

**TEXT AMENDMENT TO THE DISTRICT OF COLUMBIA ZONING REGULATIONS
ON NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICTS: LIMITATION FOR
EATING OR DRINKING ESTABLISHMENTS**

Delegated Action of the Executive Director

November 23, 2005

Pursuant to the Commission's delegation of authority adopted on August 6, 1999, I find that the proposed text amendment to provide uniform procedures for determining linear street frontage used by eating and drinking establishments in the Neighborhood Commercial Overlay District – Chapter 13 of the District of Columbia Zoning Regulations would not adversely affect the identified federal interests.

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The proposed text amendment adds language to the Neighborhood Commercial Overlay District, and specifically Section 1302.5 of the District of Columbia Zoning Regulations. This Section regulates restaurants, fast food restaurants, delicatessens, and similar eating and drinking establishments located on the ground floor of buildings within the overlay. The intent of Section 1302.5 as it currently exists is to limit these uses to no more than 25% of the linear street frontage of the building in which it is located. The goal of this text amendment is to clarify the terminology and provide uniform procedures for measuring that frontage. The District of Columbia Department of Consumer and Regulatory Affairs (DCRA), the agency responsible for the enforcement of the DC Zoning Regulations, originally proposed this amendment.

Currently, Section 1302.5 states that the frontage of ground floor eating and drinking establishments will be measured by the amount of linear square footage in which the use faces on a designated roadway. The proposed amendment would clarify this measurement by stating that the linear street footage of the roadway will be based upon the certified and recorded plats held by the Office of the Surveyor and verified through field observation. This essentially designates current District of Columbia Surveyor as the source of measurement for street frontage for these uses. The amendment also states that if a ground floor eating and drinking establishment is located on the corner of the building, then its frontage on both streets would be counted in calculating its compliance with the 25% standard. Whenever the measured linear street frontage devoted to existing eating or drinking establishment uses equals or exceeds the applicable percentage limitation, no new building permits would be issued under the proposed amendment.

The Office of Planning's (OP)'s Supplemental Report dated September 20, 2005 demonstrates treatment of citizen groups as partners and receptiveness to citizen input, and supports clarifications to the text proposed by the Cleveland Park Citizens' Association (CPCA) including addition of the definition of eating and drinking establishments proposed by CPAC with a change from "having" to "requiring" a current restaurant business license. OP agrees that the use of licenses as a means of understanding the use status of a business would alleviate the confusion over when a certificate of occupancy ceases to be valid.

Changes proposed by the CPCA reflect comments of Advisory Neighborhood Commission (ANC) 3C, and the Federation of Citizens Associations of the District of Columbia. ANC 6B requested further hearings on measurement versus special exceptions while moving ahead with procedural changes. Believing that neighborhoods are at a constant tipping point between when these establishments are allowed by special exception or by right, the Zoning Commission held a public hearing on September 26, 2005, on whether it would be preferable to no longer make the status of these uses dependent upon a measurement, but instead, designate whether the uses are permitted by right or through special exception approval with respect to each existing and proposed Neighborhood Commercial Overlay District. Following the September 26th public hearing, additional testimony was heard and the proposed action approved on November 14th.

It is my conclusion that this proposed zoning commission action would clarify and assist in the administration of the Neighborhood Commercial Overlay District without changing the intent of its regulations. I find no federal interest in this Zoning Commission action and therefore conclude that this proposed text amendment will not adversely affect the federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

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Executive Director