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September 24, 2008

By hand

Mr. Anthony Hood, Chairperson
D.C. Zoning Commission
Office of Zoning
441 4th Street N.W., Suite 210
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2008 SEP 24 AM 11:29

Re: Consolidated PUD and Zoning Map Amendment—Case 08-15:
Petition To Refer Case 08-15 To The Board Of Zoning Adjustment

Dear Chairperson Hood and Members of the Commission,

Enclosed for your consideration is a Petition To Refer Case 08-15 To The Board Of Zoning Adjustment. This letter sets forth the basis for the Petition.

1. Applicable Law: The subject PUD application applies to lots that are located in the Macomb-Wisconsin ("MW") Neighborhood Commercial Overlay District. The Applicant is asking the Commission to remove the MW Overlay from its lots as a part of granting its PUD request. Irrespective of the ultimate resolution of that request, the MW Overlay is currently in effect, and its provisions apply to the city's review of this PUD application.

2. The Zoning Regulations: As set forth in the attached Petition, Chapter 13 of the Zoning Regulations clearly requires the Applicant's proposed construction to undergo review by the BZA pursuant to the Special Exception criteria established by the Overlay.

3. The Community: The community diligently initiated and vigorously advocated the zoning map amendment that resulted in the existing C-1 and MW Neighborhood Commercial Overlay District for the small Macomb/Wisconsin neighborhood commercial center. The pending PUD seeks to remove the Overlay and return to C-2-A for almost three-quarters of the entire Neighborhood Commercial district, some 152,848 square feet of a total of 207,392 square feet in the entire zone district. This would result in a critically reduced neighborhood commercial overlay zone district. In addition, if the Applicant's portion of the MW Overlay District were excluded, food service

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District of Columbia

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EXHIBIT NO. 16

establishments in the remaining fragment would constitute well over 50% of the linear footage of the area still subject to the MW Overlay. This would render it seriously out of compliance with the Overlay's 25% restaurant limitation.

If the community's relatively recent and successful rezoning effort is to be so drastically reversed, the community is entitled to a serious hearing that will focus directly on the project's impact on the entire commercial district and surrounding residential neighborhoods. The BZA Special Exception process, including the overlay chapter's specific protective criteria, is essential to achieve that focus.

4. The Zoning Commission: The BZA's Special Exception criteria and the Zoning Commission's PUD criteria operate at cross-purposes. The BZA review is meant to assure that the project will advance/enhance the purposes of the overlay district by, among other things, ensuring compatibility with the area's existing scale and massing. In contrast, the Zoning Commission PUD process is designed to promote new development in part by offering the developer expanded scale and massing. The BZA process embraces limits; the PUD process embraces expansion. Further, the expansion that the PUD authorizes the Zoning Commission to grant may be awarded on the basis of perceived benefits that do not necessarily enhance the neighborhood commercial district. For example, the pending application identifies "Revenue for the District" as a project benefit, stating that the development "will result in the generation of significant additional tax revenues in the form of property, income, sales, use and employment taxes for the District." Statement IV.A.7. Additional tax revenues for the District is not a goal of the Neighborhood Commercial Overlay regulation.

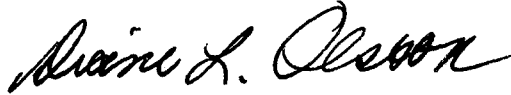
It is not reasonable to place the Commission in a position of such obvious and inescapable conflict. Importantly, if the Commission reviewed the PUD application without referral to the BZA and the Commission's decision favored the PUD despite serious neighborhood criticisms as to the project's impact on the Overlay District, it is not likely that the community would believe that its concerns had been given the full and fair hearing to which they were entitled. Public confidence in the system would be eroded.

Referral to the BZA allows that Board to consider the proposal in light of the Overlay's guidance, and it assures the community and the city that the project's impact on the commercial area and the neighborhood has been fully explored in the appropriate review process. The Zoning Commission can thereafter conduct its review under the PUD criteria, giving due regard to the BZA's determinations.

