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February 12, 1988

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WRITER'S DIRECT DIAL:

ZONING SECRETARIAT,
DISTRICT OF COLUMBIA

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Ms. Maybelle Bennett, Chair
D.C. Zoning Commission
District Building, Room 11
1350 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: Supplemental Statement To The
Zoning Commission In Case No. 86-26

Dear Ms. Bennett:

This statement is a supplement to the statement filed by this firm and testimony offered at the hearings on this case. At the close of the hearings, the record was left open for the submission of additional information. In that regard, the following is submitted:

1. Supplemental statement by Steven E. Sher, including photocopies of the slides.
2. Written statement of Pierre Tilmans and Adrienne Dominguez, who testified at the hearing on January 28, 1988.

At the close of the January 28, 1988 hearing, Chairman Lindsley Williams observed that site selection of Metrorail stops may have been influenced by existing conditions as well as potential development. The Chairman invited persons to submit information relevant to the Metro planning and station location selection process.

A review of the early planning documents and articles which were written on this issue do not support the conclusion that development at Metrorail stations was not envisioned. Further, the implication that the Cleveland Park and Woodley Park stations were chosen on the basis of existing development, without recognition that further commercial activity would occur, is without a basis in fact.

It is true that a mass transit station cannot, by itself, carry the burden of establishing a development center. Some of the downtown station sites (e.g. Farragut West and

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Judiciary Square) were selected to service existing and future employment and retail centers. Others were located to encourage growth (e.g. Metro Center and Gallery Place). However, it cannot be said that the Metrorail sites in question were selected on the basis of existing activity without the expectation of expansion of retail and other commercial activity. The zoning classifications at both stations allow for growth, and it is clear that the planners expected this growth to feed Metrorail and justify the enormous expense.

An example of this planning for future development is evidenced by the extra cost and time expended in including "knock-out" panels at the Cleveland Park station to allow for additional access to the station. The planners clearly envisioned expanded use of this station through development of the area retail establishments.

In Woodley Park, the Metrorail station is located 130 feet below Connecticut Avenue, which made it the deepest station in the District when it was built. The tremendous costs involved in excavating to this depth cannot be justified by stifling the economic activities on the surface. In fact, at an earlier stage in planning, an underground connection between this station and the Shoreham Hotel was envisioned. Given the close proximity of the hotel and the desire for greater pedestrian activity on the street to encourage patronage of the stores and restaurants, this idea never materialized. However, it is an indication that those in charge of planning the Metrorail system envisioned expanded facilities at the outlying stations as well as in the downtown.

The Federal City Council Metro Task Force found in its Summary Report, dated December 19, 1977, that the Metro system was designed not only to move people between their homes and jobs, but also to influence where those jobs, homes and other activity centers were located. In fact, the greatest utilization of mass transit results where stations outside the central employment area as well as those in the downtown have commercial activity, retail and service related facilities.

There is no doubt that encouraging passengers to commute out of the downtown to certain other commercial centers is beneficial to the business owners in that location, and makes utmost sense from a planning standpoint. Empty subway cars leaving the central core provide no revenue to WMATA and

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provide poor justification for the tremendous investment in Metro made by the District, as well as the other jurisdictions.

In recognition of the need to encourage commercial activity to support the Metrorail stations, the Zoning Commission stated, prior to the opening of the system, that:

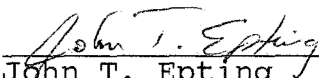
"The Zoning Commission will encourage, by all appropriate means, the achievement of a coordinated and attractive development pattern at transit stops. Planned Unit Development projects will be given priority and speculative map changes will not be encouraged."^{1/}
(Emphasis added).

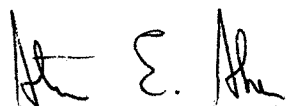
In light of the numerous statements such as the one above, contained in the record of the early planning and implementation records, it is clear that the planners recognized the need to encourage commercial activity to support this system. Thank you for the opportunity to participate in this case and comment on this matter.

Respectfully submitted,

WILKES, ARTIS, HEDRICK & LANE,
CHARTERED

By 
Christopher H. Collins


John T. Epting


Steven E. Sher
Director of Zoning Services


Edward L. Donohue

^{1/} Statement issued by the Zoning Commission on August 20, 1970 on "Interim Zoning Policies for Rapid Transit Stops".

