

Testimony of Jerry A. Moore III on Behalf of

The Rappaport Companies

REGARDING Z.C. Case No. 04-27

N.E. NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

"H STREET STRATEGIC DEVELOPMENT PLAN"

April 7, 2005

Good evening Madam Chair and members of the Commission. I am Jerry A. Moore III of the Venable law firm speaking tonight on behalf of Gary Rappaport, President and Chief Executive Officer of The Rappaport Companies, a retail development and management firm he founded in 1983. Since then Mr. Rappaport's Companies have grown to develop, manage, lease and promote over 5.3 million square feet of primarily retail space in the Washington Metropolitan area. Its

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expertise is in the development, construction, renovation,
management and marketing of shopping centers.

Of primary interest to you this evening is Mr. Rappaport's
development of the "H Street Connection" Shopping Center located on
the southside of H Street, NE, between 8th and 10th Streets. Once an
eyesore that was justifiably targeted for revitalization, the H Street
Connection is now the site of a thriving retail district. The Center's
retail tenants have enjoyed strong support from area residents and,
accordingly, are proud to be an H Street success story. Further
information on Mr. Rappaport's companies is available on his website
at www.rappaportco.com.

Mr. Rappaport's interests and success on H Street, NE have, of
course, attracted his attention to the future development of the H
Street NE corridor, not only as a benefit to his companies but also to
the many area residents and retail tenants that his Center serves. We

have followed with approval the studies that the Office of Planning has undertaken to rethink the development priorities of H Street in the context of the Comprehensive Plan. We have met with them to discuss our ideas and concerns. The Council, the Advisory Neighborhood Commissions and some of the local citizens groups have also contributed their ideas on the future development of this historic corridor. Indeed, H Street is one of Washington's main commuter corridors as well as a shopping, employment, services and entertainment destination for the people who live nearby.

Mr. Rappaport has worked with Bill Barrow, the Executive Director of H Street Community Development Corporation, to discuss and plan the continued success of the H Street N.E. corridor. We have jointly shared our thoughts - which are remarkably similar - with the Office of Planning. The Rappaport Companies are in total support of the ongoing efforts to further vitalize the corridor.

It is in this context that my client urges the Commission in fashioning it's final Order to view this overlay as a general area land use guide but not as a replacement of the existing zoning regulations.

We think the existing zoning regulations provide a practical framework for the development of the properties in terms of uses, densities and parking requirements. This zoning structures permits and encourages an innovative developer to respond to the existing market conditions and create an attractive development within a clear, coordinated framework. Current zoning also allows Mr. Rappaport and others to rebuild should any of their buildings be destroyed by fire or other calamity.

The plan before you concerns us because it requires that any rebuilding must be accomplished according to a new design plan which may or may not be acceptable to retail customers or to the financing institutions that underwrite the development investment. Thus, we

encourage the Commission to take note that the ability to rebuild a successful development is really important to any owner who is fortunate enough to have one.

There are some other points that the Commission should consider. One is that there are things that zoning can't do. Among them are to:

- Successfully force minimum heights on buildings;
- Dictate where off-street parking can, for retail purposes, best be accommodated on a lot;
- Prompt an investor to develop a site that, by a zoning requirement, is incompatible with market conditions. By this we mean impractical designs, setbacks and use requirements.

Mandating specific rigid building designs is not a function of zoning and can be counter productive, especially in areas where one is

endeavoring to build a market. Why not let the developers work with their architects, using the existing zoning regulations (which have worked elsewhere in the city) and with a general overlay guideline to produce a pleasing, conforming and effective streetscape?

The overlay proposal contains three other provisions which concern us:

1. It makes "non designated" uses that exceed the maximum ground floor coverage nonconforming. For example, financial institutions and restaurants are much desired and successful tenants. Why limit their ability to use as much available space within a building as they need to be successful? Doing so limits a landlord's ability to attract them.
2. Allows new fast food restaurants by special exception only. These restaurants are permitted as a matter

of right under the existing zoning and have proved to be highly popular among neighborhood residents.

3. Requires new buildings to be built to the H Street property line if the existing building is destroyed, a provision that would instantaneously convert Mr. Rappaport's H Street Connection to a nonconforming status.

The zoning proposal that is before you suggests the creation of a zoning overlay similar to those that exist in the Downtown Development District and in the 14th and U Streets area. It is important to emphasize the limitations of an overlay on H Street, NE and the distinctions between the development of the H Street, NE area and the Downtown and 14th U Streets areas. One important difference, for example, is zoning. The zoning in the Downtown Development District is all moderate to high density as is the "CR"

zoning on U and 14th Streets, NW. These larger zoning envelopes provide a developer with much more latitude to design schemes and uses that comport with specific guidelines. The H Street Corridor, on the other hand, is mostly zoned for low and moderate density uses to accommodate a "major portion of existing commercial strip developments." Each of these zone districts is consistent with the Comprehensive Plan and its land use map. Any future change in the zoning of H Street NE must be too.

In sum, as a long term stakeholder, the Rappaport Companies have a great interest in the future development of the H Street NE Corridor. It applauds the Office of Planning for researching and drafting a Plan to pursue that objective. Mr. Rappaport generally supports the aims of that Plan. But he earnestly requests that the Commission in passing it, emphasize that the plan must not be seen as establishing another blueprint for future development decisions. Let

the market determine the uses in the context of the existing underlying Zoning Regulations. If the current uses are working – as determined by the local residents that support them – do not act to make those uses non-conforming, a label that, as you know, places severe limits on the ability of a (successful) use to expand or rebuild in the event of a calamity. The proposed zoning plan would do just that to the H Street Connection in that it would re-characterize some of the elements of this successful development as “nonconforming”.

Specifically I refer to some of the uses (which are permitted as a matter of right, but not “preferred”), the new building set back limitations, minimum ceiling height requirements, curb cuts to required parking and even to the transparency of security grilles.

Our point here is that the H Street Connection has found a successful land use formula – one that nearby residents patronize and support. If the Commission deems it advisable to adopt new zoning

guidelines in the form of a Neighborhood Overlay, please consider grandfathering the existing uses and area calculations on Square 912. Under the existing zoning criteria, the H Street Connection has become a popular and successful development that works for the citizens of the area. Please don't try to fix it.

Thank you for this opportunity to present the thoughts of the Rappaport Companies. Mr. Rappaport is excited about the future of the H Street N.E. Corridor. This zoning proposal – as it applies to the future development – is a major, but not fully developed, step in the right direction. I am happy to address any questions that you might have.

<u>Uses at H Street Connection</u>		
<u>Current Status</u>	<u>Use</u>	<u>Proposed Status</u>
MOR	Check Cashing/lending	MOR with 20% limit
MOR	Beauty Shop	MOR with 50% minimum
MOR	Bank	MOR with 20% limit
MOR	Jewelry Shop	MOR preferred use
MOR	Florist	MOR preferred use
MOR	FF Restaurant (McDonald's)	Spec. Ex. with 25% limit
MOR	Game Store	MOR
MOR	Beauty Shop	MOR with 50% minimum
MOR	Apparel Shop	MOR preferred use
MOR	FF Restaurant	Spec. Ex. With 25% limit
MOR	Apparel Shop	MOR preferred use
MOR	Rental Center	MOR
MOR	Drug Store	MOR preferred use
MOR	Cleaners (1500 sq. ft.)	MOR with 20% limit
MOR	Sporting Goods	MOR preferred use
MOR	FF Restaurant (Subway)	Spec. Ex. With 25% limit