District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013

April 2, 2007

Ms. Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning
One Judiciary Square
441 4th Street NW Suite 210S
Washington, DC 20001

#07-10

Re: ANC 6A Petition for Emergency Text Amendment to H Street NE Commercial Zone Overlay District

Ms. Schellin:

At our regularly scheduled and properly noticed public meeting on March 8, 2007, our Commission voted 7-0-0 (with 5 Commissioners required for a quorum) to petition the Zoning Commission to adopt on an emergency basis a text amendment to the H Street NE Commercial Zone Overlay District ("HS Overlay") that will preserve the integrity and goals of the HS Overlay from anomalous pinpoint changes in the HS Overlay.

The mechanism that our Commission proffers to achieve its goal is an instruction to the Director of the Office of Zoning to suspend and refuse acceptance of applications for more permissive zoning for any property which is governed by the HS Overlay. However, our Commission is receptive to other mechanisms that accomplish the same objective. Furthermore, this emergency rulemaking is justified by the immediate danger posed by the application for rezoning and a PUD in Zoning Commission Case No. 05-37. Richard Luna is currently authorized to represent ANC 6A for this petition and the authorization includes the power of the agent or representative to bind the person in the case before the Zoning Commission.

On behalf of the Commission,

Joseph Fengler

Joseph Fengler
Chair, Advisory Neighborhood Commission 6A

BEFORE THE DISTRICT OF COLUMBIA ZONING COMMISSION

PETITION OF ADVISORY NEIGHBORHOOD COMMISSION 6A FOR AN EMERGENCY TEXT AMENDMENT TO PRESERVE THE INTEGRITY AND GOALS OF THE H STREET NE NEIGHBORHOOD COMMERCIAL ZONE OVERLAY DISTRICT

Advisory Neighborhood Commission 6A ("ANC 6A"),[1] hereby petitions the District of Columbia Zoning Commission ("Zoning Commission") to adopt on an emergency basis an amendment to the H Street NE Neighborhood Commercial Overlay Zone District ("HS Overlay") to prevent the Office of Zoning from accepting, for a limited period of time, any application or petition to rezone property to a more permissive zone district ("upzone") in the HS Overlay area.[2]

I. Proposed Emergency Text Amendment

ANC 6A respectfully requests that the Zoning Commission amend the text of the HS Overlay to include the following section, or one with substantially the same effect:

> **§ 1327. Action to preserve the policies, goals and integrity of the HS Overlay.**
>
> As of the effective date of the HS Overlay and for five years thereafter, the Zoning Commission directs the Director of the Office of Zoning to refuse to accept, and to suspend consideration of, any application or petition for zoning relief that meets the following two criteria:

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[1] At a regularly scheduled and duly noticed meeting of ANC 6A held on March 8, ,2007, the Commission, by unanimous vote, authorized the filing of this petition and authorized Richard Luna as the ANC representative for that purpose.

[2] The Zoning Commission has used the term "upzone" to refer to rezoning a property from a less permissive, more restrictive zone district to a more permissive, less restrictive zone district. *See, e.g.*, Zoning Commssion Order No. 493 at 19 (Aug. 4, 1986) ("upzone"); Zoning Commission Order No. 975 at 3 (July 12, 2004) ("up-zoning").

1) The HS Overlay applies to the property or lot that is the subject of the application or petition; and

2) The application or petition seeks any zoning relief that has the effect of rezoning the property to a more permissive or less restrictive zone district.

II. Justification for the Emergency Rulemaking

The Zoning Commission has authority to amend the zoning regulations.[3] It also has authority to take emergency action for a period not to exceed 120 days "for the immediate preservation of public peace, health, safety, welfare or morals."[4] ANC 6A unanimously supports this request for the Zoning Commission to exercise its emergency rulemaking authority to prevent the Office of Zoning from accepting upzoning applications for a limited time in a limited area for the reasons stated below.

A. The HS Overlay came about through a comprehensive and integrated planning process.

The HS Overlay is the product of an extended, comprehensive and integrated planning process between Office of Planning, ANC 6A, ANC 6C, Stanton Park Neighborhood Association, Capitol Hill Restoration Society, H Street Main Street and individual residents of neighborhoods surrounding H Street, Northeast. The groups and residents reluctantly agreed with Office of Planning's suggestion to upzone western portions of the HS Overlay in exchange for text amendments that encourage the reuse of the historic building stock on H Street and a zoning map that would remain stable for a significant period of time.

