

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



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MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: Travis Parker, Zoning Review Project Manager *TP*

DATE: August 28, 2008

SUBJECT: Public Hearing Report for ZC #08-06-4
Proposed Amendments to Zoning Regulations Governing the Arts

I. ZONING REVIEW PROCESS

The 2006 Comprehensive Plan for the District of Columbia states that "The Zoning Regulations...need substantial revision and reorganization, ranging from new definitions to updated development and design standards and even new Zones" (Comprehensive Plan, §2504.2). It goes on to note that "a major revision to the Zoning Regulations is planned for 2007-2009" (ibid). OP has designed a three-year process to produce recommended changes to update, clarify and simplify the current Regulations.

Regulations are currently being reviewed by subject area, with up to twenty subject areas to be covered in the next few years. Each subject area will be reviewed in consultation with a public working group that will discuss issues identified in the Comprehensive Plan as well as issues arising from the existing Zoning Regulations. Recommend changes are then forwarded to the 24-member Task Force for further review and input. Finally, recommendations for each subject area are made available for public review including a hearing before the Zoning Commission. After the conclusion of public review for all subject areas, OP will work with the Office of the Attorney General to draft zoning language to reflect the proposed policy changes.

Drafting the language for all subject areas at once, rather than for each topic, allows for the overlap between different subject areas and establishes a cohesive writing style and format. The recommendations for the first three subject areas – height, parking, and loading – were written as draft zoning language, rather than recommended text changes or zoning policies. The remainder of the subject areas, including arts and culture, will come forward to the Commission as recommended changes and policies. After all topics have been heard by the Commission, those policies will be unified into one proposed zoning text.

II. ARTS AND CULTURE SUBJECT AREA PROCESS

The Arts and Culture Working Group held its first of four meetings on March 18, 2008. The group was made up of working artists, representatives of arts organizations and arts businesses, developers who work with artists, and members of neighborhood organizations. Group members

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EXHIBIT NO.

represented many areas of the city. OP highlighted for the group the Comprehensive Plan's main goals for the arts: to improve the geographic distribution of the arts throughout the city and to make it more affordable for artists to practice their craft. Using those goals as a starting point, and with the assistance of a best practices study, the group helped OP address weaknesses in the existing arts overlays and propose model regulations for future arts districts. The group also spent time discussing possible locations for future arts districts. While further planning processes beyond the Zoning Review will be necessary to determine which communities would like to become arts districts, those discussions helped frame the recommendations by illustrating what types of arts districts the city could have. That discussion also helped draw out what characteristics are necessary for a successful arts district. The extensive comments and insights provided by the working group were critical to forming our recommendations.

Following the last working group meeting, the preliminary recommendations were sent to the Task Force for additional review and comment. OP made revisions to the proposals based on suggestions received at the May 28 Task Force meeting. A summary of Task Force comments and OP's responses can be found in Attachment 3. The next draft of the recommendations were posted online and made available for review and comment by the public. As of this writing, no comments have been received from the public.

III. ARTS AND CULTURE SUBJECT AREA RECOMMENDATIONS

A. Background

This report describes issues with existing arts regulations and the Office of Planning's proposed solutions to them. Four main sources contributed to the identification of issues and their solutions:

- The policies and action items of the Comprehensive Plan;
- The Zoning Commission's direction that the Zoning Review should result in greater clarity, ease of use and relevance;
- Comments of working group participants;
- A best practices study of other cities that regulate arts through zoning.

The result of that process was a list of recommendations addressing a range of issues from specific clauses in the zoning regulations to proposed citywide procedural initiatives. The initial list of recommendations developed by staff and the working group has here been reduced to those items strictly dealing with arts zoning. Other items will be:

- Addressed by other Zoning Review working groups (e.g. size limitations on accessory structures);
- Forwarded to future Office of Planning initiatives (e.g. desired locations for future arts districts);
- Left without action for now as they are beyond the scope of zoning and beyond the power of the Office of Planning to implement (e.g. citywide peer certification process).

The remaining items are detailed below in section III.D. For each topic the existing practice is described, followed by a description of the issues identified with the current regulation. OP's recommendation to address the issue is listed next, as well as an analysis of how the proposal would be an improvement. Finally, any other remaining issues pertinent to that topic are explained. All of the proposed regulations would apply only to new or significantly redeveloped buildings. New use or design requirements would not apply to existing buildings or uses. The recommendations listed below can be grouped into the following categories:

- Create new stand-alone Arts Districts, incorporating existing arts overlays and future arts districts;
- Streamline the use list and use requirements and bonuses for arts districts while creating flexibility for property owners;
- Apply design standards to ensure walkability and active neighborhoods;
- Allow appropriate arts uses in residential areas;

One topic not addressed in this working group, but integral to the functioning of a proposed Arts District, would be the allowable height and density in each particular neighborhood. Those parameters would affect how much bonus density can be achieved, and how much density could be transferred between properties. Specific maximums for those parameters will be considered in the Commercial Corridor and Downtown working groups. The limits can be revisited when future planning efforts identify potential arts districts.

Finally, another recommendation stemming from the working group is that the city create an artist peer-review board. Enforcement of arts regulations was the subject of policies in the Comprehensive Plan and was a point of emphasis of the working group. Members of the group felt that spaces designated for arts uses at the time of building permit are no longer being used as such. A peer-review board could examine potential tenants to ensure that they are an actual arts organization or individual. This type of recommendation goes beyond the scope of zoning and beyond the purview of the Office of Planning. But action by the city in this regard may be essential to the success of any future arts districts.

