

Before the

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:)
Shaw Dupont Citizens Alliance for the)
Administrative Decision of DCRA in its)
Interpretation of 11 DCMR Sections 1901.6 and 1900.1)
for 1346 T Street, NW, Washington DC 20009)
Lot 0088, Square 238)
Appeal No. 18568)

SDCA'S PRE-HEARING STATEMENT

Shaw-Dupont Citizens Alliance, Inc. (hereinafter the "Appellant" or "SDCA") respectfully submits its pre-hearing statement in support of its March 28, 2013 appeal. Appellant respectfully requests that the Board of Zoning Adjustment ("BZA") GRANT the Appeal from the Department of Consumer and Regulatory Affairs' ("DCRA" or "Appellee") interpretations of Section 1901.6 of Title 11 of the District of Columbia Municipal Regulations (hereinafter referred to as the "Zoning Regulations") such that:

- (1) the definition of a drinking establishment pursuant to Section 1901.6 of the Zoning Regulations includes an establishment that sell alcoholic beverages with an Alcohol Beverage Control ("ABC") License;
- (2) once the linear foot frontage measurement limitation calculation for a square has been reached as set forth in Section 1901.6 of the Zoning Regulations, the use limitation applies to squares and portions of squares in the 14th and U Street, NW area, as provided in Sections 1901.6 and 1900.1 of the Zoning Regulations.

BACKGROUND

The two decisions related to interpretations of the ARTS Overlay District, which are subject of the appeal, were made on February 6, 2012 and March 8, 2013. Specifically, following a request by SDCA to the Zoning Administrator for a determination letter for the issues subject of this appeal, the zoning administrator¹ responded as follows:

It is not necessary for my office to issue a formal letter as my email of Feb 11, 2013 [below] constitutes my determination on this matter. If you wish to file an appeal to the BZA, you may do so on the basis of that email by filing an appeal with the DC Office of Zoning.

¹ See Exhibit 1.1 - Letter of Determination from Matthew LeGrant

I am cc'ing Richard Nero, Deputy Director of Operations with the DC Office of Zoning, for his information. Please let me know if you have any further questions.

TIMELINESS AND STANDING

SDCA hereby incorporates the arguments advanced in its Amended Motion to Deny Intervenor's Motion to Dismiss dated June 9, 2013, and its Motion to Deny DCRA's Motion to Dismiss dated June 12, 2013.

INTERPRETATION ISSUES

SDCA hereby incorporates the arguments advanced in its Appeal dated March 28, 2013. In addition, SDCA incorporates the "BZA Executive Summary" attached hereto as Exhibit A.

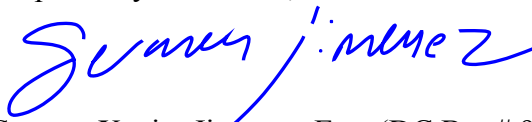
CONCLUSIONS

For the reasons stated in motions dated June 9, 2013 and June 12, 2013, Appellant requests that the BZA **deny** DCRA's and Intervenor's Motions to Dismiss dated June 11, 2013 and May 9, 2013, respectively, because the Appellant filed its appeal within the time period requirement of Section 3112.2(a) of the Zoning Regulations and because Appellant has standing in the appeal.

Additionally, the Appellant requests that the BZA ORDER the Department of Consumer and Regulatory Affairs to interpret Sections 1901.6 and 1900.1 of the Zoning Regulations such that:

- (1) the definition of a drinking establishment pursuant to Section 1901.6 of the Zoning Regulations includes Source Theater since it sells alcoholic beverages pursuant to its ABC License No. 79281, and thus, the linear foot frontage of the Source Theater must be included in the linear foot frontage measurement limitation calculation for Square 238, thereby establishing the measurement limitation calculation of 50 percent has been reached for Square 238;
- (2) once the linear foot frontage measurement limitation calculation for a square has been reached as set forth in Section 1901.6 of the Zoning Regulations, the use limitation applies to squares and the portions of squares in the 14th and U Street, NW area, as provided in Sections 1901.6 and 1900.1 of the Zoning Regulations such that the Subject Property will be subject to the use limitation for Square 238 and portions thereof in the Arts District area.

Respectfully Submitted,



German Xavier Jimenez, Esq. (DC Bar # 998903)

SDCA representative for this Appeal

June 14, 2013

**Certificate of Service for SDCA's Pre-hearing Statement in connection with the Appeal of
the Administrative Decision of DCRA to in its
Interpretation of 11 DCMR Sections 1901.6 and 1900.1 for 1346 T Street, NW, Washington
DC 20009, Lot 0088, Square 238**

I certify that on June 14, 2013, I transmitted copies of SDCA's Pre-hearing Statement to the following parties:

Runako Kumbla Allsopp
Assistant Attorney General
Department of Consumer and
Regulatory Affairs
Office of the General Counsel
1100 4th Street, SW, 5th Floor
Washington DC 20024

(via e-mail to runako.allsopp@dc.gov)

Scott H Rome
Stephen Whelan
125 19th Street, NW
Suite 320
Washington , DC

(via e-mail to srome@theveritaslawfirm.com, swhelan@theveritaslawfirm.com)

Respectfully Submitted,



German Xavier Jimenez, Esq.

(DC Bar # 998903)

SDCA representative for this Appeal

Exhibit 1.1



German Xavier Jimenez <german.xavier.jimenez@gmail.com>

Letter of Determination for 1346 T St, NW

LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>

Tue, Feb 26, 2013 at 1:54 PM

To: German Xavier Jimenez <german.xavier.jimenez@gmail.com>

Cc: "Fletcher, LaVerne (ABRA)" <laverne.fletcher@dc.gov>, Erling Bailey <ebjdc@aol.com>, Ronald Renchard <rrenchard@best-ortho.com>, elwyn ferris <elwynferris@hotmail.com>, "Nero, Richard (DCOZ)" <richard.nero@dc.gov>

German Jimenez-

It is not necessary for my office to issue a formal letter as my email of Feb 11, 2013 [below] constitutes my determination on this matter. If you wish to file an appeal to the BZA, you may do so on the basis of that email by filing an appeal with the DC Office of Zoning.

I am cc'ing Richard Nero, Deputy Director of Operations with the DC Office of Zoning, for his information. Please let me know if you have any further questions.

Best Regards,

Matthew Le Grant

Zoning Administrator

Dept of Consumer and Regulatory Affairs

Government of the District of Columbia

1100 4th St SW - Room 3100

Washington, DC 20024

Phone: 202 442-4652

FAX: 202 442-4871

Email: matt.legrant@dc.gov

Web: <http://dcra.dc.gov/DC/DCRA/Permits/Certificates+of+Occupancy+and+Zoning>

From: German Xavier Jimenez [mailto:german.xavier.jimenez@gmail.com]
Sent: Sunday, February 24, 2013 5:05 PM
To: LeGrant, Matt (DCRA)
Cc: Fletcher, LaVerne (ABRA); German.xavier.jimenez@gmail.com; Erling Bailey; Ronald Renchard; elwyn ferris
Subject: Letter of Determination for 1346 T St, NW

Mr Legrant,

[Quoted text hidden]

BZA Executive Summary

Appeal of Shaw-Dupont Citizens Alliance, pursuant to 11 DCMR Sections 3100 and 3101, from a decision of the DCRA in its interpretation of Sections 1901.6 and 1900.1 allowing a drinking establishment in the ARTS/C-3-A District a premises 1346 T Street, N.W. (Square 238, Lot 88).

