

October 8, 2012

VIA EMAIL

D.C. Board of Zoning Adjustment
441 4th Street NW, Suite 210S
Washington, DC 20001

Re: **BZA Appeal No. 18460 ("Appeal") – Motion to Dismiss Appeal; Opposition to Appeal on the Merits**

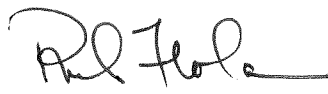
Dear Members of the Board:

Missouri Avenue Development Partners, LLC ("Missouri") hereby moves the Board of Zoning Adjustment ("BZA" or "Board") to dismiss the above-referenced appeal concerning Building Permit No. B1202925 ("Permit"). The Permit authorizes the construction of a new retail building at 5929 Georgia Avenue, NW ("Property") for a new Wal-Mart store ("Project"). The Project is authorized as a matter-of-right under the Zoning Regulations.

The Board lacks subject matter jurisdiction over the Appeal because the Appeal fails to raise an error under Section 8 of the Zoning Act of 1938 ("Zoning Act") or Title 11 of the District of Columbia Municipal Regulations ("Zoning Regulations"). In the alternative, Missouri submits that the errors alleged in the Appeal are without merit and requests the Permit be upheld as consistent with the District of Columbia Comprehensive Plan, 10 DCMR § 100, et seq. ("Comprehensive Plan") and the Large Tract Review ("LTR") procedures, 10 DCMR § 2300, et seq.

If the Board proceeds to the merits of this appeal, Missouri intends to call one witness, Ellen M. McCarthy, to provide testimony on the Comprehensive Plan and the LTR process. Missouri intends to proffer Ms. McCarthy as an expert witness in Land Use and Zoning. Her vitae is attached as Exhibit B.

Respectfully submitted,



Phil Feola

cc: Adam Davis

Board of Zoning Adjustment

District of Columbia

CASE NO. 18460

EXHIBIT NO. 24

I. MOTION TO DISMISS

The Board lacks jurisdiction over the Appeal and should dismiss the Appeal for either (1) the BZA lacks subject matter jurisdiction over the errors alleged in this Appeal; and/or (2) the Appellants are not “aggrieved” parties eligible to bring an appeal.

A. **The Board lacks subject matter jurisdiction and should dismiss the Appeal because neither the Appeal nor the Permit implicate the Zoning Regulations.**

The Board lacks jurisdiction to hear this Appeal because the Board can only hear an appeal when such appeal is based on the Zoning Regulations, and here the Appellants do not raise a single error under the Zoning Regulations. Moreover, the Board’s ruling on the merits of this Permit would contradict the binding precedent of the Court of Appeals and would improperly reallocate powers of the Zoning Commission to the Board and the Inspector of Buildings.

The statutory basis for dismissal is clear. As the Appellants set forth in their August 10, 2012 Memorandum in Support of Appeal (“Appeal Memo”), the law in the District of Columbia allows that “Appeals to the Board of Adjustment may be taken by any person aggrieved . . . by any decision of the Inspector of Buildings granting or refusing a building permit . . . *based in whole or in part upon any zoning regulation* or map adopted under this subchapter.” D.C. Code § 6-641.07(f) (emphasis added). The Appeal here is not based upon any Zoning Regulation.

The Board has consistently dismissed appeals not founded upon a Zoning Regulation because such appeals are outside the Board's subject matter jurisdiction.¹ For instance, the Board has previously dismissed those appeals failing to raise Zoning Regulation errors but instead alleging error on the basis of historic preservation law (10 DCMR § 305), building code requirements (12 DCMR § 105.6), certificate of occupancy requirements (12 DCMR § 110), or fair housing regulations (14 DCMR § 111.13).² Contrary to the implication in the Appeal Memo, the Board may not expand its own subject matter jurisdiction.³

The errors that Appellants allege arise under the Comprehensive Plan (10 DCMR § 100) and the LTR procedures (10 DCMR § 2300), neither of which are Zoning Regulations. Neither the Comprehensive Plan nor the LTR were adopted as part of the Zoning Act and neither may serve as the basis for Board review. There is no nexus between the challenge to the Permit and the Zoning Regulations. Such a nexus is necessary to bring the Permit decision within the

¹ See Appeal No. 18239 of ANC 6A, 59 DCR 1655 at 4 (Sept. 20, 2011) ("As the Board has held several times, the Board has no authority to hear an appeal that is not based upon an interpretation of a zoning regulation"); Appeal No. 17746 of Reed Cooke Neighborhood Association 56 DCR 874 (June 10, 2008) ("[I]f an appeal is brought before the Board which does not arise from the carrying out/administration or enforcement of the Zoning Regulations, it is not within the Board's jurisdiction, and the Board is without authority to hear it"); Appeal No. 18154 of Capitol Hill Restoration Society, 57 DCR 10380 at 3 (Jan. 4, 2011) ("[T]he Board has no authority to hear an appeal that is not based to some degree upon an interpretation of a zoning regulation"); Appeal No. 17329 of Georgetown Residence Alliance, 52 DCR 4427 (Jul. 12, 2004) ("[T]he Board's jurisdiction is limited to hearing and deciding appeals 'where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any . . . administrative officer or body in the carrying out or enforcement of any regulation adopted pursuant to' the Zoning Act.'") (emphasis in original) quoting D.C. Code § 6-641.07.

² Appeal No. 17329 (historic preservation not within Board's jurisdiction); Appeal No. 18239 (building code not within Board's jurisdiction); Appeal No. 17444, of Kuri Brothers, Inc., 55 DCR 4442 (Apr. 9, 2008) (certificate of occupancy not within Board's jurisdiction); and Appeal No. 18154 (fair housing regulations not within Board's jurisdiction).

³ The Board may not consider the merits of the Permit until it determines it has subject matter jurisdiction in the first place. See generally *Snowden v. Dep't of Labor*, 253 F.3d 725 (D.C. Cir. 2001) (vacating a federal agency decision because the agency lacked jurisdiction). Thus, Appellants are mistaken in their unsupported statement that "the proper forum for this dispute [over jurisdiction] is when the BZA considers the merits of Appellants' appeal." Letter from Michael Kroopnick to D.C. Board of Zoning Adjustment Regarding BZA Appeal No. 18469 ("Appeal") – Motion to Intervene; Opposition to Walmart's Motion to Expedite the Public Hearing (Sept. 10, 2012) [hereinafter "Opposition Letter"].

Board's jurisdiction and if the appeal does not arise from the administration or enforcement of the Zoning Regulations, the Board is without the authority to hear it.⁴ As in those dismissed appeals cited above, because no errors arising from the Zoning Regulations are alleged, the Board lacks subject matter jurisdiction to consider this Appeal and must dismiss.⁵

Further, the District of Columbia Court of Appeals has established precedent which also requires dismissal of the Appeal. The Appeal primarily complains of the Permit's inconsistency with the Comprehensive Plan. Yet the Board lacks the jurisdiction to opine on the consistency of the Permit in implementing the Comprehensive Plan. The Court of Appeals has stated that the Board has no authority with respect to implementing the Comprehensive Plan.⁶ Only the Zoning Commission may consider the consistency of Zoning Regulations in implementing the Comprehensive Plan.⁷

Thus, the allocation of powers between the Zoning Commission and the Board requires dismissal. First, the Project is authorized as a matter-of-right, and the Board has no power to

⁴ See Appeal No. 17746, *supra* note 1, at 3.

⁵ The Appellants themselves leave no doubt their challenge is improper by stating clearly in their September 10 letter: "Appellants are not challenging any zoning regulations in this appeal." Opposition Letter, *supra* note 4 at 2. The Board should also note that the Appellants' are now estopped from hereinafter raising challenges under the Zoning Regulations.

⁶ See *French v. Bd. of Zoning Adjustment*, 658 A.2d 1023 (D.C. 1995) ("[T]he Zoning Commission is the exclusive agency vested with the responsibility for assuring that the Zoning Regulations are not inconsistent with the Comprehensive Plan. . . . [W]e must decline to consider petitioners' arguments based on the Comprehensive Plan since the Zoning Commission has not been heard from in this case (nor, as far as we know, have its views been sought). The Board's limited function is to assure that the regulations adopted by the Zoning Commission are followed; it has no authority to implement the Comprehensive Plan.") (emphasis added) (citations omitted).

⁷ *Tenley & Cleveland Park v. Bd. of Zoning Adjustment*, 550 A.2d 331, 341 (D.C. 1988). Appellants cite no cases and no such cases exist where the Inspector of Buildings overruled a Zoning Commission decision or regulation as inconsistent with the Plan.

proscribe a matter-of-right use.⁸ Second, the Appellants' view would make the Board and the Inspector of Buildings arbiters of consistency between the Zoning Regulations and the Comprehensive Plan and would abrogate the exclusive functions of the Zoning Commission. The Zoning Commission alone has the responsibility to ensure consistency between the Comprehensive Plan and the Zoning Regulations. Similarly, the Inspector of Buildings has no authority to deny the Permit given the Permit complies with the Zoning Regulations.⁹ Accordingly, the Appeal must be dismissed.

B. The Board should dismiss the Appeal because the Appellants are not “persons aggrieved” and therefore lack standing to challenge the Permit.

The Board should dismiss the Appeal for the reasons given above, and it should also dismiss the Appeal because the Appellants lack the required standing as persons aggrieved under Section 6-641.07(f). The Board has no jurisdiction to hear an appeal if the petitioners are not aggrieved.

As the Appellants note, “Appeals to the Board of Adjustment may be taken by any person aggrieved” *Id.* § 6-641.07. Neither the statutes nor the implementing regulations articulate a standard for an “aggrieved” appellant.

⁸ *Watergate West, Inc. v. Bd. of Zoning Adjustment*, 815 A.2d 762 (D.C. 2003) (“If the BZA were to attempt to proscribe such matter-of-right use, it would be exercising powers reserved to the Zoning Commission. Under these circumstances, the BZA reasonably concluded that it lacked authority. . . .”)

⁹ The Appellants' argument that the Inspector of Buildings should have reviewed the Permit for consistency with the Comprehensive Plan is misguided. By statute, the Inspector of Buildings withholds permits “unless the plans of and for the proposed . . . reconstruction . . . fully conform to the provisions of [Sections 6-641.01-15] and of the regulations adopted under said sections.” D.C. Code § 6-641.09. Neither the Comprehensive Plan nor the LTR procedures were adopted under Section 6-641. The LTR procedures were adopted by Mayor's Order 86-121, authority for which was derived from Sections 1-242(11) and 1-244 of the D.C. Code then effective (now Sections 1-204.22(11) and 1-301.01). Therefore, the Inspector of Buildings has neither the authority to ensure that the LTR procedures are properly followed nor the power to deny permits for buildings that did not properly follow LTR procedures.

Ordinarily, an appellant achieves “person aggrieved” status by showing “damage greater than that suffered by the general public.” The burden is on the Appellants to demonstrate standing as persons aggrieved.¹⁰ Yet the Appeal Memo makes no effort to demonstrate any damage at all and certainly does not meet the burden of proving damage greater than that suffered by the general public. Moreover, it is unlikely that the Appellants, as a group, could show damage greater than that suffered by the general public.¹¹ Appellants are not neighbors to each other and are generally dispersed over a triangular area of approximately one square mile. Indeed, the Appellants are spread among multiple ANC’s and many different neighborhoods. It is unclear how the Appellants are related to each other or to the Project as anything other than members of the “general public.”

Accordingly, the Board should dismiss the Appeal for lack of standing because none of the Appellants meet the requisite aggrieved person standard.

C. Conclusion

In accordance with District of Columbia law, its own precedent and rulings of the District of Columbia Court of Appeals, the Board should dismiss the Appeal for lack of jurisdiction.

¹⁰ See 11 DCMR § 3119.2 (“In all appeals and applications, the burden of proof shall rest with the appellant.”)

¹¹ The “Economic Impact Study” that Appellants attached to their Appeal Memo is of no support because it fails to identify any grievances particular to the Appellants. Instead, the study “attempts to initially identify and quantify some of the prospective impact of these stores [i.e., Wal-Marts] *on the District of Columbia*.” The Appellants concern for the District as a whole, though civic-minded, ignores the requirement that the Appellants themselves must have damages greater than and distinct from the general public or the District as a whole. Moreover, the Board has previously held that “one who is affected only economically by a use is not a ‘person aggrieved.’” See *Hilton Hotel Corp. v. Bd. of Zoning Adjustment*, 363 A.2d 670 (D.C. 1976) (citing Appeal No. 10319 of Presidential Owners (Dec. 18, 1973)).

II. OPPOSITION TO THE APPEAL ON THE MERITS

The Board lacks jurisdiction over the Appeal, the Appellants lack standing, and either reason justifies dismissing the Appeal without further delay. However, Missouri respectfully requests that if the Board rules in favor of the Appellants on the jurisdictional issues, the Appeal must fail on the merits. For reasons set forth more fully below, the Project is not inconsistent with the Comprehensive Plan and conforms to both the letter and the spirit of the LTR process.

A. The Board should apply the standard that a zoning determination is valid if it is found to “not be inconsistent with the Comprehensive Plan.”

