

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Kyrus L. Freeman
202-862-5978
kyrus.freeman@hklaw.com

Jessica R Bloomfield
202-469-5272
jessica.bloomfield@hklaw.com

November 7, 2022

VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

**Re: Z.C. Case No. 22-11 – Consolidated PUD and Zoning Map Amendment
807 Maine Avenue, SW (Square 439-S, Lot 15)
Applicant’s Opposition to Second Party Status Request Submitted by Gail Fast
On Behalf of Town Square Towers Council of Co-Owners**

Dear Members of the Zoning Commission:

On behalf of MCRT Investments LLC (the “Applicant”), we hereby submit this statement in opposition to the second party status request submitted by Gail Fast, the President of the Council of Co-Owners of Town Square Towers Condominium (“TST”), on behalf of the TST Council of Co-Owners (Exhibit 71). Ms. Fast previously submitted a party status request to the subject application (Exhibits 27 and 27A), which request was denied by the Zoning Commission at the originally-scheduled September 15, 2022 public hearing. For the reasons set forth below, TST’s second party status request should be denied because it does not meet the party status criteria of Subtitle Z § 404.14.

1. TST Does Not Meet the Standard for Party Status Pursuant to Subtitle Z § 404.14

Pursuant to Subtitle Z § 404.14, the Commission “shall grant party status only if the person requesting party status has clearly demonstrated that the person’s interests would likely 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.” In this case, TST’s interests will not be more significantly, distinctively, or uniquely affected than those of the general public by the subject application for a consolidated planned unit development (“PUD”) and Zoning Map amendment for property located at 807 Maine Avenue, SW (Square 439-S, Lot 15) (the “Site”).

The Commission has followed this standard closely in requiring a potential party to demonstrate how it is more uniquely affected than the general public. *See, e.g.*, Z.C. Case No. 05-38, Feb. 28, 2007 Transcript at p. 11, where the Commission denied party status because the request “did not deal with the critical aspect of the test for party status which is how is [the requesting party] more

uniquely affected than the general public;” *see also* Z.C. Order No. 10-32, Finding of Fact (“FF”) No. 6 (party status denied because “the individuals’ interests were not sufficiently unique”); Z.C. Order No. 13-04, FF. No. 6 (party status denied because the requesting party “failed to demonstrate that its interests would likely 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”); Z.C. Order No. 11-03A(2), FF. No. 5 (persons requesting party status were “not being uniquely affected by the [] PUD under the Commission’s rules”); Z.C. Order No. 17-21, FF. No. 11 (the individual “was not uniquely affected by the application”); Z.C. Order No. 15-28, FF No. 8 (the entity “failed to satisfy the criteria for party status, including how [it] would be more significantly, distinctively, or uniquely affected by the proposed project).

In this case, TST has not demonstrated that its interests will be more significantly, distinctively, or uniquely affected than those of the general public. TST raises several concerns in support of its request, each of which does not meet the standard for party status.

A. Project Density and Height

Density. TST asserts that the proposed PUD would bring a “high-rise, high-density building” adjacent to TST, which would upset TST’s owners and residents’ reasonable expectations for zoning stability in their neighborhood. As previously submitted by the Applicant, the proposed PUD is not inconsistent with the densities identified for the Site in the Comprehensive Plan, including on the Future Land Use Map. Moreover, the project’s zoning, density, and consistency with the Future Land Use Map is a generalized concern that does not more significantly, distinctively, or uniquely affect TST as compared to the general public.

TST fails to acknowledge that since the original public hearing on September 15, 2022, the Applicant removed a significant amount of density from the project, resulting in an overall density of 194,839 square feet of GFA (approximately 8.21 FAR and 82% lot occupancy), as opposed to the previously-proposed density of 204,459 square feet of GFA (approximately 8.64 FAR and 90.78% lot occupancy). The density removed from the building was located on the portion of the Site closest to TST. As a result of these changes, the proposed building is approximately 220 feet away from the closest point of the TST building as shown on the figure to the right:



The party status request states that “portions of the [TST] homeowners are within the 200-foot radius” of the Site. Although a portion of the TST property is within 200 feet of the Site's property line, the TST building is 220 feet away from the proposed building. Accordingly, given the substantial distance between TST and the proposed building, the interests of TST’s residents will not be more significantly, distinctively, or uniquely affected by the project than those of others in the general public.

Height. As it relates to building height, TST states that the “height is too high” and that the building should align with TST’s 90-foot building height. In making this claim, TST again fails to demonstrate how the building height will affect the interests of TST residents more significantly, distinctively, or uniquely than those of other persons in the general public. In fact, TST makes no specific allegation regarding how the proposed building height of 110 feet impacts the TST building which is 220 feet away. As such, TST has not, and cannot, demonstrate how the proposed building height more uniquely impacts TST than the general public.

