

Cleveland Park Historical Society

July 18, 2002

Zoning Commission for the District of Columbia
Office of Zoning
441 4th Street, N.W. – Suite 220
Washington, D.C. 20001

**TESTIMONY ON CASE NO.02-06 (TEXT AMENDMENTS TO NEIGHBORHOOD
COMMERCIAL OVERLAY DISTRICT: LIMITATIONS FOR EATING OR
DRINKING ESTABLISHMENTS)**

As one of the original petitioners for the Neighborhood Commercial Overlay Districts, the Cleveland Park Historical Society (CPHS) appreciates the opportunity to comment on the proposed text amendment regarding limitations for eating or drinking establishments. In general, the text amendments improve the original regulations by clarifying issues that have arisen in the course of time in a manner that is consistent with the underlying intent of the regulations.

In our view, uncertainty regarding the interpretation of the original regulations has led to neighborhood contention and business stagnation in Cleveland Park – at least with respect to eating and drinking establishments. CPHS urges the Commission to reconsider proposed Section 1302.5 (e) because that provision is still unclear on its face and may lead to consequences that are contrary to the original intent of the regulations. Section 1302.5(e) as proposed states as follows:

An eating or drinking establishment that occupies the same premises as a gas station, grocery store, billiard parlor, or other non-eating or drinking establishment shall be subject to the applicable street frontage limitations within a particular NC Overlay District, if the eating or drinking establishment use is reflected upon, or is required to be reflected upon, the Certificate of Occupancy and the eating or drinking use occupies all or part of the ground floor level.

What is unclear on the face of this provision is what DCRA and the Zoning Commission consider an “eating or drinking establishment” and when that use is required to be reflected upon the Certificate of Occupancy. For example, in our view, a deli in a grocery store, a carry-out counter in a health food store or a popcorn, candy and beverage counter in a movie theater should not be counted as “eating or drinking establishments.” While these types of uses might never be reflected on a certificate of occupancy, that information should be clear on the face of the regulation and not be subject to public speculation and/or debate. In addition, the new provision should be consistent with the legislative intent of the original provision.

An examination of the legislative history of the eating and drinking establishment provisions supports the conclusion that the words were originally intended to apply to

“bars and restaurants.” In a memorandum to the D.C. Zoning Commission, dated December 10, 1987, entitled “Preliminary Report, Zoning Case No. 87-27 (Macomb Street/Wisconsin Avenue Petition) Fred L. Greene, Director, Office of Planning (OP), states in pertinent part:

- c. Eating and Drinking Establishments.....A restriction that should be considered and advertised for public hearing is a requirement that eating and drinking establishments not exceed 25% of such frontage. The rationale for such a restriction is to guard against a long-term trend in which **bars and restaurants** concentrate in a location, making it an increasingly popular entertainment location, and price out a number of neighborhood commercial uses, so that the diversity and function of the neighborhood shopping center is weakened. (Emphasis added.)

Preliminary Report at 8 (Attached as Exhibit 1). This point is reiterated in OP’s Final Report to the D. C. Zoning Commission, dated April 22, 1988:

- c. Eating and Drinking Establishments... The proposed restriction mandates that eating and drinking establishments not exceed 25 percent of linear frontage. The rationale of such a restriction is to guard against a long-term trend in which **bars and restaurants** concentrate in a location, making it an increasingly popular entertainment location, and price out a number of neighborhood commercial uses, so that the diversity is reduced and the neighborhood function of the shopping cluster is weakened. (Emphasis added.)

Final Report at 8 (Attached as Exhibit 2.) The same reference to bars and restaurants is used in OP’s testimony before the Zoning Commission at the hearing on the Text and Map Amendments Affecting Certain Areas Along Connecticut Avenue, N.W., Case No. 86-26, Thursday, January 14, 1988. In comparing eating and drinking establishments in Woodley Park to those in Cleveland Park, Nathan Gross on behalf of OP stated in relevant part:

The 25 per cent limit here [Woodley Park] is obviously somewhat more important than in Cleveland Park. The potential does exist here more than at Cleveland Park for **restaurants and bars** to kind of take over the area for two reasons...one the commercial area itself is quite a bit smaller; and secondly, the overwhelming presence across the street of about 2300 or 2400 hotel rooms is a logical relationship with restaurants.

