

**REVISED TESTIMONY OF ANN HUGHES HARGROVE  
ON BEHALF OF  
THE COMMITTEE OF 100 ON THE FEDERAL CITY  
BEFORE THE  
ZONING COMMISSION OF THE DISTRICT OF COLUMBIA  
ON  
ZONING COMMISSION TEXT AMENDMENT CASE 01-33,  
“HIGH DENSITY RESIDENTIAL RETAIL OVERLAY DISTRICT**

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*Madame Chair and Commission Members, I am Chairman of the Committee of 100 and am pleased to testify on behalf of the Committee. The Committee has reviewed these proposals and authorized me to speak to the issues they pose.*

### **Summary recommendations**

- We believe the proposal should be dropped or at least shelved indefinitely. On the one hand, we see no evidence that it would either beneficially affect the residential zones involved or result in the improved provision of locally needed commercial services that now may be lacking. In fact, there is no finding put forward that locally available commercial service areas are lacking nearby in most of the areas currently mapped with R-5-C, R-5-D, and R-5-E zones. On the other hand, it would have substantially deleterious effects in many areas to which it could be applied.

- We do not believe that this overlay proposal would be an appropriate approach to achieving the newly stated administration objective of increasing the city’s population. Examination of this issues deserves considerable study of land-use options, including formulas for the creation of viable neighborhoods.

- We understand that the goal of providing neighborhood commercial services would be a complement to, or a part of, the goal of achieving greater residential density in the areas adjacent to Metro stations. To implement such a broad policy, an examination of the land uses and densities in the areas near Metro should be undertaken before assuming that an overlay of this sort would be as appropriate as some other type of zoning already available. In many instances, the areas near Metro in the inner city are already at substantial density and have local services—perhaps in need of improvement—nearby in mixed use or commercial zones. Of course, Metro is mapped in inner-city commercial areas, not residential areas.

- We believe that it is timely to undertake a review of the commercial and mixed-use zones to see how the very substantial changes wrought by amended zoning in the 1970’s and 1980’s have affected, or failed to affect, desired commercial uses and whether additional modification of these zones is appropriate (see Attachment 1).

- We believe that at a minimum good zoning practice, if not the law, was not followed with the R-5 case (ZC Case #91-10, ZC Orders 721 and 721-B) in that not only was there no analysis of land use implications of rezoning the existing R-5-C to R-5-D and the existing R-5-D to R-5-E, but no mapping cases were held before applying the new zones to the areas they were to cover. A single text case is sufficient, according to well-established past practice, when a zone’s text is modified but its mapping is left in place. However, in this case, new zoning categories were applied to areas to which they had, by definition, not previously applied, without the requisite mapping cases (i.e., R-5-C, where it was mapped, became R-5-D, and R-5-D became R-5-E, with changed characteristics). These were map changes, not text changes to an existing zone, and there was no rationale in the orders themselves to justify either the combining of these decisions on text and re-mapping or the appropriateness of the mapping decisions themselves. The underlying Zoning Act clearly distinguishes text cases

from map cases, and we believe the Zoning Commission, for good reason, has consistently respected this fundamental distinction. Map cases should have been advertised as such following the text change revisions to determine where the revised zoning categories should be mapped, which we believe the Zoning Act requires. In view of this, the city needs to take remedial action. Moreover, the remapped zones may not comport not only with their land use patterns but also with the overall thrust of the Comprehensive Plan map designations for many of these areas. Remedial action should take place first, before any additional proposals to modify these zones even further are considered.

- We find no text in the Comprehensive Plan that would in any way justify commercializing residential zoning, nor do we find a preponderance of eligible sites within the mere handful of possible areas where this proposed overlay zoning could be applied by virtue of the Comprehensive Plan mapping. This proposal should be postponed until and unless text amendments in the Comprehensive Plan would justify such a proposal and related map studies have been undertaken to be reflected in the Comprehensive Plan mapping.

- We urge that overlays in general be tailored to specific areas and not generalized as though they are traditional zoning categories in themselves. They should be proposed only after small area plans are developed, including a review of *both public and private* space, design standards, uses and densities and related zoning proposals and/or overlays are recommended.

