

Recommendation to Revise Proposed Subtitle H

To Restore the Overlay Zones and Provide Clarity and Ease of Use

Neighborhood Commercial Overlays (“NCOD”) are an easy to understand, stand alone chapter in the current zoning regulations. They provide restrictions, allowances, and/or requirements not included in the underlying commercial zone. The Office of Planning committed to not changing the NCODs, but their reorganization scheme has resulted in great confusion, redundancy, dropped substantive phrases, and additions not currently authorized in NCODs. Perhaps the most offensive change is the elimination of the title overlay, which announces that there are modifications to an underlying zone. In an effort to respond to the Zoning Commission’s request for guidance to unravel the proposal, the following new organization is offered. It would remove large sections of the proposed Subtitle H that are simply repeated provisions from Subtitle G. Their inclusion in Subtitle H only serves to confuse and obscure the modifications in the overlay. Presumably the reorganization was to avoid referring back to Subtitle G, but that has caused Subtitle H to become unintelligible, potentially change the enforcement and interpretation of the overlay, and require a lot of flipping of pages to try to make sense of it. A simple reference at the beginning of each overlay district to the underlying M zone will direct the user that the main development and use standards are in Subtitle G and the purpose of Subtitle H is only to list the provisions that modify some of the standards in Subtitle G. This will add clarity and simplicity and avoid redundancy.

Deleted sections are in italics and additions from current Chapter 13, Neighborhood Commercial Overlay Zones, and retention of proposed sections are underlined.

The basic structure of Subtitle H would be

Preamble

Purpose

Limitation on Driveways and Curb Cuts

Designated and Restricted Uses

PUDs

Special Exception Relief

Individual Overlay Districts

The suggested formatting of the Cleveland Park Overlay District is offered at the end as an example of how to re-establish the current permissions, restrictions, and requirements of individual NCOD.

Subtitle H

Sec. 100.1 Restate with: “Neighborhood Mixed Use Zones are designed with overlays that protect and enhance these zones as neighborhood shopping areas.” This description more accurately describes NCODs.

Sec. 100.2 Include in the purpose statement only (f), (b), and (d). but add “Limit maximum permitted height of new buildings so as to...” to beginning of (d). **This is language from current overlay purpose statements.**

Add new sub-heading Limitation on Driveways and Curb Cuts **per current zoning** and insert after Purpose Sec. 100.2. Transfer sec. 1000.1 and 1101.5 to the Driveways and Curb Cut sub-heading.

Transfer Sec. 901 to the N-1 section since this provision is not a general requirement, but only a requirement in a specific overlay zone.

Transfer Sec. 1101, Designated and Restricted Uses, and insert after Limitation on Driveways and Curb Cuts.

Sec. 1101.2 The N Zone **designated uses** are (a) pet shop, (b)library, (c) eating and drinking establishments, (d)financial and general services, (e) retail, and (f) theatre. This list includes the current uses authorized in Sec. 1302.2. OP has expanded (a) and (f) by allowing all businesses within a large category, ie., animal care and entertainment. That is not consistent with current overlay designated uses allowances. **Library is missing from the list of designated uses.**

Retain Sec. 1101.3

Add a new PUD sub-heading and transfer 1000.2, to that sub-heading.

Transfer Sec. 1200, Special Exception Relief, and insert after PUDs.

Add to Sec. 1200.1(a) after “stated purposes of the N zones” the following: “and the particular overlay district.” **This is language from current overlay special exception provision.**

Retain Sec. 1200.2

Transfer Sec. 1201 and 1202 to the individual overlay district section where they apply.

Insert the individual overlay zones at the end of the general provisions for NCODs.

Delete the proposed Sec. 100.1. See language above to replace the OP proposed language, which is not consistent with current overlay description.

Delete Sec. 100.2 (a), (c), and (e) because they are included in Subtitle G and are confusing and repetitive here.

Delete Development Standards, Sec. 101, because they are repetitive and are included in Subtitle G.

Delete Use Provisions, Sec. 102, because they are repetitive and are included in Subtitle G.

Delete Development Standards for Public Buildings, Sec. 900, because they are repetitive and are included in Subtitle G.

