

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



April 11, 2011

Via E-Mail & U.S. Mail:

Marcel Acosta
Executive Director
National Capital Planning Commission
401 9th Street, N.W., Suite 500
Washington, D.C. 20004

Re: Notice of Proposed Rulemaking: Z.C. Case No. 10-19 (H Street Northeast Neighborhood Commercial Overlay)

Dear Mr. Acosta:

Please find attached a copy of the proposed rulemaking for the above-referenced case.

The above proposed rulemaking will be published in the *D.C. Register* on April 15, 2011, for a 30-day comment period. The comment period will end on May 16, 2011. Accordingly, this case will be considered for final action at the Zoning Commission's public meeting scheduled for May 23, 2011.

The proposed decision of the Commission to approve the above-mentioned case is referred to the National Capital Planning Commission (NCPC) for review and comment, pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 et seq.

If you have any questions, contact me at the Office of Zoning on (202) 727-0340.

Sincerely,

Sharon S. Schellin
Secretary to the Zoning Commission

cc: David W. Levy (via e-mail)
Jeff L. Hinkle (via e-mail)

ZONING COMMISSION
District of Columbia
CASE NO. 10-19
EXHIBIT NO. 25

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING**

Z.C. Case No. 10-19

(Map and Text Amendments – H Street Northeast Neighborhood Commercial Overlay)

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01), hereby gives notice of its intent to amend the Zoning Map, and §§ 1320 and 1324 of the Zoning Regulations (Title 11 DCMR).

The amendments all relate to property located near the eastern end of H Street, N.E, near where it intersects with Florida Avenue, Maryland Avenue, Bladensburg Road, Benning Road, and 15th Street. The area is depicted on the map attached to the January 21, 2011, Office of Planning report (“OP Map”). The OP Map, which is an appendix to this notice, divides the affected properties into numbered areas. These numbered areas will be referenced throughout this notice.

The Zoning Commission proposes to amend the Zoning Map as follows:

- Rezones Square 4509, portion of Lot 157 (Area 1 on the OP Map) from the C-2-B Zone District to the R-5-C Zone District;
- Rezone the properties located in Squares 1027, 1049, and 1050 (Area 2 on the OP Map) from the C-3-A Zone District to the C-2-A Zone District and by including them in the H Street Northeast Neighborhood Commercial Overlay (“Overlay”);
- Rezone the portion of Square 1026 that fronts on 13th Street (Area 3 on the OP Map) by including it in the Overlay; and
- Rezones the portion of Square 1026 that fronts on Florida Avenue (Area 5 on the OP Map) by including it in the Overlay.

The Commission also proposes to amend § 1320, which identifies the properties included in the Overlay and its sub-districts, to include the new properties and to amend § 1324.7, 1324.8, and 1324.10, to apply their design requirements to the new properties to the extent applicable. Because these provisions as advertised referred to properties that will not be rezoned into the Overlay, the Commission authorized the Office of Planning and the Office of the Attorney General to conform the advertised text to the map amendments being proposed.

Pursuant to this same authority, this notice includes a proposed amendment to § 1324.12. As currently written, that provision requires that the ground floor of each building in the Overlay have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.). At present, the only buildings subject to this requirement are those that front H Street, N.E. Those buildings are also subject to the designated use provisions of § 1302, which require at least fifty percent (50%) of their ground floor be occupied by certain retail, service and arts uses (although residential uses count toward this requirement in HS-H). The new areas proposed to be added to the Overlay would not be subject to these ground floor commercial use requirements, and therefore a

property owner could opt to construct ground floor residential uses. The Office of Planning believes that the Commission would not have wanted the ground floor height requirement to apply under these circumstances. Therefore, the proposed amendment to § 1324.12 would only impose the ground floor floor-to-ceiling minimum height requirement on those Overlay properties not fronting H Street that voluntarily comply with the commercial use designation provisions.

