

Bill Proposing Amendments to the Comprehensive Plan

Public Hearing Testimony of Joseph Bender

before the

Council of the District of Columbia's Committee of the Whole

28 September 2010

Thank you, Mr. Chairman and Members of the Committee of the Whole, for providing this opportunity to speak on amendments to the Comprehensive Plan. My name is Joe Bender. My partner and I have been active in real estate in the Brookland neighborhood for the past two decades. Encouraged by 12th Street's designation and promise as a Main Street, we have over the years acquired a few scattered holdings there. We are committed to its revitalization. We believe it can be achieved and hope to be part of it.

The bill that is the subject of today's hearing includes a handful of text and map amendments that will help with that goal. We support them. We also support the majority of the policies included in the recently adopted Brookland/CUA Small Area Plan. But, that Small Area Plan, by policy inclusion and omission, makes mistakes that will frustrate success of its otherwise good vision for 12th Street's revitalization.

Mr. Chairman, as you pointed out at the hearing on that Small Area Plan, the method employed for adopting such plans, by resolution, constrains Council's ability to refine issues and correct such problems. It's an all or nothing format. And, because agencies and commissions are to be guided by the policies of those plans, they are bound to follow the good and the bad. This bill, however, when amendments are enacted, provides Council the opportunity to update and correct policy problems in small area plans. That is what I am requesting of you today.

Specifically, the Brookland/CUA Small Area Plan includes a policy that requires any changes to current zoning in the planning area to be considered only through the PUD process. While that policy may be appropriate for larger tracts – such as the South Campus sites at Catholic University (where a PUD was just adopted), the WMATA site and perhaps others along the railroad tracks -- it is both inappropriate and unworkable for the 12th Street corridor. A considerable portion of the corridor from Lawrence Street to Michigan Avenue, Brookland's traditional retail core, is now zoned C-1. The C-1 zone is widely recognized as a stinker of a zone for enabling the type of infill development called for in the Small Area Plan. It doesn't work. So, although consideration of a change in the underlying matter-of-right zoning is

indicated, under the current Small Area Plan, the Zoning Commission would have to consider a PUD to get it done.

The PUD requirement causes several problems for 12th Street revitalization. Here are the highlights:

First, there are less than a handful of property holdings along 12th Street that meet the size requirements to even apply for a PUD. Most of the properties are single lots of a few thousand feet or less – and where a landowner has assembled a few abutting properties, they still are far below the PUD application threshold of 15,000 square feet of lot area. And the guidelines that would allow the Zoning Commission to consider a waiver to accept a PUD application for a smaller sized lot are still way too large and inapplicable. So, most 12th Street property owners are stuck with a zone that, as a practical matter, doesn't allow them to do what's called for in the plan. To get it changed, because of the PUD-only requirement of the Small Area Plan, they would have to buy their neighbors out – or sell to a larger developer who would assemble enough properties to apply for a PUD. That's bad policy. I hope and trust that is not what was intended – particularly on 12th Street Main Street where smaller, more organic, neighborhood-scaled development projects are desired. But, that is the practical consequence of the PUD-only policy.

Second, PUDs add considerable process costs. But, because any PUD-generated zoning change would still have to respect the low density mixed use land use designation along 12th Street, it would add only modestly to allowable height and building density. So, particularly for small owners, by the time you got done paying the professional and other fees required to process a PUD -- if you had the cash resources and willingness to risk them in the first place -- there would not be enough added value after expenses to justify the investment. Money needed to build the project – to make it feasible -- is eaten up in process costs. The PUD-only policy for 12th Street imposes a real hardship – and unnecessarily as, in the District of Columbia, there is another zone that applies to the low density mixed use land use designation along 12th Street, the C-2-A zone. It would provide meaningful flexibility if approved matter-of-right. It is workable.

Simply put, unlike at the larger tracts in the more immediate Station Area of Brookland, the PUD is just not the right tool for 12th Street. It will handcuff smaller property owners who want to do the right thing for Brookland's Main Street. It will frustrate desired revitalization. It is a mistake. The PUD-only policy should be removed from 12th Street in favor of a matter-of-right approach.

And, it is important for Council to encourage the City and Zoning Commission to consider matter-of-right rezoning quickly. We welcome the development approved on the South Campus and that will eventually be coming on other larger tracts in the Station Area. In the proper context, synergies would be created between those new projects and 12th Street – synergies that will benefit businesses and residents on both sides of the railroad tracks. But, because 12th Street is handicapped by inadequate zoning and policies, it cannot adjust. That context is not in place. So, as the projects in the Station Area proceed, many of 12th Street's already struggling owners and businesses will not share in the market growth. Indeed, they are likely to find it increasingly difficult to compete with new businesses on the west side to retain their existing market base. In short, planning policies that should have produced mutual benefit may actually exacerbate problems along 12th Street. That is undesirable and unfair. Prompt action is needed to create a balanced zoning context.

Finally, through a matter-of-right approach, policies supporting 12th Street Main Street could be advanced as the rezoning is being considered – with full participation of the community in that process. For example, design controls could be included within zoning that promote attractive and safe streetscapes and respect abutting residential areas. Incentives could be incorporated for shared use and off-street parking in new infill buildings – correcting deficits that currently disadvantage businesses and residents of the area that live too far to walk to 12th Street. Encouragement could be provided for owners whose properties especially contribute to 12th Street's historic character to voluntarily preserve and restore those properties. The Small Area Plan has policies that indicate these objectives are desirable – but punts on policies giving guidance and priority for implementation.

The approach I have advocated here is not something new or radical. Other neighborhoods in the City are benefiting from similar features. Why not in Brookland in support of 12th Street's revitalization?

The Council can correct these mistakes by including appropriate policies in this bill. We hope you will.

I know the Brookland Community Development Corporation is planning to testify as well. They will address in more detail some of these points. We support that testimony.

Thank you again for considering this request for amendments supporting Brookland's 12th Street. I am pleased to address any questions you may have.

Attachment: Draft Amendment

Draft Policy Addition for Section UNE 2.6 of the Comprehensive Plan

Notwithstanding provisions of the Brookland/CUA Small Area Plan to the contrary, for the 12th Street Main Street corridor portion of the planning area, the Mayor and Zoning Commission should promptly consider and adopt matter-of-right zoning and other incentives that promote mixed use projects that reinforce retail and service uses at street level and with residential and commercial uses on upper stories. Zoning and other tools should be put in place that facilitate productive synergies between 12th Street and the Station Area; that assist implementation of connectivity and parking policies, and that encourage voluntary preservation of buildings in the corridor that are determined to be most emblematic of Brookland's history and character.

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Additional Statement for the Public Hearing Record

Lavinia Wohlfarth, Chair, Brookland Community Development Corporation

and

Joseph Bender

12 October 2010

Mr. Chairman and members of the Committee of the Whole, please accept this as augmenting testimony we presented on the subject bill at the public hearing on 28 September 2010. This is primarily to address Director Tregoning's response to your question on her reaction to our testimony.

The Brookland Community Development Corporation (BCDC) and 12th Street property owners, Joseph Bender and Brendan Magner, did participate in the Brookland/CUA Small Area Plan process. Further, the themes of the amendment proposed by us remain consistent with the policies we advocated at that time. Having said that, please note there have been some refinements and modifications in language between policies we proposed at the time of the Small Area Plan and our current amendment proposal. Those changes are partly to comply with the format of the Comprehensive Plan policies – but, importantly, they also reflect input we received from meetings with residents, community groups and other affected property owners in the corridor during the intervening period.

To the degree that important policy changes were not incorporated into the Small Area Plan, we continued to advocate them in the current Comprehensive Plan Amendments process. We rigorously followed the procedures established by OP. In sum, we wanted to assure you that we have been at the table during both processes.

Director Tregoning made the comment that she felt constrained from considering amendments in this Comprehensive Plan Amendments process that affect the Brookland/CUA plan because

the “ink was barely dry” on that plan. We can understand that sentiment and procedural protocol in a general sense. But, a recent mistake is still a mistake. Through our proposed amendment, we are asking Council to correct one that has immediate and severely negative impacts for property owners and businesses along the 12th Street corridor in Brookland –and will frustrate the very revitalization goals called for in that recent plan. The mistake should be corrected before more unnecessary hardship and damage is done.

OP’s response to us when we questioned why they did not favorably consider our proposals was that they “lacked consensus” in the community. In all candor, having participated in these planning processes in Brookland, it is difficult to understand how OP is defining “consensus” with regard to many proposals that found their way in to the plan – and the lack of it for those that were excluded. Indeed, as you may recall, at the time of the public hearing on the Brookland/CUA Small Area Plan, several residents and representatives of community organizations appeared asking Council not to adopt the resolution approving that plan because of disagreement with policies.

We do not underestimate OP’s job in developing and discerning “consensus”. Perhaps more so in the Brookland neighborhood than some others, there are individuals, some in community leadership positions, whose opposition to a particular issue reflects personal, closely held, and strongly felt positions – which they have attributed to the community at large. Further, with respect to the 12th Street portion of the planning area, it received significantly less attention, analysis, and discussion than was given the area around the Metro Station and South Campus during the planning process. As such, there was relatively less exploration, understanding and development of impacts and best practices for 12th Street. Indeed, at our own expense, we had to conduct research to demonstrate the impacts of some of the recommendations, to identify alternate approaches, and to take them to the community and OP for consideration. So, a challenging job.

However, with respect to the businesses and small property owners with whom we have spoken, we can assure you that there is support for our proposed amendment. It is widely recognized that the current C-1 zoning doesn’t work and that the PUD-only method for correcting that problem is not a tool for which most 12th Street owners can apply, much less afford. In addition, there is broad consensus that additional customer parking for 12th Street businesses is necessary, that well devised design controls are desirable, and that voluntary preservation of those buildings most representative of 12th Streets historic character and

incentives to help get that done are also good things. All those factors can be addressed in a rezoning – as they have in rezoning for other neighborhood areas of the City.

Frankly, in our meetings with individuals and groups of Brookland residents, we have for the most part found a thoughtful and supportive response. For sure, from some, we encountered initial skepticism and mistrust. As the dialogue developed, however, we could see an interest in understanding the policy and technical issues confronting 12th Street – and in searching for practical solutions. On balance, we found more support than not. And, a willingness to further consider workable solutions -- to problem-solve.

As you know Mr. Chairman, our proposal for a rezoning (as a substitute for the PUD-only approach) does not in any way preclude that process of community involvement. To the contrary, if Council approves the amendment, we would immediately, together with OP and other city agencies and the Zoning Commission, begin a process of community consideration that will involve public outreach, reports and hearings. The final outcome will be a zoning that has been fully vetted and tailored to the environment and needs of Brookland as expressed in the policies included in the Brookland/CUA plan and by its community. We believe a concentrated effort could have this zoning in place within six months of Council's favorable action on the amendment.

Indeed, we believe it is the PUD-only policy, not the rezoning policy, which will frustrate community involvement. Because the vast majority of owners can't meet the size standard to apply for a PUD, it will effectively disenfranchise existing businesses and small property owners and residents from having a voice. No PUDs mean nothing to consider. And, "disenfranchise" is an appropriate description because under standard and typical zoning protocols, those existing before the PUD-only policy was adopted, property owners and residents had the right to propose rezoning in keeping with adopted land use policies.

Director Tregoning characterized our interest in rezoning as wanting an "up-zoning". Please note, our proposal expressly does not change the low density, mixed use land use designation of the 12th Street corridor contained in the Comprehensive Plan and the Small Area Plan – or the transportation and design policies of those plan. Because the current and unworkable C-1 zone is the lower of the two zoning categories for such low density mixed use areas (the other

is C-2-A), we would expect any rezoning to reflect the permissions of the C-2-A district – however it may be modified and tailored to fit 12th Street’s special design, transportation and preservation needs. So, while rezoning would grant some additional flexibility for allowable density and height, it is likely to impose other requirements -- and will in any case, remain true to the low density mixed use land use policies for Brookland and the 12th Street corridor. To characterize our proposal as an “up-zoning” without that context may create misperceptions.

Director Tregoning mentioned that OP would be open to considering creating a “PUD-lite”. The inference was that this would allow property owners having less than the current minimum lot size (15,000 sf) to apply for a PUD. She mentioned this option as being considered through the city-wide rewrite of the Zoning Code, which OP has recently launched.

We believe this suggestion simply does not address the needs of Brookland’s 12th Street. If not 15,000 sf, what would be the minimum size requirement? Many commercial lots in Brookland are far below that threshold, and even where owners have assembled adjacent lots, are less than 4,000 sf or 5,000 sf? What’s the new minimum cut-off? Who is excluded and why? Will governmental (and private professional) fees be adjusted and the process streamlined to make this new PUD option economically accessible to smaller owners? What are the policy objectives the “PUD-lite” is designed to achieve? Why is the PUD method a superior tool to rezoning that would extend controls and incentives fairly and uniformly for all owners? Currently, OP has developed no guidance for the “PUD-lite” and the city-wide rezoning exercise is expected to roll-out over the next two years. So, assuming favorable consideration and adoption of “PUD-lite” by the Zoning Commission, when would the procedures be in place allowing property owners to apply for this new PUD mechanism, much less receive approval for the PUD? That delay will further exacerbate 12th Street’s disadvantage with projects the City and Zoning Commission has already approved in the market area. Will this solution be ready and available too late – after 12th Street’s ability to compete for and share in neighborhood growth has effectively passed?

We would welcome a modification of the current PUD regulations to better address the needs of our neighborhood commercial areas. The PUD is an excellent tool for addressing large and complex sites and site plans that defy standard zoning approaches. It could also be improved as a tool to incentivize preferred uses and to tailor individualized design solutions. That is why we have not recommended changes to use of the PUD for the larger holding in the Station Area of Brookland. Our amendment would not change that policy of the Small Area Plan. But, for the

12th Street corridor, even if modified, the PUD-only policy is simply no substitute for considering and adopting base zoning that fairly and uniformly addresses general land use and design objectives. It is not the right tool to guide 12th Street's revitalization.

There is no way around it, imposing a PUD-only approach – in whatever form -- to rezoning along the 12th Street will put an effective hold on its revitalization. It will disadvantage smaller owners and businesses, while giving preference and priority to larger ones, of which there are currently very few. On the other hand, rezoning is a “tried and true” approach that does not have those, we trust, unintended consequences.

Please adopt an amendment to the Comprehensive Plan that corrects this mistake.

Thank you.

Lavinia Wohlfarth

Chair, Brookland Community Development Corporation

Joe Bender

12th Street Corridor Property Owner