

WILKES, ARTIS, HEDRICK & LANE

CABLE ADDRESS: WILAN
TELECOPIER: 202-457-7814

CHARTERED

ATTORNEYS AT LAW
1666 K STREET, N. W.

WASHINGTON, D. C. 20006
(202) 457-7800

3 BETHESDA METRO CENTER
BETHESDA, MARYLAND 20814

4020 UNIVERSITY DRIVE
FAIRFAX, VIRGINIA 22030

WRITER'S DIRECT DIAL:

October 1, 1987

HAND-DELIVERY

Edward Curry
Executive Director
of the Zoning Secretariat
District Building, Room 11
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004


RE: Connecticut Avenue Corridor Study
Zoning Commission Case No. 86-26

Dear Mr. Curry:

Enclosed are 12 copies of our comments on the Preliminary Report of the Office of Planning on the above-referenced case. In addition to these comments, we request an opportunity to address the Commission at the meeting on October 1, 1987.

Respectfully submitted,

WILKES, ARTIS, HEDRICK & LANE,
CHARTERED



Steven E. Sher
Director of Zoning Services



Edward L. Donohue

ZONING COMMISSION
District of Columbia

Case... 86-26

Exhibit... 82

DISTRICT OF COLUMBIA
ZONING SECRETARIAT
OCT 1 1987 PM 4:34

ZONING COMMISSION
District of Columbia
CASE NO. 86-26
EXHIBIT NO. 82

Mr. Lindsley Williams, Chairman

October 1, 1987

Page 2

The Connecticut Avenue Corridor is a major urban thoroughfare which is highly developed. As such, it represents a dynamic, urban context for residential, commercial, retail, transportation, and open space uses. Historically, development in the District of Columbia has been encouraged along the major corridors to protect the adjacent residential wedges. Reading the OP report, one is left with the impression that the adjacent residential areas are in a small town in Iowa, rather than lower density residential areas abutting a high traffic, high intensive use area. Connecticut Avenue has a long history as a commercial and high density residential corridor. The attached Exhibit No. 2, a portion of the zoning map colored to identify 90 foot and surrounding 40 foot districts, shows the corridor predominantly devoted to a 90 foot height zone, abutting 40 foot, lower density residential districts. The corridor has a superior infrastructure, with excellent Metro station and bus access.

There is simply no planning or land use support for the report's underlying assumption (at page 11) that zoning action is necessary due to "...the potential replacement of existing small scale buildings and neighborhood uses with large office buildings and non-neighborhood uses. Associated with this potential redevelopment is increased traffic volume and the increased congestion and safety problems more traffic brings." As discussed below, there is no significant evidence indicating that there will be large scale replacement of the present uses with office buildings and non-neighborhood uses. In terms of traffic, even the OP report shows that there is no serious traffic problem through at least the year 2000 for the entire corridor, even without TSM measures.

II. There is No Comprehensive Plan Basis for a Rezoning or Imposition of the Overlay Districts

The Office of Planning Report (at page 18) notes that in considering zoning changes, it is important to consider all elements of the Comprehensive Plan:

Essential to the application of the goals, policies and objectives of the Plan's elements is their fundamental interconnection... To focus solely on a single factor, in particular the zoning/land use consistency issue,

Mr. Lindsley Williams, Chairman
October 1, 1987
Page 3

invariably leads to errors of interpretation and understanding of the Comprehensive Plan.

Having acknowledged that the land use element is but one element of the Comprehensive Plan, and that it is the entire Comprehensive Plan to which the Zoning Commission must look to determine inconsistency, the OP report nevertheless bases its recommendations almost entirely on the Land Use Element, with little or no reference to the other components of the Plan, including housing, economic development and transportation.

A. The Density and Uses Along the Connecticut Avenue Corridor are in Conformity with the Comprehensive Plan, Including the Land Use Element, and do not Justify a Change in Zoning

Of relevance to these comments, the Office of Planning makes the recommendation that overlay districts be created in the Cleveland Park and Woodley Park area commercial areas. The petitions filed with the Commission urge that a one block portion of Woodley Park be rezoned from C-2-B to C-2-A and that the Cleveland Park commercial area be rezoned from C-2-A to C-1. The only basis for requesting such a rezoning is the assumption that zoning action is necessary to insure consistency with the Land Use Element's classification of these areas as local neighborhood centers, with a low density commercial designation. The OP correctly refused to adopt the recommendations, but then in an apparent attempt to appease the citizens, recommends overlay districts.

First, there is no city-wide planning basis for any changes in zoning. As Exhibit 3 indicates, the majority of areas in the City with similar Land Use Map classifications (the combination of low density commercial and local neighborhood center) are zoned C-2-A. Further, both Cleveland Park and Woodley Park are located at Metro stations. Where the majority of other areas similarly classified by the Land Use Element are zoned C-2-A with no overlays, there is absolutely no planning basis for changing the zoning of these areas

Mr. Lindsley Williams, Chairman
October 1, 1987
Page 4

without specific factual showing of inconsistency with the Plan.

1. CLEVELAND PARK OVERLAY

In response to the petition by the Cleveland Park Historical Society, the OP suggests an overlay district as an alternative to downzoning. In Cleveland Park, the report states that buildings are likely to be in the 25 to 35 foot height range and that the Historic Preservation Review Board has full reviewing powers. In spite of these considerations, OP has suggested a zoning tool that will dictate the height, density, and use of each particular lot on the subject blocks. The proposal is ill-advised from a planning standpoint, and may well violate the uniformity clause in the Zoning Enabling Act (D.C. Code Section 5-413). The formula to determine permissible height is a function of the height of existing buildings on adjoining property. Under the proposal, a proposed infill building could not exceed twice the height of any abutting building. This regulation assumes that the existing heights as built are appropriate, with no recognition that even the existing heights in some cases are considerably lower than even what the most restrictive residential district allows.

The uniformity clause of Section 5-413 states that "All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts." The proposed overlay is a different regulation for each building, and a regulation different from every other.

It is imperative that the Commission recognize the predominant character of the entire Connecticut Avenue corridor. The map attached as Exhibit No. 2 clearly shows the existing permitted height of 90 feet. Many buildings have already been built to that height. The map further shows that existing 40 foot districts, many developed

Mr. Lindsley Williams, Chairman

October 1, 1987

Page 5

with only 2 story houses, immediately adjoin the higher height areas. No change is suggested for these areas, yet the OP and the petitions suggest reducing height in areas where the existing limits are only 65 and 50 feet.

The report outlines controls suggested for the retention of upper-story housing, ground floor retail, height limits, drive-throughs and curb cuts and eating and drinking establishments. The report fails to establish that a problem exists in any of these areas which needs to be addressed by the Zoning Commission. For example, the Department of Public Works controls curb cuts. Nowhere has it been said that DPW is overwhelmed by applications or unable to carry out its duties. Also, the remarks on eating and drinking establishments are unsubstantiated. No basis is given for the assumption that once these uses are approaching "critical mass" and that they will subsequently price other occupants out of the area.

While it may or may not be desirable to have retail and service establishments on the ground floor, there is no indication that these uses are not occurring in the existing buildings or proposed new construction. The mandating of this use in a site-specific manner is over-regulation which has not been shown to be in any way necessary in this area.

2. Woodley Park Overlay District

The Woodley Park proposed overlay is similar to that proposed for Cleveland Park with some exceptions. In Woodley Park, OP has dropped its concern for upper-story residential use and raised the issues of hotels and fast food restaurants. The overlay would limit height to 55 feet, without a relationship to adjoining buildings.

As in the previous section, the report makes unsubstantiated statements, regarding what OP views as undesirable conditions. For example, OP

Mr. Lindsley Williams, Chairman
October 1, 1987
Page 6

believes that Woodley Park can continue to have a greater percentage of street-front eating and drinking establishments than Cleveland Park (at page 69), but that the area "already has more than its complement of hotel rooms" (at page 71). Without establishing a basis for what "its complement" consists of, and without even a suggestion that another hotel has been proposed, the OP report recommends a blanket prohibition on future hotel rooms.

The Zoning Commission has given recent extensive consideration to defining and regulating fast food restaurants. The new regulations, some two years in the making, deal with this issue exhaustively. There is no need to revisit the issue on a block-by-block basis.

3. Rezoning

The petition urges the Commission to rezone a portion of Square 2204 from C-2-B to C-2-A. Two townhouses along Calvert Street are proposed for rezoning to R-4. The apparent basis for such a micro-rezoning is (1) that the commercial frontage is a mixture of two to four-story converted townhouses, with cohesive architecture, creating a handsome urban environment; (2) that a matter of right building, currently under large-tract review, is proposed for the strip; and (3) that the Comprehensive Plan land use designation is low-density commercial, with high-density residential to the west of Connecticut Avenue, and moderate and medium density residential to the east and north of the area proposed for rezoning. The report (at pages 66-67) states that the above-referenced land use designations "seem to imply substantially a continuation of existing zoning and development patterns." (Emphasis supplied). Yet, the Report (at page 68) determines the existing zoning C-2-B:

"tends to imply a degree of redevelopment, whereas C-2-A would tend to create an incentive for redevelopment... The Office of

WILKES, ARTIS, HEDRICK & LANE
CHARTERED

Mr. Lindsley Williams, Chairman
October 1, 1987
Page 7

Planning believes that the strong and attractive cohesiveness of the commercial row along this frontage should generally be conserved rather than redeveloped, and that the narrowness of the alley separating the commercial area from adjacent townhouses (15 feet) is an additional constraint upon the scale of commercial development that should be permitted". (Emphasis supplied).

The crucial flaw in the analysis is that the commercial FAR of C-2-B and C-2-A are the same: 1.5 FAR. A chart comparing the C-2-B and C-2-A Districts is attached as Exhibit No. 4. The C-2-B District does permit a greater total FAR (2.5 for C-2-A versus 3.5 for C-2-B). The amount over 1.5 is for residential use, which seems to be precisely consistent with the above-referenced land use designations which are a mix of low density commercial and moderate, medium and high density residential. To downzone residential FAR in a high density residential corridor, immediately across the street from a Metro station, is not an action contemplated by the Comprehensive Plan.

B. The Office of Planning has Ignored 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 proposed overlays and downzoning will serve no fundamental benefit to improve the already well-established and thriving commercial and residential uses of the Corridor, particularly where no loss of neighborhood uses or traffic impacts are shown. In fact, the recent proposed matter of right development discussed in the OP Report, which is planned for Square 2204, will have neighborhood

Mr. Lindsley Williams, Chairman
October 1, 1987
Page 8

retail uses on the ground level, some offices on the middle floors, and residential use on the top floors. In addition, DPW traffic figures show no need for zoning changes.

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 system including access to transportation and shopping (section c). Rezoning in such a way as to limit housing construction on a major arterial road and so close to Metrorail and Metrobuses would be directly contrary to those policies.

3. Economic Development

A second major theme of the Comprehensive Plan completely overlooked in the OP Report 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 proposed downzoning and overlay districts are inconsistent with the economic development goals of the Comprehensive Plan. Downzoning areas with a long-established residential envelopes around commercial areas, or applying overlay districts to areas at underutilized 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:

Mr. Lindsley Williams, Chairman
October 1, 1987
Page 9

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." Downzoning or applying overlay zones at underutilized Metro stations will engender and support a suburban strip land use pattern, while maximizing drive-ins, curb cuts, and parking lots -- a development scheme that is directly contrary to the District's objectives.

III. There is No Traffic Basis for Downzoning

In advocating downzoning or overlay zones, the OP report states as an underlying assumption that increased traffic and congestion will be avoided. These statements ignores the facts and fly in the face of the data and analysis contained in the report.

The OP report found that for the previous ten years Connecticut Avenue experienced "little or no growth" (at page 29, emphasis in original). In addition, the report indicated that, with few exceptions, the level of service was good for both peak and off-peak time periods. In projecting to the year 2000, the report predicted a minor decrease in levels of service and recommended Transportation System Management (TSM) corrective measures. Significantly, the report predicted only minor difficulties without considering the substantial beneficial impact of Metro. If the five Metrorail stations, and numerous buses which operate on Connecticut Avenue are factored into the analysis, the figures should be reduced substantially. In the Tenley Circle case (Z.C. 86-17), the Office of Planning recognized that traffic estimates could be reduced by 30% where Metro had not been considered in the analysis. If Metro is included, the analysis changes substantially and all intersections are well within acceptable levels of service.

According to the report, the entire length of Connecticut Avenue, with few exceptions, is currently operating

WILKES, ARTIS, HEDRICK & LANE
CHARTERED

Mr. Lindsley Williams, Chairman
October 1, 1987
Page 10

under "good" existing levels of service. The report goes on to state that no change in current development plans is warranted. Overall, the report found that the traffic growth was expected to be localized and "not expected to cause serious traffic congestion either on Connecticut Avenue or in the Connecticut Avenue Corridor" (at page 26). Therefore, it cannot be said that the proposed rezoning is in response to traffic concerns. The traffic analysis provided indicates that the situation is good and expected to remain so, even without considering Metro. To create a traffic issue by raising the specter of potential redevelopment in order to bootstrap an argument for downzoning is an irresponsible exercise.

IV. Conclusion

One of the major purposes of zoning, set forth in the Zoning Act, is to provide for stability of districts and land values. There is no evidence that the existing zoning controls, which have been in place in these areas for many years, have created any instability. Accordingly, there is no reason to change the zoning as urged by the petitioners and the OP.


For the foregoing reasons, it is respectfully requested that the Zoning Commission not schedule a hearing on the recommendations of the Connecticut Avenue corridor study and deny the various citizen petitions for the zoning action in Case 86-26. There is no basis for rezoning or imposing cumbersome overlay districts in areas where the zoning is not inconsistent with the Comprehensive Plan, the neighborhood residential and commercial uses are thriving compatibly, there are no traffic issues, and the areas have Metro stations. While there may be corridors or areas in the District which must be rezoned to be consistent with the Comprehensive Plan, the Connecticut Avenue Corridor is not one of them.

WILKES, ARTIS, HEDRICK & LANE,
CHARTERED

By: Whayne S. Quin
Whayne S. Quin

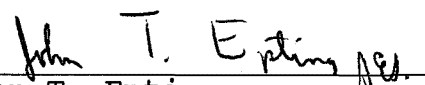
WILKES, ARTIS, HEDRICK & LANE
CHARTERED

Mr. Lindsley Williams, Chairman
October 1, 1987
Page 11



Steven E. Sher
Director of Zoning Services

Attachments



John T. Epting



Edward L. Donohue

EXHIBIT 1

List of Owners and Contract Purchasers

Sylvia T. Burk
2627 Connecticut Avenue, N.W.
Washington, D.C.

Raj and Theodora Mallic
2603 Connecticut Avenue, N.W.
Washington, D.C.

2301 Associate Limited Partnership
2301 Calvert Street, N.W.
Washington, D.C.

Elizabeth S. Kiernan
2601 Connecticut Avenue, N.W.
Washington, D.C.

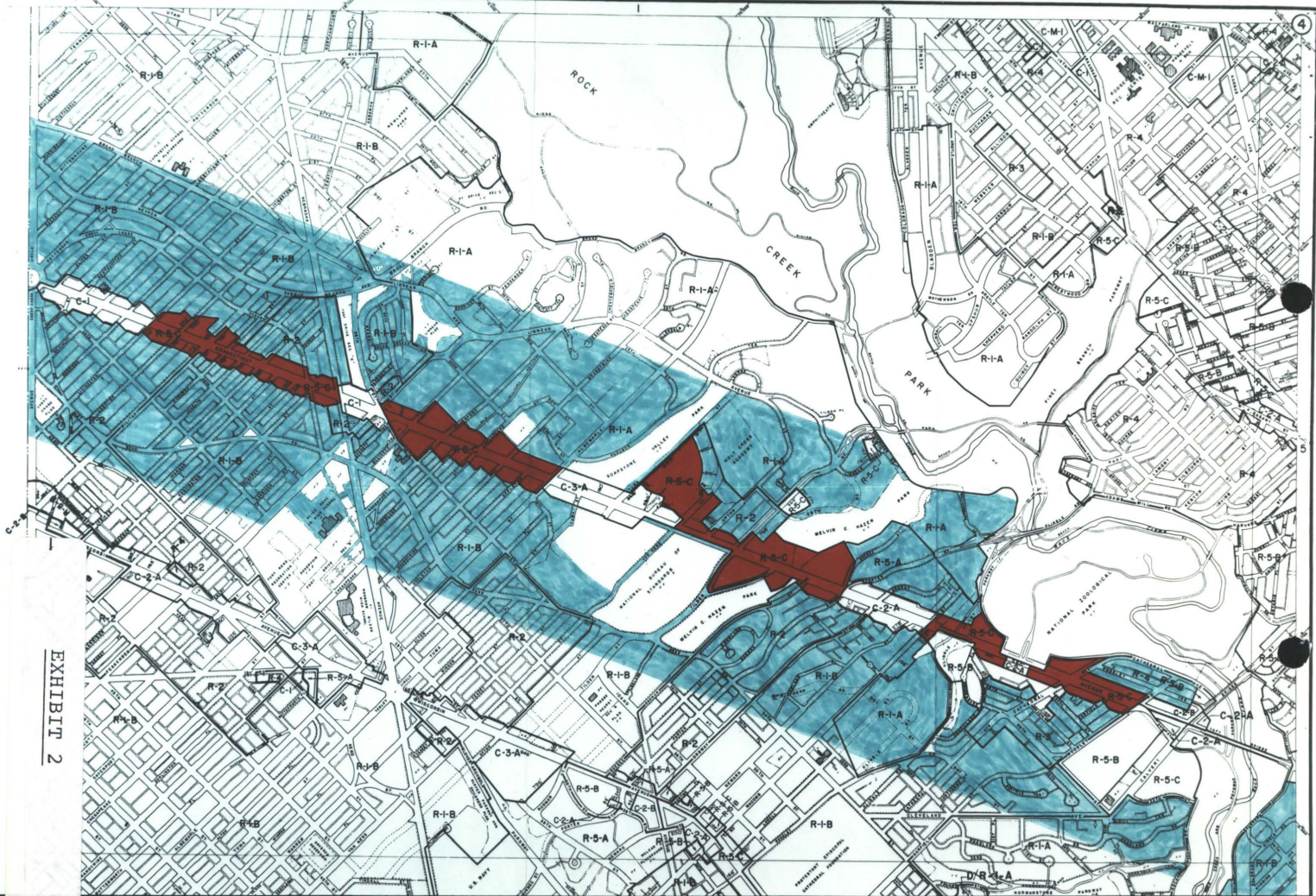
Olga M. Mazza
3816 Cathedral Avenue, N.W.
Washington, D.C.

Twenty-Six Thirty-One Limited Partnership
2639 Connecticut Avenue, N.W.
Washington, D.C.

Jack Katyal
2623 Connecticut Avenue, N.W.
Washington, D.C.

Cafritz Foundation, Owner
HDS Companies, Contract Purchaser
3501 Connecticut Avenue, N.W.
Washington, D.C.

Skinker & Garrett, Inc.
2607 Connecticut Avenue, N.W.
Washington, D.C.



DISTRICT OF COLUMBIA
ZONING MAP
SECTION 4

THIS MAP CONFORMS TO THE DECISIONS OF THE
DISTRICT OF COLUMBIA ZONING COMMISSION,
CORRECTED TO JANUARY 1, 1987

EXHIBIT 3

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.

EXHIBIT 4

COMPARISON BETWEEN C-2-A AND C-2-B DISTRICTS

<u>REQUIREMENT</u>	<u>C-2-B DISTRICT</u>	<u>C-2-A DISTRICT</u>
Height (in feet)	65	50
Maximum total floor area ratio	3.5	2.5
Maximum non-residential floor area ratio	1.5	1.5
Available residential floor area ratio assuming maximum non-residential is used	2.0	1.0
Maximum percentage of lot occupancy (applicable to residential use only)	80%	60%
Minimum recreation space (as a percentage of the gross floor area devoted to residential use)	15	10
Minimum rear yard (in feet)	15	15