Summary of BZA Appeal

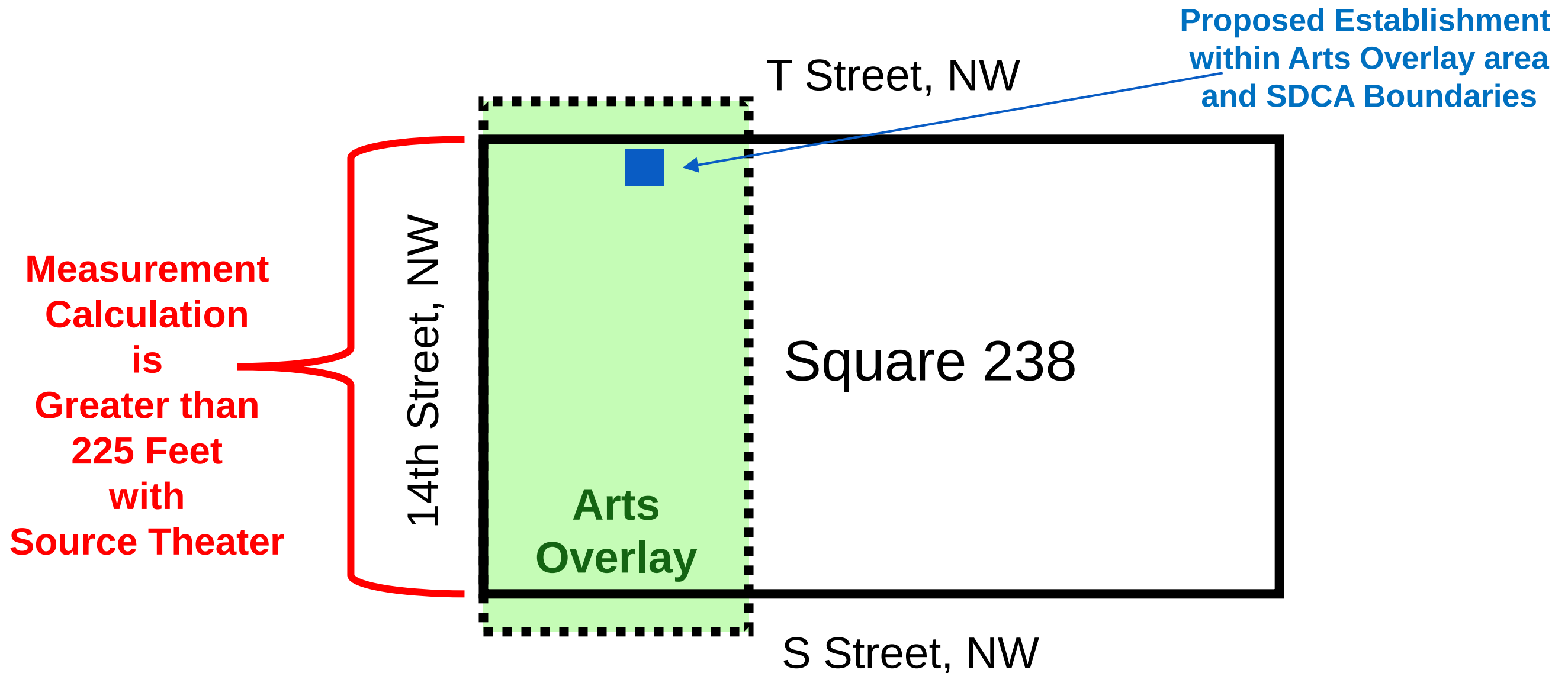
Steps in Applying the Eating/Drinking Use Limitation

- **Step 1** - Identify applicable **Square** fronting 14th Street NW or U Street, NW
- **Step 2** - Perform Measurement Calculation for applicable Square
- **Step 3** - Apply Use Limitation to applicable Square and portions thereof in the Arts Overlay District area.

Diagram 1

Title 11 DCMR 1901.6

With respect to Square 238, the **Measurement Calculation** is equal to 225 feet, which is 50 percent of the linear foot frontage as measured by 14th Street, N.W. for Square 238.



Establishment's **use as a drinking establishment must be limited** pursuant to Sections 1901.6 and 1900.1 as the Measurement Calculation for Square 238 has been met and the **Establishment located at Subject Property is within Square 238 and the portion of Square 238 in the Arts District area.**



1300 Block of T Street NW — Page 4

Issues for Interpretation for Board of Zoning Adjustment:

1. The definition of a drinking establishment pursuant to Section 1901.6 of the Zoning Regulations includes an establishment that sell alcoholic beverages with an Alcohol Beverage Control ("ABC") License;
2. Once the linear foot frontage **Measurement Calculation** for a square has been reached as set forth in Section 1901.6 of the Zoning Regulations, the **Use Limitation** applies to squares and portions of squares in the 14th and U Street, NW area, as provided in Sections 1901.6 and 1900.1 of the Zoning Regulations.



Square 238 and Portion of T Street NW in the
ARTS District Area

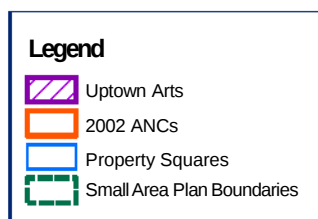
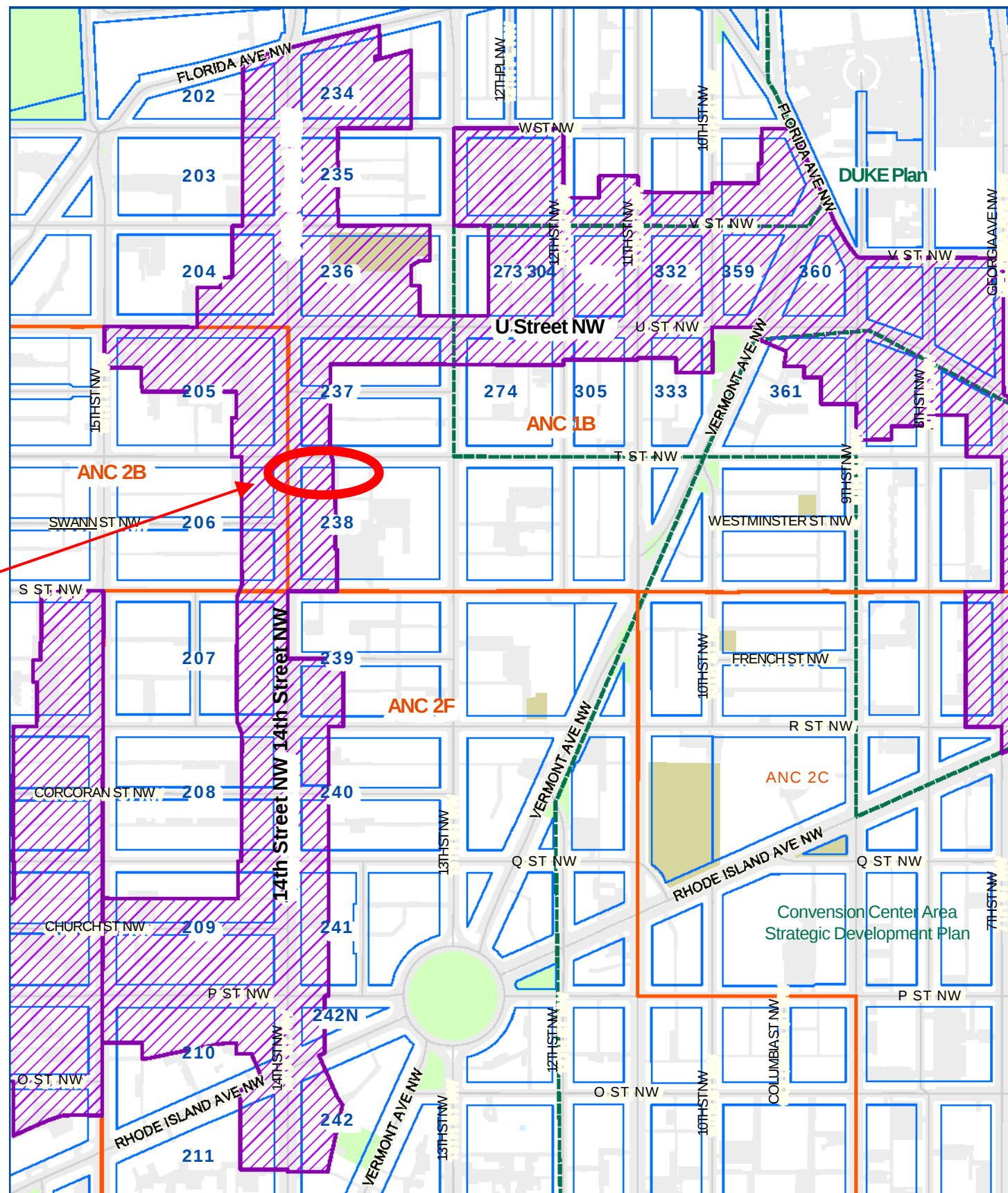
Title 11 DCMR 1900.1 - Framework

“The Uptown Arts-Mixed Use (ARTS) Overlay District is applied to the Commercial and Mixed Use Districts in the following squares and portions of squares in the 14th and U Streets, N.W., area:

202 through 211, 234 through 242, N242, 272, 273, 274, 303, 304, 305, 331, 332, 333, 358 through 361, 393, 416, 440, 441, and the portions of squares 2875 and 2877 that are south of V Street.”

**Proposed Establishment
within Arts Overlay area
and SDCA Boundaries.**

**Webster's Dictionary defines
"Area" as
"a Geographic Region"**



Title 11 DCMR 1901.6
Use Limitation and Measurement Calculation

Eating establishments, drinking establishments, or eating and drinking establishments (“eating/drinking establishments”) **shall be subject to the following limitations:**

(a) **No portion** of an eating/drinking establishment located on the ground floor **is permitted** to occupy **more than fifty percent (50%)** **of the linear frontage of each individual square**, as set forth below:

Title 11 DCMR 1901.6

Section 1901.6(a) Table's purpose is twofold

1. To **identify squares and portions thereof in the Arts District area** that are subject to the **Use Limitation** that **front** 14th and U Streets, N.W. and
2. To provide a **Measurement Calculation** for each square identified.

Title 11 DCMR 1901.6

14 th Street, N.W.		U Street, N.W.	
Square	Frontage (feet)	Square	Frontage (feet)
202	222.5	204	305.3
203	310	205	618
204	320	236	523.4
205	430.6	237	538.5
206	399.8	273	225.3
207	450.1	274	340.9
208	400	304	192.2
209	380	305	186
210	203.5	332	189.7
211	304.2	333	187.7
234	253.1	359	96.8
235	310	360	230.4
236	320	361	251.7
237	380		
238	450		
239	200		
240	391		
241	450		
242	363.1		
242N	154.5		

Identifies Applicable
Square and Portions
thereof that “Front”
14th Street, N.W.

Provides Applicable
Measurement
Calculation

Title 11 DCMR 1901.6

The following squares and portions thereof in the **Area** are excluded as they **do not front** U Street, N.W. or 14th Street, NW:

Square
272
303
331
358
393
416
440
441
2875
2877

Title 11 DCMR 1901.6

With respect to Square 238, the **Measurement Calculation** is equal to 225 feet, which is 50 percent of the linear foot frontage as measured by 14th Street, N.W. for Square 238.

The Establishment's **use as a drinking establishment must be limited** pursuant to Sections 1901.6 and 1900.1 since the Measurement Calculation for Square 238 has been met and the **Establishment located at Subject Property is within Square 238 and the portion of Square 238 in the Arts District area.**

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Title 11 DCMR 1900.3

“The ARTS Overlay District and the underlying zoning shall constitute the **Zoning Regulations for the geographic area identified in § 1900.1.** Where there are conflicts between this chapter and the underlying zoning, **the more restrictive regulations shall govern.**”

Title 11 DCMR 1900.3

Source Theater is an establishment that sells alcoholic beverages as evidenced by its ABC License No. 79281, Class DX where patrons consume alcoholic beverages.

Webster's defines "drinking" as to partake in alcoholic beverages.

By definition Source Theater is a drinking establishment within the meaning of Section 1901.6 of the Zoning Regulations.

There is no principal use test in determining "drinking establishment" in the Zoning Regulations.

DCRA must include the linear foot frontage of Source Theater when determining the linear foot frontage **Measurement Calculation** for Square 238

Title 11 DCMR 1901.6, Legislative History

Z.C. Order No. 632A further provided as follows:

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 to read as follows:

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

Title 11 DCMR 1901.6, Legislative History

When describing the amendment to Section 1901.6 of the Zoning Regulations, the Commission in its Notice of Final Rule making and **Z.C. Order No. 10-17** clarified its intent by stating, in part, the following:

The amendment changes the 25% overlay wide cap to a 50 % cap that is applied to each **individual Overlay square fronting** 14th or U Street, N.W. and clarifies that this limit applies only to ground floor frontage. **The street frontages used in this calculation are listed in the chart.**

Policy for Title 11 DCMR 1901.6

No eating/drinking Use Limitation for portions of Square 238 within the Arts District **area** is in **contradiction** of the purpose and policy of the Arts District.

For example 100 percent of T Street, NW frontage within the Arts District area may be drinking establishments despite over concentration of drinking establishments for Square 238 and portions thereof within the Arts District area.