

BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

RE: Notice of Proposed Rulemaking Zoning Commission
 in Case No. 86-26 to Downzone Case No. 86-26
 Commercial Property Along
 Connecticut Avenue

COMMENTS ON PROPOSED CONNECTICUT AVENUE COMMERCIAL
OVERLAY DISTRICTS IN CASE 86-26 ON BEHALF OF
PROPERTY OWNERS, BUSINESSMEN, AND OTHER INDIVIDUALS

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January 28, 1988

ZONING COMMISSION
CASE No. 86-26
EXHIBIT No. 378

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January 28, 1988

HAND DELIVERED

Mr. Lindsley Williams, Chairman
D.C. Zoning Commission
District Building, Room 11
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

**Re: Connecticut Avenue Proposed Commercial Overlay
Districts--Zoning Commission Case No. 86-26**

Dear Chairman Williams and Members of the Commission:

This firm represents a number of the owners and contract purchasers of property located in the Connecticut Avenue Corridor, and specifically of property located in the commercially zoned areas near the Cleveland Park and Woodley Park Metrorail stations. A list of these persons is attached as Exhibit No. 1.

The petitions filed by the Woodley Park Community Association and the Cleveland Park Historical Society, as well as the January 11, 1988 Office of Planning Report and the prior Connecticut Avenue Corridor Study offer no basis for zoning action. There are no present issues with respect to either the Cleveland Park or Woodley Park commercial areas which require zoning action. In fact, the primary conclusion to be drawn from an objective planning analysis of the Cleveland Park and Woodley Park areas is that they should be upzoned to achieve consistency with the high density character of the entire Connecticut Avenue Corridor. An alternative zoning proposal is presented in Section XI. The presence of two Metrorail stations on the Connecticut Avenue corridor offers further, compelling justification for an upzoning.

To begin, we submit that the petitioners and OP have not and cannot provide a reasonable explanation for the necessity for the proposed action. What is the basis for these proposals? Transportation? The Department of Public Works and the Washington Metropolitan Area Transit Authority studies do not support this position. Historic Preservation issues? The

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District of Columbia Historic Preservation Law and the Historic Preservation Review Board were created to address these concerns. Bulk or density? The petitioners statements and the OP reports provide no support for this position; on the contrary, C-2-A is a low density zoning district. Further, descriptions of the low density, and low heights of commercial buildings in Cleveland Park and Woodley Park appear throughout the materials submitted. Reactionary responses should not be substituted for sound planning policy.

I. There is No Planning Basis for the Recommended Action

The argument advanced by the petitioners as well as the Connecticut Avenue Corridor Study and the supplemental statement prepared by OP contain overtly one-sided views of existing conditions and development issues. Without a solid basis for action, the proponents of the changes seek to impose overlay districts over two small stretches of commercial property on Connecticut Avenue, with no reference to other parts of the Connecticut Avenue corridor or other parts of the city. There is nothing in the report which substantiates the need to focus on two small areas in Ward 3, differentiate them from other similar areas in the City, and make haphazard changes to the existing zoning.

The Comprehensive Plan recognizes the entire length of Connecticut Avenue as a special street. Connecticut Avenue is also a major urban thoroughfare which is highly developed. As such, it represents a dynamic, urban context for residential, commercial, retail, transportation, and open space uses. Historically, and consistent with sound planning policies, development in the District of Columbia has been encouraged along the major corridors to protect the adjacent residential wedges. Reading the OP report, one is left with the impression that the adjacent residential areas are in some small town, rather than lower density residential areas abutting a high traffic, high intensive use area. Connecticut Avenue has a long history as a commercial and high density residential corridor. The attached Exhibit No. 2, a portion of the zoning map colored to identify 90 foot and surrounding 40 foot districts, shows the corridor predominantly devoted to a 90 foot height zone, abutting 40 foot, lower density residential districts. The corridor has a superior infrastructure, with excellent Metro station and bus access.

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At the hearing on January 25, 1988, the Cleveland Park Historical Society presented testimony about the Lewis plan's recommendations about the height of commercial structures. Through selective quoting of the plan, testimony was presented that the plan limited commercial buildings in areas such as Cleveland Park and Woodley Park to three stories. The plan does note that "...a height limit of three stories should provide for other permitted uses and still keep the districts compatible in scale with surrounding residential areas." (Lewis Plan at 43). The next paragraph of the plan notes, however, that "(l)arger scale outlying commercial centers...can use office buildings up to 8 stories (or 90 feet) in height, comparable to the tallest apartment buildings." (Lewis Plan at 43).

There is simply no planning or land use support for the assumption of the Preliminary Report (at page 11) that zoning action is necessary due to "...the potential replacement of existing small scale buildings and neighborhood uses with large office buildings and non-neighborhood uses. Associated with this potential redevelopment is increased traffic volume and the increased congestion and safety problems more traffic brings." This is further brought out by the statement and testimony of the Department of Public Works which found that the majority of intersections were operating at "good" levels of service. As discussed below, there is no significant evidence indicating that there will be large scale replacement of the present uses with office buildings and non-neighborhood uses. In terms of traffic, even the OP report shows that there is no serious traffic problem through at least the year 2000 for the entire corridor, even without TSM measures.

II. There is No Basis for Downzoning Commercial Areas Located at Metro Stations

Both Cleveland Park and Woodley Park are beneficiaries of the City's \$100 million annual contribution to the Metro system. Throughout the discussion of this case by the Office of Planning, the Zoning Commission and the petitioners, little mention has been made of these two Metrorail stations.

The Comprehensive Plan and sound planning principles dictate that in urban areas mass transit be encouraged over vehicular transit, particularly single passenger commuters. Today, 73,000 more persons travel to the regional core in the

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peak hours than 10 years ago.^{1/} Metrorail and bus transit must be promoted to ensure the continuation of acceptable traffic levels.

The Metrorail red line which runs beneath Connecticut Avenue and connects Shady Grove to the City core has shown an increase in ridership in the previous two years. However, the Cleveland Park Metrorail station is at the bottom of a list of 30 rail stations in the District and is trailed only by Minnesota Avenue and Deanwood in Metrorail ridership. Ridership at Cleveland Park is only 62% of projected levels for 1990 according to a November 1987 study.^{2/} Recognizing the opportunities at these locations, the Comprehensive Plan calls for increased housing production and commercial expansion at Metro stations. For instance, at the Minnesota Avenue location, the policies call for a mixed-use development. At the Deanwood Station, the policies in support of the Comprehensive Plan call for moderately dense housing and upgrading and expanding commercial uses to implement the concept of the Metro station "special treatment area".

