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February 19, 1988

HAND DELIVERED

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

Re: Final Submission in Case 86-26 and Reply to  
Cleveland Park Historical Society's February 12,  
1988 Submission

Dear Ms. Bennett:

As provided for by the Zoning Commission at the January 28, 1988 public hearing on the Connecticut Avenue Overlay Districts, this submission represents our reply to the petitioners' post-hearing submission dated February 12, 1988.

The Cleveland Park Historical Society (CPHS) continues to take the narrow, parochial view that two small stretches of Connecticut Avenue should be downzoned to protect the adjoining residential areas. In essence, CPHS is asking the Zoning Commission to ignore the legitimate views of commercial property owners.

Spot Zoning

CPHS's discussion of spot zoning ignores traditional legal theory. In essence, CPHS states that because Cleveland Park is a "particular circumstance", has "special circumstances", and is "unique", the proposal does not constitute spot zoning. However, such individual treatment is by definition "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

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ZONING SECRETARIAT  
DISTRICT OF COLUMBIA

ZONING COMMISSION  
District of Columbia

86-26

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ZONING COMMISSION  
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detriment of the community. (See R. Anderson, American Law of Property, 3rd Edition, Section 5.12).

CPHS also notes that it has tried to point out that the traditional zoning law and the historic preservation law need to be better coordinated. If this is so, and there have been no examples to show any lack of coordination, our recommendation then would be to take action to better coordinate the two processes. We fail to see how downzoning the commercial areas results in better coordination.

#### Economic Development

In terms of economic development issues, CPHS cites the Draft Ward 3 Plan for support. The draft Ward Plan is irrelevant to the Zoning Commission's decision. The Zoning Enabling Act states that the Zoning Regulations shall "not be inconsistent with the comprehensive plan." The ward plans are still in draft form, are not now part of the comprehensive plan, and may never be part of the comprehensive plan. Until the time that the ward plans are completed and their legal status is determined, the Zoning Commission should not take the ward plans into account.

#### Metro

We continue to believe that the proposed overlay districts are contrary to the best interests of the City and surrounding jurisdictions with regard to the full utilization of the Metro system. This is not an attempt to "stigmatize" CPHS as being anti-Metro. The fact is that the continued viability of Metro is closely tied to the development of areas surrounding Metro stations. This has been a goal of the planners of mass transportation in this City since the beginning.

The Mass Transportation Survey, which was authorized by Congress in 1955, stated that two of the goals of mass transportation was to channel growth and preserve the economic vitality of the City. The survey recognized that rapid suburbanization was occurring, and that a rapid rail system could become the focus of revitalization efforts to prevent the

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City from becoming the "hole in the donut".<sup>1/</sup> Although the original alignment and location of some stations has been altered several times since the first plan was done, the concept of channeling growth along appropriate corridors has been a recurring theme.

In 1980, WMATA stated at the Airlie conference that the identification of future development opportunities, and participation in planning affecting land use near Metro stations were the policies of WMATA. Further, the statement noted the desire to optimize development at Metro stations through "... zoning, capital improvements, and parking". In addition, direct pedestrian access from private property to Metro stations and the encouragement of "intensive economic activities at the station areas" were to be emphasized.<sup>2/</sup>

As further evidence of WMATA's commitment to encouraging development, the Resolution of the Board of Directors of WMATA, adopted by unanimous vote on May 1, 1986 emphasized the need for real estate development at or near mass transit facilities which have significant development potential.

At pages 3-4, CPHS uses post-hoc rationalizations to now justify downzoning around Metro stations. These two stations were built well before the Comprehensive Plan was adopted. After extensive study and public hearing, it was decided to locate these stations in a commercial corridor, at commercial centers, with existing commercial zoning. To come in now, after the stations have been in operation for a number of years, and argue that the Metro stations were not meant to serve commercial nodes, but were somehow located in compliance with a Comprehensive Plan which did not exist is absurd.

The comments of people from other cities in terms of Metro must be taken in context. As Tom Flynn of ZHA testified, there are a variety of factors which influence zoning decisions

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<sup>1/</sup> "More Than A Subway: A Chronicle of Transit Goals for the Nation's Capital", Metropolitan Council of Governments, Carol L. Richards, 1979.

<sup>2/</sup> WMATA Airlie conference, Background on Development at Metro Stations, December, 1980.

