

RECEIVED

D.C. OFFICE OF ZONING

2007 SEP 17 PM 12:28

**BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA**

Application of)
Station Holdings LLC)

ZC Case No. 05-37

**MOTION OF ADVISORY NEIGHBORHOOD COMMISSION 6A
AND STANTON PARK NEIGHBORHOOD ASSOCIATION TO
REQUIRE THAT THE APPLICANT SUBMIT A REVISED
APPLICATION TO ADDRESS SECTION
1305.1 OF THE DC ZONING CODE**

Advisory Neighborhood Commission 6A (ANC 6A) and Stanton Park Neighborhood Association (SPNA) are asking the Zoning Commission to require Station Holdings LLC to submit a revised application to address Section 1305.1 of the DC Zoning Code.

Section 1305.1 is relevant to this case because Station Holdings LLC is seeking approval of a Planned Unit Development within the boundaries of the H Street N.E. Neighborhood Commercial Overlay District.¹ Section 1305.1 reads:

In the NC Overlay District, the matter-of-right height and floor area ratio limits shall serve as the guidelines for Planned Unit Developments [emphasis added].

The word “shall” is defined in §199.2(d) of the DC Zoning Code as “mandatory and not discretionary.” Despite the fact that the Zoning Regulations require the applicant to demonstrate how their PUD proposals is guided by the matter-of-right height and floor area ratio limits, the applicant has so far failed to comply with this section.

ZONING COMMISSION
District of Columbia

CASE NO. 5-37

EXHIBIT NO. 93

¹The Station's Holding LLC property on Square 752 fronts on H Street N.E. According to Z.C Order No 04-27, “This rulemaking establishes the H Street N.E. Neighborhood Commercial Overlay District that applies to all lots fronting onto H Street N.E. from 2nd Street to 15th Street and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B.” The property is a split-zoned lot with the C-2-B zone fronting H Street N.E. **ZONING COMMISSION**
District of Columbia
CASE NO.05-37
EXHIBIT NO.93

HISTORY AND INTERPRETATIONS OF §1305.1 IN THE CASE LAW

Section 1305.1 was part of the Neighborhood Commercial Overlay District regulations incorporated into the Zoning Code as part of ZC Order 616. The Zoning Commission created NC Overlay districts to “to preserve the scale, character, and prevalent existing uses” of Neighborhood Commercial Areas. In fact, §1305.1 exists in the common text of all NC Overlays because the Zoning Commission recognized that the additional density permitted by a PUD was a threat to the scale and character of these districts.

The fact that PUDs threaten the scale and character of Neighborhood Commercial areas is illustrated by the history of the DuPont Circle Overlay District. In the 1970's, the Dupont Circle area experienced a significant encroachment of a number of large buildings due to the area's permissive zoning present at the time. In order to conserve the predominately residential character of Dupont Circle, preserve the historic district and keep the central business area from expanding into the area, the Zoning Commission substantially downzoned all of Dupont Circle in 1979 as part of ZC Order 282.² After the downzoning, PUDs proliferated in Dupont Circle Area in the 1980s because the PUD process offered the only viable alternative of receiving additional height and density without petitioning for a traditional map amendment.³

In order to preserve the scale, character and prevailing uses of the Dupont Circle area, the Zoning Commission created the Dupont Circle Overlay District in 1991 which incorporated §1503.1 which states, “In the DC Overlay District, the matter-of-right height and floor area ratio limits shall serve as the maximum permitted height and floor area ratio for a planned unit development.” This strict prohibition against additional height and density in the DC Overlay District was a direct result of the proliferation of PUDs in the 1980s that were out of scale and character with the surrounding neighborhood.

Although §1305.1 does not entirely prohibit PUDs from receiving height and density above what is allowed as matter-of-right in NC Overlay Districts like §1503.1, the

²ZC Order 705. p.4

³*Ibid.*

Zoning Commission should be aware that it has previously interpreted the word “guidelines” in §1305.1 to be closer to word “requirements” than “suggestions.” In ZC Case No. 04-16 the commission wrote “The TK Overlay will subject properties located in the Central District limits to those restrictions applicable to all neighborhood commercial overlay districts that: ... Limit height and floor area ratios in Planned Unit Developments to the maximum allowed as a matter-of-right in the underlying zone district per Section 1305.1.”

ANC 6A and SPNA believe that §1305.1 does allow the Zoning Commission some flexibility in granting applicants additional density for PUDs in a NC Overlay District, but that the hurdle for granting this density is much higher than for PUDs outside of NC Overlay Districts. We believe that in these cases, applicants must demonstrate a compelling reason why matter-of-right height and density guidelines should not be followed. In ZC Case #05-37, we believe that the applicant can provide a compelling rationale for why the building should be taller than what is allowed as a matter-of-right. If the building were built to a height of 65 feet, it would only be a visually unappealing one to two stories tall at the H Street Overpass. Furthermore, the 65 feet height wouldn't allow the building to be part of the “Gateway” envisioned in the H Street Strategic Development Plan for the 200 block of H Street NE because it wouldn't be able to approach the height of the Abdo tower to the North.

Although in this case, there is a good rationale to permit a building height above what is allowed as a matter-of-right, the applicant has so far failed to present a compelling case as to why the project should be allowed to increase the density above what is allowed as a matter-of-right (226,223 sq. ft). In fact, the applicant has proposed a project with a density 72% greater than what is allowed as a matter of right and even exceeds the density allowed under a PUD without an associated map amendment (333,489 sq. ft. allowed under PUD vs. 390,124 sq. ft. proposed). The proposed building completely overwhelms the 2-3 story rowhouses on the Square and as such does not “preserve the scale, character, and prevalent existing uses” of existing structures.

HOW §1305.1 INTERACTS WITH §1326.1(a) OF THE HS OVERLAY DISTRICT

Subsection 1326.1(a) of the HS Overlay District states, "The additional height and floor area above that permitted as a matter-of-right shall be used only for housing or the preferred uses listed in §§ 1322.2 and 1323.2." If §1326.1(a) is read in the absence of §1305.1, one might conclude that the height and density guidelines for PUDs in the HS Overlay district are the maximum allowable. However, there is no explicit or implicit language in §1326.1(a) that supersedes §1305.1. Rather, when subsection 1326.1(a) is read in the context of §1305.1, it is clear that matter-of-right heights and densities are the standards for PUDs in the HS Overlay District, and in the case of where there is a compelling rationale to exceed these guidelines, any additional height and density must be used for housing or the preferred uses listed in §§ 1322.2 and 1323.

CONCLUSION

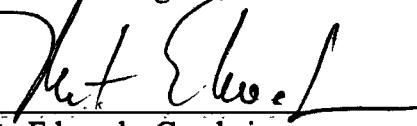
ANC 6A and SPNA ask that the Zoning Commission require the applicant comply with §1305.1 by either dismissing the current case or continuing it until the time the applicant modifies the application to comply with §1305.1.

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