

Form 104

(Revised 05/01/08)

RECEIVED
D.C. OFFICE OF ZONING
2009 AUG 11
Case No. 09-14BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

APPLICATION FOR CONSOLIDATED APPROVAL OF A PLANNED UNIT DEVELOPMENT (PUD)

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.

In accordance with the provisions of Chapter 24 of 11 DCMR – Zoning Regulations, request is hereby made for Consolidated Approval of a PUD details of which are as follows:

Square No.	Lot No.	Square Feet	Existing Zoning	Requested Zoning
1672	0803	1473	C-2-A	C-2-A
1672	0804	5108	R-3	C-1
1672	0812	3090	R-2	C-1
1672	0815	100, 121	C-2-A/R-2	C-2-A/C-1

Previous zoning (ZC and/or BZA) actions, including Order No.(s), affecting the above properties:

BZA No. 12432
April 17, 1978BZA 12089
April 7, 1976BZA 12179
Feb. 15, 1977ZC No. 178
Oct. 13, 1977

Address or boundary description of the premises:

4203 Davenport Street, N.W.

Washington, DC

Total Area of the Site:	109,792	Square Feet	2.52	Acres	Baist Atlas No.	3	Page	33
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Brief description of proposal: Raze existing structure on lot 0815 and construct a new full

service grocery store building on lots 0803, 0804, 0812 and 0815.

Concurrent change of zoning (circle one):
(If yes, please complete a Map Amendment Application)Yes / No
☒ ☐Advisory Neighborhood Commission(s)/
Single Member ANC District (s):

3E03

If applicable, Historic District(s) in which site is located:

Not applicable

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.

Signature:

Owner's Signature

Date:

8/5/09

Owner's Name:

AVIS E. BLACK AREA REAL ESTATE MGR SAFEWAY INC

Person to be notified of all actions:

Name:

Jerry A. Moore III

Address:

Venable LLP, 575 7th Street, N.W., Washington, DC

Zip Code:

20004

Phone No.:

(202) 344-4763

Certification of Minimum Area: I hereby certify that the land area involved in this application is a minimum of
2.5 acres or 109,000 square feet, pursuant to Title 11 DCMR – Zoning §2401.

Signature:

Owner's Signature

Date:

8-5-09

DO NOT WRITE BELOW THIS LINE

Date Received:

Date Accepted:

ZONING COMMISSION
District of Columbia

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

EXHIBIT NO.

CASE NO. 09-14

EXHIBIT NO. 3

09-14



**BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA**



APPLICATION/PETITION* TO AMEND THE ZONING MAP

* The Zoning Commission will determine at the time of set down whether this is a contested (Application) or rulemaking (Petition) case.

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.

In accordance with the provisions of §102 of Title 11 DCMR – Zoning Regulations, request is hereby made for an amendment to the Zoning Map as follows:

Square No.	Lot No.	Square Feet	Existing Zoning	Requested Zoning
1672	0804	5,108	R-3	C-1
1672	0812	3,090	R-2	C-1
1672	0815	100,121	C-2-A/R-2	C-2-A/C-1

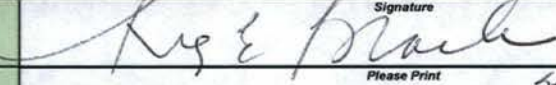
Previous zoning (ZC and/or BZA) actions, including Order No.(s), affecting the above properties:

ZC No. 178 (Lot 804) October 13, 1977	BZA No. 12432 April 17, 1978	BZA No. 12089 April 7, 1976	BZA No. 12179 February 15, 1977
--	---------------------------------	--------------------------------	------------------------------------

Address or boundary description of the premises: 4203 Davenport Street, N.W.

Total Area of the Site:	108,319	Square Feet	2.48	Acres	Baist Atlas No.	3	Page	33
Advisory Neighborhood Commission(s):	3E	ANC/SMD(s):	3E03	If applicable, Historic District(s), in which site is located: Not Applicable				

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.
(D.C. Official Code § 22 2405)

Signature:		Date:	8/5/09
Name:	Please Print AVIS E. BLACK AREA REAL ESTATE MGR	Owner:	☒
	SAFeway INC	Petitioner:	☐

Person(s) to be notified of all actions:

Name:	Jerry A. Moore III		
Address:	Venable LLP, 575 - 7th Street, N.W., Washington, D.C.		
Zip Code:	20004	Phone No.:	(202) 344-4763

DO NOT WRITE BELOW THIS LINE

Date Received:		Date Accepted:	
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ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.



Existing Condition



View from Wisconsin Avenue (before and after) – The new Safeway and its main entrance will be located on 42d Street facing Wisconsin Avenue, the primary commercial corridor, which will restore the active street front. We propose a friendly and inviting façade which is transit-friendly and pedestrian-friendly. The triangular park where the bus stop is located will be adopted by Safeway (with DDOT's approval) and landscaped to harmonize with the landscaping around the new Safeway. Relative to other buildings along Wisconsin Avenue, this building will be low in scale.

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Perspective Rendering

 SAFEWAY
 TORTI GALLAS AND PARTNERS

July 28th, 2009

A09

SAFEWAY AT TENLEYTOWN



Existing Condition

View along Ellicott Street (before and after) - Along Ellicott Street, the building is set back behind a well-landscaped park which will provide open space for the community. The building deliberately steps down in height as it moves westward, assuming a lower, subdued presence to harmonize with its residential neighbors by the use of a gabled roof and other massing and design elements. Vehicular and pedestrian entrances serve Tenleytown residents who come to the store from the north..

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Perspective Rendering

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July 28th, 2009

A10

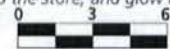
SAFeway AT TENLEYTOWN



Wisconsin Avenue Entrance Element - The main entrance element is a ceremonial pedestrian entrance and serves as a marker for this portion of Wisconsin Avenue. It is the tallest element in our project, but diminutive in comparison to the context along Wisconsin Avenue. Red brick and cast stone masonry units have been chosen to respect the distinction in District architecture between civic architecture (stone, heavy masonry, some glass) and commercial buildings (traditionally red brick). There is a long tradition of red brick markets & supermarkets in Washington DC. Windows along 42nd street and at the clerestory windows of the Entrance Element will bring light into the store, and glow in the evenings.

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Enlarged Building Elevation



July 28th, 2009

A06

SAFeway AT TENLEYTOWN



Existing Condition

View along 42nd Street (before and after) - Along 42nd Street, an inviting outside café seating area creates a place for Tenleytown residents to enjoy coffee from the in-store Starbucks, lunch or dinner from the expanded deli and food service department or a specialty dessert from the in store bakery. Windows along this façade allow natural light into the expanded produce department inside the store.

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Perspective Rendering

 SAFEWAY
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July 28th, 2009

A11

SAFEWAY AT TENLEYTOWN

**IN THE ZONING COMMISSION FOR THE
DISTRICT OF COLUMBIA**

**STATEMENT IN SUPPORT OF APPLICATION FOR APPROVAL OF A
PLANNED UNIT DEVELOPMENT AND
CHANGE OF ZONING ON SQUARE 1672**

BY

SAFEWAY INC.

Zoning Commission Case No. _____

August 11, 2009

PROJECT TEAM

Applicant:	Safeway Inc.
Architects:	Torti Gallas and Partners, Inc. Rounds Van Duzer Architects
Engineers:	Freeland and Kauffman, Inc. ERM
Transportation and Parking	Gorove/Slade Associates, Inc.
Legal Counsel:	Venable LLP
Project Coordinators:	Barry S. Porter and Associates
LEED Consultant:	Architectural Energy Corporation

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Letter of Intent

I. INTRODUCTION

A. Application Meets PUD Evaluation Standards

Safeway has exciting plans to bring a state of the art “Lifestyle” store to the Tenleytown community.

Safeway has been serving the District of Columbia for 80 years and the Tenleytown community since 1957. The current Safeway is 28 years old and, at 35,000 s.f., it is too small to provide the range of products and services the modern consumer expects. Safeway’s latest format, the Lifestyle store, was created to respond to the changing needs of today’s customers. The new format has an earth-toned décor, subdued lighting, custom flooring, unique display fixtures and other special features to impart a warm ambience that enhances the shopping experience. This format showcases enhanced service departments such as floral, produce, deli/food service, bakery, meat and seafood and emphasizes high quality perishable products and prepared food. In Tenleytown, Safeway would add new features, such as Starbucks, a service meat department, a pizza oven, a beer and wine department (if approved), gourmet cheese, in-store café seating, self-checkout stands and a scratch bakery which includes a hearth oven for baking bread.

To bring this new supermarket to the community, Safeway needs to replace its current store with a 58,000 s.f. Lifestyle model. Safeway plans to

re-position the new store on the site to create an inviting City streetscape. The building would be located on the property line along 42d Street near the intersection of Wisconsin Avenue. Rather than being “hidden” with a blank wall facing the street, Safeway would put its primary entrance on Wisconsin Avenue and 42d Street and make an active community supermarket part of the Wisconsin Avenue street life. An outside café seating area will further enliven 42d Street. Safeway would also enhance the neighborhood green space by adopting the triangular park in front of the store and landscaping it to harmonize with the greenery around the store.

A PUD and change of zoning primarily arises from the need to use the residential zoned portions of the existing Safeway parking lot to accommodate the new store building.

Other areas of zoning relief are related to a reduction in the number of off-street parking spaces that will be required together with slightly decreased penthouse, courtyard, side and rear yard measurements.

