

Statement of Diane Olsson -- Zoning Case 08-15

Good evening. I am Diane Olsson; I am a lawyer, I live in Cleveland Park; I shop at the Giant. I'd like to address some erroneous comments about the Comprehensive Plan that you've been hearing, particularly from Ellen McCarthy, formerly with the Office of Planning.

Ms. McCarthy's testimony was misleading. Fundamentally, it was based on a false logic: Ms. McCarthy's argument was:

First, under the Comprehensive Plan, a low density commercial area can be zoned either C-1 or C-2-A;

Second, Giant asks to change the zoning of its lots from C-1 to C-2-A, and

Therefore Giant's proposal is not inconsistent with low density under the Comprehensive Plan.

This is an invalid conclusion. The problem is that the formula Ms. McCarthy recited fails to say that moderate density zones can also be mapped C-2-A. In her testimony, she admitted that low density is characterized by one-to three-story commercial buildings, but she failed to point out that moderate density, also C-2-A, refers to "buildings [that are] are larger and/or taller . . . but generally do not exceed five stories in height." (Page 2-34 and Plan Legend.) To paraphrase Ms. McCarthy's conclusion, it's the Plan's moderate density definition that "totally and perfectly well sums up" the Applicant's North Block proposal.

Ms. McCarthy referred to a "generalized land use map," as though rigorous compliance isn't necessary. But the generalized soft-focus or "paint brush" land use map from her OP days is gone. Now it's a block-by-block street grid with clearly drawn definitions; it incorporates all the land use policies from other parts of the Plan. Its correct title is "Future Land Use Map." It's not "generalized"--not in name, not in concept, not in effect.

By law, zoning must not be inconsistent with that Map, and no PUD can change the Map or avoid compliance with it. (Implementation Element Policies 1.3.2 and 1.3.3, copy attached.) Ms. McCarthy's citations of various Plan "motherhood" provisions calling broadly for development and economic vitality can't override the hard facts of the Future Land Use Map's specific design for this precise part of the city. Her arguments are a throwback to her OP tenure, when some people treated Plan guidance chiefly as an obstacle, a nuisance to be avoided whenever and however possible.

When questioned, Ms. McCarthy could not state whether Giant's proposal is consistent with matter-of-right development under C-2-A. As you know from reading the application, it is not: Instead, the Applicant seeks relief not only from the applicable C-1 zoning but even from the more lenient limits of C-2-A. So not only do we have something that is too large, though within C-2-A, to be consistent with the Future Land

Use Map; we have something that exceeds the largest development permitted under C-2-A as a matter of right even if the block were designated for moderate density. Thus according to Ms. McCarthy, low density commercial covers everything from 1.0 FAR/40 foot height to 3.81 FAR/61 foot height. This is patently incorrect.

Adherence to the Future Land Use Map is important. Residents and merchants depend on predictability of land use regulation. When they lease their commercial space or buy their neighborhood home, they need to know that the Plan Map is reliable. Otherwise, what is the use of having a planned city?

This isn't an infill site, contrary to Ms. McCarthy's testimony. Except where Giant pushed out some neighborhood merchants and left the space empty for years, it is a fine example of a small neighborhood shopping area serving its surrounding area, just as the Future Land Use Map intends it to remain. The Plan provisions that control in this case are not the ones dealing with vacant lots but those that seek to preserve established areas from the threat of overdevelopment.

Finally, this area is not designated for mixed use. The Plan identifies three circumstances where mixed use is desirable: (1) Commercial areas that already include substantial housing; (2) Commercial corridors where more housing is desired in the future and (3) Large sites, generally over ten acres, where mixed use opportunities exist but haven't yet been specifically laid out. (Page 2-36 of the Framework Element, attached.) Incredibly, Ms. McCarthy asks you to believe somehow that mixed use is appropriate here precisely because this site is not designated for mixed use and does not fit any of situations that That's upside-down logic; I trust you'll reject it.

The Plan acknowledges that some older single-use commercial areas will contain existing other uses, including housing, and some older residential areas will have existing commercial uses such as corner stores or gas stations. (See Page 2-36, attached.) That is not the case at Macomb/Wisconsin, and the Plan's recognition of existing conditions is not a license to add uses that aren't here and don't meet the Plan's designation.

Ms. McCarthy has the audacity to say that this PUD is "almost the embodiment of what the Comprehensive Plan was trying to accomplish." That statement is wildly off the mark. It overlooks all of the following:

1. The Plan requires that the zone map not be inconsistent with the Future Land Use Map. (Implementation Element, IM 1.3.2, attached.)
2. The Zoning Commission must use the Future Land Use Map to guide its decisions on rezoning requests. (Implementation Element, IM 1.3.3, attached.)
3. The Plan calls Wisconsin Avenue "eclectic" and maps the Avenue to have differing uses and densities in different portions of the street. The Plan designates the entire distance from Tenleytown to Friendship Heights for various levels of mixed use, but not the PUD area. (Future Use Land Map and Rock Creek West

Element, page 23-24.)