## **A. Major problems presented by the overlay proposal**

***1. A parcel-by-parcel examination yields few if any areas where the proposed overlay is clearly needed or wanted. The current mapping of these R-5 areas is predominantly in the inner city in largely built-up areas. There is very little of it anywhere except in the built-up areas of Wards 1 and 2, and along the two avenues in Ward 3. The effects of this new zoning possibility will be largely felt in these areas where the underlying zoning is now, especially since there has been no discussion of extending the revised zoning to targeted areas elsewhere.*** Most of these presently mapped, built-up residential areas are considered by those who live in them as conservation areas rather than redevelopment areas. Most of these residential areas have locally available commercial uses nearby. We have found no supporters who desire the proposed overlay for their own neighborhoods in any of these built-up areas where the R-5 zones predominate, except some people in the West End, with whom others in the West End disagree, who wish assistance in their own neighborhood to achieve a supermarket and other needed local uses (uses which may be provided in any event through other proposals). Nor have we seen anything in the record about plotting R-5-D and R-5-E elsewhere in the city or supporters from other areas of the city requesting such an overlay for their neighborhoods. ***We are left with something of a puzzle: Where does OP think it is needed and should go? How will the order on this case be structured to justify this so-called “tool” without a clear mandate for these proposals as to need, implications for existing neighborhoods and new areas, relationship to the Comprehensive Plan, and possible application?***

***2. The proposal lacks sufficient back-up detail to enable us to review where, for what reason, and to what effect on existing neighborhoods this overlay should be applied in preference to existing zoning. Consequently it articulates no nexus between the overlay scheme and the overall planning goals for the District that it would be intended to help achieve.*** The purposes stated in the introductory section of the proposal are essentially a summary of the content of the proposal itself, not an explanation as to why in planning terms the proposal should be adopted or what it is expected to do in existing neighborhoods.

***3 While the proposal indicates that the R-5-D and R-5-E areas that would be eligible for this zoning at the present time would be those areas designated for a mixture of high-density residential and low-moderate density commercial uses in the Generalized Land Use Map of the Comprehensive Plan, it is nonetheless inconsistent with the Comprehensive Plan as to existing residential zones or any proposed newly created residential zones.*** Since there is no language in the Comprehensive Plan that suggests the conversion of

residential zones to a new mixed use zoning, and, in fact, there is ample language suggesting the protection of residential zones as residential zones, a proposal of this sort should await compelling text amendments to a revised Comprehensive Plan—a process now proceeding at a belated and glacial pace. ***Why would this proposal be considered by the Commission in advance to any directive text in the Comprehensive Plan suggesting the need for such conversion of any of the R-5 residential zones to mixed-use in the future? For this reason alone, the proposal is premature. Modification of both language and maps is necessary. So, why are we creating a “tool” that is not related to Comprehensive Plan land use policies for residential areas and which may not be considered favorably in any Comprehensive Plan modification in the future?***

***4. There are only a few supposedly eligible areas based on the Comprehensive Plan map, and it may well be that there are existing zone categories that might work for them after further study. With regard to the so-called eligible areas for re-mapping with this overlay currently entailed in the OP earlier report (Comprehensive Plan map), any suggestion that there is a groundswell of need based on these few examples alone is a stretch.*** The areas identified include such examples as the following:

— areas within the GWU University Campus Plan area, where this zoning may not be the most suitable choice in relation to the Campus Plan (nor, for that matter, do we believe that PUDS are suitable in campus plan areas);

- a site close to the Columbia Hospital site is already under construction;
- an area on Capitol Hill that is part of the area under the Architect of the Capitol’s Capitol Interest District Plan and not considered likely to be eligible;
- a residential apartment building surrounded by commercial uses in Columbia Heights on 14<sup>th</sup> Street that might well be suitable for several mixed-use or commercial options or left alone for now since it underwent fairly recent residential renovation and would presumably not meet the required tax assessment standard;
- an area within the Mount Vernon/NOMA area that should logically be part of a small area plan for the area;
- the area immediately across from the National Zoo entrance that is properly illustrated on the Comprehensive Plan map to fit its current zoning configuration—low scale commercial in front of the residential apartment house complex in the rear. (This design is, incidentally, a rather common pattern in the inner city—small scale commercial uses directly associated with a related apartment house complex.)