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WRITER'S DIRECT DIAL:

SUPPLEMENTAL STATEMENT TO THE ZONING COMMISSION
REGARDING CASE NO. 86-26

PREPARED BY:
STEVEN E. SHER
DIRECTOR OF ZONING SERVICES
WILKES, ARTIS, HEDRICK & LANE, CHARTERED

FEBRUARY 12, 1988

At the conclusion of the public hearing held on January 28, 1988, the Zoning Commission determined to hold the record in this case open for the submission of a supplemental statement addressing issues which were raised at the hearing or which time did not prevent being adequately addressed orally. Consequently, this statement will address the following items:

1. A brief commentary on the slides, which would have been presented at the hearing, copies of which are being submitted along with this statement.
2. The zoning history of the Cleveland Park and Woodley Park commercial areas.
3. The effect of the previous zoning actions on the permitted height and bulk on the subject portions of Connecticut Avenue.
4. The effect of the proposed overlay districts.
Consistency with how other portions of the Connecticut Avenue corridor are treated.
Consistency with how areas zoned C-2-A and C-2-B and other portions of the District of Columbia are treated.
The impact of the proposal on the best interests of the city.

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ZONING COMMISSION
DISTRICT OF COLUMBIA

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8. Specific comments related to the proposed use restrictions in the overlay districts.
9. Alternatives to the overlay districts as proposed.

1. Commentary on the copies of the slides.

Photographs no. 1 through 47 represent a sequence of views taken up the Connecticut Avenue corridor beginning at Calvert Street and proceeding north to Chevy Chase Circle. The photographs, in total, depict the Connecticut Avenue corridor as predominantly devoted to highrise buildings, many of which reach or exceed the 90 foot height permitted under the R-5-C zoning category which is the predominant zone found on the corridor (See the colored Zoning Map attached as Exhibit No. 2 to the Wilkes, Artis, Hedrick & Lane's statement submitted at the Public Hearing).

The photographs further reflect the diversity in the height of structures which compatibly exists along the Connecticut Avenue Corridor at the moment. For example, photographs no. 7, 8 and 9 show highrise residential development immediately behind the Connecticut Avenue corridor in the vicinity of Calvert and 24th Streets. Photographs no. 22 and 23 show the similar condition existing at Connecticut Avenue and Porter Street. Photographs no. 10 and 11 show the existing 90 foot height permitted and constructed on the north side of Woodley Road, immediately north of the area which is proposed to be limited to less than the 65 foot height presently allowed. In addition, photograph no. 11 shows a highrise apartment building under construction on the east side of Connecticut Avenue north of Woodley Road, about which no objections have been stated.

Photograph no. 34 shows a vacant lot at the corner of Connecticut Avenue and Brandywine Street, which the Zoning Commission recently approved as a planned unit development for a 90 foot high building. Accordingly, the character of Connecticut Avenue generally as a strip capable of accommodating highrise buildings is affirmed by the photographs.

Photographs no. 10 and 24 show areas presently zoned R-5-C and devoted to a mix of both highrise and lower buildings in a district where the permitted height is 90 feet. Even though there is partial underbuilding of the maximum permitted height and density, the Office of Planning and the petitioners in this case have not suggested that any rezoning to restrict the height in those locations is required. Neither has it been suggested that rezoning is required in other adjacent portions of the corridor presently zoned to permit a 90 foot height, a height far greater

than what is allowed in the Cleveland Park and Woodley Park commercial areas.

Further, photograph no. 39 shows an area at the vicinity of Connecticut and Nebraska Avenues, where there is no Metrorail station. This area is presently zoned C-1 with a maximum height of 40 feet. The photograph clearly shows that the existing development is only one-story in height. Yet, there is no proposal to apply an overlay in this situation which would restrict the height of any new development to twice the height of any existing development.

Photographs no. 48 and 49 are photographs of typical alley conditions existing behind the properties which front on Connecticut Avenue. Photograph no. 48 depicts the alley extending south from Woodley Road towards Calvert Street. Photograph no. 49 depicts the alley extending north from Woodley Road towards Cathedral Avenue. The photograph showing the alley south of Woodley Road, with property presently zoned C-2-B on the right hand side of the photograph, shows considerably less building bulk adjacent to the alley than the property zoned R-5-C on the north side of Woodley Road, shown on the left of photograph no. 49. Accordingly, since no objections to any of the existing R-5-C zoning in the area have been stated, it is difficult to envision how a 65 foot height in the C-2-B District is objectionable.

