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August 12, 1988

BY HAND

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

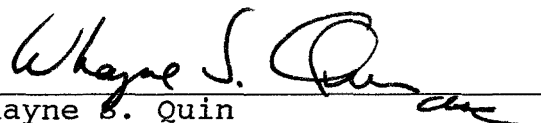
1988 AUG 12 PM 3:38
ZONING SECRETARIAT,
DISTRICT OF COLUMBIA

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

Dear Ms. Bennett:

This firm represents a number of property owners and contract purchasers of property located within the commercially zoned areas of Cleveland Park and Woodley Park. We appeared before the Zoning Commission at each of the public hearings on the proposed overlay districts. Our position on the proposed changes are contained in the various written submissions and oral statements at the hearings. Enclosed for the record is the testimony of Whayne S. Quin delivered at the July 7, 1988 public hearing. These remarks constitute the final submission on behalf of our clients.


Sincerely,


Whayne S. Quin


Christopher H. Collins


John T. Epting


Edward L. Donohue


Steven E. Sher
Director of Zoning Services

ZONING COMMISSION

CASE No. 86-26
ZONING COMMISSION
District of Columbia
CASE NO. 86-26
EXHIBIT NO. 559
EXHIBIT No. 559



BEFORE THE ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
RE CONNECTICUT AVENUE COMMERCIAL OVERLAY DISTRICT
ZONING COMMISSION CASE NO. 86-26

TESTIMONY OF WHAYNE S. QUIN, ESQUIRE
WILKES, ARTIS, HEDRICK & LANE, CHARTERED

July 7, 1988

Good evening. My name is Whayne S. Quin, and with me is Edward L. Donohue and Steven E. Sher of Wilkes, Artis, Hedrick and Lane representing a number of property owners that would be affected by the proposed amendments. We appreciate the opportunity to appear here.

We are currently in a period of prosperity for this region and for the District of Columbia. In this time of prosperity, there is a tendency to lean back and pat our bellies with the satisfaction that the region is booming, and that there is a great desire by property owners and developers to provide needed office space, housing and retail service uses. With the financial boon this development yields for the District of Columbia, and the accompanying provision of additional employment it is tempting to become satisfied. It is very difficult in times of prosperity to plan for, and make zoning decisions for the future because the needs for such long-term actions are not readily apparent. It is very easy to say that things are going so well that there is no need to look for, or to accommodate future growth.

It would be very easy in response to an emotional, extremely articulate, and well prepared presentation by intelligent people who argue for slow growth, or no growth, to say that growth will and can go somewhere else. It would be extremely easy simply

to reduce densities to a bare minimum in response to the stated desires of a number of neighbors about their neighborhood.

In the face of all of this, it is very difficult to professionally and independently apply the criteria of the Zoning Enabling Act (as set forth in the D.C. Code Section 5-413 and 5-414) as required by law in deciding zoning cases, and to make decisions for the future well-being of the entire District of Columbia.

But this Commission has traditionally dealt with complicated and emotional zoning issues in a professional way. For example, the Georgetown waterfront case which involved the mapping of the W zone districts, PUD's in the Friendship Heights area, the PUD for National Wildlife in the Dupont Circle area and many other cases. This is why the City Council in the legislative history of the Comprehensive Plan made the following statement: "The Zoning Commission, which has established a reputation for conducting thorough and fair proceedings, has the statutory responsibility to adopt the District's zoning maps." Once again we are here to ask you to carefully apply the criteria of the Zoning Enabling Act to the proposals before you, because we believe that there is no way that you can do so and conscientiously downzone properties immediately adjacent to two Metro stations to the lowest permitted density in the Zoning Regulations; namely a 1.0 FAR.

It is important to note, as this Zoning Commission has found, that restrictions under Zoning law should be imposed only to the extent that they are reasonably necessary under the established criteria. This concept has more recently been

elucidated and affirmed in the Supreme Court case of Nollan vs. The California Coastal Commission, decided last June, wherein the Court stated that restrictions on land use are not valid unless the conditions bear a legitimate relationship to the statutory purposes. Of course, this Commission is honor bound to carry out its functions in this manner.

What we are talking about here are two under-utilized Metro station areas being limited to a 1.0 FAR of commercial as a mandatory cap, and preventing any planned unit development which would exceed the matter-of-right limitation. Whether this is legally permissible is a separate question.

I say 1.0 FAR commercial because the additional 1.0 FAR for residential as recommended by the Office of Planning is absolutely meaningless. Common sense should tell any professional planner that a 1.0 FAR of housing will not be built in the vicinity of a Metro station if the underlying maximum permitted commercial density is only 1.0 FAR. This Commission knows how hard it has been to try to encourage housing in the District of Columbia, even with higher permitted densities. Housing will not occur unless it is subsidized by the commercial, and enough commercial density must be permitted relative to land values so that it makes economic sense to provide housing.

What is a 1.0 FAR? A 1.0 FAR is one floor of commercial spread across the site. It is a density that is less dense than the most restrictive residential permitted density for a single family house.

In both the areas under study, there are very limited opportunities for additional density. Any PUD would have to be superior to matter-of-right development in order for a hearing to be scheduled and for it to be approved. Yet the proposal will totally eliminate the flexibility of a PUD.

