

**Testimony of Ruthanne G Miller on the Uptown Arts Overlay Text
Amendment June 10, 2010**

Good evening Chairman Hood and Commissioners Schlater, Turnbull and May. My name is Ruthanne Miller and it is a pleasure to have this opportunity to testify on the proposed amendment to the Uptown Arts Overlay. I am speaking today as a former member and chair of the BZA as well as a resident of an ANC with three neighborhood commercial overlays with the same restriction on eating establishments that is the subject of the proposed text amendment.

I support increasing the 25% limit proposed for this Overlay but oppose changing the present relief from special exception to variance and am concerned that such a change would be bad precedent for the neighborhood commercial overlays in the city that have the same provision.

As a member of the BZA for 6 years, I had the opportunity to deliberate on two cases concerning the 25 % limitation on the linear street frontage for eating establishments in the Arts Overlay. Those cases are cited in the Office of Planning's (OP) report. In both cases the Board granted special exception relief from this provision. The evidence presented in those cases demonstrated that the 25 % limit was problematic and too low for the purpose of the regulation – that being to protect the neighborhood from an over concentration of restaurants.

The three neighborhood commercial overlays in ANC 3C - the Cleveland Park Neighborhood Commercial Overlay, the Macomb-Wisconsin Neighborhood Commercial Overlay (famous for its retro Giant supermarket) and the Woodley Park Neighborhood Commercial Overlay – have all reached or exceeded the 25% limit and there are concerns among many residents and businesses whether there should be changes made to the same limitation on eating establishments in these overlays.

10 years ago, as chair of ANC 3C, I organized a round table on this very provision. The Office of Planning employee Nate Gross, who drafted the regulations, stated then that the 25% limit was only an estimate of the appropriate limit. He reiterated this view in a recent letter to the editor in the Washington Post last year.

I applaud the efforts of the Uptown Arts Overlay Review Committee for collaborating with all its interested parties and proposing the revised text amendment. I differ only with the one proposed provision that OP also has expressed some concerns about – that being that relief from the new 50% limit be in the form of a variance as opposed to special exception relief. I trust that the recommendation from the Uptown Arts Overlay Review Committee

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stems from a fear that any excess of the 50% limit would be detrimental to the neighborhood and that therefore a more stringent protection in the form of the variance is required

From my experience on the Board and understanding of variances and special exceptions, it is my opinion that the special exception relief is appropriate and the better form of relief for this regulatory scheme. Special exception relief is appropriate where the use is generally compatible with the district, but the Zoning Commission has determined that the BZA needs to find that there will not be adverse impacts if the relief is provided. Further the special exception process allows the Board to impose conditions, if necessary, and tailor the relief to avoid adverse impacts on neighboring property. Of course, the Board can deny the relief if the criteria in the regulation is not met and/or if adverse impact would result if relief were granted.

Relief from the limitation on eating establishments in all the overlay districts in which it exists is currently in the form of a special exception because eating establishments are compatible with a vibrant commercial neighborhood district. Because the special exception relief provides appropriate protection from adverse impacts and restaurant use is not incompatible with the intent and purpose of the Overlay, use variance relief would be overkill and inconsistent with the regulatory scheme for uses deemed compatible.

Moreover the history of this provision shows that few property owners seek to exceed the limitation. The two BZA cases mentioned in the OP report are the only ones of which I am aware for all the overlays where property owners sought relief from this provision. I have heard that most restaurant owners who find they need relief from the Board to operate in an overlay, seek an alternate location where restaurant use is a matter of right.

Finally, I would like to bring to your attention a phenomenon that is now occurring in Cleveland Park. There is a 25% limitation on the linear frontage of the overlay for eating establishments but not for any other use. Now Cleveland Park has an over abundance of nail salons and perhaps one too many tanning salons. So, the regulations have resulted in the over concentration of other businesses in spaces where eating establishments were not allowed to operate

In conclusion, I highly commend the Uptown Arts Overlay Review Committee for making a thorough, inclusive and transparent study of their Arts District and seeking relief so that their district will thrive. I believe they should have protection from adverse impacts if the 50% limitation is exceeded, but that relief should be in the nature of a special exception as contemplated originally in the regulation. Thank you for this opportunity to testify.