



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

Capitol Place

Case No. 05-37

Statement of Monte Edwards
Representing the
STANTON PARK NEIGHBORHOOD ASSOCIATION

October 1, 2007

My name is Monte Edwards. I serve as Co-Chair of the Land Use Committee of the Stanton Park Neighborhood Association (SPNA). SPNA is a civic association that works for improvement of the Stanton Park neighborhood by representing the interests of the community in the area bounded by East Capitol Street, 10th Street NE, H Street NE, and 2nd Street NE. My testimony today is in support of the settlement that is described in the joint letter that was submitted by the Mediator.

This is the first case to involve a Planned Unit Development (PUD) and associated Zoning Map Amendment since adoption of the H Street Neighborhood Overlay District. The Overlay, together with the H Street Strategic Development Plan (Zoning Commission Order No. 04-27, Jan. 9, 2006) and the Comprehensive Plan (*Comprehensive Plan Amendment Act of 2006*, 10 DCMR §§ 100-1930, *as amended, published at* 54 DCR 924-928 (Feb. 2, 2007) *effective* March 1, 2007) introduce upzoning considerations and design requirements that are not part of a normal PUD proceeding. From a policy perspective, this case will provide a template for further development of the H Street Corridor.

Compliance With The Design Guidelines

An essential part of the applicant's presentation is the analysis of the Design Guidelines in terms of applicability and the manner in which compliance was achieved or deviation was justified. The uniqueness of this property and its relation to its neighbors determined the need to deviate from a limited number of those Design Guideline, and SPNA would urge the Commission to clearly state that any deviation from the Guidelines in a future case cannot rely

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on this case for the proposition that compliance with all of the Guidelines is not required. Rather, this case stands for the proposition that any deviation in future cases must satisfy a substantial evidentiary burden to establish uniqueness and an overriding public interest in allowing such deviation.

Upzoning Requires Careful Consideration of §1305.1

The HS Overlay came about through a comprehensive and integrated planning process. The western portions of the HS Overlay was upzoned in exchange for text amendments that encourage the reuse of the historic building stock on H Street in the expectation that the zoning map would remain stable for a significant period of time. This project is proposed to have a height and density above the matter-of-right allowed under the HS Overlay. SPNA supports the increased density and height associated with this project because of the unique characteristics and special circumstances associated with this project. However, allowing that increased height and density must be restricted to this project, and not allowed to serve as a precedent for future upzoning or increases in height and density that would undermine the H Street Overlay and allow.

Similar concerns, that PUDs in NC Overlays allowed heights and densities that were out of scale with the surrounding buildings, were considered in Case No. 86-26 (the Woodley Park/Cleveland Park Overlay). One suggestion was to prohibit PUDs in the neighborhood overlay districts. Testifying on behalf of ANC 3-C, then-ANC Commissioner Phil Mendelson testified (ZC Exhibit No. 370, pages 5-6):

We believe PUDs should be proscribed from the overlays for three basic reasons:

- 1) In a sense they contradict the premise of the overlay. The overlay sets forth various limitations sensitive to preserving existing local neighborhood character. PUDs provide a route for “planned” exceptions to the already sensitively planned overlay.
- 2) Allowance for PUDs is virtually an invitation to developers to request PUD-type exceptions to overlay controls. Surely this is likely near the Cleveland Park and Woodley Park Metro stations. Allowance for PUDs invites continued controversy.
- 3) OP admits in its report that existing PUD guidelines would likely conflict with the nature and intent of the overlay. OP, however, offers no proposal.

Page 2 of the March 28, 1988 Resolution of ANC 3-C (exhibit number apparently not assigned, but ZC date stamped March 29, 1988) explained the need to reconcile PUDS with matter-of-right height and density limits in overlay districts:

If there remains a large gap between the matter-of-right limits and the PUD guidelines, there will be no incentive to property owners to develop within the matter-of-right. The PUD process will become the route for new construction, leading to the assembly of small parcels, followed by application for demolition permits. However, a key purpose of the overlay zone was to create harmony between the historic review and zoning process and thus encourage the retention (and appropriate additions to buildings that contribute to the neighborhood’s

architectural character. Only conformity between the height and density limits of PUDs and matter-of-right will achieve that goal.

The Commission adopted the suggestion of creating conformity between PUDs and overlay districts by adopting a new section to the Zoning Regulation, Section 1305.1 that provides:

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

At the time 1305.1 was adopted, the Zoning Regulations for PUDs specified the height limits and FAR limits in terms of **guidelines** (See extract from 1991 Zoning Regulations, attached hereto), and not as **maximum heights** and **FARs** as they now appear in section 2405.1 and 2405.2. Thus the effect of 1305.1 was to substitute the overlay limits for height and density in place of the PUD “guidelines” in determining the allowable maximum heights and densities for a PUD in an overlay district.

Recommendation

SPNA believes that because of the innovative massing, this Capitol Place project is not out of scale and character with the existing buildings in the H Street Overlay and that it has unique characteristics and special circumstances that justify non-compliance with Section 1305.1, thereby permitting the project to exceed the matter-of-right heights and densities specified in the H Street Overlay.

However, SPNA urges that the Commission be very specific in approving this project to insure that:

1. The increased density and height approved for this project will not be subject amendment in future PUD proceeding or other amendatory proceedings.
2. The decision in this case does not serve as a precedent for future projects that may be inconsistent with the H Street Overlay.

In order to clearly define the limitations on the scope of the authorization granted in this proceeding, SPNA respectfully requests that the Commission explain that 1305.1 is applicable, and in order for future projects to justify non-compliance with Section 1305, the Commission announce the following :

1. For a PUD proposal in an NC Overlay without an associated Map amendment, it is permissible to exceed matter-of-right heights and densities only if the project has unique characteristics or special circumstances such as:
 - a. if the Comprehensive Plan or a City Council approved Small Area Plan calls for greater height and density of a site than what is allowed as matter-of-right. The general rule is that PUDs in NC Overlays should conform to the heights and densities in the controlling plan.

b. if the controlling plan does not address the height and density of a site, the development should be permitted additional height and density as required to be compatible with the scale of neighboring buildings.

2. For a PUD proposal in a NC Overlay where an associated Map Amendment is proposed that exceeds the height and density called for in the applicable plan, matter-of-right heights and densities may be exceeded only if the project has unique characteristics or special circumstances such as:

a. the site is located in close proximity to transit or abuts property or a structure that makes measurement to grade or matter-of-right density impractical or inappropriate.

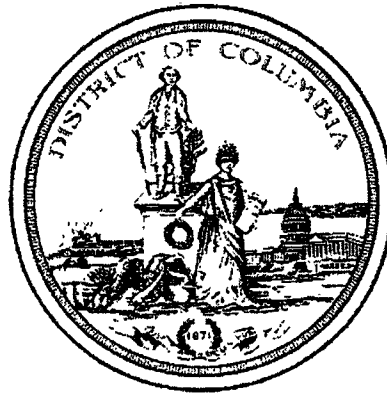
b. the building concentrates the massing in a manner which minimizes the impact on the surrounding residential and commercial properties

c. the building has exceptional architectural or other merit.

d. the project has substantial support in the community.

District of Columbia Municipal Regulations

September 1991



Title 11

ZONING

D.C. OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

SHARON PRATT KELLY
MAYOR

ALAN S. WINTER
ADMINISTRATOR

applied, they shall remain subject to the provisions of paragraph (a) of this sub-section.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7617 (November 3, 1989).

1303 LIMITATIONS ON DRIVEWAYS AND CURB CUTS

1303.1 No drive-through accessory to any use shall be permitted in the NC Overlay District.

1303.2 Within the area of the NC Overlay District, notwithstanding the provisions of §2117.8(c)(1) of this title, no driveway providing access from any designated roadway to required parking spaces or loading berths shall be permitted.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7619 (November 3, 1989).

1304 SPECIAL EXCEPTIONS

1304.1 Exceptions from the requirements of this chapter shall be permitted only as a special exception, if approved by the Board of Zoning Adjustment after public hearing, in accordance with the conditions specified in §3108 of this title, and subject to the following requirements:

- (a) The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity;
- (b) Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, which justify the exception or waiver;
- (c) Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions; and
- (d) The Board may impose requirements pertaining to design, appearance, signs, size, landscaping and other such requirements as it shall deem necessary to protect neighboring property and to achieve the purposes of the NC Overlay District and the particular overlay district.

1304.2 This section shall not operate to allow any exception to the height or floor area ratio limits of any NC Overlay District.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7619 (November 3, 1989).

1305 PLANNED UNIT DEVELOPMENT GUIDELINES

1305.1 In the NC Overlay District, the matter of right height and floor area ratio limits shall serve as the guidelines for Planned Unit Developments.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7620 (November 3, 1989).

1306 CLEVELAND PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1306.1 The Cleveland Park ("P") Overlay District is applied to a compact geographic area surrounding the Cleveland Park Metrorail Station and within the Cleveland Park Historic District, comprising those lots zoned C-2-A in Squares 2218, 2219, 2222, 2068, 2069, and 2082.

1306.2 In addition to the purposes that are set forth in §1300 of this chapter, the purposes of the CP Overlay District are as follows:

- (a) To provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic, so as to improve access to retail services, the Metrorail station, and other uses in the area;
- (b) To encourage compatibility of development with the purposes of D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978; and
- (c) To provide for retention of existing housing within the CP Overlay District, so as to help meet the need for affordable housing; and to enhance pedestrian activity, safety, and consumer support for businesses in the commercial area.

