



Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007
www.pillsburylaw.com

U.S. OFFICE OF ZONING

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Phil Feola
Phone: 202.663.8879
phil.feola@pillsburylaw.com

David Avitabile
Phone: 202.663.9013
david.avitabile@pillsburylaw.com

January 26, 2009

Hand Delivered

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

**Re: Case No. 08-15: Wisconsin Avenue Giant,
Supplemental Response of Applicant to Petition to Refer Case No.
08-15 to BZA**

Dear Chairperson Hood and Members of the Commission:

Friendship-Macomb SC Inc. (the “**Applicant**”), through its counsel, reiterates its opposition to the request of the Wisconsin/Newark Neighborhood Coalition (“**WNNC**”) to refer Zoning Commission Case No. 08-15 to the Board of Zoning Adjustment on the grounds that the MW Overlay requires review by the Board of Zoning Adjustment (“**BZA**”). The reasons remain the same, as was articulated in our filing on October 16, 2008.

First, the PUD-related Zoning Map Amendment, if approved, will rezone the Property and remove the Property from the MW Overlay. This eliminates the requirement for BZA review under Section 1308.3. Under the express terms of the Zoning Act and as a matter of legislative principle, the present Zoning Commission retains the power to modify or remove the MW Overlay. WNNC’s claim that BZA review should still be technically required since the Map Amendment will not take effect until the final order is published should be rejected. The Commission’s approval of the PUD does not take effect until the publication of the final order as

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well, which addresses any concern that the Commission's action on the PUD would precede the Map Amendment.

Second, the Zoning Commission has the authority to review requests for special exceptions—including the relief called for under Section 1308.3—as a part of its review of the PUD. Under Sections 2405.7 of the Zoning Regulations, the Commission “reserves the option to approve any use which is permitted as a special exception and would otherwise require the approval of the Board of Zoning Adjustment.” WNNC’s erroneous suggestion that the Zoning Commission chose not to include all special exceptions ignores the clear text of Section 2405.7 as well as the 1980 Order that promulgated the regulation. Even a cursory review of the Commission’s 1980 order adopting Section 2405.7 makes it clear that the Commission intended to **completely eliminate** the BZA’s role in reviewing and approving PUD applications. As noted in the Order, Commission approved the amendment “to allow expeditious and comprehensive review of PUD applications by the Zoning Commission **without further action by the BZA.**” A copy of the order is attached.

Third, the review and approval of this application by the Zoning Commission through the PUD process provides the public review called for under Section 1308.2. Separate review by the BZA is unnecessary, and runs contrary to the “expeditious and comprehensive review” of PUDs by the Zoning Commission that was affirmed by the 1980 text amendment.

Accordingly, we reiterate our request to dismiss the WNNC motion and ask that this Commission retain its jurisdiction over the case for consideration at an upcoming public hearing.

Sincerely yours,



Phil Feola



David Avitabile

cc: Alan Bergstein, Esq. (By-hand)
Jacob Ritting, Esq. (By-hand)
Lucy Wildrick, Street-Works

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2009, a copy of the attached letter and enclosure was delivered via electronic mail or first-class mail, to the following:

Jennifer Steingasser
D.C. Office of Planning
2000 14th Street NW, 4th Floor
Washington, DC 20009

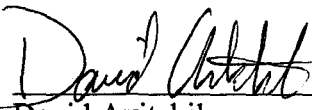
Advisory Neighborhood Commission 3C
4025 Brandywine St, NW
Washington, DC 20016

Anne Marie Bairstow, ANC 3C03
2802 27th Street NW
Washington, DC 20008

Trudy Reeves, ANC 3C06
3816 Porter Street, NW
Washington, DC 20016

Richard Rothblum, ANC 3C07
3810 Macomb Street, NW
Washington, DC 20016

Wisconsin/Newark Neighborhood Coalition
c/o Diane L. Olsson, Esq.
3519 Lowell Street, N.W.
Washington, DC 20016



David Avitabile