

**MEMORANDUM**

TO: District of Columbia Zoning Commission 2010 APR 15 PM 12: 57
FROM: Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: April 15, 2010
SUBJECT: Setdown Report for Zoning Commission Case 10-07, for Emergency text amendments to allow additional flexibility for eating and drinking establishments within the ARTS Overlay District.

ZONING COMMISSION
District of Columbia**I. RECOMMENDATION**CASE NO. 10-07
EXHIBIT NO. 1

The Office of Planning recommends that the Zoning Commission:

- Set down this case for public hearing on an emergency basis;
- Authorize the issuance of Notice of Proposed Rulemaking;
- Allow the immediate publication of the Public Hearing Notice;
- Authorize a 30 day public hearing notice instead of 45 days; and
- In the event that the Commission does not take emergency action, consolidate the hearing with a special exception application for a pending restaurant application within the Uptown Arts Overlay at 1361 U Street NW (Square 236).

This proposal to amend the ARTS Overlay would increase the percentage of frontage along U and 14th Streets NW that could be devoted to eating and drinking establishments from 25% to 50%; clarify that this limit applies only to ground floor frontage; change the overlay-wide method of measurement to a block-face by block-face method; and require that when the 50% limit is reached, any eating or drinking establishments would require variance relief from the regulations.

This report also serves as the prehearing report required by § 3013.

II. PROPOSAL

The Office of Planning proposes text amendments to Chapter 19 – Uptown Arts Overlay as follows:

A. In § 1901 USE PROVISIONS by replacing § 1901.6 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.~~

1901.6 Eating and drinking establishments shall be subject to the following limitations:

- (a) No portion of an eating and drinking establishments located on the ground floor is permitted to occupy more than fifty percent (50%) of the linear frontage of each individual block-face, not including public streets or alleys, along either 14th Street NW or U Street NW.**
- (b) An eating and drinking establishments not located on the ground (street) level of a building shall not count towards the 50% limit.**

- (c) An entrance to an eating and drinking establishment that is not located on the ground (street) level shall not count towards the 50% limit.
- (d) The linear frontage of each block-face subject to this provision is as follows:

14 th Street, N.W.		U Street, N.W.	
Square	Frontage (feet) ¹	Square	Frontage (feet) ¹
202	222.5	204	305.3
203	310.0	205	618.0
204	320.0	236	523.4
205	430.6	237	538.5
206	339.8	273	225.3
207	450.1	274	340.9
208	400.0	304	192.2
209	380.0	305	186.0
210	203.5	332	189.7
211	304.2	333	187.7
234	253.1	359	96.8
235	310.0	360	230.4
236	320.0	361	251.7
237	380.0		
238	450.0		
239	400.0		
240	² 391.0		
241	450.0		
242	363.1		
242N	154.5		

B. In § 1906 SPECIAL EXCEPTIONS by replacing § 1906.1 as follows:

~~1906.1 Exceptions from the requirements of the ARTS District shall only be permitted if granted by the Board of Zoning Adjustment under § 3104 after public hearing, based on the following criteria:~~

1906.1 The Board of Zoning Adjustment may grant exceptions under § 3104 from any of the requirements or limits of the ARTS District other than § 1901.6. In addition to the general standard set forth in § 3104, the Board must find that the criteria (a) through (d) are applicable to the relief sought:

¹ Frontage calculations are based lot frontage measurements on DC lot and square maps and do not include public alleys or streets within the square. All frontages will be verified and confirmed prior to a public hearing.

² Does not include a 9' street dedication.

III. JUSTIFICATION FOR EMERGENCY ACTION

Both the U Street and 14th Street N.W. corridors within the Uptown ARTS (ARTS) Overlay are subject to a current 25% restriction on the percentage of frontage that can be occupied by eating and drinking establishments. Recent detailed analyses by the Zoning Administrator and by the local Advisory Neighborhood Commissions (ANCs) has resulted in a determination that the 25% limit has been reached. However, there are a number of existing restaurant proposals that are currently in the building permit review process, have binding lease commitments, and have already invested in the preparatory work to open a restaurant in anticipation of being within the 25% and able to open without any zoning relief. Emergency action on this proposed text amendment would allow these restaurants, which have been undergoing renovations in good faith, to proceed without costly and unnecessary delays.

OP recognizes that the request for emergency is unusual and that emergencies are generally considered as city-wide issues. However, this is a particularly large geographic area that is becoming an increasingly important shopping and dining destination for all District residents, and timing is critical to the outstanding small businesses in this rapidly evolving commercial corridor.

Additionally, by authorizing a 30day public hearing notice the proposed text can have the earliest possible public hearing (early to mid June); allow the ZC to either consider a bench decision that evening or at the second June meeting; be referred to NCPC for their July meeting; and have final action before the August break.

IV. BACKGROUND

In Order No. 632, dated November 13, 1989, the Zoning Commission created and mapped the ARTS Overlay, which supplements the regulations of four underlying zoning districts – C-2-A, C-2-B, C-3-A and CR – in the vicinity of 14th, U and 7th Streets and Florida and Georgia Avenues NW. The purposes of the overlay include encouraging a mix of uses, a high level of pedestrian activity, a safe environment for pedestrian and vehicular movement, and an increased presence of arts, cultural and related support uses such as retail and entertainment (§1900.2). Much of the overlay, including all of the frontage along 14th Street and U Street, is also within the Greater 14th Street and Greater U Street Historic Districts, while portions of the U Street section are also within the Uptown Destination (DUKE) Plan boundaries.

Since adoption of the original order, the overlay has been amended a number of times. The first amendment (order 623-A) was adopted in November 1992 and included a new provision which established a by-right limit for eating and drinking establishments along 14th Street and U Street NW to a maximum of 25% of the total frontage within the overlay along those streets. The intent was to ensure that no one use type could dominate these streets, and that opportunities would exist for a variety of different retail uses to serve the neighborhood. Other streets within the ARTS Overlay are not subject to this provision.

Unlike most regulations that pertain to permitted uses on a specific property, this provision cumulatively applies to properties fronting onto 14th and U Streets within the Overlay - 33 block faces on 29 squares with a linear frontage of almost 11,000 feet. The Zoning Administrator is tasked with monitoring the situation to ensure that certificates of occupancy issued for eating / drinking establishments do not exceed the 25% limit. Once the limit is reached, future eating and drinking establishments would require BZA approval through a special exception process against guidelines outlined in §1906.

In 2009 ANC 2F, which includes a large portion of the 14th Street portion of the ARTS Overlay³, formed an Uptown ARTS Overlay Review Committee. A number of well attended public meetings were held to discuss the Uptown ARTS Overlay, and to form recommendations for amendments. In September of 2009, the Committee released its Uptown ARTS Overlay Report and Recommendations (the ANC Report). The report is a comprehensive document that highlights the renaissance that the area is undergoing, but also raises many concerns with the Overlay, and makes recommendations for amendments to both the Overlay text and enforcement practices. The ANC Report notes that it is the result of a collaboration involving all three affected ANCs, neighborhood associations, the MidCity Business Association, and the MidCity Artists Group. This document is forming a vital part of the Office of Planning Zoning Review process, and its recommendations are being incorporated into the analysis and drafting of proposed text through the Zoning Review process for eventual consideration by the community and the Zoning Commission.

A key recommendation of the ANC Report, as noted in the executive summary, is “*A text amendment to enable enforcement of the new limit (40-50%) on the frontage (per square) of eating and drinking uses to begin in early 2010 in the Uptown Arts District*” (p. 2). This recommendation results from the Committee’s finding that:

“it is now overkill to reserve 75% of the frontage on 14th and U streets for non-restaurant and bar uses. A substantial level of community consensus emerged during this review that a level of 40-50% is the appropriate maximum frontage that should be occupied by restaurants, bars and similar uses on the 14th and U Street corridors within the ARTS District” (p.15).

