

## Commercial Areas Working Group Meeting # 2 – Meeting Summary Notes

### Participants:

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### Office of Planning Staff:

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### Meeting Overview:

After introducing the meeting with background information for the participants on the Zoning Review process, the goals of the working group, and the agenda for the evening, participants were divided into break-out groups. In the individual breakout groups, participants provided feedback on the meeting's two discussion subjects:

- Regulating to facilitate locally suited non-retail uses in commercial zones; and
- Regulating the concentration of uses in commercial areas utilizing the 25 % restaurant limitation as a discussion example.

Participants participated in discussion sessions regarding both topics. Background information on the subject, potential options related to the regulatory subject, and discussion questions were presented to each group. The information presented regarding background, options and discussion questions is provided on the DC zoning update web-site through the following link: [Presentation Information and Discussion Boards](#).

Upon completion of the discussions regarding each subject area, participants were asked to prioritize the options identified. The prioritization was intended to inform future OP recommendations to the zoning commission.

A summary of the discussions and prioritization exercise from each group are presented below. The summaries are not intended to provide verbatim accounts of the dialogue that took place, but serve as a summation of the input provided by participants. The prioritization exercise results are presented as votes, but each vote does not represent an individual. Participants were provided with 3 votes per discussion subject, which they could weight toward desired/viable options. Not all participants may have responded, and some participants choose to weight their votes toward discussion subjects outside of the options identified.

### **General Discussion Item:**

In addition to the more specific discussion, a general question was identified regarding the overall review process and the steps being taken to ensure continual maintenance of the zoning code, without need for comprehensive re-writing on a 50 year cycle. This issue was recognized as an important one and identified as a potential subject of discussion for the Administrative Working Group to be completed later this year.

### **Facilitating Locally Suited Uses, Discussion Notes**

The following notes summarize discussions held regarding the facilitation of non-retail locally oriented uses in commercial zones (e.g., small-scale offices, arts uses, creative economy uses...)

#### **Group 1**

##### **I. General Discussion and Questions**

Why try to create a single tool to encourage certain uses? What's wrong with creating tools on an ad hoc basis as they're needed?

Which uses are we talking about?

- Neighborhood-serving commercial
- Biotech and light industrial?
- Fashion industry? (Sometimes difficult to determine when it crosses line between retail and light industrial?)
- Wholesalers

Because these are different uses with different needs, they might require different incentives (different incentives might be more valuable than others.)

Interpretation of what a use is matters more if you have use categories, because the distinctions matter more.

How do you use all of these tools WITHOUT having specific use lists?

Allowing desired non-retail uses on ground floor: Could be an effective tool in “small commercial pockets” that are not doing well, and that could benefit from additions to the daytime economy (i.e., small offices).

FAR bonus as an incentive: not appropriate everywhere (if it would result in a scale of building that is completely out of character with the existing built environment/neighborhood)

One participant asked whether the specific bonus for a grocery store in the H Street Overlay had resulted in a grocery store.

Response: Not yet. It’s unclear whether this is because the bonus is not valuable enough, because the provision has only been in place for a short while, or some other factor.

FAR ratio change: commercial developers would find this valuable, because increases flexibility. We need buildings we can actually use ... if I have a C-2-A building, and it’s only three stories, it would be more practical/valuable to have the flexibility to have more or all of the building be commercial (e.g., upper-story office instead of residential).

Commercial overlays – are they actually not working well? Opinion of some members of the group was that “it ain’t broke, so don’t fix it.”

Response: Point may not be that commercial overlays are “broken,” it may be that we have all these different tools, and we’re trying to figure out which are most effective.

Best way to promote desired uses may not be zoning, but may be through marketing or other means.

Having specific use lists helps me as a commercial broker, because it gives more clarity about what uses are desired.

## **II. Additional info needed:**

- How do different uses interact in the market? Are there specific needs (e.g., space) for specific types/categories of uses? (Light industrial needs more)
- Is zoning the best tool?
  - We might review what other incentives are in operation or possible, and determine whether they are more effective/easier to administer than zoning.
- How will we get community buy-in? Who is at the table? Need models for decision making that are less divisive.
- How many tools will be available?
  - These tools are not necessarily mutually exclusive.

- However, OP will try to determine the most effective tools, and concentrate on those.
- In general, incentives are more effective than requirements.

## **Group 2**

### **I. General Discussion**

If it ain't broke, don't fix it – we need to evaluate first whether something is working well or not before presuming that it needs to be changed

However, the same participant suggested that the Neighborhood Commercial Overlay requirement that a certain percentage of ground floor space must be devoted to specific uses (§ 1302.2 – 1302.4) is broken, because:

- It's not enforced
- It's difficult to administer

(Is this actually a problem? How hard can it be to enforce? Is it a problem when COs change? NOTE: We need to think about how use categories will fit with DCRA's system for categorizing COs)

The person making this comment wanted to distinguish between this provision and the 25% limitation in 1302.5

The tools OP presented seem to assume new construction (especially those that provide an FAR bonus). What happens over time, as uses in a building change or are desired to change over time (by property owners and/or neighborhood)? What happens if a business fails and the owner can't find a preferred use? You can't remove a floor from the building (This may imply a need for either use categories or an assurance that preferred lists are less limiting – examples: child care centers in DD and arts uses.)

#### ***Question: Should we do this at all?***

Response:

- At the least, zoning should protect desired uses
- Perhaps we should promote them

#### ***Question: Require or permit?***

There is a danger of unintended consequences with requirements (vacant buildings) Use lists may protect desired uses by creating procedural/permission disincentives to uses that aren't on the list

If we're going to have requirements intended to encourage a specific use or group of uses, the requirements should be related to building design, not for the use itself. (E.g., glazing for shop-fronts)

If you're going to require something, give them a bonus to compensate for it (model: bonus density for preferred uses in Uptown Arts, maybe DD, IZ)

Overlays have multiple goals. They are different than base zoning districts, in that you're trying to achieve a set of local objectives. Perhaps the zoning mechanisms used to encourage specific uses depend on whether it's a citywide objective or a local one. Let neighborhoods decide what they want.

What's our menu of tools?

- the menu shouldn't be limiting, it should be a starting point – a neighborhood might identify a unique need;
- however, if a new tool is created for a neighborhood that has the potential for application in other locations, that tool should then be available for use elsewhere.

Need the ability for faster, more efficient process to adopt local tools (as opposed to current process of establishing overlays). Also, need the ability to make minor tweaks without it becoming a huge ordeal.

Just because you're offering an FAR bonus, doesn't mean the owner can always take advantage of it. For example, the Uptown arts overlay allows an FAR bonus for theaters, but sometimes this density can't actual be used due to structural reasons, and the owner can't transfer their rights. You could fix this by increasing the base density.

Also, an overlay may provide for additional bonus rights, but the area may also be historically designated, which may restrict the potential to actually use the additional development rights

Counter-point: maybe only one bonus should be available

***Additional information needed:***

Local information is necessary to know what tools to apply and how to apply them.

- What's the existing use mix and building stock?
- Are there historic protections?
- What is desired by the neighborhood?
- Who decides what the incentives and requirements are?
- How does a neighborhood deal with change over time?

Definitions are crucial with respect to specific uses

## II. Prioritization Exercise

Option	Description Summary	Votes
1	Permit on ground floor	0
2	Adjust FAR to permit greater amount of non-residential uses	9
3	Require minimum FAR/floor space to be provided for desired locally suited non-retail uses	0
4	Grant bonus FAR desired locally suited non-retail uses	11
5	Enable discretionary approvals to reserve a percentage of total space for provision of affordable and/or locally suited non-retail uses	4

### Regulating Concentration of Uses Review of 25 % Restaurant Limitation

The following notes summarize the discussions of the individual groups regarding regulating to prevent the over-concentration of uses in commercial districts. These discussions were framed in direct relation to the District's existing practice of regulating the concentration of restaurants by building frontage.

#### I. Group 1 Discussion Points:

- The goals and intent of the overlay, and what they seek to achieve, are key to having a discussion about the current approach to regulating for the concentration of restaurants.
- The current regulation of drinking and eating establishments is intended to assist in maintaining lower rents and reducing parking and traffic problems.
- Tools should be tailored to meet the needs of individual neighborhoods.
- The question of how one establishes (vests) new rights where new development is taking place needs to be further resolved.
- One of the areas of confusion has been addressed thanks to clearer definitions. Now it's easier to understand which uses apply to the current provision.
- The existing system can be administered easily via the permit process.
- Certificates of Occupancy are not being revoked when a use leaves. This creates confusion about what space currently falls under the calculation requirements of the provision.

- There needs to be clarity about when one actually secures the right to operate a Drinking and Eating establishment. This should occur at the earliest permission stage.
- In neighborhood commercial areas where new construction is going on we are dealing with a different situation than a change in use. There is greater difficulty in establishing whether special exception relief is required up front for new construction due to the size and complexity of the project.
- Under the current approach, a building developer may have to ask for zoning relief twice if appropriate information isn't available early on about the status of restaurant uses. One should be able to establish their rights at a single point in time and determine if an additional permission is required by the BZA or Zoning Commission. There should not be multiple requirements for a developer to go back after an initial approval process.
- In a new construction scenario we don't need to be able to grant the rights of a restaurant to the entire portion of the ground level, but we would like to know if we can have a restaurant at all.
- Need to determine how to deal with multiple uses within a single building, e.g., theatres.
- The type of commercial area we are dealing with (e.g., neighborhood commercial vs. regional commercial) should determine our approach to regulation. We don't want to have a dominant single use in a neighborhood area; we don't want to lose variety.
- Utilizing the number of seats in an establishment may also be helpful in dealing with potential impacts, such as parking or traffic.
- Over-concentration is already regulated by the Alcoholic Beverage Regulatory Agency (ABRA) for uses that include alcohol. This does not necessarily address the economic impact of eating establishments.
- There is limited consistency between zoning language and the ABRA's regulatory language.
- Option 5 (regulating by average concentration per capita) may not be best when dealing with property rights.

## II. Group 2 Discussion Points:

- I'm not clear on what we are talking about? Are we talking about regulating restaurants or regulating the concentration of all uses?

*OP Response:* the goal is to talk specifically about the current provision which deals with the regulation of restaurant uses. This will help us with the administration of this provision, but also learn lessons that could be applied to other applications of a concentration provision.

- Option 2 (limiting total occupancies) has potential for interpretation questions. For example, what is a restaurant?
- Counting locations (as identified in Option 2) would be easier.
- Are the options identified a result of the research completed by the Office of Planning, which the Zoning Commission requested? Are there examples of tools in other parts of the country?

*OP response:* the options identified are a result of the research. However, they are not all possible examples. In many cases there may be more than one jurisdiction that may use one of the options identified in a similar manner, but for a different use, and with different corresponding standards. What is presented is a distillation of common approaches.

- All of the options presented could be varied or tailored to address a specific need or concern.
- The current approach of frontage calculation isn't difficult; it simply requires better information management, the upfront capital investment to make it work, and better integration with DCRA.
- The relationship to parking requirements/limitations must be understood. There can only be so many sittings in a restaurant within a given period which would result in a corresponding parking need and traffic impact.
- There could be a self-regulating mechanism relative to the potential square footage of a restaurant – you can't regulate solely via frontage to get at the impacts appropriately.
- The basic reason for wanting to regulate the use (maintaining neighborhood character, parking management) needs to be clear before you start evaluating options.

- It's hard to pre-determine future uses, but we know that restaurants tend to drive up rentals so by restricting them we provide more viability for other uses that can't pay the same rents. If we have prescribed list of uses we better enable the market to fulfill demand.
- Because tracking floor area may be harder to kept track of, using frontage measurement may be a good proxy for certain areas but not everywhere.
- Different indexes/limitations may be needed for different areas. The goal is to not impact some areas worse off than others with un-intended consequences. We need to provide for flexibility between areas and be able to adjust to change with different neighborhood needs.
- Flexibility needs to be provided – but how it is provided needs to be simplified.
- Not all restaurants are the same. We may want to differentiate between different types of restaurants.
- What a restaurant is isn't always 'cut and dry'. We need a better definition of what is a restaurant based on how they may evolve over time. We need to provide for flexibility of changes from convention.
- Consistency across agencies regarding definitions would be helpful.
- What can both be considered restaurants or eating establishments may function differently, e.g., a deli and restaurant.
- A change in the definitions has already made it a lot easier to determine what is and is not a restaurant.
- Although there has been a lot of discussion about flexibility, the community desires more predictability. The more flexibility you provide the less predictability there is.

### III. Prioritization Exercise:

<b>Option</b>	<b>Description Summary</b>	<b>Votes</b>
1	Existing approach – 25 % frontage restriction	27
2	Limitation of total occupancies	4
3	Building area (block) limitation	3
4	Distance separation requirements	0
5	Average concentration per capita	3