Chairman Hood and Members of the Commission
September 24, 2008
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We look forward to the Commission's prompt attention to this important matter

Sincerely,

A handwritten signature in black ink, reading "Diane L. Olsson". The signature is written in a cursive, flowing style.

Diane L. Olsson

Enclosures

Cc: Jennifer Steingasser, Office of Planning
Trudy Reeves, ANC 3C06
Richard Rothblum, ANC 3C07
Nancy MacWood, ANC 3C09

PETITION TO REFER CASE 08-15 TO
THE BOARD OF ZONING ADJUSTMENT

**In re: APPLICATION TO THE DISTRICT OF COLUMBIA ZONING
COMMISSION FOR CONSOLIDATED REVIEW AND APPROVAL OF A
PLANNED UNIT DEVELOPMENT AND ZONING MAP AMENDMENT**

**FRIENDSHIP-MACOMB SC INC c/o THE STOP & SHOP SUPERMARKET CO.
CASE NO. 08-15**

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2008 SEP 24 AM 11:30

**A. Friendship-Macomb Has Applied For A Large PUD In The Low-Density
Macomb-Wisconsin Neighborhood Commercial Zone.**

1. On May 16, 2008, Friendship-Macomb SC Inc. c/o the Stop & Shop Supermarket Co. ("PUD Applicant") filed an application to the District of Columbia Zoning Commission for consolidated review and approval of a planned unit development ("PUD") and zoning map amendment for Lot 813, Square 1920, and Lots 1 and 2 in Square 1920-N, comprising 178,236 square feet of land area.

2. The PUD Applicant is requesting the Zoning Commission to award, as an incentive for its project, a zoning map amendment to C-2-A for a major portion of its PUD site, and the elimination of the MW Overlay from the portion that it seeks to have remapped to C-2-A. The total area for which a map amendment is requested is 152,848 square feet.

3. On July 28, 2008, the Zoning Commission ordered the application to be set down for a hearing at a date to be determined.

4. The Future Land Use Map of the Comprehensive Plan for the District of Columbia, 2006, designates the area of the PUD application as Low Density Commercial and Low Density Residential. The Generalized Policy Map of the Plan designates the commercial area that includes the PUD Applicant's property as a Neighborhood Commercial Center.

5. The bulk of the PUD Applicant's property, a total of 152,848 square feet, is zoned C1 and is covered by the Macomb-Wisconsin Neighborhood Commercial Overlay ("MW") zone. The rear portion of Square 1920, a total of 25,388 square feet, is zoned R-5-A.

6. The purposes of the Neighborhood Commercial ("NC") Overlay District include, but are not limited to, "encourage a scale of development, a mixture of building uses, and other attributes as generally required by the comprehensive plan" and "limit the maximum permitted height of new buildings so as to encourage a general compatibility in scale between new and older buildings." §1300.3(a) and (c).

7. In addition to the NC Overlay District purposes set forth in §1300.3, the purpose of the particular MW Overlay District is “to provide for 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 the overlay district.” §1308.2.

B. The MW Overlay Requires The Board of Zoning Adjustment To Review Certain Large Construction Projects.

8. The MW Overlay District states (§1308.3):

Within the MW Overlay District, on a lot that has ten thousand square feet (10,000 feet sq.) or more in land area, construction of a new building or enlargement of the gross floor area of an existing building by fifty percent (50%) or more, shall be permitted, subject to review and approval as a special exception by the Board of Zoning Adjustment, pursuant to the same standards and criteria set forth in §1304 of this chapter.

9. Two of the three lots in the Applicant’s PUD application have a land area of more than 10,000 square feet and are therefore subject to the BZA review requirements of §1308.3.

10. Section 1304 of the NC Overlay Chapter sets forth the Special Exception procedures and conditions under which the Board of Zoning Adjustment (“BZA”) is required to perform its review of construction on lots over 10,000 square feet in the MW Overlay District.

