

Memorandum

Government of the District of Columbia

TO: The File

FROM: Cecil B. Tucker *CBT*
Secretary

SUBJECT: Zoning Commission Cases No. 86-26 and 87-27

Department,
Agency, Office: Zoning Secretariat/OP

Date: November 2, 1989

Copies of Z.C. Order No. 616 have been sent to the
following persons and/or agencies:

1. D.C. Register () published
2. All ANC's
3. Z.C. Members
4. NCPC
5. Joseph Bottner
6. Fred L. Greene, Nate Gross, James Gilleylen,
Madeleine Robinson, Alvin McNeal, David Colby and
Nat Levy - OP
7. Chief - Historic Preservation
8. Robert L. Klugal and George Toll - DFR
9. Dept. of Public Works
10. Reginald C. Lyons

ZONING COMMISSION
ZONING COMMISSION
District of Columbia
CASE No. 86-26
EXHIBIT No. 583

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 616
Cases No. 86-26 and 87-27
(Connecticut Avenue and Wisconsin Avenue II
Text and Map Amendments)
May 8, 1989

The Zoning Commission initiated these separate cases in response to the requests of Advisory Neighborhood Commission 3C, the Cleveland Park Historical Society, Woodley Park Community Association, and other petitioners that the Zoning Commission hold hearings to consider text and map amendments to preserve the scale, character, and prevalent existing uses in the Cleveland Park area of Connecticut and Wisconsin Avenues, and the Woodley Park area of Connecticut Avenue. Although these cases have been processed heretofore as two separate cases, the Commission has determined that common issues are appropriately addressed in one chapter of Title 11 and in a single consolidated order.

The Cleveland Park Commercial area on Connecticut Avenue is zoned C-2-A, and extends three blocks, between Porter and Macomb Streets, on the east and west sides of Connecticut Avenue. The over-all physical scale is very low, in that 90 per cent of the buildings are one or two stories in height. A number of commercial buildings have apartments on the upper stories. A majority of the businesses are retail or service uses, which serve and are sustained by the adjacent residential area, as well as a substantial residential component within the commercial area. Fourteen of the approximately eighty businesses are places to eat or drink.

The area is within the Cleveland Park Historic District, and includes the Cleveland Park Metrorail station. The Generalized Land Use Maps indicate the commercial area as a Low Density Commercial area and an existing local Neighborhood Commercial Center.

Three lots on the north side of Ordway Street, and presently included in the C-2-A District, are separated by an alley from the rest of that District. For that reason, these lots, which are Lots 72, 73, and 74 in Square 2068, are functionally related to, and appear as part of, the residential district, rather than the C-2-A District.

The Woodley Park Commercial area includes Square 2203 and portions of Squares 2202 and 2204, in the area of Connecticut Avenue and Calvert Street.

Square 2203 includes the Metrorail entrance, and is developed with low-scale buildings, primarily one-story in height. Square 2202 is developed with two low-rise structures. The C-2-B area in Square 2204 is a mixture of connected townhouses, which range from two to four stories in height. It also includes a small number of apartments, and a new, out-of character, office-retail development. The Woodley Park C-2-A and C-2-B Districts include a substantial number of places to eat and drink, which is probably a reflection of the nearby hotels. The Generalized Land Use Maps reflect this area as a Low Density Commercial area and an existing Local Neighborhood Center.

The Cleveland Park Commercial area on Wisconsin Avenue extends approximately two blocks on the west side of Wisconsin Avenue, from Idaho Avenue to approximately 150' south of Macomb Street. The Generalized Land Use Maps reflect this area as a low density commercial area and an existing local neighborhood center.

The Comprehensive Plan designation for each area is consistent with the area's current character, but the existing C-2-A and C-2-B zoning is to a degree inconsistent with both. In the context of these compact commercial districts, the C-2-A and C-2-B zoning allows height and density that can become problematic for the preservation of existing, low density, neighborhood-serving commercial uses and structures. Under existing zoning, each of these areas has development potential that provides incentive to build larger structures and occupy them with uses that may produce more revenue than the existing, local retail and service uses.

The establishment of a Neighborhood Commercial Overlay Zone District, including discrete overlay zones within that category, responds to the goals and objectives of the Comprehensive Plan. The preamble, 11 DCMR 1300, more fully expresses the purpose of the amendments.

Notice of proposed rulemaking was published in the D.C. Register on March 3, 1989, and a copy of the proposed rules was transmitted to the National Capital Planning Commission on February 24, 1989.

ANC 3C submitted comments that addressed a number of issues. It recommended that: 11 DCMR 1300 explicitly refer to "limited office space"; 11 DCMR 1301 provide unambiguously that uses that are not allowed in the C-1 zone may not be established as preferred uses in the MW Overlay zone; certain inappropriate preferred uses be deleted; the

relationship of 11 DCMR 1302.3 and 1302.4 be improved; 11 DCMR 1304 include a requirement that the special exception not be inconsistent with the Comprehensive Plan; 11 DCMR 1306 and 1307 prohibit fast food restaurants, theaters, hotels, and inns; that Calvert Street and Idaho Avenue be designated Streets; and a number of technical points that are reflected on a marked-up copy of the proposed rulemaking and are discussed later in this Order to the extent that is reasonably appropriate.

The Wisconsin Avenue Task Force, a group of the Petitioners in Case No. 87-27, expressed a major concern that the overlay provisions appeared to override the use restrictions of the C-1 Zone, and urged that the rules be revised to clearly prevent such a result. The Task Force also expressed a number of concerns that were the same as those of ANC 3C.

In addition, the Task Force urged that the reference in 11 DCMR 1308.1 be deleted, if the Commission adheres to the decision to amend the underlying zone district to C-1.

The Woodley Park Community Association restated its request that the Commission require a 20-foot setback from the alley in Square 2204.

Many members of the surrounding area submitted comments that expressed concern about the main issues identified by the Task Force and ANC 3C.

The firm of Wilkes, Artis, Hedrick and Lane submitted comments that restated points previously made and fully considered by the Commission, and which will not be restated here.

By report dated April 6, 1989, NCPC found that these proposed zoning text and map and related amendments would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Commission considered the foregoing comments at its meeting on May 8, 1989, and responds as set forth below.

As to the continuing concern about the uniformity requirement of D.C. Code Sec. 5-413, the Commission concludes that there is no substantial basis for concern. Each provision of Chapter 13 will apply in a uniform way to each class or kind of building throughout each of the three overlay districts. The MW/C-1, CP/C-2-A, WP/C-2-A, and WP/C-2-B provisions need not be uniform, respectively, with the C-1, C-2-A, and C-2-B provisions. In neither form nor fact do

the overlay zone districts continue to be the underlying district.

In part, the uniformity concern appears to be predicated upon the compact size of the districts. It is true that the new districts will be relatively small, but each will be substantially larger in area than are the sites of most planned unit developments ("PUDs"). Through the PUD process, the Zoning Commission regularly adopts "site-specific" use and development conditions and controls, which apply to no other area in the District of Columbia. Because sound planning considerations have persuaded the Commission to adopt the overlay districts, and to map them only in limited areas, this action would seem a fully valid exercise of the police power of the Commission. If the compact area of the zone districts would operate to invalidate what would otherwise represent a reasonable exercise of the zoning power, perhaps those who are genuinely concerned about such site-specific zoning should invite the Commission to repeal 11 DCMR, Chapter 24. However, the sound answer to this contention, that the new districts are "too small" to be legitimate, is found in D.C. Code Sec. 5-413, which states, in pertinent part: "[The] Commission may divide the District of Columbia into districts or zones of such ... area as said Zoning Commission may determine...." (Emphasis added.)

The comments that ANC 3C submitted in the form of recommended revisions to the list of preferred uses are not compelling as a matter of substance, were not timely raised during the public hearing process, and do not respond to post-hearing changes in the proposed amendments. However, the Commission has determined that it would be appropriate to revise the amendments to refer to this category of uses as "designated uses."

The Commission has made a number of technical and clarifying changes, as follows:

- (1) Sub-section 1301.3 has been revised;
- (2) Paragraphs (f) and (i) of sub-section 1302.2 have been clarified;
- (3) A new sub-section 1302.3 has been added to provide clearly that designated uses must be ones that are allowed in any underlying C-1 zone district; and
- (4) Sub-section 1302.5 has been revised to provide clearly that a fast food restaurant is not treated as a designated use.

The scope of the public hearing notice does not allow the inclusion of Idaho Avenue or Calvert Street as designated Streets.

The Commission is persuaded that it is reasonable to protect the compact MW/C-1 District through the operation of sub-section 1308.3, and that this provision, in particular, does not violate the uniformity provision.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set further herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations to adopt and map a Neighborhood Commercial Overlay District to make other map amendments in the Cleveland Park area. The specific amendments to DCMR Title 11 and the Zoning Map (the Zoning Regulations) are as follows:

1. Adopt a new chapter 13 of Title 11 DCMR, to read as follows:

CHAPTER 13 NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1300 PREAMBLE

1300.1 The Neighborhood Commercial ("NC") Overlay District is established to preserve and enhance neighborhood shopping areas, by providing the scale of development and range of uses that are appropriate for neighborhood shopping and services.

1300.2 The NC Overlay District includes a number of individual overlay zone districts that may be established and mapped from time to time, consistent with the general provisions of this chapter.

1300.3 The purposes of the NC Overlay District are the following:

- (a) To encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement, all of which will be as generally required by the comprehensive plan for the national capital;

- (b) To encourage retention and establishment of a variety of retail, entertainment, and personal service establishments, pre-dominantly in a continuous pattern at ground level, so as to meet the needs of the surrounding area's residents, workers, and visitors; and
- (c) To limit the maximum permitted height of new buildings so as to encourage a general compatibility in scale between new and older buildings.

1300.4 The provisions of this chapter that apply to the discrete NC Overlay Districts shall reflect the character, scale, and needs of the particular district.

1301 GENERAL PROVISIONS

1301.1 The NC Overlay District is mapped in combination with the underlying commercial zone district and not instead of the underlying district.

1301.2 Except as specifically provided in sub-section 1301.3 of this section and in other provisions of this chapter, all uses, buildings, and structures permitted in accordance with this chapter and the appropriate regulations of the underlying district with which the mapped NC Overlay District is combined, shall be permitted in the combined district.

1301.3 Where there is a conflict between this chapter and the underlying zoning, the more restrictive provisions of this title shall govern.

1302 DESIGNATED AND RESTRICTED USES

1302.1 Any building that occupies or is constructed on a lot in a designated use area within an NC Overlay District shall provide designated retail and service establishments on the ground level according to the requirements of this section and any additional requirements of the particular overlay district.

1302.2 The designated uses for purposes of this section are the following:

- (a) Any use that is permitted as a matter of right in the C-1 District pursuant to sub-sections 701.1 or 701.4, of this title;

- (b) Library;
- (c) Blueprinting or similar reproduction service;
- (d) Film exchange;
- (e) Interior decorating shop;
- (f) Laundry, self service;
- (g) Photographic studio;
- (h) Picture framing studio or shop;
- (i) Tailor shop or valet shop;
- (j) Telegraph office;
- (k) Antique store or shop;
- (l) Auction house;
- (m) Department store;
- (n) Display stand or store for mail order sales;
- (o) Dry goods store;
- (p) Furniture store;
- (q) Home furnishings sales;
- (r) Leather goods store;
- (s) Musical instruments and accessories sales;
- (t) Office supplies and equipment sales;
- (u) Optical goods store;
- (v) Pet shop;
- (w) Precision instrument sales; and
- (x) Theater, including motion picture theater.

1302.3 If the underlying zone district is C-1, the designated uses shall include only those uses that are referenced in paragraphs (a) and (b) of subsection 1302.2.

1302.4 The designated uses listed in sub-section 1302.2 of this section shall occupy no less than 50 percent of the gross floor area of the ground

level of the building, subject to the following requirements:

- (a) No more than 20 percent of the ground level floor area shall be devoted to banks, loan offices or other financial institutions, travel agencies, or other ticket offices;
- (b) The ground level floor shall be the floor that is nearest in grade elevation to the sidewalk; and
- (c) In those parts of the affected building or lot other than as delineated in this section, the use provisions of the underlying zone district shall apply.

1302.5 Restaurants, fast food restaurants, delicatessens, carry-outs, and similar eating or drinking establishments shall be subject to the following limitations:

- (a) Such uses shall occupy no more than 25 percent of the linear street frontage within a particular NC Overlay District, as measured along the lots that face designated roadways in the particular district; and
- (b) Except for a fast food restaurant, such uses may be applied to fulfill the requirements of sub-section 1302.4 of this section; Provided, that when such uses are so applied, they shall remain subject to the provisions of paragraph (a) of this sub-section.

1303 LIMITATIONS ON DRIVEWAYS AND CURB CUTS

1303.1 No drive-through accessory to any use shall be permitted in the NC Overlay District.

1303.2 Within the area of the NC Overlay District, notwithstanding the provisions of sub-section 2117.8(c)(1) of this title, no driveway providing access from any designated roadway to required parking spaces or loading berths shall be permitted.

1304 SPECIAL EXCEPTIONS

1304.1 Exceptions from the requirements of this chapter shall be permitted only as a special exception, if approved by the Board of Zoning Adjustment after public hearing, in accordance with the conditions

specified in Section 3108 of this title, and subject to the following requirements:

- (a) The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity;
- (b) Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, which justify the exception or waiver;
- (c) Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions; and
- (d) The Board may impose requirements pertaining to design, appearance, signs, size, landscaping and other such requirements as it shall deem necessary to protect neighboring property and to achieve the purposes of the NC Overlay District and the particular overlay district.

1304.2 This section shall not operate to allow any exception to the height or floor area ratio limits of any NC Overlay District.

1305 PLANNED UNIT DEVELOPMENT GUIDELINES

1305.1 In the NC Overlay District, the matter of right height and floor area ratio limits shall serve as the guidelines for Planned Unit Developments.

1306 CLEVELAND PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1306.1 The Cleveland Park ("CP") Overlay District is applied to a compact geographic area surrounding the Cleveland Park Metrorail Station and within the Cleveland Park Historic District, comprising those lots zoned C-2-A in Squares 2218, 2219, 2222, 2068, 2069, and 2082.

1306.2 In addition to the purposes that are set forth in

Section 1300 of this chapter, the purposes of the CP Overlay District are as follows:

- (a) To provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic, so as to improve access to retail services, the Metrorail station, and other uses in the area;
- (b) To encourage compatibility of development with the purposes of D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978; and
- (c) To provide for retention of existing housing within the CP Overlay District, so as to help meet the need for affordable housing; and to enhance pedestrian activity, safety, and consumer support for businesses in the commercial area.

1306.3 For purposes of Section 1302 of this chapter, the designated use area shall include any lot within the CP Overlay District that fronts on Connecticut Avenue or Macomb, Newark, Ordway, or Porter Streets.

1306.4 For purposes of sub-section 1303.2 of this title, the designated roadway within the CP Overlay District shall be Connecticut Avenue.

1306.5 In the CP Overlay District, no dwelling unit or rooming unit in existence as of October 1, 1987 shall be converted to any nonresidential use, or to a transient use as hotel or inn; provided, however, that this restriction shall not apply to the ground floor of the building, i.e., that floor which is nearest in grade elevation to the sidewalk.

1306.6 The maximum permitted height for any building or structure in the CP Overlay District shall be 40 feet.

1306.7 The matter of right floor area ratio in the CP Overlay District shall be 2.0, not more than 1.0 of which may be occupied by non-residential uses.

1307 WOODLEY PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1307.1 The Woodley Park ("WP") Overlay District is

applied to a compact geographic area surrounding the Woodley Park/Zoo Metrorail station, comprising those lots zoned C-2-A in Squares 2202 and 2203, and those lots zoned C-2-B in Square 2204.

- 1307.2 In addition to the purposes which are set forth in Section 1300 of this chapter, the purposes of the WP Overlay District are to provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic, so as to improve access to retail services, the Metrorail station, and other uses in the area.
- 1307.3 For purposes of Section 1302 of this chapter, the designated use area shall include any lot within the WP Overlay District that fronts on Connecticut Avenue, Calvert Street, or 24th Street.
- 1307.4 For purposes of sub-section 1303.2 of this title, the designated roadway within the WP Overlay District shall be Connecticut Avenue.
- 1307.5 No hotel, inn, or fast food restaurant shall be permitted in the WP Overlay District.
- 1307.6 The maximum permitted height of any building or structure in the WP Overlay District shall be as follows:
- (a) 40 feet in the WP/C-2-A District; and
 - (b) 50 feet in the WP/C-2-B District.
- 1307.7 The matter of right floor area ratio in the WP Overlay District shall be as follows:
- (a) In the WP/C-2-A District, the matter of right floor area ratio shall be 2.5, not more than 1.0 of which may be occupied by non-residential uses; and
 - (b) In the WP/C-2-B District, the matter of right floor area ratio shall be 3.0, not more than 1.0 of which shall be occupied by non-residential uses.
- 1308 MACOMB-WISCONSIN NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT
- 1308.1 The Macomb-Wisconsin ("MW") Overlay District applies to the neighborhood commercial area near and extending from the intersection of Macomb Street and Wisconsin Avenue, N.W., comprising those lots zoned C-1 in Squares 1920 and 1920N.

- 1308.2 In addition to the purposes that are set forth in Section 1300 of this chapter, the purpose of the MW Overlay District is to provide for public review of large developments as to their proposed uses, vehicular access, and the scale and massing of proposed buildings, so as to ensure compatibility with and enhancement of the primary neighborhood retail function of the commercial area and to advance the other purposes of this overlay district.
- 1308.3 Within the MW Overlay District, on a lot that has 10,000 square feet or more in land area, construction of a new building or enlargement of the gross floor area of an existing building by 50 percent or more, shall be permitted, subject to review and approval as a special exception by the Board of Zoning Adjustment, pursuant to the same standards and criteria set forth in Section 1304 of this chapter.
- 1308.4 For purposes of Section 1302 of this chapter, the designated use area shall include any lot that fronts on Wisconsin Avenue or Macomb or Newark Streets within the WP Overlay District.
- 1308.5 For purposes of sub-section 1303.2 of this chapter, the designated roadways within the MW Overlay District shall be Wisconsin Avenue and Macomb Street.
2. Amendments to the Zoning Map of the District of Columbia as follows:
- a. Change to CP/C-2-A those portions of Squares 2218, 2219, 2222, 2068, 2069, and 2082 that are currently zoned C-2-A;
 - b. Change to WP/C-2-A those portions of Squares 2202 and 2203 that are currently zoned C-2-A;
 - c. Change to WP/C-2-B that portion of Square 2204 that is currently zoned C-2-B;
 - d. Change to MW/C-1 those portions of Squares 1920 and 1920N that are currently zoned C-2-A; and
 - e. Change Lots 72, 73, and 74 in Square 2068 from C-2-A to R-2.

Vote of the Zoning Commission with respect to Zoning Commission Case No. 86-26 at the public meeting on March 14, 1988: 4-0 (Patricia N. Mathews, Lindsley Williams, John G.

Parsons, and Maybelle Taylor Bennett, to approve; George M. White, not present, not voting).

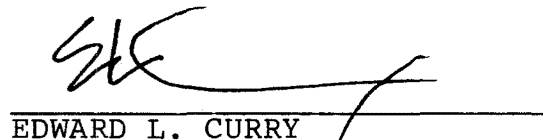
Vote of the Zoning Commission with respect to Zoning Commission Case No. 87-27 at the public meeting on June 13, 1988: 5-0 (Lindsley Williams, John G. Parsons, and Elliott Carroll, to approve; Maybelle Taylor Bennett and Patricia N. Mathews, to approve by proxy vote).

Vote of the Zoning Commission with respect to Zoning Commission Case No. 86-26, at the public meeting on September 15, 1988: in part 5-0, and in part 4-1 (Lindsley Williams, John G. Parsons, and Maybelle Taylor Bennett, to approve, Patricia N. Mathews to approve by proxy; and George M. White to approve, except as to the rezoning of Lots 72, 73, and 74 in Square 2068)

This order was revised and approved by the Zoning Commission at the public meeting on May 8, 1989, by a vote of 3-0, as to Case No. 87-27 (Lindsley Williams, Maybelle Taylor Bennett, and John G. Parsons to approve; Elliott Carroll, not present, not voting; and Lloyd D. Smith, not voting, not having participated in the case) and 4-0, in part, and 3-1, in part, as to Case No. 86-26 (Lindsley Williams, Maybelle Taylor Bennett, and John G. Parsons to approve; George M. White to approve by proxy vote, except as to the map amendment that applies to Lots 72, 73, and 74 in Square 2068; Lloyd D. Smith, not voting, not having participated in the case).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is, on _____,


MAYBELLE TAYLOR BENNETT
Vice-Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat Division

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