This application for the approval of a Consolidated Planned Unit Development and related zoning map amendment is a continuation of Safeway Inc.’s, effort to bring, and maintain exciting new full service grocery stores to the District of Columbia. 11 DCMR §2402.1 , Safeway has recently opened its 17th store in Washington, a new full service grocery store at the CityVista development (5th and K Street, N.W.), and is redeveloping a new

“Social Safeway” on Wisconsin Avenue in Georgetown and an exciting new state-of-the-art store on the Southwest Waterfront Mall. It has also renovated most of its other D.C. stores (i.e., Anacostia, Brightwood/Takoma, Benning Road, Adams Morgan (under construction), Corcoran Street, Chevy Chase and Palisades) to the Lifestyle format. The existing Safeway at 4203 Davenport Street stands next on the list for modernization. . Safeway’s extensive investment in its City store system is encouraged by customer demand and by the District of Columbia’s policies that are clearly expressed in the Supermarket Tax Incentive Acts of 1988 and 2000 in and the City’s planning and energy conservation policies. 11 DMCR §2403.6

The current application results from the fact that the existing grocery store on Square 1672 is on a 109,000 s.f. +/- site that is split zoned. 11 DCMR §2401.1(c) The store building is situated on the C-2-A portion of Lot 0815 and, pursuant to a special exception, its accessory parking is located on the R-2 zoned portion of the same lot. There are three other lots that are owned but not currently used by Safeway (Lots 803, 804 and 812). There is a mix of zones on the Safeway site: Lot 804 is zoned R-3, lot 812 is zoned R-2. Lot 803 is zoned C-2-A. Lots 804, 812 and the western portion of Lot 815 are proposed to be consolidated and zoned into a single C-1 district. 11 DCMR §2401.3. The C-2-A portion of Lot 815 is proposed to remain the same.¹

¹ Safeway anticipated requesting an order extending the existing C-2-A zoning to the entire site. This seemed like the proper planning approach. However, after hearing from the

Lot 803 is not contiguous with the other lots so it will remain as a separate lot but a part of this PUD. It is separated from Lots 804 and 812 by a public alley. 11 DCMR §2401.3

This application is unique in that the development plan does not require or request an increase in the matter of right building height or density. However, a change of zoning is necessary to permit the proposed grocery store use on Lots 804, 812 and on the portion of Lot 815 that is zoned R-2.² See the Tabulations at Chapter V. After due consultation among the Safeway team, the City's planning officials and the community, Safeway concluded that the Zoning Commission, through the PUD process with an associated map amendment, is empowered to consider and grant all the zoning relief that is requested.

This PUD and rezoning application is not inconsistent with the District of Columbia Comprehensive Plan, as amended, and is in full accord with District zoning, land use and economic development policies. It will provide Safeway with the ability to consolidate and better utilize a site that it already owns to continue and improve its products and services that it offers to the residents of Tenleytown. 11 DCMR §2403.4

community that it would be more comfortable with a rezoning of the R-2 and R-3 portions of the site to the (lesser) C-1 zone, and determining that the proposed project can be developed within a C-1 PUD structure, Safeway recast its application to respond to citizen concerns.

² Lot 803 is already zoned C-2-A, compatible for the proposed use.

On the following pages, Safeway will address the planning alternatives, the existing conditions, floor plans, vehicular and pedestrian access, site utilities, the planning framework, the proposed use, floor plans, site topography, traffic and parking, proposed site utilities, LEED certification scorecard, public and environmental benefits, employment opportunities and landscaping plans. 11 DCMR §2403.7, 2403.8, 2403.9 Safeway will also discuss the extensive efforts that it has made to gather and respond to the various community voices. Included at Chapter V is a tabulation that illustrates the distinction between the proposed development and a matter of right development. 11 DCMR §2403.11

To further support this application, Safeway is pleased to have designed a project that is:

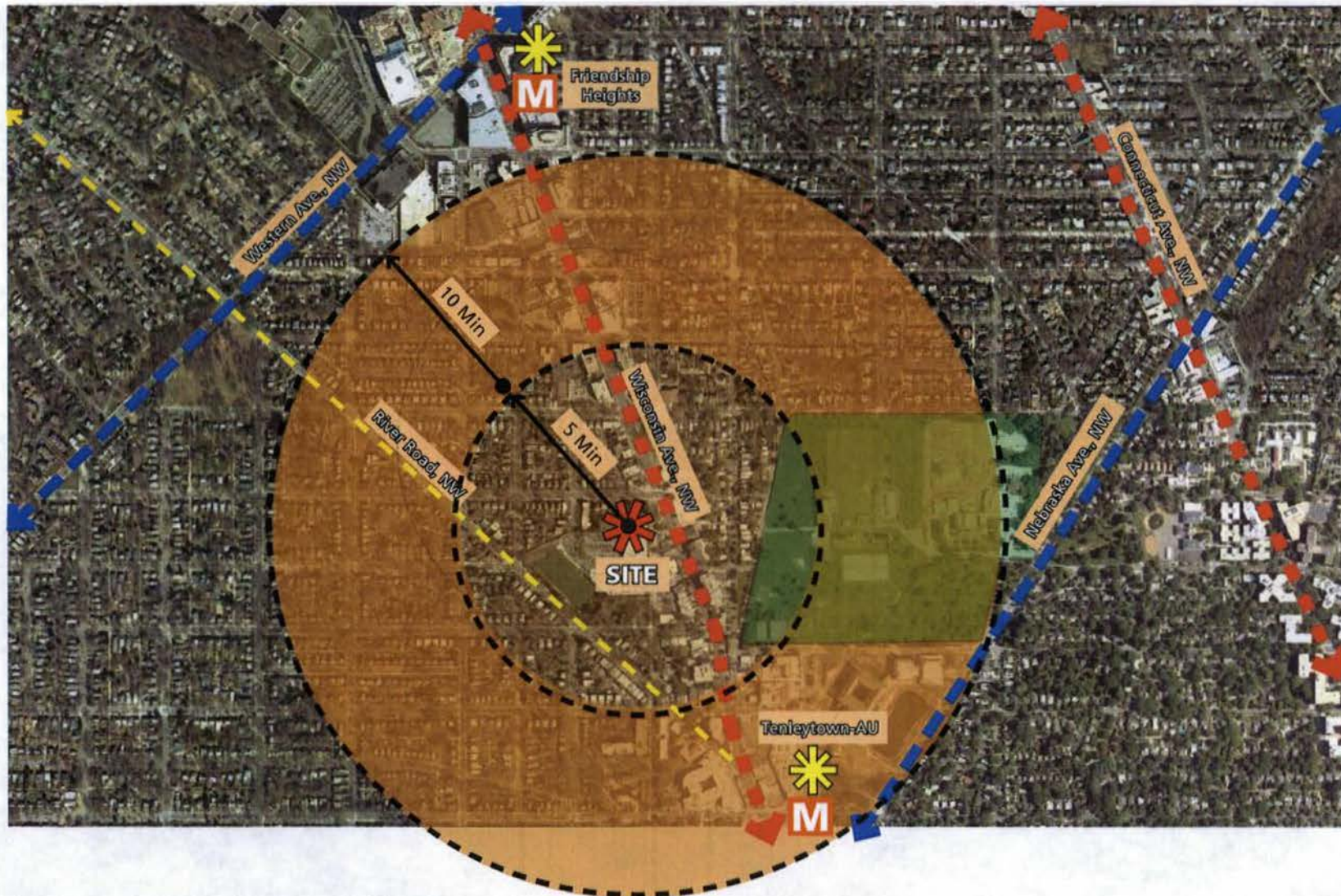
- * Not inconsistent with the Comprehensive Plan or its Land Use Maps;
- * Environmentally-friendly (LEED certifiable);
- * Presents attractive new landscaping to buffer and to beautify;
- * Offers a wide variety of new products and services;
- * Creates new employment opportunities for DC residents (First Source Employment Agreement);
- * Senior-friendly;

- * Pedestrian-friendly;
- * Public transit-friendly;
- * In accord with D.C. planning and legislative policies.

Safeway trusts that the Commission will find that the scope and substance of Safeway's submission will merit the zoning relief that is requested.

B. The Site Area

Square 1672 is located in the Northwest quadrant of the District of Columbia and is bounded by Ellicott Street on the North, Davenport Street on the south, 42nd Street on the East and 43rd Street on the west (See: Vicinity Plan on the following page). Square 1672 contains a 35,164 s.f. Safeway building, an accessory lot, a Washington Metropolitan Area Transit Authority equipment building, a vacant lot that is owned, but unused by Safeway and eight residential dwellings. Directly to the north of the site is Square 1671 which contains retail, non-residential uses along its commercially zoned (C-2-A) eastern border and single family residences on the western portion of the square. Square 1654E to the north and west of the site is also developed and used for single family residential purposes. To the west of the site is Square 1653E which contains single family residences. The Georgetown Day (Upper) School, together with its parking lots and athletic



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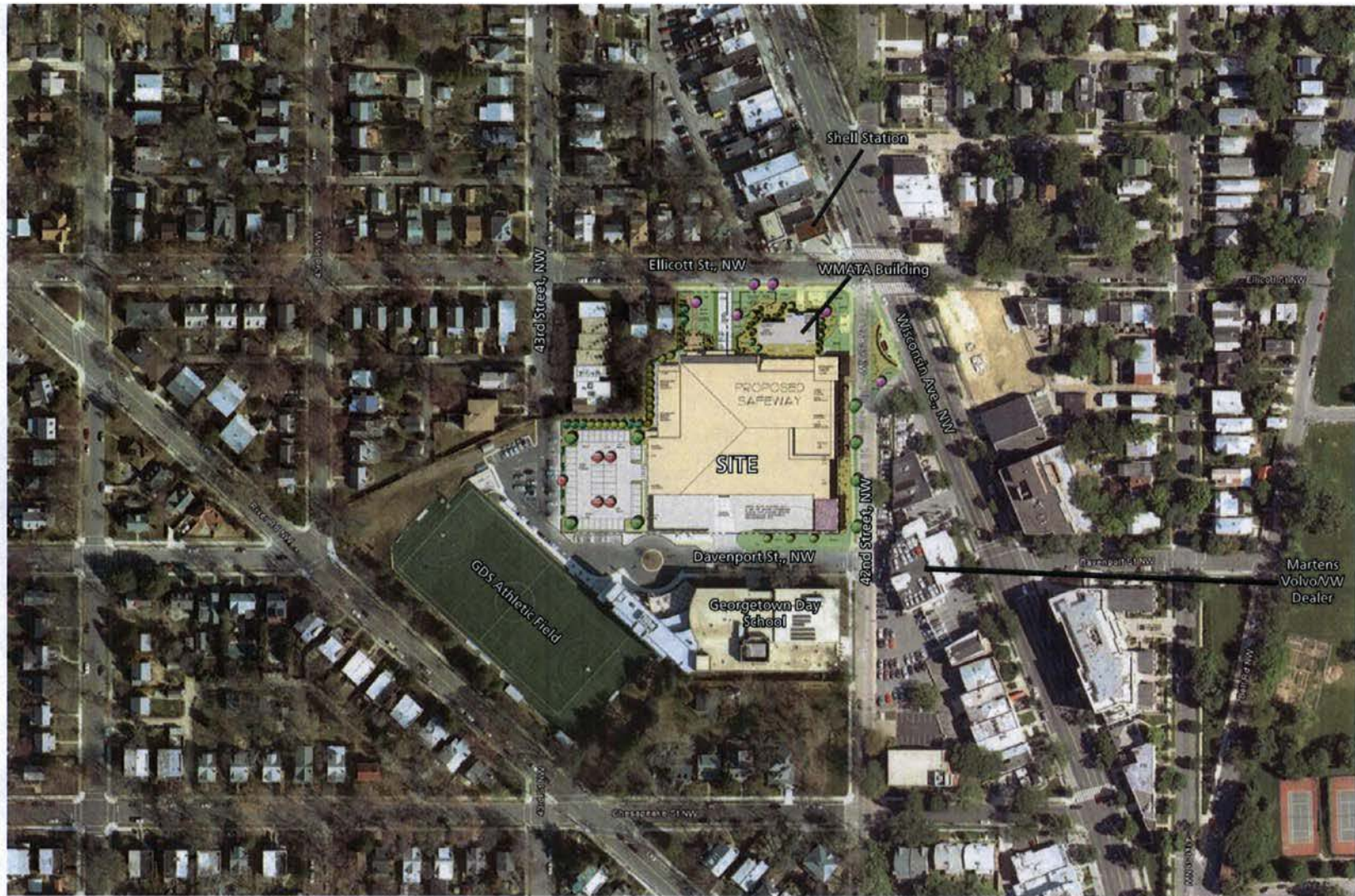
Vicinity Plan