Transcript at 84-5 (Attached as Exhibit 3).

While at some point in the process, the term “eating and drinking establishment” was extended to specify “delicatessens and carry-outs,” and “similar eating or drinking establishments”, there is no indication that this term was ever meant to apply to premises that integrate these services into a larger operation. (This should not to be confused with

the situation where a non-eating or drinking establishment adds a specific eating or drinking establishment as a separate adjunct to its business and that eating or drinking establishment fronts the street.) The above-referenced legislative history indicates that the eating and drinking provision was intended to prevent restaurants and bars from taking over the protected commercial **street frontage**, not to limit other types of neighborhood establishments that serve food or drink as part of a broader operation from fronting the protected streets.

CPHS recommends, as an alternative to proposed 1302.5(e), the following model that more clearly defines the term “eating and drinking establishment” on its face consistent with the legislative history of the original provision and the definition of restaurants in Section 199 of Title 11:

Eating or drinking establishments include restaurants (including carry-out and fast food), bars, coffee shops, delicatessens and similar eating or drinking establishments that fall within the definition of restaurant and restaurant, fast food set forth in Section 199 of Title 11 of the Zoning Regulations. Convenience stores, movie theaters, grocery and health food stores (and any portion thereof) are not considered eating or drinking establishments for purposes of this provision. The status of any businesses not listed above shall be resolved in accordance with the definitions set forth in Section 199 of Title 11.

CPHS urges the Zoning Commission to evaluate any other types of eating and drinking establishments that exist or are likely to exist in the overlay, not specifically referenced above, such as bakeries and ice cream parlors, and specifically reference them in the definition as included or excluded in the definition so that there will be as much clarity on this issue as possible.

With respect to the treatment of vacant properties that were previously occupied by eating or drinking establishments, CPHS is of the view that the Zoning Commission should consider the rule in the context of its impact on the ultimate percentage of eating and drinking establishments that will be allowed as a result, and the legal and policy implications related to investments that have been made by business in these neighborhood shopping districts. At this point in time, the effect of proposed 1302.5(f) in Cleveland Park is unclear because no definitive percentages have been provided or are available in light of the uncertainties regarding the definition as discussed above and the measurement issues also addressed in the regulations. In short, we don't know whether Cleveland Park currently is over or under the 25 percent limit. In the circumstances, CPHS urges that the provision be examined with a view to ensuring that it strikes an appropriate short-term and long-term balance between, on the one hand, the policies reflected in the 25 percent rule, which CPHS strongly supports, and, on the other hand, the rights and reasonable expectations, if any, of existing tenants and property owners.

Thank you for the opportunity to present these views.

A handwritten signature in black ink, appearing to read "Ruthanne Miller". The signature is fluid and cursive, with the first name "Ruthanne" written in a larger, more prominent script than the last name "Miller".

Ruthanne Miller
Vice-President for Legal and Regulatory
Affairs
Cleveland Park Historical Society

Memorandum

Government of the District of Columbia

TO: D.C. Zoning Commission

Department,
Agency, Office: Planning

FROM: Fred L. Greene, Director
Office of Planning

Date: DEC 10 1987

SUBJECT: Preliminary Report, Zoning Commission Case No. 87-27
(Macomb Street/Wisconsin Avenue Petition)

BACKGROUND

On July 7, 1987, the petition initiating this case was submitted to the Zoning Commission. The Office of Planning submitted a status report on the matter to the Commission on October 22. This status report reviewed the basic facts and issues in the case from OP's perspective. A copy of that report is attached for the Commission's reference. At the end of October, the petitioners submitted further comments and a detailed survey and description of existing uses, building heights and densities in the area, illustrated by maps and charts. Because this report showed that one property owner, Westminster Investing Company, owns a major land assembly including the three anchor stores in the area (Murphy's variety store, Giant Food Store and Peoples Drug Store), OP convened a meeting between Westminster and persons representing the petitioners. This meeting, we believe, was a valuable exchange, indicating in particular neighborhood concerns about redevelopment and Westminster's indication that the company has owned these properties for many years and that continuing long term leases in some buildings at low rents indicate it would be difficult and expensive for Westminster to buy out leases and redevelop in the short term. At its November meeting, the Zoning Commission requested the Office of Planning to accelerate its work on this area and provide a report for the Commission to consider at its December 14 meeting. This memorandum provides that further report.