Photographs no. 50 through 52 show a C-2-A strip along Kennedy Street between Georgia Avenue and 3rd Street, N.W. This is a street where the present zoning permits a height of 50 feet and an FAR of 2.5, of which no more than 1.5 FAR may be commercial. The photographs show that the existing development along that strip is a combination of predominantly two and three story buildings, including a mix of both commercial and residential development. The adjoining neighborhood on the north and south of this strip is zoned R-4. However, no special treatment in the way of overlay districts is proposed to be applied to this area.

Photographs no. 53 through 60 depict the property along Pennsylvania Avenue, S.E., in the general vicinity of the Potomac Avenue Metro Station. This property is zoned with a combination of C-2-A and C-2-B Districts. Again, there is vacant land, and a mixture of predominantly two story buildings devoted to commercial and residential use. However, there is no suggestion in the record of this case as to any proposals to be applied to this area in the way of an overlay district.

2. The zoning history of the Cleveland Park and Woodley Park commercial areas.

Research in the records of the Zoning Commission reflects the following zoning history with respect to the frontage along Connecticut Avenue in the Woodley Park commercial area:

- A. The original zoning adopted in 1920 applied the Residential "55" "C" District to the properties in Squares 2202, 2203 and 2204.
- B. On June 7, 1930, the properties in Square 2202 (the American Security property at Connecticut and Calvert) and Square 2203 (the triangular square bounded by Calvert Street, Connecticut Avenue and 24th Street) were rezoned to First Commercial "60" "C."
- C. On February 15, 1934, the properties fronting along Connecticut in Square 2204 (between Calvert Street and Woodley Road) were rezoned to First Commercial "60" "C."
- D. On December 13, 1950, the 5 lots in Square 2204, fronting on Calvert Street extending east from the Connecticut Avenue frontage to Woodley Place, were rezoned to First Commercial "60" "C."
- E. When the comprehensive rezoning of the city was accomplished in 1958, all of the property in the Woodley Park commercial area was placed in the C-2 category. At that time, the C-2 District permitted a maximum height of 60 feet and a maximum floor area ratio of 2.0, provided that residential development was limited to an FAR of 1.8.
- F. On July 5, 1967, the Zoning Commission divided the C-2 District into C-2-A and C-2-B, and designated all of the property in Squares 2202, 2203 and 2204 as being located in the C-2-A District.
- G. On January 13, 1969, the commercial property in Square 2204, extending from Woodley Road to Calvert Street and along Calvert Street to Woodley Place, was rezoned from C-2-A to C-2-B. At that point in time, the C-2-B District permitted a maximum height of 90 feet and a maximum floor area ratio of 3.5. The first 2 floors were allowed to be used for retail and offices uses, respectively, effectively allowing a commercial FAR of approximately 1.8.

- H. On November 9, 1978, the Zoning Commission changed the Regulations with respect to the C-2-A District, to reduce the maximum permitted height from 60 to 50 feet and to change the permitted FAR from a maximum of 2.0 with 1.8 residential to a maximum of 2.5, with no more than 1.5 to be devoted to commercial.
- I. On the same date, the Commission changed the regulations with respect to the C-2-B District to reduce the permitted height from 90 feet to 65 feet and to establish the maximum permitted commercial FAR as 1.5, an effective reduction of approximately 0.3.

With respect to the Cleveland Park commercial area, the Zoning Commission's records reveal the following history:

- A. In 1920, all of the commercial frontage in Squares 2218 and 2219 (the east side of Connecticut Avenue between Macomb and Ordway Streets), Square 2222 (the east side of Connecticut Avenue between Ordway and Porter Streets) and Square 2068 (the west side of Connecticut Avenue between Ordway and Porter Streets) were designated in the First Commercial "55" "C" District. That commercial zoning on the east side was extended slightly in Squares 2222 and 2219 in 1930 and 1931, respectively.
- B. On June 25, 1931, approximately half of the lots fronting on the west side of Connecticut Avenue between Newark and Ordway Streets were rezoned from Residential "60" "C" to First Commercial "60" "C."
- C. On December 20, 1937, the southern portion of that frontage was also rezoned from Residential "40" and "60" "C" to First Commercial "60" "C."
- D. On December 13, 1950, the remaining portion of that frontage, located at the corner of Connecticut Avenue and Ordway Street was rezoned from Residential "60" "C" to First Commercial "60" "C."
- E. The comprehensive rezoning of 1958 designated the entire Cleveland Park commercial area as within the C-2 District. At that time, the C-2 District permitted a maximum height of 60 feet and a maximum floor area ratio of 2.0, provided that residential development was limited to an FAR of 1.8.