When the Commission took proposed action, it also voted to:

- Deny the rezoning recommended by Advisory Neighborhood Commission (“ANC”) 6A for Square 1026, alley lot (Area 4 on the OP Map);
- Deny the rezoning recommended by ANC 6A for the properties located in Square 1026 that front on Florida Avenue (Area 5 on the OP Map) from the C-3-A Zone District to the C-2-A Zone District;
- Took no action on the properties located in Square 1026 at the corner of H Street and 14th Street (Area 6 on the OP Map) because ANC 6A withdrew its recommendation to rezone them; and
- Deny the rezoning recommended by ANC 6A for Square 1027, multiple alley lots (Area 7 on the OP Map).

When considering these actions, the Commission gave great weight to ANC 6A’s recommendations, but found that some were not persuasive. The Commission will describe in detail the reasons it found some of the ANC advice unpersuasive in the final order it issues for this case.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following rulemaking action is proposed:

The Zoning Map of the District of Columbia is amended as follows:

SQUARE	LOTS	OP Map Designation	Map Amendment
1026	0100, 0101, 0102, and 0103	Area 3	C-2-A to HS-A/C-2-A
	0065, 0066, 0173, 0177, 0835, and 0836	Area 5	C-3-A to HS-A/C-3-A
1027	0141, 0142, 0143, 0804, 0840, 0841, and 0849	Area 2	C-3-A to HS-A/C-2-A
1049	0019, 0020, 0021, 0803, and 0809	Area 2	C-3-A to HS-A/C-2-A

SQUARE	LOTS	OP Map Designation	Map Amendment
1050	0007, 0008, 0009, 0010, 0011, 0014, 0015, 0016, 0022, 0026, 0027, 0028, 0029, 0030, 0031, 0033, 0035, 0036, 0803, 0806, 0807, 0809, 0812, and 0813	Area 2	C-3-A to HS-A/C-2-A

Title 11 DCMR, chapter 13, NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended as follows:

Section 1320, H STREET NORTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT (HS), is amended as follows:

By amending § 1320.1 to include a description of the new properties added to the Overlay and its sub-areas, so that the provision will read 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: Square 1026, Lots 65, 66, 100, 101, 102, 103, 173, 177, 835, and 836; lots within Squares 1027 and 1049 fronting onto Maryland Avenue, N.E. or 14th Street, N.E.; Reservations 15, 15P, 15Q, and 213; and all of Square 1050. The Overlay is divided into three (3) 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: Square 1026 lots 65, 66, 100, 101, 102, 103, 173, 177, 835, and 836; lots within Squares 1027 and 1049 fronting onto Maryland Avenue, N.E. or 14th Street, N.E.; Reservations 15, 15P, 15Q, and 213; and all of Square 1050.

By amending § 1320.2, to add a new paragraph (f) so that the entire provision will read as follows:

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, N.E. 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 provisions 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;
- (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 1026, 1027, 1049, and 1050 within the Overlay but not fronting H Street.

Section 1324, DESIGN REQUIREMENTS (HS), is amended as follows:

By amending § 1324.7, 1324.8, and 1324.10 to insert the phrase “, Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street, N.E., or 15th Street, N.E.”, so that the three provisions read as follows:

- 1324.7 Parking structures with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street N.E., or 15th Street, N.E. shall provide not less than sixty-five percent (65%) of the ground level frontage as commercial space.
- 1324.8 Each commercial use with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street, N.E., or 15th Street, N.E. 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.

1324.10 Each commercial use with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street N.E., 14th Street, N.E., or 15th Street, N.E. shall have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one (1) primary entrance on H Street directly accessible from the sidewalk.

