

Comments of Friendship Neighborhood Association on
Notice of Proposed Rulemaking
Zoning Commission Case No. 08-06-A
(Text Amendment – 11 DCMR)

Title 11, Zoning Regulations – Comprehensive Text Revisions

Subtitle A, §202; Subtitle B, Chapter 2; Subtitle G, §402.2; Subtitle U, §254, and Subtitle C, §702

In these comments, we address:

- (a) the proposed new zone names [Subtitle A, Section 202];
- (b) the consolidation of use lists [Subtitle B, Chapter 2: Use Categories];
- (c) the increased FAR limit for non-residential uses in the MU-4 and MU-5 zones (current C-2-A and C-2-A zones) [Subtitle G, Section 402.2];
- (d) the impact of increased commercial uses (“corner stores”) in R-3, R-13, R-17, R-20, RF-1, RF-2 and RF-3 zones (current R-3 and R-4 zones) on walkability and the viability of nearby neighborhood commercial centers [Subtitle U, Section 254 Corner Stores (R)]; and
- (e) how replacing the current system for reducing parking requirements for projects near transit [including, for example, DCMR, Title 11, Section 2104, as amended March 5, 2010, which is based on differences in the need for off-street parking by use as well as the impact of a reduction in off-street parking on low and moderate density residential zones] with a categorical reduction [Subtitle C, Section 702] is inconsistent with the Comprehensive Plan.

Subtitle A, §202: Zone Districts

One goal of rewriting the zoning regulations was to make the regulations more user friendly and to ensure that the regulations are transparent, readable and accessible to both professional and lay users.

With our current zoning regulations, the zone names clearly identify the underlying zone and the associated overlay. The proposed zone names are not helpful in this regard. With the ZRR, the C-2-A zones would be renamed: MU-4, MU-24, MU-25, MU-26, MU-27, NC-2, NC-3, NC-4, NC-9, NC-14, NC-16, ARTS-1 and RC-2.¹

With the current zone names, the zone name provides guidance to the user, with increasing numbers indicating increased density or intensity of use. The proposed zone names fail to assist the user looking to compare different zones. For example, MU-10 (currently CR) is significantly more dense and intense than MU-17 (currently C-2-A/DC) or MU-27 (currently C-2-A/NO).

The renaming of the zone districts makes the regulations more difficult to use and obscures the relationship between different zone districts. It should be rejected.

More information on this issue is in Attachment A: Comments of Marilyn Simon for Friendship Neighborhood Association, ZC Case 08-06C, April 6, 2015: Map Amendment to Implement the Comprehensive Revision to the Zoning Regulations, Including New Zone Names (2 pages)

¹ Note, one can still change from the C- designation to MU- without throwing out the elements of the current numbering system that assist users in identifying related zones and easily understanding how the zones relate to each other in density and intensity, i.e., the C-2-A zones could be renamed MU-2-A (with a suffix for an overlay where relevant), rather than MU-4, MU-24, MU-25, MU-26, MU-27, NC-2, NC-3, NC-4, NC-9, NC-14, NC-16, ARTS-1 and RC-2.

Subtitle B, Chapter 2 - Use Categories

The consolidation of use lists in the ZRR eliminates the distinctions between the uses that are appropriate for different areas. For example, the Generalized Policy Map of the Comprehensive Plan distinguishes among neighborhood centers, multi-neighborhood centers, and regional centers. Though each designation allows retail and service uses, they are all characterized by different types of businesses, based on neighborhood impact. For example, department stores are limited to regional centers because they attract larger volumes of customers traveling greater distances, they require relatively large footprints for a single use, and their hours are longer than smaller neighborhood-serving businesses. Replacing these kinds of distinctions with very broad use categories such as retail, service or eating and drinking establishments will put neighborhood character at risk and drive out the kinds of small local businesses that flourish in areas where commercial scale is limited by the current zoning.

Under the current regulations, lower density zones have fewer, lower impact businesses allowed in each category, with more uses added as the intensity of the zone increases. This more finely calibrated approach is necessary for consistency with the Comprehensive Plan, and has been eliminated by the broad definition of use categories in Subtitle B, Chapter 2.

The consolidation of uses into broad categories is inconsistent with the Comprehensive Plan and should be rejected.

More information on this issue is in Attachment B: Comments of Marilyn Simon for Friendship Neighborhood Association, ZC Case 08-06-5, October 23, 2008, Commercial Zones: Mapping and Use Principles (2 pages)

Subtitle G, §402.2: Maximum Permitted Floor Area Ratio in the MU-4 and MU-5 Zones

Subtitle G, §402.2 increases the maximum floor area that can be devoted to non-residential uses in the MU-4 and MU-5 zones (currently C-2-A and C-2-B). This change reduces the incentive to provide housing in a mixed use zone. It also, as drafted, increases the incentive to maximize the lot occupancy (since the amount of the increased non-residential FAR is related to lot occupancy). Many of the C-2-A zones, for example, are narrow mixed-use corridors next to low-density residential neighborhoods, this change increases the impact on nearby homes, with more non-residential use and an incentive for higher lot occupancy.

The increase in the permitted non-residential floor area is inconsistent with the Comprehensive Plan policies to ensure that commercial development does not unreasonably impact surrounding residential areas. It should be rejected.

More information on this issue is in Attachment C: Comments of Marilyn Simon for Friendship Neighborhood Association, ZC Case 08-06-13, October 25, 2010, Mixed Use Zones; Setbacks. (3 pages)

Subtitle U, §254: Corner Stores

This section permits a grocery store or fresh food market as a matter of right and any use in the broadly defined retail, general service, arts, design and creation or eating and drinking establishment categories by special exception in the in R-3, R-13, R-17, R-20, RF-1, RF-2 and RF-3 zones (current R-3 and R-4 zones) subject to several conditions.

Allowing additional non-residential uses in these residential zones has an impact on the diversity of neighborhood types and the viability of nearby commercial centers. The viability of the commercial centers depends on synergies. A concentration of retail and service storefronts in a compact strip is both attractive to consumers and protective of adjacent residential neighborhoods. This proposal also undercuts the basic purpose of zoning, since it eliminates some predictability about development in R-3 and R-4 neighborhoods. The current zoning creates neighborhoods in

which rowhouse residents know that their neighbors will be rowhouse residents -- not commercial establishments.

More information on this issue is in Attachment D: Marilyn Simon, Letter to the Zoning Commission, ZC Case 08-06-14, dated December 21, 2010

Subtitle C §702: ZRR Reduction in Minimum Parking Requirements Compared with DCMR 11 §2104

The proposed mapping of the areas where there would be a 50% reduction in the minimum parking requirement is inconsistent with the Comprehensive Plan.

The current regulations for “exceptions to the schedule of requirements: near Metrorail stations” are based on careful consideration of the factors that affect the need for parking and determine the likely impact if insufficient off-street parking is available. The current regulations allow for a limited reduction in the minimum parking requirements only for non-residential buildings within 800 feet of a Metrorail station, and only if the building is more than 800 feet from a low to moderate density residential district. In another section [2107], a reduction in the required parking is allowed, subject to authorization by the BZA as a special exception, and only for non-residential buildings with a direct connection to a Metrorail station.

**2104 EXCEPTIONS TO THE SCHEDULE OF REQUIREMENTS:
NEAR METRORAIL STATIONS**

- 2104.1 The number of parking spaces required for a nonresidential building or structure shall be seventy-five percent (75%) of the amount otherwise ordinarily required under § 2101.1 if the building is located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance and:
- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
 - (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.
- 2104.2 **[REPEALED]**
SOURCE: Final Rulemaking published at 31 DCR 6585, 6597 (December 28, 1984); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8499-50 (October 20, 2000); Final Rulemaking published at 50 DCR 10822 (December 19, 2003); as amended by Final Rulemaking and Order

The current regulations are carefully crafted to reflect when there might realistically be a reduction in the amount of parking needed, and when that reduction is unlikely to have a negative impact on nearby neighborhoods. These, are consistent with the Comprehensive Plan. The ZRR proposal does the opposite. With the ZRR, there is a deeper, one-size-fits-all reduction in the already insufficient minimum parking requirements.

The proposed mapping of areas eligible for a reduction in the minimum parking requirement and the depth of the permitted reduction in Subtitle C, Section 702 is inconsistent with the Comprehensive Plan. It should be rejected.

More information on this issue is available at Attachment E: Comments of Marilyn Simon for Friendship Neighborhood Association, ZC Case 08-06-9, May 21, 2009, Sustainability.



Marilyn Simon, for Friendship Neighborhood Association

Attachments:

Attachment A: Comments of Marilyn Simon for Friendship Neighborhood Association, ZC Case 08-06C, April 6, 2015: Map Amendment to Implement the Comprehensive Revision to the Zoning Regulations, Including New Zone Names (2 pages)

Attachment B: Comments of Marilyn Simon for Friendship Neighborhood Association, ZC Case 08-06-5, October 23, 2008, Commercial Zones: Mapping and Use Principles (2 pages)

Attachment C: Comments of Marilyn Simon for Friendship Neighborhood Association, ZC Case 08-06-13, October 25, 2010, Mixed Use Zones; Setbacks. (3 pages)

Attachment D: Marilyn Simon, Letter to the Zoning Commission, ZC Case 08-06-14, dated December 21, 2010

Attachment E: Comments of Marilyn Simon for Friendship Neighborhood Association, ZC Case 08-06-9, May 21, 2009, Sustainability.

CASE NO. 08-06C
Zoning Commission of the District of Columbia
Map Amendment to Implement the Comprehensive Revision to
the Zoning Regulations, Including New Zone Names
Testimony of Marilyn J. Simon, Friendship Neighborhood Association
Monday, April 6, 2015

My name is Marilyn Simon and I am speaking on behalf of Friendship Neighborhood Association. Tonight, I would like to address the section of the proposed map amendment which would change the names of the current zones on the zoning map. Renaming the zones was proposed as part of the ZRR, and this map amendment provides an example of how the ZRR has failed to reach its stated objectives.

One goal in rewriting the zoning regulations was to make the regulations more user-friendly and to ensure that the regulations are transparent, readable and accessible to both professional and lay users. The proposed change in the zone names illustrates how the Office of Planning has moved in the opposite direction, making the regulations more complex and difficult to understand and masking the underlying relationships between related zones.

The current zone categories have two characteristics that assist the user in understanding the relationship between various zones. The name of the underlying zone is clear and there is a clear relationship between zones, where, generally, zones with higher numbers in the same category allow more intense uses and increased heights and/or densities.

The description of the underlying zone and the overlays on the Office of Zoning website has proven to be very useful to many DC residents, providing them with an understanding of how the zones in their neighborhood relate to each other and to zones in other neighborhoods. It helps them to understand how zoning shapes future development in their neighborhood. The clear designation of an underlying zone and an overlay zone, where applicable, as well as the general pattern with higher numbers associated with more intense or more dense development, make the zoning regulations reasonably transparent, readable and accessible. These attributes will be lost with this proposed map amendment.

1. Zone names that clearly identify the underlying zone and overlay.

The current name includes the name of the underlying zone, such as C-2-A , a commercial zone that is consistent with both Low Density Commercial and Moderate Density Commercial in the Future Land Use Map of the Comprehensive Plan. [§§ 225.9 and 225.10] For areas subject to an overlay, the designation for the overlay is added. The user then knows that, for example, a property in zone C-2-A/NO will be similar to other

C-2-A zones, but with some modifications related to the specific concerns described in the Naval Observatory Precinct Overlay District, related to its location adjacent to or in close proximity to the highly sensitive and historically important Naval Observatory.¹

This proposed map amendment would rename the current C-2-A zones, and they would become: C-2-A, MU-4, MU-17, MU-24, MU-25, MU-26, MU-27, NC-2, NC-3, NC-4, NC-7, NC-9, NC-14, NC-16, ARTS-1, and RC-2.

If the ZRR is adopted as proposed, over time, most users of the zoning regulations will not understand the relationship between these 16 C-2-A zones, the unifying characteristics of the 16 zones, and how they were tweaked to account for particular concerns in each of the 15 overlay districts. Nor will the users see the relationship between different underlying zones in the same overlay district.

2. Zone names that aid the user in identifying the ranking by density or intensity.

With the current zone names, within categories, the density or intensity generally increases as zone number increases. For low and moderate density zones, the density increases as we go from R-1-A to R-1-B to R-2, R-3, R-4 and R-5-A. Under the proposed system, higher numbers could denote higher or lower density in the same category. For example, in the commercial zones, MU-10 (CR) is significantly more dense and intense than MU-17 (C-2-A/DC) or MU-27 (C-2-A/NO).

Conclusion

The revised zoning regulations, if adopted, will impact the shape of our city for decades to come. So, it is important that we are certain that it is delivering on its promises, and that the new regulations are clear, transparent, readable and accessible. They should also be unambiguous, enforceable and consistent with the Comprehensive Plan.

This proposal to rename the zones makes the regulations more confusing to most users who have not participated in the ZRR, read all the drafts or studied all the cross-walks. The new zone naming system disguises important relationships between different zones. This is just one of the very serious ways in which the recently circulated drafts of the document that is being prepared for an NPRM do not achieve the goals of the zoning rewrite and will not be consistent with the Comprehensive Plan. Eliminating this unnecessary change in the zone naming system will make the regulations more transparent and readable, but it will not address the many other fatal flaws in the document.

¹ Residents and prospective residents find the current zone names, along with the explanations on the DCOZ web-site, useful. For example, if someone is looking for a home in a single family or rowhouse neighborhood near retail, they can look at the nearby commercial zone designations and quickly determine the risk of significantly higher density redevelopment of commercial area without public input. With the proposed zone names, the prospective homeowner would need to dig into the text of the new code to know where higher density redevelopment would be allowed as a matter of right and to compare different neighborhoods.

CASE NO. 08-06-5

Comprehensive Zoning Regulations Rewrite: Commercial Zones: Mapping and Use Principles

Testimony of Marilyn J. Simon, Friendship Neighborhood Association

Thursday, October 23, 2008

My name is Marilyn Simon, and I am speaking on behalf of Friendship Neighborhood Association. The recommendations in the Public Hearing Notice and Hearing Report go far beyond the scope of the associated working group, and these recommendations could limit the options available to the working groups that deal with commercial and residential zones.

We find several of the recommendations to be most troublesome and in some instances inconsistent with the clear language of the Comprehensive Plan, including the recommendation to replace the existing commercial zone districts and overlays with standalone districts, the consolidation of the use lists into approximately five categories, and the design standards, particularly the minimum clear ceiling height and the requirement that large ground floor retail sites be built to be structurally adaptable to smaller tenants.

1. OP recommends replacing existing commercial zone districts and overlays with standalone districts.

The existing commercial zone districts are important in helping to define heights, densities and uses associated the designations in the Comprehensive Plan Future Land Use Map. Currently, the Future Land Use Map shows geographic areas associated with land uses such as moderate density commercial, and one or more existing zone districts that correspond to each of these categories. These distinctions need to be maintained.

