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August 28, 2002

DOUGLAS J. PATTON
202-828-1893
DPatton@hklaw.com

The Honorable Carol J. Mitten, MAI
Chairperson, Zoning Commission of the District of Columbia
One Judiciary Square, Suite 210
441Fourth Street, NW
Washington, DC 20001

Re: Consistency Issues within the Interpretation of the "High Density Residential" Land Use Category in the Comprehensive Plan and its Further Interpretation and Application within the Zoning Regulations (General, and as part of ZC Cases 00-27 and 01-33)

Honorable Members of the Zoning Commission:

The Comprehensive Plan, as amended, includes both District and Federal parts, with the Mayor and the Council of the District of Columbia setting, with review by the National Capital Planning Commission the "District Elements" and the National Capital Planning Commission adopting "Federal" ones. The District parts are adopted as ***10 DCMR 1-19,*** and have been amended from time to time since initially adopted in 1984, most recently by actions of the Council of the District of Columbia in December 1998 and signed into law the following year by the present Mayor.

The adopted Land Use element, at Chapter 11 (cited as ***10 DCMR 11***) in turn adopts and incorporates two maps:

- Map 1 – District of Columbia Generalized Land Use Map *(**10 DCMR 1139**)*
- Map 2 – District of Columbia Generalized Land Use Policies Map *(**10 DCMR 1140**)*

Each of these maps is revised from time to time following amendment and a final review by the Council *(see **10 DCMR 1141**)*. These maps are generally available to the public and are within the meaning of §3013.1(f) of the Zoning Regulations. Therefore, we ask that you declare them to be part of the record in each of the cases now pending.

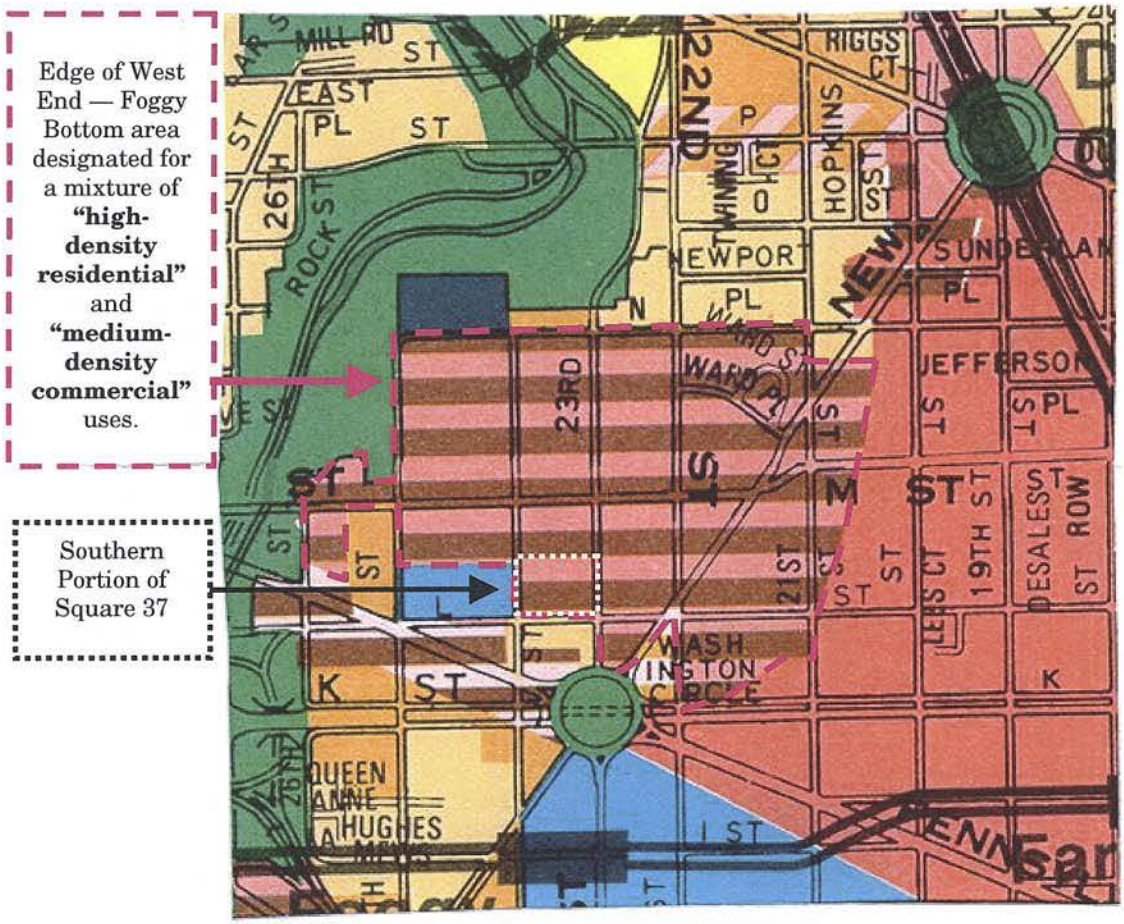
ZONING COMMISSION
District of Columbia
Case 00-27
Exhibit 40

ZONING COMMISSION
District of Columbia
CASE NO.00-27
EXHIBIT NO.40

It is critical that the Commission reads and interprets these maps as your efforts within cases 00-27 and 01-33 as they proceed, as well as other cases now underway and in the future.

For your convenience and review, we set out an excerpt of Map 1, highlighting the southern half of Square 37 by an open rectangle with a dotted white line at its edges. We also show the overall extent of the area of Map 1 that the Plan specifies for a **mix** of "**high density residential**" and "**medium-density commercial**" uses, with a dashed purple line. Those shapes will reappear later in this letter.

Excerpt from "Map 1"



We submit this letter to the record in both pending cases as well as to you for consideration at your September meeting at a more abstract level. We do so since we discern an emerging posture from the Office of Planning as to the relationship between the categories of land uses within the Comprehensive Plan and the classification of zone districts that we find somewhat disturbing, and quite possibly wrong.

The Comprehensive Plan has established a broad range of use classifications, dividing the District of Columbia into areas for *Residential, Commercial, Public and Institutional,* and *Production and Technical Employment.* Residential uses are further divided into four density categories (low, moderate, medium, and high). Commercial uses are divided into five density categories (low, moderate, medium, medium-high, and high).

Each of these is more fully spelled out in the Comprehensive Plan, this document, and materials that accompany this document.

Within the Zoning Regulations, the present regulations also provide a hierarchy of use classifications that result in a wide range of densities, controlled by such means as yard requirements, restrictions on lot occupancy, height and story limits, and maximum floor areas ratios.

No one would argue that anyone intended an absolutely rigid correlation between the provisions of the Comprehensive Plan and the system of zone classifications. However, where almost all of a given "plan area" is encompassed by a common range of zoning, it stands to reason that the Commission must find compelling reasons when it is asked, as the Office of Planning and some in the community seem poised to do, to adopt zoning that deviates dramatically from the norm already applied to the preponderance of the overall area of that plan, particularly when that would adversely restrict just one small area in terms of development rights.

We take fundamental exception to the posture of the Office of Planning's characterization of the R-5-D zone as being a "high density residential zone," a position they have taken within the record of Cases 00-27 and 01-33. **By contrast, within the current range of Residential zone districts, we find that the R-5-E zone is the only *current* Residential zone district whose characteristics and description squarely comport with that classification.** What follows sets forth our rationale for that position and offers some suggestions for your consideration.

The specific provisions of the Comprehensive Plan as to Residential Land Use Categories are set out below (emphasis added):

> **1103 RESIDENTIAL LAND USE CATEGORIES**
>
> 1103.1 **The low density residential** land use category **includes single-family detached** and **semidetached housing as the predominant uses.**
>
> 1103.2 **The moderate density residential** land use category **includes row houses** and **garden apartments as the predominant uses** and may also include, as appropriate uses, low density housing.
>
> 1103.3 **The medium density residential** land use category **includes multiple-unit housing** and **midrise apartment buildings as the predominant uses** and may also include, as appropriate uses, low and moderate density housing.
>
> 1103.4 **The high density residential** land use category **includes high-rise apartment buildings as the predominant use** and may also include, as appropriate uses, low, moderate, and medium density housing. High density residential land use areas are generally located adjacent to the Central Employment Area, major employment centers, major arterial streets, and appropriate multi-neighborhood and regional commercial centers.

The balance of this document, while diagramming a specific area in which we are very interested provides you with a chart that sets out the relevant provisions of the Comprehensive Plan and the provisions of the Zoning Regulations. We are also providing you a graphical presentation of the charted information. From all that, we conclude not only that the Square at issue in Case 00-27 falls squarely within an area the Comprehensive Plan envisions for truly "high density" uses, but that the correspondence between the terms of the Comprehensive Plan and the Zoning Regulations strongly favors your determining that the R-5-E zone is the only current Residential zone that clearly meets the *density* specifications of that plan. Furthermore, we conclude that mixed uses are already sufficiently allowed and achieved by commercial zones already in place elsewhere on the Square or nearby and the "mixed use" specification does not itself require mapping an emerging "overlay" zone in the name of "consistency."[1]

We base the conclusion that the R-5-E zone is the only appropriate high-density Residential zone for this area on the fact that the next most restrictive Residential district, R-5-D, allows scarcely over half the FAR of the R-5-E zone. Even the semantics argue in favor of our conclusion, since "medium" most generally means half-way or close

---

[1] Other mixed use zones, including both the C-2-C and CR zones set out in the original petition to Case 00-27, also fully meet the density and mixed use specifications of the current Comprehensive Plan. (From a purely technical point of view, the CR and C-2-C zones fully meet the Plan's specifications and would, all other things being equal, be appropriate to apply to the southern portion of Square 37, as originally petitioned in Case 00-27. However, while we would not object if either were applied to our client's part of or all of that area, our advocacy will focus on rezoning to allow high density residential use, namely R-5-E, on our client's property. Our mentioning C-2-C and CR is simply a reminder that their characteristics are in keeping with the specifications the Comprehensive Plan provides.)

thereto and an FAR of 3.5 is barely over halfway to the maximum allowed in R-5-E (and other comparable mixed use zones) of 6.0.[2]

We recommend that you ask the Office of Planning to advise about this issue. To us, the total/residential density limit must be at or close to 6.0 (FAR) to achieve consistency with the Plan's specification that the this mixed use area include "high density residential" uses. We will submit a proposal and options to accomplish that result.

Enclosed you will find:

A. **Comparison Among Residential Land Use Categories, Zone Districts and Limitations of Each** Zone (Multi-column document of five pages, together with four additional pages relating to the proper classification of the R-5-D zone)

B. **Graphical Presentation of Provisions of the Comprehensive Plan's "Categories" of Residential Land Uses, Zoning Classifications, and Zoning Limitations**

C. **Graphical Presentation of Provisions of the Comprehensive Plan's "Categories" of Commercial Land Uses with Selected and Consolidated Mixed Use Areas, Zoning Classifications and Zoning Limits with C-2-C and CR Options Highlighted**

D. **Two historic documents:**
   - **"Zoning Consistency Chart," part of a 1991 Office of Planning Report to the Zoning Commission on zoning consistency**
   - **Excerpt from Report on Bill 8-2 (October 3, 1989)**

The **"Comparison"** lays out the respective provisions of the Comprehensive Plan, the zoning regulations, and the zoning controls for the various *Residential* categories and zones. The fourth column of that comparison provides you with our conclusions as to the "fit" between the *Residential* provisions of the Comprehensive Plan and the Zoning Regulations. We also pose the question "Maps?", not yet answered, denoting lack of graphical information across the District as to the "fit" between the Generalized Land Use Map and the various Residential zone districts. We will try to complete this before October 3 if costs allow. (We have not prepared a *Commercial* counterpart to this.)

---

[2] Both the Office of Planning and the Zoning Commission may wish to revisit discussions of these issues prepared by that Office in 1989 and 1991, copies enclosed. The 1989 report was associated with the Comprehensive Plan amendment cycle then in process. In it, the Office suggested that "High Density" *Residential* classifications include development at a density of 91 or more dwelling units per acre. We disagree.

Significantly and appropriately, however, OP then distributes the five *Commercial* categories by zoning's maximum FAR limit, placing zones with "medium" FAR (3.0 and 4.0) within the "Medium" density classification, with the next one encompassing FAR 4.0-to 6.5, and a final one for all more permissive commercial zones, which then reached a matter of right maximum FAR of 8.0. In other words, "medium" fell half way along the potential range, as it should. Consider, as well, OP's "Consistency" materials dating from 1991, which we use in the "Graphical" comparisons enclosed with this letter.