11. Under §1304, before approving a project in the MW Overlay District, the BZA is required to determine that “the excepted use, building, or feature at the size, intensity and location will substantially advance the stated purposes of the NC Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity.” §1304.1(a).

12. Under §1304(b), the BZA must find that “exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, which justify the exception or waiver.”

13. Under §1304(c), the BZA must also determine whether “vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.”

14. Under §1304(d), the BZA is authorized “to impose requirements pertaining to design, appearance, signs, size, landscaping and other such requirements as it shall deem necessary to protect neighboring property and to achieve the purposes of the NC Overlay District and the particular overlay district.”

C. The Zoning Commission Has No Authority to Conduct The Requisite BZA Special Exception Review Established By The MW Overlay.

15. Under the PUD regulation, the Zoning Commission reserves “the option to approve any use that is permitted as a special exception and which would otherwise require the approval of the Board of Zoning Adjustment.” §2405.7.

16. The reserved authority of §2405.7 is limited by its terms to the use exception that the BZA is authorized to grant under Chapter 31 of the Zoning Regulations. Nothing in the PUD chapter or any other provision of the Zoning Regulations reserves to the Zoning Commission the authority to act in the stead of the BZA with respect to any of the authorities and responsibilities that the Neighborhood Commercial Overlay Chapter specifically assigns to the BZA as described in part in Paragraphs 11-14 above.

17. The presence of the §2405.7 option in the PUD Chapter, allowing the Commission to grant the PUD applicant a Chapter 31-type use exception, confirms that when the Zoning Commission developed and promulgated the PUD Chapter, it recognized that the PUD regulation as promulgated does not provide it with the option to perform distinct BZA Special Exception review responsibilities as a part of its PUD review, and that any such option must be expressly set forth in the PUD regulation. The PUD process can address additional BZA responsibilities only if, and to the extent that, the PUD Chapter expressly authorizes it to do so. There is no authorization in Chapter 24 to perform the BZA review established by §§1308.3 and 1304.

18. Section 1301.3 of the NC Overlay Chapter provides that “where there is a conflict between this chapter and the underlying zoning, the more restrictive provisions of this title shall govern.” The BZA Special Exception criteria are more restrictive than the PUD criteria, and the Zoning Commission must allow the BZA to apply them.

19. Section 2400.4 of the PUD chapter states that the PUD process “shall not be used “to circumvent the intent and purposes of the Zoning Regulations nor to result in action that is inconsistent with the Comprehensive Plan.” The Zoning Commission may not circumvent the NC Overlay’s BZA review process and must respect the BZA’s determinations with respect to the Special Exception criteria described in Paragraphs 11-14 above.

20. Under the above-cited regulations, the Zoning Commission must not review Case 08-15 before it has been reviewed by the BZA and may not thereafter take any action inconsistent with the findings and conclusions of the BZA.

WHEREFORE, IT IS MOVED that the Zoning Commission herewith refer Case 08-15 to the Board of Zoning Adjustment for its review pursuant to Chapter 13 of the Zoning Regulations.

Respectfully submitted,



Diane L. Olsson
3519 Lowell St. NW
Washington, DC 20016
DC Bar Number 968479



John B. O'Sullivan
3410 Newark St. NW
Washington, DC 20016
DC Bar Number 423141

Individually, as residents of the Wisconsin Avenue/Newark Street neighborhood and as residents of the District of Columbia, and on behalf of the Wisconsin/Newark Neighborhood Coalition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Petition To Refer Case 08-15 To The Board Of Zoning Adjustment was hand-delivered to the Zoning Commission on Wednesday, September 24, 2008, and was mailed by registered mail on that date to Friendship-Macomb SC Inc. c/o The Stop and Shop Supermarket Co., 1385 Hancock Street, Quincy MA 02169 and to Phil T. Feola, Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW, Washington DC 20037.



Diane L. Olsson