

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 632
Case No. 87-7
November 13, 1989
(Howard Gateway and 14th and U Streets Areas:
Text and Map Amendments, including
Uptown ARTS Overlay District)

At the recommendation of the Office of Planning ("OP"), the Zoning Commission initiated this case in order to consider amendments to the text and map of the Zoning Regulations that would: (1) eliminate inconsistencies between the Zoning Regulations that govern the 14th and U Street areas and the Comprehensive Plan; (2) encourage continuation of the ongoing commercial and cultural restoration and revitalization of the two corridors; and (3) protect the adjacent residential areas, including the Logan Circle, Shaw, and Dupont East Neighborhoods.

In addition, at the request of Howard University ("Howard"), the Commission extended the scope of the public hearings to include land owned by Howard and zoned industrial or in another category that either does not allow new residential uses or does not encourage the mix of uses that is consistent with the Comprehensive Plan and compatible with Howard's proposed use and development of the land.

Initial hearing sessions were held in September, 1989, after which the Commission decided to request OP to re-examine its recommendations, further meet with and consider the views of representative community groups and interested persons that would be affected by the proposed amendments, and submit a revised report to the Commission.

In December, 1988, OP submitted a revised Final Report. Hearings were held beginning on January 5, 1989, and concluding February 2, 1989.

The Commission heard extensive testimony and has reviewed a very substantial record that presents a variety of perspectives. In spite of the volume of the record, the main points may be fairly summarized, as is set forth in the following paragraphs.

Advisory Neighborhood Commission ("ANC") 2C, in which a significant portion of the area under consideration is

located, supports the amendments, but with certain reservations, as follows:

- (1) Increase the commercial bonus incentive for affordable housing from 1.3 to 1.5;
- (2) Add "Social Services" as a bonus use;
- (3) Delete "Drinking Places, including bar, night club, cocktail lounge"; "Dance Hall, Discotheque, Ballroom"; "Cabaret"; and "Restaurant" from Schedule B;
- (4) Protect adjacent housing in the 1400 blocks of P and Church Streets with C-2-A zoning and a 50 - foot height limit on Church and P Streets;
- (5) Phase out nonconforming parking lots;
- (6) Step back the height of the rear and side of 75-foot-tall structures that abut dwellings; and
- (7) Require bonus generating uses to remain in perpetuity.

ANC 1B, in which another significant portion of the area under consideration is located, submitted the following concerns and recommendations about the proposed amendments:

- (1) That the Ward elements of the Comprehensive Plan be incorporated to add clarity to OP's planning function;
- (2) That the Commission consider targeting this plan to a series of potential theatre incentive zones to be interspaced throughout this plan area and community. This could be an effective restriction on the density of ARTS uses and related services by managing the location of the bonus uses;
- (3) That the Commission limit the use of Planned Unit Development incentives for height, bulk, or density within the overlay zone;
- (4) Expand the plan's boundaries to include square 2870 and square 2874, which are the Cardozo High and Eugene Meyer Elementary Schools squares, respectively, in order that similarly affected property can be included;
- (5) Section 1900.2(g) states that the purpose of this overlay district includes adaptive reuses of older buildings; ANC 1B recommends that a mechanism be devised to accomplish this other than the bonus

provisions of 1904.2(g); possible alternatives could include heightened bonus ratios and a schedule of disincentives for demolishing structures with an unexpired certificate of occupancy, or some other criteria;

- (6) As to Section 1900.2(h), to foster (18) hour activity and increased public safety, ANC 1B rejects this provision, as other service systems (i.e., parking and METRO hours of operation) are not sufficient to accommodate this length of business day;
- (7) Adopt a far more restrictive system of bonus uses, limiting any bonus uses to below market housing, supermarket, performing arts space of a seating capacity to be developed by OP, practice studios, workshops, and museums, because these proposed categories would be "self-policing," in that they do not lend themselves to overproduction or production exclusively for bonus ratios for use on other parcels;
- (8) Many of the other uses set forth in schedule A and B are economic uses that will thrive in any improved market place; ANC 1B further views the rising costs of housing and the construction of a superior transportation element as making this location attractive to small business expansion opportunities;
- (9) Such ill-defined uses as cabarets, public halls, auditoriums and sidewalk restaurants are specifically rejected as uses earning bonuses as provided for in Section 1904.2 of this proposal;
- (10) The transfer of bonuses rights between differing lots provided for in Section 1905.1 should be subjected to OP review, with ANC input, as a method of rationally distributing any such preferred uses; and
- (11) Twenty-four itemized recommendations of zoning categories for specific location.

Residents and community groups expressed concerns about the impact of the proposed height in certain areas on adjacent, low-density, two-and-three story dwellings, many of which retain historic character; and also opposed the inclusion of various bonus-earning uses that were viewed as inappropriate uses to encourage so close to dwellings.

Property owners and developers, while candidly recognizing that the extant C-M-1 and C-M-2 zoning should be changed,

supported the retention of relatively greater floor area ratios for commercial uses. In support of this position, they cited the existing transportation system and future Metro station; Comprehensive Plan designations of moderate or medium commercial density for various locations; and the questionable feasibility of the bonus system, in the absence of sufficient commercial floor area to generate income.

Howard University submitted testimony and other evidence to support the map amendments that it requested, as consistent with the Comprehensive Plan and necessary for the further development of the University.

Cultural and arts groups and witnesses supported the goal of encouraging the arts-related uses that have become established in the area.

By memorandum dated March 20, 1989, and in the summary abstract dated April 6, 1989, OP recommended a number of changes in the advertised text to respond to community concerns about certain of the preferred uses and developer concerns about FAR limits and ground-level preferred use requirements; to address the issue of PUD limits; and to resolve technical questions about the operation of various provisions. The proposed rulemaking responded to these recommendations and concerns.

Notice of proposed rulemaking was published in the D.C. Register on August 4, 1989. Comments submitted during the comment period that ended on October 4, 1989, identified the following issues:

1. The rules should allow the transfer of development rights throughout the Arts Overlay District;
 2. In the interest of clarity, the provisions in chapter 19 that relate to street frontage, that is 11 DCMR 1901.1, 1903.3, and 1903.4, should reference the frontage of a lot, not a building;
 3. Support for retention in the C-M-1 zone district of the lots owned by Public Storage in Square 358, on the ground that the specific planned use for that site is compatible with the area;
 4. Support for commercial zone categories at a number of sites that would allow a higher level of commercial FAR, to provide greater incentive to use available residential FAR;
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5. Opposition to the height and commercial density that would be allowed, because of traffic and parking concerns, and the impact on vistas, parks, and the surrounding residential communities;
6. The contention that the 1300 block of the south side of U Street should be included in either the C-3-A/Arts or C-2-B/Arts zone district, to be consistent with the Comprehensive Plan designation of the area in a medium - density commercial category, and to take appropriate advantage of the nearby Metro Station;
7. Expression of reservations about the concept of an ARTs Overlay zone and its ultimate impact, together with a general preference for residential zone categories and lower - density commercial categories; and
8. Requests for exemptions for certain properties or areas, on the ground of particular redevelopment plans and claims of hardship.

ANC 1B submitted the following issues and concerns:

1. Support for retention of a portion of Square 358 in the C-M-1 district;
2. Support for C-3-A zoning of portions of Squares 235 and 237;
3. Support for C-2-B zoning of Squares 272 and 304, to protect vistas from the escarpment to the north;
4. Deletion of several objectionable arts uses and bonus uses; and
5. Inclusion of the affected Advisory Neighborhood Commission as a concerned party in 11 DCMR 1905.1(f).

ANC 2C "unofficially" recommended the following changes:

1. Revise 11 DCMR 1904.2(f) to require the retention of residential tenants and prevent the accumulation of sites and bonus FAR;

2. Strike several proposed preferred uses, as it had recommended earlier, and as not listed in the original proposal;
3. Retain the Frontiers West Public housing site in Square 239 north of Riggs and south of S Street as residential; and
4. Impose a 50 foot height limit in Square 209, along Church Street, as a buffer between the residential housing on Q Street and 75-foot to 90-foot buildings located or under construction on P Street.

The Zoning Administrator submitted a number of clarifying suggestions and administrative concerns about 11 DCMR 1900.4 (determination of value) and several other provisions.

The Commission has considered the comments, and its response is set forth in the succeeding paragraphs.

1. In Square 205, the Commission agrees that a single zone classification of C-2-B/Arts would be reasonable for all lots now zoned C-2-A, but a rezoning to C-2-B would be beyond the scope of the notice of proposed rulemaking. The Zoning Commission will consider C-2-B for the remaining C-2-A area of this Square in a further public hearing in this proceeding.
2. In response to the concern of ANC 2C about Square 239, the existing housing about which it expressed concern will remain R-5-B.
3. The Commission does not concur with the recommendation of ANC 2C that a 50-foot height limit is appropriate for Church Street frontage. The C-3-A height of 65 feet is reasonable.
4. The Commission is persuaded that C-3-A/Arts is reasonable for the southern portion of 14th Street, and that neither more restrictive nor less restrictive zoning is required.
5. The Commission has considered the requests for exemptions for various specific sites, and with one exception, which is discussed in the succeeding paragraph, has determined that they are not well-founded. Exemptions, including ones for warehouses or other categories of buildings would unacceptably reduce the incentive to develop the preferred uses that are established by this order. The unavailability of special exceptions and

variance relief will provide sufficient flexibility for cases that have merit.

6. It is reasonable to retain C-M-1 zoning for Lots 43 through 46, 49, 50, 66, 809, 813, and 822 through 825 in Square 358. In this instance, a specific proposed use is at hand, and will contribute to the revitalization of the area. The Commission does not anticipate that this or any other industrial use will endure, and does not rely on a proposed covenant for the prevention of adverse impact.
7. The Commission concurs that the lots in Square 210 that are not zoned C-2-C or C-M-3 should be rezoned to C-3-A/Arts, not C-3-A. Because the comments on this square recognized that the omission of the Overlay was an error, the Commission concludes that this change is not substantive and does not require another notice of proposed rulemaking.
8. Two members of the Commission remain persuaded that C-2-A/Arts is the appropriate category for the portions of Squares 237, 274, 305, and 333 that are now zoned C-2-A. Recognizing the goals and policies of the Comprehensive Plan as a whole, these members have concluded that the need to protect the residential area immediately across the alley that abuts the current C-2-A zone militates against the greater height that is allowed in the C-2-B and less restrictive zones. The third member that is eligible to vote in this proceeding does not concur. However, because these three members agree that the Arts Overlay is suitable, the Commission will amend this area to C-2-A/Arts at this time, and consider further alternatives in a further hearing session.
9. In sections 1900.4, 1902.2, 1901.1, 1903.3, 1903.4, and 1904.2(e), the Commission concurs with clarifying and technical corrections that were recommended by the Zoning Administrator; the firm of Stohlman, Beuchert, Egan, and Smith; and the Office of Planning. The clarifying corrections are appropriate in these provisions, and by inserting a new section 1904.3 in lieu of 1904.2(e). The Commission believes that none of these clarifying changes are substantive.
10. The Commission agrees that it is reasonable to delete assembly hall, auditorium, and public hall uses as proffered arts and arts-related uses. However, drinking places are reasonably related to

arts uses, and are reasonably controlled by other regulations.

