

STAFF RECOMMENDATION

Carlton Hart

NCPC File No. ZC 08-20



TEXT AMENDMENT FIREARM RETAIL SALES ESTABLISHMENTS

C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, C-5, C-M-1, C-M-2 and M Zone Districts
Washington, DC

Submitted by the Zoning Commission of the District of Columbia

February 26, 2009

Abstract

The Zoning Commission of the District of Columbia has taken a proposed action to approve a text amendment to allow firearm retail sales establishments in the C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, C-5, C-M-1, C-M-2 and M commercial and industrial zoning districts in Washington, D.C.

Commission Action Requested by Applicant

Approval of report to the Zoning Commission of the District of Columbia pursuant to 40 U.S.C. § 8724(a) and DC Code § 2-1006 (a).

Executive Director's Recommendation

The Commission:

Advises the Zoning Commission that the text amendment to allow firearm retail sales establishments in the C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, C-5, C-M-1, C-M-2 and M commercial and industrial zoning districts in Washington, D.C. would not be inconsistent with the Comprehensive Plan for the National Capital nor adversely affect any identified federal interests.

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BACKGROUND AND STAFF EVALUATION

DESCRIPTION

The District of Columbia Zoning Commission has referred a zoning text amendment to the Commission for review regarding consistency with the Comprehensive Plan and other identified federal interests.

On June 26, 2008, the Supreme Court of the United States decided in *District of Columbia v. Heller* that the 1973 District of Columbia law prohibiting possession of a handgun in a home violated the Second Amendment to the U.S. Constitution. Subsequently the District enacted revised laws regarding gun possession. In addition, the Zoning Commission on July 28, 2008 submitted a zoning text amendment specifying those locations in the District where firearm retail sales establishments would be allowed. The Zoning Commission determined that the text amendment was necessary because firearm retail sales establishments were not prohibited from any zone and thus could have been located anywhere in the District.

The July 2008 proposed text amendment allowed firearm retail sales establishments by special exception in high-density, commercial areas and prohibited them from locating within 600 feet of any residential district, special purpose district, church, school, library, or playground. An emergency rulemaking was approved on July 28, 2008 that allowed the proposed text amendment to take effect immediately and expire approximately 120 days later on November 25, 2008. The Office of Planning in their supplemental report dated November 14, 2008, stated that the initial text amendment was “largely based on the approval process in place for sexually oriented business establishments.”

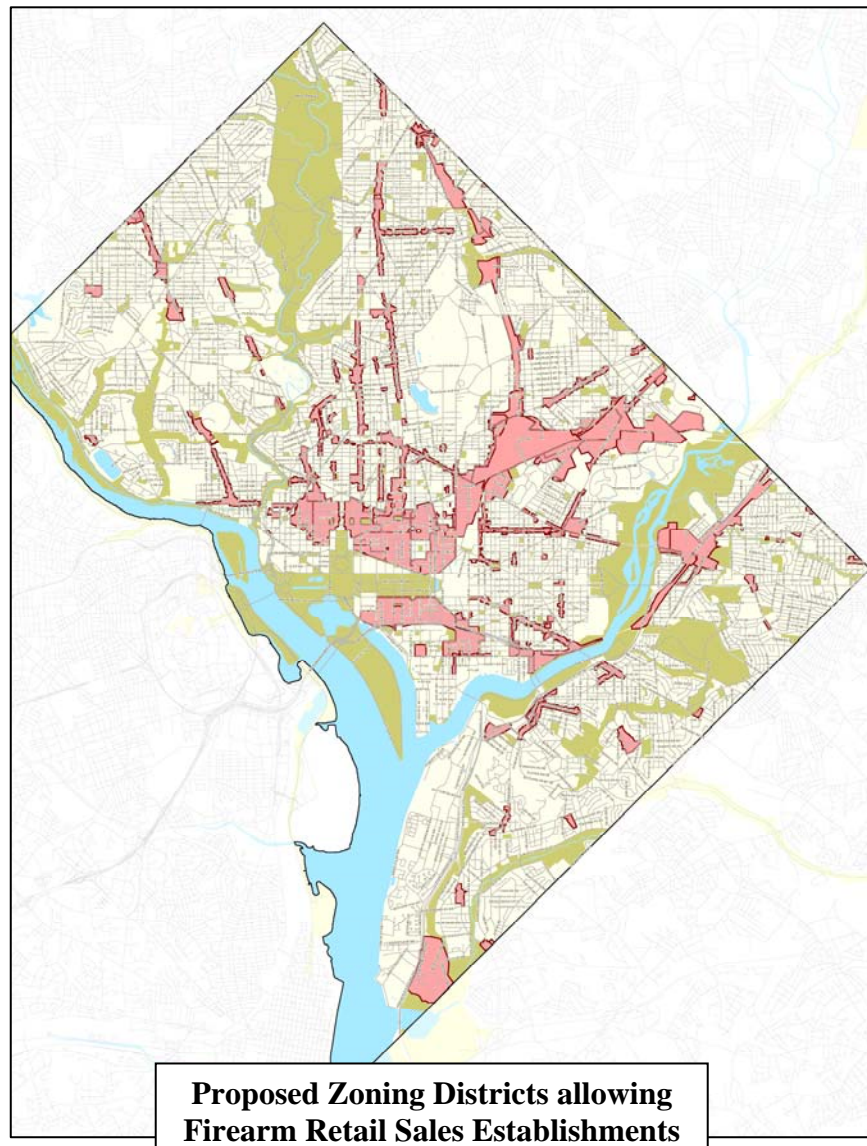
During the summer and fall the District of Columbia Office of Planning worked with the Office of the Attorney General (OAG) and the Metropolitan Police Department (MPD) to further refine the language of the proposed text amendment. The result was a new proposed text amendment that would increase the number of zoning districts where firearm retail sales establishments would be allowed and would make them a matter-of-right use in these zones. Because the Office of Planning submitted the new text in mid-November 2008, the deadline for the emergency rulemaking was extended to March 20, 2009. The Zoning Commission held a public hearing and took a proposed action to approve the proposed text amendment on February 26, 2009.