SAFEGWAY
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July 28th, 2009

G01

SAFEGWAY AT TENLEYTOWN



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Site Within the Local Vicinity

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July 28th, 2009

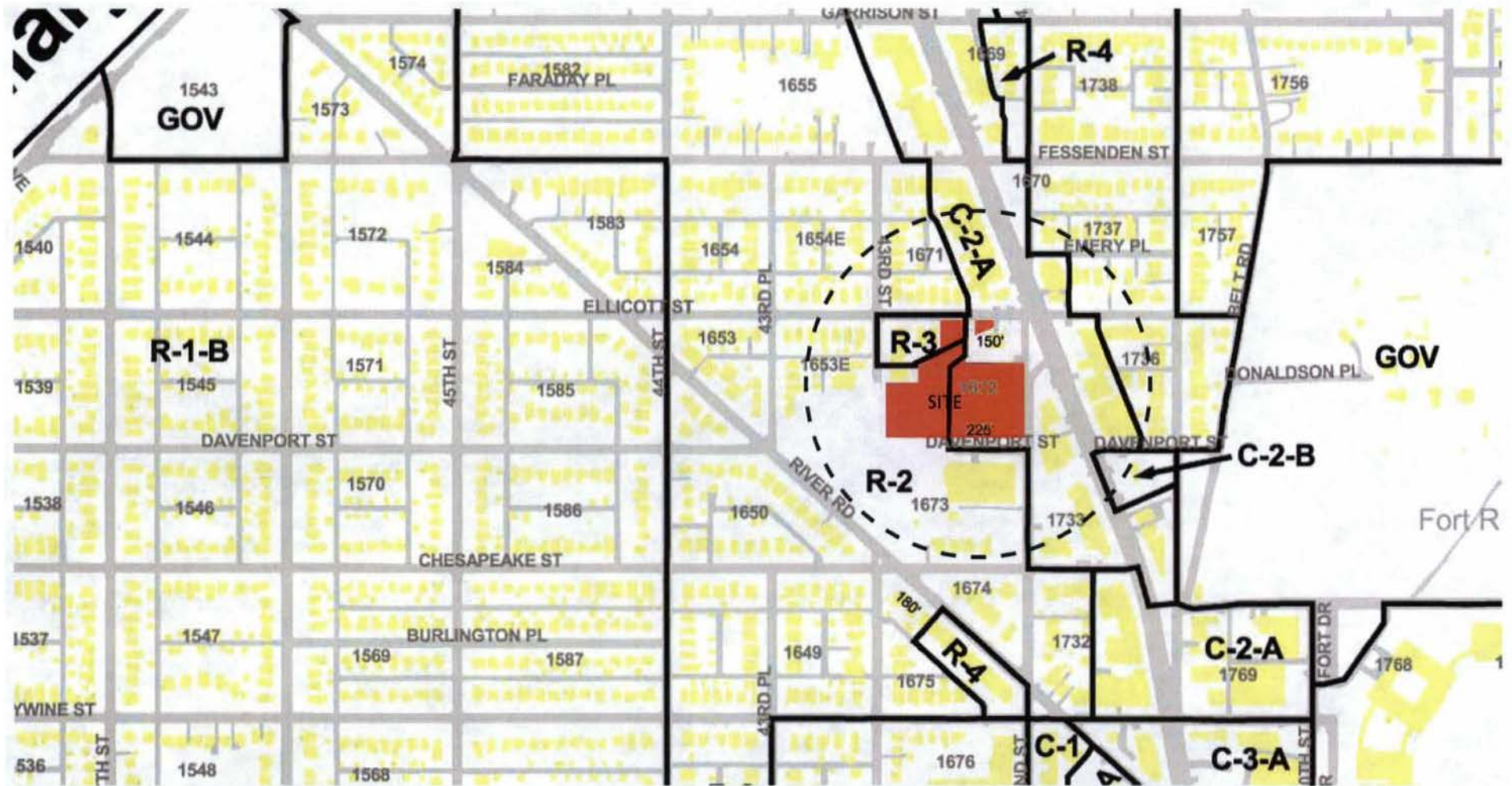
SAFEWAY AT TENLEYTOWN

field is developed along the south and southwestern border of the site. Across 42nd Street to the east is the Martens Automotive Dealership buildings and vehicle storage lots. The site is located just to the west of Wisconsin Avenue and, for practical purposes, should be included in the upper Wisconsin Avenue commercial corridor.

Davenport Street, to the south of the site, dead ends at the Georgetown Day School development, as does 43rd Street to the west of the site. Ellicott and 42nd Streets are through streets.

C. The Zoning on Square 1672

Square 1672 is zoned C-2-A for 225 feet along Davenport Street, east to west, and 150 feet along Ellicott east to west. The northwest quadrant of the square near 43rd and Ellicott Streets, N.W. is zoned R-3. The remainder of the square is zoned R-2. The C-2-A zone is mapped in low to medium density residential areas with access to main thoroughfares and rapid transit stops. It is designed to provide facilities for shopping outside of the Central Core. A grocery store is permitted on a matter of right basis. The R-2 and R-3 zones are intended to accommodate the row and semi-detached single family residences. There is no recent history that the R-2 and R-3 properties that Safeway owns have been used for residential purposes.



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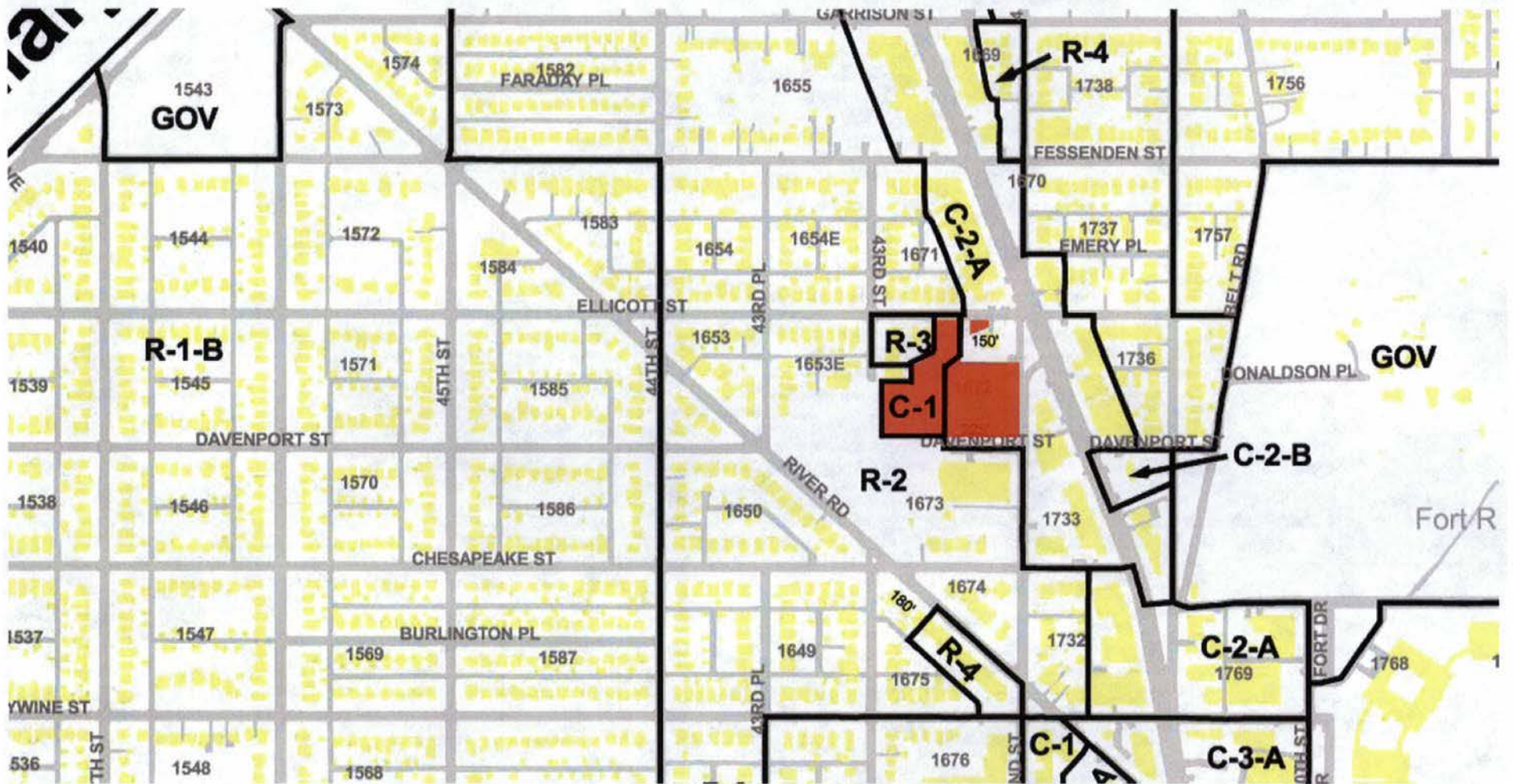
Area Zoning

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G03

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Proposed Zoning

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G04

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It appears that the C-2-A zone was originally mapped to coincide with the location of a public alley that transversed the site, north to south until it was closed in 1980. The alley closing was at the request of Safeway to allow it to reconstruct and expand a store that was then on the site. Prior to the alley closing the Safeway property to the west of the alley was unused and vacant.

D. The Applicant

Safeway is the District of Columbia's largest provider of grocery and related services. A Safeway store is – and has been – strategically located to serve nearly every District of Columbia neighborhood. Without question, Safeway stores are a needed and popular service to District of Columbia residents.

Over the years, Safeway's business has expanded from basic bread, dairy and canned goods offerings to groceries, prescription drugs, flowers, delicatessen products, a bakery, banking, catering, and even a by-the-cup coffee service. In parts of the District of Columbia and in many other jurisdictions, Safeway also offers its customers a selected menu of beer and wine products among the tens of thousands of grocery items and retail services that are available.

The District of Columbia has long recognized the importance of furthering the expansion of supermarket locations and services in the city. The District enacted the Supermarket Tax Incentive Acts of 1988 and 2000 to provide tax incentives for new and renovated grocery stores. Further, the D.C. Comprehensive Plan Act provides a clear policy in support of the District's public action objective to "provide tax, employment and other incentives to retain, expand and attract grocery stores and supermarkets to the areas east of the Anacostia River and to other underserved areas." 10 D.C.M.R. §1138.1(w). The District recognizes that large grocery stores are often "anchors around which businesses develop and are a provider of the wide range of goods, services and one-stop shopping convenience."

In addition to meeting the statutory requirements and the city's Comprehensive Plan objectives, this store location is in harmony with District of Columbia zoning policy. The store site is located in a C-2-A zone district where a "grocery store" use is permitted as a matter-of-right. The C-2-A zone district is designed to provide low and medium density, mixed use development in areas located outside of the Central Business district. It is normally located with access to the arterial streets and rapid transit stops and includes shopping center developments. Consistent with the Zoning Regulations, much of the area around the store site is low to medium density

commercial in character, near to an arterial street (Wisconsin Avenue, NW), within walking distance to Metrorail stops at Tenleytown and Friendship Heights and Metrobus stops along Wisconsin Avenue. A grocery store use is in full accord with, and appropriate to, the zoning laws of the city.

The addition of additional products is unlikely to add significantly to the customer count at this store location, but instead make available more purchase choices for existing shoppers. Thus, the granting of this zoning application is unlikely to add vehicular or pedestrian traffic to the streets. (See: Gorove/Slade report at Chapter VII)

Safeway is a family oriented, full service grocery store that markets and conducts itself as such. Safeway purposefully trains its employees to strictly adhere to its policy of ensuring that the inside and outside of Safeway stores portray a warm and inviting family atmosphere. Appropriate signs are posted in the store and a “No Loitering” policy is continuously enforced and the police will be summoned immediately in the rare event of a violation of this policy.

In the city, the area and nationwide, Safeway’s history has been one of an honorable, responsible retailer and employees. The granting of the zoning

that is necessary for Safeway to offer its new Lifestyle store on Square 1672 will be consistent with and in furtherance of that history.

Please turn to a more detailed description of the Applicant and its corporate responsibility policies at Chapter XI.

E. The Intended Use

The site will be used as a full service grocery store with accessory uses that are customarily incidental and subordinate to that use. No new residential uses or other commercial uses are planned or proposed in this application. To maintain a pace with the rapidly changing retail food industry, Safeway needs a physical facility that will allow it flexibility to offer its customers a wider variety of retail goods and services. If this application is granted, Safeway would be able to provide a modern full service supermarket operation. It would increase its offering in dry grocery, general merchandise, health and beauty offerings (65% larger than the current store); frozen food goods (50% larger); produce (20% larger); floral items (70% larger); meat department (300% larger, including a service meat department); bakery (7 times larger, including a cake decorations station, in-house production of crusty bread, bagels, cakes, pies, donuts and assorted pastries); food service (150% larger, including sandwich bar, hot pizza, sushi, and a community sit-down eating area). The store would also provide an

interior Starbucks coffee service, dry cleaners, a gourmet cheese world counter, a wide variety of beer and wine products (if approved) and self check-out stations.

Safeway proposes to make productive use of the Tenleytown land it already owns and, for the most part, already uses to construct a new store building to accommodate these new offerings. The new building will be positioned to face 42nd Street with one level of parking below the store. The grade drops from 42d Street to the west and a portion of the parking level will be uncovered by the store but not visible from 42d Street.³ The building will extend into what is now the R-2 zoned portion of the site that has been used as a parking lot for 28 years. The green space around the store will be attractively landscaped. To enhance the ambience of the intersection of 42d Street and Wisconsin Avenue, Safeway proposes to landscape adjacent properties to create a single landscape plan. Safeway proposes to “adopt” the triangular park at Wisconsin and 42d Street and work with WMATA to landscape the green space around the WMATA facility. The current vacant parcel on Ellicott Street owned by Safeway will also be transformed into a landscaped park and offered as an amenity on what is now Lots Nos: 804 and 812. All of the landscaping will reflect a similar theme in the choice of

³ Safeway anticipates that the major parking activity will be in the covered spaces beneath the store. Employees will be encouraged to use public transit. Those who do not will be directed to one of the surface parking spaces.

plantings and color. There will be an abundance of evergreen material so that it will be attractive in the winter season. The plants have been selected so that there will be blooming plants during Spring, Summer and Fall. Part of the plan is to attractively landscape and buffer the site from nearby residential uses. 11 D.C.M.R. §2117.12.

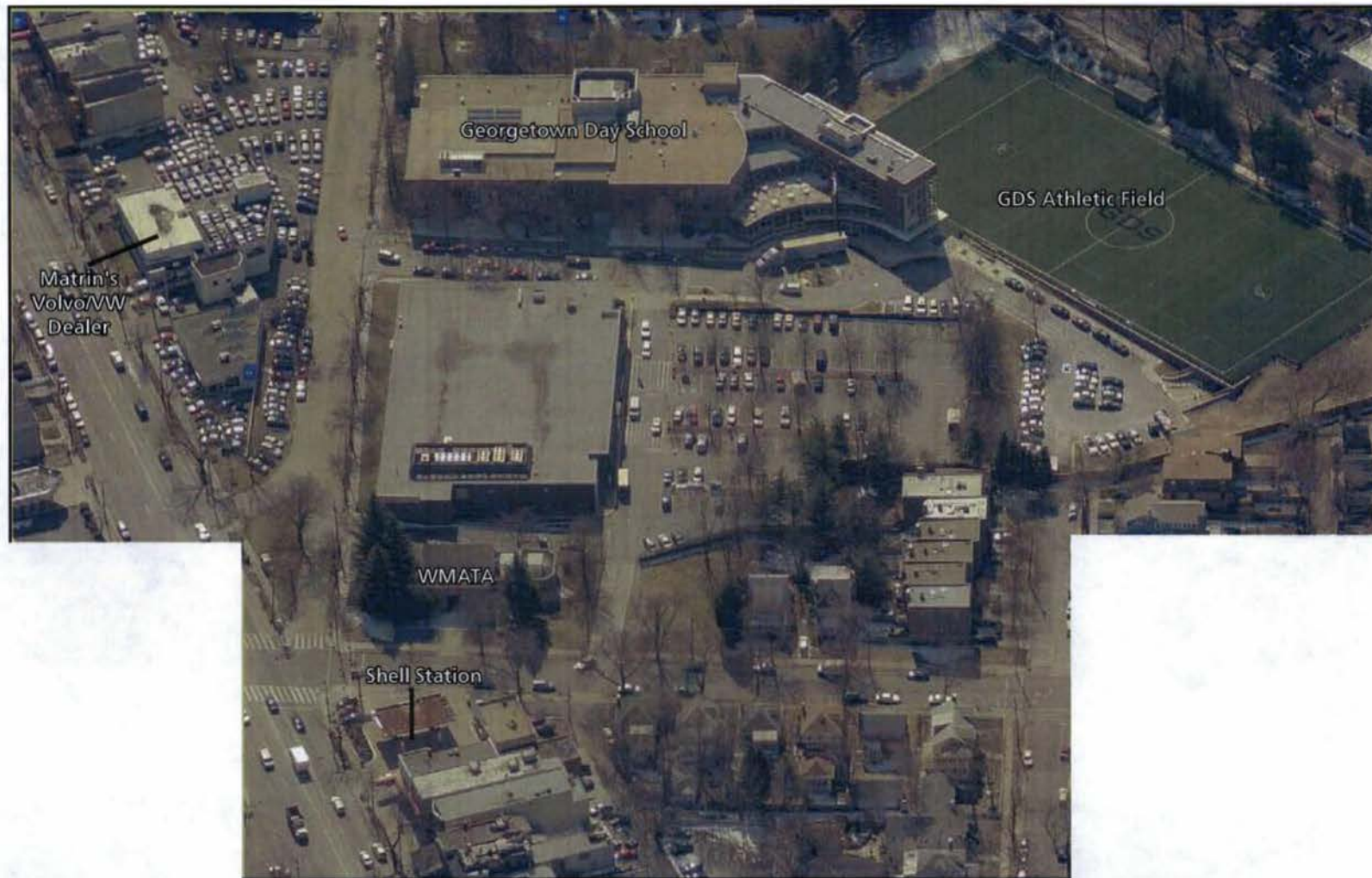
Safeway plans to construct the building to achieve a LEED certified rating to "...help mitigate the environment, economic and social impacts of the buildings so that it is energy efficient, sustainable, safe, cost effective, assessable, healthy and productive." See Chapter VIII of this report. The building will also be compliant with the American Disabilities Act and the D.C. Architectural Barriers Act.

