GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF:                  :
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Text Amendment to Allow            : Case No.
 Additional Flexibility             : 10-07
for Eating and Drinking            :
Establishments within              :
the ARTS Overlay District          :
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Thursday, June 10, 2010

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 10-07 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
KONRAD SCHLATER, Vice Chairperson
PETER MAY, Commissioner (NPS)
MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
ESTHER BUSHMAN, General Counsel
JAMISON WEINBAUM

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON

The transcript constitutes the minutes from the Public Hearing held on June 10, 2010.

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6:30 p.m.

CHAIRMAN HOOD: Good evening, ladies and gentlemen. This is the Public Hearing of the Zoning Commission for the District of Columbia for Thursday, June 10, 2010. My name is Anthony Hood.

Joining me are Vice Chairman Schlater, Commissioner May and Commissioner Turnbull. We are also joined by the Office of Zoning staff under the leadership of Director Weinbaum, and Office of Planning staff under the leadership of Ms. Steingasser.

This proceeding is being recorded by a court reporter and is also Webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room.

The subject of this evening's case is No. 10-07. This is the Text Amendment of Zoning Regulations to Allow Additional Flexibility for Eating and Drinking

Establishments within the ARTS Overlay District.

Notice of today's hearing was published in the DC Register on May 7, 2010.

The hearing will be conducted in accordance with the provisions of 11 DCMR 3021, as follows: preliminary matters; presentation by the Office of Planning; report of other government agencies; report of ANCs 1B, 2B, and 2F; organizations and persons in support; organizations and persons in opposition.

The following time constraints will be maintained in this hearing: Office of Planning, no time limit; organizations, 5 minutes; individuals, 3 minutes.

The Commission intends to adhere to the time limits as strictly as possible in order to hear the case in a reasonable period of time. The Commission reserves the right to change the time limits for presentations if necessary, and notes that no time shall be

ceded.

All persons appearing before the Commission are to fill out two witness cards. We ask that you do that before you take a seat at the table. When presenting information to the Commission please turn on and speak into the microphone, first stating your name and home address. When you finish please turn your microphone off so that we do not pick up any background noise.

To avoid any appearance of the contrary, the Commission requests that persons present not engage members of the Commission in conversation during any recess or at any time.

Please turn off all beepers and cell phones at this time so as to not disrupt these proceedings.

At this time the Commission will consider any preliminary matters.

Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRMAN HOOD: Okay. Let's go right into it.

Mr. Lawson?

MR. LAWSON: Thank you, Mr. Chair and members of the Commission. For the record, I'm Joel Lawson with the Office of Planning.

At its April 26 Regular Public Meeting, the Zoning Commission sat down for a Public Hearing, proposed text amendments to the ARTS Overlay eating and drinking establishment restrictions. The Commission also took emergency action which will expire in October to increase the limit from 25 to 30 percent.

The proposal is for an integrated package of text amendments that would increase the percentage of frontage along U and 14th Street Northwest to increase the percentage from 25 percent to 50 percent.

It would also clarify that this

limit applies only to ground floor frontage, change the overlay-wide method of measurement to a square-by-square method, and stipulate that when the 50 percent limit is reached, any additional eating or drinking establishment would require a variance relief from the regulations rather than the current special exception relief.

OP's recommendations flow directly from those of an overlay review in 2009 by the Uptown ARTS Overlay Review Committee. The Committee included all three directly affected ANCs, neighborhood associations, the MidCity Business Association, and the Mid City Artists group.

It released a report called the Uptown ARTS Overlay Report and Recommendations which made a wide range of recommendations. The Committee really is to be commended on developing such a comprehensive and thoughtful report.

The Zoning Administrator

subsequently undertook its own detailed measurements of the amount of frontage currently devoted to eating and drinking establishments along 14th Street and U Street. They found that the overlay had in fact reached the current 25 percent limit.

Directly in response to these studies, OP brought forward text amendments included to address the most immediate issues raised in the Review Committee report. Other recommendations contained in that report are being addressed through the separate Zoning review process.

The original overlay was intended to help foster a thriving pedestrian-oriented arts, retail, and entertainment district in the area. It's a complicated overlay, with a series of both regulations and incentives intended to encourage fulfilment of its objectives, to encourage arts uses, as well as provide the critical mass of retail and entertainment uses that are needed to support

a concentration of arts uses.

It seems to be working in that the area now contains a growing number of thriving performance and visual arts spaces, unique destination and local-serving retail, and a growing number of restaurant and entertainment businesses to support those uses.

Right now, almost half of the frontages of squares along 14th and U currently exceed the 25 percent limit of space devoted to eating and drinking establishments. The proposed 50 percent limit would minimize the number of nonconforming squares and provide a greater sense of market stability.

This would also allow these critical uses to locate close to the art spaces on the higher density and wider U and 14th Street corridors, which already have good transit access.

The change in method of measurement would also help to ensure a more equitable distribution of eating and drinking

establishments, so that each neighborhood in the area has good access to this type of business while limiting the chances of an overconcentration of such uses in one small area, as would currently be possible and which could negatively impact surrounding residential areas.

However, OP sees these recommendations really as a package rather than a series of discreet amendments. By this I mean that the amendment to the percentage limit, to the change in method of measurement, and to the method of obtaining relief from the limit are highly interconnected in terms of planning and land use implications.

For example, OP feels that increasing the limit to 50 percent is appropriate because of the corresponding limitations established by the other proposed amendments.

The text amendments as a whole represent a practical response which would

allow continued revitalization while helping to foster a sense of certainty in the neighborhood, in the retail sector, and in the developing community of expectations for the area over the long term.

The proposed amendments would not be inconsistent with the Comprehensive Plan Future Land Use and Generalized Policy Map designations, and would generally further policies and objectives of the economic development, urban design, and arts and culture citywide elements, as well as the MidCity and near Northwest area elements.

The amendments would also be consistent with the Duke Framework Plan for a cultural destination district within Washington's Greater Shaw/U Street area. A portion of this area does fall within the boundaries of that small area plan.

In summary, OP continues to recommend approval of the set of text amendments as advertised. As a comprehensive

package, they help to ensure that the intent of the overlay is retained, while the amendments help to ensure that the area continues to develop as an exciting and desirable destination area while avoiding potential concentration of uses that some in the neighborhood feel could have a negative impact.

That concludes my report. OP is available for questions. Thank you.

CHAIRMAN HOOD: Thank you.

Ms. Steingasser, were you going to add anything? Okay.

Thank you very much, Mr. Lawson.

Let's open it up for questioning.

Commissioners, any questions or comments on the report?

Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: Thank you, Mr. Chairman.

I have a couple questions just in terms of the study that's been done around

this. I think there's been a lot of great community collaboration in coming up with the general framework.

I just wonder -- from my perspective, the jump from 25 percent to 50 percent, even if on a block-by-block basis, is a substantial increase in the number of bars and restaurants that are going to be allowable. I think I read somewhere that there's 97 or 95 current eating and drinking establishments there. So we're talking about potentially doubling that amount to 200.

Have there been any studies on what the impact on on-street parking would be in the areas surrounding the ARTS Overlay; have there been any studies done on the potential traffic impacts of increasing this limit and having 100 more eating and drinking establishments?

MR. LAWSON: The Office of Planning has not done a detailed study to that effect.

I would note that the purpose of this is not to create new space. The space would be devoted to a retail use of some kind, if not a retail use then a service use. So it wouldn't be a direct correlation between zero and something. There would be something built other than this.

I think that the intent of this is really to address what the neighborhood feels is an appropriate amount of uses that support the arts and entertainment uses that are being encouraged in this area, and which serve neighborhood residents as well.

Given the changing nature of this area, we don't have a lot of areas that have a limit like this, frankly. Usually the market is allowed to decide what's an appropriate amount. Even in this area under the current regulations, you could have entire areas -- and we actually have some blocks -- that are 100 percent restaurant and eating and drinking establishments. That's permitted under the

current regulations.

One of the changes that's being proposed would be to kind of spread that around a little bit so that no one area gets an overconcentration, as well as no one area is prevented from the opportunity to have these kinds of uses.

But currently in the District there are a few other areas that do have the same limit of restaurant uses. That percentage right now is either 25 percent in most of the neighborhood commercial areas, or 50 percent which is what exists in the 8th Street Overlay District. So it's not out of line with some of the other provisions in the overlay already.

VICE CHAIRMAN SCHLATER: This is probably a bigger overlay than some of the other ones that you're talking about. In terms of linear frontage, I think I read somewhere it was 2τ miles or something like that; is that right?

MR. LAWSON: It is, which means there's also that much more parking available for people who go to this area. I guess I would also note that the area is very well served by transit, which is what we're trying to encourage people to use anyway, particularly if they're going to establishments where a lot of alcohol is served.

VICE CHAIRMAN SCHLATER: I will say that, just having spent a lot of time there and now living up in that neighborhood, Wednesday nights, Thursday nights, Friday nights, Saturday nights, parking for on-street neighborhood parking is almost impossible to find.

MR. LAWSON: There's certainly many area residents here and we'll look forward to hearing their experience on this issue. So far, that hasn't been raised as the overriding issue with us.

VICE CHAIRMAN SCHLATER: I'm not

surprised that it hasn't yet. But I'm just wondering about if anybody has a sense of what the impact of doubling the amount of bars and restaurants will have just on the demand for parking.

Because I think, actually, bars and restaurants do -- well, first of all, the time of when people use them is nighttime when there's not as many parking spaces available. And I think they tend to be more people intensive than neighborhood-serving retail uses.

So it's certainly a concern of mine and I look forward to hearing more testimony on it from ANCs and residents tonight. Also, U Street at night on your typical night is kind of a traffic nightmare.

I guess what we try to avoid is a situation of what's going on on 18th Street in Adams Morgan. Have there been any studies done of what percentage of the frontage there is occupied by bars and restaurants?

MR. LAWSON: Not that I'm aware of.

VICE CHAIRMAN SCHLATER: That would be a difficult thing to measure, would it not? I don't want to burden people but I feel like it's not something to be recreated, if we could avoid it, that sort of 18th Street feel.

Is that what we're trying to get with the 50/50 mix; how do you feel about what's going on on 18th Street up in Adams Morgan, as a comparison?

MR. LAWSON: First of all, this isn't 18th Street. So I don't think that we're comfortable comparing it to any other situation.

I think what we're after here is attempting to address the concerns that were brought forward by the neighborhood. They don't feel it's going to meet the long-term -- at least our understanding, and what's stated in the report, that the current overlay isn't addressing what they think are the long-term goals and objectives for the area.

Eighteenth Street is a very different situation, as is 8th Street, as is any other destination area in the District. If what you're asking is, are we trying to recreate 18th Street, I would say no. What we're trying to do is create a 14th Street and a U Street that are the best that they can be.

VICE CHAIRMAN SCHLATER: One of the things that having a firm cap at 25 percent as it exists today, I think we could all agree, it would probably slow down the development of 14th and U Street and filling some of those vacant spaces and vacant store fronts.

Is there any sense of what the vacancy rate is for retail in this area, whether it's higher than other parts of the city or not?

MR. LAWSON: We've not done a comparison against other parts of the District. Office of Planning until very recently was in the neighborhood. We've moved recently. So we were able to see a number of

the vacant parcels and buildings that were vacant become occupied.

That's a process that's ongoing, without question. There's still a lot of potential along both 14th Street and U Street. Again, I think that the hope is that these amendments would help to foster that really, really positive change that's happening on those two streets.

VICE CHAIRMAN SCHLATER: One of the things I noted in, I think it was, ANC-2F's report is there was a request to remove restaurants and bars from the list of preferred uses in Chapter 19.

Is that something they had discussed with you; what would be the impact of doing that and why isn't in the proposal?

MR. LAWSON: First of all, it's not in our proposal because it wasn't part of the advertised text. It is part of the proposal in the respect that it is part of what OP is looking at as part of the broader Zoning

review process where we're looking at all of the other recommendations in the ARTS Committee report.

It does have some potentially broader implications that need some further study. Having these uses listed as preferred uses or not impacts a number of other sections within the Uptown ARTS Overlay. And just exactly how that would suss out, we're still reviewing through that other process.

VICE CHAIRMAN SCHLATER: So you wouldn't recommend we add that to the text; we should wait for that?

MR. LAWSON: Our recommendation is proceeding forward with the recommendation that was advertised.

As I said, we're moving along quickly with the Zoning Review Text Amendments. Those should be coming to you relatively sooner rather than relatively later. They're not decades away, they're not years away. So they will be coming to you in

fairly short order.

I do think that it would not be possible to make that one change without re-looking at a number of the other sections of the regulations. I'm not saying that's not an appropriate thing to do. I'm saying that we don't know if that's an appropriate thing to do at this point.

VICE CHAIRMAN SCHLATER: Okay. One other question, just generally citywide on these bar/restaurant restrictions whether it's 25 percent or 50 percent.

Does OP think having those limitations in place drive up vacancy rates in those areas? I know it's been discussed in the context of Cleveland Park, for instance.

MS. STEINGASSER: That's a question we're not really prepared to answer specifically. There's certainly a school of thought that has been in the press that they do feel that's the case. There's also a school of thought that says no. We haven't

done any kind of real comprehensive study of landowners and landlords to find out what is the implication, are they losing tenancy based on that.

MR. LAWSON: I would note that at least as far as we know, most of the neighborhood commercial overlays have not approached their limit yet. There are some exceptions. ARTS Overlay is certainly one and Cleveland Park may be another one. There are a number of other neighborhood commercial areas. And although they haven't been studied in detail, so far there's no real evidence that they are approaching that limit. So it's not really an issue yet.

VICE CHAIRMAN SCHLATER: Okay. No further questions. Thank you very much.

CHAIRMAN HOOD: Mr. Turnbull?

COMMISSIONER TURNBULL: Thank you, Mr. Chair.

I think the Vice Chair had a lot of good questions. I think they were very

important.

I just want to follow up to his line of questioning on parking. There's a part of this that talks about establishments not on the ground floor but on an upper floor, second floor, and providing a maximum 10-foot entry.

Is there a lot of that development? I see that as if that's going to develop, that's going to be even a greater impact parking-wise. If this is going to be a draw and you're going to have a lot of second floor establishments, what's your take on that; how did this develop?

MR. LAWSON: I guess I can't say for certain what the market is going to do over the long term.

COMMISSIONER TURNBULL: Right.

MR. LAWSON: Right now there's not a lot of that kind of use, either in this area or in the district as a whole. There certainly is some, but it's not predominant,

it's not prevalent. Because most uses like this do want to locate on the ground floor where the people are. Having direct access to the street is important to most restaurant and even drinking establishments. There are some.

Our understanding from the Zoning Administrators is that the current process is that they are not counted towards the limit. So this is basically clarifying what we understand the current process to be.

COMMISSIONER TURNBULL: But you're foreseeing that this could be a development; it's an option?

MS. STEINGASSER: It's the current status. Right now the second level activities do not count towards this percentage cap in any of the overlays. It's always been just the ground floor. When working with the Zoning Administrator when we were doing this, we just decided to clarify it. But that's how the status quo has always been, so it's not a new provision.

COMMISSIONER TURNBULL: No. I asked if this does proceed and develops, do you see coming back to revisit this if it becomes an overdevelopment issue?

MS. STEINGASSER: Certainly. This came to us at the request of the neighborhood.

COMMISSIONER TURNBULL: Right.

MS. STEINGASSER: It was a community initiative. We'd be happy if in 5 years they're finding that it's getting a little too uncomfortable and they want to review it again, we're happy to work with them a second time to look at how it's doing. We're happy to meet with them every couple of years before it becomes a problem, just as a status, to check in.

COMMISSIONER TURNBULL: If restaurants or bars expand up into the second floor, I guess that's a separate issue?

MS. STEINGASSER: Right. That's not covered by ground floor percentage. It's not been brought to our attention in any of

the overlays that that has been a problem.

COMMISSIONER TURNBULL: Okay.

MS. STEINGASSER: So we're certainly willing to make a preemptive appointment to come back to this group in 2 years and see how things are going. We hope to be revisiting the Zoning Regs every 4 years as we update the Comp Plan, that there would be another comprehensive review. So there would always be that opportunity, as well.

COMMISSIONER TURNBULL: Okay. Thank you.

MR. LAWSON: I would also note that with regards to the parking question, which is kind of where your question originated, there are parking requirements in the Zoning Regulations. So if a restaurant expanded into an upper story, that expansion would have to meet the parking requirement in most cases, or they would have to request relief from the Board of Zoning Adjustments.

It is a Historic District and that

certainly complicates things with regard to parking.

COMMISSIONER TURNBULL: Yes.

MR. LAWSON: But the parking requirements are in place now. Those apply whether it's a restaurant, office, residential, or whatever. The standard is certainly varied. The parking required for a restaurant is higher than it probably would be if it was a residential floor kind of thing. But the parking standards are there.

COMMISSIONER TURNBULL: I was just looking out for the interests of the Vice Chair and getting a parking spot for him. I'm just very concerned.

CHAIRMAN HOOD: Are you finished, Mr. Turnbull? Okay. Well, hopefully he'll take the bus.

Commissioner May?

COMMISSIONER MAY: Yes. I just have a couple of quick ones.

Where did you say there are

existing overlays that are set at 50 percent cap?

MR. LAWSON: The only one that I'm aware of off the top of my head is the 8th Street Overlay.

COMMISSIONER MAY: I'm sorry, 8th or H?

MR. LAWSON: Eighth.

COMMISSIONER MAY: Eight?

MR. LAWSON: The number 8, 8th Street Southeast.

COMMISSIONER MAY: Okay. Is that aggregate or is that by square?

MR. LAWSON: As far as I know, it's aggregate.

COMMISSIONER MAY: Okay.

MR. LAWSON: I should note, it's a very small overlay. It only covers four blocks in total.

COMMISSIONER MAY: By the way, parking has gotten very difficult there lately.

If you get to 50 percent, is it a variance test at that point or is there a special exception relief to go above 50?

MR. LAWSON: I believe it would be special exception.

I just want to clarify so that people are clear of what we're talking about with the 8th Street Overlay. It's not the section of 8th Street where all the restaurants are. The 8th Street Overlay is the section of 8th Street south of the freeway. The portion north of the freeway has no overlay. It's subject to whatever the Zoning Regulations are, so there would be no limit.

COMMISSIONER MAY: There's not four blocks below the --

MR. LAWSON: Four block faces.

COMMISSIONER MAY: Four block faces? Okay. That makes sense.

Then the other question I had was, did you get a copy of the letter from ANC-2F which we received just tonight?

MR. LAWSON: Yes.

COMMISSIONER MAY: From June 8.

MR. LAWSON: Yes.

COMMISSIONER MAY: Can you address --

MR. LAWSON: I also attended the ANC-2F meeting as well as the ANC-2B meeting.

COMMISSIONER MAY: Right. I saw you mentioned that you were intending to go to that meeting in your report.

Can you talk to the issue that they raised in the letter?

MR. LAWSON: Which issue would you like me to --

COMMISSIONER MAY: I'm sorry. I'm wrong. It wasn't the 2F letter. It was ANC-2B, where it recommends modifying the text that you proposed to include elimination of bars and restaurants within the definition of contributing arts activities, as originally recommended by the Logan Circle ANC.

MR. LAWSON: Sure. This is similar

to the question that the Vice Chair was asking about. Certainly one of the recommendations -- I think there were 20 or 25 recommendations in the original report from the Neighborhood Committee -- was that bars and restaurants be removed as preferred uses. The overlay establishes a long list of preferred service uses, as well as a separate long list of preferred arts uses. That long list of preferred arts uses includes most forms of eating and drinking establishments, restaurants, cabarets, bars, that kind of stuff.

I shouldn't speak for the ANC and I know that they're here to speak to this themselves. But I believe there's some thought that it would be better if those uses were removed from the preferred uses so that the other provisions of the overlay directly related to the preferred uses wouldn't apply if somebody wanted to put in a bar or restaurant.

If your question is why the Office the Planning is not recommending to go forward, again, my response would be that we are taking it forward. We are taking that issue forward. I'm not sure what the result's going to be yet, but we're reviewing it through the Zoning review process.

It's a little bit broader in that it effects, as I said, a number of different regulations within the ARTS Overlay. And we need to get a really clear understanding of what those implications may be, both on the overlay itself and the potential implications to the market, potential implications to the ability to provide eating and drinking establishments at all, if that provision is removed.

So it's a bit of a broader issue. We are happy to look at it. We will be looking at it and we will be bringing forward recommendations to the Zoning Commission. We feel that it's a broader issue than should be

addressed as part of this immediate recommendation going to you right now.

COMMISSIONER MAY: In short, it's your intention to address the issue but in a different context, a broader context?

MR. LAWSON: In a broader context, and once we've had an opportunity to really review what the implications may be.

COMMISSIONER MAY: Okay. Thanks.

CHAIRMAN HOOD: Mr. Lawson, in the consensus of the review group collaboration -- I'm just looking because I noticed the ANC letters; 2F says a little something different than 2B and I'm looking at that.

Obviously when they had the work group, the Review Committee report, which I know one ANC and a couple of associations fully endorse -- was that indicative of all ANCs that made up that group; each ANC had a member in representation in that Review Committee report?

I'm sure I can ask them.

MR. LAWSON: Yes. I was actually just going to suggest that. I see that the chair of that Committee is in attendance tonight. I'm sure that she would be happy to address questions about how that Committee functioned.

CHAIRMAN HOOD: Okay. Was there a particular place -- I believe 2F is -- Ms. Steingasser mentioned where it was initiated; was it from 2F, outside of 2F? I'm just trying to figure out how this Review Committee came up. Was it out of ANC-2F?

MS. STEINGASSER: I'm not sure who initiated the Committee to review. It was cross-jurisdictional in terms of the ANCs and the business community. But they are here and they can answer all those questions about their structure and how they operate.

CHAIRMAN HOOD: Okay. A while back I think the Commission went from 25 to 30. We did that --

MS. STEINGASSER: By emergency.

CHAIRMAN HOOD: -- on an emergency basis?

MS. STEINGASSER: Yes, sir.

CHAIRMAN HOOD: I guess it's too early to ask about the track record because that was just done in April. But is this how we're going to do everything else?

Because here's what happens. When this Commission moves, the horse is going to be already out of the barn. And a lot of times with other things that we push forward, other initiatives in the city, the Office of Planning will come right back to us and say, "Wait a minute, hold up. We need to make a change."

Would this be also included in that circumstance? If we get out there and we see that we're getting influx, we're having problems, and it's oversaturated, whatever the case is, would the Office of Planning come right back and say, "We need to tweak this."

Is that a commitment we can get

from the Office of Planning?

MS. STEINGASSER: Absolutely.

CHAIRMAN HOOD: All right. I'm very interested in Commissioners to hear from the community and kind of see how we arrived to this point. I applaud the effort of the ANCs and cross-jurisdictional collaboration. I'm just curious to see how all that worked.

I noticed in ANC-2B's -- I kind of agree with them. I think it's 2B. Vice Chairman had already alluded to that, about excluding bars and restaurants. But let's see how we got there.

Any other questions, comments?

Okay. Let's go to -- because we do have ANCs on the list, I'm just going to go straight to -- typically we go to reports of ANCs 1B, 2B, and 2F.

If you don't mind, Chairman Reed and others, can I just go by the witnesses; I think you all are already on this witness list?

Let's just do that for the sake of time. That way we can keep some kind of order and structure.

If your name sounds similar, just come forward if I mess it up.

Ramon Estrada?

Oh, that's right. Ms. Schellin's right. She has it so idiotproof for me and I still messed up.

Let's go to Will Stephens.

MR. STEPHENS: Commissioner, can I respectfully recommend that the ANC go --

CHAIRMAN HOOD: Before you?

So maybe what I'm trying to do is not going to work.

Why don't we do this; can we put you in the parking lot? Okay.

Let's go with Ms. Allison Prince, Ruthanne Miller, Mark Weiss, and Natalie Avery. I think that's four.

Mr. Stephens, make sure I come back to you. I'm not trying to rush and get home

to the game, but make sure I come back to you.

Let's begin with Ms. Prince.

Good evening.

MS. PRINCE: Good evening. I'm Allison Prince with Goulston and Storrs. Mark Weiss is my client who's with me, so I'd appreciate it if we could testify back to back.

CHAIRMAN HOOD: Okay. Let's do that and then we'll start with Ms. Miller. You two can go first and then we'll go to Ms. Miller.

MS. PRINCE: Thank you. I've practiced land use law in DC for 25 years now. I've worked a lot with the ARTS Overlay. I was around when it got adopted.

I'd like to say at the outset that I really commend the Office of Planning for responding to this situation that erupted when we realized that we were very, very close to the 25 percent limit. That had an immediate and problematic impact for those that were

planning restaurants. OP really stepped in and resolved what could have been a very difficult situation. We appreciate that.

Since the overlay was adopted, as you know, there's been a real evolution in the development of restaurants in the overlay area. We crept up on this 25 percent limit really without being aware of how close we were to it.

I think a lot of the reason for that is one of the most difficult types of overlays to implement is an area-wide measurement technique. We've seen that in Cleveland Park. It is a nightmare. It wreaks havoc in the life of the Zoning Administrator to have a 2-mile overlay where the linear distance of restaurant frontage at the northern end of that overlay has an impact on the southern end.

So right at the outset, I'd like to say that this square-by-square approach is so much more manageable and so much more

predictable for those who are planning restaurants. And really, they can gauge what's going on in their square and if it's likely that they're close to that 50 percent limit. So I think that was an immediate improvement.

I really understand Joel's point that this is sort of a package deal. In most overlays when we need relief from the overlay, it's a special exception standard, a looser standard, a different standard than a variance standard.

In this overlay, I think, the quid pro quo that seems to have been discussed is we're talking about a 50 percent limit per square. But we're talking about a variance burden of proof to get relief to go beyond that limit.

So we'd be looking at the uniqueness test, practical difficulties; quite a different standard than a special exception standard. I'm not aware of another overlay

where we use a variance standard to get relief on the linear foot requirements. So that makes this one a little unique, a little different.

I support the 50 percent limit. I think it was arrived at in a very thoughtful way. I think the square by square way of doing it addresses impacts in a more meaningful way and prevents bunching together.

I also thought OP's analysis of the level of nonconformity created under the varying potential levels was really excellent. At the 50 percent level, you have some blocks that become nonconforming but not many. I think that's something we need to think about when we change our regulations, is how much nonconformity are we creating.

What becomes a huge problem in some cases -- specifically in the case of my client, one of his proposed restaurants -- is if we go below 50 percent. There are some restaurants that are in the pipeline right now

that would not qualify if the percentage is less than 50 percent.

So while you think about these kinds of standards and changing them, you need to be aware that there are restaurants in the pipeline right now that work under the 30 percent emergency rule that's in effect, but cannot get vested under that rule in time to beat a change in the regulations to something less than 50.

We have this really difficult limbo situation created when we have restaurants that comply with the current emergency rule, but because of the historic status of these properties you simply can't get permits quickly enough to vest under the current emergency rule. So I think the 50 percent rule is generous enough that most people that could comply with 30 could comply with 50.

But if you lower the 50, because there are so many nonconforming blocks already if it's lower than 50, that really creates

problems. Mark Weiss who is here with me from Whisk tonight is specifically affected by that situation.

I do have one possible solution, something that I really think you ought to think about. It might take you a couple of weeks or months to figure out what you want to do in terms of the permanent limit.

I really recommend that you re-advertise the emergency. And when you re-advertise it, put in a vesting provision such that any restaurants that apply for a building permit during the pendency of the emergency will be vested, their use will be vested, so you won't get caught in the problem of discussing.

That was good timing.

CHAIRMAN HOOD: Great timing. Thank you.

MS. PRINCE: Mr. Weiss has a statement.

CHAIRMAN HOOD: Okay.

MR. WEISS: Good evening, members of the Commission. Thank you for your time.

My name is Mark Weiss. I'm the CEO of Whisk Group. We are a small boutique food and beverage company. I started my career with Ritz Carlton where I spent 11 years opening about 130 restaurants around the world.

The last year and a half we've been planning restaurants in the Washington, DC area. I personally live in DC and feel that 14th Street is truly unique. I've spent about 4-5 years in DC to date and used to be employed at the Chevy Chase location with the Ritz Carlton Corporate Office.

We've got some fantastic buildings on 14th Street that I truly fell in love with, and felt it was a really unique opportunity to create some real special concepts. For that reason we ventured into a lease with the landlords.

We have two specific locations. We

feel that we could create an incredible Italian restaurant concept, one that is dubbed to be called the Shared Laundry; the other one, the Italian Cinema. We see them in two separate buildings, kind of playing off each other.

One is based around pizza and bakery concepts, a retailing a.m., lunch, and p.m. The other one is dubbed to be a butchery with pastas, risottos. Both very romantic and of course screening old movies on all walls.

We're a very serious restaurant company. I currently have two restaurants in the Washington, DC -- actually one in the Washington, DC area. One is about to open in Rockville. Both employ about 75-100 people, and in the Rockville area, about 125 ladies and gentlemen. For the corridor for 14th Street we'll be employing about 100-150 employees. So they're significant restaurants driving about $15 million a year in revenue.

We feel that we're going to spend

about $1.5-2 million per restaurant to create what I think is a very serious restaurant and a serious contribution to the neighborhood.

We would feel really honored to be in spaces such as that, because they're tough to find. The buildings have a lot of character. Those things are really phenomenal for great restaurants. And I think it has some unique components such as the retail aspects of these restaurants, and just the urban feel that that location gives us. So we would be really thrilled to be in a situation as 14th Street.

In closing, just to wrap it up, we've entered into a lease with both landlords, as mentioned before. With this situation, we currently are in a position where we might not be able to move forward. We've started our planning, drawings, MEP. We've also entered into the architectural portion of the restaurants.

So we are at the verge of really

being able to move this project forward and start truly investing in it. I'm currently in a position where I might have to stop that and hopefully look for your support to push this forward.

Thank you.

CHAIRMAN HOOD: Thank you. We're going to go to our former chairperson of BZA, Ruthann Miller.

MS. MILLER: Good evening, Chairman Hood and Commissioners Schlater, Turnbull, and May. My name is Ruthann Miller and it's a pleasure to have this opportunity to testify on the proposed amendment to the Uptown ARTS Overlay.

I'm speaking today as a former member and chair of the BZA, as well as a resident of an ANC with three neighborhood commercial overlays with the same restriction on eating establishments that is the subject of the proposed amendment.

I support increasing the 25 percent

limit proposed for this overlay, but oppose changing the present relief from special exception to variance. I'm concerned that such a change would be bad precedence of the neighborhood commercial overlays in the city that have the same provision.

As a member of the BZA for 6 years, I had the opportunity to deliberate on two cases concerning the 25 percent limitation on the linear street frontage for eating establishments in the ARTS Overlay. Those cases are cited in the Office of Planning's report.

In both cases the Board granted special exception relief from this provision. The evidence presented in those cases demonstrated that the 25 percent limit was problematic and too low for the purpose of the regulation. That being, to protect the neighborhood from an overconcentration of restaurants.

The three neighborhood commercial

overlays in ANC-3C -- Cleveland Park, Macomb/Wisconsin, and Woodley Park -- have all reached or exceeded the 25 percent limit, to the best of my knowledge. And there are concerns among many residents and businesses there whether there should be changes made to the same limitation on eating establishments.

Ten years ago as chair of ANC-3C, I organized a round table on this very provision. The Office of Planning employee Nate Gross, who drafted the regulation, stated then that the 25 percent limit was only an estimate of the appropriate limit. He reiterated this view in a recent letter to the editor in the Washington Post last year.

I applaud the efforts of the Uptown ARTS Overlay Review Committee for collaborating with all the interested parties and proposing the revised text amendment. I differ only with the one proposed provision that OP has also expressed some concerns about. That being, that relief from the new

50 percent limit be in the form of a variance as opposed to special exception.

I trust that the recommendation from the Uptown ARTS Overlay Review Committee stems from a fear that any excess of the 50 percent limit would be detrimental to the neighborhood, and that therefore a more stringent protection in the form of a variance is required.

From my experience on the Board and understanding of variances and special exceptions, it's my opinion that the special exception relief is appropriate and the better form of relief for this regulatory scheme. Special exception relief is appropriate where the use is generally compatible with the District, but the Zoning Commission is determined that the BZA needs to find that there will not be adverse impacts if the relief is provided.

Further, the special exception process allows the Board to impose conditions

if necessary, and tailor the relief to avoid adverse impacts on neighboring property. Of course, the Board can deny the relief if the criteria and the regulation is not met, and/or if the adverse impact would result if relief were granted.

Relief from the limitation on eating establishments in all the overlay districts in which it exists is currently in the form of a special exception because --

I'm new at this. I don't have too much further to go, if I can continue?

CHAIRMAN HOOD: All right. Thank you. What did you use to do this one? Go ahead.

MS. MILLER: Right.

CHAIRMAN HOOD: Okay. Go right ahead.

MS. MILLER: Okay. Relief from limitation on eating establishments in all of the overlay districts in which it exists is currently in the form of a special exception,

because eating establishments are compatible with a vibrant commercial neighborhood district.

Because a special exception relief provides appropriate protection from adverse impacts and restaurant use is not incompatible with the intent and purpose of the overlay, variance relief would be overkill and inconsistent with the regulatory scheme for uses deemed compatible.

I just want to comment that in my testimony I saw this as a use variance. I know Ms. Prince saw it as an area variance. But we are talking about limiting uses. That's something that the BZA would have to grapple with, I guess.

Moreover, the history of this provision shows that few property owners seek to exceed the limitation. The two BZA cases mentioned in the OP report are the only ones of which I am aware of for all the overlays where property owners sought relief from this

provision. I have heard that most restaurant owners who find they need relief from the Board to operate in an overlay seek an alternate location where restaurant use is a matter-of-right.

Finally, I would like to bring to your attention a phenomenon that is now occurring in Cleveland Park. There is a 25 percent limitation on the linear frontage of the overlay for eating establishments, but not for any other use. Now Cleveland Park has an overabundance of nail salons and perhaps one too many tanning salons. So the regulations have resulted in the overconcentration of other businesses and spaces where eating establishments were not allowed to operate.

In conclusion, I highly commend the Uptown ARTS Overlay Review Committee for making a thorough, inclusive, and transparent study of their arts district, and seeking relief so that their district will thrive. I believe they should have protection from

adverse impacts if the 50 percent limitation is exceeded, but the relief should be in the nature of a special exception as contemplated originally in the regulation.

Thank you.

CHAIRMAN HOOD: Thank you very much.

Let's go to Ms. Avery.

MS. AVERY: Good evening. Thank you for the opportunity to testify today. My name is Natalie Avery and I'm the Director of the MidCity Business Association.

The service area of our association basically covers the entire ARTS Overlay. We have over 125 members and they include arts organizations, art galleries, retailers, restaurants, and nightclubs.

In our association all these kinds of organizations work together and have a symbiotic relationship. The restaurants support, the arts groups support the marketing of the retail and the daytime retail.

We strongly support increasing the limit from 25 percent to 50 percent. We enthusiastically participated in the community process, too, that came up with these recommendations.

The first thing that is important is looking at the example of Cleveland Park, as that's something that we don't want to happen in our area. We really want to create a vibrant daytime economy, and having a lot of restaurants and retailers working together to make it a destination that people want to come and shop, eat, and go to galleries. It's a really important mix.

The other thing that is a concern to us is the way that the overlay is just too large. It leaves some areas clumped together, and then other areas without having the opportunity to have eating and drinking establishments that could really anchor the kind of interesting dynamic mixed-use development that we'd like to see.

I think a lot of proponents of using zoning to limit restaurants and bars are kind of portraying this as a silver bullet. What we see and what we work really hard in our association in partnership with community groups is zoning is just one tool. There are so many other tools that we need to use to promote the kind of dynamic mixed-use areas that we want to see, and to manage the impact of nightlife on residents.

Zoning is a tool but there are all sorts of other very important tools around policing, around community organizing, around just different best practices that can control and mitigate some of the issues that happen when you have a concentration of nightlife and residents living nearby.

We would really like to see this debate and the community continue to come together around really finding ways of promoting what we do want to be.

I really like what Mr. Lawson said

about we don't want to become another Adams Morgan.

What we're talking about is what we do want to become, which is a dynamic mixed-use 18-hour economy where our restaurants, galleries, and retailers work together to create that. And work very closely with the community and the residents to address the negative impacts that can sometimes happen, but also create the kind of dynamic community that we all want to see.

In conclusion, I hope that the Board supports this emergency text change and raises the limit to 50 percent.

CHAIRMAN HOOD: Okay. Thank you all very much.

Let's see if we have any questions. Commissioners?

Commissioner Turnbull?

COMMISSIONER TURNBULL: Thank you, Mr. Chair. I just had kind of a business question for Mr. Weiss.

You had two properties you were looking to lease?

MR. WEISS: Correct.

COMMISSIONER TURNBULL: I'm just curious, when you were looking at them did you know that with the current overlay, you wouldn't fit in; and were you looking to go for special exception, was that your business plan? I'm just curious.

MR. WEISS: No. I understood that I do fit in the current overlay.

COMMISSIONER TURNBULL: You did?

MR. WEISS: I did. And, no. That's what I understood.

COMMISSIONER TURNBULL: So you did? Okay.

MR. WEISS: Yes.

COMMISSIONER TURNBULL: All right. Thank you.

MS. PRINCE: If I can clarify, he fits under the 30 percent for both locations.

COMMISSIONER TURNBULL: I guess I'm

saying that before we did the 30, you already had the property which was then under 25?

MS. PRINCE: No.

COMMISSIONER TURNBULL: Or you bought it when you had --

MS. PRINCE: That's standard in the leases recently with the emergency having been in effect.

COMMISSIONER TURNBULL: Okay. Got it. Thanks.

CHAIRMAN HOOD: Any other questions, Commissioners?

Vice Chairman?

VICE CHAIRMAN SCHLATER: I'll start with you, Mr. Weiss. Thank you for your testimony. The concept looks great. Thank you for providing this.

MR. WEISS: Certainly.

VICE CHAIRMAN SCHLATER: Except it's making us very hungry up here.

First of all, it says it's a 275-seat establishment.

MR. WEISS: Correct.

VICE CHAIRMAN SCHLATER: Can you just talk to me about how you're going to approach the parking management for a restaurant like that?

MR. WEISS: I think in the end when we finish the correct fit-outs and the kitchen allocation, it'll be substantially less than 275. But like any of our restaurants, we provide valet parking and make the adequate arrangements to make sure the guests are taken care of, as well as traffic issues that may occur.

VICE CHAIRMAN SCHLATER: If you don't mind telling, which block of 14th Street are you looking at?

MR. WEISS: It's actually on the corner of 14th and Q. It's 1601 14th Street. It's the old Shared Laundry site.

VICE CHAIRMAN SCHLATER: Okay. Great.

MR. WEISS: That's the name that we

decided to go for.

VICE CHAIRMAN SCHLATER: I figured as much.

Do you have any estimate of how many jobs will be created in your restaurant?

MR. WEISS: Right. We have a restaurant right now, the one in Rockville, we employ 125 employees for that location and it has 200 seats.

VICE CHAIRMAN SCHLATER: That's great. That's a huge driver and important in this economy, obviously.

MR. WEISS: Right.

VICE CHAIRMAN SCHLATER: Thank you.

MR. WEISS: Thank you.

VICE CHAIRMAN SCHLATER: Ms. Prince, I like your recommendation on re-upping the emergency if we're not able to take action on the final language before -- is it August when it expires?

I'll advocate that we do that so that there's no period in which we go back to

the 25 percent limit.

MS. PRINCE: Right. We're also concerned about being able to vest under the 30, and you can't vest under the 30 without securing a building permit.

VICE CHAIRMAN SCHLATER: Right.

MS. PRINCE: I discussed this with Alan Bergstein and I think we came up with an approach that really works that doesn't really --

VICE CHAIRMAN SCHLATER: How would you vest if you didn't have the permit?

MS. PRINCE: It would be language that would say that for purposes of this overlay, during this period that we're all going through, you would vest upon the filing of your building permit application so that you wouldn't get your building permit only to find out that you no longer qualified because the space had been used up.

VICE CHAIRMAN SCHLATER: Okay. Great.

I will say just in regards to this plan, it's interesting. There have been a lot of restaurants and bars in that area. As the plans get more elaborate and there's more investment, the more developed the area gets. So it's exciting to see something as elaborate as you're proposing there.

MR. WEISS: Thank you.

VICE CHAIRMAN SCHLATER: Ms. Miller, I just had a question about your experience in Cleveland Park. Do you think the 50 percent standard would be appropriate in Cleveland Park?

MS. MILLER: I think that the 25 percent is too low because we do have vacancies. And then as I was saying, we have this overconcentration of other stores.

I think you asked a good question before about have there been any studies as to what is Adams Morgan, what is Georgetown, or whatever. Because that's always been the comparison: we don't want to become another

Adams Morgan.

My personal opinion is I don't think 50 percent would be too much, but I'm not basing it on any studies whatsoever. But I would say that in some of the corridors -- I mean, Cleveland Park also basically includes the Macomb/Wisconsin Overlay. And a lot of people want more restaurants, bakeries, or things like that. They're getting other things instead because of that limit that isn't so friendly to the neighborhood.

I think we got some kind of a brokerage address, a best address, or something. That's a fine business but it's not really friendly to the neighbors as much as a bakery or something like that would be, or a sandwich shop that can't come in now because of the limit.

VICE CHAIRMAN SCHLATER: I guess another question I might have is, do you think these limits are useful, period; do you think 25 percent, 50 percent should -- is it an

effective tool at creating retail diversity in these neighborhood corridors?

MS. MILLER: I think that perhaps it may differ by neighborhoods. For instance, this ARTS Overlay is a much bigger space than the Cleveland Park Overlay. The Macomb/Wisconsin Overlay is now really small because of the whole giant development. So perhaps you have to look on a case-by-case basis.

But I think it's somewhat of a crapshoot and it has its downside. In my opinion, in my neighborhoods I think the downsides may be exceeding the benefits. But I don't know for sure. You could raise the limit to 40 percent and it would still be somewhat of an experiment.

When I had this round table 10 years ago and we were looking into the genesis of it, I was told that they were looking at this in San Francisco. But then I heard that San Francisco didn't end up adopting it. So

we may be the guinea pig here.

When it started the spaces weren't filled. But now they're filling up and now we're seeing what the impact is. As far as my neighborhood goes, in my opinion there's definitely room for more restaurants. So it's kind of a negative thing because it's keeping them out and putting in other businesses that neighbors don't want quite as much.

VICE CHAIRMAN SCHLATER: Thank you very much.

MS. MILLER: Thank you.

CHAIRMAN HOOD: Ms. Prince, I would have to agree with you with the vesting. I'm glad you responded to Vice Chairman Schlater about the vesting issue. It's just how we get there and I'm glad you've already worked on that.

Let me ask this question. You mentioned about if it's 30 percent now for the emergency, then if it's approved it would need to be 50? Maybe I didn't hear you right or I

didn't understand. If it's working under 30 and they're complying to 30, why would we have to do no less than 50?

MS. PRINCE: It's the difference between the area-wide 30 percent limitation and the 50 percent per square limitation. Both of these restaurants, there's enough unused linear frontage within the entirety of the overlay under the 30 percent rule --

CHAIRMAN HOOD: right.

MS. PRINCE: -- to allow both of these restaurants. However, under a 50 percent per square limit we have to look at each square on its own.

Ironically, it's not that the large laundry site that's challenged by the 50 percent limitation. It's the much smaller -- it's the old Abdo marketing center; 24 feet of frontage is the one that would be challenged by the 50 percent limitation because there are some carryouts on the block.

MR. WEISS: Okay. Ms. Miller, I

know you have a lot of experience in grappling and having to figure out exactly what the Zoning Commission meant when they said 25 and 30 percent.

You mentioned something that I had not heard or I may have missed. You mentioned keeping it as a special exception as opposed to a variance. Again, can you just expound a little bit why we should do that? I know that there's tests and I know how that is. Why should we keep it as a special exception?

MS. MILLER: My understanding is that special exceptions apply to uses that are compatible to an area. For instance, schools are compatible in a residential area. But the Zoning Commission has a special exception process to watch them to make sure that no adverse impacts are created. Because they could be if the school, say, were too big, too noisy, had too much traffic, or things like that.

The variances are for uses that are

incompatible in general with the district. For instance, a gas station on a residential street, or for instance, parking in the front yard of a house. Generally you need a variance for it because it's seen as inconsistent with the character of the neighborhood or whatever. It would be an adverse impact.

So you have to show that there is an extraordinary reason, there is something extraordinary about the property that would create an undue hardship on the property owner, in the instance of a use variance. And then that there would be no adverse impact if relief is provided.

In this situation, my point is that they have this regulatory scheme now in effect because restaurants are compatible with a vibrant commercial neighborhood district. So therefore, the special exception isn't appropriate relief. It still addresses adverse impacts which is what the neighbors

are most concerned about. But it gives some flexibility, again, because we're guessing.

As far as I've seen so far, there aren't any studies to show that 51 percent would have an adverse impact on a neighborhood. We just don't know. They really couldn't get relief under a use variance, in all likelihood, because they're not going to able to make that test. So I think it's not appropriate.

My other point is there's a Zoning review going on now with regulations, and it makes sense that Zoning Regulations be consistent. So if you have an eating establishment limit in one area and then one in another area, it would make the most sense if they had the same standard for relief.

CHAIRMAN HOOD: Okay. Thank you very much. Do we have your written testimony or can you provide it?

MS. MILLER: Yes.

CHAIRMAN HOOD: We have it? Okay.

Any other questions, Commissioners?

I want to thank this panel. You've been very helpful. Thank you very much.

MS. MILLER: Thank you.

CHAIRMAN HOOD: Okay. I'm going to try to do it right this time, Mr. Stephens. I'm going to try to call it so 2A can go first. Was it 2A? No, 2F. I'm sorry. I don't know why I'm thinking about 2A. That's over in Foggy Bottom.

Let's go with Scott Pomeroy, Chairperson Reed from ANC-2F, Will Stephens, and Andrea Doughty.

Hopefully I pronounced that right. Did I pronounce that right?

MS. DOUGHTY: Doughty.

CHAIRMAN HOOD: Doughty.

We have four. We will begin with Mr. Pomeroy and then we will go to Chairperson Reed.

MR. POMEROY: Thank you. My name is Scott Pomeroy. I'm a resident of 13th and V

Northwest for over 22 years. I participated in the meetings that established the 14th and U Street ARTS Overlay.

Then from 2001 to 2005, I organized and ran the 14th and U Main Street Program. We specifically marketed to the 14th and U area leveraging the ARTS Overlay designation to attract, retain, and promote various arts and cultures throughout the entire business corridor.

Currently I'm the Environmental Program's Manager and the Public Space Activation Manager for the Downtown DC Business Improvement District. And I can say that 14th and U is seen as a national success as an arts overlay and an arts district.

We have four major performance theaters. We regularly have five out of the top 10 music venues in the AOL, Washington Post, or City Paper polls. And while a lot of traditional gallery spaces might be declining, our nontraditional gallery places are

expanding. It's throughout the entire corridor, particularly restaurants and eateries, where you'll find examples that these are serving as galleries and it's part of the business model.

I really want to say that zoning and the overlay is a blunt tool when looking at the uses here. I use Busboys and Poets as a great example. Is it a bookstore; is it a lounge; is it a restaurant; is it a performance space? It's all of those things. But its business license says it's a restaurant.

Then I look at places like U-topia and ACKC. These are businesses where the owners feature their own artwork, and they basically serve as their galleries. ACKC used to exhibit up and down the East Coast. Those galleries take 40 percent of the profit from the sale of those artworks. He now can have his gallery space in his chocolate shop and retain all of those resources, while providing

a great amenity for the community.

These are not unique situations. These are more the norm for what you have on the very diverse types of business models that you see in this area.

I also want to applaud the work that the ANC-2F Committee did on this. It was the most extensive outreach engagement that I have seen since we organized the Main Street Program, and before that, since the ARTS Overlay was put in place. It was very comprehensive. It engaged a great number of the community to participate in this process.

Then when you look at the corridor itself, this area is a transportation hub. And I want to echo the statements that Natalie Avery made. There are a great number of tools that you can use to address the types of issues that are facing this corridor: parking, nightlife, management. This is what is really needed in this corridor. The overlay has worked, but we need to have greater management

of what are the activities that are existing in this area.

I also want to say that the area is only about 60 percent done. There is still going to be continued growth in this area. I remember when we had all of the vacant storefronts. I hope that we can allow this to grow to the 50 percent so that we can continue the quality growth that the community has seen.

Thank you.

CHAIRMAN HOOD: Thank you.

Chairman Reed?

MR. REED: Thank you.

CHAIRMAN HOOD: You have to turn your microphone on.

MR. REED: I'm Charles Reed, Chairman of ANC-2F and Commissioner for SMD-2F01.

On June 8 of this week I submitted a letter on behalf of ANC-2F, advising your Commission that ours had unanimously adopted

resolutions recommending the actions supported by the Office of Planning and being considered tonight. Mainly, that the limit of bar and restaurant concentration be raised to 50 percent, and that the limit be applied on a block-by-block, section-by-section basis.

The details of our reasoning is set forth in our letter. I will not repeat them in my testimony unless you wish me to. I intend to keep my remarks short so that if you have any questions, I won't unnecessarily prolong the time.

Also, these recommendations have resulted from the work of the ARTS Overlay Review Committee which was established by my ANC over our concern about the vitality of the ARTS District.

The Chair of that Committee, Andrea Doughty, is next to me. She will be giving testimony, and is familiar with both the process and the facts which her Committee relied upon in making the recommendations

first to our ANC, and which we then adopted and forwarded to the Office of Planning.

I will make only a few brief comments. First, I wish to emphasize that our ANC was the motivating force in the creation of the ARTS Overlay District in the first place. Our community strongly supports the district, and believes equally strongly that the city at large benefits both economically and culturally from the district.

We have recently been able to obtain $200,000 in NIF grants to brand our main business corridor, which will focus and highlight the arts uses.

Second, the two recommendations you are considering tonight are critical in our view to achieving purposes of the district: the protection, growth, and vitality of a high concentration of art usage.

The key findings of the Review Committee was that, perhaps counterintuitively, it was necessary to

increase bar and restaurant concentrations to have the street traffic necessary for successful patronage of arts-related businesses. The increased limit proposed is designed for that purpose, with increased restaurant and bar amenities for the community only a secondary consideration.

Third, I pointed out that tonight's issues are only two of the recommendations of our Review Committee. The Office of Planning has indicated that it has adopted a number of our other recommendations, and these will be forthcoming. We deal tonight only with the time-critical issues, and leave for another day the fact that further work needs to be done to give optimal support for the art uses envisioned in the overlay regime.

Fourth, I comment briefly on the issue of the 50 percent figure. There are two supporting bases for this. One is that it is a more practical number to administer. Ms. Doughty will have further explanation on this.

The second reason is that based on the economic reviews and projections of those working on the Committee, the view was that 50 percent was needed to generate the amount of traffic that will support the uses. These are of course somewhat subjective decisions, but the Committee was composed of experts, experienced economists, and representatives of the business community including art-related businesses, as well as bar/restaurant architects, developers, and planners.

I will add a final comment resulting from the question that Commissioner Schlater raised, and that was the parking issue. As it turns out, the ANC has control on parking issues when it relates to alcohol licensees. It doesn't have any role in other uses.

Through our voluntary agreement process which we entered into with bars and restaurants, we are very much concerned about the parking issues. And most of our voluntary

agreements which are part of the operating conditions of a licensee had to do with parking requirements.

We encourage valet parking. We require contracts with off-street parking garages nearby. We require notices be given to patrons and advertising it to reduce the impact of parking.

I see my time is up.

CHAIRMAN HOOD: You can continue.

MR. REED: Also, recently DDOT, Department of Transportation, put into force new regulations concerning valet parking, which in some parts of the city had become problems. But we are now getting much more control over valet parking where it is a problem.

We do require that valet parking operations do not take up private spaces on streets, but must go to a different location which frees up the parking. The situation is much different along 14th Street in our ANC

than it is along U Street, where you have problem and I have problem when I try to get to my favorite Ethiopian restaurant up there.

But our licensee's contract with Washington Plaza Hotel -- there's also additional parking in the new structure on P Street, which was the set-aside parking for restaurants. Porto has an adjoining parking lot, and so on.

So we have power of some kind when it comes to parking. And believe me, parking is an issue; always at the top of the list in our community. We think that this will have more ability to deal with it with the increase in concentration than we would otherwise.

I thank you for the opportunity of discussing this.

CHAIRMAN HOOD: Thank you.

Next, Ms. Doughty?

MS. DOUGHTY: Hello. My name is Andrea Doughty. I am Chairman of the ANC-2F ARTS Overlay Committee, which conducted an

extensive 4-month study of the Uptown ARTS Overlay District between June and September 2009.

The Office of Planning proposal in front of you closely reflects the recommendations made by the ANC-2F ARTS Overlay Committee. We believe OP's package of amendments to add flexibility on eating and drinking establishments in the ARTS Overlay where it represents both sound, balanced Zoning policy and a major improvement on the current deficient regulation in this area.

I have four points that I would like to make very briefly. First, the Committee's recommendation was that 50 percent should be the upper end of the new limit. We support OP's proposal to designate 50 percent as the maximum limit in preference to 40 percent.

Why 50 percent? Let me give you a highly stylized example that illustrates the principle while keeping the math simple. Bear

with me. Please, stop me if I'm not being clear.

Assume that you have a zoning square that has 100 linear feet and it is made up of four equal lots of 25 feet each. Under this scenario, the old 25 percent limit meant that only one lot could have an eating or drinking use. The new temporary 30 percent limit still means that only one lot can have an eating or drinking use.

A new permanent limit of 40 percent would still mean that only one lot could have an eating or drinking use. Whereas, a new permanent limit of 50 percent allows two lots to have an eating or drinking use.

That is a highly simplified example. But it demonstrates the issue that linear frontage is lumpy by definition. It's not infinitely divisible. So on a practical level, a limit of 50 percent in our view is much more workable.

I thought Allison Prince gave very

good testimony on that fact and I endorse her comments on that particular issue.

Second, on measuring the new limit square by square, this is key to achieving the original purpose of the regulation. Namely, to ensure a balanced mix of uses.

Measuring the limit on an overlay-wide basis creates iniquitous and unbalanced situations where one area of the overlay may have 80 or 90 percent of uses that are eating and drinking, while other areas may have zero, and many not be able to have them because the overlay limit has been reached.

While it may not perhaps be perfect, zoning squares are the most practical tool available on which to base measurement of the new limit and will provide much fairer and more balanced results than the current overlay-wide measurement. Others before me have made the point that we're talking about a very large overlay district here; the largest in the city, to my knowledge.

Third, on the variance test, the community support last year and now for increasing the limit to 50 percent is conditioned on replacement of the special exception provision with a variance test.

Why is the variance test important? On a very practical level, the BZA has already established at least two precedents for granting special exceptions from the former 25 percent limit. Those special exceptions were granted up to 50 percent. In other words, special exceptions were used to effectively double the former 25 percent limit.

Unless the Zoning Commission strengthens the regulations by applying a variance test to this new limit, there is no ability to guarantee that 50 percent will be a genuine, effective new maximum.

If the special exception provision were to remain, then a 50 percent limit could actually result in much higher densities of

eating and drinking uses well above 50 percent, perhaps even approaching 70 or 80 percent on some squares.

The community cannot support a 50 percent limit without confidence that 50 percent will be an effective maximum. And the variance test goes a very long way towards ensuring that it will be.

I won't get into arcane Zoning matters, but I disagree with Ms. Miller on this point.

My last point, on an issue that is not part of the package but which you've asked about and was raised by ANC-2B. It's of great importance to the community and it was part of our 2009 recommendations: the issue of removing eating and drinking establishments from the list of preferred uses in the ARTS District.

While we believe that the package of amendments in front of you should be adopted on a permanent basis on its own merit

as a sound first step, we join others in underscoring the importance of rapid action to amend the list of preferred uses as a second step that should follow closely this first step.

We urge the Commission to both support the current amendments and to request the Office of Planning to return swiftly with a proposal to amend the definition of preferred uses in the Uptown ARTS Overlay District.

I'd like to thank you all and I'd like to thank the Office of Planning that they've done on this.

CHAIRMAN HOOD: Thank you very much.

We'll go to Mr. Stephens.

MR. STEPHENS: Thank you, Mr. Chairman and the Commission. My name is Will Stephens and I serve as the Chair of the Dupont Circle ANC, ANC-2B. Our northeast end falls within part of the ARTS Overlay, as you

know.

I appreciate your indulging my suggestion to allow representatives of ANC-2F to testify before me. Because the Committee work and report was spearheaded by them, I felt they might be in a better position to answer in detail some of the questions that you might have about the origins and process that led to the current proposal.

Our ANC-2B resolution, which was passed unanimously just last night, serves as support of the Committee's work and recommendations. You have already received our letter dated June 9, 2009, which sets forth our unanimous resolution on this issue.

We do have nine members on the Commission. We had an unanimity of 8-0 because one of the Commissioners, Commissioner Bob Meehan, had step out for a personal emergency so he didn't participate. But otherwise, we were unanimous in passing this resolution last night.

As you and others have already mentioned, in part our resolution calls for redefining arts use to be supportive of arts use. With your indulgence, I'll just read our short resolution into the record orally.

ANC-2B supports the work of Logan Circle ANC Committee on the Uptown ARTS Overlay and requests that the Zoning Commission modify the text change proposed by the Office of Planning to include the elimination of bars and restaurants within the definition of contributing arts activities, as originally recommended by the Logan Circle ANC. Without such modification, the text change just to increase ABC establishments could work to the detriment of preserving space for the arts.

If the Zoning Commission cannot include this modification during its current hearing on these issues, ANC-2B recommends that any action taken by the Zoning Commission to increase the limit on eating and drinking

establishments should extend for only another 120 days to allow time for the Office of Planning to submit a new proposal that addresses this issue.

Thank you very much.

CHAIRMAN HOOD: Okay. Thank you very much.

Let me ask Chairman Reed -- I read the reports and I know pretty much who the Review Committee consisted of. But did you have other ANC members, like from 2B, also included in that Review Committee or was it just tailored to ANC-2F?

MR. REED: I'm going to let the Chairman of the Committee respond.

CHAIRMAN HOOD: The Chairman of the Committee? Okay.

MS. DOUGHTY: Thank you. There were eight members of the Review Committee. Five of those members were residents and three of those members were business owners, including a retailer, a restaurateur, an

artist, and a developer. Some people wear multiple hats, if you're adding up.

ANC Commissioners were not members of the Committee. However, the Committee reported extensively to the three ANCs that have part of the ARTS Overlay in their districts.

On three separate occasions in July, August, and September, the ARTS Overlay Committee reported to ANC-2F, ANC-2B, and ANC-1B. A rather full discussion of the issues took place at those publicly advertised meetings with the ANC Commissioners.

In addition to that, eight public hearings were held. A number of ANC Commissioners did participate in those either as speakers at those hearings or as members of the audience.

CHAIRMAN HOOD: I'll tell you my rationale for asking that question. When I look at what 2B is recommending, the elimination of bars and restaurants and this

be included, and then I look at 2F -- that's why I want to know how the group worked together.

I look at 2F; you're asking us to do the first phase and swiftly move to the second phase. But I think the Office of Planning said they're already going to do something with the list of uses. So I was just trying to see how we got to this consensus, if all of those groups worked together. But I think I'm fine with the process and I'm clear.

I just want to say this before I go to my colleagues. I have had the opportunity to go to ANC-2F. I have said this for years. You all run a very organized, tight meeting. I have actually tried to adopt what you do. If I'm not mistaken, you put a time limit on each subject matter.

MR. REED: Yes.

CHAIRMAN HOOD: You say you're going to deal with this between 8:00 and 8:10;

you're going to deal with this from 8:10 to 8:20. Am I correct?

MR. REED: That's correct.

CHAIRMAN HOOD: So you know I've been there? Okay.

Commissioners, do you have any questions?

MR. REED: I hope we treated you right.

CHAIRMAN HOOD: It's been about 4 years or so; it's been some years ago. It was dealing with the parking issue down in there. But you treated me very well.

Colleagues, any questions of this panel?

VICE CHAIRMAN SCHLATER: One question, Mr. Chairman.

Mr. Reed, I understand your point about the voluntarily agreements --

MR. REED: Yes.

VICE CHAIRMAN SCHLATER: -- on the bars and restaurants with alcohol. I think to

some extent that definitely does give you teeth on that.

But there is an existing situation that you referenced on U Street where it is hard to get parking up there. There is a parking impact. That's where you see squares that have a percentage of restaurants closer to the 50 percent already existing. So it's almost as if you can project forward what the situation is going to be like on 14th Street.

Do you think there's a difference between what's going on up on U Street --

MR. REED: Yes, I do.

VICE CHAIRMAN SCHLATER: -- versus what's on 14th Street? More parking availability, or what's going on there?

MR. REED: Actually, there is parking availability up in the U Street area. The Reeves Center has available parking.

I think the difference, with no intent to malign our adjoining ANC up there, is our ANC is more vigorous on the parking

issues. We would have established provisions in those voluntary agreements to make optimum use of parking that does not impact the area.

Apart from that, I think there are areas in our ANC which have 50 percent. The Square 241 or 242, one of those, is 50.9 percent. And yet, while it's not a big block, there aren't really parking issues that have followed from that.

VICE CHAIRMAN SCHLATER: Okay. Go ahead, Ms. Doughty.

MS. DOUGHTY: Could I just add that --

VICE CHAIRMAN SCHLATER: Sure.

MS. DOUGHTY: -- one of the sections of U Street that's most parking-challenged is identified in the Office of Planning's report as being that part of the ARTS Overlay that is already well above 50 percent.

There are a couple of block faces on U Street that are up in 80-90 percent. The

Office of Planning will correct me if I'm wrong.

VICE CHAIRMAN SCHLATER: I see one that's 96.7 percent. The next one is at 61.7 and then the next at 53.2 percent.

I think the ANCs are the ones that have their ears on the ground on this issue and they're the ones who adhere it if there were concerns about parking. So I'm not going to overdo it. I just wanted to make sure that that issue was addressed and make sure there weren't a lot of lingering concerns about that particular issue.

Mr. Pomeroy?

MR. POMEROY: Yes. I would say the areas that you're referencing are also right on top of the Metro stop, where we have been active in soliciting the extension of the Yellow Line and greater transportation alternatives so that in those areas you do have greater options. There is always going to be a limited amount of parking in a dense

urban environment.

VICE CHAIRMAN SCHLATER: Great. Thank you very much.

CHAIRMAN HOOD: Any other questions?

Commissioner Turnbull?

COMMISSIONER TURNBULL: Yes, Mr. Chair.

I just want to maybe ask all four of you -- I know two of you are backing up the variance test rather than the special exception. Are all four of you in favor of the variance test?

MR. STEPHENS: I can say that our ANC didn't take a position on that. But we generally support the Committee report with our resolution, so you can take that for what it's worth.

COMMISSIONER TURNBULL: Okay.

MR. REED: Our ANC, as you noticed, is strongly in favor of the variance test, and there are the reasons. It is very difficult

to mount a proceeding for an ANC. It has very limited resources. It doesn't have a legal staff.

And the evidentiary proof to convince the BZA of adverse impact is a very iffy thing. As Ms. Doughty pointed out, there were two cases in which the BZA granted special exceptions that doubled the concentration.

It's very difficult for the community to feel that it has any ability to have stability -- we do not want the Logan Circle area to be an 18th Street/Mount Pleasant area; frankly, we don't want it to be a U Street -- in its current condition.

The variance requirement is one which is much more rational to achieve the objectives of what we want in our area, which is to have an active and vibrant arts zone.

MR. POMEROY: I would echo a number of the comments. For me, the greatest reason that I would support the proposed variance is

the give and take that occurred in the developing out the set of recommendations. There needs to be a good balance. If you're going to be expanding it to the 50 percent then you do need to have safeguards.

I've been on both sides. I was president of a community association, then working with the Business Association. And that's part of community development; you need to come up with a balance.

This effort that they conducted came up with, I think, a very good balance that we can move forward with. And we will be back at some point to readdress these issues. It's great to see the growth that's occurred but we need to have constant management and attention.

COMMISSIONER TURNBULL: Good. Thank you.

CHAIRMAN HOOD: Any other questions?

Okay. I want to thank this panel.

We appreciate you coming down and providing us testimony.

MR. REED: Thank you for having us.

CHAIRMAN HOOD: ANC-2F, keep up the good work.

ANC-2B, I'm sure you guys do a great job too. I just haven't been there.

William Collins, Tim Christensen, Phil Piga, Amy Saidman, David Schaefer?

Do we have anyone else that would like to testify as a proponent tonight that's not on the list?

Okay. You can come on up at this time.

Anyone else?

That will be the last call for proponents. We're going to begin with Mr. Collins.

MR. COLLINS: Ready? All right. I'm Al Collins. I'm Chair of the MidCity Residents Association. My organization is a 501(c)(3) neighborhood association that's

focused on maintaining a high quality of life in the MidCity area.

We've been operating the ARTS District about 20 years. I've lived on the 1400 block of Q Street for 9 years where I own a house. A little bit more than 9 years, actually.

I'm here to say that we support the Office of Planning proposal that's being considered tonight. I want to talk a little bit about the process and make it very brief. I participated in the process and Andrea, who was the Chair, is also the Vice Chair of the MidCity Residents Association.

I think if you have the chance to look through the way the Committee was put together and the participation, I don't believe anybody could take any issue with it. In fact, I think everybody should be very impressed with it. It was extremely transparent. All the meetings were advertised. Detailed notes were taken. I

took notes a couple of times so those are probably real detailed but maybe not spelling-accurate. But it was just a really great process.

I've got to say, personally, I went into it thinking that the 25 limit was sacrosanct and should not be changed. Then I listened to all these experts, Planning, Zoning, business owners, building owners, neighbors, and people from other jurisdictions, and I learned a lot. I'm convinced that increasing the 25 limit is the right thing to do.

The organization strongly supports the 50 percent limit that we have talked about tonight. However, and I can't say this strongly enough, it has to be no more than 50 percent. And there has to be a variance process associated with it.

I've dealt with so many Planning and Zoning issues; the public space issues that when the apartment buildings that had

been built around me were supposed to have the parking that they were supposed to have. These variances are always granted and they're always treated like guidelines, ideas, or kind of guidance.

This has to be sacrosanct and it has to have a variance process associated with it, or there's really no need to go any further with this.

I'll get back to why this all started. This started many years ago when we started scratching our heads saying, "What does this 25 percent limit mean?" And with no offense to anybody here from the Planning Office, I was told repeatedly that it couldn't be enforced. It drove me crazy because nobody knew how to measure it. So we went out and measured it all. Then we were told, "Well, there's still no enforcement mechanism."

Again, if this 50 percent doesn't have an enforcement mechanism and we're not going to treat it like a rule or regulation, then

why are we wasting our time?

Our support for the 50 percent limit is totally hinged on that being an absolute number and there being a strong variance process with it.

Thank you for letting me speak tonight.

CHAIRMAN HOOD: Thank you.

Tim Christensen?

MR. CHRISTENSEN: Thank you, Mr. Chairman, members of the Commission. My name is Tim Christensen. I am Vice President of the Logan Circle Community Association and I live at 1320 13th Street Northwest.

As you probably know, LCCA was incorporated in the early 1970s and has maintained a strong and positive presence in the neighborhood ever since. I personally have lived in the neighborhood for more than 20 years.

Logan Circle Community Association participated last year in the review of the

ARTS District Overlay led by ANC-2F. That review was completed with transparency and inclusiveness, as was noted previously tonight. We endorse the recommendations of that review.

LCCA concurs with the testimony you've heard thus far tonight, including ANC-2F's views on the variance test.

We further support the Office of Planning proposal that you are considering tonight.

I wanted to make one comment. There was a question earlier from a member of the Commission, it might have been Mr. Turnbull, about second floor and upper floor uses.

I know 14th Street better than I know U Street. And I would say to you that on 14th Street, a typical use of upper floors is mixed-use development with residential and office spaces on second, third, and fourth floors.

So if you visit a number of buildings all along the 14th Street corridor, what you'll find is retail on the first floor including art galleries, restaurants, and bars, and upper floors that are occupied by offices and residences.

LCCA endorses and promotes that sort of mixed-use development. We have found, at least on 14th Street, that use of second, third, and fourth floors for bars and restaurants is the exception rather than the rule.

Thank you very much.

CHAIRMAN HOOD: Thank you very much.

Ms. Saidman?

MS. SAIDMAN: Okay.

CHAIRMAN HOOD: There we go.

MS. SAIDMAN: I'm Amy Saidman. I'm a member of the MidCity Business Association. I've been invited here to speak on behalf of an artist.

I'm the Director of something called Speakeasy DC. We're a DC supported, nonprofit performing arts organization. We've been operating and producing shows in that area, in the U Street/14th Street corridor for the last 12 years. We have a following of about 5,000 patrons a year.

We could not have survived for the past 12 years without the partnership of -- I call it a partnership. Actually, it's just with restaurants and businesses. We've been in four venues: Black Cat Club, HR-57, Station 9, and Town Danceboutique.

What is unique about that is that we work on a shoestring budget. But what they have provided is what theater spaces cannot. Theater spaces need us to pay. They have no other way of making any money so it has to come out of our budget.

But when we partner with these restaurants and bars, we have something they want. We bring people. We bring people often

on nights that they don't have anybody. And they have a product; so they have a reason that if they have the people, they can sell their product and it's a win-win situation.

If I had to depend on paying for actual theater spaces that I had to rent that are in competition with other performance groups, I don't think we would be able to operate.

So I speak on behalf of the fact that these businesses aren't just for drinking and eating necessarily, that they do provide a space for the arts. And secondly, that they are community spaces. The kind of arts that we do is people get up and tell true stories about their lives. We do a dozen a year in that neighborhood.

Thirdly, that when the neighborhood is vibrant, and people have a place to go before the show and after the show and they see what's going on, maybe they'll come to that store the next day. It makes for just a

much more -- what's the word? Anyway, you get the point. It's an experience. It does become a destination if it's vibrant and there's places to go, and a variety of places to go that appeal to different people and different tastes.

CHAIRMAN HOOD: Thank you very much.

Mr. Schaefer?

MR. SCHAEFER: Hi. Good evening. Thank you for the opportunity to testify before you tonight. My name is David Schaefer. I own Urban Essentials furniture store on U Street.

We were one of the pioneers of U Street. I first signed a lease there 12 years ago. It was a boarded up building, a boarded up neighborhood. If someone would have told me tonight we'd be having a discussion whether or not to allow more business to come into my neighborhood, I would have told them they were nuts.

As a matter of fact, people have told me I was nuts for opening up a store in that neighborhood and that nobody would shop there. Coincidentally, tonight a 35,000 square foot furniture store is opening at 14th and T Street. So I guess now the big box stores want to be in my neighborhood and that's fine.

What's really important to me as a business owner -- I sit as a member of the MidCity Business Association. I'm on the Board of Directors for the U Street proposed bid. And I've always been a vital member of our business area when there was no business.

What's so obvious to me is that people going into restaurants in my neighborhood who walk by my front window, as a retail daytime business, see a storefront. And they say, "Oh, I want to go back there tomorrow." Whether it's Ben's Chili Bowl which drives tons of business to my store, or whether it's Busboys and Poets, Creme, or

whomever, it makes U Street a vital neighborhood.

I bought a house in Logan Circle in 1990. People said I was crazy for that, too. I opened a U Street business; crazy for that, too. I now live at 11th and W. I honestly have more parking problems because of the churches on my block than I do because of the restaurants on my block. I know this is not about that.

Honestly, I look forward to every new restaurant that opens in our neighborhood. It becomes a vital, interesting, and fun activity to go to all the new places. It brings other people into our neighborhood.

In addition, I know this isn't about arts, but Sophisticated Ladies is going on right now. Every night we get tons of women from Bethesda, Rockville, and wherever going to the show, going to dinners, and coming in and stopping in our store, saying, "We didn't know you were here." And they do

that around the whole neighborhood.

To limit the amount of restaurants and leave vacant spaces or expect in fact that other spaces will just pop up when they haven't popped up yet is not realistic. I think that any good, sensible, honest business owner who comes to the neighborhood to support our neighborhood is a viable, good thing to do.

On a case-by-case basis where it's not viable, get rid of those business owners. But don't prohibit businesses like that Italian restaurant from coming, because that's so exciting and so wonderful to think that they're going to go into this dry cleaner that, God bless them, nobody would go into. And make that horrible block nice again, and that more people would want to live there, eat there, and shop there. That's why we're there. We started it and I'm glad I'm there.

Thank you for letting me be here.

CHAIRMAN HOOD: Okay. If you can

introduce yourself?

MR. JACOBSON: Thank you. My name is Jack Jacobson. I'm an ANC Commissioner in ANC-2B. I'm representing myself and my district ANC-2B04.

I appreciate the Chairman's and the Commission's indulgence for allowing me to testify this evening. I hadn't planned to. But so many Commissioners brought up the issue of parking that I sort of wanted to address that, because I think I kind of bring of different view that my constituents have talked to me at length about.

I first want to thank and express my appreciation for Ms. Doughty and the work that her Committee did in ANC-2F. I'm thrilled at the entire process and the outcome of it. I can't praise her enough so I will every opportunity.

Speaking about cars, I am originally from South Dakota where the driving age starts at 14, which means I've been

driving for about 20 years, just under that. When I lived in South Dakota I lived two blocks from campus when I went to college. And I drove to campus every single day; I drove home after classes were out.

When you encourage things like driving by encouraging parking, you're going to have more people driving and you're going to have more people parking. When you discourage it, you'll have fewer people driving, fewer people parking, and fewer associated problems that come with that.

I moved to DC in 2000. When I moved here I had a car. When I moved to Dupont I parked it at a friend's house. I left it there for months and months. When I went back to use it to go on a run to maybe Target or something, because the only Target at the time that existed was out in Virginia, it no longer ran. So I got rid of it.

The great thing about living in Dupont in particular and in the ARTS Overlay

District, you don't need a car. You've got grocery stores. You've got farmers' markets.

You've got Metro. How many Metros are bordering the district? You've got Dupont on the east. You've got Columbia Heights on the north. You've got Convention Center on the southeast. And right in the middle of everything you have Cardozo/Shaw.

In addition to all of the great Metro access, you have almost every major bus line going both east/west and north/south. We have bike lanes everywhere. Dupont has worked very hard to incorporate additional bike lanes into every single new traffic pattern that we're setting up. We want to encourage anything but cars in our neighborhood.

You also have Zipcars. We have dozens and dozens and dozens of Zipcar locations all throughout the ARTS Overlay District. There's no reason to encourage people to drive cars from other neighborhoods to Dupont. Let's get our people from Dupont

to drive to other neighborhoods and give them those problems.

Also, what we're doing here is we're setting broader public policy here about making cities truly liveable and sustainable. Earlier today I sat down with the executive director of Living City Block, which I think Mr. Pomeroy also met with this week. Living City Block is a brand new organization. They're doing a test case in Denver to take a city block, redevelop it --

I'm sorry. May I go over a couple of seconds? Okay.

-- redevelop it, make it available for residences, businesses of all kinds, and make it environmentally sustainable. The second place that they're looking at after they do their Denver test case is 14th and U. I mean, the Metro is there; everything is there for sustainability.

When you bring cars, you bring problems. Fewer cars mean fewer problems like

pollution reduction. I'm not talking just air pollution, but also noise pollution and visual pollution by all these cars; public safety issues with accidents and drunk driving.

Then there is a public cost to operating all these roads and having all this parking. On-street parking is really a public amenity that we're providing to people with cars. Me and the tens of thousands of people within the ARTS Overlay District who don't have cars are really subsidizing those fewer thousands of people who do have cars. I would just make sure that you consider that as well.

One last point I'm going to make; 17th Street is the district I represent. We are actually in full process of shutting down 17th Street for a street festival that's going to be walking only.

I can't tell you how excited people are about it. I have not heard one person say to me, "We want to have more cars on 17th Street. We need to make sure that we make it

good for parking." Everyone has said, "We want more street festivals. Shut down the street and let's have it a liveable, walkable community."

Thank you for your indulgence for going over and thank you for holding this hearing this evening. I'm happy to answer any questions.

CHAIRMAN HOOD: Okay. Thank you all for your comments.

I will tell you that the former Chair of this Commission would have loved your testimony. I'm sure Commissioner May does because you're talking about bicycles. But anyway, that's a side note.

Commissioners, any questions for this panel?

Commissioner May?

COMMISSIONER MAY: Yes. I had a question about -- I'm sorry, the gentleman who owns Urban Essentials? Mr. Schaefer.

Your testimony was very specific to

encouraging restaurant development. But I don't recall you saying specifically anything about how much.

MR. SCHAEFER: Oh, I didn't specify how much. I would be glad to go to the 50 percentage mark. I think more is better, up to 50 percent. I think it's unfair to assume that we --

COMMISSIONER MAY: But soon there won't be room for furniture stores.

MR. SCHAEFER: Well, I think there's plenty of room, actually. It's unfortunate but for example, Go Mama Go is closing. There's another store I won't mention that's about to go out of business as well that's a furniture store. We've had tanning salons close. We've had clothing stores close.

It's hard daytime retail business there. Not many stores make it. We one of the two longest retail stores in the area. It's very difficult.

COMMISSIONER MAY: But you're okay up to 50 percent?

MR. SCHAEFER: I am.

COMMISSIONER MAY: How do you feel about variance versus special exception?

MR. SCHAEFER: I'm not a lawyer and that's above my purview, so I really wouldn't want to comment.

I do know I did testify with Andrea's Committee. I met her at our local neighborhood, thank God, Doug Park. It's wonderful to have so much involvement in that neighborhood and so many people taking interest in that neighborhood. I'm on the busiest restaurant block probably and that only helps support my business, frankly.

COMMISSIONER MAY: Okay. Thanks.

CHAIRMAN HOOD: Any other questions for this panel?

Okay. Thank you very much for your testimony.

That was all that I had as

proponents. Now we'll go to opponents.

Those that are in opposition, raise your hand?

Mr. Dickson, I see him. I have four people on the list but I only see Mr. Dickson.

You come forward.

Anyone else who is in the audience who is in opposition, if you can come forward at this time?

I think the other three may have left. You can have it. If you can turn your microphone so we can get started?

MR. DICKSON: Can you hear me?

CHAIRMAN HOOD: Yes.

MR. DICKSON: My name is Wayne Dickson. I live in the 1400 block of Q Street Northwest. I've been a resident there for 25-26 years. I'm here representing myself. I'm without portfolio.

Over the many, many years I've served on a number of commissions, boards, and

positions in my community, including President of Logan Circle Community Association, etcetera.

My purpose for being in opposition to this is that I do not believe -- and I will tell you, for well over 30 years I've been a retail consultant and a retail broker specializing in retail leasing.

I think it is beyond imagination about how this body or any governmental body can say with certainty, or even a good guess, that you can accurately tell a community what its retail/business mix can be. You can't do it. And you will actually harm the development of business in my community if you restrict them to 50 percent restaurants at this time.

When I was a little boy, my grandfather would walk me up and down 14th Street. We'd take the trolley car from Capitol Hill and he'd walk me up. It was like this. And we would go and look in one

gorgeous automobile showroom after another, one after another. Studebaker, Dodge, Plymouth, Chrysler. On the side streets there were these shops specializing in auto repair, tires, and all sorts of things.

That was then. This is today. Today in our market the only thing working is food and beverage. We can get no soft goods, meaning clothing, shoes. It doesn't exist. We've got one soft goods retailer looking on 14th Street, but not very seriously.

So if we limit it to 50 percent at this time, we're going to shutter a lot of buildings. And shuttered buildings bring more shuttered buildings.

I am in full support of what the Office of Planning has done. In my opinion, the greatest organization in the city.

I'm in full support of what the ARTS Overlay Committee has done; incredible work. You can't even imagine how hard they worked.

But the belief that you can say with certainty that only 50 percent of the businesses on any given block can be restaurants, I'm telling you, you just aren't that smart. No governmental body is that smart. So I would really urge you to take a real, real hard look at the kind of decision making you're doing. Because you are going to harm retail business development.

What I'm hearing from my good friends is, "We want arts. We want arts in there." Well, so do I. I love the arts. But let me tell you something. I don't know of a single arts organization that can pay the going rate on 14th Street right now, which is $45 triple net at a minimum. They can't afford to be there. I'm very sorry about that but's not going to happen. They have to be second floor or third floor, not first floor. That is the nature of the business.

That's my message and thank you for listening.

CHAIRMAN HOOD: Thank you very much.

Commissioners, any questions of Mr. Dickson? Any comments?

MR. DICKSON: Am I dismissed?

CHAIRMAN HOOD: I thought you wanted the other three's times so I was going to let you have that. All right. Thank you very much. We appreciate you coming down.

Okay. That's it. Do we have anything that we've asked for or anything that we need to conclude?

I'm sure we'll be dealing with this at one of our upcoming meetings.

Anything else before us tonight, Ms. Schellin?

MS. SCHELLIN: I just want to clarify that the record is closed.

CHAIRMAN HOOD: The record is closed.

MS. SCHELLIN: If the Commission and OP would like, we could put this on for

June 28 unless OP would like to wait longer. If June 28 is good, we'll put this on for consideration for proposed action at our June 28 meeting.

Again, the record is closed so no further submissions will be accepted.

CHAIRMAN HOOD: Okay. I will tell you that we've had a lot of great views and a lot of good testimony provided tonight. I know my colleagues and I appreciate the insight and are looking forward to deliberating this on the 28th.

Thank you, everyone, for your participation.

This hearing is adjourned.

(Whereupon, at 8:34 p.m. the hearing was concluded.)

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