and during subsequent amendments to the plan, it assumed the coloration followed the zone districts along Connecticut Avenue. Mr. Mendelson based on his experience drafting the Ward 3 Plan that was adopted by the Council, stated in his letter to the Zoning Commission dated January 9, 2006, that, “there was never any intention or proposal calling for increasing the zoning along Tilden Street. Never.”

16. On the 1984 “Matisse” map, the coloration for the area near the location of Tilden and Connecticut follows the land ownership at the time. The three lots owned by the Chevy Chase Land Company appear to be included in the brown “blob,” ignoring the R-2 zoning designation for the 2950 Tilden Street lot.

17. Eight semi-detached homes on Lot 800 would be consistent with the Comprehensive Plan and the Generalized Land Use Map. The R-2 zoning for Lot 800 at 2950 Tilden Street is not inconsistent with the Comprehensive Plan map. The residential land use category for high-density that currently includes the Tilden Street lot on the Land Use maps states: “High-rise apartments are the predominant uses; may also include low, moderate and medium density housing.” Semi-detached housing is considered low density.

18. At the June 5 hearing, City Councilmember Mendelson, in response to an inquiry as to the similarity of the Kennedy-Warren case and Tilden Street, testified

that “the property we are talking about tonight is on Tilden Street. It is off Connecticut Avenue, where as the Kennedy-Warren was entirely on Connecticut Avenue. Second of all, I think the issue in the Kennedy-Warren was primarily language about infilling courtyards...” The issue of infill of courtyards does not apply to the Tilden Street lot.

Requirements for Approval of a PUD

19. Section 2403.9 of the Zoning Regulations enumerates ten “evaluation standards” that be proven by the proponent of a PUD to exhibit and document the public benefits or amenities of the project. Other “additional categories” may be used as well.” *Id.* “A project may qualify for approval by being particularly strong in only one or a few of the categories in Section 2403.9, but must be found to be acceptable in all proffered categories and superior in many.” 11 DCMR Section 2403.10.

20. 2403.9(a) Urban design, architecture, landscaping, or creation or preservation of open spaces.

- a. The Applicant’s proposed building would have a negative impact on the surrounding area. There is no five story building with a Tilden Street address between Connecticut Avenue and Rock Creek Park The residences in the 2900 block of Tilden Street consist of 25 two and three story semi-detached homes on the north side of the street. On the south side of the street is the two-story Embassy of Kuwait. Although there are apartment buildings of five and nine stories bordering Lot 800, they have Connecticut Avenue addresses.
- b. The scale, height and density of the proposed building makes it ill-suited for the site.
- c. The design is out of character with the surrounding buildings.
- d. The façade is incompatible with neighboring buildings. The predominant façade in the neighborhood is brick. At the June 5 hearing, none of the examples of facades of neighboring apartment buildings exhibited had facades of pre-cast concrete.
- e. The proposed building is set back only 32.5 feet from the curb, creating a contextual inconsistency in setback with neighboring buildings on Tilden Street. To the east of Lot 800, the Embassy of Kuwait is set back 58 feet from the curb. (June 5, page 33). To the west of Lot 800, 3945 Connecticut (Tilden Hall) is set back 42 feet from the curb. On the north side of Tilden Street, all the homes are setback more or less the same distance from the curb, creating a unified streetscape.

- f. The height of the proposed building is contextually inconsistent with its

two neighboring buildings on Tilden Street. The applicant proposes either a five story building at 61 feet or a six story building at 67 feet. Both are taller than 3945 Connecticut to the west, which is 55 feet high. The proposed building would dwarf the two-story Embassy of Kuwait.