The Zoning Act sets forth a standard for reviewing zoning determinations against the various elements of the Comprehensive Plan. As the Appellants note early in the Appeal Memo, a zoning determination must “not be inconsistent with” the Comprehensive Plan.¹² However, after reciting the appropriate standard the Appellants then completely ignore it, and instead complain that the Permit would “violate,” “fail to comport with,” or “defeat” the Comprehensive Plan. These standards are meaningless in the context of evaluating a zoning determination in light of the Comprehensive Plan.

If the Board elects to evaluate the merits of the Project against the Comprehensive Plan, Missouri respectfully requests that the Board apply the statutorily-required standard that a zoning determination “not be inconsistent with the Comprehensive Plan.”

¹² Appeal Memo at 2 (citing D.C. Code § 6-641.02).

B. The Project is not inconsistent with the Comprehensive Plan policies cited in the Appeal Memo.

The Comprehensive Plan provides a broad framework to guide future land use planning decisions throughout the District of Columbia.¹³ The Comprehensive Plan and its numerous constituent elements contain dozens of policy objectives, which must be read as a whole when evaluating a zoning determination in light of the Comprehensive Plan. The Project is not inconsistent with any element of the Comprehensive Plan and, in fact, furthers numerous of those policies.

Appellants complain of four “violations” of the Comprehensive Plan. These violations implicate: (1) Policy ED-2.2.6: Grocery Stores and Supermarkets; (2) Policy RCE-2.3.1: Upper Georgia Avenue; (3) Policy ED-2.2.3: Neighborhood Shopping; (4) Policy RCE-1.2.6: Small and Minority Businesses.¹⁴ The Project is not inconsistent with any of these policies.

1. *Policy ED-2.2.6: Grocery Stores and Supermarkets.* This policy seeks to “Promote the development of new grocery stores and supermarkets, particularly in neighborhoods where residents currently travel long distances for food and other shopping services.”¹⁵ The northern neighborhoods of the District east of Rock Creek Park are undeniably underserved by grocery stores at present. Ward 4, where the Project is located, currently has only one large, open grocery

¹³ See *Tenley & Cleveland Park v. Bd. of Zoning Adjustment*, 550 A.2d 331, 339 (D.C. 1988).

¹⁴ Appellants also cite concerns with various portions of the Upper Georgia Avenue Great Streets Redevelopment Plan (“Area Plan”). However, this Area Plan is not part of the Comprehensive Plan. Rather, it is a policy document created by the Office of Planning. Therefore, these concerns are not germane to the consistency of the Project with the Comprehensive Plan and Missouri urges the Board to disregard them. In addition, the Appeal Memo raises concerns regarding the alleged economic impact of the Project and submits numerous unpublished and unreviewed studies for the record. As none have any relevance to the Comprehensive Plan, the Board should disregard them also.

¹⁵ Emphasis added. The Project will sell groceries.

store even though Ward 4 is home to more than 75,000 residents.¹⁶ The Project's addition of a new grocery store serving upper Georgia Avenue, Brightwood Park, Manor Park, and northeastern neighborhoods such as Fort Totten, University Heights and Queens Chapel is consistent with the Comprehensive Plan.

2. Policy RCE-2.3.1: Upper Georgia Avenue. This policy seeks to develop Georgia Avenue as a “walkable shopping street” with “identifiable activity centers,” “a nodal pattern,” and “new retail or local-serving office development clustered at key locations.” In addition, this policy seeks to “conserve existing housing along the corridor.” The Project is “walkable” because it (a) adds several new appropriately-scaled store fronts to Georgia Avenue, (b) eliminates existing street-level parking lots, and (c) has committed to improve the sidewalk landscaping in front of the store. The Project will also make the corner of Missouri and Georgia Avenues an important commercial node along Georgia Avenue. Finally, the Project adds new retail at a key location and does not displace any existing housing. The Project's urban design is consistent with the Comprehensive Plan.

3. Policy ED-2.2.3: Neighborhood Shopping. This policy encourages “creat[ing] additional shopping opportunities . . . to better meet the demand for basic goods and services” and “appropriately-scaled retail infill development on vacant and underutilized sites.” The Project will add more than 100,000 square feet of new retail space, and the Project's tenant will serve a district-wide demand for low-cost goods and services. The overall massing and single-story height of the project are scaled appropriately for Georgia Avenue, which is comprised of

¹⁶ The Petworth Safeway closed in August, 2012. A smaller Yes! Organic Market caters to high-income residents south of Petworth near the border of Ward 1, which currently has four large grocery stores. Ward 5, to the southeast of the Project, has three grocery stores, none within three miles of the Project and none in the northwest quadrant of the city where the Project will be located.

single-story structures primarily. The Project is also scaled appropriately for the site, which currently contains vacant parking lots and otherwise faces low, street-front retail. For these reasons, the Project's retail mix is consistent with the Comprehensive Plan.

4. *Policy RCE-1.2.6: Small and Minority Businesses.* This policy seeks to “assist small and minority businesses along . . . Georgia Avenue . . . commercial districts in providing neighborhood services and creating job opportunities for area residents.” The Project prominently features a non-local, large retail establishment. However, that fact is not inconsistent with the Comprehensive Plan because the Comprehensive Plan must be viewed as a whole, and the Plan also encourages the development of new national chains. Under *Policy ED-2.2.5 Business Mix*, the District seeks to “encourage new retail districts by attracting a mix of nationally-recognized chains.” In this policy, the Comprehensive Plan recognizes that not all new retail can or should be locally-owned, small businesses. Large chains contribute to the stability of the local economy, add jobs, and attract consumers from outside the District. For these reasons, the Project's retail tenants are consistent with the Comprehensive Plan.

C. The Project is not inconsistent with numerous other policies of the Comprehensive Plan not raised in the Appeal Memo.

Missouri submitted to the District of Columbia's Office of Planning (“OP”) an Application for Large Tract Review in March of 2011 (“LTR Application”). In its Memorandum with regard to the LTR application, the Office of Planning analyzed the Project's consistency with the Comprehensive Plan, devoting three and one-half pages of its Memorandum to this analysis, and concludes that the “proposed development would not be inconsistent with the

written elements of the Comprehensive Plan.” A copy of the OP Memo is attached hereto as Exhibit A.

In summary, the Project is not inconsistent with the Comprehensive Plan’s Land Use, Economic Development, Urban Design, and Environmental Protection Elements.¹⁷ The Project falls within the density range and type of use proposed on the Future Land Use Map. The Project redevelops a vacant site and adds vibrancy to an important corridor at an appropriate scale and intensity for the surrounding neighborhood. Consistent with the Economic Development Element, the Project will add jobs, retain shoppers who would have previously gone to the suburbs, and perhaps even bring shoppers into the District from the suburbs. From an Urban Design perspective, the Project emphasizes the surrounding public spaces, removes street level parking, and incorporates high quality architecture. Finally, the Project is consistent with the Environmental Protection Element. The Project will enhance street trees, promote water conservation and energy efficiency, and support a green building.

Likewise the Project is not inconsistent with the Rock Creek Park East Area Element, which notes in Section 2213.3 that the “historic crossroads [of Georgia and Missouri Avenues] provides a logical location for a more well-defined, walkable retail district serving nearby neighborhoods.”

D. The Project complied with all aspects of LTR.

The Project fully complied the LTR procedures. Missouri’s LTR Application set forth the environmental, traffic, and neighborhood impacts of the Project. The LTR Application included

¹⁷ See, e.g., Policies LU-1.4.1, LU-1.4.2, LU-2.4.1, LU 2.4.6, ED-2.2.1, ED-2.2.3, ED-2.2.5, ED-2.2.6, UD-2.2.1, UD-2.2.3, UD-2.2.5, UD-2.2.7, UD-2.2.11, UD-3.1.6, UD-3.1.8, UD-3.1.13, E-1.1.1, E-1.1.2, E-2.1.1, E-2.2.1, E-2.2.5, and E-3.2.1.

all of the documents required under Section 2301. In preparing its LTR Application, Missouri fulfilled all requirements with regard to various agencies and ANC communication.

The Appeal Memo complains that the Project fails to satisfy Section 2300.2 of the LTR procedures in regards to consistency with the Comprehensive Plan.¹⁸ For the reasons outlined above, the Project is consistent with the Comprehensive Plan. Moreover, the purposes set forth in Section 2300.2 are merely prefatory, not self-executing, and not authorized to regulate the development of private property.¹⁹ Because that section merely sets forth the goals of the LTR procedures, a particular project submitted to OP for LTR cannot contravene Section 2300.2(c), and that section does not present the grounds necessary to overturn a building permit.

The Project has complied with the letter and the spirit of the LTR procedures, and the LTR procedures present no bar to this Permit moving forward.

E. Conclusion

The Board should deny the Appeal because the Project is not inconsistent with the Comprehensive Plan and is compliant with the requirements of the LTR procedures.

¹⁸ In addition, the Appeal Memo implies that the LTR regulations are Zoning Regulations, but of course, they are not. The Appeal Memo reads: “Two of those [Zoning] regulations implicated in this case are Sections 2300.1 and 2300.2 of Chapter 10-B of DC’s Municipal Regulations.” Title 10-B, containing the LTR procedures, is not part of the Zoning Regulations, which are codified in Title 11. As noted *supra* at n. 10, the LTR procedures were adopted by Mayor’s Order 86-121 rather than the Zoning Act.

¹⁹ See, e.g., Appeal No. 17746, *supra* note 1, at 3.

EXHIBIT A

**Memorandum**

TO: Roland Driest, DC Surveyor

FROM: Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation

DATE: August 10, 2011

SUBJECT: Large Tract Review 2011-03, Square 2986, Lot 38 and Parcel 101/46
5929 Georgia Avenue, N.W.

I. Summary

On March 21, 2011, pursuant to 10 DCMR, § 2300, Goulston & Storrs submitted an application for Large Tract Review (LTR) on behalf of Missouri Avenue Development Partners LLC (the "applicant"). The applicant seeks to develop a 106,244 square-foot retail building within the C-3-A and R-5-A zone on a property consisting of 4.34 acres of land. The entire building would be located within the C-3-A zone. No improvements would be located within the R-5-A zone.

On March 31, 2011, ANC 4B requested an extension of time to review the application from April 22, 2011 to May 25, 2011. The applicant, the ANC and the Office of Planning agreed on the requested extension of the date for the submission of comments from the community to the Office of Planning.

On April 14, 2011 the applicant submitted a modification to the proposal revising the automobile entrance into the garage, reducing the number of off-street parking spaces from 348 to 346 and modifying the rear wall of the building to include concrete panels in place of brick on the garage level.

On May 10, 2011 the Office of Planning again extended the deadline for the submission of comments at the request of Councilmember Muriel Bowser until late June 2011 to allow the ANC sufficient time to review the revised transportation analysis the applicant was expected to submit.

LTR Purpose and Status:

The Large Tract Review is a pre-permit process that provides the applicant, District agencies, the ANC and the public the opportunity to review a project and provide comment before a building permit or other official application is filed, in order to:

- Identify potential issues early-on in the development application procedures,
- Promote efficient project review by bringing to light and resolving differences of interpretation or understanding among District agencies;
- Improve a proposed site plan by making an applicant aware of alternative design, transportation or sustainability alternatives that might improve the overall project; and
- Provide a forum for interaction among the developers, the ANC and other community groups, and the public at large.

The LTR process neither confers additional regulatory authority on agencies nor establishes additional criteria an LTR project must meet.

Having completed its review of the application after soliciting and receiving comments from District agencies, ANC 4B and the general public, the Office of Planning concludes that the application addresses the goals of the LTR regulations:

- To minimize adverse environmental, traffic, and neighborhood impacts;

- To avoid unnecessary public costs in terms of new services or facilities required of city agencies; and
- To carry out the policies of the District Elements of the Comprehensive Plan (10 DCMR § 2300.2).

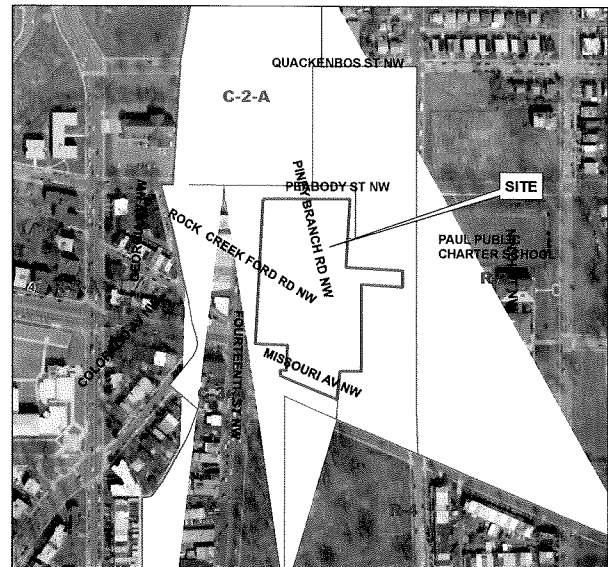
This project is designed in accordance with the provisions of the applicable zone and does not require relief from either the Board of Zoning Adjustment or the Zoning Commission to receive a building permit. Large tract review is required because the site is over three acres in size and would result in over 50,000 square feet of commercial space.

II. Location Area, and Site Description

The property is located on the west side of Georgia Avenue, N.W., the east side of Ninth Street, N.W., the north side of Missouri Avenue, N.W. and the south side of Peabody Street, N.W.

The site is located within the Georgia Avenue commercial corridor. To the north, across Peabody Street, is the Fourth District Metropolitan Police Department (MPD) station. To the south are commercial buildings, and across Missouri Avenue is a gasoline station and Emory Park. To the east are small apartment buildings, and to the west, across Georgia Avenue, are one and two-story commercial buildings.

The subject property was formerly developed with the Curtis Chevrolet and Kia automobile dealerships. It includes the now vacant car barn, which had functioned as the Chevrolet dealership, and a second building that was the Kia dealership. A third, smaller building is located near Peabody Street. The remainder of the site is asphalt paved and includes eight curb cuts; five on Georgia Avenue, two on Missouri Avenue and one on Peabody Street.

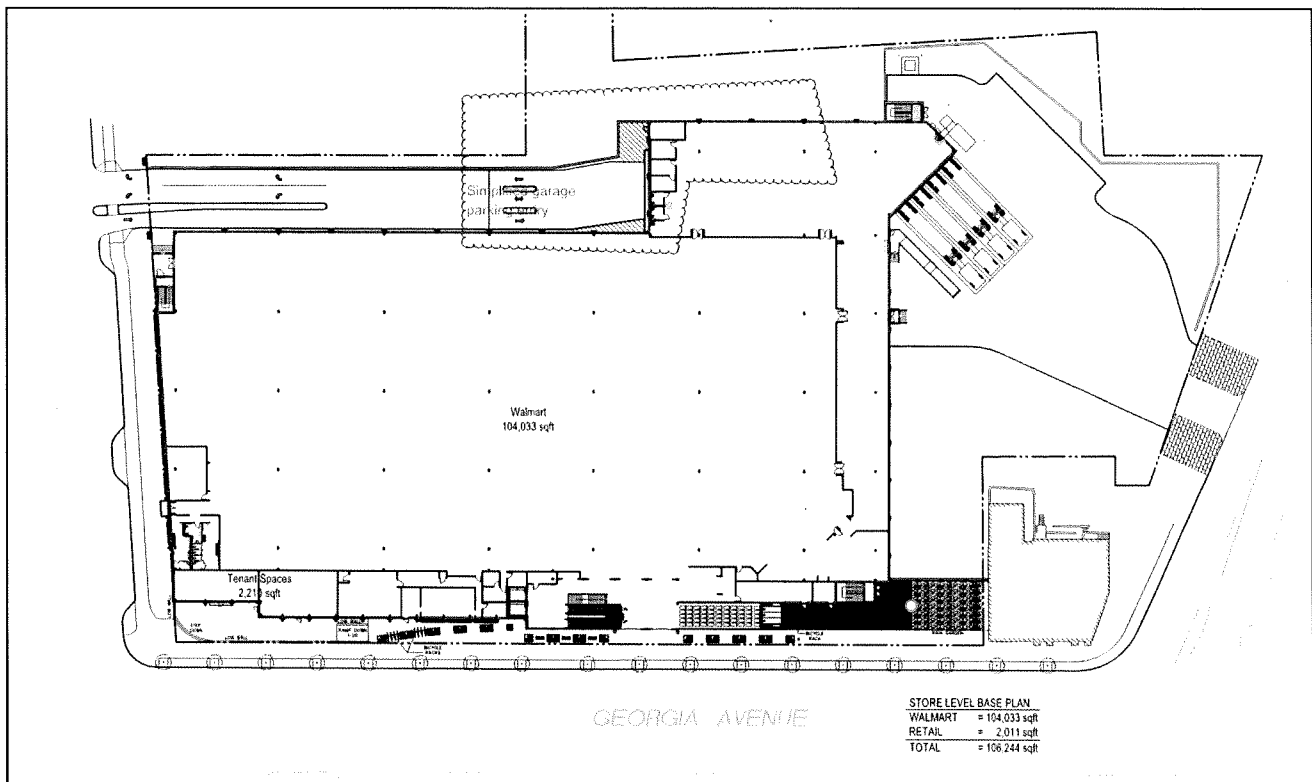


Square 2986, where the property is located, is split-zoned, as is the subject property. The majority of the lot, approximately 95 percent, fronts on either Georgia Avenue, Missouri Avenue or Peabody Street, and is zoned C-3-A. A small “finger-like” portion, consisting of approximately five percent of the site, is zoned R-5-A and fronts on Ninth Street, which is developed with low-rise apartment buildings on the west and Paul Public Charter School on the east. A public alley abuts the south side of the “finger” and also the west side of the bulk of the property, parallel to Georgia Avenue.

Georgia Avenue is served by three Metrobus routes, the 70 and 71 (Georgia Avenue – 7th Street Line), and the 79 (Georgia Avenue Metro Extra Line.) Additional bus routes run on Kennedy Street to the south, 5th Street to the east and 14th Street to the west. The site is also located 1.3 miles from the Takoma Metrorail station, 1.7 miles from the Georgia Avenue/Petworth station and 1.75 miles from the Fort Totten station, providing access to the Red, Green and Yellow lines.

III. Application and Project Description

Section 2300.1 (a) of Title 10 of the District of Columbia Municipal Regulations (DCMR) directs the Office of Planning to “Review, prior to the filing of applications for building permits or construction permits, ... any commercial or mixed-use commercial development of fifty-thousand square feet (50,000 ft²) or more gross floor area (above grade) and cellar area (below grade); ...” This proposal is subject to Large Tract Review because the site is in excess of three acres and because it is a commercial development of more than 50,000 square feet of above-grade gross floor area.



Site Plan

The applicant proposes to construct a 106,243 square-foot one-level retail building, with 346 off-street parking spaces below. Most of the building, 104,033 square feet, would be dedicated to one retail use. Two smaller retail spaces, with a combined square footage of 2,210 square feet, would be located at the corner of Georgia Avenue and Peabody Street. Each retail space would be directly accessible from the public sidewalk on Georgia Avenue. Only the large retail space would have access to the parking garage. All pedestrian access to the building would be from Georgia Avenue only for each of the three retail spaces.

Vehicular access to the parking garage beneath the building would be accessible from Peabody Street only, and would take advantage of the downward slope in topography from Georgia Avenue to Ninth Street for access into the garage. Access to the garage would not be controlled unless necessary to control unauthorized parking.

An on-street parking lane capable of accommodating eight cars would be constructed on the south side of Peabody Street, widening the paved width of Peabody Street for most of the length of the subject property. This parking lane would be constructed by the applicant, would be located within public space, and would require a slight shift in the public sidewalk toward the proposed building.

Loading access would be from Missouri Avenue only. Trucks would access the property from the east only, turning right into the site from Missouri Avenue, where four loading platforms and one service/delivery space would be located. Sufficient area would be provided to allow for all necessary truck maneuvers on-site, permitting trucks to enter head-first. Refuse removal would take place from this location also. A rear connection between the loading area and access to the driveway to the garage would be provided for emergency use only and paved with pervious materials. A gate would restrict access.

The width of the Georgia Avenue sidewalk would be widened by 8.25 feet, extending onto the subject property. At the southwest corner of the building a "pocket park" would be provided. It would include a rain garden and five benches, and would extend south to the lot line with the adjoining commercial structures. A bike rack for eleven bicycles would be installed within this area also. Additional bike racks would be located north of the main store

entrance for eight bicycles. At the north end of the store, near the intersection of Georgia Avenue and Peabody Street, would be a second area that could provide outdoor seating for either of the two smaller retail spaces.

IV. Analysis of Compliance with 10 DCMR, Chapter 23, Large Tract Review Procedures

A. Scope of Review

The Large Tract Review is a pre-permit process intended to provide the applicant, District agencies, the ANC and the public the opportunity to do a coordinated, consolidated review of the project. The LTR process neither confers additional regulatory authority on agencies nor establishes additional criteria an LTR project must meet.

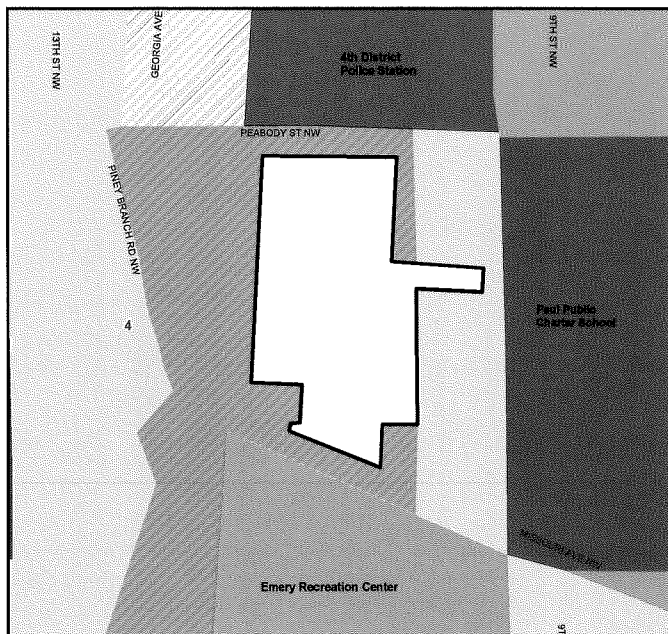
In accordance with DCMR 10 §2302.1, the scope of review to be used by District departments and agencies in assessing projects under this chapter shall include the following scope of the LTR review:

- (a) Consistency with laws in the District of Columbia, including the Comprehensive Plan for the National Capital and regulations enacted pursuant thereto;
- (b) Potential traffic, neighborhood and design impact; and
- (c) Quality of life and environmental impact.

Review of the proposal against the provisions of the Comprehensive Plan is provided in Section IV.B below. Review of the proposal for potential traffic, neighborhood, design, quality of life, and environmental impacts is provided in Sections IV.C to F below, as well as Section V, Departmental Responses.

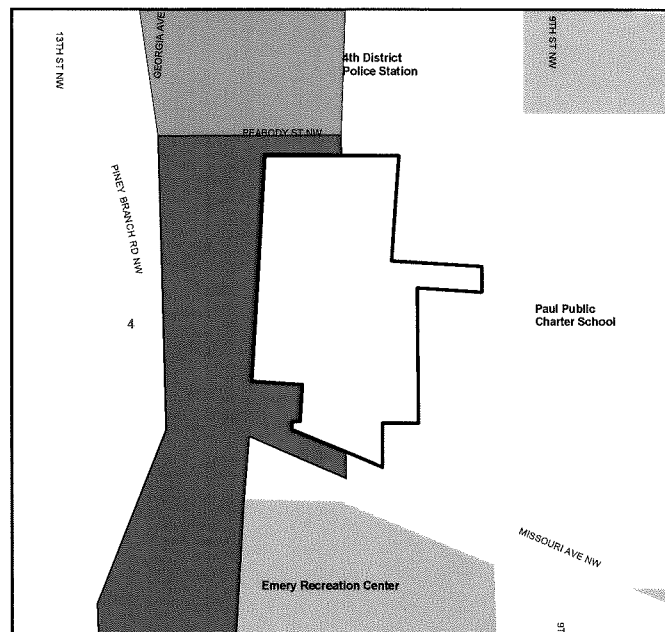
B. § 2302.1 (a) Comprehensive Plan Analysis

The proposed development would be not inconsistent with the written elements of the Comprehensive Plan, particularly the Land Use, Transportation, Economic Development, and urban Design City-wide elements, and the Rock Creek East Area Element.



The **2006 Comprehensive Plan Future Land Use Map** locates the C-3-A portion of the subject property within the “Mixed Land Use” category, consisting of “Medium Density Residential” and “Moderate Density” Commercial, as shown on the map to the left. Medium Density Residential is defined as “neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use.” Moderate Density Commercial is defined as areas where “retail, office, and service businesses are the predominant uses. The remainder of the lot, the small portion fronting on Ninth Street and zoned R-5-A, is located within the Moderate Density Residential land use category, which is defined as “the District’s row house neighborhoods as well as its low-rise garden apartment complexes.” The portion of the site fronting on Ninth Street is not proposed to be developed.

The **2006 Generalized Policy Map**, shown to the right, identifies the western half of the subject square, the portion fronting on Georgia Avenue where the proposed building would be constructed, as “Multi-Neighborhood Centers.” The map states that “*Mixed-use infill development at these centers should be encouraged to provide new retail and service uses, and additional housing and job opportunities.*” The eastern half of the square, the portion zoned R-5-A, is identified as “Neighborhood Conservation Areas,” described as areas that “*are primarily residential in character.*” No commercial development is proposed in the small R-5-A zoned portion of the site.



