District of Columbia 25 % Restaurant Limitation Provision: Information Sheet

This sheet provides an overview of the current restaurant zoning limitations including history; the current geographic application of the provision; questions and issues identified by the zoning commission (which have led to this review topic); discussion conclusions of the Retail Working Group; and, a review of lessons learned. The overview is formatted in point form for purposes of reference to more detailed information, which is cited.

This information sheet is intended as an information resource, and should not act as a substitute for the actually hearing testimony or ordinance text (which has been identified in the summary and is available from the Office of Zoning Web-site: www.dcoz.dc.gov), or information provided on the DC Zoning Update Web-site: www.dczoningupdate.org.

History

The following points provide a summary in information from the Zoning Commission hearing held ***July 18, 2002, Case No. 02-06****.* Included is the testimony of Nathan Gross, former Office of Planning Staff, involved in development and application of original provision.

- The provision was created in 1989 as a component of the neighborhood commercial overlays.
- Development and surrounding land use pressures, including compatibility of restaurants, in both Cleveland Park and Woodley Park, led to the application of a series of tools through an overlay, in lieu of a full re-zoning process. These included:
  - Restaurant provision – with special exception;
  - Promotion of pedestrian oriented retail in use permissions;
  - Prohibition of driveways
- Based on San Francisco's regulations – which had been developed, but not adopted.
- 25 % standard based on existing conditions in Cleveland Park and Woodley Park and the standards proposed in San Francisco.
- Street frontage approach – simpler than dealing with square footage due to available information, e.g., Sanborn Map.
- Not intended to be an extremely fine-grained standard as if you were dealing with noxious uses, as the uses themselves are not undesirable. Intended to ensure that retailer wasn't dominated by higher rents and therefore priced out of the market. "Not a precise thing." This was part of the purpose of using frontage and not a more detailed measure, such as square footage.
- Mr. Gross proposed annual mapping exercise with OP and DCRA, with DCRA monitoring. This would account for additional frontage added overall, and current status of eating and drinking uses.

- Also recommended fuller staffing at DCRA: one staff person whose part time work is to become more familiar with overlay zones in general. When a permit comes in they are always involved. "But that's for the day when there is better staffing."
- Intention was for a tool which is easy for DCRA to administer.
- Organization of text (intended to minimize duplication) may have created enforcement problems.
- Vesting of rights was discussed: San Francisco's practice in 2002 was to use a three-year rule. San Francisco later removed use-regulation practice and went strictly to a more local permission and/or prohibition of restaurants within smaller geographic areas.
- Questions asked and issues identified by the Z.C. in 2002:
  - When does the clock start ticking on the three year resumption of use period?
  - How does one know when a use has really vacated?
  - These questions were not fully resolved as a part of this iteration of the regulation review. Generally it was recommended that a declaration be made by the property owner.
- Public Testimony included:
  - Capacity of DCRA to enforce
  - Need for clarity in definitions/documentation
  - Need for clarity on 3-year clause
  - Potential removal of 3-year window
  - Relationship of certificates of occupancy and survey records to enforcement
- Points of Interest
  - Items proposed at this hearing have not been fully resolved. A final order has not been issued.
  - Subsequent revisions have occurred to the definitions related to restaurants and fast-food establishments, which have provided further clarity regarding what constitutes drinking and eating establishments.

Current Application of Provision

The following list provides an overview of how and where the restaurant concentration provision is applied in the District.

- Applies to all seven neighborhood commercial overlays as per § 1302.5, including newly added Georgia Avenue Overlay.
- Applies to Uptown Arts Overlay as per § 1901.6.
- Eighth Street overlay restricts to 50 % (§ 1309.4) and provides further limitations on Fast Food Restaurants.

Questions/Issues Identified by the Zoning Commission

As a part of the Zoning Commission Public meeting held on ***Monday December 8th, regarding ZC Case No. 08-06-5***, Commissioner Jeffries indicated that he found understanding the application of the use concentration provision onerous and confusing. The following is a list of questions and comments the Commission had at the hearing.

- How does one measure the 25 %; more particularly, how would a developer of new space know when they have reached the capacity of the provision when negotiating with potential tenants?
- Is 25 % the right number? Should this be revisited?
- If the application of the provision is confusing, and does not ensure its fulfillment, there may not be a need to have the provision at all.
- Requested that OP staff we review again to identify other tools that would seek to achieve the same goal, but that would do so in a simplified manner.

Discussion from the Retail Working Group

The following is a summary of key points developed as a result of discussions in the Retail Working Group. These points are ways which the provisions limiting retail uses could be improved through future review.

- Effective application and enforcement of the limitations requires that more effort be placed on keeping information related to types of uses and the associated area that they occupy, and the actual baseline standard for the restriction (i.e.: total linear frontage within a defined district.)

- How to deal fairly with applicants who are impacted by an application near the edge of a threshold is a key consideration. This could include situations where there is only a portion (5 %) of the restricted frontage available – but the desired frontage exceeds this amount. Possible solutions include:
    - The defined index could apply as a base-line only – not a strict standard. An applicant would therefore be able to occupy a space regardless of whether their proposed frontage or floor space can fit ***entirely*** within the allowable remaining index. For example, the remaining permitted frontage is 5 % and the applicant's proposed frontage would represent 7% of the entire permitted frontage. The applicant would still be permitted, as the general overall goal of effectively restricting a maximum concentration would be achieved, without being punitive.

    - Preliminary certification of space availability related to a concentration-restricted use issued by the Zoning Administrator prior to execution of a

leasing agreement. The certification would be valid for a certain time so as to not encumber the space with speculative inquiries.

- Restrictions on location and area would not apply to existing businesses that desire to expand the physical space of their existing businesses.

- Regular review of the use restrictions should be performed to evaluate the impact of the regulations toward intended goals. This could be accomplished through the establishment of sunset review language.

- Where review takes place, clear goals should be established (i.e.: reduced or maintained rental rates, balance of retail uses, vacancy rates, etc.). These criteria should form the basis of measuring the success of existing and any proposed use concentration restriction.

- Considerations should be given to regulating based on an area standard such as floor space as opposed to a linear standard.

Lessons Learned:

Through a review of the history of the application of this provision, the following key lessons have been learned:

- There needs to be a baseline established upon which a 25 % calculation will be made. How this baseline it to be measured (what is included) should be established in the coding and should be very clear.
- The definition of what uses are to be included in the assessment of the targeted uses needs to be explicit.
- The definition of the measurement method must be clear. What is or is not to be included in the measurement of the linear frontage of the defined use is important in the overall and relative assessment.
- The issue of vesting of rights must be acknowledged. When a use actually expires is essential for purposes of fair and effective application of the ordinance.
- Resources must be allocated to implementation and enforcement. The management of information, although simple in concept, requires programmatic time in order to become established and effective, and to be maintained. Under the current approach a running allocation of what uses qualify and do not would have to be maintained to provide accurate information.