- g. The proposed building will create 100% impervious surface on Lot 800. No large canopy trees can be planted to screen the building from its neighbors or to provide shade. With no side or rear yard, only ornamental trees and shrubs can be planted in containers in the front.
- h. On June 5, the Applicant's landscape architect presented a plan to restore the median from Connecticut Avenue to the eastern border of the property. (page 42, lines 16-22) The Applicant failed to include this plan in the July 12, 2006 submission, nor is it mentioned in any of the documents the Applicant has submitted to the Zoning Commission.
- i. The Applicant's proposed building has four balconies and four terraces overlooking the Embassy of Kuwait's compound. The adverse effect of the presence of these balconies is of great concern not only to the Embassy of Kuwait but to the surrounding neighborhood. Development of the site under the matter-of-right provisions would alleviate these concerns.
- j. It is possible that the proposed building, which would substantially increase the number of vehicles housed on Tilden Street could increase traffic to the point where the District Department of Transportation concludes that it would be necessary to eliminate a portion of the green median strip, so as to permit traffic to make a left turn out of the building onto Tilden Street. Kenneth Laden, the DDOT witness, testified that this would occur only if traffic projections were worse than expected. However, considering that traffic at the intersection of Connecticut Avenue and Tilden Street is already at a Level of Service F, there is a risk that approval of this PUD could degrade existing green space.

21. 2403.9(b) Site planning, and efficient and economical land utilization.

- a. The Applicant's proposed building would dominate the approximately three-fourths of an acre site. With no side or rear yard, the building is insensitive to the surrounding buildings, restricting their light and air. The front façade of the building would project 10 feet closer to the street than its neighbor, 3945 Connecticut, and 26 feet closer to the street than the Embassy of Kuwait.
- b. The Comprehensive Plan, Section 1409.7(e) states, "A significant complex of embassy compounds or ambassadorial residences is concentrated along Tilden and Van Ness Streets. New high-rise

structures adjacent to these properties would adversely impact existing residential uses in the area.” The neighbors in the surrounding homes and apartment buildings and the Embassy of Kuwait have testified and written letters regarding the adverse impact the building would have on them.

- c. The rear façade of the building is one foot, 8 inches from the 20 foot grass crete easement, leaving no space for landscaping along the rear.
- d. The Applicant proposes 49 units, and therefore is not required to provide a screened loading dock, to the detriment of the neighbors. The parking garage driveway would also serve as the trash pickup location. Large moving vans have no specified area to unload their cargo.
- e. The Applicant proposes to build to the property line on the west side of the building. Screening landscaping between the proposed building and 3945 Connecticut will have to be on the property of 3945 Connecticut. To date, the Applicant has no agreement with the owners of 3945 Connecticut to allow this landscaping.

22. 2403.9(c) Effective and safe vehicular and pedestrian access; transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts.

- a. The Applicant has not provided adequate rear access for fire and emergency vehicles. The Applicant submitted a memo for the record on June 22 from Fire and EMS Department. The memo, dated June 2, 2006, found “fire department access to the rear (of 2950 Tilden Street) is not readily accessible.” Per the International Fire Code, 2000 Edition, “The code official is authorized to require more than one fire apparatus access road based upon the potential for impairment of a single road by vehicle congestion, condition of terrain, climatic conditions, or other factors that could limit access.”
- b. On June 22, 2006, the Applicant entered into an agreement with the Unit Owners Association at 3883 Connecticut to vacate its easement rights to use the driveway of 3883 Connecticut for vehicular and pedestrian access. The Condominium Board of 3883 Connecticut subsequently withdrew its Party in Opposition status. This agreement has the effect of limiting access to the 20 foot easement grass crete “fire lane” to the rear of 2950 Tilden Street and the north side of 3883 Connecticut.
- c. At the June 5th hearing, Arthur Jackson of the Office of Planning stated, “The agency’s (DDOT) report did note that a request was made of the Applicant to provide information to the DC Fire and Emergency Services Department to determine whether the proposed 32 foot

distance between the proposed building and the residential tower at 3883 Connecticut Avenue is adequate for emergency vehicles. However, Office of Planning notes that the current plan in the public record shows only a 26 foot distance between the buildings.” (Page 152, Line 7-16) At the June 22 hearing, the Applicant submitted a plan that would reduce the distance between the buildings to 21 feet 8 inches.