II. THE SITE AND THE SURROUNDING COMMUNITY

A. Description of the Site

The site of the PUD includes all of lots 815, 803, 804 and lot 812. A change of zoning to the C-1 district is concurrently requested on the portion of lot 815 that is zoned R-2 and on all of lots 804 (now zoned R-3) and 812 (now zoned R-2).

The existing Safeway store is sited on the C-2-A portion of lot 815. The remainder of lot 815 is used by Safeway for accessory parking as allowed by



Existing Site Photograph (view from the north) - Open parking lots tend to detract from the economic viability and health of a neighborhood. Much of the land uses surrounding the Tenleytown Safeway are of a suburban character (asphalt, numerous curb cuts, buffer landscaping etc.), more suitable to a site ten miles up Wisconsin Avenue than in the heart of the Tenleytown neighborhood.

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Site Photograph

 SAFEWAY
 TORTI GALLAS AND PARTNERS

July 28th, 2009

G07

SAFEWAY AT TENLEYTOWN



1 - View looking south toward 42nd Street and Site



2 - View looking south down Wisconsin Avenue



3 - View looking north-east of Retail on Wisconsin Avenue across from site.



4 - Context view of single family housing down Ellicott St.



5 - View of tall rowhouses to the northwest of the site.



6 - View of Georgetown Day School from existing Safeway Parking lot



7 - View of Georgetown Day School at corner of 42nd Street and Davenport Street.



8 - Residential Mixed-use building along Wisconsin Ave.

Negotiating a varied surrounding Context - *This building design attempts to bridge buildings of many scales and uses, from tall seven story multifamily buildings on Wisconsin Avenue to single family residences, tying the neighborhood to the numerous non-residential buildings including the adjacent Georgetown Day School, WMATA utility building, gas station and automotive dealership.*

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Neighborhood Perspectives



July 28th, 2009

G06

SAFeway AT TENLEYTOWN

special exception (BZA No. 12432). Lots 804 and 812 abut each other. Lot 812 abuts lots 815 and 804. Lot 803 is separated from lots 804 and 812 by a public alley. Lots 803, 804 and 812 are owned by Safeway, vacant and unused. This project puts those lots to uses that serve and benefit the Tenleytown community. The remainder of Square 1672 contains a building that houses WMATA equipment (lot 817) on the northeast quadrant of the square (at 42nd and Ellicott Streets, N.W.), six single family residences (lots 7, 8, 9, 10, 11 and 14 (along 43rd Street, N.W.)) and two single family residences (lots 3 and 4) along the south side of Ellicott Street. The properties to the south and (partially to) the west of the site are owned and occupied by the Georgetown Day (Upper) School. The school building, athletic field and school parking lots are the predominant uses.

The site is accessed by curb cuts on Ellicott, Davenport and 42nd Streets. The development plan contemplates the closure of the 42nd Street curb cut and shifting the Ellicott Street curb cut West 20 feet so that it aligns with the primary driveway in the parking area below the store. Most of the existing alleyway will be closed to traffic and landscaped but a portion will be part of the new driveway. Thus, the resulting driveway will occupy a portion of lots 804 and 812 and a small portion of the existing public right-of-way (See: Site Plans at Chapter V).

Ellicott Street and 42nd Street are “through” streets from the west and south, respectively, to Wisconsin Avenue. Davenport and 43rd Streets are truncated by the Georgetown Day School building and athletic field. Wisconsin Avenue passes a (northeast) portion of the site at the intersection of 42nd and Ellicott Streets. An automobile new and used car dealership and vehicle storage lot are located to the east of the site at the triangle of 42nd Street, Ellicott Street, Davenport Street and Wisconsin Avenue.

Generally, nonresidential uses predominate in the areas to the northeast, southeast, south and southwest. Residential uses predominate to the north and northwest.

Despite the mixed zoning, the area of Square 1672 has been primarily used for nonresidential purposes .

B. Zoning History of the Site

In 1978 the D.C. Board of Zoning Adjustment approved two special exceptions to allow Safeway to use its R-2 zoned property to the west of the former alley as an accessory parking lot and to reduce the required number of off-street parking spaces for the new Safeway development by 25 percent (from 185 to 145).

In approving the special exceptions, the BZA specifically found:

- Safeway proposes to enlarge its store to provide better retail grocery service to the surrounding community. The current store building needed substantial structural improvement and was too small to provide a full line of merchandise. Although Safeway can provide 12,000 items of merchandise, the current store can store only 7,000 items. The proposed store would provide space to stock approximately 15,000 items. In a larger store, Safeway would be able to provide shoppers with a greater variety of items and more selection among brands.
- The parking lot is designed so as to not become objectionable to adjoining or nearby property owners because of noise, traffic or other objectionable conditions. The brick wall surrounding the lot will help to block both the light from headlights of cars and any noise generated from cars in the lot. The plant material used to landscape the area around the parking lot will supplement the brick wall in screening the parking lot from the residential area. The trees and shrubs will further filter any light and noise that may originate from the store or from cars in the parking lot.
- The traffic generated by a larger Safeway store can easily be accommodated by the existing street system.

- The Safeway's traffic expert testified and the Board finds that the maximum number of spaces likely to be occupied at any one time is approximately 116.
- The location of the parking lot to the west of the current Safeway store will not adversely affect the character of the existing neighborhood. Any impact that the parking lot may have on adjacent property can be minimized by the proposed buffer strip, brick wall and landscaping plan.
- Safeway has made a reasonable effort to further minimize the effects of the parking lot by providing an extension landscape buffer on the north and west sides of the lot and by providing the required brick wall around the parameter of the lot.
- Safeway has made an extensive and reasonable effort to meet the concerns raised by the neighborhood.

This order was approved unanimously by the Board of Zoning Adjustment on April 17, 1978 (Application No.: 12432, attached).

In order dated October 13, 1977 (Order No. 178, Case No.: 76-22) the D.C. Zoning Commission approved a request by individuals to rezone Lots 3, 4, 804 and 809 from R-2 to R-3 to allow those individuals to construct up to 11 residential dwellings on those lots. Only two of those dwellings have been built. Safeway now owns lot 804 and the former lot 809.

In Application No. 12089, April 7, 1976, D.C. Board of Zoning Adjustment approved a variance from the use provisions of the R-2 zone to permit the temporary storage of building materials incidental to the construction of the Washington Metropolitan Transit Authority's Red Line.

In Application No. 12179 (February 15, 1977) an application similar to the one granted in Application No. 12089 was granted by the D.C. Board of Zoning Adjustment.

In Application No. 14278 (September 4, 1985) the D.C. Board of Zoning Adjustment approved special exceptions to allow the construction of the Georgetown Day Upper School with an athletic field and permit a reduction in the number of required parking spaces in the R-2 district that was then a part of Square 1672.

In Application No. 17170 (August 6, 2004) the BZA granted the Georgetown Day School a special exception to allow the renovation of the existing school building and the construction of an addition and an increase in the permitted number of students, faculty and staff.

There is no record that any of the lots that Safeway seeks to rezone herein have been used for residential purposes. The BZA's findings in Application No.: 12432 make clear that all of the property that Safeway now uses for accessory parking was vacant before 1978. It has since been used for the same nonresidential purposes that are requested in this application. Similarly there is no record that Lots 804 or 812, now zoned R-3, have been used for residential purposes. Safeway now seeks zoning approval to use each of these lots to enhance its development and improve services and products that it provides to this community.

C. Authorized Uses

The existing Safeway operates a full service grocery store within the C-2-A zoned portion of lot 815 on Square 1672. (See: Certificate of Occupancy in Appendix) It has been granted authority by the D.C. Board of Zoning Adjustment (Application No. 12432) to use the residentially zoned portion of lot 815 for accessory parking. The parking area is paved with an impervious surface. Lots 803, 804 and 812 are vacant and unused. A solid brick wall, four and one half feet in height, a wood fence that sits atop of the wall and tall evergreen trees buffer the commercial uses on lot 815 from the abutting residential uses in the northwest quadrant of the site.

III. PLANNING AND ZONING ANALYSIS

A. Development Under Existing Zoning

Despite its history of over 30 years of nonresidential uses, the zoning on a portion of the site is still R-2 and R-3. The R-2 district is typically in areas that have been developed with one family, semi-detached, low density dwellings that are intended to permit low density residential developments and semi public buildings that are compatible with adjoining residential uses. Among the nonresidential uses that are permitted in the R-2 district are healthcare facilities, youth residential care homes and community residence facilities, emergency shelters, private schools, colleges and universities, churches and parking lots. The maximum floor area ratio prescribed for the R-2 district is 0.9 for public school buildings and “three stories” for other uses. Maximum lot occupancy is 60% for churches and public schools, 40% for all other structures. The building height limitation of 40 feet. There is a rear yard requirement of 20 feet and a side yard requirement of 8 feet.

Regulations for buildings and uses in the R-3 district are much like those in the R-2 district. The major distinction is that the R-3 district is essentially designed for row dwellings on smaller lots than are permitted in the R-2 district.

For purposes of this application, it is important to note the actual building height and rear yard measurement that are proposed for the new Safeway development would fit nicely into the R-2/R-3 zoning envelope but for the use of the building. A grocery store use is not permitted in the R-2 or R-3 zone district. Hence, either a use variance or a change of zoning is required. A use variance requires a showing of hardship in that there are no other permitted uses to which the property can be utilized. Because the subject properties are either being used as a (permitted) parking lot or could be used for residential purposes, the standard of proof for a use variance cannot be achieved, thus leaving a change of zoning as the only option to achieve the new development.⁴

B. City Policies and Planning Studies that Affect the Site

1. The Comprehensive Plan

The 1973 Home Rule Act requires that the District have a Comprehensive Plan guiding growth and neighborhood conservation. The D.C. Council unanimously adopted the revised District Elements of the Comprehensive Plan on December 19, 2006 and it went into effect in March 2007. Overall, the Comprehensive Plan is guided by the principles of managing growth and change; creating successful neighborhoods; increasing

⁴ Section 2514.2 allows permitted uses and densities to extend 35 feet into a lesser restrictive zone but the size of this project together with the need for other special exception relief make this project more appropriate as a PUD.