OFFICE OF PLANNING – SUPPLEMENTAL REPORT

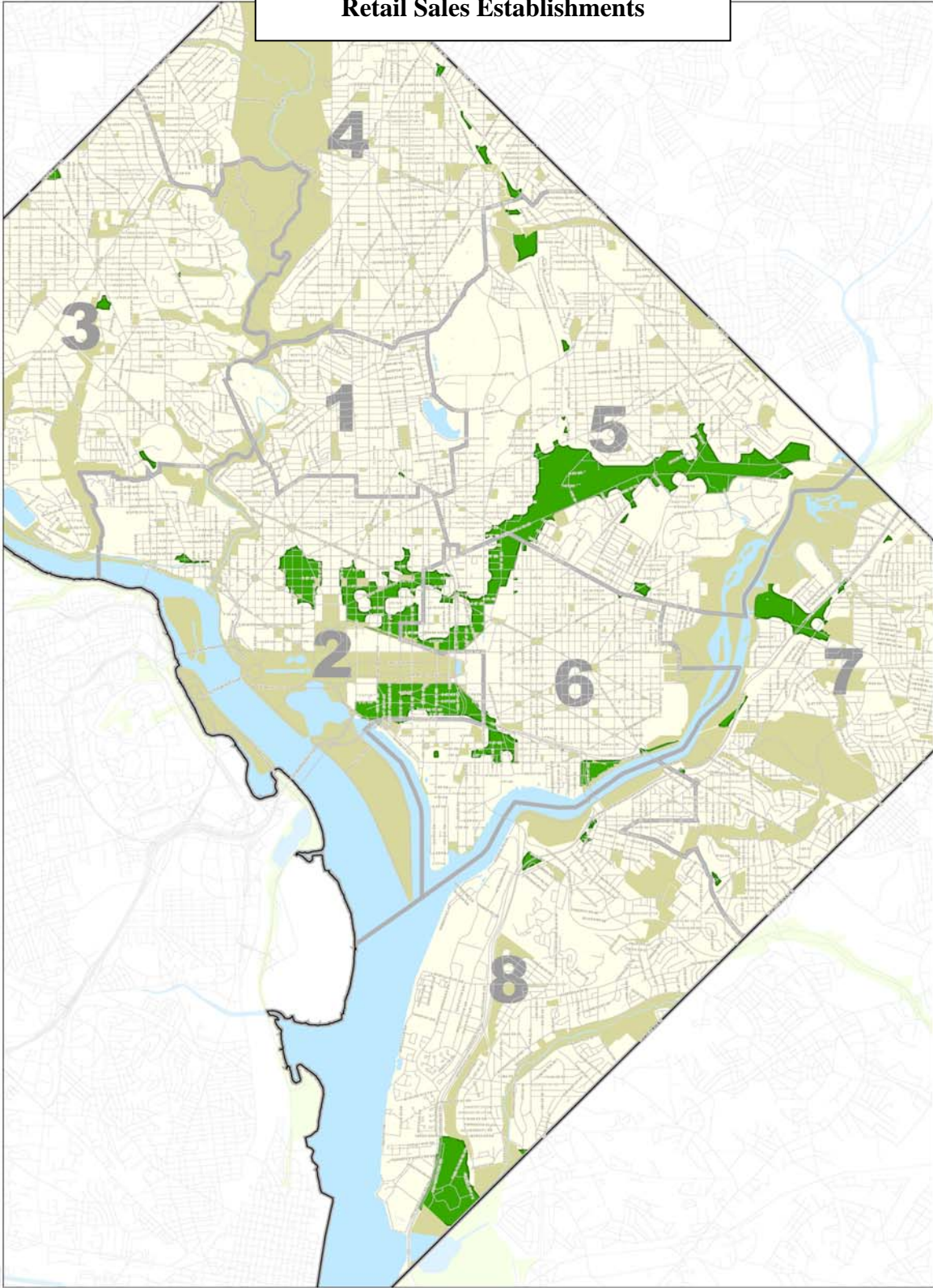
The Office of Planning submitted a supplemental public hearing report, dated November 14, 2008, which refined the initial text amendment (July 28, 2008) based on input from the OAG and the MPD and recommended approval of the current text amendment included in this report. In summary, the Office of Planning report recommends the following as the proposed text amendment:

- Amend the Zoning Regulations, Chapter I Definitions by adding the following definitions:
 - *Firearm: a gun or pistol, or any weapon capable of firing a projectile and using an explosive charge as a propellant.*

- *Firearm retail sales establishment: an establishment engaged in the sale, lease, or purchase of firearms or ammunition. If an establishment is a firearm retail sales establishment as defined here, it shall not be deemed to constitute any other use permitted under the authority of this title.*
- Add firearm retail sales establishment to the prohibited uses to the R-1 district zoning under 203.9, Home Occupation.
- Permit firearm retail sales establishments in the following zoning districts: C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, C-5, C-M-1, C-M-2 and M. An additional change is to allow these uses as a matter-of-right and not by special exception. A map reflecting this proposed change is shown below.
- Reduce the restricted area within allowable zone districts from 600 feet to 300 feet from any school, library, church, playground, or residential district. The map on the next page shows the result of these restrictions.
- Prohibit firearm retail sales establishments as a principal or accessory use in the Special Purpose, Mixed Use Commercial-Residential and Waterfront Districts.



**Proposed Locations Allowing Firearm
Retail Sales Establishments**



The proposed text amendment submitted by the Office of Planning on November 14, 2008 is as follows:

1. Amend Chapter 1 Definitions §199 by adding the following definitions:

Firearm: a gun, pistol, or any weapon capable of firing a projectile and using an explosive charge as a propellant.

Firearms retail sales establishment: an establishment engaged in the sale, lease, or purchase of firearms or ammunition. If an establishment is a firearms retail sales establishment as defined here, it shall not be deemed to constitute any other use permitted under the authority of this title.

2. Amend Chapter 2 R-1 Residence District Use Regulations §203.9 (Home Occupation) by adding the following as a prohibited use:

(c) Firearms retail sales establishment.

3. Amend Chapter 5 Special Purpose Districts §502.7 Accessory Uses as follows:

502.7 Any other accessory use and accessory building customarily incidental to the uses otherwise authorized by this chapter shall be permitted in an SP District, **except that a firearms retail sales establishment shall not be permitted.**

4. Amend Chapter 6 Mixed Use (Commercial Residential) District §602 Prohibited Uses by adding the following:

602.1 (r) Firearms retail sales establishments as a principal or accessory use.

5. Amend Chapter 7 Commercial (C) District §702.4 C-1 Accessory Uses as follows:

702.4 Other accessory uses customarily incidental and subordinate to the uses permitted in C-1 Districts shall be permitted in a C-1 District, **except that a firearms retail sales establishment shall not be permitted as an accessory use.**

6. Amend Chapter 7 Commercial (C) District § 721 Uses As of Right (C2), by adding the following subsection:

721.3 (u) (Firearms retail sales establishments, provided:

- i. No portion of the establishment shall be located within three hundred feet (300 ft.) of a Residence (R) or Special Purpose (SP) District.**
- ii. No portion of the establishment shall be located within three hundred feet (300 ft.) of a church, school, library, or playground.**

7. Amend Chapter 9 Waterfront Districts §901.2 Uses as a Matter of Right (W) as follows:

901.2 Accessory use (including parking), building, or structure customarily incidental and subordinate to the principal uses permitted in § 901.1 shall be permitted in a Waterfront District as a matter of right, **except that a firearms retail sales establishment shall not be permitted as an accessory use.**

8. Amend Chapter 9 Waterfront Districts §902.1 Prohibited Uses as follows:

902.1 (r) Firearms Retail Sales Establishment.

Along with consulting other District agencies, the Office of Planning conducted a best-practice, nationwide review of Minneapolis, New Haven, Philadelphia, Pittsburgh, Baltimore, Culver City, Denver and Detroit regarding the location of these uses. The following tables summarize this research:

Table 1 – Cities Currently Regulating Gun Sales in their Zoning Regulations

| Best Practice City/County | Minimum Distance Requirement | Conditional Approval Required? | Districts in which use is allowed | Notes |
|---------------------------|--|--------------------------------|--|--|
| Baltimore, MD | 100 yards from the boundary line of a park, religious institution, educational institution, public building, or other place of public assembly | Yes | B-2 (Community Business) B-3 (Community Commercial) B-4 (Central Business) B-5 (Central Commercial) | Defines firearms sales and ammunition sales separately |
| Culver City, CA | 1,000' from all other establishments that offer firearms for sale, and from parks, playgrounds, and primary and/or secondary schools. | No | n/a | n/a |
| Denver, CO | n/a | Yes/No | Permitted as-of-right in the B-4, B-8, MS, CMU, and TMU districts; Conditional use permit required for the B-8-A and B-8-G districts | Firearms sales classified as "special" retail which consists of uses thought to have an impact on surrounding neighborhood in terms of noise, pollution, traffic, or the type of goods sold Gun sales are also allowed as accessory uses in sporting goods stores |
| Detroit, MI | No minimum distance for gun stores but a 500' distance is required between firing ranges and residentially zoned land | Yes | B3, B4, B5 and B6 commercial zones M1, M2, M3, and M4 industrial zones Planned Development Districts | Firing ranges are allowed in the B3, B4, B5 and B6 commercial zones, M5 industrial zones, and Planned Development Districts as conditional uses. The minimum 500' distance required from residentially zoned land may be waived if 2/3 of the population w/in 500' signs a petition. |

| Best Practice City/County | Minimum Distance Requirement | Conditional Approval Required? | Districts in which use is allowed | Notes |
|---------------------------|--|--|--|--|
| Minneapolis, MN | 250' from office/residential; 500' from "protected uses" (schools, churches, parks, etc...) | Yes | C4, General Commercial District B4C, Downtown Commercial District | Firing ranges prohibited Has already withstood legal appeal |
| New Haven, CT | 1,500' from another similar use; 500' from the property line of any public or private elementary or secondary school, residential district, and predominantly residential Planned Development | Yes | BD (Central Business) BD-1 (Central Business/Residential) BE (Wholesale and Distribution), IL (Light Industry) IH (Heavy Industry) | The zoning regulations specify additional considerations for the board of zoning appeals including the following: (1) Secure storage and display areas, including a security system. (2) Security door or window grates. (3) Exterior lighting or site fencing. (4) Limited site access during non-business hours by means of fences, chains, or means specified by the board. |
| Philadelphia, PA | 1,000' from other "regulated" or similar uses or commercial entertainment districts; and 500' from residential or residentially-related uses (e.g., churches, schools, playgrounds, etc...) | Yes –for all districts except C6 Commercial and the most intense industrial district | Allowed as of right in the C6 Commercial and "least restrictive" industrial district | "Regulated uses" are those deemed to cause blight in an area. Examples include adult video/book stores, pawn shops, check cashing/payday loan stores, and prisons. All have the same locational restrictions. |
| Pittsburgh, PA | 500' from: (1) Elementary or secondary school; (2) Public playground; (3) Public or non-profit operated recreation center; (4) Drug or alcohol rehabilitation center; (5) Church, synagogue, or temple; (6) Gaming enterprise. | Yes | NDI (Neighborhood Industrial), UNC (Urban Neighborhood Commercial), HC (Highway Commercial), GI (General Industrial), UI (Urban Industrial), GT (Golden Triangle), and DR (Downtown Riverfront) Districts | Also requires adequate security measures |

STAFF ANALYSIS

Executive Summary

The proposed action establishes selected areas within commercial and industrial zones as the allowed locations for firearm retail sales establishments in the District of Columbia. NCPC staff identifies the federal interests for this case as the Comprehensive Plan, the proximity of this permitted land use to federal facilities in the District and whether this use is allowed under the Pennsylvania Avenue Plan.

Staff finds that no identified federal interest would be adversely affected and recommends advising the Zoning Commission that this proposed text amendment would not adversely affect any identified federal interest. This recommendation is based on the following: a review of the Office of Planning reports on this project, consultations with various federal agencies, and a review of the Comprehensive Plan and other applicable plans that may be affected including the Pennsylvania Avenue Plan of 1974.

Office of Planning Report

The Office of Planning Supplemental Report is a thorough review of the local concerns in determining the location of this use in the District of Columbia. This report takes into account additional information learned since the initial text amendment was proposed in July 2008 and proposes certain refinement or changes.

The refinements or changes to the text amendment suggested by the Office of Planning in their November 14, 2008 report were intended to:

- allow these uses in medium and high density commercial zones as well as industrial zones, while protecting the existing residential neighborhoods and other specialty zones
- decrease duplicative processes unintentionally created by the initial text amendment
- better align the District's process of dealing with this specialty land use with the procedures of other cities nationally

The District states that it chose the C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, C-5 commercial zoning districts because they are medium- and high-density zoning development districts. These zones are also intended as the citywide or regional shopping and office districts. The only commercial zoning districts not chosen were the C-1 commercial zones; they were not chosen because these zoning districts are intended as neighborhood shopping districts that provide "convenient retail and personal service establishments for the day-to-day needs of a small area." (§700.1, D.C. Zoning Regulations) Therefore, the Office of Planning determined that this use should not be allowed in the C-1 zoning districts.

The Metropolitan Police Department and the Alcohol, Tobacco, Firearms and Explosives Bureau both address neighborhood safety and security concerns as part of their comprehensive licensing and registration procedures. The Office of Planning determined that there is no added benefit to require a special permitting step, as was initially proposed, because of these comprehensive licensing and registration procedures already in place. The Office of Planning recommends that

firearm retail sales establishments should be a matter-of-right use. Staff identifies no federal interest adversely affected by this decision.

Finally, the Office of Planning conducted a national review of best practices from other cities regarding firearm retail sales establishments. While the review found that the regulations varied from one city to the next, generally the greater the permitting process the less restrictive the zoning regulations and vice versa. The Office of Planning report states that the 300-foot buffer was selected because it was seen as being less prohibitive than the 600-foot buffer initially proposed, while balancing the need to reduce the potential adverse impacts on safety and security this land use could have on nearby residential areas. Staff identifies no federal interest adversely affected by this decision.

Federal Agency Coordination

The federal government owns many buildings and has a significant presence in Washington, DC. In determining whether this proposed text amendment would have an adverse impact on federal buildings or campuses in the District, or on any other federal interest, staff contacted several agencies including: the District field office of the Federal Bureau of Investigation; the Office of the White House; the Department of Justice; the General Services Administration; the Federal Protective Service; the Secret Service; and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Each agency noted that it had no objection to a finding that the proposed zoning amendment had no adverse effect on the federal interest. .

Comprehensive Plan for the National Capital

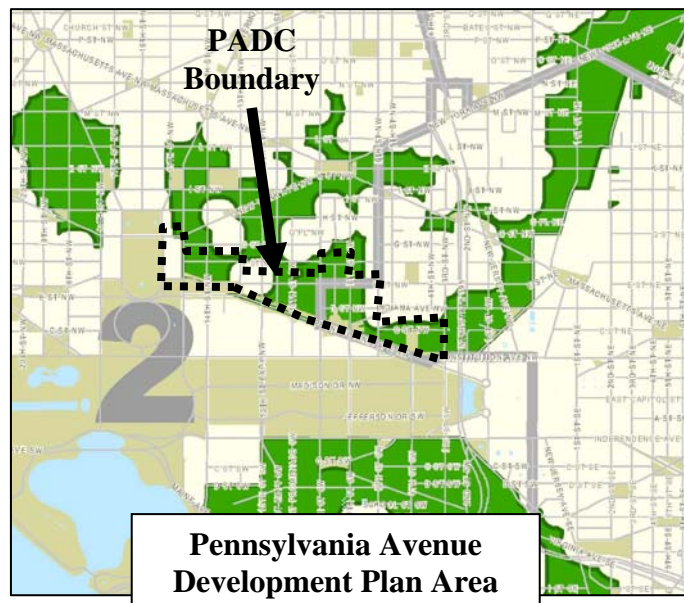
The Comprehensive Plan for the National Capital is a broad planning document that includes general land use designations that determine what is permissible in certain areas, such as commercial, retail, residential, etc. Specific land use concerns, such as firearm retail sales establishments, are intended to be addressed locally in the District Elements of the Comprehensive Plan, the District of Columbia Zoning regulations and through the permitting process.

Pennsylvania Avenue Plan of 1974

The Pennsylvania Avenue Plan, which is in both the C-4 and C-5 zoning districts, was intended to “provide for the development of Pennsylvania Avenue as a vital part of downtown Washington, as the symbolic ceremonial way between the Capitol and the White House and as a link between the governmental city and the private city.” Initially, the Pennsylvania Avenue Development Corporation (PADC) was in charge of enforcing and implementing this plan, but in 1996 the PADC was dissolved and the responsibility for the plan was transferred jointly to the National Capital Planning Commission, the General Services Administration, and the National Park Service.

There were a number of objectives of this planning area (shown in the dotted lines on the map on this page):

- Reinforce the Avenue's unique role as the physical link between the White House and the Capitol.
- Making the Avenue function as a bridge and not a barrier.
- Transforming the Avenue into an attractive and pleasant place for residents and visitors alike.
- Provide a mixture of commercial and cultural activities along the Avenue that will attract a wide variety of people and stimulate street life.
- Bringing people back to live along the Avenue
- Introducing, on currently under-utilized land, new buildings, representative of the best contemporary architectural and planning concepts.
- Maintaining a sense of historic continuity and evolution by preserving buildings representative of different eras and styles.
- Bringing new economic life to the Avenue while reinforcing existing activity both on the Avenue and adjacent downtown area.
- Reduce hardships to existing businesses by staging development carefully and by providing effective relocation benefits.
- Insuring minority businesses and workers benefit as well.
- Enhancing the city's tax base.
- Structuring an overall development program that can be implemented in a timely fashion.



While this plan includes a detailed exploration for development on each Square located within its boundary with respect to bulk, mass and height, the plan discusses appropriate land use in very general terms such as the need for retail, commercial, residential and public space.

The C-5 zoning district, which is only in the Pennsylvania Avenue Development Plan (PAD) area, was established to promote and protect the public health, safety and general welfare and amenities in the area adjacent to the north side of Pennsylvania Avenue, NW between 10th Street and 15 Street, NW. The C-4 zoning district was established to guide development in the central business district for the District of Columbia. Certain uses, such as sexually oriented businesses, are identified and allowed under the C-4 and C-5 special exception process. Since the regulations governing firearm retail sales establishments are being established through this proposed text amendment, they are not included in the current Zoning Regulations and were not discussed in the Pennsylvania Avenue Plan.

For these reasons staff finds that the proposed text amendment would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital and would not adversely affect any identified federal interest. Therefore, the Commission **advises** the Zoning Commission that the text amendment to allow firearm retail sales establishments in the C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, C-5, C-M-1, C-M-2 and M commercial and industrial zoning districts in Washington, D.C. would not be inconsistent with the Comprehensive Plan for the National Capital nor adversely affect any identified federal interests.