B. The Comprehensive Plan

The Comprehensive Plan is the starting point for the entire Zoning Review and for every topic area. For arts and culture, the Plan's policies and action items focus on a few broad themes. In the Arts and Culture Element of the Plan, a strong emphasis is placed on the arts as a means toward economic and community development through the creation of jobs, attraction of tourism dollars and the expression of community identity and values. Those goals, in turn, are to be achieved through two main methods: increasing the geographic distribution of arts in the city and making it more affordable for artists to practice their craft.

Policies AC-1.1.2 and AC-1.1.3, for example, call for the creation of new arts facilities, especially in locations that currently lack them, such as neighborhoods east of the Anacostia

River. Sections 1409.1 through 1409.3 and Policy AC-3.1.2 talk about the need to find more affordable living and working space for artists. Action AC-3.1.A states that zoning should be revised to facilitate the creation of live-work space and make it easier to use garages or accessory buildings as artist studios. In addition to addressing deficiencies faced by the District, the Plan notes the positive characteristics of the city and seeks to build on them. For example, Plan Policy AC-1.2.1 looks to enhance downtown's reputation as a center for region-serving arts venues, and Policy 1403.6 recommends creating new arts districts near mass transit infrastructure. Many of the Area Elements of the Comprehensive Plan also address the arts, some with very specific boundaries or contemplated uses, and some speaking more generally about an increased presence for the arts. Much of that guidance will be addressed through the Zoning Review. With all of its policy direction, the Comprehensive Plan is the foundation on which all the recommendations are built.

C. Best Practices

In order to inform our recommendations, OP conducted a best practices study of other cities and their zoning regulations pertaining to the arts. Some of the cities studied were Santa Fe, Malden, MA, Boston, Jersey City, Oakland and Providence, RI. While not exhaustive, the best practices study provided insights into what techniques other cities are using to address issues similar to those faced in the District. Providence, for example, has begun to recognize non-traditional forms of housing for artists, similar to OP's proposed Multi-artist live-work space. Oakland also has different designations for combinations of living space and working space. Both efforts are geared toward providing affordable space for artists. Somerville, Massachusetts, in an effort to revitalize the Union Square neighborhood, gave density bonuses for arts uses while making them easier to provide as a matter-of-right. Santa Fe's program made home occupations easier so that a home owner could begin a small business in their residence. OP learned through the study, however, that the District has done more than many cities to promote the arts through zoning. Therefore, the recommendations presented in this report attempt to draw from the best practices, but also refine and build on the techniques already in place in the zoning regulations.

D. Recommendations

The proposals listed below, and others to be considered by future working groups, attempt to achieve the goals of the Comprehensive Plan and address the concerns expressed by members of the working group and Task Force. The recommendations also seek to meet the general goals of the Zoning Review by providing clarity, ease of use and relevance for the regulations.

Please note that while the content of the recommendations listed below is the same as the legal advertisement, the numbering of some of the recommendations has been revised to better address certain topics. Some of the concepts listed in the advertisement require a sizeable amount of explanation and have therefore been divided into two or more recommendations.

1. Create stand-alone arts districts instead of overlays.

Existing Practice

The Zoning Regulations currently address arts in commercial areas through three arts-related overlays: The Downtown Arts Overlay, the Uptown Arts Overlay and the Arts Sub-Area of the H Street Overlay.

Issues

The separate overlays each address the arts slightly differently. This lack of consistency in the handling of the arts leads to confusion for anyone trying to use the regulations. Also, with separate overlays come separate use lists and other unnecessary repetition.

Recommendation

Combine all existing arts overlays and future arts districts and into a new stand-alone Arts District template that could be applied in local geographic Arts Districts.

Analysis

Combining arts districts into one type of district would have several advantages:

- Simplify the regulations and make them easier to use – an overall Zoning Review goal;
- Eliminate inconsistencies between arts districts – another overall Zoning Review goal;
- Establish a unified method for promoting arts and culture through zoning;
- Establish standards that are universal across all arts sub-districts;
- Allow new arts districts to be more easily created by following the established template.

Remaining Issues

While OP currently recommends that the Downtown Arts Overlay be incorporated into the new Arts District, the Downtown Working Group will examine in more detail the overall Downtown Development (DD) Overlay District, of which the Downtown Arts is a subset. It is possible that the requirements of the DD could be incorporated into the new Downtown sub-district of the Arts District. On the other hand, it may be determined that the Downtown Arts should remain a part of the DD.

2. Create a new, unified list of arts uses.

Existing Practice

The three existing arts overlays have slightly different preferred use lists. Some uses are consistent between them. Other uses appear on only one list.

Issues

The existing regulations, in addition to placing arts overlays in separate parts of the text, add to the confusion by creating slightly different preferred arts use lists for the overlays. There is no reason why an arts or cultural use in one part of the city would not be considered an arts or cultural use in another part of the city. In some cases the lists also give different names to the same use. For example, §1711.1(j) lists the use “Assembly Hall, Auditorium, Public Hall, or Other Performing Arts Space, including rehearsal/pre-production space or concert hall”. Section 1908.1(h), however, simply lists the use as “Concert hall or other performing arts space.”

Recommendation

Create a single preferred arts use list (PAUL) by combining the lists in the existing overlays, eliminating inconsistencies, and adding any uses that are missing. Any existing or new arts district would refer to the PAUL.

Analysis

Revising the regulations to be more user friendly and to provide clearer guidance to property owners was a recurring theme expressed by the working group. Combining existing lists into one will eliminate inconsistencies and confusion. The adoption of this recommendation will further the general Zoning Review goals of increased clarity and ease of use.

Remaining Issues

Other working groups are discussing much more significant changes to the structure of uses in the regulations including consolidation of use lists into broad categories of uses. This will be the subject of broader future discussions and may be cause to refine this recommendation.

3. Divide uses into use types.

Existing Practice

The arts uses in existing overlays are listed alphabetically and are not currently categorized in any way.

Issues

Alphabetical listings provide an order for the uses in the zoning text. But sometimes the promotion of a certain group of arts is desired, and in those cases a simple alphabetical listing may not effect the promotion as successfully as other models.

Recommendation

Categorize arts uses from the PAUL into types of arts uses or use groups. The list developed through the subject area process may include Artist Living and Production, Performing Arts, Multi-Media and others. The draft use list can be found below. Definitions developed through the subject area process can be found in Attachment 1.

Draft Preferred Arts Use List (PAUL)

(a) Artist Living and Production Use Group

- i. Artist live-work space, not to exceed 2,500 square feet;
- ii. Artist studio, not to exceed 2,500 square feet;
- iii. Multi-artist live-work space;

(b) Arts-Retail Use Group – all uses not to exceed 2,500 square feet

- i. Art gallery;
- ii. Art services, including but not limited to set design and restoration of artworks;
- iii. Art supplies store;
- iv. Musical instruments store;
- v. Recordings store;
- vi. Book store;
- vii. Picture framing shop, printmaking shop, digital print or scanning lab, or traditional darkroom and photographic supply sales;

(c) Performing Arts Use Group

- i. Arts organizations, administrative offices of;

- ii. Cabaret;
- iii. Cinema;
- iv. Dinner theater;
- v. Legitimate theater;
- vi. Performing arts ticket office or booking agency;
- vii. Theater, assembly hall, auditorium, concert hall, public hall, or other performing arts space, including rehearsal and / or pre-production space;

(d) Multi-Media Use Group

- i. Media studio;

(e) Artisan Production Use Group

- i. Architectural production;
- ii. Glass working;
- iii. Jewelry making;
- iv. Metalworking;
- v. Woodworking, including furniture manufacture;

(f) Museum Use Group

- i. Art gallery, greater than 2,500 square feet;
- ii. Museum;

(g) Design Use Group

- i. Architecture
- ii. Computer system and software design
- iii. Fashion design
- iv. Graphic design
- v. Interior architecture and design
- vi. Landscape design
- vii. Product and industrial design

(h) Entertainment Use Group

- i. Dance hall, discotheque or ballroom;
- ii. Drinking place, including bar, nightclub or cocktail lounge;
- iii. Fast food establishment;
- iv. Prepared food shop;

- v. Restaurant;
- (i) Education and Multi-function Use Group
 - i. Art center;
 - ii. Art incubator;
 - iii. Art or performing arts school, including but not limited to schools of dance, photography, filmmaking, music, writing, painting, sculpturing, or printmaking;
- (j) Other Use Group
 - i. Art exhibition area;
 - ii. Library;
 - iii. Any size-limited use in the Artist Living and Production Use Group or the Arts-Retail Use Group, with no size limitation;
 - iv. Any other use determined by the Zoning Administrator to be an arts, cultural or related use;

Analysis

The working group felt that arts districts needed to be more focused on particular types of art in order to build a critical mass, whether on a neighborhood scale or even the scale of a few blocks. By creating use groups, categories of uses can be promoted in one arts district or another, or in one part of an arts district compared to a different part. For example, the Comprehensive Plan seeks to promote museums on F Street and theaters in the triangle bounded by F, 14th and 6th Streets and Pennsylvania Avenue (Policies AC-3.2.2 and CW-2.2.2). The proposed categories would allow zoning to focus benefits on those use groups and in the desired locations. Future planning efforts will identify which uses are most appropriate in each arts district and direct benefits accordingly.

Remaining Issues

See Recommendation 6 for more detail about the FAR bonuses. A number of uses in the PAUL are limited to 2,500 square feet. This figure was carried over from the existing regulations. OP will continue to examine this number to see if it is the best size to maintain a fine-grained arts district, or if another figure is appropriate.

As with the previous recommendation, the treatment of use lists will be the subject of broader future discussions and may be cause to refine this recommendation.

4. Establish FAR requirements for arts uses.

Existing Practice

The existing Uptown and Downtown arts overlays require that an amount of FAR be set aside for “preferred” uses. Preferred uses can include both actual arts uses as well as non-arts retail and service uses. In addition to the arts use lists, each overlay also has an extensive list of retail and service uses that can fulfill much if not all of the FAR requirement.

Issues

This system potentially allows the provision of no arts uses, or at least the dilution of an overlay’s power to concentrate arts uses. In the existing Uptown overlay, 50% of the ground floor must be devoted to “preferred” uses, but not necessarily to the arts. In the Downtown overlay, 1.0 FAR is required for preferred uses, but only 0.25 FAR must be developed as arts uses. Similarly, the H Street Arts Sub-Area encourages but does not require arts uses.