TST alleges that the proposed building will block light and air and cast shadows on the neighboring Jefferson Middle School. However, in making this argument, TST inherently demonstrates that TST’s interests are not more uniquely affected than those of others.

B. Ingress and Egress

TST raises concerns with the project’s proposed vehicular entrance on 7th Street, which TST alleges will cause increased traffic congestion. However, these assertions are unsupported common grievances that, if true, would affect the general public. TST has not indicated how TST residents would be uniquely affected by the traffic concerns, and has alleged such concerns without any supporting evidence. Moreover, the project is providing zoning-required on-site parking, is accommodating all loading and pick-up/drop-off vehicular activity on-site, will have a loading management plan, and will implement a robust TDM plan, all in accordance with DDOT standards. Thus, there is no basis to find that TST will be more significantly, distinctively, or uniquely affected than the general public by non-existent traffic issues allegedly to be generated by the project.

C. Construction Activity

TST raises concerns with construction activity during Site redevelopment, particularly associated with noise, dust/dirt, and truck exhaust. However, issues related to construction impacts are not relevant to the Zoning Commission’s review. *See, e.g.,* Z.C. Order No. 15-29, Finding of Fact No. 106(e), which states as follows:

Neither the Zoning Regulations in general, nor the PUD regulations in particular, address the construction of buildings. And although the Commission must find that ‘[t]he impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable’ the phrase ‘impact on the surrounding area and the operation of the city services and facilities’ refers only to the impact of the PUD project, once it is operating. Therefore, issues pertaining to the impact of the construction of this project are not relevant to the Commission’s review. Construction issues are governed by the Construction Codes which ‘safeguard the public health, safety, and general welfare through structural strength,

means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, accessibility, sustainability, and safety to life and property from fire and other hazards attributed to the built environment, and to provide safety to fire fighters and emergency responders during emergency operations.’ (12-A DCMR § 101-2.4.).

Accordingly, it is part of the building permit approval process wherein the Applicant will have to demonstrate compliance with all applicable laws and regulations regarding construction noise, dust/dirt, and truck exhaust, which issues do not more significantly, distinctively, or uniquely affect TST which is 220 feet away from the proposed building.

D. Economic Impacts

Without providing any evidence to support its position, TST states that the proposed building would negatively impact the “feel” of the neighborhood and would be contrary to the design guidelines in the Southwest Small Area Plan (“SW Plan”). TST’s claim that the building would negatively impact the “feel” of the neighborhood is a subjective and general grievance that, if true, would not affect the interests of TST residents more significantly, distinctively, or uniquely than those of other persons in the general public. Moreover, the Applicant has previously provided lengthy analyses of how the project is fully consistent with the SW Plan (*see* Exhibit 28D, as updated by Exhibit 69D).

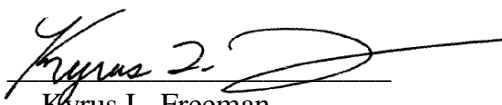
E. Social Impacts

TST alleges that the Applicant has not proffered any community benefits that would positively impact the neighborhood. If true, the lack of public benefits and project amenities would not more significantly, distinctively, or uniquely affect TST as compared to the public. However, this assertion is not true, and the Applicant has provided an extensive public benefits package that far outweighs any potential project impacts. *See* Exhibit 69E, which provides a fully updated list of public benefits.

2. Conclusion

TST has not demonstrated how the application will more significantly, distinctively, or uniquely impact the interests of TST as required pursuant to Subtitle Z § 404.14. Accordingly, the Applicant respectfully requests that the Commission deny TST’s party status request.

Sincerely,
HOLLAND & KNIGHT LLP

By: 
Kyrus L. Freeman
Jessica R. Bloomfield

cc: Certificate of Service
Joel Lawson, Office of Planning (via Email)
Karen Thomas, Office of Planning (via Email)
Aaron Zimmerman, DDOT (via Email)
Gail Fast, President, Council of Co-Owners TST Condominium (via Email)

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2022, a copy of the foregoing letter opposing TST's party status request was served on the following via email.

1. Ms. Jennifer Steingasser
D.C. Office of Planning
jennifer.steingasser@dc.gov

2. Advisory Neighborhood Commission 6D
c/o Commissioner Edward Daniels, Chair
6D@anc.dc.gov
6D07@anc.dc.gov

3. Commissioner Marjorie Lightman
Single-Member District Representative
ANC 6D01
6D01@anc.dc.gov



Jessica R. Bloomfield
Holland & Knight LLP