- d. The Applicant offered no solution to mitigate the adverse traffic impact a 49-unit building with 110 parking places will have on a residential street, and on the traffic at the Tilden and Connecticut intersection, which already has an “F” rating.
- e. The Applicant failed to recognize the increased demand for street parking that a building this size will generate. Service vehicles, guests and delivery vehicles will all add to the congestion on Tilden Street.
- f. The driveway entrance to the parking garage of the proposed building also serves as a loading dock for solid waste pickup. Garbage trucks will be required execute a difficult maneuver to back into the driveway from the single lane of Tilden Street, causing traffic delays.
- g. The Applicant’s proposal to create a drop-off area in front of the building will further reduce the number of parking places available on Tilden Street.
- h. Vehicles exiting the driveway of the proposed building must turn right, going east. In order to reach Connecticut Avenue, the vehicle must make a U-turn at 29th Street or make a left turn onto 29th Street, proceed to Upton Street and turn left on Upton Street. During the morning and evening rush hour, the traffic backs up through the 29th Street intersection, often down the hill to Linnean Avenue to the east, making a U-turn difficult.
- i. The Applicant failed to address the problems of vehicles approaching the proposed building from the east, driving west on Tilden Street towards Connecticut Avenue. Drivers have no good options to reach the proposed building. The two choices are (1) to make a difficult U-turn at Connecticut Avenue and Tilden Street or (2) to continue through the traffic light, make a U-turn on the western side of Connecticut Avenue, then drive east back through the traffic light to 2950 Tilden Street.
- j. The Applicant’s proposal offers no access for large trucks and moving vans to make deliveries to the building. There is no proposal to enforce the promises made in the June 5 hearing (p.108, lines 9-12) regarding control of large trucks. The Applicant failed to recognize its inability to enforce a prohibition of large moving trucks from making deliveries to the building once the condominium units are sold. The Applicant

would then relinquish control of the building to the Condominium Board.

23. 2403.9(d) Historic preservation of private or public structures, places or parks.

- a. The southeast corner of Lot 800 abuts the border of Melvin Hazen Park. The impact of this proximity to Rock Creek Park has not been fully addressed by the Applicant. Melvin Hazen Park is eligible for listing on the National Register of Historic Places (Federal Reservation 630).
- b. Lot 800 faces twelve homes built in 1906, some of the oldest in Forest Hills. Tilden Street, known in 1906 as Quincy Street, was laid out with a center median as a graceful gateway to Rock Creek Park.

24. 2403.9(e) Employment and training opportunities.

- a. The Applicant has not submitted any proposal to provide employment and training opportunities to District of Columbia residents.

25. 2403.9(f) Housing and affordable housing.

- a. Eight semi-detached townhouses on a vacant lot would increase the city's housing stock. The townhouses would provide housing opportunities for families and enhance the character of the neighborhood. This would be a strong benefit.
- b. The Applicant's proposed building of 49 units would be dramatic, negative contrast to the low density, stable neighborhood that it fronts. The density is not in the best interest of the city or the neighborhood.
- c. The Applicant proposed 3 affordable housing rental units, to be owned by the Applicant. No plan has been presented regarding the oversight of these units.

26. 2403.9(g) Social Services/facilities.

- a. Given the nature of this project, this factor is not applicable.

27. 2403.9(h) Environmental benefits, such as storm water runoff controls and preservation of open space or trees.

- a. The Applicant cut down the remaining trees on Lot 800 in 2002, following the completion of construction of 3883 Connecticut. Up until 1999, Lot 800 was a wooded lot.

- b. The Applicant's proposed plan does not allow for any large canopy trees to be planted on the lot to replace previously existing trees.
- c. The Applicant's proposed plan to build to the sides and rear of the lot line does not allow for any plantings other than ornamental trees in planters in the front yard and in the rear as a patio screen.
- d. The Applicant submitted a draft stormwater management plan on May 22, 2006, but as of that date, no percolation tests had been performed to determine what type of storm water system was needed.

