Government of the District of Columbia

ZONING COMMISSION



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D.C. ZONING COMMISSION

ZONING COMMISSION ORDER NO. 530
Case No. 86-17
(Wisconsin Avenue between Chesapeake and Rodman Streets, N. W. - Map Amendments)
September 15, 1988

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on November 13, 17, 20 and 24, 1986. At those hearing sessions, the Zoning Commission considered proposed amendments to the Zoning Map of the District of Columbia. The public hearing was conducted in accordance with the provisions of Section 3021 of the Zoning Regulations.

On June 23, 1986, the Wisconsin Avenue Corridor Committee filed a petition requesting the Zoning Commission to initiate a zoning case to bring all commercially zoned property along Wisconsin Avenue from Western Avenue to the Potomac River into consistency with the Comprehensive Plan for the National Capitol.

The Wisconsin Avenue Corridor Committee (WACC) represents twenty-six civic organizations and seven Advisory Neighborhood Commissions west of the Rock Creek in the District of Columbia and adjacent Montgomery County, Maryland. WACC was organized in 1974 as a vehicle to provide coordination and support to citizen organizations in land use, land use planning, zoning and related matters.

Over the next several days, the Zoning Commission received correspondence from Councilmembers Shackleton, Clarke and Kane, the Citizens Association of Georgetown, the Committee of 100 on the Federal City, Ward 3 Democratic Committee, the McLean Gardens Condominium, the Wisconsin Avenue Business Association, Advisory Neighborhood Commission 3C, the Friendship-Tenleytown Citizens Association, the Western Development Corporation, other businesses, organizations and residents, that expressed different points of view on various issues regarding the Wisconsin Avenue corridor. Those points-of-view on various issues included, but were not limited to, consistency with the Comprehensive Plan, a moratorium on building permits, compatibility of residential and commercial development, traffic generation, the need for

BZA
Case No. 17149
Exhibit No. 14

Board of Zoning Adjustment
District of Columbia
CASE NO. 17149
EXHIBIT NO. 14

emergency action, land values, and feasibility of development.

At a special meeting on July 8, 1986, the Zoning Commission considered the petition of WACC and statements of persons and organizations in support and opposition. The Commission established tentative public hearing dates and set forth a process to receive a "Wisconsin Avenue Corridor Study" prepared by the Office of Planning (OP) and Department of Public Works (DPW), and public comments, and for further consideration of the case.

At a special meeting on September 22, 1986, the Commission considered the draft "Wisconsin Avenue Corridor Study, and an OP report dated September 18, 1986. The OP report recommended emergency rezoning from C-3-A to C-2-A for properties located on Wisconsin Avenue, north and south of Tenley Circle. OP believed an emergency existed in the C-3-A area south of Tenley Circle, extending to Rodman Street, because of the dramatic differences in development scale and commercial uses that exist and are under construction, and the land use provisions of the Comprehensive Plan. OP believed the C-3-A area north of Tenley Circle, extending to Chesapeake Street, should be rezoned on an emergency basis, while a more suitable district or districts could be studied and established in a more permanent mapping.

The Commission authorized the scheduling of a public hearing for rezoning the C-3-A District north and south of Tenley Circle, between Chesapeake and Rodman Streets, to C-2-C, C-2-B, and/or C-2-A, except that rezoning to C-1 would be considered for that portion of Wisconsin Avenue between Tenley Circle and Van Ness Street. The Commission further determined to initiate Zoning Commission Case No. 86-22, and to take emergency rulemaking action in that case to amend the vesting of construction rights provisions of the Zoning Regulations as an alternative to an emergency map amendment. This amendment provided that if an application for a building permit is filed after the date on which the Zoning Commission has made a decision to hold a hearing on an amendment to the zoning map, the application may be processed only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission.

The Land Use Element of the Comprehensive Plan for the National Capital designates the C-3-A area north of Tenley Circle as a multi-neighborhood center, and a mixed use area for moderate density commercial and medium density residential. The Land Use Element also designates this area as parks, recreation and open space, and local public facilities.

The Land Use Element designates the C-3-A area south of Tenley Circle as a local neighborhood center near the intersection of Van Ness Street and Wisconsin Avenue, as moderate density commercial south of Van Ness Street, and as low density commercial north of Van Ness Street.

