

**BEFORE THE DISTRICT OF COLUMBIA ZONING
COMMISSION**

ZONING COMMISSION
District of Columbia

CASE NO. 07-22

EXHIBIT NO. 3

**PETITION OF ADVISORY NEIGHBORHOOD COMMISSION 6A FOR A
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 a text amendment to the H Street NE Neighborhood Commercial Overlay Zone District (“HS Overlay”) to prevent Planned Unit Developments in the HS Overlay from petitioning for map amendments as part of the PUD application.²

I. Proposed Text Amendment

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

§ 1326.3 Notwithstanding § 2406.2 and § 2406.11(b), a PUD application in the H Street Overlay District may not be filed with a change in zoning for the property involved.

II. Justification for the Proposed Rule

ANC 6A believes the proposed rule will serve to protect the integrity of the H Street Strategic Development Plan and the Corridor’s “scale, character, and prevalent existing uses”³ by
1) preventing spot upzonings through the PUD process 2) requiring upzoning proposals to better

¹ At a regularly scheduled and duly noticed meeting of ANC 6A held on July 12, 2007, the Commission, by unanimous vote, to authorized the filing of this petition and authorized Drew Ronneberg 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 Commission Order No. 493 at 19 (Aug. 4, 1986) (“upzone”); Zoning Commission Order No. 975 at 3 (July 12, 2004) (“up-zoning”).

³ ZC Order No. 616. This was the order that created Neighborhood Commercial Overlay Districts.

demonstrate their consistency to 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 application. In addition, ANC 6A believes that the proposed text amendment will have the practical benefit of reducing rampant land speculation in the Western End of the H Street Corridor that is preventing the rehabilitation of existing structures and retarding H Street's economic revitalization.

The proposed amendment does not prohibit or limit anyone from seeking an upzoning or a PUD – it only requires that an upzoning and a PUD be sought in separate proceedings. Both types of proceedings are utilized by developers to obtain additional density and height above what is permitted as a matter-of-right in an existing zone. The considerations that would justify an upzoning are different than the considerations that would justify a PUD. Separate proceedings would allow the upzoning request to be evaluated in terms of planning, *i.e.* whether the request is consistent with the Comprehensive Plan and the H Street Strategic Development Plan, and the PUD density be evaluated in terms of whether the proposed project is exemplary and therefore warrants bonus height and density. In a combined proceeding, these considerations become blurred and do not receive the separate consideration and evaluation that they deserve.

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 the community thought would remain stable for a significant number of years.

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.⁴ 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, 2004.⁵

The purpose of the HS Overlay is to implement the policies and goals of the Neighborhood Commercial Overlay District,⁶ the Comprehensive Plan Amendment Act of 2006,⁷ and the H Street NE Strategic Development Plan.⁸ Among those goals are building designs “that are consistent with the **historic character and scale** of the overlay district.”⁹ In addition, the Comprehensive Plan seeks to “recognize the importance of its **historic architecture** and housing stock.”¹⁰ 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

⁴ Zoning Commission Order No. 04-27 (Jan. 9, 2006).

⁵ *Id.* at 1, 5.

⁶ 11 DCMR § 1300 *et seq.*

⁷ *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.

⁸ Zoning Commission Order No. 04-27 (HS Overlay).

⁹ 11 DCMR § 1320.2 (d).

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

high-density residential corridor north of Union Station ('NoMA') and the **adjacent row house neighborhoods** of Capitol Hill."¹¹

B. Allowing PUDs with associated Map Amendments undermines the 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, 2006.¹²

Some of the properties along the western end of the H Street Corridor were upzoned in the H Street Overlay to incentivize developers to build housing which would help support the retail and Arts and Entertainment Districts to the east. The upzonings resulted from a comprehensive review of the corridors needs and assets and involved extensive public participation. Now, PUD applications with associate map amendments are creating proposals for new oversized property developments that far exceed the height and densities contemplated by the community when the HS Zoning Overlay was established.¹³

The fact that PUDs threaten the scale, character and prevailing uses of Neighborhood Commercial Districts is illustrated by the history of the DuPont Circle Overlay District. In the 1970's, the Dupont Circle area experienced significant encroachment of a number of large buildings due to the area's permissive zoning at the time. In order to conserve the predominately residential character of Dupont Circle and keep the central business area from expanding into the area, the Zoning Commission substantially downzoned all of Dupont Circle in 1979 as part of ZC Order No. 282.¹⁴ After the downzoning, Dupont Circle experienced a proliferation of PUDs in the 1980s because the PUD process offered the only viable alternative of receiving additional

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

¹² Zoning Commission Order No. 04-27 at 14.

¹³ *See, e.g.*, Zoning Commission Case No. 05-37.

¹⁴ ZC Order 705. p.4

height and density without petitioning for a traditional map amendment.¹⁵

In order to preserve the scale, character and prevailing uses of the Dupont Circle area, the Zoning Commission created the Dupont Circle Overlay District in 1991 which incorporated §1503.1 which states, “In the DC Overlay District, the matter-of-right height and floor area ratio limits shall serve as the maximum permitted height and floor area ratio for a planned unit development.” Because §1503.1 eliminates one of the means by which PUDs obtain additional height and density, it is a much more restrictive than the text amendment proposed by ANC 6A, which only requires that the applicant file for the map amendment and PUD bonus height and density in separate proceedings.

Unlike PUDs in the DC Overlay District, PUDs in general¹⁶ already receive significant height and density bonuses. For example, in a C-2-B zone, the matter-of-right height is 65 feet and FAR is 3.0, while the maximum density in a C-2-B PUD is 90 ft. and 6.0 FAR. Given the significant potential height and density bonuses for PUDs, ANC 6A believe that additional height and density received through associated map amendments is not necessary to promote development of high quality buildings along the H Street Corridor.

C. There is not need for PUDs to receive additional density through a map amendment on the H Street Corridor where there is so much vacant land and developer interest in building projects that do not require upzonings.

¹⁵ Ibid.

¹⁶ The concern about allowing de facto upzoning as a consequence of a PUD was addressed in the Takoma Overlay proceeding. In ZC Case No. 04-16 the Commission wrote “The TK Overlay will subject properties located in the Central District limits to those restrictions applicable to all neighborhood commercial overlay districts that: ... Limit height and floor area ratios in Planned Unit Developments to the maximum allowed as a matter-of-right in the underlying zone district per Section 1305.1.”

The existing vacancy rate for lots in the HS Overlay area demonstrates that there is no need or benefit to increasing the density of any one lot in the HS Overlay beyond what is permitted in a PUD. 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 With so much vacant land on H Street, a change in zoning for one lot only serves to both increase the disparity in development within the HS Overlay and destabilize a portion of the neighborhood.

Furthermore, development of high quality projects is occurring on the H Street Corridor without the requirement of additional density from a PUD and a map amendment. For example, the recently approved 601-645 H Street project (BZA Case #17651) was designed without upzoning or PUD.²⁰ 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 associated map amendment was proposed.²¹ By contrast, Dreyfus has proposed a PUD with an associated map amendment that adds almost 77,000 sq ft. of floor area to the project to give a total of over 400,000 sq feet on a Square with 2-3 story rowhouses.

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 See BZA Case No. 17521.

²¹ Zoning Commission Transcript 061211zc.pdf at 101

C. PUDs with associated map amendments in our neighborhood remain in vacant lots while the land speculation fostered by the PUD process continues to retard the economic rehabilitation of the area.

PUDs with associated map amendments have fostered land speculation without reciprocally benefiting H Street or the Near Northeast neighborhood. For example, the Cohen PUD on square 749 still has not been constructed even though the initial application with associated map amendment was approved in 1995.²² After almost 10 years of letting the existing rowhouses fall into disrepair, the Cohen Group finally razed them and fenced in the property. The surrounding community has been burdened over a decade by a developer who is sitting on vacant property in order to allow his already valuable development rights to appreciate in value. If the PUD is ever constructed, it will still be a burden on the community because the additional density received through the upzoning ensures that the 10 story development will remain out of scale and character with the surrounding community.

In another case, lots in square 752 were upzoned and approved for a PUD in 1988.²³ The Zoning Commission extended the PUD approval in 1991.²⁴ 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. Now, a new owner seeks to upzone property in those squares yet again, and seeks approval for an even larger PUD.

In both of these PUD cases, the associated map amendment process encourages a proposed development to be out of scale and character with the surrounding buildings. For

²² Zoning Commission Orders 783 and 05-36.

²³ Zoning Commission Order No. 591 (Oct. 17, 1988).

²⁴ Zoning Commission Order No. 591-B (Aug. 5, 1991).

developers, the strategy for circumventing the Zoning Map is clear – one needs to aggregate properties, propose a PUD with associated map amendments, receive approval from the Zoning Commission and then use the approval as precedence for future approvals of PUDs with associated map amendments. This process encourages property owners to keep their properties vacant and unimproved.

By contrast, the Eastern 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.²⁵ A huge development—the 60,000 square foot Atlas Performing Arts Center—is part of the development occurring without a PUD or associated upzoning.²⁶

In short, repeated upzoning through the PUD process 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 demonstrate that the only beneficiaries of PUD associated 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. This encroachment of oversized developments on our communities is 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.”²⁷ The goal of preserving the historic character and scale of H Street is so important that the HS Overlay

²⁵ See Erin Killian, *One bar at a time, Englert transforms the spirit of H Street*, Washington Business Journal, Feb. 16, 2007.

²⁶ See www.atlasarts.org.

²⁷ 11 DMR § 1320.2 (d), (e).

mentions preservation twice.²⁸ Indeed, if the Zoning Commission denies this text amendment, it is blessing this process of 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.

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

The amendment that ANC 6A proposes is limited to the narrow geographic area to which the HS Overlay applies. In addition, it respects the due process of the applications because it doesn't prevent anyone from seeking an upzoning – it just requires that upzoning requests occur outside of the PUD process. It is conceivable that a developer could achieve the same result with the proposed system as with the current system, although the process would require 2 sequential Zoning Commission hearings. The proposed text amendment also reaffirms the principle that changes to a Zoning map which resulted from comprehensive rational planning process requiring years of community consensus-building should at least trigger a full hearing in front of the zoning commission about the desirability of an upzoning request.

Finally, ANC 6A's proposed text amendment accomplishes the Zoning Commission's statutory mandate of uniformity and consistency in zoning by discouraging pinpoint rezonings and encouraging deliberative comprehensive planning processes that insure that the zoning map is "not inconsistent with the comprehensive plan for the national capital."²⁹

²⁸ *Id.*

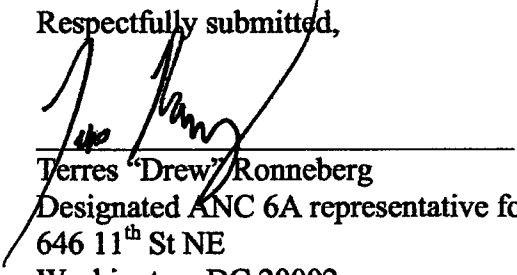
²⁹ *Id.*

III. Conclusion

ANC 6A's proposed text amendment furthers the goals and policies of the HS Overlay and Comprehensive Plan by ensuring that amendments to the Zoning Map occur independently of the PUD process. This effect of the amendment is to require all upzoning applications in the HS Overlay District to be subject to a separate hearing in front of the Zoning Commission. The proposed amendment 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.

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 set down the text amendment for a public hearing to determine whether the Zoning Commission should adopt the amendment.

Respectfully submitted,



Terres "Drew" Ronneberg

Designated ANC 6A representative for this case
646 11th St NE
Washington, DC 20002
(202) 431-4305

Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, DC 20013