

Before the D.C. Zoning Commission
October 2, 2017

Case 17-11: Proposed Rezoning of Penn-Branch Shopping Center
Statement of O Street Neighbors and Friends in Opposition to Proposed
Rezoning Adverse Impacts and Inconsistency with the Comprehensive Plan

The proposed rezoning to MU-4 is inconsistent with the Pennsylvania Avenue East Small Area Plan (SAP) for the following principal reasons:

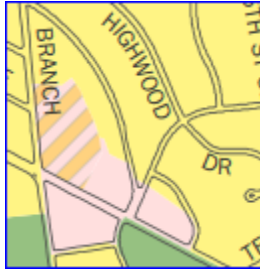
Height: The Small Area Plan calls for a maximum height of 50 feet, measured from the lowest point. That language was added at the urging of neighbors' testimony at the Council hearing on the proposed SAP. The 2008 SAP was drafted before ZR 2016 authorized habitable penthouses. In 2008, 50 feet meant 50 feet of habitable building space plus a 10-foot penthouse limited to mechanical uses. Under ZR 16, 50 feet in MU-4 means a building with 59 or 60 feet of habitable space plus a penthouse. Any rezoning of this site should read the SAP as the Council intended. The Council could not have foreseen that 50 feet would morph into 60 feet.

The applicant has not made this distinction plain to the residents. In presentations to the ANC and other groups, it describes the building as 50 feet, without explaining the impact of the penthouse. Accordingly, while there has been community outreach, the Commission may well ask whether that outreach has been meaningful and effective.

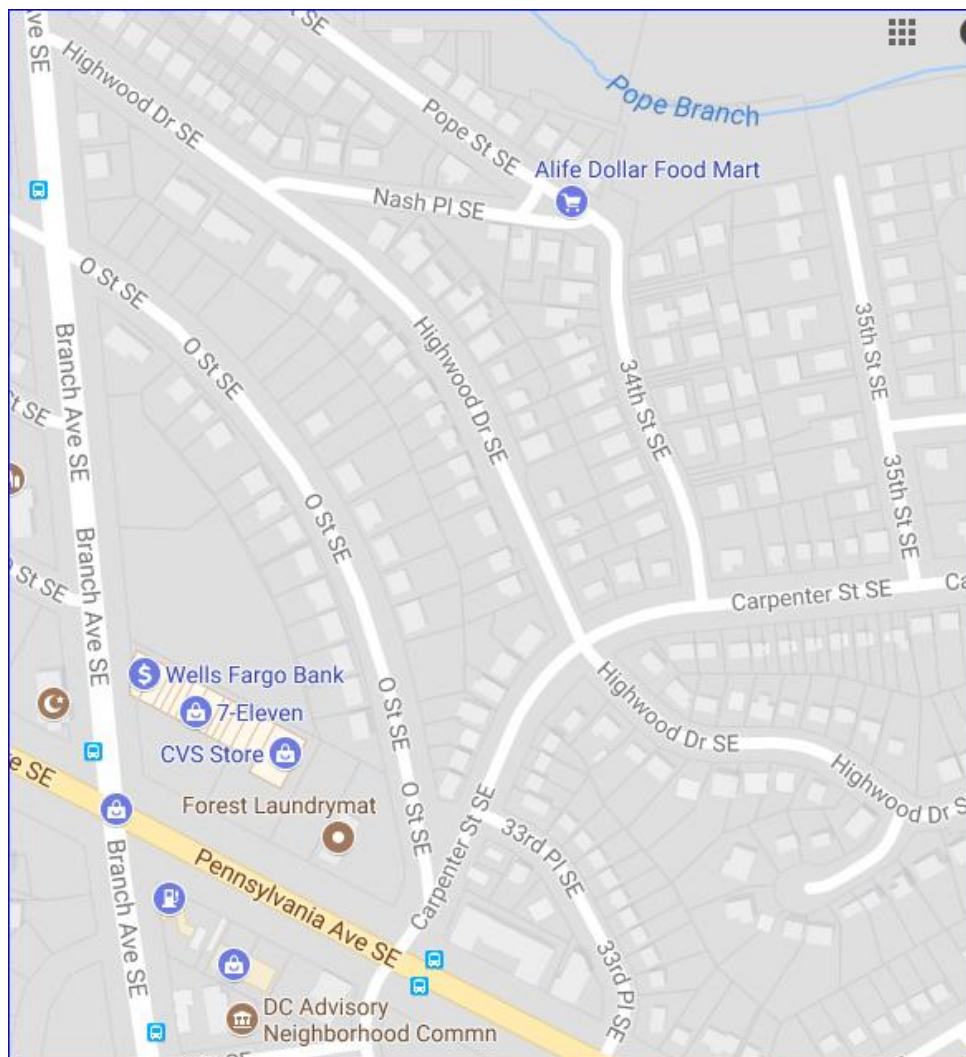
Conflict between applicable documents. There is a conflict between the SAP and the application. The SAP refers twice to the Pennsylvania Avenue shopping center site as comprising 1.72 acres. The Applicant states that it intends to rezone 3.5 acres -- twice the amount proposed for rezoning in the SAP. The Future Land Use Map apparently stripes the entire 3.5 acres, but FLUM striping does not automatically presume that an entire striped area will be built to the maximum envelope. The striping indicates a mix of uses. In addition, footnote 1 in the Appendix to the SAP states:

1) OP clarifies that the intent of the proposed land use recommendations for the Penn Branch Shopping Center opportunity site is to **support additional low density retail and residential development** along Pennsylvania Avenue SE that is consistent with other low-moderate density opportunity sites along the corridor east of the Anacostia River. Emphasis added.

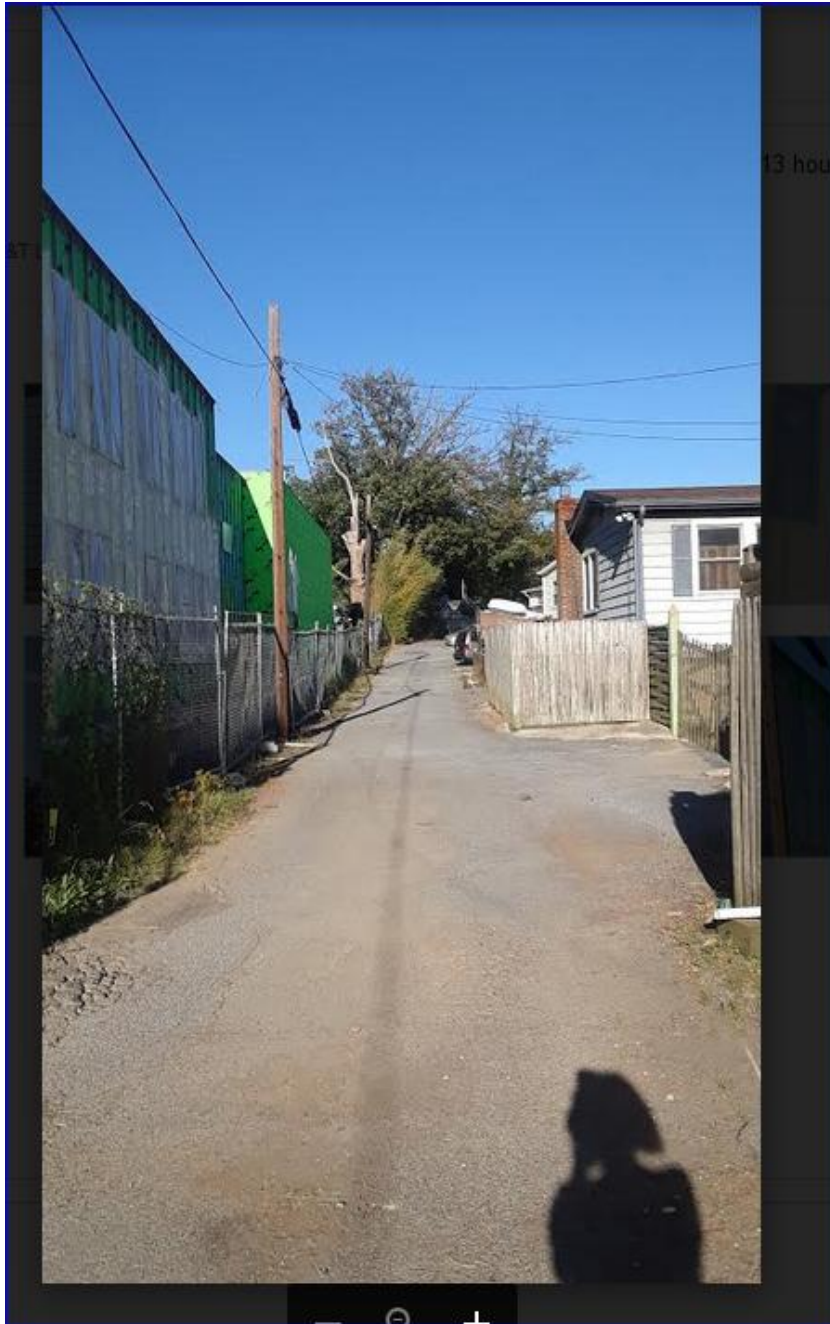
The Commission is not free to ignore either the conflict in the amount of land proposed for rezoning or the plain language of the SAP, particularly inasmuch as the SAP is the sole document that speaks specifically to this site. The Citywide Elements do not address this particular site and the sole policy in the Far Northeast/Southeast Area Element states regarding this site says only: "Policy FNS-2.6.2: Neighborhood Shopping Improvements--Promote a wider variety and better mix of neighborhood-serving retail shops at the shopping centers at Pennsylvania and Alabama Avenues, and Pennsylvania and Branch Avenues. 10-A DCMR 1716.4.



The Setbacks and Lot Occupancy Allowed under MU-4 conflict with the guiding philosophy of Neighborhood Conservation Areas. The required setback for MU-4 is 15 feet, meaning that new construction will loom over the backyards of its abutting O Street neighbors, destroying their privacy, light and air. The impact of the height will be exacerbated because the shopping center site is higher than O Street. A retaining wall separates the two, with the one-story O Street houses sitting below the shopping center site. With IZ bonus density, the applicable lot occupancy is 75 percent. As the Google Map excerpt below indicates, hardly anything in the area approaches that level of density. Indeed, most of the R-1-B lots are built well-below the allowed 40 percent lot occupancy.



For purposes of comparison, below is a photograph of a matter of right charter school under construction on a flag lot not far from the instant site. The 30-foot high charter school has a (barely) 8-foot side yard, as do the adjacent single family family houses. It obtrudes substially on the residents' privacy, light and air. If this is what a 30-foot building-- built on the same level as the houses -- imagine the impact of a 65-foot building constructed several feet higher than the O Street residences.



Rocketship public charter school under construction at Massachusetts and Alabama avenues.

The SAP calls for "[t]ransition between land uses: New development should physically step down towards existing residential uses, particularly to the side and rear" The issue of step-downs was raised at one point during community outreach without resolution. The applicant has stated that it intends to preserve and renovate the existing building and construct a second building to the rear on what is not the parking lot. Applicant presentations indicate that the loading zone and truck entrance will occur within the 15-foot setback. These are outcomes permitted by the proposed zoning enveloped and thus should be considered in this proceeding, although this is a rulemaking, not a project review. Thus, O Street residents not only will lose air, light and privacy, but also will incur the adverse impacts of a commercial loading zone as their across-the-fence neighbor.

A 65-foot building towering over one-story residents is contrary to

- the intent of the Office of Planning, as expressed in the SAP and adopted by the DC Council
- relevant policies of the Comprehensive Plan's Far Northeast/Southeast Element, to wit:

The community delivered several key messages during these meetings, summarized below: The low density character that typifies most Far Northeast and Southeast neighborhoods should be maintained. While it is recognized that the area contains much vacant land with the potential for infill development, this development should generally be similar in density to what exists today....10-A DCMR 1707.2(a).

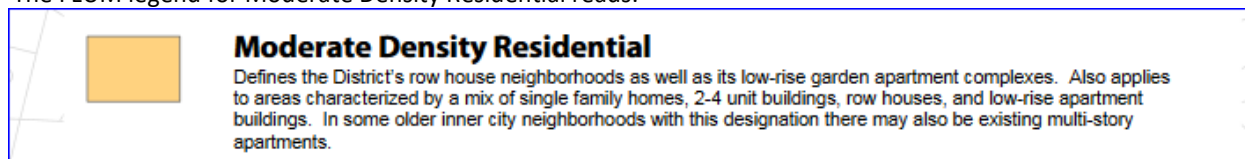
- Comprehensive Plan City Wide policies regarding neighborhood conservation. Penn-Branch is a designated Neighborhood Conservation Areas.

"Neighborhood Conservation Areas should be compatible with the existing scale and architectural character of each area. The guiding philosophy for Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. The diversity of land uses and building types in these areas should be maintained and new development and alterations [should be consistent with what exists]. Densities in neighborhood conservation areas are guided by the FLUM." 10-A DCMR 223.5.

The FLUM legend for Moderate Density Residential is below and encompasses rowhouse neighborhoods, low-rise garden apartments or a mix of these. Those densities are not consistent with a multi-story 65-foot structure.¹

A customized Neighborhood Commercial zone is appropriate for this site. ZR 16 contains numbers neighborhood commercial zones tailored to the needs of individual neighborhoods. Such a zone on the instant site could, at a minimum, address the pressing setback and height issues. Such zone could

¹The FLUM legend for Moderate Density Residential reads:



afford greater leeway to the applicant than and provide a mix of residential and commercial uses consistent with the FLUM guidance.

O Street Neighbors and Friends asks that the application be renoticed for a Neighborhood Commerical zone. Failing that, it should be rezoned to MU-3. Otherwise, rezoning should be denied outright for the reasons stated above.

O Street Neighbors and Friends



Barbara Morgan, Marla Dean, Laura Richards, Coordinators