1306.3 For purposes of §1302 of this chapter, the designated use area shall include any lot within the CP Overlay District that fronts on Connecticut Avenue or Macomb, Newark, Ordway, or Porter Streets.

1306.4 For purposes of §1303.2 of this title, the designated roadway within the CP Overlay District shall be Connecticut Avenue.

1306.5 In the CP Overlay District, no dwelling unit or rooming unit in existence as of October 1, 1987 shall be converted to any nonresidential use, or to a transient use as hotel or inn; Provided, that this restriction shall not apply to the ground floor of the building, i.e., that floor which is nearest in grade elevation to the sidewalk.

1306.6 The maximum permitted height for any building or structure in the CP Overlay District shall be forty feet (40').

1306.7 The matter of right floor area ratio in the CP Overlay District shall be 2.0, not more than 1.0 of which may be occupied by non-residential uses.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7620 (November 3, 1989).

1307 WOODLEY PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1307.1 The Woodley Park ("WP") Overlay District is applied to a compact geographic area surrounding the Woodley Park/Zoo Metrorail station, comprising those lots zoned C-2-A in Squares 2202 and 2203, and those lots zoned C-2-B in Square 2204.

- 2403.2 The heights specified in the table in §2403.4 shall be considered as guidelines only. The Commission shall reserve the option to approve a height greater or lesser than the guideline indicated.
- 2403.3 The specific height approved by the Commission for a particular planned unit development shall depend upon the exact circumstances surrounding the application, including the location and physical characteristics of the property; the nature of surrounding properties, uses, and buildings; and the design of the proposed project.
- 2403.4 To exceed the guidelines indicated in the following table, the applicant shall have the burden of demonstrating and justifying the public benefits and other meritorious aspects of the proposal that will result if the additional height is approved:

ZONING DISTRICT	MAXIMUM HEIGHT
C-1	40 feet
C-2-A	65 feet
SP-1	75 feet
SP-2, C-2-B, C-2-C, C-3-A, C-3-B	90 feet
CR	110 feet
C-3-C, C-4, C-5 (PAD)	130 feet
C-5 (PAD) (where permitted by the Act of 1910 along the north side of Pennsylvania Avenue)	160 feet

- 2403.5 For a project located in any Residential, Waterfront, or Industrial district, no building or structure shall exceed the maximum height permitted in the least restrictive district within the project area.
- 2403.6 The Zoning Commission may, in its discretion, establish more stringent standards than those set forth in §2403.5 and this subsection. For the purposes of this section, the maximum height of buildings and structures in each district may be established as follows:

ZONING DISTRICT	MAXIMUM HEIGHT
R-1-A, R-1-B, R-2, R-3	40 feet
R-4, R-5-A, W-1, W-2	60 feet
C-M-1	90 feet
R-5-B, R-5-C, R-5-D, W-3, C-M-2, C-M-3, M	

- 2403.7 For a project located in any Commercial, CR, or SP district, the gross floor area of all buildings shall be as determined by the Zoning Commission in each case, and shall be the aggregate of the floor area ratios, as specified in the table in §2403.10, for the districts included within the project area.

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- 2403.8 The floor area ratios specified in §2403.10 shall be considered as guidelines only. The Commission shall reserve the option to approve a floor area ratio greater or lesser than the guideline indicated.
- 2403.9 The specific floor area ratio approved by the Commission for a particular planned unit development shall depend upon the exact circumstances surrounding the application, including the location and physical characteristics of the property; the nature of surrounding properties, uses, and buildings; and the design of the proposed project.
- 2403.10 To exceed the guidelines indicated in the following table, the applicant shall have the burden of demonstrating and justifying the public benefits and other meritorious aspects of the proposal that will result if the additional floor area is approved:

FLOOR AREA RATIO

ZONING	RESIDENTIAL	COMMERCIAL (incl. Hotels and Motels)	TOTAL
SP-1	4.5	3.5	4.5
SP-2	6.5	4.5	6.5
CR	8.0	4.0	8.0
C-1	1.0	1.0	1.0
C-2-A	3.0	2.0	3.0
C-2-B	6.0	2.5	6.0
C-2-C	6.0	2.5	6.0
C-3-A	4.5	3.0	4.5
C-3-B	5.5	4.5	5.5
C-3-C	7.0	7.0	7.0
C-4	10.5	10.5	10.5
C-4 (facing a street at least 110' wide	11.0	11.0	11.0
C-5 (PAD)	12.0	12.0	12.0

- 2403.11 For a project located in any Residential, Waterfront, or Industrial district, the floor area ratio of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the several districts included within the project area.
- 2403.12 The Zoning Commission may, in its discretion, establish more stringent standards than those set forth in §2403.11 and this subsection. For the purposes of this subsection, the maximum permitted floor area ratio shall be as follows: