

4.4 Non-Arts Uses

Recommendation 11:

The Committee recommends that the zoning tool of limiting the maximum streetscape frontage on primary corridors that may be occupied by eating and drinking uses be retained in the new ARTS zoning template, albeit with significant modifications (as discussed below) to modernize this provision, and that priority be accorded to submission of a text amendment to enable the enforcement of an updated eating and drinking uses limitation in the ARTS Overlay District to begin by early 2010.

- The existing ARTS Overlay zoning regulations contain a provision limiting eating and drinking uses on 14th and U Streets to a maximum of 25% of the street frontage.²⁷ This regulation has never been enforced by the DC Zoning Administrator within the ARTS Overlay District because of ambiguities regarding the appropriate measurement of linear frontage under this provision.
- A measurement carried out by a neighborhood association in mid-August 2009 suggests that eating and drinking uses either currently occupy or will soon occupy around 29% of the total relevant frontage on 14th and U Streets.²⁸ However, there is a very large range around this overall total figure for 14th and U streets: for example, one block has around 90% of frontage occupied by eating and drinking uses, while other blocks have zero percent of frontage occupied by these uses.
- While the current limitation provision was badly written, its original purpose of preserving the vibrancy of the daytime streetscape (by limiting the proportion of uses that may be closed during the day) remains valid. Without a limitation of this kind, there is a significant risk that restaurant and bar uses crowd out retail and other uses at the streetscape level and harm the daytime street activity, which is critical for a balanced mixed-use (arts/retail/restaurant) environment to survive and thrive. This theoretical risk has already become a reality in a few spots within the ARTS Overlay District (see Appendix F).
- However, restaurants and bars are an important ingredient in having a vibrant ARTS District: they contribute foot traffic to the arts and retail uses, and play an important role in achieving a vibrant and safe nighttime street environment.
- In addition, how people shop has changed over the 20 years since the ARTS Overlay was introduced, with some retail uses now relying increasingly on Internet sales rather than simply on-site business in retail stores.

²⁶ This suggestion of creating an easily accessible, publicly available log of properties to which deed encumbrances apply also extends to other recommendations in this report that would result in title caveats (e.g. section 4.6 below regarding bonus density and height for arts uses).

²⁷ See section 1901.6, Chapter 19 (Uptown ARTS Overlay District) of Title 11 of DC Municipal Regulations.

²⁸ See the table contained in Appendix F.

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- For these reasons the Committee believes 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.
- 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.²⁹
- Moreover, this expansion in the frontage limitation on eating and drinking establishments could only be contemplated by the community in the context of the removal of restaurants, bars and similar uses from the list of preferred arts uses (PAUL), as recommended in section 4.2 of this report.
- The Committee examined in detail the four measurement options identified by OP for this provision, and discussed these options with the community.³⁰ Overwhelmingly, the option supported was OP's "Option 1" which retains linear frontage as the unit of measurement. Linear frontage is the measurement option that most closely corresponds with the purpose of this provision.
- In addition, it is essential that the area over which this provision is to be calculated be clarified. In the Committee's view, the most appropriate area over which this provision should be calculated is the linear frontage of these establishments per (zoning) "square" as defined in the current zoning regulations.³¹ This approach would have the significant advantages of:
 - (1) Being easily able to be tracked and monitored by the Zoning Administrator (since the zoning square is a basic part of each lot's identifying address);
 - (2) Spreading the benefits (and burdens) of restaurants, bars and like uses much more evenly and fairly throughout the ARTS District; and,
 - (3) Almost certainly avoiding any situation of a de-facto moratorium on these uses arising within Arts Districts since, while one zoning square may have reached its limit, other zoning squares elsewhere in the district would almost certainly continue to have room under the limit to be able to accommodate eating and drinking establishments.
- Regarding the definition of eating and drinking establishments for the purpose of this provision, the Committee favors retaining the existing definition passed by the Zoning Commission in

²⁹ While it may be appropriate to consider some mechanism for allowing *de minimus* increases above 50% to be permitted in individual cases, perhaps via the more stringent requirements of a variance procedure, in general the zoning regulations in Arts Districts should establish the 50% level of frontage as the absolute maximum level able to be occupied by restaurants, bars and similar uses.

³⁰ See page 1 of <https://www.communicationsmgr.com/projects/1355/docs/CA%20-%20Meeting%202%20-%20Presentation%20Boards.pdf>

³¹ See section 199.1, Chapter 1 (The Zoning Regulations), Title 11, DC Municipal Regulations: a square is defined as "land designated as a square on the records of the Surveyor of the District of Columbia." A very rough approximation would be that using each square as the measurement area would mean applying this provision moreorless block by block.

2006, provided that definition excludes establishments where no eating or drinking occurs on the premises.³²

- In addition, the measurement issue that has arisen with this provision in some Neighborhood Commercial Overlay Districts (such as Cleveland Park), regarding eating and drinking zoning being a property right that remains with the property owner (after the eating or drinking use has vacated the premises) until the building's use changes when a non-eating/drinking use moves in, needs to be addressed. One solution may be to limit the grandfathering of the entitlement to an eating/drinking establishment at the property to, say, six months, after which the entitlement would expire if another such use had not applied for appropriate building and liquor licensing permits at that property.
- ***Given the current influx of eating and drinking uses into the ARTS District,³³ a text amendment that modernizes the current limitation along the above lines is urgently needed*** so that enforcement of this provision by the Zoning Administrator can begin in the ARTS District in early 2010, before the frontage in some parts of this district risks becoming even more over-weight with these uses.
- Finally, on a separate issue, it should be noted that if the stand-alone "ARTS" zoning model is the approach adopted (as we recommend in section 4.1), it would be necessary to review whether there are particular non-arts uses (e.g. industrial uses, semi-industrial uses, other non-arts uses) that would be inappropriate in ARTS zone districts and should not be permitted at all.

Appendix F: Linear Frontage of Eating & Drinking Establishments

14TH and U STREETS:

Percentage of Linear Frontage occupied by Eating & Drinking Establishments*

(as at August 15, 2009)

	West	East
1300 Block 14th St	13%	31% (N thru Rhode Island)
1400 Block 14th St	28%	35% (Rhode Island thru P)
1500 Block 14th St	12%	61% (P thru Q)
1600 Block 14th St	17%	15% (Q thru R)
1700 Block 14th St	8%	0% (R thru S)
1800 Block 14th St	20%	39% (S thru T)
1900 Block 14th St	43%	5% (T thru U)
2000 Block 14th St	0%	70% (U thru V)
2100 Block 14th St	0%	27% (V thru W)
2200 Block 14th St	37%	0% (W thru Florida)
Total 14th St	17%	31%
	South	North
1400 Block U St	35%	0%
1300 Block U St	33%	44%
1200 Block U St	36%	64%
1100 Block U St	91%	25%
1000 Block U St	0%	47%
900 Block U St	46%	7%
Total U St	39%	36%
Total 14th and U Streets	29%	

Source: MidCity Residents Association

* Eating and drinking establishments are defined here to include licensed and unlicensed restaurants and bars that are either: currently in operation; or are currently displaying ABRA placards; or are known to be seeking licenses (about to be placarded); or are sites with special exceptions already approved by the DC Board of Zoning Adjustment to open an eating or drinking establishment.

Appendix H: Support for the Committee's Recommendations



Advisory Neighborhood Commission 1B

Government of the District of Columbia

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September 11, 2009

Ms. Harriet Tregoning
Director
DC Office of Planning
Frank D. Reeves Municipal Center
2000 14th Street N.W.
Washington, D.C. 20009

RE: D.C. Zoning Review: Uptown Arts Overlay ("ARTS") District

Dear Ms. Tregoning::

At its regularly scheduled meeting on September 3, 2009 (notice of which was properly given and at which a quorum of seven out of eleven members was present), ANC1B voted (6-0 with one abstention) to support the report and all recommendations of the ANC 2F Arts Overlay Committee. The Commission considers that these recommendations will strongly support and promote the continued development of the 14th Street and U Street Corridor in the best interest of the community. We ask that you give great weight to the Commission's support of these recommendations.

For further comment or questions, please contact Chairperson Brianne K. Nadeau.

Sincerely,

Brianne K. Nadeau
Chairperson

Meghan M. Conklin
Vice Chairperson

CC: Councilmember Jim Graham
Anthony Hood, Chairperson, D.C. Zoning Commission
Charles Reed, Chairperson, ANC 2F
Mike Silverstein, Chairperson, ANC 2B
Andrea Doughty, Chairperson, Arts Overlay Committee