

October 31, 2006

Mr. William Crews, Zoning Administrator
Office of the Zoning Administrator
Department of Consumer and Regulatory Affairs
District of Columbia
941 North Capitol Street
Washington, DC 20002

Dear Mr. Crews:

ANC 6A, the 6th and H NE Neighborhood Association, the Capitol Hill Restoration Society and Stanton Park Neighborhood Association (SPNA) are requesting an administrative ruling on whether an applicant can transfer FAR associated with a non-conforming use from a demolished structure to a new structure. This question stems from BZA case #15721, where the applicant has chosen not seek a variance to Section 1321.2 of the H St NE Neighborhood Commercial Zoning Overlay District, even though they are planning to construct a structure with non-residential uses that exceed the 0.5 non-residential FAR limit of the lot. The applicant claims that they are not subject to Section 1321.2 because they are transferring non-conforming non-residential FAR from a demolished building to the new structure. They claim that they can demolish a non-conforming structure, "bank" the non-conforming FAR, and then reactivate that FAR "entitlement" in the replacement structure. The BZA hearing for this case is currently scheduled for November 21st 2006 and is the first case to apply the H Street NC Overlay and the H Street Design Guidelines. The precedents set in this case regarding the H Street Overlay will affect future development of large lots on the rest of the H Street Corridor.

Analysis

The applicant, 601-645 H Street Ventures, LLC, is seeking to build a mixed-use structure on a C-2-C/C-2A split-zoned lot on south side of the 600 Block of H Street NE. The applicant plans to keep two existing office towers on the C-2-C portion of the lot that have non-residential FAR of 2.64 and build a new building between the towers. The current intensity of non-residential use exceeds the limits set in Section 1321.2, which states:

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.

Section 1321.3 provides for an additional 0.5 FAR for non-residential uses for new construction which preserves pre-1958 façades. Because no building on the lot that was constructed prior to 1958, Section 1321.3 does not apply in this case.

The applicant plans to demolish the one-story building between the office towers and construct a 9 story building that will add an additional 0.56 FAR of non-conforming, non-residential use to the C-2-C portion of the lot. The construction of new non-residential uses or expansion of existing non-residential uses is prohibited by Section 2002 because this is an expansion of a non-conforming use. However, the applicant maintains that they are permitted to transfer FAR associated with non-conforming non-residential use of the

demolished structure to the new structure. We can find no provisions in the zoning code which allow this transfer and every indication is that the FAR associated with non-conforming non-residential use expires when a structure is demolished.

Conclusion

Because the applicant cannot transfer non-conforming non-residential use from a demolished building to new construction, the applicant must seek a variance to Section 1321.2 and Section 2002 of the DC Zoning Regulations. ANC 6A, the 6th and H NE Neighborhood Association the Capitol Hill Restoration Society and SPNA request that you rule accordingly.

Respectfully submitted:

ANC 6A:

By _____ / *signed* /
Joseph Fengler, Chair
ANC 6A

Stanton Park Neighborhood Association:

By _____ / *signed* /
Monte Edwards, Chair Stanton Park
Neighborhood Association Land Use
Committee

6th and H NE Neighborhood Association:

By _____ / *signed* /
Roosevelt Cain Jr., President
6th and H NE Neighborhood
Association

Capitol Hill Restoration Society:

By _____ / *signed* /
Gary M. Peterson, Chair
Capitol Hill Restoration
Society Zoning Committee

Cc: Travis Parker, Office of Planning
 Norman Glasgow, Esq., 601-645 H Street Ventures
 Matthew LeGrant, Deputy Zoning Administrator