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609177	Submitted to ODAI	Notices, Opinions	Zoning Commission Notice of Final Rulemaking & Order No. 10-16 (Text Amendment to Allow Closure of Open Arcades)	11/26/2010 Vol 57/48	11/18/2010 17:54:55
609080	Submitted to ODAI	Notices, Opinions	Zoning Commission Notice of Final Rulemaking & Order No. 10-16 (Text Amendment to Chapter 30, Section 3004, Minutes & Transcripts)	11/26/2010 Vol 57/48	11/18/2010 17:54:07
608983	Submitted to ODAI	Final Rulemaking	Zoning Commission Notice of Final Rulemaking & Order No. 10-15 (Text Amendment to Chapter 30, Section 3004, Minutes & Transcripts)	11/26/2010 Vol 57/48	11/18/2010 17:53:10
608885	Submitted to ODAI	Final Rulemaking	Zoning Commission Notice of Final Rulemaking & Order No. 10-16 (Text Amendment to Allow Closure of Open Arcades)	11/26/2010 Vol 57/48	11/18/2010 17:51:22
608739	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 849-B (Lowell School, Inc.)	11/26/2010 Vol 57/48	11/18/2010 17:48:19
608692	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 03-12K/03-13K (Square 769, LLC & DCHA)	11/26/2010 Vol 57/48	11/18/2010 17:45:53
608585	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 07-22 (Petition Requesting Adoption of a Text Amendment Disallowing a Request for a Map Amendment as Part of a Planned Unit Development ("PUD") Application Within H Street, N.E. Neighborhood Commercial Overlay)	11/26/2010 Vol 57/48	11/18/2010 17:44:48
608498	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 07-18A (Jemal's Up Against the Wall, LLC)	11/26/2010 Vol 57/48	11/18/2010 17:43:43

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ZONING COMMISSION
District of Columbia

CASE NO.

07-22

EXHIBIT NO.

11

ZONING COMMISSION
District of Columbia
CASE NO.07-22
EXHIBIT NO.11

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-22
Z.C. Case No. 07-22

**(Petition Requesting Adoption of a Text Amendment Disallowing a Request for a Map
Amendment as Part of a Planned Unit Development ("PUD") Application Within H Street,
N.E. Neighborhood Commercial Overlay)**

October 15, 2007

DECISION AND ORDER

The H Street, N.E. Neighborhood Commercial Overlay District ("HS Overlay" or "Overlay") was established by the Zoning Commission for the District of Columbia (the "Commission") over lots fronting on H Street, N.E., between 2nd and 15th Streets, N.E., to encourage and foster the revitalization of the H Street corridor. The Overlay only encompasses lots fronting on H Street, but proceeding further away from H Street, both to the north and south, are low-scale row dwelling neighborhoods. The Overlay seeks to protect the historic scale and character of the area within it (11 DCMR § 1320.2(d)), but also permits new development of both residential and commercial uses. Along with the text amendments used to implement the Overlay, map amendments were also adopted "upzoning"¹ from C-2-A to C-2-B several lots fronting the north or south side of H Street and therefore allowing a somewhat larger building envelope than would have been previously permitted.

The Overlay is within the area encompassed by Advisory Neighborhood Commission ("ANC") 6A. Due to recent developments in the Overlay area, the ANC has become fearful that the Overlay corridor will become overly-developed, potentially severely impacting the nearby row dwelling neighborhoods, particularly if more, or further, upzonings are permitted. The ANC, therefore, petitioned the Commission to adopt a text amendment bifurcating the Planned Unit Development ("PUD") hearing. Under the proposal, the Commission would conduct one hearing on the zoning flexibility requested under the PUD regulations and a second hearing on the merits of the map amendment being concurrently proposed.

In its petition, the ANC states that the proposed text amendment will help protect the historic character and scale of the H Street Corridor by: (1) preventing spot upzonings through the PUD process; (2) requiring upzoning proposals to better demonstrate their consistency with the Comprehensive Plan and the H Street Strategic Development Plan by requiring a proceeding that focuses entirely on the proposed upzoning; and (3) providing a more focused proceeding for evaluating the benefits of a proposed PUD. The ANC also states that the proposed text amendment will help reduce "rampant" land speculation which, it claims, is preventing the rehabilitation of existing buildings and retarding H Street's economic revitalization. (Exhibit 3, pp. 1-2.)

¹"Upzoning" is generally used by the Commission, and is used herein, to signify a change in zoning from a more restrictive zone district to a less restrictive zone district. For example, any change from a residential district to a commercial district would be an "upzoning," or a change from a C-2-A zone district to a C-2-B zone district would be an "upzoning."

Section 6 of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-505 (b) provides in part that:

Any interested person may petition ... an independent agency requesting the promulgation, amendment, or repeal of any rule. Nothing in this subchapter shall make it mandatory that ... any agency promulgate, amend, or repeal any rule pursuant to a petition therefor submitted in accordance with this section.

The Commission is sympathetic to ANC 6A's concern for appropriate development along the H Street corridor, but cannot agree with the approach requested here. First, as the regulations currently stand, there is nothing to prevent the Commission, if it deems it appropriate/necessary, from holding two separate hearings under a PUD application – one for the development project, and a separate one for any map amendment requested. (11 DCMR § 3022.) There is no requirement that a PUD application filed together with a map amendment request must be heard together. However, mandatory separate hearings would likely add delay to the PUD process, which fosters neither administrative efficiency nor the revitalization and stabilization of the H Street corridor and should only occur in the rare occasion when a map amendment presents such extraordinary aspects as would require the Commission's focused attention.

The Commission also agrees with the point made by the Office of Planning in its October 5, 2007 Final Report, that one cannot “readily conclude” a correlation between the PUD process and the alleged land speculation which has caused the ANC so much concern. The PUD/map amendment process has worked throughout the District without creating “rampant” land speculation. Long before the H Street Overlay existed, the PUD process was available along H Street without causing land speculation, and, if anything, the Overlay will help guide development along H Street, including PUD development, in a manner supported by the ANC and local community. (Exhibit 10.)

Therefore, the Petition of ANC 6A for a text amendment to Preserve the Integrity and Goals of the H Street N.E. Neighborhood Commercial Zone Overlay District, which requests a text amendment to disallow the filing of a PUD application including a map amendment request, is hereby **DENIED**.

On October 15, 2007, upon the motion made by Chairman Mitten, as seconded by Vice Chairman Hood, the Zoning Commission **DENIED** this petition by a vote of 5-0-0 (Carol Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to deny.)

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*, that is on November 26, 2010.