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**MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** Travis Parker, Zoning Review Project Manager 

**DATE:** October 10, 2008

**SUBJECT:** Public Hearing Report for ZC #08-06-5  
Proposed Amendments to Zoning Regulations – Retail Strategy

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**I. ZONING REVIEW PROCESS**

The 2006 Comprehensive Plan for the District of Columbia states that “The Zoning Regulations...need substantial revision and reorganization, ranging from new definitions to updated development and design standards and even new Zones” (Comprehensive Plan, §2504.2). It goes on to note that “a major revision to the Zoning Regulations is planned for 2007-2009” (ibid). OP has designed a three-year process to produce recommended changes to update, clarify and simplify the current Regulations.

Regulations are currently being reviewed by subject area, with up to twenty subject areas to be covered in the next few years. Each subject area will be reviewed in consultation with a public working group that will discuss issues identified in the Comprehensive Plan as well as issues arising from the existing Zoning Regulations. Recommend changes are then forwarded to the 24-member Task Force for further review and input. Finally, recommendations for each subject area are made available for public review including a hearing before the Zoning Commission. After the conclusion of public review for all subject areas, OP will work with the Office of the Attorney General to draft zoning language to reflect the proposed policy changes.

Drafting the language for all subject areas at once, rather than for each topic, allows for the overlap between different subject areas and establishes a cohesive writing style and format. The recommendations for the first three subject areas – height, parking, and loading – were written as draft zoning language, rather than recommended text changes or zoning policies. The remainder of the subject areas, including retail strategy, will come forward to the Commission as recommended changes and policies. After all topics have been heard by the Commission, those policies will be unified into one proposed zoning text.

**II. RETAIL STRATEGY SUBJECT AREA PROCESS**

The Retail Strategy Working Group held its first of four meetings on March 19, 2008. The group was made up of business owners, real estate professionals, and members of neighborhood organizations. Group members represented many areas of the city: OP highlighted for the group

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CASE NO. 08-06-5  
EXHIBIT NO. 5

the Comprehensive Plan's main goals for retail: establishing and sustaining a viable retail economy and strengthening local neighborhood commercial areas. Using those goals as a starting point, and with the assistance of a best practices research, the group helped OP identify weaknesses in the existing regulations and discuss new strategies. The discussion of the working group helped draw out what characteristics are necessary for a successful retail areas. The extensive comments and insights provided by the working group were critical to forming our recommendations.

Following the last working group meeting, the preliminary recommendations were sent to the Taskforce for additional review and comment at the July 23 Taskforce meeting. The next draft of the recommendations were posted online and made available for review and comment by the public. As of this writing, no comments have been received from the public.

### **III. BACKGROUND OF RECOMMENDATIONS**

#### **A. Input**

This report describes strategies for improving the retail environment in our city and simplifying the regulations of retail uses and areas. Four main sources contributed to the identification of issues and their solutions:

- The policies and action items of the Comprehensive Plan;
- The Zoning Commission's direction that the Zoning Review should result in greater clarity, ease of use and relevance;
- Comments of working group participants;
- A best practices study of other cities that regulate arts through zoning.

The result of that process was a list of recommendations addressing a range of issues design standards to the way commercial zones should work. The initial list of recommendations was developed by OP staff with input from the working group and are detailed below in section IV. For each topic the existing practice is described, followed by a description of the issues identified with the current regulation. OP's recommendation to address the issue is listed next, as well as an analysis of how the proposal would be an improvement. Finally, any other remaining issues pertinent to that topic are explained. All of the proposed regulations would apply only to new or significantly redeveloped buildings. New use or design requirements would not apply to existing buildings or uses. The recommendations listed below can be grouped into the following categories:

- Treatment of Commercial zones and uses;
- Ground floor use requirements and restrictions;
- Ground floor retail design standards;

One topic not addressed in this working group, but integral to the functioning of retail areas in Commercial districts, would be the allowable height and density in each particular neighborhood,

as well as the allowable mix of retail with other uses. Those parameters would affect the level of retail requirement or restriction and relate to overall density controls. Specific values for those parameters will be considered in the Commercial Corridor and Downtown working groups.