- F. On July 5, 1967, the Zoning Commission divided the C-2 District into C-2-A and C-2-B, and designated all of the commercial property in Cleveland Park as being located in the C-2-A District.
- G. On November 9, 1978, the Zoning Commission changed the Regulations with respect to the C-2-A District, to reduce the maximum permitted height from 60 to 50 feet and to change the permitted FAR from a maximum of 2.0 with 1.8 residential to a maximum of 2.5, with no more than 1.5 to be devoted to commercial.

3. The effect of previous zoning actions on the permitted height and bulk on the subject portions of Connecticut Avenue.

As demonstrated in the zoning history cited above, the Zoning Commission has, through a series of actions, reduced the permitted height and density on the Cleveland Park and Woodley Park commercial areas. Immediately prior to the 1958 rezoning, all of the subject properties were located in the First Commercial "60" "C" District. In 1958, all of those properties were zoned C-2, permitted to be developed to a height of 60 feet, with a maximum commercial FAR of 2.0. For those properties which continue to remain in the C-2-A District, the maximum permitted commercial FAR is now 1.5 and the maximum permitted height is now 50 feet. The property in Square 2204, which was rezoned to C-2-B in 1969, precisely to encourage the construction of residential development at that location, then had a permitted height of 90 feet and a permitted commercial FAR of approximately 1.8. At present, the permitted height is 65 feet and the maximum permitted commercial FAR is 1.5.

Those changes, a result of overall city-wide policy considerations related to the C-2-A and C-2-B Districts, were not made because of specific consideration of the desirability or effects of the changes on the Cleveland Park and Woodley Park commercial areas. The changes already made have significantly reduced development potential in these areas, contrary to sound planning and zoning policy for those areas.

4. The effect of the proposed overlay districts.

It has been suggested by some of the petitioning organizations that the proposed overlay districts do not constitute a "downzoning" of the subject properties. While it is not

necessary to engage in a debate over the precise meaning of "downzoning," it is clear that the proposed overlays represent a more restrictive set of zoning controls applicable to the subject areas. The height would be clearly reduced from the present permitted 65 and 50 feet to some lesser number (50 or 55 feet in the Woodley Park area and twice the height of the adjoining building with a maximum of 40 feet in the Cleveland Park area).

The effect of the these reductions in height would also be to significantly reduce permitted density, at least in those cases where the height would be limited to 2-stories by the height of adjoining buildings. Further, the use restrictions identified in the overlay districts would significantly limit the kinds of uses permitted on the subject properties. Accordingly, while the underlying C-2-A and C-2-B Districts would remain applicable to the subject properties, the controls of the overlay districts substantially modify the effect of those districts and effectively constitute a "downzoning" of the subject properties.

5. Consistency with how other portions of the Connecticut Avenue corridor are treated.

As the photographs of the Connecticut Avenue Corridor demonstrate, there are many portions of this corridor in which a greater height is permitted than that which is presently allowed in the Cleveland Park and Woodley Park areas. Significantly, no proposals for downzoning, rezoning or implementation of height controls are suggested to be applied to any portion of the Connecticut Avenue corridor which currently allows a 90 foot height. Yet, the significant thrust of the proposed overlays is a reduction in height.

It is clearly inconsistent to allow a 90 foot height on the north side of Woodley Road, while at the same time suggesting that there are factors present which require a reduction in height from the 65 foot height permitted on the south side of Woodley Road. The same is also true for the Cleveland Park area, where 90 foot heights are permitted and would continue to be permitted north of Porter Street and south of Macomb Street, while a maximum height of only 40 feet would be permitted under the proposed overlay. No evidence or information has been brought forward to suggest that there are any significantly different neighborhood conditions or other factors present which would support that disparity and treatment. The level of control to be applied to the two commercial areas is not warranted by the facts at issue and is inconsistent with the treatment of the other portions of the same corridor.

