

September 7, 2006

Carol Mitten, Chairman
Zoning Commission
District of Columbia Office of Zoning
Suite 210-S
441 4th Street, N.W.
Washington, D.C. 20001

ZONING COMMISSION
District of Columbia

CASE NO. 06-31
EXHIBIT NO. 19

2006 SEP - 8 AM 8:41

D.C. OFFICE OF ZONING

RECEIVED

Re: Zoning Commission Case 06-31
5220 Wisconsin Avenue, N.W.
Zoning Map Amendment and Consolidated PUD

Dear Chairman Mitten:

On September 1, 2006, the D.C. Office of Planning (OP) provided the Friendship Neighborhood Association with a courtesy copy of their Setdown Report for ZC Case 06-31. OP's Setdown Report, recommending that this Application be set down for a public hearing, is seriously flawed, in spite of the fact that members of Friendship Neighborhood Association met with OP staff on August 29, 2006 to discuss why this proposed PUD is clearly inconsistent with the Comprehensive Plan, and in spite of the fact that ANC 3E had provided OP with a copy of a resolution outlining some of the many ways in which this proposal is inconsistent with the Comprehensive Plan.

The subject site is located in an area which has been designated as part of a buffer between the more intense development and commercial uses in the Friendship Heights regional center and the surrounding low density residential community.¹ It is designated as low-density commercial on the Comprehensive Plan Generalized Land Use Map.

The proposed development has a density that exceeds that of any building on the upper Wisconsin Avenue corridor and a height that far exceeds that of all but two existing buildings on the upper Wisconsin Avenue corridor, located further north on Wisconsin Avenue in the core of the Friendship Heights regional center. This fact renders the project inconsistent with the designation as low-density commercial and inconsistent with the location in the buffer, which is meant to provide a transition between the core of the Friendship Heights regional center and the low-density neighborhood.

The OP Setdown Report is deficient in the following respects:

- OP failed to provide the most basic information, which is necessary to evaluate this proposal, and failed to describe how the proposed development would exceed matter-of-right development.
 - OP failed to provide an annotated table that showed the extent to which the proposed development would comply with the standards and requirements that would apply to matter-of-right development under the zone district classification of the site at the time the application was filed.²

¹ See ZC Order No. 87, Statement of Reasons, page 2, at Application, Exhibit H, and the NCPC-D.C. Interagency Task Force Sectional Development Plan for Friendship Heights.

² See §2403.11 of the Zoning Regulations:

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- The Applicant also failed to provide such a table, as required in §2403.11.
- OP failed to compare the proposed development with a matter-of-right development in its discussion of how the project related to elements of the Comprehensive Plan.
 - Instead, OP compared the proposed development with the existing non-conforming use.
 - In fact, as explained in more detail below, development within the height, density and lot occupancy limits of matter-of-right development would address the elements of the Comprehensive Plan cited by OP in its report. Such development would not be inconsistent with the Generalized Land Use Map and the Land Use element.
- OP failed to discuss the proposed development as it relates to the Generalized Land Use Map of the Comprehensive Plan.
 - The proposed development is inconsistent with the low-density commercial designation of this site on the Generalized Land Use Map.
- OP failed to take into account the major themes³ of the Comprehensive Plan's Ward 3 Plan: protecting the Ward's residential neighborhoods and controlling development.
- OP failed to take into account the policies established in support of commercial area objectives that specifically address the relationship between development in regional centers and the adjoining communities. In particular, OP did not take into account the language of the Comprehensive Plan which specifies limitations on the heights and densities in regional centers to those which are appropriate to the scale and function of the adjoining communities.⁴

2403.11 To assist the Commission in applying the evaluation standards of this section, the applicant shall prepare and submit to the record of the case an annotated table that shows:

- (a) The extent to which the proposed development would comply with the standards and requirements that would apply to a matter-of-right development under the zone district classification of the site at the time the application is filed;
- (b) The specific relief that the applicant requests from the matter-of-right standards and requirements; and
- (c) If the applicant requests a map amendment, the extent of compliance with, and the requested relief from, the matter-of-right standards and requirements of development under conventional zoning.

³ The first two major themes of the Ward 3 Plan of the Comprehensive Plan are protecting the Ward's residential neighborhoods and controlling redevelopment.

1400.2 Major themes for Ward 3:

- (a) Protecting the Ward's residential neighborhoods:
 - (1) Ward 3's most outstanding characteristic is its low density, stable residential neighborhoods. Although the ward's communities retain individual and distinctive identities, a shared concern from American University Park and Friendship Heights to Woodley Park and throughout is one of pride and commitment to neighborhood and home; and
 - (2) Residents seek to ensure that stability is maintained. Accordingly, no significant land use changes have been indicated in the first eleven (11) elements of the Comprehensive Plan, and it is a major theme of this ward plan to protect and maintain the low-density, high-quality character of the ward;
- (b) Controlling redevelopment:
 - (2) The economic development goals for Ward 3 differ from those in other wards. The Economic Development Element of the Comprehensive Plan is principally concerned with the generally agreed upon need to stimulate more economic development overall in the District. From the point of view of the District as a whole and the ward in particular, this need does not apply to Ward 3. Rather, the issue in Ward 3 is how to channel the very strong momentum of economic development that exists while protecting and enhancing the primarily residential nature of the ward - a quality of life that in turn attracts additional economic pressures for development;

⁴ See Chapter 11, Comprehensive Plan Land Use Element:

- OP failed to accurately describe the points made by the ANC in its resolution, carefully describing the reasons why this application is flawed and why the proposed project is inconsistent with the Comprehensive Plan, and OP failed to include the ANC resolution as an attachment to its report.
- OP failed to accurately describe the reasons Friendship Neighborhood Association [FNA] opposes this Application, believes that the project is inconsistent with the Comprehensive Plan, and is not appropriate to be set down for a hearing. FNA met with OP on August 29, before the setback report was filed, to discuss those concerns. The points FNA discussed in this meeting are outline on page 6 of this document.

For the reasons given above, and described in more detail below, this PUD application is inconsistent with the Comprehensive Plan, and should not be set down for a hearing. Rather the application should be dismissed.

MAJOR DEFICIENCIES IN OP'S SETDOWN REPORT

1. OP did not address the fact that the proposed development is inconsistent with the designation of the subject site for low-density commercial uses in the Generalized Land Use Map.



2. OP did not provide tabulations comparing the proposal with the standards and requirements that apply to matter of right development and did not analyze whether the project was superior to the development that would likely result on this site under matter-of-right provisions of Title 11.

OP provided a tabulation that included development allowed with current zoning, R-5-B, as a matter of right, development allowed with a PUD under the requested zoning, C-2-B, and the project, and OP only discussed the relief requested from the requirements of a PUD with the requested zoning.

In reviewing the general provisions of the Comprehensive Plan, OP compared the proposed development with the existing non-conforming use, rather than comparing it with the

1108 POLICIES IN SUPPORT OF THE COMMERCIAL AREAS OBJECTIVES

1108.1 The policies established in support of the commercial areas objectives are as follows:

(f) Permit the District's two (2) established regional commercial centers, Georgetown and Friendship Heights, to develop and to evolve in ways which are compatible with other land use policies, including those for maintaining stable neighborhoods, mitigating negative environmental impacts, and reducing traffic congestion;

(h) Maintain heights and densities in established and proposed regional centers which are appropriate to the scale and function of development in adjoining communities, and develop buffer areas for neighborhoods exposed to new moderate, medium, and medium-high commercial densities;

development that would occur if the project were limited to the height, density and lot occupancy associated with matter-of-right limits of the existing R-5-B zoning. Instead, for example, OP cites the replacement of a used car dealership with the proposed development as meeting several goals of the Comprehensive plan. In fact, replacement of the used car dealership with a condominium or with a condominium and ground floor retail, with a height of 50 feet, a lot occupancy of 60% and a floor area ratio [FAR] of 1.8 would meet those objectives, and in many instances be superior to the proposed development in meeting those objectives and other themes of the Comprehensive Plan.⁵

