



Assessment and Recommendations of DC Zoning Update and its Application to Big Box Retail

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About the Author

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Executive Summary

SECTION 1

The Washington D.C Zoning Commission is now considering a proposed zoning ordinance which includes new regulations for “Large Format Retail.” This report suggests two modifications to the proposed ordinance which will add clarity to the proposed ordinance and will reduce the risk of controversy about the rules regarding “Large Format Retail”:

1. Remove the exemption for projects subject to Large Tract Review; and

2. Clarify the definition of “Large Format Retail.”

These proposed changes will strengthen the ordinance and will ensure the protection of the health, safety, and welfare of Washington D.C.’s citizens and businesses.

Big Box retail consumes large areas of land and has significant impacts. Shown below is a big box retail shopping center in Burbank, California.





Introduction

SECTION 2

This report examines issues relative to Big Box retail generally and in Washington, D.C. specifically. It is divided into three parts: 1) the Washington D.C. Zoning Ordinance; 2) proposed amendments; and 3) commentary on proposed amendments.

“Large Format Retail,” also known as “Big Box” retail, is typically a large warehouse-style building ranging from 50,000 to 200,000 square feet, at a height of 30 feet or more.

These buildings are typically made of metal, concrete block, or brick-faced walls.ⁱ Selling retail items, these buildings can stand alone or be part of a larger shopping center. Examples of Big Box retailers include Home Depot, Target, Walmart, Barnes and Noble, Hobby Lobby, Costco, and Best Buy.

Big Box retailers provide convenience to customers by providing goods in one location. “Large Format Retail,” or Big Box retail, is known to have significant economic and transportation impacts.

When Big Box stores initially open they have a large number of employees, but within the first few years of opening the number of employees falls significantly.ⁱⁱ The result of Big Box retailers coming in is a decline in the number of small and medium-sized retail establishments.ⁱⁱⁱ The decline in the number of retail establishments occurs over a three-year period.^{iv} In Chicago, for example, the entry of Walmart into the central city resulted in the loss of 300 full-time jobs in the surrounding neighborhoods and no net increase in retail sales. Walmart simply absorbed retail sales from nearby stores without significantly expanding the market.^v

The opening of a Big Box store results in changes in travel behavior of residents, who will choose to drive to the nearest Big Box store.^{vi} There will be more traffic on the roads that serve the Big Box store. In addition, Big Box retail is associated with an increase in vehicle crashes with injuries.^{vii}

The impacts of Big Box retail can be mitigated. Research has found that including zoning restrictions on Big Box retail results in greater retail format variety in cities.^{viii} The following sections discuss Washington, D.C.’s proposed ordinance and proposals for mitigating negative impacts of Big Box retail.



The Washington D.C. Proposed Zoning Ordinance

SECTION 3

Procedural History

Washington, D.C. is undergoing a comprehensive rewrite of its Zoning Code for the first time in over 50 years. Under the existing zoning code, D.C. allows for “as-of-right” development for nearly all Big Box stores located on commercially zoned land. In nearly all proposals, a developer whose site has the proper zoning to build retail is permitted to build any retail regardless of the proposed square footage of the store. In addition, a retail store’s proposed square



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footage itself does not trigger any administrative review by the District government. As a result, there is no public process by which 1.) residents can voice their concerns for a project, and 2.) public officials can take into account the effect a store may have on the surrounding community prior to approval of the store.

D.C.'s Office of Planning ("OP") was tasked with drafting the proposed changes to the Zoning Code and submitting the Draft to the Zoning Commission for its approval. When OP submitted its Draft to the Zoning Commission in September 2013, it did not include any changes to the existing Zoning Code as it concerned as-of-right development for retail stores regardless of a store's square footage or impact on the surrounding neighborhood. Nevertheless, many D.C. residents and advocacy groups submitted comments and testimony to the Zoning Commission in favor of a requirement that proposed Big Box stores secure a special exception from D.C.'s Board of Zoning Adjustment

before proceeding with development. A special exception would not prohibit these developments; it would simply require that certain conditions be met before the proposed development could proceed with construction. Whether these conditions are met would be addressed through a public process. Subsequently, the Zoning Commission requested that OP submit modifications to its initial Draft from September 2013 and that those modifications include a special exception requirement for Big Box stores. OP included the special exception requirement in modifications that it published online in June 2014.

Proposed Ordinance

As part of the proposed ordinance that OP published online in June 2014, all Big Box retail stores would fall under the definition of “Large Format Retail,” § 11-199 of the proposed code, which states:

Large Format Retail: 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.

This definition covers a wide range of different large retail uses, from a Home Depot to a Walmart Supercenter.

The modifications OP proposed also included a definition of grocery store:

Grocery Store: A use whose primary business is the sale of fresh produce and food products. At least 50% of customer-accessible sales and display area is used for the sale of a general line of food products intended for home preparation and consumption, and at

least 30% of retail space is for perishable goods that include dairy, fresh produce, fresh meats, poultry, fish and frozen foods. Groceries represent the majority of the sales in a grocery store although there may be accessory uses such as prepared food and drink, pharmaceuticals, personal and bank services.

The proposed ordinance allows “Large Format Retail” as a special exception if the proposed store meets certain conditions as set forth in the proposed ordinance. The proposed ordinance allows for Large Format Retail by special exception in the following zoning districts:

- MU Mixed Use (Commercial Residential) Districts
- N Neighborhood Mixed Use District
- C Commercial Districts
- CR Community Residential Districts
- SP Special Purpose Districts
- W Waterfront Districts
- CM Commercial-Light Manufacturing Districts
- M General Industry Districts
- SEFC Southeast Federal Center District
- USN Union Station North District
- HE Hill East District
- StE Saint Elizabeths East Campus District
- RC Reed-Cooke Overlay District
- PDR Production, Distribution and Repair



Proposed Amendments

SECTION 4

The Law Office of G. Macy Nelson, LLC previously submitted a proposal to better manage Big Box retail within the proposed zoning ordinance. The details of these proposed amendments are described in Comments to the Washington, D.C. Zoning Commission dated October 28, 2013. As such, they were submitted to the Zoning Commission prior to the proposed modifications that OP published online in June 2014. These proposed amendments include:

- A definition of Big Box retail;
- Requiring Big Box retail be subject to a special exception; and
- Making projects subject to Large Tract Review also subject to the special exception requirement for Big Box retail.

The proposed zoning ordinance is responsive to the recommendations listed above. It includes a definition of Large Format Retail and a provision for a special exception. The proposal, however, includes an exemption for Large Format Retail stores that are subject to Large Tract Review. As discussed below, this exemption would render the proposal moot, though based on conversations with OP staff, it is our understanding that staff will recommend that the Zoning Commission eliminate the Large Tract Review exemption if it approves the special exception requirement for Large Format Retail.



Commentary on the Proposed Ordinance and the Appropriateness of Amendments

SECTION 5

Retail is not all alike; it is not one size fits all. As the current proposed ordinance points out, there are differences between retail establishments that do and do not have grocery stores, for example. An independent grocery store has different impacts than a large scale home improvement store in terms of traffic generation and retail sales, for example. It appears that a goal of the proposed zoning ordinance is to recognize

that “Large Format Retail” and grocery stores have different impacts on the surrounding neighborhood.

My professional opinion is that Big Box retail has unique adverse effects and, because of those impacts, should be regulated separately in the zoning ordinance. These impacts have been recognized by many different organizations. For example, the Maryland Department of Planning in 2001, in its publication *Managing Maryland’s Growth: Models and Guidelines*, provides specific guidance on “Big-Box” Retail Development.^{ix} Washington D.C. has recognized this use and has proposed a definition for “Large Format Retail.”

The inclusion of a special exception requirement for Big Box stores in OP’s proposed modifications to the Zoning Commission represents an important and positive step in D.C.’s efforts to manage the development of these stores. A special exception requirement allows for enhanced review that takes into account potential adverse effects these large retailers can have on the neighborhood. This can include traffic, economic, and aesthetic effects. Requiring a special exception will better take into account the adverse effect these stores can have on traffic, adjacent small businesses, and the character of the neighborhood in which they are located. Most importantly, enactment of this proposal will facilitate a public process, which is currently missing, whereby residents can voice both their support and concerns to public officials regarding any proposed big box stores. In turn, the public can gain the confidence that the issues they raise will be taken into account by their public officials when they consider approving a special exception for such stores.

Exemption for Large Format Retail Subject to Large Tract Review

Despite, however, the positive step forward that the proposed ordinance represents, there is a severe flaw in the proposal: as it is currently

drafted, it almost wholly exempts Big Box retail from the proposed Large Format Retail special exception requirements. This is due to an exemption for development subject to the Large Tract Review process. The result is to introduce a special exception that will likely never be applicable, as virtually all Big Box retail will be subject to Large Tract Review. As currently written, the Large Tract Review process applies to developments that exceed 50,000 square feet in most commercial zones and applies to developments located on a site with three or more acres, §10-B2300.1.^x The result is an administrative review providing feedback to the developer, rather than the level of public involvement that occurs in a special exception process. This exemption must be eliminated in order to ensure that Large Format Retail stores are required to secure a special exception before they can proceed with their developments. OP staff has indicated that if the Zoning Commission approves the special exception requirement for Large Format Retail, it will recommend that the Zoning Commission also eliminate this exemption. The staff has recognized the problem created by this exemption and has stated they will take action to correct this problem.

Defining Big Box Retail

Washington, D.C. has taken a reasonable approach in defining “Large Format Retail.” The proposed definition excludes grocery stores as a principal use. However, this definition is ambiguous. In particular, there is a lack of clarity on what grocery sales as a “secondary use” means.

The term secondary use is not defined within the zoning ordinance. For example, supercenters can devote as much as 40% of the space to grocery items.^{xi} Would a supercenter devoting 40% of the floor area to groceries be considered a secondary use? Supercenters have many different departments, such as automotive, electronics, pharmacy, and clothing. Is each department viewed separately? If groceries are 40% of

the store, this could be the largest department in the store. Would it still be considered a secondary use?

I recommend that the Zoning Commission modify the definition of Large Format Retail to the following:

Large Format Retail: 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 up to 40 percent of the gross floor area. A grocery store shall not be considered a large format retail use.

By specifying a maximum gross floor area that can be dedicated to groceries eliminates any ambiguity over groceries as a secondary use. This change when combined with the definition for a grocery store would provide a high degree of clarity for both planners and developers, thus reducing the risk of litigation. Under this definition, a Large Format Retail of 120,000 square feet which includes 45,000 square feet for grocery sales would require a special exception but a free standing “grocery store” of 75,000 square feet would not.

Permitted Districts

The proposed ordinance restricts the location of Large Format Retail, for example prohibiting Big Box retail establishments in residential areas and limiting them in downtown. The proposed text allows for Big Box retail as a special exception in a wide range of commercial districts. Yet, a Big Box retailer may not be appropriate in some zones, for example the C-1 Neighborhood Shopping District “is designed to provide convenient retail and personal service establishments for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development”, § 11-700.1.



Conclusion

SECTION 6

Washington, D.C. has the opportunity to create a revised zoning ordinance that will provide for retail to support the community. The recommendations included in this report are intended to support Washington, D.C. in enhancing and supporting its neighborhoods by allowing Large Format Retail in the appropriate locations. These recommendations will limit the economic and transportation impacts, supporting healthy neighborhoods throughout Washington, D.C. These recommendations include removing the exemption for

projects subject to Large Tract Review and clarifying the definition of Large Format Retail. Integrating these recommendations will strengthen the proposed ordinance and provide further protection for Washington, D.C.'s neighborhoods, supporting the health, safety, and welfare of Washington, D.C.'s citizens and businesses.

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