

D.C. OFFICE OF ZONING  
**BEFORE THE ZONING COMMISSION  
OF THE DISTRICT OF COLUMBIA** PH 12: 29

Application of )  
Station Holdings LLC)

ZC Case No. 05-37

**MOTION OF  
ADVISORY NEIGHBORHOOD COMMISSION 6A AND  
STANTON PARK NEIGHBORHOOD ASSOCIATION TO  
REVIEW THIS APPLICATION IN A  
TWO STAGE PROCEEDING**

Advisory Neighborhood Commission 6A (ANC 6A) and Stanton Park Neighborhood Association (SPNA) are asking the Zoning Commission to determine that the application in this proceeding should be reviewed in a two-stage Planned Unit Development (PUD) process because of the circumstances and issues surrounding this proposal.

**BACKGROUND**

Section 2402.1 of the Zoning regulations provides that the PUD process may be either a one-stage or a two-stage process<sup>1</sup>. Section 2402.3 provides that an applicant may elect to file a single application for consolidated PUD review, consolidating the two-stage review into one proceeding. However, that election on the part of the applicant is not conclusive, because “the Commission reserves the right to direct an applicant to revise a one-stage application into a two-stage application, if in the opinion of the Commission the circumstances and issues surrounding the proposal require a two-stage review”

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<sup>1</sup> §2402.2 The two (2) parts of a two-stage PUD shall be as follows:

(a) The first stage involves a general review of the site's suitability for use as a PUD; the appropriateness, character, scale, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with city-wide, ward, and area plans of the District of Columbia, and the other goals of the PUD process [emphasis supplied]; and

(b) The second stage is a detailed site plan review to determine compliance with the intent and purposes of the PUD process, the first stage approval, and this title.

(§2402.6).

The circumstances and issues that introduce complexity to this proceeding are due in large measure to six significant considerations:

1. The H Street NE Neighborhood Commercial Overlay, together with the H Street Strategic Development Plan<sup>2</sup> and the Comprehensive Plan<sup>3</sup> introduce upzoning considerations and design requirements that are not part of a normal PUD proceeding.
2. The applicant is proposing upzoning 36% of the property to C-3-C even though 45% of the property was upzoned from C-2-A to C-2-B in 2006 as a result of final order and rulemaking for the H Street NE Neighborhood Commercial Zoning Overlay District.
3. This appears to be the only square in the City on which C-3-C zoning is proposed on the same square where R-4 townhouses exist.
4. The applicant has failed to address §1305.1 of the Zoning Code, which requires matter-of-right heights and densities be used as the guidelines for the Planned Unit Developments within the boundaries of a Neighborhood Commercial Overlay District (See related motion addressing the §1305.1 issue).
5. The proposed upzoning will encourage continued land speculation on H Street and thereby hinder the rehabilitation of the corridor by encouraging property owners to keep their properties vacant and unimproved.
6. The applicant has attempted to justify the upzoning only in terms of height needed to create a “Western Gateway” with the building across the street, but has not justified why additional *density* is required. ANC 6A and SPNA believe that the applicant must justify this additional density in its upzoning request or use the upzoning to receive additional height without any additional density.

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<sup>2</sup> Zoning Commission Order No. 04-27 (Jan. 9, 2006) at 1,5.

<sup>3</sup> *Comprehensive Plan Amendment Act of 2006*, 10 DCMR §§ 100-1930, as amended, published at 54 DCR 924-928 (Feb. 2, 2007). The 2006 Revised Comprehensive Plan became effective on March 1, 2007. ANC 6A’s Statement in Support refers to the page numbers of the Comprehensive Plan Amendment Act of 2006 as transmitted to the D.C. Council from the Office of Planning.

Because this case involves many unique and complicated circumstances, ANC 6A and Stanton Park Neighborhood Association believe that issues related to scale and density should be resolved before the Zoning Commission considers whether the project's detailed design and community amenities merit additional height and density under the Planned Unit Development process.

**THE CHARACTER, SCALE, AND DESIGN OF THIS PROPOSAL ARE  
INCOMPATIBLE WITH CITY-WIDE AND LOCAL PLANS**

Station Holdings LLC is proposing a structure that is 72% greater than the density of what is allowed as a matter-of-right (390,124 sq. ft. vs. 226,223 sq. ft.) with 107,257 sq. ft. of the incremental density attributable to the PUD and the 56,635 sq. ft. due to the proposed upzoning of 36% of the lot to C-3-C. The C-3-C upzoning request was made less than 1 year after the northern 42,263 sq. feet of the property was upzoned from C-2-A to C-2-B as a result of the adoption of the H Street Overlay. This development is inconsistent with the 2007 Comprehensive Plan, the H Street Strategic Development Plan and the H Street N.E. Neighborhood Commercial Zoning Overlay District and good urban planning principals.<sup>4</sup>

**Allowing C-3-C Zoning on a square of 2-3 Story Rowhouses and R-4 Zoning is Bad Urban Planning and is Inconsistent with the Controlling Plans**

Station Holdings has proposed upzoning 36% of the site from C-2-A and C-2-B to C-3-C on a square with R-4 zoning. ANC 6A and SPNA can find *no* examples in the city where C-3-C and R-4 coexist on the same square. Putting these two incompatible zones on the same square violates the Comprehensive Plan's intent of "breaking up" larger buildings to make them smaller and better able to integrate with older smaller buildings as well as avoiding sharp contrasts in scale and character. The Comprehensive Plan states:

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<sup>4</sup> It should be noted that the 2007 Comprehensive calls for the implementation of the H Street Strategic Development Plan, so satisfying provisions H Street Strategic Plan is required for a development to be "not inconsistent" with the Comprehensive Plan.

**Large Site Development: UD-2.2.8**

Ensure that new developments on parcels that are larger than the prevailing neighborhood lot size are carefully integrated with adjacent sites. Structures on such parcels should be broken into smaller, more varied forms, particularly where the prevailing street frontage is characterized by small, older buildings with varying facades.

**NoMA/Capitol Hill Transition Areas: CH-1.1.5:**

Improve buffering and urban design transitions between the emerging office and high-density residential corridor north of Union Station ("NoMA") and the adjacent row house neighborhoods of Capitol Hill. Use zoning, design guidelines, historic preservation review, and other measures to avoid sharp contrasts in scale and character where high density and moderate density areas abut one another. 1608.6

**The Requested Density Violates the Comprehensive Plan's Directive to Use Zoning As a Tool to Protect Neighborhoods Against High-Density Developments**

The Comprehensive Plan calls for the protection of medium density residential neighborhood through zoning by stating:

The residential character of neighborhoods must be protected, maintained and improved. Many District neighborhoods possess social, economic, historic, and physical qualities that make them unique and desirable places in which to live. These qualities can lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods attractive. These pressures must be controlled through zoning and other means to ensure that neighborhood character is preserved and enhanced. 218.1

In addition the Comprehensive Plans calls for zoning in Capitol Hill to maintain moderate densities. The Plan specifically states:

**Conserving Residential Uses: CH-1.1.1**

Ensure that the Comprehensive Plan and zoning designations for Capitol Hill neighborhoods sustain its moderate density land use pattern. 1608.2

Furthermore, the H Street N.E. NC Overlay states in the introduction of the Zoning Order<sup>5</sup>:

The HS Overlay was designed in conformance with the Comprehensive Plan for the National Capital ("Plan"). The Generalized Land Use Map shows the entire affected corridor as a mixed use combination of moderate-density commercial and moderate-density residential uses. The Overlay would maintain densities and uses appropriate

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<sup>5</sup>

Zoning Commission Order No. 04-27, January 9, 2006.

for these categories.

The upzoning of the Northwest corner to C-3-C on a square containing R-4 zoning does *not* preserve and enhance neighborhood character, sustain a moderate density land-use pattern, or maintain moderate density commercial and residential uses and therefore is not consistent with the Comprehensive Plan.

#### The Proposed PUD Violates Section 1305.1 of the Zoning Code

As stated in our *Motion to Require the Applicant to Submit a Revised Application to Address Section 1305.1 of the Zoning Code*, the intent of §1305.1 is to restrict PUD proposals in NC Overlay Districts to matter-of-right height and floor area limits. In contrast, the applicant has proposed a PUD that does not address §1305.1 because it fails to present an analysis and design based on the matter-of-right height and floor area areas for the existing C-2-A and C-2-B zoning. Instead, the applicant is asking the Zoning Commission for a square footage that exceeds the maximum PUD density that would be received if the project were located outside the boundaries of a NC Overlay District.

#### The Proposed Upzoning Will Encourage Further Land Speculation and Hinder the Rehabilitation of the Corridor

The existing vacancy rate for lots within the HS Overlay demonstrates that there is no need to build additional floor area at the proposed development. The D.C. Department of Consumer and Regulatory Affairs (“DCRA”) and D.C. Office of Tax and Revenue (“OTR”)<sup>6</sup> have classified 38 lots in the HS Overlay as vacant for purposes of real property tax assessments.<sup>7</sup> Even more properties that do not qualify for Class 3 vacancy classification are actually vacant.<sup>8</sup>

Moreover, in the HS Overlay area, upzoning has fostered land speculation without

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<sup>6</sup> Both DCRA and OTR are involved in the identification, classification and registration of properties as Class 3 vacant properties. See <http://otr.cfo.dc.gov/otr/cwp/view,a,1330,Q,609719.asp>.

<sup>7</sup> D.C. Dept. of Consumer and Regulatory Affairs, *Vacant Properties Listing* 20-21 (March 19, 2007), [http://dcra.dc.gov/dcra/cwp/view,a,3,q,625194,dcraNav\\_GID,1691,dcraNav|33420|.asp](http://dcra.dc.gov/dcra/cwp/view,a,3,q,625194,dcraNav_GID,1691,dcraNav|33420|.asp).

<sup>8</sup> DCRA and OTR do not consider properties advertised for sale within a certain time period before their evaluation to be vacant for purposes of real property tax assessments.

reciprocally benefiting the District or the neighborhood. For example, lots in square 752 were upzoned and approved for a PUD in 1988.<sup>9</sup> The Zoning Commission extended the PUD approval in 1991.<sup>10</sup> The upzoning substantially increased the scale of potential development on Square 752 and, as a result, the owner at that time was able to dispose of the property at a substantial profit even though the lots remained underused as a parking lot.

In contrast to the Western End of the Corridor, the Eastern end of the H Street has seen healthy redevelopment because it has been free of land speculators who envision increased density and profits through upzoning. No fewer than eight buildings have been renovated.<sup>11</sup>

Granting the increased density associated with the proposed upzoning for this property will likely fuel land speculation and further aggravate the problem of vacant properties in the Western End of the Corridor. For developers, this upzoning cycle facilitates the process of aggregating properties, upzoning them and demolishing the existing historic building stock in favor of oversized structures that will compensate the developers with the oversized profits they seek at the expense of the vibrant communities they decimate. Moreover, continuous upzoning encourages property owners to keep their properties vacant and unimproved because the expected value of the land does not justify rehabilitating existing 2 and 3 story buildings.

#### Large Scale Development Can Occur on H Street without Increasing Densities Through Upzonings

Upzoning is an extreme measure that is not necessary to achieve large-scale improvements or development on H Street. For example, the recently approved 601-645 H Street project was designed without upzoning or PUD applications,<sup>12</sup> and will likely result in a development that will benefit the community as well as the developer. In

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<sup>9</sup> Zoning Commission Order No. 591 (Oct. 17, 1988).

<sup>10</sup> Zoning Commission Order No. 591-B (Aug. 5, 1991).

<sup>11</sup> See Erin Killian, *One bar at a time, Englert transforms the spirit of H Street*, Washington Business Journal, Feb. 16, 2007.

<sup>12</sup> See BZA Case No. 17521.

addition, the Steuart Development on Square 776 (300 block of H St. NE) received approval for the PUD (ZC Case 06-01) on December 11, 2006, in a case where an upzoning was originally proposed but later withdrawn. Furthermore, the 60,000 square foot Atlas Performing Arts Center—is part of the development occurring without upzoning.<sup>13</sup> By contrast, the proposed Station Holdings development at Capitol Place, which will still be over 330,000 sq. ft. without the proposed upzoning, threatens the uniformity and consistency of the HS Overlay with anomalous pinpoint rezoning.

The Zoning Commission should consider additional height separately from additional density when considering the C-3-C upzoning request

The proposed upzoning would allow additional height and additional density. So far, the applicant has justified the upzoning only in terms of needing additional height to complete the H Street “Western Gateway”, and has been silent on why this site should receive additional density. ANC 6A and SPNA believe that there are different consideration associated with increasing height and density that may justify different outcomes for the maximum height and density of this project.

Page 38 of the H Street Strategic Development Plan specifically addresses how this site should be developed:

**Western Gateway Site - 200 Block Southside**

The Plan calls for the assembly of several lots and their development to a mid-rise (6-8 story) building to accommodate mixed income residential and/or office uses with a retail or restaurant use at the corner of 3rd and H Streets. The building should be built to the property line on H Street with the mass of the building placed as far to the north of the site as possible.

As shown on the applicant’s Exhibit A to the September 11<sup>th</sup> filing, the mass and height are concentrated on the northeast portion of the property, away from the existing R-4 townhouses on this square. In addition, the building as viewed from the H Street Bridge does not exceed 8 stories. Thus, ANC 6A and SPNA believe that the height of the

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<sup>13</sup>

See [www.atlasarts.org](http://www.atlasarts.org).

proposed building is consistent with H Street Strategic Development Plan.<sup>14</sup>

Because the applicant has not justified the need for additional density, ANC 6A and SPNA ask that the Zoning Commission to only consider granting an upzoning for purpose of allowing additional height to achieve the Western Gateway concept, and if the upzoning request is granted, to deny the applicant any additional density that could result from a upzoning the northwest corner of the site to C-3-C. If the Zoning commission grants the applicant's upzoning request solely for the purpose of increased height to achieve the Western Gateway, we request that such upzoning be specifically limited to 100 feet and not be subject to any future increase through amendatory proceedings. To so bifurcate an upzoning request is unusual and will require careful consideration of whether such limited upzoning would be compatible with the uniformity and consistency of the HS Overlay, and would not undermine the thoughtful, comprehensive zoning changes embodied in the HS Overlay

## CONCLUSION

A separate and initial First Stage PUD proceeding will allow careful consideration of whether upzoning undermines the restrictions, policies and goals embodied in the Comprehensive Plan and HS Overlay. That process requires separate considerations of the increased height and increased density associated with upzoning and also allows careful consideration of whether the applicant should be granted additional density separately from additional height. Careful consideration of the circumstances and issues presented by this application requires the attention that can only be afforded in a two-stage review proceeding.

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<sup>14</sup> The 90-foot height would be allowed with a PUD, under existing zoning. The H street Overlay awards a height bonus of 5 feet for providing 14-foot ceiling heights for ground floor retail space, which is proposed for this project. It is significant that the developer is not asking to use the full 130 foot height that could be allowed under C-3-C, only the amount of height necessary to accomplish their architect's proposal for the H Street western gateway.

Respectfully submitted,

Advisory Neighborhood Commission  
6A

By:   
Terres (Drew) Ronneberg, Chair  
ANC 6A Economic Development and  
Zoning Committee and designated  
representative for ZC Case No. 05-37.

Stanton Park Neighborhood Association

By:   
Monte Edwards, Co-chair  
SPNA Land Use Committee

September 17, 2007