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3 D.C. Code § 6-641.01 (2001); 11 DCMR § 102 (2003).

4 D.C. Code § 1-1506 (c).

In addition, the Zoning Commission itself held public hearings, accepted letters from affected ANCs, community stakeholders and the development community in support of the HS Overlay.[5] As such, the HS Overlay itself is a "necessary implementation action" of the H Street N.E. Strategic Development Plan, which the Office of Planning began in 2002 and which the Council approved on February 17, 2004.[6]

B. Given time, the HS Overlay will accomplish the clear and consistent goals it articulates.

The purpose of the HS Overlay is to implement the policies and goals of the NC Overlay District,[7] the Comprehensive Plan Amendment Act of 2006,[8] and the H Street NE Strategic Development Plan.[9] Among those goals are building designs "that are consistent with the **historic character and scale** of the overlay district."[10] In addition, the Comprehensive Plan seeks to "recognize the importance of its **historic architecture** and housing stock."[11] To achieve these goals, "the scale of development must be **sensitive to adjacent uses**" and must "**improve buffering** and urban design transitions between the emerging office and high-density residential

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5 Zoning Commission Order No. 04-27 (Jan. 9, 2006).

6 *Id.* at 1, 5.

7 11 DCMR § 1300 *et seq.*

8 *Comprehensive Plan Amendment Act of 2006*, 10 DCMR §§ 100-1930, *as amended, published at* 54 DCR 924-928 (Feb. 2, 2007). The 2006 Revised Comprehensive Plan became effective on March 1, 2007. ANC 6A's Statement in Support refers to the page numbers of the Comprehensive Plan Amendment Act of 2006 as transmitted to the D.C. Council from the Office of Planning.

9 Zoning Commission Order No. 04-27 (HS Overlay).

10 11 DCMR § 1320.2 (d).

11 *Comprehensive Plan Amendment Act of 2006*, District Elements, Policy CH-1.1.1, 2-10 (emphasis added).

corridor north of Union Station ('NoMA') and the **adjacent row house neighborhoods** of Capitol Hill."[12]

C. Upzoning lots in the HS Overlay District at this early stage undermines the restrictions, policies and goals embodied in the HS Overlay and the Comprehensive Plan Amendment Act of 2006.

The HS Overlay and underlying zoning have been in effect only since March 10, 2006.[13] In that short period, few structures have been rehabilitated or built in the westernmost section of the HS Overlay area. The short period of time since the effective date has been insufficient for the HS Overlay district to rehabilitate its existing cohesive, stable and dominant character. Moreover, some of the property along the western end of the H Street Corridor was upzoned as a result of the HS Overlay. Now, proposals for new oversized property developments endanger the HS Overlay by exceeding the density and other limitations the HS Overlay established.[14]

Upzoning is an extreme and permanent measure that is not necessary to achieve large-scale improvements or development on H Street. For example, the recently approved 601-645 H Street project was designed without upzoning or PUD applications.[15] It will likely result in a development that will benefit the community as well as the developer. In addition, the Steuart Development on Square 776 (300 block of H St. NE) received approval for the PUD (ZC Case 06-01) on December 11, 2006, in a case where no upzoning was proposed.[16] By contrast, the proposed Dreyfus development threatens the uniformity and consistency of the HS Overlay with anomalous pinpoint rezoning. In short, further changes in zoning are not only unnecessary; they

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12 *Comprehensive Plan Amendment Act of 2006* at 2-11 (Dec. 19, 2006) (emphasis added).

13 Zoning Commission Order No. 04-27 at 14.

14 *See, e.g.*, Zoning Commission Case No. 05-37.

15 *See* BZA Case No. 17521.

16 Zoning Commission Transcript 061211zc.pdf at 101

would undermine the thoughtful, comprehensive zoning changes embodied in the HS Overlay.

D. Upzoning vacant or abandoned lots harms the rehabilitation and economic well-being of the area by encouraging land speculation, while the number of empty lots show there is no justification for increasing the density of any one lot.

The existing vacancy rate for lots in the HS Overlay area demonstrates that there is no need or benefit to an increase in the density of any one lot in the HS Overlay at this time. The D.C. Department of Consumer and Regulatory Affairs ("DCRA") and D.C. Office of Tax and Revenue ("OTR")[17] have classified 38 lots in the HS Overlay as vacant for purposes of real property tax assessments.[18] Even more properties that do not qualify for Class 3 vacancy classification are actually vacant.[19] A change in zoning for one lot at a highly visible portion of the HS Overlay only serves to both increase the disparity in development within the HS Overlay and destabilize a portion of the neighborhood.

Moreover, in the HS Overlay area, upzoning has fostered land speculation without reciprocally benefiting the District or the neighborhood. For example, lots in square 752 were upzoned and approved for a PUD in 1988.[20] The Zoning Commission extended the PUD approval in 1991.[21] The upzoning substantially increased the scale of potential development on square 752. As a result, the owner at that time was able to dispose of the property at a substantial profit even though the lots remained underused as a parking lot.

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17 Both DCRA and OTR are involved in the identification, classification and registration of properties as Class 3 vacant properties. *See* http://otr.cfo.dc.gov/otr/cwp/view,a,1330,Q,609719.asp.

18 D.C. Dept. of Consumer and Regulatory Affairs, *Vacant Properties Listing* 20-21 (March 19, 2007), http://dcra.dc.gov/dcra/cwp/view,a,3,q,625194,dcraNav_GID,1691,dcraNav|33420|.asp.

19 DCRA and OTR do not consider properties advertised for sale within a certain time period before their evaluation to be vacant for purposes of real property tax assessments.

20 Zoning Commission Order No. 591 (Oct. 17, 1988).

21 Zoning Commission Order No. 591-B (Aug. 5, 1991).

Now, a new owner seeks to upzone property in those squares yet again, and seeks approval for an even larger PUD.

Likewise, just one block over at 329 H Street, NE, the aptly-named Vulture LLC purchased that lot for under $400,000.[22] In February 2006, after the HS Overlay upzoned many lots on H Street, Vulture LLC sold that lot to the H Street Community Development Corporation ("H St. CDC") for almost twice what they paid for it.[23]

By contrast, the east end of the H Street corridor has seen healthy redevelopment because it has been free of land speculators who envision increased density and profits through upzoning. No fewer than eight buildings have been renovated.[24] A huge development—the 60,000 square foot Atlas Performing Arts Center—is part of the development occurring without upzoning.[25]

In short, repeated upzoning rewards land speculators by increasing the permissible density, and therefore value, of vacant lots while the speculators leave their lots vacant and deteriorating. The fact that so many properties in the HS Overlay district have been on sale but vacant for years demonstrates that the only beneficiaries of upzoning on the H Street corridor are land speculators. The District, the HS Overlay and the surrounding residents are harmed through the blight and related problems that this speculation on upzoning for vacant land encourages.[26]

E. ANC 6A's proposed text amendment is an appropriate solution.

The amendment that ANC 6A proposes merely preserves the status quo. It is limited to the narrow geographic area to which the HS Overlay applies. In addition, the amendment is

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22 D.C. Recorder of Deeds, Document No. 2004173214 (Dec. 21, 2004).

23 H St. CDC purchased the undeveloped lot from Vulture for $770,000. D.C. Recorder of Deeds, Document No. 2006017912 (Feb. 8, 2006).

24 *See* Erin Killian, *One bar at a time, Englert transforms the spirit of H Street,* Washington Business Journal, Feb. 16, 2007.

25 *See* www.atlas arts.org.

26 ANC 6A embraces the rehabilitation and renovation of the HS Overlay area. However, ANC 6A opposes continuous upzoning that upsets the balance of character, scale and stability of the neighborhood.

effective for only a finite and well-defined amount of time. ANC 6A projects that five years is a sufficient period of time for the HS Overlay to take root, for the HS Overlay to manifest itself in a refurbished H Street corridor, and for the long-dormant H Street corridor to achieve a cohesion, stability and dominance that sets a clear standard for future development. In addition, the proposed text amendment reaffirms the principle that comprehensive rational planning that resulted from years of community consensus-building should be allowed a reasonable amount to time for implementation before alterations to it merit consideration. After the corridor undergoes the rehabilitation, renovation and development on the limited scale contemplated by the HS Overlay, the H Street NE Strategic Development Plan, and the Comprehensive Plan, the area and the community will be prepared to contemplate alterations to the HS Overlay zone district.

