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WRITER'S DIRECT DIAL:

July 1, 1988

HAND DELIVERED

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

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

1988 JUL - 1 P 4:25
ZONING COMMISSION
DISTRICT OF COLUMBIA

Dear Chairman Bennett and Members of the Commission:

This office 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.

ACTION TO RESTRICT PUDS

The notice of public hearing in Case No. 86-26 indicates that one of the actions that the Zoning Commission will consider at the July 7, 1988 hearing, concerns height and FAR guidelines for PUDs in the Woodley Park and Cleveland Park overlay zones. The specific issue is the establishment of height and FAR guidelines for PUDs in the Woodley Park and Cleveland Park overlay zones within a range from the matter-of-right limits in the overlay zones to the PUD guidelines for height and FAR in the underlying C-2-A and C-2-B zones, as provided by Chapter 24 of the Zoning Regulations. Changes to the PUD guidelines for these two areas of the District, which have already been substantially downzoned in a manner inconsistent with the Comprehensive Plan, appears unreasonable from a professional planning basis.

In light of the downzoning of the Woodley Park and Cleveland Park commercial districts, there is no basis for

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changing the uniform PUD guidelines of Chapter 24 in these two areas. The PUD process was created to provide flexibility in planning and design. PUDs are subject to the review and approval of the Zoning Commission on a case-by-case basis. The PUD process offers substantial community involvement. For the Zoning Commission to foreclose the option of PUDs in these two areas, where the Commission is the ultimate arbitrator, takes away an important planning tool which has potential benefits to the city, the neighborhood and the developer. The Zoning Commission must consider that it alone has the authority to set a case for hearing and to make a decision on a case. The Zoning Commission can require changes to a proposal and, in approving a PUD, specify conditions governing all aspects of the development. Obviously, with the two overlays in place, developers seeking to undertake a PUD in these two areas must develop their proposal in a manner reflective of the overlay districts' standards. The Commission should also be mindful of the overlays in its consideration of PUD applications and approvals. The Commission should not, however, limit the range of choices for any particular site.

I. The Zoning Commission Must Consider the Adverse Impacts Already Created by the Overlay District

The Zoning Commission has already taken several actions to substantially downzone the commercial areas of Woodley Park and Cleveland Park, by establishing the overlay districts. Additional action, without basis in the record, to limit PUDs will further adversely impact property owners in the area, as well as citizens of the District of Columbia. The proposal to limit PUDs, coupled with the downzoning, must be considered by the Zoning Commission in light of the following:

1. What impact will the limitation on PUDs in two small areas of the City have on the City's requirement to fund its share of Metro?
2. What signals will the limitation on PUDs send to investors and financiers looking to the District versus other areas in the region?
3. Would the Commission take a similar action if the District was not experiencing a strong real estate economy?

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4. What impact will the restriction of PUDs have on piece-meal development of small parcels not subject to the PUD process?
5. What is the basis, subsequent to the downzoning of a commercial area located on a major corridor at a Metro station, for restricting a planning tool under the specific control of the Zoning Commission?
6. What is the financial impact of restricting PUDs on the immediate area? How many housing units will be lost by eliminating PUDs? How many square feet of office and retail will be lost? How many jobs will be lost as a result?
7. What is the impact on the city as a whole as a result of lost real estate and sales tax, lost jobs and lost housing?
8. What impact will the proposal have on the fiscal ability of the District of Columbia to manage such future costs as decaying infrastructure, aging citizenry and capital improvements?

The Zoning Commission must look to the future. Such restrictive zoning controls will have a devastating effect in an economic downturn. Restricting PUDs in the overlay districts takes away a significant tool that the Commission has to grapple with tough, complex land use decisions and obtain a superior project.

In its action, the Zoning Commission should recognize that the District's share of expected growth over the next decade is on the decline. Once the commitment of investment capital goes to one of the surrounding jurisdictions, it is lost. There is no opportunity for recapture as in cases where a state or local government redistributes wealth from a booming area to a struggling one.

II. There is No Planning Basis for any Restrictions on PUDs

No final Office of Planning Report is yet available on the issue of restricting PUDs in the overlay districts. As originally provided in the Connecticut Corridor study and as

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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.

On October 1, 1987 at a meeting with OP and the citizens of the Connecticut Avenue corridor, the Director of OP, Mr. Fred Greene, was asked directly how the proposed amendments would effect the Park and Shop development. Mr. Greene responded that the project would likely be a PUD, and that therefore no additional controls were needed since it would require Zoning Commission approval. In the January 11, 1988 OP report and at the hearing on January 14, 1988, OP noted that it had reconsidered the inclusion of PUD restrictions within the proposed overlays. In its report dated March 31, 1988, the OP recommended PUD guidelines for Cleveland Park that allowed a ten foot height increase and no increase in FAR. For Woodley Park, OP recommended a .5 FAR increase in residential FAR for PUDs in the C-2-B district, and no increase in height. For PUDs in the C-2-A district of Woodley Park, the OP report recommends that no incentives be provided. In the view of our clients, OP was correct in its earlier assessment that the PUD process already contains the controls necessary to evaluate a project, and that each application should be evaluated on its own merit. There is no reason for the Zoning Commission to restrict the flexibility it has to consider a PUD prior to having the opportunity to review the application.