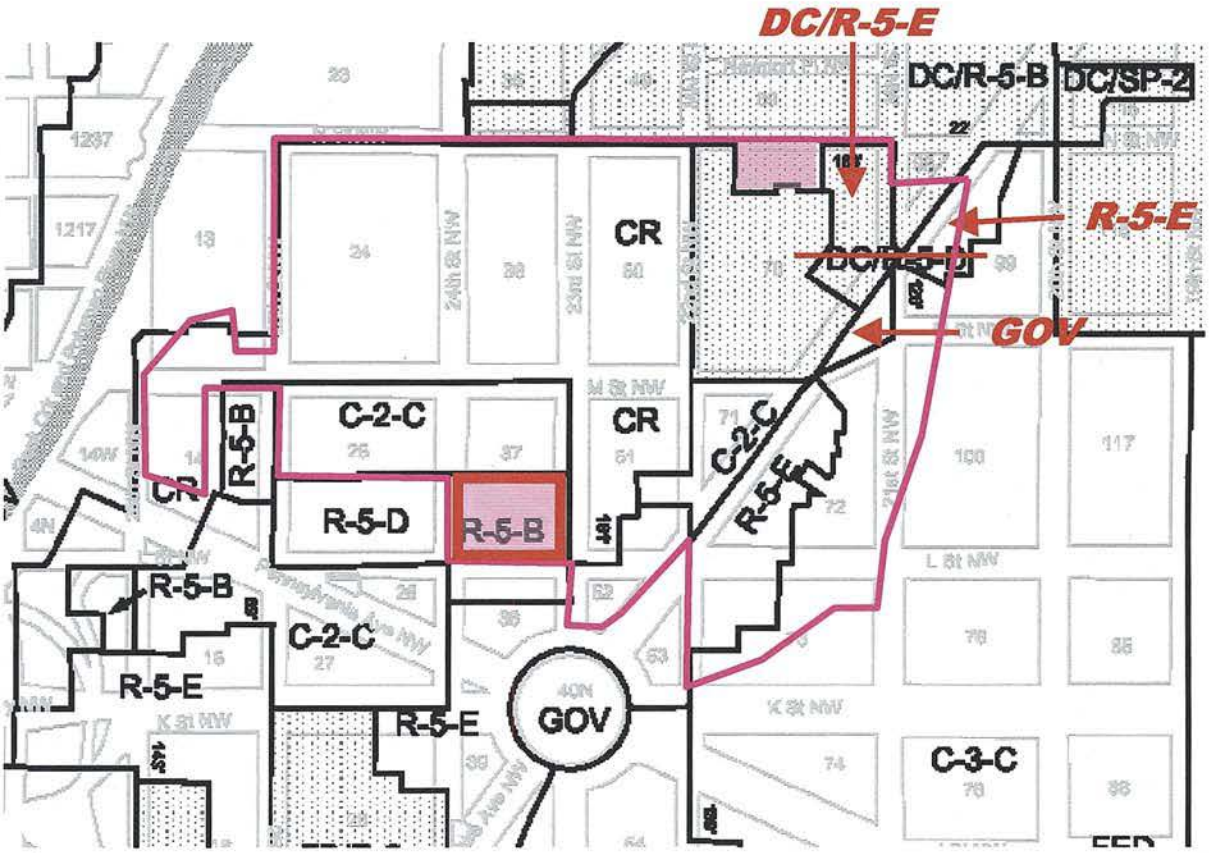
The next two documents present the relevant categories graphically, first for the *Residential* categories and zones, then for the *Commercial* ones, including most of the "mixed use" categories. In the *Residential* diagram, we label the rows corresponding to the rows for R-5-C and R-5-D in a manner that summarizes our conclusions as to where each of these zone districts fall *vis-a-vis* the Comprehensive Plan's classificatory spectrum. To us, neither of those two zone districts fall within the Comprehensive Plan's "High Density" Residential Land Use category.

The *Commercial* diagram arrays the various commercial zones against the five categories of "Commercial" in the Comprehensive Plan, distributing them as set forth in an Office of Planning's report on "consistency" issues dating from 1991. While we disagree with parts of that intellectually (e.g., the placement of W-1), we further note that it declares that both C-2-C and CR are themselves among "Mixed Use" zones of "Medium to High Density" when all zones included therein are limited to an FAR of 6.0, far from the upper end of the "Commercial" densities contemplated in the Plan and allowed in the adopted system of zones then in place.

The final enclosures are two documents showing how the Office of Planning viewed the various Residential land use categories in the late 1980's when their views became a part of the record in the Comprehensive Plan revision cycle then underway and a few years later in a report it provided to the Zoning Commission.

The latter document is essential to understanding the *Commercial* diagram we provide herein, discussed above. The reason is this: we have carried over their placement of the various *Commercial* zones and mixed use zones. (However, since our objective is show you how the C-2-C and CR zones operate – which OP then characterized as two of four zones OP saw as falling in the "Medium to High Density" band – we provide details on just the four mixed use zones in that band and aggregated the zones OP associated with *Commercial* mixed use bands of lesser density.)

Returning to Square 37 and its surrounding area, we set out the zoning currently applied to the relevant area surrounding Square 37 in the West End (on the next page):



Zoning Map for Portions of Foggy Bottom/West End and Dupont Circle Area
Red Italic Text*: *Corrections and Additions
Red Rectangular Outline: Southern Portion of Square 37
Purple Perimeter: Comprehensive Plan Land Use Map's "Mixed Use" Area

Taken as a whole, virtually all areas within the perimeter of the overall adopted Land Use element's Generalized Land Use Map specifying "mixed high-density residential and medium density commercial" is already zoned with districts of virtually identical bulk and height. Specifically, the zones mapped limit Floor Area Ratio to 6.0, limit of height to 90 feet, and limits the percentage of lot occupancy for buildings in "residential use" to either 75% or 80% (i.e., they are zoned R-5-E, C-2-C, or CR).[3]

The southern half of Square 37 is the major exception and the reason for the petition.[4]

---

3 The web-hosted zoning map both lacks information and conveys incorrect information at the northeaster corner of the overall area, corrected above in red text.

4 The other exception is a much smaller area that was developed at the time with mid-rise apartment buildings, which survive to this day, whose characteristics are very similar to the Tiverton Apartment building on Square 37 such that they could more appropriately

Accordingly, while acknowledging your discretion and authority, we feel that the Commission's logical range of options for rezoning within Square 37 must be to zone districts or patterns that reach an FAR of 6.0 and allow heights to ninety feet (90 ft.) – or that come close to those parameters though a judicious combination of base zone districts. We will present some viable options in a separate submission for consideration at the hearing scheduled for October 3.

In the meantime, we feel you should have the opportunity to consider the issues presented herein. Thank you for your interest and attention.

HOLLAND & KNIGHT LLP

Douglas J. Patton, Esq.

Lindsley Williams
Land Use, Planning, and Zoning Consultant
to the Law Firm of Holland & Knight LLP

Enclosures:

- Comparison Among Residential Land Use Categories, Zone Districts and Limitations of Each Zone (Multi-column document of five pages, with four additional pages of supporting materials as to purpose of R-5-D zone)
- Graphical Presentation of Provisions of the Comprehensive Plan's "Categories" of Residential Areas, Zoning Classifications, and Zoning Limitations.
- Graphical Presentation of Provisions of the Comprehensive Plan's "Categories" of Commercial Land Uses with Selected and Consolidated Mixed Use Areas, Zoning Classifications and Zoning Limits with C-2-C and CR Options Highlighted
- Two historic documents:
  - "Zoning Consistency Chart," part of a 1991 Office of Planning Report to the Zoning Commission on zoning consistency
  - Excerpt from Report on Bill 8-2 (October 3, 1989)

---

have been mapped R-5-D or, had it then existed, what is now the R-5-C zone classification.