Finally, ANC 6A's proposed text amendment accomplishes the Zoning Commission's statutory mandate of uniformity and consistency in zoning. The proposed amendment merely maintains the existing uniformity of character across the existing HS Overlay district. Moreover, the proposed amendment discourages pinpoint aberrations and "anomalies" in the zoning maps, which contradict the statutory mandate for uniformity in zoning[27] and which the Zoning Commission disfavors.[28] Also, by maintaining the *status quo* for a limited period of time, the proposed amendment encourages stability of the HS Overlay district and land values therein.[29] Finally, the proposed text amendment ensures that the zoning maps and regulations are "not inconsistent with the comprehensive plan for the national capital."[30]

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27 D.C. Code § 6-641.01.

28 *See, e.g.,* Zoning Commission Case No. 05-34 Tr. of April 20, 2006 at 22-:4-24, 33:9-19.

29 D.C. Code § 6-641.02.

30 *Id.*

III. Emergency rulemaking is warranted because a specific proposal for an oversized development immediately threatens the express policies, goals and objectives of the HS Overlay and Comprehensive Plan Amendment Act of 2006.

ANC 6A requests this emergency text amendment because an oversized development proposal contemplates upzoning for existing underused lots. Moreover, other upzoning proposals are expected. These upzoning proposals violate the compromises and concessions between stakeholders, city agencies and the community that had the goal of limiting future increases in density and encroachments through repeated upzoning.

New oversized property developments are already eroding the HS Overlay. For example, in late 2006, Louis Dreyfus Property Group ("Dreyfus") applied for both upzoning and a PUD for a large development at the western gateway of the HS Overlay ("Dreyfus Property").[31] The Dreyfus Property is currently split-zoned C-2-A/C-2-B, while most of the property in the H Street Overlay is zoned C-2-A. The initial Dreyfus Property proposal sought to upzone 60% of the lot that was zoned C-2-A to C-2-B. Now, Dreyfus still proposes to upzone 36% of the property to a C-3-C zone. Drefyus's proposed upzoning would increase the matter-of-right density by over 88,000 square feet, from 226,000 square feet to 315,000. The combined effect of the proposed upzoning and PUD would increase the floor area of the development to over 403,000 square feet. This oversized development, which contravenes the express policies and objectives of the Comprehensive Plan Act of 2006, is currently under review.[32]

Dreyfus seeks to upzone its property even though the Dreyfus Property has been repeatedly upzoned before. In 2006, the Zoning Commission upzoned portions of the lot from C-2-A to C-

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31 200 H St., Northeast. *See* ZC Case No. 05-37.

32 *See* Zoning Commission Case No. 05-37.

2-B as part of the H Street Overlay.[33] Less than a decade earlier in 1997, the C-2-A portion of the aggregated lots had been upzoned to C-2-A from a C-1 zone.[34] In the meantime, the surrounding neighborhood has not changed.[35]

In all this time and during all these zoning changes, the land owned by Dreyfus that fronts on H Street has remained unimproved as a parking lot despite promises and plans to the contrary.[36] The portion of the Dreyfus Property that fronts on 2nd and G Streets contains 14 rowhouses that contribute to the historic architecture and housing stock. Dreyfus will demolish the historic rowhouses to make way for a building that is so large it will be entirely inconsistent with the scale, design and character of the adjacent neighborhood. There are numerous similar aggregated lots that are likely to face similar treatment. Developments like the Dreyfus Property are oversized by every measure contemplated in the zoning regulations, namely, height, size, density and lot occupancy.

Another pressing danger is that repeated upzoning to accommodate larger and larger developments exacerbates the encroachment of developments that have a scale and character that violate the Comprehensive Plan Act's policies for the Capitol Hill District Element. Individual property owners, like those that sold their property to Dreyfus, become discouraged at the prospect of living in the shadows of such oversized buildings and incompatible uses. In turn, the incompatibility provides an incentive for owners to leave their properties vacant and hope that large-scale developers like Dreyfus will at least buy them out as a part of a similar oversized development.

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33 *See* Zoning Commission Order No. 04-27 at 2 (Jan. 9, 2006) (square 752 rezoned from C-2-A to C-2-B).

34 *See* Zoning Commission Order No. 821 at 3, 6 (Aug. 4, 1997); Zoning Commission Order No. 591 at 12 (Dec. 2, 1988).