4. Those mixed use areas are all served by Metrorail--no point is more than four-tenths of a mile from the Metro. The PUD area does not have Metrorail.
5. A five story building is not a one- to three-story building, and a medium density mixed-use building is not a low density commercial building. Allowing that to happen here would violate the Future Land Use Map's overall scheme and the obvious, well thought out intent of the Plan.
6. The whole point of the Macomb-Wisconsin Overlay is to compel BZA review of exactly this type of development (construction of a new building or enlargement of the gross floor area of an existing building by fifty percent or more) on precisely this piece of land (a lot that has ten thousand square feet or more in land area). (Zoning Regulations, §1308.) The overlay requires public review of large developments—

as to their proposed uses, vehicular access, and the scale and massing of proposed buildings, so as to ensure compatibility with and enhancement of the primary neighborhood retail function of the commercial area and to advance the other purposes of this overlay district. (Emphasis added.)

7. Nothing has occurred in this case that would cause the Overlay to become inactive. The Applicant and OP act as if the Overlay doesn't exist, but in simple fact, it does.
8. Sadly, the Zoning Commission's PUD review is no substitute for the BZA review, because it isn't controlled by the Overlay's protective criteria at §1304.
9. Legal pleadings have shown that the PUD regulation has no provision that would empower the Zoning Commission to grant the Applicant relief from the requirements of the Overlay regulation. The Applicant's legal argument for escaping the Overlay was rejected thirty years ago by the Corporation Counsel, with a straightforward analysis that still holds true.

These points present the Applicant with an inconvenient truth.

But the fundamental inconvenient truth here is that the Home Rule Charter requires the Mayor to prepare and implement a Comprehensive Plan. It's shocking to see the almost deliberate failure of due diligence by OP, the Mayor's agency, as it struggles to defend this PUD. The poorly done work by OP is an abrogation of its duty to the Zoning Commission and to the public to conduct an adequate and objective analysis of the legal and practical problems of this application. Approval of this PUD without the changes urged by the opposition parties would be nothing less than a violation of the Home Rule Charter.

**District of Columbia
Home Rule Act**

TITLE IV -- THE DISTRICT CHARTER

MUNICIPAL PLANNING

SEC. 423. [D.C. Code 1-244]. (a) The Mayor shall be the central planning agency for the District. He shall be responsible for the coordination of planning activities of the municipal government and the preparation and implementation of the District's elements of the comprehensive plan for the National Capital which may include land use elements, urban renewal and redevelopment elements, a multi-year program of municipal public works for the District, and physical, social, economic, transportation, and population elements. . . . In carrying out his responsibilities under this section, the Mayor shall establish procedures for citizen involvement in the planning process and for appropriate meaningful consultation with any state or local government or planning agency in the National Capital region affected by any aspect of a proposed District element of the comprehensive plan (including amendments thereto) affecting or relating to the District.

(b) The Mayor shall submit the District's elements and amendments thereto to the Council for revision or modification, and adoption by act, following public hearings. . .

COMPREHENSIVE PLAN IMPLEMENTATION ELEMENT

IM-1.3 Zoning Regulations and Consistency ²⁵⁰⁴

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. The Home Rule Charter requires that zoning “shall not be inconsistent” with the Comprehensive Plan. Consequently, revisions to the Comprehensive Plan should be followed by revisions to the Zone Map, with an emphasis on removing clear inconsistencies. ^{2504.1}

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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. Make appropriate revisions to the Zone Map to improve its alignment with the Future Land Use Map and to eliminate clear inconsistencies. ^{2504.4}

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) as well as Small Area Plans pertaining to the area proposed for rezoning. ^{2504.5}

Policy IM-1.3.4: Interpretation of the District Elements

Recognize the overlapping nature of the Comprehensive Plan elements as they are interpreted and applied. An element may be tempered by one or more of the other elements. As noted at Section 300.2, since the Land Use Element integrates the policies of all other District elements, it should be given greater weight than the other elements. ^{2504.6}

Mixed Use Categories

The Future Land Use Map indicates areas where the mixing of two or more land uses is encouraged. The particular combination of uses desired in a given area is depicted in striped patterns, with stripe colors corresponding to the categories defined on the previous pages. The Mixed Use category generally applies in the following three circumstances:

- a. Established, pedestrian-oriented commercial areas which also include substantial amounts of housing, typically on the upper stories of buildings with ground floor retail or office uses;
- b. Commercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future. The pattern envisioned for such areas is typically one of pedestrian-oriented streets, with ground floor retail or office uses and upper story housing; and
- c. Large sites (generally greater than 10 acres in size), where opportunities for multiple uses exist but a plan dictating the precise location of these uses has yet to be prepared. 225.18

The general density and intensity of development within a given Mixed Use area is determined by the specific mix of uses shown. If the desired outcome is to emphasize one use over the other (for example, ground floor retail with three stories of housing above), the Future Land Use Map may note the dominant use by showing it at a slightly higher density than the other use in the mix (in this case, "Moderate Density Residential/Low Density Commercial"). The Comprehensive Plan Area Elements may also provide detail on the specific mix of uses envisioned. 225.19

It should also be acknowledged that because of the scale of the Future Land Use Map and the fine-grained pattern of land use in older parts of the city, many of the areas shown purely as "Commercial" may also contain other uses, including housing. Likewise, some of the areas shown as purely "Residential" contain existing incidental commercial uses such as corner stores or gas stations, or established institutional uses such as churches. The "Mixed Use" designation is intended primarily for larger areas where no single use predominates today, or areas where multiple uses are specifically encouraged in the future. 225.20