



CASE NO. 10-18
EXHIBIT NO. 6

District of Columbia Office of Planning
D.C. OFFICE OF ZONING

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MEMORANDUM

TO: Zoning Commission for the District of Columbia
FROM: Jennifer Steingasser, Deputy Director for Development Review & Historic Preservation
DATE: October 4, 2010
SUBJECT: Zoning Commission Case 10-18 Public Hearing Report - Proposed zoning text amendments related to allow additional flexibility for fast food establishments and prepared food shops within a portion of Square 375.

I. RECOMMENDATION

OP recommends that the following proposed text amendments be approved:

- Amend the list of arts and arts-related uses in § 1711 and the ground floor use requirements in § 1703 to allow additional flexibility for fast food establishments and prepared food shops within lot 823 of Square 375.

II. PROPOSED TEXT

The following changes are proposed with new text shown in **BOLD** and UNDERLINED:

Chapter 17, DOWNTOWN DEVELOPMENT OVERLAY

Section 1703, Downtown Shopping District (Retail Core) is amended by adding new language to § 1703.3 to read as follows:

1703 DOWNTOWN SHOPPING DISTRICT (RETAIL CORE)

1703.3 Each new or altered building that faces or abuts a public street shall devote all of the ground floor leasable space to the retail and service uses listed in § 1710 or the arts and arts-related uses listed in § 1711; provided:

- (a) The gross floor area devoted to the retail, service, arts and arts-related uses listed in §§ 1710 and 1711 shall be no less than 0.5 FAR on the ground floor;
- (b) Not more than 20% of the required gross floor area on the ground floor shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket office, prepared food shops, fast food establishments, printing or fast copy services, newsstands, dry cleaners, or any combination thereof; **except that on lot 823 in Square 375, measured as 115 feet parallel to 10th Street NW from G Street, NW to G Place, NW, fast food establishments and prepared food shops shall not be subject to the 20% limit:**
- (c) This ground floor use requirement shall not apply to a building that is devoted entirely to hotel or apartment house use or to a church or other place of worship; and
- (d) In the applicable sector of the Downtown Arts District, that is Squares 254, 290, 321, 347, 377, 376, and 375 (south of G Place), uses that are listed in §

1711 shall comprise not less than 50% of the gross floor area required to be devoted to preferred uses.

Section 1711, Arts Uses and Arts-Related Uses, is amended by adding new language to § 1711.1 to read as follows:

1711 ARTS USES AND ARTS-RELATED USES

1711.1 For the purpose of this chapter, the following uses are preferred arts uses and arts-related retail and support uses:

(a) Art Center;

(y) Fast food establishments (excluding drive-through) and prepared food shops, only within those portions of Square 375 that are east of a line parallel to 10th Street extending 115 feet from G Street, NW to G Place, NW.

III. BACKGROUND

This request is initiated by the Office of Planning, at the request of 733 10th and G Street LLC, to allow fast food and prepared food shops to be considered “preferred uses” within Square 375. Currently, zoning requires the provision of preferred uses in accordance with § 1703. “Restaurants” are listed in § 1711 as a preferred use; however neither fast food establishments nor prepared food shops are defined as restaurants.

Square 375 is bounded by H Street NW (north), 9th Street NW (east), G Street NW (south), and 10th Street NW (west). G Place NW runs east-west through the center of the square. The square is mainly comprised of office and institutional uses, including the Office of Homeland Security and Martin Luther King public library.



IV. ZONING

The subject square is located in the DD/C-4 zone. The C-4 Central Business District zone encompasses the downtown office and retail core for the District. The zone permits a variety of retail, commercial, and business uses including high-density, mixed-use development. The Downtown District Overlay (DD) is designed to accomplish the land use and policy objectives found within the Comprehensive Plan that affect the District’s downtown shopping district and retail core. The site is within the Arts area of the Downtown Shopping District (SHOP).

Square 375 is subject to both the area-wide and site specific use and design standards of the DD overlay. The square is also located within the Downtown Retail Core (as designated within the Comprehensive Plan) and the portion south of G Place is part of the Downtown Arts District (see Exhibit 3). As a result, development within this square is subject to several layers of use requirements, all aimed at creating arts-related or arts-supporting uses in Downtown and concentrating retail and service uses at the ground level on certain streets.

The permitted retail and service uses found in § 1710 include several types of retail stores including fast-food establishments. Section 1711 focuses on arts uses which mainly include galleries, theaters, museums, and performance spaces. In addition, this section allows arts-related support uses which include restaurants but do not include fast food establishments or prepared food shops (see Exhibits 4 and 5). Uses listed in §§ 1710 and 1711 are required to occupy 50% of the ground floor area (pursuant to § 1702), but fast food establishments and prepared food shops are among the uses limited to 20% of the ground floor in § 1703 (b).

V. MODIFICATIONS SINCE SETDOWN

After further review of the request and the existing conditions of the square, OP has modified the text amendment to limit its application to a specific redevelopment site within Square 375. The requested amendment would expand the list of uses within § 1711 such that fast food establishments and prepared food shops be treated as restaurants and therefore permitted as arts-related uses, but only on Lot 823. The owner of the new building proposed for Lot 823 wishes to have these uses occupy more than 50% of the ground floor retail space, consistent with § 1710. The initial request was not inconsistent with the Comprehensive Plan, but to minimize competition with arts uses, OP recommends limiting the amendment to only Lot 823 in Square 375. All the other lots within the Square are constructed.

VI. ANALYSIS

Existing Regulations and Square Conditions

The purpose of the use provisions within Chapter 17 is to implement the land use and development policies of the Comprehensive Plan that address this part of the District. Generally, this includes encouraging a balanced mix of uses with a particular focus on retail, residential, and arts-related uses. To that end, the current requirements found within §§ 1702 and 1703 apply to buildings within the prescribed areas with frontage on public streets, as a way to foster pedestrian friendly conditions that support these desired uses. However, the current physical conditions within portions of this square severely limit the feasibility of creating the retail environment the regulations are trying to encourage. For example, while G Place NW is technically a public street, the roadway is only 40' wide and it functions more like an alley. The street is characterized by loading zones and parking entrances that serve the library and adjacent office building.



View looking northeast on G Place NW

10th Street NW is similarly situated, due to the presence of parking and loading facilities for the Grand Hyatt hotel and office uses on the west side of the street. The only street within the square that currently has ground floor retail or service uses is 9th Street NW, which contains a restaurant and a bank use. As such, OP feels that while the proposed amendment is particularly relevant to the lots with frontage on G Place and 10th Streets, it is also appropriate for the entire square, given its existing improvements and character. Despite the current conditions, ground floor retail and arts uses remain a desirable goal within the square and should continue to be encouraged. The proposed amendment would only allow for additional flexibility in this regard.

At the setdown meeting, Zoning Commissioners asked questions about the presence of other available retail space within the square which might be impacted by the proposed changes. Currently, the bulk of the square is built out with little vacant ground floor space. With the exception of the site currently under construction at the corner of 10th and G Place NW, the only remaining undeveloped ground floor space is within two historic structures located immediately north of this site. These buildings are federally owned and are both planned to have internal connections to the adjacent federal office building. To minimize the impact on other retail or arts spaces, OP is proposing to limit the text amendment to only lot 823, which is a tax lot comprising previous lots 834, 835, 836 and 837. These lots were 100 feet deep but the redevelopment of the site also involves the adjacent 15' wide north-south alley. Therefore, OP has noted that the area should be measured as 115 feet parallel to 10th Street NW from G Street to G Place, NW.

The property owner for the redevelopment site, lot 823, has indicated that proposed ground floor retail space in this building will be difficult to market for many of the preferred uses found in 1711 due to its location and physical characteristics. The site was originally developed with a church and the redevelopment will incorporate the church into the new building at the ground floor; the ground floor will also include an office building lobby, leaving little space for required retail. The owner has indicated there is local support for and growing market interest in locating a casual restaurant use in this space but the current regulations would prohibit such a use from exceeding 20% of the total GFA. Given the site conditions of the square and the redevelopment proposal for this site, the current regulations impose restrictive limitations on the use of the ground floor.

