



MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: ^{JLS} Jennifer Steingasser, Deputy Director, Development Review and Historic Preservation

DATE: November 4, 2013

SUBJECT: Case No. 08-06A Title 11, Zoning Regulations – Comprehensive Text Revisions; Hearing Report on Subtitle G – Mixed Use (M) and Subtitle H - Neighborhood Mixed Use (N) Zones

I. INTRODUCTION

The Comprehensive Plan is a general policy document that provides overall guidance for future planning and development of the city. The first Comprehensive Plan was adopted in 1984 and 1985. In 2006 a new Comprehensive Plan (Comp Plan) was approved, which was the first major revision of the 1985 plan. The Comp Plan was updated in 2011. The Comp Plan's Implementation chapter (IM-1.3) calls for the substantial revision and reorganization of the zoning regulations:

The Zoning Regulations need substantial revision and reorganization, ranging from new definitions to updated development and design standards, and even new zones.

This report provides OP's recommendation on Subtitle G – Mixed Use (M) and Subtitle H - Neighborhood Mixed Use (N) Zones, a summary of the proposed changes relative to the current code chapters, a summary of Comprehensive Plan elements. Each subtitle is discussed in terms of Commission guidance provided to OP and changes to the current text. Additionally, the report notes any clarifying or additional language that may be required or is recommended.

II. ZONING COMMISSION ACTION TO DATE

The Commission held public hearings on the proposed concepts and then provided guidance to OP between 2008 and 2011. The table below summarizes the actions taken to date by the Zoning Commission relative to each subtitle or topic.

Subtitle	Case Number and Topic	Public Hearing	Guidance Public Meeting
G,H	08-06-5 Mixed Use / Commercial (Mapping, Uses, Retail)	October 23, 2008	December 8, 2008
G,H	08-06-13 Mixed Use / Commercial (Setbacks)	October 25, 2010	November 29, 2010

III. ADVERTISED VERSION



All reports for Case 08-06A respond to the advertised text dated September 9, 2013 (“9/9/13 text”). The 9/9/13 text was posted and continues to be available for viewing on the Office of Planning website (www.dczoningupdate.org) and the Office of Zoning website (www.dcoz.dc.gov) through the IZIS link. An updated copy on a disc was provided to all ANCs, and an updated paper and disc copy was provided to every DC Public library.

IV. REPETITIONS, OMISSIONS, ADDITIONS AND CLARIFICATIONS

OP is aware that many of the regulations are repeated throughout the subtitles and that there are phrases that may be inconsistently used (e.g. “by special exception” and “as a special exception”). There are also some unintentional omissions due to the new format of the proposed text.

Some changes may also be recommended after additional consultation with the Zoning Administrator’s office since the publication of the 9/9/13 text and review of the guidance discussions. Additionally, OP has continued to hear from the public and where possible has proposed clarification or new language.

These issues are addressed in the report as clarifications with suggested or additional text, or noted as Errata with suggested additional text. The repetitions and inconsistencies will be reconciled after the public hearings in collaboration with the Office of Attorney General and any direction from the Commission.

V. SUBTITLE G: MIXED USE/COMMERCIAL

Subtitle G is a compilation of the standards and uses applicable to mixed use and commercial zones (M zones). The M zones are designed to provide facilities for housing, shopping and business needs, including residential, office, service and employment centers at varying densities. Below is a summary, by existing chapter, of how elements are proposed to be modified or changed in the draft text.

Chapter 5 (SP), Chapter 6 (CR), Chapter 7 (C), and Chapter 9 (W)

- Placed in one subtitle as Mixed Use zones
- Rear setbacks standardized by height and zone instead of by use
- Standardized court requirements
- Waterfront setback from W zones applied to all zones fronting the Anacostia or Potomac River; addition of physical and visual accessibility requirements

Chapter 12 Capitol Interest Overlay District

- Incorporated with base zone into new zones in Mixed Use and Residential

Chapter 13 Neighborhood Commercial Overlay District

- Subtitle H created for new Neighborhood Mixed Use zones;
- No change to boundaries, uses, purposes or conditions

Chapter 14 Reed-Cooke Overlay District

- Incorporated with base zone into new zones in Mixed Use and Residential
- No change to boundaries, uses, purposes or conditions

Chapter 15 Miscellaneous Overlay Districts

- Incorporated with base zone into new zones in Mixed Use and Residential
- No change to boundaries, uses, purposes or conditions

Chapter 19 Uptown Arts-Mixed Use (Arts) Overlay District

- Incorporated with base zone into new zones in Mixed Use
- No change to boundaries, uses, purposes or conditions

ZC Guidance: **Commercial Zones and Overlays**

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.

