

Government of the District of Columbia
OFFICE OF ZONING



MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Sharon S. Schellin *SS*
Acting Secretary to the Zoning Commission

DATE: November 9, 2005

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on November 18, 2005:

1. Z.C. Corrected Notice of Proposed Rulemaking (Case No. 04-27);
2. Z.C. Notice of Public Hearing (Case No. 05-24);
3. Z.C. Order No. 949-B (Case No. 00-36CP);
4. Z.C. Order No. 955B (Case No. 01-09A);
5. Z.C. Order No. 03-22 (Case No. 03-22);
6. Z.C. Order No. 03-27 (Case No. 03-27);
7. Z.C. Order No. 03-30 (Case No. 03-30); and
8. Z.C. Order No. 04-02 (Case No. 04-02).

Office of
Documents and
Administrative
Issuances

2005 NOV -9 PM 4: 07

Attachments

ZONING COMMISSION
District of Columbia

CASE NO. 04-27
EXHIBIT NO. 33

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: ☐ EMERGENCY RULES

FINAL RULES

x

PROPOSED RULES-
CORRECTED
NOTICE

COMBINED

DATE AND TIME RECEIVED

Office of Documents use only

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: JERRILY KRESS

ADDRESS: 441 4th Street, N.W., Suite 210 South

TELEPHONE: (202) 727-6311

TITLE AND DESCRIPTION OF RULES: H Street Northeast Neighborhood Commercial Overlay District (HS) – a new neighborhood commercial overlay district applied over certain squares along H Street, N.E., from 2nd to 15th Streets, N.E. and map amendments to implement imposition of the Overlay.

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning), Chapter 13, new §§ 1320 through 1326 are being added.

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: DCR DATE:

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Sections 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), D.C. Official Code § 6-641.01.

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

DATE: NOVEMBER 9, 2005

SIGNED:

Robert J. Spagnoletti

PHONE: (202) 442-9777

☒ FINAL

☐ CONDITIONAL

NAME: ROBERT J. SPAGNOLETTI TITLE: ATTORNEY GENERAL

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)

Zoning Commission For The District Of Columbia

Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules. Sections 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), D.C. Official Code § 6-641.01.

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF
APPROVAL
OF VOTE:

7-11-05

APPROVAL OF ATTEST: Sharon Schellin

Acting Secretary to the Zoning

TITLE: Commission

PHONE: (202) 727-0340

Office of Documents
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THIS NOTICE
PUBLISHED AT:

VOL:

DCR:

DATE:

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
CORRECTED NOTICE OF PROPOSED RULEMAKING**

Z.C. Case No. 04-27

**(Text and Map Amendments to Establish and Map the H Street, N.E. Neighborhood
Commercial Overlay District)**

On November 4, 2005, at 52 *D.C. Register* 9912, the Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2001)), gave notice of its intent to amend Chapter 13 of the Zoning Regulations (Title 11 DCMR) by adding new §§ 1320 through 1326, containing the provisions of a new neighborhood commercial overlay, the H Street Northeast Neighborhood Commercial Overlay District (HS). The HS Overlay is divided into three sub districts, a housing sub district, a retail sub-district, and an arts sub district, and will be mapped over all lots fronting onto H Street, N.E. from 2nd Street, N.E. to 15th Street, N.E. and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B.

In the Notice of Proposed Rulemaking published on November 4, 2005, four proposed map amendments were inadvertently omitted. This Corrected Notice of Proposed Rulemaking supersedes the earlier one, and includes the four map amendments.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following rulemaking action is proposed:

A. Amend the Zoning Map of the District of Columbia as follows:

1. Rezone from C-2-A to C-2-B:

- a. Lots fronting on the south side of H Street, N.E., in Square 752;
- b. Lots fronting on the north side of H Street, N.E., in Square 776;
- c. lots fronting on the south side of H Street, N.E., in Square 777; and
- d. Lots fronting on the north side of H Street, N.E., in Square 858.

B. Title 11 DCMR (Zoning) is amended by adding new §§ 1320 through 1326 to Chapter 13, "Neighborhood Commercial Overlay District."

**1320 H STREET NORTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY
DISTRICT (HS)**

1320.1 The H Street Northeast Neighborhood Commercial Overlay District (HS) applies to all lots fronting onto H Street NE from 2nd Street to 15th Street NE and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B. The Overlay is divided into three sub-districts affecting the following squares:

- (a) H Street Northeast Overlay Housing Sub-district (HS-H) encompasses properties fronting on H Street NE in Squares 751, 752, 776, 777, 808, 809, 832, 833, 858 and 859 from 2nd to 7th Streets NE;
- (b) H Street Northeast Overlay Retail Sub-district (HS-R) encompasses properties fronting on H Street NE in Squares 889, 890, 911, 912, 933, 958, 959, 981, and 982 from 7th to 12th Streets NE;
- (c) H Street Northeast Overlay Arts Sub-district (HS-A) encompasses properties fronting on H Street NE in Squares 1003, 1004, 1026, 1027, 1049N, and 1049 from 12th to 15th Streets NE.

1320.2 In addition to the purposes in § 1300, the purposes of the HS Overlay District are to:

- (a) Implement the policies and goals of the Comprehensive Plan and the *H Street NE Strategic Development Plan* as adopted by the Council of the District of Columbia on February 17, 2004 (R15-460);
- (b) Encourage residential uses along the H Street NE corridor, particularly provision of affordable units and reuse of upper floors;
- (c) Encourage the clustering of uses into unique destination districts along the corridor specifically a housing district from 2nd Street to 7th Street NE; a neighborhood-serving retail shopping district from 7th Street to 12th Street NE; and an arts and entertainment district from 12th Street to 15th Street NE;
- (d) Establish design guidelines for new and rehabilitated buildings that are consistent with the historic character and scale of the Overlay District; and
- (e) Encourage the reuse of existing buildings along the corridor.

1320.3 For purposes of § 1302, the designated use area shall include any lot within the HS Overlay District that fronts on H Street NE. In addition to the ground floor uses designated by §1302.2, the following uses are also designated in each Sub-district:

- (a) HS-H Sub-district: Residential Uses
- (b) HS-R Sub-district
 - (1) Candy Store;
 - (2) Computer Store;
 - (3) Delicatessen;
 - (4) Fabric Store;

- (5) Health or Exercise Studio;
- (6) Ice cream parlor;
- (7) Plant store or nursery
- (8) Secondhand or Consignment Store;
- (9) Shoe Store;
- (10) Video Rental and Sales; and
- (11) Other similar personal/consumer service establishment or retail use.

(c) HS-A Sub-district: Any preferred use listed in §1323.2.

1320.4 The following buildings, structures, and uses shall be permitted as a special exception if approved by the Board of Zoning Adjustment, in accordance with the standards specified in §§ 3104 and 1325 of this title.

- (a) Any use requiring a special exception in the underlying zone, except a new gas station;
- (b) Accessory parking spaces located off-site from the principal use;
- (c) Fast food restaurant or food delivery service provided:
 - (1) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District, unless separated therefrom by a street or alley;
 - (2) If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line;
 - (3) Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate and shall not face a Residence District; and
 - (4) This use shall occupy no more than twenty-five percent (25%) of the linear street frontage within the HS Overlay District as measured along the lots that face designated roadways.
- (d) Funeral, mortuary, or undertaking establishment; and

- (e) Parking Garage.

1320.5 The following uses are prohibited:

- (a) Automobile and Truck Sales;
- (b) Automobile laundry;
- (c) Boat or marine sales;
- (d) Gasoline Station;
- (e) Outdoor storage of any materials; and
- (f) Commercial parking lots.

1320.6 The provisions of §1302.5 shall not apply to the HS Overlay District.

1320.7 For purposes of §1303.2, the designated roadway within the HS Overlay District shall be H Street NE.

1320.8 With respect to a lot that has six thousand square feet (6,000 ft.²) or more in land area, construction of a new building or enlargement of the gross floor area of an existing building by fifty percent (50%) or more, shall be permitted, subject to review and approval as a special exception by the Board of Zoning Adjustment, pursuant to the standards and criteria in §§1325 and 3104.

1321 HS OVERLAY HOUSING SUB-DISTRICT (HS-H)

1321.1 The purpose of the housing sub-district is to encourage housing.

1321.2 The floor area ratio for new construction in the HS-H Sub-district may not exceed 0.5 FAR for nonresidential uses, except as provide in §1321.3.

1321.3 New construction that preserves an existing façade constructed before 1958 is permitted to use an additional 1.0 FAR for up to a maximum non-residential FAR of 1.5 for office uses or neighborhood-serving retail uses as permitted in §§ 701.1 and 701.4.

1321.4 In the event that a grocery store is constructed on Square 776, a maximum nonresidential FAR of 1.5 shall be permitted on that Square.

1322 HS OVERLAY RETAIL SUB-DISTRICT (HS-R)

1322.1 The HS Overlay Retail Sub-district is intended to encourage retail uses.

1322.2 For the purposes of §§ 1322.2 and 1326.1 (a), preferred uses in the HS-R Sub-district are:

- (a) Antique Store;
- (b) Apparel and Accessories Shop;
- (c) Appliance sales or repair;
- (d) Bakery;
- (e) Banking or Financial Institution (excluding check cashing services);
- (f) Bicycle Shop;
- (g) Bookstore;
- (h) Café, delicatessen, or lunch counter (excluding fast food);
- (i) Candy Store
- (j) Camera/photo sales;
- (k) Catering establishments;
- (l) Cobbler or shoe repair;
- (m) Collection center for dry cleaning;
- (n) Computer store;
- (o) Cosmetics or toiletries sale;
- (p) Department store;
- (q) Dressmaker or tailor;
- (r) Drug store;
- (s) Dry goods store;
- (t) Electronic sales;
- (u) Fabric store;
- (v) Film exchange or development;

- (w) Florist;
- (x) Gift or card shop;
- (y) Grocery store;
- (z) Gym or exercise studio;
- (aa) Hardware stores;
- (bb) Hobby shop;
- (cc) Home furnishing sales;
- (dd) Ice cream parlor;
- (ee) Interior decorating shop;
- (ff) Jewelry shop;
- (gg) Office supplies or services store;
- (hh) Music or instrument sales;
- (ii) Pet shop;
- (jj) Pharmacy;
- (kk) Plant store or nursery;
- (ll) Professional services or office not on the ground floor;
- (mm) Restaurant (excluding fast food);
- (nn) Secondhand or consignment store;
- (oo) Shoe store;
- (pp) Sporting goods; and
- (qq) Video Rental and Sales.

1322.3 New construction that preserves an existing façade constructed before 1958 is permitted to use an additional 0.5 FAR over the non-residential FAR permitted in the underlying zone for non-residential preferred uses listed in §1322.2.

1323 HS OVERLAY ARTS SUB-DISTRICT (HS-A)

1323.1 The HS Overlay Arts Sub-district is intended to encourage arts and entertainment uses.

1323.2 For the purposes of §§ 1323.4 and 1326.1 (a), preferred uses in the HS-A Sub-district are:

- (a) Art Center;
- (b) Art Gallery;
- (c) Art or Performing Arts School;
- (d) Artist Housing;
- (e) Artist Studio;
- (f) Artists' Supply Store;
- (g) Arts Services, including set design and restoration of artworks;
- (h) Bar, nightclub, or cocktail lounge;
- (i) Book Store;
- (j) Cabaret;
- (k) Coffee shop, café, or delicatessen;
- (l) Concert hall or other performing arts space;
- (m) Library;
- (n) Movie Theater;
- (o) Museum;
- (p) Musical Instruments Store;
- (q) Performing Arts Ticket Office or Booking Agency;
- (r) Photographic Studio;
- (s) Picture Framing Shop;

- (t) Printing, lithographing, or photoengraving establishment, in each case not exceeding twenty-five hundred square feet (2,500 sq. ft.) of gross floor area;
- (u) Record Store;
- (v) Recording Studio;
- (w) Restaurant; and
- (x) Theater.

1323.3 The floor area ratio in the HS-A Sub-district for new construction may not exceed 1.0 FAR for nonresidential uses except as provided in §1323.4.

1323.4 New construction that preserves an existing façade constructed before 1958 is permitted to use an additional 0.5 FAR over the non-residential FAR permitted in the underlying zone for non-residential preferred uses listed in §1323.2.

1324 H STREET NORTHEAST COMMERCIAL CORRIDOR DESIGN REQUIREMENTS

1324.1 The design requirements of §§ 1324.2 through 1324.14 shall apply to any lot in the HS Overlay District.

1324.2 New buildings shall be designed and built so that not less than seventy-five percent (75%) of the streetwall(s) to a height of not less than twenty-five feet (25 ft.) shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots shall be constructed to both property lines abutting public streets.