Proposed Amendment

The requested text amendment, as proposed to be limited by this report, would allow for fast food establishments and prepared food shops to locate under the same parameters as restaurant uses within lot 823 in Square 375. Fast food establishments are already a preferred retail and service use in the Downtown District overlay, as identified in § 1710. While prepared food shops aren't among the preferred uses listed in §§ 1710 and 1711, they are addressed in §1703.3 and permitted in the zone. Prepared food shops are also permitted as-of-right in most commercial and mixed-use zones, often with size limitations. Fast food establishments with drive through facilities would continue to be prohibited in the square. The proposal maintains the existing controls for preferred uses elsewhere in the retail core. Definitions of each type of use are provided below for your reference.

Fast food establishment - a place of business, other than a "prepared food shop," where food is prepared on the premises and sold to customers for consumption and at least one of the following conditions apply:

- (a) *The premises include a drive-through;*
- (b) *Customers pay for the food before it is consumed. One characteristic that would satisfy this element would be building permit plans that depict a service counter without*

seating unless the applicant certifies that the intended principal use is for a restaurant or grocery and that the counter is part of a carry out service that is clearly subordinate to that principal use; or

- (c) *Food is served on/in anything other than non-disposable tableware. Characteristics that would satisfy this element include, but are not limited to: the building permit plans do not depict a dishwasher or do depict trash receptacles in public areas.*

A proposed or existing establishment meeting this definition shall not be deemed to constitute any other use permitted under the authority of these regulations, except that a restaurant, grocery store, movie theater, or other use providing carryout service that is clearly subordinate to its principal use shall not be deemed a fast-food establishment. (54 DCR 9393)

Prepared food - food that is assembled, but not heated by means other than microwave or toaster, on the premises of a prepared food shop. (54 DCR 9393)

Prepared food shop - a place of business that offers seating or carry out service, or both, and which is principally devoted to the sale of prepared food, non-alcoholic beverages, or cold refreshments. This term includes an establishment known as a sandwich shop, coffee shop, or an ice cream parlor. (54 DCR 9393)

Restaurant - a place of business that does not meet the definition of a “fast food establishment” or “prepared food shop,” where food, drinks, or refreshments are prepared and sold to customers primarily for consumption on the premises. Any facilities for carryout shall be clearly subordinate to the principal use providing prepared foods for consumption on the premises. (32 DCR 4374 and 54 DCR 9393)

Potential Impact

The proposed text amendment would have a limited impact in that it would only expand the types of uses that can be considered as restaurants in this location. The current regulations do not anticipate or address casual dining or fast-casual dining restaurants in the definitions provided. These types of restaurants accommodate both carryout and “sit-down” dining, often with limited table service and the use of non-disposable tableware. However, since customers are required to order at a counter and pay prior to receiving their food, they are categorized as fast food establishments.

The proposed change would allow these types of uses, along with “traditional” fast food establishments and prepared food shops, to be treated as restaurants, and therefore as preferred uses, within a portion of Square 375. In this case, the requested text change would practically result in a 3,946 square foot space that could be devoted entirely to these types of eating establishments as opposed to 911 square feet which the Zoning Regulations would currently allow.

The proposed text amendment would not preclude use of the space for any of the other preferred uses found in § 1711. OP continues to strongly encourage arts uses downtown but recognizes that the site conditions in this square present obstacles for their viability and success. The proposed text amendment would provide additional ground floor retail opportunities within a square that is currently lacking such uses. OP finds the proposed expansion of restaurant uses on this lot to be appropriate and complementary to the proposed office uses on the site and those existing nearby.

VII. COMPREHENSIVE PLAN

The proposed amendment would not be inconsistent with the 2006 Comprehensive Plan. The proposed change would generally support the following policy statements of the Central Washington element:

Policy CW-1.1.1: Promoting Mixed Use Development

Expand the mix of land uses in Central Washington to attract a broader variety of activities and sustain the area as the hub of the metropolitan area. Central Washington should be strengthened as a dynamic employment center, a high-quality regional retail center, an internationally-renowned cultural center, a world-class visitor and convention destination, a vibrant urban neighborhood, and the focus of the regional transportation network. New office and retail space, hotels, arts and entertainment uses, housing, and open space should be encouraged through strategic incentives so that the area remains attractive, exciting, and economically productive.

Policy CW-1.1.9: Neighborhood-Serving Retail in Central Washington

Ensure that Central Washington's retail uses serve not only the regional market, but also the local neighborhood market created by residential development within the area. This should include basic consumer goods like drug stores, hardware stores, and grocery stores, to supplement the major anchors and specialty shops.