Increasing density and promoting use of underutilized Metro stations makes common sense and represents sound planning. Yet, the response to underutilized Metro stations in Ward 3 is quite different; restrictive controls and downzonings are proposed for areas located at Metro stations. Such actions provide great disincentives to development in any form, putting the City's substantial investment in Metro at risk. The waste of such a valuable investment is not only unwise, it is also fiscally irresponsible. If the petitioners and the Zoning Commission desire to doom these stations to continued underutilization, the proposals in this case will certainly accomplish that objective.

^{1/} "The 1987 Metro Core Cordon Count Report: Observations, Trends and Issues", Metropolitan Washington Council Of Governments, National Capital Region Transportation Planning Board, November 1987.

^{2/} WMATA study of Metrorail Ridership, November 3, 1987. (See Exhibit 4).

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III. There is No Traffic Basis for the Proposed Overlay Districts

The Office of Planning undertook a study of 80 square city blocks in preparation of the Connecticut Avenue Study. OP asked the Department of Public Works (DPW) to review and provide its analysis of data from field surveys, supplemented by information from the Department of Finance and Revenue, and data from the Surveyor's Office and the City's Municipal Automatic Geographic Information System (MAGIS).

In this herculean effort, DPW was hamstrung by the following limitations:

1. No consideration of the impact of the Metro system;
2. No forecasting data prepared by the Metropolitan Council of Governments (COG); and
3. No opportunity to analyze options other than worst case scenarios of future development extrapolated from historical trends.

(OP report dated September 25, 1987 at 24).

No updating of the DPW report to address these limitations has been done. (See DPW Memorandum dated January 7, 1988, attached as part of the Office of Planning report, dated January 11, 1988).

In light of the foregoing limitations, it could be expected that the DPW report would provide a bleak picture of the existing traffic conditions on Connecticut Avenue in order to support the proposed restrictions that OP was recommending. If not in its analysis of existing levels of service, DPW could certainly be expected to use some license in predicting future traffic congestion and gridlock. After all, the Connecticut Avenue Study was the City's response to petitions for downzoning--shouldn't DPW support the effort?

In fact, DPW provides a strong basis for the argument that no restrictions are required from a traffic engineering standpoint. The DPW report found that for the previous 10

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years, Connecticut Avenue experienced "little or no growth" (emphasis supplied). In addition, the report indicated that, with few exceptions, the level of service was good for both peak and off-peak time periods. In projecting to the year 2000, the report predicted a minor decrease in levels of service and recommended Transportation System Management (TSM) corrective measures.

Significantly, the report predicted only minor difficulties, all of this without considering the substantial beneficial impact of Metro. There are 5 Metrorail stations, two of which are at Cleveland Park and Woodley Park, and numerous buses which operate in the Connecticut Avenue study area. If these are factored into the analysis, the figures would be further reduced substantially. In the Tenley Circle case (Z.C. No. 86-17), the Office of Planning recognized that traffic estimates could be reduced by 30 percent where Metro had not been considered in the analysis. If Metro is included, there should be a significant change in the analysis and even less support for the proposition that there is any basis for the proposals based on traffic levels.

According to DPW's report, the entire length of Connecticut Avenue, with few exceptions, is currently operating under "good" levels of service. The report goes on to state that no change in current development plans is warranted. Overall, the report found that the traffic growth was expected to be localized and "not expected to cause serious traffic congestion either on Connecticut Avenue or in the Connecticut Avenue Corridor" (at page 26).

Therefore, it cannot be said that the proposed rezoning is in response to traffic concerns. The traffic analysis provided indicates that the situation is good and expected to remain so, even without considering Metro.

In its January 7, 1988 Supplementary Report and in testimony before the Zoning Commission on January 14, 1988, the Department of Public Works maintained that existing traffic levels of service were acceptable and expected to remain acceptable. In fact, George Jivatode testified that the chart depicted projected levels of service in the year 2000 could be characterized as a "worst case" scenario. (Table 2, Existing and Projected Levels of Service at Intersections Along Connecticut Avenue - Year 2000). That chart indicates that

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with minor Transportation System Management (TSM) measures, all intersections in the two proposed overlay districts would be acceptable and that the majority of the intersections would be in the A-C range.

In summary, the DPW report and testimony provides no support for the proposed overlay districts from a traffic engineering standpoint. The professional opinion of the agency charged with maintaining the City's streets is that Connecticut Avenue is operating and would continue to operate at acceptable levels.

IV. There is No Comprehensive Plan Basis for a Rezoning or Imposition of the Overlay Districts

In the Connecticut Avenue Study, dated September 25, 1988, the Office of Planning (at page 18) notes that in considering zoning changes, it is important to consider all elements of the Comprehensive Plan:

Essential to the application of the goals, policies and objectives of the Plan's elements is their fundamental interconnection... To focus solely on a single factor, in particular the zoning/land use consistency issue, invariably leads to errors of interpretation and understanding of the Comprehensive Plan.

Having acknowledged that the Land Use Element is but one element of the Comprehensive Plan, and that it is the entire Comprehensive Plan to which the Zoning Commission must look to determine inconsistency, the OP report nevertheless bases its recommendations entirely on the Land Use Element.

Even with this view of the Comprehensive Plan, the Office of Planning finds that in both Cleveland Park and Woodley Park the existing zoning is consistent with the Comprehensive Plan. ^{3/}

^{3/} The January 11, 1988 OP report states that the "Generalized Land Use Maps [of the Comprehensive Plan] indicate this commercial area [Cleveland Park] to remain a Low Density Commercial area and a Local Neighborhood Commercial
(continued...)

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A. The existing C-2-A zoning at Woodley Park and Cleveland Park is in Conformity with the Comprehensive Plan, Including the Land Use Element, and does not Justify a Change in Zoning

Despite specifically acknowledging that the existing zoning is consistent with the Comprehensive Plan, the Office of Planning suggests the need for the proposed overlay districts. The only basis for requesting the proposed overlay districts is the assumption that zoning action is necessary to insure consistency with the Land Use Element's classification of these areas as local neighborhood centers, with a low density commercial designation.