28. 2403.9(i) Uses of special value to the neighborhood or the District of Columbia as a whole.

- a. Given the nature of this project, this factor is not applicable.

29. 2403.9(j) Other public benefits and project amenities and other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.

- a. Section 2403.13 of the Planned Unit Development Procedures states that Public Benefits other than affordable housing, such as public facilities or public open space, may be located off-site; provided that: "there is a clear public policy relationship between the PUD proposal and the off-site benefit."
- b. The Applicant fails to establish a clear public policy relationship with three of the four recipients. The Applicant proposes to donate a total of \$200,000, \$50,000 each to four entities in the area. \$100,000 will go to foundations that support a federal entity, the National Park Service, and \$50,000 to Hearst Playground, a D.C. entity.

One recipient is the National Park Foundation, earmarking \$50,000 to provide lighting and landscaping in Melvin Hazen Park. This park abuts the site, but the need for lighting and landscaping in the park is unclear.

Friends of Peirce Mill will receive \$50,000 for further restoration of the Mill, with no direct benefit to the immediate neighbors.

Hillwood, a private house museum, will receive \$50,000, with no direct benefit to the immediate neighbors.

Hearst Playground, a District of Columbia facility, will receive \$50,000 for a study of current trees, with no direct benefit to the immediate neighbors.

- c. The Commission finds the amenity offer of \$200,000 *de minimis* based on the potential profit the Applicant will realize from this proposed project.
- d. The Applicant has submitted an unacceptable Construction Management Plan outlining their intention to maximize the work hours. On Monday to Friday they propose working 7am to 7pm, and Saturdays from 9am to 4pm, with the possibility of night work. In the case of foul weather, Saturdays will be extended from 7am to 7pm. On Sundays, the Applicant proposes interior work from 9am to 4pm.

30. Based on the foregoing, the Commission concludes that the applicant has not demonstrated that the proffered public benefits and project amenities qualify the project for approval as a planned unit development.

31. As discussed more fully in the following paragraphs, the Commission further finds that the proposed PUD is inconsistent with and would not further certain policies and objectives of the Comprehensive Plan and the Ward 3 Element of the Comprehensive Plan.

32. The Residential Neighborhood Objectives section of the Comprehensive Plan emphasizes the conservation of established neighborhoods.

Section 1104.1(b)

“Conserve and maintain the District’s sound, established neighborhoods through strict application and enforcement of housing, building and zoning codes and the maintenance of the general level of existing residential uses, densities and heights;”

The Applicant’s proposal fails to conserve an established neighborhood, seeks to change the long-standing zoning codes and disregards the general levels of existing residential uses, densities and heights on Tilden Street.

33. The following are additional specific policy violations in the Ward 3 plan that apply to the proposed PUD:

Section 1400.2(a) (2). “Residents seek to insure that stability be maintained. Accordingly, no significant land use changes have been indicated...and it is a major theme of this ward plan to protect and maintain the low-density, high quality character of the ward”.

Section 1404.3 (a) (1)(B) states: “Medium and high density residential uses (where designated in the Land Use Element) should be limited to the major arterials well served by either Metro rail or Metrobus.” This PUD site is not along a major arterial. Any finding that the PUD is ‘not inconsistent with the Comprehensive Plan’ violates this Section 1404.3 (a) (1) (B).

Section 1409.1(b). "...The Generalized Land Use Map of the Land Use Element designates most of the ward in the low-density residential category. ..."

Section 1409.1(h). "The current land use character of the ward - which is reflected in the Comprehensive Plan without change - has created a value in the land and attracted an affluence in population that contributes substantially to the District's tax base. ..."

Section 1409.2(a). "Maintain the existing land use character of the ward."

Section 1409.2(b). "Protect existing residential neighborhoods and enhance their qualities."

