

Major Issues Raised by Subtitle I (Downtown Zones)

Here are seven areas in which significant policy changes have been incorporated into the proposed new regs – in most cases, without any explicit acknowledgement of (or rationale for) the change. Each of these topics merits serious thought and discussion prior to the approval of this subtitle.

- Expansion of Downtown
 - OP is proposing a downtown that is about triple the size of our current downtown.
 - The proposed expansion sprawls and skips, so downtown would no longer be compact and contiguous.
 - Little or no attention seems to have been paid to the area adjoining (sometimes even sandwiched between different sections of) the new downtown. How will transitions and buffers be handled?
 - What is (or will be) at stake in an area being classified as downtown?
 - Currently, the obvious answer is that parking requirements would be eliminated.
 - Increased heights appear to be another aspect of downtown zoning.
 - Are such changes appropriate for all of the areas OP proposes to map as downtown?

- Relationship of the Zoning Code to the Height Act

As currently written, the new code would automatically allow for increased heights in most downtown zones if the Height Act restrictions are loosened. This approach is in direct contradiction to Director Tregoning's representations to the Council and to NCPC that changes to the Height Act would have no effect unless implemented through Comp Plan changes and a rezoning process.

Additional discussion follows.

- Significant Upzoning
 - Maximum height in current C-3-C zones moves from 90 feet to 130 feet (or more)
 - Limits on FAR would be eliminated in 7 of the 11 downtown zones
- Incentives/requirements/leverage
 - Significant increases in height and density shouldn't just be given away – but that is what OP is doing in this subtitle. Maximum heights allowable under the Height Act and unlimited FAR will be achievable as matter-of-right in most zones.
 - PUD 06-14 is a interesting read if you want to get a sense both of what can be achieved by making additional height contingent upon infrastructural improvements and of how limits on FAR create important incentives for the provision of public space. It's being built now in NOMA so it's direct comparison – how would that project look different if it were developed under the proposed downtown rules rather than the existing ones?

- In Height Act discussions, Director Tregoning has repeatedly mentioned that possibility that FAR could be auctioned off. But the only auctions that will happen if this subtitle is passed as currently drafted would involve one developer selling credits to another. DC government loses both money and control when it leaves development capacity up to the market rather than regulates it.
- The existing regulations were the product of a time when it was difficult to attract investment downtown. That situation has changed dramatically. And therefore it's time to reconsider whether bonuses (especially bonuses for things that the market already incentivizes).
- With respect to pre-existing development rights (CLDs, TDRs), while they can't be eliminated, there's no reason to increase their value. Those who possess these entitlements got what they bargained for – to the extent that it hasn't proven useful to them, no obligation arises to offer them something more or better.

- Historic Preservation

Existing protections for historic structures and fabric downtown seem to have been weakened. A more detailed discussion, focused on regulation 306.1, follows.

- Inclusionary Zoning

- No viable strategy for the production of affordable housing downtown has been developed, even as the creation of new downtown neighborhoods is being encouraged.
- It appears that the following squares, which are currently subject to inclusionary zoning requirements, have been exempted from them under this new mapping of downtown: 325, 326, 351, 352, 383, 384, 385, 409, 410, 433, 434 462, 646, 648, 649. See attached maps for the details.

- Parking and Land Use

- One of the most distinctive aspects of our CBD, is that almost all parking has been undergrounded and, as a result, less than 1% of our land is devoted exclusively to parking. By contrast, many other US cities devote 25% of their land downtown to aboveground parking structures and surface lots.
- With both changes in the Height Act and the elimination of on-site parking requirements downtown currently on the table, the incentives that have made undergrounding near-universal in DC will disappear.

Height Act

The downtown code seems to have been written with the intention that any changes in the Height Act would have immediate effect and would not require rezoning. Certainly any competent RE lawyer could make a persuasive case for this position by pointing out that

- (a) Two different formulas are used for describing the height limit within a zone.

Compare D-4-B-1: “100 ft., unless limited to less by Height Act” (used only in this zone)

with

D-5-B-1: “130 ft., or as limited by Height Act” (used in all zones from D-4-B-2 on up)

- (b) When the second formula is used, the number always matches the current Height Act maximum for commercial development.
- (c) And there are places in the regs where it is made explicit that maxing out the HA is the intent.

Here are three examples:

- 212.1 The D-7-B-1 zone:

- (a) Permits the highest density commercial development that is achievable under the Height Act,

- And it uses the second formula: “160 ft. max., or as limited by Height Act”

- The D-8-B-1 (the Independence Avenue blocks from 4th* to 12th Street) uses the same language in 213.1 (a).
- There’s also the last sentence of 306.1:

- “In the D-6-B-1 through D-8-B-1 zones a building or structure on the site of a historic landmark or within a historic district may be constructed to the maximum height allowed under the Height Act.”

The logical conclusion is that the first formula is used in a case where most restrictive standard (numerical height assigned to the zone vs. HA calculation for parcel) is intended to prevail. And the second formula is used when the least restrictive standard is intended to prevail.

Suggested Action: Use the “or unless limited to less by the Height Act” formulation for maximum heights in all downtown zones. Eliminate Height Act references in 212.1 (a), 213.1 (a), 306.1. Replace with “the Zoning Code.”

Historic Preservation

Problematic Provision: 306.1: “In the D-1-A-2 through D-5-B-2 zones a building or structure on the portion of a site occupied by a historic landmark or a contributing building within a historic district shall be limited to 90 feet in height. In the D-6-B-1 through D-8-B-1 zones a building or structure on the site of a historic landmark or within a historic district may be constructed to the maximum height allowed under the Height Act.”

Substantive Issue: This appears to be a major change in policy. Will it adequately protect the historic fabric and buildings in downtown zones?

Discussion:

306.1 seems to represent a major shift from the current policy, embodied in 1707.1

- (c) Restrict permitted building bulk on critical historic frontages and lots with historic buildings so as to encourage preservation of historic buildings and assure a suitable scale of new construction in historic districts, especially in projects combining new development with preservation;

1707.1(c) regulates bulk as well as height, and applies to historic frontages (in addition to lots with historic buildings). Its focus is on appropriate scale as determined by context. By contrast, 306.1 is focused on maximum allowable heights based on zone.

According to OP’s crosswalk, 1707.1 would be eliminated in the new code. It is replaced by 808.1, but the function of 808.1 is to incentivize new construction on lots with historic buildings, while 1707.1’s function was to ensure the compatibility of new construction.

Both the elimination of 1707.1 and the adoption of 306.1, seem to undermine the protection of historic resources in downtown areas, especially since, by law, the question of compatibility appears to hinge on interpretation of relevant zoning regulations. See D.C. Official Code § 6-1107:

Section 8. New Construction.

(f) The permit shall be issued unless the Mayor, after due consideration of the zoning laws and regulations of the District of Columbia, finds that the design of the building and the character of the historic district or historic landmark are incompatible; provided, that in any case in which an application is made for the construction of an additional building or structure on a lot where there is presently a building or structure, the Mayor may deny a construction permit entirely where he finds that any additional construction will be incompatible with the character of the historic district or historic landmark. Notwithstanding a finding of incompatibility, the Mayor may find that issuance of the permit is necessary to allow the construction of a project of special merit.

If/where the zoning regs give explicit permission for maximum height on parcels including historic buildings, will findings of “no incompatibility” become the norm?

Applicability: The zones in which 306.1 would allow developers to build up to Height Act limits on parcels containing historic buildings (D6 through D8) encompass Farragut and McPherson Squares, Penn Quarter, and some of the parcels just across from The Mall, along Independence Ave from (4th or)* 6th to 12th Street. These zones include (parts of) the following historic districts: Downtown, 15th St, Ford's Theatre, Lafayette Square, Pennsylvania Avenue. And OP hasn't provided a list of the historic buildings that fall within these boundaries.