There is no city-wide planning basis for any changes in zoning. As Exhibit 3 indicates, the substantial majority of areas in the City with similar Land Use Map classifications (the combination of low density commercial and local neighborhood center) are zoned C-2-A. Further, both Cleveland Park and Woodley Park are located at Metro stations. **Woodley Park and Cleveland Park are the only similarly classified areas in the entire city located at Metro stations.** Where the majority of other areas similarly classified by the Land Use Element are zoned C-2-A with no overlays, and none of these other areas have Metro stations, there is absolutely no planning basis for downzoning or rezoning these areas without a specific factual showing of inconsistency with the Plan.

3/(...continued)
Center" (at 12) and "(t)he land use designations for this area [Woodley Park] ... seem to imply substantially a continuation of existing zoning and development patterns." (at 20). Clearly, the OP report does not say that the Comprehensive Plan requires a downzoning or any other such change.

In fact, in terms of Cleveland Park, OP notes that "(i)n this particular location, the C-2-A District is oriented to a Metrorail system and also has automobile access for two principal streets...In this context it is difficult to argue that C-2-A is overzoning in terms of development density." (at 14) (emphasis added).

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As noted, the subject sites are presently zoned C-2-A, with Square 2204 in the Woodley Park area zoned C-2-B. The Comprehensive Plan categorizes both commercial areas as low density commercial and as local neighborhood centers. Such zoning is consistent with the Zoning Commission's most recent evaluation of Comprehensive Plan consistency. In the Tenley Circle Case (Zoning Commission Case No. 86-17), the D.C. Zoning Commission determined that a similar commercial area from Van Ness Street north to Tenley Circle, which is also classified as low density commercial and a local neighborhood center, should be zoned C-2-A. ^{4/}

Based on the Zoning Commission's recent finding that a similarly situated C-2-A zoned property is consistent with the Comprehensive Plan's low density commercial and local neighborhood center classifications, coupled with the statements by the Office of Planning that the existing zoning is consistent with the Comprehensive Plan, there should be no dispute that the present zoning is consistent with the Comprehensive Plan.

Further, in the Wisconsin Avenue Corridor Study, OP examined Wisconsin Avenue from the District/Maryland line to the Potomac River. In its discussion of the land use maps and zoning, the OP report notes that "(n)ot only in Ward 3 but also throughout the city the Generalized Land Use Map depicts low density commercial land use where the underlying zoning is C-1 or C-2-A. Therefore, the interpretation that the low density commercial land use category on the land use map incorporates only C-1 is simply a misinterpretation" (at 14; emphasis added).

^{4/} The Zoning Commission voted to rezone the property to C-2-A on May 21, 1987. As of this date, the Zoning Commission has not issued an Order. This action is not final and effective until the Commission's Order is published in the D.C. Register.

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**B. The Office of Planning has Ignored the Remainder
of the Comprehensive Plan**

1. Stabilizing the District's Neighborhoods

The first major theme in Title I (General Provisions element) of the plan is "Stabilizing the District's Neighborhoods." The District Elements focus on increasing housing opportunities, neighborhood commercial facilities, and improving transportation. The proposed downzonings will serve no fundamental benefit to improve the already well-established and thriving commercial and residential uses of the Corridor, particularly where no loss of neighborhood uses or traffic impacts are shown. In fact, the originally proposed matter of right development proposed for 2639 Connecticut Avenue, discussed in Exhibit 5 was to have neighborhood retail uses on the ground level, offices on the middle floors, and residential use on the top floors. The revised project will also have neighborhood retail on the ground floor.

2. Housing

Section 301 of the Plan states the major policies related to housing. Foremost among them are the need to stimulate a wider range of housing choices (section b) and the need to view housing as a key part of a total urban living system including access to transportation and shopping (section c). Downzoning in such a way as to effectively prohibit housing construction on a major, high density corridor, at locations with direct access to Metrorail and superb Metrobus service would be directly contrary to the Comprehensive Plan's housing policies.

3. Economic Development

Another major theme of the Comprehensive Plan that was completely overlooked in the OP Report is economic development, specifically Section 101-2, "Increasing the District's Share of Regional Employment and Economic Growth." In addition, an entire element, Title II, is devoted to economic development. The proposed downzoning and overlay districts are inconsistent with the economic development goals of the Comprehensive Plan. Applying overlay districts to commercial areas at Metro stations jeopardizes private sector

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confidence in the stability of the District Government. This weakens the District's competitive position in the region's economy in a manner which is directly inconsistent with the Comprehensive Plan.

4. Transportation

Section 503 of the Plan states that the transportation objectives of the Plan are:

To support District policy to preserve and improve neighborhoods, to facilitate the commerce of the District, and to support District growth and development objectives to expand business and job opportunities.

The first policy in support of these objectives is to "support land use arrangements that simplify and economize transportation services." Downzoning through the application of restrictive overlay zones at Metro stations will engender and support a suburban strip land use pattern.

IV. The Proposed Overlay Restrictions are Without Basis or Support

Given that the existing zoning is consistent with the Comprehensive Plan, a statement which is supported by the Office of Planning in its January 11, 1988 Report 5/, the proposed overlay districts are without basis and serve no legitimate purpose.

If the existing zoning is consistent with the Comprehensive Plan, and OP believes that no changes to the underlying zone are necessary, why are additional restrictions proposed? What are the purposes of the restrictions contained within the overlay districts? With respect to Cleveland Park, the Office of Planning notes that it has reviewed the issues raised by the petitioners. While rezoning to C-1 is not recommended, the OP report notes that "some zoning provisions, specifically geared to this C-2-A District with its historic preservation objectives, can help the area achieve its design, neighborhood service, and economic objectives in a more

5/ See note #2.

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fruitful way." (at 15). With respect to Woodley Park, the OP report notes that the primary issue is "a concern that the C-2-B zoning could permit matter-of-right buildings that are out of scale with the cohesive row of commercial townhouse structures...C-2-B tends to imply a degree of redevelopment, whereas C-2-A would tend to create less incentive for redevelopment." (at 21) (emphasis supplied).

The January 11, 1988 OP report and the proposed text, Chapters 13 (Woodley Park) and 14 (Cleveland Park), propose controls on: ground floor retail, retention of upper-story housing (Cleveland Park only), height, drive-throughs and curb cuts, eating and drinking establishments, prohibitions on fast food restaurants (Woodley Park only), and prohibition on hotel use (Woodley Park only). Each are addressed below.

A. Ground Floor Retail restrictions (sections 1301.41-1301.43 and 1401.41-1401.43)

The Office of Planning's expressed rationale for the proposed restrictions of ground floor retail is to insure that the total supply of retail and services uses remain adequate, and to limit the total size of office use in the two districts. Contrary to the purpose and intent of the C-2-A zoning district as applied throughout the City, the Office of Planning has determined that the usable ground floor space of commercial buildings in these locations should be required to be devoted to specified retail and personal service uses, and not office or commercial uses.

Without providing any incentives or benefits to developers or store owners, OP assumes that such limitations will avoid the creation of "dead spots" and fragmentation of retail services. Instead, OP believes that these disincentives and restrictions will somehow "enhance the aesthetic and physical cohesiveness of the shopping district, ensure a wide range of services (rather than losing the ground floor to office use), and improve pedestrian accessibility to stores". OP notes that the proposal also would serve to limit the overall size of office use in these areas, even though such office use is specifically permitted under the C-2-A district.

Why should it be assumed that OP's selection of preferred uses are somehow "better" for these areas than other

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uses permitted under the Zoning Regulations? In addition, there is no assurance that these uses will be established or that desired uses will continue. The OP report posits no evidence to indicate that its preferred category of uses, coupled with restrictions on office use, will make the area better in the future or prevent the area from deteriorating. For instance, there is no showing that the area is being redeveloped for office space on the ground floor. In fact two recent proposals, at 2639 and 3501 Connecticut both would provide ground floor retail space. Where is the evidence to indicate that such restrictions are necessary?

If such uses are desired for these area, the Office of Planning should propose a comprehensive system of incentives to ensure that developers and store owners attempt to provide the indicated uses and services. While hope may spring eternal, it is pure folly to believe that government regulation can mandate specific uses.

The purpose of governmental regulations must be substantially related to the type of regulation proposed. There must be a substantial connection between the type of regulation imposed (here restrictions between various types of uses specifically permitted under the Zoning Regulations) and a legitimate state interest (here arguably ensuring the retention of retail stores and protecting aesthetics). Governmental regulations of the type proposed by the Office of Planning must further the stated purpose of the regulation (e.g., retaining retail). Unless the regulations serve to advance the stated governmental purpose, the regulations are "not a valid regulation of land use but 'an out-and-out plan of extortion.'" Nollan v. California Coastal Commission, No. 86-133 (June 26, 1987). Here there is no evidence to indicate that there is any relation between the proposed use restrictions and ensuring that the specified uses will be retained.

B. Retention of Housing (section 1401.3)

For the Cleveland Park overlay, the Office of Planning proposes to prohibit the conversion of upper story residential uses to nonresidential use. First, it must be noted that the factual basis for this proposal have not been verified by the

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Office of Planning and appear incorrect. ^{6/} Further, there is no evidence to indicate that existing housing is being converted. The available housing is on the upper floors of older buildings; retail and office use of such space may not even be feasible.

More significantly, the actual restrictions imposed in the overlay districts for both Woodley Park and Cleveland Park will virtually ensure that no new housing will be developed. The imposition of the height limits will force developers, who would otherwise like to build a mixed use commercial-residential building, to abandon the residential aspect. The result will be low, square commercial buildings with no residential component. ^{7/} The overall result of the overlay restrictions will be a substantial loss in potential housing gains at appropriate mixed use locations.

C. Height Limitations

There are internal inconsistencies in the height restrictions proposed. The proposed height limitations are not easy to discern. For Cleveland Park, the OP report, at pages 15-16, provides for a maximum height of 50 feet, in combination with a formula approach for determining building height based upon the height of an adjacent building. The proposed text, at section 1401.1, says that the maximum permitted height is to be 40 feet. For Woodley Park, the proposed height restriction is also not clear. The proposed text, at section 1301.1 states that the maximum permitted height is 50 feet. The OP report, at page 22, discusses a 55 foot height limit.

Under the Cleveland Park formula proposal, a proposed infill building could not exceed twice the height of any abutting building. This regulation assumes that the existing heights as built are appropriate, with no recognition that even

^{6/} For instance, an OP representative testified at the January 14, 1988 hearing that the upper floors of the property in Square 2068 on the west side of Connecticut contained residential uses. On the contrary, these properties have been in commercial use for over 30 years.

^{7/} See Statement of Pierre Tilmans and Adrienne Dominguez and Section IX.

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the existing heights in some cases are considerably lower than even what the most restrictive residential district allows. The formula provides no basis for determining the height of the abutting building. As recognized by Commissioner member John Parsons in the January 14, 1988 Zoning Commission hearing, the best way to deal with such a formula is to tear down all of the abutting buildings.

The OP report fails to provide any evidence to indicate what is wrong with 50 to 65 foot tall buildings in commercial areas, along a commercial corridor, which are surrounded by residential buildings up to and exceeding 90 feet in height. The report also fails to discuss the architectural design benefits to be gained from a higher height limit. The predominant character of the entire Connecticut Avenue corridor is one of tall buildings framing the wide span of Connecticut Avenue. The map attached as Exhibit No. 2 clearly shows the predominance of existing permitted height of 90 feet. Many buildings have already been built to that height. The map further shows that existing 40 foot districts, many developed with only 2 story houses, immediately adjoin the higher height areas. Both of these commercial areas, presently developed by low rise commercial structures, are surrounded by tall residential structures. No concern has been expressed about the 90 feet high residential structures, yet the OP and the petitioners suggest reducing height in areas where the existing limits are only 65 and 50 feet.

D. Restrictions on curb cuts and drive-throughs

The Office of Planning's stated reasons for proposing restrictions on curb cuts and drive-throughs have no factual basis. The OP report states that the restrictions are necessary to retain the existing building fabric, minimize vehicular conflicts with pedestrian flows, and avoid other aesthetic and vehicular circulation detriments.

Three issues are raised by OP's proposal. One, there is no evidence shown that there are any plans to divide up the either the Woodley Park or Cleveland Park commercial areas by developing curb cuts. In fact, the most recent development in these areas, at 2639 Connecticut, is actually replacing a parking lot which has an existing curb cut, and bridging the gap between the buildings.

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Curb cuts are already extensively regulated by the Department of Public Works (DPW). There is no showing that DPW is not carrying out its duties or is overwhelmed with applications. If DPW is the appropriate regulatory body to control curb cuts throughout the rest of the City, why is an additional regulatory layer needed for these two small areas? Does the Zoning Commission possess greater wisdom in transportation matters in Ward 3 than DPW? Finally, the right to develop one's property includes the right to have access. Without a logical basis in fact, and without recognizing the existing controls, OP would eliminate this right.

