

**Uptown ARTS Overlay Review Committee**  
**Report and Recommendations, September 2009**

**PART ONE – Zoning of the Uptown ARTS Overlay District<sup>1</sup>**

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<sup>1</sup> Note that Part 2 of the Committee’s Report (“Economic Development of the Uptown Arts Overlay District”) will address non-zoning issues such as economic development programs and policies, taxation issues, streetscape and parking issues, façade restoration, etc. Part 2 of the Committee’s report will be circulated in October 2009.

## 1. Executive Summary

The Uptown ARTS Overlay Zoning District encompasses a diverse mix of theatrical, visual and musical arts uses, as well as a nascent retail area, and a thriving restaurant and bar scene. All 3 of these use groups (arts, retail, restaurants) are essential ingredients to a vibrant Arts District. However, two of these groups are struggling (arts and retail) because of lack of daytime foot traffic and rising rents, while the third (restaurants) is experiencing such rapid growth that it is endangering the viability of its companion arts and retail uses. 14<sup>th</sup> Street is widely recognized as being the center of contemporary visual arts in DC, yet by the end of 2009 this district is at serious risk of losing almost one half of its existing contemporary visual arts uses.

The existing ARTS Overlay regulations have been ineffective in incenting arts uses, largely because the current regulations take too much of a “scatter gun” approach to be effective. In the context of the current citywide DC Zoning Review, significant changes are needed to the zoning framework if this ARTS District is to survive and thrive over the coming years. Without a significant course correction, the Arts District may lose many of its arts and retail uses and risk becoming mainly a nightlife destination.

Urgent action is required in 3 areas:

- The issuance of a revised “Arts & Culture” Guidance Note by the Zoning Commission to reflect that body’s consideration of the recommendations contained in this report
- A text amendment to enable enforcement of the new limit (40-50%) on the frontage (per square) of eating and drinking uses to begin in early 2010 in the Uptown Arts District
- A text amendment to restrict ground floor uses such as banks and pharmacies that do not contribute to a vibrant streetscape in the Uptown Arts District

Ultimately, the new ARTS zoning template for this district also needs to:

- Address streetscape dead zones in a variety of ways
- Promote daytime foot traffic, including by allowing greater flexibility for office development
- Provide a tiered list of preferred arts uses that recognizes the varying financial competitiveness of different types of arts uses
- Recognize the distinct nature of restaurants, bars and similar uses in a separate use category
- Introduce an Arts Requirement (5% of GFA) to apply to developments (above a certain size)
- Provide bonus density of 3 to 1 for financially challenged arts uses, 2 to 1 for financially competitive arts uses, and zero for restaurant/bar uses (which do not require incentives).
- Provide a highly constrained possibility for a bonus height incentive of up to 1 storey (10 feet)
- Include an increased (75%) ground floor retail requirement
- Limit restaurant/bar uses from fulfilling more than 50% of that (75%) ground floor requirement
- Require new developments, including PUDs, to be consistent with DDOT Streetscape Plans
- Require a finished ground floor ceiling height of 14 feet, with possible incentives up to 18 feet
- Preclude lobby exhibition areas from meeting the Arts Requirement, and
- Consider ways to facilitate temporary arts uses in vacant space.

In addition, DC’s Zoning Review should include a comprehensive assessment of the compliance resources needed in the Zoning Administrator’s office to effectively monitor and enforce the regulations.

We now face a choice: provide effective zoning incentives to ensure that our vibrant neighborhood remains a truly mixed-use (arts/retail/restaurants) district, or risk losing many of the arts and retail uses that provide this district with its special appeal. A rebalancing of zoning incentives and restrictions along the above lines would provide the kind of zoning framework most likely to underpin the survival and sustainable development over time of the Uptown Arts District.

## 2. Introduction

The Uptown ARTS Overlay District (hereafter referred to in this report as “the ARTS District”) was established in 1989 and encompasses large parts of both the 14<sup>th</sup> and U Streets corridors.<sup>2</sup> The original purpose of the ARTS District (as stated in the regulations) was to encourage arts and related cultural and support uses, as well as pedestrian-friendly retail, residential and other development, that fosters 18-hour activity in the district. To that end, the Uptown ARTS Overlay District Zoning Regulations specify a set of zoning incentives and requirements that were intended to meet these goals.<sup>3</sup>

In May 2009 Advisory Neighborhood Commission 2F (“ANC2F”) became aware that, as part of the DC’s citywide “Zoning Review” process, the DC Office of Planning (“OP”) had issued a report making recommendations on the future zoning of Arts Districts in the city, and that the DC Zoning Commission (“ZC”) had considered OP’s recommendations and issued a “Guidance Note” on Arts District zoning to direct the further work of OP as it moved forward with rewriting zoning regulations for arts districts.<sup>4</sup>

ANC2F immediately wrote to OP and the ZC requesting that the Uptown Arts Overlay District community be given a reasonable and adequate opportunity to provide input into the future zoning of the ARTS District. ANC2F indicated that it intended to conduct an outreach process to all stakeholders to review the zoning issues affecting the ARTS District, and agreed to provide its report and recommendations concerning the future zoning of this district to OP and the ZC by September 2009.

In June 2009 ANC2F formed the “Uptown ARTS Overlay Review Committee” to review the effectiveness of the zoning rules governing the ARTS District. The Committee held 8 advertized public meetings over June and July, at which it heard from both panels of expert speakers and members of the public. During August and September Committee members participated in another 9 advertized public meetings in the ARTS District, at which the Committee’s recommendations were presented and discussed. Participants in the Committee’s outreach process came from all backgrounds: community leaders; individual residents; artists; gallery owners; theater representatives; retailers and other business owners; restaurateurs; bar and club owners; local and national developers; OP staff and other DC government officials; urban planning and retail development experts; business associations; numerous property owners throughout the 14<sup>th</sup> and U Streets’ corridors; the DC Zoning Administrator, a former chair of DC’s Board of Zoning Adjustment; a former chair of DC’s Zoning Commission; and, DC’s former Deputy Mayor for Economic Development. The Committee itself comprised local residents, a local artist and developer, a local restaurateur, and the owner of local service and retail businesses.<sup>5</sup>

The community-based zoning review process that led to this report has been open, transparent and comprehensive. The Committee’s report and recommendations are the consensus product of an unprecedented process of collaboration that has encompassed 130 participants, three ANCs, three neighborhood associations, the MidCity Business Association, and the MidCity Artists Group, all of which organizations voted to endorse the committee’s recommendations.<sup>6</sup>

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<sup>2</sup> See Appendix A for a map of the ARTS Overlay District.

<sup>3</sup> See Chapter 19 (Uptown ARTS Overlay District) of Title 11 of DC Municipal Regulations.

<sup>4</sup> OP’s report is available online at: <http://www.dczoningupdate.org/artsculture.asp?area=ace> In addition, the Zoning Commission’s Guidance Note is reproduced in full as Appendix D of this report.

<sup>5</sup> See Appendix B for a list of Committee Members and of participants in this review process.

<sup>6</sup> Letters of support and endorsement from these organizations are contained in Appendix H of this report.

### 3. The Committee's Findings

1. While the Arts Overlay District has been a useful tool, the **ARTS Overlay has failed to be fully effective in promoting its arts objectives** for many reasons; 3 of the most important reasons are:
  - (1) The original “bonus” density and other zoning-related incentives were poorly targeted and relatively insignificant in size
  - (2) The zoning objectives were not supported by other Government policies to catalyze and support arts growth in the district
  - (3) The ARTS Overlay district (which is the largest neighborhood overlay zoning district) is too large and unwieldy in size and encompasses diverse zoning contexts, which has made it difficult to consolidate community institutions behind a cohesive approach to support and promote the overlay’s goals.
2. Nonetheless, numerous research studies indicate that **arts spending has a powerful economic multiplier effect** and generates significant downstream spending, jobs and tax revenues, making the incentivization of arts uses via zoning and other tools a valid urban planning strategy.
3. **What's good for the arts is good for retail/restaurants** and to help the arts we need to have a healthy retail and restaurant sector. Arts businesses, retailers and restaurateurs agree that there is a symbiotic relationship between these businesses generally, and that a healthy growing commercial district generating foot traffic 18 hours per day “floats all boats”.
4. However, among these symbiotic uses – arts, retail and restaurants – **arts uses typically require a more actively supportive policy environment to survive** because they generate less cash flow and are more vulnerable to high rents/taxes.
5. **Four ingredients** were repeatedly pointed to as being important to the future development of the district:
  - (1) **“Momentum”**: loss of businesses &/or failure of critical development projects to go ahead would likely have negative impacts on the district that may last for years
  - (2) **“Special Appeal”**: this district’s “special appeal” to developers, businesses and residents alike is closely related to 2 factors: (i) business diversity; and (ii) the arts
  - (3) **“Daytime Foot Traffic”**: the need to grow daytime foot traffic in order to support retail
  - (4) **“Dead Zones”**: the need to overcome “dead zones” in the streetscape (especially along 14<sup>th</sup> Street) and join up the existing “clusters” of retail and other development
6. **Arts uses** (especially artists and galleries) are finding it very difficult to pay the rents in this district and there is a high probability that we will face substantial loss of these uses in our area during the current recession.
7. The same is true of **small independent retailers** in our district: many are experiencing difficulty; more closures are expected. Both arts uses and independent retailers noted the heavy impact of DC’s commercial property tax on their costs.
8. Overall, the “jury remains out” on whether **the retail model on 14<sup>th</sup> and U Streets** yet has the (commercially viable) critical mass necessary for a retail district that is self-sustaining over the course of a full economic cycle.

9. In contrast, the ARTS district continues to attract numerous **restaurant developments** (perhaps a dozen new announcements and/or openings over the past 2 months).
10. In addition, several **key development projects** are well-advanced in the planning stages, for example: Utopia project, Whitman Walker Clinic project, Central Union Mission project, Room & Board project.
11. **Financing challenges** in the current economic environment are likely to delay at least some of these key development projects and are already delaying or preventing some retail, office and other uses from moving into the area.
12. While the relevant time horizon for zoning regulations is around 20 years and is thus a much longer time period than simply the current recession, **nonetheless the current economic environment is an important backdrop** against which DC's Zoning Review is taking place.

## 4. The Committee's Zoning Recommendations

Of the 20 different “subject areas” that make up DC’s current Zoning Review, there are many that have relevance to the ARTS District. However, the primary purpose of the committee’s work is to review the objectives and the functioning of the current ARTS District regulations and make recommendations on the future zoning of the ARTS District. Thus, the committee’s focus has been the “Arts & Culture” subject area of the Zoning Review and ***this report presents the committee’s zoning recommendations within the framework of the “Arts & Culture” subject area of the current DC Zoning Review.***<sup>7 8</sup>

### 4.1 Arts Districts

#### **Recommendation 1:**

***The ARTS Committee recommends that the new “ARTS zoning template” provisions be applied as a stand-alone “ARTS” zoning district.***

- The ZC’s guidance on Arts Districts instructs OP to create a template of zoning provisions that would apply to existing and future Arts Districts in one of three ways: either the provisions could be applied as a stand-alone district, as a part of individual commercial districts or as an overlay.
- The stand-alone model (e.g. a zoning category of its own for “ARTS” districts like “R-5-B” or “C-3-A” are currently stand-alone zoning district classifications that are used all over the city in appropriate contexts) seems to the committee to be the most conducive to facilitating the necessary accompanying economic development policies to support Arts Districts.
- We note that, if the stand-alone “ARTS” zoning model is adopted, this neighborhood will have to look closely (as the work on the new ARTS template is progressed by OP) at how a range of maximum “zoning envelopes” (e.g. floor area ratio or “FAR”, height, etc) will be defined and applied under that model in an appropriately contextual manner.<sup>9</sup>

#### **Recommendation 2:**

***Alternatively, if the overlay model is retained to designate Arts Districts, the Committee recommends that the existing Uptown ARTS Overlay District be split into two ARTS Overlay Districts (the “14<sup>th</sup> Street Corridor ARTS Overlay District” and the “U Street Corridor ARTS Overlay District”).***

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<sup>7</sup> In particular, section 4 of this report follows the structure of the ZC’s Guidance Note on the “Arts & Culture” subject area, which is reproduced in full in Appendix D. The Committee withholds making recommendations on the “Commercial Corridors” subject area of the Zoning Review until OP has issued its report on that subject area and we have had an opportunity to review OP’s recommendations and assess their impact on the ARTS District. Some of the zoning issues discussed in this report (e.g. bonus density, the “25% limit”, etc) cut across both the “Arts & Culture” and the “Commercial Corridors” subject areas.

<sup>8</sup> The primary documents related to the “Arts & Culture” subject area of the DC Zoning Review can be found online at: <http://www.dczoningupdate.org/artsculture.asp?area=ace>

<sup>9</sup> At present there are 4 different maximum “zoning envelopes” that apply throughout the Uptown ARTS District: those related to the C-2-A, C-2-B, C-3-A and CR zones, in addition to the maximum envelopes specified in the ARTS Overlay regulations.

- One important reason that the existing Uptown ARTS Overlay District has failed to be fully effective is that it is too large. The existing district encompasses very different zoning contexts, building forms, and built environments such as streets and sidewalks.<sup>10</sup>
- In addition, the sheer scale of the current Uptown Overlay (it is much larger, for example, than the current Neighborhood Commercial Overlay districts, which are each quite compact) has been a major deterrent to the ability of cohesive community institutions to emerge to actively support “the Arts District”.
- “One size does not fit all” in the current ARTS District and future customization (whether in the context of a stand-alone model or of an overlay approach where the current Uptown Overlay is split into two overlay corridors) of the zoning regulations governing the area covered by the current ARTS District will be essential.
- It is critical that corridor communities, whether they be on U Street or on 14<sup>th</sup> Street, be empowered in order to instill local “ownership” and advocacy for that part of the broader Arts District. This will strengthen the overall Uptown Arts District by allowing for the possibility for actions to support the arts corridors to occur both in unison across the entire district, as well as separately and targeted at the needs of particular sub-areas.

**Recommendation 3:**

***The Committee recommends that the application of the new ARTS zoning template as part of individual commercial districts not be supported.***

- In the absence of substantial further information and analysis from OP on this option, this model seems to us likely to be completely unworkable. In particular, we are concerned that an insufficiently nuanced and targeted zoning treatment of arts uses would be the likely result of this approach.

**Recommendation 4:**

***The Committee recommends that zoning within ARTS Districts be brought into a measure of basic zoning conformity where necessary.***

- Specifically, it is not appropriate for residential zoning to apply to lots fronting onto major ARTS (and commercial) corridors. In the case of the Uptown ARTS District, a 200-foot long stretch of 14<sup>th</sup> Street (on the east side between Riggs and S Streets, NW) is currently zoned “R-5-B”. This creates an enormous “dead zone” in the heart of the ARTS corridor and is a major obstacle to the development of a cohesive and unified ARTS District streetscape.
- As envisaged by the Comprehensive Plan (see Appendix C) and as part of the current citywide zoning review, these kinds of anomalies should be addressed as necessary through consideration of up-zoning segments of frontage to the appropriate commercial or ARTS zoning category.

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<sup>10</sup> In addition to different underlying zoning along the two streets, 14<sup>th</sup> Street, where the street is 110 feet wide including 20 feet wide sidewalks, provides a very different retail environment to U Street, where the street is 85 feet wide including 14 feet wide sidewalks. Moreover, the building forms are very different, reflecting the different history of the areas, with 14<sup>th</sup> Street being characterized by the large former automobile showrooms, which had maximum street level display frontage, while U Street is mainly characterized by smaller storefront buildings.

- Naturally, existing residential uses at any such sites would be grandfathered and, under DC's current Zoning Regulations, there are well-established procedures for existing property owners to be fully involved in consideration of any property rezoning that affects them.
- However, rezoning would provide the option of either remaining residential or redeveloping in the future with mixed residential/commercial uses, which is a very different proposition from being legally required to remain residentially zoned while neighboring property owners with similar parcels have been granted greater mixed use (residential/commercial) development rights.<sup>11</sup>

**Recommendation 5:**

***The Committee recommends that where undeveloped city-owned parcels that currently have inappropriate uses and/or inappropriate zoning are contiguous to ARTS Districts, these sites should be integrated wherever possible into the ARTS District zone.***

- Again, as a matter of basic zoning conformity, undeveloped city-owned parcels (especially those with inappropriate semi-industrial uses) that are located contiguous to ARTS Districts and currently have anomalous zoning should be incorporated into the ARTS zone, so that future land use and redevelopment of those sites takes place within an appropriate zoning framework.
- In particular, the lot(s) owned by the Department of Parks and Recreation located on the northern side of the 1300 block of S street, NW, are currently zoned "R-5-B" yet they are house a bus parking lot of large size and a commercial building. Given their adjacency to the ARTS District and their current inappropriate zoning, these lots should be re-zoned "ARTS" and incorporated into the ARTS zone.<sup>12 13</sup>

**Recommendation 6:**

***The Committee recommends that the new ARTS zoning template provide for the possibility that the maximum zoning envelope in ARTS Districts be able to be allocated flexibly between residential and commercial uses.***

- Commercial office development can be very important in providing the daytime foot traffic that sustains many daytime retail and ARTS uses. Occupants of commercial buildings need to eat lunch, shop and run errands in the vicinity of their offices.
- The kind of daytime foot traffic that is generated by commercial offices can play a critical role in the sustainability of an ARTS District. In general, many ARTS uses cannot rely on nighttime foot traffic (provided by residential uses and restaurant uses) alone, but in many cases require the daytime foot traffic vitality that is provided by retail and service uses that are open during business hours.

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<sup>11</sup> There is a basic issue here of equality of zoning treatment. It is the view of the Committee that the current residential zoning of, for example, this segment of 14<sup>th</sup> Street is discriminatory in that the affected property owners are being deprived of the same development rights as other similarly situated property owners along the corridor.

<sup>12</sup> This is also an issue of equality of zoning treatment. It is discriminatory to the surrounding property owners to have an inappropriate semi-industrial use located on an R-5-B-zoned site.

<sup>13</sup> With the exceptions of Recommendations 4 and 5, all other recommendations in this report apply only to commercially zoned property.

- In the ARTS Overlay District there are many sites that would be appropriate for the development of “Class B” and “Class C” commercial office space. These uses would support critical daytime foot traffic, which remains in short supply in parts of the current ARTS Overlay, and should not be prevented by the new ARTS zoning template. Otherwise, there is a significant risk that daytime retail and arts uses suffer the double blow of lack of daytime patronage and rising rents associated with restaurant uses.
- In addition, additional flexibility regarding commercial uses would likely make certain smaller-scale sites economically viable for redevelopment that were not previously economically viable for redevelopment as residential uses. This would help to reduce streetscape “dead zones” that currently undermine joining up retail clusters into a viable, cohesive, synergistic and genuinely mixed use (arts, retail, restaurants, residential, office) corridor.<sup>14</sup>
- Moreover, the “livability” of mixed-use areas is increased when floors of office space provide a “buffer” between the ground floor/street level, which can be noisy, and upper floor levels of residential uses.
- Finally, while commercial development may not be appropriate for all ARTS zoned districts, it is likely to be very appropriate in the case of those ARTS Districts that already have an established and substantial residential use component that would not be threatened by adding “Class B” and “Class C” commercial office space to the use mix. Thus, the new ARTS template needs to provide the flexibility to allow this.

**Recommendation 7:**

***The Committee recommends that sites within ARTS Districts that face environmental remediation issues (including title caveats that prevent future redevelopment as residential uses) should have the right to develop the full zoning envelope permitted in that ARTS zone for commercial use.***

- Many districts, including the ARTS Overlay District, have sites such as current and former gasoline service stations that can never be redeveloped for residential use because of environmental remediation problems and associated title caveats. Unless these sites are permitted to use the full zoning envelope for commercial uses, many of them will never be viable for redevelopment, leaving “dead zones” in the ARTS District streetscape.

**Recommendation 8:**

***The Committee recommends that the Zoning Commission be asked to issue a revised “Arts & Culture Guidance Note” with some urgency (i.e. during 2009) so that the further Zoning Review work on the Arts & Culture subject area will reflect the Commission’s consideration of the recommendations contained in this report.***

- Whether a stand-alone “ARTS” zoning category is created or an ARTS overlay approach is retained, the ARTS zoning template (currently under development) will need to be adapted to meet the needs of not just the Downtown ARTS District (which seemed to have been OP’s

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<sup>14</sup> Additional flexibility in this regard has already been demonstrated to be necessary for redevelopment of existing ARTS uses to be viable in some cases. For example, the Lincoln Theatre redevelopment required a text amendment in 2008 to allow a larger commercial use component (relative to residential) in order for the project to go ahead.

focus in 2008) but also the different zoning context and challenges faced by the Uptown ARTS District.<sup>15</sup>

- In order for the significant work of this community on the future zoning of the ARTS District to be taken up as part of the Zoning Review, it is necessary for the Zoning Commission to ask OP to modify the “ARTS zoning template” (currently under development) to reflect the needs of the Uptown ARTS District as identified in the recommendations of this report.

## 4.2 Arts Uses

### **Recommendation 9:**

***The Committee recommends that OP’s draft “Proposed Arts Use List” (PAUL) be revised to remove restaurants and bars from the list of Arts uses and to provide a tiered structure that makes allowance for the varying financial competitiveness of different types of arts uses, along the lines of the Committee’s revised PAUL proposed in Appendix E.***

- In October 2008 OP published a draft PAUL that, relative to the mish-mash of Arts uses currently identified throughout the zoning regulations, unifies and simplifies the list of Arts uses for zoning purposes by grouping these uses by type.<sup>16</sup> The Zoning Commission, in its guidance note (see Appendix D) endorsed OP’s basic approach and instructed OP to continue working on this list, which will in the future be applied in the zoning regulations for all parts of the city that are ultimately identified as Arts Districts.
- The Committee supports the effort to modify the PAUL and to group arts uses into types, since a major problem with the current use lists contained in the ARTS Overlay is that they lack a coherent focus on the Arts by including all kinds of other uses.
- In this regard, OP’s new draft PAUL remains fundamentally flawed in that it continues to include restaurants, bars, nightclubs and the like as “Arts Uses”. While restaurants, bars, nightclubs, etc are important land uses in their own right; there is widespread consensus in this neighborhood that these uses are not **primarily** “arts uses” in character. For this reason the Committee believes that it would be entirely inappropriate for these uses to be defined as “Arts Uses” in the new zoning regulations.
- This is not to say that restaurants, bars, clubs and like uses do not play an important role in partnering with arts uses by providing exhibition space or live performance space free of charge. They often do play a critical partnership role with the arts. This symbiotic relationship (additional

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<sup>15</sup> See, for example, page 5, “Remaining Issues” paragraph of Recommendation 1 of OP’s Public Hearing Report for ZC #08-06-4 entitled “Proposed Amendments to Zoning Regulations Governing the Arts”, August 28, 2008, available online at:

<https://www.communicationsmgr.com/projects/1355/docs/Arts%20and%20Culture%20OP%20Report.pdf> , where OP recommends that the Downtown ARTS District be incorporated into a new stand-alone ARTS district, but does not mention the Uptown ARTS District. In addition, the “Arts & Culture” subject area documents scarcely mention the Uptown ARTS District: most if not all of the examples cited relate to the Downtown ARTS District, which is a completely different zoning context to the Uptown Arts area. See the documents available online at: <http://www.dczoningupdate.org/artsculture.asp?area=ace>.

<sup>16</sup> See page 7 of

<https://www.communicationsmgr.com/projects/1355/docs/Arts%20and%20Culture%20OP%20Report.pdf>

foot traffic to the restaurants/bars/clubs etc in exchange for free space) is a win-win relationship for both use groups that occurs naturally now and will continue to occur in the future throughout Arts Districts. However, it neither relies on nor requires incentives via the zoning regulations. Nor does this type of “accessory use” partnership warrant restaurants, bars, and clubs and like uses being redefined as “arts” uses.

- Not only is such a redefinition of restaurants, bars and clubs as “arts uses” not warranted in land use terms, it is severely damaging to arts uses. The experience over the past 20 years with the current Arts Overlay regulations, which group restaurants, bars and nightclubs together with arts uses, demonstrates the failure of this approach.<sup>17</sup> Providing bonus density equally to both highly profitable restaurant and bar uses on the one hand, and to less profitable arts uses on the other hand, has naturally favored those more profitable uses. Within the ARTS Overlay district, restaurant and bar uses have flourished, while arts uses have generally languished or, at least, failed to flourish. It would continue to cause significant damage to the viability of arts uses if non-arts uses such as restaurants are given equal footing in qualifying for “arts” bonuses.
- Furthermore, even after removing non-arts uses such as restaurants from the list, great care still needs to be taken with the PAUL groupings. While many uses can qualify as having an artistic or creative component, there is a fundamental difference between arts uses that are commercially competitive with other land uses (in terms of cash flow and profits) and arts uses that are not-for-profit or lower-profit uses that -- as the Arts & Culture Working Group stated -- *“can almost never compete on a financial level with other more profitable uses”*.<sup>18</sup>
- Thus, the PAUL and the PAUL sub-groupings need to make a clear distinction between financially competitive and financially challenged arts uses, so that --where appropriate-- the latter are able to be specifically referenced for additional zoning incentives in the regulations. As noted in OP’s recommendations *“... sometimes the promotion of a certain group of arts is desired”*.<sup>19</sup> For this reason highly profitable and negligibly profitable arts uses should not be grouped together in the PAUL.
- The PAUL published by OP is missing this key necessary dimension: the ability to focus zoning incentives not just by general category of arts use (e.g. visual arts versus performing arts), but to *“focus benefits on those use groups”*<sup>20</sup> that are at risk of otherwise becoming extinct in some parts of the city as a result of being priced out of arts districts by non-arts uses such as restaurants and even by other more profitable arts uses.
- The Committee’s proposed revised PAUL (see Appendix E) is a first effort at attempting to incorporate this dimension into the arts use list. The Committee’s PAUL excludes restaurants, bars, nightclubs, etc., and introduces a two-tier structure to the PAUL. “Tier 1” arts uses are

<sup>17</sup> See section 1908.1, Chapter 19 (Uptown ARTS Overlay District) of Title 11 of DC Municipal Regulations.

<sup>18</sup> See page 1 of <https://www.communicationsmgr.com/projects/1355/docs/Arts%20and%20Culture%20-%20Meeting%20%20Summary.pdf>

<sup>19</sup> Page 7, paragraph 2, of OP’s Public Hearing Report for ZC #08-06-4 entitled “Proposed Amendments to Zoning Regulations Governing the Arts”, August 28, 2008, available online at: <https://www.communicationsmgr.com/projects/1355/docs/Arts%20and%20Culture%20OP%20Report.pdf>

<sup>20</sup> Ibid, page 9.

those that our review indicated generally struggle to compete financially in this district, while “Tier 2” arts uses are those that are generally more financially competitive.<sup>21</sup>

- As the Office of Planning makes further progress on refining the PAUL approach (preferably along the lines recommended here in Appendix E), the Committee will review and address the issue of the zoning definitions of the preferred arts uses.<sup>22</sup>

### 4.3 Arts Requirement

#### **Recommendation 10:**

***The Committee strongly supports the Zoning Commission’s guidance that new construction in Arts Districts be required to provide a minimum level of a space for Arts uses, but recommends that this requirement be defined in terms of Gross Floor Area (5%) rather than Floor Area Ratio (0.5) and that the requirement be subject to a minimum building-size threshold and extend also to addition & alteration projects in arts districts.***

- The ARTS Overlay District regulations currently provide for optional bonus density of 0.5 FAR to apply to new construction projects and to additions exceeding 75% of a building’s assessed value if these projects include any of the listed arts, restaurant/bar and retail uses.<sup>23</sup> As discussed elsewhere in this report (see sections 4.2 and 4.6), this “optional bonus density” approach has been unsuccessful in promoting arts uses, largely because (1) the bonus FAR was also granted for non-arts uses, and (2) the bonus FAR was too small and/or difficult to utilize without additional bonus height in which to do so.
- OP is currently recommending that developments in Arts Districts be subject to an “arts requirement”. The recommendation to introduce an “arts requirement” within Arts Districts, which has been accepted by the ZC, is also strongly supported by the Committee.
- However, OP’s recommendation is that all new developments within Arts Districts (regardless of the size of those developments) would be required to provide 0.5 FAR for specified arts uses. Thus, a building of 20,000 square feet on a 4,000 square foot lot would be required to provide 2,000 square feet for arts uses, while a 4,000 square foot building on a 4,000 square foot lot would be required to provide the same 2,000 square feet for specified arts uses.<sup>24</sup>
- In the Committee’s view, the arts requirement as currently envisaged by OP and the ZC would be entirely inequitable across property owners and would introduce a prohibitive obstacle to infill and other small redevelopment projects within Arts Districts.

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<sup>21</sup> We believe that this tiered approach is a more flexible and effective model than, for example, the relatively crude approach taken in the existing Downtown ARTS District regulations, where a not-for-profit arts use is entitled to an additional 25% of density bonus in excess of other for-profit arts uses. See section 1704.9, Chapter 17 (Downtown Development Overlay District), Title 11 DC Municipal Regulations.

<sup>22</sup> Given the time constraints under which this review of the ARTS Overlay District has been carried out and the need to set priorities, this issue of the zoning definitions of arts uses was viewed as being not a critical priority that needed to be addressed by the Committee at this stage of the Zoning Review.

<sup>23</sup> See section 1904.1, Chapter 19 (Uptown ARTS Overlay District) of Title 11 of DC Municipal Regulations.

<sup>24</sup> The Committee checked with OP that this is the correct interpretation of their proposed arts requirement.

- For these reasons the Committee is convinced that, while an “arts requirement” within Arts Districts is a vital zoning tool, such a requirement must be based on gross floor area (“GFA”) rather than FAR, in order not to discriminate against small developments. In addition, because the cash-flow burden of an arts requirement on small developments with limited commercial frontage (and already heavy relative proportions of square footage that must be allocated to core building functions), the arts requirement should be subject to a minimum building-size threshold of around 10,000 square feet.
- Under the Committee’s proposed arts requirement (5% of GFA), a building of 20,000 square feet on a 4,000 square feet lot would be required to provide 1,000 square feet for arts uses, while a 4,000 square feet building on a 4,000 square feet lot would be exempt from any arts requirement.
- The requirement for 5% of GFA to be provided for arts uses in new construction and substantial redevelopment projects in Arts Districts (above a minimum size of around 10,000 square feet) is the single most important factor that will result in at least a minimum amount of space being set aside in Arts Districts for arts uses. In the Committee’s view, it is absolutely critical that OP and the ZC carry forward a minimum Arts Requirement based on GFA into the new zoning regulations.
- However, again, this requirement will not serve any useful purpose in promoting and preserving arts uses in Arts Districts if restaurants, bars and nightclubs are defined as “arts uses” for the purposes of fulfilling this arts requirement (see section 4.2 above). In that case, restaurant and bar uses will crowd out arts uses in being chosen as the uses to fulfill this requirement, as they are more profitable and can pay higher rents than virtually all true “arts uses”.
- Thus, it is critical that this “arts requirement” only be able to be fulfilled by arts uses such as those listed in the Committee’s proposed revised PAUL in Appendix E.
- Moreover, it is very important that no “buy-out” possibility exist for this arts requirement. The Committee does not support any provision along the lines of an “Arts Proffer Condition” where, in lieu of providing 5% of GFA to an arts use, a developer could provide a contribution to an arts fund. This approach would not be appropriate because it undermines the fundamental purpose of land use zoning in Arts Districts to preserve and set aside a minimum amount of space in these districts for arts uses.
- However, one completely “optional” variation on the Arts Requirement that the Committee does support is the possibility of **halving the minimum arts requirement to 2.5% of gross floor area IF (and only if) the floor area allocated to the arts use is ground floor frontage space.** This option of halving the 5% GFA requirement would probably need to be subject to a minimum floor amount of square footage below which the requirement could not be reduced any further (e.g. a minimum GFA allocated to the arts use of, say, 500 square feet).<sup>25</sup>
- It is also very important that appropriate procedures be put in place for legally recording (via deed restriction or similar) the sites to which the minimum arts requirement applies and thus

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<sup>25</sup> For example, among the smallest known arts venues currently in existence in the ARTS District today is “Transformer Gallery” near the southwest corner of 14<sup>th</sup> and P Streets, which comprises approximately 500 square feet of gross floor area. It is difficult to envisage an arts use being able to be effective in a space smaller than this.

occupancy of that space is limited to arts uses, so that these provisions can be properly monitored and enforced by the Zoning Administrator's office. For purposes of transparency, there should be a log of the properties to which this arts requirement applies, which can be easily accessed and monitored by the public (e.g. on the Zoning Administrator's website).<sup>26</sup>

#### 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 14<sup>th</sup> and U Streets to a maximum of 25% of the street frontage.<sup>27</sup> 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 14<sup>th</sup> and U Streets.<sup>28</sup> However, there is a very large range around this overall total figure for 14<sup>th</sup> 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.

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<sup>26</sup> 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).

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

<sup>28</sup> See the table contained in Appendix F.

- For these reasons the Committee believes that it is now overkill to reserve 75% of the frontage on 14<sup>th</sup> 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 14<sup>th</sup> and U Street corridors within the ARTS District.
- However, with this expansion in allowable restaurant/bar frontage to 40-50% along 14<sup>th</sup> 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.<sup>29</sup>
- 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.<sup>30</sup> 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.<sup>31</sup> 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

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<sup>29</sup> 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.

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

<sup>31</sup> 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 more or less block by block.

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

- 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,<sup>33</sup> 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.

#### 4.5 Combined Lot Development/Transfer of Development Rights

##### **Recommendation 12:**

***The Committee recommends that the proposed flexibility regarding transfer of PAUL requirements and earned bonus rights should be supported, provided that (as envisaged in OP's August 2008 recommendations) this transfer flexibility only applies within the same Arts District.***

- The Zoning Commission's October 2008 guidance note on the Arts & Culture subject area provides for flexibility to be allowed in "... *the location of Arts uses and density in the Arts district through combined lot developments (CLDs) or transfer of development rights (TDRs), or other methods. Both Arts requirements and bonus density could be traded between properties.*"<sup>34</sup>
- Given the critical role that will be played by the 5% GFA Arts Requirement in reserving space for arts uses in individual Arts Districts, it would be entirely inappropriate for this requirement to be able to be traded away to sites outside that particular Arts District. Thus,

<sup>32</sup> See DC Register, February 17, 2006, Zoning Commission Case No. 02-06, which defines eating and drinking establishments as either (1) establishments with CR, DR, CT, DT, CN or DN alcoholic beverage licenses, or (2) establishments that are required to obtain a Basic Business License with a Public Health Food Establishment Restaurant Endorsement.

<sup>33</sup> Over the past two months or so around 20 new openings of, or applications to open, eating and drinking uses have occurred within the ARTS District.

<sup>34</sup> See Appendix D.

flexibility to transfer this requirement should only apply within the same arts district (as envisaged in OP's August 2008 recommendation).

- In addition, given the important role played by the Greater 14<sup>th</sup> Street Historic District and the Greater U Street Historic District in determining the appropriate mass of new construction within the ARTS Overlay District, the possibilities for trading earned bonus rights – even within the same arts district -- may in practice be somewhat constrained.<sup>35</sup>

#### 4.6 Bonus Density & Height for PAUL Uses

##### **Recommendation 13:**

***The Committee recommends that the new arts template provide a 2 to 1 bonus density for Tier 2 PAUL uses, and a 3 to 1 bonus density for Tier 1 PAUL uses (based on the proposed revised PAUL contained in Appendix E of this report).***

- The current ARTS Overlay regulations provide bonus density of 3 to 1 for theatre uses and 2 to 1 for arts uses (including restaurants, bars and nightclubs).<sup>36</sup> There is simply no information that the Committee is aware of that would suggest that the 2008 proposals of OP and the ZC to offer 1 to 1 bonus density for PAUL uses would be in any way effective in incenting arts uses in arts districts. Even the existing 3 to 1 bonus density provision that applies to theatre uses has never been utilized in the 20-year history of the Uptown ARTS Overlay District regulations.<sup>37</sup>
- OP's Arts & Culture Working Group noted, "...Arts uses can almost never compete on a financial level with other more profitable uses"<sup>38</sup>. To achieve meaningful results regarding the objective of the Comprehensive Plan ("... to make it more affordable for artists to practice their craft ...")<sup>39</sup>, then it is necessary to offer bonus densities of greater than 1 to 1 because arts uses are less profitable and cannot pay the same rents as other uses, so 1 for 1 density bonuses simply do not provide a sufficient incentive for developers.
- To have any chance of being effective, bonus density of 3 to 1 needs to be offered to the least financially competitive arts uses (Tier 1 of the proposed revised PAUL contained in Appendix E), and 2 to 1 to other arts uses (Tier 2 of the proposed revised PAUL contained in Appendix E).
- Given the importance of retail uses to arts districts, and the fact that retail uses in many cases also struggle to compete financially with restaurant/bar uses in the ARTS Overlay District, these

<sup>35</sup> See Appendix C for further information regarding the Greater 14<sup>th</sup> Street and Greater U Street Historic Districts.

<sup>36</sup> See section 1904.2, Chapter 19 (Uptown ARTS Overlay District) of Title 11 of DC Municipal Regulations.

<sup>37</sup> The only new construction of theatre square footage in the ARTS Overlay District since its inception was the 2001 expansion of Studio Theatre on 14<sup>th</sup> Street. In the case of this project, the 3 to 1 bonus density was not utilized.

<sup>38</sup> See page 1 of: <https://www.communicationsmgr.com/projects/1355/docs/Arts%20and%20Culture%20-%20Meeting%20Summary.pdf>

<sup>39</sup> See section II ("Arts & Culture Subject Area Process") of OP's Public Hearing Report for ZC #08-06-4 entitled "Proposed Amendments to Zoning Regulations Governing the Arts", August 28, 2008, available online at: <https://www.communicationsmgr.com/projects/1355/docs/Arts%20and%20Culture%20OP%20Report.pdf>

uses should continue to qualify for bonus density within Arts Districts, but it must necessarily be at a lower level than that applying to arts uses (otherwise the more financially competitive retail uses will compete directly with the less financially competitive arts uses for bonus density occupancies, to the ultimate detriment of the objective of retaining arts uses in Arts Districts).<sup>40</sup>

**Recommendation 14:**

***The Committee recommends that the new Arts template provide for the possibility that the bonus density described above for Tier 1 and Tier 2 PAUL uses be available, under certain highly circumscribed conditions (as described below), up to a maximum of one additional storey in height (10 feet) within Arts Districts.***

- The efficacy of bonus density as a zoning tool--without provision for bonus height to accommodate that density—has proven to be extremely limited in areas (like the ARTS Overlay District) that are historic districts and thus subject to Historic Preservation Guidelines.<sup>41</sup>
- The protection afforded to the existing historic structures that is provided by the Historic District Guidelines is important and highly valued across both the residential and business communities in the ARTS District.
- However, the Historic Preservation Review Board (HPRB) also pays close attention to the maximum height and density envelopes specified by the zoning regulations governing these areas and attempts, to the extent possible and where appropriate, to accommodate the indicated zoning envelope.
- Therefore, it is important that the zoning regulations signal to the HPRB that, in those limited number of situations where additional height and density could appropriately be accommodated, while retaining the historic fabric and character of a neighborhood, in order to achieve important land use goals such as incenting the retention of (PAUL) arts uses in Arts Districts, such opportunities may be considered by HPRB on a case-by-case basis.
- It is possible to conceive of single or combined lot developments within the current boundaries of the ARTS District where existing conditions (e.g. the absence of contributing historic buildings and/or other special factors) may allow for an additional 10 feet in height (e.g. 1 additional storey) to be accommodated appropriately without significant impact on the historic character of the area.
- This possibility for additional height flexibility to accommodate bonus density for arts uses should be subject to some very significant controls. As described below, this bonus height flexibility:
  - ❖ Should not be an entitlement, but rather a special exception procedure that would require a public hearing;

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<sup>40</sup> One approach would be for the new Arts template to provide a bonus density in arts districts of 1 to 1 for retail uses, and zero for restaurant/bar type uses (which simply do not require incenting in arts districts). Given the time constraints under which this review of the ARTS Overlay District has been carried out and the need to focus as directly as possible on arts-related issues at this stage, the question of defining a list of retail uses that might qualify for bonus density in arts districts has been set aside at present for future review.

<sup>41</sup>All references to height in this report are to the height of buildings *excluding* roof structures.

- ❖ Should be subject to the “45 degree line provision” that requires that height be setback and stepped down for light and air purposes in situations where the lot in question abuts either a residence zone or an alley that serves as the zone district boundary line with an adjacent residence zone.<sup>42</sup>
- ❖ Should be explicitly subject in the zoning regulations to the requirement that the additional height allowance (or some part thereof) be judged by the HPRB to be acceptable within the context of that part of the applicable Historic District.
- Bonus density without bonus height to accommodate that density simply does not work effectively: if no bonus height is offered, bonus density is severely weakened as a zoning tool to incent desired uses.<sup>43</sup>
- The option of using bonus height (in a highly constrained way) to incent a narrowly targeted list of preferred arts uses, while not completely uncontroversial, has elicited broad support across a wide variety of participants in this Review.<sup>44</sup> There is considerable understanding throughout the ARTS District that the experience of the past 20 years indicates that, in order to achieve the important goals of Arts Districts, a much more targeted and serious effort is required to effectively incent the retention of arts uses. Otherwise, many of these uses will be lost over time. Meaningful incentives are necessary if we wish to retain arts uses in Arts Districts.
- Moreover, there is no basis to fear that highly circumscribed height flexibility (of the kind outlined above) would result in ‘doomsday scenarios’ such as the ‘canyonization’ of the district. For example, the ARTS District has had –in the C-3-A zone that applies to virtually the entire 14<sup>th</sup> street corridor-- a 75 feet maximum height limit for almost 20 years, the past 10 of which have seen probably the biggest property price boom in a generation. Yet the average building height on this part of the 14<sup>th</sup> Street corridor remains in the order of 3 storeys. The probability of the highly circumscribed height flexibility described above resulting in canyonization is approximately zero.
- After taking into account the necessary setbacks from residence zones and from existing contributing buildings, some sites in the ARTS District may be able to accommodate (without harm to historic character) an additional “storey” that in fact has a highly reduced footprint relative to lower floors. A very, very few sites within the ARTS District may be able to accommodate (without harm) an extra floor that has something approaching a medium to full-

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<sup>42</sup> See, for example, the current 45 degree line provision contained in the ARTS Overlay regulations: section 1902.1(b), Chapter 19 (Uptown ARTS Overlay District) of Title 11 of DC Municipal Regulations.

<sup>43</sup> Note also that this approach of offering bonus height alongside bonus density was also recently judged to be necessary in many districts in the Inclusionary Zoning regulations in order to have a realistic possibility of achieving the goal of providing effective incentives for affordable housing. See Appendix C for more information regarding Inclusionary Zoning.

<sup>44</sup> In contrast, the Committee has encountered no enthusiasm for adjusting, for example, lot occupancy standards, rear yard standards or side yard standards in order to accommodate bonus density. Adjustment of these zoning tools is viewed as potentially having more serious adverse consequences for neighboring property owners (than bonus height), as well as being significantly more complex to achieve in a way that is fair across the wide variety of unique situations that can exist at ground level in a dense mixed use urban context like the ARTS District. When OP issues its recommendations on these (and other) areas as part of the Zoning Review of the Commercial Corridors subject area, it will be important for this neighborhood to examine those proposals carefully for their impact on the ARTS District.

size footprint. The vast majority of sites will not be able to meet the conditions necessary to accommodate bonus height.

- Finally, the bonus density and height described above for PAUL uses should apply to only those new construction and addition/alteration projects that also meet the Arts Requirement.

