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ID	Status	Register Category	Subject	Register Issue	Action Date
253187	Submitted to ODAI	Public Hearing	Zoning Commission Notice of Public Hearing: Case No. 10-07 (Text Amendment to Allow Additional Flexibility for Eating & Drinking Establishments within the ARTS Overlay District)	5/7/2010 Vol 57/19	4/29/2010 09:04:50
253090	Submitted to ODAI	Emergency and Proposed	Zoning Commission Notice of Emergency & Proposed Rulemaking: Case No. 10-07 (Text Amendment: Additional Flexibility for Eating & Drinking Establishments within the ARTS Overlay District)	5/7/2010 Vol 57/19	4/29/2010 09:03:13

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ZONING COMMISSION
District of Columbia

CASE NO. 10-07

EXHIBIT NO. 3

ZONING COMMISSION
District of Columbia
CASE NO.10-07
EXHIBIT NO.3

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY and PROPOSED RULEMAKING
Z.C. Case No. 10-07**

**Text Amendment - Additional Flexibility for Eating and Drinking Establishments
within the ARTS Overlay District.)**

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798, as amended; D.C. Official Code §§ 6-641.01 and 6-641.03) and the authority set forth in section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), hereby gives notice of the adoption, on an emergency basis, of an amendment to § 1901.6 of the Zoning Regulations (Title 11, DCMR).

The amendment increases from twenty-five percent (25%) to thirty percent (30%) the amount of the linear foot frontage within the ARTS Overlay District, as measured along the lots fronting on 14th Street and U Street, N.W., that can be occupied as a matter of right by eating and drinking establishments.

This action is being taken on an emergency basis in order to safeguard and promote continued economic growth within the overlay and the District. This growth is threatened because the existing twenty five percent (25%) occupancy cap has been reached. As a result, any new eating and drinking establishments would require the approval of the Board of Zoning Adjustment (“BZA”) before structural renovations could begin. The earliest date for a hearing on any such application would not be until July of this year. There are presently several proposed restaurant ventures that have reached the point of development by which considerable sums have been borrowed and expended, and lease commitments made. None of the owners had budgeted for the additional cost and time associated with the special exception approval process. Given the low margin nature of the restaurant business, subjecting these nascent enterprises to the special exception process may cause them to fail before they even begin.

Such a result would both jeopardize the ongoing rejuvenation of this overlay area and send exactly the wrong message to the larger business community, such that the adverse impact of retaining the cap is likely to be felt District-wide. For this reason the Zoning Commission concluded that an increase of the cap, to the minimum extent necessary to allow ongoing projects to continue, was needed “for the immediate preservation of the public ... welfare”. (D.C. Official Code § 2-505.)

This emergency rule was adopted on April 26, 2010, and became effective on that date. The amendment to Title 11 of the District of Columbia Municipal Regulation, ZONING, is as follows

Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, § 1901, USE PROVISIONS, § 1901.6 is amended to read as follows:

- 1901.6 Eating and drinking establishments shall occupy no more than thirty percent (30%) of the linear foot frontage within the ARTS Overlay District, as measured along the lots fronting on 14th Street and U Street, N.W.

The Commission also gives notice of its intent to take final rulemaking action to adopt the following amendments to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* or thirty (30) days following referral of this amendment to the National Capital Planning Commission, whichever occurs last.

The proposed rules are more expansive than the emergency rule described above. If adopted, the proposed rules would amend § 1901.6 to change the overlay-wide method of measurement to a square by square method (excluding any area of right-of-way), establish at 50% the maximum amount of linear foot frontage within each square fronting on 14th Street or U Street, N.W. that can be occupied by eating and drinking establishments, and clarify that this limit applies only to ground floor frontage. A chart is also added to the subsection that specifies the total street frontage occupied by each affected lot. The Office of Planning will verify these measurements prior to the public hearing on these proposed rules. Notice of that hearing is given elsewhere in this volume.

The Commission also proposed to amend § 1906.1. That provision authorizes the BZA to grant relief from any of the other provisions of the overlay. The amendment would disallow such relief from the 50% limit, leaving only the grant of a variance available. In addition, the subsection would be amended to specify that the BZA, when considering whether to grant a special exception from the remaining overlay provisions, should apply the criteria stated in paragraphs (c) or (d), concerning architectural concept and vehicular access, only if the criteria are relevant to the relief sought.

The emergency rule will expire on August 24, 2010, which is the 120th day after the adoption of the rule, or upon the publication of a Notice of Final Rulemaking in the *D.C. Register* adopting any or all of the proposed rules, whichever occurs first.

The proposed amendments to the Zoning Regulations, Title 11 DCMR, are as follows:

Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, is amended as follows:

1. Section 1901, USE PROVISIONS, § 1901.6 is amended to read as follows:

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

- (a) No portion of an eating and drinking establishment 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 N.W. or U Street N.W.;

- (b) An eating and drinking establishment 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; and
- (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)	Square	Frontage (feet)
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	399.8	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	200.0		
240	391.0		
241	450.0		
242	363.1		
242N	154.5		

2. Section 1906, SPECIAL EXCEPTIONS, § 1906.1, is amended by striking the phrase “based upon the following criteria” and inserting in its place the phrase “based upon the following

criteria; except that the Board shall apply criteria (c) and (d) only if relevant to the relief sought", so that the provision will read as follows:

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 based upon the following criteria; except that the Board shall apply criteria (c) and (d) only if relevant to the relief sought:

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, June 10, 2010 @ 6:30 p.m.**
 Office of Zoning Hearing Room
 441 4th Street, N.W. Suite 220-S
 Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 10-07 (Text Amendment to Allow Additional Flexibility for Eating and Drinking Establishments within the ARTS Overlay District)

THIS CASE IS OF INTEREST TO ANCs 1B, 2B, and 2F

The Office of Planning (“OP”), in a report dated April 15, 2010, petitioned the Zoning Commission (the “Commission”) for a text amendment to allow additional flexibility for eating and drinking establishments within the ARTS Overlay District.

OP recommended that § 1901.6 be amended to change the overlay-wide method of measurement to a square-by-square method (excluding any area of right-of-way), establish at 50% the maximum amount of linear foot frontage within each square fronting on 14th Street or U Street, N.W that can be occupied by eating and drinking establishments, and clarify that this limit applies only to ground floor frontage. A chart would also be added to the subsection that specifies the total street frontage occupied by each affected lot. OP will verify these measurements prior to the public hearing.

OP also proposed amending § 1906.1. That provision authorizes the Board of Zoning Adjustment (“BZA”) to grant relief from any of the other provisions of the overlay. The amendment would disallow such relief from the 50% limit, leaving only the grant of a variance available. In addition, the subsection would be amended to specify that the BZA, when considering whether to grant a special exception from the remaining overlay provisions, should apply the criteria stated in paragraphs (c) or (d), concerning architectural concept and vehicular access, only if the criteria are relevant to the relief sought.

At its regular public meeting held April 26, 2010, the Commission set down this case for a public hearing. The OP report served as the pre-hearing submittal for the case.

When setting down this case for a public hearing, the Commission authorized the publication of a proposed rulemaking notice, which is also published in this edition of the *D.C. Register*.

The Commission also authorized the immediate publication of this public hearing notice, and a 30 day advertisement period for the public hearing notice. In doing so, the Commission waived its normal rule requiring certain supplemental filings before advertising the public hearing notice, 11 DCMR 3013, and the 40 day notice period requirements of 11 DCMR § 3014.1.

The proposed amendments to the Zoning Regulations, Title 11 DCMR, are as follows:

Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, is amended as follows:

1. Section 1901, USE PROVISIONS, § 1901.6 is amended to read as follows:

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

- (a) No portion of an eating and drinking establishment 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 N.W. or U Street N.W.;
- (b) An eating and drinking establishment 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; and
- (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)	Square	Frontage (feet)
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	399.8	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		

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14 th Street, N.W.		U Street, N.W.	
Square	Frontage (feet)	Square	Frontage (feet)
238	450.0		
239	200.0		
240	391.0		
241	450.0		
242	363.1		
242N	154.5		

2. Section 1906, SPECIAL EXCEPTIONS, § 1906.1, is amended by striking the phrase “based upon the following criteria” and inserting in its place the phrase “based upon the following criteria; except that the Board shall apply criteria (c) and (d) only if relevant to the relief sought”, so that the provision will read as follows:

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 based upon the following criteria; except that the Board shall apply criteria (c) and (d) only if relevant to the relief sought:

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, D.C. Official Code § 6-641.01, *et seq.*

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of 11 DCMR § 3021. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to Sharon Schellin, the Secretary of the Zoning Commission, Office of Zoning, Suite 200/210-S, 441 4th Street, N.W., Washington, D.C., 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, KONRAD S. SCHLATER, MICHAEL G. TURNBULL, AND PETER G. MAY – ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JAMISON L. WEINBAUM, DIRECTOR, AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.