More critically, the small area is but a very small extension of a much larger area zoned R-5-B in 1958, most of which subsequently was put under the Dupont Circle "overlay zone" but is otherwise largely intact. Note also, from the excerpt of Map 1 appearing earlier in the letter that this larger area depicts "moderate density" residential land uses under the Comprehensive Plan, not either of that Plan's two Residential Land Use categories associated with even greater density.

cc: Director, Office of Planning
Chairperson, Advisory Neighborhood Commission 2-A
President, Foggy Bottom Association
Convenor, Tiverton Apartment Tenants' Association
ZC Case Files 00-27 and 01-33.

WAS1 #1111358 v3

A

Comparison Among Residential Land Use Categories, Zone Districts and Limitations of Each Zone

Comprehensive Plan Provides:

1103 RESIDENTIAL LAND USE CATEGORIES

1103.1 The **low density** residential land use category includes single-family detached and semidetached housing as the predominant uses.

Zoning Classifications Provide:

200 R-1 DISTRICTS: GENERAL PROVISIONS

200.1 The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes.

* * * * *

200.3 The R-1 District is subdivided by different area requirements into R-1-A and R-1-B Districts, providing for districts of **low[er]** and **high[er]** density, respectively.

300 R-2 DISTRICTS: GENERAL PROVISIONS

300.1 The R-2 District consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. It shall be expected that these areas will continue to contain some small one-family detached dwellings.

Relevant Limits of Zone Controls

Primary Residential Uses

R-1-A *One-family detached*
R-1-B *One-family detached*
R-2 *One-family semi-detached*

Minimum Lot Size

R-1-A 7,500 square feet
R-1-B 5,000 square feet
R-2 3,000 square feet (*dwellings*)
4,000 square feet (other allowed uses)

Minimum Width of Lot

R-1-A 75 feet
R-1-B 50 feet
R-2 30 feet [for dwellings, 40 for other allowed uses)

Maximum Lot Occupancy Pct.

R-1-A 40 %
R-1-B 40 %
R-2 40 %

Maximum Number of Stories

R-1-A 3
R-1-B 3
R-2 3

Maximum Height

R-1-A 40 feet
R-1-B 40 feet
R-2 40 feet

Also Regulated [no details in this summary]

- Rear Yard
- Side Yards
- Court area
- Court width

Not Specifically Restricted:

- Maximum Floor Area Ratio (effectively 1.2 from *story* and *lot occupancy* limits)

Comp Plan / Zone Plan "Fit"

Generally good "fit" of texts.

Maps?

Estimated Maximum Number of Dwelling Units per Acre of Private Land:

R-1-A	1-6
R-1-B	7-9
R-2	10-14

Comparison Among Residential Land Use Categories, Zone Districts and Limitations of Each Zone

Comprehensive Plan Provides:

1103.2 The **moderate density** residential land use category includes **row houses** and **garden apartments** as the predominant uses and may also include, as appropriate uses, low density housing.

Zoning Classifications Provide:

300 R-3 DISTRICTS: GENERAL PROVISIONS

320.1 The R-3 District is designed essentially for **row dwellings**, but there shall be included in an R-3 District areas within which row dwellings are **mingled with one-family detached dwellings, one-family semi-detached dwellings, and groups of three (3) or more row dwellings.** To maintain a family-life environment, permitted related uses are the same in R-3 Districts as in R-1 Districts.

330 R-4 DISTRICTS: GENERAL PROVISIONS

330.1 The R-4 District is designed to include those areas now developed primarily with **row dwellings**, but within which there have been a **substantial number of conversions of the dwellings into dwellings for two (2) or more families.**

* * * * *

330.3 The R-4 District **shall *not* be an apartment house district** as contemplated under the General Residence (R-5) Districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement.

. . . continues on following page. . .

Relevant Limits of Zone Controls

Primary *Added* Residential Uses

R-3	*Row dwelling*
R-4	*Flat and conversions of pre-1958 buildings to apartments*
R-5-A	*Multiple dwellings [apartment houses]*

Maximum Floor Area Ratio

R-3	None prescribed *(but effectively 1.8 from lot occupancy and story limits)*
R-4	None prescribed *(but effectively 1.8 as above)*
R-5-A	0.9

Minimum Lot Size

R-3	2,000 square feet
R-4	1,800 square feet [for dwellings, 900/unit for conversions, 1,000 for others)
R-5-A	As prescribed by BZA

Minimum Width of Lot

R-3	20 feet (row dwelling) 30 feet (semi-detached) 40 feet (other structures)
R-4	18 feet (row dwelling & flats) 30 feet (semi-detached) none specified (conversions) 40 feet (other structures)
R-5-A	As prescribed by BZA

Maximum Lot Occupancy Pct.

R-3	60 % (row dwelling & flat) 40 % (most other structures)
R-4	60 % (row dwelling & flat) none specified (conversions) 40 % (most other structures)
R-5-A	40 %

. . . continues on following page. . .

Comp Plan / Zone Plan "Fit"

Generally good "fit" of text.

Maps?

Estimated Maximum Number of Dwelling Units per Acre of Private Land:

R-3	15-21
R-4	15-24 (up to 48 in flats)
R-5-A	25-40

Comparison Among Residential Land Use Categories, Zone Districts and Limitations of Each Zone

. . . continuing from prior page. . .

Comprehensive Plan Provides:

1103.2 ***[Repeated from prior page]***

*The **moderate density** residential land use category includes **row houses** and **garden apartments** as the predominant uses and may also include, as appropriate uses, low density housing*

. . . continuing from prior page. . .

Zoning Classifications Provide:

500 R-5 DISTRICTS: GENERAL PROVISIONS

350.1 The R-5 Districts are general Residence Districts designed to permit flexibility of design by permitting in a single district, except as provided in §§ 350 through 360, **all types of urban residential development if they conform to the height, density, and area requirements established for these districts** under chapter 4 of this title . . .

350.2 The R-5 Districts are subdivided into **R-5-A,** R-5-B, R-5-C, R-5-D and R-5-E Districts. **In R-5-A Districts, only a low height and density shall be permitted; . . .**

. . . continuing from prior page. . .

Relevant Limits of Zone Controls

Maximum Number of Stories

R-3	3
R-4	3
R-5-A	3

Maximum Height

R-3	40 feet
R-4	40 feet
R-5-A	40 feet

Also Regulated [no details in this summary]

- Rear Yard
- Side Yards
- Court area
- Court width

. . . continuing from prior page. . .

