

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



April 29, 2010

Via E-Mail & U.S. Mail:

Marcel Acosta
Executive Director
National Capital Planning Commission
401 9th Street, N.W., Suite 500
Washington, D.C. 20004

Re: Notice of Emergency & Proposed Rulemaking: Z.C. Case No. 10-07 (Office of Planning – Text Amendment re: ARTS Overlay District)

Dear Mr. Acosta:

Please find attached a courtesy copy of the emergency and proposed rulemaking for the above-referenced case. The ZC took action to adopt the enclosed at its meeting held on April 26, 2010.

The rulemaking will be published in the *D.C. Register* on May 7, 2010, for a 30-day comment period. A public hearing has been scheduled for Thursday, June 10, 2010.

No action is required by NCPC until after the hearing; this copy is being sent to NCPC as a courtesy only.

If you have any questions, contact me at the Office of Zoning on (202) 727-0340.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon S. Schellin".

Sharon S. Schellin
Secretary to the Zoning Commission

cc: David W. Levy (via e-mail)
Carlton Hart (via e-mail)

ZONING COMMISSION
District of Columbia

CASE NO. 10-07

EXHIBIT NO. 4

**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.