

Appendix II

DC Comprehensive Plan Requirements For The Macomb/Wisconsin Commercial Zone

Statement Of Wisconsin Newark Neighborhood Coalition
ZC Case 08-15 – Friendship Macomb PUD

I. Comprehensive Plan Implementation Requirements.

The Zoning Commission must respect the following basic principles regarding Comprehensive Plan implementation.

1. First and foremost, zoning must not be inconsistent with the Future Land Use Map:

Zoning Regulations and Consistency

The importance of zoning as a tool for implementing the Comprehensive Plan, particularly the Future Land Use Map, is discussed in several places in the Comprehensive Plan. (Implementation Element, 25-5.)

Policy IM-1.3.2: Zone Map Consistency

Consistent with the Home Rule Charter, ensure that the Zone Map is not inconsistent with the Comprehensive Plan Future Land Use Map. (Implementation Element, 25-6.)

Purpose of the Policy Map

The purpose of the Generalized Policy Map is to categorize how different parts of the District may change between 2005 and 2025. It highlights areas where more detailed policies are necessary, both within the Comprehensive Plan and in follow-up plans, to manage this change.

The map should be used to guide land use decision-making in conjunction with the Comprehensive Plan text, the Future Land Use Map, and other Comprehensive Plan maps. (Framework Element, 2-28.)

2. The Zoning Commission's decisions must be guided by the Maps:

Policy IM-1.3.3: Consultation of Comprehensive Plan in Zoning Decisions

Require the Board of Zoning Adjustment, the Zoning Commission, the Zoning Administrator, and other District agencies or decision-

making bodies regulating land use to look to the District Elements of the Comprehensive Plan and its accompanying Maps. Decisions on requests for rezoning shall be guided by the Future Land Use Map read in conjunction with the text of the Plan (Citywide and Area Elements) . . . (Implementation Element, p 25-6.)

3. The Land Use element is the driving force in the Plan:

The Land Use Element is the cornerstone of the Comprehensive Plan. It establishes the basic policies guiding the physical form of the city, and provides direction on a range of development, conservation, and land use compatibility issues. (Land Use Element Overview, p. 3-1.)

4. The Zoning Commission must give priority to the Land Use Element over the other Elements:

More than any other part of the Comprehensive Plan, this [LandUse] Element lays out the policies through which the city will accommodate growth and change while conserving and enhancing its neighborhoods, commercial districts, and other areas. Because the Land Use Element integrates the policies and objectives of all the other District Elements, it should be given greater weight than the other elements as competing policies in different elements are balanced. (Land Use element, Overview, p. 3-1.)

5. Area-specific directives take precedence over general Plan policies.

Within the Land Use and Rock Creek West Elements, general policy statements are secondary to the Plan's Maps and directives for specific areas. For this reason, the Commission must consider and respect the Plan's design for Wisconsin Avenue as a whole. Studying the requirements for the particular PUD site in the context of the rest of Wisconsin Avenue confirms the Plan's intentions to maintain the low-density neighborhood commercial character at Macomb/Wisconsin. As Professor McGrath emphasized in his statement in this case, the Commission is not itself a planning agency. Its duty is only to understand and implement the Plan legislation, including the 2006 update.

II. The Comprehensive Plan and the Macomb/Wisconsin Commercial Center.

The Applicant and the Office of Planning claim that the PUD complies with the Comprehensive Plan. This is no surprise. Advocates of any position can cull through the Plan and find general statements that appear to support their pre-set conclusions. However, the potential physical and precedent-setting impact of this PUD is too great for the Commission to settle for a superficial approach. Instead, the Commission must follow the Plan's directives as found in the Framework, Land Use, Rock Creek West and Implementation elements.

