

Zoning Commission Case No. 16-26  
Wisconsin Owner, LLC – Consolidated Planned Unit Development  
& Related Map Amendment @ Square 1732)  
Testimony of Marilyn J. Simon  
Thursday, September 28, 2017

Introduction

Tonight, I briefly address my concerns about this Application and highlight ways in which this PUD with a map amendment is inconsistent with the Comprehensive Plan and should be denied. I also address some inconsistencies in the Application, some erroneous assumptions that served as a basis for the ANC’s resolution in support of this proposal, and a serious error in the calculation of the initial affordable housing set aside required by the regulations in effect at the time of the initial application.

The Relationship between the Future Land Use Map and the Zoning District:  
Not Necessarily the Most Intense Zoning District Described in the Definitions

The Comprehensive Plan is clear in stating that the designation of an area with a particular land use category, such as moderate-density commercial, does not necessarily mean that the most intense zoning district described in the land use definitions is automatically permitted.

The definition of the Moderate Density Commercial land use category in the Framework Element of the Comprehensive Plan states that the corresponding zone districts are generally C-2-A (MU-4), C-2-B (MU-5) and C-3-A (MU-7).<sup>1</sup>

**Guidelines for Using the Generalized Policy Map and the Future Land Use Map** 226

The Generalized Policy Map and Future Land Use Map are intended to provide generalized guides for development and conservation decisions. Several important parameters, defined below, apply to their use and interpretation.

e. The designation of an area with a particular land use category does not necessarily mean that the most intense zoning district described in the land use definitions is automatically permitted. A range of densities and intensities applies within each category, and the use of different zone districts within each category should reinforce this range. There are more than twice as many zone districts (about 30, plus more than a dozen overlay zones) as there are Comprehensive Plan land use categories. For example, there are at least three zone districts corresponding to “Low Density Residential” and three zone districts corresponding to “Moderate Density Residential.” Multiple zones should continue to be used to distinguish the different types of low- or moderate-density residential development which may occur within each area.

THE COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL: DISTRICT ELEMENTS

The ZC has already evaluated zoning north of the Tenleytown Metrorail Station Area

The Zoning Commission has already determined the appropriate zone within this Moderate Density Commercial range for this site. Although this site is designated as Moderate Density Commercial, the most intense zoning district is not automatically permitted, and, in fact, the Zoning

<sup>1</sup> When this definition in the Comprehensive Plan was written, the matter of right FAR for a C-2-A zone was 2.5. The MOR FAR for a C-2-B zone was 3.5 and the MOR FAR for a C-3-A zone was 4.0. With inclusionary zoning, the maximum FAR for mixed use buildings that include residential uses was increased to 3.0, 4.2 and 4.8, respectively. The MOR maximum permitted heights for these zones are 50 feet, 65 feet, and 65 feet, respectively, and with inclusionary zoning the maximum height in C-2-B (MU-5) was increased to 70 feet. For the Medium Density Residential, the matter of right FAR in R-5-B (RA-2) and R-5-C (RA-3) zones were 1.8 and 3.0, respectively. Inclusionary zoning increased these by 20%. The maximum permitted heights were 50 feet and 60 feet, respectively.

Commission has already reviewed the Comprehensive Plan and zoning for the Wisconsin Avenue Corridor in the Tenleytown area and determined which portions of the corridor designated for Moderate Density Commercial on the FLUM should have the more intense zoning district, C-3-A (MU-7), and which portions of the corridor designated for Moderate Density Commercial should have the less intense zoning district, C-2-A (MU-4).



*Moderate Density Commercial*

**Moderate Density Commercial:** This designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height. The corresponding Zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply. 225.9

**Medium Density Residential:** This designation is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone districts are generally consistent with the Medium Density designation, although other zones may apply. 225.5



*Medium Density Residential*

In Zoning Commission Order 530, it was determined that the more intense zone in this category would be south of Brandywine Street, and the less intense zone, C-2-A (MU-4), was appropriate for the Tenleytown portion of the Wisconsin Avenue corridor north of Brandywine Street, including the UIP site. The portions of Square 1732 that were zoned C-3-A were downzoned to C-2-A, and C-3-A was only retained in the Tenleytown Metro Station Area, which is south of Brandywine Street. It is also important to note that when this determination was made, the maximum FAR as a matter of right in a C-2-A zone was 2.5, less than half the FAR requested in this PUD, and the maximum height as a matter of right in a C-2-A zone was 50 feet. With this PUD and map amendment, UIP is requesting more than twice the density that the ZC had designated as a MOR for this site and a height that is 76% higher than that designated by the ZC for this site.