Proposed Text: The commercial zones and associated overlays have been combined and the new standalone zones are as follows.

Subtitle G - Mixed Use	
SP-1	M-1
SP-2	M-2
C-1	M-3
C-2-A	M-4
C-2-B	M-5
C-2-C	M-6
C-3-A	M-7
C-3-B	M-8
C-3-C	M-9
CR	M-10
W-0	M-11
W-1	M-12
W-2	M-13
W-3	M-14
SP-1/DC	M-16
SP-2/DC	M-17
C-2-A/DC	M-18
C-2-B/DC	M-19
C-2-C/DC	M-20
C-3-B/DC	M-21
C-3-C/DC	M-22
CR/DC	M-23
SP-2/CAP	M-24
C-2-A/CAP	M-25
C-2-A/CHC	M-26
C-2-A/CAP/CHC	M-27
C-2-A/NO	M-28
C-2-A/ARTS	M-29
C-2-B/ARTS	M-30
C-3-A/ARTS	M-31
CR/ARTS	M-32

Subtitle G - Mixed Use	
C-2-A/RC	M-33
C-2-B/RC	M-34
C-3-A/FT	M-35
CR/FT	M-36

Note: M-15 was not assigned as a zone name and should appear as “reserved” in the draft proposed text.

ZC Guidance: Ground Floor Design Standards

Establish design standards within commercial zones for designated streets addressing:

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

Proposed Text: Street frontage design requirements are found in § 808 for the Uptown Arts zones, within Subtitle I for the Downtown and within Subtitle K for the CG overlay area.

ZC Guidance: Adaptability of New Retail Space

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.

Proposed Text: This provisions are found at H § 707 (i) as part of the design guidelines for the Georgia Avenue Neighborhood Mixed use zone and at H § 808.8 as part of the design guidelines for the H Street Neighborhood Mixed Use zones. Similar provision are within the Subtitle I, Downtown zones.

ZC Guidance: Consolidation of Use Lists

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.

Proposed Text: The proposed text includes the replacement of multiple uses with Use Categories with use permissions found at Subtitle G Chapter 14. The proposal includes conditions associated with many Use Categories including, accessory, by-right, conditional, and special exception uses.

Clarification: Special exception criteria for Church Programs within the SP-equivalent zones (M-1, 2,16, 17 and 24) have inadvertently been left out of the 9/9/13 text and should be included as G § 1403.2 as follows:

The part of the church program conducted on the property shall be carried on within the existing church building(s) or structure(s).

The operation of the program shall be such that it is not likely to become objectionable in the zone because of noise and traffic.

No sign or display indicating the location of the church program shall be located on the outside of the building or the grounds.

Any authorization by the Board shall be limited to a period of three (3) years, but may be renewed at the discretion of the Board.

The operation of the program shall be such that it is not likely to become objectionable in the zone because of noise and traffic.

G § 1414 should include a provision that prohibits accessory uses that are not permitted as principal uses:

1414.3 Accessory uses that are not permitted as a principal use in G § 1414.1 shall be prohibited.

G § 1415.3 should provide the specific review criteria for the uses permitted by special exception in G § 1415.2.

G § 1420.1 should include Local Government as a permitted use:

1420.1 Government, Local P

G § 1421.2(h) should be deleted as a permitted use.

~~A Metropolitan Police Department vehicle maintenance facility or equestrian unit under provided the vehicle maintenance facility or equestrian unit shall be located so that it is not likely to become objectionable to adjoining or nearby property because of noise or fumes.~~

ZC Guidance: Retail Use Size Limitations

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.

