February 10, 2008 **FAX: (202) 727-6072**

Zoning Commission for the District of Columbia
c/o Sharon Schellin, Secretary to the Zoning Commission
Office of Zoning
Suite 200-210-S
441 4th Street, NW
Washington, DC 20001

Case No. 07-33: Reed-Cooke Overlay: Off-premises alcoholic beverage sales as a permitted accessory use

Dear Commissioners:

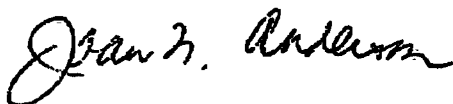
I am writing to **support** the thoughtful and well-researched letter submitted by Janet Topolsky on February 7, 2008, (see attached) and comments by the Reed-Cooke Neighborhood Association requesting that the existing Reed-Cooke Overlay regulation Title II (DCMR), Chapter 14 § 1401.1 (b) with regard to "Off premises alcoholic beverage sales" be retained. **I oppose** the Office of Planning proposal to amend the Overlay, which will be the subject of a scheduled February 21, 2008, Commission hearing.

Much time, energy, and thought went into the creation of the Reed-Cooke Overlay in the early 1990s. Since mid-1984 I have lived within one block of 17th Street and Kalorama Road, NW—the site of the soon-to-open Harris Teeter grocery store—and have seen many positive changes take place. The neighborhood has evolved a long way from my early years as a member of the Orange Hat Patrol.

I would like to state that **I support** the Harris-Teeter full-service grocery store coming to Reed-Cooke, including the approval of their request to sell wine and beer as part of their operation. My opposition is to the way they are choosing to go about their request. As part of the Reed-Cooke Overlay there is a mechanism for requesting an "exception," and Harris-Teeter has had years to pursue this avenue. Rather than change the Overlay and open the door to potential future requests for other changes, I urge you to deny the Harris-Teeter request and ask that they pursue the viable option of applying for an "exception."

Thank you for your consideration of this request.

Sincerely,



Joan N. Anderson
1661 Crescent Place, NW, #603
Washington, DC 20009
(202) 332-5197

Attachment: As stated.

ZONING COMMISSION
District of Columbia
CASE NO. 07-33
EXHIBIT NO. 9

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ZONING COMMISSION
District of Columbia
CASE NO.07-33
EXHIBIT NO.9

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February 7, 2008

Zoning Commission for the District of Columbia
c/o Sharon Schellin, Secretary to the Zoning Commission
Office of Zoning
Suite 200-210-S
441 4th Street NW
Washington DC 20001

Case No. 07-33: Reed-Cooke Overlay: Off-premises alcoholic beverage sales as a permitted accessory use

Dear Commissioners:

I am writing in **strong opposition** to the set-down amendment to the Reed-Cooke Overlay zoning regulations that is being proposed by the Office of Planning – the subject of the scheduled Commission hearing on February 21, 2008.

To be specific, I ask that the Commission retain the existing Reed-Cooke Overlay District regulation Title 11 (DCMR), Chapter 14 § 1401.1 (b), which reads:

> (b) Off premises alcoholic beverage sales;

I ask that the Commission not approve that it be amended to read as follows:

> (b) Off-premises alcoholic beverage sales as a principal use; except that off-premises alcohol sales shall be permitted as an accessory use to a grocery store or other similar permitted use.

The impetus that led to proposing this amendment – well known by all parties involved – is specifically to allow for the sale of beer and wine at the Harris Teeter grocery store that is scheduled to open on Kalorama Road in March, 2008. As is evident from the current Reed-Cooke Overlay language, the sale of beer and wine by Harris Teeter is not allowed within the Overlay, **unless** they follow a prescribed procedure – also detailed in the Overlay regulations – to apply to the Board of Zoning Adjustment for a "special exception."

First, let me offer some background on my interest. I have lived within six blocks of the forthcoming Harris Teeter / Citadel building since 1985, and for the last 10 years within one-half block of it; in fact, I can look out my window and see almost the entire building as I write this. I have attended community meetings in relation to Harris Teeter since 2003 – first to welcome Harris Teeter's initial ambassadors in 2003-2004, then to participate in community negotiations with them during the 2004-2005 period when they pursued a PUD application, and since then, whenever I am able to attend ANC sessions or other local organization discussions. Overall, I have been supportive of Harris Teeter coming to the neighborhood, while always expressing my concerns for traffic, noise and hours-of-operation disruptions, and strongly advocating for restrictions that address those concerns. And I support Harris-Teeter gaining the right to sell beer and wine – a feeling that is shared by many in the neighborhood.

