



Stanton Park Neighborhood Association

P.O. Box 75085, National Capitol Station, Washington, D.C. 20013-5085

November 16, 2006

Chairman Geoffrey Griffis
DC Board of Zoning Adjustments
441 4th Street, NE, Suite 200 South
Washington, DC 20001

Re: 601-645 H Street Ventures
BZA Case No. 17521

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Dear Mr. Griffis:

Attached is the Motion of Stanton Park Neighborhood Association (SPNA) concerning the portion of the November 14, 2006 Supplemental Report of the Office of Planning that addresses the H Street Design Guidelines. SPNA attaches particular importance to the Design Guidelines because this proceeding is the first time those Guidelines will be applied to a project, and the outcome from this proceeding will likely provide the template for future development on the H Street Corridor.

Sincerely,

Monte Edwards, Co-Chair
SPNA Land Use Committee

Cc: Esther Bushman, Esq., General Counsel to the Office of Zoning
Travis Parker, AICP, Office of Planning
Bill Sisolak, ANC 6C, Zoning Comm. Chair
Anthony Rivera, ANC 6C-06
Drew Ronnenberg, ANC 6A, Economic Dev. & Zoning Comm. Chair
Hilary Axam, 6th and H Street NE Neighborhood Assoc.
Gary Peterson, Capitol Hill Restoration Society, Zoning Comm. Chair
Norman Glasgow, Jr., Esq., 601-645 H Street Ventures

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17521
Board of Zoning Adjustment
District of Columbia

EXHIBIT NO. 81
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**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of }
601-645 H Street}
Ventures LLC }

BZA Case No. 17521

**MOTION OF STANTON PARK NEIGHBORHOOD ASSOCIATION
TO REQUIRE DEMONSTRATION
OF COMPLIANCE WITH THE
THE H STREET DESIGN GUIDELINES**

The Stanton Park Neighborhood Association (SPNA) respectfully requests that the Board of Zoning Adjustment require the applicant to demonstrate compliance with the H Street Design Guidelines and provide a reasonable opportunity to review and address the applicant's presentation of that demonstration. Section 1325.4 of the Zoning Regulations (the HS Overlay) states:

Applicants shall demonstrate that projects requiring a special exception shall be consistent with the design intent of the design requirements, of § 1324 and the design guidelines of the *H Street N.E. Strategic Development Plan* [emphasis added].

The question is whether "intent" applies to both "design requirements" and "design guidelines," with the result that an applicant must demonstrate compliance only with the vague intent of the Design Guidelines; or whether it applies to "design requirements" only, with the result that an applicant must meet the more difficult burden and demonstrate compliance with the specific Design Guidelines themselves.

The Office of Planning Supplemental Report Dated November 14, 2006, states at page 3-4:

The proposed addition must satisfy the standards as identified in §1325.1 as follows:

(a) *The project is consistent with the design intent of the design requirements of §1324 and the design guidelines of the H Street N.E. Strategic Development Plan*

OP believes that the project is generally consistent with the intent of the design requirements. The applicant has had multiple meetings with OP and the community to address issues regarding the H Street Plan and has been responsive in addressing and responding to concerns. The community is expected to submit a complete review of the project's conformance or lack of conformance with the design guidelines. [emphasis supplied]

Both of the underscored sections of the Office of Planning Report are erroneous. The design is to be consistent with the specific guidelines, not some vague concept of “the intent of the guidelines,” and it is the responsibility of the applicant to demonstrate that consistency, not the responsibility of “the community ... to submit a complete review of the project’s conformance or lack of conformance...”

The legislative history of the HS Overlay and the Final Order of the Zoning Commission that promulgated §1325 of the Zoning Regulations unequivocally demonstrate that an applicant seeking a special exception under § 1325 must refer to the specific provisions of the Strategic Development Plan (SDP) Design Guidelines themselves and demonstrate compliance with those specific provisions for any application for a special exception under 11 DCMR § 1325.

Discussion

The HS Overlay states, "Applicants shall demonstrate that projects requiring a special exception shall be consistent with the design intent of the design requirements, of § 1324 and the design guidelines of the *H Street N.E. Strategic Development Plan*." § 1325.4. The text is unclear about whether an applicant must prove compliance simply with the intent of the Design Guidelines, or whether an applicant must satisfy the more difficult burden of proving compliance with specific provisions of the Design Guidelines themselves. The legislative history and the Zoning Commission Order in Z.C. Case No. 04-27 unequivocally support the interpretation that an applicant must meet the more difficult burden.

First, the legislative history reveals that neither the Office of Planning nor the Zoning Commission ever contemplated an interpretation of § 1325.4 that would require an applicant to prove only compliance with the intent of the Design Guidelines. Neither the Office of Planning nor the Zoning Commission ever referred to the intent of the Design Guidelines in their discussions about § 1325.4 or the Design Guidelines (Tr. of Oct. 25, 2004 at 24; Tr. of Apr. 27, 2005 at 9; July 11, 2005 at 90). Mr. Parker, on behalf of the Office of Planning, explained the purpose of the Design Guidelines (Tr. of Apr. 27, 2005 at 9: 7-14):

First, the overlay is intended to establish a common set of design standards and guidelines for the corridor. This is to protect the existing building stock and the character of H Street.