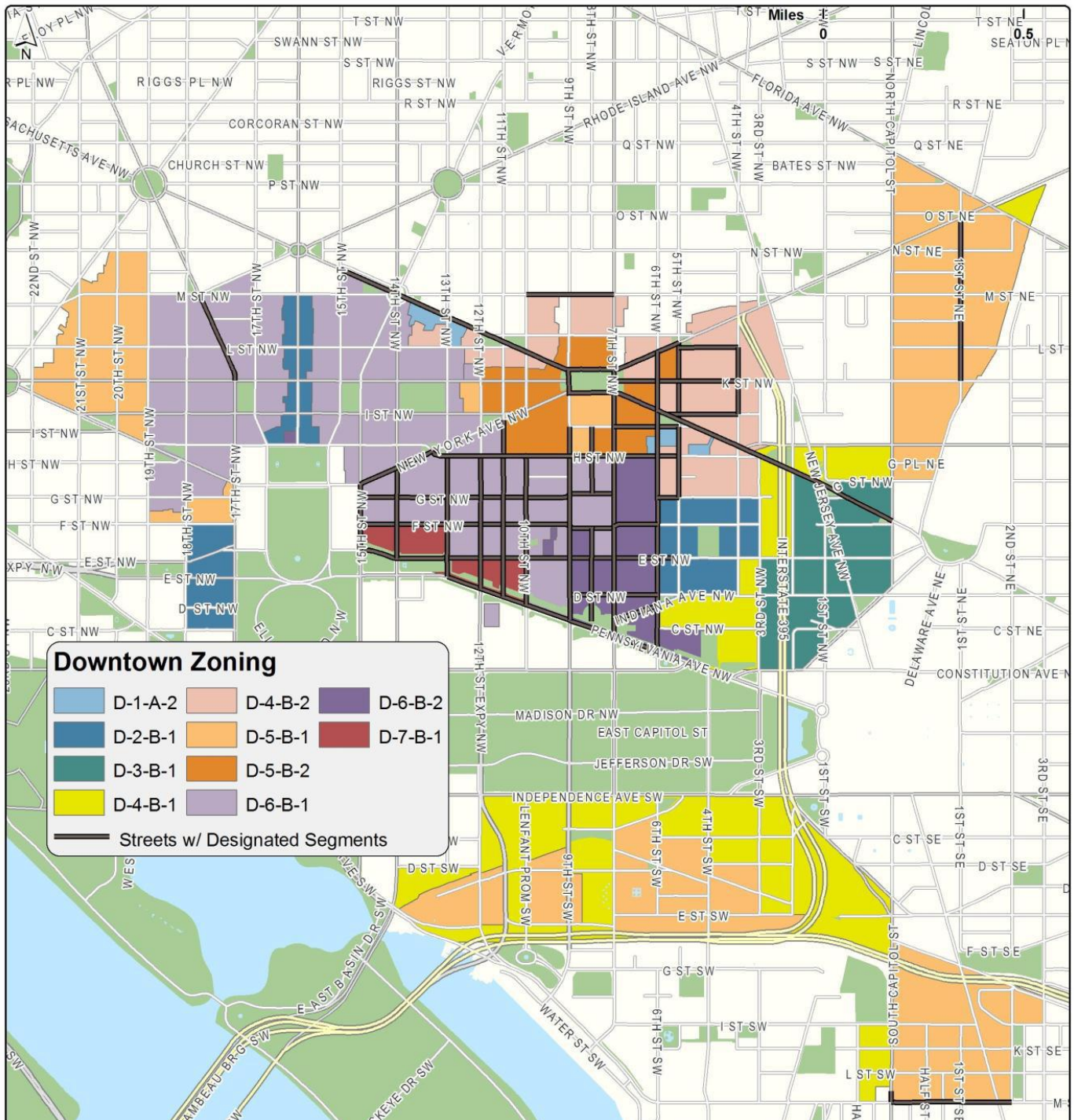
Suggested Action: Eliminate 306.1. Retain 1707.1(c).

Inclusionary Zoning and the Re-mapping of South Capitol Street and Independence Avenue Parcels

The following maps tell the story of the remapping of these squares and demonstrate that OP has been engaging in deliberate parcel-specific upzoning over the course of the ZRR.

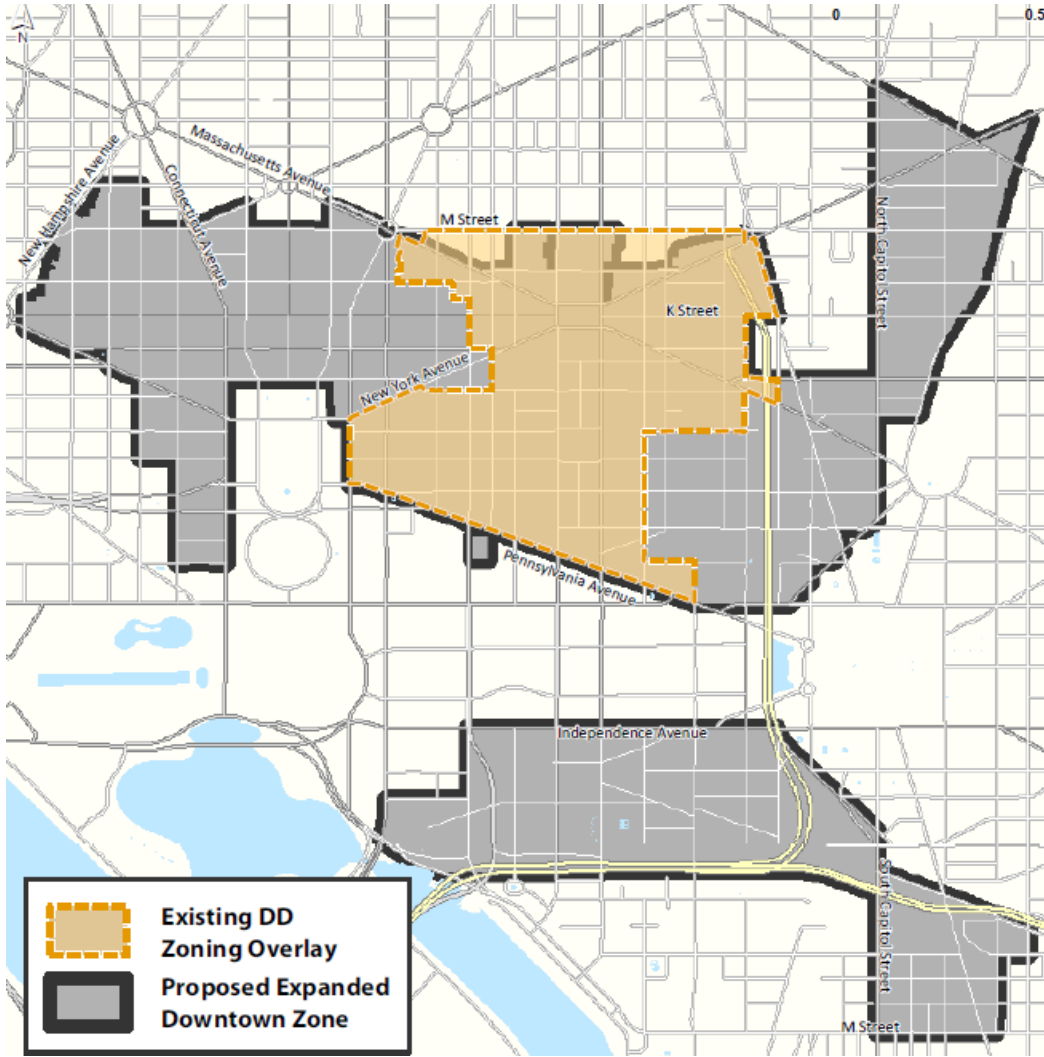
[[I have not found any explicit acknowledgement that (or explanation of why) these boundaries were re-drawn.]]

November 2012 draft regs (squares west of S. Capitol included in downtown but zoned for IZ; small lot within square carved out)



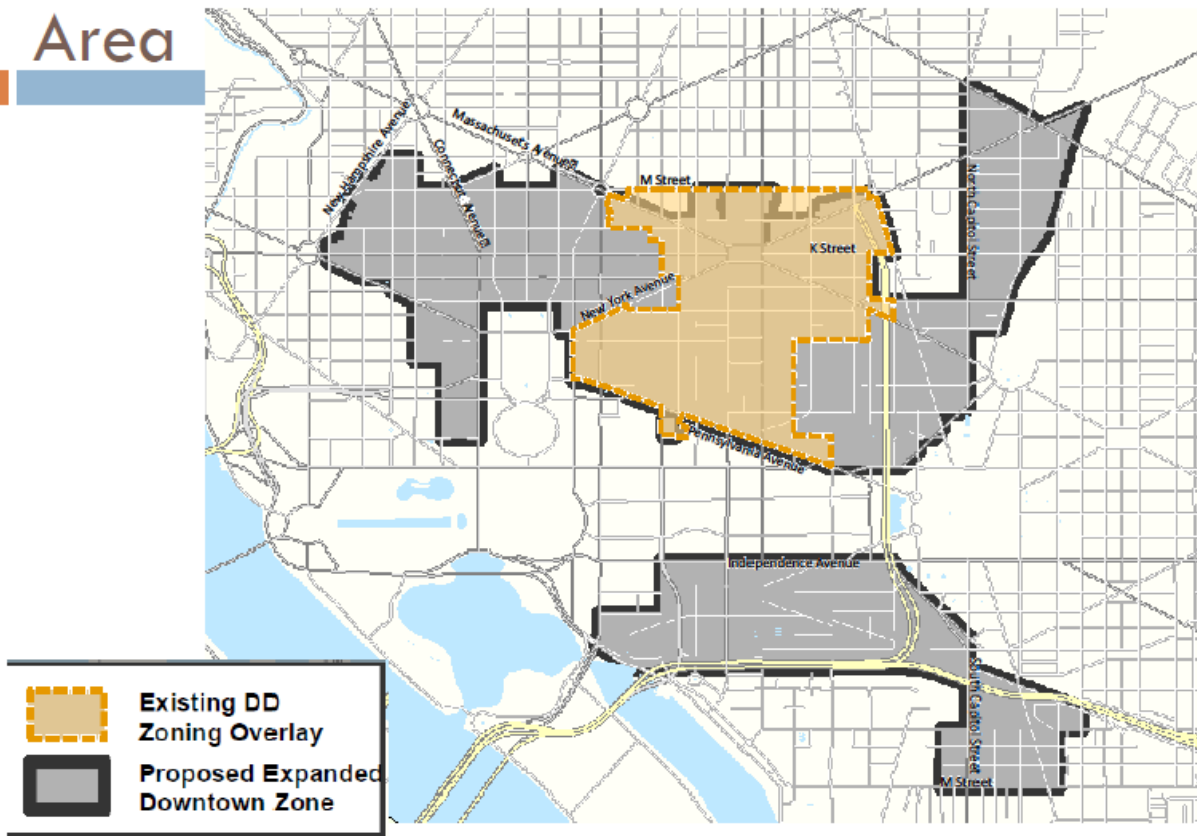
The three squares west of South Capitol St. are mapped as downtown, but zoned to require affordable housing (IZ) -- as they do under the current regs. (D-4-B-1 is one of the few downtown zones that includes an IZ requirement.) These blocks are not included in the same overlay as the area east of South Capitol, which is currently exempt from IZ.

Ward-wide outreach meetings, Jan 2013 (squares west of S. Capitol not included in expanded downtown):



↑
South Capitol defines the edge of downtown. Odds are that this was just a mistake because the person making the map followed existing boundaries and didn't realize that the person writing the downtown regs was adjusting those boundaries. Lack of coordination/supervision?

Existing DD and Proposed D-Zone Area

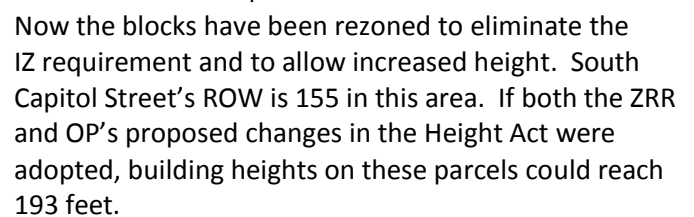


Error caught and corrected. Now the three blocks west of South Capitol are included in the downtown mapping. Someone's paying attention to their fate. One consequence of inclusion in downtown is elimination of on-site parking requirements.

