

October 23, 2008

VIA HAND DELIVERY

Ms. Sharon Schellin
Secretary to the Zoning Commission
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441 4th Street, NW
Washington DC 20001

Steven E. Sher
Director of Zoning and Land Use Services
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D.C. OFFICE OF ZONING
2008 OCT 23 PM 4:50

Re: Zoning Commission Case No. 08-06-5
Zoning Rewrite - Retail

Dear Sharon:

Enclosed, please find fifteen copies of comments on the retail provisions which are the subject of the public hearing before the Commission this evening.

Sincerely,



Steven E. Sher
Director of Zoning and Land Use Services

Enclosures

ZONING COMMISSION
District of Columbia

CASE NO. 08-06-5

EXHIBIT NO. 11

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OUTLINE OF TESTIMONY TO THE ZONING COMMISSION

CASE NO. 08-06-5 ZONING REGULATIONS REWRITE RETAIL

STEVEN E. SHER,
DIRECTOR OF ZONING AND LAND USE SERVICES
HOLLAND & KNIGHT LLP

OCTOBER 4, 2008

- I. Introduction
- II. Replace existing districts and overlays with standalone districts combining all applicable provisions in one place

Comment: appears to be format change without substantive impact

- III. Consolidate current retail, service and miscellaneous use lists into five or six categories

Comments:

- A. **Consolidating use lists loses the ability to distinguish between types of retail or service uses, as is currently the case between C-1 and C-2 zones**
- B. **As with many of the concepts set forth in this case, the exact details of how uses are classified and what conditions would apply are critical to be able to understand and comment but are absent from what is before the Commission now**

- IV. Uses would be either permitted or prohibited with conditions on each class of use (such as hours of operation, radius requirements and size)

Comments/questions:

- A. **Clarify that this means that there would no longer be a category of uses called special exceptions**
- B. **Relief from the size requirements would be by special exception, for which there are no standards proposed**

C. Relief from any other condition would require a variance:

- 1. Would this be a use variance or an area variance?**
- 2. Is the variance test the most logical way for relief to be considered?**

D. OP's report suggest that there would no longer be a distinction between primary uses and accessory uses (i.e., a use would have to meet the requirements for both classes of uses); this would be problematic where an establishment contains predominantly one use with a very small amount of area or percentage of the operation devoted to another use (e.g., office use incidental to a store, service and repair incidental to sales); Commission might want to establish some minimum percentage of floor area where a use would not have to meet tests for both uses; e.g., uses with more than 75% or 80% of the floor area would only be considered in one category

V. Allow for caps or limits on the size of new retail spaces

Comment: this is such a broad statement that it is impossible to understand the impact; "allow for" doesn't specify where, how or in what way caps would be applied

VI. Allow that a minimum percentage of ground floor space in new building be required for retail use

Comments/questions:

- A. This is too broad a statement to be analyzed for its impact**
- B. What percentage and for how long?**
- C. Don't want to have vacant retail storefronts if the space can't be rented**
- D. Clarify that, if adopted, would apply to new buildings only**

VII. Allow limitations to keep uses inconsistent with a vital retail streetscape off the ground floor

Comments/questions:

- A. This is too broad a statement to be analyzed for its impact**
- B. What uses would be prohibited?**

C. How do decide what is inconsistent or incompatible?

D. What percentage of space would be limited?

- VIII. Establish design standards for designated streets addressing minimum clear ceiling height, active retail/window space, minimum distance between building access points and limitation of office and residential lobby space

Comments:

A. This can work in some spaces but without knowing the details, it is impossible to comment on whether all retail spaces need to meet all these standards

B. Clarify that the regulations are talking about a maximum distance between access points and not a minimum

C. Clarify that applies to new buildings only

- IX. Establish standards to ensure that new retail space could be used in the long term by smaller business but not prohibit occupancy by larger retail tenants

Comments:

A. Seems to be an unnecessary and counterproductive requirement; there are buildings that are going to be designed solely for large scale uses; why would you design a supermarket so that it could be broken up into smaller scale uses?

B. Clarify that, if adopted, would apply to new buildings only

- X. **Conclusions**

A. District's retail market has generally underperformed relative to large areas of the city

B. Changes which increase requirements and provide less flexibility are generally not good things and will make it more difficult for developers to design suitable buildings and attract retail tenants

C. Some of the details of what is proposed are not known, therefore making it difficult to respond on a cogent basis

D. What comes through is a clear preference for small scale retail

- E. The District is in need across-the-board for all kinds of retail; recent developments including the Target in Columbia Heights, the Home Depot on Brentwood Road and supermarkets in a number of areas points out that there is also a strong need for and public acceptance of large scale retail**
- F. Regulations should be as flexible as possible to remove rather than install impediments to future retail development**