***5. The proposal would be applicable potentially—on a case by case basis not necessarily related to a small area plan—to areas that many feel are now unjustly and improperly zoned R-5-D and R-5-E as there was no provision for mapping cases following Zoning Commission Text Case #91-10 revisions of the R-5 zones. Zoning Commission Case #91-10 changed the mapped zoning categories of R-5-C and R-5-D to revised R-5-D and R-5-E zones respectively, irrespective of underlying land-use patterns and sound zoning practice of undertaking mapping cases when a zone is changed from one to another on a given parcel.*** This was a special irony since the genesis of that case was in proposals made in 1989 by the Committee of 100 on the Federal City in the 14<sup>th</sup> and U Street rezoning case and related cases.<sup>1</sup> There is now, as a result of Case #91-10, *de minimis* R-5-C zoning and extensive R-5-D zoning. The newly designated R-5-D zoning is unsuitable to many built-up areas because of the mismatch between fine buildings—low-rise apartment houses, rowhouses, detached and semi-detached houses of lower height and density--and the revised and newly mapped R-5-D zoning as a result of the R-5 case. Additionally, some areas that had been zoned R-5-C and contained fine old apartment houses at what would seem to be well-suited to the revised R-5-C zoning, were automatically rezoned R-5-D instead, a higher density and height unsuitable for them. Many of these mismatched areas are in historic districts or in areas now undergoing historic building surveys pursuant to possible historic district designation. ***While lip service is given to a nod from HPRB, why put in standards that are on their face at variance with these districts and***

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<sup>1</sup> Attachment 2 is an unbound copy of the Committee of 100 report minus its large map of the area involved. See especially pages 63-69.

*their facades, especially in view of the strong support given to preservation and protection of residential uses against commercial and institutional incursions in the Comprehensive Plan?*

**6. Many of the mismatched areas referred to above are illustrated on the Comprehensive Plan Land Use Map at lower density and height than presently zoned and should be re-zoned accordingly to be in compliance with the Comprehensive Plan map designations.** This would thereby limit the number of areas that should be considered in the future for mixed-use zoning. What this suggests is that, following additional land use studies, it could well be that there will need to be considerable adjustment of the mapped zoning areas prior to consideration of changes. We respectfully request OP to study these areas immediately and sponsor zoning cases to remedy the mismatch problem before proceeding with additional proposals on the same zones. ***Why create a tool that on its face is unnecessarily broader in application than is appropriate?***

**7. The overlay's provisions for commercial uses, FAR bonus and increased lot occupancy would allow commercial and residential density combinations that are not only similar to existing nearby lower density commercial districts but actually exceed them in respect of commercial density in some areas. In practical effect, the proposed overlay would threaten the stability of established residential neighborhoods by inducements to convert parts of them to commercial districts essentially indistinguishable from existing neighborhood commercial strips (except for in fact being more commercial), and by inducements for demolition and assaults on the architecture of fine, older buildings, both inside and out.** Destabilizing residential neighborhoods (and possibly nearby commercial areas) is at odds with objectives of the Comprehensive Plan to improve both residential and commercial neighborhoods and is a thoroughly bad idea any time: it is especially so at a time when the city has an informally stated policy of substantially increasing population. Moreover, apparently not having been based on a study of the current land use patterns, at least in the inner city, the proposal can be considered of limited benefit in terms of the additional FAR or lot occupancy, because the extent of non-conforming structures in the inner city is formidable, many of which have used up all if not more than that allowed by the zoning districts involved.

**8. The rigid standards for ground level retail or service uses, height of that story (15 feet), and large display windows are arbitrary and destructive architecturally for a residential zone overlay in built-up areas and equally arbitrary if proposed for many existing commercial districts.** They would have a particularly noxious effect on residential buildings slated for major renovation, which must comply with mandatory requirements for architectural changes and commercial uses (unless they have a certain amount of footage at the ground floor level devoted to residential usage prior and after renovation, or elect to do a less expensive renovation). And these standards would likely be at odds with appropriate renovation or new development in historic districts, historic landmarks, or areas undergoing study for potential historic district designation. This is a pointless disincentive to investment in the maintenance of residential properties where commercial conversion is inappropriate. One effect may be to crowd the headroom space of upper stories because of the mis-match of 15 feet ceiling on the ground floor and a 90-foot height limit.

**9. The overlay zone, by being applicable to particular "compact areas" within a zoning district, would encourage small lot commercial development, with attendant demolition, in residential areas, and entail a sort of legislated spot zoning and also induce a domino effect over the potentially eligible area.** This can be extremely damaging to the stability of existing residential neighborhoods, and should be actively discouraged—not invited. Once one such development is granted, it renders the remaining buildings in built-up areas vulnerable to change, whether they have been renovated or not. A basic tenet of zoning application is affording protection within a zone district against unwarranted change, especially by the threat of future unwarranted change built into the proposed regulations themselves.

**10. As originally written, the overlay proposal would allow expansion of certain institutional and additional commercial uses in hotels through the addition of the "permitted" local uses, thereby being in conflict with the current limitation on hotel expansion in residential zones, the Comprehensive Plan, and the**

*general proposition that any expansion of non-residential and institutional facilities in residential zones is undesirable. (This would include the addition of other uses to these facilities.)*

**11. The proposal lacks a grounding in any explanation as to why or how existing residential areas should be converted.** It lacks:

- proposed standards for proximity of desired local commercial uses to various types of residential land use patterns,
- long-term requirements for the continuation of specified uses eligible for bonuses (such as covenants running with the land),
- distinctions made between existing built-up areas, including historic districts and areas undergoing historic surveys, and those especially targeted for development or redevelopment,
- limitations on boundaries of areas involved to curb tendencies toward destabilization of residential areas, and
- provisions recognizing that local commercial uses may well require changing over time and with regard to particular locations, an especially troublesome problem in light of the fact that the bonuses are granted in the first place with reference to a list of possible uses from which choices can be made.

**12. The proposal lacks supporting data and analyses, specifically:**

- a thorough review of existing localized commercial areas in relation to surrounding residential areas;
- an area-by-area land-use study and analysis of potential effects for specific residential areas, where the zone may potentially be applied;
- a study of impact of extensive text and map changes made some twenty years ago
- an overview of possible text improvements that could be made for existing commercial zones and of where they should be mapped,
- a review of areas where small area plans should be developed that might include some refinements of uses and densities and utilize an overlay or modified zones,
- an analysis of the relationship between historic preservation and the arbitrary standards imposed for the ground floor, its window, and ceiling height (As suggested above such standards could well be at odds both with the architectural design of existing landmarks or contributing buildings in historic districts, and with standards of appropriateness for infill buildings in such areas. And they might be at odds with architectural integrity of residential areas not in historic districts as the standards connote commercialism in the architecture rather than residential design.)

## **B. Deleterious effects of proposed provisions making commercial use and other requirements in residential structures mandatory, optional or inapplicable**

**1. The arbitrary design standards would be applicable equally to new construction and renovation, without proper deference to the pre-renovation configuration, or historic survey or historic preservation status regarding facades and design (Sections 1315.11, -12, -13). (Please note that the design standards are directly at odds with existing historic preservation requirements for landmarks and contributing buildings in historic districts and cannot be ameliorated except by their removal since they would adversely affect facades.)**

**2. In certain types of uses and properties, the requirements apply only if the owner opts to have them apply, as with grandfathered hotels and certain other commercial or institutional uses, including museums, renovated buildings where the ground floor is mainly residential, and certain small lots, limiting the expansion to those on the “permitted” list. On the other hand, as a result of the provisions on mandatory**

and optional application as presently drafted, any apartment building in the overlay district that is considered for renovation, where the renovation exceeds the assessed value of the building, *must* comply unless both before and after the renovation at least 50% of the ground floor is residential—as already mentioned above. **One can only get around this requirement by reducing the scope of the investment, a punitive measure in the case of renovation of many all-residential buildings as residential.** Such arbitrary rules make it abundantly clear that this is to be a commercial zone.

3. **There are exemptions, including obvious ones (see Section 1315.5), but curiously not detached buildings with one or more added apartments or semi-detached buildings.** *Many neighborhoods have some of these dwellings in their midst, especially in the inner city where a variety of dwelling patterns co-exist in the same area. These structures contribute to the ambience and livability of the areas in which they are located, and their design is not suited to having their interiors and exteriors modified by virtue of these arbitrary standards. On the assumption that demolition would be the remedy to secure the full benefit of the development incentives, neighborhoods could lose this valuable asset by assembly and demolition in the expectation of receiving an overlay in the future to make investment in these properties especially profitable.*

4. **Commercial uses: the list includes many uses which may or may not be needed or desired in residential areas, thus failing to provide for the fine-tuning that would be possible under the usual non-floating overlay for specific areas or revised zoning.** We cannot imagine that the incentive is sufficient to provide for such low-yield uses as a cobbler’s shop, so it is disingenuous to suggest that such a use is more likely to be provided by this scheme in an expensive renovated building than in a neighboring commercial district, or that residents would want to give up their residential zoning to have such a use. Similarly, in areas where there are already a variety of alcohol-related establishments, there is no requirement for determining that more are needed, especially in what one might label as residential areas, or, for that matter, that certain other uses would be needed. *By allowing the market to decide the use from the list under this proposal, it is conceivable that uses, such as alcohol-related uses that bring a greater return than, say, a cobbler’s shop, will predominate in a residential area afflicted with the overlay. This outcome would not be in keeping with securing stable residential neighborhoods.*

5. **Skewing incentives and disincentives to sound development or rehabilitation investment in existing buildings through the requirement for renovation costing 100% of assessed value for eligibility is harmful.** *On the one hand, if there is a building or “compact area” as to which a convincing case can be made for commercial development, it should probably simply be given the requisite mixed-use commercial zoning under existing regulations, without regard to the cost of the renovation. On the other hand, many owners that find commercial uses inappropriate will be compelled to restrain investment in renovation for fear of triggering this scheme’s arbitrary requirements to install commercial uses.*

### **C. Deleterious effects of the proposed development incentives**

1. **The bonus of 1 additional permitted residential square foot beyond the maximum for every 1 square foot of commercial space, up to .5 FAR, or roughly half the square footage of the lot—represents a very substantial increase--translating into a substantially greater density than would normally be possible (see Sec. 1315.16).**

2. **A higher permitted lot occupancy of 80%, and the possibility of exceeding it for ground floor only by a special exception (12315.24) removes the protection of the limitations on lot occupancy for residential areas, destroying a fundamental zoning protection in the regulations for residential zones (1315.24) and removing open space normally afforded residential zones.** *There is no language in the Comprehensive Plan suggesting that loss of open space on residentially zoned lots is appropriate or desirable for residential zones, so this provision does not appear to be warranted for residential zones, especially since*

*the Zoning Act itself stipulates that it should “provide adequate light and air, ...prevent the undue concentration of population and the overcrowding of land”, etc. This proposal would lessen these fundamental protective standards embodied, some say inadequately, in the R-5 zones.*

3. Relaxation of parking requirements (1315.20) is controversial, especially in non-Metro areas, and such a policy is not reflected in the Comprehensive Plan.

4. A developer will be able to pack a great deal more economically productive space on the same lot, with few costly amenities like parking, at the expense of providing the amenities themselves for the residents. *No additional requirements, such as the loading and FAR limitation on banking and financial service uses, can offset the development incentives associated with the other uses and the diminution of basic residential standards.*

## **D. The possible piecemeal conversion of residential neighborhoods to mixed-use commercial areas**

1. *As already indicated, the proposed overlay would permit denser and higher commercial development than certain existing commercial zones, strengthening the tendency to commercialize the residential areas nearby and weakening the incentive for redevelopment or renovation in nearby commercial areas.* For example, the R-5-D zone has the same FAR and lot occupancy maximums as the C-2-B zone (3.5 FAR and 80% lot occupancy), but a 90-foot height compared with C-2-B’s 65-foot height limit. (There is an irony in the fact that the C-2-B was reduced from 90 feet to 65 feet by a text amendment at the request of the Adams Morgan ANC and other community organizations.) This proposed overlay zone, improperly labeled as residential, would also be substantially higher in height, lot occupancy and FAR than the commonly mapped C-2-A zone, which has a height limit of 50 feet, FAR of 2.5, and lot occupancy of 60%.