But they have to do it the right way, and this amendment is decidedly not that way. My reasons for opposing this change to the Overlay are several. Any one of them is reason enough to oppose it.

1. **It's unnecessary. There is a prescribed and much better way for Harris Teeter to gain permission to sell beer and wine.** My basic opposition to the amendment stems from the fundamental fact that there is **absolutely no need** to change the Overlay regulations in order for Harris Teeter to receive permission to sell beer and wine. There is a detailed, customary, simpler and better way to secure the right to sell beer and wine, by applying to BZA for a special exception, but they have not done so. In fact, they have tried almost any other way imaginable EXCEPT applying for the special exception, for reasons which elude me and my neighbors. It is very simple: There is a ruling Overlay regulation which prohibits the sale; the same Overlay regulations offer a way out, that is, to apply to the BZA for a special exception. We all know it, and they have known it for years – and they have had years to do it. It has come up in every one of discussions of this project in which I have participated. Why have they not done so – were they afraid of community opposition and wanted to try to backdoor it? Or did they simply overlook it?

   I have personally reviewed hearing transcripts, memoranda and other documents related to the other routes they have tried. Their efforts to obtain a DCRA letter qualifying the sale of alcohol as a non-primary, incidental, "accessory" use and, therefore, allowed by the Overlay, or to argue that their approved construction permit, because it had attachments that included drawings that had wine shelving detailed in them, was effectively the document that qualified them to sell beer and wine, are, quite frankly, convoluted, tortured, and unnecessary.

   The rules are already there, stated, and clear. Like everyone else, Harris Teeter must play by the rules. Please do not change the Overlay and make a mockery of the established and understood process simply because they have oddly and stubbornly refused to follow it.

2. **Amending the Overlay as proposed could create unintended negative side effects.** Look at the wording of the proposed amendment, specifically: "as an accessory use to a grocery store or other similar permitted use." What exactly does "other similar permitted use" mean, and who decides? The Overlay itself offers only *general* criteria language about what uses are to be allowed in the Overlay; it is *specific* only about what uses are *not* allowed. Why open the door wider to other opportunities to sell off-premises alcohol when it is clearly the intent and purpose of the Overlay to limit exactly that in this happily residential neighborhood? Which leads directly to...

3. **This is top-down, not bottom up.** Whose idea was this anyway? The process by which this amendment came into being violates the process and the spirit with which the Overlay was created back in the late early 1990s – in which a group of community-minded citizens came together, organized and advocated to make their neighborhood a better place for today and tomorrow. The community-led effort that helped create the Overlay is not asking for this amendment. In fact, the established neighborhood organization – the Reed-

Cooke Neighborhood Association, which helped create the Overlay – opposes it. Instead, the Office of Planning is proposing the amendment in response to requests from one company new to the neighborhood. What is wrong with that picture? Plenty. Demand from the *Reed-Cooke* community for this amendment is simply not there.

4. **It is really, really bad precedent.** In reviewing much that has transpired leading to this amendment request, it struck me that gaining Harris Teeter the right to sell beer and wine via this broad amendment to the Overlay is tantamount to securing a piece of Congressional "pork" by changing the Constitution rather than simply passing a bill. I do not say this lightly. When one company – even one that brings good intentions and welcome goods and services to a neighborhood – can talk to enough people at the top to amend a long-established set of zoning regulations to suit their purpose, while ignoring established community and legal process, what's to keep the next one from doing the same? And asking to *expedite* it on top of that!!! This is no way to run the District government for its citizenry.

In summary, please vote against this amendment. Ask Harris Teeter to respect and follow the due process of applying to the BZA for a special exception. Perhaps that means its beer and wine shelves will be empty for a few months as they follow the process through. That is a very small price to pay for building good will with its new neighbors – and potential customers. And it pales in comparison to the high price of ill will and other harm that passing this amendment likely will exact for years to come.

Thank you for your careful consideration of this matter. Please contact me if you have any questions.

Sincerely,

Janet Topolsky

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