The Comprehensive Plan Elements

Framework Element:

The proposal would particularly further the following Framework Element Guiding Principles:

Redevelopment and infill opportunities along corridors and near transit stations will be an important component of reinvigorating and enhancing our neighborhoods. Development on such sites must not compromise the integrity of stable neighborhoods and must be designed to respect the broader community context. (§ 217.6)

Many neighborhoods include commercial and institutional uses that contribute to their character. Neighborhood businesses, retail districts, schools, park and recreational facilities, houses of worship and neighborhood identity and provide destinations and services for residents. They too must be protected and stabilized. (§ 218.2)

Increasing access to jobs and education by District residents is fundamental to improving the lives and economic well being of District residents. (§ 219.1)

Land Use Element:

Policy LU-1.4.1: Infill Development

Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create “gaps” in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern. (§ 307.5)

Policy LU-2.3.3: Buffering Requirements

Ensure that new commercial development adjacent to lower density residential areas provides effective physical buffers to avoid adverse effects. Buffers may include larger setbacks, landscaping, fencing, screening, height step downs, and other architectural and site planning measures that avoid potential conflicts. (§ 311.5)

Policy LU-2.4.1: Promotion of Commercial Centers

Promote the vitality of the District’s commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city’s role as the center of the metropolitan area. Commercial centers should be inviting and attractive places, and should support social interaction and ease of access for nearby residents. (§ 312.5)

Policy LU-2.4.5: Encouraging Nodal Development

Discourage auto-oriented commercial “strip” development and instead encourage pedestrian-oriented “nodes” of commercial development at key locations along major corridors. Zoning and design standards should ensure that the height, mass, and scale of development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them. (§ 312.9)

Transportation Element:**Policy T-1.2.1: Boulevard Improvements**

Continue to work across District agencies to beautify and stabilize selected boulevards by implementing coordinated transportation, economic development, and urban design improvements. (§ 404.6)

Policy T-3.1.2: Regional TDM Efforts

Continue to pursue TDM strategies at the regional level and work with regional and federal partners to promote a coordinated, integrated transportation system. (§ 414.9)

Policy T-3.3.1: Balancing Good Delivery Needs

Balance the need for goods delivery with concerns about roadway congestion, hazardous materials exposure, quality of life, and security. (§ 416.8)

Economic Development Element:**Policy ED-2.2.1: Expanding the Retail Sector**

Pursue a retail strategy that will allow the District to fully capitalize on the spending power of residents, workers and visitors, and that will meet the retail needs of underserved areas. (§ 708.4)

Policy ED-2.2.6: Grocery Stores and Supermarkets

Promote the development of new grocery stores and supermarkets, particularly in neighborhoods where residents currently travel long distances for food and other shopping services. Because such uses inherently require greater depth and lot area than is present in many commercial districts, adjustments to current zoning standards to accommodate these uses should be considered. (§ 708.10)

Policy ED-3.1.1: Neighborhood Commercial Vitality

Promote the vitality and diversity of Washington’s neighborhood commercial areas by retaining existing businesses, attracting new businesses, and improving the mix of goods and services available to residents. (§ 713.5)

Urban Design Element:**Policy UD-1.4.1: Avenues/Boulevards and Urban Form**

Use Washington’s major avenues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city. (§ 906.6)

Policy UD-1.4.3: Avenue/Boulevard Vistas and View Corridors

Protect views and view corridors along avenues/boulevards, particularly along streets that terminate at important civic monuments or that frame distant landmarks. Vistas along such streets should be accentuated by creating more well-defined street walls, improving landscaping, and requiring the highest architectural quality as development takes place. (§ 906.9)

Policy UD-1.4.5: Priority Avenues/Boulevards

Focus the city’s avenue/boulevard design improvements on historically important or symbolic streets that suffer from poor aesthetic conditions. Examples include North and South Capitol Streets, Pennsylvania Avenue SE, and Georgia Avenue and the avenues designated by the “Great Streets” program. (§ 906.11)

Rock Creek East Area Element:***Policy RCE-1.1.3: Directing Growth***

Concentrate economic development activity and employment growth in Rock Creek East around the Georgia Avenue/Petworth Metrorail and Takoma station areas, along the Georgia Avenue corridor, along Kennedy Street, and on 14th Street NW between Allison and Decatur Streets. Provide improved pedestrian, transit, and bicycle access to these areas, and improve their visual and urban design qualities in order to create a unique destination for the local community to enjoy. (§ 2208.4)

Policy RCE-1.1.4: Neighborhood Shopping Areas

Maintain and encourage the development of multi-use neighborhood shopping and services in those areas designated for commercial or mixed uses on the Future Land Use Map. The encroachment of commercial and other non-residential uses into the stable neighborhoods adjacent to these locations shall be strongly discouraged. (§ 2208.5)

Policy RCE-2.3.1: Upper Georgia Avenue

Develop Upper Georgia Avenue (from Decatur to Eastern) as a walkable shopping street with distinct and clearly identifiable activity centers along its course. Encourage development that reinforces a nodal pattern, with new retail or local-serving office development clustered at key locations and new housing or mixed use development on underutilized commercial properties in between. Conserve existing housing along the corridor and support its maintenance and renovation. (§ 2213.7)

Implementation Element:***MC-2.1.C: Great Streets Improvements.***

Implement the Great Streets initiative recommendations for Georgia Avenue, including transit improvements, façade improvements, upgraded infrastructure, blight abatement, and incentives for housing and business development along the avenue. (§ 2519)

The subject application provides an opportunity to redevelop an underutilized tract of land. The new building would accommodate new retail space that could improve the mix of goods and services available along the Upper Georgia Avenue commercial corridor, and expand employment opportunities available to residents. The building, designed in conformance with all of the provisions of the C-3-A zone, would provide direct pedestrian access from the public sidewalk on Georgia Avenue into each of the three proposed retail spaces.

Widened sidewalks, new tree plantings and a pocket-park provided at the south end of the site's Georgia Avenue frontage would improve the appearance of this "great street" and gateway into the District of Columbia. A masonry wall would be constructed to the rear of the building, buffering the new construction from the existing residential uses along Ninth Street.

Although the application is for a retail building only, zoning on the site would support a mixed use building, as was proposed in 2008 under Large Tract Review Application No. 2008-08. That application, which proposed a five-story building with ground floor retail and four levels of residential above, was found to be in conformance with the provisions of Comprehensive Plan and the Upper Georgia Avenue Plan. The Comprehensive Plan is generalized, and while it may recommend mixed-use for the subject property, such use is not required.

Upper Georgia Avenue Great Streets Redevelopment Plan**Section 5 Recommendations*****[5.4] Zone 4- Missouri Avenue******Market Demand & Development Potential***

The recommended program for the Missouri Avenue area includes restaurant space, a grocery store, an anchor-type retail store, smaller neighborhood- serving retail,

The proposed building would be designed to accommodate an anchor-type retail store, including a grocery, with two additional storefronts that could accommodate smaller neighborhood serving retail.

C. § 2301.3 (c) Zoning and Height Act Considerations

The LTR application is consistent with the type and scale of development permitted by the Zoning Regulations. The project's compliance with the Zoning Regulations is summarized below in Table 1. No zoning relief is required; the proposal is designed to be matter-of-right.

Item	C-3-A Regulations ¹	Proposal
Building Height (max.)	65 feet	45 feet
Floor Area Ratio		
- Maximum Residential	4.00	0.00
- Maximum Nonresidential	2.50	0.56
- Maximum Total	4.00	0.56
Lot Occupancy		
- Maximum Residential	75 percent	Not applicable
- Maximum Nonresidential	100 percent	43.8 percent
Square Feet ²		
- Maximum Residential	726,286 square feet	None
- Maximum Nonresidential	472,626 square feet	106,243 square feet
- Maximum Total	726,286 square feet	106,243 square feet
Rear Yard (min.)	12 feet	36.26 feet
Side Yard (min.)		
-North	None, but min. 6 feet if provided	None
-South	None, but min. 6 feet if provided	54.31 feet
Parking (min.)	345 spaces	346 spaces
Loading Platforms (min.)	1 at 100 square feet 1 at 200 square feet	4 at 200 square feet
Loading Spaces (min.)	1 at 20 feet deep	1 at 20 feet deep

Table 1, Zoning Analysis

D. Technical and Procedural Analysis

This proposal is subject to the criteria of DCMR 10 Chapter 23 Section 2301.3 requirements and criteria, as it will contain more than 50,000 square feet of commercial development.

- § 2301.3 (a): A completed certification form

A completed Large Tract Review Certification Form was included as Appendix F of the submission.

¹ Approximately 9,700 square feet of the subject property is located within the R-5-A zone, adjacent to Ninth Street. No improvements are proposed within this portion of the site.

² Based on OP's estimate of the square footage of the subject property located within the R-5-A zone.

- § 2301.3 (b): The name, address and signature of all owners, or their authorized agent, and of property included in the area to be developed. If there is an agent, the applicant shall provided written authorization and the extent of the agent's authority.

Complies.

- § 2301.3(c): A map showing the location of the proposed project and the existing zoning of the site.

Drawing C-2, Zoning Plan, depicts the zoning of the site and the location of the property.

- § 2301.3(d): A statement indicating the contribution of the project toward implementing city and community goals and policies.

Complies. See also District agency comments, Section V. below.

- § 2301.3(e): A statement indicating the relationship of the proposed development to the objectives of the District Elements of the Comprehensive Plan for the National Capital.

Complies. See also Section IV B. above.

- § 2301.3(f): A general site and development plan, indicating the proposed use, location, dimensions, number of stories and height of building.

Drawing C-7, Site Plan, depicts the proposed location and use of the structure, interior dimensions, and use of the building. Sheet C-3, Project Data/Bulk Requirements, provides building height and setbacks. The most current submissions reflect a number of design-related modifications to the plan suggested by OP, mainly to improve the streetscape appearance of the building along Georgia Avenue and Peabody Street, and to provide additional subsidiary retail spaces along the street.

OP would support the provision of additional street level windows on the north side of the building facing Peabody Street to activate this area and make it feel safer and more inviting for pedestrians. OP continues to recommend limited redesign to reallocate some of the ground floor level uses to a second floor fronting Georgia Avenue, or to accommodate additional residential or commercial development on top.

- § 2301.3(g): A general circulation plan, including the location of vehicular and pedestrian access ways, other public space and the location and number of all off-street parking and loading spaces, loading berths and service delivery spaces.

Provided. The applicant proposes to widen the public sidewalk along Georgia Avenue. Public sidewalks exist along all four of the streets that abut the property. The width of the sidewalk along Peabody Street would be relocated to accommodate the addition of a parking lane. All pedestrian access to the building would be from Georgia Avenue only.

All automobile ingress to and egress from the site would be from Peabody Street only. All truck access, including access to loading berths, the service delivery space and refuse removal, would be from Missouri Avenue only. Adequate space would be available to accommodate all truck turning movements on-site. With the exception of Fire Department emergency access, there would be no vehicular connection between the parking garage and the loading areas.

The number of curb cuts would be reduced from eight to two, including elimination of all existing curb cuts on Georgia Avenue. One curb cut would be provided on Peabody Street and the other would be on Missouri Avenue.

In addition, 37 bicycle parking spaces are proposed, both within and around the building, as well as other transportation demand management measures outlined in Section V below.

- § 2301.3(h): A typical floor plan.

Dwg. A1.1, Conceptual Plan (Store Level), depicts the floor plan for the retail level of the store. The proposal also includes a copy of the below grade parking level plan.

- § 2301.3(i): A general statement of the approximate schedule of building construction.

The application states that the applicant anticipates breaking ground in the fall of 2011, with completion in either late 2012 or early 2013.

- § 2301.3(j): Vehicle trip generation, trip assignment and before and after capacity analysis and level of service at critical intersections.

The transportation impact study prepared by the applicant's transportation consultant, Gorove/Slade Associates, Inc., was submitted with the application. It studied twelve intersections surrounding the subject property, providing before and after capacity analyses and level of service (LOS).

The study estimates the development would generate 177 AM peak hour vehicle trips and 490 PM peak hour vehicle trips. Georgia Avenue and Missouri Avenue are commuter routes. Georgia Avenue volumes are highest southbound during the AM peak and northbound during the PM peak. Traffic on Missouri Avenue is somewhat higher westbound during the AM peak and eastbound during the PM peak. After capacity levels of service (LOS) for those intersections would be acceptable (LOS D or better).

- § 2301.3(k): Any other information needed to fully understand the final building proposed for the site.

The application included conceptual elevations, sections and perspectives depicting colored renderings of each of the proposed façades of the building, and a conceptual aerial, portraying how the proposed building would relate to surrounding development.

V. Departmental Responses

Application materials were distributed to the following District departments for their review and comment:

- Department of Consumer and Regulatory Affairs (DCRA)
- Department of Employment Services (DOES)
- Department of the Environment (DDOE)
- Department of Public Works (DPW)
- District of Columbia Water and Sewer Authority (DC Water)
- Department of Transportation (DDOT)
- Department of Employment Services (DOES)
- Fire and Emergency Medical Service (FEMS)
- Metropolitan Police Departments (MPD)
- Office of the Attorney General (OAG)
- Historic Preservation Office (HPO) within the Office of Planning

In addition to direct meetings between the applicant and OP and DDOT, on May 12, 2011 the Office of Planning hosted an interagency meeting on the application. Agencies in attendance included the following:

- Office of Planning (OP)
- District Department of Transportation (DDOT)

- District Department of the Environment (DDOE)
- District of Columbia Fire Department (DCF)
- Department of Parks and Recreation (DPR)

Office of the Attorney General (OAG) – OAG, in an email dated March 23, 2011, informed the Office of Planning that it had no comments on the application.

Metropolitan Police Department (MPD) – MPD, in a memorandum dated April 15, 2011, raised issues regarding traffic on Peabody Street, Georgia Avenue and Missouri Avenue, and that the application did not adequately address store security. These issues were forwarded to the applicant and DDOT, respectively. On April 21, 2011 MPD commented further about traffic issues and the Peabody Street entrance, suggesting that the retailer test the use of parking aides at the entrance to the parking garage.