The proposals listed below, and others to be considered by future working groups, attempt to achieve the goals of the Comprehensive Plan and address the concerns expressed by members of the working group and Task Force. The recommendations also seek to meet the general goals of the Zoning Review by providing clarity, ease of use and relevance for the regulations.

## **B. The Comprehensive Plan**

The Comprehensive Plan is the starting point for the entire Zoning Review and for every topic area. For retail, the Plan's policies and action items focus on a few broad themes. In the Economic Development Element of the Plan, a strong emphasis is placed on a vibrant mix of retail uses with a focus on promoting small and local businesses.

Policies ED-2.2.2 and ED-2.2.3, for example, call for the expansion of retail shopping opportunities in the downtown and neighborhood areas, respectively. Policies under ED-3.2 talk about the need to protect, retain and promote small local businesses. Many of the Area Elements of the Comprehensive Plan also address retail, some with very specific boundaries or contemplated uses, and some speaking more generally about increased support of retail. Much of that guidance will be addressed through the Zoning Review. With all of its policy direction, the Comprehensive Plan is the foundation on which the recommendations are built.

## **C. Best Practices**

In order to inform our recommendations, OP conducted a best practices study of other cities and their zoning regulations pertaining to retail. Sample cities studied include Austin, Chicago, New York, Palm Beach, San Francisco, Seattle, and Rockville, MD. While not exhaustive, the other practices examined provided insights into what techniques other cities are using to address issues similar to those faced in the District. Seattle, for example, has developed Neighborhood Districts to enhance the commercial environments in the city. Rockville, MD and dozens of other cities have implemented caps on the maximum size of retail businesses. Other efforts around the country are focused on limiting uses in retail zones that do not promote foot traffic and pedestrian vitality. The recommendations presented in this report attempt to draw inspiration from these other practices, but also refine and build on the techniques already in place in the zoning regulations.

## **IV. RETAIL STRATEGY RECOMMENDATIONS**

While the basis of these recommendations is the facilitation and promotion of a strong retail economy, many of the recommendations are necessarily more broadly addressed than retail alone. In working with retail uses, it is necessary to address the treatment of uses in general in the code as well as look at the zone districts which allow these uses. The recommendations include a look at ways to simplify and clarify the promotion of neighborhood serving retail currently handled through overlays. This report also discusses the broader treatment of uses in the regulations based on the consolidation and simplification of retail use lists. There is necessary overlap between this subject area and the land use subject areas looking at commercial zones. The general recommendations here, if adopted, would be expanded on in specific zoning categories in future working groups.

### **1. Commercial Zones and Overlays**

#### Existing Practice

The Zoning Regulations currently contain a small number of general commercial districts that apply across the city. Specific local needs can only be met through the establishment of overlays that work in conjunction with the underlying zones.

#### Issues

Overlays provide local regulation for a system that otherwise does not recognize geographic differences, but does it in an unnecessarily complicated way. The use of overlays rather than single, tailored zones entails multiple layers of regulation and confuses the implementation of simple zoning tools.

#### Recommendation

**Replace existing commercial zone districts and overlays with standalone districts in which the uses and area restrictions are tailored to the needs of specific and contiguous geographic areas. This would not change the protections and restrictions afforded by the current overlays, but rather include them in an underlying zone for that area.**

#### Analysis

The commercial zoning categories created in 1958 anticipate a homogeneous city with similarly zoned areas across the city following identical standards; every C-2-A area would behave like every other C-2-A area. In order to recognize the unique characteristics of commercial areas in our city, zoning has had to find a way to apply localized bulk and use standards. These localized standards allow for protection and retention of the existing character of our historic and eclectic commercial areas.

In the absence of a reexamination of the 1950s style zoning system, the creation of an overlay system was the only way to apply localized standards in our existing code. However, the ability to review and update our zoning system offers a unique opportunity to accomplish these same goals through a simpler and more straightforward system.

Nothing in this recommendation is intended to remove or weaken the protections and regulations in place through existing overlays. The intention is to create zones where the requirements from existing underlying and overlay zones are combined into one localized commercial zone.

#### Remaining Issues

The consolidation of existing zones and creation of the template for new zones would take place in the individual working groups dedicated to specific land use types. It is expected that each of the working groups for Commercial Corridors, Medium & High Density Commercial, and Downtown would use this guidance to formulate localized zones containing all of the existing and future regulations for the individual areas.

## **2. Consolidation of Use Lists**

#### Existing Practice

Currently each commercial zoning district contains a list of retail and other uses that are permitted in that zone. Overall, the zoning regulations contain several hundred different listed uses. Over half of those are commercial uses, including retail uses.

#### Issues

Long lists of uses are unwieldy, complicated, and continually out of date. Separating uses by general type and impact offers a simpler and more relevant way to regulate building uses and their impacts.

#### Recommendation

**Consolidate the current retail, service and miscellaneous use lists contained in Chapter 7 into broad categories. Proposed commercial categories include: Retail, Service, Office, Accommodation & Food Service, Entertainment, and Arts. Categories would be permitted or prohibited in each zone with conditions for each use (such as hours of operation, radius requirements, and the amount of gross floor area occupied) established for each district.**

## Analysis

Examples of problems that exist due to current use lists include: multiple separate names for the same use, different uses existing under the same name, new uses are not identified, old uses clutter the lists, many uses appear only in one overlay and are not mentioned or referenced elsewhere, and organization of uses happens differently in separate overlays and districts.

Revising the regulations to be more user-friendly and to provide clearer guidance to property owners has been a recurring theme expressed throughout the process. Combining existing lists into one single list applicable throughout the regulations will eliminate hundreds of inconsistencies and much confusion. The adoption of this recommendation will further the general Zoning Review goals of increased clarity and ease of use.

In addition to making use classification easier through broader distinctions, a system of use categories would ease the pressure on the Zoning Administrator to classify mixed uses, or make a distinction between primary and accessory uses. Uses with components of two categories would have to meet the requirements of both categories. For example, a convenience store with gas pumps would constitute both a retail use and an auto use and only be allowed where both uses are permitted; it would not have to be determined to be either one or the other.

Individual districts could permit uses, permit them with conditions, or prohibit them. Depending on the type of zone, possible conditions on uses could include gross floor area (GFA) maximums, hours of operation, and limits on certain types of activities. Uses would be subject to the conditions of the zone with a special exception required to vary GFA and a variance required to relieve any other condition.

OP has examined the existing lists of hundreds of commercial uses and tentatively proposes commercial categories with the definitions given below. If the Zoning Commission approves this change, these definitions will need further refinement including insuring that all categories are mutually exclusive.

### **Retail**

Businesses devoted to the on-premise sale of tangible goods

Examples: Book store, drug store, pharmacy, shoe store, grocery store

### **Service**

Businesses devoted to the provision of general services other than industrial or public services

Examples: Bank, tailor, real estate, bike repair, tax service, yoga studio

**Office**

Administrative, professional, research, or similar organizations and laboratories having limited contact with the public

Examples: Law firm, brokerage, think tank, corporate office, lobbyist office

**Accommodation & Food Services**

Establishments providing customers with lodging and/or prepared meals, snacks, and beverages for immediate consumption

Examples: Hotel, bed & breakfast, restaurant, coffee shop, ice cream parlor

**Entertainment**

Both participatory and spectator venues for sports or art

Examples: Hockey rink, bowling alley, stadium, theater, auditorium

**Arts Production & Display**

Uses where artists create or display their work

Examples: Artist studio, gallery, museum

**Automobile Related**

Uses involving, the on-site service, repair, or fueling of automobiles

Examples: Gas Station, auto-body shop, inspection station

**Remaining Issues**

While the categorization of uses is most important for retail and other commercial uses, it must be accompanied by a system-wide change. It would not make sense to have commercial use categories but have long use lists for the non-commercial uses. Based on the existing uses and use types in the regulations, OP would recommend that the ZC also consider the following proposed categories of non-commercial uses:

**Residential**

Dwelling units providing human habitation for periods of at least one month

Examples: Single family home, rowhouse, apartment building, voluntary CBRF

**Institutional**

Uses involving the assembly or habitation of people for religious, social, educational, or corrective purposes

Examples: Church, private school, university, hospital, involuntary CBRF

**PDR (Industrial)**

Use involving the production, distribution, repair, or processing of materials, products, or technology

Examples: manufacturing, warehousing, light industry, recycling, material storage

### **Local Government**

Uses operated by the District of Columbia government

Examples: Police station, fire station, library, public school

*There are some uses that do not fit easily into the categories outlined above. Other minor categories of uses might include:*

### **Non-building Uses:**

Any functional, social, or technological activity that is imposed or applied to land or structures on the land

Examples: Antenna, truck garden, soccer field

### **Marine Uses**

Uses adjacent to and associated with riverways

Examples: Marina, water taxi, houseboat

### **Animal Boarding Uses**

Uses entailing the boarding of animals as pets or livestock

Examples: Veterinarian, dog boarding, stable

### **Transportation Uses**

Infrastructure for public transportation systems

Examples: Metro stations, bus stops, bus transfer stations

## **3. Retail Use Size Limitations**

### Existing Practice

There are no existing minimum or maximum size requirements for new retail spaces in the regulations.

### Issues

The absence of target size limitation requirements for retail space in neighborhood commercial zones prevents the promotion of small and local businesses through the provision of additional small-scale retail sites.

### Recommendation

**Allow for floor space caps to be applied to achieve local retail goals. Such a cap would limit the size of new retail spaces developed in some portion of the total zone or some portion of each project.**

### Analysis

Allowing neighborhood retail areas to establish such a limit could help promote vibrant local commercial areas by creating opportunities for small scale retail and other uses based on local commercial area needs. The most likely way for this recommendation to be implemented on a local scale would be to require any new development in a designated zone to provide at least one small retail space prior to the provision of any larger space. The definition of a “small” retail could also shift by zone.

### Remaining Issues

Individual limits would be set for individual local zones based on small area plans or existing overlays.

## **4. Ground Floor Retail Uses**

### Existing Practice

Many existing zones and overlays require a certain FAR or percentage of the ground floor to be provided for retail use.

### Issues

This requirement is common throughout the regulations and appears to be effective in directing new retail. The practice should be standardized so that separate zones follow the same procedure, even though area requirements may differ.

### Recommendation

**Allow the requirement of a minimum percentage of the ground floor of any new building in commercial zones to be built for retail use where appropriate.**

### Analysis

The success of a retail district is directly related to the use of space at street level. Often there is a need to promote or encourage retail or similar uses on the ground floor above office or service uses. The existing tool for promoting retail on designated streets appears to work well in focusing retail growth and improving the availability of retail space. This recommendation would standardize and continue this existing practice.

### Remaining Issues

Individual requirements would be set for individual local zones based on small area plans or existing overlays.

## **5. Limitation of Certain Uses on the Ground Floor**

### Existing Practice

Currently, the Neighborhood Commercial overlay districts allow for the limitation of restaurants to a maximum of 25% of the street frontage of designated streets. Other overlays, including the Downtown Development overlay, have limits on other types of uses on the ground floor.

### Issues

This policy is currently available for new overlays and should be more broadly available for targeted local regulation.

### Recommendation

**Allow commercial districts to limit ground floor uses that are inconsistent with a vital retail streetscape, where appropriate.**

### Analysis

Uses that may be appropriate or desirable in the zone district may have negative impacts on the retail function of an area when located on the ground floor. Allowing for the targeted limitation of categories of use in particular commercial corridors can help achieve a balanced retail business mix, can help curtail rising rents associated with certain uses, and can ensure that retail space is available to serve neighborhood retail needs. This limit could be a percentage of the street frontage or of the ground floor area in a particular district.

### Remaining Issues

Individual limits would be set for individual local zones based on small area plans or existing overlays.

## **6. Ground Floor Design Standards**

### **Existing Practice**

Certain overlays in the existing regulations contain design requirements for ground floor uses including window requirements, entrance requirements, and ceiling height requirements.

### **Issues**

The regulations do not have a standard way to address these issues across different zones.

### **Recommendation**

**Establish design standards within commercial zones for designated streets addressing:**

- a. Minimum clear ceiling height;**
- b. Active retail/window space;**
- c. Minimum distance between building access points; and**
- d. The limitation of office or residential lobby entrances relative to overall retail frontages.**

### **Analysis**

The existing regulations have many instances of ground floor design requirements for the promotion of vibrant and active retail areas. These requirements encourage the provision of usable retail spaces that are active and address the street. This recommendation would continue to allow and encourage design requirements for individual commercial corridors. Individual design standards could change between areas, but would address the areas listed above.

### **Remaining Issues**

Individual standards would be set for individual local zones based on small area plans or existing overlays.

## **7. Adaptability of New Retail Space**

### **Existing Practice**

There are no existing regulations dealing with the adaptability of retail space.

### Issues

The construction of certain large retail spaces often creates spaces that are unusable for other retail uses when the original use leaves. Regulations should encourage more flexibility and usability of retail space.

### Recommendation

**Establish Ground Floor Retail adaptability development standards to ensure establishment of new retail space that would allow for long-term utilization by smaller businesses, but that would not prohibit occupancy by larger retail tenants.**

### Analysis

Although current regulations are silent on the types of retail space built, it is important to recognize the need for retail space to serve a wide variety of tenants in terms of scale. Requiring that newly developed retail space be adaptable to serve either large scale or small scale tenants will ensure that the District's retail supply base can address changes in retail markets over time.

Such development standards could include a baseline standard that would be determined for the maximum width of desired local retail space in an area. This standard would be the basis for requiring that the ground floor level of new buildings be able to be divisible in the future into spaces that meet the minimum standard. The entire space would still be able to be consolidated for single occupancy at the desire of the building owner based on real estate demands.

Such a development standard would ensure that new retail spaces could adapt to a variety of potential future market demands for retail space. There would be an assurance that regardless of current demands there would be a long term supply of start-up or small scale space. Adaptable building standards would also maintain urban design policies intended to ensure that a "fine-urban grain" is maintained and that the street environment is maintained as an active space.

### Remaining Issues

The baseline standard width for retail space would be set on a local basis for individual retail areas.

## **Attachment 1 – Response to public comments**

### **Comment 1:**

*I'd be reluctant to prohibit ground-level retail anywhere in a commercial zone; if the retailer thinks the location is suitable, she should be allowed to use it.*

### **Response:**

The basis for this recommendation is a result of the recommendations of the Retail Action Strategy efforts. Certain commercial corridors suffer from an imbalance between residential floor space and retail floor space. In lieu of adding additional residential floor space to support the existing retail space, it may be viable on a short term basis, and beneficial to retailers to consolidate their efforts in the same geographic area.

The intent is not to prohibit retail uses comprehensively throughout the district, but to provide flexibility to allow for a retail development strategy where retail uses could be focused and consolidated. With the flexibility of regulating based on an area by area basis, prohibitions would be applied only where appropriate in the District.

### **Comment 2:**

*I don't think it's appropriate to require building owners to incur the extra costs required to implement an "adaptable" development standard or to require them to adopt a particular exterior design arrangement.*

### **Response:**

The intent of the proposed regulation is not to result in a standard which is overly punitive on a building developer. Although there may be some additional cost associated with achieving the intended result of adaptability, it is believed this regulation serves the long term interests of building owners and the District of Columbia.

At this time, the regulation is conceptual in nature and it is recognized that there would be a need for determination of the potential cost implications associated with such a standard. This is an example of a relevant issue that can be identified, discussed and further developed into actual requirements as a part of the remaining working groups dealing with retail related issues. Ultimately, setting the local requirements for such a regulation should be based on the feedback of those involved in the field of retail development (e.g.: developers, architects and structural and mechanical engineers).