



**District of Columbia Government**  
Advisory Neighborhood Commission 6A  
Box 75115  
Washington, DC 20013



February 12, 2009

Ms. Melissa Bird  
Neighborhood Planning Coordinator (Ward 6)  
Office of Planning  
2000 14<sup>th</sup> Street, NW, 4<sup>th</sup> Floor  
Washington, DC 20009

Re: Proposed Agency Action: Map Amendment (Square 1049)

Dear Ms. Bird:

ANC 6A proposes that the Office of Planning recommend a zoning map amendment to include all C-3-A zoned lots of Squares 1026, 1027, 1049 and 1050 within the H Street NE Neighborhood Commercial Overlay Zone District (11 D.C.M.R. §§ 1320-26) (the "H Street Overlay").

ANC 6A believes that the exclusion of these lots from the H Street Overlay was an oversight, and, in any event, is essential to the ability to achieve the planning, land use and economic development objectives of the H Street Overlay at its eastern-most end. Alternatively, ANC 6A requests that these lots currently excluded from the Overlay be rezoned as a C-2-A zone district. The attachment explains the ANC 6A's reasons for proposing this agency action.

ANC 6A proposes this agency action pursuant to its authority under D.C. Code § 1-309.10(h)(1) (2001 & Supp. 2008). On February 12, 2009, ANC 6A voted in favor of this proposal by a vote of 6 (with 4 Commissioners required for a quorum) at a public meeting noticed and held in accordance with D.C. Code § 1-309.11(g). Accordingly, a response is due within 10 days and a status report is due within 60 days following that as required by D.C. Code § 1-309.10(h)(1). Please contact me if I can be of further assistance.

On behalf of the Commission,

Joseph Fengler  
Chair, Advisory Neighborhood Commission 6A

Enclosures



## **Attachment #1**

### **The H Street Overlay**

On January 9, 2006, the Zoning Commission approved Zoning Commission Order 04-27, which implemented the H Street Overlay (Exhibit A). It became effective on March 10, 2006. The H Street Overlay created an Arts Sub-district at the eastern end of the corridor (see Exhibit A at § 1323). The H Street Overlay restricts other uses that are deemed incompatible with the Arts Sub-district (see, Attachment #2, Exhibit A at § 1320.4).

### **The Excluded Lots**

The eastern-most end of the H Street NE Corridor is the only place on the entire street where lots subject to the provisions of the H Street Overlay are immediately adjacent to lots in a commercial zone district that are excluded from the provisions of the Overlay. All other commercially zoned lots on the H Street NE Corridor are adjacent to residentially zoned lots. These deviating lots are:

1. In Square 1026: Lots 173,177, 835,836, 65 and 66;
2. In Square 1027: Lots 141,142,143, 849, 804, 840 and 841;
3. In Square 1049: Lots 19, 20, 21, 31, 803 and 809; and
4. In Square 1050: Lots 7, 8, 9, 10, 11, 14, 22, 30, 31, 35, 36, 803, 806, 807, 809 and 812.

The Excluded Lots are in a C-3-A zone district, but not subject to the provisions of the H Street overlay (see Exhibit B). As a result, the zoning for the Excluded Lots creates lots that have less zoning restrictions than adjacent lots that have the same base zoning but are subject to the provisions of the H Street Overlay. The remainder of the surrounding Capitol Hill neighborhood is zoned Residential.

### **Disparate Zoning Creates “Islands” of Incompatible Uses**

The Excluded Lots are in prominent, highly visible locations—the corner of Maryland Avenue and 14<sup>th</sup> Street, along the south side of Maryland Ave between 14<sup>th</sup> and 15<sup>th</sup> St and along the south side of Florida Ave between Staples and Holbrook St NE. These properties are at the eastern gateway of the Arts Sub-district and the northeast Capitol Hill neighborhood. Currently, these neighborhoods are the centerpieces of District planning efforts, development efforts and over \$40 million in infrastructure investment. Any development that occurs on the Excluded Lots will effectively define (1) the Eastern Gateway of H Street, NE, (2) the success or failure of the Arts Sub-district, and (3) the northeast Capitol Hill neighborhood.

The vast disparity in zoning treatment between the Excluded Lots and C-3-A zoned lots subject to the Overlay creates “islands” of incompatible land uses. Because of the visibility and prominence of the Excluded Lots, incompatible development will disrupt the remainder of the Arts Sub-district and the neighborhood. Unfortunately, the incompatibility has already begun: an eight-pump gas station was proposed for the cornerstone of square 1049, lots 803 and 21 (see Board of Zoning Adjustment Application No. 17825 (filed May 7, 2008)).



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This type of development has been deemed to be entirely incompatible with the H Street Overlay (see 11 D.C.M.R. § 1320.5(d)) and the northeast Capitol Hill Neighborhood (Comprehensive Plan, Policy CH 1.1.6 (10 D.C.M.R. § 1508.7)). It is also entirely inconsistent with planning objectives that have the force of law (see Comprehensive Plan (10 D.C.M.R. § 100 *et seq.*)).

**Proposed Agency Action**

For the foregoing reasons, ANC 6A has concluded that exclusion of the Excluded Lots from the H Street Overlay was an oversight and that including them would be consistent with the District planning objectives for this area. Accordingly, rezoning the Excluded Lots so that they are entirely within the H Street Overlay would remedy this inconsistency. Alternatively, ANC 6A concludes that rezoning them as a C-2-A zone district would at least mitigate the detrimental impact of incompatible development at the Excluded Lots. Any such amendment should be retroactive to the effective date of the H Street Overlay, March 10, 2006.

- (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 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.