Comp Plan / Zone Plan "Fit"

(Please see prior page)

Comparison Among Residential Land Use Categories, Zone Districts and Limitations of Each Zone

Comprehensive Plan Provides:

1103.3 The **medium density** residential land use category includes **multiple-unit housing and midrise apartment buildings *as the predominant uses*** and may also include, as appropriate uses, low and moderate density housing.

Zoning Classifications Provide:

500 R-5 DISTRICTS: GENERAL PROVISIONS

350.1 The R-5 Districts are general Residence Districts designed to permit flexibility of design by permitting in a single district, except as provided in §§ 350 through 360, all types of urban residential development if they conform to the height, density, and area requirements established for these districts under chapter 4 of this title . . .

350.2 The R-5 Districts are subdivided into R-5-A, **R-5-B, R-5-C, R-5-D** and R-5-E Districts. In R-5-A Districts, only a low height and density shall be permitted; **in R-5-B, a moderate height and density shall be permitted;** in R-5-C, a medium height and density shall be permitted; ~~[and]~~ in R-5-D ***a relatively high height and medium-high density shall be permitted;*** and **in** R-5-E, a relatively high height and density shall be permitted.

Note: The italicized portions above are from text the Office of Corporation Counsel is recommending to the Office of Zoning to correct the current misstatements about the R-5-D zone resulting from the establishment of the R-5-C zone.

Relevant Limits of Zone Controls

Primary *Added* Residential Uses

R-5-B *No new use added*
R-5-C *No new use added*
R-5-D *No new use added*

Minimum Lot Size

R-5-B *None prescribed*
R-5-C *None prescribed*
R-5-D *None prescribed*

Minimum Width of Lot

R-5-B *None prescribed*
R-5-C *None prescribed*
R-5-D *None prescribed*

Maximum Lot Occupancy Pct.

R-5-B 60 %
R-5-C 75 %
R-5-D 75 %

Maximum Floor Area Ratio

R-5-B 1.8
R-5-C 3.0
R-5-D 3.5

Maximum Height

R-5-B 50 feet
R-5-C 60 feet
R-5-D 90 feet

Also Regulated [no details in this summary]

- Stories *(R-5-A only)*
- Rear Yard
- Side Yards
- Court area
- Court width

Comp Plan / Zone Plan "Fit"

With the exception of *maximum* height allowed in R-5-D, generally good "fit" of respective text provisions.

Note that while R-5-D zoning *allows* heights of up to 90 feet, that full envelope is often not utilized since the FAR limit constrains the development fundamentally, even with side and rear yards, and with court yards.

Note, too, that the Comprehensive Plan sets forth the expectation that multiple unit buildings and mid-rise apartment buildings would be the predominant uses.

R-5-C and R-5-D zones produce that effect.

Maps?

Estimated Maximum Number of Dwelling Units per Acre of Private Land:

R-5-B	41-80
R-5-C	81-130
R-5-D	120-150

Comparison Among Residential Land Use Categories, Zone Districts and Limitations of Each Zone

Comprehensive Plan Provides:

1103.4 The **high density** residential land use category includes **high-rise apartment buildings as the *predominant* use** and may also include, *as appropriate* uses, low, moderate, and medium density housing. High density residential land use areas are generally located adjacent to the Central Employment Area, major employment centers, major arterial streets, and appropriate multi-neighborhood and regional commercial centers.

Zoning Classifications Provide:

500 R-5 DISTRICTS: GENERAL PROVISIONS

350.1 The R-5 Districts are general Residence Districts designed to permit flexibility of design by permitting in a single district, except as provided in §§ 350 through 360, all types of urban residential development if they conform to the height, density, and area requirements established for these districts under chapter 4 of this title . . .

350.2 The R-5 Districts are subdivided into R-5-A, R-5-B, R-5-C, R-5-D and **R-5-E** Districts. In . . . **R-5-E, a relatively high height and density shall be permitted.**

Relevant Limits of Zone Controls

Primary *Added* Residential Uses

R-5-E *No new use added*

Minimum Lot Size

R-5-E *None prescribed*

Minimum Width of Lot

R-5-E *None prescribed*

Maximum Lot Occupancy Pct.

R-5-E 75 %

Maximum Floor Area Ratio

R-5-E 6.0 (apartment buildings)
5.0 (other allowed uses)

Maximum Height

R-5-E 90 feet

Also Regulated [no details in this summary]

- Rear Yard
- Side Yards
- Court area
- Court width

Not Regulated

- Maximum number of stories

Comp Plan / Zone Plan "Fit"

Generally good "fit" of text provisions.

High rise apartment buildings are the precise product of the R-5-E zone. (High rise apartment buildings, while *allowed* in R-5-D, are not required and if developed are limited to barely over half the maximum density (FAR) allowed in R-5-E.)

Maps?

Estimated Maximum Number of Dwelling Units per Acre of Private Land:

R-5-E 200-260

-----Original Message-----
From: Sansone, Marie (OCC) [mailto:marie.sansone@dc.gov]
Sent: Wednesday, August 14, 2002 12:42 PM
To: Williams, Lindsley (WAS - X71873)
Subject: RE: Correct R-5-D Overview's Mis-Characterization at §350.2
Importance: High

Lindsley . . . The correction that you have proposed is appropriate in light of the fact that the R-5-D District permits a high height (Section 400) and is described as "medium-high density" in Section 105.1. **I have indicated the proposed change on a further mark-up of Title 11 provided to Alberto Bastida in the Office of Zoning this morning, as follows "in R-5-D, a relatively high height and medium-high density shall be permitted;"[1].** It is my understanding that the Office of Zoning intends to prepare an up-to-date, but unofficial, version of Title 11, which will include all the additional corrections to the last version provided by the Office of Documents, and to then transmit the Office of Zoning version to the Office of Documents with the request that the Office of Documents conform and/or address the Office of Zoning corrections in the final official version.

Marie Sansone
Assistant Corporation Counsel
Land Use and Public Works Section
Suite 6N97
(202) 724-6657

-----Original Message-----
From: lwilliams@hklaw.com [mailto:lwilliams@hklaw.com]
Sent: Thursday, August 08, 2002 5:39 PM
To: Sansone, Marie (OCC)
Subject: FW: Correct R-5-D Overview's Mis-Characterization at §350.2
Importance: High

Marie,

I was pleased to speak with you earlier this afternoon, but saddened at the continuing failure of the Office of Documents to issue a new compilation of the Zoning Regulations.

I asked about the email, appearing below, that I'd sent you March 1. You told me that the ideas I had expressed seemed "in order" and that the leadership of the Office of Zoning concurred with my recommendation. But, I don't have the exact words and certainly not "from" you.