Section 1409.2(i). "Maintain and improve viable residential areas and eliminate incompatible and non-conforming land uses in or proximate to residential areas."

Section 1409.7(e). As amended by the D.C. City Council (effective September 22, 1999): "A significant complex of embassy compounds or ambassadorial residences is concentrated along Tilden and Van Ness Streets. New high-rise structures adjacent to these properties would adversely impact existing residential uses in the area."

CONCLUSIONS OF LAW

1. The Planned Unit Development process is designed to encourage high-quality developments that provide public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number of quality or public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. The Commission must find that the project is not inconsistent with the Comprehensive Plan and other public policies, 11 DCMR § 2403.4, and that the impact of the project on surrounding areas and government operations will not be unacceptable. A project's impact must either be favorable or, if adverse, capable of being mitigated or outweighed by the project's benefits. 11 DCMR § 2403.3.
3. In evaluating whether the applicant has met its burden, the Commission must "judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case." 11 DCMR § 2403.8.

4. A PUD applicant seeking a related map amendment must demonstrate that “public health, safety and general welfare goals of zoning regulation would be served by the ... amendment” *Citizens Association of Georgetown v. District of Columbia Zoning Commission* 402 A.2d 36, 39 (1974). A proposed map amendment should:

“create conditions favorable to health safety transportation, prosperity, protection of property, civic activity and recreational, educational and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.”

Id. at 40.

5. The proposed PUD is inconsistent with the land use element, the urban design element, the environmental element, the preservation and historic features element, and the housing element of the Comprehensive Plan and the Ward 3 Element of the Comprehensive Plan. In making this determination, the Commission was cognizant of the fact that the Comprehensive Plan Generalized Land Use map incorrectly designates the Subject Property as potential high-density use.
6. This project is an example of development that would have an adverse impact that the Commission finds cannot be mitigated. It does not preserve open space, is not compatible with the site, increases traffic and parking congestion and does not meet the approval of the nearby residential community.
7. Approval of the application will not promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The applicant has proposed no project amenities and public benefits that positively affect the immediate neighborhood. None has exceptional merit.
9. Based on the record, and the findings of fact stated above, the Commission concludes that the applicant has not met its burden in all respects to all issues.
 - A. With regard to Section 2403.9(a), architecture and urban design, the Commission concludes that the proposed PUD lacks superior design, is insensitive to the surrounding neighborhood, is incompatible contextually with the neighboring buildings, is of a scale and density unsuitable for a residential street.

- B. With regard to Section 2403.9(b), site design and planning, the Commission concludes that the proposed PUD is inconsistent with the Comprehensive Plan, Section 1409.7(e). "A significant complex of embassy compounds or ambassadorial residences is concentrated along Tilden and Van Ness Streets. New high-rise structures adjacent to these properties would adversely impact existing residential uses in the area." It is also inconsistent with section 1404.3(a)(1)(B), which explicitly limits high-density and high-rise development to the major arterials in Ward 3. Tilden Street is not a major arterial.
- C. With regard to Section 2403.9(c), safe vehicle and pedestrian access and connections to public transportation, the Commission concludes that the Applicant has provided documentation that states that the emergency access to the rear of the building is not adequate. In a Fire/EMS Department memo submitted by the Applicant, the June 2 memo concludes "fire department access to the rear (of 2950 Tilden Street) is not readily accessible" and does not meet the code. Furthermore, the Commission finds the traffic impact of a driveway/loading dock entrance on a 25 foot wide, one way residential street with a bicycle lane is unacceptable.
- D. With regard to Section 2403.9(d), the historic preservation of private or public structures and parkland, the Commission concludes the Applicant has provided insufficient evidence that the proposed building will not negatively affect the abutting parkland, Melvin Hazen Park. The Applicant also failed to propose a transitional building that would be sensitive to the one hundred year old houses across the street.
- E. With regard to Section 2403.9(e), employment and training opportunities, the Commission concludes the Applicant has not submitted any proposal to provide employment and training opportunities to District of Columbia residents.
- F. With regard to Section 2403.9(f), housing and affordable housing, the Commission concludes the Applicant's proposal of three units *de minimis*.
- G. With regard to Section 2403.9(g), social services, the Commission concludes this provision is not applicable.
- H. With regard to Section 2403.9(h), environmental benefits, storm water runoff and open space or trees, the Commission concludes the Applicant has provided an unacceptable plan that does not allow for open space or for landscaping the site with large canopy trees. The Applicant's proposed plan for storm water runoff is not adequate, considering the site abuts Melvin Hazen park. The Applicant has done no testing of the site.