The ANC report goes on to recommend that:

However, with this expansion in allowable restaurant/bar frontage to 40-50% along 14th and U streets, it would be inappropriate for a special exception procedure to be able to take this level above 50%. It is the Committee’s strong view that the level of 50% should be viewed as an absolute maximum, above which increases in restaurant/bar frontage should not be permitted. (p.15)

The ANC Report also notes that an August 2009 community measurement estimated that 29% of existing street frontage was or would soon be devoted to eating / drinking establishments (p.15).

In response to this recommendation, the Zoning Administrator (ZA) undertook its own detailed measurements and study of 14th and U Streets, and the amount of frontage devoted to eating and drinking establishments. The ZA released general findings on April 5, 2010, noting that the Overlay was at or very near the 25% limit. Like the ANC’s report, it noted that some individual blocks were well in excess of the limit (permitted, since the limit is not measured on a block by block basis), while others had no eating or drinking establishments at all. The ZA has also noted that there are other applications for eating / drinking establishments along these streets that have been approved or are currently in process.

V. ANALYSIS

Establishing a maximum percentage of the total linear street frontage that is permitted to be devoted to a particular use is a common method of attempting to control the concentration of that use.

³ Other portions of 14th Street and U Street within the Uptown ARTS Overlay are within ANCs 1B and 2B.

Generally, these restrictions are in place to address concerns of a neighborhood over the impacts of such a concentration.

The current proposal is only for those portions of 14th and U Streets NW within the Uptown ARTS Overlay, and is being brought forward in response to the ANC Report recommendations as well as the recent Zoning Administrator analysis. The issue was also raised with the Zoning Commission as part of the Zoning Review process, when staff noted that there are problems associated with the 25% street frontage limitation related to undertaking and monitoring the required measurements of both eating / drinking establishment frontage and total frontage on the streets, particularly where the restriction applies to a very broad area such as the ARTS Overlay. The ANC Report also notes the need for greater effectiveness and certainty in managing and monitoring the regulation.

The proposed amendment would address some of the most critical issues raised in the ANC Report; other recommendations contained in that report will be addressed through the Zoning Review process. However, due to the immediate issues associated with the eating / drinking establishments, OP segregated them out for Commission consideration. The amendments would:

- A. Increase the percentage of frontage along U and 14th Streets NW from 25% to 50%.
Currently, according to the Zoning Administrator, the area as a whole has reached its limit for restaurants, and may, in fact, be slightly over the 25% limit. Effectively, no new establishments could be granted by right permission on the portions of 14th or U Street NW that are within the Overlay, but would have to seek special exception approval for the use from the BZA. Both U Street and 14th Street have become exciting destination arts and entertainment areas. An increase in the percentage of space that can be occupied by eating and drinking establishments would further encourage this redevelopment while providing for retail variety.
- B. Clarify that this limit applies only to ground floor frontage. The proposal would also exempt the entry space required for eating / drinking establishments not located on the ground (street) level from the 50% limit.
- C. Change the overlay-wide method of measurement to a block-face by block-face method.
Currently, the measurement is for the total frontage of all squares along both 14th and U Streets. As noted above, this can create difficulties in administering the regulations, and would lead to inequities in where restaurants could be located; a concentration in one small area results in an inability to establish any eating / drinking establishments by right anywhere else on the two corridors. Measuring on a block by block basis would better ensure that each block has the potential for a variety of uses, and that no part of 14th or U Street is limited from having restaurants.
- D. Require that any additional eating / drinking establishment proposal, once the 50% limit on a block is achieved, would require variance approval, rather than special exception approval permitted for other provisions of the ARTS Overlay. While OP has some concerns with this provision because of the standards of a variance test, it was made clear that this is critical to the neighborhood, and its implications warrant discussion at a public hearing. OP estimates that four of the 33 block faces appear to be currently above the proposed 50% limit – both the U Street and 14th Street frontages of square 236, the U Street frontage of square 332 (which is only slightly over the limit); and the U Street frontage of Square 305, which is currently exclusively developed with popular eating establishments.

