

STOOP LAW

A COMMUNITY JUSTICE PROJECT

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**Re: Opponent's Opposition to Applicant's Pre-Hearing Brief
Zoning Case Number 21-27**

Date: October 2, 2022

From: Aristotle Theresa, Esq. on behalf of Dr. Sheila Samaddar and Greg Keagle

To: Dear Zoning Commissioners,

Design Review Standards

The zoning regulations require an applicant for design review to include a "... circulation plan, including the location of all vehicular and pedestrian access ways. . ." 11 DCMR Z-301.10(j). The application shall include a "detailed site plan, showing the location and external dimensions of all. . . easements, walkways, driveways, plazas, arcades, and any other open spaces." 11 DCMR Z-301.1(g). Applicant must provide "...Any other information needed to understand the proposed project." 11 DCMR 310.10(n). Design Review Application requirements require Applicants to provide the "... name, address, and signature of each owner of property included in the area to be developed, or of the owner's authorized agent, shall be included in the design review application. . ." 11 DCMR Z-301.4.

Dr. Samaddar Holds Fee Simple to the Land Applicants Seek to Use to Emergency Egress unto South Capitol St SW.

Whether or not there is an easement in existence, Dr. Sheila Samaddar holds fee simple to the 10-foot strip of land beginning 70 feet West of South Capitol Street SW and falling between her two side lot lines. *See Exhibit B – Right of Way Map* (For illustrative purposes only, observe Dr. Samaddar's property, which is North adjacent to Lot 53, extends 80 feet West from South Capitol St. SW, into the area Applicant is attempting to include into its development plans for emergency egress) Since the ten-foot strip of land is necessary for emergency egress unto South Capitol Street SW, it is "included" in the area to be developed in this design review application. 11 DCMR Z-301.4, *supra*. That notwithstanding, and contrary to the zoning regulations, Applicant has not collected Dr. Samaddar's signature pursuant to 11 DCMR Z-301.4.

Any Rights Applicant Claims to be Able to Cross Over the Easement are Dubious.

The alleged and purported easement agreement Applicant references in their Application is invalid, unrecorded, and currently the subject of litigation in the DC Superior Court.¹ 2021 CA 001958 B.

Analysis

The zoning regulations, at bare minimum, require applicants for a Design Review application to have some possessory interest in the lands they include in their zoning application. 11 DCMR Z-301.4. Whether the land is the applicant's own, or they have been granted the appropriate permissions from the person(s) with authority over the land. *Id.* In this application, this has not been done, and cannot be done, because Dr. Samaddar does not give permission for residents who will be living in Applicant's proposed development to cross over her property whether it is strictly for emergencies or otherwise.

Opponents to this project are not asking the Zoning Commission to consider private land use matters. Opponents are doing the opposite by requesting that the Zoning Commission stay out of one. It is the Applicant's burden to prove they meet the criterion of a Design Review application. 11 DCMR Z-408.8. Applicant cannot carry that burden because their application does not meet the combined dictates of 11 DCMR Z-301.10(j), 11 DCMR Z-301.1(g), 11 DCMR 310.10(n), and 11 DCMR Z-301.4, *supra*. To the extent Applicant claims they already have this right, to cross over Dr. Samaddar's land, it is their burden to prove. 11 DCMR Z-408.8, *supra*. A valid, recorded easement, not currently the subject matter of litigation, would go far in that regard, but Applicant is incapable of providing the same. To the extent Applicant's plan to use Dr. Samaddar's property as a pass thru, for their residents to egress unto the South Capitol St SW in the case of an emergency, Dr. Samaddar presently refuses to "include" her property in such a plan pursuant to 11 DCMR Z-301.4.

Conclusion

This matter is currently being negotiated in hopes of coming up with a 2022 Easement Agreement, inclusive of Jason Lam, but the matter is not yet resolved. Project Opponents ask the Zoning Commission to not insert themselves into a private land use matter and accompanying ongoing litigation. Accordingly, Applicant Opponents seek for this matter to be held in abeyance until a.) DC Superior Court rules on the easement, or b.) a resolution is reached amicably between the parties.

s/Aristotle Theresa, Esq.
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¹ Even if the easement were valid, Chun Chau Lam, owner of Square 653 and lot 65 and 66, is not a party to the purported easement agreement Applicant's reference in their application. Chun Chau Lam's father, Shing Wai Lam is party to the agreement, owner of Square 653 and Lot 827, but once they consolidate their lots with Jason Lam they no longer would have access to the purported and alleged 2017 North-South Easement. *See* Exhibit A - 2017 North-South Easement Agreement, p. 1, 2 (Jason Lam, a.k.a., Chun Chau Lam, is not a party to the agreement and is only listed in the recitals).

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