The proposed text amendment would have limited impact on the existing street environment as the square is completely built out and already largely comprised of office and institutional uses. Further, the amendment would only expand the types of uses considered as restaurants within a small portion of a single square.

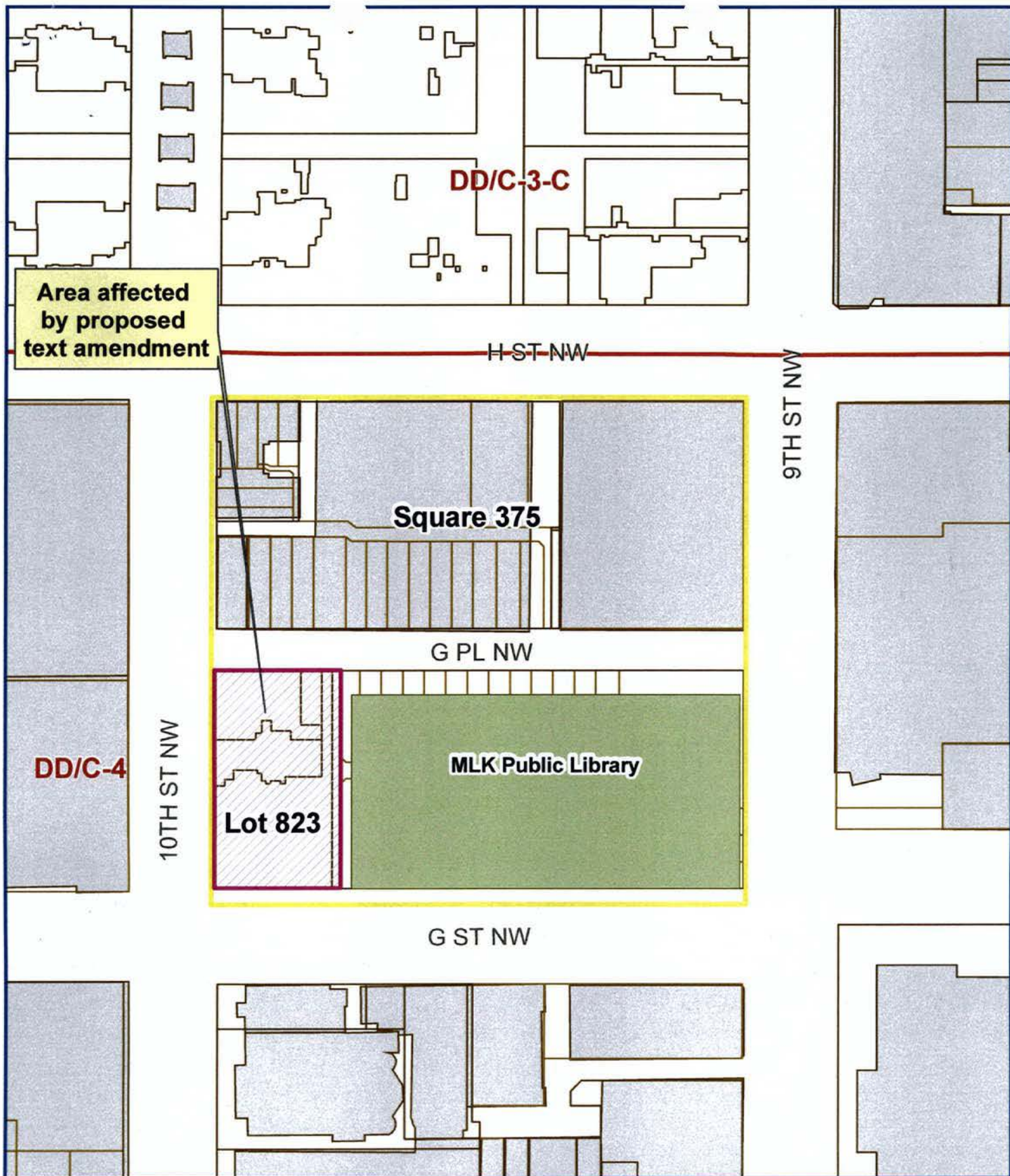
VIII. CONCLUSION

Based on the above discussion and the objectives of the Comprehensive Plan, the Office of Planning recommends approval of the proposed text amendment with the condition that it be limited to lot 823 in Square 375 **measured as 115 feet parallel to 10th Street NW from G Street, NW to G Place, NW.**