If these distinctions are maintained, the proposed standalone districts will require OP to define hundreds of different districts to maintain the granularity that is necessary within each standalone district. Some areas, such as the Friendship Heights include several zoning districts so that the heights, density and intensity of allowed uses step down as you move through the zones between the Metro and the low-density residential neighborhood.

We are also concerned that the templates proposed for the standalone zones might lack the necessary granularity and have eliminated important zoning tools to provide our neighborhoods with the kind of predictability that they expect from the zoning regulations.

2. OP proposes consolidation of use lists, with uses either permitted or prohibited in each zone.

The consolidation of use lists proposed would make it difficult to distinguish different types of uses that would be appropriate for different areas on the Comprehensive Plan Generalized Policy Map. For example, the Generalized Policy Map has neighborhood commercial centers, multi-neighborhood commercial centers and regional centers, each characterized by different types of businesses. The OP proposal would consolidate the commercial categories, so that the zoning regulations would not be consistent with the designation in the Generalized Policy Map. OP proposes the categories: Retail, Service, Office, Accommodation & Food Service, Entertainment, Arts Production & Display and Automobile Related. The Neighborhood, Multi-neighborhood and Regional Centers are separately mapped on the Generalized Policy Map, and the description of each of these types of these areas includes businesses that fall into each of these categories, but the Comprehensive Plan distinguishes between different uses within these broad categories.

Lists of uses are essential for providing clarity and for distinguishing between the types of uses that are appropriate for different zones. On the surface, OP's recommendation might seem to be simpler but it is not consistent with the Comprehensive Plan and does not provide the type of predictability that is necessary. Further, in its implementation, it is unlikely to be simpler, and is likely to become an enforcement nightmare, as it is difficult after a project is completed to control the conditions that OP proposes.

3. OP proposed design standards, including minimum clear ceiling height.

We are concerned about establishing design standards, such as requiring 14 foot clear ceiling heights on the first floor, since that can create an undesirable and unnatural uniformity in the facades. Similarly, there is a concern about mandating other design standards, such as distance between access points. We also oppose granting of any bonus height based on a requirement that there be 14 foot clear ceiling heights. Heights and densities should be set to appropriate levels, and for regional centers they are limited by the Comprehensive Plan to that which is "appropriate to the scale and function of development in adjoining communities." Inclusion in the zoning regulations of a variety of bonus heights and densities makes it difficult to maintain the necessary predictability of development and to maintain consistency with the Comprehensive Plan.

Finally, we do not think that the zoning regulations should include OP's recommended requirement that large ground floor retail sites be built to be structurally adaptable to smaller tenants. For private development, developers can include large ground floor retail, customized for a particular tenant or type of tenant, and might at their own risk or sharing that risk with their tenant, choose a design that would be costly to adapt to smaller uses. The developer will need to assess the risk and the additional cost of engineering for adaptability, but the zoning regulations should not bar the developer from assuming that risk. On the other hand, if there is a project where a public investment is involved, we might find it advantageous to make certain that the space is adaptable for other uses, but that requirement would be included in the RFP, and would not need to be part of the zoning regulations.

CASE NO. 08-06-13

Zoning Commission of the District of Columbia

Comprehensive Zoning Regulations Rewrite: Mixed Use Zones; Setbacks

Testimony of Marilyn J. Simon, Friendship Neighborhood Association

Monday, October 25, 2010

My name is Marilyn Simon, and I am speaking on behalf of Friendship Neighborhood Association. It is difficult to assess the impact of many of the recommendations advertised in the Public Notice since the new definitions will apply to all zones and will interact with the recommendations and proposed language in many of the other sections.

There does, however, seem to be a general theme in many of these recommendations, and that is to increase the allowable footprint for many sites, and to provide for matter-of-right development possibilities on sites that currently would need to be combined with adjoining lots in order to support a development project without having a negative impact on the light and air of neighboring property owners. Another theme is to encourage development that has no break in the streetwall, based on the assumption that having impenetrable blocks, regardless of block size, in medium and high density mixed use and residential zones is desirable.¹

To fulfill these goals, the Office of Planning has reviewed several special cases, providing an overly simplistic analysis, focusing only on a few specific Comprehensive Plan policies, and recommending that these special cases be addressed with global changes to the matter-of-right zoning envelope. In spite of several assurances that these recommendations are consistent with the Comprehensive Plan, there seems to be little analysis of the impact of these changes outside the special cases.

Recommendation 11, to allow existing buildings in a C-2-A or C-2-B zone to have commercial use equal to the greater of 1.5 FAR or 2 full stories as a matter of right, or for new construction to allow a full second story of commercial use as a matter of right in mixed use buildings, or as a special exception for commercial only buildings, seems to be a solution in search of a problem. It seems to focus on mixed use buildings that have lot occupancies above 75% and do not have any significant amount of space on the first two floors that is associated with the residential use above. Further, it seems to encourage new commercial buildings in mixed use zones to increase lot occupancy above 75% up to 100% in order to obtain the

¹ See, for example, the discussion of Recommendation 5 in OP's September 28, 2010 memorandum to the District of Columbia Zoning Commission, "Conceptual Recommendations for Mixed-use Zones."

