

**TENLEYTOWN NEIGHBORS ASSOCIATION (TNA)
CASE NO. ZC 16-26**

SUPPLEMENTAL POST HEARING SUBMISSION

**ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA**

TNA, a party in opposition, hereby responds to the November 13, 2017 filing of a supplemental post hearing submission (Exhibit 58) by Applicant, Wisconsin Avenue Owner for 4620 Wisconsin Avenue and Wisconsin Avenue Associates Limited Partnership as nominee for 4624 Wisconsin Avenue. Applicant requests a Consolidated Planned Unit Development (PUD) and a related Map Amendment to rezone the Property at 4620-4624 Wisconsin Avenue N.W. ((Square 1732, Lots 45 and 49) from MU-4 to MU-7 to build a 146-unit, eight story (88ft), mixed-use apartment building with approximately 135,942 sq. ft. of gross floor area and 10,984 sq. ft. of retail on the ground floor.

These Post Hearing Submissions are in response to the Zoning Commission request that the Applicant and the Tenleytown Neighbors Association address the applicability to this proposed project of certain Rock Creek West element provisions of the Comprehensive Plan, namely (1) RCW-2.2: Wisconsin Avenue Corridor and (2) Policy RCW- 2.2.5: Land Use Compatibility Along Wisconsin Avenue.

COMPREHENSIVE PLAN GENERALIZED POLICY MAP

Wisconsin Avenue is described as a “Main Street Mixed Use Corridor”, a term used for neighborhood shopping streets characterized by **low-to-mid rise buildings** with ground floor retail and upper floor residential and office uses. **Low-rise residential areas** stretch for many blocks to both the east and west of this entire section of Wisconsin Avenue. These areas are defined as Neighborhood Conservation Areas and consist largely of stable, successful neighborhoods for families and children.

Central to the Comprehensive Plan for the Rock Creek West (RCW) area and the Wisconsin Avenue Corridor are core policies that balance development on Wisconsin Avenue with the conservation of nearby low-rise residential neighborhoods. The UIP project would be inconsistent with these policy priorities.

Policy RCW-1.1.1: Neighborhood Conservation

“Protect the low density, stable residential neighborhoods west of Rock Creek Park and recognize the contribution they make to the character, economy, and fiscal stability of the District of Columbia. Future development in both residential and commercial areas must be carefully managed to address infrastructure constraints and protect and enhance the existing scale, function, and character of these neighborhoods.” (2308.2)

The proposed 8-story project would be higher than all buildings in the area both north and south on Wisconsin Avenue. It would not be consistent with RCW-2.2.

RCW-2.2: Wisconsin Avenue Corridor

“...The scale and height of new development on the corridor should reflect the proximity to single family homes, as well as the avenue’s intended function as the neighborhood’s main street. This means an emphasis on low-to mid-rise buildings rather than high-rise towers or auto-oriented strip development.” (2312.6)

The Zoning Commission made a specific request for additional information, namely clarification about the significance to this proposed Project of Comprehensive Plan sections RCW 2.2 and RCW 2.2.5. However, Applicant has taken the liberty to address or re-address different issues—and never specifically addressed or even referred to RCW 2.2 (presumably because 2.2 is contrary to Applicant’s position).

UIP has the initial burden of proof to justify its application (304.2). It is the Zoning Commission’s responsibility to then determine whether the proposed development has merit and meets the standards of 304.4, which states:

“The Zoning Commission shall find that the proposed development:

- (a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
- (b) Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated., or acceptable given the quality of public benefits in the project; and*
- (c) Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.”*

The Applicant’s proposal at eight stories high would be inconsistent with general policy guidance, particularly as contained in RCW 2.2, because the Comprehensive Plan defines a low-rise building as three stories or less, a mid-rise building as four to seven stories in height, and a high-rise building as eight stories or taller. (Glossary G-19, 25, and 26)

Seven is considered the MAXIMUM height where appropriate. RCW-2.2 says there should be an emphasis on 4 to 7 story buildings but it is for the Zoning Commission to decide where in this range is appropriate and that decision must rest on “the proximity to single family homes.” In this instance the single-family homes are situated directly across an alley from the proposed project.

In addition, the Applicant states in its Supplemental Post Hearing Submission that opponents, such as TNA, have acknowledged that “other buildings in the Tenleytown neighborhood are in the 6-7 story range.” Applicant, page 2 of post- hearing submission. This is a misquotation and is

incorrect. TNA never stated that there are 7-story buildings in the area. TNA stated that the only other building even close to the height being requested was the Babe's building, which is 6 not 7 stories and Babe's is not juxtaposed with single family homes.

Thus, the tallest building in the block between Brandywine and Chesapeake Streets is 6 stories. Even in the Metrorail Station area to the south of the Applicant's project, the tallest building is only 6 stories. Therefore, the "predominant" and "emphasized" height range is 6 stories or lower.

Finally, desperate to demonstrate that its 8-story project is not inconsistent with the Comprehensive Plan, the Applicant resorts to the argument that its 8-story building would not be "perceived" as inconsistent with the predominant height range in the area of 6 stories or less because of topography and, therefore, would not in fact be inconsistent with the Plan.

This argument is incorrect for at least two reasons: 1) The Zoning Regulations and the Comprehensive Plan describe and quantify the dimensions of physical structures, not the perception of them. 2) The argument leads to unacceptable conclusions that are not in compliance with zoning or the plan. For example, the roof of a 5-story building on Brandywine Street, if extended horizontally to the north, would end up as the roof line of a 10-11 story building on Davenport St. Such a result is not contemplated by either the current Zoning District or the Comprehensive Plan.

So, 7 stories are not automatically permitted – even if the Zoning Commission up zones this site to MU-7 and overrides their previous Order 530. And 8 stories are beyond even MU-7 zoning. The existing zoning, MU-4, allows 50 feet unless a PUD is approved, and, if a PUD is approved, then 65 feet, which would only get you to 5-6 stories.

THE UIP BUILDING AT 4620 WISCONSIN WOULD BE THE TALLEST BUILDING IN TENLEYS TOWN.

Is this just a matter of 8-stories versus a maximum of 7 stories or is this a matter of 8 stories (103 feet in the back) versus 50 feet as a matter of right (or 65 feet if a PUD were approved) as allowed by the existing MU-4 zoning?

The Property at 4620 and 4624 Wisconsin Avenue, NW is located in the MU-4 Zoning District, which permits the construction of mid-rise buildings of 50 feet as a matter-of-right and 65 feet as part of a consolidated PUD.

ZONING: HEIGHT AND DENSITY

Applicant's Request compared to existing zoning (assuming an approved PUD in MU-4):

- Height would be 77% greater
[65 feet for MU-4 with PUD versus UIP proposal of 88 feet – 103 feet at the back].
- Density (as measured by the Floor-Area-Ratio or FAR) would be 91% greater

[MU-4 with a PUD at 3.6 versus UIP's proposal of 5.74].

- Lot Occupancy limits would increase by 50%
[MU-4 with PUD allows 75% versus UIP at 89.9%].

For the above measurements, see Exhibits 49 and 50 submitted by TNA as a presentation on September 28, 2017 and Exhibit 33 submitted by Office of Planning (OP) on September 18, 2017.

Even in Applicant's own diagrams, the height adds to more than 103 feet. See the post hearing submission architectural plans, Exhibit 58A at page 17.

As even Applicant states, Exhibit 58, page 2 of their post hearing submission, "...no other building is eight stories tall." Each time a building is approved far beyond zoning, it is stated that it will not set a precedent. And in a way, it doesn't because the next building goes even higher.

Applicant compares their request to MU-7 but 4620 – 4624 Wisconsin Avenue is zoned MU-4 not MU-7. Comparing their request to their request is not a legal argument.

The Applicant in their post hearing submission states that:

The C-3-A Zone, which is the predecessor to the proposed MU-7 Zone, is explicitly listed as a zone that is consistent with that Moderate-Density Commercial land use designation. 10A DCMR § 225.9. The MU-7 Zone is described in the Zoning Regulations as a zone intended for "medium-density mixed-use development located on arterial streets, in uptown centers, and at rapid transit stops", and so it is entirely consistent with the Property's location and its medium-density designation. 11-G DCMR § 400.6. (emphasis supplied by TNA)

The Future Land Use Map (FLUM) is not a zoning map. It defines land areas in terms of their use (residential or commercial) and density (low, moderate, medium or high). The land area of the Applicant's proposed building is designated as Mixed-Use Medium Density Residential/Moderate Density Commercial.

The Future Land Use Map does not contemplate this site being re-designated MU-7. The Applicant seeks the Zoning Commission's approval for construction of a high-rise (8 stories), high-density building in a block that is not located in the Tenleytown Metrorail Station Area and therefore is not identified in the Comprehensive Plan as a preferred location for higher density growth.

Applicant frequently compares their request for 8 stories to their request for MU-7 at 7 stories but existing zoning is MU-4.

The Applicant's 8 story building is not consistent with either the Medium Density Residential category, which is defined by the Comprehensive Plan as 4-7 stories, nor the Moderate Density Commercial category, which is defined as 3-5 stories in height.

The Applicant also argues that the Mixed-Use designation in the Future Land Use Map (FLUM) indicates a desire to encourage “substantial amounts of housing” on the property. However, the Comprehensive Plan does not define the term “substantial” and a 6-story mixed-use building could also be said to provide “substantial amounts of housing” and it would be consistent with the Medium Density Residential definition of the property.

Applicant’s shadow studies never define what they are using as “MOR” or matter of right. See post hearing submission architectural plans, Exhibit 58A at page 14. Are they comparing the difference between their presumptive 7 stories versus their proposed 8 stories? If so, that would explain the very little difference in the shadow results. The difference between 50 feet and 103 feet, would seem likely to cast very contrasting shadows – but we do not know what measurements were used because it is not included in the charts.

The site is located in the Rock Creek West area on Wisconsin Avenue between the Friendship Heights Metrorail Station, a Regional Center to the north, and the Tenleytown-AU Metrorail Station, designated as a multi-neighborhood shopping district nearby to the south.

COMPREHENSIVE PLAN - FUTURE LAND USE MAP (FLUM)

The Comprehensive Plan makes clear that the Future Land Use Map (FLUM) is intended as a general guide to decision-making but not the only source. For example:

“The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including citywide elements and area elements...”[226(d)] and

“The designation of an area with a particular land use category does not necessarily mean that the most intense zoning district described in the land use definitions is automatically permitted.” [226(e)].

Applicant’s proposed building is on lots the Zoning Commission specifically considered and downzoned to restrict to mid-rise, lower-density projects that are consistent with the Comprehensive Plan.

The FLUM should be interpreted in the context of past zoning decisions, current area plans, and other relevant elements of the Comprehensive Plan. In fact, the Rock Creek West Element, Page 23-24, states: “This Comprehensive Plan does not propose any significant departure in policy for the Upper Wisconsin Avenue corridor from the previous Comprehensive Plan.” Given the zoning history, a PUD under the current MU-4 (and not MU-7) zoning designation would be most reasonable and appropriate.

For all the reasons stated above, the Applicant has not met the burden of proof to support a finding that this project is consistent with RCW-2.2. Wisconsin Avenue Corridor.

THE ZONING COMMISSION ALSO ASKED THE APPLICANT TO ADDRESS THE APPLICABILITY OF POLICY RCW – 2.2.5. APPLICANT HAS NOT EVEN MENTIONED THIS SECTION IN THEIR POST HEARING SUBMISSION.

Policy RCW – 2.2.5. states:

Policy RCW- 2.2.5: Land Use Compatibility Along Wisconsin Avenue

“Ensure that future development along Wisconsin Avenue is physically compatible with and architecturally sensitive to adjoining residential neighborhoods and is appropriately scaled given the lot depths, widths, and parcel shapes. Use a variety of means to improve the interface between commercial districts and residential uses, such as architectural design, the stepping down of building heights away from the avenue, landscaping and screening, and additional green space improvements.” (2312.12)

SETBACKS, STEPDOWN, SENSITIVE ARCHITECTURE AND LANDSCAPING.

The Applicant mentions setbacks from the alley and landscaping but note that, with the addition of some potted plants in a new planter, which is dwarfed by the size of the building, there is no greenery to soften the visual effects of the “apparent” and very real size of the building. Trucks will be using the alley and these “setbacks” are for loading and unloading. The “sensitive” architectural design will include “windows” and “brick.” This does not qualify as “sensitive architecture” as envisioned in the Comprehensive Plan.

A building that is 88 feet going to 103 as it traverses the lot from Wisconsin Avenue toward the family homes is “stepping up” NOT “stepping down” so far as the families living in the homes are concerned.

On Wisconsin Avenue, the UIP project would be built on one of the highest hills in DC and on land that slopes downhill 10 ft. from the south to the north end of the building. Rather than stepping the new building down to adjust to the change in elevation, UIP designed the roof to be two stories taller than Tenley View, its immediate neighbor to the south, and five stories higher than the low-rise buildings to the north.

Similarly, the west façade on the alley, which faces low-rise residential areas, rises above the rear alley to a height of over 100 ft. feet at its mid-point or 12 ft. higher than on Wisconsin Avenue. The design provides for a 10-foot set-back for the lowest three floors to allow for a loading dock and only 3 feet for the top four floors where wider set-backs would be most effective. As a result, the proposed design would confront nearby residents with a monolithic wall.

Finally, UIP is requesting relief from zoning limits on Lot Occupancy to allow building on 89.9% of the land area. Approval of this request would further weaken opportunities for transition from commercial to residential land uses by reducing space for landscaping and screening and other green space improvements.

IN ORDER 530, THE ZONING COMMISSION ALREADY DECIDED THAT THE APPROPRIATE ZONING FOR LOTS 45 AND 49 WAS MU-4 NOT MU-7. [previously designated as Lots 801, 806 and 21]

Applicant's request for up-zoning and a Map Amendment are in conflict with the Comprehensive Plan as well as previous zoning approvals granted for the site. No map amendments were included for the Tenleytown area in the recent Comprehensive Plan amendment cycle.

In 1988, after careful consideration in a legislative proceeding, the Zoning Commission downzoned Square 1732, Lots 19, 20, 21, 44, 801, 806, 808, 817, 818, 819, 820, and 821 from C-3-A to C-2-A [ZC Order 530, Case No. 86-17 (1988), p. 11]. Lots 45 and 49 in Square 1732, the subject of this Zoning Application, were formerly Lots 801, 806 and 21. See Lusk District of Columbia Assessment Directory 1987, p. 304.

Since 1988, nothing about the location and circumstances of any Lots in Square 1732 have substantially changed to justify up-zoning to MU-7 (formerly C-3-A). The Red Line of the Metro system was in place in 1988; the Tenleytown Metro station was in full operation and the CityLine condominiums were in the planning stage.

Moreover, the Zoning Commission in four days of public legislative hearings in November 1986, taking testimony from the Wisconsin Avenue Corridor Committee representing 26 civic organizations and 7 ANCs west of Rock Creek Park and receiving correspondence from the DC Office of Planning, three DC City Council members and a number of civic organizations, businesses and residents and thereafter publishing a notice of proposed rulemaking in the DC Register. See ZC Order 530, pp. 1-2 and 6.

Applicant has not argued that the Babe's case was precedent for their request but even if the Babe's Applicant adequately met its burden of proof for its up-zoning, it resulted in an addition of only 6 feet greater height (71 feet) over what that applicant would have been allowed under C-2-A zoning in a PUD application (65 feet).

Since the Zoning Commission already ruled on zoning for this site in Order 530, the Applicant in this case has the burden of proving not only that its Project is not inconsistent with the Comprehensive Plan but also that up-zoning to MU-7 is justified by changed circumstances.

There have been no significant changed circumstances in the area of Lots 45 and 49 since those lots were down-zoned in the Zoning Commission's extensive legislative hearing process resulting in ZC Order 530 in 1988.

Applicant's counsel at the Sept. 29, 2017 Zoning Commission hearing claimed that the *Giant-Cathedral Commons* DC Court of Appeals decision (*Wisconsin- Newark Neighborhood Coalition v. DC Zoning Commission*, 33 A3d 382 (DC App. 2011)) was relevant to Order 530. *Giant-Cathedral Commons* is located more than a mile south of the UIP project, at the intersection of Wisconsin Ave and Macomb St NW. And whatever the

Giant court intended to decide with respect to the Giant project, it neither referred to Order 530 in its decision nor addressed or decided anything relevant to this case, because the circumstances around the Tenleytown Metro Station and the lots at issue here were not at issue in Giant-Cathedral Commons. Therefore, that decision is neither controlling nor relevant here.

Applicant has provided no evidence of significant changed circumstances and, even assuming change in policy would be relevant, has provided no evidence of relevant policy changes since the date of Order 530.

In fact, to put RCW – 2.2.5 in context, the Rock Creek West Element, Page 23-24 to 23-25, states:

“This Comprehensive Plan does not propose any significant departure in policy for the Upper Wisconsin Avenue corridor from the previous Comprehensive Plan. As stated in the prior plan, the Tenleytown and Friendship Heights metro stations continue to be opportunity areas for new housing. Friendship Heights continues to be a regional center, and Tenleytown continues to be a multi-neighborhood center, each with limited opportunities for new retail and residential uses. 2312.4

Between Jennifer and Brandywine Streets, there are a number of vacant commercial buildings on the corridor. Their reuse with new local-serving retail uses and housing is encouraged. Additional measures are needed to upgrade the streetscape, improve traffic flow, and address parking problems. Some of these measures are laid out in a traffic study for the Wisconsin Avenue corridor completed in 2005. 2312.5

Friendship Heights and Tenleytown are stable, transit-oriented neighborhoods, and their conservation should be ensured during the coming years. Thus, several core issues must be addressed as plans for any of the sites around the Metro stations or along the corridor move forward.

Any redevelopment along the corridor should respect the scale of existing neighborhoods, promote walkability, and create a more attractive street environment. The impact of new development on traffic, parking, infrastructure, and public services must be mitigated to the greatest extent feasible. The scale and height of new development on the corridor should reflect the proximity to single family homes, as well as the avenue’s intended function as the neighborhood’s main street. This means an emphasis on low- to mid-rise mixed use buildings rather than high-rise towers or auto oriented strip development. 2312.6

Applicant argues (Exhibit 58, Supplemental Post Hearing Submission, page 3) that the Mixed-Use designation of the Property on the FLUM indicates a desire to encourage "substantial amounts of housing" on the Property, which further supports the proposed rezoning to the MU-7 zone district. 10A DCMR § 225.18. (Other provisions of the Plan, including in particular provisions of the Rock Creek West Element, similarly call for new housing at the Property. See

RCW-1.1.4; RCW-1.1.6.)” But, as stated previously, the term “substantial amounts of housing” is not defined and 6 stories of new housing could easily meet that goal.

Applicant has not and cannot sustain their burden of proof sufficient to up-zone Lots 45 and 49 to MU-7. Because of the lack of such evidence, Applicant’s request for up-zoning should be denied.

Applicant’s proposal is inconsistent with the Comprehensive Plan’s policy of balancing growth on Wisconsin Avenue with conservation of residential neighborhoods, especially in light of previous Zoning Commission approvals of nearby projects that are much lower in height and density.

Applicant’s proposal exceeds the medium-density residential / moderate-density commercial designation on the Future Land Use Map and the Applicant has not provided a persuasive justification for exceeding the limits of that classification.

APPLICANT ARGUES THAT A PUD SHOULD BE GRANTED AND THAT THIS PROPOSAL IS SO EXCEPTIONAL THAT A PUD AT EIGHT-STORIES IS JUSTIFIED. Page 2 of Applicant’s post-hearing submission.

Tenleytown Neighbors addressed this at greater length in TNA’s proposed Findings of Fact and Conclusions of Law.

When examined by the Zoning Commission, any up zoning needs to stand on its own merits as to its appropriateness in the context of the neighborhood. “Public benefits” cannot buy appropriateness. And in this case, the public benefits are not substantial or adequate.

Finally, the Zoning Commission must deny a PUD application if the proffered benefits do not justify the degree of development incentives requested including any requested map amendment according to (305.11), which states:

“The Zoning Commission may not compel an applicant to add to proffered public benefits, but shall deny a PUD application if the proffered benefits do not justify the degree of development incentives requested (including any requested map amendment). Nevertheless, the Zoning Commission may at any time note the insufficiency of the public benefits and suggest how the benefits may be improved.”

The public benefits offered by the Applicant do not justify the extraordinary development incentives requested by the Applicant:

Requested development incentives are extensive:

- A map amendment from MU-4 to MU-7 that would authorize significant increases in building height and density and other benefits.

- Approval of a PUD with additional height and density increases.
- Approval of an Inclusionary Zoning density bonus above matter-of-right.
- Relief from zoning limits on Lot Occupancy.
- Relief from minimum rear yard requirement.

The proffered Public Benefits are grossly inadequate:

- **Housing:** The Applicant offers housing square footage in excess of the amount allowed under matter-of-right, but emphasizes studio and one-bedroom units rather than larger family oriented housing, which is a policy priority of the Comprehensive Plan. (See Housing Element 500.20-21 and Nos. 34-36 above.)
- **Superior Urban Design and Architecture:** The Applicant claims “step downs along Wisconsin Avenue to be consistent with the changing grade, as well as setbacks at the rear of the Project to better transition to the neighboring residential properties.” (Exhibit 2, Applicant Statement of Support, p. 15).

In reality, the building does not step down along Wisconsin Avenue; on the contrary, it is 2 stories higher than the Tenley Hill to the south and rises by 10 feet from the south to the north end of the building. Similarly, the minor 3 feet setback at the rear of the building offers very little in the way of transition to neighboring residences. A more complete analysis is presented above.

- **Uses of Special Value:** The Applicant cites as a “potential benefit” the renovation of the Chesapeake House, owned by the National Park Service. This claimed benefit is unwarranted, since there is no binding agreement or plan for its use and maintenance.
- **Limitations on Future Development:** A conditional promise to limit development to six stories on nearby land that Applicant does not own cannot be considered as a benefit.
- **Brandywine St. Closure and Park:** Removing an “awkward” intersection would have a neutral effect; it would be a minor benefit for some and an irritant for others seeking entrance to Best Buy from 42nd Street. It would only truly benefit UIP, the owner of the adjacent property at 4545 42nd Street N.W.

See generally, Exhibit 49, TNA Statement (submitted Sept 28, 2017)

END NOTE: NEIGHBORS

Although the Zoning Commission did not ask for further comment on the position of the neighbors, Applicant has addressed the topic, when they stated on page 3 of their post hearing submission (exhibit 58) that regarding “*immediately adjacent houses (none... oppose the project and some actively support it). Furthermore, the Property is over 300 feet away from the closest houses of members of the Opponents...*”

As background, one of the immediately adjacent neighbors was scheduled to testify in opposition, accompanied by experts he had personally hired at his own expense. He withdrew 24 hours before the hearing for unstated reasons. In fact, that immediate neighbor in his party status application (Exhibit 14), included in the record and approved by the Commission, stated:

“The height and density of the proposed PUD is not appropriate to the scale and character of the surrounding community and no buffers or mitigation measures are proposed to protect the residential areas behind the building and specifically the houses that abut the alleyway. Mr. Lowery’s property sits directly on the alleyway within 25 feet of the proposed PUD. ...Mr. Lowery believes that the residential and commercial density of the proposed project along with the trash truck, delivery truck, moving truck, motorcycle and automobile traffic it will create in the alleyway will render his home uninhabitable as a residence.”

Two nearby neighbors supported the project. Neither live next to the alley. One neighbor in support has one house between them and a TNA presenter. Is this a significant difference in distance from the project for the impact to be different? Does the opinion of one neighbor count and the opinion of the other not count?

Many of the homes immediately behind the Applicant’s proposed building are absentee landlords. At the October 28 hearing, Applicant testified that ownership of the closest home on the alley had changed hands since the project was proposed and they had been unable to contact the new owner. To ascertain the proximity of that new owner, see Exhibit 58A at p.16 and substitute “carriage house” for “detached garage” because the two buildings are both directly positioned on the alley across from the project. None of the individuals living directly across from this project on the alley have written in support of this project.

CONCLUSION

Applicant in the introductory sentence of their post hearing submission, Exhibit 58, mistakenly claims the Zoning Commission “took unanimous action to approve the Applicant’s proposed Project . . .” In reality, the Zoning Commission approved forwarding this application for review by the National Capital Planning Commission, a step in the process not a final approval.

The Zoning Commission has not yet decided. Indeed, while each of the Commissioners expressed that they “liked” the proposed project generally, they have not voted to approve the Zoning Map Amendment to MU-7 and other provisions necessary for approve.

The Zoning Commission should deny Applicant’s request because Applicant has not met their burden of proof that they are in compliance with the Comprehensive Plan RCW 2.2 and Policy RCW 2.2.5. The proposed height, density, and lot occupancy of Applicant’s proposed project exceeds what is contemplated by the Comprehensive Plan’s policy of balanced growth in a neighborhood of single family homes. The building is not stepped down to accommodate those homes.

The proposed site, 4620 - 4624 Wisconsin Avenue, is not in a designated Metrorail Station Area as evidenced by the Zoning Map and reflected in Order 530 and the Comprehensive Plan. The Plan itself states that no changes were made from the 1989 Comprehensive Plan regarding the Wisconsin Avenue Corridor (see 2312.4). Applicant needs exceptional reasons to justify abnegation of Order 530, and its reasons are not exceptional. Thus, Applicant's proposal does not comply with RCW 2.2.5.

Applicant has not and cannot sustain their burden of proof sufficient to up-zone this site to MU-7. Because of the lack of such evidence, Applicant's request for up-zoning should be denied.

In addition, even taking into account Applicant's asserted "public benefits," the Applicant does not meet their burden of proof for a PUD and Map Amendment, given the very extensive development incentives - changes in zoning - requested.

If the Zoning Commission does decide to approve this project, it should be approved only insofar as it can be done within MU-4 PUD requirements and standards.

If the Zoning Commission determines that the Commission cannot amend but only approve or disapprove an Application, then this Application should be denied.

Certificate of Service

The undersigned hereby certifies that copies of the foregoing document will be delivered by first class mail to the following persons on November 20, 2017.

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