Take for example the Cleveland Park Station. When the Metro station was being built, the Cafritz Foundation dedicated below grade easements to serve the Metro station. This in turn creates subsurface restrictions on the property. The depth of the site and other constraints make it an ideal candidate for the flexibility of a planned unit development. These factors, together with the fact that the property is in a historic district provide special circumstances which have frequently been recognized by this Commission as providing a suitable base for a planned unit development.

Contrary to the statements of various witnesses, the PUD that is proposed by the developers of the Park and Shop site, after discussions with the Office of Planning and after having sought, but receiving no response from neighborhood groups, is a building of less than 50 feet (approximately 46 feet), four stories tall with a possible setback of the fourth floor, and a 2.5 FAR all commercial, including one floor of retail space. The models submitted by the proponents of the text, which purport to show the Park and Shop site, are totally misleading and are unfair.

As proposed, the text does not even allow substitution of commercial for residential use within the 2.0 FAR permitted bulk under the proposed PUD guidelines. In order to provide suitable

amenities, such as a hardware store and superior design, it is absolutely essential that additional bulk be permitted. Certainly, a project with 2.5 commercial FAR on the only relatively vacant site in the area directly over Metro is within the realm of feasibility from a zoning standpoint.

What will happen to available under-utilized land if this mandatory cap is imposed? We believe one of two things will happen:

1. Nothing will happen and the sites will continue to be under-utilized with no contribution to the community or city. This amounts to a form of urban decay; or in the alternative,

2. The sites will be developed with the most efficient, high yielding uses that can be built at the lowest possible construction costs because to do anything else makes no economic sense. Quality development will be unlikely, and if lesser quality development occurs it will be there for decades impinging upon the future development needs of the city for the next few decades.

Under what theory is the downzoning being sought? There are several possible answers, none of which appear adequate under the circumstances.

1. The height of buildings? No, it doesn't seem so, because for the most part Connecticut Avenue is developed at heights significantly greater than 40 feet with the residential buildings being generally 90 feet or more. Immediately across the street from Park and Shop are buildings at heights greater than 40 feet. What is innately wrong with having a building over a Metro

station which is extremely well designed yet slightly higher than 40 feet?

2. The Comprehensive Plan? No, as will be explained by Mr. Sher, this cannot be the basis because the Comprehensive Plan, especially the Transportation Element, calls for increased utilization of the land surrounding Metro stops. Overall, the Plan does not call for reduction of densities in Metro station areas. In our view there is a total lack of uniformity in the regulations proposed from the regulations that relate to other C-2-A zones and areas designated low density commercial.

3. Design or aesthetics? Obviously this cannot be the answer because planned unit developments are superior in design.

4. Transportation? No, because transportation planning dictates that the highest density reasonable should be placed around Metro stops and on major corridors so that density does not go elsewhere with the concomitant modal split in favor of the automobile, or encroach into residential areas.

5. Historic preservation? No, because the District of Columbia already has the most stringent historic preservation law of any jurisdiction in the United States. Any new building or alteration in a historic district must receive Historic Preservation Board review and potentially Mayor's Agent review which reviews govern not only the design but the height and sizes of buildings. It is interesting to note that two of the buildings cited by the petitioners as being in conformance with the historic preservation goals, exceed the FAR proposed; namely the Yes Store and McDonalds

6. Economic or market basis? Absolutely not. The merchants and commercial land owners in the area drastically need increased patronage to help them survive. The proposed amendments will not provide housing or provide incentives for quality developments.

As to the future, let me bring to your attention a few statistics. These figures are provided by the Greater Washington Research Center and the Council of Governments.

1. Over a four year period population in the metropolitan statistical area for 1987 to 1990 is expected to increase by 6%. In Maryland the increase is projected to be 6%, in Virginia the increase is expected to be 9% and in the District of Columbia there is expected to be decrease of .2%. This verifies the fact that there is an imbalance of growth in the region going to the suburbs as opposed to the District of Columbia. In our view something is wrong.

2. With regard to unemployment, the District of Columbia has more than twice the unemployment rate of Virginia and Maryland. An inordinate majority of jobs in the region go to the suburbs. The percentage increase in retail sales in Virginia and Maryland is double that of the District of Columbia. With regard to the increase of employees of private employers in this metropolitan area over a five year period, the increase has been 44% in Virginia, 29% in Maryland and 6% in the District of Columbia. (The source of this information is the Greater Washington Research Center 1988 Data Book.)

3. With regard to projected employment growth, the Council of Governments is in the process of releasing new growth forecasts. For the period 1985 to 1990, the District of Columbia's anticipated employment growth would be 4.7 %. Whereas in Montgomery County the growth is expected to be 22.6%, in Loudoun County the growth will be 45.1% and in Prince William County 43.4%. All other counties in the metropolitan area have a substantially greater projected growth of jobs than the District. These figures and statistics emphasize the acute need for the Zoning Commission to consider the proposed zoning action in the context of the need for future growth of the District of Columbia.

So we ask the final question, is downzoning here a sound policy action for the future, or is it more related to what the Urban Land Institute has identified as a pervasive and injurious antigrowth movement in urban areas. In any event, the fact that we are in a time of prosperity does not discharge the Zoning Commission from its obligation to apply the Zoning Enabling Act and sound planning principles to cases now with a view to the future.

Thank you.