

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-10

Z.C. Case No. 07-10

**(Petition Requesting Set-Down of Rulemaking Imposing Moratorium on Upzoning¹ Within
H Street, N.E. Neighborhood Commercial Overlay)**

June 11, 2007

DECISION AND ORDER

The H Street, N.E. Neighborhood Commercial Overlay (“HS Overlay” or “Overlay”) was established for the District of Columbia by the Zoning Commission (the “Commission”) on March 10, 2006 over lots fronting on H Street, N.E. between 2nd and 15th Streets, N.E., to encourage and foster the revitalization of the H Street corridor. Z.C. Order No. 04-27 (53 DCR 1708). The Overlay only encompasses lots fronting on H Street, but proceeding further away from H Street, both to the north and south, are low-scale row dwelling neighborhoods. The Overlay seeks to protect the historic scale and character of the area within it (11 DCMR § 1320.2(d)), but also permits new development of both residential and commercial uses. Along with the text amendments used to implement the Overlay, map amendments were also enacted “upzoning” from C-2-A to C-2-B several lots fronting the north or south side of H Street and therefore allowing a somewhat larger building envelope than would have been previously permitted.

The Overlay is within the area encompassed by Advisory Neighborhood Commission (“ANC”) 6A. Due to developments in the Overlay area, the ANC has become fearful that the Overlay corridor will become overly-developed, potentially severely impacting the nearby row dwelling neighborhoods, particularly if more, or further, upzonings are permitted. The ANC, therefore, petitioned the Commission to impose a moratorium on any more upzonings within the Overlay. In its petition, the ANC characterizes upzoning as “an extreme and permanent measure” that “rewards land speculators by increasing the permissible density, and therefore value, of vacant lots while the speculators leave their lots vacant and deteriorating.” (Exhibit 1, pp. 4 and 6.)

Section 6 of the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. Official Code § 2-505 (b) provides in part that:

¹“Upzoning” is generally used by the Commission, and is used herein, to signify a change in zoning from a more restrictive zone district to a less restrictive zone district. For example, any change from a residential district to a commercial district would be an “upzoning,” or a change from a C-2-A Zone District to a C-2-B Zone District would be an “upzoning.”

Any interested person may petition ... an independent agency requesting the promulgation, amendment, or repeal of any rule. ... Nothing in this subchapter shall make it mandatory that ... any agency promulgate, amend, or repeal any rule pursuant to a petition therefore submitted in accordance with this section.

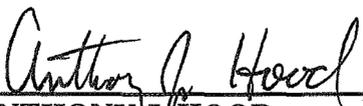
The Commission concludes that the proposed rule should not be promulgated.

A moratorium on upzoning map amendment requests is unnecessary because all map amendments, upzoning or not, require public notice and public participation through a hearing and a written comment period. Each map amendment is therefore fully vetted and opponents may make their positions known. A blanket moratorium on upzoning map amendment requests is a disproportionate and severe response when opponents to each such request will have an opportunity on a case-by-case basis, to apprise the Commission of their opposition, potentially resulting in the Commission's decision not to adopt the amendment proposed. Further, such a moratorium is inconsistent with the privileges of the public to petition the Commission for such map amendments as it considers appropriate pursuant to the DC APA provision just cited and the prerogatives of this Commission to adopt them.

Therefore, the petition of ANC 6A for an Emergency Text Amendment to Preserve the Integrity and Goals of the H Street, N.E. Neighborhood Commercial Zone Overlay District is hereby **DENIED**.

On June 11, 2007, upon the motion of Chairman Mitten, as seconded by Vice Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to deny; Gregory N. Jeffries, not having participated, not voting.)

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*, that is on November 19, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-10

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As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 07-10 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 5. Councilmember Tommy Wells |
| 2. ANC 6A
Box 75115.
Washington, D.C. 200013 | 6. DDOT (Karina Ricks) |
| 3. ANC 6C
Box 77876
Washington, DC 20013 | 7. Melinda Bolling, Acting General
Counsel
DCRA
1100 4 th Street, S.W.
Washington, DC 20024 |
| 4. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 8. Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:

A handwritten signature in black ink, appearing to read "S. S. Schellin", written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning