

### **Testimony of Peter W. Brusoe**

Good morning My name is Peter Brusoe, and I am the President of the Woodley Park Community Association I have lived in a Woodley Park apartment since 2005 and served the Community Association as an officer for the better part of 7 years

WPCA opposes a special exception from the 25% eating establishment limitation We do not oppose the other relief sought by the applicant, but the board does not have to reach those issues because it should deny the application as to the 25% cap

My testimony will respond to the claims made by the applicant in support of its special exception request Barbara Ioanes, the vice president of our association, will explain the importance of maintaining the integrity of the limitation

### **The Applicant Is Wrong About the History**

The applicant says (without any citation) that "Woodley Park was in fact above 25 percent from the start " (Prehearing Statement at 5 ) That simply is not true ANC3C was watchful of the cap from the start, as shown by the attached 1996 letter to DCRA expressing concern over the licensing of another restaurant (Unfortunately, we do not have a copy of DCRA's response ) This letter would not have been written if Woodley Park was above 25 percent from the start

More telling is correspondence from 2004, which includes a DCRA chart showing the restaurant percentage at 24 78%.

Unfortunately, DCRA apparently lost sight of this fact that we were just a hair short of 25% and continued to issue permits to allow additional restaurants to move into the district,

resulting in the situation we have today

### The Applicant's Initial Submission

In order to qualify for a special exception under, the applicant must show that "[e]xceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area " DCMR § 11-1304 1(a) <sup>1</sup>

In its initial filing, the applicant relies on "the continuing effects of the economic recession [that] have had a debilitating effect on small retail and restaurants in the immediate Woodley Park neighborhood " It said, "Small businesses have failed, leaving ground floor space vacant, thus detracting from the quality and character of the streetscape .. " Preliminary Statement at 3.

This paints a pretty desolate picture It Sounds like Woodley Park is full of vacant storefronts, with tumbleweeds going down Connecticut Avenue The problem is, that it just isn't true The fact is that, when this was written, there was exactly one vacant storefront in the neighborhood — this one

Sure businesses have come and gone since the economic recession — as they did before it In fact, one closed last month, but within a few days a new tenant was publicly announced. That's not "exceptional circumstances" — that's the normal course of business

This neighborhood commercial district is in desirable neighborhood with Metro access and residential and visitor buying power It is quite healthy A new 200-plus-unit rental building that just opened a block away will increase the number of residents looking to shop

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<sup>1</sup> In its Preliminary Statement of Compliance, the applicant said (on page 1) that it wanted a variance from the 25% limitation It has since corrected that mistake and now asks for a special exception

nearby, and a renovation of a hotel tower will bring even more permanent residents. The economic distress asserted by Nando's doesn't exist.

A related argument applicant makes is that only a national chain business is stable enough to succeed in Woodley Park.<sup>2</sup> But Woodley Park is home to many local non-restaurant businesses that have been in the neighborhood literally for decades — such as, Debonair Cleaners, Sherry's Wines, and Salon Roi. Stability can be found without having to turn to a national chain restaurant. In fact, it is my impression that there is greater tenant turnover among restaurants than non-restaurant businesses.

#### The Applicant's Prehearing Statement

Apparently realizing that "the continuing effects of the economic recession" does not satisfy the "exceptional circumstances" test it acknowledges it must meet, the applicant makes a new argument in its supplemental filing. It now says that "the owner's inability to lease the space to an appropriate matter-of-right use during the past 18 months" is grounds for a special exception. Prehearing Statement at 8.

But that assertion is disproven by the admission that the landlord found two matter-of-right businesses to lease the space.

In fact, other non-restaurant businesses have moved into Woodley Park in recent months (a pet supply store a couple of doors down and a bakery opposite the Zoo).

More important, you don't get a pass at complying with the rules just because it might be a little difficult to do so.

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<sup>2</sup> "Market conditions demand tenants with good credit ratings, and eating establishments with a national presence have the requisite financial stability to not only sign leases but proven track records of success. Without such capabilities, the space is at risk of remaining vacant, which negatively affects the streetscape and viability of other retail spaces." Preliminary Statement at 6.

### WPCA Activity

WPCA received this application in September, and it was discussed at the early October Board meeting. The consensus was that if an argument based on non-existent effects of an economic downturn several years ago was sufficient to support further breach of the 25% cap, then the cap was pretty much unenforceable. This was a major issue, and should involve broad discussion. The Board decided that it was critical that the members have an opportunity to discuss whether they thought the cap was a good thing or not. The issue at hand wasn't Nando's, because any landlord could point to the economic downturn to support an exception for just about any restaurant.

We publicized the meeting in two ways — by sending two emails to the 4-500 members on our email list and by putting a discussion of the issue on the front page of our print newsletter that was mailed to some 1,500 households in the neighborhood. Thirty-five to 40 people attended the meeting, both members and non-members. Most of those who spoke supported continuation and enforcement of the restaurant limitation. A vote was taken, and a motion to oppose this application as to the 25% cap passed 15-6. At the end of the day, the people who live and call Woodley Park Home oppose the breaking of the cap, and support the current zoning. As the applicant has not come remotely close to satisfying the strict test for an exception, we urge the Board to support the community and neighborhood and deny the application.

Thank you

# ADVISORY NEIGHBORHOOD COMMISSION 3-C

## GOVERNMENT OF THE DISTRICT OF COLUMBIA

CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE HEIGHTS • McLEAN GARDENS • WOODLEY PARK

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2737 DEVONSHIRE PLACE, N.W.  
WASHINGTON, D.C. 20008  
(202) 232-2232

Single Member District Commissioners

01-Cheryl A. Opedinch  
02-Jan P. Gordon  
03-Maureen Blum  
04-Jeanne Ingram  
05-Emilia Strand  
06-Phil Mendelson  
07-Marcy Rothblum  
08-Rosalyn P. Doggett  
09-Jeremy Bates

July 8, 1996

Mr. Hampton Cross, Director  
Department of Consumer and  
Regulatory Affairs  
District of Columbia Government

Dear Hampton:

I am writing regarding two issues relating to land and building use in the Woodley Park Overlay Zone district with which I would appreciate your review.

First, the Woodley Park Overlay Zone specifically prohibits "fast food" restaurants. Recently, a "fast food" restaurant, Papa Joe's Pizza, opened at 2311 Calvert Street. The very problems have surfaced that the Woodley Park neighborhood cited in our effective arguments before the Zoning Commission that such uses are inappropriate in this local neighborhood commercial center. The D.C. Government, e.g., the Office of Planning, as well as Councilmembers for Ward 1 and Ward 3, supported the neighborhood on this prohibition.

I would appreciate a review by your office of this situation and information on steps that will be taken to correct it, as well as steps that will be taken to preclude it happening again.

Second, the Woodley Park Overlay Zone limits the number of restaurants within its boundaries. Very recently, another restaurant, The Acapulco, opened in the 2600 block of Connecticut Avenue.

I would appreciate a review by your office on whether the limits on restaurants have been exceeded and the extent of this. Should the limits not yet be reached, please advise as to the present status. Additionally, I would appreciate knowing what steps are in place to ensure that the restaurant limits are not exceeded.

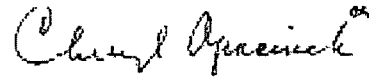
Mr. Hampton Cross

-2-

July 8, 1996

Please call me at (703) 604-8040 if needed. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl Opacinch".

Cheryl Opacinch  
Commissioner ANC3-C SMD-01

cc: Councilmember Frank Smith  
ANC 3-C Chairman  
Allen Elevins  
WPCA Chairman

DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND  
REGULATORY AFFAIRSRECEIVED  
FEB 03 2004

## FACSIMILE TRANSMITTAL SHEET

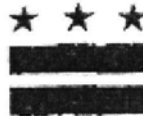
|               |                                        |                                     |                                                          |
|---------------|----------------------------------------|-------------------------------------|----------------------------------------------------------|
| TO:           | Nancy Macwood<br>Commissioner ANC 3C09 | FROM:                               | Joseph McCatley/for Denzil Noble,<br>Administrator, BLRA |
| COMPANY:      | DCRA                                   | DATE:                               | 2/2/2004                                                 |
| FAX NUMBER:   | 202-232-0667                           | TOTAL NO. OF PAGES INCLUDING COVER: | 5                                                        |
| PHONE NUMBER: |                                        | SENDER'S REFERENCE NUMBER:          |                                                          |
| RE:           | Commercial Overlay - Woodley Park      | YOUR REFERENCE NUMBER:              |                                                          |

☐ URGENT    ☒ FOR REVIEW    ☐ PLEASE COMMENT    ☐ PLEASE REPLY    ☐ PLEASE RECYCLE

NOTES/COMMENTS:  
*Please confirm receipt.*

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Consumer and Regulatory Affairs

Office of the Director



February 2, 2004

Nancy J. Macwood  
Commissioner  
ANC 3C09-  
3417 Woodley Road, NW  
Washington, DC 20016

Dear Commissioner Macwood:

Pursuant to your request and ongoing communications, please find attached for your review the Department of Consumer and Regulatory Affairs (DCRA) Building and Land Regulation Administration's (BLRA) Woodley Park Commercial Overlay District Measurements, As of February 2, 2004.

While we are aware that an application has been filed with the Alcohol and Beverage Control Board (ABRA), there exists no application for a Certificate of Occupancy to change the usage of 2331 Calvert Street N.W. from a deli to a restaurant filed with DCRA's Permit Center.

Should you have any further questions, please contact me at (202) 442-8927. Thank you.

Sincerely,

Joseph McCahey  
Customer Service Advocate

cc: Theresa Lewis  
Gwendolyn Davis  
Denzil Noble  
Douglas Foster

BUILDING AND LAND REGULATION ADMINISTRATION  
COMMERCIAL OVERLAY DISTRICT  
WOODLEY PARK  
MEASUREMENT  
As of February 2, 2004

| BUSINESS ESTABLISHMENT                                        | ADDRESS                 | PRODUCTS   | NUMERATOR | DENOMINATOR | PERCENTAGE OF<br>EATING AND DRINK EST. |
|---------------------------------------------------------------|-------------------------|------------|-----------|-------------|----------------------------------------|
| 2300 Block Woodley Road, east of Connecticut Ave, South bound |                         |            |           | 144.52      |                                        |
| 2600 Block Connecticut Avenue, east side                      |                         |            |           | 858.15      |                                        |
| Thai Town Restaurant                                          | 2666 Connecticut Avenue | Restaurant | 26.11     |             |                                        |
| Petites Restaurant                                            | 2653 Connecticut Avenue | Restaurant | 26.11     |             |                                        |
| Trattoria Italiana                                            | 2651 Connecticut Avenue | Restaurant | 25        |             |                                        |
| Café Paradiso Restaurant                                      | 2649 Connecticut Avenue | Restaurant | 25        |             |                                        |
| Apartment                                                     | 2647 Connecticut Avenue |            |           |             |                                        |
| Manhattan Market                                              | 2645 Connecticut Avenue |            |           |             |                                        |
| Allan Woods Flower                                            | 2645 Connecticut Avenue |            |           |             |                                        |
| All Wrapped Up                                                | 2643 Connecticut Avenue |            |           |             |                                        |
| Lebanese Taverna                                              | 2641 Connecticut Avenue | Restaurant | 20        |             |                                        |
| Unity Woods Yoga                                              | 2639 Connecticut Avenue |            |           |             |                                        |
| Custom Cleaner                                                | 2637 Connecticut Avenue |            |           |             |                                        |
| Sake Club                                                     | 2635 Connecticut Avenue | Restaurant | 20        |             |                                        |
| Café International                                            | 2633 Connecticut Avenue | Restaurant | 20        |             |                                        |
| Bank of America                                               | 2631 Connecticut Avenue |            |           |             |                                        |
| Bomba Chest                                                   | 2629 Connecticut Avenue |            |           |             |                                        |
| Antique Anonymous                                             | 2627 Connecticut Avenue |            |           |             |                                        |
| The Silk Road                                                 | 2627 Connecticut Avenue |            |           |             |                                        |
| Brucelee                                                      | 2625 Connecticut Avenue | Restaurant | 9.6       |             |                                        |
| Accapulco Restaurant                                          | 2623 Connecticut Avenue | Restaurant | 23        |             |                                        |
| Tasted of India                                               | 2621 Connecticut Avenue | Restaurant | 18.75     |             |                                        |
| Woodley CME                                                   | 2619 Connecticut Avenue | Restaurant | 18.75     |             |                                        |
| Office Building                                               | 2607 Connecticut Avenue |            |           |             |                                        |

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DATA OF BUILDING

|                       |                         |            |    |
|-----------------------|-------------------------|------------|----|
| Tono Sushi Restaurant | 2805 Connecticut Avenue | Restaurant | 25 |
| Rajaji Indian Tandoor | 2803 Connecticut Avenue | Restaurant | 25 |
| Long and Foster       | 2801 Connecticut Avenue |            |    |
| Vacant                | 2801 Connecticut Avenue |            |    |

**2300 Block Calvert Street, east of Connecticut, North bound**

223.78

|                         |                            |            |    |
|-------------------------|----------------------------|------------|----|
| Sherry Wine and Spirits | 2315a Calvert Street, N.W. |            |    |
| Trocadero Textile       | 2313 Calvert Street, N.W.  |            |    |
| Papa Joe Pizza          | 2311 Calvert Street, N.W.  | Restaurant | 25 |
| Alghan Grill            | 2309 Calvert Street, N.W.  | Restaurant | 25 |
| Lant Temple             | 2307 Calvert Street, N.W.  |            |    |
| Language One            | 2305 Calvert Street, N.W.  |            |    |
| Syracuse University     | 2301 Calvert Street, N.W.  |            |    |

**2300 Block Calvert Street, east of Connecticut, south bound**

178

**2600 Block Connecticut Avenue, west side**

357.34

|                           |                         |                |       |
|---------------------------|-------------------------|----------------|-------|
| Chipotle Mexican          | 2600 Connecticut Avenue | New Restaurant | 41.7  |
| Salon Roi plus Nail Shop  | 2602 Connecticut Avenue |                |       |
| Mr. Chen Cuisine          | 2604 Connecticut Avenue | Restaurant     | 7     |
| Baskin Robbins Ice Cream  | 2604 Connecticut Avenue | Restaurant     | 7     |
| Jandara Real Thai Cuisine | 2606 Connecticut Avenue | Restaurant     | 23.83 |
| Lex Cajun Grill           | 2608 Connecticut Avenue | Restaurant     | 17    |
| Laundry Debonair          | 2610 Connecticut Avenue |                |       |
| Laundry Debonia           | 2612 Connecticut Avenue |                |       |
| Madeline's Restaurant     | 2614 Connecticut Avenue | Restaurant     | 25    |
| McDonald's                | 2616 Connecticut Avenue | Restaurant     | 3     |
| CVS                       | 2618 Connecticut Avenue |                |       |
| M and T Bank              | 2620 Connecticut Avenue |                |       |

**2900 Block Calvert Street, west of Connecticut, North bound**

187.33

|                                             |                           |            |               |                |
|---------------------------------------------|---------------------------|------------|---------------|----------------|
| <b>2500 Block Connecticut Ave east side</b> |                           |            |               | 165            |
| Washington Park Gourmet                     | 2331 Calvert Street, N.W. |            |               |                |
| New Heights Restaurant                      | 2317 Calvert Street, N.W. | Restaurant | 17.01         |                |
| Vacant                                      | 2600 Calvert Street, N.W. | Restaurant | 20            |                |
| Vacant                                      | 2600 Calvert Street, N.W. | Restaurant | 20            |                |
| <b>2600 Block 24th Street, east side</b>    |                           |            |               | 333.34         |
| CVS (Rear)                                  | 2605 24th Street, N.W.    |            |               |                |
| Murphy's Pub                                | 2607 24th Street, N.W.    | Restaurant | 37.51         |                |
| <b>Total Linear feet</b>                    |                           |            | <b>551.37</b> | <b>2225.46</b> |
|                                             |                           |            |               | <b>24.78%</b>  |

Woodley Park Neighborhood Commercial Overlay District, comprising those lots zoned C-2-A in squares 2202 and 2203, and those lots zoned C-2-B in square. The zoning boundary are East side of Connecticut Ave and West side of Connecticut Ave. North bound from Calvert Street to Woodley Road, South bound from Woodley Road to Calvert Street, N.W.