VI. RELATED SPECIAL EXCEPTION APPROVAL REQUEST

The Zoning Commission has on rare occasions exercised their prerogative to hear variances and special exceptions in tandem with a text or map amendment when it has been deemed expedient to do so. In this case, block by block analysis of in-process applications for eating and drinking establishments compared to the amount of each block already devoted to such uses indicates one known instance where a space currently being renovated for a restaurant would not conform to the existing regulations, and depending on the Commission's course of action at set down, may not conform to the proposed regulations. The restaurant would be located on the second floor of a recently renovated building at the corner of 14th and U Streets NW, but would have an entry to the space on U Street. Under current regulations, the entry would count towards the 25% limit; the proposed regulations would exempt such entry space from the limit. If the Commission takes emergency action on the proposed amendment, no relief for this entry space would be required. However, if the Commission elects to not take emergency action, or to not set down the proposal to exempt entry space from the limit, then the entry space would exceed the limit. Under the existing area wide method of measuring the 25% limit, special exception review is required. Under the proposed block-by-block method of measuring the 50% limit, variance review is required. OP is recommending that, if required, review for this small amount of space be considered by the Zoning Commission in tandem with the text amendment proposal. If required, complete analysis of the relief against the applicable guidelines would be provided at the public hearing.

In BZA Case 17749 (1625 – 1631 14th Street, NW Central Union Mission Residential Conversion, Square 240) the BZA granted relief to the applicant, to allow more than 25% of the linear frontage on 14th Street to be devoted to restaurant use. Similar relief was granted by the BZA in Case 17850 (1802-1818 14th Street, NW). In both cases, it was noted that at the time, it had not been determined whether the Overlay did or did not already exceed this limit, and the applicant wished to ensure that they could have eating / drinking establishments as part of the ground floor of their developments.

VII. COMPREHENSIVE PLAN

The proposed text amendments would be generally not inconsistent with the Comprehensive Plan, and would further a number of city and neighborhood policies and objectives:

Chapter 2 – Framework Element

Managing Growth and Change: Guiding Principles 217

4. The District needs both residential and non-residential growth to survive. Nonresidential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. 217.4

Chapter 7 – Economic Development

Policy ED-2.3.1: Growing the Hospitality Industry

Develop an increasingly robust tourism and convention industry, which is underpinned by a broad base of arts, entertainment, restaurant, lodging, cultural and government amenities. ... 709.5

Chapter 9 – Urban Design

“Activating” the street is another important objective—especially on neighborhood shopping streets. In many cities renowned for successful street life, there is an active relationship between interior and

outdoor spaces. Lively sidewalk cafes, outdoor restaurant seating, and vendor shopping on the street can create a sense of commercial energy that is lacking on many streets in the District today. Streets can also be activated through complementary ground floor uses (such as retail rather than offices) and a high level of transparency and window space ... 913.5

Chapter 14 – Arts & Culture

Arts Districts also have an economic development value. Retail shops, restaurants, and hotels find a ready market for their goods and services in Arts Districts. ... 1404.3

Chapter 20 – Mid-City Element

The Mid-City Planning Area ... includes the vibrant nightlife and ethnic restaurants of 18th Street and the “New U” Street, and other walkable neighborhood centers that embody the best qualities of urban living. The area is well-served by the District’s transportation system, including the Metro Green Line, numerous bus lines, and several crosstown arterials. 2000.3

Policy MC-2.3.6: Small Business Retention

Incorporate small business retention and assistance programs in the Uptown District’s revitalization, possibly including zoning regulations, tax relief, and other measures which assist small businesses as redevelopment along U Street, 9th Street, and 7th Street takes place. 2013.10