Would you please provide me, by email, whatever acknowledgement is appropriate and a summary of your understanding of what will happen, by whom (OZ, Office of Documents, whatever), and when (realizing that we can't set deadlines for the Office of Documents or even expect them to keep their promises).

Thank you.

Lindsley

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[1] No footnotes in original email messages; all are added to this compilation. **Emphasis shown here** and elsewhere in this compilation also added.

> -----Original Message-----
> **From: WILLIAMS, LINDSLEY (WAS - X71873)**
> **Sent: Friday, March 01, 2002 11:51 AM**
> **To: Marie Sansone Esq. (E-mail)**
> **Cc: Alberto Bastida (DCOZ) (E-mail); Jerrily Kress (DCOZ) (E-mail); Alan H. Bergstein Esq. (E-mail)**
> **Subject: Correct R-5-D Overview's Mis-Characterization at §350.2**
> **Importance: High**
>
> Marie,
>
> As part of the overall cleanup of the Zoning Regulations, we would like to alert you to a misleading, but non-governing provision at §350.2, which describes the various R-5 zone districts. By introduction, however, we summarize the critical rules already established for the respective densities and heights.
>

> Zone	Heading at §105.1	Max FAR	Max Height
> R-5-A	Low Density	0.9	40
> R-5-B	Moderate Density	1.8	50
> R-5-C	Medium Density	3.0	60
> R-5-D	Medium-High Density	3.5	90
> R-5-E	High Density	6.0	90

>
> At present, §350 of the Zoning Regulations characterizes both the R-5-D and R-5-E zones in a single declaration but in a manner that is misleading and inconsistent with what's really allowed. Right now, the specific introductory language in the Zoning Regulations reads:
>

> 350.2
>
> The R-5 districts are subdivided into R-5-A, R-5-B, R-5-C R-5-D and R-5-E districts. In R-5-A districts only a low height and density shall be permitted; in R-5-B a moderate height and density shall be permitted; in R-5-C a medium height and density shall be permitted, **and in R-5-D and R-5-E districts a relatively high height and density shall be permitted.**[2]
>

> The language of this section was amended, inaccurately we feel, when the Zoning Commission created the R-5-C district a decade ago. Until that time, the corresponding provision had provided:
>

> 350.2
>
> The R-5 districts are subdivided into R-5-A, R-5-B, R-5-C and R-5-D districts. In R-5-A districts, within the first (1st) of which only a low height and density shall be permitted; within the second (2nd) of which a medium height and density shall be permitted, and within the last of which [i.e. R-5-D] a relatively high density shall be permitted. ***[R-5-C, which became R-5-D, was not previously described in these general provisions.]***
>

> These earlier provisions date back some time, well prior to the time that the Comprehensive Plan, its map and Generalized Land Use classifications were established, in 1984. The Comp Plan introduced a five-prong[3]

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[2] Emphasis added.

[3] The original declaration of "five prong" is in error. While the Commercial classifications total five, the Residential classifications number four; there is no "medium-high" Residential land use classification in the current Comprehensive Plan or maps. Having noted that, it does not change the conclusions reached.

> Residential density scheme -- low, moderate, medium, medium-high, and high
> -- in its nomenclature and specifications. While these were not intended
> to correspond directly and inexorably to zoning classifications, its term
> "moderate" appropriately replaced "medium" into the explanatory materials
> that accompanied the establishment of the R-5-C zone in 1991 (the term was
> used in relation to R-5-B).
>
> The R-5-C case focused on what was essential to get that zone established.
> I recall no evidence of discussion on the conforming amendments to the
> purpose of other zones, and believe that the present language is
> misleading and inappropriate. Therefore, I am suggesting that your office
> support a recommendation for a text amendment to this section as part of
> the cleanup effort to clarify it along the following lines:
>

> 350.2
>
> The R-5 districts are subdivided into R-5-A, R-5-B, R-5-C, R-5-D and R-5-E
> districts. In R-5-A districts only a low height and density shall be
> permitted; in R-5-B a moderate height and density shall be permitted; in
> R-5-C a medium height and density shall be permitted; **in R-5-D districts**
> **high height and medium-high density shall be permitted;** and in R-5-E
> districts high height and density shall be permitted.
>

> Since we are suggesting no change in the prevailing standards set
> elsewhere, this clarification should be possible to adopt as an editorial
> change, and should not require either a separate Rulemaking case or
> hearing.
>
> In this context, it is also appropriate to note the manner in which the
> five R-5 zone districts are set out in the first Chapter of the Zoning
> Regulations, namely:
>

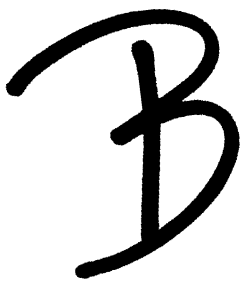
> 105 ZONING DISTRICTS
>
> 105.1 For the purpose of this title, the District of Columbia shall
> be divided into the following districts:
> (a) RESIDENCE DISTRICTS, as follows:
>. (1) R-1 one-family detached dwellings, subdivided as follows:
> (A) R-1-A low density; and
> (B) R-I-B high density;
> (2) R-2 one-family, semi-detached dwellings;
> (3) R-3 row dwellings;
> (4) R-4 row dwellings, conversions, and apartments; and
> (5) R-5 general residence, subdivided as follows:
> (A) R-5-A low density;
> (B) R-5-B moderate density;
> (C) R-5-C medium density;
> **(D) R-5-D medium-high density; and**[4]
> (E) R-5-E high density . . . .
>

> The change we suggest above to §350.2 is fully consistent with the changes
> the Commission directed in its Order 721, and clean-up/correction Orders
> 721-A and 721-B.