Second, the overlay will require review of larger projects along the corridor, in order to ensure that these design standards and the H Street policies are implemented throughout the corridor.

At the July 11, 2005 hearing the possibility of a less proscriptive application of the Design Guideline was explored in the context of the very similar language of § 1325.1 (the provision

that Office of Planning addresses in their November 14 Supplemental Report). Ms. McCarthy and Chair Mitten employed the Comprehensive Plan as a reference point, concerning the requirement of consistency with specific requirements of the guidelines as opposed to consistent with the intent of the guidelines (Tr. of July 11, 2005 at 91:21-25):

MS. MCCARTHY: Maybe we could say generally not inconsistent which is often times a conclusion we use with the comp. plan sections when we're balancing the overall objectives and goals for the comp. plan with the project.

Specific language to accomplish this was discussed (Tr. of July 11, 2005 at 92:1-8):

CHAIRPERSON MITTEN: I would like to say, "Consistent with the design intent of the design requirements and generally (something) with the design guidelines of the H Street NE Strategic Development Plan." Compatible with? What do you think about that?

MS. MCCARTHY: Yeah, compatible.

CHAIRPERSON MITTEN: Okay. That's it.

But, that's not what was adopted. §1325.1 states:

The buildings, structures, and uses listed in § 1320.4 and exceptions from the requirements of the H Street Overlay District shall be permitted as a special exception if approved by the Board of Zoning Adjustment after public hearing, based on § 3104, provided the following criteria and the requirements of § 1304 are met:
(a) The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the H Street N.E. Strategic Development Plan;

The adopted language does not say "compatible" or "not inconsistent" with the Guidelines, as was being discussed at the July hearing. Thus, the more restrictive interpretation of the guidelines applies, rather than merely being consistent with the intent.

The Office of Planning expressly stated that the HS Overlay incorporates the Design Guidelines themselves, not merely their intent. (Tr. of July 11, 2005 at 90:15-25.) The reason to incorporate the Design Guidelines themselves is that it "is a very large group of additional guidelines that . . . that gave clear direction as to the character that was intended to be achieved through the plan." (Tr. of July 11, 2005 at 90:19-23.) Also, the Zoning Commission stated that it expected the Office of Planning reports to refer to the Design Guidelines themselves, not their intent. (Tr. of July 11, 2005 at 90:23 – 91:3) This point is significant because the Design Guidelines specifically state the intent of the Design Guidelines in a discreet three paragraph section entitled "Intent." The Zoning Commission and the Office of Planning could have easily and properly referred to the Intent sections of the Design Guidelines if it sought to require compliance with only the intent portion. However, they expressly stated otherwise. Therefore,

the Office of Planning and the Zoning Commission intended to require applicants to comply with the Design Guidelines themselves, not their generalized intent.

Finally, and conclusively, the Final Order adopting the Design Guidelines (Z.C. Case No. 04-27) explained at page 4:

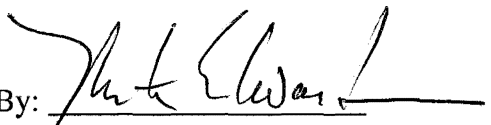
At its regularly scheduled public meeting held January 9, 2006, the Zoning Commission took final action to approve the proposed map and text amendments. No changes were made to the text as published in the D.C. Register. The Commission did, however, resolve one question brought to its attention by the Office of the Attorney General concerning the applicability, within the H Street Overlay, of 11 DCMR § 1304, which is a “general” special exception section applicable to all Neighborhood Commercial Overlays. The H Street Overlay has its own specific special exception section, at § 1325, which sets forth the criteria to be met to obtain a special exception within the H Street Overlay. The Commission made it clear at the January 9th public meeting that both §§ 1304 and 1325 were to apply within the H Street Overlay. Therefore, applicants for special exceptions within the H Street Overlay must meet all the criteria set forth in both § 1304 and § 1325 *[emphasis supplied]*.

CONCLUSION

The plain language of the Final Order as well as the legislative history of the HS Overlay unequivocally demonstrate that an applicant seeking a special exception under § 1325 must refer to the specific provisions of the Strategic Development Plan Design Guidelines and must demonstrate compliance with the specific provisions of those Design Guidelines. The applicant should be directed to demonstrate that compliance in an appropriate filing before the hearing in this proceeding, and the Office of Planning as well as the community should be provided a reasonable opportunity to review and address that compliance filing.

Respectfully submitted,

STANTON PARK
NEIGHBORHOOD ASSOCIATION

By: 

Monte Edwards, Co-Chair
SPNA Land Use Committee

November 16, 2006