Policy MC-2.3.1: Uptown Destination District

Encourage the redevelopment of U Street between 6th Street and 12th Street NW... as a mixed use residential/commercial center, with restored theaters, arts and jazz establishments, restaurants, and shops, as well as housing serving a range of incomes and household types. 2013.5

Chapter 21 – Near Northwest Area Element

Policy NNW-1.1.3: Enhancing Stable Commercial Areas

Sustain and enhance the neighborhood, community, and regional shopping areas of Near Northwest, including ... 14th Street NW. Sustain these areas as diverse, unique, pedestrian-oriented shopping streets that meet the needs of area residents, workers, and visitors. 2108.4

Policy NNW-2.3.2: 14th Street Mixed Use

Promote the development of art galleries, lofts, and business incubators for the arts along 14th Street, along with the establishment of cultural facilities and street level retail and neighborhood service uses, such as restaurants and local-serving professional offices. 2113.5

The Comprehensive Plan Generalized Future Land Use Map predominantly designates the 14th and U Street NW corridors for moderate to medium density mixed commercial / residential forms of use. The Generalized Policy Map predominately shows the corridors within Main Street Mixed Use Corridors - traditional business corridors, typically with a pedestrian oriented environment and traditional storefronts. The proposed text amendments would not be inconsistent with these designations.

VIII. DUKE FRAMEWORK PLAN FOR A CULTURAL DESTINATION DISTRICT WITHIN WASHINGTON’S GREATER SHAW / U STREET AREA

The DUKE Plan, adopted by Council in 2005, is intended to “*guide future development strategically by capitalizing upon this historic context to restore this contemporary uptown neighborhood with 18-hour destinations*”. (p.4) The intent is “*to attract local and visiting guests from the National Mall and new Convention Center, located one Metro station away*” and to

provide “*direction to the community, private sector and public agencies in revitalizing this transit oriented neighborhood to achieve a cohesive and inclusive district which meets the community and District government development goals*” (p.4). The proposed text amendments would further the objectives of the DUKE Plan:

V. Market Analysis - Overview

Other entertainment opportunities include: More dining, entertainment, and retail uses, such as niche food and beverage outlets (e.g., ethnic restaurant, single product – smoothies); live performance music clubs (e.g., jazz, hip hop); a large live entertainment venue (approx. 5,000 seats); and lifestyle retail (e.g., parenting, arts and crafts, do it yourself-oriented). (p.9)

VII. Planning & Implementation Principles (p.12)

E - Retail Development

Foster a spirited environment of local entrepreneurship in which local businesses are provided enhanced services and opportunities and the best in new retail ideas are supported.

F - Local Access & Participation

Ensure that existing residents receive opportunities and a voice in shaping how the destination district develops.

IX. CONCLUSION

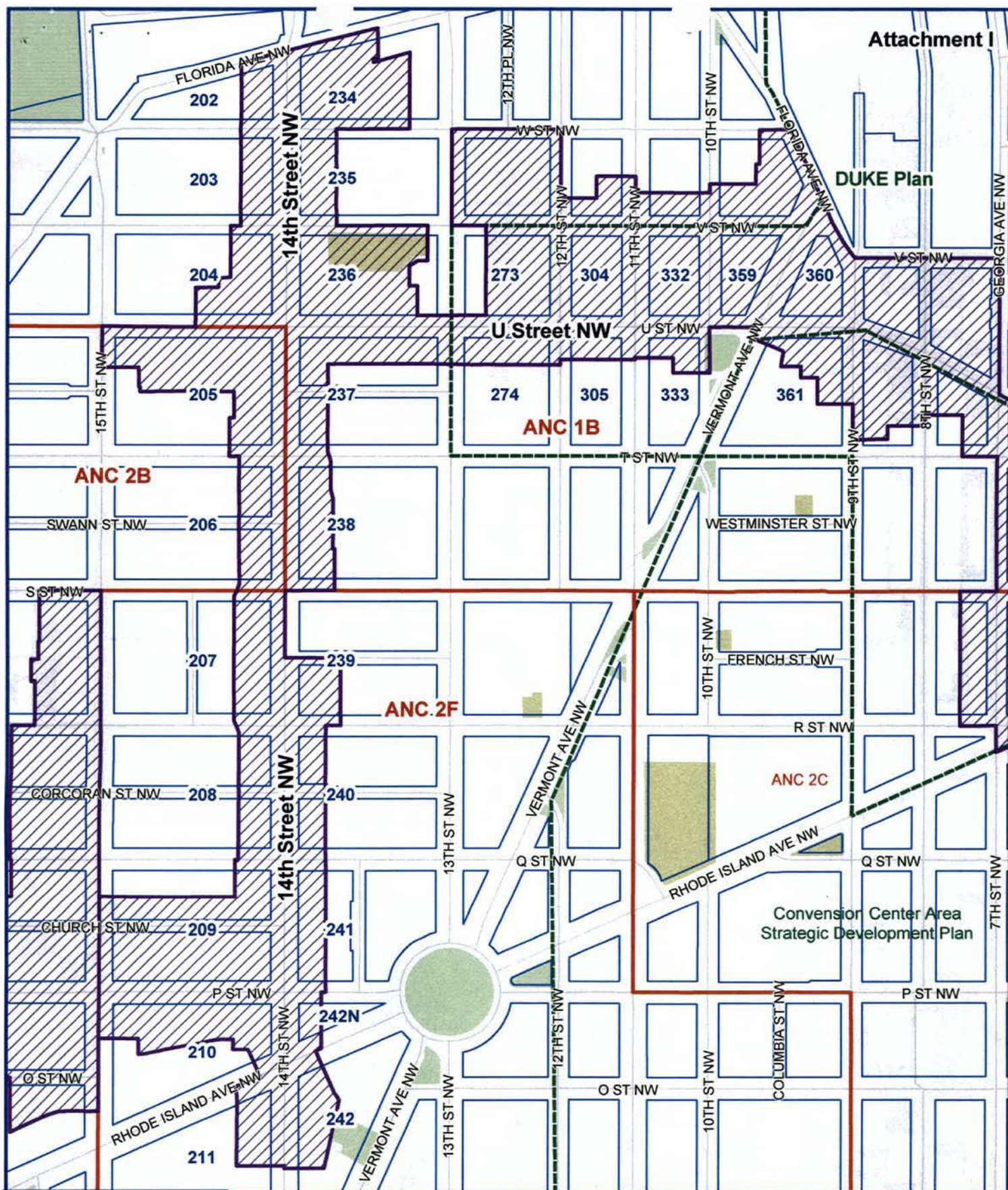
Both U Street and 14th Street have recently experienced an exciting renaissance with many popular new businesses attracting residents and visitors to the Shaw neighborhood. New infill buildings and once vacant storefronts are being utilized by many different kinds of retail and entertainment purposes, creating a lively and attractive streetscape. The proposed text amendments would facilitate this renaissance and alleviate neighborhood concerns without jeopardizing the basic intent of the ARTS Overlay.

OP recommends that the Zoning Commission:

- Set down this case for public hearing on an emergency basis;
- Authorize the issuance of Notice of Proposed Rulemaking;
- Allow the immediate publication of the Public Hearing Notice;
- Authorize a 30 day public hearing notice instead of 45 days; and
- In the event that the Commission does not take emergency action, consolidate the hearing with a special exception application for a pending restaurant application within the Uptown Arts Overlay at 1361 U Street NW (Square 236).

Attachment 1 Map of Uptown Arts Overlay

JLS / jl, Joel Lawson, project manager



Legend

-  Uptown Arts
-  2002 ANC's
-  Property Squares
-  Small Area Plan Boundaries

Uptown Arts Overlay District

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.