Fire and Emergency Medical Service (FEMS) – FEMS, in an email dated March 24, 2011, indicated that it had no issues with the application. Comments on the revised site plan were received by email on April 25, 2011, indicating some concerns regarding fire apparatus access and designated fire lanes. At the interagency meeting on May 12, 2011, the applicant and FEMS agreed that access for emergency vehicles only would be provided across the rear of the building, between the loading area and the driveway access to the parking lot.

District Department of the Environment (DDOE) – DDOE, in a memorandum dated June 6, 2011, discussed pending impervious surface fees to be assessed by DC Water and DDOE, and the need to submit a LEED certification checklist with the building permit application. DDOE also encouraged the applicant to design the project to target 75 points on the Energy Star Portfolio Manager scale.

District Department of Transportation (DDOT) – On May 16, 2011 the applicant submitted a revised traffic study to DDOT for their review, pursuant to DDOT's comments. On June 3, 2011 DDOT submitted revised comments on the application based on an updated traffic study. The applicant submitted additional responses to comments received from DDOT at a meeting on June 14, 2011.

DDOT, in a memorandum dated June 24, 2011, found that the application met the requirements of the Large Tract Review Process and that mitigation strategies proposed by the applicant would minimize the impact on the neighborhood to acceptable levels. Those mitigation strategies are:

DDOT Comment	Applicant Response
<i>Roadway Capacity and Operations</i>	
Intersection of Georgia Avenue and Missouri Avenue: addition of north and southbound left-turn lanes, and signal modification.	Agreed to finance improvements.
Intersection of Georgia Avenue and Peabody Street: addition of north and southbound left-turn lanes, northbound right-turn lane and signal modification.	Agreed to finance improvements.
Peabody Street: widening to accommodate increased vehicle movements and to preserve curbside parking.	Agreed to finance improvements.
Georgia Avenue and Quackenbos Street: addition of new signal.	Agreed to finance improvements.
<i>Bicycle and Pedestrian Facilities</i>	
Upgrade intersection facilities leading to the site to ADA standards	Agreed to finance improvements and work with DDOT on which intersections are to be upgraded.
Provide exact locations of bicycle facilities.	The applicant has agreed to provide on-site bicycle parking, and will work with DDOT on exact locations.

Georgia Avenue and Missouri Avenue: improve eastbound and westbound pedestrian refuges.	The applicant will coordinate with DDOT and agreed to finance these improvements.
Install raised median at Missouri Avenue and Colorado Avenue.	The applicant will coordinate with DDOT and agreed to finance this improvement.
Close curb cut at Georgia Avenue and Rock Creek Ford Road.	The applicant will coordinate with DDOT and agreed to finance this improvement.
Refurbish pavement markings and signage at the intersection of Georgia Avenue and Missouri Avenue.	The applicant will coordinate with DDOT and agreed to finance these improvements.
<i>Transit Services</i>	
Relocation of bus stops to accommodate addition of left-turn lanes.	The applicant does not agree with this request.
<i>Site Access and Loading</i>	
Missouri Avenue: construct concrete pad on the westbound lanes at the loading entrance to the site.	Agreed to finance improvements.
No loading within public space.	Agreed.
<i>Streetscape/Public Realm</i>	
Work with DDOT on design of public space.	Agreed to work with DDOT.
Provide DDOT with detailed engineering designs for turn lanes and elimination of on-street parking.	Agreed to provide DDOT with drawings.
Coordinate with DDOT, WMATA and the community on the relocation of bus stops.	Will coordinate on the relocation of bus stops, but will not pay for the relocation.
<i>Transportation Demand Management</i>	
Work with DDOT on bikeshare facility, transit incentives for employees and real time transit information kiosk.	Agreed to work with DDOT on the details of the transportation demand program.

Table 2, DDOT Comments

Historic Preservation Office (HP) – HP had no comments on the application. OP supports the retention of the existing car barn trusses, and their incorporation into the building design.

No other agencies commented on this application.

VI. Community Review

The Office of Planning provided one copy of the application to the Juanita E. Thorton/ Shepherd Park Neighborhood Library to be made available for review by the public, one copy to the office of Ward 4 Councilmember Muriel Bowser, and copies to ANC 4B and ANC 4C. The application was posted on the Office of Planning webpage.

Notification of the filing of the application was sent to all property owners within 1,000 feet of the subject property by the applicant (exceeding the LTR requirement of 200 feet). Several residents and ANC commissioners contacted the Office of Planning with questions about the proposed development.

ANC 4B: The site is located within the boundaries of ANC 4B. In a resolution dated June 27, 2011, the ANC stated that it would not support the application unless the following recommendations described in the resolution were incorporated into the project:

ANC Resolution Recommendation	OP Response
Community involvement and consultation for community benefits agreement and legislative and administrative action.	This recommendation is outside of the scope of large tract review.
Building design.	OP is satisfied with the building design as amended by the applicant in response to this LTR process.
Transportation Demand Management.	The applicant coordinated with DDOT on this recommendation.
Traffic circulation.	The applicant coordinated with DDOT on this recommendation and proposes to work with DDOT to implement the recommendations contained with DDOT report.
Transportation planning and engineering.	The applicant coordinated with DDOT on this recommendation.
Safety.	The applicant coordinated with DDOT on this recommendation.
Neighborhood economic impact.	This recommendation is outside of the scope of large tract review.
Community benefits.	This recommendation is outside the scope of large tract review.
Recommendations for rectifying gaps in planning and zoning regulations.	This recommendation is outside the scope of large tract review.

Table 3, ANC Recommendations

ANC 4B also submitted a number of supporting documents, including the following:

- Final Report, Square 2986 Large Tract Review Subcommittee, dated May 23, 1011;
- ANC 4B Special Committee on Square 2986, Subcommittee on Community Benefits Agreement;
- Square 2986 Alternatives Committee, Final Report, dated February 24, 2011;
- “A Report on the Economic Impact of an Urban-Style Wal-Mart on Small Business Development at the Square 2986, Curtis Chevrolet Site, Georgia & Missouri Avenues, NW,” by Taalib-Din A. Uqdah, dated May 2011.

Under Section 13 of the Advisory Neighborhood Commissions Act of 1975, as interpreted by the Office of the Attorney General, the Office of Planning is required to give “great weight” to issues and concerns raised by the affected ANC concerning the consistency of the proposed project with the District Elements of the Comprehensive Plan for the National Capital. Although the ANC resolution does not raise issues related to the Comprehensive Plan, an attachment to the resolution submitted by the ANC entitled Final Report, Square 2986 Large Tract Review Subcommittee contains a section titled “Comprehensive Plan recommendations for the site.” This section acknowledges that the Comprehensive Plan “*does not dictate or require that particular parcels be developed to their “highest or best use” or to the maximum size or development type allowed by zoning*” (p. 5). OP concurs. Although the Comprehensive Plan may include recommendations regarding how an area should be developed, those recommendations cannot be required.

The proposal is in conformance with the zoning of the property. Although OP would support additional development at this location, including residential use, it is not required by the zoning and the proposed development would not be substantially inconsistent with the Comprehensive Plan. The development would provide for new retail along Upper Georgia Avenue, expand the retail sector, and act as an infill development along a commercial street.

Although many of the issues raised by ANC 4B are outside the scope of large tract review, OP acknowledges the thoughtful and insightful comments submitted by ANC 4B as part of this review process. A copy of the ANC comments was received by the applicant for review and comment.

ANC 4B07, ANC 4B03 and ANC 4B06 Commissioners: In a letter dated June 28, 2011, gave conditional support, provided the applicant:

- Provides a written agreement between Florian Gardens Cooperative and nine other adjacent properties about the design;
- Creates a community committee consisting of stakeholders from religious, community organizations, ANCs, business association and residents;
- Makes an effort to hire District certified LSDB contractors for the construction; and
- Hires District residents for day and non-subcontract jobs.

Although largely outside the scope of the large tract review process, these comments are forwarded to the applicant.

Florian Gardens Cooperative Properties: In a letter dated June 20, 2011, expressed the following concerns:

- Customers to the new store may park on the cooperative's property;
- Increase in traffic on Peabody and Ninth streets, and difficulty exiting from their parking lot with the addition of the new store;
- Noise, congestion and pollution from vehicular traffic in their neighborhood; and
- Structural damage to their buildings from construction.

These comments have been forwarded to the applicant. The traffic study and the DDOT analysis address issues related to traffic circulation, although OP recommends that the applicant continue discussions with neighboring residents. The issue of potential structural damage during the construction process is a common concern, and is routinely addressed at the building permit stage.

ANC 4A – In a letter dated June 30, 2011, recommended that the mitigation measures identified in the DDOT report dated June 24, 2011 be implemented.

Ward 4 Thrives, an association of Ward 4 residents, submitted comments to the Office of Planning dated May 25, 2011. The comments included a traffic study dated March 20, 2011, and a paper on the economic impact of four new Walmart stores in the District of Columbia, dated April 25, 2011. On July 1, 2011 an update to the traffic study was submitted. The association concluded that the proposed development would:

- Have adverse traffic and neighborhood impacts;
- Result in unnecessary public costs;
- Not be consistent with the District Elements and the Economic Development Policies of the Comprehensive Plan, or the Upper Georgia Avenue Plan;
- Be inconsistent with traffic and parking planning goals and recommendations; and
- Be inconsistent with the Land Use Element of the Comprehensive Plan.

The traffic study was provided to the applicant and DDOT for consideration.

Fourteen residents contacted the Office of Planning in opposition to the application. Concerns include:

- Economic impacts;
- Environmental impacts;
- Impact on city infrastructure;
- People coming to shop at the store from other areas of the city;
- Pedestrian safety;
- Traffic and parking, including Peabody Street, a narrow street that is also used by MPD vehicles;
- How trucks would enter and exit the site; and

- The intersection of Georgia Avenue and Missouri Avenue.

Four area residents contacted the Office of Planning requesting additional information on the application.

Two area residents contacted the Office of Planning in support of the application.

JS/sjm^{AICP}

Stephen J. Mordfin, AICP, Project Manager

cc: Adam Davis, Foulger-Pratt
Councilmember Muriel Bowser
Bruce Faust, FEMS
Chris Delfs, DDOT
Inspector Dierdre Porter, MPD
Nina Albert, DDOE
Yvonne Jefferson, Chair, ANC 4B
Douglas Smith, SMD ANC 4B04

Attachments:

Exhibit 1 Memorandum from FEMS dated March 24, 2011
Exhibit 2 Memorandum from FEMS dated April 25, 2011
Exhibit 3 Memorandum from MPD dated April 15, 2011
Exhibit 4 Memorandum from MPD dated April 21, 2011
Exhibit 5 Memorandum from DDOE dated June 6, 2011
Exhibit 6 Memorandum from DDOT dated June 24, 2011
Exhibit 7 ANC 4B Resolution

Mordfin, Stephen (OP)

From: Faust, Bruce (FEMS)
Sent: Thursday, March 24, 2011 12:00 PM
To: Mordfin, Stephen (OP)
Subject: RE: Large Tract Review 2011-03

Steve,

The DC Fire And EMS Department has no issues with this LTR, and would only recommend the incorporation of dedicated and marked fire lanes, and comment on hydrant placement when it reaches that level.

Thanks,

Bruce D. Faust
Deputy Fire Chief
Fire Marshal
Fire Prevention Division
DC Fire & EMS Department
(202) 727-3298
(202) 345-7117

Mordfin, Stephen (OP)

From: Faust, Bruce (FEMS)
Sent: Monday, April 25, 2011 10:47 AM
To: Mordfin, Stephen (OP)
Subject: RE: Walmart LTR Revision 5929 Georgia Ave with attachment

Good Morning Steve,

The DC Fire & EMS Department, Office of the Fire Marshal has reviewed the preliminary submissions and has no comment at his time. There are some concerns relative to fire apparatus access, designated fire lanes, location of fire department connections and other requirements identified in the International Fire Code (2006). It is my belief these will be addressed as the plans progress.

Should you have any questions, please feel free to contact me directly.

Bruce D. Faust
Deputy Fire Chief
Fire Marshal
Fire Prevention Division
DC Fire & EMS Department
(202) 727-3298
(202) 345-7117



**Patrol Services and School Security Bureau
Fourth Police District**

Commanding Officer Kimberly Chisley- Missouri

6001 Georgia Avenue, N.W., Washington, D.C., 20011 Office: 202-715-7400 Fax: 202-715-7489

MEMORANDUM

TO: Assistant Chief of Police
Patrol Services and School Security Bureau

FROM: Commander *Kimberly Chisley- Missouri*
Fourth District

DATE: April 15, 2011

SUBJECT: Walmart Large Tract Review, 5929 Georgia Avenue, NW

With regard to the proposal to build a Walmart store at 5929 Georgia Avenue, NW, the following issues has been identified as needing careful review prior to the opening of the store and continued monitoring once the store is open for business. This is by no means intended to be a complete list of all the things that could become issues once the store is open for business.

