ShawPittman

A Law Partnership Including Professional Corporations

November 13, 2000

Rec'd.
5.15.01

D.C. Board of Zoning Adjustment
441 Fourth Street, N.W., Room 210
Washington, D.C. 20001
Attn: Sheri Pruitt

Re: BZA Application No. 16611;
Edmund Burke School
2969 Upton Street, N.W.,
4101 and 4103 Connecticut Avenue, N.W.

Dear Members of the Board:

Edmund Burke School, the Applicant in the above-mentioned case, hereby objects to the request for party status filed on November 6, 2000 by the law firm of Greenstein DeLorme & Luchs on behalf of the Van Ness South Tenants' Association, Inc. ("VNSTA"). This request for party status should be denied because VNSTA does not satisfy the substantive requirements for party status as described in the Zoning Regulations.

Lack of Standing

VNSTA fails to meet the substantive requirements for party status as laid out in Section 3106.3 of the Zoning Regulations. Section 3106.3 outlines the rationale that the Board must follow in considering whether a request for party status should be granted. Section 3106.3 reads as follows:

> In considering any request for party status pursuant to §3106.2, the Board shall grant party status only if the person has clearly demonstrated that his or her interest will be more significantly, distinctively or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public (emphasis added).

VNSTA claims that its members will be adversely affected by traffic congestion, parking and safety issues related to Edmund Burke School; however, VNSTA gives no explanation of how its members are more affected by the proposed zoning action than the general public.

BZA
Case No. 16611
Exhibit No. 161

Board of Zoning Adjustment
District of Columbia
CASE NO. 16611
EXHIBIT NO. 161

The District of Columbia Court of Appeals has elaborated on what it takes to be a party and VNSTA fails to show that it will be aggrieved by the BZA's action on this application. To satisfy the test to be a "party" in a zoning matter, a person "must allege an injury or aggrievement which is real, perceptible, concrete, specific and immediate . . . ." Lee v. District of Columbia Board of Appeals and Review, 423 A. 2d 210, 217 (D.C. 1980) (emphasis added). VNSTA does not demonstrate specific, personal concerns of the degree necessary to justify party status. Its alleged interest, if it exists at all, is too removed from the subject site to represent anything more than a general interest in this application; its interest is no different from that of the larger community. Such an interest is not tantamount to a specific impact on one's personal or property rights. Blumberg v. Hill, 199 N.Y.S. 2d. 855, 857 (1953). Because of the distance of its property from the subject site, VNSTA cannot show that it is "personally and specifically affected in a way different from that suffered by the public generally" Bryniarski v. Montgomery County Board of Appeal, 230 A. 2d. 289, 294 (Md. 1967). "A person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved." Id. at 295.

VNSTA's property interest is not continuous or adjoining to the subject site. It is not within the 200 feet radius of the site that is specifically noted in the Zoning Regulations as those persons who are accorded special treatment and party status. In fact, the physical distance between Van Ness South, 3003 Van Ness Street, N.W., where VNSTA members reside, and the subject property makes it clear that members of VNSTA are no more affected by the proposed addition to Edmund Burke School than members of the general public (see the area map attached hereto). There is no direct access, either vehicular or pedestrian, to the subject site from VNSTA's property. Members of VNSTA cannot see the subject property from their building due to distance and the existence of a ninety-foot tall apartment building that blocks any direct views. Furthermore, the two properties are separated by almost two blocks along a public right-of-way, approximately 800 linear feet. It is ludicrous, therefore, that VNSTA can complain about any potential traffic problems, on-street parking problems and/or noise from the subject site, a property two blocks away. Its alleged interests are not significantly different from the general public and cannot justify party status in this proceeding.

The Zoning Regulations contemplate that party status is not to be conferred lightly. Party status should be reserved for only those individuals and organizations that are truly differently, significantly or uniquely affected by a zoning action. VNSTA

members are not so affected. The proper process for the membership of VNSTA is to raise its objections to this application as persons in opposition to the application.

For the above-stated reasons, the Applicant respectfully requests that the request for party status by VNSTA be denied.

Sincerely,

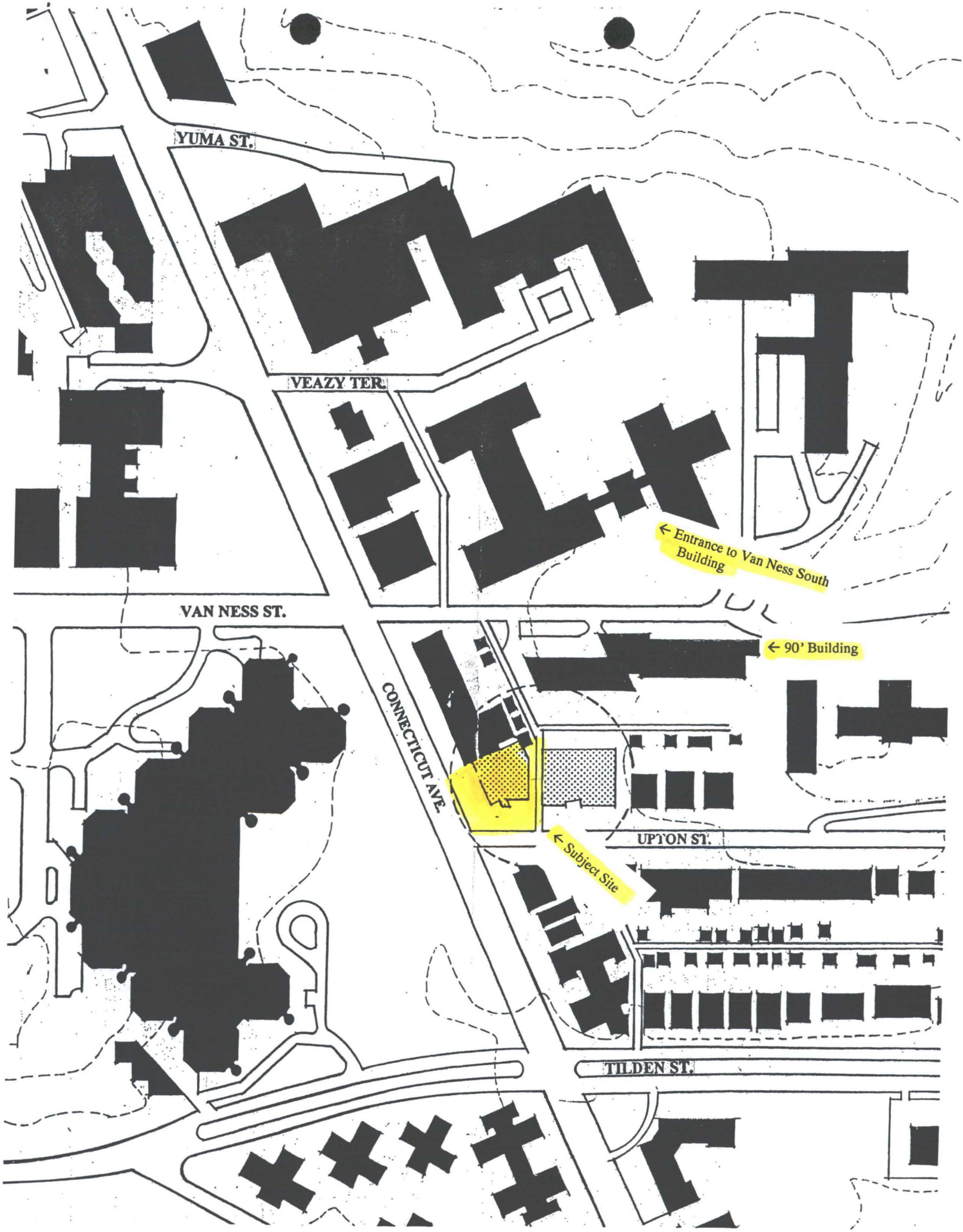
Phil T. Feola

Sarah E. Shaw

Enclosure

cc: John Patrick Brown, Esq.
Advisory Neighborhood Commission 3F
Office of Planning

Document #: 1038577 v.1


YUMA ST.
VEAZY TER.
VAN NESS ST.
CONNECTICUT AVE.
UPTON ST.
TILDEN ST.
← Entrance to Van Ness South Building
← 90' Building
← Subject Site