Planned Unit Developments (PUDs) are governed by Article 24 of the D.C. Zoning Regulations, 11 DCMR, April 1987, as amended. Because PUDs are governed throughout the City under this separate Chapter of the Zoning Regulations, and PUD approval is only granted by the Zoning Commission through an adjudicatory-type proceeding, with crucial citizen involvement, PUDs must remain outside the scope of the overlay districts.

III. There is no Basis for Restricting PUDs in Commercial Areas Located at Metro Stations

Both Cleveland Park and Woodley Park are beneficiaries of, as well as potential generators, to the City's \$100 million annual contribution to the Metro system. In the earlier hearings, we raised the issues of the under-utilization of these two Metrorail stations, and that further restrictions on development at these sites would put the City's and other jurisdiction's investments at risk. Because of the

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flexibility inherent in the PUD process, PUDs represent an important planning tool for ensuring appropriate development at Metro stations.

In the recent Progress Report on the Comprehensive Plan, which was recently introduced for Council review (PR-7-402), it was reaffirmed that development at Metrorail station areas is an objective of the Comprehensive Plan in order to encourage ridership for the transit system and to enhance the District's economic development efforts. Significantly, the report failed to mention that at two underutilized stations in Ward 3 (Cleveland Park and Woodley Park), the Zoning Commission may well preclude any chance of real development.

Increasing density, seeking to create innovative proposals and promoting use of underutilized Metro stations such as these 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 enacted for areas located at Metro stations. Further, innovative planning tools such as the PUD process are sought to be restricted or eliminated. 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 unwise, and fiscally irresponsible.

IV. There is no Comprehensive Plan Basis for Restricting PUDs in the Overlay Districts

The Office of Planning's report finds that in both Cleveland Park and Woodley Park the existing zoning is consistent with the Comprehensive Plan. 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 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). 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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Clearly, the OP report does not say that the Comprehensive Plan requires a downzoning or any other such restrictive changes, such as restricting PUDs.

We believe that the downzonings of Woodley Park and Cleveland Park are clearly inconsistent with the Comprehensive Plan. Any further restrictions on these commercial areas through the restriction of PUDs would be without basis.

A. The Land Use Element of the Comprehensive Plan does not Justify a Restriction on PUDs

The Comprehensive Plan categorizes both commercial areas as low density commercial and as local neighborhood centers. There is no city-wide planning basis for the elimination of PUDs. As Exhibit 2 indicates, there are 32 areas in the City with similar Land Use Map classifications (the combination of low density commercial and local neighborhood center). Only Cleveland Park and Woodley Park are located at Metro stations. There is absolutely no planning basis for restricting PUDs in these two areas, and no other similarly situated areas of the City, without a specific factual showing of inconsistency with the Plan.

B. Restricting PUDs is Inconsistent with 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 restriction of PUDs will serve no fundamental benefit to improve the commercial and residential uses of the Corridor, and will decrease the opportunities for innovative development.

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 choice (section b) and the need to view housing as a key part of a total urban living

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system including access to transportation and shopping (section c). PUDs represent a major means of ensuring that housing is provided in appropriate locations in the District. Coupled with the downzoning, any restriction on PUDs will effectively prohibit housing construction on a major, high density corridor, at locations with direct access to Metrorail and superb Metrobus service. Such an action would be directly contrary to the Comprehensive Plan's housing policies.

3. Economic Development

Another major theme of the Comprehensive Plan 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 downzoning and subsequent proposal to restrict PUDs in the overlay districts are inconsistent with the economic development goals of the Comprehensive Plan. Restricting PUDs in commercial areas at Metro stations jeopardizes private sector 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." Placing restrictions on PUDs at Metro stations will engender and support a suburban strip land use pattern.

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VIII. The Proposed PUD Restrictions will Drastically Reduce Housing Development Opportunities in Woodley Park and Cleveland Park

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

Reducing the height and FAR guidelines to the matter-of-right levels will ensure that no residential development is built. There is no incentive to build residential units, or to undertake a PUD.

**OTHER ACTIONS TO BE
CONSIDERED AT THE HEARING**

I. Establish a Matter-of-Right Height Limit in the Woodley Park Overlay District of 40 Feet

There has been a good deal of confusion about the height limit in Woodley Park, and the Zoning Commission has apparently decided that the most restrictive alternative is the best.

Previously, the Zoning Commission has advertised a maximum permitted height of 50 feet for the entire overlay district. In its January 11, 1988 report, the Office of Planning discussed a 55 foot height restriction, which would have "no practical effect on the C-2-A areas, where the more restrictive 50 foot height maximum would apply" (OP report at p.22). In an apparent attempt to make the Woodley Park Overlay more similar to the Cleveland Park Overlay, the Zoning Commission has now advertised for a 40-foot height limit for the Woodley Park C-2-A area and has reduced the permitted C-2-B height to 50 feet.

As is more fully discussed in our previous submissions, there is a notable absence of discussion of the 90 foot apartment buildings that line parts with Connecticut Avenue. Neither the Zoning Commission nor OP has provided any rationale as to why a 65 foot commercial or mixed use building is more

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objectionable than a 90 foot apartment building. In addition, there is no recognition of the architectural design benefits to be gained from a higher height limit or the relationship to residential construction.

II. Establish a Matter-of-Right Floor Area Ratio (FAR) as Follows:

	<u>Non-Residential</u>	<u>Total</u>
WP Overlay	1.0	3.0
CP Overlay	1.0	2.0

The advertised FAR appears in error with respect to the Woodley Park Overlay District. The notice appears to upzone the C-2-A portion of the Woodley Park Overlay from a maximum permitted FAR of 2.5 to 3.0. In the event that the advertised changes are erroneous, we have provided comments on the downzoning of permitted densities.

According to the Zoning Regulations, the C-2-A district is designed to provide facilities for shopping, business, housing and mixed-use and shall be located in low and medium density residential areas with access to highways or rapid transit. The C-2-A district shall permit development to medium densities and shall accommodate a major portion of existing commercial centers (see Zoning Regulations of Section 720.2-720.5).

The C-2-B district is designed to serve similar commercial and residential functions, but with greater density. The C-2-B district shall be compact and located on arterial streets, at uptown centers and at rapid transit stops (see Zoning Regulations at Section 720.6-720.8).

All the rhetoric in this case notwithstanding, there is no denying that the commercial centers at Woodley Park and Cleveland park fit the definition of the respective zone districts. The proximity to residential areas, the arterial road, rapid transit stops, etc., as well as the make-up of the mixed-use, commercial strip centers make these two areas typical C-2 districts. It is truly baffling to our clients to see the Zoning Commission, OP, and others try to distinguish these two centers, out of 32 other centers in the city, none of

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which are blessed with the presence of Metrorail, and further restrict growth through the imposition of restrictive overlays and reduced densities.

The Zoning Commission should be able to answer a crucial question as to the advertised change in FAR: Why reduce density below that permitted in a single-family residential zone in commercial strip centers which are located on a major arterial road and adjacent to Metrorail? From a common sense standpoint, this cannot be justified.

III. Provide Ground Floor Restrictions in Woodley Park and Cleveland Park Overlay Districts

Our previous testimony and statements have questioned the practical impacts of the types of ground floor uses attempting to regulate which will actually occur. Pages 12-13 of our Statement dated January 28, 1988 summarizes our client's opposition on this proposal. In summary, it is not reasonable to believe that the Zoning Commission, through regulations, can establish an ideal retail area any better than the market forces do at present. If these uses discussed are so desirable, some method of incentives for the private market to establish these use must be established. An ideal commercial center cannot be created simply by administrative fiat.

CONCLUSION

As stated here and in previous submissions, our clients believe there is no basis in law or fact for the proposed amendments. The record in this case lacks the sound planning basis for the further downzoning of commercial centers or the imposition of changed PUD guidelines. One of the recurring themes of the OP reports have been the purported "Stabilization of District Neighborhoods". There is no probative evidence in the record that the proposed changes lead to such stability. Rather, the record indicates that the proposed changes, coupled with the downzoning of the two areas, will result in substantial impacts and a destabilization of the affected neighborhoods.

The Zoning Commission appears to lack faith in its own ability to correctly decide a PUD case over which it has sole jurisdiction. The proposed new guidelines can only be viewed

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as a means to limit the Commission's discretion. In the earlier hearings, the petitioner's expressed their concern that overlay districts are essential in historic districts. The petitioner's explanation was that the Historic Preservation Review Board needed further assistance in ruling on cases, implying strongly that the Board was not capable of making a decision based on its own standards. The presence of a strong overlay district would, it was alleged, assist the Board in handling development pressures. Here, it appears that the Zoning Commission lacks faith in its ability to decide PUD cases independently without further standards.

Respectfully submitted,

WILKES, ARTIS, HEDRICK & LANE,
CHARTERED

By Whayne S. Quin
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Christopher H. Collins
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Edward L. Donohue
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Director of Zoning Services

Attachments

EXHIBIT 1

List of Clients

Olga M. Mazza
3816 Cathdral 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.

EXHIBIT 2

**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.