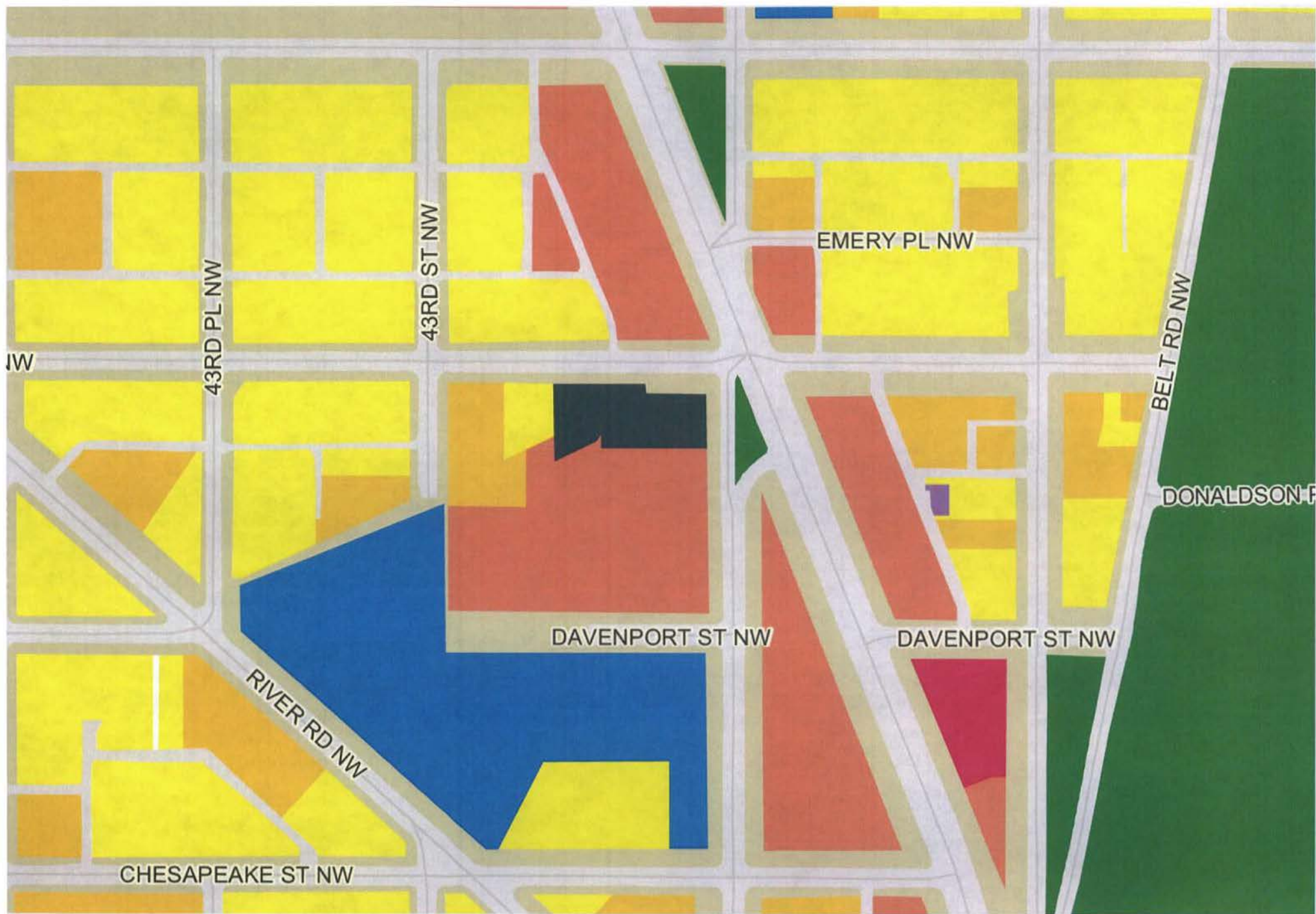
access to education and employment; connecting the city; and building green and healthy communities.

An essential purpose of the District Elements of the Comprehensive Plan is to guide private and public development in order to achieve District and community goals. To achieve its goals, the Comprehensive Plan includes detailed maps and policies for the physical development of the city.

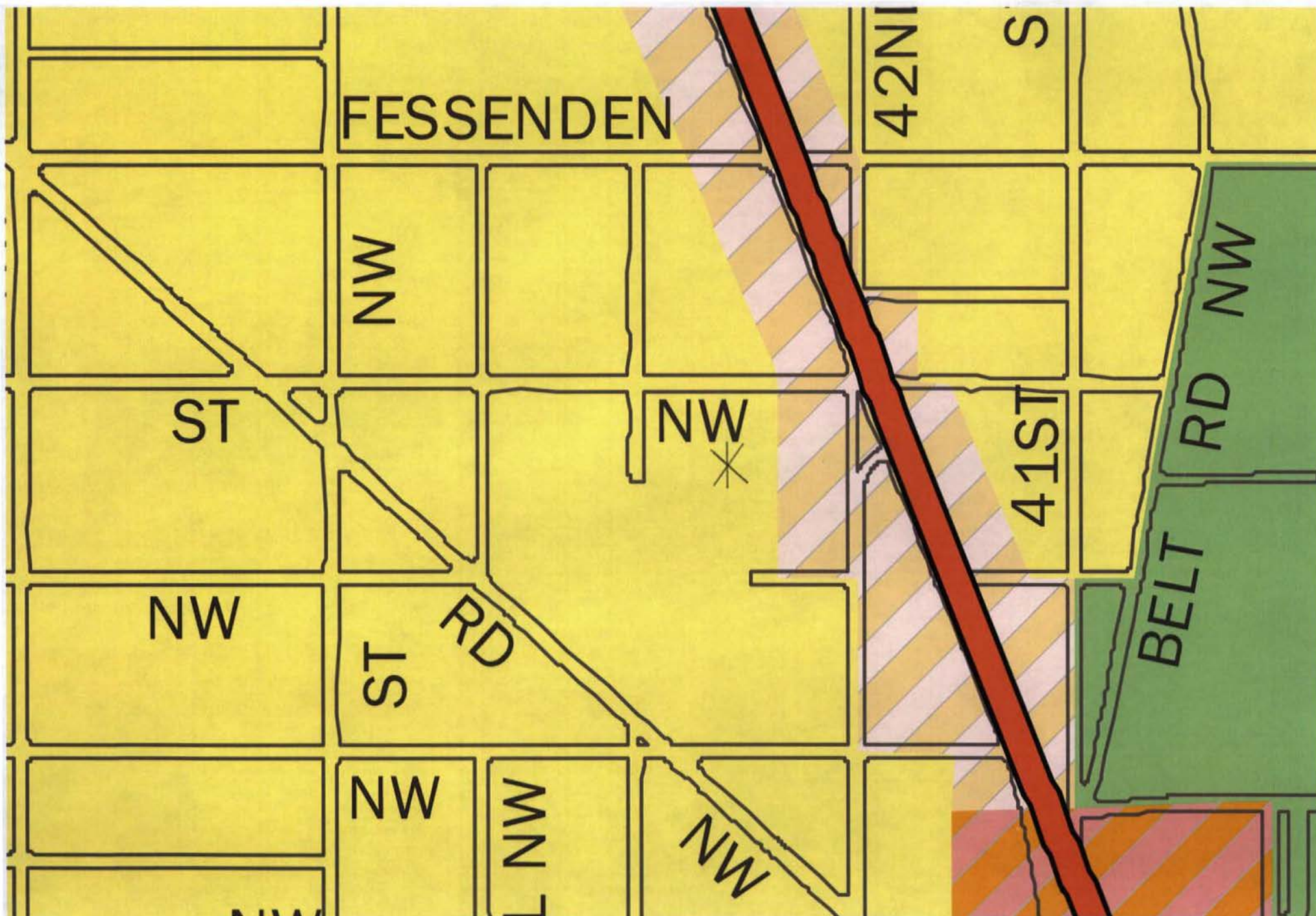
Specifically, the District Elements of the Plan contain Citywide Elements that provide goals, objectives and policies for land use issues that impact the city as a whole. There are also Area Elements which provide goals, objectives and policies specific to certain geographic areas of the city. Ultimately, the District government uses the Comprehensive Plan to guide its decision making process as it relates to the future development of the D.C.

a. Policy and Future Land Use Maps

The Comprehensive Plan also incorporates a Generalized Existing Land Use Policy Map (attached) and a Future Land Use Map (attached) that provide the foundation for land use decision making and zoning in the District. The Existing Policy Map categorizes how land in different parts of the District is used and highlights areas where more detailed policies are necessary. The



COMPREHENSIVE PLAN "EXISTING LAND USE" MAP



COMPREHENSIVE PLAN "FUTURE LAND USE" MAP

Future Land Use Map illustrates the general character and distribution of recommended and planned uses across the city.

The maps are generally color coded by area to illustrate the preferred uses and densities in each neighborhood. However, both the Zoning Commission and the Office of Planning have repeatedly stated that the color coded maps are to be interpreted with a “soft edge”, each case being evaluated on its own merits. This is such a case.

The Generalized Policy Map defines the “Middle Wisconsin Avenue Corridor,” where the Safeway site is located, as a “Commercial / Mixed Use Area.” The “Commercial / Mixed Use Area” corresponds to the city’s business districts, characterized by their physical and economic character along with generalized long-range conservation and development objectives. Within this category, the location of Square 1672 is designated as a “Main Street Mixed Use Corridor.” The policies that govern the “Main Street Mixed Use Corridor” are designed to conserve and enhance the corridor to foster economic and housing opportunities and serve neighborhood needs.