JS/ayj

Attachments:

- Exhibit 1 – Lot map with building footprints
- Exhibit 2 – Aerial Photograph (2009)
- Exhibit 3 – Context Map for DD Retail Core
- Exhibit 4 – List of Retail and Service Uses (§ 1710)
- Exhibit 5 – List of Arts and Arts-Related Uses (§ 1711)



ZC 10-18 - Restaurant Use Text Amendment for Square 375

Exhibit 1 - Location Map

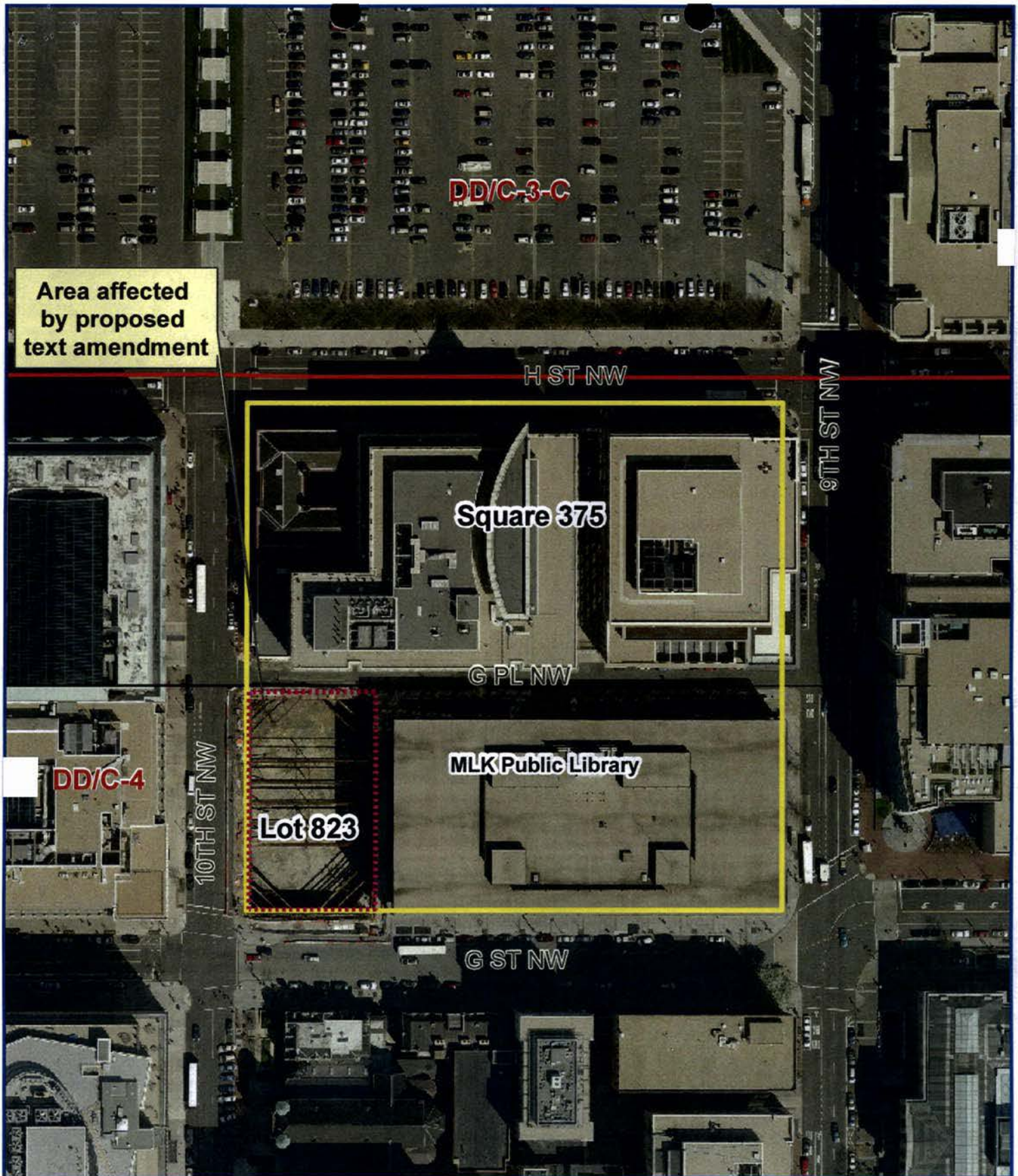
Legend

	Zoning Districts		Tax Lots
	Buildings		Record Lots
	Library Buildings		

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.

