

**MEMORANDUM**

TO: D. C. Zoning Commission
FROM: Jennifer Steingasser, Deputy Director, Development Review & Historical Preservation
DATE: December 24, 2010
SUBJECT: Zoning Commission Case Number 10-19, Proposed Zoning Map Amendments to Square 1050 and Portions of Squares 1026, 1027, and 4509 and Related Text Amendments to the Zoning Regulations

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 D.C. OFFICE OF PLANNING
 ZONING

I. SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends that the Zoning Commission approve the following map and text amendments that would:

- Rezone the portions Squares 1027, 1049 and 1050 currently zoned C-3-A to HS-A/C-2-A (Community Business District within the H Street Northeast Overlay Arts Sub-district).
- Rezone a portion of lot 157 on Square 4509 from C-2-B to R-5-C (Residence) District.
- Amend §§ 1320 and 1324 of the Zoning Regulations.

OP continues to not support other map amendment proposals submitted by Advisory Neighborhood Commission (ANC) 6A.

II. BACKGROUND

The proposed map amendment as brought forward by OP was the result of discussions with ANC 6A. While OP could not support the extent of the map amendments originally proposed by the ANC, OP and the ANC reached agreement that OP would take forward the original amendment, targeting specific areas where the change in zoning would more clearly reflect existing land use patterns and density, and the Land Use Plan designation.

Subsequent to the setdown but prior to the first Zoning Commission Public Hearing on this case, the ANC submitted a recommendation to expand the area of the proposed rezoning to include other commercially zoned property, including lots fronting H Street and within the H Street Overlay area as well as alley lots and lots fronting other side streets. As noted at the first Public Hearing, OP opposed these additional downzoning map amendments as being inconsistent with the Comprehensive Plan and the H Street Strategic Development Plan.

During the Public Hearing on November 1, 2010, the Commission agreed to consider the additional map amendments proposed by the ANC. Staff was directed to reschedule the public hearing for January 3, 2011; revise the public hearing notice to include the changes suggested by the ANC; and notify the owners of all the property that would be subject to these proposed changes.

The Commission also asked for the following supplemental information:

- photographs of the areas under consideration which have been included in this report;
- a copy of the Board of Zoning Adjustment (BZA) Order for a special exception application that originally raised community concerns - attached as Exhibit 3.

ZONING COMMISSION
 District of Columbia

The BZA Order for special exception relief was granted on September 15, 2009 for a gasoline station with a convenience store on a corner lot located at 1400 Maryland Avenue NE after a lengthy BZA review process. To date no Building Permits have been issued for the proposed use. A Commissioner also asked what the status of the special exception would be if the zoning was changes from C-3-A to HS-A/C-2-A, as proposed. In its response, the Office of the Attorney General referred OP to the following Zoning Regulation provision:

3203.9 Applications for certificates of occupancy authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations in effect on the date the orders were promulgated; provided, that all applications for certificates of occupancy shall be accompanied by information sufficiently complete to permit processing without substantial change or deviation.

III. AREA DESCRIPTION

The subject properties of OP's original proposal are located generally close to the intersection of Maryland Avenue and H Street NE. Although there are some vacant lots in the area, existing development generally consists of a mixture of one- to two-story residential, commercial, and institutional structures (including the service station) in Squares 1027, 1049 and 1050; and four-story residential apartment buildings on the subject portion of Square 4509.

Properties in Square 1027 and 1049 to the north of the subject area are generally developed with buildings of similar scale, occupied by commercial and residential uses with frontage along H Street in the HS/C-3-A district. Properties south of Square 1050, across G Street, are mostly developed with two-story row dwellings in an R-4 district. Properties to the south and east of the commercially zoned portion of lot 157 in Square 4509, in the same Pentacle Limited Partnership development, are occupied by one-family row dwellings and four-story apartment buildings in the R-5-B district.

The subject area is proximate to H Street, which has good bus service and is anticipated to have streetcar service connections to Union Station. H Street is undergoing revitalization and is becoming increasingly popular as an arts and entertainment area.

IV. COMPREHENSIVE PLAN

The Comprehensive Plan Generalized Future Land Use Map designates all of the properties proposed by OP for amendment as moderate density residential. Since the time of setdown and the holding of the first meeting, the Council of the District of Columbia approved and forwarded to NCPC for review a bill including range to text and map amendments to the Comprehensive Plan, including the following map amendment for the area in question:

"The southwestern corner of Maryland Avenue, N.E., and Benning Road, N.E., west of 15th Street, N.W. (the C-3-A zoned portions of Squares 1027, 1049, and 1050), is changed from moderate density residential to mixed use moderate density residential and low density commercial."

The Comprehensive Plan Generalized Policy Map designates most of the OP proposed area s "Neighborhood Conservation Area", where new infill development is intended to "fit in" with the existing prevalent character. The amendments proposed by OP would be not inconsistent with these designations.

The additional properties proposed by ANC 6A are designated on the Future Land Use Map for mixed use moderate density residential / low density commercial development – a designation which anticipates somewhat more density and a greater mix of uses. The Generalized Policy Map

designates virtually all of the ANC proposed land as “Main Street Mixed Use Corridor”, and specifically refers to H Street as a commercial main street serving multiple neighborhoods. New development is intended to “foster economic and housing opportunities”, and to “support transit use and enhance the pedestrian environment”. The map amendments proposed by the ANC would be inconsistent with this designation, particularly the proposals to downzone properties on or adjacent to the H Street corridor.

V. H STREET STRATEGIC DEVELOPMENT PLAN

The H Street Strategic Development Plan (“H Street Plan”)¹, a supplement to the Comprehensive Plan approved by the District Council in February 2004, provides additional guidance. The H Street Plan encourages new office and retail development along the H Street corridor, as well as additional housing needed to support corridor retail elements and to add “eyes on the street”. The H Street Plan guidelines are directly related to appropriate (re)development along the H Street corridor – the Plan and the resultant H Street Overlay do not currently extend beyond the H Street corridor to include any properties without frontage on H Street NE.

The H Street Plan states that initial efforts must focus on building a critical mass of quality destinations in key locations along the H Street Corridor. High standards were also set for new development:

“New buildings along the corridor should be designed in ways that respect the community’s character, protect neighborhood livability and contribute to the making of active streets and public spaces. New development should be urban in character and use, bringing life to the street, complementing historic buildings and reinforcing a ‘sense of place’ for the corridor. Through the use of design guidelines and preservation incentives, the community can ensure that new investment is of the highest quality [Page 32].”

Significant public realm investments were proposed, and are currently underway to improve the pedestrian environment. The intent is to encourage more intense and diverse pedestrian activity along wider intersecting sidewalks along the corridor (H Street) for such activities as outdoor dining. The Plan, however, predates the installation of the H Street Streetcar line.