35 The sole exception to this statement is another oversized Dreyfus development known as Station Place.

36 *See* Zoning Commission Order No. 591-B () (extending validity of orders granting PUD application for square 752).

For developers, this upzoning cycle facilitates the process of aggregating properties, upzoning them and demolishing the existing historic building stock in favor of oversized structures that will compensate the developers with the oversized profits they seek at the expense of the vibrant communities they decimate. Moreover, continuous upzoning encourages property owners to keep their properties vacant and unimproved. Indeed, if the Zoning Commission denies this text amendment, it is blessing the destruction and permanent loss of the inventory of historic structures that the HS Overlay is designed to protect, and that the Council and community stakeholders sought to preserve through the Comprehensive Plan Amendment Act of 2006.

In short, the repeated zoning changes and cycle of encroachment are diametrically opposed to the goals of the HS Overlay and Comprehensive Plan Amendment Act of 2006, which are to stabilize "the historic character and scale of the Overlay District" and "[e]ncourage the reuse of existing buildings along the corridor."[37] The goal of preserving the historic character and scale of H Street is so important that the HS Overlay mentions preservation twice.[38] Moreover, the high number of developments proposed in a short period of time on the H Street corridor, and the Dreyfus property in particular, are taxing the attention, time and resources of ANCs and residents in the area.[39] By contrast, there is no urgency or need for upzoning empty lots. Therefore, an emergency text amendment is warranted.

IV. Conclusion

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37 11 DMR § 1320.2 (d), (e).

38 *Id.*

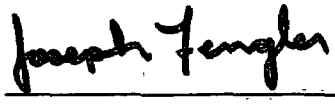
39 *See, e.g.*, ZC Case No. 05-37.

ANC 6A's proposed emergency text amendment furthers the goals and policies of the HS Overlay and Comprehensive Plan by preserving the status quo for a limited period of time in a very limited geographic area in response to an immediate threat. It also crystallizes OP's promise to the community that the upzoning achieved through the HS Overlay would be the last for a substantial period of time. It also discourages the kind of land speculation that has allowed developers to reap the rewards of upzoning while they allow their properties remain vacant and blighted. Finally, emergency rulemaking is warranted in this case because of the threat posed by the Dreyfus Property and the number and frequency of other anticipated upzoning applications in the HS Overlay area.

For the reasons stated herein, and for such other reasons that the Zoning Commission deems just and proper, ANC 6A respectfully requests that the Zoning Commission:

1. Adopt the above-mentioned text amendment to the zoning regulations on an emergency basis; and
2. Set down the text amendment for a public hearing to determine the whether the Zoning Commission should adopt the amendment on a permanent basis.

Respectfully submitted,



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ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

APPLICATION TO AMEND THE TEXT OF THE ZONING REGULATIONS

Before filling out this form see the instructions on the reverse side.
Print or type all information unless otherwise indicated.

In accordance with the provisions of Section 102 of the Zoning Regulations, request is hereby made for an amendment to the text of the Zoning Regulations as follows:

Existing Language (include Section or Paragraph Number): NONE (NEW SECTION)

Proposed Language: NOD:

§ 1327. Action to preserve the policies, goals and integrity of the HS Overlay.

As of the effective date of the HS Overlay and for five years thereafter, the Zoning Commission directs the Director of the Office of Zoning to refuse to accept, and to suspend consideration of, any application or petition for zoning relief that meets the following two criteria:

1) The HS Overlay applies to the property or lot that is the subject of the application or petition; and
2) The application or petition seeks any zoning relief that has the effect of rezoning the property to a more permissive or less restrictive zone district.

The above information and attached documents are true to the best of my knowledge:

Joseph Fengler — Applicant's Signature

4/2/07 — Date

ADVISORY NEIGHBORHOOD COMMISSION 6A — Applicant's Printed Name

Applicant's Filing Status (Check One):

- ✓ Owner of Property
- District of Columbia Department
- Federal Government Department

Person to be notified of all actions:

Terres Andrew Ronneberg (Drew) — Name

(202) 431-4305 — Telephone Number

646 11th St NE, Washington DC — Address

20002 — Zip Code

DO NOT WRITE BELOW THIS LINE

Date Received:

Date Accepted: _____ Z.C. Case No. _____