The Future Land Use Map represents public policy on future land uses across the city. The “Middle Wisconsin Avenue Corridor” is designated as “Mixed Use Land” because “Low Density Commercial” land use and

“Moderate Density Residential” land uses are encouraged in this area. The “Low Density Commercial” category is defined by shopping and service areas that are generally low in scale and character and range from small business districts to large business districts uses that draw from a broader market area. The Safeway project is easily identified as a “Low Density Commercial” shopping and service use that is low in scale and character.

b. Citywide Elements.

The Comprehensive Plan includes thirteen Citywide Elements, each addressing a topic that is citywide in scope. This memorandum addresses four Citywide Elements that may influence the evaluation of this PUD application. These Citywide Elements are: (1) Land Use; (2) Urban Design; (3) Parks, Recreation, and Open Space; and (4) Environmental Protection.

c. Land Use Element

The Land Use Element is a major component of the Comprehensive Plan because it integrates the policies and objectives of all the other District Elements. Therefore, the Comprehensive Plan states that it should be given greater weight than the other elements as competing policies in different elements are balanced. The Land Use Element’s goals are to:

- Ensure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs;
- Help foster other District goals;
- Protect the health, safety, and welfare of District residents and businesses;
- Sustain, restore, or improve the character and stability of neighborhoods in all parts of the city; and
- Effectively balance the competing demands for land to support the many activities that take place within District boundaries.

Safeway proposed development is easily in accord with the following Land Use Policies:

- Beautifies the neighborhood
- Is a low scale building
- Maintains a landscaped off-street parking facility
- Is located to be friendly to bus, rail and pedestrian traffic
- Adopts a public park with the intention of beautifying public space (triangular park); and
- Installs and operates an outdoor sidewalk café.

Policy LU-2.2.4: Neighborhood Beautification

Encourage projects which improve the visual quality of the District's neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements.

Policy LU-2.4.6: Scale and Design of New Commercial Uses

Ensure that new uses within commercial districts are developed at a height, mass, scale and design that is appropriate and compatible with surrounding areas.

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.

Policy LU-2.4.10: Use of Public Space within Commercial Centers

Carefully manage the use of sidewalks and other public spaces within commercial districts to avoid pedestrian obstructions and to provide an attractive and accessible environment for shoppers. Where feasible, the development of outdoor sidewalks cafes, flower stands, and similar uses which "animate" the street should be encouraged. Conversely, the enclosure

of outdoor sidewalk space with permanent structures should generally be discouraged.

d. Urban Design Element

The Urban Design Element addresses the District's physical design and visual qualities. The Urban Design Element's goals are to enhance the beauty and livability of the city by:

- Reinforcing the identity of its neighborhoods;
- Harmoniously integrating new construction with existing buildings and the natural environment; and
- Improving the vitality, appearance, and security of streets and public spaces.

The following design attributes of Safeway's new building square with the urban design elements that are listed below:

- Presents a new building with attractive facades and designs that beautifies the Wisconsin Avenue arterial gateway to the city;

- Safeway's architecture is harmonious with that of the existing buildings on each side;
- Safeway has planned shade trees and landscaping together with the wall required by the Zoning Regulations to beautify and screen parking areas from adjacent property;
- Reorienting the front of the building on the site to the street property line with attractive architecture, landscaping and scoring of pavement. Benches for outside seating will also be added. Safeway will beautify the existing bus stop.
- Safeway has agreed to adopt the triangular park that is immediately across 42nd street from its main entrance. The park will be landscaped and maintained by Safeway; and
- Safeway will provide an attractive and interesting streetscape by moving an existing curb cut and avoiding a windowless façade and gaps in the street wall;

Policy UD-1.4.1: Avenues/Boulevards and Urban Form

Use Washington's major avenues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city.

(The Comprehensive Plan identifies Wisconsin Avenue as one of the city's major avenues in the context of this policy.)

Policy UD-2.2.5: Creating Attractive Facades

Create visual interest through well-designed building facades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street.

Policy UD-2.2.10: Surface Parking

Encourage the use of shade trees and landscaping or screening of surface parking areas. Parking should be designed so that it is not the dominant element of the street, and should be located behind development rather than in front of it.

Policy UD-2.2.11: Parking Structures

Encourage creative solutions for designing structured parking to minimize its visual prominence. Where feasible, the street side of parking structures should be lined with active and visually attractive uses to lessen their impact on the streetscape.

Policy UD-3.1.1: Improving Streetscape Design

Improve the appearance and identity of the District's streets through the design of street lights, paved surfaces, landscaped areas, bus shelters, street "furniture", and adjacent building facades.

Policy UD-3.1.8: Neighborhood Public Space

Provide urban squares, public plazas, and similar areas that stimulate vibrant pedestrian street life and provide a focus for community activities.

Encourage the "activation" of such spaces through the design of adjacent structures; for example, through the location of shop entrances, window displays, awnings, and outdoor dining areas.

Policy UD-3.1.7: Improving the Street Environment

Create attractive and interesting commercial streetscapes by promoting ground level retail and desirable street activities, making walking more comfortable and convenient, ensuring that sidewalks are wide enough to accommodate pedestrian traffic, minimizing curb cuts and driveways, and avoiding windowless facades and gaps in the street wall.

e. **Environmental Protection Element**

The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. This element provides policies on critical issues such as drinking water safety, energy conservation, air quality, pollution prevention and waste management. The Environmental Protection Element's goals are to:

- Protect, restore, and enhance the natural and man-made environment in the District of Columbia;
- Take steps to improve environmental quality, prevent and reduce pollution; and
- Conserve the values and functions of the District's natural resources and ecosystems.

Safeway responds to the Environmental Protection Element by adopting a LEED scorecard and pursuing LEED certification, installing a newer, more efficient storm water management system and attractively landscaping the entire site area in support of the following elements:

Policy E-1.1.3: Landscaping

Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce storm water runoff, and create a stronger sense of character and identity.

Policy E-2.1.1: Promoting Water Conservation

Promote the efficient use of existing water supplies through a variety of water conservation measures, including the use of plumbing fixtures designed for water efficiency, drought-tolerant landscaping, and irrigation systems designed to conserve water.

Policy E-2.2.5: Energy Efficient Building and Site Planning

Include provisions for energy efficiency and for the use of alternative energy sources in the District's planning, zoning, and building standards. The planning and design of new development should contribute to energy efficiency goals.

An additional environmental protection policy that is relevant is: Street Tree Planting and Maintenance (Policy E-1.1.1); Tree Requirements in New Development (Policy E-1.1.2).

f. **Parks, Recreation and Open Space Element**

The Comprehensive Plan also seeks to improve open space as part of the District's broader vision of "building green and healthy communities."

The Parks, Recreation and Open Space Element outlines policies that seek to increase the amount of open space in the city and protect open space where it currently exists.

Below is a table listing the policies of the Parks, Recreation and Open Space Element that Safeway's landscaping, open spaces and environmental/energy improvements respond to:

Policy PROS-4.3.2: Plazas in Commercial Districts Encourage the development of outdoor plazas . . . in neighborhood business districts, around civic buildings, and in other areas with high volumes of pedestrian activity. Use the planned unit development process to promote such spaces for public benefit and to encourage tree planting, public art, sculpture, seating areas, and other amenities within such spaces.
Policy PROS-4.3.3: Common Open Space in New Development Provide incentives for new and rehabilitated buildings to include "green

roofs,” rain gardens, landscaped open areas, and other common open space areas that provide visual relief and aesthetic balance.

2. Area Elements

a. Rock Creek West

The Comprehensive Plan includes ten Area Elements. This store location is located within the Rock Creek West area. In general, the preservation and improvement of the natural environment is a high priority in Rock Creek West. Area residents are also concerned about growth. Although residents support development of underutilized sites along the major corridors, issues of height, scale, character, and density remain a source of concern within the community. The Comprehensive Plan states that “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.” The community has also stated that aesthetic improvements are needed along some of the area’s roadways so that they can become the “gracious gateways to the nation’s capital they were intended to be.” This application seeks no density bonuses.

Below is a table listing the policies governing the Rock Creek West area that are consistent with Safeway's proposed new use of the site as previously described in this text and in the Gorove/Slade Analysis at Chapter VII:

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 these neighborhoods.
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.

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. When planned unit developments are proposed in these areas, require traffic studies which identify the mitigation measures that must occur to maintain acceptable transportation service levels—and secure a commitment to implement these measures through transportation management plans. Traffic studies and mitigation plans should consider not only the impacts 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. Car-sharing, bicycle facilities, and designs which promote transit use should be encouraged as mitigation measures, in addition to measures addressing passenger and service vehicles.

b. Wisconsin Avenue Corridor

Within the Rock Creek West area, the Comprehensive Plan has identified the Wisconsin Avenue Corridor as a “policy focus area,” where it addresses policies specially related to that community. The plan states that

(1) Tenleytown and Friendship Heights metro stations continue to be opportunity areas for new housing; (2) Friendship Heights continues to be a regional center with limited opportunities for new retail and residential uses; and (3) Tenleytown continues to be a multi-neighborhood center with limited opportunities for new retail and residential uses.

The Comprehensive Plan highlights that 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. In addition, the scale and height of new development on the corridor should reflect the proximity to single family homes, as well as the avenue's intended function as the neighborhood's main street. The plan suggests an emphasis on low- to mid-rise mixed use buildings, such as this Safeway project, rather than high-rise towers or auto-oriented strip development.

Below is a table listing the relevant policies governing the Wisconsin Avenue Corridor that support Safeway's application in that they accurately illustrate the scale, compatibility, landscaping and green space improvements that these policies promote.

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.

3. Upper Wisconsin Avenue Corridor Study

a. Overall Themes

The OP released a revised “Upper Wisconsin Avenue Corridor Study Strategic Framework Plan” (“Framework Plan”) in July 2004. The purpose of the plan is to provide a strategy for guiding redevelopment opportunities, encouraging a better mix of retail uses, creating a sense of place, and preserving the existing assets along Wisconsin Avenue. To date, the Framework Plan has not been approved by the D.C. Council however, the plan is helpful because it reflects citizen concerns and current neighborhood issues that the OP has identified. If approved, the Framework Plan would be

used to supplement the Comprehensive Plan by providing detailed direction for the Upper Wisconsin Avenue Corridor.

The overall themes of the Framework Plan include considerations for parking, greenspace and parks, public realms, pedestrian environments and building placement:

Public Realm, Pedestrian Environment and Building Placement

- Locations along Wisconsin have inconsistent building frontages which poorly define the street edge.
- Building setbacks should be minimized along Wisconsin to promote an attractive streetscape.
- The creation of attractive streetscapes and improved public realms should be encouraged.

Safeway's design eliminates the existing building setback, reorients the front of the building to the property line and beautifully landscapes the entire site.

Parking

- Off-street parking alternatives in the form of below grade parking structures beneath office and retail buildings are common along the corridor.

Greenspace and Parks

- Park spaces are not well utilized.
- There are few attractive and usable open spaces in the area.
- The creation of more public open spaces and plazas should be encouraged.

Most notably, the Framework Plan stresses that growth remains a controversial topic in the community. Some residents support growth while others are firmly against it. Those residents opposed to further growth are concerned with the possible negative impact to the surrounding neighborhoods that large scale development may bring. Many residents who support growth do so without specific limitations. However, other residents who support growth are only willing to do so in the confines of existing zoning regulations.

b. Middle Wisconsin Study Area

Overall, the Framework Plan recommends that the Middle Wisconsin Area maintain much of the same land use pattern that currently exists and target policy at promoting infill developments and redevelopments that improve land use efficiency. This includes the addition of street fronting retail, reworking larger parcels and encouraging a combination of office and residential uses on the upper floor.

The Framework Plan provides an illustrative guide for the Safeway site in the Middle Wisconsin Area. The plan encourages development patterns more conducive to an urban location on a major roadway in the District. Recommendations include reconfiguration the grocery store (Safeway) to face Wisconsin Avenue and adding a new parking garage at the rear of the site. The illustrative plan also encourages additional density in the area to complement the Safeway store.

4. Tenleytown Strategic Area Retail Assessment

The DC Office of Planning (“OP”) has released a draft Strategic Assessment of the Tenleytown Area as part of a citywide “Retail Action Strategy” in an effort to retain and attract retail dollars lost to surrounding suburban areas. OP plans to use the Strategic

Assessment for marketing purposes and to help guide informal planning decisions. Although this assessment has no legal binding effect, the observations and the general recommendations made therein, which include improving the streetscape along Wisconsin Avenue, are at least noteworthy in evaluating Safeway's proposed development in Tenleytown.

The Assessment states the obvious: that the District's role as a retail destination has not kept pace over the past twenty years with retail growth in the Maryland and Virginia suburbs.⁵ OP noted that D.C. residents currently spend more than \$1 billion annually outside the city. This leakage includes spending on grocery items.⁶ The consequences of this lost revenue include lack of adequate support for local businesses and the loss of retail employment opportunities in the District. The Assessment focuses on neighborhood-serving retail and notes that "the surrounding residential neighborhoods are affluent with significant disposable income for improved retail performance, but the quality of the available retail does not reflect the spending power of the neighborhoods."⁷ To overcome this deficit of quality retail and a perceived "lack of a clear and distinct identity", the Assessment suggests that the Tenleytown streetscapes, building facades, and merchandising strategy can be greatly improved by redeveloping underutilized parcels proximate to the Tenleytown-AU Metro station thus bolstering Tenleytown's identity as a vibrant, pedestrian-oriented commercial district. It also suggests a merchandising strategy

⁵ The D.C. Office of Planning, *Retail Retention, Attraction and Expansion in the District of Columbia*, Fall 2007/Spring 2008, at 2.

⁶ *Id.*

⁷ *Id.* at 1.

that focuses on supporting and upgrading existing retail to better meet the needs and demands of residents in the adjacent neighborhoods.

Safeway is redeveloping this store to bring greater retail options to the Tenleytown community. By offering more at its Tenleytown store, Safeway enables the community to do its shopping close to home and not travel to the suburbs or other parts of the City. Safeway is also positioning the store to make it a part of the streetscape and more convenient for pedestrians and to those who use transit.

C. Zoning Alternatives Considered

Safeway seeks minimal forms of relief to build its new store, a change in zoning to permit a grocery store use and minor adjustments to the courtyard, side yard, rear yard and penthouse requirements and approval of a 3% (or 6 spaces) reduction in required off-street parking. Unlike many PUD applications, it does not seek greater building height, density or other bonus development rights. In considering each alternative, Safeway looked at how it could most efficiently obtain the necessary relief while allowing the community ample opportunity to offer input on the development in its neighborhood. Safeway concluded that the PUD process allows the Zoning Commission the authority to grant all the relief needed in a process that is both transparent and appropriate to the planned project.

Safeway owns the entire site (lots 803, 804, 812, and 815). Currently ninety-two percent (92%) of the site is used for its grocery and accessory parking uses. The remaining eight percent (8%) is vacant and unproductive. The development plan calls for Safeway to continue to use the ninety-two percent (92%) portion for a grocery building and off-street parking while improving the remaining eight percent (8%) with landscaped open space.

Safeway has used the R-2 zoned portion of the site for parking for the past twenty-eight (28) years (BZA Case No. 12432) but now seeks to use the entire R-2 and adjacent R-3 zoned property for a new store building with underground and surface parking. Neither the R-2 nor the R-3 zone permits a grocery store use so a change of zoning to a commercial district is required. A change of zoning on the currently vacant lots (804 and 812) is also appropriate to permit them to be used as a part of the Safeway development.

It is certainly accurate to say that development in the upper-Wisconsin Avenue corridor has generated intense interest among those who reside there. Largely because of that reason, the Planned Unit Development process, with an associated change of zoning, is the most appropriate means to attain the necessary zoning relief. The purposes of the project and the types of zoning modifications that are required are the primary factors that support this conclusion. The PUD accords the Office of Planning, the Zoning

Commission and the neighboring community the comfort of knowing the use, density, and architecture of this new and unique development. Safeway has endeavored to avoid the protracted development controversies of the past by engaging in a transparent PUD process, thus avoiding the uncertainty of a stand-alone map amendment process. The PUD process permits all who are interested to know and comment on the attributes of the development in a single interrelated process.

The BZA process is inappropriate because of the uncertainty that the project could qualify for a use variance and the necessity for other forms of relief — a special exception to reduce the number of required parking spaces and several area variances.

In sum, the PUD process, with a related map amendment, provides a level of procedural transparency that the government and the community demand. This is true even as this project does not require or seek development incentives such as increased building height and density.

**D. Neighborhood Shopping (C-1) Zoning on the Site does not
Constitute Spot Zoning**

Rezoning of the site from R-2/R-3 to C-1 does not constitute spot zoning because the action is consistent with sound planning policy and will enhance the general welfare of the neighborhood, as well as conform to the District of Columbia Comprehensive Plan, including a soft edge reading of generalized land use maps. A rezoning of the category sought is also

consistent with the Upper Wisconsin Avenue Corridor study. As defined by the District of Columbia Court of Appeals, spot zoning is an action which: (1) singles out a parcel for the benefit of a particular property owner or a specifically interested party; and (2) is inconsistent with District's Comprehensive Plan. Citizens Association of Georgetown, Inc. v. District of Columbia Zoning Commission, 402 A.2d 36, 39 (D.C. 1979). Professor Rathkopf, in his oft cited treatise on zoning, explains that there must be an "arbitrary or unreasonable" rezoning to constitute spot zoning. If a rezoning is in accordance with the Comprehensive Plan and serves the public welfare, it is not considered spot zoning. 2 A. Rathkopf, The Law of Planning and Zoning, § 26.02 (4th Ed. 1982).

The mapping of C-1 zoning to the vacant lots will benefit the neighborhood by enabling Safeway to modernize its facility to increase its level of service and product offerings to the community. While the rezoning benefits the property owner, it also benefits the interests of the public by promoting the general health and convenience of the surrounding community. The rezoning is consistent with the District of Columbia Comprehensive Plan in the ways set forth in Chapter III.

The proposed rezoning is also consistent with previous actions of the Zoning Commission. The Commission has rezoned numerous properties throughout the District based upon findings that the proposals promote the prosperity and general welfare of the District, would not adversely affect the character

and uses of adjacent or neighboring districts, and are in harmony with the intent, purpose, and integrity of the Zoning Regulations and the Comprehensive Plan.

IV. PROJECT DESCRIPTION AND BENEFITS

A. The Planning Process

In approaching the development of Square 1672, Safeway drew on its experiences in developing community-friendly grocery stores in the District of Columbia. As the District of Columbia's largest and most consistent full-service grocery store, Safeway worked with government agencies, the D.C. Council, the ANC, community organizations, and numerous individual citizens to create buildings and services that are attractive to their communities, safe, architecturally and functionally modern and virtually free of adverse impacts to its neighbors. Among Safeway's most recent new store developments are City Vista (5th and K Streets, N.W.), Georgetown (1855 Wisconsin Avenue, N.W.), and Waterfront (4th and M Streets, S.W.). Safeway proudly notes that each of these developments were achieved with the support of the neighboring community.

With this background, Safeway set out to plan a new store on Square 1672. As is evidenced elsewhere in this application, Safeway arranged to meet with and learn from each of those who agreed to meet with its representatives. Among them are the Office of Planning, the D.C.

Department of Transportation, Councilmember Mary Cheh, a SMD of ANC 3E, Friendship Terrace Association, Iona Senior Services, the Department of Consumer and Regulatory Affairs, Ward 3 Vision, the Georgetown Day School, the Washington Metropolitan Area Transit Authority, the Alliance for Rational Development, Marten's Volvo, and a host of interested citizens, including Marilyn Simon, David Frankel, Ann McMaster, Gina Mirigliano, Louis Wolf, Marlene Berlin, Paul Fedeke, Carolyn Sherman, and Jane Walton.

Good and honest suggestions were gleaned from each meeting. Safeway's representatives are grateful to each of the citizens who took the time to meet with them. Subsequently, Safeway endeavored to improve its base thinking by amending its plans to incorporate as many of the community ideas as possible. As a result, the end production, as submitted, is one that creates an exciting place for the Tenleytown community, is consistent with nearby uses and also with the intensity, height, and density of neighboring properties.