- I. With regard to Section 2403.9(i), uses of special value to the neighborhood as a whole, the Commission concludes the proposed PUD will not benefit either the immediate neighborhood, the greater community or in Ward 3. It is without merit.
 - J. With regard to Section 2403.9(j), other public benefits and amenities, the Commission concludes the proposed building lacks “any superior features that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title. (2403.6)
10. As stated by Arthur Jackson, Office of Planning, at the June 5th hearing, “It is important to remember that the Comprehensive Plan, while providing general guidance, will also allow for lower intensity development in the same category.” (Page 154, Line 20)

The Commission concludes that the R-2 matter-of-right zoning for Lot 800 is not inconsistent with the Comprehensive Plan.

11. With respect to Comprehensive Plan issues, the Commission concludes that the proposed PUD would be inconsistent with certain policies and objectives of the Comprehensive Plan and the Ward 3 Element of the Comprehensive Plan, for reasons set forth in Findings 32 through 33, *supra*. The applicant has urged the Commission to conclude that the project would not be inconsistent with the Comprehensive Plan based on the fact that the Generalized Land Use Map contemplates that the project site should be high-density residential use. The applicant relies on a case involving the Kennedy-Warren apartment building, *Cathedral Park Condominium Committee v. District of Columbia Zoning Commission*, 743 A.2d 1231, 1240 (D.C. 2000). The Commission concludes that the Kennedy-Warren case does not compel such an outcome.
- a. The Kennedy-Warren at most authorizes the Commission to give greater weight to the Generalized Land Use Map when there is what the Court termed a “residual” conflict between the Land Use Element and a Ward Plan. The Court limited application of that rule to situations where the alleged conflict was between the Generalized Land Use Map and general provisions of a Ward Plan that spoke about “overall” goals for the ward.
 - b. In fact, the Court reversed the Commission for failing to address certain elements of the Ward 3 Plan that addressed not “overall” goals for the ward, but specific sites within the ward. The Court’s order required the Commission to explain how the proposed PUD was consistent with the pertinent portions of the Ward 3 Element.

- c. Here, there are two significant elements of the Ward 3 Plan that counsel against approval of this PUD. The first is section 1404.3(a)(1)(B), which limits high-rise and medium-rise residential use to “major arterials,” i.e., Wisconsin and Connecticut Avenues. Tilden Street is not a major arterial, and construction of the proposed PUD would be clearly inconsistent with this provision.
- d. In addition, the proposed project is inconsistent with section 1409.7(e), which notes the profusion of embassy compounds and ambassadorial residences on Tilden and Van Ness Streets, explaining that “[n]ew high-rise structures adjacent to these properties would adversely impact existing residential uses in the area.”

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia ORDERS that the application for a consolidated Planned Unit Development and map amendment from R-2 to R-5-C for Square 2234, Lot 800 be DENIED.

The Commission on _____, 2006, voted to deny the application on a vote of _ _ ().

This Order was ADOPTED by the Zoning Commission at its public meeting on _____, 2006, by a vote of _ _ ().

In accordance with the provision of 11 DCMR 3028, this Order shall become final and effective upon publication in the D.C. Register, that is on _____.

Carol J. Mitten
Chairperson,
Zoning Commission

Jerrily R. Kress, FAIA
Director,
Office of Zoning