It is also important to note that in this Order, the Commission was explicit in stating that they are only determining whether the MOR limits in the zones are consistent with the Comprehensive Plan, and if future proposals under Chapter 24 (PUDs) of the Zoning Regulations might involve a height or bulk that is inconsistent with the Comprehensive Plan, the Commission would need to make that determination if such a proposal is presented.

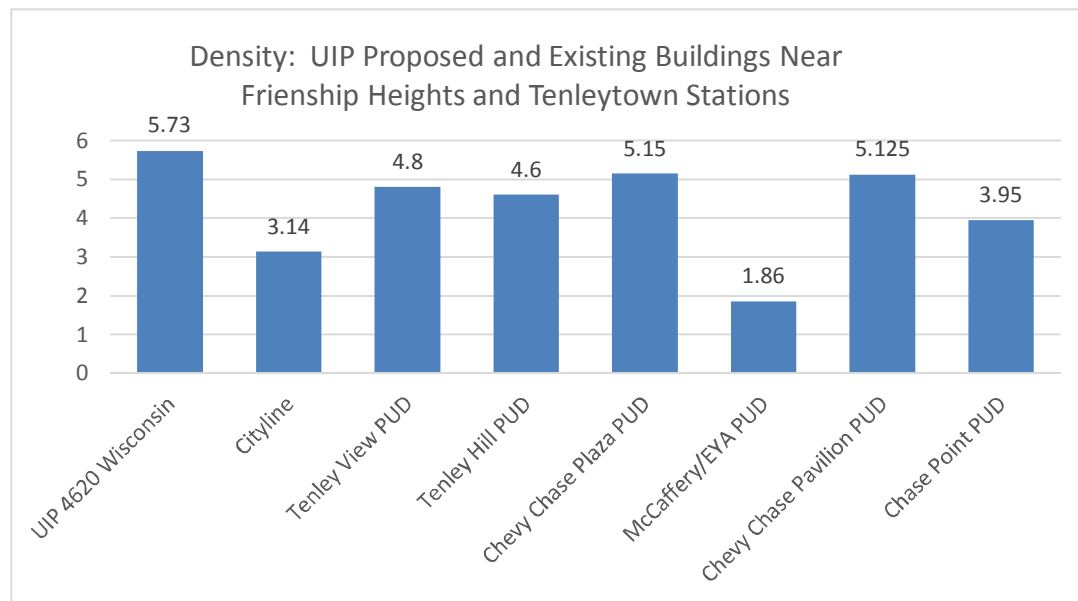
The Proposed Height and Density is Not Appropriate for this Location

If approved, the floor area ratio (FAR) for the UIP project (5.73) would be significantly higher than the FAR of any other building in the upper Wisconsin Avenue Corridor. The height (88 feet) will exceed that of other buildings in Tenleytown.

In Tenleytown, there are two planned unit developments: Tenley Hill with a zoning height of 65 feet and an FAR of 4.5 and Tenley View, with a zoning height of 71 feet and an FAR of 4.8. The Cityline and Best Buy/Container Store building has a zoning height of 70 feet and an FAR less than 3.14.<sup>2</sup>

Friendship Heights and Tenleytown are stable, transit-oriented neighborhoods, and their conservation should be ensured during the coming years. Thus, several core issues must be addressed as plans for any of the sites around the Metro stations or along the corridor move forward. 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. 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. This means an emphasis on low- to mid-rise mixed use buildings rather than high-rise towers or auto-oriented strip development. <sup>2312.6</sup>

In Friendship Heights, the FAR of Chevy Chase Pavilion, a hotel, office and retail building with direct access to the Metro, is 5.125 (ZC Order 517), the FAR of Chase Point, a residential building across the street from Chevy Chase Pavilion, is 3.95 (ZC 04-06), the FAR of Chevy Chase Plaza, a mixed use building at Jenifer and Wisconsin, is 5.15 (ZC Order 519), and the FAR of Friendship Center and the Courts of Chevy Chase (McCaffery and Eakin/Youngentob), a retail and townhouse development on the same block as Chevy Chase Plaza and Chevy Chase Center, is 1.86 (ZC Order 824). The FAR of the Amalgamated Transit Union building, a mixed used office and residential building at 5025 Wisconsin Avenue, is 2.5. With the exception of Tenley Hill all the following sites are closer to Metro than UIP.