The following table shows excerpts from the tabulation provided by OP in the first seven columns, and the omitted comparison between the project and MOR limits with current zoning in the last column:

| EXCERPTS FROM TABLE IN OP SETDOWN REPORT | | | | | | | INFORMATION OMITTED FROM OP TABLE |
|--|---------|----------------|---------|---|--|------------|--|
| Item | Section | R-5-B (MOR) | Section | C-2-B (PUD) | Proposed | Relief | Comparison between Proposed and R-5-B (MOR) |
| Building Height | 400 | 50' | 2405.1 | 90' | 79' | Conforming | Requesting increase of 29 feet in height, from 50 feet to 79 feet. |
| FAR | 402 | 1.8 | 2405.2 | 6.0 (max) 6.0 (res. max) 2.0 (comm.. max) | 5.25 (118,125 total sq. ft.) 4.31 (97,050 res. sq. ft.) 0.59 (13,200 retail sq. ft.) 0.35 (7,875 load., garage) | Conforming | Requesting increase in FAR from 1.8 to 5.25 |
| Lot Occupancy | 403 | 60% | 772 | 80% | 1 st Floor 100% 2 nd Floor 84.7% 3 rd Floor, 88.4% | Requested | Requesting an increase in lot occupancy from 60% to 100% |
| Floor Area | | 40,500 sq. ft. | | 118,125 sq. ft. | | | Requesting an increase of 77,625 sq. ft. |

3. OP failed, in discussing the land use policies and the designation of Friendship Heights as a Housing Opportunity Area, to take into account that a housing opportunity already exists with the underlying residential zoning. A Housing Opportunity Area simply designates an area where the District expects and encourages new housing, which can be accomplished within the existing residential zoning.

The designation as a Housing Opportunity Area does not mean that additional height and density is necessary to provide housing, but simply designates an area where development within

⁵ For example, in discussing the Environmental Protection Element, OP cites the "green roof" and landscaping, and an increase in the number of street trees. The project has 100% lot occupancy, while the MOR limits of R-5-B set a maximum lot occupancy of 60%, leaving 9,000 SF of open space. The "green roof" covers less than 4,500 SF of the roof area, and a condominium or mixed use building within the height, density and lot occupancy of current zoning would create the same opportunity for more street trees relative to the car dealership, and would likely have attractive landscaping on-site to maximize the attractiveness of the project to prospective purchasers. Similarly, a condominium or mixed use building within these limits would likely enhance the streetscape more than the proposed building, without overwhelming the streetscape with an inappropriately scaled building.

the existing zoning can provide additional housing. Replacing the existing non-conforming use, a car dealership, with a moderate density residential building, with an FAR of 1.8, a floor area of 40,500 sq. ft., a lot occupancy of 60% and a height of 50 feet would provide additional housing, with as many as 80 large units per acre.

4. OP failed, in discussing the land use policies and the designation of Friendship Heights as a regional center, to consider the critical language in the Land Use Element of the Comprehensive Plan, limiting the heights and densities of development in regional centers. See footnote 4, above.

5. OP failed to take into account the small lot area and the inappropriateness of this approximately half acre site for development as a PUD. PUD development is intended for large sites.

6. OP failed, in evaluating many of the public benefits and amenities, to take into account the fact that a development within the height, lot occupancy and density limits of matter of right development within an R-5-B district would provide the same benefits.

For example, OP cites enhancements to the façade of the neighboring PEPCO substation. In fact, any developer proposing a luxury condominium building would request permission from PEPCO to enhance the façade of the substation in order to increase the value of the project and to make the units more attractive to prospective purchasers. A condominium is the type of project which would likely be proposed on this site if limited to a height of 50 feet, a maximum of 40,500 sq. ft., and a lot occupancy of 60%, and members of the community indicated that, if a project met the other requirements of matter of right development in an R-5-B zone, they would support zoning flexibility to allow for first floor retail in that project if desired.

OP has also cited streetscape and sidewalk improvements, and a developer of a project within matter of right limits would find it most profitable to provide streetscape and sidewalk improvements in order to enhance the value of the property. In addition, the developer within those limits would have 60% lot occupancy, rather than 100% lot occupancy, and so would have the opportunity to have space for trees, planting beds and benches. With this PUD, those improvements must all lie within the narrow public sidewalk space.

OP cites environmental benefits of LEED certification, but most of the measures that serve to meet that certification are directly related to cost savings for the future owners, residents and retail tenants. Many of these cost-saving measures would be adopted by a developer in a matter-of-right project.

7. OP has failed in characterizing the ANC comments and the comments received from members of the community and community organizations.

(a) ANC 3E submitted a detailed resolution which outlined a number of ways in which this project is inconsistent with the Comprehensive Plan and in which the Application is deficient. OP failed to mention many of those specific points in the Setdown Report. A copy of the ANC 3E resolution is attached.

(b) Friendship Neighborhood Association met with OP staff prior to the filing of the OP Setdown Report and discussed in detail how the Application is deficient and why the project is inconsistent with the Comprehensive Plan.

- FNA discussed the zoning history for this site and its designation as part of the buffer between the more intense development in the regional center and the adjoining neighborhoods.

- FNA discussed the provisions in the Land Use Element limiting the height and density of development in regional centers to that which is appropriate to the scale and function of the adjoining neighborhoods.
 - FNA discussed how this project has a higher density than any building on the upper Wisconsin Avenue corridor, and how it has a height that greatly exceeds that of all but two buildings on the Wisconsin Avenue corridor, with those buildings in the core of the regional center. During that meeting, FNA specifically asked the OP representatives whether they could identify any buildings along upper Wisconsin Avenue that had a density equal to or exceeding the density proposed in this PUD. The OP representatives were unable to identify any such buildings.
 - FNA discussed the major themes of the Ward 3 Plan of the Comprehensive Plan and how this proposal is contrary to those themes.
 - FNA addressed the Applicant omission of the required tabulations comparing the project with matter of right limits with current zoning and requested that OP include the omitted tabulation in their Setdown Report.
 - FNA discussed how development within matter of right limits would provide nearly all the benefits claimed by the developer for this project.
- (c) OP failed to properly characterize the overwhelming opposition to this project. For example, FNA informed OP that it would be filing a petition in opposition to this project with approximately 500 signatures of residents in the blocks closest to the site. Those petitions were indeed filed with the Zoning Commission on September 6, 2006.

Given the deficiencies in this Application and given that the proposal is clearly inconsistent with the Comprehensive Plan, we believe that the Office of Planning should recommend that this Application be dismissed. This is not a close call.

We hope that the Office of Planning will correct these errors in their Setdown Report prior to the September 11 Zoning Commission Meeting.

Sincerely,



David P. Frankel
Gina Mirigliano
Marilyn J. Simon
for Friendship Neighborhood Association

CC: Ellen McCarthy, Office of Planning
Jennifer Steingasser, Office of Planning
Amy McVey, Chairman, ANC 3E
Carolyn Sherman, Commissioner, ANC 3E03

ATTACHMENT: ANC 3E RESOLUTION

ADVISORY NEIGHBORHOOD COMMISSION 3E
TENLETTOWN • AMERICAN UNIVERSITY PARK • FRIENDSHIP
HEIGHTS

Lisner-Louise-Dickson-Hurt Home
5425 Western Avenue NW
Washington, DC 20015

**Resolution of ANC 3E Opposing Set Down of John Akridge Development Company's
Application for Consolidated Review and Approval of
a Planned Unit Development and Zoning Map Amendment
of
Square 1657, Lots 810, 811 and 812
at 5220 Wisconsin Avenue, NW**

WHEREAS The John Akridge Development Company ("Akridge") has given notice of its intent to file an application for consolidated review and approval of a Planned Unit Development ("PUD") and an amendment to the Zoning Map for the property known as 5220 Wisconsin Avenue, NW, Square 1657, lots 810, 811 and 812;

WHEREAS the property is currently zoned R-5-B and Akridge has given notice of its intent to seek a Planned Unit Development (PUD) and a map amendment to rezone the property to C-2-B;

WHEREAS R-5-B zoning for Square 1657, Lots 810, 811 and 812 currently allows a height of 50 feet, a Floor Area Ratio ("FAR") of 1.8, residential development of 40,500 square feet of gross floor area;

WHEREAS Akridge has given notice of its intent to file an application to construct a new condominium apartment house with between 55 and 70 units, with the first floor of the proposed building devoted primarily to retail use, including approximately 13,000 square feet of retail gross floor area, and a total FAR of the 5.25 (approximately 118,125 square feet of gross floor area);

WHEREAS Akridge has given notice of its intent to file an application to have a maximum height for the project on this site of 79 feet, more than 50% greater than that allowed by matter of right zoning;

WHEREAS the land area for this site is 22,500 square feet;