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in individual cities. To simply say that one action is universally applicable to all cities and all situations flies in the face of sound professional planning. What if these policies are not working in the various cities? There is no evidence to support their utility. What if these policies have led to a decay in the Metro system? What if they have led to commercial flight to the suburbs? The petitioners have presented no evidence that the cited policies are effective for their respective cities. Picking policies from different cities, out of context, and applying them to small areas of another city is not wise planning. The District must do its own planning.

In this regard, it is interesting to again review the District's Comprehensive Plan (not some other city's) in terms of policies for Metro stations. These include:

Place a high priority on stimulating and facilitating a variety of commercial, retail, and residential development investments appropriate to selected Metrorail station areas outside of the Central Employment Area (section 208(13)).

Designate, as residential development opportunity areas, sites where significant housing development can appropriately occur and encourage multi-unit housing development near selected Metrorail stations, at locations adjacent to Downtown, and adjacent to proposed employment centers and office areas (section 304(4)).

Provide zoning incentives, as appropriate, to developers prepared to build low-and moderate-income housing such as permitting additional densities in exchange for incorporating low- and moderate-income housing in development projects; tie provision of housing into large-scale commercial developments where zoning benefits are sought, and give zoning preferences to mixed use sites that include housing near appropriate Metrorail stations (Emphasis added) (section 306(4)).

Support land use arrangements that simplify and economize transportation services, including mixed-use zones that permit the codevelopment of residential and

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nonresidential uses to promote higher density residential development at strategic locations, particularly near appropriate Metrorail stations.  
(Emphasis added) (section 504(1))

Plan for mixed-use development of designated Metrorail station areas outside the Central Employment Area at appropriate levels of intensity and use to make full use of the public transportation opportunities that the stations provide and to increase Metrorail ridership.  
(Emphasis added) (section 1133(1))

#### Traffic and Parking Issues

CPHS's discussion of traffic and parking is curious at best, particularly in its assault on the testimony and statement of the opposition. First, we should make it very clear that nowhere did we "attack" the DPW report. We simply noted that even with all of the limitations stated by DPW, there was no traffic problem. Therefore, we did not see a need for a traffic expert. The DPW's report is clear. There is no traffic problem on Connecticut Avenue.

The DPW's February 8, 1988 memorandum, providing a critique of Dr. Carter's study, is the official DPW position of record. The memorandum, notes that the DPW Office of Planning staff "see no justification for the higher development scenarios proposed in the Carter study...The poor levels of service noted in the Carter report are not evident from actual observations....We therefore cannot accept the levels of service projections in the Carter report...Our review does not indicate that any major changes are necessary to our Connecticut Avenue study techniques or conclusions."

#### Planning History

In terms of planning history, CPHS once again cites the Lewis Plan. CPHS states "(I)t is particularly interesting to recall that Lewis believed that for a commercial node like Cleveland Park 'a height limit of three stories should provide for other permitted uses and still keep the district compatible in scale with surrounding residential areas.' (Lewis Study, p. 43) It might be noted that, at this time, Mr. Lewis was well aware of all the apartment houses on Connecticut Avenue in Cleveland Park". (CPHS, at 7). We believe that the reply to

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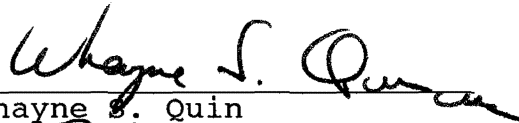
this statement is straightforward. Mr. Lewis did a study and made some recommendations. In this case the Zoning Commission did not accept them. Instead of three story commercial buildings, the Zoning Commission adopted a 60 foot height and an FAR of 2.0 for C-2 Districts (see supplemental statement of Steven E. Sher, February 12, 1988).

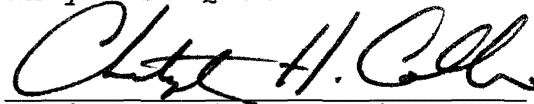
Conclusion

We are somewhat puzzled as to the way the CPHS has spent so much time and energy criticizing this firm and its clients' legitimate interests, rather than focusing on the substantive issues at hand. The issue is not whether Wilkes, Artis has raised concerns about the proposal. The issue is whether the proposals are the right thing to do for the city. CPHS's substantive arguments seem to miss the point.

For the reasons stated above, and in light of our previous submissions and testimony, we urge the Zoning Commission to disapprove the proposed overlay districts for the Cleveland Park and Woodley Park commercial areas.

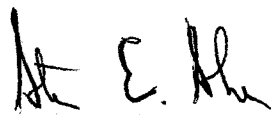
Respectfully submitted,

  
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