2. *Row dwellings and detached and semi-detached dwellings would be made vulnerable to displacement by commercial development.* Making these structures ineligible for incentives (1315.5(t)), is hardly a guard against destabilization when small *lots* are eligible at the owner’s option. *Section 1315.6 makes the scheme optionally available for projects on lots under 7000 feet or on interior lots with less than 50 feet of street frontage, providing a dangerous inducement for demolition of row dwellings and single-family houses, which as standing buildings would be exempt from this proposal.*

3. *Existing apartment buildings would be made vulnerable.* It is true that an owner would have the right to opt out for 100% renovation projects that have at least 50% residential use on the ground floor, which would appear to be a significant protection against mandatory disfigurement of, and commercial intrusion into, a certain number of the many large apartment buildings found in the R-5 districts. *But many of the architecturally finer and more elegant of these buildings characteristically have capacious lobbies or meeting rooms and other rooms not used as apartments on their ground floors and therefore would be vulnerable to developers who are not constrained by considerations of architectural integrity or neighborhood character.*

4. *Allowing expansion of commercial space in existing hotels and institutions, even if non-hotel related or institutional related, is still an expansion.* While the scheme for hotels, for example, would not allow expansion of sleeping rooms or function space, it could permit expanding the hotel’s space overall. If this is not the intention, the text needs to be changed.

5. *By allowing diminution of light, air, gardens, green space and architectural ambience, with an accompanying increase in noise related effects of commercial activities, much of the appeal of these residential neighborhoods and their livability would be diminished.*

## *Attachment 1*

### **Note on modification of commercial and mixed-use zones, 1979-1980's**

In 1979 and in the 1980's there were a series of cases involving the modification and creation of new commercial and mixed-use zones. All the commercial zones were redone, C-R and the Waterfront zones were created, SP was modified, and an adjustment was made (Article 54 case) to ensure that commercial uses could not expand beyond their stated FAR limit to the exclusion of the required residential component in order to protect the housing use that was, at least at that time, the basic structure for most of these zones. Also, the new device of overlays was created—somewhat modeled on the “special districts” in New York City--to refine the zoning in certain small areas to better control densities and uses, but always designed for particular areas as in accordance with planning guidelines as they are in NYC. Most, if not all, were folded into the Comprehensive Plan. They are a useful tool for dealing with specific areas thematically. And there was, and continues to be, considerable debate on the total amount and area amount of commercial needed or desired and how best to achieve desired mixes and uses. What does this tell us? That we should review the experience with the zones that were created as to their suitability for the present to provide the twin needs of diversity in commercial and sufficient housing opportunities.

One case, the 14<sup>th</sup> and U case, with which the Committee of 100 was associated, produced detailed land-use studies and argued that there should be an adjustment in the R-5 zones to provide protection for the many fine rowhouses and apartment houses of low to moderate density that predominate in large portions of, or completely, on block faces in the inner city. Unfortunately, the fruit of the decision in the case (ZC #91-10, Orders 721 and 721-B) that followed to simply change all parcels on the map that were R-5-C to R-5-D and all those that were R-5-D to R-5-E makes the current proposal, perhaps unwittingly, a further de-stabilization of a number of areas that should be more properly zoned in accordance with the revised R-5-C and R-5-D. This oversight should be corrected through cases that would recommend the appropriate zone for an existing desirable land use pattern or for one that is desired in a particular location.

***So, some questions about the present proposal: Why aren't we studying actual zoned mixed use and commercial areas? Why aren't we considering refinements to these zones? Why aren't we looking at the R-5-D and R-5-E areas as to whether they are properly mapped or whether some of them should be R-5-C or R-5-D respectively? Why aren't we undertaking small area planning studies of areas and developing either revised zones or overlays for them as necessary? Why aren't we determining how much commercial area land and in what configuration is needed in relation to existing residential areas, a pretty fundamental question? Why aren't we examining other techniques to provide missing uses and diversity of uses, including tax abatement? Why aren't we examining the potential effects on residential zoning itself by these proposals?***

***This proposal is premature.***