

Memorandum in Support of Appeal

The Inspector of Buildings (“Inspector”) erred by granting Missouri Avenue Development Partners, LLC (“Developer”) building permit No. B1202925. The Developer obtained this building permit in order to build a proposed Walmart at 5929 Georgia Avenue, NW in Ward 4 (“proposed Walmart”). This development is planned as a 106,244 square foot retail building. The entire building would be located within the C-3-A zone. Residents of Ward 4, including William Washington, Ginia Avery, Willie Baker Jr., Michael Wilson, Edna Dogget, and Baruti Jahi (“Residents”), have filed an appeal with the Board of Zoning Adjustment (“BZA”) opposing the proposed Walmart because the Inspector issued the building permit illegally.

This Memorandum outlines the reasons in support of the Residents’ appeal. In particular, the Inspector’s issuance of the building permit is illegal because it violates the District Elements of D.C.’s Comprehensive Plan (“Comprehensive Plan”).¹ Before outlining the bases for these violations, this Memorandum outlines the basis for BZA’s jurisdiction over this matter.

I. BZA has jurisdiction to consider this appeal.

The BZA has jurisdiction to consider whether a building permit authorizing the construction of a particular development violates the goals of the Comprehensive Plan based on its statutory authority under Title 6, Chapter 6, Subchapter 4 of the DC Code. As a preliminary matter, the BZA has jurisdiction to hear appeals concerning the issuance of a building permit. Section 6-641.07(f) of the DC Code provides:

Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any office or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter.

The Inspector’s issuance of a building permit to an applicant (i.e., a developer) is illegal “unless the plans of and for the proposed erection, construction, reconstruction, conversion, or alteration fully conform to the provisions of this subchapter and of the

¹ The Residents may provide a supplemental Memorandum to this Memorandum (up until 14 days prior to the hearing in this appeal) outlining additional violations of the Comprehensive Plan and the large tract review, and the bases for these violations, after reviewing more documents pertaining to approval of the proposed Walmart.

regulations adopted under said sections.” § 6-641.09 of the DC Code. Among the provisions of this subchapter to which a building permit must conform is Section 6-641.02. This section requires that “Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital.” § 6-641.02 of the DC Code. Accordingly, the issuance of a building permit must conform to the regulations that are designed to implement the comprehensive plan.

Two of those regulations implicated in this case are Sections 2300.1 and 2300.2 of Chapter 10-B of DC’s Municipal Regulations. Section 2300.1 of these regulations requires that any commercial or mixed-use development which exceeds 50,000 square feet be subject to large tract review by the DC Office of Planning prior to applying, and then securing, a building permit. 10 DCMR 2300.1(a). The proposed Walmart was required to undergo this process because it is a commercial development that exceeds 50,000 square feet and is not located in a zone exempted from this process (i.e., C-3-C zone). Section 2300.2 outlines the goals of large tract review. These goals include: (a) minimizing adverse environmental, traffic and neighborhood impacts; (b) avoiding unnecessary public costs in terms of new services or facilities required of city agencies; and (c) carrying out the policies of the District Elements of the Comprehensive Plan for the National Capital. 10 DCMR 2300.2.

As discussed below, the proposed Walmart does not satisfy Section 2300.2 because it fails to carry out the policies of the District Elements of the Comprehensive plan. Because the proposed Walmart violates this regulation, the Inspector illegally issued the building permit: the Inspector should have ensured that the building permit conformed to all applicable regulations before the Developer was granted this permit.

II. The proposed Walmart violates the policies of the East of Rock Creek Park Element of the Comprehensive Plan, and the Upper Georgia Avenue Great Streets Redevelopment Plan.

The development of a Walmart at 5929 Georgia Avenue violates the goals of both the district elements of the Comprehensive Plan for this site and the Upper Georgia Avenue Great Streets Redevelopment Plan. The Comprehensive Plan includes various District Elements that apply specifically to the proposed site, including the East of Rock Creek Park Element (“East of Rock Creek Park Element”) and Economic Development Element (“Economic Development Element”). In addition to the Comprehensive Plan, the development goals of this site are informed by the Upper Georgia Avenue Great Streets Redevelopment Plan (“Upper Georgia Avenue Plan”). The proposed Walmart fails to comport to the policies of each of these plans.

First, this Walmart would violate the East of Rock Creek Park Element’s policy for new grocery stores. This policy only supports adding grocery stores “in

neighborhoods where residents currently travel long distances for food and other shopping services.” Economic Development Element at 7-19, Policy ED-2.2.6. Similarly, the Upper Georgia Avenue Plan promotes an additional grocery store only “[i]f a store is not possible further north in Zone 1.” Upper Georgia Avenue Plan at 34-35, Policy 4.2.3. However, the residents of this district are already served by nearby grocery stores that do not require them to travel long distances. In relation to the site of the proposed Walmart, there is a Safeway hardly half a mile north at 6500 Piney Branch Road, and a second Safeway 1.6 miles south at 3830 Georgia Avenue. Within a 1.5 mile radius of the proposed site is a Yes! Organic Market at 4100 Georgia Avenue; the PanAm Market at Michigan and Easter Avenues; and a Giant Supermarket at Easter Avenue and Riggs Road.

Second, this Walmart would violate the East of Rock Creek Park Element’s policy for pedestrian-oriented development in this district. This policy seeks to promote “pedestrian-oriented ‘centers’” rather than “auto-oriented ‘strips.’” East of Rock Creek Park Element at 22-9. “Much of the area continues to be underserved by basic consumer services like banks, hardware stores, and sit-down restaurants.” *Id.* Thus, the community “expressed a strong preference for neighborhood-serving, rather than regional commercial uses. Such uses should be complementary to the low scale of existing development. . . .” *Id.* The vision for this portion of Georgia Avenue is as “a walkable shopping street.” *Id.* at 22-25, Policy RCE-2.3.1.

Yet the proposed Walmart would defeat all of these goals. This type of development is not “pedestrian-oriented” or made to facilitate “a walkable shopping street,” but instead “auto-oriented” given the developer’s own admission that this Walmart is designed to “attract commuters for ‘pass-by’ trips.” Developer’s Statement of Support, <http://anc4b.info/walmartLTR.pdf>, at 1. Moreover, by definition Walmart constitutes regional (if not national) commercial uses contrary to the community’s “strong preference for neighborhood-serving uses.” East of Rock Creek Park Element at 22-9. Inclusion of this Walmart will undermine promoting the very types of businesses the community seeks, including “banks, hardware stores, and sit-down restaurants.” *Id.*

This proposed Walmart also violates the vision of the Upper Georgia Avenue Plan. Like the East of Rock Creek Park Element, this plan seeks to promote “a mix of uses that achieve the pedestrian oriented, neighborhood serving vision,” such as “basic consumer services like banks, hardware stores, and sit-down restaurants.” And specifically at the site of the proposed Walmart, this plan seeks such businesses as “a movie theater, bookstore, hardware store, child care facility, gym, and sit-down restaurants.” Upper Georgia Avenue Plan at 5.4. None of these uses are part of the proposed Wal-Mart store.²

² Further, the Developer’s statement that the Upper Georgia Avenue Plan calls the site of the proposed Walmart “the most viable opportunity in the entire study area for a large-

III. The proposed Walmart violates the economic policies for this site.

The proposed Walmart is in violation to D.C.'s economic policies for this site. The Economic Development Element of the Comprehensive Plan states that the goal of promoting neighborhood shopping means "the creation of locally-owned, non-chain establishments because of their role in creating unique shopping experiences." Economic Development Element at 7-19, Policy ED-2.2.3. It goes without saying that Walmart is as much of an opposite as possible of a locally-owned, non-chain establishment. At the same time, the East of Rock Creek Park Element of the Comprehensive Plan directs that land use decisions "Assist small and minority businesses along Kennedy Street, Georgia Avenue and other Rock Creek East commercial districts in providing neighborhood services and creating job opportunities for area residents. East of Rock Creek Park Element at 22-16, Policy RCE 1.2.6. Building a Walmart will make many of these businesses, which are already struggling, go out of business. They are simply not in a position to compete with Walmart given that Walmart can sell similar products at lower prices and hire employees at lower wages.

Nor is there any support for the Developer's assertion that Walmart will increase tax revenues and jobs for D.C. by generating increased consumers and sales in the City. The attached economic impact study by Michael Siegel corroborates this finding. With respect to sales, his study notes, for example, that in Richmond, non-chain grocery store sales fell by 19 percent following the opening of Walmart superstores in the area and total taxable sales of Richmond's chain grocery stores fell by 22 percent. Siegel Report at 5. More generally, "Inflation-adjustable taxable grocery sales have declined from 22 percent to as much as 80 percent in some Virginia host countries in the years following the opening of a new Walmart supercenter." *Id.* at 4. Regarding jobs, the Siegel Report found that after a Walmart opened in Henrico County, Virginia, total food and beverage jobs in Richmond fell by 28 percent between 1998 and 2008 and the number of grocery only (chain and non-chain) jobs in Richmond fell by 33 percent. Siegel Report at Table 1. Meanwhile, a new Walmart in the city of Chicago generated zero net gain in employment, income, sales and taxes to the City as a result of the diversion of jobs and revenue from existing businesses in the vicinity of the new Walmart. *Id.* at 7. The impact of the proposed Walmart will have a particularly devastating effect on small and

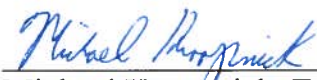
scale redevelopment in one location" is especially misleading. Developer's Statement of Support, <http://anc4b.info/walmartLTR.pdf>, at 9. In fact, this statement appears in Section 4.3.2 of the Upper Georgia Avenue Plan pertaining to the "Housing Development Potentials by Zone." Likewise, the Upper Georgia Avenue Plan also calls for "mixed used development" at the site of the proposed Walmart with "between 5-6 stories with ground floor retail, and residential above." Upper Georgia Avenue Plan at 62. The Developer's proposal, however, fails to include any housing at this site and is limited Walmart.

minority-owned businesses who serve the same customer base that the proposed Walmart intends to serve.

Conclusion

For the foregoing reasons, Appellants respectfully request that the BZA reverse the Inspector's issuance of building permit No. B1202925.

Respectfully Submitted,



Michael Kroopnick, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue
Suite 803
Towson, Maryland 21204
(410)-296-8166
mkroopnick@gmacynelson.com
Attorney for Appellants