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August 30, 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
Applicant's Opposition to Party Status Request Submitted by Gail Fast, President,
Council of Co-Owners of Town Square Towers Condominium**

Dear Members of the Zoning Commission:

On behalf of MCRT Investments LLC (the “Applicant”), we hereby submit this statement in opposition to the 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 Board of Directors.

Ms. Fast’s party status request should be denied because: (i) Ms. Fast has not provided the information required pursuant to Subtitle Z § 404.1(f); and (ii) TST does not meet the party status criteria of Subtitle Z § 404.14 because Ms. Fast has not demonstrated that TST’s interests will 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”).

Pursuant to Subtitle Z §§ 404.13 and 404.14, the Zoning Commission (“Commission”) shall determine whether to grant Ms. Fast’s party status request based upon whether the express requirements of Subtitle Z § 404.1(f) have been met, and whether the specific information provided by Ms. Fast qualifies TST as a party. As demonstrated below, Ms. Fast has not satisfied either of these requirements upon which the Commission must base its determination. Accordingly, the Commission should deny the party status request.

1. Ms. Fast Does Not Meet the Standard for Party Status Pursuant to Subtitle Z § 404.1(f)

Pursuant to Subtitle Z § 404.1(f), a person seeking party status that is not an individual is required to file evidence that the entity requesting party status has (1) authorized the entity’s participation in the proceeding; and (2) designated a specific officer, employee, or agent to act on its

behalf and bind the entity in the proceeding. Moreover, Subtitle Z § 404.2 states: “[t]he evidence required in Subtitle Z § 404.1(f) may consist of a resolution of the person’s board of directors; a copy of the by-laws provision authorizing the particular officer, employee, or agent to represent the person in such proceedings; a letter signed by all the members; or similar proof satisfactory to the Commission.”

In this case, Ms. Fast, the individual who filed the party status request, claims that she has been “authorized by the TST Board of Directors to testify on their behalf” and that the Board of Directors “voted to oppose the development and request [TST] be granted party status.” However, Ms. Fast provides no documentation evidencing that such authorization was granted or that such a vote was taken to oppose the development and request party status. Ms. Fast has not presented a resolution of the TST Board of Directors, a copy of the provision from TST’s by-laws authorizing her to represent TST in such a proceeding, a letter signed by all the members of TST’s Board of Directors, or any other proof as required to demonstrate compliance with Subtitle Z § 404.1(f). Accordingly, the party status request should be denied since it does not include the required authorization.

2. Ms. Fast Does Not Provide Evidence that TST Meets 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.” For the reasons set forth below, Ms. Fast has not satisfied this standard.

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, Ms. Fast has not demonstrated that TST’s interests will be more significantly, distinctively, or uniquely affected than those of the general public. Ms. Fast asserts three arguments in support of her request, each of which does not meet the standard for party status as follows:

A. Environmental Impacts

Ms. Fast states, without providing any supporting evidence, that the proposed project is inconsistent with the Comprehensive Plan’s Future Land Use Map (“FLUM”) and the Southwest Neighborhood Plan (“SW Plan”), particularly the SW Plan’s goal of creating a Green Oasis. However, without addressing the merits of this claim, consistency with District plans is a universal argument that addresses compliance with District planning goals generally and not specific impacts to TST.

In relation to this claim, Ms. Fast alleges that the project would create “congestion, traffic, noise, and parking problems,” which is an unsupported common grievance that, if true, may affect the general public and has been alleged without any supporting evidence. Ms. Fast has not indicated how TST residents would be uniquely affected by any of the purported “environmental” impacts. 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 Ms. Fast’s allegation that TST will be significantly, distinctively, or uniquely affected by non-existent parking, congestion, traffic, and noise issues allegedly to be generated by the project.

Furthermore, Ms. Fast claims that the project would decrease existing zoning-required open space and block light and air to the neighboring Jefferson Middle School (the “School”). Here, Ms. Fast alleges that the project would negatively impact a third party, which inherently demonstrates that TST’s interests are not more uniquely affected than those of others. Moreover, open space required by the Zoning Regulations is intended to benefit the users/residents of the property on which the open space is required, not those of occupants of other properties, particularly properties located at least 145 feet away from the project site. Indeed, Ms. Fast has not provided anything demonstrating how the project’s proposed lot occupancy significantly, distinctively, or uniquely affects TST.

B. Economic Impacts

Ms. Fast states that the project would change the character of the north side of M Street, thus becoming less attractive to current homeowners and reducing their property values. However, the project is not located on the north side of M Street, it is located on the north side of Maine Avenue. As shown in the figure to the right, the Site is approximately 1,200 linear feet from M Street. Notwithstanding, Ms. Fast’s claim that the impact of the project on the “attractiveness” of a neighborhood located blocks away from the PUD Site, even if true, would affect all homeowners on the north side of M Street, not just those living in TST.