#### 4.7 Design & Use Requirements

##### **Recommendation 15:**

***The Committee recommends that the zoning tool of requiring a minimum ground floor retail component on primary corridors in the ARTS District be retained and, subject to necessary minima for entry areas, etc., expanded from 50% to around 75%.***

- The existing minimum ground floor retail requirement is an important tool for achieving a vibrant daytime streetscape and must be retained in the ARTS District.<sup>45</sup> However, a development that provided only the bare minimum 50% ground floor retail component would not be an acceptable use of street frontage on the primary corridors in Arts Districts.
- Given the importance of retail to a vibrant Arts District, the minimum ground floor retail requirement should be increased to around 75% (or potentially even higher) in Arts Districts, subject to appropriate amounts of frontage remaining available for entrance foyers, and subject to a special exception procedure that would allow variation from the higher requirement for sites where it would be difficult to meet the new higher minimum.<sup>46</sup>

##### **Recommendation 16:**

***The Committee recommends that restaurants, bars and like uses be excluded from fulfilling more than 50% of the 75% minimum ground floor retail requirement, for sites above a certain minimum width in Arts Districts.***

- Given the important role of retail uses in supporting daytime foot traffic in Arts Districts, and the fact that retail uses struggle to compete financially with restaurant/bar uses in terms of the rents that they are able to pay, it is important that some portion of new construction ground floor retail space remain within reach of retail uses in Arts Districts.
- It is a reality that, at present in the ARTS District, restaurant and bar uses are pricing retail uses and other service uses out of the market for ground floor occupancy. The goal of restricting new construction developments above a certain size from allocating most if not all of their ground floor space to restaurant and bar uses is to create at least some ground floor space that these uses would not be eligible to compete for. This limitation would result in rental levels for a portion of new construction ground floor space not rising as rapidly as they otherwise would, which would be a potentially very important tool in the ability of Arts Districts to retain the vibrant retail component that is necessary for arts uses to survive and thrive.
- Since this limitation would only apply, essentially, to combined lot developments above a certain minimum width (say, 60 feet), it is important to note that the vast majority of current ground floor space available in the ARTS Overlay District would be exempt from this limitation.

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<sup>45</sup> See section 1901.1, Chapter 19 (Uptown ARTS Overlay District), Title 11, DC Municipal Regulations.

<sup>46</sup> Higher minimum ground floor retail requirements apply within other zoning districts in DC.

**Recommendation 17:**

***The Committee recommends that a zoning tool be considered for the new ARTS zoning template to allow limitations to be placed on ground floor uses (such as banks and pharmacies) on primary corridors that do not contribute to a vibrant streetscape within Arts Districts, and that priority be accorded to submission of a text amendment to bring this tool into effect.***

- Uses such as pharmacies, banks, loan offices and other financial institutions that do not contribute to a vibrant streetscape on primary corridors, either during the day or at night, are already subject to limitations in some other districts in DC.<sup>47</sup>
- In addition, the Zoning Commission's Guidance Note on the "Retail Strategies" subject area of the Zoning Review identifies ground floor occupancy limits for uses that are inconsistent with a vital streetscape as an appropriate zoning tool to be carried forward into the rewrite of the zoning regulations for retail areas.<sup>48</sup>
- Limitations on these uses must also be a tool available within the new zoning template for Arts Districts. Moreover, the extent of the current problem of streetscape "dead zones" in the ARTS District is such that an urgent text amendment is required to prevent any further impairment of the streetscape by such uses in the very short term. The introduction of any further retail dead zones in the present environment would likely be a near-mortal blow for retail uses in some parts of the ARTS District.
- A somewhat different example of a ground floor occupancy that creates a dead zone is the Verizon Telephone Exchange building located on the northwest corner of 14<sup>th</sup> and R Streets. At present this use is grandfathered in the zoning regulations and may be rebuilt without complying with the zoning requirements of the Overlay regulations.<sup>49</sup> Such a redevelopment of this site without regard for the surrounding ARTS District would be entirely inappropriate and this provision should not be incorporated in the new zoning template for Arts Districts or elsewhere in the new zoning regulations.
- In addition, OP should work with Verizon to seek to bring the ground floor of the existing exchange building into compliance with the ground floor retail requirement in the ARTS District.<sup>50</sup>

**Recommendation 18:**

***The Committee recommends that the new ARTS zoning template explicitly require new construction developments in Arts districts to be consistent with DC Department of Transportation (DDOT) Streetscape Plans in those districts, including a requirement for Planned Unit Developments (PUDs) to specifically recognize DDOT Streetscape Plan provisions as a mandatory amenity in arts districts.***

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<sup>47</sup> For example, in the Downtown Overlay District: see section 1703.3(b), Chapter 17, Title 11, DCMR.

<sup>48</sup> See page 2 of: <https://www.communicationsmgr.com/projects/1355/docs/Retail%20ZC%20guidance.pdf>

<sup>49</sup> See section 1906.2, Chapter 19 (Uptown ARTS Overlay District), Title 11, DC Municipal Regulations.

<sup>50</sup> FCC regulations now require switching equipment to be located at a secure remove from ground floor locations, and there are other Verizon facilities in DC that contain switching equipment on upper floors in conjunction with retail and other services on the ground floor.

- The streetscape is critical to the success of Arts districts and the need for new development including PUDs to be consistent with DDOT streetscape plans is simply a basic land use issue that should be made explicit in the new ARTS zoning template.

#### 4.8 Ceiling Height

**Recommendation 19:**

***The Committee recommends support for the Zoning Commission's Guidance that a minimum (finished) ground floor ceiling height of 14 feet be required in Arts Districts, and recommends that ground floor ceiling heights in Arts Districts in excess of 14 feet be able to qualify (under highly circumscribed conditions) for a 1 to 1 bonus (building) height incentive up to a maximum of 4 feet.***

- Generous ground floor ceiling heights in Arts Districts are important in order to maximize the possibility for such space to be occupied by arts uses. They are also highly desired by retail occupancies. Finally, many of the historic buildings within the ARTS District were originally built with generous ground floor ceiling heights (e.g. the automobile showrooms) and it contributes to the overall harmony of the streetscape if in-fill development is also able to accommodate a generous ground floor ceiling height.
- The Committee proposes that, for example, if a development provided a minimum ground floor ceiling height of 15 feet instead of 14 feet, it may qualify for an additional 1 foot of building height, so as to ensure that the height of the upper floor levels was not compressed by the additional ground floor ceiling height.
- This 1 to 1 bonus (building) height incentive in respect of higher ground floor ceilings would only be available under the same tightly circumscribed conditions that were described in section 4.6 above, namely subject to: a special exception procedure, the 45 degree line provision, and the approval of the HPRB. This bonus building height incentive should also only be available up to a maximum ground floor ceiling height of 18 feet, and would not be in addition to the bonus height described in section 4.6, but would be one possible utilization of that flexibility.

#### 4.9 Arts Exhibition Areas

**Recommendation 20:**

***The Committee recommends that building lobby exhibition areas should not count towards the 0.5 FAR Arts Requirement.***

- The Zoning Commission's Guidance Note recommends that the contribution of building lobby exhibition areas toward meeting the Arts Requirement be limited to 5% of the requirement in Arts Districts.
- The Committee sees no reason why lobby exhibition areas, which are almost universally not open to the public, should count at all towards fulfilling the Arts Requirement. The Arts Requirement is far too important to Arts Districts for any of that already minimal requirement to be frittered away on private lobby spaces that simply do not contribute to the vibrancy of those districts.

#### 4.10 Arts Uses in Residential Zones

**Recommendation 21:**

***The Committee recommends that the Zoning Commission's Guidance -- that stand-alone arts uses be permitted as a special exception in existing buildings (such as former schools) in residential districts -- be supported.***

#### 4.11 Arts Home Occupations

**Recommendation 22:**

***The Committee recommends that the Zoning Commission's Guidance -- that artist's studios (and related arts uses that can meet home occupation standards) be permitted as home occupations -- be supported.***

#### 4.12 Artist Live-Work Space

**Recommendation 23:**

***The Committee recommends that the Zoning Commission's Guidance -- that artist live/work space (i.e. multiple artists apartments sharing communal workspace) be permitted in residential zones at the same density as other residential units (i.e. a zone allowing two units would allow two artist apartments) -- be supported.***

#### 4.13 Temporary Arts Uses

**Recommendation 24:**

***The Committee recommends that consideration be given in the new ARTS zoning template to creating a "temporary arts" land use designation (and associated procedures) that could be used to facilitate the use of vacant space in Arts Districts for time-limited temporary arts exhibitions and installations.***

- The ability to undertake temporary arts uses in otherwise vacant space would be extremely helpful to arts districts. It would seem possible for a way to be found to facilitate or incent such uses, while at the same time balancing the need for minimum procedures to be followed and safety provisions to be fully met.

#### 4.14 Zoning Compliance Resources

**Recommendation 25:**

***The Committee recommends that, as part of the current Zoning Review, the Office of Planning -- with the participation of independent experts -- undertake a (public) assessment of the minimum level of compliance resources needed in the DC Zoning Administrator's office to effectively monitor and enforce DC's Zoning Regulations.***

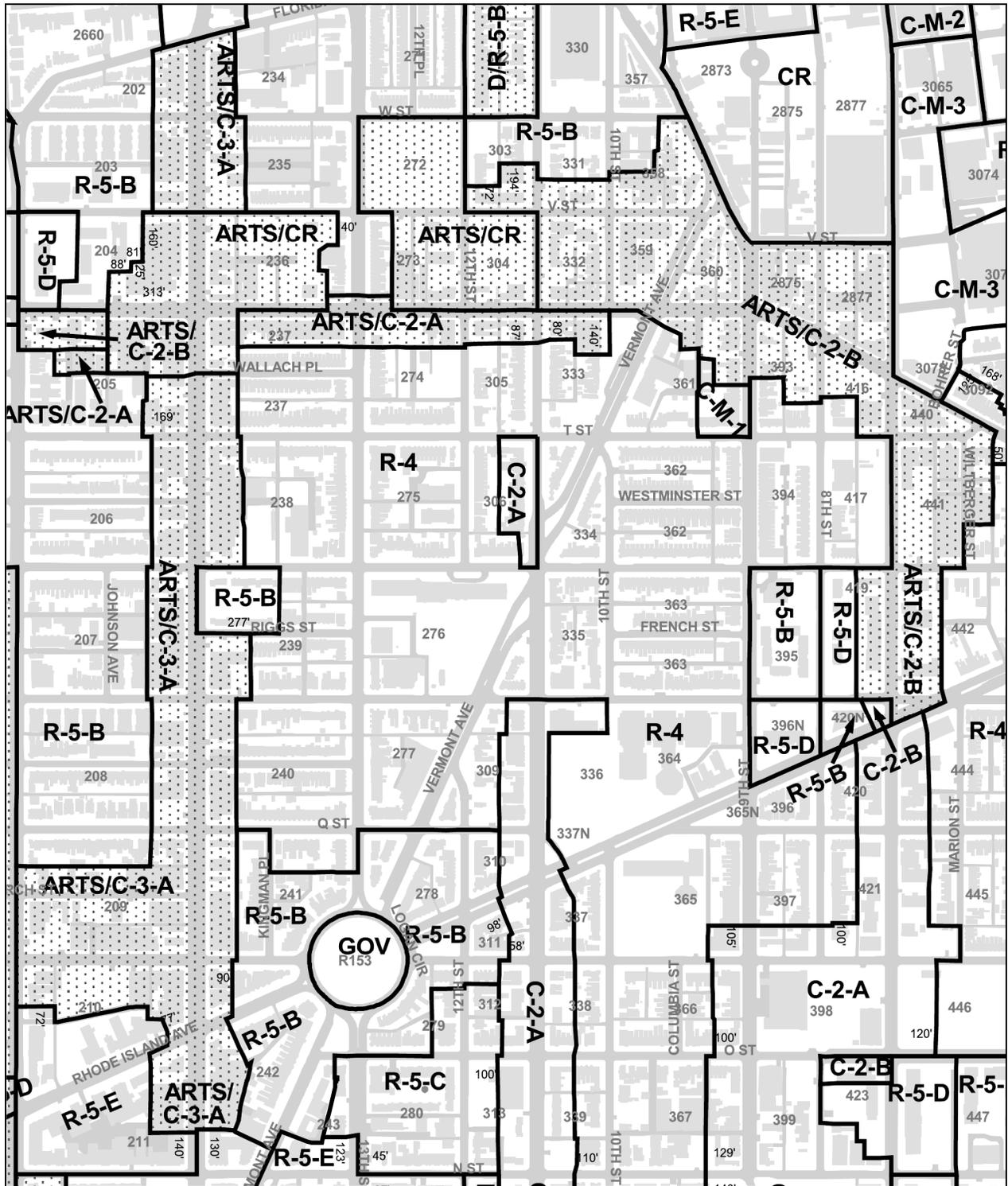
- An important element of any comprehensive zoning review, such as the one presently being undertaken by DC, should be to achieve maximum "buy-in" to the zoning regime by all affected parties.

- However, there is an enormous amount of skepticism (even cynicism) throughout the community, which has built up over many years, regarding zoning enforcement and compliance in DC. This situation is ultimately unhelpful to an effective zoning regime and needs to be seriously addressed within the framework of the current zoning review.
- Greater transparency regarding the level of resources necessary in the Zoning Administrator's office to enforce compliance with the zoning regulations, together with a commitment that adequate compliance resourcing will be one of the issues addressed as part of this Zoning Review, are two measures that would likely go a significant way to reducing community skepticism and increasing the willingness of parts of the community to embrace changes to the zoning regulations.
- At present (accurately or inaccurately) the widespread belief exists that the level of compliance resources in the Zoning Administrator's office is totally inadequate.

## **5. Appendices**

- Appendix A: Map of the Uptown ARTS Overlay District**
- Appendix B: Committee Members & Participants**
- Appendix C: DC Comprehensive Plan, Historic Districts, Inclusionary Zoning, & the “DUKE” Plan**
- Appendix D: Zoning Commission’s Guidance Note on Arts & Culture Subject Area**
- Appendix E: The Committee’s Proposed “Preferred Arts Use List” (PAUL)**
- Appendix F: Linear Frontage of Eating & Drinking Establishments**
- Appendix G: Zoning Recommendations: Consolidated List**
- Appendix H: Support for the Committee’s Recommendations**

**Appendix A: Map of the Uptown ARTS Overlay District**



## **Appendix B: Committee Members & Participants**

### **1. ANC2F ARTS Overlay Review Committee Members**

#### ***Mary Brown***

Mary is an attorney who has lived in the Logan Circle neighborhood for 19 years. She has built up extensive experience with planning and liquor licensing issues, and in 2002-03 was closely involved in development of the DC Council's regulations to implement DC's amended liquor licensing law.

#### ***Andrea Doughty*                      *Committee Chair***

Andrea is an economist who has lived in the 14<sup>th</sup> Street neighborhood for the past 10 years. She has experience in presenting cases before the DC Board of Zoning Adjustment and in successfully working with the DC Zoning Commission and DC Office of Planning to draft zoning regulations that were adopted.

#### ***Giorgio Furioso***

Giorgio is the founder of Furioso Development and has been involved in residential and commercial development for more than 20 years. He is also an artist and the owner of 1515 14<sup>th</sup> Street, which houses Posto Restaurant, Hemphill Gallery and several other arts-related businesses.

#### ***Ben Harris***

Ben is a communications professional who has lived in the 14<sup>th</sup> Street neighborhood for 3 years. He is co-author of the popular "14<sup>th</sup> and You" blog (<http://14thandyou.blogspot.com/>) which tracks latest developments affecting the 14<sup>th</sup> and U Street corridors and surrounding neighborhoods.

#### ***Jim Kane***

Jim is a business development director in the architectural industry who has lived in the 14<sup>th</sup> Street neighborhood for more than 25 years. He has served on the DC Historic Preservation Review Board for 17 years and has experience with historic preservation and neighborhood issues.

#### ***Joe Kerger***

Joe is a writer who has lived in the 14<sup>th</sup> Street neighborhood for 2 1/2 years. He is President of the Q14 Condominium Association Board (which has 28 condominium owners and 2 commercial tenants) located on 14<sup>th</sup> Street at Q Street.

#### ***Khalid Pitts***

Khalid, who with his partner was named Washingtonian Magazine's 2009 Restaurateur of the Year, has been co-owner of Cork Wine Bar on 14<sup>th</sup> Street since 2008 and is also a resident of the 14<sup>th</sup> Street neighborhood.

#### ***Linda Welch***

Linda is a serial entrepreneur who has owned and operated three successful businesses (Dogs by Day and Nite, Green Pets and Big Monkey Comics) on 14<sup>th</sup> Street for more than 5 years and is a former President of MidCity Business Association for 3 years.

#### **Committee Contact Person & Website:**

***Dr. Joan Ferraris*** is the contact person/recording secretary for the ARTS Committee. The ARTS Committee can be reached via Joan at: [jdferraris@yahoo.com](mailto:jdferraris@yahoo.com)

***Andrew Warth*** provided the ARTS Committee with critical technical support, including creating the ARTS Committee's website, which is available at: [www.anc2f.org/arts/](http://www.anc2f.org/arts/)

## **Appendix B continued**

### **2. Participants in the Uptown ARTS Overlay Review**

The following individuals either participated in the eight public meetings held by ANC2F's ARTS Overlay Review Committee, or participated in the numerous ANC and Neighborhood Association discussions of the Committee's report and recommendations, or contributed input into the review directly to the Committee:

<b>Rosemary Akinboni</b>	ANC1B Commissioner
<b>David Adamson</b>	Owner, Adamson Gallery
<b>David Alpert</b>	Founder, <a href="#">GreaterGreaterWashington</a> planning website
<b>Paula Amt</b>	Owner, Plan B Gallery
<b>Natalie Avery</b>	Executive Director, MidCity Business Association
<b>Chuck Baxter</b>	U Street Neighborhood Association
<b>Mike Benardo</b>	Vice-Chair, ANC2F
<b>David Bielenberg</b>	Director, Station North Arts District, Baltimore, MD
<b>Claire Block</b>	DC Strategy Group
<b>Bill Bonstra</b>	Bonstra Haresign Architects & DC Zoning Taskforce
<b>Michelle Bowen</b>	Economic Research Associates
<b>Travis Bowerman</b>	Source Theatre, Cultural Development Corporation
<b>Ilana Branda</b>	Source Theatre, Cultural Development Corporation
<b>Karen Brandon</b>	Board Member, Logan Circle Community Association
<b>Brian Card</b>	U Street Neighborhood Association
<b>Phil Carney</b>	ANC2B Commissioner
<b>Mark Chalfant</b>	Washington Improv Theater
<b>Lydia Charles</b>	U Street Neighborhood Association
<b>Martin Chin</b>	Owner, Bang & Olufson
<b>Tim Christensen</b>	Board Member, Logan Circle Community Association
<b>Lou Cipro</b>	Chair, Historic Preservation, Logan Circle Community Association
<b>Don Cohen</b>	Resident
<b>Roz Cohen</b>	Resident
<b>William Collins</b>	Chair, MidCity Residents Association
<b>Meghan Conklin</b>	ANC1B Commissioner
<b>Jeff Coudriet</b>	Legislative Issues, Councilmember Evans' Office
<b>Tom Coumaris</b>	Resident
<b>Liz Cullen</b>	Board of Trustees, Studio Theatre, & Resident
<b>Kate Damon</b>	Board of Directors, Transformer Gallery
<b>Dawn Debus</b>	City Living Magazine
<b>Wayne Dickson</b>	Partner, Blake Dickson Commercial Real Estate Services
<b>Robin Diener</b>	President, Dupont Circle Citizens Association
<b>Morey Epstein</b>	Executive Director, Studio Theatre
<b>Ramon Estrada</b>	ANC2B Commissioner
<b>Mike Feldstein</b>	ANC2B Commissioner
<b>Carol Felix</b>	Felix Design & Vice-Chair, MidCity Residents Association
<b>Joan Ferraris</b>	Board Member, MidCity Residents Association
<b>Eduardo Ferrer</b>	ANC1B Commissioner
<b>Kenneth Finkelstein</b>	Chief Development Officer, The JBG Companies
<b>Bryan Martin Firvida</b>	President, U Street Neighborhood Association
<b>Bill Fischer</b>	Fathom Creative
<b>David Franco</b>	Level 2 Development, & Owner, Universal Gear

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<b>Annie Gawlak</b>	Owner, former G Fine ART Gallery
<b>Michael Giulioni</b>	DC Office of Planning
<b>Jim Graham</b>	Councilmember, Ward 1
<b>Geoffrey Griffis</b>	City Partners DC & DC Zoning Taskforce
<b>Becca Gurganious</b>	Pink Line Project
<b>Linda Harper</b>	Executive Director, Cultural Tourism DC
<b>Anthony Harvey</b>	Intowner Newspaper
<b>Joel Heisey</b>	ANC2F Community Development Committee
<b>George Hemphill</b>	Owner, Hemphill Fine Arts
<b>Ethan Hicks</b>	Pink Line Project
<b>Tim Hillard</b>	ANC2F's 2002 ABC Liquor License Taskforce
<b>Gail Holness</b>	ANC1B Commissioner
<b>Jean Homza</b>	9:30 Club, & Vice-President, Board of Directors, MidCity Business Assoc.
<b>Martin Irvine</b>	Irvine Contemporary Gallery
<b>Kurt Jacobs</b>	Resident
<b>Jack Jacobson</b>	ANC2B Commissioner
<b>Gary Jankowski</b>	Resident
<b>Darryl Judy</b>	Resident
<b>Jon Kardon</b>	U Street Neighborhood Association
<b>Greg Kearley</b>	Owner, Project 4 Gallery
<b>Davis Kennedy</b>	Current Newspapers
<b>Sakina Khan</b>	DC Office of Planning
<b>Sherri Kimbel</b>	Constituent Services Director, Councilmember Evans' Office
<b>Phyllis Klein</b>	Chair, Zoning Committee, Dupont Circle Citizens Association
<b>David Knight</b>	Resident
<b>Eric Kole</b>	Owner, Vastu
<b>Helen Kramer</b>	ANC2F Community Development Committee
<b>Rod Lawrence</b>	Studio Theatre, & Resident
<b>Jyh-Mei Lee</b>	Abdo Development
<b>Matt LeGrant</b>	DC Zoning Administrator
<b>Greg Link</b>	Owner, Home Rule
<b>Marissa Long</b>	Program Coordinator, Transformer Gallery
<b>Juan Lopez</b>	ANC1B Commissioner
<b>Jim Louchs</b>	ANC2F Community Development Committee
<b>Candida Manozzi</b>	Owner, former Candida's World of Books
<b>Sayed Mansour</b>	Owner, Playbill Café, & Board Member, Logan Circle Community Assoc.
<b>Dan Mariottini</b>	Board Member, MidCity Residents Association
<b>Bob Meehan</b>	ANC2B Commissioner
<b>Todd Metrokin</b>	Co-Chair, Gays & lesbians Opposing Violence, GLOV)
<b>Regina Miele</b>	MidCity Artists; Board Member, MidCity Business Association; Raven Arts
<b>Ben Miller</b>	Resident, & President, Western Development Corporation
<b>Drew Mitchell</b>	Fathom Creative
<b>Carol Mitten</b>	DC Zoning Taskforce & former Chair, DC Zoning Commission
<b>Steve Moore</b>	President & CEO, Washington DC Economic Partnership
<b>Patrick Moriarity</b>	Senior Principal, Economic Research Associates
<b>Myla Moss</b>	ANC1B Commissioner
<b>Rebecca Moudry</b>	DC Office of Planning
<b>Sedrick Muhammad</b>	ANC1B Commissioner
<b>Brianne Nadeau</b>	Chair, ANC1B
<b>Camille Nixon</b>	Department of Small and Local Business Development, DSLBD
<b>Anca Novacovici</b>	Eco-Coach & Resident

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<b>James Nozar</b>	JBG Development
<b>Alex Padro</b>	ANC2C Commissioner & Director, Shaw Main Streets
<b>Travis Parker</b>	DC Office of Planning
<b>Lori Parkerson</b>	Owner, Redeem Boutique
<b>Bhavna Patel</b>	ANC2B Commissioner
<b>Timothy Paul</b>	Owner, Timothy Paul Carpets, Bedding & Home
<b>Mark Parascandola</b>	MidCity Artists
<b>Phil Piga</b>	Resident, 15th and P Streets, NW
<b>Scott Pomeroy</b>	Downtown DC Business Improvement District (B.I.D)
<b>Eric Price</b>	Abdo Development & Former DC Dep. Mayor for Economic Development
<b>Tony Puesan</b>	Director, HR-57 Center for the Preservation of Jazz & Blues
<b>Peter Raia</b>	ANC1B Commissioner
<b>Matthew Raymond</b>	ANC2F Commissioner
<b>Charles Reed</b>	Chair, ANC2F
<b>Victoria Reis</b>	Director, Transformer Gallery
<b>Darryl Rippeteau</b>	Owner, Rippeteau Architects
<b>Sharon Romack</b>	Executive Director, River North Business Association, Chicago, IL
<b>Amy Saidman</b>	Director, Speakeasy DC
<b>David Schaefer</b>	Owner, Urban Essentials
<b>Michael Schaeffer</b>	Resident
<b>Monica Schneider</b>	ANC2F Commissioner
<b>Jeffrey Schonberger</b>	Alturas Development, & Treasurer, Adams Morgan B.I.D.
<b>Barton Seaver</b>	Partner, Diamond District Seafood Market & Restaurant
<b>Mike Silverstein</b>	Chair, ANC2B
<b>John Soloman</b>	Owner, Solly's Bar
<b>John Snellgrove</b>	Bar Pilar & Café Saint-Ex
<b>Phil Spalding</b>	U Street Neighborhood Association
<b>Will Stephens</b>	Vice-Chair, ANC2B
<b>David Stivaletta</b>	Resident
<b>Christine Szathsmay</b>	Vice-Chair, U Street Neighborhood Association
<b>Deborah Thomas</b>	ANC1B Commissioner
<b>Laura Tischler</b>	Resident
<b>Brian Vargas</b>	ANC2F Commissioner
<b>Sheryl Walter</b>	U Street Neighborhood Association
<b>Andy Warth</b>	ANC2F Community Development Committee
<b>Victor Wexler</b>	ANC2B Commissioner
<b>Pixie Windsor</b>	Owner, Miss Pixies Furnishings & Backroom Palace
<b>Joseph Wnuk</b>	Resident

## **Appendix C: DC Comprehensive Plan, Historic Districts, Inclusionary Zoning, and the “DUKE” Plan**

While the Zoning Regulations governing the Uptown Arts District are the primary focus of this report, several other frameworks also have a very important impact on future development, land use, and density in the Arts District: for example, DC’s Comprehensive Plan, the Greater 14<sup>th</sup> Street and Greater U Street Historic Districts, DC’s new Inclusionary Zoning Law, and the “DUKE” Cultural Plan for the Greater Shaw/U Street area (western boundary is the 1300 block of U Street).<sup>51</sup>

The ARTS Committee has closely examined each of these frameworks to crosscheck that the recommendations in this report do not conflict in any way with the important guidance and support these frameworks provide for the future development of the Uptown Arts District. Among these, DC’s Comprehensive Plan is the overarching policy document that guides all future planning and development in DC and, as such, it provides the fundamental basis for the future zoning of the Uptown ARTS District. Since the Comprehensive Plan forms the basis for the zoning recommendations contained in this report, we provide here a brief review of the most important provisions pertaining to the Uptown ARTS Overlay District.

The Comprehensive Plan’s “Generalized Policy Map”<sup>52</sup> designates the main corridors in the Uptown ARTS Overlay District as “Main Street Mixed Use Corridors” which are “traditional commercial corridors with a concentration of older storefronts along the street ... Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment.”

Regarding those portions of 14<sup>th</sup> and U Streets that lie within the Uptown ARTS Overlay, the Comprehensive Plan’s “Future Land Use Map”<sup>45</sup> designates:

- 14<sup>th</sup> Street between N and Church Streets, and between Riggs and U Streets, as “Medium Density Residential (4-7 stories)” and “Moderate Density Commercial (usually 5 stories maximum)”
- 14<sup>th</sup> Street between Church and Riggs Streets as “Moderate Density Residential” and “Moderate Density Commercial (usually 5 stories maximum)”
- 14<sup>th</sup> Street above U Street as “Medium Density Residential (4-7 stories)” and “Medium Density Commercial (usually 8 stories maximum)”
- U Street as a patchwork of land use densities varying from Moderate to Medium Density Residential, and from Moderate to Medium Density Commercial.

In addition to the Comprehensive Plan maps, several chapters of the Plan contain provisions affecting the Uptown ARTS Overlay District:

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<sup>51</sup> The Comprehensive Plan is available online at: <http://www.planning.dc.gov/>  
 Information regarding the Greater 14<sup>th</sup> and Greater U Streets’ Historic Districts is available at: <http://www.planning.dc.gov/planning/cwp/view,A,1284,Q,570832.asp>  
 Information regarding DC’s new Inclusionary Zoning law is available at: <http://dhcd.dc.gov/dhcd/cwp/view,a.1243,q.647468.asp>  
 Information regarding the DUKE Cultural Destination plan for Greater Shaw/U Street area is available at: <http://www.planning.dc.gov/planning/cwp/view,a,1285,Q,619216.asp>

<sup>52</sup> See: <http://www.planning.dc.gov/planning/cwp/view,a.1354,q.639789,PM,1.asp>

## **Appendix C continued**

### **Comprehensive Plan: “Arts & Culture” Element (Chapter 14)**

The Arts & Culture Element of the Comprehensive Plan states that:

- “Retaining existing clusters of arts establishments” is a “key issue” facing DC (page 14-1)
- Existing arts and cultural facilities “may be threatened by rising rents and redevelopment pressures” (page 14-2)
- “The City faces a persistent need for the retention and further development of affordable neighborhood arts facilities” (page 14-2)
- When siting arts facilities “give preference to locations near public transit” (page 14-3)
- “Regulatory changes” should be considered to “encourage the provision of space for arts in new and refurbished public buildings” (page 14-3)
- “Arts Districts are identified, mixed-use areas of the city in which a high concentration of arts and cultural facilities serves as an anchor of attraction” (page 14-4)
- DC should “identify, recognize and support existing clusters of arts establishments” (page 14-5)
- DC should “ensure that ... incentives for arts-related uses are not precluded by other provisions of zoning” (page 14-5)
- DC should “establish an inspection and enforcement program for Arts Districts zoning requirements, ensuring that such requirements ... are enforced after projects are constructed” (page 14-5)
- DC should “support the temporary reuse of vacant and/or underutilized storefronts and other non-residential buildings for arts exhibition” (page 14-7)
- “The city’s ability to sustain its artists is threatened by a lack of affordable real estate and suitable locations for studios, live-work space, and production facilities” (page 14-9)
- DC should “ensure that the District’s zoning and land use regulations support the development of live-work space for artists in a variety of settings around the city” (page 14-10)
- DC should “conduct a review of planning, building and zoning regulations as they relate to arts uses to: (a) ... create incentives for joint living and work quarters for artists in new and existing structures; and (b) make it easier to use garages and accessory buildings on residential lots as studio spaces ...” (page 14-10)
- “The non-profit arts are not entirely self-supporting” (page 14-11)
- DC should “explore off-setting costs for business licenses and permits, property taxes, insurance, and rents for use of city facilities, among others” (page 14-12)

### **Comprehensive Plan: “Land Use” Element (Chapter 3)**

The Land Use Element of the Comprehensive Plan states that:

- “Six “Great Streets” were named in 2005 as part of an integrated economic development, transportation, and urban design strategy ... While not officially designated, four other corridors ... *(including)* ... 14<sup>th</sup> Street, NW ... *(have)* potential for enhancement” (page 3-17)
- “... More effective and responsive enforcement remains one of the most frequently raised planning issues in the District today” (page 3-28)
- DC should “fully enforce conditions of approval for new development ... and apply appropriate penalties in the event of non-compliance” (page 3-28)
- DC should “provide zoning and alcoholic beverage control laws that discourage the excessive concentration and potential negative effects of liquor licensed establishments (e.g. night clubs and bars) in neighborhood commercial districts” (page 3-34)
- DC should “ensure that the District’s zoning regulations limit the location and proliferation of fast food restaurants, sexually-oriented businesses, late night alcoholic beverage establishments, 24-

## **Appendix C continued**

hour mini-marts and convenience stores, and similar high impact commercial establishments ...” (page 3-35)

- DC should “maintain a range of monitoring, inspection and enforcement programs for commercial areas to ensure that activities are occurring in accordance with local planning, building, zoning, transportation, health, alcoholic beverage control, and other District rules and regulations. Prompt and effective action should be taken in the event of non-compliance ... (page 3-35)
- DC should “as part of each Small Area Plan, conduct an evaluation of commercially zoned areas to assess the appropriateness of existing zoning designations. This assessment should consider:
  - a. The heights, densities and uses that could occur under existing zoning; and
  - b. The suitability of existing zoning given the location and size of each area, the character of adjacent land uses, the relationship to other commercial districts in the vicinity, transportation and parking attributes, proximity to adjacent uses, and the designation on the Future Land Use Map” (page 3-36)
- DC should “as part of the comprehensive rewrite of the zoning regulations, consider text amendments that:
  - a. More effectively control uses which are permitted as a matter-of-right in commercial zones;
  - b. Avoid the excessive concentration of particular uses with the potential for adverse effects, such as convenience stores, fast food establishments, and liquor-licensed establishments; and
  - c. Consider performance standards to reduce potential conflicts between certain incompatible uses” (page 3-36)

### **Comprehensive Plan: “Near Northwest Area Element” (Chapter 21)**

The Near Northwest Area Element (which covers the 7<sup>th</sup> Street portion and most of the 14<sup>th</sup> Street portion of the ARTS Overlay District) states that:

- “More contemporary high-density construction defines ... the 14<sup>th</sup> Street corridor ...” (page 21-1)
- “The more prominent retail areas are on the major streets like ... 14<sup>th</sup> Street ...” (page 21-2)
- “14<sup>th</sup> Street is home to the Studio Theater as well as other performing arts venues and galleries” (page 21-2)
- “The most significant retail areas are along linear corridors such as ... 14<sup>th</sup> Street” (page 21-5)
- “Existing zoning (*on 14<sup>th</sup> Street*) permits a level of development that exceeds what currently exists” (page 21-9)
- “The process of creating, administering and enforcing zoning regulations, including the granting of variances and zoning changes, needs to be refined and consistently applied. Several meeting participants singled out the granting of “Special Exceptions” as an objectionable practice” (page 21-10)
- “Certain kinds of commercial activities, such as fast food restaurants and liquor licensed establishments are a source of concern for neighbors” (page 21-11)
- “The funky quality of some of the area’s streets is disappearing, as lower-cost stores and services are replaced by national chain stores ... Small businesses across the entire area face the stress of rising rents” (page 21-12)
- DC should “sustain these (*community shopping*) areas as diverse, unique, pedestrian-oriented shopping streets that meet the needs of area residents, workers and visitors” (page 21-14)
- DC should “discourage the excessive concentrations of liquor-licensed establishments on local shopping streets ...” (page 21-12)
- DC should “encourage existing and new arts activities along 7<sup>th</sup> Street and 14<sup>th</sup> Street, in an effort to link these corridors to the arts district along the U Street corridor ... Theaters, galleries, studios, and

## **Appendix C continued**

other arts and cultural facilities and activities should be encouraged on these streets ...” (page 21-17)

- “Other catalytic projects, like the new Studio and Woolly Mammoth Theaters, have helped to transform 14<sup>th</sup> Street from its former life as the city’s “auto row” into a lively arts, restaurant, and loft district. An Arts Overlay zone district along 14<sup>th</sup> Street includes incentives for arts-oriented businesses along the corridor” (page 21-26)
- “Current trends ... are expected to continue into the future, with 14<sup>th</sup> Street emerging as an even stronger center for arts and entertainment over the next decade. Additional restaurants, theatres, lofts and apartments are encouraged on the blocks between Thomas Circle and U Street, creating a dynamic street environment that epitomizes the best qualities of urban living” (page 21-26)
- DC should “promote and encourage the presence of the arts along 14<sup>th</sup> Street ... and protect the area’s entertainment, arts, and architectural history” (page 21-26)
- DC “should promote the development of art galleries, lofts, and business incubators for the arts along 14<sup>th</sup> Street, along with the establishment of cultural facilities and street level retail and neighborhood service uses, such as restaurants and local-serving offices” (page 21-27)
- DC should “encourage lot consolidation to address the many narrow commercial sites that exist along 14<sup>th</sup> Street to encourage suitable scale and massing and improve conditions for new development along the corridor” (page 21-27)

### **Comprehensive Plan: “Mid-City Area Element” (Chapter 20)**

The Mid-City Area Element (which covers most of the U street portion of the ARTS Overlay District) states that:

- “A different set of urban tensions is present along the area’s rapidly developing corridors such as 14<sup>th</sup> and U Streets ... Revitalization has ... burdened small businesses trying to keep up with rising costs” (page 20-2)
- “The loss of neighborhood diversity was the greatest concern expressed at almost every Comp Plan meeting in this area, and was raised in many different contexts – from the need for affordable housing to concerns about the influx of chain stores and decline of neighborhood businesses” (page 20-9)
- “The arts should be recognized as an essential part of community life” (page 20-10)
- “Commercial gentrification is also an issue. Small corner stores and other businesses that are unique to the neighborhood are having a harder time getting by. The area’s restaurants, ethnic establishments, and iconic neighborhood businesses are an important part of what defines this community. They should be strongly supported in the future” (page 20-11)
- DC should “protect the small businesses and essential local services that serve (this area) ...” (page 20-12)
- DC should “identify the potential for regulatory controls to address ... excessive concentrations of liquor-licensed establishments within the neighborhood commercial districts ...” (page 20-14)
- “By the 1920s ... black-owned theatres, restaurants, night clubs, billiard parlors, and dance halls extended along U Street ... During its heyday, legendary jazz greats like Duke Ellington, Louis Armstrong, Dizzy Gillespie, and Pearl Bailey performed at U Street venues” (page 20-22)
- “The downside of U Street’s success is that many of the long-time businesses, including basic services like barber shops and bookstores, are having difficulty paying the higher rents and taxes that have come with gentrification. Efforts to retain the street’s character must do more than just preserve its buildings; measures to retain and assist existing businesses are needed” (page 20-23)
- DC should “incorporate small business retention and assistance programs in the Uptown District’s revitalization, possibly including zoning regulations ... and other measures which assist small businesses” (page 20-24).

## **Appendix D: Zoning Commission’s Guidance on Arts & Culture**

This Appendix reproduces the DC Zoning Commission’s “Guidance Note” to the DC Office of Planning following the Zoning Commission’s preliminary consideration of the “Arts and Culture” subject area of the Zoning Review in October 2008.<sup>53</sup>

### **Arts & Culture Guidance**

**10/20/08**

#### **1. Arts Districts**

- Create template set of provisions that would apply to existing and future Arts Districts. Based on the remainder of the work in the Zoning Review, these provisions could be applied as a stand-alone district, as a part of individual commercial districts, or as an overlay.

#### **2. Arts Uses**

- Unify and simplify list of Arts uses, including grouping Arts uses by type.

#### **3. Arts Requirement**

- Require 0.5 FAR of Arts use in new construction in Arts Districts.

#### **4. Non-Arts Uses**

- Retail and other non-Arts uses would be permitted, but not count toward the Arts requirement.

#### **5. Combined Lot Development/Transfer of Development Rights**

- Allow flexibility for the location of Arts uses and density in the Arts district through CLD, TDR, or other method. Both Arts requirements and bonus density could be traded between properties.

#### **6. Bonus Density for Preferred Arts Uses**

- Provide a 1 to 1 density bonus for preferred Arts uses based on FAR equivalent.

#### **7. Design and Use Requirements**

- Create design requirements and use frontage requirements that would apply to designated “primary streets” within Arts Districts, with the ability to tailor the design requirements based on the specific circumstances of each Arts District.

#### **8. Ceiling Height**

- Require 14’ ground floor ceiling height for all commercial structures in Arts Districts.

#### **9. Arts Exhibition Areas**

- Limit the amount that building lobby exhibition areas count toward Arts requirements to 5%.

<sup>53</sup> This document is available online at:

<https://www.communicationsmgr.com/projects/1355/docs/ZC%20A&C%20guidance.pdf>

**10. Arts Uses in Residential Zones**

- Permit stand-alone arts uses in existing buildings (such as former schools) in residential districts as a special exception.

**11. Arts Home Occupations**

- Allow artists studios (and related arts uses that can meet home occupation standards) as home occupations

**12. Artist Live-Work Space**

- Allow artist live/work space (i.e. multiple artists apartments sharing communal workspace) in residential zones at the same density as other residential units (i.e. a zone allowing two units would allow two artist apartments)

**End of Appendix D**

## **Appendix E: The Committee's Proposed "Preferred Arts Use List" (PAUL)**

### **Tier 1: (these uses would qualify for a 3 to 1 bonus density)**

#### Artist & Artisan Living and Production Use Group

- i. Artist & Artisan live-work space, not to exceed 2,500 square feet;
- ii. Artist & Artisan studio, not to exceed 2,500 square feet;
- iii. Multi-artist & Artisan live-work space

#### Arts-Retail Use Group – all uses not to exceed 2,500 square feet

- i. Art gallery;
- ii. Art services, including but not limited to set design, restoration of artworks, and arts curator services
- iii. Art supplies store;
- iv. Musical instruments store;
- v. Recordings store;
- vi. Book store;
- vii. Picture framing shop, printmaking shop, digital print or scanning lab, or traditional darkroom and photographic supply sales

#### Artisan Production Use Group – all uses not to exceed 2500 square feet

- i. Glass working;
- ii. Jewelry making;
- iii. Metalworking;
- iv. Woodworking, including furniture manufacture;
- v. Paper and textile;
- vi. Stone and ceramic

#### Performing Arts Use Group

- i. Nonprofit Arts organizations, administrative offices of;
- ii. Legitimate theater (includes only those theaters that make [10%] [25%] or less of their revenue from alcohol sales);
- iii. Theater, assembly hall, auditorium, concert hall, public hall, or other performing arts space or center, including rehearsal and / or pre-production space

#### Design Use Group -- all uses not to exceed 2,500 square feet

- i. Fashion design

#### Education and Multi-function Use Group

- i. Art center;
- ii. Art incubator;
- iii. Art or performing arts school, including but not limited to schools of dance, photography, filmmaking, music, writing, painting, sculpting, or printmaking

#### Other Use Group

- i. Art exhibition area;
- ii. "Black box" arts space;
- iii. Media or multi-media studio

## **Appendix E continued**

### **Tier 2: (these uses would qualify for a 2 to 1 bonus density)**

#### Artisan Production Use Group

- i. Architectural production

#### Design Use Group

- i. Architecture;
- ii. Graphic design;
- iii. Interior architecture and design;
- iv. Landscape design;
- v. Product and industrial design;

#### Performing Arts Use Group

- i. Cinema;
- ii. Dinner theater
- iii. Performing arts ticket office or booking agency

#### Museum Use Group

- i. Art gallery, equal to or greater than 2,500 square feet;
- ii. Museum

#### Other Use Group

- i. Any size-limited use in the Artist & Artisan Living and Production Use Group, the Arts-Retail Use Group, the Artisan Production Use Group or the Design Use Group, with no size limitation;
- ii. Any other use determined by the Zoning Administrator to be an arts or cultural use, except dance halls, discotheques, ballrooms, drinking places (including bars, nightclubs or cocktail lounges), fast food establishments, prepared food shops, and restaurants.

## **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 G: Zoning Recommendations: Consolidated List**

### **Recommendation 1:**

The ARTS Overlay Committee recommends that the new “ARTS zoning template” provisions be applied as a stand-alone “ARTS” zoning district.

### **Recommendation 2:**

Alternatively, if the overlay model is retained to designate Arts Districts, the Committee recommends that the existing Uptown ARTS Overlay District be split into two ARTS Overlay Districts (the “14<sup>th</sup> Street Corridor ARTS Overlay District” and the “U Street Corridor ARTS Overlay District”).

### **Recommendation 3:**

The Committee recommends that the application of the new ARTS zoning template as part of individual commercial districts not be supported.

### **Recommendation 4:**

The Committee recommends that zoning within ARTS Districts be brought into a measure of basic zoning conformity where necessary.

### **Recommendation 5:**

The Committee recommends that where undeveloped city-owned parcels that currently have inappropriate uses and/or inappropriate zoning are contiguous to ARTS Districts, these sites should be integrated wherever possible into the ARTS District zone.

### **Recommendation 6:**

The Committee recommends that the new ARTS zoning template provide for the possibility that the maximum zoning envelope in ARTS Districts be able to be allocated flexibly between residential and commercial uses.

### **Recommendation 7:**

The Committee recommends that sites within ARTS Districts that face environmental remediation issues (including title caveats that prevent future redevelopment as residential uses) should have the right to develop the full zoning envelope permitted in that ARTS zone for commercial use.

### **Recommendation 8:**

The Committee recommends that the Zoning Commission be asked to issue a revised “Arts & Culture Guidance Note” with some urgency (i.e. during 2009) so that the further Zoning Review work on the Arts & Culture subject area will reflect the Commission’s consideration of the recommendations contained in this report.

### **Recommendation 9:**

The Committee recommends that OP’s draft “Proposed Arts Use List” (PAUL) be revised to remove restaurants and bars from the list of Arts uses and to provide a tiered structure that makes allowance for the varying financial competitiveness of different types of arts uses, along the lines of the Committee’s revised PAUL proposed in Appendix E.

### **Recommendation 10:**

The Committee strongly supports the Zoning Commission’s guidance that new construction in Arts Districts be required to provide a minimum level of space for Arts uses, but recommends that this requirement be defined in terms of Gross Floor Area (5%) rather than Floor Area Ratio (0.5), and that the requirement be subject to a minimum building-size threshold and extend also to addition & alteration projects in arts districts.

## **Appendix G continued**

### **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 Arts Districts, albeit with significant modifications (as discussed in section 4.4 of this report) 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.

### **Recommendation 12:**

The Committee recommends that the proposed flexibility regarding transfer of PAUL requirements and earned bonus rights should be supported, provided that (as envisaged in OP's August 2008 recommendations) this transfer flexibility only applies within the same Arts District.

### **Recommendation 13:**

The Committee recommends that the new arts template provide a 2 to 1 bonus density for Tier 2 PAUL uses, and a 3 to 1 bonus density for Tier 1 PAUL uses (based on the proposed revised PAUL contained in Appendix E of this report).

### **Recommendation 14:**

The Committee recommends that the new Arts template provide for the possibility that the bonus density described above for Tier 1 and Tier 2 PAUL uses be available, under certain highly circumscribed conditions (as described in section 4.6 of this report), up to a maximum of one additional storey in height (10 feet) within arts districts.

### **Recommendation 15:**

The Committee recommends that the zoning tool of requiring a minimum ground floor retail component on primary corridors in the ARTS Overlay District be retained and, subject to necessary minima for entry areas, etc., expanded from 50% to around 75%.

### **Recommendation 16:**

The Committee recommends that restaurants, bars and like uses be excluded from fulfilling more than 50% of the 75% minimum ground floor retail requirement, for sites above a minimum width in Arts districts.

### **Recommendation 17:**

The Committee recommends that a zoning tool be built into the new ARTS zoning template to allow limitations to be placed on ground floor uses (such as banks and pharmacies) that do not contribute to a vibrant streetscape within Arts districts, and that priority be accorded to submission of a text amendment to bring this tool into effect.

### **Recommendation 18:**

The Committee recommends that the new ARTS zoning template explicitly require new construction developments in Arts districts to be consistent with DC Department of Transportation (DDOT) Streetscape Plans in those districts, including a requirement for Planned Unit Developments (PUDs) to specifically recognize DDOT Streetscape Plan provisions as a mandatory amenity in arts districts.

### **Recommendation 19:**

The Committee recommends support for the Zoning Commission's Guidance that a minimum (finished) ground floor ceiling height of 14 feet be required in Arts Districts, and recommends that ground floor ceiling heights in Arts Districts in excess of 14 feet be able to qualify (under highly circumscribed conditions) for a 1 to 1 bonus (building) height incentive up to a maximum of 4 feet.

## **Appendix G continued**

### **Recommendation 20:**

The Committee recommends that building lobby exhibition areas should not count towards the Arts Requirement.

### **Recommendation 21:**

The Committee recommends that the Zoning Commission's Guidance -- that stand-alone arts uses be permitted as a special exception in existing buildings (such as former schools) in residential districts -- be supported.

### **Recommendation 22:**

The Committee recommends that the Zoning Commission's Guidance -- that artist's studios (and related arts uses that can meet home occupation standards) be permitted as home occupations -- be supported.

### **Recommendation 23:**

The Committee recommends that the Zoning Commission's Guidance -- that artist live/work space (i.e. multiple artists apartments sharing communal workspace) be permitted in residential zones at the same density as other residential units (i.e. a zone allowing two units would allow two artist apartments) -- be supported.

### **Recommendation 24:**

The Committee recommends that consideration be given in the new ARTS zoning template to creating a "temporary arts" land use designation (and associated procedures) that could be used to facilitate the use of vacant space in Arts Districts for time-limited temporary arts exhibitions and installations.

### **Recommendation 25:**

The Committee recommends that, as part of the current Zoning Review, the Office of Planning -- with the participation of independent experts -- undertake a (public) assessment of the minimum level of compliance resources needed in the DC Zoning Administrator's office to effectively monitor and enforce DC's Zoning Regulations.

**Appendix H: Support for the Committee's Recommendations**



**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 14<sup>th</sup> 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 14<sup>th</sup> 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,

Handwritten signature of Brianne K. Nadeau in blue ink.

Brianne K. Nadeau  
Chairperson

Handwritten signature of Meghan M. Conklin in black ink.

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

**Appendix H continued**



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Dupont Circle Advisory Neighborhood Commission 2B**

September 13, 2009

Ms. Harriet Tregoning  
Director, DC Office of Planning  
Frank D. Reeves Municipal Center  
2000 14th Street, NW 4th Floor  
Washington, DC 20009

Re: DC Zoning Review: Uptown Arts Overlay ("ARTS") District

Dear Ms. Tregoning:

At its regular meeting on September 9, 2009, the Dupont Circle Advisory Neighborhood Commission ("ANC 2B" or "Commission") considered the above-referenced matter. With nine of the nine Commissioners present, a quorum at a duly-noticed public meeting, the Commission approved the following motion by a unanimous vote (9-0):

ANC 2B supports and encourages the report of the Logan Circle ANC Committee on the Uptown Arts Overlay and hopes it moves forward, however we have questions and concerns about several specific recommendations.

I will be the Commission's representative on this matter and can be reached at (202) 833-4440 or by e-mail at [mike.silverstein@dupontcircleanc.net](mailto:mike.silverstein@dupontcircleanc.net).

ON BEHALF OF THE COMMISSION.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Silverstein", written over a light gray grid background.

Mike Silverstein  
Chairman

cc: Marc Loud, Chairman, Board of Zoning Adjustment  
Anthony Hood, Chairman, DC Zoning Commission

**Appendix H continued**

MidCity Business Association  
 1847 14<sup>th</sup> St. NW  
 Washington, D.C. 20009  
 202-246-0343

**BUSINESS ASSOCIATION****MBA,  
Board of Directors.****President**

Kamal Ali  
 Ben's Chili Bowl

**Vice President**

Jean Hornza  
 9:30 Club

**Treasurer**

John Snellgrove  
 Bar Pilar  
 Cafe Saint-Ex

**Secretary**

Lisa Williams  
 Senate Realty

Jeff Banks  
 Bank of  
 Georgetown

Kenny Barnes  
 ROOT Foundation

Frank Smith  
 African American  
 Civil War Memorial

Lisa Williams  
 Senate Realty

Regina Miele  
 Raven Arts

Teresa Watts  
 Lettie Gooch

John Soloman  
 Solly's

**Ex Officio**

**Members**  
 Scott Pomeroy

Ms. Harriet Tregoning  
 Director, DC Office of Planning  
 Frank D. Reeves Municipal Center  
 2000 14th Street, NW 4th Floor  
 Washington, DC 20009

September 9th, 2009

**Re: DC Zoning Review: Uptown Arts Overlay ("ARTS") District**

Dear Director Tregoning,

On September 9<sup>th</sup>, The Board of Directors of the MidCity Business Association voted unanimously (10-0) to endorse the report and all of its recommendations of the ANC 2F Arts Overlay Committee. We believe the recommendations will strongly support and promote the continued development of the 14th Street and U Street Corridor in fashion that is in the best interest of the community and help to develop vibrant, safe and well managed commercial and arts districts.

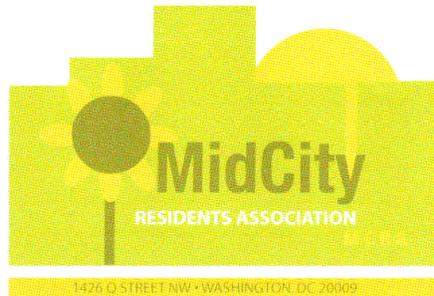
The MidCity Business Association and the small businesses and arts organizations we represent are pleased to be collaborating with local residents and civic groups to promote, develop and manage one of the most creative and dynamic districts in the city. ANC 2F's report and recommendations reflect an unusually deep level of community collaboration, bringing together a range of stakeholders to craft the recommendations.

We are also thankful to ANC 2F for making 14<sup>th</sup> Street the priority it needs to be as the City continues to develop and promote MidCity's commercial corridors as distinctive and historically significant arts and cultural destinations. We are pleased to be part of the unique and growing coalition of community groups who support ANC 2F's Arts Overlay Committee's report and recommendations. We appreciate the committee's recognition of the interplay between zoning and the other important factors in working toward this shared goal, including promoting daytime foot traffic, cleaning and greening of the streetscapes and building the kind of community collaborations necessary for a well managed area. Thank you for the opportunity to show our support for this important report and set of recommendations.

Yours truly,

Kamal Ali  
 President, MidCity Business Association and Owner, Ben's Chili Bowl

Hon. Jack Evans, Ward 2 Councilmember  
 Council Member Jim Graham, Ward 1 Councilmember  
 Mr. Anthony Hood, Chairman, DC Zoning Commission  
 Ms. Jennifer Steingasser, Deputy Director, DC Office of Planning  
 Mr. Travis Parker, DC Office of Planning  
 Mr. Michael Giullioni, DC Office of Planning  
 Ms. Andrea Doughty, Chair, ANC2F Arts Overlay Review Committee  
 Dr. Joan D. Ferraris, Recording Secretary, ANC2F Arts Overlay Review Committee  
 Mr. Charles Reed, ANC2F Chair  
 Ms. Brianne Nadeau, ANC1B Chair

**Appendix H continued**

September 18, 2009

*(Via Email Only)*

Ms. Harriet Tregoning  
 Director, DC Office of Planning  
 Frank D. Reeves Municipal Center  
 2000 14<sup>th</sup> Street, NW, 4<sup>th</sup> Floor  
 Washington, DC 20009

**Re: DC Zoning Review: Uptown Arts Overlay ("ARTS") District**

Dear Ms. Tregoning,

On behalf of the MidCity Residents Association ("MCRA"), I am extremely pleased to support the recommendations of the ANC2F ARTS Overlay Committee. MCRA believes that the implementation of these recommendations will assist the kind of development along 14<sup>th</sup> and U Streets that will result in vibrant corridors that sustain businesses and services that support and enhance our neighborhood.

As you know, the ANC2F ARTS Overlay Committee operated in a transparent and inclusive manner and created a forum for all stakeholders to voice their opinions. We believe these recommendations represent the views of residents, businesses, developers and property owners. Therefore, MCRA urges the Office of Planning and the DC Zoning Commission to implement these recommendations as soon as reasonably possible.

Please contact me if you have any questions and thank you considering these comments.

Sincerely,

*Carol Felix* VICE CHAIR, MCRA

*for* Al Collins, Chair  
 MidCity Residents Association

cc: Mr. Anthony Hood, Chairman, DC Zoning Commission  
 Council Member Jack Evans, Ward 2  
 Mr. Charles Reed, Chairman, ANC2F  
 Mr. Travis Parker, DC Office of Planning  
 Ms. Andrea Doughty, Chair, ANC2F ARTS Overlay Review Committee

**Appendix H continued**The logo for Logan Circle Community Association is a black rectangle with a white border. Inside the rectangle, the text "Logan Circle" is written in a serif font, and "COMMUNITY ASSOCIATION" is written in a sans-serif font below it.

Logan Circle  
COMMUNITY ASSOCIATION

PO Box 12008 Mid City Station NW • Washington, DC 20005 • [www.logancircle.org](http://www.logancircle.org)

September 18, 2009

*(Via Email Only)*

Ms. Harriet Tregoning  
Director, DC Office of Planning  
Frank D. Reeves Municipal Center  
2000 14<sup>th</sup> Street, NW, 4<sup>th</sup> Floor  
Washington, DC 20009

**Re: DC Zoning Review: Uptown Arts Overlay (“ARTS”) District**

Dear Ms. Tregoning,

On behalf of the Logan Circle Community Association (“LCCA”), I am pleased to confirm our endorsement of the report and zoning recommendations of the ANC2F ARTS Overlay Committee.

LCCA believes that the implementation of these recommendations will provide important underpinning for the continued development of the 14<sup>th</sup> and U Streets corridors as a vibrant and successful arts district.

We respectfully urge the Office of Planning and the DC Zoning Commission to move forward proactively to implement these recommendations, which were the product of a wide collaborative process throughout our community.

The many residents and businesses that LCCA represents look forward to the benefits that an updated zoning code for our arts district, along the lines outlined in the ARTS Overlay Committee’s report and recommendations, will undoubtedly bring.

Thank you for the opportunity to provide our input on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Trock".

Jennifer Trock  
President  
Logan Circle Community Association

**Appendix H continued**



PO Box 12008 Mid City Station NW • Washington, DC 20005 • [www.logancircle.org](http://www.logancircle.org)

cc: Mr. Anthony Hood, Chairman, DC Zoning Commission  
Council Member Jack Evans, Ward 2  
Mr. Charles Reed, Chairman, ANC2F  
Ms. Andrea Doughty, Chair, ANC2F ARTS Overlay Review Committee

**Appendix H continued**

18 September 2009

Ms. Harriet Tregoning  
Director, DC Office of Planning  
Frank D. Reeves Municipal Center  
2000 14th Street, NW 4th Floor  
Washington, DC 20009

RE: DC Zoning Review: Uptown Arts Overlay District

Dear Director Tregoning:

On September 10, 2009, at the regular meeting of the U Street Neighborhood Association, the membership of the association voted to officially support and endorse the ANC 2F Arts Overlay Committee report and all of its recommendations. We believe that the recommendations presented in this report will strongly support and promote the continued development of the Greater U Street Neighborhood and the historic 14th Street and U Street corridors in a manner which is in the best interest of our community and will help to develop vibrant, safe, and well managed commercial and arts districts.

For nearly twenty years, the U Street Neighborhood Association has worked to be an active voice of the residents of the Greater U Street Neighborhood and fulfill a commitment to improve the quality of life for everyone that lives, works, and plays in our neighborhood. We see a similar commitment in ANC 2F's report and recommendations, as this report is the product of genuine community collaboration, and the bringing together of a full range of stakeholders and opinions.

The U Street Neighborhood Association is pleased to be part of the unique and growing coalition of community organizations that support this report and recommendations, especially as the District of Columbia continues to develop and promote our historic commercial corridors and residential areas as distinctive and historically significant arts and cultural destinations.

We appreciate the Committee's recognition of the interplay between zoning and the other important factors in working toward this shared goal, including promoting daytime foot traffic, cleaning and greening of the streetscapes and building the kind of community collaborations necessary for a well managed area.

Thank you for the opportunity to show our support for this report and recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bryan N. Martin Firvida". The signature is fluid and cursive, with a large loop at the end.

Bryan N. Martin Firvida  
President

cc: Mr. Anthony Hood, Chairman, DC Zoning Commission  
Mr. Jim Graham, Councilmember, Ward I  
Ms. Andrea Doughty, Chairperson, Arts Overlay Committee

**Appendix H continued**

## THE JBG COMPANIES

September 15, 2009

Ms Harriet Tregoning  
Director, DC Office of Planning  
Frank D. Reeves Municipal Center  
2000 14th Street, NW 4th Floor  
Washington, DC 20009

**RE: DC Zoning Review: Uptown Arts Overlay ("ARTS") District**

Dear Ms Tregoning,

The JBG Companies ("JBG") owns and controls several properties in the Uptown Arts Overlay ("ARTS") District, and has recently met with and provided recommendations to the ANC2F ARTS Overlay Review Committee (the "Committee") regarding the proposed revisions to the ARTS District zoning regulations. JBG commends the Committee for its recent work related to the proposed zoning regulation revisions, and while we still have significant concerns with the current and proposed zoning regulations, we support the Committee's Report and Recommendations, as enclosed and dated September 2, 2009.

As an active developer in the area, JBG has dedicated a significant amount of resources and attention to the 14<sup>th</sup>/U/Logan neighborhood. We recently received zoning approvals for the redevelopment of the former Whitman Walker site at 14<sup>th</sup> and S Streets NW, and are working through entitlements of the existing Rite Aid at 13<sup>th</sup> and U Streets NW. As you are aware, the area is in the midst of a 'rebirth', and we believe both of these projects will positively transform their respective blocks and the larger 14<sup>th</sup> / U Street corridors. The area has significant untapped potential and thus we remain very committed to being an active stakeholder in the neighborhood for many years to come.

However, the current ARTS District zoning regulations are a significant deterrent to future development. At JBG's Whitman Walker site, we were able to obtain a special exception relief from provisions of the ARTS overlay district restricting eating and drinking establishments, which allowed us to move forward with the project. Without this special exception, the viability and economics of the project would have been seriously compromised. As such, JBG supports revisions to the current ARTS District zoning regulations that address our concerns, while also fostering the vibrant artistic and cultural marketplace in the corridor.

JBG has met with and spoken to the Committee on numerous occasions over the past few months in order to provide feedback on the proposed revisions to the ARTS District zoning regulations. We believe that the Committee has done a tremendous job of reaching out to and obtaining input

## Appendix H continued

from the community and neighborhood stakeholders -- including residents, retailers, community organizations, and developers such as JBG. While we remain concerned with a few of the proposed revisions to the zoning regulations (as outlined below), we support the Committee's recommendations and look forward to continuing to work with the Committee, Office of Planning and Zoning Commission to finalize the new ARTS District regulations.

The concepts and provisions that JBG remains concerned about include:

- **Use requirements or restrictions in the ARTS District as a means of encouraging Arts uses.** JBG opposes any use restrictions and requirements in the ARTS District, particularly the onerous 0.50 FAR to be designated specifically to Arts-related uses as proposed by The Office of Planning and Zoning Commission. We strongly believe that this would be detrimental to the future financial viability of redevelopment projects in the ARTS District and would do very little to accomplish the goal of attracting new Arts uses to the area. By way of example, at our Whitman Walker project this would amount to approximately 12,000 square feet of Arts uses, or two thirds of our entire retail program. Such an extreme measure would most definitely impede future redevelopment and lead to continued blight in the corridor. We strongly believe that Arts uses should be incentivized, rather than mandated, and are confident that this Arts requirement would 1) significantly detract from real estate investment in the Corridor due to the impact to project-level economics, 2) lead to an imbalance in retail store types, under-serving many neighborhood wants and needs, 3) further reduce daytime foot traffic along the Corridor and impact the vibrancy of the neighborhood, and 4) reduce property values and corresponding tax income to the City.

While JBG opposes these restrictions, we support the Committee's recommendation that this Arts requirement be reduced to 5% of Gross Floor Area ("GFA"), subject to a minimum building size threshold, and further reduced to 2.5% of GFA if the Arts uses are located on the ground floor (Recommendation #10 in the Committee's report). This is a much less onerous restriction, and we believe would still go a long way in realizing the ultimate goals of the ARTS District in that it would provide more viable and appropriately-sized spaces designated for specific Arts uses.

In addition, **JBG fully supports the provisions allowing for bonus density and height in order to offset the financial burden posed by this requirement** (Recommendation numbers 13 and 14 in the Committee's report). Any use restrictions or requirements need to be balanced by an appropriate amount of bonus density, building height, setback or coverage relief, and/or tax incentives in order to offset the financial burden to the land owner / developer. If such relief is not provided, the economics to redevelop the highly-constrained properties along the 14<sup>th</sup> and U Street corridors will be seriously compromised.

- **Limiting streetscape frontage for certain uses on primary corridors.** As stated above, JBG opposes any use restrictions in the ARTS District as a means of encouraging other uses. In order to create an authentic, vibrant corridor that best meets the needs and desires of the residents of the area, JBG believes retail uses should be allowed to evolve organically, as market demand grows and changes over time. Thus, we do not support limiting streetscape frontage for eating and drinking uses (Committee recommendation numbers 11 and 16), or any subjective measures to limit uses that "do not contribute to a vibrant streetscape" (Committee recommendation # 17) within the ARTS District.

**Appendix H continued**

JBG understands the intent of these limitations – to encourage Arts uses and a more diverse set of retailers by setting aside “designated” space. However, we remain wary as we believe these limitations are 1) difficult to regulate and enforce, 2) too subjective and could be used to target specific, law-abiding businesses, 3) overly burdensome to landowners and developers, particularly in a down economy, and 4) potentially detrimental to creating an authentic mix of financially viable, long-term retailers that best meet the needs of the residents of the area.

We do, however, support the Committee’s efforts to increase the maximum allowable streetscape frontage on primary corridors that may be occupied by eating and drinking uses. The current ARTS District zoning regulation limits eating and drinking establishments to 25% of the total linear street frontage in the Corridor, whereas the Committee has recommended increasing the frontage to 40%-50% of the linear streetscape frontage of each block in the corridor. We believe that this additional flexibility is absolutely necessary.

- **The need to balance the demands of the ARTS District restrictions along with those of Inclusionary Zoning and other City requirements.** The various zoning ordinances and restrictions, coupled with historic district guidelines, need to be balanced in order to create an opportunity for the types of redevelopment that the area’s residents and stakeholders desire. Without the proper mechanisms in place to balance and offset the costs of these regulations and restrictions, real estate developers will simply not be able to afford to build in the corridor – thus pushing market demand to other parts of the City or outside of the District altogether.

Again, we look forward to continuing to work with the Committee, Office of Planning and Zoning Commission on this important issue. We truly appreciate the opportunity to provide our input and assist in shaping the future ARTS District zoning regulations in order to ensure the corridor remains vibrant for a long time to come, and all community stakeholders are satisfied.

Please do not hesitate to contact me at (240) 333-3643 if you would like to discuss our comments and concerns any further.

Sincerely,



Kenneth F. Finkelstein  
Chief Development Officer

Enclosure

cc: Mr. Anthony Hood, Chairman DC Zoning Commission  
Ms. Andrea Doughty, Chair, ANC2F ARTS Overlay Review Committee  
Councilman Jim Graham, Ward 1  
Councilman Jack Evans, Ward 2

**Appendix H continued: From David Alpert of [www.GreaterGreaterWashington.org](http://www.GreaterGreaterWashington.org) website:**

**“ARTS report balances bars and arts, requirements and bonuses”**

ANCs and other community groups have a reputation for taking an anti-change, knee-jerk anti-development point of view. Just look at [yesterday's discussion of the Georgetown ANC](#), including many of the comments. Over in the 14th Street area, however, a committee of residents and business owners appointed by ANC 2F has created a very thoughtful and sensible set of recommendations for the ARTS zoning overlay on 14th and U Streets.

They spent three months carefully analyzing the thinking about and discussing the future of the neighborhood. They met with merchants, developers, neighbors and planners. And, in the end, they produced a report that's neither knee-jerk anti-change nor knee-jerk pro-development, but one that tries to employ sensible incentives to shape a lively yet livable neighborhood.

14th Street is a bustling commercial corridor with an uncertain future. Its numerous theaters and galleries give the area a special arts focus, which spurred the creation of a special zoning district to preserve and encourage arts uses. However, many galleries are closing. Restaurants and bars have multiplied, bringing more foot traffic for other businesses and replacing vacant storefronts, but also threatening to push arts uses out and bringing greater levels of noise. A number of furniture stores have opened in the area, which could create a burgeoning "furniture district" that becomes a regional draw, but could also contribute to displacing the arts. The economic downturn may claim several retail stores or other businesses, and according to committee chair Andrea Doughty, many are looking to 14th Street for a sign about whether urban retail districts can truly thrive and grow.

How can the community shape its future? The report recommends tweaking the limits on restaurants and bars, maintaining some limits but adapting them to something that could work better. It would limit the percentage of bars and restaurants on every block and require some non-restaurant, non-bar ground floor retail, along with requiring some arts uses. But for developers who include extra arts in a building, the report also recommends granting more "bonus density" than is available today, including one extra story of height, as an incentive. [Here's the report](#), or for something shorter, [here's a summary of the recommendations](#).

Today, the ARTS overlay lets developers build extra density in a project if they include space for arts in the building. However, "arts uses" include restaurants and bars. The only differentiation is that the overlay also limits the total "linear frontage" of bars and restaurants to 25% of the total frontage. In theory, that would ensure a mix of restaurants and bars and other uses. However, that hasn't worked in practice. For a long time, the area was under 25%, and nobody considered the balance when opening businesses. Now, the district has either reached or nearly reached the limit, which could mean no new restaurants and bars can open. That's not right either, as the popularity of the area has created demand for restaurants and bars, and other retail or arts uses are not able to fill the remaining space. New development projects are less likely to be profitable without the opportunity to include any food or drink establishments anywhere in a new building.

Instead, the committee suggested removing restaurants and bars from the list of uses eligible for bonus density. For the percentage, their recommendation resembles [my suggestion](#): they would increase the percentage limit to 40-50%, but consider the limit over a smaller area. Right now, the limit applies over 10 blocks of 14th and 6 blocks of U, meaning a restaurant at 9th and U limits the possibility of one at 14th and 9th. The committee suggests considering the percentage only for each "square," such as the east side of 14th between S and T.

To ensure an active streetscape, the report also recommends requiring 75% of the ground floor of any new development to contain retail. However, a bar or restaurant could only fulfill half of that requirement, forcing some diversity of uses even on a project by project basis in addition to square by square. This wouldn't apply to buildings under 60 feet in width, as smaller buildings obviously don't have room for two different retail uses and it wouldn't be fair to completely preclude a bar or restaurant from such buildings.

In the Arts and Culture section of the Zoning Update, the Zoning Commission already recommended requiring some arts uses in new buildings equalling 0.5 FAR, or essentially half of one floor. The committee strongly endorses this requirement, but suggests changing it to 5% of the total floor area of the project, exempting

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buildings under a certain size, and expanding it to include major, large-scale additions and alterations of existing buildings.

Meanwhile, the committee recommends offering even greater bonuses to developers who build arts uses into a project. They created a two-tier list of uses. The "least financially competitive arts uses," such as theaters, jewelry making, arts schools, bookstores and small galleries would give the developer a 3 to 1 bonus: for each square foot they give to these uses, they could build three additional square feet in the building. Meanwhile, uses such as architecture, graphic design, movie theaters, large art galleries and museums would provide a 2 to 1 bonus.

In addition, buildings containing some of these uses could potentially build ten feet (one story) higher than the current zoning allows. Most of 14th Street, for example, is C-3-A, which allows buildings up to 65 feet, with the ARTS overlay extending that to 75. This recommendation would expand that to 85 feet. However, developers could only take advantage of this extra bonus by applying for a "special exception," which the Board of Zoning Adjustment reviews to ensure that the exception does not harm the public interest. The buildings would also have to continue to comply with rules in the overlay like the "45 degree line" rule, where starting 50 feet above the ground, the building has to step back at least at a 45 degree angle from adjacent residential zones.

HPRB would also review all projects, since the entire area is part of several historic districts. Whether rightly or wrongly, they've lowered other buildings' height in the past to better line up with older, historic buildings, and "shaped" them to better fit into the appearance of the district by selectively cutting out pieces. This alleviates many residents' fears of a "glass canyon" like K Street. At the same time, any such limits reduce the ability of a developer to take advantage of the bonus density. If a building can't add more floors or more square feet, it won't benefit from the inclusion of arts uses. As the report points out, HPRB generally uses the allowed zoning envelope as a guide, and would try to strike a balance between creating a building that fits into the area with something that encloses enough space to pay for its construction.

Most of the other recommendations address consistency and administration. They suggest creating an ARTS "district" instead of an "overlay," or if the overlay remains, splitting it into two separate districts, one for 14th Street and one for U. On 14th, they would rezone the residential parcels along 14th, such as the east side between Riggs and S, to the same commercial classification as the rest of the street. Obviously, the buildings there could remain residential, but the law wouldn't force them to remain that way forever. The committee also urges the DC government to adequately fund compliance in the Office of Zoning. In the past, that office has not been able to adequately monitor the various overlays, leading to many violations. These zoning tools cannot help shape the community if nobody enforces them.

Overall, this is an amazingly detailed and thoughtful report. A group of eight residents and business owners carefully considered all of the zoning rules in the area and met with many people. They've created a set of recommendations that apply some new rules but also introduce some incentives as well. On balance, it shouldn't hinder the ability of developers to fill in the dead spaces along the street, but will hopefully also preserve an arts focus for the area.

ANC 2F (whose territory includes 14th Street south of S) and 1B (which covers the north side of U from 16th to 14th and both sides east of 14th, along with the east side of 14th from U to S) both voted to endorse the report. Dupont Circle's ANC, 2B also borders the area, covering the south side of U from 16th to 14th and the west side of 14th from U to S. Commissioner Ramon Estrada represents that corner, and has often taken a more strongly anti-development and anti-bar and restaurant stance than many of his neighboring commissioners in the other ANCs. Estrada told ANC 1B that 2B "would not be supporting the Committee's recommendations in their entirety," which was apparently a surprise to the other 2B commissioners. Estrada opposes splitting 14th and U into separate districts, and unifying the zoning, which probably means removing the residential classifications on some of the blocks.

As a resident of ANC 2B, I plan to testify in favor of the report at their meeting tonight. If you live in the Dupont Circle area or southwest of 14th and U, come to Brookings, 1775 Mass. Ave. at 7 pm to give your opinions. If I were writing the zoning code, I might have made a few small differences and perhaps erred a bit more on the side of flexibility, but this is an excellent report that clearly represents the collective consensus of the committee's members. I hope the commissioners will endorse the plan. This represents the best of resident

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involvement in zoning: a detailed, thorough look at the issue culminating in a very thoughtful and reasonable set of recommendations.

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