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Christian Klein, R.A. Chair  
Zoning Board of Appeals  
Town of Arlington  
51 Grove Street  
Arlington, Massachusetts 02476

RE: Docket 3644

Dear Chair Klein:

I own the real estate located 1171 Massachusetts Avenue, which is directly impacted by the Applicant's proposal to construct 130 residential units at 1165R Massachusetts Avenue.

The 1165R Massachusetts Avenue is located behind my building and my building is occupied by my law office on the first floor and two small residential apartments on the second floor.

My property contains approximately 10,320 square feet.

The brief history of the property shows that the title to both my property and the Applicants of the 1165R Massachusetts Avenue property was derived through the Estate of Theodore Schwamb and subsequently passed to his daughter, Clara S. Peirce.

My building was built in 1845 and was occupied by the Schwamb family in and around the 1870's.

A subdivision plan was recorded at the Registry of Deeds on November 12, 1952 which essentially subdivided the property creating a 20-foot Right of Way benefiting my property and the Right of Way is shown on the plan, a copy of which accompanies this letter. See Subdivision Plan of T.F. Geary, Surveyor.

My title is currently shown as Lot C1 on a Deed recorded in Book 19038, Page 445 at Middlesex South District Registry of Deeds.

The use of my property has essentially not changed over many years since the building itself was constructed in 1845 i.e., it has been a residential use for more than 100 years and a mixed-use building for the last 60-70 years.

When I purchased the 1171 Massachusetts Avenue property, I never expected that there would be 130 residential units constructed at the 1165R Massachusetts Avenue property and that traffic access from that property would be over the 20-foot Right of Way, which I acquired when I purchased the property in 1988.

The 1165R Massachusetts Avenue property was occupied from the 1870's into the 1970's by the Theodor Schwamb Company which manufactured piano cases until the late 1920's and then architectural millwork, neither of which activities generated significant traffic through the Right of Way whether motor vehicle or otherwise.

Presently there is an automotive dealership located directly across from my property abutting the Right of Way owned by Yukon Realty Associates, LLC, which is an automotive dealership owned by a member of the Mirak family, who is not involved in the present Application.

That property was a gas station when I acquired my property in 1988 and there was no traffic emanating from the gas station down through the Right of Way, passing in front of my entrance to my parking lot.

Subsequently when that property was acquired by Yukon Realty Associates, LLC a Hyundai automobile dealership was constructed at the property.

The vehicles which occupy the automobile dealership lot all travel down the Right of Way before making a right turn to travel past proposed building #2 onto the Yukon Realty Associates, LLC's property located to the East of building #2.

The motor vehicles travel to the rear of the Hyundai property and are serviced and then brought back to the Yukon Realty Associates, LLC's property abutting the private way.

There have been many occasions when there have been near accidents as a result of vehicles leaving the automobile dealership, taking a right turn, traveling directly in front of the entrance to my parking lot which is only 20-feet or so away from the entrance to the Hyundai parking lot.

Motor vehicles leaving the automobile dealership lot do not go out on to Massachusetts Avenue but rather take the more expedient route of passing down the Right of Way before making a right turn to head toward the automobile dealership complex mentioned previously, owned by Yukon Realty Associates, LLC.

There is also a work bar building located directly behind my building which uses the Right of Way for both in and out automobile traffic, once again passing directly by the entrance/exit to my parking lot and the entrance/exit with respect to the automobile dealership on the other side of the Right of Way.

Yukon Realty Associates, LLC also has motor vehicle traffic which use the Right of Way unrelated to the automobile dealership with that traffic including trucks with respect to the property it owns to the East of proposed Building #2.

I have had to repair my sidewalk many times because of trucks, whether coming from the Yukon Realty Associates, LLC property or the 1165R Massachusetts Avenue property which have driven over my sidewalk, nearly hitting my building, as can be seen in photographs, which accompany this letter.

The volume of traffic which the Applicant proposes to funnel into the narrow Right of Way, even with the removal of the telephone pole which presently exists in the Right of Way is much more intensive than has been the case historically.

There is another access road being proposed for the project which is off of Forest Street which in turn leads to Ryder Street and then the so-called "Quinn Access Road" which further leads to Applicant's proposed buildings #1, #3, and #4.

My understanding is that the Applicant is proposing that all motor vehicles leaving the residential complex, drive out through the Right of Way impacting my property onto Massachusetts Avenue and that all motor vehicles entering the complex enter by way of the Forest/Ryder Streets and "Quinn Access Road".

It is also my understanding that there is no additional traffic use regarding the Forest/Ryder Streets and "Quinn Access Road" route, unlike the Right of Way which services my property which is accessed by multiple different businesses, including Mirak/Hyundai, The Work Bar, and other uses which Yukon Realty Associates, LLC may presently have or may have on their property in the future.

It is also interesting to note that the traffic impact report prepared for the Applicant was prepared on July 6, 2020, during the middle of the pandemic when traffic flow on Massachusetts Avenue and other roads within the Town was significantly decreased because of individuals not traveling to and from places of employment and elsewhere because of the pandemic.

Consequently, it would not be reasonable in my view to rely on the results of the traffic impact report with regard to traffic conditions because of when the traffic study was performed and prepared.

The only true test of any motor vehicle traffic impact study as a result of the Applicant's proposal to construct 130 residential units at their property would be to view the traffic pattern situation once the pandemic is over and motor vehicle use returns to pre-pandemic road conditions.

It is also interesting to note that the development will consist of 130 apartment units, with 139 parking spaces proposed while the Zoning Bylaw at Article 6, Section 6.1.4 would require 171 parking spaces. Where is the additional motor vehicle parking which it is reasonable to conclude will be generated by occupants

of the studio, one-bedroom, two-bedroom, and three-bedroom residential units going to be provided for with respect to those additional vehicles?

Are those excess motor vehicles going to park on streets where overnight parking is not allowed? Am I going to be monitoring my parking lot to be sure the excess vehicles do not park in my parking lot which services two residential units and my office unit?

The Applicant is also proposing a waiver from Bylaw Article 5, Section 5.6.2, i.e., the floor area ratio section which provides for an FAR of 1.5 and other requirements.

The proposal of an FAR of 2.37 which will make for an intensive use of the prior relatively passive and less intensive use of the Right of Way which can only contribute to traffic and safety issues relating to the Right of Way and excess parking and congestion issues.

The legal issue with respect to the Applicant's proposal as it relates to the Right of Way which benefits my property at 1171 Massachusetts Avenue is whether the proposal results in an overburdening of the Right of Way and in my view the answer is decidedly yes.

There is no reason why the Applicant cannot have both in and out traffic from its proposed residential complex through the Forest/Ryder Streets and "Quinn Access Road" route where there is not the intensity of use as there is with respect to the Right of Way abutting my property.

There would be no likelihood of vehicles existing the Mirak/Hyundai dealership or vehicles traversing the right of way from interfering with my use of my parking lot both with respect to any accident occurring resulting in property damage and/or personal injury to individuals if this access route is used.

If the use of an easement is overly intensive it could result in the overburdening of a Right of Way as was the case with a proposed 41 Lot subdivision which had the

benefit of a reserved way, but the Court concluded that the increased use made of the way/ways would be an overburden of any easement rights in the Right of the Way. See Boudreau v. Coleman, 29 Mass. App. Ct. 621, 564 N.2d 1 (1990). 130 residential units will generate far more vehicle traffic than a 41-lot residential subdivision. See also, Parker, et al. v. Freedman, MISC 14-488513, SPEICHER, J. (2016) for a Land Court Judge's discussion relating to overburdening of a Right of Way.

For all of the above reasons, I respectfully request that the Members of the Zoning Board deny any request for a permit to use the Right of Way abutting my property whether for traffic to the residential complex or traffic leaving the residential complex and that an alternative approach be taken by the Applicant so that my rights to use the Right of Way are not overburdened and particularly so when I had no reasonable expectation when I purchased my property in 1988 that in addition to the traffic volume that would emanating from the then potential use of both the 1165R Massachusetts Avenue and the Yukon Realty Associates, LLC's property that 130 residential units would be constructed at the 1165R Massachusetts Avenue property with the residents of those units being allowed to use the Right of Way whether for in or out access or both.

Very truly yours,



Robert J. Annese

RJA:lm

Enclosures