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INSTITUTE FOR PUBLIC LAW

GEORGETOWN UNIVERSITY LAW CENTER
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November 30, 1979

M E M O R A N D U M

TO: Gary Kopff
Vice-Chairman
Advisory Neighborhood Commission 3C

FROM: Suzan Aramaki

RE: Tregaron Estate Development: Research Project Design

In response to your November 21, 1979, request for legal services, this memorandum represents the first step in an analysis of both the possible legal proceedings arising from the development of the Tregaron Estate and the resulting options available to ANC 3C and citizen organizations regarding citizen input into development decisions. The purpose of this memorandum is to identify preliminary issues, and develop an organized approach to researching those issues.

I. Background

The Tregaron Estate is 20.69 acres of land located in Northwest D.C. between Klingle Road and Macomb Road. The land is heavily wooded and contains a large mansion and several appendant structures. The buildings are currently being used as a private school by the Washington International School under special exception granted by the Board of Zoning Adjustment. Otherwise, the property is zoned for low density single family residential use as follows:

(a) 20.52 acres are zoned R-1-A (minimum lot area: 7,500 sq. ft.; minimum lot width: 75 feet);

(b) 7,255 sq. ft. are zoned R-1-B (minimum lot area: 5,000 sq. ft.; minimum lot width: 50 ft.).

Under a recent court order, the land is to be sold under the direction of a court-appointed trustee, James Crooks, Esq.

II. Present Limitations on Development

A. Historic Landmark Development

(1) Entire estate was designated an Historic Landmark on February 16, 1978.

(2) Legal effect: Under D.C. Law 2-144 no demolition, alteration, subdivision, or construction is allowed unless the Mayor issues a permit after finding that an alteration, etc., is (a) necessary in the public interest, or (b) unreasonable economic hardship to the owners would otherwise result.

(3) Research Objectives:

(a) Investigate case law, especially zoning cases, on what is considered "necessary in the public interest".

(b) Investigate the case law as to what level of profits are necessary to ensure that no "unreasonable economic hardship to the owners" would occur. See BZA variance/ hardship cases.

(c) Determine whether the Mayor has delegated his decisionmaking power on these issues to the Zoning Commission or other agency.

(d) Determine whether the resulting limitations on development constitute an unconstitutional taking of private property without compensation.

B. Scenic Easement

(1) The National Capital Planning Commission (NCPC) obtained a scenic easement for 8 acres along Klingle Road although the $48,000 compensation agreed upon for the easement in 1960 has not yet been paid and the easement has not been recorded.

(2) Legal effect: The terms of the easement prohibit the removal of any trees or shrubs and the construction of any structure on the 8 acres, with the exception of construction necessary to ensure the owner's access to the property.

(3) Research Objectives:

(a) Determine the character of the scenic

easement; easement or covenant?

(b) Investigate the validity of the easement in light of the NCPC failure to pay consideration and the fact that it has not been recorded. Was the easement contingent on payment?

(c) Determine the validity of the easement with respect to subsequent purchasers if the land were transfered and the transfer recorded before the easement was recorded. What is the effect of such a purchaser's actual knowledge of the easement?

(d) Investigate the possibility of inverse condemnation of the remaining part of the estate by virtue of the limitations imposed by the easement on the remainder of the property.

C. Topography of the Property

(1) A stream runs through the land and much of the property is situated on sharp inclines.

(2) Legal effect: The physical characteristics of the property have an important influence on the actual uses which can be made of the property within its zoning classification. In particular topography is an important factor in any determination of economic hardship.

(3) Research objectives: Investigate the kinds of topographical features which have been determined by the BZA to cause hardship, and identify the criteria used in those determinations.

D. Zoning

(1) Aside from the limitations imposed by the scenic easement and historic landmark designation the current zoning classification imposes severe restrictions on development because for the majority of the property it is the most restrictive zoning classification. See description of zoning classification in Part I (above).

(2) Legal effect: The current restrictive zoning may limit possible uses so severely as to constitute hardship.

(3) Research Objectives:

(a) Determine what uses are allowed under current zoning, especially those uses permitted under special exception.

(b) Investigate how restrictive zoning limitations can be on an owner's economic return from his property before hardship would result.

(c) Determine if any permitted uses would yield an economic profit.

(d) Investigate the effect of a transfer of the property on the new owner's claim of hardship.

III. Development Options with Respect to Present Limitations

A. Continue Present or Similar Use: This was the option considered by the appraiser as the only feasible use under current limitations. The principal question is one of economic feasibility. Under the present lease arrangement, the rents paid by the Washington International School barely pay the property taxes. This does not include the substantial debt service which any purchaser would necessarily want to have covered by income from the property.

B. Foreign Embassy: Embassies are allowed as of right under the current R-1-A zoning. Problems may arise, however, if chancery uses become housed on the property, since an act of the Council soon to become effective would exclude establishment of such a use. There are also problems of diplomatic immunity where non-confirming uses are initiated by a foreign embassy.

C. Subdivision/Planned Unit Development/High Density Residential Development: Any development along these lines would require comprehensive rezoning, as well as overcoming the scenic easement and historic landmark limitations. (See below).

IV. Opportunity for Citizen Input in the Forums for Government Decisions on Development

A. Mayor: Under D.C. Law 2-144 the Mayor is technically charged with responsibility for issuing permits to develop historic landmarks; he determines whether development is in the public interest or whether hardship exists.

(1) Research Objectives:

(a) Determine whether the Mayor has delegated that responsibility to an agency.

(b) If not, do ANCs have the same rights to notice and comment and "great weight" as regarding decisions by the Mayor as they do regarding agency decisions? Under Section 13(a) of the ANC Act, D.C. Law 1-21, it is clear that ANCs have the same rights to notice and comment, but 13(d) requires only agencies to give "great weight" to ANC views.

(c) Determine whether a public hearing is required before a permit under D.C. Law 2-144 may be issued? Is the D.C. A.P.A. applicable?

B. Joint Committee on Landmarks of the National Capital: The Joint Committee made the initial determination to designate Tregaron as an Historic Landmark.

(1) Research Objectives:

(a) Determine whether it is possible for the Joint Committee to withdraw an historical landmark designation.

(b) If so, determine what the official character of the Committee is. Is it an agency of the D.C. government such that ANC notice and comment rights would apply?

(c) Do the provisions of the Administrative Procedure Act apply to Committee decisions?

(d) Would a hearing be required before the Committee could make a decision? Would this be a contested case under the A.P.A.?

C. Zoning Commission:

(1) Conventional map change: Assuming that other obstacles could be overcome, developers might petition the Commission for a map change to rezone for a less restrictive use. The Commission could grant the request as long as the new zoning classification was not inconsistent with the Comprehensive Plan for the National Capitol (promulgated by the NCPC). Under a 1977 Court of Appeals case, Cap. Hill Resoration Society v. ZC, 380 A.2d 174, proceedings before the Zoning Commission for map changes concerning individual parcels are conducted under the contested case procedures of the A.P.A., D.C. Code 1-1509. From the point of view of the ANC this type of procedure is preferable since the "great weight" requirements are much more rigorous for contested cases under Kopff than for rulemaking. In essence this means that the ANC will be able to have its concerns addressed point for point as well as having rights of cross-examination, rebuttal, etc. On the other hand, other

citizen groups may not have the same status as the ANC and would therefore have to rely on the ANC to call their spokesmen as witnesses in order to be assured a chance to participate in the hearing.

(a) Research objective: Examine the rules of procedure for contested cases before the Zoning Commission as to what parties may participate as of right. Make certain that map change proceedings would be governed by contested case procedures.

(2) Area rezoning: The Zoning Commission could elect to open the proceedings for rezoning of the entire area containing the Tregaron property. Under Schneider v. Zoning Commission, 383 A.2d 324, this well within the discretion of the Commission, and given the size of the parcel and the likely impact of its rezoning on the surrounding area, that might be a real possibility. If so the rulemaking procedures would apply. At the very least ANCs and citizen organizations would be able to submit evidence, just like any other citizen. However, with regard to "great weight" requirements, there is less certainty. One of the Administrative Law Unit students has just completed a memo on this subject. Although Steven Sher currently indicates that ANCs concerns are addressed in the Statement of Reasons where the property under consideration in a map change is within a particular ANC, this does not guarantee the adequacy of the Commission response within the statement of reasons. There is no case yet which addresses the adequacy of "great weight" findings in rulemaking.

(a) Research objective: Examine the judicial treatment of the "great weight" requirement to ascertain what findings are required for rulemaking, and in particular whether less detailed findings are necessary. Develop tentative guidelines for agency "great weight" findings under rulemaking.

(3) Planned Unit Development (PUD): A PUD is similar to a map change in that it would proceed under contested case procedures. The difference is that the Zoning Commission and BZA

are able to retain much tighter control over the character of development once approval is given, including imposing covenants running with the land (see below). One thing that can be counted on with a PUD, however, is intensive development, which may be antithetical to ANC objectives.

(a) Research Objectives: Investigate the PUD procedures, and in particular the opportunities for ANC and citizen input in the initial approval process before the Zoning Commission and in the later implementation process before the BZA.

D. Board of Zoning Adjustment (BZA):

(1) Variance: This is the most likely and least expensive approach which a developer can take. The basic issue is whether the owners of the land are experiencing exceptional hardship, although the issue is not as simple as it sounds. Hardship is a function of the character and situation of the property as it relates to the zoning restrictions imposed on the property. The hardship exists only to the point where restrictions cease to deprive the owner of a reasonable profit. In short, where an R-1-A classification may make development unfeasible, an R-1-B classification may not. Another factor is that hardship may not be self-imposed. In this regard close examination of the circumstances surrounding the scenic easement may be necessary. If the owners voluntarily transferred that interest in their property, they may not now be permitted to claim hardship based on the development limitations imposed by the easement.

(a) Research objectives: Determine what variance would be necessary to establish a tennis club (permitted in R-4 districts).

(2) Special exception: The BZA may allow certain uses like schools, charitable institutions, or community centers, provided that such use is in harmony with the zoning maps and does not adversely affect surrounding property.

E. Department of Environmental Services: DES is responsible for issuing certificates that adequate sewer capacity exists. On behalf of ANC 5C the Harrison Institute has studied the question of whether ANC rights to notice and comment apply to such permits, but the answer to that question has yet to be resolved. While a test case may ultimately be necessary to guarantee ANC rights in this area, initial attempts to resolve the issue should be political and are therefore outside the scope of the Institute's involvement. Regarding problems rainwater runoff, however, no real basis for objection can be anticipated, since a stream running through the property empties into Rock Creek nearby.

F. Superior Court: The controversy currently lies in D.C. Superior Court. In this regard a number of preliminary decisions must be made by the court and the trustee. Among those aspects of the court action that will require further research are the following:

(1) What are the statutes, if any, which govern the partitioning and sale of land by court appointed trustees? Does such a statute cover sales proceedings or is the method of sale within the discretion of the trustee, subject to fiduciary limitations?

(2) Are the terms of the trustee's appointment such that the land must be sold, even if no buyer can be obtained at the $3.5 million appraisal value? Does the trustee have the authority -- or the duty -- to hold the property off the market?

(3) Is the trustee bound by his fiduciary duty to put the property up for public bidding? Who would administer the bidding and award; the trustee or the court?

(4) Given the number of contingencies involved in any development scheme for this property the decision as to who is a "responsive bidder" may be determinative. What criteria should be applied by the trustee to determine who is a responsive bidder? Does this open the proceeds to negotiated bids where the proposal of the high bidder is not initially responsive?

IV. Private Regulation of Land Use

A. Restrictive covenant imposed on the land by the developer as part of an agreement with citizen groups: This may be the best means for nearby residents to leverage some control over the development of the property, since their primary bargaining chip is the possibility of obstructing development through opposition. This is particularly true since zoning authorities are likely to give considerable weight to the views of residents affected by development.

(1) Research objective: determine what is necessary to make such covenants binding.

B. Covenants imposed as a condition of Zoning Commission approval: This may run into problems with contract zoning, which is illegal.

(1) Research objective:

(a) Determine the parameters of contract zoning and identify legal convenants imposed as part of a development scheme.

(b) Distinguish covenants imposed by the Zoning Commission and BZA as part of a PUD.

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

TESTIMONY - PUBLIC HEARING ON

Confirmation of Mayoral nominees to
D.C. Commission on Aging

November 30, 1979
Council Chambers - Room 500
District Building

Madam Chairperson, Mrs. Winters and Members of D.C. Council. I am very pleased to have this opportunity to speak in support of the re-appointment of Mr. Stuart L. Knoop to continue service on the D. C. Commission on Aging for a three year term ending October 28, 1982. I speak for Advisory Neighborhood Commission 3-C as well as for myself. The vote at the monthly business meeting of the Commission on November 26, 1979 was unanimous in favor of supporting this re-appointment to be conveyed to you through my statement.

My name is Ruth Haugen, I live at 2800 Woodley Rd. N. W. I am an Advisory Neighborhood Commissioner, recently re-elected for a third term and have carried responsibility for the Human Resources and Aging concerns during this period.

As documentation for support of this re-appointment, I am attaching the copy of the letter submitted to Mayor Barry in support of the re-nomination.

For Advisory Neighborhood Commission 3-C and myself, we urge that this nomination be confirmed. we look forward to continuing our association with Mr. Knoop in the interests of the concerns of our older adult population in the neighborhood, in the Ward and in the District. Thank you. Ruth Haugen Tel: 232-1468

Single Member District Commissioners, 1978-1979

01-Fred Pitts
02-Ruth Haugen
03-Bernie Arons
04-Lindsley Williams
05-Katherine Coram

ANC-3C Office
2737 Devonshire Place, N. W.
Washington, D. C. 20008
232-2232

06-
07-Gary Kopff
08-
09-Louis Rothschild
10-David Grinnell

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

19 November 1979

N O T I C E :

The November meeting of Advisory Neighborhood Commission 3C will take place on Monday, November 26, starting at 8:00pm; the meeting will take place at the Second District Police Station on Idaho Avenue between Macomb and Newark Streets, NW.

Topics for discussion include:

- Report on ANC elections
- Zoning items:
  - Update on 79-12 and 77-46 (Rules of Practice)
  - Article 54 (Case 79-16; action needed)
  - Sheraton Park (action possible)
- Transportation
  - Reno Road demonstration
  - L-4 short runs/full loads
- Addressograph capacity
- 3C Funding
- McLean Gardens
- Newsletter
- Tenant Guide
- And other topics .....

The public is invited to attend and, as time may permit, participate in the discussion.

HAVE A HAPPY THANKSGIVING.

Illustration of Strategy
Licenses of Neighborhood Significance

ANC and citizen input ↓ / Licences affected →	Specific Targeted License (like public space or night building permits.)	Building and Demolition permits	Business license and Permits Branches — with specific limitations*	All Licenses of "Neighborhood Significance across the board
Receive Notice of Application by Mail	No significant strategic advantage over broader coverage.	This has strong support of statute and would be easiest option to impliment.	This has weak support of statute but it is most desirable and arguably quite practical.	Agencies would probably defeat this by attacking administrative burden.
Press Great-Weight on license agencies		Probably would inhibit attraction of allies by placing too much emphasis on ANCs. →	→	
Allow citizens to initiate Appeals and Review		A logical extention of notice and the most efficient way to institute citizen participation	Needed to give meaning to notice provision above.	
Add consideration of "Neighborhood Impact" to license process	↓	A major policy change and administrative burden — probably best to work on this later. →	→	↓

* EXCLUDE: (1) all identification and specific "minor" business licences — leaves 15,000/year
(2) all business licence renewals (same size business) — leaves 3,000/year
(3) all applications for the "central business district" — leaves ???

(ADD ONLY "Building and Demolition" Permits — 800/year)

Appendix C

PERMIT BRANCH MONTHLY REPORTS

	Sept. 1979	Aug. 1979	July 1979	June 1979	May 1979	April 1979	March 1979	Feb. 1979	Jan. 1979	Dec. 1978	Nov. 1978	Oct. 1978	Totals
New row and semi-detached houses	16	9	16	15	8	43	48	2	16	14	94	19	300
New detached dwellings	10	15	9	23	16	3	6	3	6	7	15	14	127
New apartments	3	1	2	1	1	8	11	-	1	2	5	2	37
New churches	1	-	1	1	1	1	3	-	-	2	-	1	11
New office buildings	2	1	4	2	3	1	1	-	-	2	2	3	21
New retail stores	3	-	-	1	-	2	2	-	2	1	1	2	14
New banks	-	1	-	-	-	-	-	-	-	-	-	-	1
Residential repairs (brick)	223	300	291	270	285	312	274	136	197	152	272	355	3,067
Residential repairs (frame)	30	33	40	27	45	37	29	25	21	24	19	28	358
Commercial repairs	57	76	78	73	60	80	62	43	62	63	54	55	763
Swimming pools	3	5	5	4	9	5	3	-	1	1	6	9	51
Retaining walls	9	9	8	7	10	12	5	3	-	1	6	11	81
Garages (brick)	5	11	4	8	2	11	9	-	2	3	3	-	58
Garages (frame)	3	-	-	-	-	-	-	-	-	1	-	-	4
Sheds	2	9	2	7	8	3	1	1	1	1	2	2	39

PERMIT BRANCH MONTHLY REPORTS

	Sept. 1979	Aug. 1979	July 1979	July 1979	May 1979	April 1979	March 1979	Feb. 1979	Jan. 1979	Dec. 1978	Nov. 1978	Oct. 1978	Totals
Machinery tanks	5	3	2	3	-	3	9	3	2	6	1	4	41
Elevators	11	6	18	16	11	24	7	8	14	24	11	9	159
Plumbing	783	1023	988	676	874	846	644	485	855	614	1042	910	9,740
Refrigeration	118	120	73	135	140	117	153	156	94	89	122	83	1,400
D.C. operations (over $100,000)	-	8	1	3	3	2	3	-	5	-	6	2	33
Apartment repairs	4	3	9	-	-	-	-	-	-	-	-	-	16
Apartment plumbing	5	2	3	-	-	6	2	4	3	-	-	3	31
Buildings erected - masonry	35	20	30	46	30	58	79	5	25	29	119	73	549
Buildings erected - frame	-	-	-	-	-	-	-	-	-	-	-	-	-
Buildings razed - masonry	22	30	18	17	4	33	11	14	18	22	11	18	218
Buildings razed - frame	5	3	3	1	4	4	1	-	-	1	2	3	27
School repairs	-	5	-	-	-	-	-	-	-	-	-	-	5
Hospital repairs	-	-	-	-	-	-	-	-	-	-	-	-	1

Mendelson

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

26 November 1979

Honorable Ruby McZier, Chairperson
Zoning Commission of the
District of Columbia
District Building, Room 9-A
Washington, D.C. 20004

Dear Mrs. McZier: Re: 79-9 (new C-3-B district)

This is in further response to the Notice published by the Zoning Commission to consider amending the text of the Zoning Regulations of the District of Columbia to create a new zone district, C-3-B; this response supplements our earlier comments of September 2.

The additional issue brought to the attention of the members of Advisory Neighborhood Commission 3C since the submission of our letter to you of September 2 is that the Commission seems to have adopted a policy of not providing Advisory Neighborhood Commissions across the city "great weight" in legislative cases -- at least when the comments or concerns raised are city-wide in character. For example, no Statement of Reasons has yet been issued in Case 79-12 (amending the rules of procedure before the Board of Zoning Adjustment) on which we commented -- and we are informed that there is no intention of issuing such a Statement. This is, if true, unfortunate and possibly subject to legal challenge.

Returning to the matter of the proposed new C-3-B zone district, our comments of September 2 were of a general nature raising generic issues. These issues remain, in our eyes, valid. Central to them was a concern that the preambles to the various C-3 districts not contain unqualified statements of appropriateness of these zone districts to areas near "rapid transit stops."

While this comment is pertinent across the entire city, it is also a matter of direct concern to this Advisory Neighborhood Commission inasmuch as our area includes two such stops (Woodley Park/Zoo and Cleveland Park) and is adjacent to and served by two others (VanNess/UDC and Tenley Circle).

Citizen groups within our area, notably the Woodley Park Community Association and Citizens for City Living have prepared plans for Woodley Park and Cleveland Park, respectively. These plans, which have the approval of their respective communities and the general approval of this Advisory Neighborhood Commission, do not suggest the need to have anything

like the type of activity or intensity of activity that would be permitted in either the C-3-A or C-3-B zone district in the existing commercial areas or in their nearby residential areas (as presently mapped).

Our understanding of the recommendations of the Tenley Circle Sectional Development Plan is similar: neither C-3-A nor C-3-B zone classifications would be appropriate. Only in the case of VanNess/UDC (within Advisory Neighborhood Commission 3F) might the newly proposed preambles not seem out of line.

Our recommendation in this matter remains as stated in our September 2 letter: drop the references to "rapid transit stops" and "uptown centers" from the preamble statements to the existing C-3-A district and the newly proposed C-3-B district.

Should these references remain, we feel considerable harm may come to the communities we represent. Should these references remain, we feel the communities involved are entitled to knowing why both in general terms and in ones more specific to the areas around the Woodley Park/Zoo and Cleveland Park rapid transit stops and hereby ask that the Zoning Commission issue an appropriate Statement of Reasons which provides "great weight" to the advice provided herein and in our letter of September 2.

This letter was adopted by resolution of Advisory Neighborhood Commission 3C at its meeting of November 26, 1979.

For the Advisory Neighborhood
Commission 3C,

Lindsley Williams, Chairperson

cc: Assistant City Administrator
for Planning and Development
Chairperson, Advisory Neighborhood Commissions 3E and 3F
Honorable Polly Shackleton
Honorable David Clarke
President, Woodley Park Community Association
President, Citizens for City Living
President, Cleveland Park Citizens Association

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

November 26, 1979

The Honorable Ruby McZier
Chairman, Zoning Commission of
the District of Columbia
District Building, Room 9-A
Washington, D.C. 20004

Dear Mrs. McZier: Re: Case No. 79-16 (Article 54)

This is in response to the Notice published by the Zoning Commission of the District of Columbia announcing your intent to hold a public hearing to consider an amendment in the Zoning Regulations of the District of Columbia relative to Article 54 "Exceptions to the Use, Height, Area, and Bulk Regulations for Commercial Districts" and related provisions of other Articles in Chapter 5, particularly Article 53.

As you know, this public hearing follows emergency action which the Commission took in late September (in Order 295) when it recognized a situation in which there was a clear threat to the public welfare regarding the existing, but vulnerable, supply of housing. We applaud you and the Commission as a whole for taking this emergency action -- and a set of related actions regarding hotels pending final decisions in Case 79-1 -- and will urge that the policy direction set in Order 295 and the related Orders pertaining to hotels be made permanent.

Background:

Prior to the issuance of Order 243 in November of 1978, the scope of Article 54 was restricted to circumstances involving the rezoning of property from one commercial district classification to another (section 5401.1). The text of the Article was structured so as to supplement, in effect, the provisions of Article 71, "Nonconforming Uses and Nonconforming Structures" basically by saying that uses validly existing before a map change might convert to any other use allowed before the map change within the property in question. In addition, it allowed any such use to expand within the limits of the structure in place at the time of the map change; it prohibited, however, the expansion of the structure or land area involved (section 5402.2). A serious question exists of the rationale for ever permitting the conversion of one use precluded by a map change to another and we sense there is a need for a complete assessment of the need for this Article 54 on your.

calendar in the near future, particularly in light of the underlying requirements of the Zoning Enabling Act (56 Stat. 122). Section 1 of that Act concludes that regulations issued by the Zoning Commission --

> ... shall be uniform for each class or kind of building throughout each district, but the regulations for one district may differ from those in other districts.

The effect of Article 54, even before Order 243, was to undermine the integrity of the zone district scheme.

Order 243 expanded the scope of Article 54 so that it would apply not only to map cases but also to those circumstances in which the regulations applicable to commercial districts were changed by amendments to the "... use, height, floor area ratio, lot occupancy, yard or court requirements for any or all the Commercial Districts." This Order accompanied related Orders effecting changes in these very regulations growing out of Cases 78-1 and 78-2.

Among the changes made to the text of the Zoning Regulations in these Cases were highly desirable regulations designed to promote the development of mixed use districts. This was done by establishing a differential schedule of maximum permitted floor area ratios in the commercial districts at section 5301.1 which is repeated below in pertinent part:

Maximum Permitted Floor Area Ratio (FAR)

District	Apartment House or Other Residential Use	Hotel or other permitted use	Maximum Permitted
C-1	1.0	1.0	1.0
C-2-A	2.5	1.5	1.5
C-2-B	3.5	1.5	3.5
C-2-C	6.0	2.0	6.0
C-3-A	4.0	2.5	4.0
C-3-B	6.5	6.5	6.5

The table of maximum permitted FAR sets forth the Zoning Commission's decisions on the types and densities of uses that can be sustained in the various Commercial Districts -- or so we had thought.

This was, of course, a change in the text of the Zoning Regulations affecting "one or all of the Commercial Districts." Thereby, the provisions for expansion of use at section 5402.2 became a viable option for all property owners to consider.

The option became particularly attractive for owners of the larger apartment houses which had been built in the commercial districts before, usually well before, the adoption of the current Zoning Regulations in 1958. Many of these buildings are substantially more dense than would be allowed any use under the present regulations as amended in 1978.

Specifically, owners of such properties appear to be able to convert apartments and bachelor apartments to offices or other commercial uses allowable in the zone district in question -- even if the total FAR resulting were to exceed the maximum permitted in the table established in the Zoning Regulations.

In fact, such a process was underway in some areas of the city and threatened others. This led to appeals by citizen groups for emergency action in September 1979 and the issuance of an Emergency Order.

The Emergency Order (Number 295) maintained the table of FAR limits for buildings or structures for which an application for a building permit was filed on or after November 17, 1978 (the effective date of Order 243) and went on to establish the principle that the FAR devoted to "hotel or other permitted use" be firmly limited to that shown in the table. The Emergency Order did this by providing explicit text so providing at section 5301.12 and amending section 5402.2, which had permitted unchecked expansion of a use within a structure, to indicate that the limits of section 5301.11's table were to be followed totally in the matter of hotels and other permitted non-residential uses.

Case 79-16 is to consider making the provisions of the Emergency Order permanent.

Interest of Advisory Neighborhood Commission 3C:

The area served by ANC 3C includes about 20,000 persons living in some 8,000 housing units. Of these, some 4,000 are dwellings (single family, row housing, etc.) and 4,000 are apartments. Many of the apartments have been converted to condominiums or cooperatives, or are in the process of being so converted -- leaving only a minimal percentage of units available for rent. Some of the rental apartment units are located within our commercial districts -- all told we estimate some 300 units are at risk of being lost if the changes proposed are not made permanent. A chart is attached identifying these. Similarly, we have prepared a map for your consideration showing the locations involved (copies not available, original only).

Thus, we feel that we have a direct stake in the outcome of Case 79-16 as it could very well impact on the persons we are charged with representing. The Case, of course, is city-wide in nature.

Because of this direct interest, we hereby request the Zoning Commission to issue a Statement of Reasons in regard to this case for those items we suggest but which you choose not to follow in terms applicable to the properties listed in the attached table. We request this as a means of insuring that you provide us, and other Advisory Neighborhood Commissions that may choose to participate in this case, with the "great weight" provided under D.C. Law 1-21.

Immediate Recommendations:

Article 53 -- Adopt changes proposed in Hearing Notice.

Article 54

Section 5401 -- Although no changes were proposed in the Hearing Notice, it appears as if the Commission can consider a wide variety of suggestions within the scope of the Hearing Notice as long as they relate to Article 54.

First preference: Delete Article 54 altogher and rely, instead, on Article 71 and process of BZA review of cases where this poses severe difficulties which can be relieved by variance without substantial public detriment.

Second preference: Delete the portion of Section 5401.1 which was added by Order 243, i.e. restrict scope of Article 54 to changes made as a result of map cases.

Section 5402 -- First preference: Eliminate the section altogether and restrict the scope of Article 54 to structures (section 5403).

Second preference: Delete first sentence of section 5402.2 that allows one previously allowed use to change to another, even though no longer permitted and retain sentence allowing extension of existing uses but only with proviso stated in Hearing Notice, namely the absolute limits of non-residential use provided within section 5301.11.

Third preference: Retain sentence of section 5402.2 allowing extension of existing uses with proviso as in Second preference above.

Article 54, con't.

General -- We urge the Commission to continue to declare all aspects of hotels, including sleeping rooms and suites, as a non-residential use in the application of the limits imposed in the table in section 5301.11.

Long Term Recommendations:

Over the longer term, we sense that there is a need to see whether the city can afford to allow unchecked loss of apartment houses to other uses without some arrangement for the development of replacement housing. But for the fact that such a suggestion is clearly outside the bounds of the Hearing, we might have suggested same in this proceding.

Second, the comments and suggestions made in the course of this letter suggest there is a fundamental problem with the design of Article 54, particularly as it relates to uses (as against structures) -- even a possible legal issue under the Zoning Act.

These two matters, taken together, suggest the need to call a two-purpose hearing in the near future one aspect of which would relate to Article 54 in general along with Article 71 and similar provisions in other sections of the Zoning Regulations relating to nonconforming uses and nonconforming structures. The second aspect would be to consider the matter of apartment houses in commercial districts and other mixed use districts. Under this portion consideration could be given to the development of replacement housing. It could also provide a forum in which to provide suggestions on whether there are other physical arrangements needed for mixed use buildings as in separate entrances and limitations on the stories of a building in which certain classes of use occur (for example, an apartment unit should not be located anywhere near a disco ballroom even if allowable under the FAR table).

Conclusion:

Thank you for scheduling a hearing on the problems posed in Article 54 of the Zoning Regulations and for taking effective emergency actions. We hope you can develop effective long-term solutions based on the Hearing Notice and suggestions contained herein.

This letter was approved by the members of Advisory Neighborhood Commission 3C in the course of their meeting of Monday, November 26, 1979.

BY RESOLUTION OF THE COMMISSION,

Lindsley Williams, Chairperson

Attachment - Listing of Apartment Houses Located in Commercial Districts in the Area Served by ANC 3C

Associated Document - Map of Area showing locations of Apartments (original only, no copies)

cc: Assistant City Administrator for Planning and Development
Honorable David Clarke
Honorable Polly Shackleton
Honorable Willie Hardy (Cte. on Housing)
Chairpersons, Advisory Neighborhood Commissions 1-C, 3-B, 3-E, and 3-F

Apartment Houses Located in Commercial Districts in the Area Served by ANC 3C

Address	Present Use	No. of Apt. Units	Estimated F.A.R. Res.	+ Com.	= TOT.	Zone Class	Allowable F.A.R. Res.	Com.	MAX.
2659 Connecticut Ave.	Mixed	20*	3.0	0.3	3.3	C-2-B	3.5	1.5	3.5
3000 Connecticut Ave.	Mixed	4**	0.1	1.9	2.0	C-2-A	2.5	1.5	2.5
3432 Connecticut Ave.	Mixed	10*	1.7	0.8	2.5	C-2-A	2.5	1.5	2.5
3446 Connecticut Ave.	Mixed	40*	4.0	0.5	4.5	C-2-A	2.5	1.5	2.5
3520 Connecticut Ave.	Mixed	12*	2.5	0.8	3.3	C-2-A	2.5	1.5	2.5
2755 Macomb Street[f]	Mixed	40*	4.0	0.3	4.3	C-2-A	2.5	1.5	2.5
2911 Newark Street***	Mixed	12*	1.0	0.5	1.5	C-2-A	2.5	1.5	2.5
2902 Porter Street	Mixed	32	4.0	0.5	4.5	C-2-A	2.5	1.5	2.5
4105 Wisconsin Avenue[f]	Mixed	50*	4.0	1.0	5.0	C-3-A	4.0	2.5	4.0
4115 Wisconsin Avenue[f]	Mixed	50*	4.0	1.0	5.0	C-3-A	4.0	2.5	4.0

* Estimated
** Count and other figures for commercial depth only (estimated)
*** Deed covenants further restrict uses of this property and there are unanswered questions about where the zone district line runs because of a discrepancy between the zoning order and the zoning map; estimates shown based on map only, even though ANC 3C feels it may be in error.
f Immediately adjacent to ANC 3C; actual address is in ANC 3F.

THE ANNE BLAINE HARRISON
INSTITUTE FOR PUBLIC LAW

GEORGETOWN UNIVERSITY LAW CENTER
605 G ST., N.W. - SUITE 401
WASHINGTON, D.C. 20001
202-624-8235

November 26, 1979

M E M O R A N D U M

TO : Lindsley Williams
Chairperson
Advisory Neighborhood Commission 3C

FROM : Elsa Burchinow
Legal Intern

Suzan Aramaki
Staff Supervisor

RE : Interpretation of Sections 13(A) & (D) of the ANC Act, D.C. Law 1-21: "Great Weight" Requirements in Rulemaking

The purpose of this memorandum is to explore the statutory requirements governing D.C. agency duties to give substantive consideration of ANC issues and concerns in rulemaking proceedings. While there is little doubt that ANC views must be accorded "great weight" in contested case proceedings, there is considerable uncertainty as to the applicability of those requirements to rulemaking proceedings. This uncertainty is fostered by the fact that the governing statutes do not expressly address the issue and are therefore open to varying interpretations depending on what implications are drawn from the statutory language and legislative scheme of the ANC Act, D.C. Law 1-21, and the D.C. A.P.A., D.C. Code 1-1501, et seq. For this reason, the proper place to begin an analysis of "great weight" requirements as they apply to rulemaking is to examine the legislative context and judicial treatment of them and the policies which underly the "great weight" requirements.

I. Background

A. The Legislative Scheme Underlying the Creation of Advisory Neighborhood Commissions

ANCs were conceived as a means of instituting greater citizen participation in D.C. government. In short, ANCs are the representatives of neighborhood residents before D.C. agencies. In this representative capacity ANCs are given the following authority under Section 13(A) of the ANC Act:

> Each Advisory Neighborhood Commission (hereinafter the Commission) may advise the Council of the District of Columbia, the Mayor and each Executive Agency and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning, streets, recreation, social services programs, edication, health, safety and sanitation which affect that Commission area. For the purposes of this act proposed actions of District government policy shall be the same as those for which prior notice of proposed rule making is required pursuant to section 5(a) of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1505(a)) or as pertains to the Council of the District of Columbia. (Emphasis added).

Thus in their advisory capacity ANCs are given broad authority to participate in government decision-making which affects their neighborhoods. That authority is expressly extended to rulemaking for which notice is required under the D.C. A.P.A. The relevant section of the APA reads as follows:

> Sec. 1-1505(a) The Mayor and each independent agency shall prior to the adoption of any rule or the amendment or repeal thereof publish in the District of Columbia Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice so as to afford interested persons opportunity to submit data and views either orally or in writing as may be specified in such notice. (Emphasis added).

Reading the two statutes together, therefore, ANCs may advise the D.C. government with respect to any rule or the amendment or repeal of a rule which affect their neighborhoods. While this language gives broad authority to ANCs to advise, however, it should be noted that it does not define the duties of D.C. agencies with regard to such advice. Furthermore, ANC authority to advise is not without limits; an ANC is afforded "great weight" only in government decisions which are significant to neighborhood planning and development. Nevertheless the legislative purpose of ANCs is clear: they are designed by Congress and the Council to provide a broad basis for citizen participation in D.C. government decision-making. In this respect, the statutes regulating agency duties with regard to ANC issues and concerns should be read with that statutory purpose in mind.

The statutory definition of those agency duties appears in Section 13(d) of the ANC Act as follows:

> Sec. 13(d) Each Commission so notified. . . shall forward its written recommendations. . to the appropriate agency. . . The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken.

While the plain meaning of the above is that ANC issues and concerns are to be given "great weight", the parameters of the "great weight" requirement were left to be defined by the courts.

B. Judicial Interpretation of the "Great Weight" Requirement": Kopff v. D.C. A.B.C. Board

In the leading case on ANC "great weight" requirements, Kopff v. D.C. A.B.C. Board, 391 A.2d 1372 (D.C. 1977), the court construed those requirements as applied to contested cases and laid down rigorous guidelines regarding agency responses. Each agency is required to (1) elaborate its response to ANC issues and concerns; (2) refer specifically to each ANC concern as such, and detail specific facts and conclusions with respect to each; and (3) articulate why the particular ANC does or does not offer persuasive advice under the circumstances. The policy underlying the Court's requirement of such as elaborate written response is that without it, it would be impossible to assure compliance with the "great weight" requirement, thereby impairing judicial review.

It should be noted that Kopff dealt only with a contested case and thus its express holding applies only to governmental decisions affecting neighborhood planning and development for which an adjudicative hearing is required. Nevertheless the rationale for assuring an adequate basis for judicial review is equally applicable to rulemaking proceedings -- although the specific requirements may vary somewhat. This was exactly the conclusion reached by the Court in two downzoning cases, Ruppert v. Washington, 366 F.Supp. 683 (1973) and Citizens Ass'n of Georgetown, Inc. v. Zoning Commission of D.C., 477 F.2d 402 (1973), which required the D.C. Zoning Commission to issue a statement of reasons for adopting one proposal over another. The court in Ruppert held that because downzoning has such a great effect on the properties affected, judicial review would be facilitated by a statment of reasons for the downzoning. In Citizen's Ass'n the court held that a statement of reasons was essential in order to provide a reviewing court a basis upon which to review. Otherwise a reviewing court would only be guessing as to what an administrative agency based its conclusions on.

From the preceeding discussion two principal issues begin to emerge. First, what are the limits on ANC participation in rulemaking proceedings imposed by the requirement that such proceedings be of significance to neighborhood planning and development? Second, what requirements are imposed upon agencies to insure proper grounds for judicial review where "great weight" is required? As the following discussion will illustrate, there are broad and narrow interpretations of the statutory requirements regarding these issues, with considerable implications for the scope of ANC participation in the decision-making process.

II. Broad Interpretation

Under a broad interpretation sec. 13(a) provides for ANC input in all types of rule-making procedures. This would permit ANCs to advise in internal rule-making procedures within the agency as well as rule-making procedures directed towards a particular area. The plain meaning of sec. 13(a) favors a broad interpretation of rule-making because it is unencumbered by restrictive limitations. Under a broad construction sec. 13(d) at the minimum, provides for a statement of reasons to give meaning to the great weight requirement. Without requiring agencies to provide a statement of reasons for choosing one proposal over another there is no viable means of ascertaining whether ANC issue and concerns were in fact afforded the statutorily required great weight.

The plain meaning of sec. 13(d) favors a statement of reasons because it provides for great weight and provides for the ANC's issues and concerns to be ". . . discussed in the written rationale. . ." in the agency final order. In addition, a broad interpretation is in keeping with the Congressional intent to provide for citizen participation in local government throught the mechanism of ANCs.

III. Narrow Interpretation

Under a narrow interpretation sec. 13(a) provides for ANC recommednations in rule-making procedures which affect a particular ANC. Mr. Steven Sher of the D.C. Zoning Commission has interpreted sec. 13(a) and (d) to allow for ANC recommendations in a rule-making procedure which is directed towards a particular property and affects a specific ANC. In such a case "great weight" will be afforded to the issues and concerns of the affected ANC in the form of a statement of reasons issued in the final order. Under the D.C. A.P.A. there is no statutory requirement for a statement of reasons in a rule-making procedure. In addition, sec. 13(a) states that an ANC may advise an agency to all "matters. . . which affect that Commission area." This has been interpreted as providing for ANC recommendations only in matters which affect that particular ANC. In conclusion, rule-making procedures which affect only the internal workings of an agency are not within the authority of ANCs. Under a narrow interpretation ANCs are restricted to matters which only affect their particular Commission area.

IV. Analysis

Given the context of the "great weight" requirement within a legislative scheme to encourage greater citizen participation in agency decision-making, the restrictive interpretation of Section 13(a) & (d) urged by the Board of Zoning Adjustment would appear to have a contrary effect by limiting citizen participation in decisions of potential importance to neighborhoods. The contention that ANC advisory duties are limited to those govenment decisions which affect only specific neighborhoods ignores the fact that many government decisions affect neighborhood interest uniformly across the entire city. That fact, however, should make such decisions no less important to neighborhood planning and development. For instance, changes in rules governing agency procedures which restrict the ability of citizens to participate in agency proceedings are of vital interest to individual neighborhoods, but affect all neighborhoods equally. Under the narrow interpretation of the ANC Act, rule-making regarding such internal agency procedures would not be within the scope of ANC "great weight" requirements. This is clearly inconsistent with the purpose of the ANC Act.

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November 26, 1979

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ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

November 21, 1979

Mr. Robert S. Stumberg
Deputy Director
Anne Blaine Harrison Institute
for Public Law
Georgetown Law Center
Washington, D.C.

Subject: Request for Legal Services Concerning the Tregaron Estate

Dear Bob:

The potential for adverse development of the R-1-A and R-1-B zoned, 21-acre Tregaron Estate in Cleveland Park, within the jurisdiction of ANC 3-C, is a major concern for many in our community. On June 27, 1979, Superior Court Judge Korman resolved the partition suit filed by the heirs and ordered that: (1) the land be sold, and (2) that James Crooks be appointed trustee and charged with the sale. Crooks' report to the Court was reportedly due last week. This ANC forwarded our position on Tregaron to Mr. Crooks (attachment). A number of specific uncertainties limit informed citizen discussions concerning their potential role in the sale and possible development of Tregaron. As citizens in Cleveland Park seek to represent their own interests, they must intervene in various public processes (e.g., judicial land sales, zoning), learn the substantive and procedural regulations, do the necessary research and persevere. As the Harrison Institute has commented:

> "Those citizens who do participate in a process without understanding it, or without assistance, tend to clog the system without adding any real benefits. This only serves to frustrate those citizens and sour the government officials on the utility of citizen participation."

Consequently, our ANC would like the Harrison Institute to work with us and citizens of Cleveland Park to clarify three sets of issues:

1. <u>What is the procedure which James A. Crooks, Esq. and/or the Superior Court are likely to follow in selling Tregaron?</u>

   a. Will a sealed bids auction occur?

   b. If so, must the highest bid be automatically the winning bid? If not, what other considerations might prevail?

c. If no bid exceeds the $3.5 million appraisal (as of August 1979), can the trustee and/or Court be persuaded to hold the property off the market for a period of time?

d. Are bids publicly revealed?

e. Can initially unsuccessful bidders revise their initial bids within a reasonable period of time?

2. Before which public agencies may the community - i.e., abutting property owners, the Cleveland Park Citizens Association, ANCs, and other groups and individual citizens - express itself? For example,

a. The Superior Court and/or Trustee before or after bids are received?

b. The Zoning Commission and/or Board of Zoning adjustment if development occurs for the following either separately or in combination:

(i) single-family detached homes?

(ii) rowhouses?

(iii) a planned unit development?

(iv) a subdivision of one lot with private roads?

(v) a high-rise rental, coop, or condominium residential structure?

(vi) a commercial structure?

(vii) a school?

(viii) a recreation facility (e.g., tennis/swim club) developed either by the school or by a commercial developer?

c. The Licensing and Permits Office for the various development options in 2(b)?

d. The Mayor or the Joint Committee on Landmarks of the National Capital, since Landmark Case No. 77-8 in February 1978 designated

Tregaron a Category III Historic Landmark and D.C. Law 2-144 (March 1979) restricts development of such a property without a finding by the Mayor?

e. The National Capital Planning Commission regarding the 8 acres of scenic easement along Klingle Road established in 1960 by the Department of the Interior but unrecorded?

f. Before appropriate agencies concerning storm and sanitary sewers?

3. What approaches can you envision for agreements and/or restrictive covenants to bind prospective developer(s), the Washington International School (currently a tenant, prospectively an owner or co-owner), and "the community" that would:

a. protect the developer(s) against community opposition before governmental agencies so long as they abided by an agreement reached with "the community"?

b. protect the community against development exceeding an initial development concept (e.g., percent developable acreage, roads/parking, tree removal, topological alterations, siting of structure)?

Your law student(s) should become familiar, if not already, with the agreements developed for the Archbold Estate ("Hillandale") between the community (Burleith Citizens Association) and the developer (Clint Murchison of Dallas), for the 25-acre Rockefeller Estate between the community (the Coalition for Planned Environmental Development) and the developer (Rozansky and Kay), and for 2911 Newark Street in 1937 between nearby property owners and their heirs and the owners (and heirs) of the apartment house.

This request has the concurrence of Commissioners Williams, Arons, and Grinnell, which, I believe, is sufficient, prior to our next regularly scheduled meeting, to authorize the Harrison Institute to proceed. The work may fall within the purview of both your Administrative Law Project (which includes our ANC's contract) and the Housing Law Project of the Harrison Institute.

Please consult with us, as always, if you need clarification in setting priorities or budgetary limits to produce results within the next 30-60 days relative to existing commitments in connection with the ABC Board action in

the Sheraton Park case, the Zoning Rules project, the Licenses project, Article 54 of the Zoning Regs on the Saudi Chancery.

ON BEHALF OF THE COMMISSION

Gary J. Kopff
Vice Chairman

Enclosure
cc: James A. Crooks, Esquire
Dorothy Goodman, Washington International School
Arthur Meigs, Cleveland Park Citizens Association
Harry Montague, Citizens for City Living
William Carroll, Woodley Park Community Association
Tilford Dudley
John Ellicott, Esquire
Sheldon Holen
Stephen Koczak

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Tregaron a Category III Historic Landmark and D.C. Law 2-144 (March 1979) restricts development of such a property without a finding by the Mayor?

e. The National Capital Planning Commission regarding the 8 acres of scenic easement along Klingle Road established in 1960 by the Department of the Interior but unrecorded?

f. Before appropriate agencies concerning storm and sanitary sewers?

3. What approaches can you envision for agreements and/or restrictive covenants to bind prospective developer(s), the Washington International School (currently a tenant, prospectively an owner or co-owner), and "the community" that would:

a. protect the developer(s) against community opposition before governmental agencies so long as they abided by an agreement reached with "the community"?

b. protect the community against development exceeding an initial development concept (e.g., percent developable acreage, roads/parking, tree removal, topological alterations, siting of structure)?

Your law student(s) should become familiar, if not already, with the agreements developed for the Archbold Estate ("Hillandale") between the community (Burleith Citizens Association) and the developer (Clint Murchison of Dallas), for the 25-acre Rockefeller Estate between the community (the Coalition for Planned Environmental Development) and the developer (Rozansky and Kay), and for 2911 Newark Street in 1937 between nearby property owners and their heirs and the owners (and heirs) of the apartment house.

This request has the concurrence of Commissioners Williams, Arons, and Grinnell, which, I believe, is sufficient, prior to our next regularly scheduled meeting, to authorize the Harrison Institute to proceed. The work may fall within the purview of both your Administrative Law Project (which includes our ANC's contract) and the Housing Law Project of the Harrison Institute.

Please consult with us, as always, if you need clarification in setting priorities or budgetary limits to produce results within the next 30-60 days relative to existing commitments in connection with the ABC Board action in

the Sheraton Park case, the Zoning Rules project, the Licenses project, Article 54 of the Zoning Regs on the Saudi Chancery.

ON BEHALF OF THE COMMISSION

Gary J. Kopff
Vice Chairman

Enclosure
cc: James A. Crooks, Esquire
Dorothy Goodman, Washington International School
Arthur Meigs, Cleveland Park Citizens Association
Harry Montague, Citizens for City Living
William Carroll, Woodley Park Community Association
Tilford Dudley
John Ellicott, Esquire
Sheldon Holen
Stephen Koczak

Mendelson

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

25 November 1979

Mr. Anthony M. Rachal, III
Assistant Director
Department of Transportation
Office of Mass Transportation
415 Twelfth Street, N.W. -- Room 504
Washington, D.C. 20004

Dear Tony:

Some time ago we supported the steps your office was taking to launch a "Small Bus Study."

With the opening of Metrorail service in this area now just two years off, we really need to see the results of that study so we can begin to think effectively about routes buses might traverse in our area so as to connect the Metrorail system with the people, and so as to build a public transportation system that will facilitate the movement of residents of this area (and the city as a whole) from their homes to local shops and grocery markets, services, and health care facilities.

We would very much appreciate your spending some time with us in January laying out what you know now about the results from this study, what is expected later (and when "later" is), and how we might best apply this knowledge to our own local situation.

I am, by copy of this letter, asking Mr. Larry Aurbach to give you a call in a few days to see if we can agree on a convenient time in early to mid January. A good place to meet would be in this Office as we have a number of maps at our disposal -- and it is convenient for the residents of this area who are looking into this matter.

Thank you for your interest.

Sincerely,

Lindsley Williams

Lindsley Williams, Chairperson
Committee on Transportation,
Traffic, and Parking

cc: Larry Aurbach

Mendelson

ADVISORY NEIGHBORHOOD COMMISSION 3-C
Government of the District of Columbia

Cathedral Heights | Cleveland Park | McLean Gardens | Woodley Park

26 November 1979

The Honorable Jerry A. Moore, Jr.
Chairperson, Committee on Transportation
and Environmental Affairs
Council of the District of Columbia
District Building
Washington, D.C. 20004

Dear Rev. Moore: Re: Bill 3-191

This is in response to your Notice of intent to conduct hearings on Friday, December 7 on Bill 3-191, the proposed "Neighborhood Municipal Metered Off-Street Parking Facilities Act of 1979."

The proposed Act has four sections, the first of which gives its title and the last of which provides for its taking effect under Congressionally required review. Section 2 consists of a series of findings with which we take no exception; indeed, other findings could be added if there were such a desire.

The operative section of the bill, section 3, however, is presently drafted in such a broad form that we must advise you to amend the bill substantially. The proposed Act would amend the District of Columbia Motor Vehicle Parking Facility Act of 1942 and, as so amended, would confer sweeping powers on the Council of the District of Columbia and the Mayor "... to exercise all powers necessary and convenient to carry out the purposes of this Act, the said purposes being hereby declared to be the acquisition, creation, and operation, in any manner hereinafter provided, under public regulations, of public off-street parking facilities in the public interest ... including the establishment of neighborhood municipal metered off-street parking facilities ...."

Thus, it would appear that the Government of the District of Columbia could begin to purchase land by various means, including eminent domain. Nor is it clear how the proposed Act would tie in with the Zoning Regulations of the District of Columbia, or whether the Act would grant the Mayor and Council powers overshadowing the Zoning Regulations.

Three issues seem to be interwoven in this proposed Act, each of which is discussed below. These are (1) need, (2) principles of application and operation, and (3) financing and rate setting.

Need:

In a press release dated September 19, Councilmember John Ray indicated a substantial need for short-term parking for shoppers in neighborhood shopping areas. We can concur with this even in those shopping districts which are now or will shortly be served by Metrorail as purchases, such a foodstuffs and household supplies and goods, must be transported and the private automobile is a reasonable way to do so (oil supplies permitting).

The proposed Act, however, does not contain limitations vital to ensure that any facility that is put into operation is restricted to short-term use. Some sort of limitation seems essential to prevent possible redirection of this broad authority to purposes entirely different from those announced. Perhaps a limitation along the lines of "Meters installed in public off-street parking facilities shall permit the use of the corresponding parking space for a period not to exceed two hours upon deposit of fee" would clarify this intent.

It is essential that some suitable language be introduced to make sure these facilities do not become all day parking facilities for commuters and employees of neighborhood businesses.

Principles of Application and Operation:

Absent a Comprehensive Plan, the Zoning Regulations of the District of Columbia provide some direction for the use of land in the city. Parking lots are one of the regulated uses, and they are prohibited from certain zone districts, including the R-1-A, R-1-B, R-2, R-3, SP-1, SP-2, W-1, W-2, W-3, and CR (in this context, "parking lots" refer to the use of a tract of land "for the temporary parking of motor vehicles when such use is not accessory to any other use" on the same or adjacent tract of land). Subject to review and approval by the Board of Zoning Adjustment, parking lots may be located in R-4, R-5-A, R-5-B, R-5-C, and R-5-D districts this review to ensure that no advertising takes place and to ensure that "... the present character and future development of the neighborhood will not be affected adversely; and parking lot is reasonably necessary and convenient to other uses in the vicinity."

The protections afforded residential neighborhoods by the Zoning Regulations stated above are principles we would commend to the District in relationship to any municipal off-street metered facility whether it be one which would be subject to Board review or one which could be operated as a "matter of right" in the C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-4, or C-5 district. Other useful guides concerning lighting and geometry are found in Article 72 of the Zoning Regulations -- and we would suggest that uniform requirements apply to all parking lots, including those the City chooses to operate.

The operation of Municipal parking lots should not create dangerous or objectionable traffic conditions, and with sensitively designed facilities and compassionate officials, this should not occur. However, the Act as presently drafted does not provide for any public body to review those facilities which would not require approval by the Board of Zoning Adjustment. We would suggest the Council take steps to provide a mechanism by which specific proposals could be considered before they are established as well as to provide a forum before which complaints about the actual operation of any existing facility could be brought.

Moreover, as noted above under "Need," steps must be taken to limit the meters in the proposed facilities in a manner to ensure that they are not taken over by employees. A two-hour limit is a start (suggested above), but steps will also be needed to ensure that groups of employees don't pool together to organize "meter feeding" teams that completely defeat the purposes of the off-street lots. On this point, also see "Financing and Rate Setting" (below).

Finally, the Council should seriously consider if it wishes the Government of the District of Columbia to acquire land for the purpose of providing off-street parking in the sense of outright ownership. City-owned land is land that does not pay taxes. Nor is it land that can be developed. This Commission recommends that the Council restrict the authority of the District of Columbia in this regard to entering into leases with land owners -- and with the land continuing to be held in private hands and paying taxes according to its assessment and the established tax rate.

Financing and Rate Setting:

While this Advisory Neighborhood Commission is sensitive to the utility of some municipally operated off-street parking lots equipped with meters, we are very much concerned about the costs of establishing and operating the program.

As stated above, we recommend the City not acquire land as such, but lease it. Moreover, we recommend that each municipal facility be able to "pay for itself." In other words, receipts from meters should be sufficient to pay the costs of the lease and necessary maintenance. Possibly, some factor could be allowed from the increased receipts the city would collect in taxes from the enterprises doing business in the immediate neighborhood of the parking lots but, lacking data or responsible projections, this seems risky at best.

The Notice of the hearing indicates the Council of the District of Columbia would be involved in setting the rates to be charged. We suggest that the Council establish the principles

on which the rates would be based but leave actual rate-setting to the Administrative side of the Government, i.e. the Mayor. Among the principles we would suggest are that:

- the rates charged provide sufficient revenue to pay the costs of the parking lot in question
- the rates charged be no less than the rate for parking on the street in the same general vicinity.

Conclusion:

The proposed "Neighborhood Municipal Metered Off-Street Parking Facility Act of 1979" is a Bill (3-191) which the Council should consider carefully. Advisory Neighborhood Commission 3C opposes it in the form introduced but believes that with substantial modification it could become a useful piece of legislation. Without modification, it would not provide adequate protection to the residents of this city either in terms of the actual operation or costs to the taxpayer.

We hope you will find these comments helpful and will report out legislation that will serve the city and its residents and businesses well.

BY RESOLUTION OF THE COMMISSION,

Lindsley Williams, Chairperson

cc: The Honorable John Ray
The Honorable David Clarke
The Honorable Polly Shackleton
The Honorable Charlene Drew Jarvis
The Honorable Hilda Mason
The Honorable Marion S. Barry, Jr.
Mr. Douglas N. Schneider, Jr.
Mr. James Clarke
Mr. John Brophy
Chairpersons, Advisory Neighborhood Commissions 1-C, 3-A,B,D-G
President, Citizens for City Living
President, Woodley Park Community Association

FACT SHEET

Massachusetts Avenue

Western Avenue

PUBLISHED BY THE RENO ROAD CORRIDOR COALITION

We are your neighbors who live on or close to the 34th Street/Reno Road/ 41st Street corridor. We once lived in a quiet residential neighborhood. But we have woken up to an unpleasant fact: the quiet residential street that was for so many years the backbone of our neighborhood has been converted into a noisy, dangerous, polluted speedway -- EVERYMAN'S SHORTCUT IN AND OUT OF THE CITY.

This fact sheet may give you a better idea of who we are, how our mutual problem got out of hand, and what we can do about it.

HISTORY: Reno Road was designed as a tree lined residential street. As the neighborhood developed, until about 1930, homes were constructed along Reno Road just as on other residential streets. Unlike Connecticut and Wisconsin Avenues, no trolleys or buses plied the road, since it was only considered a neighborhood collector street. Reno was not cut through to Massachusetts Avenue until after World War II. In 1968, without ever holding a public hearing, the D.C. government officially designated Reno as a secondary artery.

ZONING: The entire corridor is zoned by the government of the District of Columbia as R1B (single family) and R2 (semi-detached). There are no commercial zoning designations anywhere on the corridor. The zoning regulations of the District of Columbia state that R1B and R2 areas are "designed to protect quiet residential districts....to stablize such areas to promote a suitable environment for family life."

POPULATION: There are approximately 1000 people who live directly on the Reno Road corridor. Another 2500-3000 are within a one block radius.

SCHOOL POPULATION: Eleven public and private schools are located on the Reno Road corridor. Two elementary schools, John Eaton and Murch, with a total entrollment of 771 students are located directly on 34th Street/Reno Road/41st Street. These schools are attended by neighborhood children, most of whom walk to school. Many of the other students in the total school population of over 6300 must also cross Reno in order to get to school.

TRAFFIC DENSITY: The Reno Road corridor carries considerable more traffic than it was safely designed to handle.

- More than 20,000 cars use the corridor over a 24-hour period (based on the Department of Transportation's statistics for 1976 and 1977)
- During rush hour over 2,500 cars travel through the section of Reno Road between Van Ness and Tilden -- a figure that does not differ substantially from rush hour volumes at major intersections on Wisconsin, Connecticut and Massachusetts Avenues.
- The per land density on the Reno Road corridor is considerably higher than it is on either Wisconsin or Connecticut Avenues. According to a Department of Transportation report, this is at least in part because of the relatively uninterrupted flow of traffic -- with few lights and stop signs.
- Maryland commuters constitute about 60 percent of the rush hour traffic at the midpoint of the corridor.

SPEED LIMITS: The speed limit on the corridor is between 15 to 25 mph, yet, these limits are not enforced by the police. Typical traffic moves at 40 to 50 mph, including intersections at school crossings. When radar cars have been sent to the corridor, at the request of residents, the radar has been set at 35 to 40 mph. Traffic lights, by the admission of the Department of Transportation are set for traffic to move through the corridor at 30 to 35 mph -- including the area near the John Eaton School. The commercial traffic (bus/truck) bans have also not been enforced.

ACCIDENT DATA: Police Department statistics for a 21 month period following January 1978 indicate over 335 major accidents on the Reno Road corridor, including 15 hit-and-runs. Forty percent of those accidents occurred between 3 and 6 pm, when the thousands of children who go to school on the corridor are most vulnerable.

In the last 21 months, the number of major accidents at the following intersections was:

Reno and	Van Ness	44
	Nebraska	41
	Albemarle	21
	Tilden/ Springland	20
	Porter	19
	Upton	16
	Military	14
	Davenport	12

Eight other cross streets with Reno have had 5 to 10 reported accidents -- Rodman, Fessenden, Warren, Yuma, Cumberland, Harrison and Huntington.

AIR POLLUTION: A February 1979 study by the District of Columbia Bureau of Air and Water Quality indicated a good possibility that carbon monoxide pollution levels exceeded the federal governments eight-hour standards at two of the intersections studied, Reno and Military Roads and Reno Road and Fessenden Street.

LEAD POISONING: A number of federal government and local area studies indicate a strong correlation between heavy automobile traffic and lead poisoning in children. No specific lead tests have yet been done on the children in the Reno Road corridor.

PARKING: There is no parking on the corridor during rush hours and no parking at all on a majority of the road. Where parking is allowed, the hours are so segmented as to make parking in front of homes virtually impossible. The construction of the University of the District of Columbia, the International Center and the Metro stations are expected to make an already difficult parking situtation almost impossible for some of the residents of the corridor and their guests.

By way of comparison, Wisconsin and Connecticut Avenues generally have parking on both sides of the street and some rush hour parking.

****

WHAT DO WE WANT?

1. Enforcement of existing laws -- speed limits and limits on trucks and buses. NOW.

2. Long range reduction of traffic, pollution, noise and danger -- a return to the residential character consistent with the original design and intent.

WHAT CAN WE DO?

ORGANIZE: The coalition is planning a systematic attack on the problem, including petitions, media campaigns and political/legal initiatives. Join with us by contacting one of the committee chairman listed on the last page of this fact sheet.

INDIVIDUAL ACTIONS: PAY ATTENTION TO WHAT'S HAPPENING TO THE CORRIDOR. Report all traffic violations to the police. The police are pledged to respond to complaints.

Report the following types of violations:

- Patterns of speeding
- Police vehicles that are speeding (place, time, and car number)
- Report trucks that pass from zone to zone. Trucks are limited to one zone: Massachusetts to Porter, Porter to Nebraska, and Nebraska to Western. This sounds like an

unenforceable law, but if you see it violated, report it.

THE MORE OFTEN WE REPORT THESE VIOLATIONS, THE MORE ACTION WE WILL GET.

To report truck problems and police vehicle speeding call:
OFFICER STITCHER 282-0050

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OFFICER SINE 282-0068

Other individual actions which could have an impact on slowing the speedway commuters down and making the corridor safer:

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  14th and E Streets, N.W.
  Washington, D.C. 20005

ABOUT THE RENO ROAD COALITION:

CHAIRMAN: Herb Reff
5357 Reno Road
244-6057 (home)

VICE-CHAIRMAN: Johanna Anderson
3715 Fessenden Street
244-6093 (home)

NEIGHBORHOOD COMMUNICATIONS/BLOCK CAPTAINS COMMITTEE
Jinny Saylor, 686-0521 (home)
4617 Reno Road

LEGAL COMMITTEE
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5240 Reno Road

Apt. D-106
3840 39th Street, N.W.
Washington, D.C. 20016

November 26, 1979

Lindsley Williams,
Chairperson
ANC-3C
2737 Devonshire Pl., N.W.
Washington, D.C. 20008

Dear Lindsley:

This is to inform you that I am no longer able to continue to perform work as may be requested by the Commission. I have recently taken up new employment, which has severely cut into the time available to me, in the past, for such things as Commission work. In addition, I have been elected a Commissioner, and although I do not assume office until January, I wish to minimize any appearance of a conflict of interest.

I do intend, at your instruction, to complete the minutes for the Commission through tonight's meeting and to complete the filing of those documents already put in my folder in the office. This will be done soon.

Sincerely,

Phil

Phil Mendelson

Woodley Community, Sheraton Officials Clash Over Parking

By Paula Tarnapol
Special to the Washington Post

A brightly colored poster in the lobby of the Washington Sheraton calls the hotel and convention center, now in the midst of major expansion and refurbishment, "the only hotel of its kind on earth."

Residents of Woodley Park, the adjacent community of about 7,500 people, have other ways of describing the 16-acre site, which until recently was called the Sheraton Park Hotel.

"Games and tricks, that's all we've seen from" Sheraton officials, said Bobbi Carroll, a member of the Woodley Park Community Association. "They say they now have the biggest convention facility on the East Coast. So why haven't they planned accordingly?"

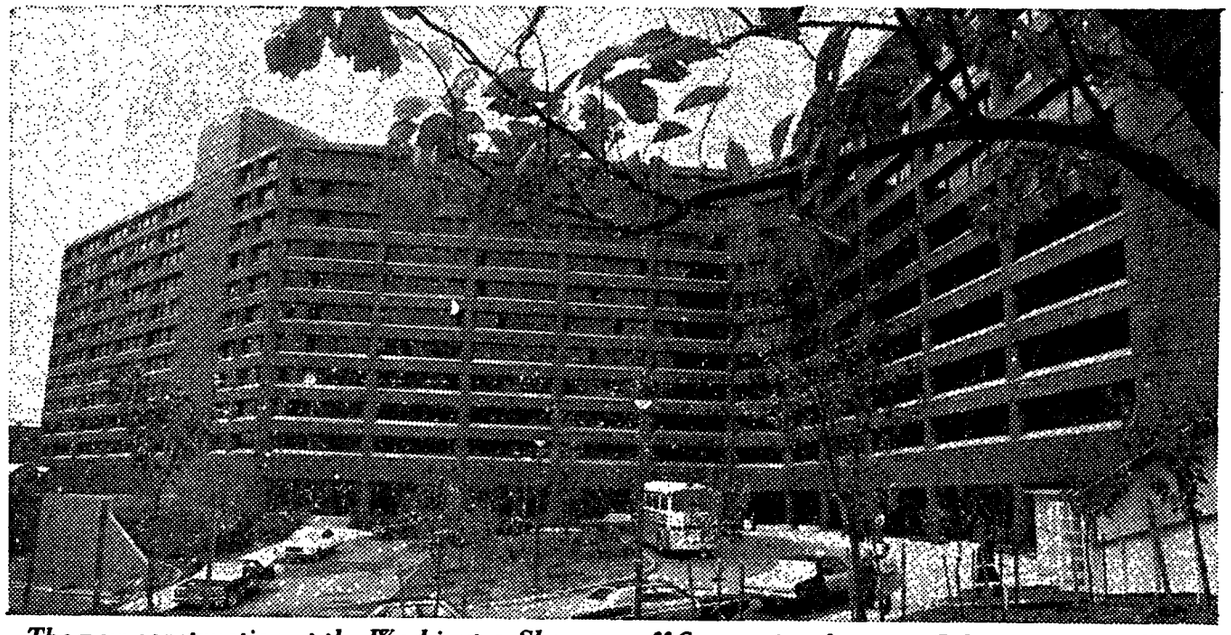
Sheraton officials and members of the community are at odds over parking facilities on hotel property.

There are presently about 580 parking spaces in two garages and a small lot. Hotel officials say this number is sufficient to accommodate guests and staff. Woodley Park residents, who often have difficulty finding a place to park near their homes when a hotel function is taking place, say the real need is closer to 1,000 spaces.

The number of rooms in the hotel will increase from 1,421 to 1,540 as a result of expansion, "but these figures include living rooms and kitchens in suites, and other rooms that can't be rented separately without a bedroom," said John Young, senior vice president of the Sheraton Corporation.

"The level of business and the occupancy rates will not be a lot different than in the past," he continued. "We have enough parking spaces now, and the (District of Columbia) zoning administrator has backed us up on this. But we're willing to look for other solutions to help out the neighborhood."

According to James Fahey, the D.C. zoning administrator, the present 580 spaces do conform with city law. A hotel must provide one parking space for every two sleeping rooms. It is not required to have additional space to accommodate guests at banquet, meeting or exhibition halls, even though users of these rooms might not be overnight guests.



The new construction at the Washington Sheraton off Connecticut between Calvert and Woodley.

A task force made up of four community groups has concluded that the solutions the Sheraton officials have offered to date are unworkable. Members of the Woodley Park Community Association (WPCA); the Cleveland Park Association; the Saint Thomas Apostle Parish Council, at 2700 Woodley Road, and the ANC-3C have worked together since 1976—observing traffic patterns at the hotel, studying D.C. zoning regulations and negotiating with Sheraton officials.

"Of course, we would prefer that none of this traffic congest our streets at all, but we have to be realistic," said William Carroll, chairman of the task force and WPCA president. "Our premise is that the Sheraton will be used more as a convention center than as a hotel, or at least as much. And, in that case, the hotel should have between 900 and 1,100 spaces."

Until this summer, the Sheraton plan was to tear up the lawn on the Woodley Road side of the site and build a new parking lot there. The area, dotted with old trees, forms a buffer between the hotel and the Woodley Park neighborhood.

"We didn't think a residential street should have to look like a shopping center lot," said Lindsley Williams, a task-force member and outgoing chairman of ANC-3C. "We called that the 'Sheraton Park-ing,' not the 'Sheraton Park.' "

Hotel officials bowed to community pressure. They then sought a variance from the city to paint over the present parking area and make more spaces by alternating standard-sized spaces (9 by 19 feet) with smaller ones (7 by 17 feet). Valets would be hired to help park the cars during peak hours.

"Human experience makes that crazy," said Carroll. "If you're driving a Fiat and you see a space for an LTD, you're not going to pass it up and look for a smaller space. Besides, the valets wouldn't be able to handle the volume of traffic for a banquet, for example, when there would be hundreds of people arriving and leaving at the same time."

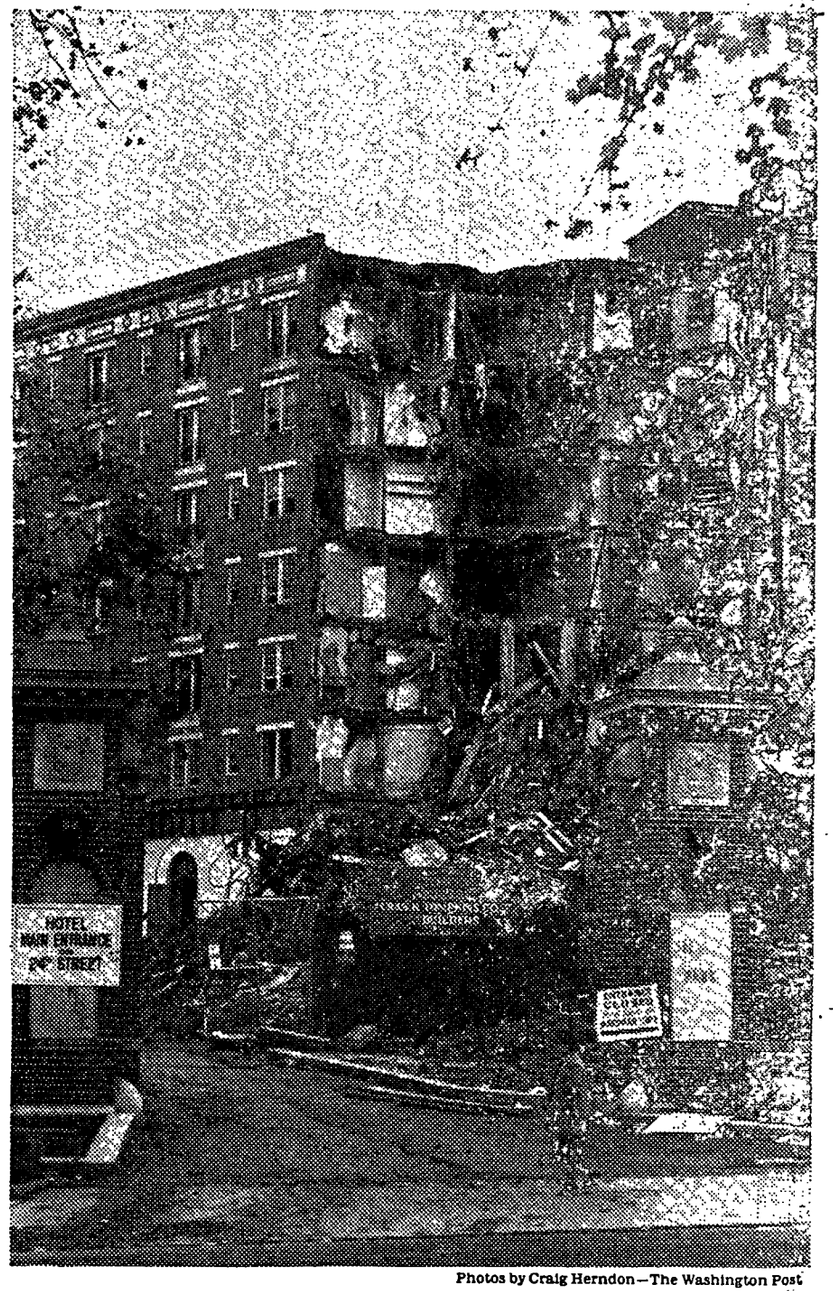
A public hearing to consider the variance for different-sized spaces was to have been held yesterday before the Bureau of Zoning Adjustment, but hotel officials requested that the hearing be postponed until December.

In a meeting with members of the task force, Young agreed that the "paintbrush approach" was not feasible and has hired a professional traffic consultant to study alternatives.

Young says he hopes the consultant will have an alternative plan by next month. The task force is willing to wait until then, but many residents are expressing impatience with a situation that they say will be aggravated next spring with completion of the hotel and convention center.

"Our streets are full now," said Jonathan Blair, who has lived on Woodley Place since 1973. "We're underspaced and it's getting worse."

"The (Sheraton) guests will also be put out," said Bobbi Carroll. "They'll be forced to circle the streets to find a place to park, just like us. The hotel has a responsibility toward the guests and the neighborhood, and they're ignoring us both."



Photos by Craig Herndon—The Washington Post

Demolition of the old part of the hotel.

Cleveland Park Residents Protest High-Speed Traffic

Signs held aloft by youngsters, all off-duty school crossing guards, read "My Friends and I Sure Hope You Know/15 MPH is the Speed to Go" to motorists passing in front of John Eaton Elementary School.

The children's signs were part of a Cleveland Park neighborhood's successful attempt Tuesday morning to call attention to speedsters and slow them down.

Adults, members of the Reno Road Coalition, paired up in Reno Road's two south-bound lanes during morning rush hour and drove at the legal speed limit, 25 miles per hour. Honking from drivers behind them indicated the pace was too slow.

The demonstration and motorcade were part of the coalition's ongoing effort to reduce traffic and speed limit violations in the 34th Street-Reno Road-41st Street corridor, a predominantly residential area.

The group contends that although area speed limits are 15 to 25 miles per hour, most traffice travels at about 40 to 50 miles per hour.

Apart from the pollution, noise and congestion the traffic causes, coalition members are concerned about the 771 students who attend the community's 11 private and public schools.

No one is more concerned than George Rothwell. He stood on the corner of McCombs and 34th streets where his daughter, Kiyo Doniger, was struck by a car nearly two years ago, sustaining minor injuries.

Rothwell's sign dramatized his concern: "One of *You Hit* My Child."

By Sharon Farmer for The Washington Post.

School crossing guard Leslie Pace, 11, displays sign protesting speeding near John Eaton Elementary School.