This guidance was not brought forward as an independent proposal. It resulted from the initial discussion with the Zoning Commission in 2008 and the concept of a set of zoning tools that were not necessarily assigned to any zone. The format of the 9/9/13 draft text proposes a more familiar format with tools included with specific zones as appropriate.

ZC Guidance: Ground Floor Retail Uses

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.

This guidance was not brought forward as an independent proposal. It resulted from the initial discussion with the Zoning Commission in 2008 and the concept of a set of zoning tools that were not necessarily assigned to any zone. The format of the 9/9/13 draft text proposes a more familiar format with tools included with specific zones as appropriate.

ZC Guidance: Limitation of Certain Uses on the Ground Floor

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

Proposed Text: The limitation on eating and drinking establishments in the Uptown Arts Mixed Use zones is contained at G § 809.6.

ZC Guidance: Side Setbacks

Continue to allow no setback, but where one is provided establish a uniform side setback standard for all mixed use (C, CR, SP, W) zones of four feet. Define side setback standards to apply to any portion of a building that is set back from the side lot line.

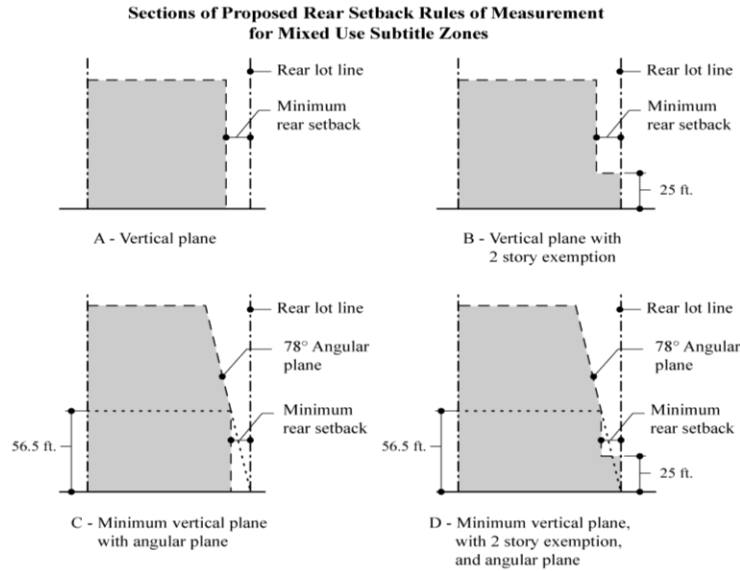
Proposed Text: The proposed text continues to allow no setback and provides for a uniform requirement for all zones except for the M-11 (W-0) zone. Side setbacks are regulated in G §§ 205, 306, 406, 506, 606, 705, 806, 906, and 1006. The side setback provisions for mixed use zones clarify that a side setback of 8 feet is required for a single family detached or semi-detached dwellings. The side setback provisions also state that, “any portion of a building setback from the side lot line shall be considered a side setback and not a courtyard.”

Zone	Requirement
M-1 and M-2 M-3 through M-10 M-12 through M-14 M-16 through M-23 M-24 through M-27 M-28 M-29 through M-32 M-33 and M-34 M-35 and M-36	If provided, at least two inches (2 in.) wide for each foot of height of building but no less than five feet (5 ft.)
M-11	A side setback for any building or structure located in whole or in part on land, shall be no less than twelve (12) feet

ZC Guidance: Rear Setbacks

Standardize eight rear yard standards into four by making the following changes:

- Unify the rear setback angle relative to height
- Standardize a two-story exemption on alleys
- Avoid different setback standards in the same zone based on use



Proposed Text: Rear setbacks are regulated in G §§ 204, 305, 405, 505, 605, 704, 805, 905, and 1005 and have been standardized as follows.

Zone	Requirement
M-1 and M-2	Minimum 12-foot rear setback requirement above a horizontal plane established at 25 feet
M-3 through M-10	M-3 20 feet M-4 – M-6 15 feet M-7 – M-10* 2.5 inches/1 ft. but not less than 12 feet (M-10 rear setback only required for residential uses.)
M-11	A side setback for any building or structure located in whole or in part on land, shall be no less than twelve (12) feet
M-12 through M-14	2.5 inches/1 ft. but not less than 12 feet (only required for residential uses)
M-16 through M-23	M-16 – M-17 12 feet M-18 – M-20 15 feet M-18 – M-22 horizontal plane at 25 ft. M-21 – M-23 2.5 inches/1 ft. but not less than 12 feet (only required for residential uses)
M-24 through M-27	M-24 12 feet M-25 – M-27 15 feet horizontal plane at 25 ft.
M-28	Minimum 15-foot rear setback requirement above a horizontal plane established at 25 feet
M-29 – M-32	M-29 – M-30 15 feet M-29 – M-31 horizontal plane at 25 ft. M-31 – M-32* 2.5 inches/1 ft. but not less than 12 feet (M-32 rear setback only required for residential uses.)
M-33 and M-34	Minimum 15-foot rear setback requirement above a horizontal plane established at 25 feet
M-35 and M-36*	2.5 inches/1 ft. but not less than 12 feet (M-35 horizontal plane at 25 ft.) (M-36 only required for residential uses)

Additionally, where a lot abuts an alley, the rear setback may be measured from the center line of the alley to the rear wall of the building. Where a lot does not abut an alley, the rear setback shall be measured from the rear lot line to the rear wall of the building or other structure.

ERRATA: The reference to G § 306.3 in 305.4 and 305.5 should be corrected to G § 305.3.

ZC Guidance: Courts

Remove some court requirements. Regulate courts alongside yards through setback requirements rather than separate court requirements. Continue to regulate interior courts with windows.

Proposed Text: Courtyards are not required in the M zones; however, when a courtyard is provided, it shall meet the following minimum dimensions.

	Open Courtyard Width:	Closed Courtyard Width:	Closed Courtyard Area:
Residential, more than three units:	Four inches per foot (4 in./ft.) of height of courtyard; Ten feet (10 ft.) minimum	Four inches per foot (4 in./ft.) of height of courtyard; Fifteen feet (15 ft.) minimum	Twice the square of the required width of courtyard dimension; Three hundred and fifty square feet (350 sq.ft.) minimum
Non-Residential and Lodging:	Two and one-half inches per foot (2 1/2 in./ft.) of height of courtyard; Six feet (6 ft.) minimum	Two and one-half inches per foot (2 1/2 in./ft.) of height of courtyard; Twelve feet (12 ft.) minimum	Twice the square of the required width of courtyard dimension; Two hundred and fifty square feet (250 sq.ft.) minimum

ZC Guidance: Floor Area Ratio Limits on Commercial Uses.

Existing Buildings: Allow existing buildings to contain commercial use on the full first and second story as a matter-of-right, even if the result is more than 1.5 FAR of commercial use.

New Construction: For new construction, allow a full second story of commercial use to be higher than 1.5 FAR as a matter-of-right for mixed-use buildings or as a special exception for commercial-only buildings.

Proposed Text: G § 101.5 clarifies that “residential uses may occupy all or any portion of the total permitted floor area ratio for a zone.” In the M-4, M-5, M-18, M-19, M-28, M-29, M-30, M-33, M-34, M-35, and M-36 zones, existing buildings on a lot with an area of ten thousand (10,000) square feet or less, may have a maximum floor area ratio of 2.0 for non-residential uses, provided the uses are located in the ground story and the story directly above the ground story.

ZC Guidance: Residential Lot Occupancy in Mixed Use Zones

Remove lot occupancy requirements for residential stories. Rely on existing regulations, included as a part of existing zoning and building codes, to fulfill main objectives of air and light access to occupants of buildings in lieu of existing residential lot occupancy requirements for mixed use zones. Implement additional tools to protect adjacent neighborhoods, and ensure adequate environmental performance.

The residential lot occupancy requirements for residential stories have been removed.

ZC Guidance: Zone to Zone Transition Regulations

Adopt the height transition tool in the existing ARTS overlay for use as a tool in other mixed-use zones city-wide. The tool would not be initially applied beyond its existing

boundaries, but would be available for future application. Modifications to the rules include:

- Basing height transition on height limit of neighboring zone; and
- Defining starting point of transition as the neighboring property line

The height transition regulations from the ARTS overlay, which are now found at G § 802.3 and 802.4, can be applied at any time to other zones as deemed appropriate.

ZC Guidance: Plaza Requirements (current “Open Space” requirement)

Retain, but modify, the current open space requirement for those CR districts not governed by the ARTS overlays. Modifications include:

- Limit the requirement to lots greater than 10,000 square feet in area.
- Remove the ability to count arcades toward the public space requirement, so that only spaces open to the sky will count.
- Reduce the requirement to 8% of lot area.
- Add design requirements that spell out the features expected in “suitably” designed public space. These might include requirements for seating, landscaping, and paving.
- Retain Arts overlay requirements for street-level design and uses, but remove separate public space requirement in these areas.

Proposed Text: G § 301.1 proposes an open space area of eight percent (8%) of lot area, G § 307 provides for the minimum lot area, and C Chapter 14 sets out plaza design features and the ability to use preferred arts uses in lieu of plaza space.

ZC Guidance: Use Concentration Limitation

Retain existing percentage limitations on uses (such as food and alcohol service uses), but add the following:

1. Precise delineation of which uses are being limited
2. Limited geographic scope of limitation, i.e. by the block rather than the entire designated roadway within the zone”)
3. Clear guidance on how the street frontage is to be measured when linear street frontage not specified.
4. Requirement encouraging the creation and maintenance of a database for each and every location with a street frontage limitation
5. Occupancy rights should be established when building permit for a use is issued and not revisited when the certificate of occupancy is applied.
6. Provide for de-vesting of occupancy rights if use is abandoned

Proposed Text: The use concentration limitations are found at G § 809; after analysis and public input no change is proposed to regarding measurement. The creation and maintenance of a database has been determined to be an administrative function subject to the maintenance of the Zoning Administrator Vesting rights through a building permit area addresses in A Chapter 3.

VI. SUBTITLE H: NEIGHBORHOOD MIXED USE

Subtitle H is a compilation of the Neighborhood Commercial Overlays that are found in Chapter 13 of the current code. Below is a summary, by existing chapter, of how elements are proposed to be modified or changed in the draft text.

Chapter 13 - Neighborhood Commercial Overlay District

- Subtitle H created for new Neighborhood Mixed Use zones;
- No change to boundaries, uses, purposes or conditions

Within the new Subtitle H, the zones are grouped by geography, rather than intensity of development so that design, special exception, and PUD requirements can be found with the zones. The purpose statements and geographic applicability are also introduced with each zone.

Subtitle H – Neighborhood Commercial	
C-1/MW	N-1
C-2-A/TK	N-2
C-2-A/CP	N-3
C-2-A/WP	N-4
C-2-B/WP	N-5
C-3-A/ES	N-6
C-2-A/GA	N-7
C-3-A/GA	N-8
C-2-A/HS-H	N-9
C-2-B/HS-H	N-10
C-2-C/HS-H	N-11
C-3-A/HS-H	N-12
C-3-B/HS-H	N-13
C-2-A/HS-A	N-14
C-3-A/HS-A	N-15
C-2-A/HS-R	N-16
C-2-B/HS-R	N-17

Clarification: Certain geographic information has been included that is duplicative of the mapping information found in Subtitle W. All redundant geographic information (§§ 200.3, 300.2, 400.3, 500.4, and 600.2) is to be deleted in the final draft text.

Need to include a new provision stating the designated street for the H Street Northeast Neighborhood Mixed Use zones.

800.17 The designated roadway within the H Street Northeast Neighborhood Mixed Use zones shall be H Street, NE.

VII. COMPREHENSIVE PLAN POLICIES AND ACTIONS

ZONING ISSUES	COMPREHENSIVE PLAN CITATION	COMPREHENSIVE PLAN TEXT
SUBTITLE G MIXED USE		
Zoning Changes to Reduce Land Use Conflicts in Residential Zones	Action LU-2.3.A	As part of the comprehensive rewrite of the zoning regulations, develop text amendments which: a. Expand buffering, screening, and landscaping requirements along the edges between residential and commercial and/or industrial zones; b. More effectively manage the non-residential uses that are permitted as a matter-of-right within commercial and residential zones in order to protect neighborhoods from new uses which generate external impacts; c. Ensure that the height, density, and bulk requirements for commercial districts balance business needs with the need to protect the scale and character of adjacent residential neighborhoods; d. Provide for ground-level retail where appropriate while retaining the residential zoning along major corridors; and e. Ensure that there will not be a proliferation of transient accommodations in any one neighborhood
Multi-Family Neighborhoods	Policy LU-2.1.10	Maintain the multi-family residential character of the District's Medium and High-Density residential areas. Limit the encroachment of large scale, incompatible commercial uses into these areas, and make these areas more attractive, pedestrian-friendly, and transit accessible.
Transitional and Buffer Zone Districts	Policy LU-2.3.4	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.
Transient Accommodations in Residential Zones	Policy LU-2.3.9	Continue to distinguish between transient uses—such as hotels, bed and breakfasts, and inns—and permanent residential uses such as homes and apartments in the District's Zoning Regulations. The development of new hotels on residentially-zoned land should continue to be prohibited, incentives for hotels (such as the existing Hotel Overlay Zone) should continue to be provided on commercially zoned land, and owner-occupancy should continue to be required for transient accommodations in residential zones.

ZONING ISSUES	COMPREHENSIVE PLAN CITATION	COMPREHENSIVE PLAN TEXT
Co-operatives and Co-housing	Policy H-1.3.4	Encourage cooperatives, shared housing, and co-housing (housing with private bedrooms, but shared kitchens and common areas) as a more affordable alternative to condominiums. Ensure that such housing is appropriately regulated to avoid adverse effects on surrounding residences and neighborhoods.
Single Room Occupancy Units	Policy H-1.3.6	Allow the development of single room occupancy (SRO) housing in appropriate zone districts.
Commercial Corridors	Policy UD-3.1.6 and Policy UD-3.1.7	Along walkable shopping streets create street walls with relatively continuous facades built to the front lot line in order to provide a sense of enclosure and improve pedestrian comfort. Create attractive and interesting commercial streetscapes by... avoiding windowless facades and gaps in the street wall.
SUBTITLE H NEIGHBORHOOD MIXED USE		
Zoning Changes to Reduce Land Use Conflicts in Residential Zones	Action LU-2.3.A	As part of the comprehensive rewrite of the zoning regulations, develop text amendments which: a. Expand buffering, screening, and landscaping requirements along the edges between residential and commercial and/or industrial zones; b. More effectively manage the non-residential uses that are permitted as a matter-of-right within commercial and residential zones in order to protect neighborhoods from new uses which generate external impacts; c. Ensure that the height, density, and bulk requirements for commercial districts balance business needs with the need to protect the scale and character of adjacent residential neighborhoods; d. Provide for ground-level retail where appropriate while retaining the residential zoning along major corridors; and e. Ensure that there will not be a proliferation of transient accommodations in any one neighborhood
Downtown and Neighborhood shopping	Policy ED-2.2.2 and Policy ED-2.2.3	Call for the expansion of retail shopping opportunities in the downtown and neighborhood areas, respectively.
Reduce Land Use Conflicts in Commercial Zones	Action LU-2.4.B	Control the uses which are permitted by-right in commercial zones; avoid concentration of particular uses with the potential for adverse effects; and consider performance standards to reduce potential conflicts.
Meeting the needs of a growing city	Action PROS-1.4.B	Revise the provisions for mixed-use zones to consider requirements for useable recreation space or payments in-lieu to meet recreational needs.

ZONING ISSUES	COMPREHENSIVE PLAN CITATION	COMPREHENSIVE PLAN TEXT
Open space and cityscape	Action PROS-4.3.A	Complete an evaluation of zoning requirements for “residential recreation space” and “lot coverage.” Explore feasibility of requiring residential recreation space in high-density residential and commercial zones, and establishing specific conditions for lowering or waiving the requirements under certain conditions.