WHEREAS the minimum land area for a PUD in an R-5-B District is one acre [43,560 square feet] and the Zoning Commission may waive no more than 50% of the minimum area requirement, provided that the project is of exceptional merit and in the best interest of the city or country;

WHEREAS this site was downzoned to R-5-B as part of a buffer between the high density commercial and mixed use portions of the area and the surrounding low density residential

community. In particular, the Statement of Reasons for Zoning Commission Order 87 states that the purpose of the downzoning was to carry out the following objectives:

“protection of stable residential areas adjacent to the plan boundaries by concentrating intensive commercial development at the intersection of Western and Wisconsin Avenues where there will be immediate access to the Friendship Heights Metro Station; controlling commercial and residential development within the plan area at a level consistent with the traffic capacity of the main arterial and feeder streets within the plan area; rezoning certain property south of the intersection of Wisconsin and Western Avenues to a mixture of commercial and residential to encourage the development of apartments as well as neighborhood commercial facilities; rezoning certain areas on the periphery of the plan area to medium density residential in order to provide a buffer between the high density commercial and mixed use portions of the plan area and the surrounding low density residential community.”

WHEREAS the Generalized Land Use Map of the District of Columbia shows this site as Commercial-low density, which corresponds to a zoning category of C-1 or C-2-A at most;

WHEREAS this site is outside the area that is designated as part of the Friendship Heights regional center;

WHEREAS the Comprehensive Plan includes the following policy:

to "Maintain heights and densities in established and proposed regional centers which are appropriate to the scale and function of development in adjoining communities, and develop buffer areas for neighborhoods exposed to new moderate, medium, and medium-high commercial densities." [Section 1108.1(h)]

WHEREAS the proposed FAR for Akridge's proposed project is higher than that of any building in the Friendship Heights regional center, or along the upper Wisconsin Avenue corridor;

WHEREAS only two buildings, both on Square 1661, in the Friendship Heights regional center in the blocks bounded by Western Avenue on the north, have heights exceeding the height sought in Akridge's proposal, and no other buildings in the Friendship Heights regional center or along the neighboring sections of the upper Wisconsin Avenue corridor have heights above 65 feet;

WHEREAS the proposed density and scale is inappropriate for this site;

WHEREAS Akridge has given its notice of intent to file this application which appears to request additional zoning flexibility, including, but not limited to, lot occupancy and loading docks;

WHEREAS the 5 ANCs and the surrounding community affected by the Upper Wisconsin Avenue Corridor Study (UWACS), a small area plan developed by the Office of Planning focused on increasing the heights and densities and planned unit developments in the upper Wisconsin Avenue area and officially withdrawn by OP from consideration during October 2005

due to community opposition that was determined through three well attended, moderated public meetings hosted by the ANCs 3E and 3F, overwhelmingly rejected the plan in favor of retaining the existing Ward 3 Element Comprehensive Plan protections and enhancements and existing matter-of-right development limits; and

WHEREAS the following organizations also filed comments opposing the UWACS: Friendship-Tenleytown Citizens Association, The Friendship Neighborhood Association, Tenleytown Neighbors Association, Cleveland Park Citizens Association, McLean Gardens Condominium Association Board of Directors, the Coalition to Stop Tenleytown Overdevelopment; and

WHEREAS Strong and significant opposition to the Alkridge proposal was voiced at 2 public meetings and in letters written by many residents near the proposed project, yet Alkridge did not meet with community groups that had objections to the proposal in order to try to reach consensus on the project as requested by the ANC 3E; and

WHEREAS Alkridge held an amenities meeting outside of the ANC 3E meeting in a refusal to abide by the request from the ANC 3E to hold said meeting at a regularly scheduled public ANC 3E meeting after many of the objections to the proposed project had been addressed;

NOW, THEREFORE, BE IT RESOLVED that the Advisory Neighborhood Commission 3-E hereby requests that the Zoning Commission deny a request for set down of this Application, without prejudice, and recommend that the Applicant work with the community to explore development within the bounds of the existing zoning category or within the designation on the Generalized Land Use map.

ANC 3-E approved this resolution by a vote of 4 - 0 at its monthly public meeting on June 8, 2006. Commissioners present were Amy Hoang Wrona, Carolyn Sherman, Lucy Eldridge and Anne Sullivan.

Lucy Eldridge

Vice-chair, ANC 3E