Recommendation

Require that properties devote at least 0.5 FAR to PAUL uses.

Analysis

In order to create a successful arts district with a critical mass of arts and cultural uses, developers should be obliged to provide a small amount of that type of use. This is similar to a housing requirement or a retail requirement in areas where the city wants to encourage those uses. The PAUL, however, has a broad range of uses, so developers will not be constrained by a narrow selection of tenants. Furthermore, this provision improves on the existing arts overlays. The Downtown overlay currently requires 0.25 FAR of arts uses, but the Uptown and H Street overlays do not require a threshold of any arts uses. A survey by the Office of Planning found only 17 art or cultural uses in the Downtown Overlay (not including gallery space that has been incorporate into building lobbies), and while the purposes of the Overlay state that it should promote entertainment uses as well as arts, the working group felt that the pendulum has swung too far toward a purely entertainment district.

Remaining Issues

Bonuses for providing certain uses are explained further in Recommendation 6. Not all PAUL uses will be granted bonuses in all arts districts.

5. Do not permit non-arts uses to count towards the FAR requirement.

Existing Practice

The existing Uptown and Downtown arts overlays require that an amount of FAR be set aside for “preferred” uses. Preferred uses can include both actual arts uses as well as non-arts retail and service uses. In addition to the arts use lists, each overlay also has an extensive list of retail and service uses that can fulfill much if not all of the FAR requirement.

Issues

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Recommendation

Do not permit non-arts “preferred uses” to count toward the arts FAR requirement. Eliminate the retail and service lists from the new Arts District and simply allow commercial uses as provided for in other commercial districts.

Analysis

The working group felt that property owners were escaping from the provision of actual arts uses by instead providing service or retail uses. The data showing that only a few arts uses are located downtown reinforces that assertion. They felt that this practice diminished the effectiveness of the overlays. In the revised regulations, OP recommends that there only be an FAR requirement for actual arts uses. This change would not only help ensure the provision of legitimate arts and cultural uses, but it would also simplify the regulations governing arts districts. Instead of restating a list of permitted retail and service uses, the Arts District could refer to lists established for other commercial zones.

6. Establish preferred use groups and FAR bonuses.

Existing Practice

The Downtown and Uptown overlays currently provide FAR bonuses when certain specific uses are provided. For example, in the Uptown overlay, for every one square foot of legitimate theater provided, the developer would receive three bonus square feet of floor area that could be put toward any other permitted use.

Issues

The current system of bonuses is a good model, but the way it is executed in the current regulations can be complicated. Also, the system does not provide enough specificity to create, for two examples, a true theater corridor or a gallery district. Furthermore, developers can earn bonuses for non-arts uses.

Recommendation

Identify, generally in future planning processes, which use group, if any, from the PAUL list would be the preferred use type in each arts district or part of an arts district. When a property owner commits to provide in perpetuity a use from the identified use group, the property should be given an FAR bonus at a 1-to-1 floor area equivalent ratio.

Analysis

Each arts district or even portions of arts districts may be more suitable for certain uses than for others. It may also be the District's policy to promote a certain type of use through the clustering of that use type. For example, downtown already has a number of theaters and the Comprehensive Plan recognizes that fact and builds on it by promoting a theater district between F Street and Pennsylvania Avenue (Policy CW-2.2.2). This policy can be implemented through the new arts district by providing an FAR bonus for performing arts uses. The Working Group echoed the need to concentrate similar arts uses.

This system also uses bonuses to promote preferred uses rather than creating a mandate that only specific uses locate in a certain area; other arts uses are not excluded. In addition, this structure can be more user friendly than the system currently in place; it can be tailored to any future arts district and the uses most suitable for those neighborhoods.

Remaining Issues

The maximum FAR allowed in any particular neighborhood will be determined during later working groups. The total FAR for a development site, including any bonuses, would be limited to that maximum.

7. Allow for flexibility in the location of arts uses within arts districts.

Existing Practice

Combined Lot Development and the Transfer of Development Rights have been used in the Downtown Development Overlay and the Uptown Arts overlay to permit the exchange of uses and density.

Issues

There is a need to maintain flexibility for property owners and developers as some may not wish or be able to provide an on-site arts use. Also, the working group indicated that using bonus density can sometimes be difficult with an existing structure or when the subject property is contributing to an historic district.

Recommendation

Provide for the purchase, sale or trade of PAUL requirements and earned bonus density within the same arts district through a Combined Lot Development (CLD) or similar system.

Analysis

Combined Lot provisions would allow property owners who are not able or do not wish to provide arts uses the flexibility to trade, buy or sell preferred use requirements with other property owners in the same arts district. Two lots could combine to provide the same overall mix of uses, but with one of the properties providing all of the arts use. The same provisions could be used to trade or sell bonus density from a site that cannot use it to a site that can. In this way, the total amount of PAUL uses and the total density within the arts district remain constant.

Remaining Issues

Future working groups will determine what the maximum FAR and height could be in various commercial areas, including arts districts. This would govern how much density a given site could accept through CLDs.

8. Designate primary streets.

Existing Practice

In the Uptown Arts Overlay, certain streets are designated as "pedestrian streets" (§1903.1) and are subject to extra provisions to ensure a walkable environment and an inviting retail streetscape.

Issues

The Office of Planning wants to reinforce the goals implied in the Uptown Overlay by continuing the emphasis on inviting, walkable streets.

Recommendation

In all existing and new arts districts, designate those streets that serve as the principal pedestrian and retail streets as “Primary Streets.”

Analysis

By designating Primary Streets, special design criteria can be put in place that will impact only those street frontages. This is discussed in further detail in Recommendation 9.

Remaining Issues

Existing “pedestrian streets” in the Uptown Overlay, H Street, in that overlay, and streets highlighted in the Downtown Arts Overlay can be immediately named as Primary Streets. In future arts districts, the primary streets will be identified during the planning process that forms the arts area.

9. Establish Primary Street design and use requirements.

Existing Practice

The Uptown Overlay has a broad set of standards to help ensure pedestrian mobility and an energetic neighborhood. The DD and H Street Overlays also address street design on a larger scale.

Issues

The working group expressed that walkability and the potential to be a destination should be characteristics of an arts district. While parts of the existing overlays have become very active streets and great pedestrian environments, too often buildings still exhibit blank walls, or in other ways impede the creation of a lively community.

Recommendation

All buildings on Primary Streets should be subject to design requirements like those found in §1903 of the Uptown overlay calling for pedestrian safety, building mass on the property line, display windows and business entrances. The portions of buildings facing Primary Streets should also be required to have a PAUL use or a retail or service use. If an entrance to a residential or office building is necessary, it should be minimal in size.

Analysis

These standards help create an active pedestrian environment and vibrant neighborhoods. Pedestrian mobility and active neighborhoods are goals of the Comprehensive Plan and characteristics the working group felt should be part of any arts district. The use and design standards would apply even if the PAUL uses are transferred to another development via a transfer mechanism.

10. Make arts uses more viable by creating usable spaces.

Existing Practice

The Downtown Arts Overlay has an incentive to provide ceilings over 12 feet in height, and the H Street overlay requires at least 14 feet of height from floor to ceiling. The Uptown Overlay has no ceiling height requirement.

Issues

It was described during the work sessions that, at present, arts uses often get “leftover” space in buildings. So while technically a development may meet the zoning guidelines for providing space for arts uses, the space provided might be unusable or barely functional.

Recommendation

Require that the minimum ground floor floor-to-ceiling height in Arts Districts be 14 feet clear.

Analysis

While one size might not fit all arts uses, a height of 14 feet is used in various parts of the District as an appropriate minimum height for ground floor uses. A similar requirement in arts areas will help provide enough volume for most arts uses to operate. This will also bring consistency to the arts regulations and would eliminate the need for existing incentives for ceiling heights over 12 feet in the Downtown Overlay. This requirement should not apply where an existing ceiling structure, in a building undergoing renovation, is being preserved at a lower height, or where other historic preservation guidelines would prevent a 14 foot height.

11. Modify the regulations to create better art exhibition areas.

Existing Practice

Currently, art exhibition areas (AEAs) are governed by specific regulations contained in §1704.5 (DD Overlay). These regulations address how much of the required FAR can be an AEA, what its operating hours should be, who may curate the exhibit, etcetera.

Issues

Art Exhibition Areas (AEAs) were singled out by the Working Group as the use that is most often used by developers to avoid providing a more substantive arts use. While AEAs can make a contribution to an arts neighborhood if they are managed well and open to the public, too often, according to the working group, they are put in place as an afterthought, and do not function as a legitimate arts use. The Task Force also recommended that the rules governing these uses be strengthened.

Recommendation

Include regulations in the new arts districts similar to the existing §1704.5 governing AEAs. Allow AEAs to count as no more than 5% of the overall 0.5 FAR PAUL requirement. Allow AEAs to be curated by an art professional in addition to an art gallery or professional curator. Require building owners to submit an annual report to the District government detailing how the requirements governing the use have been met over the past year.

Analysis

Both the Working Group and the Task Force recommended making criteria more strict for AEAs. Presently AEAs can count as 20% of the 0.25 FAR requirement, or 0.05 FAR. Decreasing that ratio by half will ensure more floor area is available for more substantive arts uses. That being said, AEAs can be legitimate art space if they follow the criteria laid out in the revised §1704.5, and a report to the DC government will help ensure that those criteria are being met. Adding the term “art professional” expands the universe of qualified professionals who can curate an art exhibition.

Task Force Comments and OP Response

- Be more strict about counting art exhibition areas as an actual art use.

Presently, art exhibition areas (AEAs) can count as 20% of the 0.25 FAR requirement in the Downtown, or 0.05 FAR. The Working Group and the Task Force both recommended that the regulations governing AEAs be more strict. OP will include a recommendation that AEAs should count as no more than 0.025 FAR towards the 0.5 FAR requirement.

Remaining Issues

It remains to be seen what agency will receive reports about the AEAs and who will monitor compliance. The Office of Planning or the Commission on Arts and Humanities could receive the reports and monitor compliance, but the Department of Consumer and

Regulatory Affairs (DCRA) is likely the only agency that could enforce regulations or impose penalties. Also, “art professional” is undefined at this time. Before the final zoning text is prepared, OP will either refine the terminology or prepare a definition so that only those people who are qualified to curate an AEA may do so.

12. Allow art centers and similar uses in appropriate residentially zoned locations.

Existing Practice

Currently stand-alone arts uses are not permitted in residential areas.

Issues

While schools and institutional uses are permitted in residential zones, arts uses with similar impacts are not. Some publicly owned buildings could be re-used as art centers or art schools.

Recommendation

Permit uses from the PAUL Education and Multi-function Use Group as uses in residentially zoned areas. These uses could be matter-of-right for buildings formerly used as public schools, and special exceptions in other locations.

Analysis

The working group expressed interest in using vacant schools for uses like an art incubator or an art center. Artists in the city are in need of working spaces where they can collaborate and share ideas, and such uses could keep vacant buildings from becoming a blemish on surrounding neighborhoods. The group disagreed, however, as to whether those uses should be matter-of-right (MOR) or special exception uses in residential areas.

Special exception pre-requisites could include a large enough lot size and / or a maximum FAR. Special exception evaluation criteria could include traffic, noise, light and visual intrusion and general compatibility with the neighborhood. All applications should be referred to city agencies for review and comment including OP, DDOT and the Commission on Arts and Humanities.

Task Force Comments and OP Response

- Multi-function Use Group uses should not be special exception uses in residential areas but rather use variances.

The Working Group strongly supported making it easier to re-use vacant buildings such as schools for Art Centers or Art Incubators. A use variance is the present method for establishing those uses in residential districts. A special exception would make it easier for those uses to find a location, but would still allow the District to review the application and give the public an opportunity to comment at a BZA hearing. Many members of the Working Group felt that these uses should be a matter-of-right. OP will continue to research what standards and level of review is appropriate for institutional uses in residential areas. The Low and Moderate Density Residential Working Group is also looking at standards that could be applied to these sorts of uses in residential areas.

Remaining Issues

The Office of Planning will continue to research what standards and criteria are appropriate for institutional uses in residential areas. The Low and Moderate Density Residential Working Group will bring forth suggested criteria for all institutional uses, not just those for the arts.

13. Expand the number of arts uses permitted as home occupations.

Existing Practice

Home Occupation is the use that allows an artist to live and work in their home. Section 203.7(c) lists a small number of arts uses that may be practiced in the home.

Issues

Many other art forms could be practiced in the home with little or no impact on adjacent properties.

Recommendation

Revise §203.7(c) (Home Occupation) to allow any use meeting the definition of artist studio as a home occupation.

Analysis

The existing use allowances do not encompass many potential arts uses. The definition of artist studio is broad enough to capture uses suitable as home occupations. Any uses would still be subject to the performance standards for home occupations contained in §203.4. The concept of performance standards regulating home occupations is echoed in preliminary suggestions by the Low and Moderate Density Residential Working Group.

Task Force Comments and OP Response

- Increase the specificity of the noise standard for home occupations, artist studios in accessory buildings, etc.

OP had originally recommended that arts uses in residential areas have a qualitative noise standard similar to the current home occupation regulations. The Task Force recommended a quantitative standard. But because of recent legislative action by the City Council in this area, the Office of Planning, together with the Office of the Attorney General, has decided not to make any recommendation at this time. OP will examine the recent legislation in order to understand its full impact and may return with a new standard in the future.

Remaining Issues

The term “crafts” is included in the definition of studio as a permitted use. Crafts can encompass a number of distinct art types, and may include some uses that on their own could fall under the Artisan Production Use Group of the PAUL. Artisan Production uses are generally thought of as ones with more impacts to surrounding properties, but some could also be conducted as home occupations such as jewelry making or small scale glass work. The use of the performance standards contained in §203.4 should limit the scale of any operation to that suitable for residential neighborhoods.

Most cities that have arts regulations use the term “live-work” as the name of the use that combines a living space with work space. The District’s current regulations use the terms “artist housing,” “artist live-work space” and “home occupation” to mean roughly the same thing. At present “artist live-work” and “home occupation” are still terms that could be used in the revised regulations. One possibility for simplifying the text is that artist live-work could be a sub-category of general live-work uses, which could replace the term “home occupation.” The exact nomenclature will be decided as the zoning review process continues.

14. Allow different forms of occupancy in appropriate residential areas.

Existing Practice

Currently each home occupation or live-work is one artist living in the same unit as the concomitant studio.

Issues

Some existing buildings may be able to accommodate living and working space, but not in the same unit. They may be better suited to accommodate living units in one part of

the building and communal or individual work spaces in another part, or even elsewhere on the same property. The existing regulations do not anticipate such an arrangement.

Recommendation

In zones where two or more dwellings are permitted in a single building, allow multi-artist live-work space as a matter of right at the same unit density as normal dwelling units.

Analysis

In some cases a typical live-work or home occupation arrangement is not the most efficient way to house artists or for artists to work. Some buildings or types of art lend themselves to communal working arrangements. The prototypical example is the historic firehouse, where large first floor bays make great work spaces, and the upstairs can be subdivided into individual living units. These uses are similar to typical home occupations in that the impact on adjacent properties is minimal or non-existent. Performance standards similar to those governing home occupations could be incorporated into the multi-artist live-work regulations.

Task Force Comments and OP Response

- Uses need more specificity about maximum occupancy, especially Multi-artist live-work space.
- Refine minimum lot size standard for Multi-artist live-work space in R-4 districts.

The Office of Planning had originally recommended that multi-artist live-work space be permitted at a density based on the size of the lot, similar to an R-4 apartment conversion based on the size of the lot. Preliminary guidance from the Low and Moderate Density Residential Working Group indicates that the concept of apartment conversions in R-4 will not be recommended. For those buildings in R-4 that are unusually large a special exception process would probably be available to accommodate some kind of multi-unit use. For Multi-artist live-work, OP proposes that the number of artists units allowed match the permitted density for normal residential units. The only difference would be the common work space that makes Multi-artist live-work space unique. For example, in a two unit per building zone, a two unit Multi-artist live-work space would be permitted. In a three unit per building zone, three artists could live in one building with a communal work space. It should be noted that regular live-work space would still be a permitted use in rowhouses or flats in the R-4 district.

**Attachment 1
Draft Arts Definitions**

Art center [combine existing definitions from §199 and §1799 and modify] – a multifunctional arts use that:

- (a) Comprises two (2) or more distinct arts uses integrated under single management;
- (b) Includes but is not limited to uses such as administrative offices of arts organizations, art gallery, artist live-work space, art school, artist studio, cinema, concert hall, legitimate theater, media studio, multi-artist live-work space or museum;
- (c) May also include the following uses: cabaret, dinner theater and any use from the Entertainment Use Group of the Preferred Arts Use List, such that the floor area dedicated to said uses is equal to or less than 25% of the total floor area of the art center;
- (c) Occupies part or all of a single building or a group of buildings that are within a radius of two thousand feet (2,000 ft.) of the centermost building.

Art exhibition area [modify existing definition] – a building lobby, part of a lobby, another publicly accessible room on the basement or first or second floors of a building or an outdoor public area on private property, which space is designed and used for the public display and sale of works of art.

Art gallery [existing definition] – an establishment that derives more than fifty percent (50%) of its income from the display and sale of objects of art.

Art incubator – an arts use that:

- (a) Is organized under single management and a single Certificate of Occupancy;
- (b) Has as its core mission the provision of work space at a reduced cost for aspiring artists or arts organizations;
- (c) Provides work space that is either communal or subdivided into any number of areas;

- (d) May include the following uses: artist studio, administrative offices of arts organizations, legitimate theater, or media studio;
- (e) Does not have any residential uses;
- (d) Does not have, as its primary purpose, the sale of art, but it may have up to six public sales per year for art produced in the incubator, and up to six performances per year of dramatic or performance art produced in the incubator.

Artist live-work space – a single dwelling unit occupied by an artist to both live and work, where a minimum of thirty percent (30%) of the gross floor area of the unit is used for an Artist Studio use by the artist residing therein. The minimum size of a live-work unit shall be 1,000 sf. In residential zones the artist may sell art produced on site as a clearly incidental part of the live-work use.

Artist studio [modify existing definition] – a place of work of one or more persons who are engaged actively, and either gainfully or as a vocation in the following:

- (a) The fine arts, including but not limited to crafts, painting, printmaking, or sculpturing;
- (b) The performing and visual arts, including but not limited to dance, choreography, photography, or filmmaking;
- (c) Any use from the Design Use Group;
- (d) Ceramics;
- (e) Writing;
- (f) The composition of music; or
- (g) The recording and / or production of music, video or other media form.

In residential zones the artist may sell art produced on site as a clearly incidental part of the studio use.

Book store – a retail establishment that has as its main business the sale of written materials such as books and magazines. A book store may also contain as ancillary and clearly subordinate uses the sale of recorded music or other audio art forms, the sale of recorded movies or other visual art forms, a fast food establishment, prepared food shop or restaurant.

Cabaret [existing definition] – 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 [existing definition] – 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.

Floor area equivalent – The amount of floor area that a volume occupies. The first 14 feet of height in a volume shall count as a floor, and every 10 feet of height thereafter. Fractions of 10 feet shall not count as floors. Although below-grade volumes do not count toward maximum FARs, the floor area equivalent of a below-grade volume can be used, in arts districts, to meet use requirements and to generate bonus density.

Legitimate theater [existing definition] – 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.

Media studio – a studio space dedicated to the recording or production of audio and / or visual art forms or the broadcast via radio, television, internet or other media of audio and / or visual art forms or the combination of any of the above.

Multi-artist live-work space – a building or part of a building with two or more dwelling units, with all units inhabited by artists whose primary studio is in the same structure or on the same property, but not in their unit. The studio space may be communal or may be subdivided into any number of areas. In residential zones the artists may sell art produced on site as a clearly incidental part of the live-work use.

Performing arts center [existing definition] – one or more facilities that provide space for the performing arts, including but not limited to concert halls and legitimate theaters.

Recordings store – a retail establishment that has as its main business the sale of records, cds, dvds or other portable source of recorded music, spoken word, movies or other art form. A recordings store may also contain as ancillary and clearly subordinate uses the sale of books or other written materials, a fast food establishment, prepared food shop or restaurant.

Attachment 2 Task Force Comments

The following comments were received from the Task Force at their regular meeting on May 28, 2008. OP's response follows each comment. Some comments refer to earlier recommendations that are not included in this report. Those recommendations will either be forwarded to future working groups, forwarded to other Office of Planning initiatives, or left without action at this time as they are beyond the scope of the Zoning Review.

1. Do not allow Entertainment Use Group uses in C-1 or equivalent zones. Alcohol-based uses can be problematic.

The Office of Planning, through the Arts and Culture subject area process, originally recommended that uses from the PAUL be allowed in all commercial zones. As it does not directly deal with an arts district, this recommendation is not part of the present report to the Commission, but will be forwarded on to a future working group.

The PAUL includes alcohol based uses as a dance hall, discotheque, bar, nightclub or cocktail lounge. The C-1 allows bars or cocktail lounges as a matter-of-right (§701.1(b)), but the Task Force expressed concern about having alcohol-based uses in that district or its successors. OP will ask the Commercial Corridors Working Group to weigh in on this topic, and the Low and Moderate Density Residential Working Group may also bring forth recommendations about C-1 commercial uses.

The PAUL also includes the food-based uses Fast food establishment, Prepared food shop and Restaurant. OP recommends that those uses continue to be governed by the principles of Zoning Commission order #06-23, the text amendment which revised the rules and definitions for food-based uses.

- 2. Uses need more specificity about maximum occupancy, especially Multi-artist live-work space.**
- 3. Refine minimum lot size standard for Multi-artist live-work space in R-4 districts.**

The Office of Planning had originally recommended that multi-artist live-work space be permitted at a density based on the size of the lot, similar to an R-4 apartment conversion based on the size of the lot. Preliminary guidance from the Low and Moderate Density Residential Working Group indicates that the concept of apartment conversions in R-4 will not be recommended. For those buildings in R-4 that are unusually large a special exception process would probably be available to accommodate some kind of multi-unit use. For Multi-artist live-work, OP proposes that the number of artists units allowed match the permitted density for

normal residential units. The only difference would be the common work space that makes Multi-artist live-work space unique. For example, in a two unit per building zone, a two unit Multi-artist live-work space would be permitted. In a three unit per building zone, three artists could live in one building with a communal work space.

It should be noted that regular live-work space would still be a permitted use in rowhouses or flats in the R-4 district.

- 4. Put more emphasis on small artists when considering PUD amenities.**
- 5. Encourage public art in PUDs.**

The Office of Planning, through the Arts and Culture subject area process, recommended that the PUD regulations consider affordable art space or art space provided to Certified Business Enterprises (CBEs) an amenity item. This recommendation will be forwarded to a future working group dealing with the administration and review of PUDs.

Similarly, OP recommended that in PUDs or other discretionary approvals, public art formally be recognized as an amenity item. While zoning cannot impact what happens in public space, this will encourage public art to be provided on private property. This recommendation will also be forwarded to a future working group.

- 6. Increase the specificity of the noise standard for home occupations, artist studios in accessory buildings, etc.**

OP had originally recommended that arts uses in residential areas have a qualitative noise standard similar to the current home occupation regulations. The Task Force recommended a quantitative standard. But because of recent legislative action by the City Council in this area, the Office of Planning, together with the Office of the Attorney General, has decided not to make any recommendation at this time. OP will examine the recent legislation in order to understand its full impact and may return with a new standard in the future.

- 7. Proposals to modify regulations governing accessory buildings and alley buildings may not be appropriate in all neighborhoods.**

The Working Group felt strongly that size and use standards should be revised so that accessory buildings and alley lots can be better utilized for arts uses. These recommendations will be forwarded to the Low and Moderate Density Residential Working Group who can better assess what standards are appropriate for each neighborhood.

8. Multi-function Use Group uses should not be special exception uses in residential areas but rather use variances.

The Working Group strongly supported making it easier to re-use vacant buildings such as schools for Art Centers or Art Incubators. A use variance is the present method for establishing those uses in residential districts. A special exception would make it easier for those uses to find a location, but would still allow the District to review the application and give the public an opportunity to comment at a BZA hearing. Many members of the Working Group felt that these uses should be a matter-of-right. OP will continue to research what standards and level of review is appropriate for institutional uses in residential areas. The Low and Moderate Density Residential Working Group is also looking at standards that could be applied to these sorts of uses in residential areas.

9. Delete the list of potential arts districts and rely on the list of criteria to identify new arts districts.

The Working Group identified a list of criteria that they felt could be used to select the best locations for future arts districts. The Working Group then proceeded to identify several neighborhoods that could be studied to determine suitability based on those criteria. The Task Force stated that the list of neighborhoods should be omitted and that a purely analytical study should be conducted to determine future arts districts. This topic is more appropriately addressed in future small area plans, or perhaps a city-wide planning effort to identify arts areas. The groundwork conducted by the Working Group will be forwarded to any future Office of Planning initiative.

10. Be more strict about counting Art Exhibition Areas as an actual art use.

Presently, art exhibition areas (AEAs) can count as 20% of the 0.25 FAR requirement in the Downtown, or 0.05 FAR. The Working Group and the Task Force both recommended that the regulations governing AEAs be more strict. OP will include a recommendation that AEAs should count as no more than 0.025 FAR towards the 0.5 FAR requirement.

11. Consider if it is necessary to define “artist”.

The Comprehensive Plan and the Working Group both recommended stronger enforcement of arts regulations. One aspect of enforcement is ensuring that art space created with an FAR bonus is actually used for artists and arts organizations. The Office of Planning had originally recommended that the city create a peer-review panel that would certify new tenants as artistic in nature. But because that recommendation is beyond the scope of zoning changes it is not included in this report. If a peer review panel were established, it would be able to adapt to

innovations in the field, whereas a definition could not respond to changes in what constitutes art.