

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 632-A Case No. 87-7 (Uptown Arts Overlay District II & III) October 19, 1992

By Z.C. Order No. 632 dated November 13, 1989, the Zoning Commission for the District of Columbia adopted amendments to the text of the District of Columbia Municipal Regulations (DCMR) and the Zoning Map of the District of Columbia. The amendments created and mapped the "Uptown Arts Overlay District."

The purposes of the Uptown Arts Overlay District were to eliminate inconsistencies between the Zoning Regulations that govern the 14th and U Streets areas and the Comprehensive Plan for the National Capital; to encourage the continuation of on-going commercial and cultural restoration and revitalization of the two corridors; and to protect the adjacent residential areas, including the Logan Circle, Shaw, and Dupont East neighborhoods.

On December 11, 1989 at its regular monthly meeting, the Zoning Commission determined that there were several text and map amendment issues that it could not resolve in the process that resulted in the adoption of Z.C. Order No. 632. The Commission consequently, initiated action to consider the adoption of an Office of Planning (OP) follow-up proposal; e.g., "Uptown Arts Overlay District II."

On February 23, 1990, Z.C. Order No. 632 become final and effective. After that date, counsel for the Harrison Group, owners of property in Square 2882 that Z.C. Order 632 had rezoned from C-M-1 to R-5-B, challenged the validity of that rezoning. The Executive Director of the Zoning Secretariat reported to the Commission that the required public hearing notice had not been given of a proposed rezoning to R-5-B, and that the same deficiency also applied to the rezoning to R-5-D of Lots 785 through 792, and Lot 869 in Square 2873.

The Commission was also informed by the Executive Director that it appeared that the premise for retention of industrial zoning in a portion of Square 358 was no longer viable. The Commission had been persuaded to retain C-M-1 zoning for certain lots in Square 358 to accommodate a particular proposed use. The Executive Director reported to the Commission that the particular use had been abandoned by the proposed occupant. Accordingly, the Commission decided to hold a hearing to consider rezoning the lots consistent with the remainder of that square.

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On July 8, 1990 at its regular monthly meeting, the Zoning Commission authorized a public hearing for the second follow-up proposal in this case; e.g., "Uptown Arts Overlay District III."

A notice of public hearing for the Uptown Arts II proposal was published in the D.C. Register on February 23, 1990 (37 DCR 1384). A notice of public hearing for the Uptown Arts III proposal was published in the D.C. Register on September 7, 1990 (37 DCR 5885) and corrected as published on September 21, 1990 (37 DCR 6126).

The Uptown Arts Overlay District II proposal included the following amendments to the Zoning Regulations and Map:

1. Add a new provision to provide for the sharing of parking by uses that are primarily active during different times of the day;
2. Adopt a limit on the number of eating and drinking establishments within the ARTS Overlay District;
3. Require a portion of the residential or hotel component of a combined lot development to be provided concurrently with the related commercial development;
4. Establish height and bulk guidelines for Planned Unit Developments in the ARTS Overlay District;
5. Apply the driveway limitation of 11 DCMR 1903.2 to 7th Street;
6. Establish a process by which preferred uses existing before February 23, 1990 could earn bonuses;
7. Establish a time period for use of a surface parking lot devoted to transient parking;
8. Allow bonus FAR to be transferred to any lot in the ARTS Overlay District;
9. Adopt definitions that would apply to Chapter 19, including transient parking, below-market housing, department store, and gross leasable area;
10. Rezone to R-5-B or C-2-B the lots or parts thereof that are now zoned C-M-2 in Squares 2660, 2661, and 2868; and
11. Rezone to R-5-B the lots or parts thereof that are now zoned C-M-1 in Squares 330 and 2872.

