

Cleveland Park Citizens Association (CPCA) Comments for Case #08-15
(Entered into the Record, April 14, 2009)

The following comments are a guide to major points of testimony that will be presented at the April 23 hearing and are informed by witness testimony and Commissioners' observations and guidance at the April 6 hearing.

1. Comprehensive Plan (CP).

This PUD would be unlawful. It is in violation of current zoning laws and is clearly inconsistent with the Comprehensive Plan. Sections 2400.4 and 2403.4 of the Zoning Regulations prohibit a PUD from being used to "result in action that is inconsistent with the Comprehensive Plan".

- Each block must be consistent with the Future Land Use Map (the CP's definitive prescriptions). All zoning modifications within a PUD must remain at all locations consistent with the CP. There can be no averaging among multiple blocks for the purpose of a PUD, if it would violate this requirement.
- Since the Future Land Use Map calls for the North Block in the PUD to be low-density commercial and to be "comprised primarily of one- to three-story... buildings," and since there is only one building proposed for the block, it can't be bigger than a one- to- three-story commercial building.
- A two-story commercial building compliant with C-1 zoning would meet this requirement, as would a three-story commercial building under C-2-A. A 5-story building cannot, and would violate the Comprehensive Plan.
- As a separate matter, since the Future Land Use Map calls for the north block to be comprised primarily of one- to three-story *commercial* buildings, a 5-story building that is four-fifths residential does not comply with the Comprehensive Plan.
- The Comprehensive Plan can be amended only by the City Council, not by the Zoning Commission through a map amendment.

2. The Contract.

- **CPCA has a binding contract (2002 Letter of Agreement) (copy enclosed) with Giant and the Office of Planning governing how a new Giant will be built. Among other things, the Contract requires OP to broker any disagreements between Giant and CPCA. OP has been ignoring its obligation, and Giant has rebuffed efforts to encourage its compliance.**
- CPCA committed to withdrawing its landmark application, and has fully performed under the Contract.

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- Under the Contract, Giant committed itself to build a state-of-the-art grocery store, interactive Wisconsin Avenue sidewalk and parking that meets zoning requirements, all within existing matter-of-right zoning. (Development of the North Block, otherwise not addressed in the agreement, is subject to certain notification requirements.) Instead, Giant has sought to rezone part of the South Block from residential to commercial; rezone both South and North blocks from C-1 to C-2-A; use a PUD to exceed matter-of-right development; construct an out-of-scale, primarily residential building on the north block; provide less commercial parking than called for by zoning regulations; and destroy the Overlay. The Zoning Commission should not facilitate Giant's violation of both the letter and spirit of the agreement.
- The scale of Giant's plan creates otherwise avoidable loading problems, impacting existing residents, with large trucks entering and exiting alongside their houses, and interfering with delivery to Macomb Street restaurants (with whom OP and DDOT have not conferred).

3. Neighborhood Commercial Overlay District.

The applicant seeks, and OP endorses, removal of the Macomb-Wisconsin Neighborhood Commercial Overlay for the PUD area. The building of a new modern grocery store can readily be done within the Overlay, and removal of the Overlay would not legitimize the North Block plan.

- The Comprehensive Plan encourages neighborhood commercial overlays, but the Applicant, with the support of OP, asks to be relieved of its obligations under the M/W Overlay, based on a murky legal theory that says it's there although it isn't there. In fact, even OP can't seem to figure out what its various statements mean.
- The Overlay prescribes important procedural and substantive neighborhood commercial protections, such as limiting the extent of restaurants and restricting allowable uses. Removing this Overlay would be subverting the CP (which recommends *more* neighborhood commercial overlays). The use prescriptions of the Overlay would be replaced by the C-2-A use list. This is a conversion from "neighborhood shopping district" C-1, to "community business center" C-2-A, and would substantially change the character of the business area and the surrounding neighborhoods. New uses allowed would include automobile and truck sales, automobile rental agency, pool hall, bowling alley, mortuary, public storage, plumbing and heating shop, veterinary hospital, etc. OP says that the Commission and the neighbors can be sure that the retail will be neighborhood serving because neighborhood-serving uses are allowed, even though, under the Giant/OP plan, so would other higher-revenue, non-neighborhood serving uses. (Giant commits to "affordable" rents only for 15 years.)
- OP was unable to identify the number and size of new restaurants that would be permitted under the applicant's request (actually 375 feet), or what linear footage of restaurants it might entail (a good-sized restaurant uses about 50 feet), but supported that aspect of the application anyway.