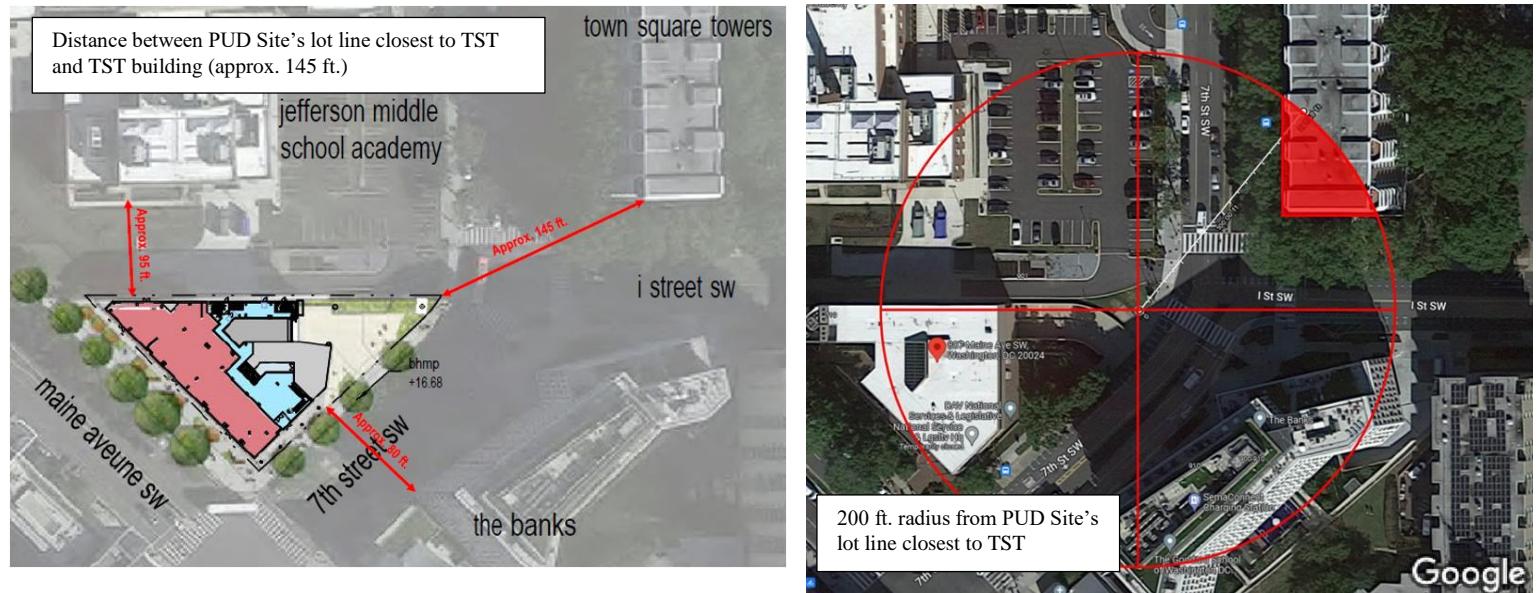
C. Social Impact

Ms. Fast claims that there is “no need for additional residential development in Southwest.” However, this statement directly contradicts numerous District policies and initiatives that promote more residential development in all areas of the city, particularly development that creates new affordable housing without causing any direct displacement of existing residents. Moreover, this claim in no way affects TST more distinctively than anyone else living in Southwest.

Ms. Fast also states that the project would make the School less attractive for prospective parents, which could reduce its enrollment and funding. In doing so, Ms. Fast alleges again that the project would negatively affect the School and an undefined group of “prospective parents,” again demonstrating that TST’s interests are not more uniquely affected than those of others – in this case, parents of potential students.

3. The Majority of TST Residents do not Live within 200 feet of the Site

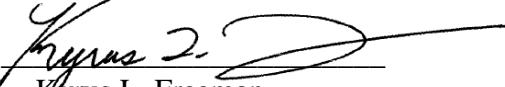
The party status request states that TST is a “285-unit condominium located within 200 ft of the proposed project” and that “[a]ll 285 homeowners are within 200 feet of the proposed development.” However, this is blatantly false. In fact, as shown on the images below, the TST building is approximately 145 feet away from the PUD Site’s closest property line, and only a small portion of TST’s homeowners reside in units located within 200 feet of the PUD Site’s closest property line. Accordingly, given the substantial distance between TST and the PUD Site, 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.



4. Conclusion

Ms. Fast has not included the information required pursuant to Subtitle Z § 404.1(f), nor has she demonstrated how the application will 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 Ms. Fast'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 w)
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 August 30, 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
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3. Commissioner Marjorie Lightman
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