The proposed amendments were referred to the National Capital Planning Commission on August 4, 1989. By report dated September 11, 1989, NCPC advised the Commission that it would not make a recommendation on the proposed zoning text and map and related amendments.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set further herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations to adopt and map an Uptown Arts Mixed Use (Arts) Overlay District and to make other map amendments in the Howard Gateway and 14th and U Streets areas. The specific amendments to DCMR, Title 11 (the Zoning Regulations) and the Zoning Map are as follows:

I. Amend the Zoning Map as follows:

1. In Squares 202 and 203, rezone to C-3-A/Arts the lots that are now zoned C-M-2.
2. In Square 204, rezone to CR/Arts the lots that are now zoned C-M-2; and rezone to R-5-B that part of Lot 208 that is now zoned C-2-A.
3. In Square 205, rezone to C-2-B/Arts those lots and parts thereof that are now zoned C-2-A and are north of the boundary line between Lot 66 and lot 42 or an eastern extension of that line; rezone to C-3-A/Arts those lots now zoned C-M-2 that are south of the southern boundary line of Lot 22; and rezone to CR/Arts the other lots that are now zoned C-M-2.
4. In Squares 206 and 238, rezone to C-3-A/Arts the lots that are now zoned C-M-2.
5. In Squares 207, 208, 209, 239, 240, and 241, rezone to C-3-A/Arts the lots that are now zoned C-M-3.
6. In Square 210, rezone to C-3-A/Arts the lots that are now zoned either C-2-C or C-M-3.
7. In Squares 211, 242, and N-242, rezone to C-3-A/Arts the lots that are now zoned C-2-C.

8. In Square 234, rezone to C-3-A/Arts the lots that are now zoned C-M-2 and west of the north-south alley that is closest to 14th Street; and rezone to R-5-B the other lots that are now zoned C-M-2.
9. In Square 235, rezone to C-3-A/Arts the lots that are now zoned C-M-2 and west of the north-south alley that is closest to 14th Street; and rezone to R-5-B the other lots now zoned C-M-2.
10. In Square 236, rezone to CR/Arts the lots that are now zoned C-M-2; and rezone to C-2-A/Arts the lot now zoned C-2-A.
11. In Square 237, rezone to C-3-A/Arts those lots that are now zoned C-M-2 and south of Wallach Place; rezone to CR/Arts the lots that are now zoned C-M-2 and north of Wallach Place; and rezone to C-2-A/Arts the lots that are now zoned C-2-A.
12. In Square 272, rezone the entire square to CR/Arts.
13. In Square 273, rezone to CR/Arts the lots that are now zoned C-M-1; and rezone to C-2-A/Arts the lot now zoned C-2-A.
14. In Squares 274, 305 and 333, rezone to C-2-A/Arts the lots that are now zoned C-2-A.
15. In Square 303, rezone to C-2-B/Arts the lots that are now zoned C-2-A.
16. In Square 304, rezone all lots to CR/Arts.
17. In Square 331, rezone to C-2-B/Arts the lots that are now zoned C-2-A and south of the east-west alley; and rezone to R-5-B the lots now zoned C-2-A that are north of the east-west alley.
18. In Square 332, rezone all lots from C-M-1 to C-2-B/Arts.
19. In Square 357, rezone all lots from C-M-1 to R-5-B.
20. In Square 358, rezone lots 12, 16, 17, 53 through 63, and 65 from C-M-1 to R-5-B; retain C-M-1 zoning for Lots 43 through 46, 49, 50, 66, 809, 813, and 822 through 825; and rezone the remainder of the Square from C-M-1 to C-2-B/Arts.
21. In Squares 359 and 360, rezone all lots from C-M-1 to C-2-B/Arts.

