

RECEIVED
DC. OFFICE OF ZONING
20 APR 28 PM 4:31

April 25, 2006

FIRST CLASS MAIL

Sharon S. Schellin, Acting Secretary to the Zoning Commission
Office of Zoning, Government of the District of Columbia
One Judiciary Square
441 4th Street, NW
Suite 210
Washington, DC 20001

Re: 2950 Tilden Street Development
Case Number 05-26

Dear Ms. Schellin:

I am the President of the Unit Owners Association of 3883 Connecticut Avenue, A Condominium ("Association"). The 3883 Connecticut Avenue Condominium ("Condominium") is located at 3883 Connecticut Avenue and is adjacent to the lot being developed by Clark Realty Capital LLC on behalf of 800 Tilden LLC ("Developer") with an address of 2950 Tilden Street ("Tilden Street Development"). This letter serves as the Association's statement opposing the Tilden Street Development. We ask that this statement of opposition be included in any materials forwarded to the members of the Zoning Commission in preparation for the public hearing scheduled for June 5th, 2006 on this matter and in the Zoning Commission's official record of the hearing.

Background

The Condominium is a nine-story building containing 157 residential units and 173 parking spaces. The Association consists of all of the unit owners of all of the residential units within the Condominium and is charged with the governance of the Condominium through the Association's Board of Directors. The Board of Directors has the authority to administer and manage the affairs of the Association.

**ZONING COMMISSION
District of Columbia**

CASE NO. 05-26
EXHIBIT NO. 37
ZONING COMMISSION
District of Columbia
CASE NO. 05-26
EXHIBIT NO. 37

Sharon Schellin
April 25, 2006
Page 2

We understand that the Developer has submitted an application to the Office of Zoning requesting approval of a consolidated Planned Unit Development (PUD) on the subject property known as 2950 Tilden Street (the "Subject Property"). The Developer intends to develop the vacant property with forty-nine (49) for-sale residential condominium units in a pre-cast concrete building that ranges from two to six stories in height with a maximum height of sixty-seven feet (67 ft.) at the rear of the Subject Property. The proposed project includes approximately 98,000 square feet of gross floor area equaling a floor area ratio (FAR) of 2.8, and below grade parking for approximately 120-140 vehicles on two levels accessed from a single twenty foot-wide driveway. The driveway also accommodates a 12 x 20 foot loading and delivery space.

Currently, the Subject Property is zoned R-2, which allows one-family detached and semi-detached dwellings up to forty feet (40 ft.) and three-stories height, and a maximum lot occupancy percentage of 40% with no FAR limit. The Developer has requested approval of the PUD that would include a zone map amendment that would change the current R-2 zone to an R-5-C zone district to allow for the planned development. We understand that the Developer has also requested relief from Section 411 of the Zoning Regulations to allow the roof structure to have less than a 1:1 setback from the irregular exterior building walls, and from the requirement under Section 2001.1 for a loading birth 55 feet deep.

The Condominium lies to the south of the Subject Property, and includes a twenty-foot wide fire lane/driveway. This fire lane/driveway is part of the Condominium's property; however, an easement agreement grants the owners, tenants, residents, invitees and guests of the Subject Property a perpetual, non-exclusive easement across the driveway of the Condominium for the purpose of pedestrian and vehicular ingress and egress between Connecticut Avenue and the Subject Property. Similarly, the Condominium is benefited by a separate twenty-foot wide easement on the Subject Property for fire department access to the Condominium as well as adequate light and air to the Condominium. A copy of the easement agreement and the recorded declaration of covenants are enclosed with this correspondence.

We understand that on January 9, 2006 the Zoning Commission held a set down hearing for the proposed development, at which the Zoning Commission determined that a full public hearing is required for the Tilden Street Development. The date of that hearing is June 5th, 2006. We ask that this letter be included in the packet of materials sent to the Zoning Commission prior to the public hearing.

The Association intends to file for party status prior to the hearing, and I intend to speak at the public hearing on behalf of the Association. We expect many of the Condominium's residents to be present at and/or speak at the hearing to express opposition to the proposed Tilden Street Development. We also reserve the right to supplement this letter once we have the opportunity to review the Developer's pre-hearing statement.

We also understand that the Developer, based on input received by community leaders and affected residents, has modified the application for approval for the PUD to the following:

- Proposed building height of 6 stories
- Increased the driveway width and loading accommodations
- Carved terracing into the rear building façade to add visual interest
- Increased the amount of landscaping
- Eliminated the easement in favor of the Subject Property granting vehicular access rights to the driveway serving the Condominium
- Added more traditional elements to the building architecture

The Association certainly appreciates the Developer's willingness to modify its development plans to reduce the adverse impact its development project will have across the Association's property. However, our client requires confirmation that its understanding of the above-modifications to the Developer's plan is accurate. Specifically, an issue of critical importance to the Association is whether the Developer's plans have eliminated the right of residents and guests of units within the Subject Property to use the Association's driveway. If so, then one of the primary bases for our opposition to the Developer's proposal will have been addressed to our satisfaction.

If not, then one of the bases for our continued opposition to the development plan will be the planned increase in the amount of traffic across our private property. As I am sure you know, under Section 2403 of the Zoning Regulations, the Commission is required to consider the impact of the Tilden Street Development on the surrounding area. Included in this criteria, the Commission is required to evaluate any "potential adverse effects according to the specific circumstances of the case." *See* Zoning Regs. 2403.6.

The Association is concerned about the size and density of the proposed Tilden Street Development. The proposed development will clog the already dense area surrounding the Subject Property. Also, if the existing easement rights are not modified to eliminate the right of residents and guests of units within the Subject Property to use the Association's driveway, the residents of the Condominium will suffer a severe reduction in the peace and enjoyment they currently enjoy on the Condominium property. Clearly, the Condominium is the property most affected by the Tilden Street Development due to the fact that the existing easement provides that all pedestrian and vehicular traffic to and from the development and Connecticut Avenue will travel over the Association's driveway.

If the easement agreement will remain in affect, the Association is concerned that the Association will be forced to incur increased maintenance costs and responsibility for the fire lane/driveway due to the increase in traffic generated by the Tilden Street Development. Additional vehicular traffic over the Association's driveway will undoubtedly force the Association to invest more funds and resources towards ensuring that the access route is properly

maintained, since the existing easement agreement makes the Association solely responsible for all maintenance costs associated with the driveway, regardless of the amount of use over the access area that is generated by development of the Subject Property. If the Developer intends to allow the existing easement to continue in its existing form, the Association requests that Zoning Commission require the Developer to address this issue and modify its development plans accordingly to minimize the impact of its development upon the Association's property.

Nevertheless, even if the Developer enters into an agreement with us to modify the existing easement agreement to eliminate the easement granting the Subject Property the right of vehicular and pedestrian access through our driveway, the Association still has significant concerns that arise from the Developer's current development plans for the Subject Property. Specifically, the Association is concerned that the proposed development will have a severe negative impact on individual unit owners whose units face the Subject Property since we believe the proposed development will infringe upon the air and light rights granted in the Declaration of Covenants dated April 18, 2002, recorded as Document No. 2002050183 in the District of Columbia land records. The Declaration of Covenants requires the successors of 3883 Connecticut LLC, which includes Developer, "to provide and maintain the twenty (20) foot wide easement on Lot 800 for the benefit of Lot 4 . . . [and] [s]hall provide fire department access to Lot 4 as well as adequate light and air to the residential building on Lot 4."

There are thirty-six (36) units that face the Subject Property on the north side of the Condominium building. This constitutes twenty-three percent (23%) of the total units within the Condominium whose air and light rights will be adversely affected by the proposed Tilden Street Development. Any development on the Subject Property will undoubtedly interfere with the air and light easement expressly granted to the Condominium and it would be unlawful for the Developer to erect a structure that would interfere with this express grant of light and air rights.

As I am sure you know, case law in the District of Columbia requires the courts to enforce express easements to light and air, such as the easement at issue here, when such rights are expressly covenanted. *See Jackson v. Eli*, 23 U.S. App. D.C. 127-28, 1904 U.S. App. LEXIS 5234 (D.C. 1904). Under District of Columbia law, good title to the passage of light and air to windows may be given by grant or express agreement, as 3883 Connecticut LLC did when it granted an air and light easement to the Condominium. *Wood v. Grayson*, 22 U.S. App. D.C. 432, 446, 1903 U.S. App. LEXIS 5546 (D.C. Cir. 1903). Where there is an express agreement that grants an easement to a party for access to light and air, DC courts are required to enforce the easement and preclude the disturbance of the dominant property in a way that infringes upon that easement. *Id.*

The Condominium and its residents have an express easement to light and air via the twenty-foot wide easement. The Developer cannot erect any structures that will interfere with this easement right. Our understanding of the Developer's construction plans reflects that little, if any, consideration has been made to the existing air and light rights of the Association and its

Sharon Schellin
April 25, 2006
Page 5

members that are created by the enclosed easement agreement. The Association has not been appraised as to how the Developer intends to address the issue of the Condominium's air and light easement. We ask that your office require the Developer to address this issue in its proposed development plans to ensure that the impact on the Condominium's air and light rights is minimized.

On behalf of the Association and the residents of 3883 Connecticut Avenue, A Condominium, we thank you for taking time to consider the issues raised in this Statement of Opposition to the Tilden Street Development. If you require any additional information from the Association, please do not hesitate to contact the undersigned.

Sincerely,

THE UNIT OWNERS ASSOCIATION FOR 3883
CONNECTICUT, A CONDOMINIUM

By: David Rose
David Rose, President

Enclosures
LSB

cc: Sara Jones, Property Manager, Legum & Norman
Jennifer Steingasser, District of Columbia Office of Zoning
Arthur Jackson, Case Manager, District of Columbia Office of Zoning
Clark Realty Capital LLC
Todd A. Sinkins, Esq.
Leslie S. Brown, Esq.