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September 3, 2009

Hand Delivered

Mr. Anthony Hood, Chairperson
D.C. Zoning Commission
Office of Zoning
441 4th Street N.W., Suite 200S
Washington, DC 20001

**Re: Opposition to WNNC's Motion for Reconsideration, Zoning
Commission Case No. 08-15: Friendship Shopping Center**

Dear Chairperson Hood and Members of the Commission:

For the reasons set forth below, the Applicant opposes WNNC's late request for reconsideration as untimely and beyond the scope of the proceedings. Further, the Commission should reject WNNC's proposed changes to Condition No. 16 of the Order since its proposed changes are either redundant, unnecessary or unsupported by evidence in the record.

1. The Commission Should Deny WNNC's Late Motion for Reconsideration

In its August 27 letter, Ms. Diane L. Olsson, on behalf of the WNNC, requests that the Commission reconsider its decision on residential permit parking. The request should be denied as untimely, beyond the scope of the record, and in any event, unnecessary.

First, the request is filed late. Under Section 3029, any motion for reconsideration must be filed with 10 days of the Order's finality. Here, WNNC's motion was, by its own admission, filed late, 17 days after the Order's finality. Second, the request is based on a communication that, at best, is hearsay, took place after the Commission's final decision and was outside of the record. Third, regardless of the ex parte information WNNC attempts to use to justify its late motion for reconsideration, the Commission's finding on the issue of RPP was not arbitrary.

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Rather, it was based on clear evidence that in this case no restriction on RPP was required. As found by the Commission, there will be ample off-street parking for all PUD residents.

2. The Commission Should Reject WNNC's Proposed Language for Condition No. 16

In its Motion, the Applicant requested additional clarity to Condition 16 in order to permit the Zoning Administrator to assess compliance with the proffered benefits and amenities of the PUD. WNNC's proposed language goes too far, however, and includes a series of conditions that are either unnecessary, go beyond the scope of the record in the case, or exceed the authority of the Commission. For example:

- Unnecessary Language.

Many of WNNC's proposed conditions are unnecessary because they require nothing more than conformance with the approved plans, approved conditions, or regulations themselves. For example, WNNC's proposed Condition No.16(a) would require that the Applicant's affordable housing "conform to the development standards of the District of Columbia's inclusionary zoning (IZ) law." The proposed language is unnecessary, since the application of the IZ regulations is already governed by the text of the regulations itself as well as Condition No. 6 of the Order. Similarly, proposed Condition No. 16(b) purports to require the provision of a certain minimum number of parking spaces, but that is already required pursuant to the approved plans and Condition No. 8 of the Order.

- Language Outside the Record.

Other conditions proposed by WNNC introduce new items that are not a part of the record. For example, proposed Condition No. 16(e), regarding the community parking proffer, attempts to impose a definition of "off-peak" hours. There is nothing in the record that defines these "hours". Similarly, proposed Condition No. 16(k) proposes language limiting the type of retail food establishments typically found in a "neighborhood shopping center," and while this was discussed in the record, it was discussed only as example of preferred uses, not as a limit to such uses.

- Conditions Beyond the Commission's Authority.

Other language proposed by WNNC goes beyond the Commission's authority. For example, proposed Conditions No.16(f) and 16(i), regarding on-street parking and Ordway Street measures, are beyond the scope of the Commission's authority, since

the management and use of public space is ultimately subject to DDOT review and approval.

The Commission's conditions of approval, with the focused amendment to Condition No. 16 proposed by the Applicant, provide ample detail to ensure the PUD will be developed according to the approved plans and with all of the proffered benefits and amenities.

Conclusion

For the reasons set forth above, the Applicant respectfully requests that the Commission approve its originally-proposed revisions to Condition 16, which are set forth below for the Commission's convenience:

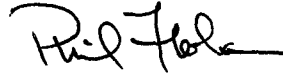
"16. In addition to the other requirements of the Conditions of this Order, the Applicant shall also fulfill other public benefits and amenities proffered as detailed in Finding of Fact No. 60, as follows:

- a. The affordable housing commitment as described in Condition No. 6 shall be a minimum of 10% of the gross floor area of the residential portion of the project, which is approximately 16,480 square feet;
- b. Implementation of the recommendations of the Applicant's noise consultant regarding the grocery store loading area, as detailed in Exhibit B of Exhibit 46 of the record;
- c. Public space improvements shall be constructed as shown on the approved plans, including special paving features along Newark Street, subject to review and approval by the District Department of Transportation;
- d. The Applicant shall provide the public spaces as shown on the approved plans including a tree-canopied space (open to the public) on the north side of Newark Street and a public plaza at the intersection of Wisconsin and Idaho Avenues; and
- e. The grocery store shall be constructed with energy-efficient sustainable features equivalent to the features detailed on pages 13-14 of Exhibit 3 of the record."

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The Applicant appreciates the Commission's attention to its limited request for reconsideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Phil Feola".

Phil Feola

A handwritten signature in black ink, appearing to read "David Avitabile".

David Avitabile

Enclosure

cc: Lucy Wildrick, Street-Works, LLC

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2009 a copy of the foregoing was sent via hand delivery to the following:

Maxine Brown-Roberts
D.C. Office of Planning
2000 14th Street, NW, 4th Floor
Washington, DC 20009

Cleveland Park Citizens Association
c/o George Idelson, President
3035 Newark Street, NW
Washington, DC 20008

Jeff Jennings
District Department of Transportation
2000 14th Street, NW, 6th Floor
Washington, DC 20009

3300 Idaho
c/o Thomas J. Haines
3315 Idaho Avenue, NW
Washington, DC 20016

Anne Marie Bairstow, Chair, ANC 3C
2802 27th Street, NW
Washington, DC 20008

Immediate Macomb Street Neighbors
c/o Frances A. Sclafani
3815 Macomb Street, NW
Washington, DC 20016

Advocates of Wisconsin Avenue
Renewal
c/o Jeffrey S. Davis
3409 Newark Street, NW
Washington, DC 20016

Wisconsin-Newark Neighborhood Coalition
c/o John O'Sullivan
3410 Newark Street, NW
Washington, DC 20016

Ordway Street Neighbors Association
c/o David Isaacs
3610 Ordway Street, NW
Washington, DC 20016



David Avitabile