

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



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D.C. OFFICE OF ZONING

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MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: *J for* Jennifer Steingasser, Deputy Director
DATE: October 5, 2007
SUBJECT: **ZC #07-22**
Final Report – ANC-6A's request for a text amendment to the H Street Commercial Overlay District

RECOMMENDATION

The Office of Planning (OP) does not support the text amendment as proposed by ANC-6A regarding the submission of planned unit development (PUD) applications. The amendment proposes an applicant file separately for a map amendment and a PUD.

BACKGROUND

ANC-6A petitioned the Zoning Commission on April 4, 2007 for an emergency text amendment which would add a new Section 1327 to the existing H Street Overlay text to suspend acceptance by the Office of Zoning any application for up-zoning within the H Street Overlay District for a period of five years. The petitioners expressed a concern that there was immediate danger to the overlay's intent posed by applications for rezoning, including a PUD submittal (ZC 05-37). The Zoning Commission subsequently denied the hearing of that petition.

ANC-6A has now proposed a text amendment which bifurcates the Zoning Commission's process of considering PUDs with related map amendments by requiring that an upzoning application and a PUD application be heard in separate proceedings on the grounds that the considerations that justify an upzoning are different than those that would justify a PUD. The applicants believe that a combined proceeding blurs these considerations and the issues do not receive their deserved evaluation. ANC-6A expressed the following concerns:

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EXHIBIT NO. 10

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- PUD applications with associated map amendments are creating proposals for new oversized property development that far exceed the height and densities contemplated by the communities when the H Street Overlay was established.
- PUDs in general already receive significant height and density bonuses.
- Additional height and density received through associated map amendments is not necessary to promote development of high quality buildings along the H Street Corridor.
- Due to the high number of vacant properties on H Street, a change in zoning for one lot ... increase the disparity in development within the HS Overlay and destabilize a portion of the neighborhood.
- PUDs with associated map amendments have fostered land speculation without reciprocally benefiting H Street or the Near Northeast neighborhood.
- Repeated upzonings through the PUD process rewards land speculators by increasing the permissible density.

REVIEW OF PROPOSAL

OP remains sensitive to the neighborhood concerns regarding the intent of the H Street Overlay. OP and the Comprehensive Plan support the purpose and intent of the H Street Overlay, including designs consistent with the historic character and scale of the overlay district. However, OP does not believe that the proposed text amendment would adequately address the concerns expressed by ANC-6A regarding the detriment to the overlay's intent.

OP is concerned that adopting separate procedures preempts the Commission's ability to decide when to amend the zoning map, as well as what public hearings are necessary and when they are held. Under current procedures, the Zoning Commission decides whether to hold a public hearing for a PUD with an associated map amendment at setdown. It can decide to hold hearings for the PUD and map amendment concurrently, or separately, as it deems appropriate. There is concern about preempting this process and the precedent it may set. If the Commission adopts the proposal, it could not hold the hearings concurrently, even if it believed the proposed map amendment was appropriate for the property, consistent with the Comprehensive Plan, and that a combined hearing was the most effective way to receive public comment.

In the District of Columbia, the PUD process has served two distinct but related purposes. On one hand, the PUD process permits the development of areas 10,000 square feet and greater as a single unit through flexibility in the height, density, and use restrictions not available through matter-of-right provisions. PUD regulations specify the scope of the Zoning Commission's duties regarding public benefits and project amenities:

In deciding a planned unit development application, the Zoning Commission shall judge, balance, and reconcile [1] the relative value of the project amenities and public benefits offered, [2] the degree of development incentives requested, and [3] any potential adverse effects according to the specific circumstances of the case.

The consideration of a PUD and related map amendment allows for a covenant to be tied to a particular project, whereas a map amendment (upzoning) on its own does not. The Commission reviews map amendments unrelated to development projects as consistency actions, including situations where protection of a neighborhood's character may become threatened by existing zoning designations inconsistent with the Comprehensive Plan.

The proposed text amendment which splits the hearing process between map amendments and PUDs would deprive the Zoning Commission of its duty to review a development project until the PUD is presented. The Commission grants requested relief by reconciling the relative value of the project's amenities and benefits and any potential adverse effects relative to specific circumstances of the case. A project's amenities and benefits are in most cases tied to the requested development incentives and it is the Commission's role to "judge, balance and reconcile" the requested incentives for a superior project against the potential adverse impacts of those incentives. This process binds the related map amendment (as a covenant) to a specific project. An upzoning request without a development plan and not related to a consistency action has no merit before the Commission and would not be supported by OP.

The Zoning Act conveys authority to the Zoning Commission to make decisions about map amendments and PUDs and to convey flexibility. OP does not support limiting that authority.

The procedural rule suggested by the text amendment would apply to a limited area of the District. Separate hearings would only delay development projects within the overlay district and create inefficiencies in the development process and does not further the revitalization and stabilization of the H Street Corridor. The creation of the overlay is a direct response to the longstanding vacant properties and development potential, and it provides the guide for development that respects the neighborhood's character. The PUD process and related map amendments existed before the creation of the overlay. Therefore, a direct correlation between land speculation, vacant properties and the PUD process cannot be readily concluded. The overlay in fact, provides additional guidance and support for neighborhood character when development involves the PUD process and related map amendment.

Comprehensive Plan

The Zoning Act permits map amendments. Such amendments must be consistent with the Comprehensive Plan as it is a legal document which guides the Zoning Commission's decision making and the recommendations of the Office of Planning. The Office of Planning would not recommend approval of any submission incompatible with the provisions of the Comprehensive Plan or approved small area plans.

As previously stated in OP's report regarding ANC-6A's previous submission, the 2006 Comprehensive Plan provides strong guidance for the redevelopment of the H Street / Benning Road corridor. This guidance includes clear language about the scale and sensitivity of development to the existing neighborhood. Population and job projections in the Capitol Hill Area Element identify that much of the growth for the Capitol Hill

Planning Area is “expected to consist of medium density mixed use development along H Street NE, consistent with the approved H Street Small Area Plan.” Additional sections under General Policy cite the need for sensitively designed development that respects the historic character and scale of the neighborhood and existing buildings (CH-1.1.4, CH-1.1-A). The 2006 Comprehensive Plan also includes great detail on the H Street Corridor and incorporates the elements and details of the Council approved 2003 small area plan (§ CH-2.1). These elements provide the guidance needed for review of any application.

CONCLUSION

Although this area will be undergoing change, the Commission has established the H Street Overlay to respond to and encourage area development. Separate hearings would only delay development projects within the overlay district and create inefficiencies in the development process for the District and does not further the revitalization and stabilization of the H Street Corridor.

Therefore, OP does not recommend that the Commission set down this petition for a text amendment which would limit the Commission’s decision-making authority of the H Street corridor.