One of the key components of the implementation strategy was to establish a zoning framework that would include design guidelines to encourage the planned revitalization along the H Street corridor and to address the pedestrian experience along that street. The resulting H Street Overlay was adopted by the Zoning Commission in 2006, and encompasses all properties with frontage directly onto H Street between 3rd and 15th Street NE. The Overlay was further divided into three focus areas – a Residential node at the west end of the corridor, a Retail node at the center and an Arts & Entertainment area at the east end, between 12th and 15th Streets. The Strategic Development component of the Area Plan envisioned *“the eastern end of the corridor developing as a destination for restaurants, cafes, galleries, small shops, and studio spaces serving the needs of theatergoers, the District arts community, and neighborhood residents. ... This area, in combination with the Central Retail District (to the west), will further improve the street’s image as a unique and interesting destination. Recommendations for this area include initiatives to attract new investment, encourage the renovation of storefronts and buildings, attract small office and apartment uses in upper story spaces, encourage infill development on vacant and underutilized sites. Additional parking is proposed on the vacant land behind the library and in the middle of the block behind the Atlas Performing Arts Center. ... [Page 34].”*

¹ Online at: [dpw.dc.gov/DC/Planning/In Your Neighborhood/Wards/Ward 6/H Street Corridor Revitalization Plan](http://dpw.dc.gov/DC/Planning/In%20Your%20Neighborhood/Wards/Ward%206/H%20Street%20Corridor%20Revitalization%20Plan)

VI. OP RECOMMENDED PROPOSAL

The OP proposal, as originally advertised and unchanged since that time, consists of three components:

- Rezone a portion of Square 4509 lot 157, currently zoned C-2-B and developed with 4 story apartment buildings, to R-5-C (shown as Area 1 on the attached Land Use Designations and Zoning Changes Map, Exhibit 1);
- Rezone those properties on in Square 1027 and 1049, and Square 1050 that are currently zoned C-3-A to HS-A/C-2-A (shown as Area 2 on Exhibit 1); and
- Amend specific relevant provisions of Chapter 13, NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT § 1320 H STREET NORTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY to apply them to the referenced portions of Square 1027, 1049 and 1050, as follows (proposed additions are shown in **bold text**²):

- Amend § 1320.1 as follows:

1320.1 The H Street Northeast Neighborhood Commercial Overlay District (HS) applies to all lots fronting onto H Street, N.E. from 2nd Street to 15th Street, N.E. and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B, **as well as lots within Squares 1027 and 1049 fronting onto Maryland Avenue NE or 14th Street NE; and all of Square 1050.** 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, N.E. in Squares 751, 752, 776, 777, 808, 809, 832, 833, 858, and 859 from 2nd to 7th Streets, N.E.;
- (b) H Street Northeast Overlay Retail Sub-district (HS-R) encompasses properties fronting on H Street, N.E. in Squares 889, 890, 911, 912, 933, 958, 959, 981, and 982 from 7th to 12th Streets, N.E.;
- (c) H Street Northeast Overlay Arts Sub-district (HS-A) encompasses properties fronting on H Street, N.E. in Squares 1003, 1004, 1026, 1027, 1049N, and 1049 from 12th to 15th Streets, N.E., **as well as lots within Squares 1027 and 1049 fronting onto Maryland Avenue NE or 14th Street NE; and all of Square 1050.**

- Amend § 1320.2 by adding a new purpose statement as follows:

- (f) **Encourage residential uses, the reuse of existing buildings, and the redevelopment of those portions of Squares 1027, 1049 and 1050 within the Overlay but not fronting H Street.**

- Amend specific subsections of § 1324 DESIGN REQUIREMENTS (HS) as follows:

1324.7 Parking structures with frontage on H Street, N.E., **Maryland Avenue NE, 14th Street NE, or 15th Street NE** shall provide not less than sixty-five percent (65%) of the ground level frontage as commercial space.

1324.8 Each new building on a lot that fronts on H Street, N.E., **Maryland Avenue NE, 14th Street NE, or 15th Street NE** 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 having clear or clear/low-emissivity glass, except

² For reference, a complete version of the H Street overlay text is attached as Exhibit 3, with all changes highlighted

for decorative or architectural accent, and to entrances to commercial uses or to the building.

1324.10 Each commercial use with frontage on H Street, N.E., **Maryland Avenue NE, 14th Street NE, or 15th Street NE** shall have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one primary entrance on H Street directly accessible from the sidewalk.

VII. ANALYSIS OF ORIGINAL OP PROPOSAL

- **Square 4059 (Area 1 in Exhibit 1):**

This map amendment would downzone a portion of one lot from C-2-B to R-5-C. The remainder of the lot is zoned R-5-B. The Comprehensive Plan Generalized Future Land Use Map indicates this area for moderate density residential development. The existing residential buildings have no retail, and have a maximum height of 60 feet. The C-2-B district is considered a medium density mixed use zone, and allows (though a PUD) a height of 90 feet. Although normally considered a medium density district, R-5-C is the minimum residence district that allows the 60-foot height of the existing buildings.



Zone Comparison ³	Square 4059		Squares 1027, 1049, & 1050		
Standard	C-2-B	R-5-C	C-3-A	C-2-A	HS-A/C-2-A ⁴
FAR	3.5	3.0	4.0	2.5	3.0
Non-res FAR	1.5	0.0	2.5	1.5	1.0
PUD FAR	6.0	4.0	4.5	3.0	3.5
PUD non-res FAR	2.0	0.0	3.0	2.0	1.5
Height	65 ft.	60 ft.	65 ft.	50 ft.	55 ft.
PUD Height	90 ft.	75 ft.	90	65 ft.	70 ft.

- **Squares 1027, 1049, and 1050 (Area 2):**

The proposed amendments would rezone about 45 properties from C-3-A to HS-A/C-2-A (refer to photographs, next page).

Generally, each property would have a somewhat reduced permitted height and density, which would not be inconsistent with the either the existing developed character or the Comprehensive Plan Generalized Policy and Land Use Maps. The HS Overlay District is also proposed to be applied to this area, with the area included within the adjacent H Street Arts and Entertainment District. Although not part of the original H Street Strategic Development Plan, the area shares some similar characteristics so that the extension of

³ This table does not incorporate Inclusionary Zoning (IZ) requirements and allowances. Most of the properties are very small so would not provide 10 or more units unless consolidated, and are currently developed with small non-residential buildings.