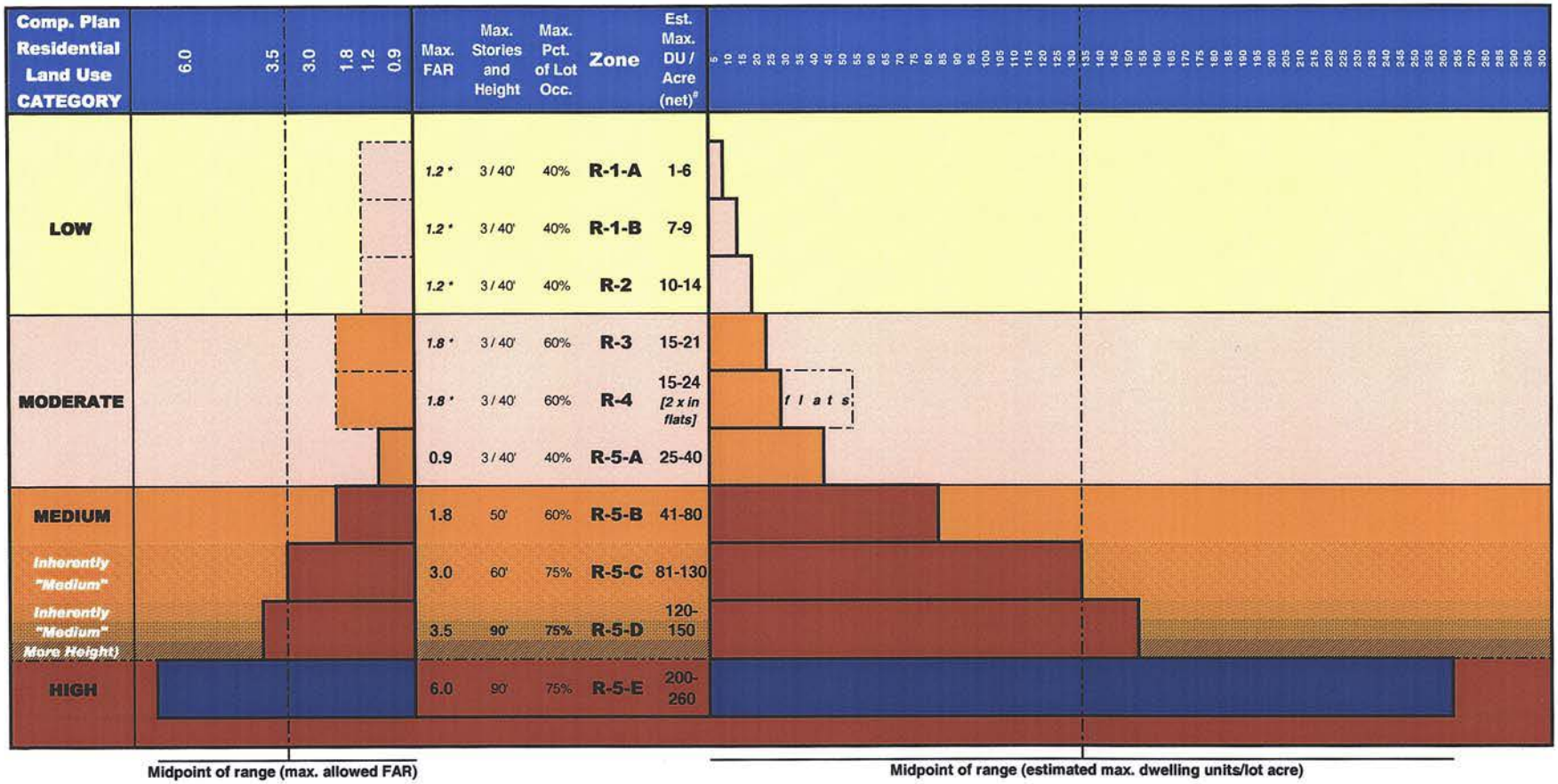
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[4] Emphasis added; though we would not, on our own, declare an FAR of 3.5 to be "medium-high" as it is just 0.5 greater FAR than that allowed in the next more restrictive zone, already and appropriately described as "medium density." We feel more accurate language would be as follows: "R-5-C medium density within medium height" and "R-5-D also medium density but with greater vertical latitude."

> Since the Commission is embarked on a campaign to clean up all manner of
> errors in the Zoning Regulations prior to March 31, we are advising you to
> bring this to the Commission's attention for appropriate action, hopefully
> in a manner that allows it to be a part of the significant recodification
> efforts now underway.
>
>
>
> *Lindsley*
>
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>
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Graphical Presentation of Provisions of the Comprehensive Plan's "Categories" of Residential Land Uses, Zoning Classifications and Zoning Limitations



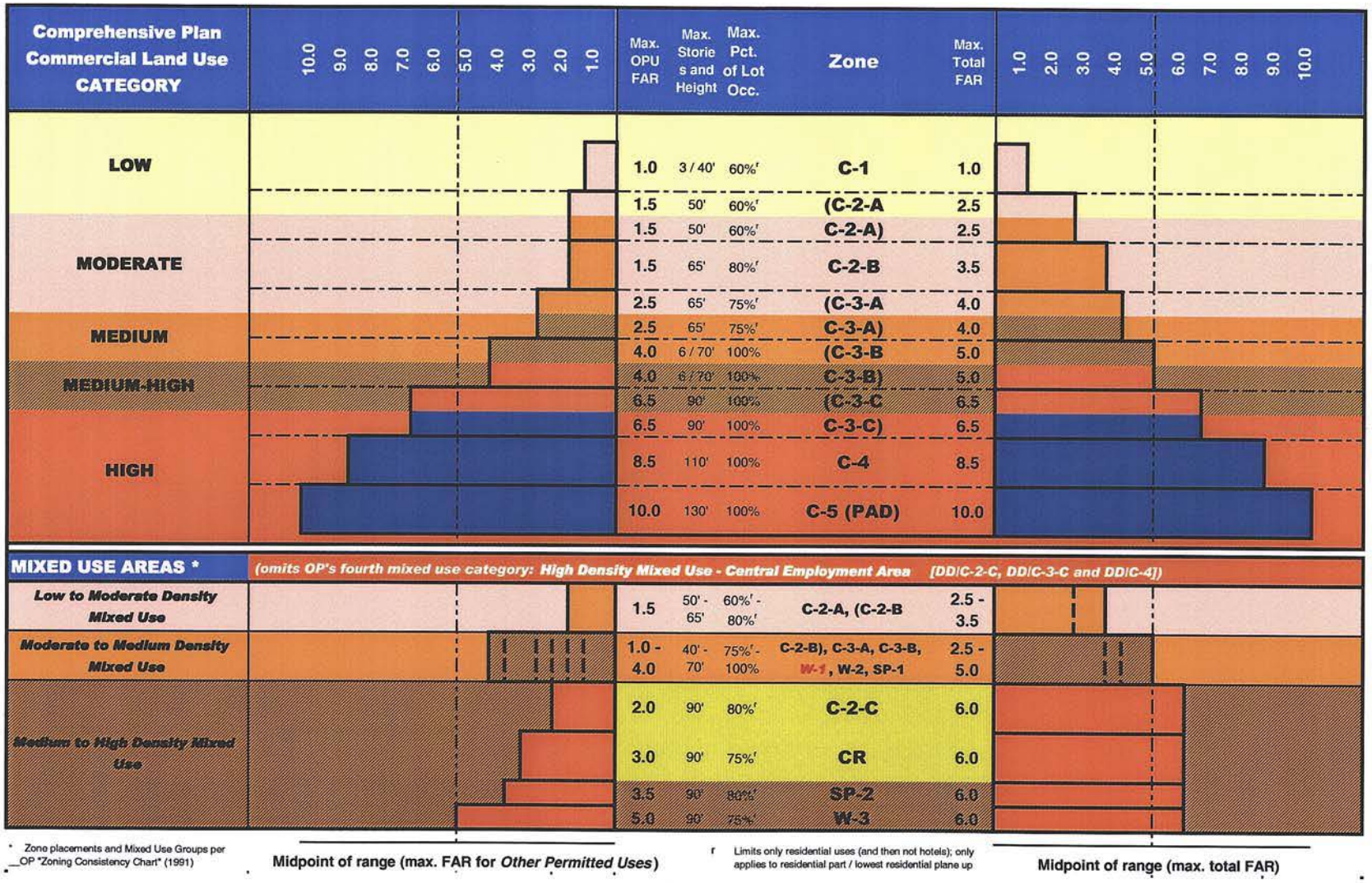
* Imputed from max. *pct. of lot occupancy* and max. *number of stories.*

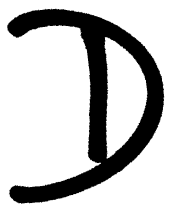
\# Imputed from min. lot area / each DU @ 1,000 sq. ft.

Holland & Knight LLP
Washington, DC 20006
August 2002



Graphical Presentation of Provisions of the Comprehensive Plan's "Categories" of Commercial Land Uses with Selected and Consolidated Mixed Use Areas, Zoning Classifications and Zoning Limits with C-2-C and CR Options Highlighted





M442 1991
O.P. REPORT TO Z.C. RE:
COMP. PLAN
IMPLEMENTATION

ZONING CONSISTENCY CHART

Adopted Comprehensive Plan Land Use Categories	Zone District
Residential Land Use Categories	
"Low Density: Single-family detached and semi-detached housing are the predominant uses";	R-1, R-2
"Moderate Density: Row houses and garden apartments are the predominant uses; may also include low density housing";	R-3, R-4, R-5-A, R-5-B
"Medium Density: Multiple-unit housing and mid-rise apartment buildings are the predominant uses; may also include low and moderate density housing";	R-5-B, R-5-C*
"High Density: High-rise apartment buildings are the predominant uses; may also include low, moderate and medium density housing";	R-5-D*, R-5-E*
Commercial Land Use Categories	
"Low Density: Shopping and service areas that are generally low in scale, character and activity and that provide a limited range of retail goods and services are predominant uses";	C-1, C-2-A
"Moderate Density: Shopping and service areas that generally provide a much broader range of goods and services are the predominate uses. Chain drug stores and grocery stores as well as branches of department stores, some specialty shops, and personal service establishments may be present";	C-2-A, C-2-B, C-3-A

"Medium Density: Shopping and service areas that generally offer the largest concentration and variety of goods and services outside the Central Employment Area are the predominant uses. Most customers arrive by car, bus or subway";	C-3-A, C-3-B
"Medium-High Density: Shopping and service areas that genreally offer the largest concentration and variety of goods and services outside the Central Employment Area are the predominant uses. Most customers arrive at medium-high density commercial land use areas by car, bus, or subway";	C-3-B, C-3-C
"High-Density: The business and retail heart of the District and Metropolitan area includes a mix of employment, retail, office, cultural and entertainment centers";	C-3-C, C-4, C-5
Mixed Use Land Use Categories (Residential-Commercial)**	
Low to Moderate Density Mixed Use+	C-2-A, C-2-B
Moderate to Medium Density Mixed Use	C-2-B, C-3-A, C-3-B, W-1, W-2, SP-1
Medium to High Density Mixed Use	CR, C-2-C, W-3, SP-2
High Density Mixed Use - Central Employment Area	DD/C-2-C, DD/C-3-C, DD/C-4

NOTE: This chart must not be used as the sole determinant of zoning consistency with the Comprehensive Plan. It is a beginning point for analysis, which must include consideration of other planning designations and policies in the Comprehensive Plan as well as localized study of the area or property being reviewed for zoning consistency.

Overlay zones are not included as they apply to specialized situations and locations. Note that an overlay zone may modify the base zone or zones by means of either restrictions, incentives or a combination of the two. An overlay may thus affect the preliminary classification system presented above.

* A new, mid-rise, medium-density residential zone is being recommended to the Zoning Commission for adoption. This will fill a long-standing need for a zone in between the R-5-B and R-5-C zones. Assuming adoption of this new zone as R-5-C, the existing R-5-C zone (map and text) would be redesignated R-5-D, and the existing R-5-D zone would become R-5-E.

** There are a few locations where institutional, PTE and open space uses are part of a mixed use designation. These locations will have to be judged individually.

+ There are subcategories of commercial-residential mixes within most of these mixed use categories, e.g., moderate residential with medium commercial, medium commercial with moderate residential, etc. Thus, the specific mix indicated for the location will be considered in determining the recommended zone district, taking all other factors into account.

LAND USE CATEGORY	DENSITY RANGES
Residential	
Low	0-15 units per acre
Moderate	16-48 units per acre
Medium	49-90 units per acre
High	91 + units per acre
Commercial	
Low	Less than 1.0 FAR*
Moderate	1.0 - 2.0 FAR*
Medium	2.0 - 4.0 FAR*
Medium-High	4.0 - 6.5 FAR*
High	More than 6.5 FAR*

(* FAR means the range of permitted commercial floor area ratio under matter-right-zoning; numbers listed do not include maximum permitted residential floor area ratio, nor do they include the additional commercial floor area ratio permitted under planned unit development guidelines of the Zoning Regulations).

(40) The amendment in the nature of a substitute also establishes a new title 12 of the Comprehensive Plan, which includes enacted ward plans as part of the Comprehensive Plan. The Committee Print includes enactments of ward plans for Wards 1 and 2, proposed by their respective Councilmembers, and reserves space for future enactments of ward plans for other wards. As indicated in section 3 of the legislation, adopted ward plans are intended to provide supplemental guidance to the Zoning Commission and other agencies in carrying out the policies of the Comprehensive Plan at the ward level.

Section 3 adopts several conforming amendments to those provisions of the District of Columbia Comprehensive Plan Act of 1984 and of the District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984 which are outside of the elements of the Comprehensive Plan.

The conforming amendments track several requirements upon the Mayor that are contained in the elements of the Plan, including:

(1) the requirement to transmit 4 generalized land use maps to the Council for approval within 90 days of the effective date, which are illustrative of the requirements of the amendment in the nature of a substitute;

(2) the requirement to provide the Council with detailed biennial progess reports on Comprehensive Plan implementation;

(3) the requirement to propose amendments to the Comprehensive Plan on a periodic basis (the Committee Print prescribes at least once every two years);

(4) the requirement to review the consistency of building, construction, and public space permits, for projects that are subject to the large tract review process, with the land use element of the Comprehensive Plan, and, where inconsistency is found, to propose zoning amendments to eliminate the inconsistency; and