

## Before the D.C. Zoning Commission

### Case 17-11: Proposed Rezoning of Penn-Branch Shopping Center: Supplemental Statement of O Street Neighbors and Friends Regarding Views

October 16, 2017

As requested by the Commission at its October 2, 2017 hearing on this matter, O Street Neighbors and Friends ("O Street Neighbors") has researched the issue of the right to a view. The issue arose in this matter because the proposed MU-4 zone allows building heights of 65 feet (including habitable penthouses) only 15 feet from the rear lot line. O Street residents, whose rear yards abut the rear lot line of the site proposed to be rezoned, assert that MU-4 zoning adversely impacts their views, privacy, light and air.<sup>1</sup>

It is generally accepted -- and the Zoning Commission has recognized -- that persons generally cannot complain of an obstructed view caused by a structure erected in accordance with *matter or right* zoning regulations. In such a case, the governing regulations are presumed to reflect the appropriate degree of visual impact that new construction may present.

Zoning authorities must consider views under three circumstances:

- when granting relief from matter of right restrictions.
- when required by a specific zoning regulation establishing or preserving a viewshed or line of sight;
- when rezoning land or establishing zoning for previously unzoned land.

The last circumstance -- rezoning a site -- applies to the case under consideration.

**Relief from matter of right restrictions.** The Board of Zoning Adjustment routinely considers the impact of obstructed views in special exception cases, often when a property owner seeks permission to build or enlarge a deck. For instance, in BZA Case 16780 (Dec. 4, 2001), the BZA refused to approve a deck because:

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<sup>1</sup> In preparing this statement, O Street Neighbors consulted with Julie Rones, Esq., counsel for O Street owner Gwen Rose. O Street Neighbors concurs with the conclusions reached Ms. Rones's brief. The planning standards articulated in the brief make clear the relevance of view considerations to the zoning process. The photographs dramatically illustrate the potential adverse impacts of MU-4 zoning.

The light and air of the adjacent properties have been substantially adversely affected by the addition. The addition intrudes well into the rear of the lot, such that the neighbors at 1362 *now have much of their view from their rear bedroom and deck restricted*. In addition, this new addition casts a significant shadow over the lower portions of the adjacent property and restricts circulation of air on the neighbors' smaller, adjacent rear deck. Also, the configuration of the new deck structure unduly compromises the privacy of use and enjoyment of the neighboring property. As stated at the hearing, the new addition enables a person to look directly into the rear bedroom window of the neighbor's property (1462 East Capitol, N.E.) and is large enough to accommodate groups of up to 15 persons.

Order at p.4, emphasis added. Significantly, the Order -- and the regulations on which it is based - do not protect only dramatic, established views such as the viewshed down Pennsylvania Avenue. In the course of considering adverse impacts, the BZA considers whether a building that exceeds matter of right limits unduly obstructs normal everyday views outside an owner's window. In this cases -- and numerous others like it -- the BZA considers blocked views and loss of light, air and privacy under the umbrella of "adverse impacts." The Commission routinely makes similar determinations in Planned Unit Development cases.

**Required by a specific zoning regulation establishing or preserving a viewshed or line of sight.**

As noted in Ms. Rones's brief, some jurisdictions expressly protect seascapes or mountain views. In the District, primary protection is given to the L'Enfant views and views from the escarpment. These circumstances have little bearing on the case at hand.

**Rezoning land or establishing zoning for previously unzoned land.** In these circumstances the Zoning Commission exercises a planning function, guided by the Comprehensive Plan and other relevant documents. See 11 DCMR X-500.3 (In amending the zoning map, "[i]n all cases, the Zoning Commission shall find that the amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site"). For instance, the Plan recognizes and calls for preservation of viewsheds along the District's major L'Enfant streets and avenues, across the McMillan Filtration site and from "the point" at St. Elizabeth's. The Far Northeast/Southeast Area Plan provides general guidance for view protection as follows:

**Policy FNS-1.2.5: View Protection**

Protect and enhance important views and vistas between Far Northeast/Southeast and Central Washington, such as the vistas of the U.S. Capitol and Washington Monument from East Capitol Street. Such views are rare in the District and should be cherished and maintained.

11 DCMR FNS 1709.5.

Drilling down the layers of planning specificity, the Pennsylvania Avenue Small Area Plan ("SAP") addresses view in and around the Penn Branch site as follows:

**Future Vision.** Development in this [Penn-Branch] sub-area, and particularly at the Penn Branch Shopping Center, will respect the adjoining residential neighborhoods, stepping down towards them *and preserving their view sheds whenever possible*.

SAP, p. 66. The SAP states further under Urban Design guidance:

Transition between land uses: New development should physically step down towards existing residential uses, particularly to the side and rear, and provide a buffer of trees and other plantings.

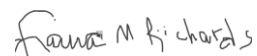
SAP, p. 66. That above guidance applies to the entire Penn-Branch sub-area, not only the Penn-Branch shopping center site. Regarding the Penn-Branch shopping center site in particular, the SAP states:

It is important that any construction on the property respect the adjoining residential neighborhood. For example, the conceptual plan on the following page portrays the bulk of the building located along the street edges, with terraces transitioning down towards the single family homes abutting the rear end of the Penn Branch Shopping Center site.

SAP, p. 67. 1. The SAP also states the D.C. City Council's "intent" that "[t]he height of development at the Penn Branch Shopping Center opportunity site shall be measured from the lowest point of the existing grade." These very specific provisions call for protecting adjacent residents from the visual intrusion of a building mass immediately in back of their homes.

In conclusion, the SAP contains more than adequate protection from undue visual obstructions on the Penn-Branch shopping center site. It now rests with the Zoning Commission to implement the SAP's guidance.

Submitted



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O Street Neighbors and Friends