1. The Comprehensive Plan Carefully Considers Wisconsin Avenue and Supports Its "Eclectic" Character.

The Comprehensive Plan identifies Wisconsin Avenue as a "policy focus area" that merits a higher level of direction and guidance than is supplied by the Plan's general citywide and Rock Creek West provisions. (RCW-2.2.) The Plan's Wisconsin Avenue discussion makes it clear that development along the Avenue is not uniform. The Plan text describes the mix along the Avenue as "eclectic," with uses ranging from Georgetown's pedestrian shopping, through mid- and high-rise apartments, up to the relatively low-density single family neighborhoods north of the Cathedral with their mix of retail uses, and then on to Fannie Mae and the Avenue's transit-oriented, mixed use neighborhoods. In keeping with this eclectic variety, the Plan's Future Land Use Map maintains low density commercial at Macomb/Wisconsin, unlike its mixed use designations farther up the Avenue. Specifically, the Plan Map shows mixed use commencing at the Tenleytown Metrorail station and proceeding, at various mixed use densities, up to the Friendship Heights Metrorail station. All of that area is within four-tenths of a mile or less of a Metrorail station, close enough to qualify for transit oriented development. ("TOD.")

The PUD site does not have a Metrorail station, and the Future Land Use Map does not designate Macomb/Wisconsin for any level of mixed use. There is a tall, mixed use building at Idaho and Wisconsin, but that is the result of an earlier PUD.

The Rock Creek West element identifies the two Wisconsin Avenue Metrorail station commercial centers and the area in between them as housing opportunity sites, although even there the Plan cautions that traffic and parking problems must be addressed. In contrast, the Rock Creek West element's discussion of Wisconsin Avenue does not name the PUD site as a housing opportunity area or as appropriate for substantial new housing.

In fact, the policy statement targeted closest to the PUD site addresses the area around the National Cathedral. The Plan calls for protecting the Cathedral from development that would despoil its setting "or further exacerbate traffic on its perimeter." (Policy RCW-2-2-3, emphasis added.) The perimeter of the Cathedral is roughly two blocks away from the proposed PUD site. It would obviously suffer negative impacts from the exacerbated traffic resulting from the PUD, contrary to the Plan's specific policy.

The Wisconsin Avenue discussion also states, in a highlighted sidebar

Any redevelopment along the corridor should respect the scale of existing neighborhoods, promote walkability, and create a more attractive street environment. The impact of new development on traffic, parking, infrastructure, and public services must be mitigated to the greatest extent feasible. (Emphasis added.)

The Plan's insistence on mitigating traffic, parking, infrastructure and public services impacts "to the greatest extent feasible" requires more than a promise to examine problems after the buildings are erected.

In sum, the Comprehensive Plan preserves Wisconsin Avenue's "eclectic mix" of uses rather than allowing higher density mixed use buildings in the Macomb/Wisconsin neighborhood commercial area. For Macomb/Wisconsin, the Plan's greatest expressed concern was to prevent any worsening of traffic in the area and to require mitigation of traffic and parking impacts of new development "to the greatest extent feasible." The PUD's large housing proposal for the north block, with its seriously inadequate parking and flawed traffic program, clearly fails to conform to the Plan's specific intentions for this portion of Wisconsin Avenue.¹

¹ In her 2006 campaign for Council, now-Councilmember Cheh endorsed the Plan's policy for adding housing around Metrorail stations and in the area from Brandywine to

2. The Comprehensive Plan Including The Future Land Use And Policy Maps Requires Zoning To Retain The Low Density Commercial Character of the Macomb/Wisconsin Area.

The Comprehensive Plan Future Land Use and Land Use Policy maps designate the Macomb/Wisconsin commercial area as a low density commercial² neighborhood commercial center.³ The Plan, which is to guide development for the next twenty-five years,⁴ does not designate this area for mixed use. While various general provisions of the Plan support the conclusion that a limited level of housing may be appropriate for the Macomb/Wisconsin commercial area, there is no justification, either generally in the Plan or in the specific prescriptions for this area, for the intense level of new housing that the

Fessenden, while supporting preservation of Ward 3's neighborhood commercial overlays. Her recent testimony to the Commission changed that stand. Councilmember Cheh did not explain her reasons for abandoning her pre-election position respecting the Macomb/Wisconsin area.

² **Low Density Commercial.** "This designation is used to define shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings." (Legend, Comprehensive Plan Future Land Use Map.)