By amending § 1324.12 to continue to require that the ground floor of buildings fronting H Street N.E. have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.), but only impose that requirement on other Overlay properties that voluntarily comply with its commercial use designation provisions:

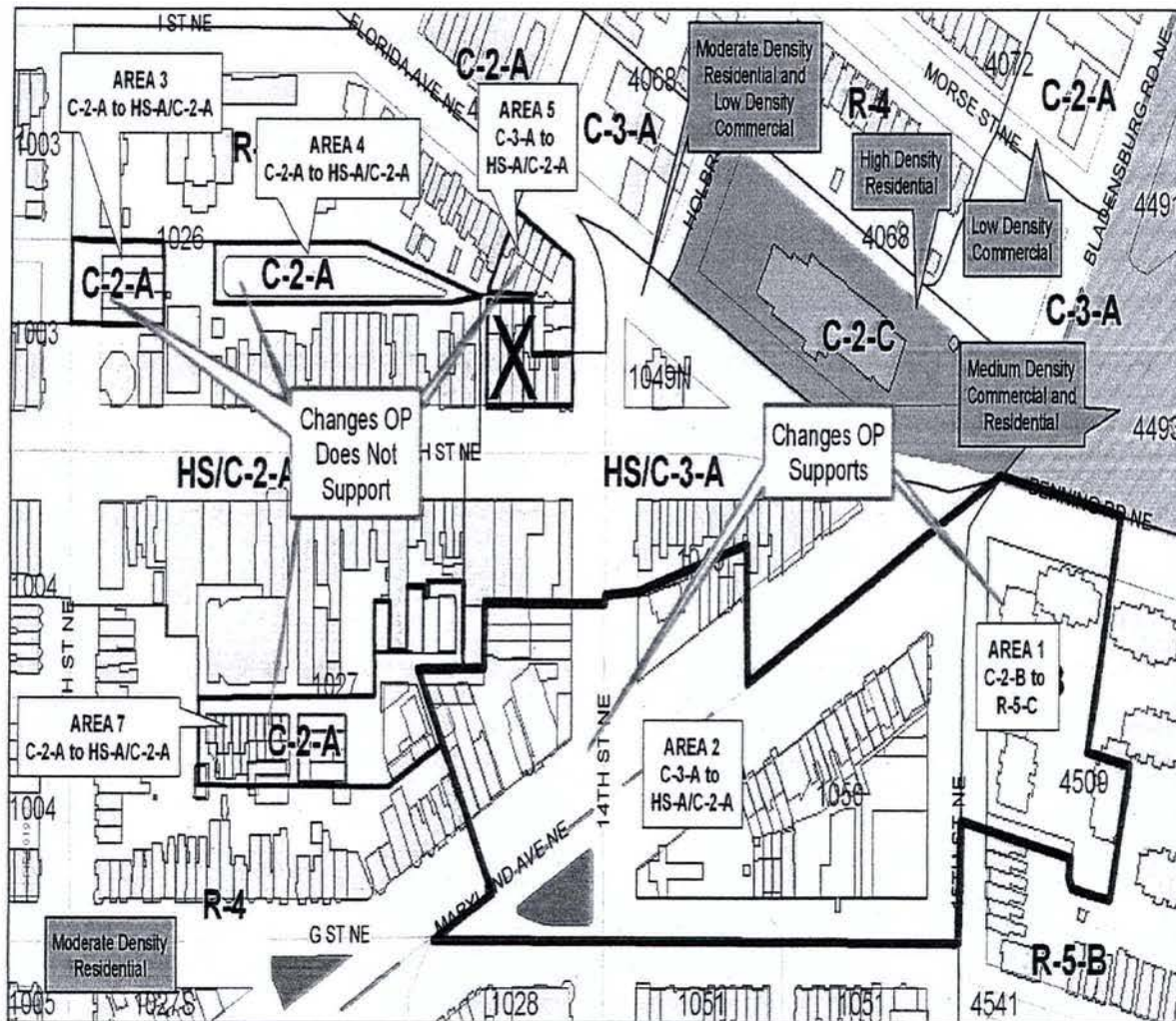
1324.12 The ground floor level of each new building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.) if the building:

- (a) Fronts H Street, N.E.; or
- (b) Fronts Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street, N.E., or 15th Street, N.E. and would have ground floor space occupied by one (1) or more service, retail, or office uses permitted as a matter of right in the underlying zone.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

APPENDIX

OP Map



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

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 - January 14, 2011

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