E. Restrictions on Eating and Drinking Establishments
(Sections 1301.5 and 1401.5)

OP proposes that restaurants not exceed 25 percent of the linear square feet of street frontage within the overlay districts. The stated intent of this proposed restriction is to prevent the possibility that over a period of time "...bars and restaurants concentrate in certain locations, acquire a critical mass, and price out a number of neighborhood retail uses, so that the diversity and function of the neighborhood shopping cluster is lost." (OP report at 16-17).

The primary purpose of the OP regulation is to ensure that neighborhood retail uses are not priced out. The limitation on restaurants, however, has no relationship between rental price structure and the linear square footage of restaurants. Why is it assumed that restaurants will price out neighborhood retail uses any more than other uses? Further, why has OP determined that restaurants are not neighborhood uses? Restaurants provide neighborhood services just as much as many other uses.

F. Fast food and hotel prohibitions (section 1301.2)

The Zoning Commission has given recent extensive consideration to defining and regulating fast food restaurants. The new regulations, which represent two years of effort, deal with this issue exhaustively. There is no need to revisit the issue on a block-by-block basis for the Woodley Park area alone.

New hotels are to be prohibited in the Woodley Park Overlay because, according to the OP Report, Woodley Park

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"already has more than its complement of hotel rooms" (at page 23). Without establishing a basis for what "its complement" consists of, and without even a suggestion that another hotel has been proposed, the OP report recommends a blanket prohibition on future hotel rooms. Such a restriction is unnecessary and decidedly without basis.

VI. The Proposed Overlay Districts Violate the Uniformity Clause

The proposed overlay districts violate the uniformity clause of the Zoning Enabling Act, and are therefore invalid. The Zoning Commission has no authority to react to petitions willy-nilly and conduct micro-rezonings of the City. Fortunately the Zoning Enabling Act precludes this type of action.

The Zoning Enabling Act, D.C. Code Section 5-412 et seq. provides the statutory basis for the creation of the Zoning Commission and for the promulgation of regulations and the creation of districts or zones. In order to ensure uniformity of treatment throughout each district, Section 5-413 contains the uniformity clause, which provides: "All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts."

The uniformity clause is contained in the Standard State Zoning Enabling Act and is in nearly every state zoning enabling statute. See R. Anderson American Law of Property, 3rd Edition, Section 5.25 (1986).

In Dupont Circle Citizens Association v. District of Columbia Zoning Commission, 355 A.2d 550 (D.C. 1976), the court stated that the uniformity clause required that "the regulations be applied uniformly to all property throughout a district, all owners of the same class being treated alike." 355 A.2d at 559.

Courts routinely strike ordinances and zoning amendments that violate the requirement of uniformity. For this reason, the requirement of a buffer zone on one side of a particular parcel but not any similarly situated parcels was

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struck down. 8/ Likewise, a setback requirement of 25 feet in a business district but which required a 67 foot setback in one particular block was found to be invalid 9/ and an ordinance that prohibits the serving of food and beverages within 1,000 feet of an industrial park violates the uniformity requirement, and is therefore invalid. 10/

Over the past several years, the Zoning Regulations have been amended to create special districts or overlays. The Mixed Use Diplomatic District (11 DCMR, Section 1000 et seq.), the Hotel-Residential Incentive District (11 DCMR, Section 1100 et seq.) and the Capitol Interest District (11 DCMR, Section 1200), are all examples of overlay districts which provide incentives to, or controls on, development.

With the exception of the Capitol Interest District, each of the overlay districts is capable of being applied in various parts of the City. As Exhibit 7 demonstrates, each of the existing overlay districts covers a much larger area than the proposed CP and WP overlays. These overlays were created after thorough analysis to address the particular concerns of various locations. The existing overlay districts cover 11 underlying zoning districts, as the chart demonstrates. The Hotel-Residential and Diplomatic overlays are applied in numerous locations, and in several different zoning districts. The applicable zoning regulations in these overlay districts do not vary from location to location.

The Zoning Commission must recognize that such site specific zoning cannot be squared with the doctrine of uniformity. These proposed overlays will be applied to, at most, two underlying zones; C-2-A and C-2-B (unless downzoning occurs in Square 2204 as requested by the petitioners). The implication is that simply by petitioning the Zoning

8/ Veseskis v. Bristol Zoning Commission, 168 Conn. 358, 362 A.2d 538 (1975).

9/ N.T. Hegeman Co. v. River Edge, 6 N.J. Super. 495, 69 A.2d 767 (1949).

10/ Carleton Tennis Association, Inc. v. Town of Clay, 131 Misc. 2d 522, 500 N.Y. Supp. 2d 908 (1985).

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Commission, one can effect a rezoning on a block-by-block basis and principles of planning and law will not interfere.

As the court found in Linda Development Corporation v. Plymouth Township, 3 Pa. Commonwealth 334, 281 A.2d 784 (1971), such "special legislation" designed to prevent the lawful use of a particular area is "arbitrary, unreasonable and confiscatory in its application" 281 A.2d at 787.

Furthermore, the specific proposal regarding the permitted height of buildings in the Cleveland Park overlay also violates the requirement of uniformity. Two adjoining properties, identical but for the structure that abuts their other side would not be permitted to be developed to the same height. This so-called transitional height concept violates the intent and the letter of the Zoning Enabling Act.

VII. The Proposed Overlay Districts Represent Spot Zoning

Spot zoning occurs when an area is rezoned in contravention of the Comprehensive Plan. Capitol Hill Restoration Society v. Zoning Commission, 380 A.2d 174 (D.C. 1975); Palisades Citizens Association v. District of Columbia Zoning Commission, 368 A.2d 1143 (D.C. 1975). The situation often occurs when the amendment is made at the request of certain property owners for their benefit and the detriment of the community. (See R. Anderson, supra Section 5.12).

In the present case, the Office of Planning preliminary report is clearly responsive to the particular concerns and demands of the petitioners. The benefits that would enure to this group is documented in their petitions. The detriment to the community is a zoning at variance with the general pattern, violative of the integrity of the Zoning Map and in contravention of the Comprehensive Plan.

The Comprehensive Plan categorizes the area as low density commercial and as a local neighborhood center. Throughout the City where these Comprehensive Plan descriptions coincide the applicable zoning category is C-2-B, C-2-A or C-1. (See Exhibit 1). This is consistent with the similar situation of Wisconsin and Van Ness, where the Zoning Commission recently determined that the applicable zoning should be C-2-A. (See Zoning Commission Case No. 86-17). Therefore, the area is currently zoned consistent with the Comprehensive Plan.

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Nowhere in the Comprehensive Plan is the recommendation that site-specific overlay districts should be created. The proposed Cleveland Park and Woodley Park overlays have regulations on height, uses, ground floor retail, eating and drinking establishments and curb cuts and drive-throughs. The Comprehensive Plan has no such particularized categorization of uses. Therefore, the proposed overlay district is contrary to the Comprehensive Plan.

VIII. The Proposed Overlay District will have adverse economic impacts and threaten the economic stability of the neighborhood

The proposed overlay districts will have short term and long term negative economic impacts. Imposition of the height and use restrictions will affect not only the value of existing structures and land, but will affect the nature and type of development in the future. As discussed under section IX, the restrictions will also result in a loss of residential FAR, particularly in the Woodley Park area zoned C-2-A.

The proposed overlay also will not encourage stability of districts and of land values. In considering requests for rezoning action, the Commission is required to consider the impact of its action on the stability of the area and of the city, as well as on land values. There is nothing to indicate that these downzonings will encourage stability. In fact, such downzonings would tend to discourage long-term owners from seeking opportunities in the District.

IX. The proposed overlay districts will drastically reduce housing development opportunities in Woodley Park and Cleveland Park

A primary impact of these overlays is to ensure that no mixed use projects with residential components will be developed in these areas. To prohibit housing in a high density corridor, in mixed use locations, across from Metro, is poor public policy and violative of the Comprehensive Plan.

The reduction in the height limit and the consequent reduction in the number of stories, with no change in the commercial FAR, will ensure that no residential development is built. While a commercial building, low and wide in style,

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can still be squeezed into a 40 or 50 foot height, there is no additional area for residential uses?

The imposition of the height reduction in the Woodley Park area is an extreme example of undermining the City's strong desire for housing. Square 2204 is zoned C-2-B. The Office of Planning argues in its latest report that the existing C-2-B zoning: "tends to imply a degree of redevelopment, whereas C-2-A would tend to create an incentive for redevelopment...The Office of Planning believes that the strong and attractive cohesiveness of the commercial row along this frontage should generally be conserved rather than redeveloped, and that the narrowness of the alley separating the commercial area from adjacent townhouses (15 feet) is an additional constraint upon the scale of commercial development that should be permitted". (OP Report at 21) (Emphasis supplied).

OP misses the point. The C-2-B zone does not signify greater redevelopment potential than C-2-A. What C-2-B provides is an incentive for residential development. The crucial flaw in the analysis is that the commercial FAR of C-2-B and C-2-A are the same: 1.5 FAR. A chart comparing the C-2-B and C-2-A Districts is attached as Exhibit No. 6. The C-2-B District does permit a greater total FAR (2.5 for C-2-A versus 3.5 for C-2-B) and thus somewhat larger, taller buildings are permitted. But the difference is that the amount over 1.5 FAR is for residential use, which would seem to be consistent with the above-referenced land use designations for the Woodley Park area which are a mix of low density commercial and moderate, medium and high density residential. It must be remembered that the Woodley Park area is surrounded by residential buildings ranging in height from approximately 60 to 90 feet in height. To downzone residential FAR in a high density residential corridor, immediately across the street from a Metro station, is inappropriate and is not an action contemplated by the Comprehensive Plan.

A specific case example of the loss of residential development at this location will be presented at the hearing by Mr. Pierre Tilmans and Ms. Adrienne Dominguez, Esq. A copy of their outline of testimony is attached.

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X. PUDs must be considered separately from these proposed overlay districts

Planned Unit Developments (PUDs) are governed by Article 24 of the D.C. Zoning Regulations, 11 DCMR, April 1987, as amended. As originally provided in the Connecticut Corridor study and as stated on several occasions by the Director of the Office of Planning, the PUD process is separate and distinct from the overlay districts which govern matter-of-right development. In the recent OP report, dated January 11, 1988 and at the hearing on January 14, 1988, OP has made statements which can be interpreted as reconsidering the inclusion of PUD restrictions within the proposed overlays. Because PUDs are governed throughout the City under a separate Chapter of the Zoning regulations, and PUD approval is only granted by the Zoning Commission through an adjudicatory-type proceeding, PUDs must remain outside the scope of the overlay districts.

XI. Alternative Zoning

Over a year ago in considering proposals to downzone portions of Wisconsin Avenue in Case 86-17, the Office of Planning discussed the development of Metro station impact zones where special zoning incentives would be applied to Metro stations across the City. No action has been taken on this proposal. All of the District's neighboring jurisdictions, Prince Georges County, Montgomery County, and Arlington County, in recognition of the significant fiscal commitment of Metro stations, have adopted Metro overlay zones to promote increase mixed use development at Metro stations. The proposed Cleveland Park and Woodley Park overlays, however, would downzone Metro stations along a major commercial corridor.

We believe that it is necessary for the Zoning Commission to consider an alternative proposal to upzone these Metro station areas, and others throughout the City. Metro Station development zones which would encourage a mix of uses around stations generally, including Cleveland Park and Woodley Park, should be developed and implemented. These Metro station zones would provide for additional height and FAR for projects meeting mixed use goals. The imposition of these zones would help to achieve appropriate utilization of mass transit. Such alternative zoning proposals will be discussed at the hearing

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by Mr. Steven E. Sher. A copy of an outline of his testimony is being submitted separately.

XII. Conclusion

One of the major purposes of zoning, set forth in the Zoning Act, is to provide for stability of districts and land values. There is no evidence that the existing zoning controls, which have been in place in these areas for many years, have created any instability. Accordingly, there is no reason to change the zoning as urged by the petitioners and OP.

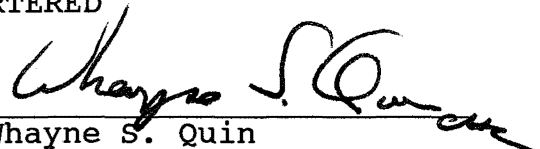
Action should be taken, however, to recognize the need to promote appropriate mixed use development at Metro stations, particularly along commercial corridors, such as Connecticut Avenue. We urge the Commission to initiate proceedings to develop such Metro station overlay zones.