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The Uptown Arts Overlay District III proposal included the following amendments to the Zoning Regulations and Map:

1. Adopt definitions that would apply to Title 11, including art center and legitimate theater;
2. Rezone to C-2-B/Arts all lots that are now zoned C-2-A/Arts in Squares 237, 274, 305 and 333;
3. Consider placing every lot in Square 2882 in the C-M-1, C-2-A, C-2-B, CR, or the R-4 zone district or in any R-5-A through R-5-D zone district;
4. Consider placing lots 785-792, and 859 in Square 2873 in the C-M-1, C-2-A, C-2-B, CR as R-4 zone district;
5. Rezone to C-2-B/Arts all lots or portions thereof that are now zoned C-M-1 in Square 358.

On April 5, 1990 and October 22, 1990, the Zoning Commission held public hearings to consider the Uptown Arts II and III proposals, respectively. The public hearings were conducted in accordance with the provisions of 11 DCMR 3021.

The District of Columbia Office of Planning (OP), by memoranda dated March 22 and October 19, 1990 and by testimony presented at the public hearings on the Uptown Arts proposals II and III, supported the proposals and made some recommendations.

Advisory Neighborhood Commission-1B, by letters dated April 19 and October 20, 1990 and by testimony presented at the public hearings supported the purpose of the proposals. ANC-1B made some recommendations and supported the proposed rezoning of Square 358 and the south side of U Street between 10th and 14th Streets.

The Zoning Commission heard testimony from several persons and considered issues that included, but were not limited to, the following:

1. The appropriate height limits for Square 2882 and 2868, and the natural escarpments associated therewith;
2. The appropriate zoning for the existing power plant building in Square 330;
3. The appropriate zoning for a property in Square 358 that was of some development interest to a storage co.;

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4. The appropriate height and density adjacent to the Metrorail Station at Vermont Avenue, and 10th & U Streets;
5. The appropriate height and density for the south side of U Street between 10th & 14th Streets; and
6. Parking, phasing requirements for mixed use developments, number of eating and drinking establishments permitted, driveways, operating hours for parking lots transferring bonus floor area ration, and new definition.

One participant in the proceeding requested the Commission to reconsider the appropriate zone district for the south side of U Street, between 10th Street and 14th Street. By Z.C. Order No. 632, this area had been rezoned to C-2-A/Arts. Although the location of a Metro station in the area would have supported an underlying C-2-B zone, the Commission had determined that C-2-A zoning was needed for the protection of residential areas to the south of the commercially-zoned portions of Squares 237, 274, 305, and 333.

The same participant reminded the Commission that on November 13, 1989, when it took final action to approve Z.C. Order No. 632, the Commission determined to issue a notice of proposed rulemaking to amend 11 DCMR 1905.1(a) to allow combined lot development within the entire Arts zone. The Executive Director reviewed and issue, and determined that the Commission had indeed so decided.

The Commission concurs, in part, with OP, ANC-1B and others, and believes that after considering and balancing all of the issues related to the proposals, its decision appropriately further implements the goals and policy objectives of the Comprehensive Plan.

The Commission believes that its proposed decision in the Uptown Arts Overlay District II and III is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

A notice of proposed rulemaking was published in the District of Columbia Register on June 19, 1992 (39 DCR 4629). As a result of the publication of that notice, no comments were received from interested persons.

The proposed decision to approve the Uptown Arts Overlay District II and III was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC by report dated July 22,

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1992 found that the objectives of the Zoning Commission's text and map amendments are not inconsistent with the Comprehensive Plan for the National Capital.

NCPC, however, reiterated its previous recommendation that the Zoning Commission consider adding specific measures that would encourage the preservation and enhancement of the vistas from the Florida Avenue escarpment. NCPC also recommended that the policies of the Preservation and Historic Features element of the Comprehensive Plan continue to be applied in the design and review of individual development projects, to ensure protection and enhancement of the visual qualities of Special Streets and Places.

On October 19, 1992 at its regular monthly meeting, the Zoning Commission determined that it would proceed with final action on the pending proposals and consider the concerns of the NCPC in a follow-up processing of the case.

