



ADVISORY NEIGHBORHOOD COMMISSION 3E

TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS
CHEVY CHASE WAKEFIELD FORT GAINES

c/o Lisner-Louise-Dickson-Hurt Home 5425 Western Avenue, NW Washington, DC 20015
www.anc3e.org

Resolution in opposition to a change in allocation of retail space to medical uses for 5335 Wisconsin Avenue NW in Zoning Commission Order 517 (ZC No. 85-16F/84-20P)

Whereas, Clarion Partners LLC, owners of the Chevy Chase Pavilion (the “applicant”) has received provisional approval for a Request for Modification of Plans from the DC Zoning Administrator to enable the applicant to convert retail square footage to medical uses for their property located at 5335 Wisconsin Avenue NW (square 1661, lot #2006) in Zoning Commission (ZC) Case No. 85-16F/84-20P, and

Whereas, in 2012 the applicant completed a \$32 million renovation of their property¹ but never appeared before the ANC before or during the construction, and

Whereas, as a result of this renovation a number of long-term tenants were replaced with new tenants and subsequently some retail space was never filled and other new tenants did not survive resulting in a significant amount of empty retail space, and

Whereas, the Chevy Chase Pavilion (the Pavilion) was approved as part of a Planned Unit Development (PUD) on January 12, 1987 which included zoning changes and the partial closure of a public street and alley and PUD’s require a number of amenities and mitigation measures and among the listed amenities in this case were:

- “The dramatic full height enclosed atrium as an active community place”
- “Support to the Metro system and direct Metro access”
- “Meeting facilities for local government and civic groups”

Whereas, among the conditions of approval of this PUD were the following:

- “There shall be no loading activity, including arrivals, departures, or maneuverings, at the PUD loading facility from 7:00AM to 9:00AM or from 4:30PM to 6:00PM.”
- “The proposed garage for the PUD site shall include a lighted sign which designates at each garage entrance whether the parking garage is full.”
- “The project shall provide a direct connection to the Friendship Heights Metrorail Station.”

¹ <https://www.streetsense.com/news/news-title>

Whereas, the project approved by the ZC in the PUD had specified allocations of square footage between office space, hotel, and retail, *see e.g.*, excerpt from Office of Planning report:

The applicant requests a preliminary review and approval of a Planned Unit Development (PUD) to construct a 592,800-square foot mixed use development consisting of 260,000 square feet of office space, an 162,148-square-foot hotel (200 rooms), and a three-level retail complex of 171,700 square feet.

Whereas, the applicant's request to reconfigure a significant portion of the "three-level retail complex of 171,700 square feet" approved as part of the PUD to medical office use is a significant change and should, with nothing more, require the PUD to be reopened, and

Whereas, ANC 3E additionally believes that converting retail space to medical office use in the atrium will greatly reduce the likelihood that the atrium will be "an active community place," and

Whereas, ANC 3E has found on many occasions that the Pavilion has locked their exterior doors when Metrorail is operating, thus undercutting the amenity of providing "Support to the Metro system and direct Metro access" and that "[t]he project shall provide a direct connection to the Friendship Heights Metrorail Station,"

Whereas, ANC 3E has found on many occasions that the Embassy Suites hotel located within the Pavilion has been unwilling to offer meeting space or even respond to emails requesting meeting space availability which is clearly contrary to the listed amenity from the 1987 order (see attachments), and

Whereas, ANC 3E has observed that the Pavilion continuously uses their loading dock during the hours of "7:00AM to 9:00AM or from 4:30PM to 6:00PM" and furthermore has no signage as required in the PUD order indicating whether the parking garage is full (see attachments), and

Whereas, the 2012 renovation resulted in the addition of rooftop mechanical equipment on a sub-roof of the property on the northwest corner which does not adhere to the DC Zoning Laws required 1:1 setback and has resulted in continuous noise and vibration issues for the immediate neighbors a situation Clarion Partners has refused to do anything to remedy and there appear to be 2 additional zoning violations for rooftop mechanical equipment not meeting the required 1:1 setback (see attachments), and

Whereas, the Pavilion has currently been cited for illegally installing electrical conduit and electric boxes in many of its tree boxes, has illegally enclosed many of its tree boxes and as of today has had Christmas lights illegally encircling all of its street trees (see attachment) and has on numerous previous occasions been cited for illegally working in and occupying public space (see attachment), and

Whereas, a letter to the Zoning Administrator from the applicant's attorney indicated that the applicant only intends to convert internal (non-street facing) retail to medical uses but the approved request for modification contains no limits on which retail space can be converted to medical uses, and

Whereas, according to the Institute of Traffic Engineers Trip Generation Manual, 10th Edition, during the weekday morning peak hour a Medical Office generates 3 times as many vehicle trips (2.78 vehicle trips per 1,000 square feet) as retail (.94 vehicle trips per 1,000 square feet) and similar levels of traffic during the afternoon peak hour (3.46 vs 3.81) and slightly lower levels during a Saturday mid-day peak hour (3.10 vs 4.50) (see attachments), and

Whereas, the community is not responsible for market vicissitudes, the applicant is free to lower rent prices until it can find a tenant for the project that was approved, and if the applicant nonetheless believes it faces a profound financial hardship, it should direct those arguments to the ZC, not the ZA.

Now therefore be it resolved, ANC 3E respectfully maintains that the applicant seeks a significant modification from the project the ZC approved and, without more, this requires the applicant to seek to reopen the PUD at the ZC.

Be it further resolved, ANC 3E believes that the applicants property is non-compliant with a number of conditions of the 1987 Zoning order that enabled its construction and is also in violation of additional zoning and public space laws and under these circumstances believes that, even were it otherwise appropriate for the ZA to grant the relief sought, and we believe it is not, it would be inappropriate for the ZA to grant any relief to the applicant until the applicant resolves these issues and opposes the relief at this time and until the applicant is in good standing.

Be it further resolved, ANC 3E believes the approved modification order is too vague in its scope and would enable the applicant to convert all of its retail space to medical uses if it so chose and will not support any zoning modification that is so vague.

ANC 3E approved this resolution at its meeting on January 10, 2019, which was properly noticed and at which a quorum was present. The resolution was approved by a vote of 0-0-0. Commissioners Jonathan Bender, Greg Ehrhardt, Amy Hall, Jonathan McHugh and Tom Quinn were present.

ANC 3E
By Jonathan Bender, Chairperson