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September 11, 2014

VIA IZIS

Anthony Hood, Chairman
Zoning Commission
441 4th Street, NW
Suite 200-S
Washington, DC 20001

Re: Subtitles G, J, H, and K of Draft Zoning Regulations (September 2013) -- Comments Concerning District's Office of Planning's Proposed Special Exception Requirement for Large Format Retail Stores

Dear Chairman Hood and Members of the Zoning Commission:

This letter is in response to the District's Office of Planning's ("OP") proposed special exception requirement for large format retail stores ("Proposal") under Subtitles G, J, H, and K of the draft text of the new Zoning Code ("Draft"). *See* Proposal attached herein as Exhibit A. These stores, also known as "big-box" stores, typically occupy a building with a height of 30 feet or more, are simple and rectangular in construction, and range in size from 75,000 to 260,000 square feet. OP's Proposal was part of the alternative language to several sections of the Draft that OP submitted to the Zoning Commission on June 16, 2014.

The District's existing zoning code does not regulate big-box stores. Rather, the District provides for "as-of-right" development for virtually all big-box stores located on commercially zoned land. This policy means that the District does not require developers and prospective tenants to participate in a public process that would weigh the costs and benefits of proposed projects prior to their approval. In nearly all cases, a developer whose site has the proper zoning to build retail is permitted to build any retail notwithstanding the proposed square footage of the store. This policy also means that the District does not conduct any administrative review of a proposed retail store based on that Proposal's square footage.

For the reasons discussed below, we applaud OP's Proposal to include a special exception requirement for large format retail stores in the alternative language it submitted to the Zoning Commission this past June. However, we also identify shortcomings in OP's Proposal and make recommendations to correct these shortcomings. We strongly urge the Zoning Commission to adopt OP's Proposal, albeit with the additional changes we recommend.

In comparison to smaller retailers, big-box stores cause adverse effects in the neighborhoods where they are located. They exacerbate traffic and parking; hurt small businesses; lower wages in the community; and often are out-of-scale with the character of the neighborhood. Because of these effects, additional scrutiny of the proposed development's costs and benefits is necessary.

An effective way to provide additional scrutiny of these developments is by requiring that a developer of a big-box store secure a special exception from the District's Board of Zoning Adjustment ("BZA"), as OP has proposed. OP's Proposal, in turn, would empower the BZA to grant or deny a developer a special exception based on whether the Proposal meets the criteria for a special exception.

Moreover, requiring that big-box developers secure a special exception from the BZA would facilitate a public process related to the approval or denial of these developments that is currently lacking in D.C. This process would provide the public with an opportunity to raise their support and/or grievances for a project. At the same time, the members of the BZA who are tasked with receiving feedback on projects from the public will have an opportunity to address and take into account the issues residents raise. As a result, the public would be assured that their issues were considered 1.) in a transparent manner, and 2.) prior to the approval or denial of a project.

OP's Proposal to require a special exception for big-box stores therefore represents a significant improvement in the regulation of big-box stores compared to both the District's existing zoning code and the Draft OP submitted last September. Nevertheless, there are two critical flaws in OP's Proposal which, if not corrected, would render the Proposal ineffective and meaningless.

Most significantly, OP's Proposal exempts all proposed large format retail stores subject to Large Tract Review ("LTR") from needing to secure a special exception prior to proceeding with the development. The problem with this exemption is that nearly all large format retail stores are subject to LTR. Although LTR is meant to identify potential flaws in a project and to streamline the permitting process, LTR is conducted internally by OP, is advisory in nature, and does not provide members of the public with an opportunity to air their grievances with a proposed project publicly. Without removing

this exemption, OP's Proposal would not apply to nearly all the stores for which the Proposal was designed.¹

A second problem is with the definition of large format retail stores that OP included in its Proposal. OP included the following definition:

A single retailer or common retail space with a minimum floor space of 50,000 square feet; the use shall include warehouse club stores with or without paid memberships, discount retailers, and similar uses. A large format retailer may include grocery sales as a secondary use but a grocery store shall not be considered a large format retail use.

See Exhibit A at p. 1. This definition does not define what "grocery sales as a secondary use" means. Consequently, a large format retail store with grocery sales as a component could argue that this component was not a secondary use, even if grocery sales did not constitute a project's predominant use. To remedy this problem, the Zoning Commission could provide a specific definition for "secondary use," such as any particular use that does not exceed 50% of a store's sales or square footage.

In addition to these flaws, there appears to be a discrepancy in the text of the Proposal. Section 206 of the Proposal lists the MU, N, and P Zones and Subtitle K. *Id.* However, Section 206.1 only identifies the special exception requirement applying to the MU, N and P zones without stating that it applies to Subtitle K or the zones specified in Subtitle K. *Id.* The exclusion in Section 206.1 of Subtitle K or the zones in Subtitle K also conflicts with the comments in the Discussion Column of the Proposal, which states that the text is proposed for, among others, the zones specified in Subtitle K. *Id.* In light of this exclusion, Section 206.1 should be amended such that it identifies the special exception requirement as applying to either Subtitle K or the zones specified in Subtitle K.

With these changes, the Proposal will sufficiently take into account the effects of large format retail stores on the surrounding community prior to their construction. The Proposal includes appropriate criteria for a large format retail store to fulfill in order to warrant the BZA's approval of a special exception. This criteria includes, for example, a project's effect on noise, traffic, parking, loading, lighting, as well as whether the project incorporates the proper development standards and design guidelines.

¹ OP has indicated to us that if the Zoning Commission adopts the Proposal, it will advise the Zoning Commission to remove this exemption. See email from Joel Lawson to Michael Kroopnick dated August 7, 2014 attached herein as Exhibit B.

Comments Re: Proposed Large Format Retail Special Exception
September 11, 2014
Page 4

If the Commission incorporates the changes described above into the Proposal, we highly recommend that it adopt the Proposal as part of the new Zoning Code.

Thank you for your time and consideration of this matter.

Best regards,



Michael Kroopnick
Of Counsel
Law Office of G. Macy Nelson, LLC

LARGE FORMAT RETAIL

Proposed Text for Inclusion in Setdown Draft	Comments (refer to 5/5/14 summary)	Discussion
Large Format Retail shall mean a single retailer or common retail space with a minimum floor space of 50,000 square feet; the use shall include warehouse club stores with or without paid memberships, discount retailers, and similar uses. A large format retailer may include grocery sales as a secondary use but a grocery store shall not be considered a large format retail use.		New definition
206 LARGE FORMAT RETAIL (MU, N and P ZONES and Subtitle K)		
206.1 Large format retail use shall be permitted as a special exception in an MU, N and P zone if approved by the Board of Zoning Adjustment under Y Chapter 8, subject to the provisions of this section.	113, 127, 128, 129, 130, 135, 136, 137, 138, 159, 188, 276, 277, 313, 315, 320, 321, 322, 326, 334, 370, 443, 444, 445, 446, 463, 464, 465, 466, 487, 534, 547, 557, 563, 712	Received 22 comments regarding large format retail (aka "Big Box"), the majority of which proposed requiring a special exception. The Zoning Commission requested that OP review the issue of large format retail. OP has proposed text and a new definition for consideration by the Zoning Commission.
206.2 The development standards and design guidelines contained within this section apply to all new large format retail establishments with single tenant space of 50,000 gross square feet or greater.		
206.3 The use shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, parking, loading, deliveries, lighting, trash compacting and collection, hours of operation, or otherwise objectionable conditions.		The text proposes a square foot threshold that is the same as the Large Tract Review (LTR) regulations; sets forth design guidelines, and reflects similar site and performance standards as the LTR process.
206.4 Sufficient automobile parking, but not less than that required in Subtitle C, Chapter 19, shall be provided to accommodate the employees and customers.		
206.5 An application under this section shall include the following information: (a) A general site and development plan, indicating the proposed use, location, dimensions, number of stories and height of building; (b) A study of site characteristics and conditions, containing the following: (1) A description of existing topography, soil conditions, vegetation and drainage consisting of written material, plats, maps and photographs; (2) Proposed topography including street grades and other		The text is proposed for the Mixed Use, Neighborhood Mixed Use, and PDR zones, (C, CR, SP, W, CM and M) zones, and the SEFC and USN, HE, StE, and RC zones. It is not proposed to be applicable in the Downtown zones.



LARGE FORMAT RETAIL

grading contours; (3) Identification of mature trees to remain and percent of site to be covered by impervious surface; (4) Proposed drainage and sewer system and water distribution; (5) Proposed treatment of existing natural features such as steep slopes, ravines, natural watercourses, etc.; (6) Proposed method of solid waste collection; and (7) Estimated water consumption (gallons per year). (c) A transportation study, containing the following: (1) Proposed circulation plan, including the location of vehicular and pedestrian access ways, other public space and the location and number of all off-street parking and loading spaces, loading berths and service delivery spaces; (2) Estimated number and type of trips assumed to be generated by project, and assumed temporal and directional distribution; (3) Traffic management requirements (lights, stop signs, one-way streets, etc.); (4) Relationship of the proposed project to the mass transit system (nearest bus stops and routes, nearest Metrorail stations, etc.); (5) Vehicular trip generation, trip assignment and before-and-after capacity analyses and level of service at critical intersections; and (d) Any other information needed to fully understand the final building proposed for the site. 206.6 An applicant requesting approval under this section must demonstrate that the proposed use, building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will:		
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LARGE FORMAT RETAIL

(a) Be in context with the surrounding street patterns; (b) Minimize unarticulated blank walls adjacent to public spaces through facade articulation, materials, display windows, entries, and other architectural efforts; and (c) Will not result in light spillage off the site. 206.7 Where additional stores or individual uses are located within a large format retail use each such store shall have at least one exterior customer entrance. 206.8 The following list should be considered as guidelines for the design of large format retail buildings: (a) Building design shall incorporate architectural features and patterns to provide visual interest; (b) Exterior walls shall feature projections and recesses; (c) Building roofs shall incorporate pitched rooflines and detailed roofing materials; (d) Building materials shall include stone, wood, brick, glass, and metal in keeping with the surrounding architectural context; (e) Entryways shall be well-marked and engaging and provide connection via wide sidewalks to primary streets and parking; (f) Building design shall incorporate sustainable measures to include solar energy, geothermal heating and cooling, and use of permeable paving for surface parking areas; and (g) Landscaping shall be provided in the rear and side yards to screen and limit visibility of storage areas; 206.9 This section shall not apply to the following: (a) Large Format Retail uses that would occupy a Planned Unit Development approved as of the effective date of this ordinance. (b) Large Format Retail uses that would occupy projects approved under the Large Tract Review regulations for a development of 50,000 square feet or more. A modification to an approved Large	
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LARGE FORMAT RETAIL

Tract Review that would result in a project with 50,000 square feet or more of retail shall also require approval under this section prior to certificate of occupancy for a use meeting the definition of Large Format Retail.		
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Michael Kroopnick

From: Lawson, Joel (OP) <joel.lawson@dc.gov>
Sent: Thursday, August 07, 2014 6:38 PM
To: mkroopnick@gmacynelson.com
Subject: ZRR

Mr. Kroopnick: I thought it would be easier to email. OP does not anticipate providing additional draft text until after the Zoning Commission has held its public hearings on the original proposal (September 4, 2014) and the alternative text (Sept 8 - 11). Assuming you are asking about the special exception for large format retail provision, we advised the Commission that, if the Commission wishes to proceed with this alternative, the text would be corrected to reflect the concern you raised.

Have a good day
Joel Lawson
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Metro – Green Line, Waterfront Station
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Help DC become an Age-Friendly city by participating in the Block-by-Block Walk on Saturday, September 6. Sign up [here](#) to volunteer.

