

Testimony of the Cleveland Park Citizens Association
Zoning Commission
DC Zoning Regulations Rewrite Case no. 08-06A
Subtitle "H"
November 13, 2013

Members of the Zoning Commission, my name is Susan Taylor and I appear today as President of the Cleveland Park Citizens Association (CPCA) to tell you about our concerns with the proposed changes to the Cleveland Park Neighborhood Commercial Overlay District. Cleveland Park began its development into one of Washington's most vibrant communities over 100 years ago. Today our commercial area along Connecticut Avenue is a thriving, albeit tiny, commercial center. Despite its small size, only two blocks long, it boasts a wide range of neighborhood serving shops, a library, a theater, a US post office and nearly 30 restaurants, two of which made Tom Sietsema's 40 favorite restaurants in the Washington Post's 2013 Fall Dining Guide. This success is not by chance. The mix of destination restaurants and neighborhood serving shops was carefully crafted through the Cleveland Park Neighborhood Commercial Overlay.

I'm done with the preamble and will get into the guts of my testimony. I want to make 3 points.

First, words matter. The impetus for the ZRR is the 2006 Comprehensive Plan. The Plan speaks specifically and very positively about NCODs and references them in various sections. It lays out the benefits and usefulness of Neighborhood Commercial Overlays as important zoning tools (pg.23-1, pg 23-16). It goes so far as to recommend, "the creation of additional neighborhood commercial overlay zones atneighborhood commercial centers and "main streets" throughout the area". So why does the re-write drop the term "neighborhood commercial overlay" entirely? OP has renamed these areas "Neighborhood Mixed Use Zones". The term "overlay" makes sense. It takes the underlying code and lays on top of it certain restrictions. It is simple to understand. In the current Zoning Regulations, the Preamble {(NC current zoning 1300.3 (c))} specifically refers to its purposes "as generally required by the Comprehensive Plan". In the ZRR "General Provisions" there is no reference to the Comprehensive Plan in the "N" zone language. With the switch to "Neighborhood mixed Use Zones", and the omitted reference, the essential link to the Comprehensive Plan is lost. Keep the language used in the Plan the same in the code. Use "Neighborhood Commercial Overlay". The Plan is the touch point against which all proposed code revisions are measured. It is like a giant mission statement complete with goals and objectives. The connection between the Plan and the code must be clear and easily recognizable. And it must be maintained.

Second, the draft re-write is maddeningly confusing. OP's mission statement calls for "Streamlin[ing] Zoning Regulations to enhance efficiency and transparency of zoning processes," which is also cited as a primary purpose of the re-write. So please explain to me how this (the two page table of contents for Subtitle H) simplifies this (the 1/3 page table of contents for the current Chapter 13)? When I was first elected as a CPCA officer, I had to learn about the overlay. It took me about 45 minutes to read through Chapter 13, and a bit more time and some conversations to grasp its mechanics. Aside from some outdated terms, the chapter was simple and easy to understand. Fast forward to the re-write. I have spent hours and hours poring over Subtitle H. I've had meetings with local zoning experts, Historical Society leadership, and even Jennifer Steingasser and staff from the Historic Preservation Office. I still can't understand this re-write! For example, two of Cleveland Park's most important components are the Uptown Theater and the Library. But I can't find them in any of the designated uses for "N-3(C-2-A/CP)". Numerous subsections in the "General Use Permissions for N Zones" (1100) are repeated in "Neighborhood Mixed (N) Zones" (100) and again in "Cleveland Park Mixed Use Zones" (400).

This confusion is unnecessary. It would be so much simpler, dare I say elegant, if the re-write followed the logic behind the purpose: Specify the rules for underlying zoning in a subtitle; then specify the refinement of these rules vis-à-vis the overlay zoning in a second subtitle. Simplify the code by keeping the distinction between the underlying zoning and overlay-refined zoning clear. Separate the concepts into two subtitles.

Third, OP representatives have assured us that they would not change a thing about NCODs, save perhaps to update the list of allowed retail uses. In fact, they have made an incredible number of changes, both in form and content. Not only are there changes, the subtitle is sometimes wrong. For example, “Lodging” is permitted according to the table in 1102.3, but prohibited in 1105.2(g) the “N-4” zones. There is no reference in 1105.2(g) to “N-3” zones so is it prohibited or permitted there? Today, lodging is not an allowable use in the Cleveland Park Commercial Overlay District.

Additionally, the ZRR adds some provisions and deletes others. As previously mentioned, it drops the existing code’s reference to the Comprehensive Plan (Section 1300.2). Please put it back in. It also adds section 400.2, “The N-3 zone (C-2-A/CP) is intended to permit mixed use development at a *moderate density* rate”. This is not in the existing code. The term is vague. Please take it out. The ZRR has changed the purpose of “preserving and enhancing neighborhood shopping areas” (current zoning 1300.1) to include new (possibly retail-displacing) “residential and employment” as additional purposes of these new “Zones.”(100.2 (a)). The code would now encourage new (possibly retail-displacing) “residential” and “employment” as additional intents of these new “Zones.” This is a significant change. Please take it out.

A glaring omission is content from the Overlay District Preamble. The current Section 1300.2, which says, “The NC Overlay District includes a number of individual overlay zone districts that may be established from time to time, consistent with the general provisions of this chapter” has been dropped. This emphasizes the connection between the goals of the Comprehensive Plan and the code. Please put it back in.

In conclusion, the Cleveland Park Commercial Overlay area is very small but it is wonderfully vibrant and varied. Our retail is mostly comprised of small business owners. The community worked hard to codify an overlay structure that would create a welcome mix of neighborhood serving retail and services, while allowing for some destination places of entertainment. We want to help Cleveland Park remain a walkable community. And that is what the CP/NCOD does. Residents and Metro users can visit the commercial area and get almost anything they need, catch a movie, eat and drink, or check a book out of the library. Please maintain the integrity of the Cleveland Park Neighborhood Commercial Overlay District and the city's other overlays by keeping the name and the current language. And please -- for the benefit of the next generation of developers, attorneys, residents, business owners, public servants, and community activists trying to understand what they can and cannot do -- please make the code easier to use and apply.

We concur with the recommendations for simplification submitted on behalf of the Committee of 100 by Nancy MacWood and have attached them to our testimony as an addendum.

Thank you,



Susan Taylor, President
Cleveland Park Citizens Association

Addendum to Cleveland Park Citizens Association Testimony

Presented by the Committee of 100 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 as 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. 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.” *Delete the proposed Sec. 100.1*

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). *Delete (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.

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.

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. *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. 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.

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. *Delete (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.*

Retain Sec. 1101.3

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.

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.”

Delete the second (a) that begins with “The architectural design..”, (d), and (e). Delete from (c) “to encourage safe and efficient pedestrian movement.” These deletions are not part of the current special exception standards for NCODs.

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.

Cleveland Park Neighborhood Mixed Use Overlay Zone

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.”

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; *Delete (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.

Add new section at end of Purpose sections: 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.

Retain Sec. 401.

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