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increased FAR that becomes available with this change. As an example, some commercial corridors have C-2-A zones along the corridor next to a low density residential neighborhood. This proposed change provides the incentive to push the commercial only buildings closer to the rear yards of the single family homes.

Recommendation 12, to rely on existing building code regulations, rather than residential lot occupancy to deal with light and air considerations for residential buildings in mixed-use zones, fails to take into account the concerns that were raised by the working group.² The working group suggested that the current 100% lot occupancy for commercial uses is not working well, and that a lower limit on lot occupancy for commercial uses should be implemented, one that considers light and air access for neighboring properties, and ensures provision of open space to ensure a respect for surrounding buildings and character.

Recommendation 13 to modify the transition regulations, does not fully address the Comp Plan provisions requiring buffers between higher density areas and low and moderate density residential neighborhoods. For example, Policy LU-2.4.4: Heights and Densities in Regional Centers, specifically mentions the use of buffer areas,³ as does Policy LU-2.3.4: Transitional and Buffer Zone Districts.⁴ Even keeping in mind the need to preserve existing buffer zones and implement new ones as necessary, the recommendations do appear to be inadequate for protecting low and moderate density neighborhoods where no buffer zone is possible. For example, the angular plane is defined to begin at the property line or center of the alley from a height which is ten feet above the maximum permitted height. As we know the prevailing heights in many low-density residential zones is well below the maximum allowed,

² See "Commercial Areas Working Group: Meeting #4 Notes," Available at <https://www.communicationsmgr.com/projects/1355/docs/CA%20-%20Development%20Standards%20Meeting%20-%20%20Notes.pdf>

³ Policy LU-2.4.4: *Heights and Densities in Regional Centers* Maintain heights and densities in established and proposed regional centers which are appropriate to the scale and function of development in adjoining communities and which step down to adjacent residential areas, and maintain or develop buffer areas for neighborhoods exposed to increased commercial densities. 312.8

See also, ZC Order 824, where the Zoning Commission found that for a PUD modification in the Friendship Heights Regional Center, "the townhomes in the residential portion of the project provide a more appropriate buffer between the commercial area of Wisconsin Avenue and the residential neighborhood east of 43rd Street than was approved in the original PUD."

⁴ Policy LU-2.3.4: *Transitional and Buffer Zone Districts* Maintain mixed use zone districts which serve as transitional or buffer areas between residential and commercial districts, and which also may contain institutional, non-profit, embassy/chancery, and office-type uses. Zoning regulations for these areas (which currently include the SP-1 and SP-2 zones) should ensure that development is harmonious with its surroundings, achieves appropriate height and density transitions, and protects neighborhood character. 311.6

and adding ten feet, and moving up at a 45-degree angle from the middle of the alley can produce a building wall that loom menacingly above the dwelling on the other side of the alley.

In summary, I ask that you exercise caution in providing guidance on global recommendations whose impact cannot yet be evaluated in each of the zones where these changes will affect the zoning envelope, and also that you consider the cumulative impact on our urban environment and on the light and air of neighboring properties of a large number of proposed changes, each of which provides, as a matter of right, more flexibility to expand the footprint, reduce buffers, and increase density. I also ask that as we consider future requests for map changes, that you recognize the need for buffer zone districts, and do not assume that the loose transition regulations proposed tonight, or even more stringent transition regulations, can substitute for the buffer zone districts which current exist or which should be included in new regional centers or streetcar zoning.

Marilyn J. Simon, Letter, ZC Case 08-06-14, December 21, 2010

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5241 43rd Street, NW
Washington, D.C. 20015
December 21, 2010

2010 DEC 22 AM 8:49
D.C. OFFICE OF ZONING

Mr. Anthony Hood
Chair, D.C. Zoning Commission
441 4th Street, N.W.
Washington, D.C. 20001

Re: ZC Case No. 08-06-14, ZRR- Medium & High Density Residential Zones

Dear Chairman Hood and Zoning Commission Members,

I am writing in opposition to OP's recommendation to allow additional non-residential uses in residential zones. The recommendation seems to be based on an assumption that all residents of medium or high density residential zones should have the opportunity to have a "corner store" or two within 500 feet of their home.

As I see it, this recommendation has two unintended consequences:

- It eliminates the diversity of neighborhood types; and
- It undercuts the viability of the commercial nodes which serve these medium to high density residential zones.

Diversity of Neighborhood Types:

Currently, DC residents can choose between several types of areas and have confidence that the zoning regulations provide them with confidence that the area in which they invested will retain the characteristics that they chose. For residents who seek multi-family housing, they have three basic choices:

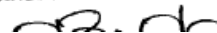
(a) an apartment or condominium in a mixed use (commercial) zone, which includes both commercial uses and residential uses, with the possibility that non-residential uses can be on the same block or even in the same building as the resident's home;

(b) an apartment or condominium near a commercial zone, i.e., near the commercial node that serves the neighborhood, where the resident knows that there will be no commercial uses on his block, but he or she can quickly walk to a commercial node where those stores and services are available; or

(c) an apartment or condominium more than 500 feet from a commercial zone, where the resident knows that there will be no commercial uses near his home, but recognizes in making this choice he or she will need to walk further to reach the commercial node.

OP's recommendation removes the option of choosing housing types (b) and (c), where residents have the option of avoiding the potential impacts of commercial uses near their home, while realizing that it does mean that they will have a somewhat longer walk to the commercial node.

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Recommendation encourages commercial sprawl into residential areas which reduces walkability and viability of commercial zones:

The recommendation not only removes the option of avoiding the impact of commercial uses by assuming the inconvenience of living slightly further from the commercial node, but it also has the unintended consequence of reducing the viability of the commercial node and reducing the walkability of the area.

The walkability of the commercial node depends on having a cluster of neighborhood-serving businesses in a compact area. This allows residents to conveniently shop at a number of businesses in close proximity.

With the proposal, some of the businesses that would otherwise locate in the commercial node will instead seek lower cost locations 500 feet or more from the commercially-zoned area. With the conditions listed, which provide minimum protection for the residents, the commercial establishments in the residential zone will be scattered, losing the convenience and walkability associated with a compact commercial area with a selection of services.

By shifting some of the businesses away from the commercial node, the recommendation threatens the viability of some of the smaller commercial nodes, as they might no longer have sufficient scale, and the remaining businesses can suffer as they see more vacant storefronts in the immediate area and they lose the synergies that they had previously benefited from.

Conclusion:

It is important to remember that District residents have diverse preferences, and our zoning regulations should provide a variety of neighborhood-types, including a variety of medium and high density residential neighborhood-types. The proposed changes in the regulations will create homogeneity, where residents would have otherwise been offered a variety of options. This does not serve us well.

Further, this proposal undercuts a basic purpose of zoning by eliminating the predictability about development in residential neighborhoods.

Sincerely,


Marilyn Simon

CASE NO. 08-06-9

**Comprehensive Zoning Regulations Rewrite: Sustainability
Testimony of Marilyn J. Simon, Friendship Neighborhood Association
Thursday, May 21, 2009**

My name is Marilyn Simon, and I will be speaking on behalf of Friendship Neighborhood Association. Some of OP's recommendations would implement specific language in the Comprehensive Plan. Examples are listed below. However, there are other recommendations which are contrary to the clear language of the Comprehensive Plan and would have a predictably negative impact on some of the District's neighborhoods. My testimony today focuses on Recommendation 3, Transit Oriented Development (TOD), and Recommendation 18, Green Area Ratio (GAR).

The Comprehensive Plan does specifically call for the creation of a transit oriented development overlay zone which would include some of the provisions included in OP's recommendations. However, the language of the Comprehensive Plan is quite clear: The overlay is not to apply to every Metro station, and the Comprehensive Plan sets out a process and criteria for determining around which Metrorail stations a TOD overlay district should apply.

Action LU-1.3.B: TOD Overlay Zone

During the forthcoming revision to the zoning regulations, create a TOD overlay district. The overlay should include provisions for mixed land uses, minimum and maximum densities (inclusive of density bonuses), parking maximums, and buffering and design standards that reflect the presence of transit facilities. Work with land owners, the DC Council, local ANCs, community organizations, WMATA, and the Zoning Commission to determine the stations where such a zone should be applied. The emphasis should be on stations that have the capacity to accommodate substantial increases in ridership and the potential to become pedestrian-oriented urban villages. Neighborhoods that meet these criteria and that would welcome a TOD overlay are the highest priority. 306.19 Comprehensive Plan, page 3-21

OP chose to ignore the plain language of the Comprehensive Plan and instead recommends that the TOD Overlay Zone be mapped in all "transit accessible areas," which includes all properties within a half-mile of a Metro station, except for those which are currently zoned R-1 through R-5-B. The recommendation also includes properties not zoned R-1 through R-5-B which are within a quarter-mile of a streetcar line or high service bus corridor.¹

In addition, in an earlier proceeding, OP recommended that there be no minimum parking requirements for any use in the TOD Overlay Zone. The earlier recommendation, along with the proposed mapping, has serious implications for many of the District's low and moderate density neighborhoods near Metro stations or high service bus corridors. In the earlier proceeding, this Commission was concerned about the impact of spillover parking on low and moderate density neighborhoods if it adopted OP's recommendation to eliminate minimum parking requirements for high density residential buildings. This Commission should be just as concerned about the elimination of minimum parking requirements for all properties within a half-mile of a Metro station or a quarter-mile of a streetcar or certain bus corridors, except for those properties zoned R-1 through R-5-B.

The current zoning regulations clearly recognize the issue, and in the regulation allowing for a reduction of the parking requirement for non-residential buildings within 800 feet of a Metro station, the rulemaking specifically excluded those properties that were within 800 feet of any R-1 through R-4 District.

¹ The Working Group was told that mapping the TOD overlay area was beyond the scope of this section, and input from the Working Group on this issue was not solicited by OP.

**2104 EXCEPTIONS TO THE SCHEDULE OF REQUIREMENTS:
NEAR METRORAIL STATIONS**

2104.1 The number of parking spaces required under § 2101.1 for a nonresidential building or structure located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance may be reduced by up to twenty-five percent (25%); provided:

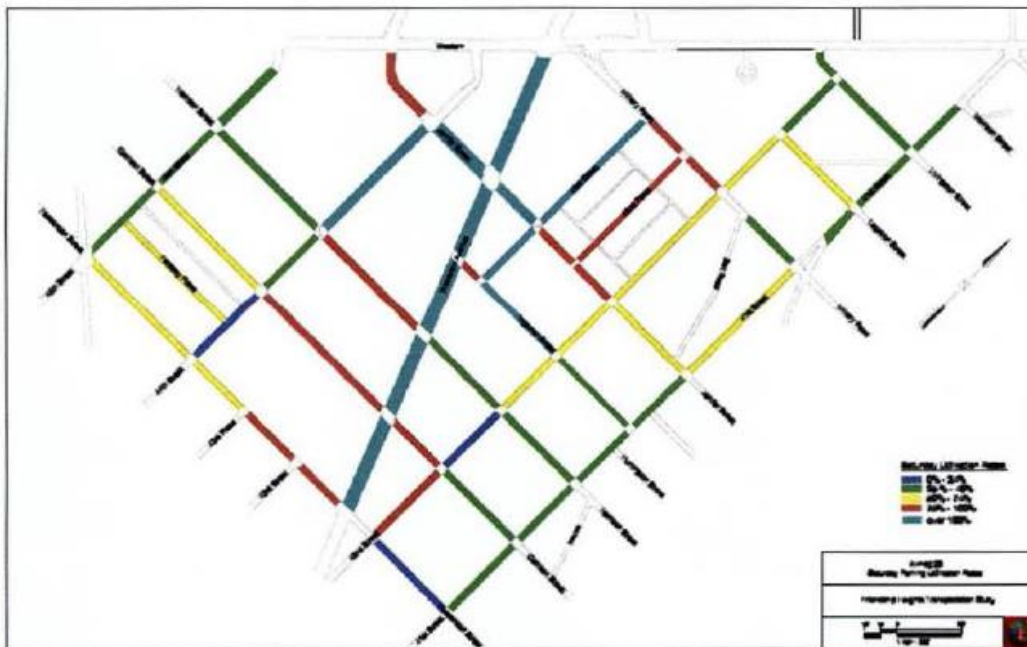
- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
- (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.

SOURCE: Final Rulemaking published at 31 DCR 6585, 6597 (December 28, 1984); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8499-50 (October 20, 2000).

This has provided some protection for low- and moderate density neighborhoods near Metro, although spillover parking remains a serious issue. OP's recommendation to eliminate minimum parking requirements for new commercial and higher density residential development within a half mile of every Metro station will exacerbate existing problems.

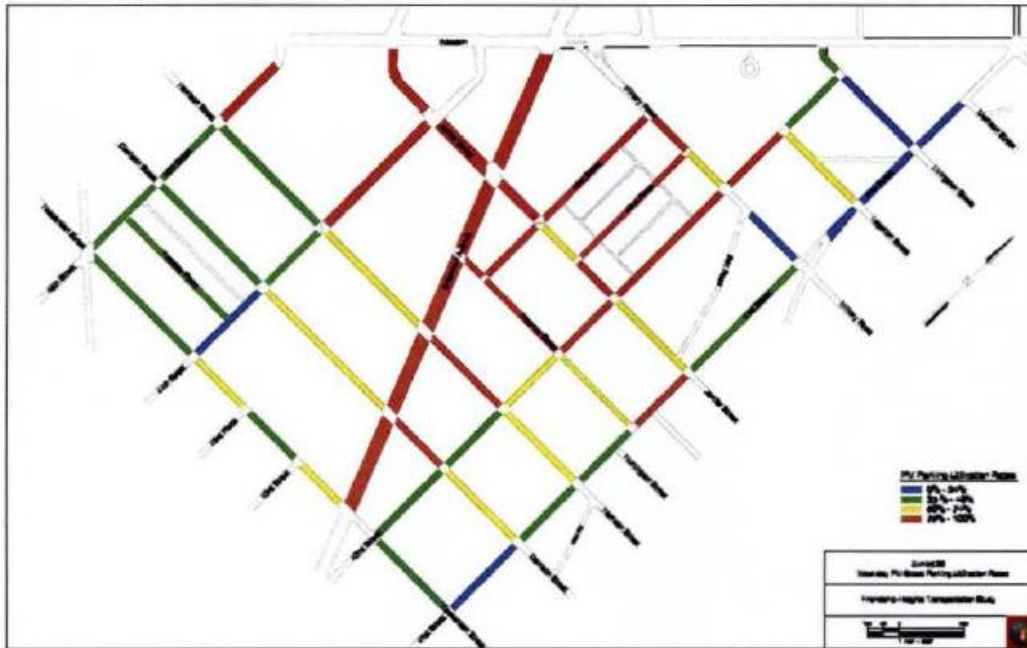
The following charts show DDOT's findings for parking utilization near the Friendship Heights Metro, showing high utilization rates, frequently exceeding 100%, for many blocks near the Metro. OP's recommendation, contrary to the clear language of the Comprehensive Plan, that all the commercially zoned properties in this area be designated as part of a TOD Overlay Zone, and that there be no minimum parking requirements in that area, along with the other provisions for the TOD Overlay Zone, would increase the number of blocks in the Friendship Heights neighborhoods that have excessive parking utilization rates.

FHTS: Weekend Parking Utilization Rates



Light blue indicates streets where parking utilization exceeds 100%, i.e. all legal spaces used with some additional cars parked illegally.

FHTS: Weekday PM Parking Utilization Rates



In addition, we have concerns about some of the recommendations for the requirements of the TOD Overlay Zone.

(1) **Parking Maximums:** Imposition of parking maximums which are too restrictive can make projects less desirable to prospective tenants, and/or might cause parking spillover, which would negatively impact the quality of life in adjoining neighborhoods. Overly restrictive parking maximums, perhaps based on an unrealistic view of how well our public transportation system can meet all the needs of a building's residents, customers or employees, might deter development in some neighborhoods.

(2) **Design Guidelines:** In creating design guidelines, it is important that these guidelines "get it right" and allow sufficient flexibility so as not to create an unnatural uniformity.

(3) **Required Access and Orientation to Transit:** This might be appropriate, but it probably should be fairly limited in scope and flexible. The requirements need to be carefully drafted to avoid unintended consequences.

(4) **Permitted Mixed-Use:** Many areas near Metro currently include zoning districts which allow mixed use. This is not the case in all the areas which OP proposes to include in the TOD Overlay Zone, and it is contrary to the Comprehensive Plan policy encouraging nodal development.

Policy LU-2.4.5: Encouraging Nodal Development

Discourage auto-oriented commercial "strip" development and instead encourage pedestrian-oriented "nodes" of commercial development at key locations along major corridors. Zoning and design standards should ensure that the height, mass, and scale of development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them. 312.9

Allowing mixed use for all properties along corridors which are planned for nodal development will undercut this goal.

(5) **Minimum Bulk/Form Standards:** These types of requirements, like parking maximums, can deter some development when profitable development on a smaller scale might be possible and profitable, but a building meeting this standard might not be profitable. Minimum bulk and form standards might also create an unnatural uniformity in the area.

(6) **Maximum bulk/form standards:** Maximum bulk/form standards are specifically mentioned in the Comprehensive Plan (Action LU-1.3.B, §306.19) for the TOD overlay district. That section calls for "maximum densities (inclusive of density bonuses)". This provision is critical, not just for TOD Overlay Zones, but for all areas where bonus densities are being considered.

(7) **Bulk Transitions to Surrounding Residential Neighborhoods:** As noted in OP's report, this is a recurrent theme in the Comprehensive Plan. The OP proposal to include tools such as angled height setbacks is useful, but woefully inadequate. In addition to using these tools, it is also necessary to maintain an area with intermediate zoning wherever it currently exists. This is critical in areas such as Friendship Heights, where a Regional Center is near a low density residential neighborhood. As a result of an interjurisdictional planning effort, this Commission adopted a zoning map which created a moderate density residential zone between the low-density residential neighborhood and the higher density commercial zones at the core of the regional center.

We ask this Commission to follow the clear language of the Comprehensive Plan and limit the mapping of the Transit Oriented Development Overlay Zone, and that this Commission carefully consider that some of the provisions, such as parking maximums, minimum bulk or required mixed use, might deter desirable development, and that other provisions, such as permitting mixed use for every property in the TOD overlay district, will undercut other important policies in the Comprehensive Plan.

The Office of Planning recommends the adoption of a "Green Area Ratio" ("GAR"), a point threshold system dealing with a wide range of environmental goals. It is not clear how the trade-offs available through this point system would work or whether this might replace other important zoning restrictions, such as limitations on lot occupancy, which partially address environmental issues, but also relate to the impact of a building on its neighbors. If a GAR replaces other zoning restrictions, this system might result in having open space that would otherwise be available at ground level eliminated because of the inclusion of a green roof.

The sample score sheet included in the OP report includes several calculations that will create perverse incentives and bizarre inequities. For example, in the sample, the developer calculates the land area excluding the public space, but is allowed to take credit for landscaping in the public space, including publicly planted trees in the public space. This inflates the ratio for buildings abutting a large public space, particularly those which include a substantial number of street trees. While this is simply a sample score sheet, it does demonstrate the difficulties involved in devising a fair and effective score system.

We hope that the Commission will make it clear that this type of provision does not replace other important zoning restrictions, and that, if it is to be implemented, it should be on a small scale, as a pilot, perhaps after evaluating its effectiveness in other U.S. jurisdictions, and only after careful consideration about how this system would interact with DC's other regulations.