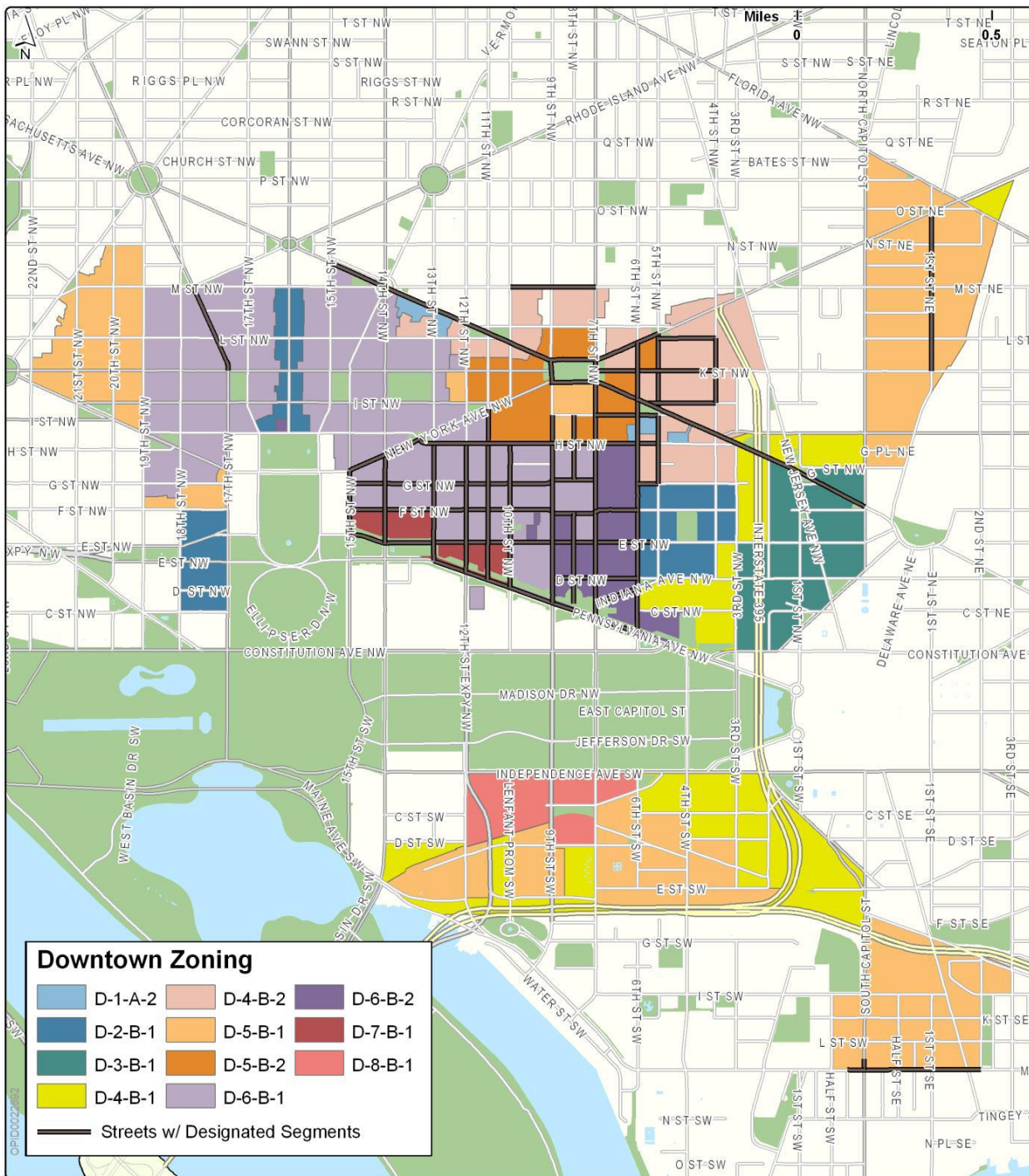
Downtown Zoning

D-1-A-2	D-4-B-2	D-6-B-2
D-2-B-1	D-5-B-1	D-7-B-1
D-3-B-1	D-5-B-2	
D-4-B-1	D-6-B-1	

Streets w/ Designated Segments



September 2013 amended map -- Shows new dark red zone along Independence Ave. Though that area was previously zoned D-4-B-1 (see the previous page) , the D-8-B-1 zone basically follows the D-5-B-1 chart (while adding incentives to restore the street grid). This rezoning effectively eliminates IZ requirements (and raises allowable heights) for the parcels south of Independence Avenue between 6th* and 12th Streets:



*Oddly, the text in the regulations that defines the new zone describes it as extending from 4th to 12th Street. It remains to be seen whether the map or the text will be corrected.

As this map from the draft SW EcoDistrict plan indicates, with the exception of the Wilbur Wright building across from the Hirshhorn, the parcels just south of Independence Ave. represent development opportunities (infill, demolition, expansion/adaptive re-use).* In the most recent ZRR, they are zoned D-8-B-1 which is exempted from IZ and would allow 130 foot heights and unlimited FAR.**



*The SW EcoDistrict plan anticipates that, by 2030, redevelopment will have transformed this area.

**Independence Avenue's ROW is 112.5 feet, so if it were classified as a commercial street under the current Height Act (which appears to be OP's intent), the limit would be 130 feet. That limit would increase to just over 140 feet if the Height Act were amended as OP has requested (to 1.25x the street width within the L'Enfant City).