6. Consistency with how areas zoned C-2-A and C-2-B in other portions of the District of Columbia are treated.

The petitioners and the Office of Planning have suggested that detailed controls related to use, curb cuts and height, are necessary for the two commercial areas under consideration. No such controls are suggested for any other area zoned C-2-A or C-2-B in the District of Columbia. There are many other areas which are similar to those proposed where no overlay treatment is suggested. Such areas include: Kennedy Street between Georgia Avenue and 3rd Street, N.W.; Pennsylvania Avenue in the vicinity of the Potomac Avenue Metro Station, S.E.; (both of which areas were described in the slide submitted to the Commission); Good Hope Road from Martin Luther King, Jr. Avenue to 18th Street, S.E.; Rhode Island Avenue, from 13th to 17th Streets, N.E.; and MacArthur Boulevard in the vicinity of U and V Streets, N.W. There are also other examples of C-2-A and C-2-B Districts in historic districts and at Metrorail stations, such as in the Takoma area.

All of the cited locations are commercial strip areas located along arterial streets. All are adjoined by residential neighborhoods containing a variety of zone categories from R-1-B through R-3, R-4, R-5-A and R-5-B. All are devoted to a mixture of uses and heights and densities. Many contain more fast food restaurants than are present in either Cleveland Park or Woodley Park. None are proposed for an overlay district. Accordingly, it appears that the Cleveland Park and Woodley Park areas have been unfairly singled out for more restrictive zoning treatment than other similarly situated properties elsewhere in the city.

7. The impact of the proposal on the best interests of the City.

The proposals to apply the overlay districts to the Cleveland Park and Woodley Park commercial areas are contrary to the best interest of the City and are not supported by sound, planning, theory or policy, for the following reasons:

- A. The restrictions would prevent appropriate commercial and residential growth in areas of the City best able to accommodate that growth. The wedges and corridors concept suggests that development be concentrated along the major spurs leading out from the central city, in order to relieve pressure on the intermediate wedges, which are to be devoted to lower densities and less intense uses. The overlay districts before the

Commission effectively suggest that, in the corridors best able to accommodate the development because of their location and characteristics, development should not be allowed to occur.

- B. The petitioners have essentially suggested to the Commission that an "inverse node" theory be applied to these commercial areas. Reduced to its simplest terms, the petitioners have suggested that the lowest height and density be permitted closest to the Metrorail stations, that is, at the center of the node, and that the density allowed as one proceeds further north and south along Connecticut Avenue, would remain at the permitted 90 feet and 3.5 FAR. Such a policy is inconsistent with generally accepted planning theory and actions taken by the Commission in the past.
- C. The primary impact of the proposed changes is a reduction in the residential component of development at the two Metrorail stations. Neither of the proposed overlay districts is specifically directed at the level of commercial use; i.e. no changes were suggested to the allowable commercial FAR. However, the practical effect of reducing the permitted height is to reduce or eliminate the area devoted to residential use. The testimony of Pierre Tilmans and Adrienne Dominguez regarding the changes made to their proposed project is a direct and practical example of the consequences of the proposed overlay.
- D. The effect of limiting the height is to further effect the design of residential buildings on the sites. Reducing the permitted from six to five or four stories means that the buildings will be lower and wider, creating inefficient apartment designs because the distance from the corridors to the windows will be increased. It further forces the mass of the building further toward the rear of the site, thereby putting it closer to the public alleys and lower density residential properties located at the rear.

8. Specific comments related to the proposed use restrictions.

The proposed overlay districts contain a number of limitations on the retail and service uses to be permitted. Significant among those restrictions is the prohibition on fast food restaurants in the Woodley Park Overlay District. Such a

restriction is not contained in the Cleveland Park Overlay District, with no explanation as to why that use is permitted in one location and prohibited in the other.