The notice of public hearing, which was published in the District of Columbia Register on October 3, 1986, includes a proposal to change the zoning of various lots in Squares 1729, 1730, 1731, 1732, 1769, 1770, 1774, 1778, 1789, 1790, 1823, 1824, 1825, 1826, and 1829 from C-3-A to C-2-C, C-2-B, and/or C-2-A, and to change the zoning of various lots in Squares 1780, 1783, 1784, 1785, 1786, and 1831 from C-3-A to C-2-C, C-2-B, C-2-A and/or C-1.

The C-1 District permits matter-of-right low density development to a maximum height of forty feet/three stories, a maximum floor area ratio (FAR) of 1.0, and a maximum lot occupancy of sixty percent.

The C-2-A District permits matter-of-right low density development, including office, retail and all kinds of residential uses, with maximum FAR's of 2.5 for residential uses and 1.5 for non-residential uses, a maximum height of fifty feet, and a maximum lot occupancy of sixty percent for residential uses.

The C-2-B District permits matter-of-right medium density development, including office, retail, housing, and mixed uses, with a maximum height of sixty-five feet, a maximum FAR of 3.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of eighty percent for residential uses.

The C-2-C District permits matter-of-right high density development, including office, retail, housing, and mixed uses, with a maximum height of ninety feet, a maximum FAR of 6.0 for residential and 2.0 for other permitted uses, and a maximum lot occupancy of eight percent.

The C-3-A District permits matter-of-right development for major retail and office uses, with a maximum height of sixty-five feet, a maximum FAR of 4.0 for residential and 2.5 for other permitted uses, and a maximum lot occupancy of seventy-five percent for residential uses.

Initially, the District of Columbia Office of Planning, by memorandum dated November 3, 1986, and by testimony presented at the public hearing, recommended rezoning the C-3-A areas north and south of Tenley Circle to C-2-A. OP believed that the area south of Tenley Circle appeared to be inconsistent with the Comprehensive Plan, particularly in regard to the Generalized Land Use Map and the Generalized Commercial and Production and Technical Employment (PTE)

Land Use Policies Map. OP further considered other elements of the Comprehensive Plan, the lack of any special planning designation, an analysis of existing land uses, and an analysis of the existing and proposed zoning for the area south of Tenley Circle, as well as the recommendations and conclusions of the Wisconsin Avenue Corridor Study.

OP further believed that the area north of Tenley Circle presented a more complex zoning issue based upon analysis of the zoning pattern in the area and potential development of the existing C-3-A area. OP had concluded that rezoning to C-2-A would be appropriate and would be consistent with the Comprehensive Plan. However, OP, in presenting testimony at the public hearing, withdrew its recommendation of C-2-A zoning for the area north of Tenley Circle, and recommended that the Commission consider the merits of all of the various zone Districts reviewed in the OP report.

The Wisconsin Avenue Corridor Committee (WACC) by petition dated June 23, 1986, and by testimony at the public hearing, recommended that the Commission amend the zoning map to allow for rational development of Wisconsin Avenue between Chesapeake and Rodman Streets. WACC believed the map amendments would result in development that balanced the goals of the Comprehensive Plan for lower density development south of Tenley Circle, minimized the impact on adjacent residential areas, and minimized unacceptable traffic congestion. The proposed amendments would allow for significant development of increased commercial facilities to the north of Tenley Circle and upgrading of existing commercial facilities south of the circle.

WACC further proposed: the area north of Tenley Circle surrounding the Tenleytown metro station be rezoned to C-2-A; the area south of Tenley Circle and north of Van Ness Street be rezoned to C-1; and the area south of Van Ness Street be rezoned to C-2-A. WACC believed its proposal would allow the establishment of a "Community Business District" of "medium proportions" north of Tenley Circle consistent with the multi-neighborhood center designation of the Comprehensive Plan, and a lower density "Neighborhood Shopping District" of "Low bulk development" south of Tenley Circle consistent with the Plan's designation of a "local, ... low density commercial" goal for the area south of the circle.