1324.3 New construction that preserves an existing façade constructed before 1958 is permitted to use, for residential uses, an additional 0.5 FAR above the total FAR permitted in the underlying zone district for residential uses.

1324.4 In C-2-A Districts within the HS Overlay District a 70% residential lot occupancy shall be permitted.

1324.5 For the purposes of this section, the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin.

1324.6 For the purposes of § 1324.5, “residential uses” includes single-family dwellings, flats, multiple dwellings, rooming and boarding houses, and community-based residential facilities.

1324.7 Parking structures with frontage on H Street NE shall provide not less than 65% of the ground level frontage as commercial space.

- 1324.8 Each new building on a lot that fronts on H Street shall devote not less than fifty percent (50%) of the surface area of the streetwall(s) at the ground level of each building to display windows and to entrances to commercial uses or to the building, provided the windows shall be clear glass, or clear/low-emissivity glass, except for decorative or architectural accent.
- 1324.9 Security grilles shall have no less than 70% transparency.
- 1324.10 Each commercial use with frontage on H Street shall have an individual public entry directly accessible from the public sidewalk. Multiple-unit buildings shall have at least one primary entrance on H Street NE directly accessible from the sidewalk.
- 1324.11 Buildings shall be designed so as not to preclude an entrance every forty feet (40 ft.) on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to permitted ground floor uses and the main lobby.
- 1324.12 The ground floor level of each new building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.).
- 1324.13 For new construction, buildings with a minimum clear floor-to-ceiling height of fourteen feet (14 ft.) on the ground floor level consistent with §1324.12 shall be permitted an additional 5 feet (5 ft.) of building height over that permitted in the underlying zone for new construction.
- 1324.14 The following sign guidelines shall apply in the HS Overlay:
- (a) Projection Signs shall have a minimum clearance of eight feet (8') above a sidewalk and fourteen feet (14') above a driveway, project no more than three feet, six inches (3'6") from the face of the building, and be a minimum of one foot (1') behind the curbline or extension of curbline.
 - (b) Façade Panel Signs shall not be placed so as to interrupt windows or doors and shall project no more than twelve inches (12") from the face of the building.
 - (c) Roof Signs are prohibited.
- 1325 H STREET NORTHEAST COMMERCIAL CORRIDOR OVERLAY DISTRICT SPECIAL EXCEPTIONS**
- 1325.1 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, in accordance with §3104, and subject to the following criteria:
- (a) The architectural design of the project will enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board shall include

review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board.

- (b) Safe and efficient pedestrian movement will be provided by locating and designing vehicular access and egress so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions;
- (c) Parking and traffic conditions associated with the operation of a proposed use will not adversely affect adjacent or nearby residences;
- (d) Noise associated with the operation of a proposed use will not adversely affect adjacent or nearby residences;
- (e) The Board may impose requirements pertaining to design, appearance, signs, massing, landscaping, and other such requirements, as it deems necessary to protect neighboring property and to achieve the purposes of the H Street Overlay District; and
- (f) The size, type, and location of signs will be compatible with the surrounding corridor and consistent with the H Street design guidelines. Signage is encouraged on upper facades, awnings, and transom windows. Signage should be of durable materials and sensitive design. Signage that affects more than twenty percent (20%) of display windows is discouraged. Backlit box signs and neon product advertisements are discouraged. Signs should not block visibility into a store or be overly obtrusive.

1325.2 Applicants must show that projects requiring a Special Exception shall be consistent with the design intent of the design requirements of §1324 and generally compatible with the design guidelines of the H Street N.E. Strategic Development Plan.

1326 PLANNED UNIT DEVELOPMENT PROVISIONS (HS).

1326.1 A Planned Unit Development (PUD) in the HS Overlay District shall be subject to the following provisions in addition to those of Chapter 24 of this title:

- (a) Any additional height and floor area above matter-of-right shall be used only for residential or preferred uses; and
- (b) The PUD process shall not be used to reduce requirements in the HS Overlay District for designated uses, specifically retail, service, entertainment, and arts uses.

1326.2 The minimum area included within the proposed PUD, including the area of public streets or alleys proposed to be closed, shall be ten thousand square feet (10,000 ft.²).

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Acting Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.