TRAFFIC CONGESTION

Peabody Street, NW

The 900 block of Peabody Street, NW is, under the best of circumstances, a narrow and congested street. Cars are parked on both sides of the street along the entire length of the block. When vehicles pass each other going in opposite directions in the block they often must slow down just to be sure they won't side-swipe each other. This is especially true if one or both of the vehicles is a large SUV or a van or some sort of delivery truck. The opening of the Walmart will definitely cause an increase in traffic in this block, and will cause traffic to back up. There will definitely be an increase in vehicles traveling west-bound on Peabody Street, trying to turn south-bound onto Georgia Avenue. There will also be vehicles traveling westbound trying to turn left into Walmart, which will cause traffic behind them to stop. The increase in pedestrian traffic on the south side of Peabody Street, crossing the entrance to the Walmart will cause more delays for the cars turning left into Walmart. In short, the 900 block of Peabody Street is likely to become jammed in both directions while Walmart is open for business.

It is imperative that all of the parking spaces currently available for Fourth District officers to use in the 900 block of Peabody Street be preserved. None of these spots should be lost to Walmart parking. In order to ensure that these spaces are preserved, signs should be posted in the block stating that the spaces are reserved for police personnel.

Georgia Avenue

Georgia Avenue, NW is, under the best of circumstances, a very busy and congested street. Any addition of traffic to this major thoroughfare will of course exacerbate this. Cars are parked on both sides of the street along the entire length of the block. The opening of the Walmart will definitely cause an increase in traffic in this block, and will cause traffic to back up. There will definitely be an increase in vehicles traveling west-bound on Peabody Street, trying to turn south-bound onto Georgia Avenue. There will also be vehicles traveling east-bound on Peabody Street trying to turn right into Walmart, which will cause traffic behind them to stop. The increase in pedestrian traffic on the south side of Peabody Street, crossing the entrance to the Walmart, will cause more delays for the cars turning into Walmart.

A no left turn sign from south-bound Georgia Avenue onto Peabody Street may be necessary.

Missouri Avenue

The loading dock entrance on Missouri Avenue will also probably cause traffic congestion, especially when 18 wheel trucks have to turn left into it when traveling east-bound on Missouri Avenue. While they turn, they will block the road in all likelihood. This will affect traffic south on Georgia Avenue turning left onto Missouri Avenue.

The traffic study submitted for review asserts that all trucks making deliveries will take New Hampshire Avenue to Missouri Avenue and then turn right into the loading docks. The trucks will exit by turning right onto Georgia Avenue and heading north. This would mean no large trucks blocking major roadways while they turn into the loading docks. This is an unlikely scenario. There can be no doubt that at least some large trucks headed to Walmart will go south on Georgia Avenue and end up making a left onto Missouri Avenue and a left into the loading docks. This will definitely happen. The question is how often it will happen and how much disruption these trucks will cause.

STORE SECURITY ARRANGEMENTS

The Review does not address the issue of store security and how people who commit crimes in the store, such as shoplifters, will be handled. Whatever arrangements Walmart

puts forth, the essential thing is that it must be presumed that this Walmart store will be very popular, and that there will be crimes committed inside of the store as well as in the parking garage. The popularity and success of this store cannot be allowed to cause a drain on the manpower and resources of the Fourth District. There will have to be some kind of store security personnel and perhaps off-duty MPD officers hired to work security in the store. This appears to be working in the Target store on 14th Street.

The control of the parking lot will also be very important. If people are allowed to leave cars in the garage for days at a time, the number of available spaces will be diminished, which will in turn cause congestion outside of the garage. It takes much longer to get into a garage that is full or nearly full. Also, even the slightest mishap at the entrance to the parking garage, such as a stalled vehicle, a stuck gate, or a minor fender bender, would cause serious back-ups on Peabody Street.

From: "Chisley-Missouri, Kimberly (MPD)" <kimberly.missouri@dc.gov>
Date: April 21, 2011 3:20:21 PM EDT
To: "Porter, Dierdre (MPD)" <dierdre.porter@dc.gov>, "Groomes, Diane (MPD)" <diane.groomes@dc.gov>
Subject: RE: Walmart LTR Revision 5929 Georgia Ave with attachment

This looks to have five entrances for the garage but the drawings depict one lane for ingress and two lanes for egress. This will more than likely still create traffic tie-ups on Peabody.

I'd like to add the provision of Walmart having traffic aides at this location- maybe for the first 120 days and then see how it goes from there.

Kimberly Chisley-Missouri
Commander
Metropolitan Police Department
Fourth District
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Washington, DC 20011
202-715-7500-office
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Kimberly.Missouri@dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA

District Department of Environment



MEMORANDUM

TO: Stephen Mordfin (OP)

FROM: Nina Albert, Special Assistant, DDOE

DATE: June 6, 2011

SUBJECT: Comments to Large Tract Application 2011-03, 5929 Georgia Avenue, NW

1) Background

It is not clear from the application package what level of stormwater management, permeable site standards, or green building standards the applicant expects to achieve. DDOE requests that the applicant submit its plan, which defines the scope and content of work, for achieving the District's environmental requirements.

2) Regulatory Framework

- Stormwater Management. Due to large areas of impervious surface proposed in the site plan, *applicant should be aware of the pending impervious surface fees to be assessed by DC Water and DDOE. The applicant is encouraged to consider the financial benefit of reducing impervious surfaces through: green roofs, living screens/living walls on parking lot structure, on-site stormwater retention solutions.* Also, while the 1.2" stormwater retention standard is not currently in effect, it is pending. *Applicant is requested to consider meeting this retention standard despite pending regulations.*
- Green Building. In accordance with the Green Building Act of 2006 (D.C. Official Code § 6-1451.01, et seq., as amended), *the applicant is required to submit a LEED certification checklist with their building permit application.* If the applicant submits its building permit application after January, 2012, the project will be required to attain LEED certification. Also, *the applicant should be aware that all projects over 50,000 SF will be required to enter energy benchmarking data and make publicly available their Energy Star Portfolio Manager results. DDOE encourages the applicant to design the project to target 75 points on the Energy Star Portfolio Manager scale.*

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DISTRICT DEPARTMENT OF TRANSPORTATION



d. Policy, Planning & Sustainability Administration

MEMORANDUM

TO: Harriet Tregoning, Director
Office of Planning

FROM: Maurice Keys, Interim Associate Director

DATE: June 24, 2011

SUBJECT: Large Tract Review No. 2011-03 - Curtis Chevrolet site (proposed Walmart) 5929 Georgia Avenue, N.W. Square 2986, Lot 38; Parcel 101/46

Introduction

This memorandum serves as an update and supplement to the District Department of Transportation (DDOT) memorandum to the DC Office of Planning dated April 21, 2011. DDOT has completed its review of the additional data and analyses submitted by the Applicant since our last report and the following presents the most recent evaluation of the transportation impacts for the proposed development at 5929 Georgia Avenue NW.

DDOT believes that the Applicant has met the requirements of the Large Tract Review process by capturing the transportation impacts and documenting needed mitigation strategies. DDOT expects that the anticipated transportation impacts to the surrounding area can be mitigated through the Applicant executing:

- Roadway capacity improvements;
- Transportation Demand Management (TDM) strategies;
- Restricted heavy truck routing and delivery times; and
- Spot safety improvements in the immediate vicinity of the site.

Background

The Large Tract Review process goals under DDOT's purview are to: (a) minimize the transportation impacts; and (b) avoid associated public costs for new services and

facilities related to the proposed development. In our April 21, 2011 memorandum, DDOT detailed various deficiencies in the Applicant's initial Traffic Impact Study; and requested several follow up items in order to sufficiently review the transportation impacts of the proposed site. Since the previous memorandum, the Applicant has met several times with DDOT and has provided the necessary information. Additional submissions of data were received on May 16 and June 20, 2011.

Transportation Analysis

Overview

The proposed development will attract new vehicle trips to the area however; the mitigation strategies outlined to be undertaken by the Applicant will minimize the impact to acceptable levels within the surrounding neighborhood. DDOT agrees with the Applicant's proposed strategies described below and expects that all of these measures will be implemented as part of the project.

Roadway Capacity & Operations

Traffic delay is expected to increase at the immediate intersections serving the proposed development. DDOT expects that the following mitigation strategies will minimize such delays and increase the roadway capacity at the two most critical intersections serving the site:

- The Missouri Avenue and Georgia Avenue intersection will need to include northbound and southbound left-turn lanes; and incorporate the related traffic signal modifications;
- The Peabody Street and Georgia Avenue intersection will need to include southbound and northbound left-turn lanes, and a northbound right-turn lane; and incorporate the related signal modifications;
- Peabody Street will need to be widened, in order to accommodate the increased vehicle movements and to preserve curbside parking; and
- A new signal at the Quackenbos Street and Georgia Avenue intersection will facilitate pedestrian movements and improve traffic flow.

It should be noted that in order to redesign the intersection at Georgia Avenue / Missouri Avenue, and Georgia Avenue / Peabody Street to include the needed turn lanes, two existing bus stops will have to be relocated and parking along Georgia Avenue will be affected. Refer to the parking section of this report for details.

Bicycle and Pedestrian Facilities

The Pedestrian Master Plan and Bicycle Master Plan together with DDOT's Design and Engineering Manual provide design guidelines and requirements that improve pedestrian and bicycling conditions. As identified in the Applicant's March 14, 2011 Traffic Impact Study Report, the surrounding area lacks bicycle parking facilities. The proposed 37

bicycle parking spaces and Capital Bikeshare station in front of the site will further support bicycling and help to meet existing demand near the site. Although there are no sidewalk gaps within ¼ mile of the site as identified by the Applicant, not all intersections leading to the site have upgraded or meet current ADA curb ramp and facility specifications.

- The Applicant will need to upgrade the intersection facilities leading to the site to meet current ADA standards; and
- The Applicant proposes 18 bicycle spaces within their off-street parking facility and 19 bicycle spaces outside of the building. The exact locations will need to be agreed with DDOT's Active Transportation Branch during the Preliminary Design Review Meeting (PDRM) phase of the public space review and permitting process.

The Military Road/Missouri Avenue Transportation Study, completed by DDOT in 2003 made safety improvement recommendations to the Georgia Avenue and Missouri Avenue intersection. The Applicant has agreed to implement targeted safety improvements as described below:

- Improve pedestrian refuges at the westbound and eastbound approaches to the Georgia Ave / Missouri Ave intersection;
- Install raised median at Missouri Avenue junction with Colorado Avenue to limit unsafe turning movements;
- Close curb cut at the junction of Georgia Avenue and Rock Creek Ford Road;
- Refurbish pavement markings and signage at Georgia Ave / Missouri Ave intersection.

Transit Services

The proposed development is expected to create some additional demand on existing bus services. However, the Applicant's Traffic Impact Study concludes that the number of *new* transit person trips per bus trip will be marginal. Specifically, the analysis shows, that the development will introduce an additional .51 person trips per bus in the AM peak hour, 1.19 person trips per bus in the PM peak hour, and 3.85 persons per bus in the Saturday peak.

The District of Columbia has made significant investments in the major bus routes serving the retail site, particularly the express service on Georgia Avenue. DDOT encourages transit use on these lines and will monitor the effects of new passengers following the opening of the proposed development to ensure impacts are acceptable. If bus travel times are reduced or other problems occur, DDOT will work with WMATA, and the Applicant to identify solutions.

In order to accommodate the turn lanes needed to increase roadway capacity (refer to the Roadway Capacity & Operations section) two existing bus stops will need to be relocated.

Further coordination with DDOT's Progressive Transit Services Administration (PTSA) and WMATA to determine the exact location and specification for the bus stops will be necessary.

In addition, the relocation of the near-side bus stop on Georgia Avenue from the intersection of Quackenbos Street and Georgia Avenue to the far-side intersection of Georgia Avenue and Peabody Streets should be considered as additional pedestrian safety improvement measure.

Site Access and Loading

The Applicant has supplied a truck routing plan as part of the Large Tract Review application. DDOT expects strict adherence to this plan to ensure that trucks remain on the designated routes to ensure there are no impacts to the surrounding residential areas.

Off-street parking access for the site will be via Peabody Street at the proposed driveway. In order to accommodate the increase in vehicular traffic turning to reach the site, the Applicant will need to implement mitigation actions as described in the Roadway Capacity & Operation section above.

All commercial loading will occur on site via the curb cut on Missouri Avenue. DDOT expects:

- That no loading will occur off of Georgia Avenue or on the public space;
- In order to accommodate heavy truck movements, the Applicant will construct a concrete pad on the westbound lanes at the Missouri Avenue driveway; and
- Heavy trucks WB-50 or larger will be subject to restricted morning and evening peak hour activity, in order to minimize pedestrian and vehicular conflicts during delivery.

Parking

The Applicant has proposed 348 parking spaces in a below grade parking facility, which meets the minimum parking requirements as established in the District of Columbia Municipal Regulations.

The proposed site plan includes the closure of existing curb cuts on Georgia Avenue and Peabody Street, which will create approximately 5 new curbside spaces. As previously mentioned in the Roadway Capacity & Operation section, in order to increase capacity at the intersections of Georgia Avenue and Missouri Avenue and Georgia Avenue and Peabody Street, turn lanes will need to be provided. These turn lanes will have to be accommodated with the elimination of approximately 18-22 curbside parking spots at various locations as proposed by the Applicant.

DDOT recognizes that losing curbside parking along this segment of Georgia Avenue is not desirable. However, this tradeoff is required in order to avoid substantial congestion at the intersection. Without making the change, delay would rise by approximately 9 seconds versus 4seconds per vehicle with the turn lanes in the northbound direction at Georgia Avenue and Missouri Avenue, and 18 seconds versus 6 seconds in the southbound direction in the AM peak period. According to the analysis completed by the Applicant, improvements to the existing conditions can be achieved with the turn lanes.

Safety

DDOT expects the Applicant to develop and implement a safety plan for heavy truck delivery coordination to the site. At a minimum, trucks WB-50 and larger should not occur during peak hours to ensure minimum pedestrian and vehicular conflicts.

In addition, the relocation of the 15 (ft) long double yellow centerline on the west side of Peabody Street is required and should provide a 12 (ft) wide approach lane for eastbound traffic and 18 (ft) wide lane for westbound traffic. This will improve safety for vehicles by providing more room for making a right turn from Georgia Avenue onto Peabody Street and reduce conflicts with vehicles going across the intersection towards the site.

Streetscape/Public Realm

The Great Streets Framework Plan lays out streetscape guidelines and identifies critical transportation improvements for the Georgia Avenue corridor. As a result, express bus services have been implemented on Georgia Avenue; and the DC Transit Future Plan has documented the intention to re-establish a streetcar line along the corridor. As such, the Applicant will need to closely coordinate with DDOT regarding changes to public space surrounding the property.

In line with District policy and practice, any substantial new building development or renovation is expected to rehabilitate streetscape infrastructure along its property line. The Applicant's site plan includes an extensive upgrade of all streetscape facilities bordering the site. The Applicant will need to work closely with DDOT to ensure that the design of the public realm meets current standards, and is consistent with the Great Streets Framework plan, and that the design meets various public space regulatory requirements.

Through DDOT's public space review and permitting process, the Applicant will be required to provide detailed engineering designs to accommodate the turn lanes, bus stop relocations, and the elimination of parking spaces. The Applicant team will also need to continue their coordination with Washington Metropolitan Area Transit Authority (WMATA) and community stakeholders.

Transportation Demand Management

DDOT is in support of the Applicant's approach to TDM initiatives as described in the May 16, 2011 submittal and expects these to be adopted. These include for example, implementation of a new bikeshare facility, transit incentives for employees, and a real time transit information kiosk. DDOT expects to see further details of the applicant's TDM plan.

Summary

The Applicant has met the requirements of the Large Tract Review process by capturing the transportation impacts and needed mitigation strategies. The proposed development will increase the number of trips to the site. Most notable, vehicular delay will increase at key intersections and more pedestrians will be utilizing facilities that require upgrades. As such, the Applicant has identified mitigation measures in order to reduce the transportation impact of their proposed development to include increased roadway capacity and safety, which will require the loss of curbside parking, along with other measures as described in this memorandum.

**ADVISORY NEIGHBORHOOD COMMISSION 4B
RESOLUTION ON THE
PROPOSED WALMART DEVELOPMENT
GEORGIA AND MISSOURI AVENUES N.W.**

Adopted on June 27, 2011

WHEREAS a new Walmart store has been proposed for the Curtis Chevrolet site located at Square 2986, Georgia and Missouri Avenues N.W.;

WHEREAS Foulger-Pratt ("Developer") submitted a Large Tract Review (LTR) application to the D.C. Office of Planning (OP) in March 2011.

WHEREAS this LTR is for a completely different proposal from the previous LTR submitted by Foulger-Pratt on December 1, 2008 and therefore should be submitted as a new LTR and not as an amendment to the previous one;

WHEREAS this proposed development is located within the boundaries of Advisory Neighborhood Commission 4B (the "Commission") and will have major impacts on the quality of life of the neighborhoods adjacent to it, especially, for example, the Florian Cooperative and nearby single-family homes;

WHEREAS according to the provisions of the District of Columbia Code: Division 1, Government of District: Title 1 Government Organization, Chapter 3 Specified Governmental Authority, Subchapter V. Advisory Neighborhood Commissions 1-309.10(a), 1-309.10(d)(3)(A), 1-309.10(d)(3)(B) and 1-309.10(d)(3)(C), it is therefore our understanding that ANC's have "great weight" regarding planning and street issues;

WHEREAS the goals of the LTR regulations are to a) "minimize adverse environmental, traffic and neighborhood impacts," b) "avoid unnecessary public costs in terms of new services or facilities required of city agencies," and c) "carry out the policies of the...Comprehensive Plan for the National Capital;" (See Title 10, Chapter 23, Large Tract Review Procedures)

WHEREAS the "Scope of Review" detailed in the LTR regulations requires that city agencies consider a) "consistency with the laws in the District of Columbia, including the Comprehensive Plan for the National Capital and regulations enacted pursuant thereto," b) "potential traffic,

neighborhood and design impact” and c) “quality of life and environmental impact” in assessing the LTR submission; (See Title 10, Chapter 23, Large Tract Review Procedures)

WHEREAS the Office of Planning (OP) extended the comment deadline to June 30 so that ANC 4B could review DDOT’s revised comments, but ANC 4B has not officially received these comments from DDOT nor from OP, and did not receive traffic study data included in the appendix of the April 2011 DDOT comments.

WHEREAS, ANC 4B should receive and review comments from the other agencies detailed in the OP document, “Snapshot of the Large Tract Review Process,” before making a decision, but did not. These agencies are the Department of Consumer and Regulatory Affairs, the Department of Public Works, Fire and Emergency Medical Services, the Metropolitan Police Department, the Office of the Attorney General, the Department of the Environment, the Water and Sewer Authority, and the Department of Housing and Community Development.

WHEREAS it is expected that approximately 61 acres of the Walter Reed Army Medical Center will be redeveloped to serve city needs and, therefore, may generate even more vehicular traffic;

WHEREAS the DC Department of Transportation (DDOT) has found that the intersection at Georgia and Missouri is a failed intersection, and the additional traffic generated by the proposed Walmart would increase the urgency to reconstruct the intersection in order to handle the significant increase in traffic.

WHEREAS the Washington Metropolitan Area Transit Authority’s (WMATA) Metrobus service for that site runs primarily north and south, and potential customers also live and travel from points east and west of Square 2986;

WHEREAS the “Complete Streets” concepts, which would accommodate biking, walking, public transit and freight movement, are being promoted by the Council of Governments for Washington DC, as well as for all other communities within its purview;

WHEREAS the bulk, massing, landscape and detail of the proposed Walmart building appears to be essentially a scaled-down version of Walmart’s suburban and rural style stores and does not take into consideration the history and character of the community;

WHEREAS the old car barn, constructed in 1909 and originally used to service street cars, is an important link marking the history of the development of the area;

WHEREAS the Commission established a special committee to address the Walmart proposal, which included community residents, businesses and planning professionals;

WHEREAS, these reports are attached for review and consideration;

BE IT THEREFORE RESOLVED that ANC 4B would not support the Walmart LTR unless the recommendations below are incorporated into the project.

However, due to our incomplete receipt of traffic study information as well as the key DDOT report promised by OP by June 14 and from other crucial agencies specified in the OP document, "Snapshot of the Large Tract Review Process," we reserve the right to make additional comments.

A. Community Involvement and Consultation Recommendations For Community Benefits Agreement and Legislative and Administrative Action

Walmart should sign a binding and enforceable Community Benefits Agreement that will spell out its commitments with respect to hiring and employment practices, workforce training, contracting, transportation and traffic mitigation, environmentally sound building practices, public safety, small business assistance, community input, and financial support for on-going community programs. These recommendations are detailed throughout this resolution.

Walmart and the Developer must agree to the formation of a Community Advisory Committee composed of residents of the neighborhoods immediately adjacent to the location of the development, including residents of 4B04, the 4B04 Commissioner, the ANC 4B Chair or ANC designees. 4B04 residents should make up one third of the Committee. "Immediately adjacent to" is defined as residents located within 1,000 feet of the development. This Community Advisory Committee shall have the following responsibilities if the store opens:

- (a) Meet with Walmart on a regular basis (at least once a month) before, during and after construction of the project;

(b) Monitor construction activities and advise Walmart on measures to mitigate negative impacts of construction activities on neighborhood quality of life;

(c) Monitor impacts of traffic flow, traffic congestion and advise Walmart, DDOT, MPD and other relevant DC agencies on measures to mitigate adverse conditions;

(d) Monitor Walmart's compliance with any community benefits agreements entered into by Walmart with the District government and the community, and advise appropriate agencies of any issues, problems or concerns;

(e) Monitor security management, site management and maintenance and all other activities potentially impacting neighborhood quality of life;

(f) Walmart shall commit to provide to the Community Advisory Committee all documents and other information necessary for the Committee to meet its responsibilities, to meet regularly with the Committee, and to make Walmart management personnel available for Committee consultations, meetings, and decisions.

B. Site Plan and Development Recommendations

1. Walmart should provide a three-dimensional model of the proposed store and neighboring buildings as depicted in the published plans. This model should be shown at community and government meetings and hearings and altered as plans are revised. This would help residents and government officials visualize the proposal and its impact on the community.
2. Foulger-Pratt should create a phased development program for the site, constructing the building in such a way as to allow for the addition of upper-story housing at a later date, as both economic circumstances and demand warrant.
3. This will necessitate some redesign of the building including the possibility of some increase in parking beyond that required by the proposed retail use to service the addition of upper story housing at some point in the future. (The truss-style roof of the streetcar barn likely couldn't be retained in a future redevelopment phase.)

4. Building the capacity for mixed use development in the future may necessitate some DC Government financing to encourage this preferred course of development on the site.
5. The Commission recommends that the OP and the Deputy Mayor for Planning and Economic Development discuss and finalize with the developers a commitment to sign a 20-year or shorter lease term. This is more commensurate with typical time frames for redeveloping similar properties.
6. Economic impact to the city of a single use vs. a mixed use project further justifies a preference for a mixed use project at this site and further supports a shorter lease term.

C. Building Design Recommendations

1. Walmart should present an architectural design that is compatible with and enhances the better features of the historic architecture and character of the surrounding community;
2. Walmart should present a design which incorporates the existing structure of the car barn into the architecture of a new building or buildings on that site in a highly visible and identifiable way, such as building around it and featuring it in the internal design of the building;
3. Walmart should reorganize the design and operation of the store so that separate departments of the store, such as the grocery department, prepared food counters (e.g., most Walmarts have a quick service food counter, with tables and chairs), are placed with entrances on Georgia Avenue, thereby punctuating the façade, providing more openings, and more reasons to walk along the entire block of the Georgia Avenue frontage, and better connecting this large scale building to the otherwise relatively small scale and punctuated streetscape that currently defines Georgia Avenue.
4. The Missouri Avenue elevation especially, but the Peabody Street elevation and street parking as well, should be redesigned to better engage with the street in keeping with urban design principles focused on creating great storefront, walkable streets, and street experiences on the first floors of buildings in urban commercial districts.

D. Transportation Demand Management Recommendations

1. Walmart should provide a shuttle service between their store and the Georgia Avenue-Petworth Metro Station and the Ft. Totten Metro station, or negotiate with WMATA, the Circulator, or a private bus company to do so.
2. Walmart should offer delivery services for all transactions totaling at least \$50.
3. Walmart should make home delivery services a routine and standard part of their service offering in urban/center city store locations, not just at the Georgia Avenue location, but in all the stores in DC.
4. Walmart should agree to explore with DDOT setting up a shared parking situation with the on-site customer parking spaces, perhaps through the creation of a "transportation management district" to manage this and other transportation demand management initiatives in both this and the Walter Reed commercial nodes on Georgia Avenue.
5. Walmart should provide Metro Smartcards, transit and/or other transportation benefits to employees to limit the number of trips employees make to the store by car.
6. Foulger-Pratt and Walmart should sign an agreement with the Florian Cooperative and other adjacent property owners.
7. Walmart should agree to not receive deliveries during morning (7:00 a.m. to 9:00 a.m.) and evening (3:30 p.m. to 7:00 p.m.) rush hour traffic periods.
8. The LTR Transportation Study submitted by Walmart assumes that all trucks making deliveries to the proposed store will travel south from the Capital Beltway via New Hampshire Avenue, and then make a right turn onto Missouri Avenue NW and another right turn into the site. Walmart must explain (a) the reasons for its assumption that there will never be any delivery trucks travelling on Georgia Avenue and (b) assuming that some delivery vehicles may occasionally travel on Georgia Avenue, Walmart must specify in writing what route these trucks would take to avoid making a left turn into the site across Missouri Avenue especially considering cases where Missouri Avenue traffic is blocked on the Walmart street side or blocked on both sides of the street due to snow, flood, police or traffic emergency, etc.

E. Traffic Circulation Recommendations

1. The Commission supports the developer proposal to add six feet to the width of the street on the south side of the 900 block of Peabody Street, along the entire length of Lot 35.
2. Walmart should employ security to monitor the parking lot and all other areas of the store. A weatherized booth should be incorporated as part of the parking lot entrance to allow security personnel to monitor the lot and the surrounding street. The structure should include an automated system to alert prospective customers attempting to park in the Walmart garage when the parking lot is full.
3. Install a traffic diverter midway in the 900 block of Peabody Street, between the "Curtis" section and the residential section of Square 2986 to ease customer traffic into and out of the Walmart development without imposing on the residential portion of the block and to eliminate cut-through traffic on Peabody Street.
4. Consider adding angled parking by permit only to the eastern section of the 900 block of Peabody Street, NW, the cost of which should be borne by the developer.
5. Eliminate public parking on the north side of the western section (i.e., west of the diverter) of Peabody Street, NW, alongside the police station, to provide parking spaces for the Fourth District police cars.
6. Put restrictions on through-traffic between Blair Road and Georgia Avenue, at least for Peabody (if a diverter is not installed) and Quackenbos Streets, and maybe Rittenhouse Street, with recurring enforcement efforts, to limit the impact of the Walmart store in terms of generating cut-through traffic on residents.
7. Walmart must develop a traffic congestion mitigation plan that specifies the measures that will be taken by Walmart to address congestion or backups in their entrances and driveways that may occur from vehicle breakdowns, accidents, or other causes.

F. Transportation Planning and Engineering Recommendations

1. We believe that despite DDOT's recommendations, dated June 24, 2011, the intersection at Georgia and Missouri needs to be reconstructed to meet the increased traffic that this project will generate. Walmart, in consultation with DC government officials,

should pay for the cost to reconstruct the Georgia Avenue-Missouri Avenue intersection to improve its geometry and capacity and to reduce congestion. This will prove to be an important investment to mitigate traffic congestion, revitalize Georgia Avenue and Upper Northwest DC, and is an investment with a multi-decade impact.

2. The DC government should present a clearer multi-modal access plan which will support a more walkable, bike-able community, with special attention to comfortable pedestrian walkways and safe bike lanes which connect to other bike lanes in the vicinity;
3. The DC government should prioritize and commence the planning, design, and engineering for streetcar service on Georgia Avenue, in order to reduce the negative traffic impact that would otherwise occur. This is an energy-efficient mode of transportation as there is currently limited transit service in the corridor (bus only), north of New Hampshire Avenue to Downtown Silver Spring and to the Silver Spring Metro Station.
4. The DC government should make sure that current road construction projects along Georgia Avenue incorporate streetcar tracks to support the development of the streetcar service and to reduce the need for later and more costly reconstruction.
5. The DC government should allocate funds and commence planning for the creation of the Kennedy Street to Walter Reed section of the Georgia Avenue Great Streets Master Plan.

G. Safety Recommendation

Walmart should be required to submit a safety and security management plan including, and with special attention to the store's parking lot before a certificate of occupancy is issued for the operation of the store. Special considerations should be provided concerning special sales events and holiday periods.

H. Neighborhood Economic Impact Recommendations

1. OP should conduct a more detailed and complete analysis of the neighborhood economic impact of a Walmart general merchandise/supermarket combination store in Ward 4, as a legitimate interpretation of the provisions of the LTR process concerning minimization of adverse neighborhood impacts. If potentially negative impacts cannot be expected to be reasonably mitigated, denial of the application in whole or in part could potentially be justified.

2. As agreed to by Walmart representatives in public meetings, Walmart should agree in writing not to apply for or receive the tax benefits and incentives available to supermarkets and grocery stores in the District of Columbia.
3. A mitigation program should be created to manage the entry of Walmart into the Georgia Avenue corridor generally, and into the Missouri Avenue-Piney Branch Road commercial district node specifically, which will limit potentially negative impacts on retailers. This should be done, to the extent possible, in a proactive manner through various commercial district revitalization activities and should be funded by the developer and/or Walmart.
4. Funds should be made available for technical assistance to merchants, façade improvement projects, marketing, financial management, and other initiatives, in advance of (and after) the opening of the Walmart store, to better prepare retailers to face and address competition. (The Main Street commercial district revitalization program, such as the program in Old Takoma, serving both DC and Maryland, is one such model for this type of program.)
5. A revitalization coordinator should be hired and paid for by Walmart/Foulger-Pratt for at least a three year period to develop and manage this program in association with merchants, residents, and other stakeholders. This person could be assigned to work as part of the Deputy Mayor's Office for Planning and Economic Development and/or OP or related agencies.
6. A master database of all commercial properties should be created, with data on lease terms, property size, building condition, revenue potential/square footage and other relevant information, for use in the execution of this program.
7. A recruitment and development program to attract new businesses and new development should be executed simultaneously with the development and implementation of the technical assistance and support program for extant businesses and properties.
8. Part of the mitigation program should include the creation of promotional materials for the Missouri Avenue to Piney Branch Road commercial node on Georgia Avenue.

I. Community Benefits Recommendation

1. The Commission recommends that "Community Benefits" be divided into the following 4 sections:
 - a. Mitigate the impact of and design the physical structure and operations so that it is safe, efficient, effective and "green" (i.e., environmentally sound), especially regarding traffic and transportation, and public safety.
 - b. Establish and implement hiring and employment policies which ensure equitable treatment and promotion based on merit, as well as make a special effort to train and hire local contractors and employees, including those with conditions and personal histories which generally make it difficult for them to find steady work.
 - c. Develop technical assistance and training programs for local businesses surrounding Square 2986 in cooperation with appropriate education and training institutions in DC.
 - d. Structure a section of the Walmart Foundation to accept applications for grants for the public benefit of DC residents. The applications must meet a set of conditions to be determined, and applications would be accepted only after the store is open for business.
2. The Community Benefits Agreement, developed by the Community subcommittee, is attached and is part of these recommendations.

J. Recommendations for Rectifying Gaps in Planning and Zoning Regulations

1. DC should impose impact fees on new development. The collection of such monies is a fair and equitable way to address the mitigation of project impacts and a viable source of income to reimburse the District government for the cost of the new infrastructure and services required by new development. Area jurisdictions, including Montgomery County, already do this successfully.
2. The LTR process does not adequately address the potentially negative economic impact of projects generally. The LTR process is also deficient because it is essentially advisory, without the ability to directly mandate action or deny approval. These defects in the

LTR process should be addressed and the process made more robust.

3. DC should create a new mandatory review process ("Large Retail Impact Review") to address the various economic and other impacts of large scale retail projects in excess of 75,000 square feet.
4. The LTR regulations should be amended to require that all residents, businesses, and property owners within 1,000 feet of a property subject to an LTR receive written notification of the submission, what the review includes, and the deadline for comment.
5. Arguably, the Georgia Avenue site on Square 2986 does not currently have the capacity to meet the demands of uses generating great numbers of automobile trips, and therefore high traffic generating uses should not be located there unless and until that condition is successfully addressed. Land use and building use approval processes should include provisions for linking use approvals to sites with the capacity to satisfy transportation demand to a great extent through the use of already extant transportation infrastructure. The "ABC" planning process employed in the Netherlands is a model for how this could be done in practice¹.

¹ <http://www.eaue.de/winuwd/131.htm>

EXHIBIT B



Ellen M. McCarthy*

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Practice Teams

Real Estate

Areas of Focus

Zoning

Land Use

Historic Preservation

Practice Areas

Ellen McCarthy is the director of planning and land use for the firm. She has more than 35 years of experience in the planning field, with a focus on zoning, neighborhood planning, and historic preservation. Ellen feels that her past work in both the public and private sectors has provided insight into the needs of each side, and allows her to assist clients in designing projects and entitlement requests from the outset to increase the likelihood of efficient approvals, with minimal need for redesign, lengthy hearings and community conflict. She advises clients in all aspects of zoning and development review before the DC Zoning Commission, the Historic Preservation Review Board and the Board of Zoning Adjustment, including planned unit developments, re-zonings, variances, and special exceptions. She also assists clients with processes such as street and alley closings, antennas, roof structure reviews, downtown development district compliance and transfers of development rights, as well as federal land use, preservation, and environmental reviews.

*Ellen is not a member of the legal profession.

Recent Articles and Legal Updates

- Arent Fox's Director of Planning and Land Use, Ellen McCarthy, Interviewed in *The Washington Post* Discussing District's Population Growth

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Previous Work

Previously, Ellen was the director of planning and land use for a large US law firm. Prior to that, she served as the director of the District of Columbia Office of Planning, where she managed a 65-person team in providing a wide range of services for District of Columbia citizens. Her projects included completing the preparation and obtaining unanimous city council adoption of the first new Comprehensive Plan in 20 years, the re-engineering of the development review function, and the crafting of a strategy to revitalize dilapidated affordable housing projects into lively, mixed-use, mixed-income neighborhoods while retaining existing low-income residents. She also directed the integration of the Historic Preservation Office into the Office of Planning from the permitting department, revamping its financial accountability system, and oversaw planning efforts for the Anacostia Transit Station Area, Northeast Gateway, Shaw/Convention Center Area, NoMA, and Georgia Avenue, along with completion of new zoning for the Anacostia waterfront district, Mt. Vernon Triangle, H Street, and numerous large development projects.

Professional Activities

Ellen has been involved in several civic and professional organizations. She currently serves on the board of directors of Cultural Tourism DC, an umbrella organization of more than 200 arts and cultural organizations as well as many embassies. She also serves on the Zoning Revision Task Force, advising the Office of Planning on its ongoing total overhaul of the DC Zoning Regulations, and is co-facilitator of the Working Group on the Built Environment for the Mayor's City-Wide Sustainability Initiative. She is a member of the Local Advisory Council of the Washington office of the Local Initiatives Support Corporation (LISC). In addition, she co-chairs the Task Force on Public Policy and Regulatory Reform for the Washington effort of the Urban Land Institute's Terwilliger Workforce Housing Initiative. Ellen served on the boards of directors of the Washington Area Community Investment Fund (low-income housing finance organization) the Housing Council of Catholic Charities of the Archdiocese of Washington, DC, the DC Preservation League, and the Washington Architectural Foundation, as well as the Board of Trustees of the Committee of 100 on the Federal City, and she was active in the Citizens Planning Coalition. She was elected president of the National Capital Area Chapter, American Planning Association, and co-chair of the Coalition for a Living Downtown. She also currently serves on the Steering Committee of Ward 3 Vision, a local organization organized to advocate for smart growth in upper northwest, DC.

Publications, Presentations and Recognitions

- "Revitalizing Downtown DC," *Real Estate Review*. Winter, 2009
- "Center Cities," *Land Use in Transition*, co-written with Richard H. Bradley and Gayle L. Berens
- "The Management and Organization of Ridesharing Programs," *Transportation Research Board Special Report*, co-written with Richard Bradley, 1985
- "The Role of Transit in Creating Livable Metropolitan Communities," *National Academy Press*, 1997
- "Integration of Paratransit with Conventional Transit Systems," *Information Bulletin*, The Urban Consortium, Public Technology, Inc.
- "Institutional Framework for Integrated Transportation Planning," *Information Bulletin*, The Urban Consortium, Public Technology, Inc.
- "Transportation Planning and Impact Forecasting Tools," *Information Bulletin*, The Urban Consortium, Public Technology, Inc.
- *Manual for Planning and Implementing Priority Treatments for High-Occupancy Vehicles*, co-written with Gary Hebert, Urban Consortium, Public Technology, Inc.

For the American Public Transit Association:

- "An Analysis of the US Department of Transportation's National Transportation Policy," 1975

For the World Congress on Transport Research for Social and Economic Progress:

- "A New Role of Transportation System Managers: Public Entrepreneurs," Proceedings, World Congress on Transport Research for Social and Economic Progress, 1980
- ULI Conference on Anchor Institutions as Catalysts for Urban Reinvestment – "Win-Win Approaches to University Development: a George Washington University Case Study"
- ULI District Council
 - Presenter – Urban Marketplace Conference
 - Organizer – Session on Economic Development for Land Use Leadership Institute
- Society for College and University Planning – "A Case Study of the George Washington University Campus Plan Process"
- DC Building Industry Association
 - "Repositioning Older Assets – Cost Effective Approaches to Adding Value"
 - "Development Activity East of the River"
 - "Trends in Retail"
- Bisnow – Moderator on panel on real estate issues
- Lectured for Classes at GU Law School, GU, GWU Real Estate Program, U MD Real Estate Program
- Cincinnati Town Hall Meeting – Presentation on the DC Comprehensive Plan Process
- National Building Museum – presentations for various programs including a forum on planning commissions and a session on Comprehensive Planning in the US
- Numerous presentations to smaller groups including the League of Women Voters, various community organizations, Leadership Washington, a private equity fund and others.

Ellen has been recognized with an Entrepreneurial American Leadership Award by the Partners for Livable Communities, a national organization which promotes healthy, vibrant cities and towns; an Outstanding Performance Award from the US Department of Transportation; a Chapter Service Award from the National Capital Area Chapter of the American Planning Association; and was awarded a Fannie Mae Housing Fellowship to attend the John F. Kennedy School Program for Senior Executives in State and Local Government at Harvard University.

Press Coverage

- Arent Fox Director of Planning & Land Use Ellen M. McCarthy discusses future of RFK Stadium with The Washington Post
 - Arent Fox's Ellen McCarthy Honored by Partners for Livable Communities
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Education

Harvard University, Department of City and Regional Planning, MCP, 1974
University of Maryland, BA (Phi Beta Kappa, with high honors), 1972

Life Beyond the Law

Ellen is an active volunteer in community efforts, and enjoys biking with her husband, reading, gardening, and knitting. She especially enjoys visiting her two children at college.

Certificate of Service

I hereby certify that the foregoing Motion and Opposition were sent by email and first class, postage prepaid, on October 8, 2012, to the following:

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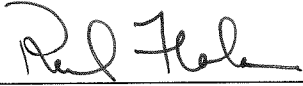
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