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ZC 10-18 - Restaurant Use Text Amendment for Square 375 Exhibit 2 - Aerial Photograph (2009)

Legend

 Zoning Districts

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.
Oblique imagery © Pictometry International

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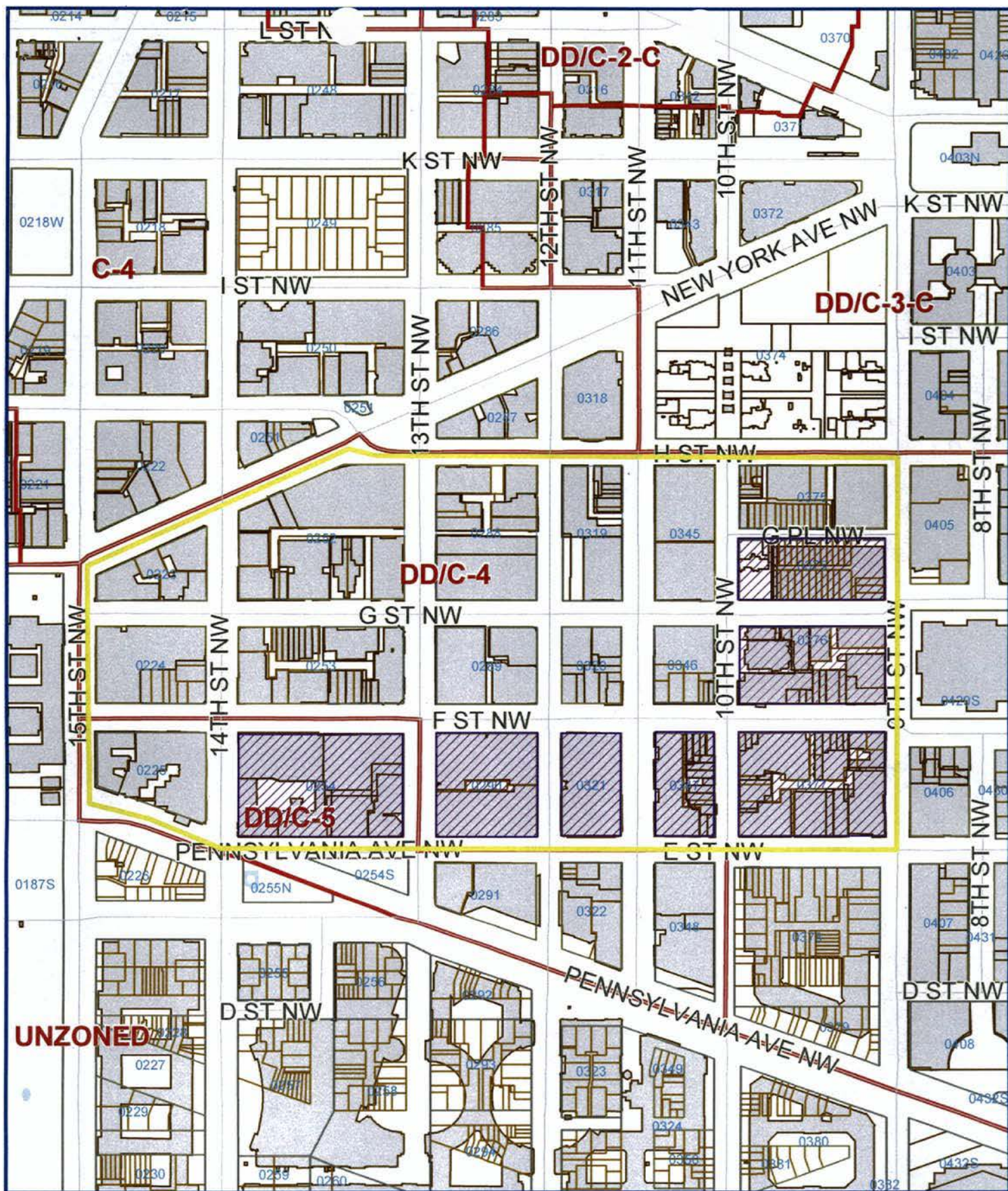


Exhibit 3 - Context Map for DD Retail Core

Legend

- Zoning Districts
- Property Squares
- Buildings
- Downtown Retail Core
- Downtown Arts District
- Street Centerlines

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1710 RETAIL AND SERVICE USES

1710.1 For the purposes of this chapter, the following uses are preferred retail and personal/consumer service uses:

- (a) Anchor Store;
- (b) Antique Store;
- (c) Apparel and Accessories Store;
- (d) Appliance Store;
- (e) Auction House;
- (f) Auto and Home Supply Stores, excluding installations;
- (g) Bakery, limited to baking of food sold on premises;
- (h) Bank Loan Office, Savings & Loan, Credit Union, or Other Financial Institution;
- (i) Barber or Beauty Shop;
- (j) Bicycle Shop;
- (k) Camera Store;
- (l) Candy Store;
- (m) Child Development Center;
- (n) Computer Store;
- (o) Cosmetic Store;
- (p) Delicatessen;
- (q) Department Store;
- (r) Dressmaking or Tailor Shop;
- (s) Drug Store;
- (t) Dry Cleaners;
- (u) Fabric Store;
- (v) Fast Food Establishment, excluding drive-through;
- (w) Florist and Plant Stores;
- (x) Furniture Store;
- (y) Gift, Novelty, and Souvenir Shop;

- (z) Grocery Store;**
 - (aa) Hardware Store;**
 - (bb) Health or Exercise Studio;**
 - (cc) Hobby, Toys, and Game Shop;**
 - (dd) Home Furnishings Store;**
 - (ee) Jewelry Store;**
 - (ff) Liquor Store;**
 - (gg) Luggage and Leather Goods Store;**
 - (hh) Newsstand;**
 - (ii) Office Supplies and Equipment Store;**
 - (jj) Optician;**
 - (kk) Paint Store;**
 - (ll) Pet Store;**
 - (mm) Printing, Fast Copy Service;**
 - (nn) Radio, Television, and Consumer Electronics Store;**
 - (oo) Secondhand Store;**
 - (pp) Shoe Repair and Shoeshine Parlor;**
 - (qq) Shoe Store;**
 - (rr) Specialty Food Store;**
 - (ss) Sporting Goods Store;**
 - (tt) Telegraph Store;**
 - (uu) Tobacco Store;**
 - (vv) Travel Agency, Ticket Office;**
 - (ww) Variety Store;**
 - (xx) Video Tape Rental; and**
 - (yy) Other similar personal/consumer service establishment or retail uses, including assemblage and repair clearly incidental to the principal use.**

SOURCE: Final Rulemaking published at 38 DCR 612, 640 (January 18, 1991); as amended by Final Rulemaking published at 54 DCR 9393, 9400 (September 28, 2007).

1711 ARTS USES AND ARTS-RELATED USES

1711.1 For the purpose of this chapter, the following uses are preferred arts uses and arts-related retail and support uses:

- (a) Art Center;
- (b) Art Exhibition Area;
- (c) Art Gallery;
- (d) Art School, including school of dance, photography, filmmaking, music, writing, painting, sculpturing, or printmaking;
- (e) Artist Live-Work Space;
- (f) Artist Studio;
- (g) Artists' Supply Store;
- (h) Arts Organizations, Administrative Offices of;
- (i) Arts Services, including set design, and restoration of art works;
- (j) Assembly Hall, Auditorium, Public Hall, or Other Performing Arts Space, including rehearsal/pre-production space or concert hall;
- (k) Book Store;
- (l) Cabaret;
- (m) Dance Hall, Discotheque, or Ballroom;
- (n) Dinner Theater;
- (o) Drinking Place, including bar, nightclub, or cocktail lounge;
- (p) Legitimate Theater;
- (q) Movie Theater;
- (r) Museum;
- (s) Performing Arts Ticket Office or Booking Agency;
- (t) Photographic Studio;
- (u) Picture Framing Shop;
- (v) Record Store, Musical Instruments Store;
- (w) Restaurant; and
- (x) Television and Radio Broadcast Studio.

SOURCE: Final Rulemaking published at 38 DCR 612, 641 (January 18, 1991).