



FURTHER INFORMATION

2010 MAY 28 PM 2: 27

TO: District of Columbia Zoning Commission

FROM: Jennifer Steingasser, ^{JS} Deputy Director Development Review & Historic Preservation

DATE: May 28, 2010

SUBJECT: Public Information Report for Zoning Commission Case 10-07, text amendments to allow additional flexibility for eating and drinking establishments within the ARTS Overlay District.

I. RECOMMENDATION

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 square by square method; and stipulate that when the 50% limit is reached, any eating or drinking establishments would require variance relief from the regulations.

The Office of Planning recommends that the Zoning Commission approve the following text amendments to DCMR 11 Chapter 19 - Chapter Uptown Arts Overlay:

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 establishments, drinking establishments, or eating and drinking establishments shall be subject to the following limitations:

(a) **No portion of such an establishment located on the ground floor is permitted to occupy more than fifty percent (50%) of the linear frontage of each individual square, as that frontage is set forth below:**

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	610.8
204	320.0	236	538.4
205	430.6	237	538.4
206	339.4	273	303.3
207	450.0	274	340.3
208	400.0	304	192.2
209	380.0	305	186.0
210	203.4	332	189.8
211	304.1	333	187.8
234	253.1	359	96.8

ZONING COMMISSION
District of Columbia

CASE NO. 10-07

EXHIBIT NO. 7

14 th Street, N.W.		U Street, N.W.	
Square	Frontage (feet)	Square	Frontage (feet)
235	310.0	360	240.4
236	320.0	361	261.7
237	380.0		
238	450.0		
239	200.0		
240	391.0		
241	450.0		
242	363.1		
242N	154.5		

- (c) Such an establishment not located on the ground (street) level of a building shall not count towards the 50% limit.
- (d) An entrance to such an establishment that is not located on the ground (street) level shall not count towards the 50% limit, to a maximum of ten linear feet.

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

II. BACKGROUND

At its April 26, 2010 regular public meeting, the Zoning Commission set down for a public hearing a proposal by the Office of Planning for text amendments to the ARTS Overlay eating and drinking establishment restrictions. The Commission also took emergency action to increase the limit from 25% to 30% to accommodate a small number of such establishments which were currently in a review process. The emergency action will expire in August 2010.

The Zoning Commission originally created and mapped the ARTS Overlay in 1989, and covers a wide area, including portions of 14th and U Streets NW. The Overlay is generally intended to encourage 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, restaurant, and entertainment businesses (§1900.2).

The Overlay has subsequently been amended a number of times. The first amendment (1992) established a by-right limit of 25% maximum of the total frontage along 14th Street and U Street NW that could be devoted to eating and drinking establishments. Unlike most regulations that pertain to permitted uses on a specific property, this provision cumulatively applies to all properties fronting onto 14th and U Streets within the Overlay - 33 faces on 29 squares with a linear frontage of just over

10,500 feet, or 2 miles. The Zoning Administrator is tasked with ensuring that certificates of occupancy issued for eating / drinking establishments do not exceed the limit. Other streets within the ARTS Overlay are not subject to this provision, nor are portions of 14th Street and U Street that are not within the Arts Overlay.

In September of 2009, the Uptown ARTS Overlay Review Committee released an Uptown ARTS Overlay Report and Recommendations (the Review Committee Report), which makes recommendations for amendments to both the Overlay text and enforcement practices. The Review Committee Report was the result of a collaboration involving all three directly affected ANCs, neighborhood associations, the MidCity Business Association, and the MidCity Artists Group. In its report, the Review Committee recommended that the current limit on eating / drinking establishments be raised from 25% to 40-50% maximum, noting that they estimated that 29% of existing street frontage was or would soon be devoted to eating / drinking establishments (p.15). The Review Committee report also recommended that the method of measurement be changed to a square by square method, and that once the limit is reached on a square, any additional eating / drinking establishment would require variance approval rather than the current special exception approval, a more difficult test to make.