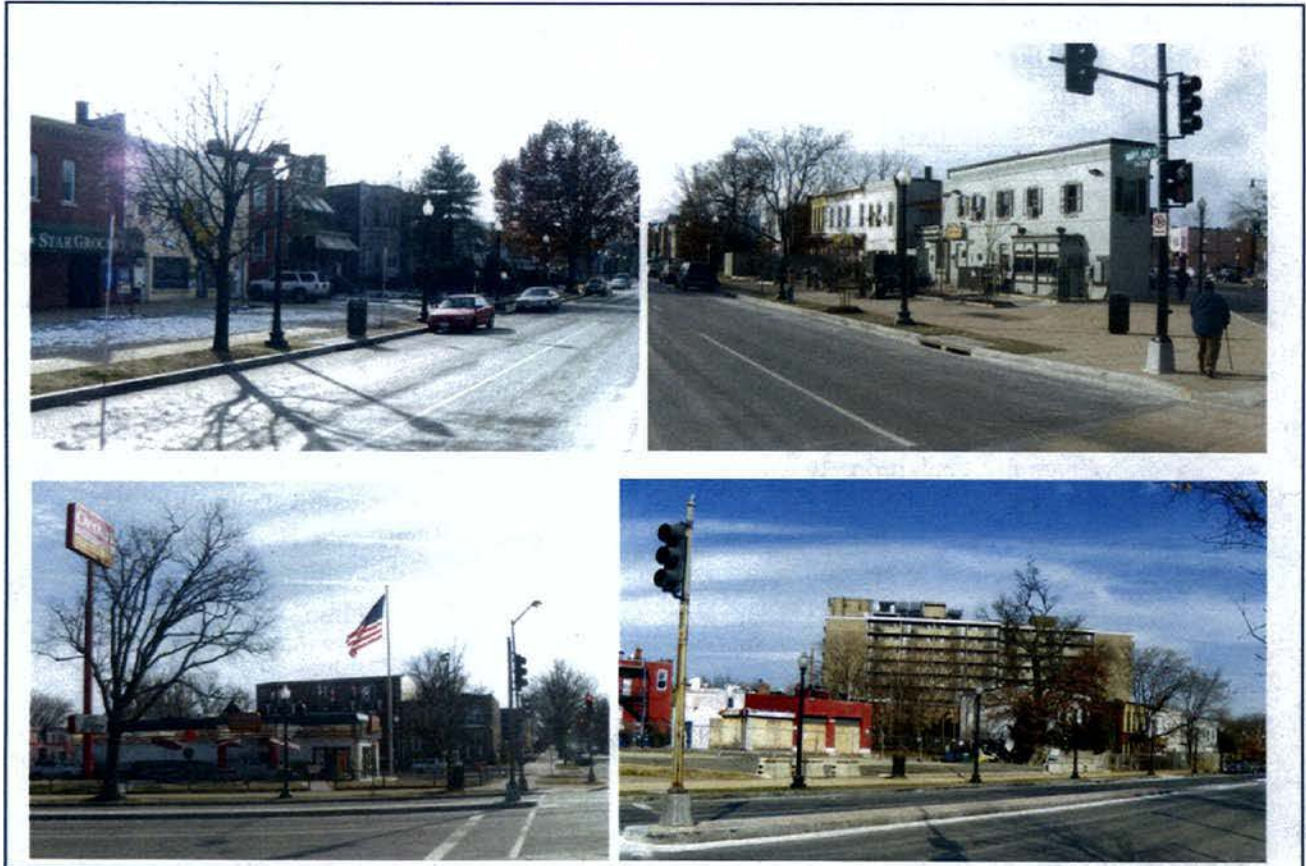
⁴ Bonuses are allowed for providing specified uses, preserving existing building facades, etc., so not all provisions that impact height or density may apply to each property

specific standards and design requirements established along the H Street corridor would be appropriate. These standards would:

- Require that any new fast food restaurant, funeral home, parking garage, or the construction of a new building or enlargement of an existing building by 50% or more on a lot that has at least 6,000 sq. ft. of land area would be subject to BZA approval of a special exception, judged against the purposes and design guidelines of the HS Overlay.
- Prohibit a number of uses, including gas station, automobile sales, and parking lot.
- Apply a series of requirements related to the provision and design of ground floor arts and retail space.
- Apply a series of additional review criteria and guidelines to special exception review.
- For a Planned Unit Development (PUD) application, limit the use of additional height and density to residential or preferred uses.

Rezoning the portion of Square 4509 in Area 1 from C-2-B to R-5-C would result in zoning consistent with the form and character of existing development, and remove the potential for higher density mixed-use development that would be inconsistent with the current Plan designation, without moving the existing apartment buildings into a nonconforming status.

Rezoning properties in Areas 2 in Squares 1027, 1049 and 1050, from C-3-A to HS-A/C-2-A as proposed by OP would limit the development of medium density mixed-use projects, would be consistent with the Comprehensive Plan, and would establishing standards to guide the potential redevelopment of properties within the area.



VIII. ANC EXPANDED DOWNZONING PROPOSAL (NOT SUPPORTED BY OP)

Additional map amendments proposed in the letter from the ANC are as follows:

Area 3 on Exhibit 1 - Proposal to include lots 100, 101, 102, and 103, zoned C-2-A within the H Street Overlay, resulting in HS/C-2-A zoning. The lots are located immediately north of the former R.L. Christian Branch Library, with frontage along 13th Street and currently undeveloped. These properties are owned by the District of Columbia.



Analysis - The proposal to include these properties within the H Street Overlay is not supported by the Comprehensive Plan, and is not anticipated by the H Street Plan.

These properties do not front onto a major retail corridor and the H Street Plan does not provide any relevant guidance for their development. The proposal to expand the boundaries of the Overlay to include properties not on H Street or a major commercial corridor would effectively and inappropriately expand the retail focus area beyond the corridor.

Area 4 – Proposal to downzone lots 65, 66, 173, 177, 835 and 836 from C-3-A to C-2-A and include them in the H Street Overlay, resulting in HS/C-2-A zoning. The properties are currently developed with two- to three-story multi- and single-family dwellings that front 14th Street and Florida Avenue NE. Properties across both Florida Avenue and 14th



Street are zoned C-3-A; adjacent properties to the west along Florida Avenue are developed with row dwellings in an R-5-B district. The properties are privately owned.

Analysis – Downzoning the properties and placing them within the Overlay is not supported by either the Comprehensive Plan, particularly the Policy Map, or the H Street Plan. The Plan provides no direct or relevant guidance for the development of these lots, and downzoning them would be inconsistent with the zoning and intended development patterns for this intersection. The proposal to expand the boundaries of the Overlay to include properties not on H Street would effectively expand the retail focus area beyond the corridor, while the design standards provided the H Street Overlay would be misplaced since these are specifically intended to enhance new retail lease space fronting on the H Street commercial corridor.

Area 5 – Proposal by the ANC to rezone downzone lots 1, 152, 160, 175, 176, 819, 824 and 829 from C-3-A to C-2-A, resulting in zoning of HS/C-2-A. The lots are currently developed with moderate scale mixed use buildings with frontage on H Street NE. These properties front onto the H Street corridor and were included within the original H Street Strategic Development Plan, so are currently within the H Street Overlay. The properties are owned by various private entities.



