

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 630
CASE NO. 89-9
(Map Amendment - Safeway)
September 11, 1989

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on July 17, 1989. At that hearing session, the Zoning Commission considered an application from Safeway Stores, Inc. and Mildred Beck Walker, to amend the Zoning Map of the District of Columbia, pursuant to subsection 102.1 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on February 8, 1989, requests a change of zoning from R-1-B to C-2-A for a portion of lots 3 through 12 and 19, and all of lots 13 through 15 in Square 2974.
2. Square 2974 is situated in the northwest section of the city, and is bounded by Van Buren Street on the north, Piney Branch Road on the east, Underwood Street on the south, and Georgia Avenue on the west. All of the existing R-1-B zoned property in Square 2974 is subject to rezoning in this application.
3. The applicants propose to construct a Safeway grocery store of approximately 52,000 square feet in floor area at the northern end on the square.
4. The R-1-B District permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of forty percent, and a maximum height of three stories/forty feet.
5. The C-2-A District permits matter-of-right low density development, including office, retail and all kinds of residential uses, to a maximum floor area ratio (FAR) of 2.5 with non-residential uses limited to 1.5 FAR, a

maximum height of fifty feet, and a maximum lot occupancy of sixty percent for residential uses.

6. The District of Columbia Generalized Land Use Map of the Comprehensive Plan for the National Capital designates the subject site as being located in the "mixed-use low density residential/commercial", and the "low density residential" land use categories.
7. Square 2974 is split-zoned C-2-A and R-1-B, and is improved with an existing Safeway grocery store of approximately 27,800 square feet of floor area, an existing parking lot to accommodate 167 cars for the customers of the existing store, and some unimproved land along Georgia Avenue at the northwest portion of the square.
8. The subject site comprises 64,130 square feet of land area which is zoned R-1-B in Square 2974. The subject site is part of an overall large site embracing the total square, that includes an additional 70,531 square feet of land area zoned as C-2-A and is not part of this application.
9. The area surrounding the site reflects a mixture of commercial, institutional and residential uses. In this vicinity of the site, the Georgia Avenue Commercial Corridor has a wide range of service and retail establishments, including fast food restaurants, banks, dry cleaning stores, gasoline service stations, hair salons, and other uses. South of the site, along Underwood Street is the New Bethel Church of God. Next to the church is a fast food restaurant with on-site parking and a gasoline service station. Commercial and non-residential uses predominate the west side of Georgia Avenue near the site and border both Georgia Avenue and Piney Branch Road on Squares 2975 and 2943, immediately to the south of Square 2974. These uses include two fast food restaurants, a dress shop, a convenience store, offices, a church, four gasoline service stations, an insurance agency, a bank and two video rental and sales stores. All of these uses, including the Safeway store, appear to be within the building height guidelines of the C-2-A district.
10. North and east of the site are single-family detached dwellings. Several of these houses contain doctors' and dentists' offices which are permitted as a matter-of-right. Three-story garden apartments, a child learning center, an inn and a cemetery are located along the Georgia Avenue Corridor north of Van Buren Street. The Walter Reed Army Medical Center complex is also located three blocks north of the site on the west side of Georgia Avenue.

11. On May 12, 1958, pursuant to a comprehensive city-wide rezoning initiative, the Zoning Commission zoned Square 2974 R-1-B and C-2 (now known as C-2-A). The C-2-A portion of the square included all lots with frontage along Georgia Avenue and extended a depth of 100 feet. The remainder of the square was zoned R-1-B.
12. On December 11, 1962, the Zoning Commission in Case No. 62-75, rezoned from R-1-B to C-2-A various lots in Square 2974 to a depth of 167 feet from Georgia Avenue. As a result of that rezoning, the existing grocery store was constructed.
13. In 1963, prior to construction of the existing store, the Board of Zoning Adjustment (BZA) approved a special exception application for accessory parking on a portion of the residentially zoned lots within Square 2974 (BZA Appeals No. 7086 and 7087). In the same application, the BZA also authorized variance relief to extend the accessory parking more than 200 feet from the store and to extend the store use 35 feet to provide loading facilities. In approving the application, the BZA concluded that the accessory parking was not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions. In a second action one year later, the BZA granted another special exception permitting the extension of accessory parking to three additional residentially zoned lots within the square (BZA Appeals Nos. 7730 and 7731).
14. As a condition to the 1963 BZA approval, Safeway Stores, Incorporated became a party to a covenant with the District Government which requires the R-1-B zoned area to be reserved for accessory parking for as long as the Safeway store exists or so long as accessory off-street parking is required by the Zoning Regulations. In conjunction with its current area variance applications to the BZA, Safeway intended to seek release of the covenant. The anticipated rezoning, the subdivision of the square into one record lot prior to construction of the new store and the demolition of the existing store will eliminate the need for, and purpose of, the covenant.
15. By Z.C. Order No. 432 dated August 16, 1984, the Zoning Commission in Case No. 81-9 approved rezoning from R-1-B to C-2-A for a limited portion of Square 2974 to allow for the expansion of the existing store. The rezoning extended the C-2-A zone to a depth of 264 feet from Georgia Avenue but was limited to the east side of the existing store.
16. The applicants propose that the existing Safeway store

remain in operation until the new store has been constructed. At that time the existing store will be razed and its site will be used for parking to accommodate the customers of the new store.

17. In order for the above-mentioned to be implemented, the applicants, on February 8, 1989, filed an application before the BZA for a special exception and variances to allow two principal structures on the same lot and reduced on-site parking requirement during the construction of the new store.
18. The applicants, through their representative, testified at the public hearing that a change of ownership and policy at the corporate level have affected the company's plans for Square 2974. The company abandoned its earlier plans to expand the existing store, and in lieu thereof, intends to construct the new store, known as "Marketplace". Marketplace will be a "state-of-the-arts" facility of sufficient size and superior design that will provide the product mix and specialty areas desired by today's customer, including but not limited to, a bakery, fish market, delicatessen, salad bar, flower stand, postal boxes, etc.
19. The applicants' land planning expert, by testimony presented at the public hearing and by statements included in the record, stated the following:
 - a. "The rezoning of the site to C-2-A and the proposed use are consistent and supportive of the Comprehensive Plan of the District of Columbia. The proposal furthers the major goals of the Comprehensive Plan: (1) stabilize the District's neighborhoods by permitting new construction that will significantly enhance the prospect of the existing use continuing on Square 2974 on a long term basis; (2) increase the District's share of regional employment and economic growth; (3) preserve and promote cultural and natural amenities; and (4) respect and improve the physical character of the District.
 - b. The proposed rezoning also furthers the objectives of the Comprehensive Plan as follows: (1) Economic Development - The rezoning will support and encourage the continued operation and expansion of a Safeway store at this location, creating new jobs, continuing job opportunities for D.C. residents and expanding the District's revenue base. (2) Land Use - The rezoning will facilitate the provision of adequate commercial and support services, elements necessary for neighborhood

vitality; promote the revitalization, economic development and stability of the Georgia Avenue corridor. (3) Urban Design - The new facility will enhance the neighborhood's aesthetic character and serve as a stimulus for revitalization of the Georgia Avenue commercial corridor. (4) Environmental Protection - The site plan has been designed to enhance the neighborhood's environmental quality in terms of visual, noise, air, energy conservation, vehicular and pedestrian circulation, social interaction, safety, security, maintenance and preserving and protecting the natural environment. (5) Transportation - The goals of the Plan will be promoted through the efficient use and delivery of transportation services, the reliance on Metrobus and rail service, and the provision of 163 off-street parking spaces, loading area and appropriate sized driveways.

- c. The Comprehensive Plan Generalized Land Use Maps designate the site area for low-density mixed commercial and residential uses. This category includes shopping and service areas that are generally low in scale, character and activity and that provide a limited range of retail goods and services and single-family detached and semi-detached housing as the predominant uses. Rezoning of the site to C-2-A, a low-density commercial district, is consistent with the Generalized Maps.
 - d. The proposed rezoning complies with and furthers the goals and policies of the Draft Ward 4 Plan (December 1987). The Draft Plan states that economic development is a priority in Ward 4. The expansion and modernization of this Safeway store is specifically mentioned in a list of proposed projects for Ward 4. The project will contribute to neighborhood stabilization and the revitalization of Georgia Avenue by providing appropriate services and employment opportunities that are complementary to adjoining land uses. The proposed supermarket will help achieve the goal of promoting "a healthy, viable Georgia Avenue". The rezoning will facilitate the construction of the new store without encroaching on nearby residential areas because it will reflect the actual current and historical commercial use of the site."
20. The applicants' traffic and transportation expert, by evidence submitted into the record, indicated

that the rezoning and proposed new supermarket will have no adverse traffic impact on the streets and intersections in the vicinity of the site and that the proposed site access system will adequately serve the new store while maintaining a good level of service on the adjacent roadway system. The expert traffic report also indicated that sufficient parking will be provided and that, by transportation standards, the rezoning of the proposed improvements are in accord with the Zoning Regulations, will promote the general public welfare and are not inconsistent with the Comprehensive Plan.

21. The District of Columbia Office of Planning (OP), by memorandum dated July 10, 1989 and by testimony presented at the public hearing, recommended that the application be approved. OP stated:

"This application is for rezoning the R-1-B portion of Square 2974 to C-2-A to facilitate the construction of a new state-of-the-art supermarket. We recognize that this is a case for straight map amendment in which the applicant is not bound by the proposal as described, but the applicant has operated a Safeway Store at the site for many years and has an admirable record of cooperation with the neighborhood. The applicant is likely to remain in business at the site in the foreseeable future. Availability of appropriate grocery store facilities at convenient locations is a city-wide problem. This application seeks to address that problem. The site has been used for commercial purposes for many years and is suitable for such use.

In the opinion of the Office of Planning the requested map amendment at the subject site is consistent with the provisions of the Comprehensive Plan. The Office of Planning recommends that this application for a map amendment from R-1-B to C-2-A be approved."

22. The District of Columbia Department of Public Works (DPW), by memorandum dated July 7, 1989, supports the application and indicated that the proposal will have a negligible impact on traffic operation and water/sewer capacities in the area.
23. The District of Columbia Fire Department (DCFD), by memorandum dated May 5, 1989, has no objection to the application.
24. The District of Columbia Department of Finance and Revenue (DCFR), by memorandum dated May 18, 1989, supports the requested rezoning.

25. The District of Columbia Office of Business and Economic Development (OBED), by letter dated March 16, 1989 indicated that it supports the expansion of the Safeway store, which is in accord with OBED's policy to assist in providing additional retail food services in the District.
 26. Advisory Neighborhood Commission - 4B, by letters dated March 30 and July 6, 1989, recommended that the application be approved. ANC-4B indicated that issues and concerns regarding geographical orientation of the new store, vehicular traffic pattern, allotted parking spaces, and landscaping were addressed and resolved. ANC-4B noted that the proposed Safeway Marketplace is badly needed, emphasized the solid community support for the facility, and requested the Zoning Commission to help facilitate the objectives of the community by rezoning the subject site.
 27. By letter dated May 5, 1989, the Chairperson of ANC-4B, the Vice Chairman of ANC-4A, whose corporate jurisdiction begins immediately across Georgia Avenue to the west of the site, and the Presidents of the Brightwood Civic Association and Plan Takoma requested that no restrictions, covenants or other encumbrances be placed on the site as a condition of the rezoning that is requested by this application.
 28. By letter dated May 22, 1989, the President of Plan Takoma related that organization's unanimous and strong support for the proposed project and map change with two conditions: the existing cut in median along Piney Branch Road be realigned to coincide with the proposed new entrance to the Safeway store along Piney Branch Road; and Safeway be required to install its proposed landscaping plan as outlined in a study that had been reviewed by his organization. In lending its support, Plan Takoma noted that the proposed new store will improve available grocery shopping in the area and attract D.C. residents who now shop in Maryland.
 29. By letter dated March 27, 1989, the Brightwood Civic Association supported the applicants' plans for a new Safeway store on Square 2974.
 30. Three persons who reside near the site of the proposed rezoning appeared at the hearing to testify. Two of these persons submitted letters into the record opposing the proposed rezoning.
 - a. One of the witnesses testified that she was not against the building of the new Safeway but that she was concerned that there is no covenant binding Safeway to use the site as it proposes if
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the zoning is changed. She reinforced her concerns by citing two Safeway stores that have been closed in preceding years. She also expressed here concern with the future commercial uses that may be established along Van Buren Street should the rezoning be approved and Safeway not follow through with its proposed plan.

- b. A second witness testified that she had no problems with the development of the proposed Safeway but indicated that it shouldn't be along Van Buren Street because of its residential character. She also expressed her concern with the level of traffic that would be generated along Piney Branch Road in the event this application is approved.
 - c. A third witness, who testified but did not submit a letter into the record, also indicated that he was not opposed to the development of the Safeway store on Square 2974 but expressed concern with the operational impact of the store should it be built.
31. The Commission concurs with the OP position that the requested zoning is consistent with the Comprehensive Plan, would reflect a land use that has been occurring on the site for at least 25 years, and will promote a service that is needed and valuable to the entire community. The Commission further concurs with the position of the applicant, ANC-4B, DPW, DCFD, DCFR, OBED and others.
 32. The Commission finds that the requested rezoning will be in furtherance of the goals of the Comprehensive Plan, the Draft Ward 4 Plan, the Draft Georgia Avenue Revitalization Study, and District of Columbia policies regarding the retention of retail food markets.
 33. The Commission finds that rezoning the property to C-2-A would be compatible with the existing zoning since the entire square has consistently been used for C-2-A uses at C-2-A levels of development.
 34. The Commission finds that the extension of the C-2-A zoning line to include the entire subject square satisfies the requirements for the C-2-A district in that the zone district will accommodate an important new low density facility located in a low and medium density residential area with access to a main highway.
 35. The Commission finds that the existing R-1-B zoning on the subject square has proven to be inappropriate in terms of the historical use of the site for commercial

purposes, the need of the City to encourage the retention of supermarkets in neighborhood areas, and the trend of supermarkets to require more space for the types of services that its customers demand.

36. The Commission further finds that operational concerns about any new development that may occur on the site, if this application is approved, is not a proper issue in this map amendment proceeding.
37. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission, pursuant to the terms of the District of Columbia Self Government and Governmental Reorganization Act. NCPC, by report dated September 7, 1989 found that the proposed action of the Zoning Commission would not adversely affect the Federal establishment or other Federal interests in the National Capital or be inconsistent with the Comprehensive Plan for the National Capital.
38. The Commission notes that on July 19, 1989, the BZA approved Application No. 15047, which sought zoning relief as indicated in Findings of Facts No. 14 and 17 of this order.

CONCLUSIONS OF LAW

1. Rezoning to C-2-A is in accordance with the Zoning Act (Act of June 20, 1938, 52 Stat. 797) by furthering the general public welfare and serving to stabilize and improve the area.
2. Rezoning to C-2-A will promote orderly development in conformity with the entirety of the District of Columbia zone plan as stated in the Zoning Regulations and Map of the District of Columbia.
3. Rezoning to C-2-A is not inconsistent with the Comprehensive Plan for the National Capital.
4. A rezoning to C-2-A will not have an adverse impact on the surrounding neighborhood.
5. In considering its decision on this case, the Zoning Commission has accorded ANC-4B the "great weight" consideration to which it is entitled.
6. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this order is conditioned upon full compliance with those

provisions. The failure or refusal of applicant to comply with any provisions of D.C. Law 2-38, as amended, shall be a proper basis for the revocation of this order.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District hereby orders APPROVAL of the change of zoning from R-1-B to C-2-A for that portion of Square 2974 that is presently zoned R-1-B; that is, part of Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 19, and all of lots 13, 14 and 15.

Vote of the Zoning Commission taken at the public meeting held on July 31, 1989: 4-1 (John G. Parsons, Lloyd D. Smith, William L. Ensign and Maybelle Taylor Bennett, to approve C-2-A, and Lindsley Williams, opposed).

This order was adopted by the Zoning Commission at its public meeting held on September 11, 1989 by a vote of 4-0 (John G. Parsons, Lloyd D. Smith, William L. Ensign and Maybelle Taylor Bennett, to adopt - Tersh Boasberg, not voting not having participated in the case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on

OCT 06 1989


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat