

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

Memorandum

TO: Zoning Commission

FROM: *ALS* *fev*
Andrew Altman, Director
Office of Planning

DATE: July 15, 2002

SUBJECT: Waiver of Rules for Late Submittal of Office of Planning Report on Case No. 02-06, Text Amendment to the Neighborhood Commercial Overlay District - Limitation for Eating and Drinking Establishments

The attached report concerning the application for an Amendment to Title 11, Chapter 13, Neighborhood Commercial Overlay District is being submitted less than 10 days prior to the Zoning Commission's consideration of the item and scheduled public hearing. The Office of Planning respectfully requests that the Commission waive its rule and accept the report into the record.

AA/mbr

ZONING COMMISSION
District of Columbia

Case 02-06

ZONING COMMISSION

District of Columbia

Exhibit 1

CASE NO. 02-06

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

Memorandum

TO: Zoning Commission

FROM: 
Andrew Altman, Director
Office of Planning

DATE: July 12, 2002

SUBJECT: ZC # 02-06 – Text Amendment to the Neighborhood Commercial Overlay District - Limitation for Eating and Drinking Establishments

On February 8, 2002, the Department of Consumer and Regulatory Affairs (DCRA) advertised in the District of Columbia Register its intent to adopt standard operating procedures for the implementation of 11 DCMR Chapter 13, Neighborhood Commercial (NC) Overlay District, and in particular Section 1302.5 that establishes limitations on eating and drinking establishments. These proposed operating procedures were a response by the Zoning Administrator to a number of issues that have arisen in implementing the regulations.

The Zoning Commission made a determination that the proposed procedures contained revisions to the Zoning Regulations and therefore set the text down for public hearing. On May 17, 2002, the proposed changes to Section 1302.5 were advertised.

The Office of Planning analyzed the proposed text amendment and provides its recommendations on the advertised text amendments in the form of explanatory comments in *Italics* following each proposed provision.

In brief OP recommends adoption of the proposed 1302.5 with the following changes:

- Clarification of “ground floor level” in subsection (a)
- Deletion of subsection (e)
- Clarification from “square footage” to “street frontage” in subsections (b) and (f);

SECTION 1302.5 (a)

1302.5 Restaurants, fast food restaurants, delicatessens, carryouts, and similar eating or drinking establishments, ~~occupying all or part of the ground floor level of a building,~~ shall be subject to the following limitations:

- (a) These uses shall occupy no more than twenty-five percent (25%) of the linear street frontage **OF THE GROUND FLOOR LEVEL OF BUILDINGS** within a particular NC Overlay District, as measured along the lots that face designated roadways in the particular district;

***Comment:** The Office of Planning believes the reference to the ground floor level is more functional in Paragraph (a) where it relates directly to the measurement of linear frontage. At least one written submission in the case alleges that the twenty-five percent restriction is not limited to ground floor occupancy but all floors. The suggested amendment to (a) should clarify the intent of the regulation.*

SECTION 1302.5 (b), (c), and (d)

- (b) The linear ~~square footage~~ **STREET FRONTAGE** of each designated roadway shall be based upon the certified and recorded plats in the Office of the Surveyor, measured to the Zone District boundary line of each commercial zone district within the overlay zone;
- (c) The total linear frontage for eating or drinking establishments shall be based on the existing records of Certificates of Occupancy for such uses by address and verified through field observations;
- (d) If an eating or drinking establishment occupies all or part of the ground floor level of a corner lot facing two or more designated roadways, linear street frontage for each designated roadway shall be included for purposes of determining compliance with § 1302.5(a);

***Comment:** OP recommends adoption of Paragraphs (b) with the condition that the phrase "linear square footage" be changed to read "linear street frontage" and adoption of Paragraphs (c) and (d) without change.*

All three paragraphs are valuable clarifications of the methodology to be used by the Department of Consumer and Regulatory Affairs ("DCRA") in administering the regulations. Including this information in the regulation helps the general public and applicants to understand the procedures. This information also potentially saves DCRA staff time by avoiding the need to explain some details or correct misunderstandings.

SECTION 1302.5 (e)

~~(e) — An eating or drinking establishment that occupies the same premises as a gas station, grocery store, billiard parlor, or other eating or drinking establishment shall be subject to the applicable street frontage limitation within a particular NC Overlay District, if the eating or drinking establishment use is reflected upon, or is required to be reflected upon, the Certificate of Occupancy and the eating or drinking use occupies all or part of the ground floor level;~~

***Comment:** OP recommends against adoption of this proposed provision because it is unnecessary and potentially confusing. OP sees no reason to deviate in this case from the normal zoning rules regarding principal and accessory uses. The use provisions of the Zoning Regulations normally govern principal uses on a lot. The principal uses allowed in each zone district are a collection of uses considered generally compatible with each other and consistent with logical development of the city. Accessory uses are relatively minor uses defined in § 199 as, “customarily incidental and subordinate to the principal use, and located on the same lot with the principal use.” Accessory uses are intended (and generally are) “incidental” to the principal use. Because the accessory use must be incidental and subordinate, there is less need to regulate them individually (because they raise fewer and less significant land use compatibility questions).*

The illustrative examples included in advertised § 1302.5(e) are instructive. The concept is that an accessory eating or drinking establishment in conjunction with one of the following principal uses should cause the property to be regulated) as an eating or drinking use:

Gasoline Service Station. There is only one gasoline station in an NC Overlay District (in Cleveland Park at the intersection of Connecticut Avenue and Porter Street, N.W.). At present there is no associated eating or drinking establishment. Gasoline station normally requires a special exception in the C-1 to C-3 districts (§§706,726 and 743) and in the NC Overlay Zone is simply not a permitted new use at the ground floor level. Thus, there is no likelihood of this issue arising as a matter-of-right permit question. The ground floor use provisions in § 1302.2 of the NC Overlay Zone are designed to accommodate pedestrian-oriented businesses, not automobile-oriented uses such as gasoline station, car dealership, car wash, etc. The permitted ground floor uses include many, but far from all, C-1 uses, plus a list of pedestrian-oriented commercial uses permitted in C-2 districts. The NC Overlay Zone has the effect of requiring a use variance for this use at the ground floor level. Thus, the question of whether to allow an eating or drinking establishment in conjunction with a gasoline station does not arise.

Billiard Parlor. This use is not permitted in the NC Overlay Zone. “Billiard Parlor or Pool Hall” is a C-2 matter-of-right use, at § 721.2(c). However, as stated above, only pedestrian-oriented uses from C-1 and C-2 are allowed as preferred uses at the ground floor level in the NC Overlay Zone, as set forth in § 1302.2. Paragraph (a) indicates that C-1 uses authorized in §§ 701.1 and 701.4 are permitted, and then Paragraphs (b)

through (x) list additional retail, service and entertainment uses that are allowed in the NC Overlay Zone. There is no provision allowing "other similar uses." This was intentional and can be verified from the record of the original case if necessary. In cellars, basements and upper floors of buildings, the use restrictions of § 1302 do not apply. But for the preferred use are on the ground floor level, the issue of eating or drinking use in combination with a billiard parlor does not arise.

Grocery Store. The issue here is the potential combination of a delicatessen within a grocery store. In the record of this case there is reference to the Washington Park Gourmet Store located within the Woodley Park Overlay Zone at the corner of 24th and Calvert Streets, N.W. The issue is whether the inclusion of a delicatessen on the premises makes or should make this property an eating or drinking use under NC overlay provisions. A related example is the Magruder's grocery store in the Cleveland Park Overlay Zone, at 5626 Connecticut Avenue, N.W. At Magruder's, a small grocery store, a delicatessen-style meat counter prepares sandwiches for take-out by customers. Although "delicatessen" is not indicated on the C of O, presumably "delicatessen" could be applied for and added. In OP's opinion, neither of these premises raises the regulatory issues that led to the adoption and continuation of the NC Overlay Zone, namely, the potential loss of a diversity of neighborhood retail services if eating and drinking establishments "price out" other uses and become excessively dominant in the business precinct. These are two small grocery stores that also sell some prepared food items. The availability of groceries for neighborhood residents, perhaps especially upon leaving the Metrorail station, would appear to be a worthwhile neighborhood retail service that should not be discouraged by regulation. The food preparation activity is clearly subordinate to the principal grocery store use and creates no apparent adverse effects. The prepared foods are most likely aimed primarily for neighborhood residents, rather than being destination eating establishments, such as a popular restaurant. Grocery stores, with or without delicatessens, are not known to be high-rent uses. Neither the Woodley Park or Cleveland Park overlay districts includes a supermarket. In the case of the Macomb-Wisconsin Overlay Zone, where the Giant food store is planned for major expansion, would it be logical to count the use as an eating or drinking use if there were to be a delicatessen counter inside? In OP's opinion, this would be illogical.

In general, OP concludes that the effects of accessory uses on the achievement of the goals of the overlay zone are likely to be relatively minor and that the attempt to regulate them is likely to be unnecessary and potentially confusing and wasteful of the time of DCRA staff, businesspeople and members of the public.

SECTION 1302.5 (f)

- (f) In the event that a property ceases to be used as an eating or drinking establishment, its linear ~~square footage~~ STREET FRONTAGE shall no longer be included in the measurement of such uses once three (3) years has passed since the use was discontinued, or a certificate of occupancy is issued for a different use, whichever occurs first;**

Comment. *OP strongly supports the recommended three-year time limit on maintenance of vesting rights for a vacated ground floor space previously devoted to an eating or drinking establishment. The reasons for the importance of the time limit are stated later in this section. But first, the issue of “nonconformity” must be addressed.*

“NONCONFORMITY” ISSUE

There are several submissions in the record of this case that argue against the three-year time limit substantially on the grounds of the legal doctrine of abandonment of nonconforming uses. OP agrees with the position of the Department of Consumer and Regulatory Affairs that nonconforming uses are not at issue in this case. A nonconforming use is one that is not allowed by the zone classification of a property. Each zone district allows a range of uses that are considered compatible with each other and that are consistent with a city’s land use plans and Comprehensive Plan. A nonconforming use is a use that was originally established as a matter of right, but which, as a result of a zoning map or text amendment, is no longer a permitted use. It is officially deemed incompatible with public land use objectives and the zoning regulations. A use variance is required to establish such use as a new use, but the nonconforming use is allowed to continue, subject to restrictions found in 11 DCMR Chapter 20.

The situation in the NC overlay zone is completely different. Eating and drinking uses are matter-of-right uses in the NC Overlay District. Even when they exceed a certain (25% or 50%) limit, they are still allowed as a special exception. The definition of “Nonconforming use” in §199 states in part, “A use lawfully in existence at the time of adoption or amendment of this title, which would thereafter require special exception approval from the Board of Zoning Adjustment shall not be deemed a nonconforming use. That nonconforming use shall be considered a conforming use . . .” (Emphasis added.) Eating and drinking uses in the NC Overlay zone that exceed or could potentially exceed the 25 percent limit, are clearly not nonconforming uses. And the legal doctrine of abandonment relating to nonconforming uses in some jurisdictions is irrelevant to this case¹.

¹It is worth noting that in Zoning Commission Case No. 81-17 (Order No. 403) updating the nonconformity provisions in 11 DCMR 20, a debate between proponents of the abandonment doctrine and of the discontinuance regulation occurred. Opponents to adoption of the then-proposed discontinuance clause on nonconforming uses argued in favor of the doctrine of abandonment and argued that the Zoning Act precluded the Commission from adopting the discontinuance clause. There was also private attorney testimony supporting the legality of the proposed three-year discontinuance provision, which the Zoning Commission adopted as §2005 after careful deliberation, including review of court precedents. The specific goal of the discontinuance clause was to overcome the “intent” and “overt act” features of the common law doctrine of abandonment and establish an objective, time-based rule for expiration of nonconforming use rights after long vacancy. In recommending the discontinuance clause, the Office of Planning noted the harmful effects of allowing a nonconforming property to be derelict and vacant for many years and yet benefit from issuance of a new Certificate of Occupancy based on the doctrine of abandonment. In the NC overlay case the issue is special exception uses, not nonconforming uses, but even if the latter were the case, the Zoning Commission would have legal precedent for adoption.

The zoning formula of a matter-of-right numerical limit (such as the 25-50% limitation in NC zones), which if exceeded, triggers a special exception, is fairly common in the Regulations. Examples include:

- A rule that allows a small day care home as a matter of right for up to five children but requires a special exception for a larger child development center;*
- An allowance for one outside employee in a home occupation, with a special exception required to exceed that number;*
- Various types and sizes of antennas that are allowed up to a certain size or location as a matter of right but which require a special exception to deviate from those standards;*
- Laundry or dry cleaning establishment limited to 5,000 square feet in C-3 zones, but existing facility may expand to exceed this limit as a special exception.*

Thus, OP believes there is no question of nonconforming uses here and no constraint upon the Zoning Commission imposing a reasonable time limit upon the validity of Certificates of Occupancy after the premises of an eating or drinking establishment become vacant.

TIME LIMIT

The second critical issue is the importance of the time limit: it is simply essential to achieving the fundamental purposes of the zone. The overriding goal is to maintain diversity of commercial services -- especially to preclude generally higher-rent (eating and drinking) uses from squeezing out generally lower-rent (neighborhood retail and service) uses, as was emphasized in testimony when the NC Overlay District was initially adopted. If Certificates of Occupancy are vested without time limitation, property owners will tend to hold premises as vacant until another eating or drinking establishment can be found for the space. The three-year time limit allows a reasonable period for this to occur. If unsuccessful within three years, some owners would prefer to have no limit on the vacancy period. In effect, they would lose potential revenue in the short term in order to maintain the right to re-occupy the space with a higher-rent use later, even much later. However, in public policy terms, the extended vacancy period creates a "dead spot" in the continuity of ground floor businesses, and precludes a new business from occupying the space. The lack of a replacement business undermines the goal of diversity and a critical mass of retail and service establishments. The property may also show signs of deferred maintenance. Even if the exterior is well maintained, the vacancy is detrimental to the image and marketability of the business district. All of these factors support the critical importance of the three-year time limit. Without the time limit the overlay zone cannot fully achieve its objectives.

Moreover, the penalty upon property owners and businesses of the three-year limitation is not severe; they can apply for a special exception to exceed the normal limitation. They need not apply for or meet the difficult criteria for a use variance, as would be the

case if the use were not allowed in the zone. This is another indication that eating and drinking uses in excess of the limitation are not nonconforming uses, but special exception uses.

OP recommends adoption of Paragraph (f) with the condition that the phrase "linear square footage" be changed to read "linear street frontage."

SECTION 1302.5 (g) and (h)

(g) Whenever the linear street frontage devoted to existing eating or drinking establishment use equals or exceeds the applicable percentage limitation, no new certificates of occupancy may be issued for:

(1) A new eating or drinking establishment occupying all or part of the ground floor level of a building, except those uses intending to occupy the same space vacated by an eating or drinking establishment, if the space has remained vacant for a period of three years or less; or

(2) The expansion of an existing eating or drinking establishment occupying the ground floor level of a building.

(h) Whenever existing linear street frontage devoted to eating or drinking establishment use is less than the applicable percentage, no Certificate of Occupancy shall be issued for an eating or drinking establishment use with linear street frontage in excess of the unused portion of the applicable percentage limitation for the NC Overlay District;

Comment. *OP agrees with the substance of the above provisions and recommends their adoption.*

SECTION 1302.5 (g)

(i) Except for a fast food restaurant, such uses may be applied to fulfill the requirements of § 1302.4; provided, that when such uses are so applied, they shall remain subject to the provisions of paragraphs (a) – (h) of this subsection.

Comment. *Paragraph (i) is an existing provision modified to refer to paragraphs (a) through (h), an increased number of provisions compared to the existing text. OP recommends adoption.*

Attached is the edited version of the text as advertised in the DC Register with OP recommended changes in strikeouts and capital letters. A full copy of the existing Chapter 13, Neighborhood Commercial Overlay District is also attached for the Commissions' reference.

OP PROPOSED LANGUAGE AMENDMENTS §1302.5

- 1302.5 Restaurants, fast food restaurants, delicatessens, carryouts, and similar eating or drinking establishments, ~~occupying all or part of the ground floor level of a building~~, shall be subject to the following limitations:
- (a) These uses shall occupy no more than twenty-five percent (25%) of the linear street frontage ***OF THE GROUND FLOOR LEVEL OF BUILDINGS*** within a particular NC Overlay District, as measured along the lots that face designated roadways in the particular district;
 - b) The linear ~~square footage~~ ***STREET FRONTAGE*** of each designated roadway shall be based upon the certified and recorded plats in the Office of the Surveyor, measured to the Zone District boundary line of each commercial zone district within the overlay zone;
 - (c) The total linear frontage for eating or drinking establishments shall be based on the existing records of Certificates of Occupancy for such uses by address and verified through field observations;
 - (d) If an eating or drinking establishment occupies all or part of the ground floor level of a corner lot facing two or more designated roadways, linear street frontage for each designated roadway shall be included for purposes of determining compliance with § 1302.5(a);
 - ~~(e) An eating or drinking establishment that occupies the same premises as a gas station, grocery store, billiard parlor, or other eating or drinking establishment shall be subject to the applicable street frontage limitation within a particular NC Overlay District, if the eating or drinking establishment use is reflected upon, or is required to be reflected upon, the Certificate of Occupancy and the eating or drinking use occupies all or part of the ground floor level;~~
 - (f) In the event that a property ceases to be used as an eating or drinking establishment, its linear ~~square footage~~ ***STREET FRONTAGE*** shall no longer be included in the measurement of such uses once three (3) years has passed since the use was discontinued, or a certificate of occupancy is issued for a different use, whichever occurs first;
 - (g) Whenever the linear street frontage devoted to existing eating or drinking establishment use equals or exceeds the applicable percentage limitation, no new certificates of occupancy may be issued for:

- (1) A new eating or drinking establishment occupying all or part of the ground floor level of a building, except those uses intending to occupy the same space vacated by an eating or drinking establishment, if the space has remained vacant for a period of three years or less; or**
 - (2) The expansion of an existing eating or drinking establishment occupying the ground floor level of a building.**
- (h) Whenever existing linear street frontage devoted to eating or drinking establishment use is less than the applicable percentage, no Certificate of Occupancy shall be issued for an eating or drinking establishment use with linear street frontage in excess of the unused portion of the applicable percentage limitation for the NC Overlay District;**
- (i) Except for a fast food restaurant, such uses may be applied to fulfill the requirements of § 1302.4; provided, that when such uses are so applied, they shall remain subject to the provisions of paragraphs (a) – (h) of this subsection.**

CHAPTER 13 NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

Secs.

13.00 Preamble

1301 General Provision*

1302 Designated and Restricted Uses

1303 Limitations on Driveways and Curb Cuts

1304 Special Exceptions

1305 Planned Unit Development Guidelines

1306 Cleveland Park Neighborhood Commercial Overlay District

1307 Woodley Park Neighborhood Commercial Overlay District

1308 Macomb-Wisconsin Neighborhood Commercial Overlay District

1300 PREAMBLE

1300.1 The Neighborhood Commercial (“NC”) Overlay District is established to preserve and enhance neighborhood shopping areas, by providing the scale of development and range of uses that are appropriate for neighborhood shopping and services.

1300.2 The NC Overlay District includes a number of individual overlay zone districts that may be established and mapped from time to time, consistent with the general provisions of this chapter.

1300.3 The purposes of the NC Overlay District are the following:

- (a) To encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement, all of which will be as generally required by the comprehensive plan for the national capital;
- (b) To encourage retention and establishment of a variety of retail, entertainment, and personal service establishments, predominantly in a continuous pattern at ground level, so as to meet the needs of the surrounding area’s residents, workers, and visitors; and
- (c) To limit the maximum permitted height of new buildings so as to encourage a general compatibility in scale between new and older buildings.

1300.4 The provisions of this chapter that apply to the discrete NC Overlay Districts shall reflect the character, scale, and needs of the particular district.

1301 GENERAL PROVISIONS

1301.1 The NC Overlay District is mapped in combination with the underlying commercial zone district and not instead of the underlying district.

1301.2 Except as specifically provided in §1301.3 of this section and in other provisions of this chapter, all uses, buildings, and structures permitted in accordance with this chapter and the appropriate regulations of the underlying district with which the mapped NC Overlay District is combined, shall be permitted in the combined district.

1301.3 Where there is a conflict between this chapter and the underlying zoning, the more restrictive provisions of this title shall govern.

1302 DESIGNATED AND RESTRICTED USES

1302.1 Any building that occupies or is constructed on a lot in a designated use area within an NC Overlay District shall provide designated retail and service establishments on the ground level according to the requirements of this section and any additional requirements of the particular overlay district.

1302.2 The designated uses for purposes of this section are the following:

- (a) Any use that is permitted as a matter of right in the C-1 district pursuant to §§701.1 or 701.4, of this title;
- (b) Library;
- (c) Blueprinting or similar reproduction service;
- (d) Film exchange;
- (e) Interior decorating shop;
- (f) Laundry, self service;
- (g) Photographic studio;
- (h) Picture framing studio or shop;
- (i) Tailor shop or valet shop;
- (j) Telegraph office;
- (k) Antique store or shop;
- (l) Auction house;

- (m) Department store;
- (n) Display stand or store for mail order sales;
- (o) Dry goods store;
- (p) Furniture store;
- (q) Home furnishings sales;
- (r) Leather goods store;
- (s) Musical instruments and accessories sales;
- (t) Office supplies and equipment sales;
- (u) Optical goods store;
- (v) Pet shop;
- (w) Precision instrument sales; and
- (x) Theater, including motion picture theater.

1302.3 If the underlying zone district is C-1, the designated uses shall include only those uses that are referenced in paragraphs (a) and (b) of §1302.2.

1302.4 The designated uses listed in §1302.2 of this section shall occupy no less than fifty percent (50%) of the gross floor area of the ground level of the building, subject to the following requirements:

- (a) No more than twenty percent (20%) of the ground level floor area shall be devoted to banks, loan offices or other financial institutions, travel agencies, or other ticket offices;
- (b) The ground level floor shall be the floor that is nearest in grade elevation to the sidewalk; and
- (c) In those parts of the affected building or lot other than as delineated in this section, the use provisions of the underlying zone district shall apply.

1302.5 Restaurants, fast food restaurants, delicatessens, carry-outs, and similar eating or drinking establishments shall be subject to the following limitations:

- (a) These uses shall occupy no more than twenty-five percent (25%) of the linear street frontage within a particular NC Overlay District, as measured along the lots that face designated roadways in the particular district; and
- (b) Except for a fast food restaurant, such uses may be applied to fulfill the requirements of §1302.4 of this section; Provided, that when such uses

are so applied, they shall remain subject to the provisions of paragraph (a) of this sub-section.

1303 LIMITATIONS ON DRIVEWAYS AND CURB CUTS

1303.1 No drive-through accessory to any use shall be permitted in the NC Overlay District.

1303.2 Within the area of the NC Overlay District, notwithstanding the provisions of §2117.8(c)(1) of this title, no driveway providing access from any designated roadway to required parking spaces or loading berths shall be permitted.

1304 SPECIAL EXCEPTIONS

1304.1 Exceptions from the requirements of this chapter shall be permitted only as a special exception, if approved by the Board of Zoning Adjustment after public hearing, in accordance with the conditions specified in §3108 of this title, and subject to the following requirements:

- (a) The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity;
- (b) Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, which justify the exception or waiver;
- (c) Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions; and
- (d) The Board may impose requirements pertaining to design, appearance, signs, size, landscaping and other such requirements as it shall deem necessary to protect neighboring property and to achieve the purposes of the NC Overlay District and the particular overlay district.

1304.2 This section shall not operate to allow any exception to the height or floor area ratio limits of any NC Overlay District.

1305 PLANNED UNIT DEVELOPMENT GUIDELINES

1305.1 In the NC Overlay District, the matter of right height and floor area ratio limits shall serve as the guidelines for Planned Unit Developments.

1306 CLEVELAND PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1306.1 The Cleveland Park ("CP") Overlay District is applied to a compact geographic area surrounding the Cleveland Park Metrorail Station and within the Cleveland Park Historic District, comprising those lots zoned C-2-A in Squares 2218, 2219, 2222, 2068, 2069, and 2082.

1306.2 In addition to the purposes that are set forth in §1300 of this chapter, the purposes of the CP Overlay District are as follows:

- (a) To provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic, so as to improve access to retail services, the Metrorail station, and other uses in the area;
- (b) To encourage compatibility of development with the purposes of D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978; and
- (c) To provide for retention of existing housing within the CP Overlay District, so as to help meet the need for affordable housing; and to enhance pedestrian activity, safety, and consumer support for businesses in the commercial area.

1306.3 For purposes of §1302 of this chapter, the designated use area shall include any lot within the CP Overlay District that fronts on Connecticut Avenue or Macomb, Newark, Ordway, or Porter Streets.

1306.4 For purposes of §1303.2 of this title, the designated roadway within the CP Overlay District shall be Connecticut Avenue.

1306.5 In the CP Overlay District, no dwelling unit or rooming unit in existence as of October 1, 1987 shall be converted to any nonresidential use, or to a transient use as hotel or inn; Provided, that this restriction shall not apply to the ground floor of the building, i.e., that floor which is nearest in grade elevation to the sidewalk.

1306.6 The maximum permitted height for any building or structure in the CP Overlay District shall be forty feet (40 ft.).

1306.7 The matter of right floor area ratio in the CP Overlay District shall be 2.0, not more than 1.0 of which may be occupied by non-residential uses.

1307 WOODLEY PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

- 1307.1** The Woodley Park (“WP”) Overlay District is applied to a compact geographic area surrounding the Woodley Park/Zoo Metrorail station, comprising those lots zoned C-2-A in Squares 2202 and 2203, and those lots zoned C-2-B in Square 2204.
- 1307.2** In addition to the purposes which are set forth in §1300 of this chapter, the purposes of the WP Overlay District are to provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic, so as to improve access to retail services, the Metrorail station, and other uses in the area.
- 1307.3** For purposes of §1302 of this chapter, the designated use area shall include any lot within the WP Overlay District that fronts on Connecticut Avenue, Calvert Street, or 24th Street.
- 1307.4** For purposes of §1303.2 of this title, the designated roadway within the WP Overlay District shall be Connecticut Avenue.
- 1307.5** No hotel, inn, or fast food restaurant shall be permitted in the WP Overlay District.
- 1307.6** The maximum permitted height of any building or structure in the WP Overlay District shall be as follows:
- (a) Forty feet (40 ft.) in the WP/C-2-A District; and
 - (b) Fifty feet (50 ft.) in the WP/C-2-B District.
- 1307.7** The matter of right floor area ratio in the WP Overlay District shall be as follows:
- (a) In the WP/C-2-A District, the matter of right floor area ratio shall be 2.5, not more than 1.0 of which may be occupied by non-residential uses; and
 - (b) In the WP/C-2-B District, the matter of right floor area ratio shall be 3.0, not more than 1.0 of which shall be occupied by non-residential uses.
- 1308** **MACOMB-WISCONSIN NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT**
- 1308.1** The Macomb-Wisconsin (“MW”) Overlay District applies to the neighborhood commercial area near and extending from the intersection of Macomb Street

and Wisconsin Avenue, N.W., comprising those lots zoned C-1 in Squares 1920 and 1920N.

- 1308.2** In addition to the purposes that are set forth in §1300 of this chapter, the purpose of the MW Overlay District is to provide for public review of large developments as to their proposed uses, vehicular access, and the scale and massing of proposed buildings, so as to ensure compatibility with and enhancement of the primary neighborhood retail function of the commercial area and to advance the other purposes of this overlay district.
- 1308.3** Within the MW Overlay District, on a lot that has ten thousand square feet (10,000 ft. sq.) or more in land area, construction of a new building or enlargement of the gross floor area of an existing building by fifty percent (50%) or more, shall be permitted, subject to review and approval as a special exception by the Board of Zoning Adjustment, pursuant to the same standards and criteria set forth in §1304 of this chapter.
- 1308.4** For purposes of §1302 of this chapter, the designated use area shall include any lot that fronts on Wisconsin Avenue or Macomb or Newark Streets within the WP Overlay District.
- 1308.5** For purposes of §1303.2 of this chapter, the designated roadways within the MW Overlay District shall be Wisconsin Avenue and Macomb Street.

1309 EIGHTH STREET SOUTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

- 1309.1** The Eighth Street Southeast (“ES”) Overlay District is applied to a compact geographic area along Eighth Street, S.E., near the entrance to the Navy Yard north, comprising those properties zoned C-3-A in squares 906, 907, 929, and 930.
- 1309.2** In addition to the purposes that are set forth in §1300 of this chapter, the purposes of the ES Overlay District are as follows:
- (a) To encourage and allow new business and office development in close proximity to the Navy Yard, with emphasis on firms that will conduct business with the Navy, as well as neighborhood-serving retail and service businesses;
 - (b) To allow and encourage medium density commercial development in the interest of securing economic development, while restricting building heights to a low level so as to respect the historic scale of buildings and the entrance to the adjacent Navy Yard; and

- (c) To provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic so as to improve access to retail and other businesses in the area.

- 1309.3** For the purposes of §1302 of this chapter, the designated use area shall include any lot within the ES Overlay District that fronts on Eighth Street, L Street, M Street or Potomac Avenue, S.E.
- 1309.4** For purposes of §1302.5 of this chapter restaurants fast food restaurants, delicatessens, carry-outs, and similar eating or drinking establishments shall be subject to the following limitations: These uses shall occupy no more than fifty percent (50%) of the linear street frontage within the Eighth Street Overlay District, as measured along the lots that face designated roadways in the Eighth Street Overlay District of which up to one-half (112) of the fifty percent (50%) of the linear street frontage shall only be occupied by fast food restaurants.
- 1309.5** For purposes of §1303.2 of this chapter, the designated roadways within the ES Overlay District, shall be Eighth Street, M Street and Potomac Avenue.
- 1309.6** The maximum permitted height for any building or structure in the ES Overlay District shall be forty-five feet (45 ft.).
- 1309.7** The maximum permitted gross floor area for permitted commercial and residential uses in the ES Overlay District shall be 3.0 FAR.