

March 14, 2002

Mr. Olutoye Bello, Acting Zoning Administrator
Building and Land Use Administration
D. C. Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 2000
Washington, D. C. 20002

Dear Mr. Bello:

Re: "Neighborhood Commercial Overlay Districts"

This is in response to the proposal for Operating Procedures for Implementing Title 11 DCMR Chapter 13, published in the D. C. Register dated February 8, 2002, which arrived late the following week. As proposed, the procedures exceed the authority of the Zoning Administrator and constitute an amendment to the Zoning Regulations.

As is acknowledged in the proposal, eating or drinking establishments in Neighborhood Commercial Overlay Districts (NCOD's) might already exceed the 25% limitation enacted on May 8, 1989, because of improperly issued permits or certificates. The proposal to retroactively convert unlawfully issued Certificates of Occupancy into "nonconforming" uses only exacerbates the impropriety of the earlier violation of regulations.

An accurate reading of the relevant sections of DCMR makes clear that this proposal confuses two very distinct land-use concepts. First, 12A DCMR §118.1.2 speaks of a nonconforming structure, typically covered by a CO for use as a commercial rental building. This CO, issued to the building owner, is entirely separate from the CO's for the businesses that are tenants in the building; these other CO's are issued to the owners of those businesses, and are governed by Title 11. Clearly 12A DCMR §118.1.2 provides that a new CO can be issued to a new owner of the building even though the building has become a nonconforming structure because of a change of zoning. This provision has no relation to the restricted uses in the NCOD's.

Separately, 11 DCMR §3203.1 establishes that a CO for a use cannot be transferred from one person to another ("...[N]o person shall use any structure ... until a certificate of occupancy has been issued to that person ...") and §3203.8 prevents a new CO from being issued to a subsequent business owner because of the requirement that the certificate of occupancy conform to the zoning provisions "in effect on the date the certificate is issued." Thus any certificate issued to an establishment that exceeded the 25% cap after May 8, 1989, is illegal and cannot be made legal by importing language from other land-use regulations.

Further, the proposal to limit the 25% cap to ground-floor store frontage only would undermine the very purpose of the overlay and is in no way justified by the NCOD language.

The Committee of 100 on the Federal City asks that the matter be referred to the Zoning Commission for its consideration and that the proposed procedures be set aside until the Commission decides how these illegal uses should be treated. The Commission should also consider rulemaking to clarify the limitations on the Zoning Administrator's authority for interpreting the provisions of the Zoning Regulations.

Sincerely,

Ann Hughes Hargrove, Chairman