Analysis – The proposed downzoning is not supported by the Comprehensive Plan, and would be contrary to the intent of the H Street Plan. All other properties on this intersection of H and 14th Streets are currently zoned HS/C-3-A in accordance with the H Street Plan, which anticipated the possibility for additional development at locations such as this. The existing properties would potentially be rendered non-conforming for non-residential FAR if rezoned to C2A, and the rezoning would limit options for improvement or redevelopment. There is no policy support or planning justification for the downzoning, and the properties are already subject the guidelines and regulations of the H Street Overlay. Prior to the original submission, OP advised the ANC that OP could not support any proposal to downzone properties on H Street.

Areas 4 and 7 - ANC proposal to include alley lot 169 in Square 1026 and alley lots 50, 56, 57, 58, 59, 60, 61, 82, 90, 109, 110, 65, 66, 173, 177, 835 and 836 in Square 1027. The alley lot in Square 1026 (photo to right) is owned by United House of Prayer, is currently developed for parking, and does not have frontage on any street. Almost all of the alley lots in Square 1027 (photos below) are currently developed, mainly with a variety of two-story warehouse and garage buildings primarily occupied by auto-related and services uses. These lots have no direct frontage on H Street and only alley access to H Street, G Street and Maryland Avenue NE. The properties are owned by various private entities.



–Analysis - Rezoning these alley lots to include them within the H Street Overlay is not supported by either the Comprehensive Plan or with the H Street Strategic Development Plan. The properties currently appear to be generally put to appropriate uses. The H Street Plan provides no guidance for the development of alley lots, other than that they could serve as support (parking) areas. Rather, the focus of the H Street Plan and the resulting Overlay is to address the “streetscape” presence of buildings and these properties do not front on any street. As such, the properties could be subject to inappropriate or irrelevant guidelines, and design review with no land use or design guidelines for the purpose of such review.

As part of its broader Zoning Review process, OP is investigating guidelines and regulations for all alley lots; OP feels it would be more appropriate to address these alley lots as part of that broader process.

As such, OP does not recommend these additional map amendments. However, if considered by the Zoning Commission, they would require corresponding additional text amendments such as:

- Amendments to § 1320.1 as follows:

1320.1 The H Street Northeast Neighborhood Commercial Overlay District (HS) applies to all lots fronting onto H Street, N.E. from 2nd Street to 15th Street, N.E. and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B, as well as all other lots zoned C-2-A or C-3-A within Square 1026, lots within Squares 1027 and 1049 fronting onto Maryland Avenue NE or 14th Street NE; all other lots zoned C-2-A within Square 1027, and all of Square 1050. The Overlay is divided into three sub-districts affecting the following squares:

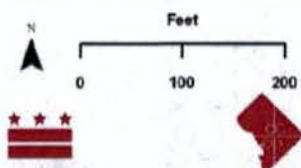
- (a) H Street Northeast Overlay Housing Sub-district (HS-H) encompasses properties fronting on H Street, N.E. in Squares 751, 752, 776, 777, 808, 809, 832, 833, 858, and 859 from 2nd to 7th Streets, N.E.;
- (b) H Street Northeast Overlay Retail Sub-district (HS-R) encompasses properties fronting on H Street, N.E. in Squares 889, 890, 911, 912, 933, 958, 959, 981, and 982 from 7th to 12th Streets, N.E.;
- (c) H Street Northeast Overlay Arts Sub-district (HS-A) encompasses properties fronting on H Street, N.E. in Squares 1003, 1004, 1026, 1027, 1049N, and 1049 from 12th to 15th Streets, N.E. as well as all other lots zoned C-2-A or C-3-A within Square 1026, lots within Squares 1027 and 1049 fronting onto Maryland Avenue NE or 14th Street NE; all other lots zoned C-2-A within Square 1027, and all of Square 1050.

- Amend § 1320.2 by adding a new purpose statement as follows:

- (f) Encourage residential uses, the reuse of existing buildings, and the redevelopment of those portions of Squares 1026, 1027, 1049 and 1050 within the Overlay but not fronting H Street.

Attachments: Exhibit 1 - Land Use Designations and Proposed Zoning Changes
Exhibit 2 - Complete H Street Neighborhood Overlay Text Highlighting the OP Proposed Amendments
Exhibit 3 - Board of Zoning Adjustment Order for Application 17825, 1400 Maryland Avenue NE

Arthur Jackson, Case Manager
JS/afj



Government of the District of Columbia
 This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.
 Office of Planning ~ December 23, 2010

ZC 10-19 Zoning Consistency Case Land Use Designations and Proposed Zoning Changes

LEGEND

- DC Reservations
- Zoning Districts
- Street Centerlines
- Property Squares
- Buildings
- Lots Proposed for RZ

Complete H Street Neighborhood Overlay Text With OP Proposed Amendments Highlighted

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, N.E. from 2nd Street to 15th Street, N.E. and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B, as well as lots within Squares 1027 and 1049 fronting onto Maryland Avenue NE or 14th Street NE; and all of Square 1050. 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, N.E. in Squares 751, 752, 776, 777, 808, 809, 832, 833, 858, and 859 from 2nd to 7th Streets, N.E.;
 - (b) H Street Northeast Overlay Retail Sub-district (HS-R) encompasses properties fronting on H Street, N.E. in Squares 889, 890, 911, 912, 933, 958, 959, 981, and 982 from 7th to 12th Streets, N.E.;
 - (c) H Street Northeast Overlay Arts Sub-district (HS-A) encompasses properties fronting on H Street, N.E. in Squares 1003, 1004, 1026, 1027, 1049N, and 1049 from 12th to 15th Streets, N.E., as well as lots within Squares 1027 and 1049 fronting onto Maryland Avenue NE or 14th Street NE; and all of Square 1050.
- 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 approved by the Council of the District of Columbia on February 17, 2004 (R15-460);
 - (b) Encourage residential uses along the H Street, N.E. 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, N.E.; a neighborhood-serving retail shopping district from 7th Street to 12th Street, N.E.; and an arts and entertainment district from 12th Street to 15th Street, N.E.;
 - (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; and
 - (f) **Encourage residential uses, the reuse of existing buildings, and the redevelopment of those portions of Squares 1027, 1049, and 1050 within the Overlay but not fronting H Street.**
- 1320.3 For purposes of § 1302, the designated use area shall include any lot within the HS Overlay District that fronts on H Street, N.E. 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 use listed in §1323.2.
- 1320.4 The following buildings, structures, and uses are permitted only by 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 gasoline service station;

- (b) Accessory parking spaces located off-site from the principal use;
- (c) Fast food restaurant establishment 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 the designated roadway;
- (d) Funeral, mortuary, or undertaking establishment;
- (e) Parking garage; and
- (f) Construction of a new building or enlargement of the gross floor area of an existing building by fifty percent (50%) or more, if located on a lot that has six thousand square feet (6,000 sq. ft.) or more of land area.

1320.5 The following uses are prohibited:

- (a) Automobile and truck sales;
- (b) Automobile laundry;
- (c) Boat or marine sales;
- (d) Gasoline service station;
- (e) Outdoor storage of any materials; and
- (f) Parking lot.

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 Districts shall be H Street, N.E.

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 non-residential uses, except as provided 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 density of 1.5 FAR, 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 density of 1.5 FAR 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 §§ 1322.3 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 store;
- (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;
- (ij) 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 0.5 FAR in addition to the non-residential density 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 §§ 1320.3(c), 1323.4 and 1326.1(a), preferred uses 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 ft.2) 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 non-residential uses except as provided in §1323.4.

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

1324 DESIGN REQUIREMENTS (HS)

1324.1 The design requirements of §§ 1324.2 through 1324.16 shall apply to any lot in the HS Overlay District for which a building permit was applied after October 25, 2004.

1324.2 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 density permitted in the underlying zone district for residential uses.

1324.4 In C-2 Districts within the HS Overlay District, a seventy percent (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, N.E., Maryland Avenue NE, 14th Street NE, or 15th Street NE shall provide not less than sixty-five percent (65%) of the ground level frontage as commercial space.

1324.8 Each new building on a lot that fronts on H Street, N.E., Maryland Avenue NE, 14th Street NE, or 15th Street NE 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 having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building.

- 1324.9 Security grilles shall have no less than seventy percent (70%) transparency.
- 1324.10 Each commercial use with frontage on H Street, N.E., Maryland Avenue NE, 14th Street NE, or 15th Street NE have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one primary entrance on H Street 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 ground floor uses and the main lobby.
- 1324.12 The ground floor level of each building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.).
- 1324.13 Buildings subject to § 1324.12 shall be permitted an additional 5 feet (5 ft.) of building height over that permitted in the underlying zone.
- 1324.14 Projection signs shall have a minimum clearance of eight feet (8 ft.) above a sidewalk and fourteen feet (14 ft.) above a driveway, project no more than three feet, six inches (3 ft., 6 in.) from the face of the building, and end a minimum of one foot (1 ft.) behind the curbline or extension of the curbline.
- 1324.15 Façade panel signs shall not be placed so as to interrupt windows or doors and shall project no more than twelve inches (12 in.) from the face of the building. 1342.16 Roof signs are prohibited. [ORDER No. 04-27; 03/10/06]

1325 SPECIAL EXCEPTION REQUIREMENTS (HS)

- 1325.1 The buildings, structures, and uses listed in § 1320.4 and 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, based on § 3104, provided the following criteria and the requirements of § 1304 are met:
 - (a) The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the H Street N.E. Strategic Development Plan;
 - (b) The architectural design of the project shall 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;
 - (c) Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions;
 - (d) Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences;
 - (e) Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences; and
 - (f) The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent the design guidelines of the H Street N.E. Strategic Development Plan.
- 1325.2 An applicant may demonstrate compliance with § 1325.1(f) by demonstrating that the signage will be exclusively located on upper facades, awnings, and transom windows, constructed of durable materials, and sensitively designed; and will not affect more than twenty percent (20%) of display windows, consist of backlit box signs or neon product advertisements, block visibility into a store, or be overly obtrusive.
- 1325.3 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.
- 1325.4 Applicants shall demonstrate that projects requiring a special exception shall be consistent with the design intent of the design requirements, of § 1324 and 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) The additional height and floor area above that permitted as a matter-of-right shall be used only for housing or the preferred uses listed in §§ 1322.2 and 1323.2 and
 - (b) The PUD process shall not be used to reduce requirements in this Chapter for designated uses, typically retail, service, entertainment, and arts uses.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17825 of 1400 Maryland Avenue, Ltd. Empire Leasing, pursuant to 11 DCMR § 3104.1, for a special exception to establish a gasoline service station with convenience store under §§ 743, 706, and 2302, in the C-3-A District, at premises 1400 Maryland Avenue, N.E. (Square 1049, Lots 803 and 21).

HEARING DATES: October 14, 2008, January 13, 2009, June 16, 2009, and July 21, 2009
DECISION DATE: September 15, 2009

DECISION AND ORDER

This application was submitted on May 7, 2008, and amended and re-submitted on September 30, 2008, by 1400 Maryland Avenue Limited Empire Leasing, Inc. ("Applicant"), the owner of the property that is the subject of the application ("subject property"). The application requests a special exception to establish a gasoline service station and convenience store at the corner of Maryland Avenue, N.E. and 14th Street, N.E. Since a convenience store is a matter of right use in the C-3 District, the subject of this application and the sole focus of the Board's decision is the gasoline service station use.

The Board of Zoning Adjustment ("BZA" or "Board") scheduled a public hearing on the application for October 14, 2008. Due to issues involving the use of public space which could have had, and did eventually have, an effect on the plans for the service station and on the Applicant's ability to meet the special exception tests, the hearing was continued to January 13, 2009, and then to June 16, 2009 and July 21, 2009, when it was completed. The decision was scheduled for, and took place on, September 15, 2009, when the Board voted 3-0-2 to approve the application, with conditions.

Notice of Application and Notice of Hearing. By memoranda dated May 13, 2008, the Office of Zoning ("OZ") gave notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission 6A ("ANC"), the ANC within which the subject property is located, Single Member District 6A06, and the Councilmember for Ward 6. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register*, and on July 9, 2008, sent such notice to the Applicant, ANC 6A, and all owners of property within 200 feet of the subject property.

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Request for Party Status. ANC 6A was automatically a party to the application, and appeared in opposition. There were no requests for party status.

Applicant's Case. The Applicant's representative testified briefly as to the operation of the service station, but the bulk of the Applicant's case was encompassed in the testimony of its traffic expert.

Government Reports. *The Office of Planning.* OP filed several reports concerning this application with the Board. In its first report, dated October 7, 2008, OP did not make a recommendation for or against the application, citing a lack of information necessary to determine whether the proposed use, as designed, would create dangerous or other objectionable traffic and circulation conditions. At that time, public space issues remained to be resolved, the proposed landscaping was not yet determined, DDOT had not provided any critique of the Applicant's traffic and circulation plans, and those plans themselves did not address certain key information, such as drive aisle space and turning radii for vehicles. Exhibit No. 33.

OP's second report, dated January 6, 2009, recommended denial of the application, based to some extent on the December 18, 2008 action of the Public Space Committee, which denied the Applicant's public space permit for use of the public space surrounding the subject property. OP's second report states that the denial of the public space permit reflects a determination that the use, as then proposed to be designed, would inappropriately impact the adjacent public space. The second OP report also states that the traffic and circulation plans submitted by the Applicant, because they depended on the denied use of the public space, were no longer accurate, preventing OP from performing an effective evaluation of the impacts of traffic and vehicle circulation in and around the subject property. Exhibit No. 39.

OP's third report, dated June 9, 2009, stated that OP could not make a recommendation because it lacked a DDOT evaluation of on- and off-site circulation impacts, thereby preventing OP from determining whether the special exception criteria were met. In this third submission, OP opined that the Applicant might need relief for the height of the gasoline pump island canopy. OP also provided a list of nine proposed conditions which it recommended be included if the Board decided to approve the application. Exhibit No. 48.

OP submitted a fourth report, dated July 14, 2009, noting that the Applicant had significantly improved the proposal, including eliminating almost all use of the adjacent public space, and that the Public Space Committee had granted conditional approval of the proposal on June 25, 2009. OP expressed general support for the design of the proposed buildings and landscaping, and recommended nine conditions to be included in an approval by the Board. OP, however, again declined to make an official recommendation with regard to the application because it had not yet received an analysis of on- and off-site circulation impacts from DDOT, without which it could not make a recommendation with regard to whether the special exception criteria were met. Exhibit No. 54.

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At the public hearing on July 21, 2009, the OP representative stated that "the chief outstanding issues concerning circulation have been resolved to DDOT's satisfaction," and that, therefore, the Office of Planning was now recommending approval of the special exception relief. Transcript of July 21, 2009 hearing ("Trans."), at 354-355.

The Department of Transportation. DDOT filed four reports with the Board. The first, dated October 10, 2008, was filed with the Board before the Public Space Committee had held a hearing on the proposed use of public space by the Applicant. This first report stated that DDOT could not determine with certainty that the proposed service station would not create objectionable impacts. Exhibit No. 38. At that time, there were still many unanswered questions as to the use of public space, and the safety of both internal circulation and access points.

DDOT's second report, dated June 11, 2009, was generally positive about the application and the many modifications made to it since its filing a year earlier, but still could not recommend approval. At that time DDOT stated that "remaining circulation problems on the site as well as spillover effects onto public space ha[d] the potential to create unsafe traffic conditions." Exhibit No. 50. DDOT then listed three further pieces of information it would need for a final evaluation of the project – fuel truck turning templates, vehicle movement diagrams, and an expanded scale site plan.

The third DDOT report, dated July 21, 2009, indicated that DDOT personnel had met with the Applicant's representatives, who supplied the information listed above. Earlier concerns about the safe and fluid movement of vehicles on the site had been mitigated by changes in the proposed design, permitting DDOT to "no longer oppose[] this project." Exhibit No. 63. The report, however, requested that the Applicant include signs directing vehicles entering the site to use fueling positions to the right and noted that DDOT was still in the process of evaluating the need for a change in the median design along Maryland Avenue adjacent to the site.

DDOT's fourth report, dated August 20, 2009, goes into significant detail concerning several aspects of the application which had been troublesome earlier, including the impact on on-street parking, fuel truck delivery hours, and the Maryland Avenue median. As to the project's impact on on-street parking, the report concludes that no existing legal spaces will be affected, and that truck-turning requirements will likely preclude adding any new legal on-street spaces. Concerning hours of fuel delivery, DDOT recommended that it be prohibited during the peak travel periods of 7:00 to 9:30 a.m. and 4:00 to 7:30 p.m. With regard to the Maryland Avenue median, DDOT is requiring the Applicant to install an unbroken, raised median in the middle of Maryland Avenue, along the length of the property. Finally, the fourth report reiterated that DDOT "no longer has objections" to the application. Exhibit No. 64.

ANC Reports. ANC 6A filed seven letters/reports/memos/motions with the Board regarding this application. The ANC's first filing, dated July 28, 2008, requested postponement of the hearing scheduled for October 14, 2008, citing "extensive concerns" with the application. Exhibit No. 27. The hearing was continued, but on October 13, 2008, the ANC submitted a second filing.

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stating its opposition to the application. Exhibit No. 31. At that time, the ANC had problems with the Applicant's proposed use of public space and its use of a "suburban" design model. The ANC next filed a motion, on October 7, 2008, to dismiss or defer the hearing on the application until the Applicant obtained any necessary public space permits. Exhibit No. 32. On January 6, 2009, the ANC submitted a fourth filing reiterating its opposition and including a memorandum of law explaining why the ANC believed that the application did not satisfy the special exception standards and would be inconsistent with the Comprehensive Plan. Exhibit No. 40.

On June 10, 2009, ANC 6A filed a short letter with the Board, requesting another continuance of the hearing until after a decision from the Public Space Committee, which was going to hear, on June 25, 2009, the Applicant's second request to use public space. Exhibit No. 49. The ANC's letter briefly cited as problems the possible elimination of on-street parking, and possible hazardous on-site and off-site conditions due to the then-proposed plan for on-site circulation.

On June 15, 2009, the ANC filed a document explaining the concerns it still had with the Applicant's proposal. The document sums up the ANC's concerns thus: "the existing application is deficient, overly relies upon the use of public space ... and fails to demonstrate compliance with S[ub]section 706.4 of the zoning regulations." Exhibit No. 51.

Between the ANC's June 15, 2009 filing and its last filing, dated July 20, 2009, the Applicant made significant changes to the application, improving the design, including the safety of on-site circulation, and reducing the use of public space to only what was necessary – the need to drive over public space to enter the property. Due to these important changes, the Applicant secured conditional approval for a public space permit, but the ANC continued to oppose the application in its entirety. Realizing, however, that the Board could approve the application notwithstanding its opposition, the ANC recommended six conditions should the application be approved. Exhibit No. 56.

FINDINGS OF FACT

The property and the surrounding area

1. The subject property is zoned C-3-A and is located at address 1400 Maryland Avenue, N.E., at the corner of Maryland Avenue, N.E. and 14th Street, N.E., on Square 1049, Lots 803 and 21.
2. The property measures approximately 119 feet parallel to Maryland Avenue to its south, and 83 feet parallel to 14th Street to its west, with an area of approximately 7,262 square feet.
3. Between the property's southern property line and Maryland Avenue, is an approximately 50-foot wide swath of public space.

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4. Between the property's western property line and 14th Street, is an approximately 35-foot wide swath of public space.
5. The total area of public space bordering the property is approximately 7,240 square feet, not including the sidewalks, which are also in public space.
6. To the south of Maryland Avenue, i.e., across the street from the property is a fast food restaurant, row dwellings, and some small-scale commercial uses. Across 14th Street are two automobile repair/sales businesses and a church.
7. To the immediate north of the property are the backs of low-rise commercial buildings, which front on H Street, N.E. and are within the H Street Northeast Neighborhood Commercial Overlay District ("HS").
8. To the immediate east of the property are residential uses that appear to be vacant.
9. On the property is a vacant 1,321 square-foot one-story building that abuts a 10-foot wide dead-end public alley, running along the rear of the property.
10. There are currently no curb cuts allowing access to the property from Maryland Avenue, though photographic evidence shows that there were two such curb cuts in the past. See Exhibits Nos. 3 & 48.
11. There are currently two active curb cuts along 14th Street, one of which allows direct access (over public space) to the property, and one of which allows access into the public alley abutting the rear of the property.
12. The entire property, and most of the adjoining public space, is paved over, with no significant area of greenery.
13. Although vacant now, the property has, in the past, been used for various gasoline and automotive uses, such as a gasoline service station, auto repair, and used auto sales, as evidenced by past Certificates of Occupancy. Exhibit No. 10.
14. There are no other gasoline service stations within the boundaries of ANC 6A.

The Applicant's proposal

15. The application proposes to establish a gasoline service station and associated convenience store, with a sandwich preparation area, on the subject property.
16. There will be two pump islands and four fueling pumps.
17. There will be no entrance to the property from the alley at its rear.

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18. The service station will be open 24 hours a day, seven days a week, with at least one employee present at all times.
19. The proposal meets all the necessary dimensional zoning requirements, such as lot occupancy and floor area ratio.

The zoning relief

20. Subsection 743.1 of the Zoning Regulations authorizes the establishment of a gasoline service station in any C-3 District as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of § 706 and Chapter 23 of Title 11 of the DCMR.
21. Subsection 706.3 requires that the station shall not be located within twenty-five feet (25 ft.) of a Residence District unless separated from the Residence District by a street or alley. Subsection 2302.1 contains the same requirement, while § 2302.3 prohibits a vehicular entrance or exit connected with a street at a point closer than twenty-five feet (25 ft.) from any Residence District.
22. The property and proposed facility meet these requirements. The property is surrounded on three sides, for a distance much greater than 25 feet, with C-3-A zoning. On its fourth side, to the north, is an HS/C-3-A zone district.
23. Both vehicular access points to the property are more than 100 feet from a street intersection as required by § 2302.4 and the proposed service station will not have the grease pits or hoists disallowed by § 2302.5.
24. Although § 706.6 does not require that required parking spaces be arranged so that all spaces are accessible at all times, it does require that all parking spaces must "be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicles without moving any other vehicle onto public space." The station will provide four zoning-compliant parking spaces, one of which will be located to the west of the building on the property, and the other three spaces will be located to the east of the building.
25. The siting and arrangement of these parking spaces permits the facility to exceed the above standard because each space will be fully accessible at all times. In addition, the spaces will be useable without causing the movement of other vehicles onto public space. (See, "Proposed Site Plan" attached as Exhibit B to Exhibit No. 55.)
26. In general, the operation of the proposed use will not create dangerous or other objectionable traffic conditions as disallowed by § 706.4 because:
27. It will be accessed by one curb cut and driveway on each adjacent street, i.e., one on Maryland Avenue and one on 14th Street;

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28. The proposed site design allows for fuel truck access and turning without impinging on any legal street parking spaces on 14th Street or Maryland Avenue. (See, DDOT Report, Exhibit No. 64 and internal/external circulation plans, attached as Exhibit A to Exhibit No. 55.);
29. No truck with a length greater than 35 feet will be permitted to deliver fuel to the facility;
30. The Applicant will imprint directional arrows on the pavement and post signage directing vehicles entering the site to utilize fuel pumps to the right, which will facilitate safe internal site circulation;
31. Only right turns will be permitted from the property onto Maryland Avenue. To ensure this, the Applicant will install, in accordance with DDOT's request and pursuant to its standards, an unbroken, raised median in the center of Maryland Avenue for the length of the property's Maryland Avenue frontage; and
32. Each of the drive aisles on the property, leading from the vehicular access points, will be two-way and 25 feet in width.
33. All of the above findings in this section also demonstrate compliance with the general standard for granting a special exception as stated in § 3104.1, as do the following additional findings.
34. The only use of public space by the proposed service station and convenience store arises, as with most commercial uses, from the fact that vehicles must drive over an area of public space between the adjoining street and the property.
35. The existing concrete paving between the property line and the sidewalk, along both Maryland Avenue and 14th Street, will be removed and replaced with soil, ground-covering plants, and low, ornamental shrubs.
36. The installation of the unbroken median referred to in Finding of Fact 31 will have no effect on on-street parking on Maryland Avenue.
37. Running along the northern and eastern property lines -- the two property lines not abutting a street -- a 6-inch-high concrete curb and a 3-foot-high iron fence will be installed.
38. To facilitate pedestrian access to the convenience store, concrete walkways will be installed alongside the drive aisle leading to Maryland Avenue and alongside the public alley, linking 14th Street and the western side of the building.
39. The fuel cost sign will be positioned on the subject property, set back from the corner. It will be illuminated and have overhead lights that shine downward, but not outward.

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40. The sign will be six feet high, side mounted on an eight-foot pole, and will be subject to the applicable provisions of the Construction Codes, 12A DCMR § 3107, SIGNS.

CONCLUSIONS OF LAW

Special Exception Relief

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 706 and § 2302, pursuant to the mandate of § 743.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to determining whether the proposed exception satisfies the ... requirements" of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

Some of the requirements of §§ 706 and 2302, and, to a certain extent, § 3104, overlap. Sections 706.1 and 2302.1 both require that no portion of the service station be located within 25 feet of a residential zone district. In addition, § 2302.2 requires that no street ingress or egress to the station be within 25 feet of a residential district. The application satisfies these requirements. Findings of Fact No. 22 and 23. Furthermore, the application satisfies the requirement of § 2302.4 that no entrance or exit to the station may be closer than 40 feet from a street intersection as measured from the intersection of the curb lines extended. Finding of Fact No. 23. Finally, pursuant to § 2302.5, gasoline service stations located outside of the C-M or M District must locate all grease pits or hoists within the building. The gasoline service station that is the subject of this application does not proposed any such facilities.

Subsection 706.4 states that "[t]he operation of the use shall not create dangerous or other objectionable traffic conditions," and § 3104 requires that the use "not tend to affect adversely the use of neighboring property." Sections 706.4 and 3104 highlight the most contentious issues in this application. The extensive use of the surrounding public space initially proposed by the Applicant raised concerns over possible dangerous or objectionable on-site circulation and off-site traffic conditions. In response to these concerns, the design of the service station was revised several times, with input from the ANC, OP and DDOT, to improve both the on-site circulation and off-site traffic impacts.

A number of modifications were made to improve on-site circulation, including: reducing the number of fuel pump islands and fuel pumps, reducing the maximum length of trucks allowed to deliver fuel to the facility from 57 to 35 feet, and reducing the size of the building by 385 square feet. In addition, the on-site parking spaces were re-located, signs and directional arrows were added, as well as a perimeter fence to keep vehicles off the adjoining public space. These changes, along with two 25-foot wide ingress/egress drives and a reasonable amount of maneuvering space left on the site, make on-site circulation sufficiently safe, meriting DDOT's conclusion, in its August 20, 2009 report, that "internal site design allows for adequate vehicle movement." Exhibit No. 64.

Pursuant to § 706.5, the Board may impose requirements pertaining to design, appearance, screening, or lighting, or other requirements it deems necessary to protect adjacent or nearby property. In this regard, the Board notes that the Applicant has committed to landscaping and beautifying the adjacent public space. Lighting on the site will be appropriate and focused on the property to minimize spillover into the surrounding neighborhood.

According to § 706.6, all required parking spaces need not be located in a manner in which they are accessible at all times. However, § 706.6 further states that "all parking spaces provided shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of vehicles without moving any other vehicle onto public space." The gasoline service station will meet the parking requirement for the use of four spaces entirely on the subject property. These spaces are located on either side of the convenience store building, allowing for safe pedestrian access to the store without the necessity of having to walk near the gas pump islands. The spaces have been so located to enable their access without the need to move a vehicle onto public space, and maneuvers necessary to enter or exit the spaces can all take place on the property.

The station is providing the required number of on-site parking spaces and neither its design, nor maneuvers of fuel trucks, will cause impingement on any existing legal parking spaces on the adjacent streets. The subject property is located at the intersection of two large streets, which will be able to safely support any increase in traffic brought about by the service station use. In addition, based on the evidence in the record and the testimony provided during the hearing, the design of the gasoline service station will be able to accommodate the necessary fuel delivery truck maneuvers entirely onsite, and without impinging upon on any existing legal parking spaces on the adjacent streets. Furthermore, the subject property is located at the intersection of two large streets, which will be able to safely support any increase in traffic brought about by the proposed use.

To facilitate traffic movement on the adjacent streets, the Applicant will install an unbroken, raised median on Maryland Avenue along the length of the subject property, which will restrict turns into, and out of, the property, onto Maryland Avenue, to right turns only. Preventing left turns into, or out of, the property will prevent traffic congestion and queuing in the eastbound

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lanes of Maryland Avenue. As DDOT stated in its August 20, 2009 report, "[i]mpacts to public space and traffic congestion are both minimal."

Concerning harmony with the zone plan, as a special exception use, a gasoline service station at this site is pre-deemed compatible with the surrounding C-3-A zone district. The subject property has historically been used for similar automotive uses, and the applicant has reduced the size of the building and the fuel cost sign to improve the look and operation of the station. The Board concludes that the use is compatible with the neighborhood and in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. § 3104.1.

As noted at the outset of this Order, the proposed convenience store is a matter of right use in the C-3 zone district. Therefore, the Board did not make any particularized findings with respect to its impact, since the use would be permitted on the site and does not lose that status because it will be established in conjunction with a use approved by special exception.

Great weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning filed four reports with the Board, three of which did not make any recommendation, and one of which, the second of the four, recommended denial. This recommendation was based almost completely on the Public Space Committee's denial of a request by the applicant to use a large amount of public space. By the time of the hearing, however, more than seven months after OP's second report, the use of public space was no longer an issue and DDOT was no longer opposed to the application. Therefore, OP's earlier recommendation of denial has been replaced by its subsequent recommendation of approval, which the Board accepts.

The ANC filed several reports with the Board, all in opposition to the application. Initially, the ANC most strenuously opposed the proposed use of a significant amount of public space by the service station, and the "suburban" design model it claimed the station was based on. Both of these issues were addressed by the Applicant throughout these proceedings, resulting in a reduction of public space usage to the smallest possible, and changes in the design of the station, such as the installation of a smaller fuel cost sign.

The ANC also objected to several other aspects of the application, stating that the service station use at the proposed corner location would lead to an over-concentration of gas stations and convenience stores in the vicinity. The ANC claimed the use would have a negative effect on pedestrian and vehicular traffic along the adjacent sidewalks and streets, resulting in adverse impacts on local businesses and pedestrian flow. The ANC's filings elaborated that the claimed

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inadequacy of the proposed on-site circulation would lead to objectionable impacts both on- and off-site. The ANC further alleged that the movements of trucks delivering fuel would eliminate parking spaces along public streets, and that left turns into the property from Maryland Avenue would "further degrade the traffic environment." Exhibit No. 56.

The ANC's concerns as to traffic and pedestrian safety, as well as to the possible loss of on-street parking, were considered by the Board. There was conflicting evidence presented with respect to whether there were other service stations in the immediate area, but the Board notes that there is no "distance apart" requirement in any of the sections of the Zoning Regulations relevant to this application. Furthermore, the ANC representative himself stated that there are no other service stations within the boundaries of ANC 6A. Hearing Transcript ("Trans.") at 416, lines 5-8.

The proceedings in this application, from filing date to decision date, transpired over a period of 16 months, and the application underwent many significant changes along the way. The changes improved the design and on-site circulation, and reduced the off-site impacts of the proposed use. No legal on-street parking spaces will be lost as a result of this application, and once the Applicant constructs the raised median, left turns into or out of the property along Maryland Avenue will not be permitted. The ANC representative stated that the ANC would withdraw its statements that left turns from Maryland Avenue would be objectionable if the median were closed. Trans. at 413, lines 14-17. All of these changes have reduced the potential for traffic congestion and pedestrian conflicts to a minimum, and along with the conditions imposed by this Order, will enable the service station to operate safely. The Board, therefore, disagrees with the ANC's recommendation of denial.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to a special exception pursuant to §§ 743, 706, and 3104, to establish a gasoline service station and convenience store at the subject property. Accordingly, this application, pursuant to Exhibit No. 60, Revised Site Plan, and Exhibit No. 66A, Floor Plan with Elevation & Reduced Sign Size, is hereby **GRANTED, SUBJECT to the following CONDITIONS:**

1. No external sound amplification system shall be used.
2. Deliveries of gasoline shall not be made to the subject property between the hours of 7:00 a.m. and 9:30 a.m. and between 4:00 p.m. and 7:30 p.m.
3. Deliveries of gasoline shall be made by trucks no longer than 35 feet in length, bumper to bumper.
4. Pump island canopy lighting shall be recessed into the canopy, shall not protrude below the canopy, and shall face downward.
5. Flood lights, if used, shall be angled downwards and shielded in order to avoid light spillage on neighboring properties.

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6. Trash enclosure(s) shall be of board-on-board construction consisting of pressure-treated lumber. Trash enclosure(s) are to remain closed and locked except for when throwing out and picking up garbage.
7. The façade material of the convenience store building shall be brick.
8. The height of the pump island canopy shall be no taller than 15 feet, in conformance with 11 DCMR § 2500.4.
9. The height of the fuel cost sign shall be no taller than eight feet.
10. The Applicant shall imprint directional arrows on the pavement and post signage directing vehicles entering the site to utilize fuel pumps to the right, which will facilitate safe internal site circulation.
11. The Applicant shall install, upon DDOT's request and pursuant to its standards, an unbroken, raised median in the center of Maryland Avenue for the length of the property's Maryland Avenue frontage.
12. The landscaping/plantings shall be maintained in a neat and healthy manner.

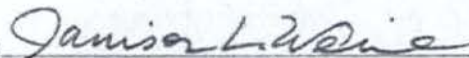
VOTE: 3-0-2

(Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull,
to Approve; two Board members (vacant seats) not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board members has approved the issuance of this order.

ATTESTED BY:



JAMISON L. WEINBAUM

Director, Office of Zoning

FINAL DATE OF ORDER: JAN 26 2010

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE