

Comments on 11/13/02 Draft LUC "Big Box" Amendment.

These comments, in outline form, are an attempt to explain the intent of the draft Large Retail Establishment (LRE) amendment, for someone who has neither attended the Big Box Subcommittee (BBSC) meetings nor followed otherwise the evolution of the draft.

A. *General aims.*

1. *Optimally accomodate interests of all affected parties:*

a. *Owners and residents of adjacent properties.*

- maximal mitigation of negative impacts from all development on the adjacent commercial site.
- participation in pre- and post-approval processes.
- clear standards.
- predictable approval procedure.

b. *Owner and developer of the LRE site.*

- timely and predictable approval procedure.
- clear standards.
- standards adaptable in order to accommodate differences between sites and to allow redevelopment.
- minimal mitigation.

c. *Community:*

- mitigation of effects of development on infrastructure.
- promote economic health of the community.
- enhance the aesthetics of the City.

2. *Resolution of the following particularly refractory issues by compromise, to obtain an amendment that is balanced and advantageous for all parties.*

- food sales limitation.
- whole site applicability.
- relaxation of performance standards.
- levels at which certain performance standards set.

B. Implementation.

1. Zones.

- 2.5.1, etc.
- LRE allowed in C-2 and less restrictive zones (C-3, MU, OCR, and I).
LRE not allowed in C-1 or other zones more restrictive than C-2.

2. Purpose statement.

- 3.5.9.7.A. Purpose.
- A careful statement of the aims of the amendment. The aims are implemented through the performance criteria and approval procedures. The statement is intended as a guide for the applicant and neighbors, and in particular for the Zoning Examiner during the review process.

3. Permitted use and Type IV Administrative approval procedures.

- 3.5.9.7.B. LRE - Permitted Use.
3.5.9.7.C. LRE - Type IV Administrative ...
- If a site is far from residential and not adjacent to historic property, development is encouraged by timely and minimally intensive review procedures and by minimally restrictive performance criteria, consisting of design standards with essentially no required mitigation of impacts on adjacent property.

4. Type V Administrative approval procedure.

- 3.5.9.7.D. LRE - Type V Administrative ...
- If a site is near residential or historic property, there is intensive review (Zoning Examiner decision after hearing) and restrictive performance criteria, balanced by the explicit intent to modify the criteria on a site-by-site basis.
- The Type V Administrative procedure (Zoning Examiner decision) replaces the Type III Legislative procedure (Mayor and Council decision) of the current 1999 ordinance. Appeal of a Zoning Examiner decision goes to the Mayor and Council. A Zoning Examiner decision is expected to be more timely and, being outside the political process, more predictable.

5. Standards.

- 3.5.9.7.D.1. Site Design and Relationship ...
3.5.9.7.D.2. Aesthetic Character of Buildings.
- The 20 or more performance criteria were constructed with the intent of making the purpose clear (aim of mitigation stated or implicit in the standard) and the implementation reasonable for the developer.
- The standards are set at a high level to mitigate near-worst-case impacts of development on adjacent residential.

- The standards are equally or more restrictive compared with those of the current 1999 ordinance:
 - more specific, more comprehensive, and greater setbacks;
 - similar landscape and screen wall buffers;
 - slightly more restrictive hours;
 - more restrictive noise, light, and traffic limits;
 - more specific and workable architectural and site-design standards;
 - various standards not in the current ordinance:
 - grade differentials;
 - neighborhood meetings;
 - post-approval monitoring.

6. *All-site application of standards.*

- 3.5.9.7.D.1. Site Design and Relationship ...

"The performance criteria of this Section shall apply to all structures and uses at the site, except where criteria are explicitly specified as applying only to Large Retail Establishments or only to non-Large Retail Establishment structures and uses."

- All-site application of setbacks and large setbacks are viewed by neighborhoods as the the most secure and permanent mitigation of development impacts, even though setbacks may not be the best mitigation.
- The current ordinance was intended at the time of its approval by the Mayor and Council to be all-site applicable. Subsequently, the Planning Department and County Attorney have determined that the current ordinance does not apply to non-LRE buildings and uses at an LRE site.

7. *Adaptation of standards to a specific site.*

- 3.5.9.7.D. [preamble statement, 2nd paragraph].

"A Large Retail Establishment proposal on a specific site may require more or less stringent criteria to achieve the purpose of the performance criteria. The Zoning Examiner may approve modifications to the performance criteria and/or alternative means of substantially achieving the purpose of the performance criteria, based on evidence in the record."

- The standards are to be adapted to the requirements of a specific site, and certain considerations are to be addressed by the Zoning Examiner in deciding on the appropriateness of a proposed modification.
- Adaptation of standards goes hand-in-hand with the high level of the baseline standards, one complementing the other.
- Adaptation of standards serves to encourage redevelopment.
- Pre-application discussion, or even negotiation, between developer and neighbors is an essential part of the procedure for relaxation of standards. Neighborhoods differ in what they view as most desirable with regard to

mitigations and compromises.

8. *Combination of Retail with Food and Beverage Sales.*

- The draft amendment does not have the limitation on food sales of the current 1999 ordinance.
- Various groups — developers, neighbors, and others — have an interest in the food-sales restriction. There is wide disagreement among them on whether the restriction should be retained and on the reasons for retaining or removing it.
- A majority of the BBSC voted to remove the restriction and to recommend remanding the matter to the Mayor and Council.
- Removal of the restriction is part of the compromise of the draft amendment that balances the interests of developers, neighbors, and others.

9. *Neighborhood participation.*

- 3.5.9.7.D.1.n. Neighborhood Meetings.
3.5.9.7.D.1.f. Monitoring Operations of the Site.
3.5.9.7.D.1.o.2. Special Submittal Requirements.
- The pre-application meetings of developer with neighbors are more structured. Summaries of the meetings are to be distributed to participants and are to be submitted with the application.
- After approval of an application, an "Ongoing Committee" is established by the DSD Director to monitor post-approval operations. The committee is modeled on that of the El Con agreement. Records are to be kept of the meetings and of reported violations.
- Although cooperation between developer and neighbors cannot be forced, the draft amendment shows it is expected.

10. *Aesthetic character, and related sections.*

- 3.5.9.7.D.1.g. Pedestrian Flows.
3.5.9.7.D.1.h. Site Amenities.
3.5.9.7.D.1.m. Walls.
- 3.5.9.7.D.2. Aesthetic Character of Buildings.
- Similar in scope to sections of the current 1999 ordinance, but more specific and workable.

11. *DRB.*

- 3.5.9.7.D.3. Development Review Board (DRB).
- The role of the DRB is reduced in scope and made specific.

C. Background.

1. The following URLs give background information:

<http://urban-issues.com/Current-Events/bbbsc-records/bbcompdraft-compare.pdf>
Outline of the Draft Land Use Code Amendment
and Comparison with Current 1999 Big Box Ordinance
(pdf file; JAR):

<http://urban-issues.com/Current-Events/bbbsc-records/bbcompdraft-comment.pdf>
Comments in Outline Form on the Intent and Structure of the Draft
Amendment
(this file)
(pdf file; JAR):

<http://urban-issues.com/Current-Events/bbbsc-records/pc120402lucbbb.pdf>
Comparison of the Draft Amendment with Current 1999 Big Box
Ordinance
(pdf file; Planning Dept.):

<http://urban-issues.com/Current-Events/bbbsc-records/bbcompdraft.pdf>
Draft Land Use Code Amendment of 11/13/02
(Draft Revision of Big Box Ordinance)
(pdf file; Planning Dept.):

<http://urban-issues.com/Current-Events/bbbsc-records/pc1gretssa.pdf>
Current Big Box Ordinance of 9/27/99, Amended 1/29/2002
(pdf file; Planning Dept.):

<http://urban-issues.com/Current-Events/bbbsc-records/frankbangs-summary-100102.DOC>
Big Box Revisions; Framework for Compromise, 10/1/02
(DOC file; FB):

<http://urban-issues.com/Current-Events/bbbsc-records/101502min.pdf>
Minutes of the 10/15/02 BBSC meeting
(pdf file; Planning Dept.):

<http://urban-issues.com/Current-Events/bbbsc-records/102202min.pdf>
Minutes of the 10/22/02 BBSC meeting
(pdf file; Planning Dept.):

<http://urban-issues.com/Current-Events/bbbsc-records/102902min.pdf>
Minutes of the 10/29/02 BBSC meeting
(pdf file; Planning Dept.):