

**ANC 3F RESOLUTION OPPOSING PUBLIC SPACE RENTAL FOR A SIDEWALK  
CAFÉ AT 4501 WISCONSIN AVENUE, NW, DDOT TRACKING NO. 66869**

*Advisory Neighborhood Commission 3F  
North Cleveland Park, Forest Hills & Tenleytown  
4401-A Connecticut Avenue, N.W. Box #244  
Washington, D.C. 20008-2322*

**WHEREAS**, Panera Bread LLC has applied for a public space permit for an unenclosed sidewalk café in front of 4501 Wisconsin Avenue, NW, which is within the boundaries of ANC 3F; and

**WHEREAS**, the site plan included with the application shows that Panera intends to install a cafe not only on the sidewalk in front of the one-story building that it occupies, but also on the sidewalk in front of a separate lot owned by WMATA, as well as on WMATA's own property; and

**WHEREAS**, WMATA has informed ANC 3F that it was unaware of Panera's intent to install a café on and in front of its Tenleytown property, has never given permission to Panera to do so, and opposes this application insofar as it relates to WMATA's property; and

**WHEREAS**, the DC Real Property Tax Database shows two listings for "4501 Wisconsin Avenue, NW" on two separate lots under separate ownership: (1) Lot 14 in Square 1770 owned by WMATA (Attachment A), and (2) Lot 24 in the same square improved with a "Store-Small 1-Story" owned by Pedas Tenley LLC (Attachment B); the DC Zoning Map shows both of these lots, with Lot 24 north of Lot 14 (Attachment C); and

**WHEREAS**, for the purpose of this application Panera has supplied a copy of its Certificate of Occupancy, which states that it occupies Lot 14 and is owned by WMATA (Attachment D), but WMATA has informed ANC 3F that this Certificate of Occupancy is in error: Panera does not occupy Lot 14, which contains the east-side escalator and elevator to the Tenleytown Metrorail Station, and WMATA does not own the retail building occupied by Panera; and

**WHEREAS**, records in the DC Surveyor's Office show that Lot 14 was recorded in 1932 (Attachment E), and the land now occupied by Panera was subdivided into Lot 24 by the Pedas family and recorded in September 2008 (Attachment F); DCRA's permit records show that Building Permit No. B0901208, issued on July 6, 2009, to the Pedas family to replace a surface parking lot with the new single-story retail building now occupied by Panera, was granted for Lot 24, not Lot 14 (Attachment G); and

**WHEREAS**, DCRA's "Address Applications Arc Map" shows that Lot 24 in Square 1770 should have been assigned the address "4503 Wisconsin Avenue", not "4501" (Attachment H); the street address "4503 Wisconsin Avenue" is still available because Payless ShoeSource, the store immediately to the north on Lot 25, is using "4505 Wisconsin Avenue" (Attachment I); and

**WHEREAS**, the sidewalk café as designed would violate 24 DCMR § 311.7 ("No sidewalk cafes shall be within fifteen feet (15 ft.) of a bus stop, a bus shelter, or a Metrorail station entrance"); furthermore, residents and ANC 3F are concerned about the effect of locating a sidewalk café so close to the escalator to the Tenleytown Metrorail Station and on WMATA's property:

- Tables and chairs would block the pedestrian passage along the north side of the escalator, generally restrict pedestrian circulation around the escalator, and could impede fire and emergency operations for the Metro Station;
- If diners and waiters placed objects on the wall surrounding the escalator, they could fall and injure persons on the escalator below;
- The café could be in the way of a future canopy over the Metro escalator long anticipated by Tenleytown residents; and
- The café would project too close to the busy intersection and crosswalks at Wisconsin Avenue and Albemarle Street; and

**WHEREAS**, residents are in favor of a sidewalk café in front of Panera’s restaurant, but the application before us leaves many questions unanswered:

- The application includes an assortment of furniture types that make up an “Outdoor Gathering Place Methodology” but does not specify exactly which ones would be used in this location;
- The site plan states that 3 gas heaters will be installed, but does not show what they would look like, where they would be placed, or explain how they would be made safe on a busy public sidewalk;
- The site plan refers to grading work to be accomplished and shows a shaded area not only in front of Panera’s store, but also in front of and on WMATA’s property -- is this the area to be regraded? -- has the work already been done? -- did WMATA give permission to regrade on and in front of its property? If grading will be required for the sidewalk café, no drawing has been provided to describe it; and
- Contrary to the requirement of 24 DCMR §303.14 (e), the site plan fails to show the trees and tree boxes along Wisconsin Avenue and the 6-inch-high brick walls that surround them, making it impossible to determine the sufficiency of the sidewalk space between the proposed café and these obstructions;

**THEREFORE BE IT RESOLVED THAT**, for the foregoing reasons ANC 3F opposes this application for a sidewalk café and requests that it be denied; ANC 3F designates Commissioners Cathy Wiss, Karen Perry, and Bob Summersgill to represent it in this matter; and

**BE IT FURTHER RESOLVED THAT**, ANC 3F strongly urges Panera to seek revision of its Certificate of Occupancy to show – correctly -- that it occupies Lot 24, which is owned by Peda Tenley LLC; and, if Panera refuses to do so, ANC 3F urges the Director of DCRA to revoke the Certificate of Occupancy under 14 DCMR §1406.1<sup>1</sup>; and

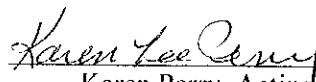
**BE IT FURTHER RESOLVED THAT**, ANC 3F recommends that Panera apply to use a different street number, such as “4503 Wisconsin Avenue”, to avoid continued confusion with WMATA’s property; and

**BE IT FURTHER RESOLVED THAT**, ANC 3F is willing to consider a revised application by Panera for a sidewalk café solely in front of Lot 24 in Square 1770 so long as the questions listed above can be answered satisfactorily and the application complies with all aspects of 24 DCMR and DDOT’s Public Realm Design Manual, as they pertain to sidewalk cafes.

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<sup>1</sup> Section 1406.1 provides: “Any Certificate of Occupancy issued pursuant to these rules may be revoked by the Director, after notice, if the actual occupancy does not conform with that permitted or because of any misrepresentation in the application having a substantial bearing on the safety of the occupancy, or if due to any material circumstance, it is found to have been issued in error.”

This resolution was approved by a vote of 5-0-0 at a duly noticed public meeting of ANC 3F on Monday, February 13, 2012, with a quorum present, a quorum being four.

  
Karen Perry, Acting Chair

## ATTACHMENTS

Attachment A:

Property Detail for Square 1770, Lot 14 from the Real Property Assessment Database

Attachment B:

Property Detail for Square 1770, Lot 24 from the Real Property Assessment Database

Attachment C:

Extract from the online DC Zoning Map showing a portion of Square 1770

Attachment D:

Certificate of Occupancy for Panera Bread

Attachment E:

Recordation of Lot 14 in Square 1770 with the DC Surveyor's Office

Attachment F:

Recordation of Lot 24 in Square 1770 with the DC Surveyor's Office

Attachment G:

Copy of Building Permit B0901208 issued on 07/06/2009 for a "new 3,677 SF single story building" on Lot 24 in Square 1770

Attachment H:

View of Lots 14 and 24 in the DCRA Address Applications ArcMap, showing Lot 24 with the address "4503 Wisconsin Avenue" (Of the other lots shown on this map, the Real Property Assessment Database states that WMATA owns Lots 15, 811, 812, 813, and 815 in addition to Lot 14; and Pedas Tenley LLC owns not only Lot 24, but also Lots 8, 13, 21, 25, and 804.)

Attachment I:

Photograph showing that Payless ShoeSource uses the address "4505 Wisconsin Avenue"