The attached copy of the previous OP status report indicates on p. 1, the names of the five petitioning entities and a

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ZONING COMMISSION
District of Columbia

Case 87-27

Zoning Proposal. The Office of Planning believes that specific overlay controls should be established in this small commercial area in order to reinforce the area's strengths and guide any new development in a favorable manner.

Following are the types of controls recommended for public hearing, together with a summary statement of rationale for each.

- a. Ground floor retail. The usable ground floor space of commercial buildings should be required to be devoted to specified retail and personal services uses, not office use or to commercial uses incompatible with a pedestrian-oriented, neighborhood convenience center. This will avoid the creation of "dead spots" and fragmentation of retail services and will instead enhance the aesthetic and physical cohesiveness of the shopping district, ensure the retention of a critical mass of retail space rather than losing critical amounts of space to office or conflicting uses, and improve pedestrian accessibility to stores. Some of the uses precluded as incompatible are car wash, automobile rental agency, funeral home, plumbing or heating shop, etc. Another effect of this proposed requirement is to limit the total size of office use in the area. Within the 1.5 FAR which the C-2-A District permits for office and retail uses combined, if 0.5 to 0.75 FAR is utilized as ground floor retail, the office component is reduced comparably. Any redevelopment plan will have to provide compatible ground level retail uses.
- b. Drive-throughs, curb cuts. Restrictions are also proposed on drive-throughs and on curb cuts providing access to parking. Such driveways are frequently created by replacing previous commercial buildings. The result is a gap in the continuity of stores, a reduction in total commercial space, increased danger and inconvenience to pedestrians, and, in most cases, an unsightly gap in the physical fabric of building fronts. As stated previously, the economy of the city benefits from many uses which are auto-oriented, and such uses are widespread in neighborhood commercial districts. In those limited areas where compact and coherent groupings of retail buildings remain, it is reasonable to preclude the usually detrimental effects of driveways and drive-throughs.

- c. Eating and Drinking Establishments. Based on petitioners' measurements of store frontages along the front property line, eating and drinking establishments constitute 20% of linear frontage. This represents a balanced complement of restaurants, in OP's opinion. A restriction that should be considered and advertised for public hearing is a requirement that eating and drinking establishments not exceed 25% of such frontage. The rationale of such a restriction is to guard against a long-term trend in which bars and restaurants concentrate in a location, making it an increasingly popular entertainment location, and price out a number of neighborhood commercial uses, so that the diversity and function of the neighborhood shopping cluster is weakened. The proposed overlay district provides a waiver procedure before the Board of Zoning Adjustment, which in practical terms, means that at whatever time the frontage reaches 25%, any additional eating or drinking establishment would require a review of the proposed use in light of the purposes of the overlay zone and other specifics as indicated in the proposed zone.
- d. Large Lot Development. Because of the potential impact that a large redevelopment can have on a neighborhood convenience cluster, the concept of development review by the BZA of sites above a certain size should be considered. As illustrated in the photographs, potential adverse effects on the viability of the cluster can arise from: large, freestanding commercial buildings; office buildings, even in C-1 with a low density and a three-story height limit; poorly situated surface parking, access-egress and location of uses, e.g., interior court rather than sidewalk oriented. Many of these features, if provided on a small infill site will be only moderately detrimental, but on a large scale can substantially substitute itself for what had been a convenience retail cluster. We suggest that 10,000 square feet of land area and 15,000 square feet be advertised for consideration in this regard.

In conclusion, the Office of Planning recommends that a public hearing be scheduled on the proposed commercial overlay zone as described above. A draft of the proposed zone is attached to this report for purposes of the Notice of Public Hearing, if a hearing is scheduled.