Furthermore, the proposals suggest that certain uses, otherwise allowed in the C-2 District, would not be allowed in Woodley Park and Cleveland Park. Those uses include a billiard parlor, a bowling alley, a catering establishment, a dental laboratory, an optical laboratory, etc. Absolutely no rationale is provided to indicate why those uses are selected for prohibition in the Woodley Park and Cleveland Park areas. Neither the Office of Planning nor the petitioners have conducted any studies nor submitted any information to suggest why certain C-2 uses should be allowed and certain other C-2 uses should be prohibited.

9. Alternatives to the overlay districts as proposed.

Rather than seeking to reduce the height and density and otherwise restrict development in the immediate vicinities of the two subject Metrorail station areas, the Zoning Commission should be considering broad scale policies and incentives to encourage development in those locations where it can best be accommodated. The Commission might well consider the creation of appropriate Metro station development zones, as has been done in many of the surrounding suburban jurisdictions and in other central city areas across the country. Such development zones would encourage a mix of uses including that combination of residential, retail, service and office uses, which would provide for optimal use of the investment in mass transit facilities.

Metro station development zones might well provide for additional height and density for projects which meet the mixed use goals for metro station areas and which achieve appropriate utilization of the transit services available and provided. More detailed research and analysis would be necessary to propose specific levels of height and density and to describe the nature of incentives which might be provided, but the Commission should clearly focus its attention on capturing the opportunities created by the increase in accessibility arising from the Metro system.

Respectfully submitted,



Steven E. Sher
Director of Zoning Services
Wilkes, Artis, Hedrick & Lane,
Chartered
February 12, 1988

ZONING COMMISSION CASE NO. 86-26
XEROX COPIES OF SLIDES
Prepared By Steven E. Sher

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ZONING SECRETARIAL,
DISTRICT OF COLUMBIA

ZONING COMMISSION

CASE No. 391-B

EXHIBIT No. _____



PHOTOGRAPH NO. 1

View of the American Security property located at the southeast corner of Calvert Street and Connecticut Avenue.



PHOTOGRAPH NO. 2

View of the north side of Calvert Street east of Connecticut Avenue.



PHOTOGRAPH NO. 3

View of the northeast corner of Calvert Street and Connecticut Avenue.



PHOTOGRAPH NO. 4

View of the east side of Connecticut Avenue north of Calvert Street.



PHOTOGRAPH NO. 5

View of the parking lot on the east side of Connecticut Avenue between Calvert Street and Woodley Road.



PHOTOGRAPH NO. 6

View of the east side of Connecticut Avenue between 24th Street and Woodley Road.



PHOTOGRAPH NO. 7

View of the northwest corner of Calvert Street and Connecticut Avenue.



PHOTOGRAPH NO. 8

View of the west side of Connecticut Avenue, south of 24th Street.



PHOTOGRAPH NO. 9

View of the corner of Connecticut Avenue and 24th Street, showing the entrance to the Woodley Park Metrorail Station.



PHOTOGRAPH NO. 10

View of the residential development on the west side of Connecticut Avenue, north of Woodley Road.



PHOTOGRAPH NO. 11

View of residential development on the east side of Connecticut Avenue, north of Woodley Road, including a highrise apartment building under construction.



PHOTOGRAPH NO. 12

View of the residential development on the west side of Connecticut Avenue looking south from Hawthorne Street.



PHOTOGRAPH NO. 13

View of the residential development on the east side of Connecticut Avenue looking south from Hawthorne Street.



PHOTOGRAPH NO. 14

View of the mixed commercial and residential development on the west side of Connecticut Avenue opposite the entrance to the Zoo.



PHOTOGRAPH NO. 15

View of the Kennedy Warren Apartments on the east side of Connecticut Avenue just north of the Zoo.



PHOTOGRAPH NO. 16

View of the west side of Connecticut Avenue north of Newark Street.



PHOTOGRAPH NO. 17

View of the west side of Connecticut Avenue, south of Ordway Street showing the Uptown Theatre.



PHOTOGRAPH NO. 18

View of the apartment building located at the southwest corner of Connecticut Avenue and Ordway Street.



PHOTOGRAPH NO. 19

View of the west side of Connecticut Avenue between Ordway and Porter Streets with the Cleveland Park Metrorail Station entrance in the foreground.



PHOTOGRAPH NO. 20

View of the northeast corner of Connecticut Avenue and Macomb Street.



PHOTOGRAPH NO. 21

View of the east side of Connecticut Avenue between Newark and Ordway Streets showing commercial development.