<sup>2</sup> The height and FAR of the Cityline and Best Buy/Container Store building is based on the BZA order granting a special exception for recreational area and height. Based on the data in that order, the residential FAR is 2.14, and the commercial FAR is less than 1.0.

### Conclusion

The Applicant is requesting a substantial increase in height and density, and will have a substantial impact on the neighborhood. The Zoning Commission had previously determined that the matter of right limits for a C-3-A zone were inconsistent with the Comprehensive Plan, and the Applicant is requesting significantly more height and density than were allowed in a C-3-A zone at that time. As we know, the zoning envelope on upper Wisconsin Avenue would allow an increase of thousands of new housing units over ground floor retail as a matter of right. The proposed height and density of this project is not consistent with the Comprehensive Plan, and could create a precedent for scale of development that is does not respect the scale of the existing neighborhoods and that taxes the infrastructure of the area.

I ask that the Zoning Commission deny this PUD Application.

### Other Issues

1. There are inconsistent statements on the inclusionary zoning set-aside in the Applicant's filings. The most recent filing presents conflicting information on the set-aside for inclusionary zoning. The Applicant's September 8th Prehearing Report states that they will be providing 12,496 SF of affordable housing, but the IZ calculations in the Architectural Drawings (page A-25, filed September 8, 2017) clearly state that the proffer is for only 11,753 SF.

2. The original proposal did not meet the inclusionary zoning set-aside requirement and that deficiency was not included in OP's setdown report. The Applicant claimed that the amount of the set-aside was 8% of the residential GFA, but the square footage given fell short of that amount. Further, the actual requirement was higher than 8% of the residential GFA: 50% of the achievable bonus density. The Applicant stated that they were offering 7,195 SF of IZ units, when the requirement was for 9,496 SF of IZ units, a shortfall of 24.23%.

While providing only 75.77% of the required IZ housing, the developer claimed additional affordable housing as part of its benefits package. The OP Setdown Report simply states: "The application indicates that the building would be in compliance with Inclusionary Zoning for the provision of affordable units, or eight percent of the residential gross floor area," in spite of the fact that the proffer is for significantly less than the required IZ set-aside.

In fact, the Revive 3E letter in support of this PUD (Exhibit 38) cites the Applicant's provision of affordable housing as a reason for support, when, at the time the letter was written, the Applicant was proffering far less than the amount of affordable housing required by the zoning regulations.

3. There is an error in the calculation of the required IZ set-aside in the most recent filing. As with the original filing, in the most recent filing, the Applicant made an error in calculating the required IZ set-aside. The actual requirement is for "the greater of eight percent (8%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or fifty percent (50%) of its achievable bonus density to inclusionary units." In this case, the second calculation is somewhat higher than the first, and the IZ requirement is 9,496 SF, while the Applicant claimed that the requirement was 9,402 SF. While this is not a large difference in this case, it is critical that all proposals are reviewed to make certain that they meet these requirements.

4. RPP Conditions are not enforceable: The ANC resolution is based on the assumption that the block on which the Property is located would not be eligible for RPP. While the address currently is not in the RPP database, the developer has claimed, and the ANC seems to have accepted, that buildings on commercially zoned land cannot become eligible for RPP. Yet, in this ANC, the residents of the Cityline at Tenley Condominium (Albermarle and Wisconsin) and The Harrison (4201 Wisconsin) are on commercially zoned land and are eligible for RPP. In addition, future residents at the Martens Volvo site (4800 Wisconsin Avenue) zoned MU-4 would also be eligible for RPP, as the block is listed in the RPP database. Further, as discussed in my comments in ZC Case 08-06A [Exhibit No. 986, on Subtitle C, Section 702.1(c)], after approval of a PUD and map amendment with an RPP Condition, the address for Jemal's Babes (4600 Wisconsin Avenue) was added to the RPP database.