Advisory Neighborhood Commission (ANC) 3C, by report dated October 28, 1986, and testimony presented at the hearing, supported the petition of WACC. ANC 3C recommended the following: the area south of Tenley Circle, extending to Van Ness Street, be rezoned to C-1; and that the Commission consider a residential zone for the area adjacent to Glover Archibold Park. Further, ANC - 3C urged the Commission to consider rezoning the area of Wisconsin Avenue between

Lowell Street and Idaho Avenue, as recommended in the original WACC petition.

ANC 3B, by report dated November 5, 1986, and testimony at the public hearing, urged the Commission to act positively on WACC's petition to rezone the Tenley Circle area. ANC 3B believed that major commercial development of the existing C-3-A area at Tenley Circle would severely increase traffic congestion, threaten the safety of bordering neighborhoods, and establish a dangerous precedent of development in the heart of residential neighborhoods.

ANC 3F, by letter dated November 20, 1986, and by testimony at the hearing, endorsed the petition of WACC, because of traffic generation and the displacement of small businesses.

ANC 3E, by testimony at the public hearing, supported the WACC proposal.

Councilmembers Clarke, Kane, and Shackleton, by letters, supported the holding of public hearings and/or the proposal of WACC.

The Commission received letters and heard testimony from many persons and community organizations in support of the WACC proposal. Issues associated with support of the proposal include the following:

1. Commercial zoning should be consistent with the Comprehensive Plan;

2. Residential neighborhoods abutting Wisconsin Avenue should be preserved;

3. Excessive traffic congestion exists; and

4. Development under the existing C-3-A zoning is inappropriate.

The Commission also received letters and heard testimony from persons and business organizations, including the Wisconsin Avenue Business Association, in opposition to the proposal for the following reasons:

1. The proposal does not reflect all of the major goals of the Comprehensive Plan;

2. The proposal would cause a destablization of land values;

3. There is no legal or factual support for the proposal;

4. Nonconforming uses and structures would result; and

5. The proposal would have adverse economic effects.

The Zoning Commission generally concurs with the position of the Office of Planning, WACC, ANC's 3B, 3C, 3E, and 3F, and others.

It is plain that present circumstances are significantly different from those which existed in 1956-1958, and on which the Zoning Commission then predicated the C-3 zoning in the Tenley Circle area. The Lewis Plan describes the locations of the then proposed C-3 Districts as "wherever there is sub-central location and major highway access." A New Zoning Plan for the District of Columbia: Final report of the Rezoning Study, P.24 (1956). A map showing these sites portrays Tenley Circle as the confluence of Wisconsin Avenue, River Road, Glover-Archbold Parkway, and Nebraska Avenue. Nebraska Avenue is not shown simply as it existed in 1956, but as a portion of a proposed expressway, identified as "Fort Drive." Fort Drive is shown as a loop expressway within the District, connected at one end to the George Washington Parkway in Virginia, and at the other end to the Anacostia Freeway. Neither Glover-Archbold Parkway nor Fort Drive have been developed in the way which had been anticipated in 1956.

The Commission believes that the extent of the C-3-A zoning on Wisconsin Avenue north and south of Tenley Circle is inconsistent with the Comprehensive Plan, except in the area of the Tenleytown Metro station. The Commission believes that the elimination of inconsistencies with the Comprehensive Plan, together with lessening the adverse effect of future development, weighs more heavily in the balance than possible economic detriments either to some of the commercial property owners in the area or to the District of Columbia government. Any potential loss of revenues to the District is reasonably compensated by the benefit which the District derives from readjusting the District's land use regulations so that they are not inconsistent with the longer term, larger purposes of the Plan which the District has developed to guide its development.

A notice of proposed rulemaking was published in the D.C. Register on April 3, 1987. As a result of that notice, the Commission received comments from organizations and persons expressing a variety of views, which may be summarized as follows:

1. The downzoning was supported for the reasons cited on page 5 of this order.

2. The proposed downzoning would not go far enough, because both the severity of the problems and the Comprehensive Plan require more restrictive downzoning. Comments of this nature urged mapping of C-1 or C-2-A in the Tenleytown Metro Station area; residential next to Glover-Archbold Park; C-1 south of Tenley Circle; no less restrictive category than C-2-A throughout the area under consideration; and no less restrictive category than C-1 throughout the area.

3. The downzoning should extend beyond the area which was the subject of the public hearing notice and notice of proposed rulemaking.

4. A limit should be imposed on the scale of certain construction for which a permit had been issued, and which was in progress.

5. The downzoning was opposed for the reasons set forth on Page 5 of this order.

6. Existing structures should be protected from the impact of the downzoning.

7. Telephone exchanges and sites of other public utilities should be exempt from the height and density limitations of the proposed amendments.

8. To compensate for the impact of nonconforming structures, land which is unimproved should be placed in a zone classification which would achieve an actual over-all reduction in developed density.

9. The type of stores, businesses, and other uses which the rezoning would continue to allow do not serve the neighborhood, but a much larger area.

10. The rezoning would adversely affect the District Government's receipt of revenue.

The comments of the petitioner focused on two specific issues: (1) Square 1730, the site of the Sears Department Store, should be rezoned to C-2-A to protect adjacent residential uses from the practical impact of a matter-of-right C-3-A structure which could be built on the Square; and (2) support for a new zoning case to consider mapping of residential districts on the western portions of Squares 1789, 1790, 1826, and 1823.

The comments of affected ANC's 3C, 3E, and 3F reflected the same concerns expressed in other comments, that is :

1. ANC 3C: opposition to the density, height and uses which C-3-A zoning would allow in the Tenleytown Metro station area; opposition to commercial zoning for all but a limited portion of Squares 1789 and 1823; opposition to any commercial zone other than C-1 in areas which the Comprehensive Plan includes in the low density commercial category; opposition to any commercial zone category where the lot size could result in new office development; support for residential development at the Tenley Metro Station; and support for a more human scale of development, with building setbacks.

2. ANC 3E: support for the proposed downzoning but concern that it would not go far enough to be consistent with the Comprehensive Plan; opposition to C-3-A zoning for the Tenley Metro Station area, as inconsistent with the Comprehensive Plan, and allowing development of an overwhelming and paralyzing regional business and employment center; and support for further downzoning in the Tenley Metro area and Square 1823;

3. ANC 3F: opposition to C-3-A zoning north of Tenley Circle; and support for a mix of C-1 and residential zoning, rather than C-2-B south of Van Ness Street, on the west side of Wisconsin Avenue.

The Commission has carefully considered the comments which were submitted in response to the notice of proposed rulemaking. The Commission's views are as follows:

1. C-2-A and C-2-B zoning: the Commission is persuaded that the matter-of-right uses and density allowed under C-2-A or C-2-B zoning are not inconsistent with the moderate density commercial land use category; the amendments as adopted by this order would in fact adopt the C-1 zone classification for those areas under consideration in this case which the Comprehensive Plan includes in the low density commercial category.

2. Tenleytown Metro Station Area: retention of C-3-A zoning is not inconsistent with the designation of this area for inclusion in the moderate density commercial and medium density residential categories; further, the matter-of-right height limit of 65 feet is, in particular, consistent with medium density residential development; the height and topography of the land between Albemarle and Chesapeake Streets do not warrant the imposition of more restrictive height limits

through the vehicle of a generally more restrictive zone classification.

3. West side of Wisconsin Avenue, south of Van Ness Street: as noted above, the Commission has concluded that the C-2-B zone district is not inconsistent with the moderate density commercial designation under the Comprehensive Plan; the greater part of the matter-of-right density in the C-2-B zone under 11 DCMR 771.2 is allowed only for residential use; this limitation reasonably

accommodates the moderate density residential designation of the Comprehensive Plan for the land adjacent to Glover-Archbold Park; while a residential zone classification for this land would also serve that purpose, the adoption of such a residential category would be beyond the scope of the public hearing notice in this case; the Commission is not persuaded that split zoning of the land in this area would be significantly beneficial, or sufficiently so, as to hold further public hearings.

4. Compensatory Zoning: the Commission disagrees with this concept; the Commission views the primary goal of the Comprehensive Plan as being served by the establishment of the appropriate classifications to implement the Plan; the limitations on nonconforming uses and structures under 11 DCMR Chapter 20 reasonably address previously approved and established uses and structures; the Commission recognizes that these limits do not "perfectly" eliminate nonconforming uses and structures; however, the penalizing effect of compensatory zoning would make it a remedy more harmful than the ailment it would treat.