³ **"Neighborhood Commercial Centers** meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Their service area is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small business, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. New development and redevelopment within Neighborhood Commercial Areas must be managed to conserve the economic viability of these areas while allowing additional development that complement existing uses." (Legend, Comprehensive Plan Policy Map.)

⁴ See Framework Element p. 2-28, stating that the Generalized Policy Map is to be used to guide land use decision-making in conjunction with the Plan's text, Future Land Use Map and other Comprehensive Plan Maps.

PUD proposes. Applicant's requested relief would allow development completely out of scale and at odds with the character of this very small commercial area. Therefore, rezoning to permit the Applicant's project would be inconsistent with the Comprehensive Plan.

In short, the Applicant and Office of Planning rely upon broad policies to justify the PUD, but examination of the more specific Plan directives makes it clear that the Plan does not allow the intense level of residential construction that the applicant requests. Permitting housing at the requested intensity would make it impossible to honor the Plan's other requirements about mitigating traffic, parking and other impacts. The PUD proposal disregards basic Plan principles that call for maintaining a character and scale compatible with the rest of the commercial zone. The PUD would diminish the diverse, "eclectic" fabric of Wisconsin Avenue. It would, simply stated, be inconsistent with the Comprehensive Plan and hence contrary to D.C. law.

3. The PUD Must Comply With The Macomb/Wisconsin Neighborhood Commercial Overlay.

The Applicant seeks removal of the M/W Overlay. The overlay, along with the existing zoning, is an important part of keeping the area's zoning not inconsistent with the Plan. For example, the Plan's future land use designation here calls for one- to three-story commercial buildings; the overlay implements that designation by (1) establishing a purpose to "Limit the height of new buildings so as to encourage compatibility in scale between new and older buildings" (sec.1300.3(c)); (2) requiring matter-of-right height and FAR limits to serve as PUD guidelines (sec. 1305.1); (3) in the case of Special Exceptions such as required by sec. 1308, prohibiting any exceptions from matter-of-right height and FARs (Sec. 1304.2), and (4) procedures for ensuring the "compatibility with and enhancement of the primary neighborhood retail function of the commercial area." (§1308.2.) Removing the overlay would wrongly eliminate all of these measures that help assure Plan implementation.

The Plan does not merely endorse neighborhood commercial overlay zones (Rock Creek West Element, Overview); the Plan expressly calls for their expansion. (Action RCW-1.1.A.) Removal of the M/W overlay would be clearly inconsistent with the Plan.

III. Additional Comprehensive Plan Provisions.

Many general Comprehensive Plan provisions, not cited by Applicant, reinforce the conclusion that the PUD as currently proposed is not allowable under the Plan. These include the following:

1. Policy LU-2.3.2: Mitigation of Commercial Development Impacts

Manage new commercial development so that it does not result in unreasonable and unexpected traffic, parking, litter, shadow, view obstruction, odor, noise, and vibration impacts on surrounding residential areas. Before commercial development is approved, establish requirements for traffic and noise control, parking and loading management, building design, hours of operation, and other measures as needed to avoid such adverse effects. (Emphasis added.)

The PUD's traffic, parking and loading proposals are woefully inadequate. In addition to other issues, the north block building as currently designed would obstruct important views of the National Cathedral from farther up Wisconsin Avenue. Under LU-2.3.2, all of these issues must be addressed before any approval of this development. Simply setting aside a limited amount funds to deal with whatever problems result after the development is approved and built does not satisfy this requirement.

2. LU-2.4 Neighborhood Commercial Districts and Centers

Even the most successful neighborhood centers in the District must deal with land use conflicts. Excessive concentrations of bars, liquor stores, fast-food outlets, convenience stores, and similar uses are causes of concern in almost every part of the city. Commercial parking demand affects nearby residential streets around many centers . . . Effective zoning and buffering requirements are important to address such concerns and protect neighborhood character. Zoning overlays have been adopted in some commercial districts to limit the range of allowable uses and reduce the likelihood of external impacts.