D.C. -44
APRIL 1980

Memorandum

Government of the District of Columbia

TO: D.C. Zoning Commission

FROM: Fred L. Greene
Director

SUBJECT: Final Report: Application No. 87-27 (Macomb Street and Wisconsin Avenue)

Department,
Agency, Office: Planning

Date:

APR 22 1980

Description of Application

This application is a request to change the existing C-2-A zone to include an overlay zone (Macomb/Wisconsin Commercial Overlay District), or to rezone all or part of the area to C-1 with an overlay zone or to C-1 without an overlay zone.

The area under consideration in the case includes the C-2-A zoned portions of Squares 1920 and 1920-N. (The Sanborn Atlas designates the same area as Squares 1920 and 1920-A.) Geographically, the area incorporates the triangular-shaped block bounded by Wisconsin Avenue, Idaho Avenue and Newark Street; the Wisconsin Avenue frontage of the square bounded by Wisconsin Avenue and Newark Street, Idaho Avenue and Macomb Street; and the southwest corner of Wisconsin Avenue and Macomb Street. In sum, application 87-27 concerns the C-2-A zoned portion of the west side of Wisconsin Avenue from Idaho Avenue to south of Macomb Street.

Summary Recommendation

For reasons detailed in the body of this report, the Office of Planning (OP) recommends adoption of a modified M/W overlay zone and a map amendment from C-2-A to C-1 for the property advertised in this case.

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ZONING SECRETARIAT
DISTRICT OF COLUMBIA

The types of controls recommended, with a statement of rationale for each, are described as follows.

- a. Ground Floor Retail. The usable ground floor space of commercial buildings should be required to be devoted to specified retail and personal services uses, not office use or commercial uses incompatible with a pedestrian-oriented, neighborhood convenience center. This will avoid the creation of "dead spots" and fragmentation of retail services and will enhance the aesthetic and physical cohesiveness of the shopping district, ensure the retention of a critical mass of retail space rather than losing critical amounts of space to office or conflicting uses, and improve pedestrian accessibility to stores. Some of the uses precluded as incompatible are: car wash, automobile rental agency, funeral home, plumbing or heating shop. Another effect of this proposed requirement is to limit the total office use in the area. Within the 1.0 FAR which the C-1 District permits for office and retail uses combined, if at least 0.5 FAR is utilized as ground floor retail, the office component is reduced comparably. Any redevelopment plan will have to provide compatible ground level retail uses.

As a result of the Office of Planning's recommendation to rezone the area from C-2-A to C-1, Paragraph 1601.1(a) of the advertised overlay zone is recommended for elimination. The recommended change to C-1 zoning reduces the range of commercial uses allowed, most of which are local neighborhood and personal service uses. The issue of ground floor retail uses as opposed to offices, banks, loan and financial institutions, travel agencies and other ticket offices remains, however.

- b. Drive-throughs and Curb Cuts. Restrictions are also proposed on drive-throughs and on curb cuts providing access to parking. Such driveways are frequently created by the razing of one or more small commercial buildings. The result is a gap in the continuity of stores, a reduction in total commercial space, increased danger to pedestrians and unsightly gaps in the physical fabric of building fronts. As stated previously, the economy of the city benefits from many uses which are auto-oriented, and such uses are widespread in neighborhood commercial districts. In those limited areas where compact and coherent

groupings of retail buildings remain, it is reasonable to sharply limit the usually detrimental effects of driveways and drive-throughs.

- c. Eating and Drinking Establishments. Based on petitioners' measurements of store frontages along the front property line, eating and drinking establishments constitute 20 percent of linear frontage. This represents a balanced complement of restaurants, in OP's opinion. The proposed restriction mandates that eating and drinking establishments not exceed 25 percent of linear frontage. The rationale of such a restriction is to guard against a long-term trend in which bars and restaurants concentrate in a location, making it an increasingly popular entertainment location, and price out a number of neighborhood commercial uses, so that diversity is reduced and the neighborhood function of the shopping cluster is weakened. The proposed overlay district provides a waiver procedure before the Board of Zoning Adjustment, which in practical terms, means that at whatever time the frontage reaches 25 percent, any additional eating or drinking establishment would require a review in light of the purposes of the overlay zone and other specifics as indicated in the proposed zone.
- d. Large Lot Development. Because C-1 zoning is recommended for this area, OP recommends that the Large Lot Review provision of the advertised overlay zone be eliminated. The change from C-2-A to C-1 substantially reduces the range of permitted uses. The possibility of new developments with a significant office component is also substantially reduced due to the maximum 1.0 FAR allowed by the C-1 zone.

Comprehensive Plan Considerations

As stated in the preamble, the proposed overlay zone regulations are designed to:

Encourage a scale of development, a mixture of building uses, and other attributes such as safe and efficient conditions for pedestrian and vehicular movement, all of which will be as generally required by the Comprehensive Plan; and

Encourage the retention and establishment of a variety of retail and personal service establishments,

DISTRICT OF COLUMBIA ZONING COMMISSION

PUBLIC HEARING

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 In the Matter of: :
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 CONSIDERATION OF TEXT AND MAP :
 AMENDMENTS AFFECTING CERTAIN AREAS: Case No. 86-26
 ALONG CONNECTICUT AVENUE, N.W. :
 :
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Thursday, January 14, 1988
 Commission Hearing Room 9
 1350 Pennsylvania Avenue, N.W.
 Washington, D.C.

The hearing in the above-entitled matter convened,
 pursuant to notice, at 7:28 p.m., CHAIRMAN LINDSLEY WILLIAMS,
 presiding.

COMMISSIONERS PRESENT:

LINDSLEY WILLIAMS, Chairman
 MAYBELLE T. BENNETT, Commissioner
 JOHN PARSONS, Commissioner
 GEORGE M. WHITE, COMMISSIONER

STAFF PRESENT:

EDWARD CURRY, Executive Director,
 Zoning Secretariat
 ELIZABETH TESFAYE, Special Assistant
 NATHAN GROSS, Office of Planning
 SCOTT SORG, Office of Planning
 FRED GREENE, Office of Planning
 GEORGE JIVATODE, Department of Public Works
 NARINDAR THAKRAL, Department of Public Works

[Brief recess.]

CHAIRMAN WILLIAMS: We'll call the Commission hearing back into session at this point after our break and continue our discussion further down Connecticut Avenue.

Mr. Greene, Mr. Gross, Mr. Sorg.

MR. GROSS: Let me just make a couple of introductory remarks regarding Woodley Park.

A number of the proposed overlay controls are the same in Woodley Park as in Cleveland Park; that would be the required ground-level retail, the prohibition against curb cuts and driveways from Connecticut Avenue, the limits on eating and drinking establishments. Let me say one word about that before going further, and that is that with the 23 percent at Woodley Park -- and just from a general observation about the area, it is a strong cluster of eating and drinking establishments -- it is very attractive. The 25 percent limit here is obviously somewhat more important than in Cleveland Park. The potential does exist here more than at Cleveland Park for restaurants and bars to kind of take over the area for two reasons -- one, that the commercial area itself is quite a bit smaller; and secondly, the overwhelming presence across the street of about 2,300 or

2,400 hotel rooms is a logical relationship with the restaurants. And you can see this very strongly at lunch time. The most recent time I was up there was around lunch time, and conventioners with name tags were walking across the street in streams to the restaurants. It is very good for the luncheon trade, good for the restaurants, but over a long period of time there could be a risk of this area just losing its balanced mix of uses.

So a number of the controls are the same. A couple that are different are that we are proposing that hotel use not be allowed in the C-2 zones here. It is zoned C-2-A and C-2-B. The reason for this is just that again, the commercial area is small; it would not be totally out of the question for someone to start up a hotel in the commercial area, drawing part of its business simply from the overspill patronage from the Sheraton and the Shoreham. And to us, this wouldn't be an adverse effect, except in the sense that space that should be devoted to other retail uses would be lost.

This might be the only place in the City where we would consider a prohibition like this, but in this location you do have a very unusual situation.