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August 14, 2006

D.C. Zoning Commission
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2006 AUG 14 PM 2:48

RE: Zoning Case No. 05-26

Dear Chairman Mitten and Members of the Zoning Commission:

Attached please find the response of ANC 3F to the Applicant's July 12, 2006, analysis of the Kennedy-Warren case, Cathedral Park Condominium Committee v. District of Columbia Zoning Commission, 743 A. 2d 1231 (D.C. 2000).

Sincerely,

Cathy Wiss
Chair, ANC 3F

One attachment

Cc: Phil Feola, Pillsbury Winthrop Shaw Pittman
Cornish F. Hitchcock, Esquire

ZONING COMMISSION
District of Columbia

CASE NO. 05-26
EXHIBIT NO. 159

**ANC 3F RESPONSE TO THE APPLICANT'S ANALYSIS
OF THE KENNEDY-WARREN CASE**

ZONING CASE NO. 05-26

The “Kennedy-Warren case”, Cathedral Park Condominium Committee v. District of Columbia Zoning Commission, 743 A. 2d 1231 (D.C. 2000), concerned an application for a planned unit development and a map amendment from R-5-D to R-5-E to build an addition to the Kennedy-Warren, an existing apartment building located on Connecticut Avenue between the National Zoo and Klinge Valley, a tributary park of Rock Creek Park. The addition was to be built on vacant land on the Kennedy-Warren’s own property. The Kennedy-Warren had been partially constructed during the Depression of the 1930s without its south wing. In the 1990s, new owners sought to construct the south wing, using the original plans for the exterior of the addition. Zoning relief was needed to allow the increased density, however, because the zoning regulations in effect in the 1930s, which would have allowed the addition as a matter of right, were no longer in effect. In fact, even without the addition, the Kennedy-Warren exceeded the FAR allowed by current R-5-D zoning. *Id.* at 1236, n.3.

In deciding whether the Zoning Commission (Commission) erred in approving the PUD, the Court looked not only to the Generalized Land Use Map, but also to the criteria for “high density residential use” and other provisions of the Comprehensive Plan. Unlike 2950 Tilden, there was *no* discrepancy between the Generalized Land Use Map and the zoning of the Kennedy-Warren property. Consistent with both the site’s existing R-5-D zoning and its prospective R-5-E zoning, the map designated the Kennedy-Warren for high density residential use. Also consistent with the regulatory definition of high density residential use, 10 DCMR Section 1103.4, the building was located on a major arterial street, Connecticut Avenue, where

high-rise apartment buildings are the predominant use. Although several provisions of the Ward 3 Plan seek to maintain the overall low density character of the ward, the Court concluded that “[t]hey do not purport to rule out all high density projects in the ward, nor do those provisions purport to apply specifically to the site of the Kennedy-Warren”, *id.* at 1240. The Court noted that other sections of the Ward 3 Plan expressly call for development of multi-family housing on Connecticut Avenue. *Id.* at n.10.

Several aspects distinguish the Kennedy-Warren case from the 2950 Tilden Street PUD. The 2950 Tilden Street property is located not on Connecticut Avenue, but on a side street with low density uses. No provisions in the text of the Comprehensive Plan call for high density residential use on Tilden Street. Like the Kuwaiti Embassy property and semi-detached homes across the street, 2950 Tilden Street is zoned R-2 for low density residential use. The site appears to be part of a transitional zone between the high density residential uses along Connecticut Avenue and the very low density R-1-A uses on Tilden Street east of 29th Street. The high density residential designation on the Generalized Land Use Map for the 2950 Tilden Street site is the only suggestion that anything other than low density residential uses should be built there. Contrary to the Applicant’s assertion, this presents an obvious ambiguity.

That this ambiguity exists is not surprising. The Generalized Land Use Map is replete with errors. The inaccuracy of the map is so widely recognized that, during the past year, the DC Office of Planning met with every Advisory Neighborhood Commission in the city to identify and correct the map’s errors in preparation for issuing the new Comprehensive Plan. In ANC 3F, these errors include residential properties designated for park, local facility, or federal use; federal parks designated for residential use; high density residences designated as low density; and misalignment of commercial zones and institutional uses. Simply following the designation

on the Generalized Land Use Map to determine zoning without consideration of other factors, as the Applicant would have you do, could produce absurd and damaging results.

On at least one other occasion, the Commission has had to consider how to handle an error in the Generalized Land Use Map. In Zoning Case No. 00-03C, the map incorrectly designated for local public facility use a site that was zoned for and had contained two single-family detached residences. The Commission found that “[t]his [institutional] designation is a carryover from the original, extremely generalized land use map that did not distinguish between the subject small, privately-owned townhouses residential property (sic) and the large public school site to the north” and went on to say that “[t]he incorrect designation of the project site requires that the Commission look to other sources to determine the appropriateness of the rezoning requested.” ZC Order No. 921 at 6 (September 17, 2001).

The Commission then considered where the Comprehensive Plan specifically targeted high density uses in the area and whether the site in question was so targeted. Finding that it was not in a location specified for higher density housing, the Commission turned its focus to the characteristics of the area in which the site was located. Finding that the block in which the site was located was not a transitional area, but part of an established single-family neighborhood, the Commission concluded that low density development of this property would be appropriate.

In applying this analysis to 2950 Tilden Street, the Commission must find that the text of the Comprehensive Plan neither targets this site for high density residential use, nor sanctions it. The Comprehensive Plan makes clear that “[m]edium and high density residential uses . . . should be limited to the major arterials.” 10 DCMR Section 1404.3 (a)(1)(B). The location of 2950 Tilden on a side street places it outside the scope of this section. Section 1409.7 (e), as amended, warns that “new high-rise structures adjacent to [embassy properties along Tilden

Street] would adversely impact existing residential uses in the area.” The Applicant’s proposal would clearly conflict with this section as regards the adjacent Kuwaiti Embassy.

The R-2 zone in which 2950 Tilden Street is located includes the adjacent two-story detached Kuwaiti Embassy and the semi-detached homes across the street, some of which date back one hundred years. In effect, this zone can be interpreted as a transition from the high density uses along Connecticut Avenue to the very low density R-1-A uses east of 29th Street. In ZC Order No. 106, the Commission recognized the need to protect the very low density character and wooded nature of Tilden Street between 29th Street and Rock Creek Park. The Applicant’s proposed massive five or six story building spanning the entire lot would flagrantly disregard the long-settled pattern of this block and would violate the role of the existing R-2 zone as a transition. What the Commission ultimately approves for this site should harmonize with the surrounding uses. It should represent a rational stepping down from the high density uses along Connecticut Avenue to the very low density homes and embassies in the blocks to the east and not serve to extend the high density uses of Connecticut Avenue down this side street.

The Applicant contends, however, that mere proximity to Metro is enough to justify high density development. The Commission rejected a similar argument in Zoning Case No. 00-03C, ZC Order No. 921 at 7. In that case, the property in question was considerably closer -- in fact within sight of the Metro -- not a five to seven minute walk, like 2950 Tilden Street.

Relying on a discussion of preservation of green space in the Kennedy-Warren case, the Applicant argues that only that green space that contributes to the integrity of the site should be preserved. The gist of this argument is unclear. At issue in the Kennedy-Warren case was how to construe two provisions of the Comprehensive Plan concerning infill on the “swaths of green space” in front of many apartment buildings, Sections 1409.4 (a)(3) (prohibiting infill at

inappropriate locations) and 1407.3 (d) (relating to building design and zoning regulations of the 1920s). Each provision referred specifically to the Kennedy-Warren. Deferring to the Commission's construction that Section 1407.3 (d) clarifies Section 1409.4 (a)(3), the Court remanded the case for a factual determination of whether the green space where the addition was to be built contributed to the integrity of the site. 743 A.2d at 1244.

To the degree that either of these sections applies to 2950 Tilden, they indicate that the Commission should consider the contribution of the green space of this lot to the historic apartment buildings at 3901 Connecticut Avenue and 3945 Connecticut Avenue (Tilden Hall) as well as to 3883 Connecticut Avenue. These buildings are in close proximity to each other, much closer than the Kennedy-Warren was to any other building, and they have been in common ownership at one time or another. Development of this lot at a lower density than its neighbors would provide some green space for them to enjoy.

In the alternative, the Commission should consider the equity of approving a project so contrary to the Applicant's earlier representations to neighboring property owners that it intended to build semi-detached houses on Lot 800. These representations were used to obtain the consent of the owners of 3901 Connecticut Avenue to a July 21, 1999, Cooperation and Development Agreement and an Easement Agreement to be able to build 3883 Connecticut Avenue, as well as to obtain the consent of the owners of 3883 Connecticut Avenue to an easement/covenant agreement for use of their driveway. *See* ANC letter of July 31, 2006. At least one owner testified that she purchased her condominium at 3883 Connecticut after receiving specific assurances that Lot 800 would be developed with semi-detached houses.

The Kennedy-Warren case does not alter the Commission's mandate under 11 DCMR Section 2403.9 to evaluate the impact of the proposed project on its surroundings. In this case, it

is clear that both the five-story and six-story proposals would have such a significant impact on surrounding properties and the neighborhood that they should not be approved. One of the most serious defects is the project's encroachment on all of the adjoining properties: the east wall would be several stories high on the common property line with the Kuwaiti Embassy, with balconies overlooking the embassy; the south façade would be too close to 3883 Connecticut Avenue, with no room for a buffer of trees; and the west façade of the building and driveway would be so close to the property line with Tilden Hall that any trees for screening or relief would have to be planted on the grounds of Tilden Hall, which opposes this project. General lack of open space on the property for plantings of any significant size would make this project feel much more “urban” than the surrounding Forest Hills community, which is characterized by tall trees and gardens, and protected by the Forest Hills Tree and Slope Overlay.

Both proposals conflict with urban design policies and objectives of the Ward 3 element. The height of both proposals is greater than the adjacent buildings on Tilden Street, the Kuwaiti Embassy and Tilden Hall, in contravention to 10 DCMR Section 1406.9 (a), which indicates that the height of new buildings should be “roughly equal to the average height of existing buildings”. Both proposals are out of scale with and wider than neighboring buildings, contrary to the dictates of Section 1406.9 (b). Both proposals would violate Section 1406.9 (e) by being sited closer to Tilden Street than adjacent buildings.

Finally, this project would have an adverse impact on traffic for the surrounding area and would have to remove much-needed on-street parking. The amenities being offered do not make up for the impacts being created.