

DISTRICT OF COLUMBIA COURT OF APPEALS

Wisconsin-Newark Neighborhood Coalition v. District of Columbia  
Zoning Commission

33 A.3d 382 (D.C. 2011) · Decided December 22, 2011

SUMMARY

The District of Columbia Court of Appeals reviewed a challenge to the District of Columbia Zoning Commission’s approval of a planned unit development and related zoning map amendment for a mixed-use project. The court held that the Commission had authority to conditionally remove the applicable neighborhood commercial overlay through the PUD process without prior referral to the Board of Zoning Adjustment. It also upheld the Commission’s conclusions that the project was consistent with the Comprehensive Plan and supported by substantial evidence regarding traffic and truck loading.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| COURT                 | District of Columbia Court of Appeals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Reid, Senior Judge; Blackburne; Pryor; Reid; Rigsby                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| JURISDICTION          | District of Columbia                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| DECIDED               | December 22, 2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Petitioners sought appellate review of a District of Columbia Zoning Commission order approving a Planned Unit Development and related Zoning Map amendment for a mixed-use development.                                                                                                                                                                                                                                                                                                                                         |
| STANDARD OF REVIEW    | The court reviews factual findings for substantial evidence in the record as a whole, reviews agency decisions for arbitrariness, capriciousness, or abuse of discretion, and reviews legal determinations de novo. It affords deference to an agency's reasonable, non plainly-wrong interpretation of a statute it administers and gives even greater deference to an agency's interpretation of its own regulations, while affording reduced deference to the agency's determination of the scope of its statutory authority. |
| PRECEDENTIAL VALUE    | published opinion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| PARTIES               | Wisconsin-Newark Neighborhood Coalition, Ordway Street Neighbors Association, 3300 Idaho Neighbors v. District of Columbia Zoning                                                                                                                                                                                                                                                                                                                                                                                                |

## TOPICS

zoning    judicial review of agency action    administrative law    standard of review    appellate procedure

## PRACTICE AREAS

land use    administrative law    zoning    appellate procedure

## QUESTIONS PRESENTED

1. Whether the Zoning Commission had authority to approve a PUD and related Zoning Map amendment that conditionally removed property from the MW Overlay without prior Board of Zoning Adjustment approval.
2. Whether the Commission erred by failing to enforce the MW Overlay's height and density restrictions.
3. Whether the approved PUD and C-2-A rezoning were inconsistent with the District of Columbia Comprehensive Plan.
4. Whether substantial evidence supported the Commission's finding that the proposed truck-loading operation was feasible and would not create unacceptable impacts.

## HOLDINGS

1. The Zoning Commission had authority to approve the PUD and related Zoning Map amendment without prior BZA approval under the MW Overlay's special-exception provision.
2. The Commission did not err by failing to enforce the MW Overlay's height and density restrictions because its PUD-related map amendment conditionally removed the overlay for purposes of the PUD.
3. The Commission reasonably concluded that the PUD and related C-2-A rezoning were not inconsistent with the Comprehensive Plan.
4. Substantial evidence supported the Commission's finding that the proposed truck-loading operation was feasible and would not impose unacceptable impacts.

## KEY QUOTATIONS

*“Our review of this matter is limited and narrow.” (at 389)*

*“We hold that the Commission had the authority to approve the PUD and related Zoning Map amendment, without the BZA’s prior approval pursuant to 11 DCMR § 1308.3 of the MW Overlay District.” (at 389)*

*“Based on the record, there is substantial evidence to support the Commission’s conclusion that the grocery store’s truck loading operation will not impose adverse impacts and that Idaho Avenue can accommodate the loading operations.” (at 397)*

## FACTUAL BACKGROUND

Friendship-Macomb SC, Inc. proposed replacing an existing shopping center with a mixed-use development containing a grocery store, retail and commercial space, approximately 138 multifamily units and townhouses, and related loading and transportation facilities. The property was subject to MW/C-1 and R-5-A zoning and the Macomb-Wisconsin Neighborhood Commercial Overlay District, which imposed height, density, and restaurant-frontage restrictions. The developer sought PUD approval, rezoning, conditional removal of the overlay, and flexibility from various zoning requirements. The Commission credited the testimony of the District of Columbia Office of Planning, the Department of Transportation, and the developer's experts concerning the project's public benefits, Comprehensive Plan consistency, and truck-loading feasibility.

## PROCEDURAL HISTORY

The Zoning Commission held a public hearing and issued a July 13, 2009 order approving Friendship-Macomb SC, Inc.'s PUD and related Zoning Map amendment. Petitioners challenged the order, arguing that the Commission lacked authority to proceed without referral to the Board of Zoning Adjustment, failed to apply overlay height and density restrictions, approved a project inconsistent with the Comprehensive Plan, and relied on insufficient evidence concerning truck loading. The Court of Appeals rejected the challenges and affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Hotel Tabard Inn v. District of Columbia Dep't of Consumer & Regulatory Affairs, 747 A.2d 1168, 1173-74 (D.C. 2000)
- Reneau v. District of Columbia, 676 A.2d 913, 917 (D.C. 1996)
- Foggy Bottom Ass'n v. District of Columbia Zoning Comm'n, 639 A.2d 578, 582, 584 (D.C. 1994)
- District of Columbia Pres. League v. District of Columbia Dep't of Consumer & Regulatory Affairs, 711 A.2d 1273, 1275 (D.C. 1998)
- Foggy Bottom Ass'n v. District of Columbia Zoning Comm'n, 979 A.2d 1160, 1167-70 (D.C. 2009)
- 1330 Connecticut Ave., Inc. v. District of Columbia Zoning Comm'n, 669 A.2d 708, 714-15 (D.C. 1995)
- Blagden Alley Ass'n v. District of Columbia Zoning Comm'n, 590 A.2d 139, 142-43, 147 (D.C. 1991)
- District of Columbia v. Brookstowne Cmty. Dev. Co., 987 A.2d 442, 449 (D.C. 2010)
- Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n, 355 A.2d 550, 556-57 (D.C. 1976)
- Watergate E. Comm. Against Hotel Conversion to Co-op Apartments v. District of Columbia Zoning Comm'n, 953 A.2d 1036, 1040, 1043, 1051 (D.C. 2008)
- Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n, 426 A.2d 327, 332, 335-36 (D.C. 1981)
- Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment, 550 A.2d 331, 337 (D.C. 1988)
- Badawi v. Hawk One Sec., Inc., 21 A.3d 607, 613 n. 4 (D.C. 2011)
- Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293, 1301 (D.C. 1990)

- Sandula v. District of Columbia Police & Firefighters' Ret. & Relief Bd., 979 A.2d 32, 39-40 (D.C. 2009)
- Georgetown Univ. Hosp. v. District of Columbia Dep't of Emp't Servs., 916 A.2d 149, 151 (D.C. 2007)
- Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 844 (1984)

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