22. In Square 361, rezone from C-M-1 to C-2-B/Arts Lots 15 through 26, 116 through 121, 135, and 136; and rezone from C-M-1 to R-4 Lots 82 through 90, 104, 122 through 133, and 803 through 805.
23. In Square 362, rezone to R-4 the lots that are now zoned C-M-1.
24. In Square 2882, rezone Lot 1036 and the lots north thereof from C-M-1 to R-4; and rezone the remainder of the Square from C-M-1 to R-5-B.
25. In Square 2873, rezone from C-M-1 to R-5-D Lots 785 through 792, and 869; and rezone to CR the other lots that are now zoned C-M-1.
26. In Square 2875, rezone to C-2-B/Arts the lots that are now zoned C-M-1 and south of V Street; and rezone to CR the lots now zoned C-M-1 that are north of V Street.
27. In Square 393, rezone from C-M-1 to R-4 Lots 16 through 24, 33, 800, 801, 802, 804 through 807, 824, and 825; and rezone the remainder of the Square from C-M-1 to C-2-B/Arts.
28. In Square 394, rezone to R-4 the lots that are now zoned C-M-1.
29. In Square 2877, rezone the lots that are south of V Street from C-M-2 to C-2-B/Arts; and rezone the lots that are north of V Street from C-M-2 to CR.
30. In Square 416, rezone from C-M-1 to R-4 Lots 24 through 28, and 801 through 806; and rezone all other lots from C-M-1 to C-2-B/Arts.
31. In Square 417, rezone to R-4 the lots that are now zoned C-M-1.
32. In Square 440, rezone all lots from C-M-1 to C-2-B/Arts.
33. In Square 441, rezone to C-2-B/Arts all lots that are now zoned C-M-1.

II. Adopt a new Chapter 19 of Title 11, to read as follows:

CHAPTER 19 UPTOWN ARTS-MIXED USE OVERLAY (ARTS) DISTRICT

1900 GENERAL PROVISIONS

1900.1 The Uptown Arts-Mixed Use (Arts) Overlay District is applied to the Commercial and Mixed-Use zoned land in the following squares and portions of squares in the 14th and U Streets, N.W., area: 202 through 211, 234 through 242, N242, 272, 273, 274, 303, 304, 305, 331, 332, 333, 358 through 361, 393, 416, 440, 441, and the portions of squares 2875 and 2877 that are south of V Street.

1900.2 The purposes of the Arts Overlay District are as follows:

- (a) To encourage a scale of development, a mixture of building uses, and other attributes such as safe and efficient conditions for pedestrian and vehicular movement, all of which will be as generally required by the Comprehensive Plan for the National Capital;
- (b) To require uses that encourage pedestrian activity, especially retail, entertainment, and residential uses;
- (c) To provide for an increased presence and integration of the arts and related cultural and arts-related support uses;
- (d) To expand the area's housing supply in a variety of rent and price ranges;
- (e) To expand business and job opportunities, and encourage development of residential and commercial buildings;
- (f) To strengthen the design character and identity of the area by means of physical design standards;
- (g) To encourage adaptive reuse of older buildings in the area and an attractive combination of new and old buildings; and
- (h) To foster 18-hour activity and increased public safety.

1900.3 The Arts Overlay District and the underlying zoning shall together constitute the Zoning Regulations for the geographic area referred to in Subsection 1900.1. Where there are conflicts between this chapter and the underlying zoning, the more restrictive regulations shall govern.

1900.4 The requirements of this chapter shall apply to all new construction and to any addition, alteration, or repair that, within any twenty-four (24) month period, exceeds seventy-five percent (75%) of the assessed value of the building; provided, that:

(a) The cost basis for alterations or additions to an existing building shall be the amount indicated by the applicant on the application for a building permit; and

(b) The assessed value of the building shall be the value as set forth in the records of the Office of Property Assessment as of the date of the building permit application.

1901 USE PROVISIONS

1901.1 Retail and service uses listed in Section 1907, and arts and related uses listed in Section 1908 shall occupy no less than fifty percent (50%) of the ground level of each building on a lot that fronts on 14th Street, U Street, or 7th Street; or on Florida Avenue between 7th and 9th Streets; provided, that this requirement shall not apply to a building that is located on a lot less than fifty (50) feet in width, measured along the property line that abuts the public street, if the building is used as an apartment house, multiple dwelling, or hotel.

1901.2 A hotel is a permitted use, provided that no other hotel is located within 500 feet.

1901.3 No drive-through accessory to any use shall be permitted.

1901.4 A use that exists on the effective date of this chapter, having a certificate of occupancy for a use first permitted in a CM District, shall be permitted to expand if approved by the Board of Zoning Adjustment as a special exception subject to the following conditions:

(a) There shall be no outdoor storage of materials, nor any outdoor processing, fabricating, or repairs;

(b) There shall be adequate off-street parking for trucks and other service vehicles;

- (c) The use shall not create objectionable effects on the character of the neighborhood because of its operations, traffic, or other conditions; and
- (d) The Board may impose requirements that apply to the design, appearance, or screening of the site, or any other requirement that it deems necessary to protect neighboring or adjacent property.

1902 HEIGHT AND BULK

1902.1 In the underlying C-3-A District, a building may be constructed in excess of the height limit of sixty-five (65) feet, up to a maximum height of seventy-five (75) feet; provided, that:

- (a) No roof structure permitted by this title shall exceed a height of eighty-three and one-half (83½) feet above the measuring point used for the building; and
- (b) If the lot abuts either a residential zone or an alley that serves as the zone boundary of an adjacent residential zone, no part of the building shall project above a plane drawn at a forty-five degree angle from a line located fifty (50) feet directly above the property line that abuts the residential zone or the alley.

1902.2 In the underlying CR zone, if a building is located on a lot that abuts a street, an alley, or a zone boundary with a residential zone, no part of the building shall project above a plane drawn at a forty-five degree angle from a line located sixty-five (65) feet directly above the property line on any such street, alley, or zone boundary line.

1902.3 Lots in the underlying CR District shall have a maximum floor area ratio of five (5.0), not more than two (2.0) of which may be used for other than residential purposes, except as provided in Section 1904 of this chapter.

1903 STREET FRONTAGE DESIGN REQUIREMENTS

1903.1 The design requirements of Subsections 1903.2, 1903.3, and 1903.4, shall apply to any lot that fronts on one or more of the following streets, hereafter referred to in this section as "pedestrian streets:"

- (a) 14th Street;
- (b) U Street;
- (c) 7th Street; and
- (d) Florida Avenue between 7th and 9th Streets.

1903.2 Notwithstanding the provisions of Subsection 2117.8(c) (1) of this title, no driveway that provides access from a pedestrian street, other than 7th Street, to required parking spaces or loading berths shall be permitted.

1903.3 Each new building on a lot that fronts on a pedestrian street shall be designed and built so that not less than seventy-five percent (75%) of the streetwall(s) to a height of not less than fifteen (15) feet shall be constructed to the property line between the subject lot and the abutting street right-of-way.

1903.4 Not less than fifty percent (50%) of the surface area of the streetwall(s) at the ground level of each building on a lot that fronts on a pedestrian street shall be devoted to display windows and to entrances to commercial uses or to the building; provided, that:

- (a) Such windows shall use clear or low-emissivity glass, except for decorative or architectural accent; and
- (b) Entrances to the building, including entrances to shops and to the main lobby, shall be separated by not more than forty (40) feet on average for the linear frontage of the building.

1904 BONUSES

1904.1 A project shall be eligible for bonus gross floor area for space devoted to one of the preferred uses indicated in Subsection 1904.2; provided, that:

- (a) The bonus density may be used either to increase the gross floor area of the building for any permitted use up to the maximum gross floor area specified in paragraph (b) of this subsection, or to provide nonresidential uses or development in excess of the otherwise applicable limitation on the floor area of nonresidential uses in the underlying zone district; and
- (b) No building that uses bonus density shall achieve a maximum gross floor area in excess of 6.0 in the underlying CR District, 4.5 in the underlying

C-3-A and C-2-B Districts, or 3.0 in the underlying C-2-A District.

1904.2 The following preferred uses are eligible for bonus floor area at the ratio indicated:

	Space devoted to the bonus use		Proportionate number of square feet of additional gross floor area earned for-on-site or off-site development
(a) Below market housing	1	to	3
	Space devoted to the bonus use		Proportionate number of square feet of additional gross floor area earned for on-site or off-site development
(b) Legitimate theater	1	to	3
(c) Department store, drug store, dry cleaner, laundry, grocery store, hardware store, variety store, and any use listed in Section 1908 other than legitimate theater or drinking places;	1	to	2
(d) Any use listed in Section 1907 and 1908, in excess of the required 0.5 FAR at ground level; not to be counted in addition to			

bonus floor
area from Paragraphs
(b) or (c) of this
subsection; and 1 to 1.5

- (e) Space in a
building constructed
before 1958 and
occupied by one
of the uses listed
in Paragraphs (a)
through (d);
provided, that
this bonus
shall count
in addition
to any appli-
cable use
bonus. 1 to 1

1904.3 A building that includes 3.0 or more FAR that is
devoted to residential use is entitled to a bonus
residential of 0.5 FAR.

1905 COMBINED LOT DEVELOPMENT

1905.1 Two or more lots may be combined for the purposes of
transferring bonus density and of allocating the
permitted mixture of uses among development sites;
provided, that:

- (a) The lots may be located in the same square or in
different squares that are within the same indi-
vidual C-2-A, C-2-B, C-3-A, or CR District;
- (b) The maximum permitted floor area for all uses and
the maximum floor area for nonresidential uses
shall be calculated as if the lots were one lot,
and the total project shall conform with both
limitations;
- (c) Bonus floor area earned by the provisions of
Section 1904 may be developed on any lot or
combination of lots governed by the covenant
required by paragraph (f) of this Subsection;
provided, that no development on any lot shall
exceed the maximum height and bulk standards set
forth in Section 1902 and in Paragraph 1904.1(b);
and provided further, that the ground level uses
required by Subsection 1901.2 shall not be trans-
ferred, but shall be provided on each lot;
- (d) In the underlying CR District, the provisions of

this Section shall apply in lieu of the provisions of Subsections 631.3 and 631.4 of this title;

- (e) If a combined lot development involves the transfer of bonus density or allocates residential development rights from one site to another, the Certificate of Occupancy for the bonus floor area for the nonresidential building shall not be issued until a building permit has been issued for the building that will provide the residential or other preferred uses;
- (f) No transfer of floor area for preferred uses, or of bonus floor area, shall be effective under this Section unless an instrument, legally sufficient in both form and content to effect such a transfer, in a form approved by the Corporation Counsel, has been entered into among all of the parties concerned, including the District of Columbia;
- (g) A certified copy of the instrument of transfer shall be filed with the Zoning Administrator, Department of Consumer and Regulatory Affairs, before approval by that Department of any building permit application that is affected by such transfer;
- (h) The document shall be recorded in the Office of the Recorder of Deeds, serving as a notice both to the receiving lot and to the sending lot by virtue of this arrangement for transfer of floor area for preferred uses or of bonus floor area; and
- (i) The notice of restrictions and transfer shall run with the title and deed to each affected lot.

1906

EXCEPTIONS

1906.1

Exceptions from the requirements of the ARTS District shall only be permitted if granted by the Board of Zoning Adjustment after public hearing, based on the following criteria:

- (a) The use(s), building(s) or feature(s) at the size, intensity and location(s) proposed, will substantially advance the stated purposes of the Arts Overlay District and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area;

- (b) Exceptional circumstances affecting the property make compliance with the requirements of this chapter difficult or impossible, or the development provides alternative public benefits, in lieu of the excepted uses or features, that are of comparable value to the public in achieving the purposes of this chapter and of the Comprehensive Plan;
- (c) The architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located; provided, that if a historic district or historic landmark is involved, the Board shall refer the application to the State Historic Preservation Officer for review and report;
- (d) Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise and objectionable traffic conditions; and
- (e) The Board may impose requirements pertaining to design appearance, signs, size, landscaping, and other such requirements as it shall deem necessary to protect neighboring property and to achieve the purposes of the Arts Overlay District.

1906.2 If a telephone exchange that existed on February 23, 1990, is thereafter destroyed it may be rebuilt without compliance with the provisions of this chapter or chapter 20 of this title.

1907 RETAIL AND SERVICE USES

1907.1 For the purpose of this chapter, the following uses are preferred retail and service uses:

- (a) Antique Store;
- (b) Apparel and Accessories Store;
- (c) Appliance Store;
- (d) Auction House;
- (e) Auto and Home Supply Store, excluding installations;
- (f) Bank, Loan Office, other Financial Institution;
- (g) Bakery, limited to baking of food sold on premises;
- (h) Bicycle Shop;
- (i) Barber or Beauty Shop;
- (j) Candy Store;
- (k) Clinic;

- (l) Computer Store;
- (m) Cosmetic Store;
- (n) Camera Store;
- (o) Delicatessen;
- (p) Department Store;
- (q) Dressmaking or Tailor Shop;
- (r) Drug Store;
- (s) Dry Cleaner;
- (t) Fabric Store;
- (u) Florist and Plant Store;
- (v) Furniture Store;
- (w) Gift, Novelty, and Souvenir Shop;
- (x) Grocery Store;
- (y) Hardware Store;
- (z) Health or Exercise Studio;

- (a) (a) Paint Store;
- (b) (b) Pet Store;
- (c) (c) Printing, Fast Copy Service;
- (d) (d) Public Agency Office;
- (e) (e) Public Library;
- (f) (f) Radio, Television, and Consumer Electronic Store;
- (g) (g) Secondhand Store;
- (h) (h) Shoe Repair and Shoeshine Parlor;
- (i) (i) Shoe Store;
- (j) (j) Social Service Agency Office;
- (k) (k) Specialty Food Store;
- (l) (l) Sporting Goods Store;
- (m) (m) Telegraph Office;
- (n) (n) Tobacco Store;
- (o) (o) Travel Agency, Ticket Office;
- (p) (p) Variety Store;
- (q) (q) Video Tape Rental; and
- (r) (r) Other similar personal/consumer service establishment or retail use, including assemblage and repair clearly incidental to the principal use.

1908 ARTS USES AND ARTS-RELATED USES

1908.1 For the purposes of this chapter, the following uses are preferred arts uses and arts-related support uses:

- (a) Art Center;
- (b) Art Gallery;
- (c) Art School, including school of dance, photography, filmmaking, music, writing, painting, sculpturing, or printmaking;
- (d) Artist Housing;
- (e) Artist Studio;
- (f) Artists' Supply Store;

- (g) Arts Services, including set design and restoration of art works;
- (h) Concert Hall or other performing arts space;
- (i) Book Store;
- (j) Cabaret;
- (k) Craftsman or artisan;
- (l) Dinner Theater;
- (m) Drinking Places, including bar, nightclub, or cocktail lounge;
- (n) Legitimate Theater;
- (o) Movie Theater;
- (p) Museum;
- (q) Performing Arts Ticket Office or Booking Agency;
- (r) Photographic Studio;
- (s) Picture Framing Shop;
- (t) Record Store, Musical Instruments Store;
- (u) Restaurant; and
- (v) Television and Radio Broadcast Studio.

Vote of the Zoning Commission at the special public meeting on May 18, 1989: 3-1 in part; 3-2 in part; 4-0 in part; and 5-0 in part (Maybelle Taylor Bennett to approve; Elliott Carroll, Lindsley Williams, and John G. Parsons in part to approve, and in part opposed; and Lloyd D. Smith, in part to approve, and in part not present, not voting).

This order was revised and approved by the Zoning Commission at the public meeting on November 13, 1989, by a vote of 3-0 (Maybelle Taylor Bennett, John G. Parsons, and Lloyd D. Smith to approve; William Ensign, not voting, not having participated in the case; and Tersh Boasberg, not voting, not having participated in the case, and recused. In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is, on FEB 23 1990.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat