

September 23, 2024

TO: Neighborhood Planning and Development Committee

Subject: Further PWNA Testimony on **Ordinance No. 240814**: 4438-4450 Washington. Applying the **review criteria in Section 88-515-08**

**The Municipal Code requires the City Council to apply the review criteria in Section 88-515-08 when deciding when to rezone property. A majority of those criteria have not been met.** The burden of proof is on the developer.

**The following review criteria have not been met:**

**88-515-08-A. Requires conformance with adopted plans.** The *Midtown Plaza Area Plan*, adopted in 2016, controls this site. The Plan recommends a density of 29 units to the acre. This site is .39 acres, which means that 11 units would be allowed under the Plan, and that is what could be built under the existing zoning district. No change is needed to gain 11 units, but the developer wants more, at least 20 units, which is why he is seeking a rezoning. The maximum height of 45 feet for this area in that Midtown Plaza Area Plan is consistent with the existing zoning. The proposed rezoning to R-0.5 with a maximum height of 60 feet is not consistent with the Area Plan.

**88-515-08-B. Requires consideration of zoning and use of nearby property.** The property to the west is single family homes and is zoned R-6. There does not appear to be any other area in Midtown or the Plaza in which R-.75 (the zoning district sought by developer) is next to R-6. We believe that the imposition of R-.75 rezoning immediately next to R-6 is unprecedented and therefore arbitrary and capricious. In the past, Staff selectively applied MPD safeguards on other properties, but did not apply those same safeguards in this case upon the single-family homes to west.

**88-515-08-D. Requires consideration of whether public facilities (infrastructure) and services will be adequate to serve development allowed by the requested zoning map amendment.** A traffic or parking study hasn't been performed. Therefore, the developer cannot make the case that the traffic and parking infrastructure is adequate. In this area, on-street parking tapped out and the streets are narrow; increased traffic and parking will increase hazards. Ordinance No. 230579 authorized a traffic study that would have included this area stretching from 39<sup>th</sup> St to 52<sup>nd</sup> St, State Line to Troost. However, this area south of 43rd St. was excluded at the discretion of the existing 4<sup>th</sup> District Councilmembers. Keeping the current zoning in place, with less density, will reduce safety hazards from street parking and traffic, more consistent with Vision Zero Initiatives of the City.

**88-515-08-E. Requires that the suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations.** The property could be used to construct a multi-family complex with 11 units, in the existing zoning district. This is a viable use in the existing zoning. Plaza Westport NA is not opposed to development at that density under the current zoning. Plaza Westport has supported development in other portions of our neighborhood where it makes sense in the

periphery on more major streets. In this case, the proposed development harms its neighbors and is detrimental to the neighborhood area.

**88-515-08-G. Requires consideration of the extent to which approving the rezoning will detrimentally affect nearby properties.** The proposed structure will dwarf adjacent existing family homes, destroy their privacy, and will decrease their property values. This criterion alone should invalidate the developer's application for rezoning. **Why should nearby residents pay a hefty price and lose asset value** for a development from which they will not benefit?!

In addition to the fact that the standards for the above criteria have not been met by this proposed development, we believe the **Staff's analysis is problematic** in several respects:

- A) Staff has determined that Infill Regulations allow consolidation of four lots, that formerly contained four single-family homes, to allow a multi-family complex of 20 units. We believe that to be a stretch of Infill Regulations.
- B) At the CPC, staff stated the Infill Regulations would limit height to 48 feet and not the 60 feet height permitted under the proposed rezoning to R-0.75. That is omitted in the staff's written presentation to you today.
- C) Staff interpretations have changed over the years to the detriment of the Neighborhood: the MPDs that were previously permitted in this area are no longer a safeguard available to the Neighborhood.
- D) A condition limiting the height to what you were shown was not supported by Staff when it was raised at the CPC by a Commissioner. Notwithstanding 88-505-10, which allows conditions in rezonings, we were advised by City staff that conditions are not permitted in a rezoning ordinance except for MPD and UR. Yet that safeguard too is denied to the Neighborhood.

**This is a rezoning, without a plan.** What is presented to you by the developer, they aren't obligated to build. That is particularly detrimental to the single-family homes to the west. A project plan isn't required because what is proposed is 20 units. Plaza Westport offered multiple alternatives to reduce that risk, but none were supported by either the Developer or City staff. **To remedy: We ask that you instruct staff to come back with a text amendment to Section 88-518-02-A to require a project plan for more than 6 units,** and not 20. We have the support of this amendment request from other Midtown Neighborhoods.

**The Neighborhood is left to its sole remedy of opposing Ordinance No. 240814. Plaza Westport wants to make it clear that we don't oppose the construction of 11 units available in the existing zoning.**

**WE ASK THAT THIS ORDINANCE NOT BE RECOMMENDED FOR PASSAGE AND NOT BE ADVANCED.**