5. Zoning based on lot size: the Commission disagrees with this concept; if a lot is of such an area that its development under matter-of-right zoning allows a structure which is either perceived to be, or objectively is, "large," the structure must nonetheless be within the same development limits that would apply to several structures on several lots; the height, floor area ratio, and lot occupancy limitations, for example, do not fluctuate with lot size.

6. Protection of nonconforming structures: the extant provisions of 11 DCMR Chapter 20 reasonably protect nonconforming structures; the Zoning Regulations should not encourage such structures to be preserved

indefinitely; the Commission is not persuaded that a special rule should apply to the areas rezoned by this Order.

In its summary, the Commission has addressed the relationship of the Comprehensive Plan land use categories to matter-of-right development limits in the various zone districts. Even if certain development guidelines under 11 DCMR Chapter 24 would arguably allow development of a height or bulk which would be "inconsistent with" the Comprehensive Plan, the Commission retains full and effective authority to protect against such results in the consideration of applications pursuant to that chapter. Further, the Commission retains authority to allow beneficial development pursuant to that chapter which would in fact further the goals and objectives of the Comprehensive Plan. Because the Commission's action in this order does not by itself allow other than matter-of-right development, the Commission has not discussed the impact of hypothetical planned unit developments.

Although the Commission has considered the other issues set forth in comments in response to the proposed rulemaking, it does not believe that they require more extended discussion.

The Zoning Commission believes that the proposed amendments to the Zoning Map of the District of Columbia are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

The proposed action of the Zoning Commission to rezone various properties along Wisconsin Avenue near Tenley Circle was referred to the National Capital Planning Commission, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, through its Executive Director and by report dated April 2, 1987, found that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Commission believes that in its decision, it has accorded Advisory Neighborhood Commissions - 3B, 3C, 3E and 3F the "great weight" to which they are entitled.

On September 15, 1988, at its regular monthly meeting, the Zoning Commission considered some proposed editorial changes to this order, as recommended by the Executive Director of the Office of the Zoning Secretariat.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of the following amendments to the Zoning Map of the District of Columbia:

1. CHANGE FROM C-3-A to C-1:

   a. SQUARE 1780 - lot 24.

   b. ALL OF SQUARES 1783 and 1785.

   c. SQUARE 1784 - lots 14, 17, and 18.

2. CHANGE FROM C-3-A TO C-2-A:

   a. SQUARE 1732 - lots 19, 20, 21, 44, 801, 806, 808, 817, 818, 819, 820, and 821.

   b. ALL OF SQUARE 1769.

   c. SQUARE 1786 - lots 7, 9, and 810, and parts of lots 6, 8, and 821.

   d. SQUARE 1825 - parts of lots 800, 816, and 817.

   e. SQUARE 1829 - lots 55 and 56.

   f. SQUARE 1831 - lot 37.

3. CHANGE FROM C-3-A TO C-2-B:

   a. ALL OF SQUARE 1789.

   b. SQUARE 1823 - lots 9 and 801.

Vote of the Zoning Commission taken at the public meeting on March 2, 1987: 5-0 in part, and 3-2 in part, (Patricia N. Mathews, John G. Parsons, Maybelle Taylor Bennett, Lindsley Williams and George M. White, to approve C-2-B and C-2-A; and John G. Parsons, Maybelle Taylor Bennett and Lindsley Williams to approve C-1; Patricia N. Mathews and George M. White, opposed).

This order was adopted by the Zoning Commission at a special public meeting on May 21, 1987, by a vote of 4-0 (Maybelle Taylor Bennett, Patricia N. Mathews, Lindsley Williams and George M. White to adopt; John G. Parsons, not present, not voting).

This order was amended and adopted by the Zoning Commission at the public meeting on September 15, 1988, by a vote of 3-0 (Lindsley Williams, John G. Parsons, and Maybelle Taylor Bennett, to adopt as amended - George M. White and Patricia N. Mathews, not present, not voting).

In accordance with the provisions of Section 3028 of the Zoning Regulations, this order is final and effective upon publication in the D.C. Register, that is on 30 SEP 1988.

MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

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