The existing Macomb/Wisconsin Overlay must be maintained and enforced to prevent the variety of adverse impacts identified in LU-2.4.

3. Policy LU-2.4.8: Addressing Commercial Parking Impacts

Ensure that the District's zoning regulations consider the traffic and parking impacts of different commercial activities, and include provisions to mitigate the parking demand and congestion problems that may result as new development occurs, especially as related to loading and goods delivery.

If the Zoning Commission permits Applicant's requested parking and loading waivers, the PUD would exacerbate rather than mitigate adverse impacts of the new development.

4. Rock Creek West Element; Overview.

. . . Some of the District's most vibrant retail districts are located around the area's Metro stations and along its major corridors. Commercial overlay zones have been created in three of these areas, allowing a mix of retail uses and retaining a human scale and pedestrian character along neighborhood shopping streets . . . The need to appropriately control and guide growth, and to protect neighborhoods, remains a top priority throughout the community and is a major theme of this Element. (Pp. 3-4.)

The PUD is not near a Metrorail station. The north block proposal fails to retain the existing human scale along this neighborhood shopping street, and the overall PUD fails to protect the surrounding neighborhoods from excess growth, contrary to a major theme of the Rock Creek West Element. Instead of protecting the neighborhoods by adherence to the Overlay's requirements, it actively seeks to circumvent important Overlay protections.

5. Planning and Development Priorities

a. Residents of the Rock Creek West Planning Area remain deeply concerned about growth. While there is support for development on underutilized sites along the major corridors, issues of height, scale, character, and density remain a source of concern as well as a source of debate within the community. The relatively low-density commercial zoning on most of the corridors has not provided the predictability that many residents seek. The reliance on planned unit developments (PUDs) has brought neighborhood amenities but has also resulted in density "bonuses" that are beyond what many residents find acceptable.

This section aptly summarizes the problems raised by the proposed PUD and which must be remedied prior to any approval.

b. . . . Along parts of Connecticut and Wisconsin Avenues, multi-story apartment buildings abut single family homes along rear lot lines. These uses successfully co-exist in part because of the significant buffering effects of open space, parking lots, alleys, mature trees and shrubbery, changes in topography, and other screening and site-planning measures. Neighborhoods seek assurances that existing buffers will be maintained and that additional buffers, setbacks, and a “stepping down” in building heights will be provided if and when infill development occurs along the corridors.

Eliminating the surface parking lot and locating the supermarket’s loading dock driveway on residential land abutting a single-family residence reduces the buffer rather than meeting the requirement to provide better buffers.

d. . . . High costs are having a negative effect on some of the area’s small business, leading to a loss of small “mom and pop” businesses and family-owned neighborhood institutions. The community continues to favor neighborhood-serving retail rather than office space along the corridors, both to meet community needs and to avoid uses that would generate commuter traffic.

The PUD application fails to provide any assurance that small retailers will be able to afford its spaces. Instead, it only offers to accept a 25% limit on the amount of commercial linear street frontage within the PUD available for food service establishments. Applicant’s offer is a Trojan horse. With this provision, the PUD would be able to have food service establishments along some 375 linear feet of its street frontage. This would allow it to host some six or seven additional restaurants—the sort of establishments that can afford higher rents and drive out local shops and services.

The non-PUD portion of the M/W Commercial Overlay is only about 20% of the commercial zone. That 20% already contains a heavy concentration of restaurants; it complies with the Overlay’s limits only because there currently are few such uses within the PUD site. If the Overlay is removed from Applicant’s property, the remaining M/W Overlay area will be thrown vastly out of compliance with the Overlay’s 25% limitation, and the arrival of several new restaurants will potentially change the character of the whole commercial area from local retail to a dining and entertainment magnet. It will seriously violate the specific Plan policies for this area. Instead, the Overlay must be retained, and if additional restaurants would exceed the Overlay’s allowances, the overlay’s special exception provisions should be employed to determine their allowability.

In addition, Applicant’s “offer” includes fast food establishments. The existing C-1 zoning bars these establishments, with their generally less healthy menus and tendency to increase litter, from the Macomb/Wisconsin commercial district. Any PUD approval for the area must retain the ban on fast food establishments anywhere in the PUD area.

Policies and Actions. RCW-1 General Policies

6. Policy RCW-1.1.1: Neighborhood Conservation

Protect the low density, stable residential neighborhoods west of Rock Creek Park and recognize the contribution they make to the character, economy, and fiscal stability of the District of Columbia. Future development in both residential and commercial areas must be carefully managed to address infrastructure constraints and protect and enhance the existing scale, function, and character of neighborhoods.

The PUD, if allowed, would fail to carry out the Plan's Rock Creek West policy of protecting and enhancing the existing scale, function and character of the Macomb/Wisconsin neighborhood commercial zone and surrounding neighborhoods. Increased parking and traffic on the side streets may reduce the quality of life as well as property values in these attractive neighborhoods.

7. Policy RCW-1.1.3: Conserving Neighborhood Centers

Support and sustain local retail uses and small business in the area's neighborhood commercial centers. These centers should be protected from encroachment by large office buildings and other non-neighborhood serving uses. Compatible new uses such as multi-family housing or limited low-cost neighborhood-serving office space (above local-serving ground floor retail uses) should be considered within the area's commercial centers to meet affordable housing needs, sustain new neighborhood-serving retail and small businesses, and bring families back to the District.

The PUD's minimal affordable housing is not sufficient to warrant the major new residential use it proposes for the north block of the commercial zone. Existing and matter-of-right proposed housing surrounding the M/W commercial center is ample to sustain local shops and services and bring families back to the district. The Commission need not prohibit the addition of a modest amount of residential space in the PUD, but that space must be limited to retain the primary neighborhood commercial function of the M/W commercial area. The Commission needs to require the applicant to scale back the proposed north block housing so that the building's height and scale will be more consistent with the rest of the Macomb/Wisconsin commercial area.

8. Policy RCW-1.1.5: Preference for Local-Serving Retail

Support new commercial development in the Planning Area that provides the range of goods and services necessary to meet the needs of local residents. Such uses are preferable to the development of new larger-scale or "big-box" retail uses that serve a regional market. "Destination" retail uses are not appropriate in smaller-scale commercial areas, especially those without Metrorail access. Regardless of scale, retail

development must be planned and designed to mitigate traffic, parking, and other impacts on adjacent residential areas.

This section reinforces the Plan's policy against oversize development that squeezes out suppliers of local goods and services and attracts out-of-neighborhood shoppers and diners, such as will surely come to the new supermarket and restaurants. RCW-1.1.5 requires the Zoning Commission to recognize that limiting the overall scale of the development is particularly important at Macomb/Wisconsin, since there it lacks Metrorail service.

9. Policy RCW-1.1.12: Congestion Management Measures

Ensure that land use decisions do not exacerbate congestion and parking problems in already congested areas such as the Friendship Heights, Tenleytown, and Connecticut/Van Ness Metro stations . . . Traffic studies and mitigation plans should consider not only the impact of the project under consideration but the cumulative impact of other projects which also may impact the community, as well as the impact of non-resident drivers using local streets.

The PUD will inevitably exacerbate congestion and parking problems in the Macomb/Wisconsin area. Also, the applicant's traffic studies and mitigation plans fail to consider the impact of other existing and planned uses, including the projected new residential conversion being developed across the avenue in an area zoned R-5-D. That matter-of-right building will offer only 37 off-street parking spaces for its 99 new condo units.

10. Policy RCW-1.1.13: Parking

Consider the use of easements with private developers to provide additional public parking in the area's commercial districts. On-street public parking should not be removed within these districts.

Applicant proposes removal of on-street public parking, in violation of Policy RCW-1.1.13. It has offered 30 spaces for non-PUD users, but it has not offered to provide these spaces as a permanent easement. In fact, it has not supplied any details as to how these spaces would be identified or whether they might be shared with the PUD's other parking demands. The applicant is already citing potential sharing of spaces as a way to justify its failure to satisfy parking requirements for a project its size. In any case, these 30 spaces would be far less than the amount of non-Giant parking that currently occurs in Giant's existing surface parking lot. Although Giant is under no obligation to allow the current use of its lot, this current use is an existing condition that should be considered as a practical matter in evaluating the PUD's potential future impacts on the neighborhood.

11. Action RCW-1.1.A: Commercial Zoning Assessment

... Consider the creation of additional neighborhood commercial overlay zones Such overlays should ensure that new development is pedestrian-oriented, achieves neighborhood compatibility, and is responsive to community concerns about building height, buffers, and transitions between uses.

Applicant's request to remove its properties from the existing overlay directly conflicts with the Rock Creek West action proposal to increase such zones. The M/W Overlay limits building heights and FARs, among other protections. Adherence to the Overlay's height and FAR limits could result in a significant lessening of the project's related adverse impacts, although if the Commission grants the C-2-A zone request, it would be preferable for it to include a 40 foot height limit as it has done as to the C-2-A zones in Cleveland Park and Woodley Park Neighborhood Commercial Overlays. (See NC Overlay §1306.6 and §1307.6.) It would be an anomaly for the Commission to allow greater heights in the small Macomb/Wisconsin neighborhood commercial zone than it allows in the larger, Metrorail-served neighborhood commercial zones of Cleveland Park/Connecticut Avenue and Woodley Park.

12. Policy RCW 2.2.5: Land Use Compatibility Along Wisconsin Avenue

Ensure that future development along Wisconsin Avenue is physically compatible with and architecturally sensitive to adjoining residential neighborhoods and is appropriately scaled given the lot depths, widths and parcel shapes. Use a variety of means to improve the interface between commercial districts and residential uses, such as architectural design, the stepping down of building heights away from the avenue, landscaping and screening, and additional green space improvements.

The PUD's 5-story, 61-foot north block is not consistent with the nearby existing single-family neighborhoods. The eight-story building across Idaho Avenue is itself the result of a previous PUD and should not be used as a piggyback justification for additional out-of-scale buildings. Also, the Comprehensive Plan designates that site for low density commercial/medium residential residential, and the zoning there is R-5-A. Hence, it is appropriate for the PUD-approved use of the site to be primarily residential, unlike the existing C-1 or the PUD's proposed C-2-A zoning.

13. Action RCW-2.2.C: Zoning and Design Measures

Continue to work with the community, the Advisory Neighborhood Commissions, and local property owners to address concerns regarding building density and height, planned unit developments and related density bonuses, and architectural design in the

Planning Area. Zoning techniques should be considered to break up the auto-oriented commercial appearance of much of Wisconsin Avenue and instead create a more pedestrian-oriented street, distinct in function and visual character from adjacent residential areas.

Applicant has met with the community but has not responded to expressed concerns about building density and height. The Plan does not anticipate that the Macomb/Wisconsin commercial area will be limited to pedestrians, since it is not served by Metrorail and it features a supermarket, to which shoppers will no doubt come from some distance and purchase more than they could reasonably carry on foot.

14. Chapter 2 Framework Element

e. The designation of an area with a particular land use category does not necessarily mean that the most intense zoning district described in the land use definitions is automatically permitted. A range of densities and intensities applies within each category, and the use of different zone districts within each category should reinforce this range.

The Plan Framework makes it clear that Applicant's request to change the zoning from C-1 to C-2-A is not to be granted automatically, nor should the PUD's additional requested flexibility be automatic. Indeed, a rezoning from C-1 to matter-of-right C-2-A would itself be a substantial PUD-based density bonus; the applicant has not justified its request for "a bonus on the bonus" in excess of C-2-A limits. The applicant has not offered sufficient public benefits or amenities--features superior to those that would be expected matter-of-right--to justify its radical revision of existing, Comprehensive Plan-backed conventional and overlay zoning. Instead, its proposal would circumvent the intent and purposes of the Zoning Regulations and result in action that is inconsistent with the Comprehensive Plan, in violation of sec. 2400.4.