

October 24, 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 Capitol Hill Restoration Society and Stanton Park Neighborhood Association (SPNA) are requesting an administrative ruling on whether, under DC Zoning Regulations, the transfer of use from a less restrictive zone to a more restrictive zone is permitted as a matter of right for split-zoned lots. This question stems from BZA case #15721, where the applicant is seeking to transfer non-residential (*i.e.* commercial) use from the C-2-A zoned portion of the lot to the C-2-C portion of the lot. The BZA hearing for this case is currently scheduled for November 21<sup>st</sup> 2006 and is the first case to apply the H Street NC Overlay and the H Street Design Guidelines. While neither the Overlay nor the Design Guidelines are directly at issue in this request for administrative ruling, the case is of considerable importance because the outcome of this case will influence the future development of the H Street Corridor.

### **Analysis**

The applicant, 601-645 H Street Ventures, LLC, is seeking to build a structure on the south side of the 600 Block of H Street that concentrates all commercial use on the C-2-C portion of the lot and uses the C-2-A portion of the structure entirely for residential use. The applicant is seeking to transfer the “unused” floor area associated with commercial use in the C-2-A zone to the C-2-C zone and transfer an equal amount of floor area associated with residential use from the C-2-C zone to the C-2-A zone.

Section 2514.1 and Section 2514.2 only permit the transfer of use, height, and bulk of structures and use from a less restrictive zone 35 feet into a more restrictive zone. Section 2514.1 permits this transfer as a matter of right only when a zone district boundary line divides a lot that was in single ownership on May 12, 1958. On the other hand, Section 2514.2 permits this by special exception and reads,

If approved by the Board of Zoning Adjustment as a special exception under § 3104, the regulations applicable to that portion of a lot located in a lesser restrictive use zone district that control the use, height, and bulk of structures and the use of land may be extended to that portion of the lot in a more restrictive use zone district...

Neither section permits the transfer of use from the more restrictive zone to the less restrictive zone. If the transfer of FAR associated with a particular use could be transferred from a more restrictive zone to a less restrictive zone, it would constitute a de-facto upzoning that wouldn't require zoning relief from the BZA or a map change from the Zoning Commission.

In the proposed development for BZA case #17521, the applicant intends to keep two existing 5 story towers on the C-2-C portion of the lot. These towers are currently used for office and retail and have no residential use. Because the FAR for these towers is 2.48 for the C-2-C portion of the lot, they currently exceed the permitted 2.0 FAR for non-residential use in a C-2-C zone. The applicant proposes to “transfer” additional non-residential (*i.e.* commercial) use from the C-2-A zoned portion of the lot, in a manner which (1) isn't confined to 35 feet of the C-2-C zone abutting the C-2-A zone, (2) is from the more-restrictive zone to the less restrictive zone, and (3) further increases the non-residential use of the C-2-C zone beyond the 2.0 FAR limit permitted by §771.2 and the 0.5 FAR limit permitted by §1321.2 of the H Street NE Neighborhood-Commercial Zoning Overlay District.

**Conclusion**

The FAR associated with a particular use can only be transferred between zones in a split-zoned lot from a less restrictive zone to a more restrictive zone in accordance with Section 2514.1 and Section 2514.2. These sections do not permit the transfer of use from a more restrictive zone to less restrictive zone nor do they permit the transfer of use more than 35 feet into less restrictive zone. ANC 6A, the Capitol Hill Restoration Society and SPNA request that you rule accordingly.

Respectfully submitted:

ANC 6A:

Stanton Park Neighborhood Association:

By \_\_\_\_\_ /\*signed\*/ \_\_\_\_\_  
Terres (Drew) Ronneberg, Chair  
ANC 6A Economic Development  
and Zoning Committee

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

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