In response to this report, the office of the Zoning Administrator (ZA) undertook its own detailed measurements and study of the amount of frontage devoted to eating and drinking establishments along 14th and U Streets within the Arts Overlay. The ZA released general findings on April 5, 2010, noting that the Overlay was at or very near the 25% limit.

In response to these studies, OP brought forward recommended text amendments in an April 2010 report intended to address some of the most critical issues raised in the Review Committee Report. Other recommendations contained in that report will be addressed through the separate Zoning Review process. However, due to the immediate issues associated with the eating / drinking establishments, OP separated them out for more immediate Commission consideration in this initiative.

III. OP RECOMMENDATION AND ANALYSIS

Since setdown, OP has worked with the ZA to provide more detailed and definitive numbers for the linear frontage of each square along 14th and U Streets as well as the frontage currently devoted to eating / drinking establishments. This information is provided in the table below. Square frontages are based on the surveyed Baiste maps of the 1960's, and includes all land within each square fronting onto the relevant street, but excludes public alleys and streets through the square. Eating / drinking establishment frontage was determined by DCRA primarily through on-site measurement as well as through a review of existing and pending permit applications. DCRA numbers include eating / drinking establishments that are currently in the permitting process but are, of course, subject to change as new applications are received.

Many individual squares are in excess of the current limit, which is permitted since the limit is not currently measured on a square by square basis. Some squares would also be over the proposed limit of 50% eating / drinking establishments. Overall, U Street has a significantly higher percentage of frontage devoted to eating drinking establishments (37.4%) than does 14th Street (21.9%). This information is also shown on map Attachment I, and detailed on the table below:

Square	Street Frontage	Amount devoted to Restaurant ¹	Percent
14th Street			
202	222.5	60.0	27.0%
203	310.0	25.0	8.1%
204	320.0	0.0	0.0%
205	430.6	188.0	43.7%
206	399.4	19.0	4.8%
207	450.0	65.0	14.4%
208	400.0	75.2	18.8%
209	380.0	46.0	12.1%
210	203.4	59.0	29.0%
211	304.1	40.0	13.2%
234	253.1	39.1	15.5%
235	310.0	75.1	24.2%
236	320.0	215.0	67.2%
237	380.0	43.7	11.5%
238	450.0	226.6	50.4%
239	200.0	0.0	0.0%
240	391.0	0.0	0.0%
241	450.0	109.9	24.4%
242	363.1	100.6	27.7%
242N	154.5	75.8	49.1%
14th St. Total	6,691.7	1,463.0	21.9%
U Street			
204	305.3	0.00	0.0%
205	610.7	228.2	37.4%
236	538.4	284.3	52.8%
237	538.4	198.0	36.8%
273	303.3	107.5	35.5%
274	340.3	130.7	38.4%
304	192.2	34.1	17.8%
305	186.0	179.8	96.7%
332	189.8	100.9	53.2%
333	187.7	0.0	0.0%
359	96.8	0.0	0.0%
360	240.4	147.3	61.3%
361	261.7	82.8	31.6%
U St. Total	3,990.9	1,493.5	37.4%
Overlay Total	10,682.6	2,956.5	27.7%

¹ Includes existing establishments, and ones that are currently in the permitting process.

With the refinements noted below, OP's recommendations from our setdown report have not significantly changed. The proposed amendments would:

A. Increase the permitted percentage of eating / drinking establishment frontage from 25% to 50%.

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 / drinking establishments would further encourage this redevelopment while maintaining retail variety. According to DCRA analysis of existing and in process eating / drinking establishments, there are 51 on U Street and 50 on 14th Street NW. Cumulatively, at 37.4% U Street is already well above the current 25% limit while 14th Street is slightly under at 21.9%. The average frontage of existing establishments is just less than 29 feet; the largest single frontage is 120 feet, and the narrowest is 12.4 feet.

OP was contacted by one ANC commissioner suggesting that a lower percentage along U Street might be preferable. The ANC in question did not meet on this issue prior to this report being finalized, but OP raised this option with the ZA who indicated that this would not appear to present significant implementation difficulties. The table below summarizes the impact of potential percentages along both 14th and U Streets:

	Percentage Permitted	Frontages: Street	Eating /Drinking	Impact on Availability of Eating / Drinking Space	Squares Made Non-conforming*
14th St.		6,692			
Existing	21.9%		1,463		
If limit is set at:	25%		1,673	265 linear feet available	7 35.0%
	30%		2,008	599 linear feet available	4 20.0%
	40%		2,677	1,268 linear feet available	4 20.0%
	50%		3,346	1,938 linear feet available	2 10.0%
U St.		3,991			
Existing	37.4%		1,494		
If limit is set at:	25%		998	-396 linear feet over limit	9 64.3%
	30%		1,197	-196 linear feet over limit	9 64.3%
	40%		1,596	203 linear feet available	4 28.6%
	50%		1,995	602 linear feet available	4 28.6%
Combined		10,683			
Existing	27.7%		2,957		
If limit is set at:	25%		2,671	-131 linear feet over limit	16 47.1%
	30%		3,205	403 linear feet available	13 38.2%
	40%		4,273	1,471 linear feet available	8 23.5%
	50%		5,341	2,540 linear feet available	6 17.6%

* Assumes that the Commission also adopts the square by square method of calculation

OP continues to recommend a limit of 50% on U Street NW. This, combined with the other recommendations noted below, would provide certainty and permit a reasonable number of new establishments before the limit is reached on most squares. A limit substantially lower than 50% would make more blocks non-conforming, particularly since 4 squares are very close to the 40% number. Based on the average eating / drinking establishment frontage of about 29 feet, a 50% limit would allow about 17 additional establishments on the .75 mile frontage along U Street NW, an increase of approximately 35%.

With regards to 14th Street, at about 22%, the current percentage of restaurants is lower so there is the potential for a greater change – a 50% limit would allow an estimated 65 additional eating / drinking establishments on the 1.27 mile frontage, an increase of about 127%. However, because many squares have been developed with other arts, retail, office, or residential uses, it is unlikely that these increases in eating / drinking establishments could be reached, at least in the foreseeable future. This would particularly be the case if the Commission adopts the separate recommendation to measure conformance using a square by square method rather than the current area-wide method.

14th Street is also increasingly becoming a destination for performing and visual arts – Studio Theatre and Source Theatre are located on 14th Street, and the Jewish Community Center and Church Street Theatre are both in close proximity. The higher density 14th and P Street area is also home to a growing number of art galleries (currently at least 7), and destination and often high end retail (particularly home furnishing) stores. All of these uses would continue to be supported by close eating and drinking establishments to serve their patrons, as a common complaint is the relative lack of eating and drinking establishments in the immediate area.

Raising the limit to 50% would minimize the number of squares made non-conforming and provide a greater sense of market stability. It would help to foster a sense of certainty in the neighborhood, in the retail sector, and in the development community of expectations for the area over the long term. This would also allow such facilities to locate on the higher density and wider 14th Street corridor, potentially reducing the number that might instead locate within or closer to lower density areas and on the narrower side streets (where permitted) where transit options are fewer and potential impacts would be greater.

The community, including the local ANC, also appears to be supportive of the 50% limit, when combined with the other recommendations noted below. However, discussions with local ANCs is continuing, and further information and a possible alternative recommendations will be provided at or prior to the public hearing.

B. Clarify that this limit applies only to ground floor frontage.

The overlay has been interrupted to address only ground floor establishments and not those below grade or on second floors or above. This section would simply clarify that interpretation.

C. Exempt entry space to eating / drinking establishments not located on the ground (street) level.

To clarify what is considered entry space, OP now recommends that this be limited to a maximum width of 10 feet. This would provide adequate space for a reasonable entry (stairs and elevator). Alternatively, the Commission could elect to eliminate this exemption, meaning that all entry space devoted to eating / drinking establishments not on the ground floor would be counted towards the limitation.

D. Change the overlay-wide method of measurement to a calculation based on the frontage of each individual property square.

Currently, the measurement is for the total frontage (2 miles) 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 square by square basis would better

ensure that each square has the potential for a variety of uses, and that no part of 14th or U Street is limited from having restaurants.

- E. Require that any additional eating / drinking establishment proposal, once the 50% limit on a square is achieved, would require variance approval, rather than special exception approval permitted for other provisions of the ARTS Overlay.

Where the percentage on a square is reached, any new proposal would require BZA approval though the variance test, showing uniqueness associated with the property which results in a practical difficulty, and that the proposal would not result in harm to the neighborhood or to the integrity or intent of the zoning regulations themselves.

Under the current provisions, 25 % of the corridor can be an eating or drinking establishment as a matter-of-right and it is theoretically possible to achieve 100% by special exception. If a variance is required for an establishment to exceed the 50% limit, the 50% is for practical purposes an ‘absolute’ limit and part of why OP recommends the 50% as opposed to a lower percentage.

While OP continues to have some concerns with this provision because of the high standards of a variance test, it was made clear that this is critical to the neighborhood if the limit is to be raised. OP estimates that six of the 33 square faces appear to be currently above the proposed 50% limit – two on 14th Street and four on U Street NW. In addition, a few other squares are close to the 50% limit.

The current special exception standards contained in Section 1906.1, which would continue to apply to other forms of relief from Overlay requirements, would not directly apply to a variance request to exceed the frontage limitation.

IV. COMPREHENSIVE PLAN

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.

The proposed text amendments would further a number of city and neighborhood policies and objectives in the Chapter 7 – Economic Development Element (Policy ED-2.3.1); Chapter 9 – Urban Design Element (913.5); Chapter 14 – Arts & Culture Element (1404.3); Chapter 20 – Mid-City Area Element (Policy MC-2.3.6: Small Business Retention; Policy MC-2.3.1: Uptown Destination District); and Chapter 21 – Near Northwest Area Element (Policy NNW-1.1.3: Enhancing Stable Commercial Areas, and Policy NNW-2.3.2: 14th Street Mixed Use).

A portion of the area in question is also within the DUKE Framework Plan for a Cultural Destination District within Washington’s Greater Shaw / U Street Area, and the proposed change would not be inconsistent with that small area plan.

V. COMMUNITY COMMENTS

OP has been in contact with all of the directly impacted ANC's, individual ANC members, and the Chair of the Arts Overlay Review Committee. OP has offered to attend each ANC meeting; all three ANCs have regularly scheduled meetings subsequent to OP filing this report, but before the public hearing. As such, OP may submit a supplemental report or provide supplemental information at the public hearing in response to issues or concerns heard at ANC meetings.

A representative of ANC 1B supplied OP with the ANC adopted motion to support the Review Committee Report and the recommendations it contained; the OP recommendations are consistent with those of that report. A copy of the ANC 1B recommendation is included in this report as Attachment II. OP has also been invited to attend the next meeting of ANC 2F on June 2, 2010.

OP has received one letter from a property owner on 14th Street in support of the proposal, and has been contacted by phone from some existing and future businesses owners requesting additional information and generally indicating support for the proposal.

VI. AGENCY COMMENTS

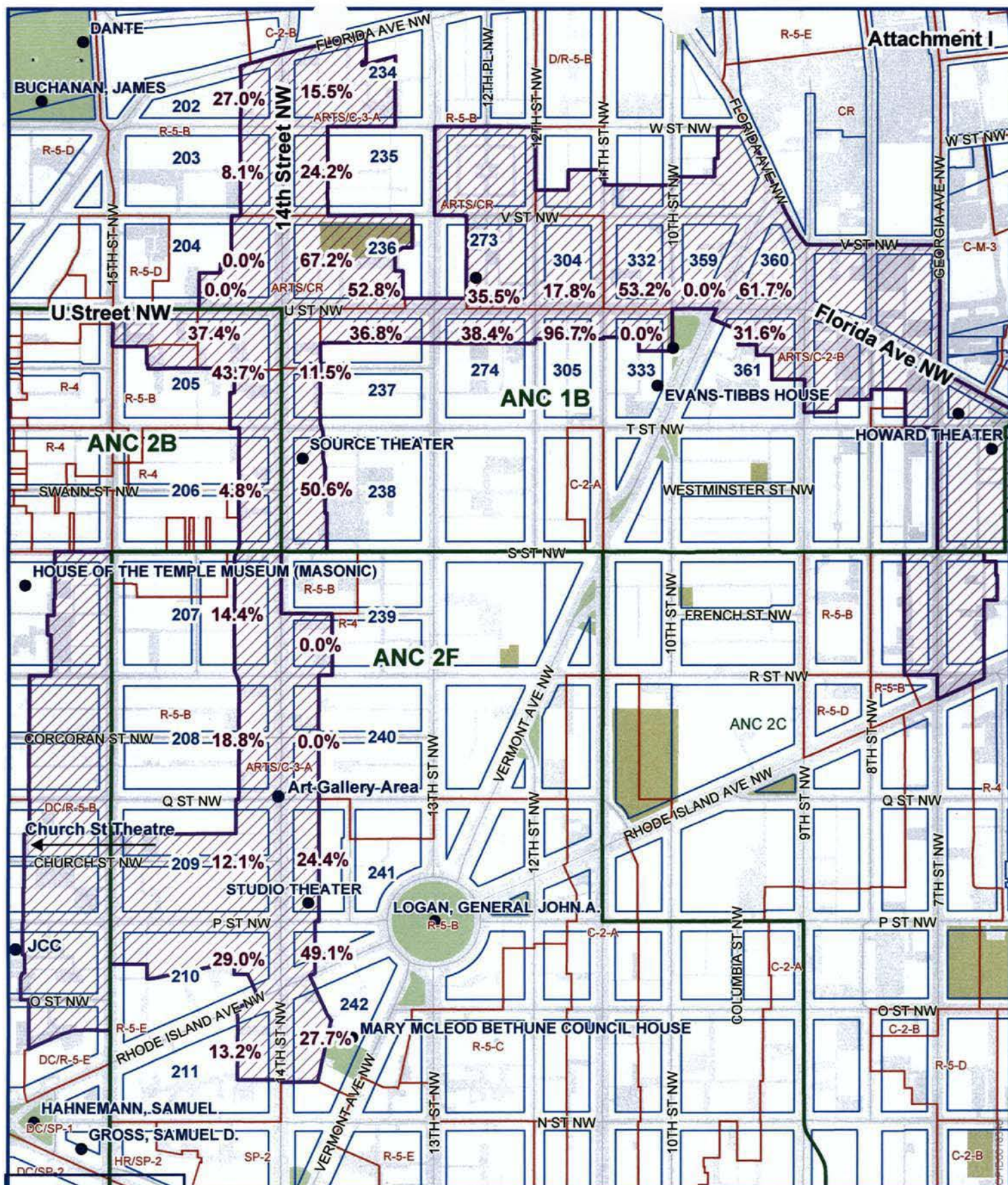
OP has received comments from no other District agency, but has worked closely with the Zoning Administrator in the Department of Consumer Affairs and the Office of the Attorney General in drafting these provisions.

Attachments:

- 1 Map of Uptown Arts Overlay showing percentages of each square frontage devoted to eating / drinking establishments
- 2 Letter of support for Arts Overlay Review Committee Report and Recommendations (September, 2009)

JLS / jl

Joel Lawson, project manager



Legend

- Points of Interest
- ▨ Uptown Arts Overlay
- ▭ 2002 ANCs
- ▭ Property Squares
- ▭ Zoning Districts

Uptown Arts Overlay District, With Existing Percentage of Eating / Drinking Establishments

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.

DC Office of Planning
June, 2010
1:6,500





Advisory Neighborhood Commission 1B

Government of the District of Columbia

PO Box 73710, Washington, DC 20056

**Myla Moss, Peter Raia, Sedrick Muhammad, Deborah Thomas, Brianne Nadeau, Meghan Conklin,
Juan Lopez, Rosemary Akinmboni, Thomas K. D. Smith, Eduardo Ferrer, E. Gail Anderson-Holness**

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,

A handwritten signature in black ink, appearing to read "Brianne K. Nadeau".

Brianne K. Nadeau
Chairperson

A handwritten signature in black ink, appearing to read "Meghan M. Conklin".

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