The Zoning Commission has accorded ANC-1B the "great weight" consideration to which it is entitled.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of amendments to the Zoning Regulations and Map. The specific amendments are as follows:

1. Add a new provision to provide for the sharing of parking by uses that are primarily active during different times of the day, to be designated 11 DCMR 1901.5, and to read as follows:

1901.5 Required parking spaces may be shared by time of day with other uses specified in this subsection so as to meet all or a portion of the parking requirement for the uses on a site; Provided, that:

- (a) The eligible evening uses for this purpose shall be restaurant, legitimate theater, movie theater, dinner theater or cabaret;
- (b) The eligible daytime uses for this purpose shall be office use and the Arts Uses and Arts-Related Uses set forth in section 1909 with the exception of the evening uses set forth in paragraph (a); and
- (c) The respective property owners shall execute an agreement that identifies the designated parking spaces for this purpose and provides that use of the space or spaces for permitted

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daytime uses shall cease at no later than 6:00 p.m. Monday through Saturday and shall be available for parking by the specified evening uses as agreed to by the parties involved. This agreement shall be filed with the Zoning Administrator to be maintained as part of the certificate of occupancy file on each affected property.

2. Adopt a limit on the number of eating and drinking establishments within the ARTS Overlay District, by adopting a new provision, to be designated 11 DCMR 1901.6 and to read as follows:

1901.6 Eating and drinking establishments shall occupy no more than twenty-five percent (25%) of the linear foot frontage within the ARTS Overlay District, as measured along the lots fronting on 14th Street and U Street N.W.

3. Require a portion of the residential or hotel component of a combined lot development to be provided concurrently with the related commercial development, by deleting the existing 11 DCMR 1902.3 and adopting a new provision to read as follows:

1902.3 In the CR District, development of a lot or lots in a combined lot development pursuant to section 1905 of this chapter shall provide not less than 2.5 FAR of residential development, or of hotel development subject to the spacing requirement of subsection 1901.2, concurrent with any commercial development on the lot or combined lots; Provided, that:

- (a) This requirement shall not apply to a lot or combined lots having less than 7,500 square feet of land area or to conversion of a building constructed before 1958 to nonresidential uses; and
- (b) In developments in which residential development is required by this subsection, a certificate of occupancy for commercial or nonresidential uses shall not be issued prior to the issuance of a certificate of occupancy for a residential or hotel component.

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4. Establish height and bulk guidelines for planned unit developments in the ARTS Overlay District, by adopting a new provision to be designated 11 DCMR 1902.4, to read as follows:

1902.4 In the ARTS Overlay District, the bonus density and height permitted with bonus uses shall also serve as the guidelines for planned unit developments.

5. Apply the driveway limitation of 11 DCMR 1903.2 to 7th Street, by deleting the phrase, "other than 7th Street," from that provision.
6. Establish a process by which preferred uses existing before February 23, 1990 could earn bonuses, by adopting new provisions to be designated 11 DCMR 1904.4 and 1904.5, and to read as follows:

1904.4 A preferred use, in existence and with a valid certificate of occupancy as of February 23, 1990, is eligible to earn a bonus as indicated in subsection 1904.2.

1904.5 An existing legitimate theater is eligible for the bonus indicated; provided, that if the theater company goes out of business or leaves the area governed by this chapter, the owner-developer shall make every good faith effort to transfer the agreement to another theater company to occupy the same or different premises of similar size, failing which, the owner-developer shall apply to the Board of Zoning Adjustment for a special exception pursuant to Section 1906 of this chapter, at which proceeding the Board and the applicant shall give first preference to substituting another bonus use from section 1904 in lieu of the prior theater use.

7. Establish a time period for use of a surface parking lot devoted to transient parking, by adopting a new provision to be designated 11 DCMR 1904.6, and to read as follows:

1904.6 If a surface parking lot devoted to transient parking is the basis for developing bonus floor area on another lot, the covenant required by paragraph 1905.1(f) shall require the transient parking lot to continue in existence for at least ten (10) years from the date of issuance of the building permit for the lot where the bonus floor

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area will be built; provided that operation of the parking lot may be suspended for not more than twenty-four (24) months to permit the construction of a parking structure that will replace the surface lot and be subject to the same covenant.

8. In 11 DCMR 1905.1, amend paragraph (a) to read as follows:

(a) The lots may be located in the same square or in different squares that are within the ARTS District;

9. Adopt definitions that would apply to chapter 19, by adopting a new section 1907, to read as follows:

1907 **DEFINITIONS**

1907.1 The provisions of section 199 of chapter 1 of this title, and the definitions set forth in that section, shall be incorporated by reference in this section.

1907.2 Transient parking shall mean parking spaces provided for short-term parking in a parking garage or parking lot. The applicant shall submit to the Zoning Administrator a plan for ensuring that such spaces will be used for transient parking consistent with the purposes of this chapter. The Zoning Administrator shall send a copy of the application to the Department of Public Works and to the Office of Planning for review and report within fifteen (15) days of the referral.

1907.3 Below-market housing shall mean a housing unit or units offered for sale or rent according to the following criteria:

(a) The qualifying housing unit is offered for rent at a rent level, including utilities, which does not exceed twenty-five percent (25%) of the maximum allowable monthly gross income of a lower income household, as defined herein, whose composition is consistent with the size and type of housing in question, and the availability of the unit at such a rent is covenanted for a period of twenty years by the housing provider; or

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- (b) The qualifying housing unit is offered for sale at a price such that the monthly payment of principal, interest, taxes, and insurance (PITI) on the property shall not exceed twenty-eight percent (28%) of the maximum allowable monthly gross income of a lower income household, as defined herein, whose composition is consistent with the size and type of housing unit in question, assuming that the household obtains a ninety-five percent (95%) loan-to-loan, 30-year fully amortized mortgage at an interest rate equal to the conventional mortgage interest rate as reported for the then-current month in Federal Reserve Statistical Release H.15 (519) or its successor;
- (c) "Lower Income Households", including individuals, shall be defined as households whose income does not exceed eighty percent (80%) of the median household income for households of the same size in the Washington, D.C. metropolitan area as established periodically by the U.S. Department of Housing and Urban Development or its successor; and
- (d) The Zoning Administrator shall send a copy of the application to the Department of Housing and Community Development and to the Office of Planning for review and report within fifteen (15) days of the referral.

1907.4 Department Store - a single retail store, in excess of 50,000 square feet of gross leasable area, that: (a) is involved in the sale of, among other things, apparel and furnishing; (b) is organized into departments or sections that are integrated under single management; and (c) is operated under a single certificate of occupancy.

1907.5 Gross leasable area - the sum of the floor area occupied by the business or use, as measured from the exterior faces of the walls encompassing the space, and including any stairways, elevator shafts, escalators, or mechanical areas inside the perimeter walls occupied by multiple tenants or multiple uses; the central elevator core or cores,

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associated lobbies, stairways, and mechanical areas shall be excluded from gross leasable area, if they serve the building as a whole.

10. Amend 11 DCMR 199 to adopt the following definitions of "art center," "artist housing," "cabaret," "dinner theater," and "legitimate theater":

Art Center - a multifunctional arts use that: (a) comprises three or more distinct arts and arts-related uses as specified in section 1909 of this chapter; (b) at least one of the uses must be an art gallery, art school, artist housing, artist studio, concert hall, dinner theater, legitimate theater, movie theater, or museum; (c) is operated in a unified way under single management; and (d) occupies part or all of a building or a group of buildings within the same square.

Artist Housing - an apartment or studio where an artist works and lives.

Cabaret - a restaurant or nightclub providing as the main focus of its business, programs of live entertainment such as singing, dancing, comedy, literary readings, or performance art. In a cabaret, the clientele generally sit at tables in order to watch the entertainment and are attended by waiters or waitresses who serve food or drink. Typically, there may be more than one show in an evening and a complete turnover in patrons.

Dinner Theater - a restaurant with a stage or performing area where the main activity is the serving of dinner and following dinner, the performance of a play or musical theater.

Legitimate Theater - a building, or a part of a building, that is designed and used for the presentation of live plays and other forms of dramatic performance. The facility typically has a stage or other performing area plus tiers of seats for the audience, or other arrangements for the audience to sit or stand to view the performance.

11. In squares 2660, 2661, and 2868, rezone to C-2-B the lots or parts thereof that are now zoned C-M-2.
12. In squares 330 and 2872, rezone to R-5-B the lots or parts thereof that are now zoned C-M-1.

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13. In Square 2882, place Lot 1036 and all lots to the north of Lot 1036 in the R-4 zone; and place all other lots in the square in the R-5-B zone.
14. In Square 2873, place lots 785 through 792 and Lot 869 in the R-5-D zone.
15. In Square 358, rezone to C-2-B/Arts all lots that are now zoned C-M-1, including but not limited to, lots 43 through 46, 49, 50, 66, 809, 813, and 822 through 825.
16. In squares 237, 274, 305, and 333, retain the existing C-2-A/Arts for those lots zoned C-2-A/Arts, pursuant to Z.C. Order No. 632.

Vote of the Zoning Commission for the Uptown Arts II proposal taken at the regular meeting on May 14, 1990: 3-0 (Lloyd D. Smith, Maybelle Taylor Bennett and William L. Ensign, to approve - John G. Parsons, not voting not having participated in the hearing and Tersh Boasberg, not voting having recused himself).

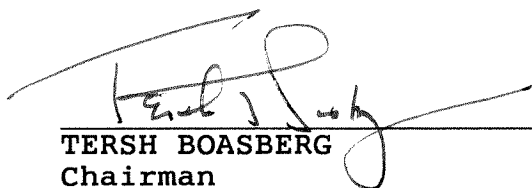
Vote of the Zoning Commission for the Uptown Arts III proposal taken at the regular meeting on February 11, 1991 - 3-0 (Maybelle Taylor Bennett, John G. Parsons and William L. Ensign, to rezone Square 2882 - Lloyd D. Smith, abstained and Tersh Boasberg, not voting having recused himself) and 4-0 (Maybelle Taylor Bennett, John G. Parsons, William L. Ensign and Lloyd D. Smith, to rezone Squares 2873 and 358; to retain C-2-A/Arts for Squares 237, 273, 305 and 333; and to define arts center, artist housing; cabaret, dinner theatre and legitimate theater - Tersh Boasberg, not voting having recused himself.)

This order was adopted by the Zoning Commission at its monthly meeting on October 19, 1992 by a vote of 3-0: (Lloyd D. Smith, Maybelle Taylor Bennett and William L. Ensign, to adopt the Arts Overlay II component of the order - John G. Parsons, not voting not having participated in the case, and Tersh Boasberg, not voting having recused himself) and by a vote of 3-0: (John G. Parsons, Maybelle Taylor Bennett and William L. Ensign, to adopt the Arts Overlay III component of the order - Lloyd D. Smith, abstained and Tersh Boasberg, not voting having recused himself).

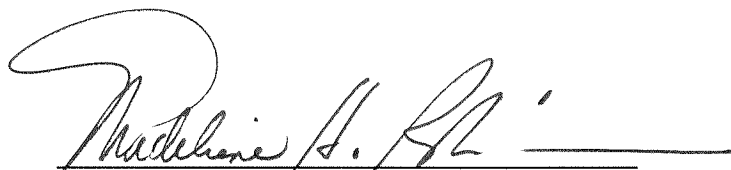
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In accordance with 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that is, on

NOV 13 1992



TERSHER BOASBERG
Chairman
Zoning Commission



MADELIENE H. ROBINSON
Acting Director
Office of Zoning

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