Delete Sec. 1001, 1002, and 1004 since they are included in Subtitle G.

Delete Sec. 1100, General Use Permissions, as these provisions are included in Subtitle G.

*Delete General Development Standards, Delete Sec. 1000.3 since lodging is **not an authorized use** in neighborhood commercial overlay zones (“NCODs”).*

Delete Sec. 1000.4 since it is repetitive and is included in Subtitle G.

Delete Sec. 1101.2(a) animal care group, which is overly broad and (b) arts design and creation group for same reason, and (d) entertainment group for same reason. The overlay has narrow retail and service uses plus a few more neighborhood-oriented uses at ground level; the broader uses can be located on upper floors or in less than 50% of ground floor area.

Delete Sec. 1101.4 since these are specific permissions for individual overlay districts and should be included in section where they apply. It is confusing and unnecessary to place them here.

Delete Sec. 1101.5 because it is included in Subtitle G.

Delete Sec. 1102, Use Zones, because they are included in Subtitle G.

Delete Sec. 1103, 1104, 1105, 1106, 1107, 1108, and 1109 since they are included in Subtitle G.

Delete the second (a) from Sec. 1200 that begins with “The architectural design”, and (d), and (e). Delete from (c) “to encourage safe and efficient pedestrian movement.” The deletions are language inserted by OP and are not part of the current special exception standards for NCODs. The second (a) is an Historic Preservation Review Board function and typically the Zoning Commission does not consider HPRB actions, just as HPRB does not consider zoning actions.

The Committee of 100’s preference is to separate the underlying zone provisions from the overlay provisions in separate titles. Alternatively, if it is determined that all the provisions should be in one subtitle, we recommend that all the underlying zone provisions be grouped at the beginning of the subtitle with the overlay provisions grouped behind them. However, this format reveals a major flaw in combining underlying and overlay provisions. Overlay districts do not share the same underlying zoning and it is difficult to include the underlying provisions for so many zones without adding complexity and confusion. A better approach if the Zoning Commission wants all provisions in one subtitle would be to list them sequentially. The M zone purpose statement would be listed as such and be followed by the NCOD purpose statement. This would be done for all sub-headings so that it is clear how the overlay modifies the base zone provisions. For each overlay district, the same process of listing the underlying zone provisions would precede that district’s overlay zone provisions. The only approach that should not be chosen is the current OP approach because there is no possible way to know how the base zone is being modified and which provisions represent that neighborhood’s priorities. The current NCOD chapter makes it clear that while the underlying and overlay zones are mapped in combination where there is conflict the more restrictive overlay provisions shall govern. If you can’t distinguish the overlay provisions from the underlying zone provisions how can this critical provision in current zoning be implemented?

Cleveland Park Neighborhood Mixed Use Overlay Zone

Sec. 400.1 Add: Is mapped in combination with the M3 zone. Where there is a conflict between this subtitle and Subtitle G, Mixed Use Zones, the more restrictive provisions of this title shall govern.

Move Sec. 400.3 to preamble and replace “shall be mapped” with “is applied to.” **Current language.**

Sec. 400.1, Purpose, comes next. Add a new (a): Provide for safe and efficient movement by reducing conflicts between pedestrians and vehicular traffic so as to improve access to retail services, the Metrorail station, and other uses in the area; **This is language from current overlay.**

Add new section after Sec. 400.5: No dwelling unit or rooming unit in existence as of October 1, 1987, shall be converted to any nonresidential use or to a transient use as hotel or inn; provided, that this restriction shall not apply to the ground floor of the building; that is, that floor that is nearest in grade elevation to the sidewalk. **This is a current CP NCOD restriction, but it has been deleted.** This provision adds a restriction above the ground floor. It prohibits the implementation of an underlying zone authorized use – lodging – if it would displace existing residential. Without this provision hotels or inns could replace housing in the Cleveland Park overlay district.

Retain Sec. 401.

Delete Sec. 400.1 (b) because it is not a provision in the CP NCOD and it is included in the general purposes of NCODs. Delete semi-colon after (c).

Delete Sec. 400.2 because it is included in Subt. G.

Delete Sec. 403 through 407 because they are included in Subt. G.