Further, if the Commission determines that certain of the proposed restrictions are necessary, we recommend that the restrictions be redeveloped in a manner to provide developers and store owners with incentives to meet these objectives, rather than attempting to force such objectives through restrictive regulations.

For the foregoing reasons, it is respectfully requested that the Zoning Commission take no action on the recommendations of the Office of Planning and the various citizen petitions in Case 86-26. There is no basis for imposing cumbersome overlay districts in areas where the zoning is not inconsistent with the Comprehensive Plan, the neighborhood residential and commercial uses are co-existing compatibly. The economic bases of the existing retail establishments requires stabilization not disruption. There are no traffic issues, and these areas have Metro stations. The subject areas should be upzoned to increase mixed use development.

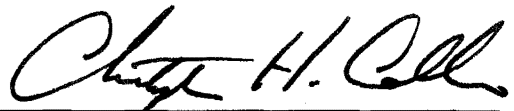
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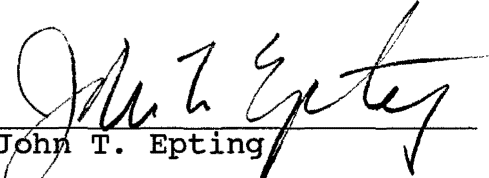
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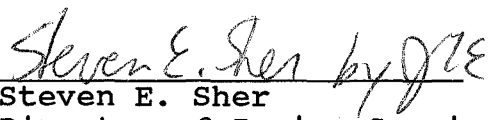

Whayne S. Quin

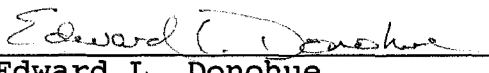
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CHARTERED

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Christopher H. Collins


John T. Epting


Steven E. Sher
Director of Zoning Services


Edward L. Donohue

Attachments

EXHIBITS

1. List of clients
2. Zoning Map of the Connecticut Avenue Corridor
3. Locations in the District of Columbia Classified as Local Neighborhood Centers and Low Density Commercial
4. Metrorail Ridership
5. Comparison between C-2-A and C-2-B Districts
6. Overlay Districts in the District of Columbia

EXHIBIT 1

List of Clients

Olga M. Mazza
3816 Cathdral Avenue, N.W.
Washington, D.C.

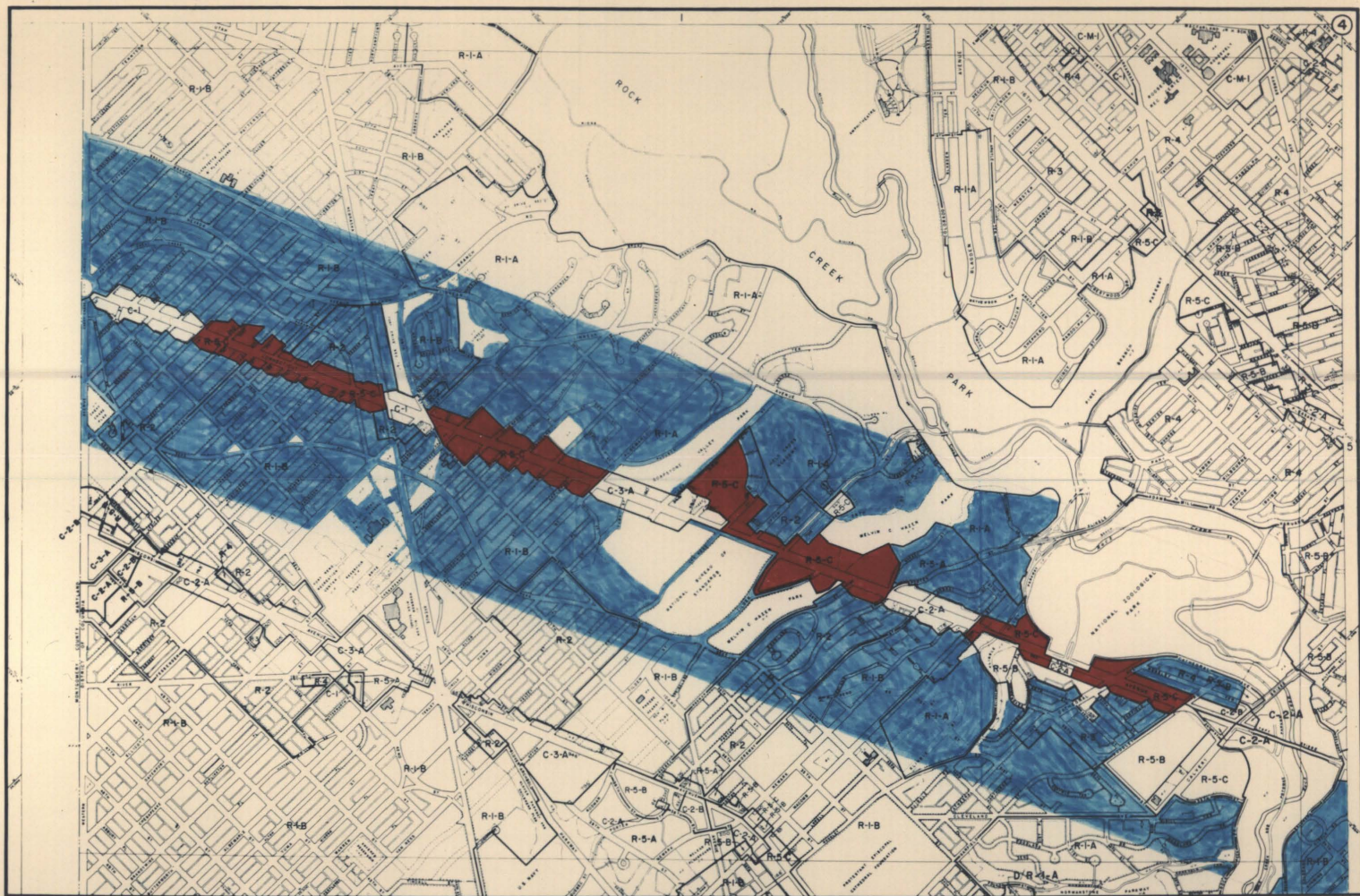
Twenty-Six Thirty-One Limited Partnership
2639 Connecticut Avenue, N.W.
Washington, D.C.

Cafritz Foundation, Owner
The Urban Group, Contract Purchaser
3501 Connecticut Avenue, N.W.
Washington, D.C.

Maryland National Bank
Mr. Tom Maxfield
MNC Financial
P.O. Box 987-MS030503
Baltimore, MD

Riggs National Bank, Trustee for 3331, 3323, 3325 Conn. Ave.
Mr. John Bixler
Miller and Chevalier
Metropolitan Square
655 15th Street, N.W.
Washington, D.C.

Embassey Properties
Raj and Theodora Mallick
1329 Connecticut Avenue, N.W.
Washington, D.C. 20036



SCALE 0 400 800 1200 FEET
BY OFFICE OF PLANNING
Base map by National Capital Planning Commission

DISTRICT OF COLUMBIA
ZONING MAP
SECTION 4

THIS MAP CONFORMS TO THE DECISIONS OF THE
DISTRICT OF COLUMBIA ZONING COMMISSION,
CORRECTED TO JANUARY 1, 1987.

EXHIBIT 3

**Locations in the District of Columbia Classified As
Local Neighborhood Centers and Low Density Commercial**

<u>ADDRESS</u>	<u>ZONING</u>	<u>METRO</u>
1. Connecticut & Livingston, NW	C-1/R-5-C	
2. Connecticut & Fessenden, NW	C-1/R-5-C	
3. Connecticut & Newark/Ordway, NW	C-2-A	Cleveland Park
4. Connecticut & Nat. Zoo Entrance, N.W.	C-2-A	
5. Connecticut & Calvert/ Woodley, NW	C-2-B/ C-2-A	Woodley Park/Zoo
6. Wisconsin & Van Ness, NW	[C-3-A]*	
7. Wisconsin & Macomb/ Newark, NW	C-2-A/ C-2-B	
8. Wisconsin & Observatory Circle, NW	C-2-A	
9. Mass. & Fordham/48th St., NW	C-2-A	
10. New Mexico & Macomb, NW	C-1	
11. MacArthur & Cathedral, NW	C-1	
12. MacArthur & U/V Sts., NW	C-2-A	
13. MacArthur & Foxhall, NW	C-1	
14. Blair Rd. & Aspen, NW	C-2-A	
15. Georgia & Illinois/ Jefferson, NW	C-2-A/ R-4	
16. 14th St. & Buchanan/ Crittenden, NW	C-1/C-M-1	
17. Rock Creek Church Rd. & Upshur, NW	C-1	
18. 16th & Park Rd., NW	C-2-A	
19. 17th & Corcoran, NW	C-2-B/R-5-B	
20. Rhode Island & 1st St., NW	C-2-A	

21. Florida & 1st St., NW	C-2-A/R-5-B
22. South Dakota & Delafield, NE	C-1
23. Rhode Island & Newton, NE	C-2-A/R-5-A
24. Mt. Olivet Rd. & Monticello, NE	C-2-A/C-M-1
25. Bladensburg Rd. & Lyman, NE	C-2-A
26. N. Carolina & Constitution, NE	C-2-A/R-5-B/R-4
27. Nannie Helen Burroughs Ave/ 44th St., NE	C-1/C-2-A/R-2
28. Dix St. & 61st St., NE	C-2-A
29. Central Ave. & Southern Ave., SE	C-1/R-2
30. John Philip Sousa & Alabama, SE	C-2-A
31. Alabama & 22nd St., SE	C-1/R-5-A
32. [Martin Luther King] Nichols & Sterling, SE	C-1/R-2

* This area is subject to rezoning in Zoning Commission Case 86-17 from C-3-A to C-2-A.

SUMMARY

Areas classified as local neighborhood centers, with low density commercial land use - 32

Areas zoned C-2-A (or C-2-B) - 21

Areas zoned C-1 - 11

Of the above, only Woodley Park and Cleveland Park have metro stations.

EXHIBIT 4

Metrorail Ridership
District of Columbia Stations

Actual Ridership vs. Projections

Station	Actual Ridership as of 11/3/87	Projected Ridership for 1990	Actual as % of Projected
Deanwood	4,560	11,972	38%
Capitol Heights	5,976	11,016	54%
Minnesota Ave.	6,314	19,588	32%
Cleveland Park	6,979	11,256	62%
Archives	6,993	28,048	25%
Benning Road	7,199	20,042	36%
Stadium Armory	7,896	19,604	40%
Takoma	11,433	21,032	54%
Fort Totten	11,555	55,484	21%
Tenleytown	11,819	37,020	32%
Woodley Park	11,899	15,650	76%
Rhode Island Ave.	12,351	46,212	27%
Federal Center SW	12,904	33,880	38%
Eastern Market	13,013	16,536	79%
Gallery Place	13,168	38,972	34%
Potomac Avenue	14,718	12,428	118%
Van Ness	14,940	22,768	66%
Capitol South	15,277	13,340	115%
Brookland	15,440	33,046	47%
Friendship Heights	15,729	26,640	60%
Federal Triangle	15,875	24,352	65%
Smithsonian	17,498	22,294	79%
Judiciary Square	17,900	7,236	247%
Union Station	29,741	37,782	79%
McPherson Square	32,586	35,936	91%
L'Enfant Plaza	37,352	46,816	80%
Foggy Bottom	37,635	51,330	73%
Dupont Circle	38,072	53,990	71%
Farragut North	48,371	47,172	103%
Metro Center	49,128	41,978	117%
Farragut West	53,533	39,222	136%

Stations are listed in increasing order of actual riders; actual ridership figures are numbers provided by WMATA as farecard gate counts on November 3, 1987; projections are from the study prepared for WMATA by Alan M. Voorhees & Associates, revised November, 1974

EXHIBIT 5

COMPARISON BETWEEN C-2-A AND C-2-B DISTRICTS

<u>REQUIREMENT</u>	<u>C-2-B DISTRICT</u>	<u>C-2-A DISTRICT</u>
Height (in feet)	65	50
Maximum total floor area ratio	3.5	2.5
Maximum non-residential floor area ratio	1.5	1.5
Available residential floor area ratio assuming maximum non-residential is used	2.0	1.0
Maximum percentage of lot occupancy (applicable to residential use only)	80%	60%
Minimum recreation space (as a percentage of the gross floor area devoted to residential use)	15	10
Minimum rear yard (in feet)	15	15

