GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director
Office of Planning

DATE: November 15, 2001

SUBJECT: Waiver of Rules for Late Submittal of a Preliminary Report on Zoning Commission Case Number 00-27, a Proposed Zoning Map Amendment make a the Southern Half of Square 37 consistent with the Adopted Comprehensive Plan

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The attached report concerning an petition submitted by James Pedas, requesting a change to the zoning of lots 810, 811, 831, 836, 837 and 855 on Square 37 from R-5-B to a classification more consistent with the Generalized Land Use Map of the District of Columbia Comprehensive Plan, is submitted less than 10 days prior to the Zoning Commission Public Hearing. The Office of Planning respectfully requests that the Board waive its rule and accept the report into the record.

ZONING COMMISSION
District of Columbia
Case 00-27M
Exhibit 16

ZONING COMMISSION
District of Columbia
CASE NO.00-27
EXHIBIT NO.16

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: D. C. Zoning Commission

FROM: Andrew Altman
Director

DATE: November 15, 2001

SUBJECT: Preliminary Report on Zoning Commission Case Number 00-27, a Proposed Zoning Map Amendment to make lots 810, 811, 831, 836, 837 and 855 on Square 37 consistent with the adopted Comprehensive Plan

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PETITION
In October 2000, a petition was submitted to the Office of Zoning on behalf of James Pedas, co-owner of referenced lot 855, requesting that the Zoning Commission initiate steps to change the zoning of lots 810, 811, 831, 836, 837 and 855 on Square 37 from R-5-B to a classification more consistent with the Generalized Land Use Map of the District of Columbia Comprehensive Plan.

RECOMMENDATION
The Office of Planning (OP) recommends that the Zoning Commission "set down" this petition for a public hearing to consider whether the existing R-5-B shall be changed in accordance with the Generalized Land Use Map to one of the following proposed new zoning classifications: R-5-D/NC or R-5-E/NC.

Amendments to the R-5 District and Neighborhood Commercial Overlay District (NC) provisions of the Zoning Regulations (Chapters 3 and 13, respectively) required in accordance with this recommendation are proposed for "set down" in a companion Commission report.

BACKGROUND
Area Description
The subject six parcels make up the southern half of Square 37. South of the existing alley between 23rd Street and 24th Street N.W. are lot 855, developed with a commercial open parking lot, and lots 810, 811 and 831, developed with two-story row houses and a four-story apartment building. These properties are privately owned. Lots 836 and 837 at the southern end of the square (immediately north of L Street, N.W.) are owned by the District and developed with the West End Public Library and Metropolitan Police Department Special Operations Division buildings (refer to Exhibit 1). These six properties total 58,628 square feet (1.35 acres) and are all zoned R-5-B (refer to the zoning certification for the District properties in Exhibit 2).

Surrounding development north of the alley consists of three lots zoned C-2-C and developed with the Westin Grand Hotel (2350 M Street, N.W.), 2300 M Street, N.W. (European Union) office building and a condominium apartment building (1140 23rd Street, N.W.). South of L Street, N.W., are six lots on Square 38 developed with two-story row houses and apartments. To the east, across 23rd Street, N.W., is the Millennium Planned Unit Development (1100 23rd Street, N.W.) that occupies the entire street frontage. The PUD included a map change to CR for that site. West across 24th Street, N.W., is the Columbia Hospital for Women zoned R-5-B, and the future site of a 142 apartment, 143,287 square foot addition over an existing medical office building at 2450 M Street, N.W. The latter property is zoned C-2-C.

Existing Zoning

The existing zoning pattern in the area consists of the following.

District	Predominant Use	FAR	MNR FAR[1]	Height	PUD			
					FAR	Height	Lot Occupancy	Conditions
R-5-B	Moderate density apartment houses	1.8	0	50 ft.	3.0	60 ft. (3 stories)	.60	None
R-5-D	Medium-high density apartment houses	3.5	0	90 ft.	4.5	90 ft.	.75	None
R-5-E	High-density apartment houses	5.0-6.0	0	90 ft.	6.0	90 ft.	.75	Apartments up to a 6.0 FAR
C-2-A	Community business Center, low-moderate density	2.5	1.5	50 ft	3.0	65 ft.	.60	MNR FAR[1] <= 2.0
C-2-B	Community business center, medium density	3.5	1.5	65 ft.	4.5	90 ft.	.80	MNR[1] FAR <=2.0
C-2-C	Community business center, high-density	6.0	2.0	90 ft	6.0	90 ft.	.80	MNR FAR[1] <= 2.5

[1] Maximum non-residential floor area ratio (FAR)

District	Predominant Use	FAR	MNR FAR[2]	Height	PUD			
					FAR	Height	Lot Occupancy	Conditions
CR	Mixed residential, retail, office and light industrial uses	6.0	3.0	90 ft.	8.0	110 ft.	.75	MNR FAR[1] <= 4.0

The current R-5-B zoning only allows development of moderate density housing since commercial development is not allowed as a principal use. Therefore, the existing zoning is inconsistent with the Generalized Land Use Map and the Comprehensive Plan.

Comprehensive Plan

The petition is consistent with the Comprehensive Plan. The Generalized Land Use Map designates the subject properties for the following mixed-use development:

- *High-Density Residential* – Characterized by high-rise apartment buildings as predominant uses (may also include low, moderate and medium density housing).

- *Moderate-Density Commercial* – Characterized by shopping and services, offering the largest concentration and variety of good and services, outside of Central Employment Area as predominant uses.

Major Themes of the Comprehensive Plan in Section 101 include:

> "… (a) Stabilizing and improving the District's neighborhoods;
> (b) Increasing the quantity and quality of employment opportunities in the District;
> …
> (e) Respecting and improving the physical character of the District;
> (f) Preserving and ensuring community input;
> …
> (h) Reaffirming and strengthening the District's role as the economic hub of the National Capital Region; …"

The Comprehensive Plan, which is the legal basis for zoning in the District, enunciates, as its first principle, the importance of stability for residential neighborhoods. Under Section 101, Major Themes, the plan states:

> "The successful and creative functioning of neighborhoods is a fundamental concern.

[1] Maximum non-residential floor area ratio (FAR)

> Citizen participation in civic improvement starts from the interest that people have in their neighborhood blocks and the day-to-day relationships therein. District services are primarily directed to homes and their environs. ...
>
> The District elements of the Plan propose that the residential character of neighborhoods be maintained and improved. ...
>
> Ensuring good quality neighborhoods is of utmost importance to the District."

In Title 11, the Land Use Element, the Plan gets quite specific in Section 1102, Objectives for Residential Neighborhoods, that states the residential neighborhood objectives are as follows:

> "(a) To conserve the essentially satisfactory qualities of the District's many stable residential neighborhoods;
> (b) To enhance other neighborhoods to improve and achieve stability;
> (c) To redirect public and private initiatives to neighborhoods most in need of improvement and stability;
> (d) To encourage development of adequate neighborhood shopping and support services in all sections of the District;
> (e) To protect residential neighborhoods from disruptive uses; and
> (f) To prevent concentrations of non-residential uses in residential neighborhoods."

Policies in support of these objectives under Section 1104.1 include several that are directly relevant to this case:

> "(a) Promote the conservation, enhancement and revitalization of the residential neighborhoods of the District for housing and neighborhood-related uses;
> (b) Conserve and maintain the District's sound, established neighborhoods through the strict application and enforcement of housing, building, and zoning codes and the maintenance of the general level of existing residential uses, densities, and heights;
> ...
> (c) Encourage the retention and expansion of residential areas in mixed use neighborhoods to help maintain the residential character of these areas, through modification of land use and related regulations when necessary;
> ...
> (i) Protect low and moderate density residential neighborhoods that are also designated for commercial uses from uses that are incompatible with residential neighborhoods, and from activities, particularly those of a commercial nature, that generate excessive traffic, late night activity, noise, litter, and other damaging environment impacts;
> ...
> (l) Upgrade deficient neighborhood and multi-neighborhood shopping and service areas, ... and assist in the establishment of new commercial areas to ensure that all

neighborhoods have ready access to a suitable range of retail goods and services in the District. ..."

Ward 2 Objectives for Economic Development in Section 1301.1 include:

"(a) Enhance the image of Ward 2 as a place to do business and to reside;
(b) Maintain sound areas of the ward and rebuild and develop other areas of the ward where economic development actions are needed;
(c) Increase total employment in the ward, especially in the Central Employment Area, and at appropriate locations and levels in other areas of the ward; ...
(g) Increase District tax revenues from expanded economic development activity in Ward 2 but not at the expense of residential communities in the Ward that are critical providers of revenues to the District, especially in the form of income and property taxes, and that are a source of employees to the Central Employment Area."

Ward 2 Objectives for Housing under Section 1304.1 include:

"(a) Stimulate production of new and rehabilitated housing to meet all levels of need and demand and to provide incentives for the types of housing needed at desired locations;
(b) Provide for the housing needs of low- and moderate-income households;
(c) Encourage home ownership; ..."

Ward 2 Objectives for Transportation under Section 1310.1 include:

"(b) Improve mobility within Ward 2 for residents, employees, and visitors, while minimizing the adverse transportation impacts on commercial areas and residential neighborhoods."

The Office of the Deputy Mayor for Planning & Economic Development (DMPED) agreed that this request is not inconsistent with the Generalized Land Use Map in a letter dated September 26, 2001 (Exhibit 3).

Analysis

OP supports zoning consistency, however staff is concerned that strict consistency would potentially result in excessive commercial office development that would be inconsistent with community planning goals for the area. These goals include but are not limited to the following:

- support of the developments that provide long-term residential opportunities;
- encourage the provision of more small-scale neighborhood-serving commercial establishments;
- limit future office development; and

- encourage future construction that is sensitive to the scale and massing of existing structures in this close urban setting.

Therefore, in order to further both zoning consistency and community goals, OP recommends modifying the existing zoning categories. This is particularly appropriate in light of the fact that the majority of the land that would be affected is District owned, and this application is proceeding in the absence of a specific development proposal. The new Neighborhood Commercial Overlay option will have broad applicability and will address several shortcomings illustrated by this case, namely the lack of zoning tools that: allow mixed use development consisting of high-density residential with neighborhood serving commercial; and require that neighborhood serving retail and service uses be a component of such develop.

The referenced R-5 provisions under Section 350 and Neighborhood Commercial Overlay (NC) provisions under Section 1300 of Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning are attached in Exhibit 4. Proposed amendments would establish a new mixed-use development model that would:

- allow medium-high intensity residential development up to a 3.0-4.5 FAR (4.0-5.5 FAR under a PUD);
- allow low-moderate density commercial development up to a 1.0-1.5 FAR (with no PUD increase) in conjunction with the above residential development (both consistent with the Generalized Land Use Map);
- generally limit the size and types of allowable commercial development to community serving retail, service, institutional (library) and accessory office uses;
- limit office as a principal use; and
- require that a minimum 0.5 of first floor FAR be reserved for the referenced community serving retail and services uses.

In general the proposed zoning categories would allow the following:

District	Predominant Uses	FAR	MNR FAR[1]	Height	PUD			
					FAR	Height	Lot Occupancy	Conditions
R-5-D/NC	Mixed Medium-high density Residential with Retail …	3.5	1.0	90 ft.	4.5	90 ft.	.75	Require a minimum of 0.5 FAR of first floor commercial uses under Section 1302.2 (as per proposed amendments)
R-5-E/NC	Mixed High-density Residential with Retail …	5.0-6.0	1.5	90 ft.	6.0	90 ft.	.75	Apartments up to a 5.5 FAR, require a minimum of 0.5 FAR of first floor commercial uses under Section 1302.2 (as per proposed amendments)

In the alternative, principal office uses up to a maximum 0.5 FAR and 1.0 FAR in R-5-D and R-5-E, respectively, would be allowed as part of a larger residential development. The following issues will be addressed in greater detail during the course of our review:

- Community concerns about increased zoning intensity: Foggy Bottom Advisory Neighborhood Commission (ANC) 2A considered this petition during regular ANC meetings in July and October 2001. A Report to ANC 2A on Square 37 adopted by the ANC on November 13, 2001 concludes by recommending, "the designated zoning for Square 37 should be retained" (Exhibit 5). However, an earlier memorandum dated January 31, 2001, from Michael Thomas, then president of the Foggy Bottom Neighborhood Association indicated what would be desirable and undesirable changes to their neighborhood related to any zoning change (Exhibit 6). The new Association board has not yet discussed this issue.

- Traffic impact analysis: Transportation impacts are the principal concern. OP is working with the Department of Public Works to undertake a study of the existing West End traffic and public parking conditions, to quantify existing problems and determine how they can be mitigated, and to analyze what more intense development of the subject property, consistent with the surrounding zoning pattern, would mean.

- Future development controls: Staff is working with the DMPED to review possible measures to guide the design and character of future development involving the District properties.

- Whether additional zoning text changes are required for this proposal.

There is a final issue concerning the timing of any zoning change. The subject petition does not include any specific proposal or timetable for redeveloping the private properties in question or the District properties. The Office of Planning had suggested to the petitioner that it was more appropriate to consider rezoning the subject property in light of a specific development proposal that could be evaluated for its public benefit, rather than in the abstract. However, the petitioner indicated a strong desire to pursue a map amendment now.

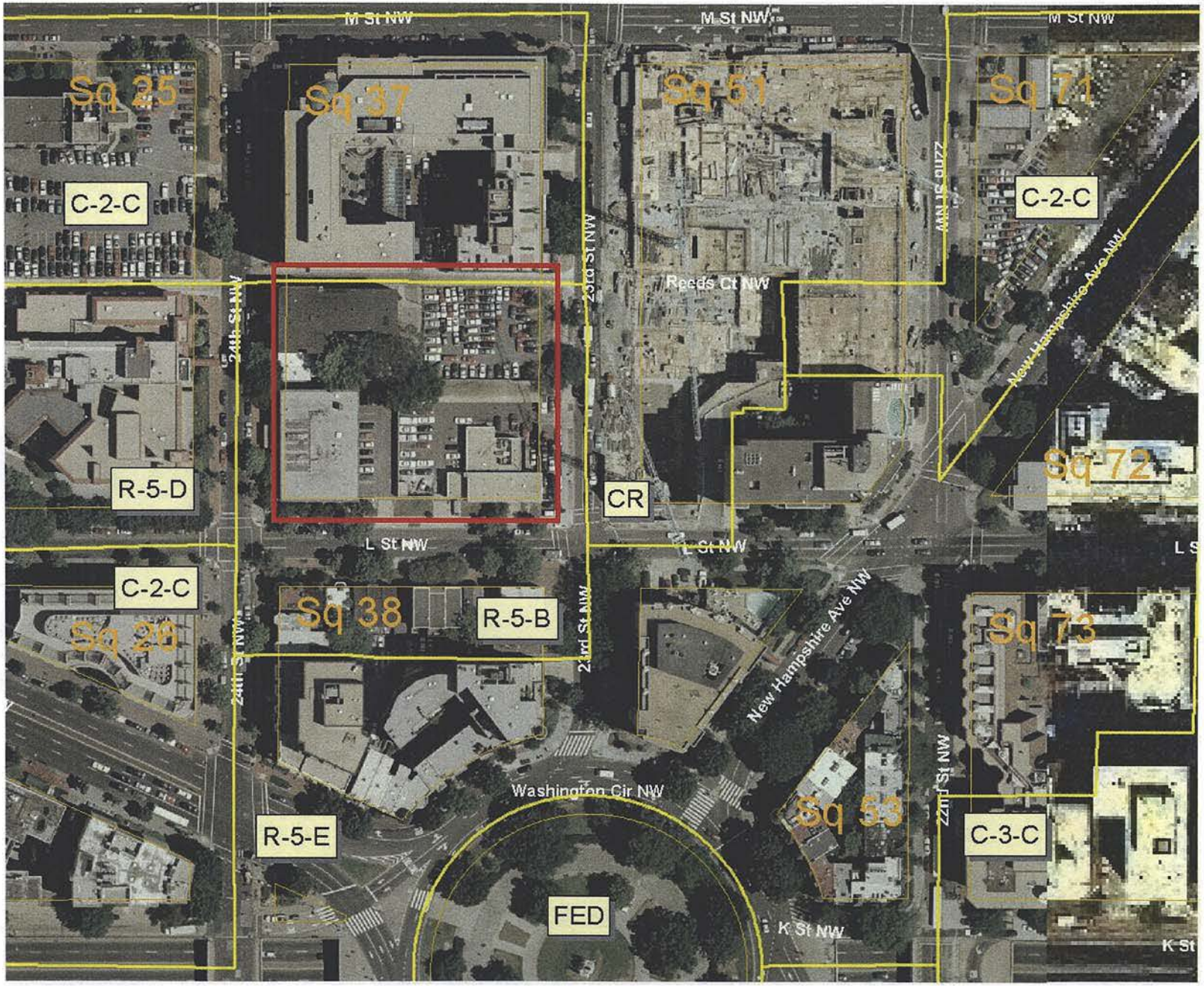
Note that, while the Office of Planning supports Zoning Commission consideration of this proposal, the final OP recommendation will depend on the results of the more detailed studies outlined above.

AA/afj

Attachments:	Exhibit 1	Aerial Map with Zoning
	Exhibit 2	Zoning Certification of District of Columbia Property (Lots 836 & 837, Square 37)
	Exhibit 3	Letter dated September 26, 2001, from Michael Vincent Hodge, Director, Revenue Bond Program and Enterprise Zones, Deputy

	Mayor for Planning & Economic Development to Arthur Jackson, Development Review Specialist, Office of Planning
Exhibit 4	Section 350 of "R-2, R-3, R-4 and R-5 District Use Regulations" and "Neighborhood Commercial Overlay District", Chapter 13, under Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning
Exhibit 5	Report of ANC-2A on Square 37 with cover letter
Exhibit 6	Memorandum dated January 31, 2001, from Michael Thomas to Ellen McCarthy, et al

AA/afj



Zones.shp
Street Names
Square Index
Parcel Index
Neighborhoods

Existing Zoning Around Square 37

100 0 100 Feet

Exhibit 2

Government of the District of Columbia

OFFICE OF ZONING

441 4TH STREET, N.W.
SUITE 210
WASHINGTON, D.C. 20001
(202) 727-6311

May 29, 2001

Ms. Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
Suite 4000
Washington, D.C. 20002

RE: Zoning Certification for Lots 836 & 837, in Square 37

Dear Ms. McCarthy:

In response to a letter dated May 24, 2001, from Arthur F. Jackson, Jr. of your office (see attachment) requesting a zoning certification for the above properties, please find a zoning certification for the above properties, identifying these properties as being located in the "R-5-B" Zoning District.

Please be aware that the subject properties have been owned and used by the D.C. Government for government purposes as a library (Lot 836) and a police station (Lot 837) well before May 23, 1990. Title 11 DCMR § 106.5 (a) which provides, in reference to properties of the District of Columbia government, that "Any governmental land or building uses that were either in existence or were substantially planned, documented and vested in prior to May 23, 1990, shall not be subject to zoning;"

Subsection 106.5 (b) states that "With regard to the properties referenced in (a) above, any change or expansion in the use of land or buildings, or any new construction or additions to buildings shall be subject to zoning; and ..."

Please feel free to call me or Rick Nero, my Special Assistant on (202) 727-6311, if we can be of further assistance in this matter.

Sincerely,

Jerrily R. Kress, FAIA
Director

Attachments
cc: Arthur F. Jackson, Jr.

Exhibit 3

Government of the District of Columbia

Eric W. Price
Deputy Mayor for Planning and
Economic Development

VIA FACSIMILE 202-442-7637

September 26, 2001

Arthur Jackson
Development Review Specialist
Office of Planning
801 North Capitol Street, NE
Suite 4000
Washington, DC 20002

RE: Zoning Commission Case No. 00-97

Dear Arthur:

This is in response to your letter to me dated May 16, 2001 and on conversations we have had on several occasions regarding the rezoning of certain lots in Square 37. Please be advised, the Office of the Deputy Mayor for Planning and Economic Development has determined that the "Request for Zoning Change" contained in the letter from Holland & Knight dated 10/10/00 to the Zoning Commission is not inconsistent with the Generalized Land Use Map associated with the approved Comprehensive Plan. Nor does the requested change in zoning conflict with plans currently contemplated by this office.

Sincerely,

Michael Vincent Hodge
Director, Revenue Bond Program and Enterprise Zones

Cc: Eric W. Price, Deputy Mayor for Planning and Economic Development

335.8 The Board shall not approve more than one (1) youth rehabilitation home, adult rehabilitation home, or substance abusers' home in a square or within five hundred feet (500 ft.) of each other.

335.9 The Board shall submit the application to the Director of the Office of Planning for coordination, review, report, and impact assessment, along with reports in writing of all relevant District departments and agencies, including but not limited to, the D.C. Departments of Public Works, Human Services, and Corrections and, if a historic district or historic landmark is involved, of the State Historic Preservation Officer.

SOURCE: §3104.47 of Regulations effective May 12, 1958; as added by Final Rulemaking published at 28 DCR 3482, 3495 (August 7, 1981); and by Final Rulemaking published at 40 DCR 726 (January 22, 1993).

336 - 349 [RESERVED]

350 R-5 DISTRICTS: GENERAL PROVISIONS

350.1 The R-5 districts are designed to permit a flexibility of design by permitting in a single district, except as provided in §§350 through 360, all types of urban residential development if they conform to the height, density, and area requirements established for these districts under chapter 4 of this title. The R-5 districts shall also permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and which are excluded from the more restrictive Residence districts.

350.2 The R-5 districts are subdivided into R-5-A, R-5-B, R-5-C, R-5-D and R-5-E districts. In R-5-A districts only a low height and density shall be permitted; in R-5-B a moderate height and density shall be permitted; in R-5-C a medium height and density shall be permitted; and in R-5-D and R-5-E districts a relatively high height and density shall be permitted.

350.3 Except as provided in chapters 20 through 25 of this title, in any R-5 district, no buildings or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except for one (1) or more of the uses listed in §§350 through 360.

350.4 The following uses shall be permitted as a matter of right in an R-5 district:

(a) Any use permitted in the R-4 district subject to the requirements of §410 of chapter 4 and §353 of chapter 3 of this title;

(b) Greenhouse or horticultural nursery;

(c) Multiple dwellings subject to the requirements of §353 and §410 of this title; Provided, that in an apartment house, accommodations may be provided only to residents who stay at the premises a minimum of one month;

(d) Hotel, only in R-5-B, R-5-C, R-5-D, or R-5-E districts, in existence as of May 16, 1980, with a valid Certificate of Occupancy or a valid application for a building permit; Provided, that the gross floor area of the hotel may not be increased and the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased. An existing hotel may be repaired, renovated, remodeled, or structurally altered;

(e) Residence for teachers or staff of private schools;

(f) Youth residential care home, community residence facility, or health care facility for seven (7) to fifteen (15) persons, not including resident supervisors or staff and their families; Provided, that there is no property containing an existing community-based residential facility for seven (7) or more persons in the same square and that there is no property containing a community-based residential facility for seven (7) or more persons within a radius of five hundred feet (500 ft.) from any portion of the subject property; and

(g) Child/elderly development center in R-5-D and R-5-E districts; Provided, that the center shall be limited to no more than twenty-five (25) individuals.

350.5 A parking garage on an alley lot so recorded on the records of the Surveyor, District of Columbia, or recorded on the records of the D.C. Department of Finance and Revenue, on or before November 1, 1957, shall be permitted as a matter of right in an R-5 district; Provided, that the following conditions shall be met:

(a) No part of the garage shall be located within seventy-five feet (75 ft.) of any building line: and

(b) Vehicular entrances and exits shall open directly onto an alley.

350.6 A chancery shall be a permitted use in R-5-D or R-5-E districts, subject to disapproval by the Board of Zoning Adjustment in accordance with the requirements of chapter 10 of this title.

SOURCE: §§3105.1, 3105.2, 3105.3 of Regulations effective May 12, 1958; as amended by Final Rulemaking published at 27 DCR 2066, 2068 (May 16, 1980); 28 DCR 3482, 3496 (August 7, 1981); by Final Rulemaking published at 29 DCR 4913, 4919 (November 5, 1982); by Final Rulemaking published at 30 DCR 3270, 3271 (July 1, 1983); by Final Rulemaking published at 36 DCR 7625, 7626 (November 3, 1989); by Final Rulemaking published at 39 DCR 8305 (November 13, 1992); and by Final Rulemaking published at 40 DCR 726 (January 22, 1993).

351 ACCESSORY USES AND BUILDINGS (R-5)

351.1 The following accessory uses or accessory buildings incidental to the uses listed in §350 shall be permitted in an R-5 District:

CHAPTER 13 NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

Secs.

1300 Preamble
1301 General Provisions
1302 Designated and Restricted Uses
1303 Limitations on Driveways and Curb Cuts
1304 Special Exceptions
1305 Planned Unit Development Guidelines
1306 Cleveland Park Neighborhood Commercial Overlay District
1307 Woodley Park Neighborhood Commercial Overlay District
1308 Macomb-Wisconsin Neighborhood Commercial Overlay District

1300 PREAMBLE

1300.1 The Neighborhood Commercial ("NC") Overlay District is established to preserve and enhance neighborhood shopping areas, by providing the scale of development and range of uses that are appropriate for neighborhood shopping and services.

1300.2 The NC Overlay District includes a number of individual overlay zone districts that may be established and mapped from time to time, consistent with the general provisions of this chapter.

1300.3 The purposes of the NC Overlay District are the following:

(a) To encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement, all of which will be as generally required by the comprehensive plan for the national capital;

(b) To encourage retention and establishment of a variety of retail, entertainment, and personal service establishments, predominantly in a continuous pattern at ground level, so as to meet the needs of the surrounding area's residents, workers, and visitors; and

(c) To limit the maximum permitted height of new buildings so as to encourage a general compatibility in scale between new and older buildings.

1300.4 The provisions of this chapter that apply to the discrete NC Overlay Districts shall reflect the character, scale, and needs of the particular district.

AUTHORITY: Unless otherwise noted, the authority for this chapter is An Act approved June 20, 1938, 52 *Stat.* 797, ch. 534, as amended at 56 *Stat.* 122, D.C. Code §5-413 (1981).

SOURCE: Final Rulemaking published at 36 DCR 7616 (November 3, 1989).

1301 GENERAL PROVISIONS

1301.1 The NC Overlay District is mapped in combination with the underlying commercial zone district and not instead of the underlying district.

1301.2 Except as specifically provided in §1301.3 of this section and in other provisions of this chapter, all uses, buildings, and structures permitted in accordance with this chapter and the appropriate regulations of the underlying district with which the mapped NC Overlay District is combined, shall be permitted in the combined district.

1301.3 Where there is a conflict between this chapter and the underlying zoning, the more restrictive provisions of this title shall govern.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7617 (November 3, 1989).

1302 DESIGNATED AND RESTRICTED USES

1302.1 Any building that occupies or is constructed on a lot in a designated use area within an NC Overlay District shall provide designated retail and service establishments on the ground level according to the requirements of this section and any additional requirements of the particular overlay district.

1302.2 The designated uses for purposes of this section are the following:

(a) Any use that is permitted as a matter of right in the C-1 district pursuant to §§701.1 or 701.4, of this title;

(b) Library;

(c) Blueprinting or similar reproduction service;

(d) Film exchange;

(e) Interior decorating shop;

(f) Laundry, self service;

(g) Photographic studio;

(h) Picture framing studio or shop;

(i) Tailor shop or valet shop;

(j) Telegraph office;

(k) Antique store or shop;

(l) Auction house;

(m) Department store;

(n) Display stand or store for mail order sales;

(o) Dry goods store;

(p) Furniture store;

(q) Home furnishings sales;

(r) Leather goods store;

(s) Musical instruments and accessories sales;

(t) Office supplies and equipment sales;

(u) Optical goods store;

(v) Pet shop;

(w) Precision instrument sales; and

(x) Theater, including motion picture theater.

1302.3 If the underlying zone district is C-1, the designated uses shall include only those uses that are referenced in paragraphs (a) and (b) of §1302.2.

1302.4 The designated uses listed in §1302.2 of this section shall occupy no less than fifty percent (50%) of the gross floor area of the ground level of the building, subject to the following requirements:

(a) No more than twenty percent (20%) of the ground level floor area shall be devoted to banks, loan offices or other financial institutions, travel agencies, or other ticket offices;

(b) The ground level floor shall be the floor that is nearest in grade elevation to the sidewalk; and

(c) In those parts of the affected building or lot other than as delineated in this section, the use provisions of the underlying zone district shall apply.

1302.5 Restaurants, fast food restaurants, delicatessens, carry-outs, and similar eating or drinking establishments shall be subject to the following limitations:

(a) These uses shall occupy no more than twenty-five percent (25%) of the linear street frontage within a particular NC Overlay District, as measured along the lots that face designated roadways in the particular district; and

(b) Except for a fast food restaurant, such uses may be applied to fulfill the requirements of §1302.4 of this section; Provided, that when such uses are

so applied, they shall remain subject to the provisions of paragraph (a) this sub-section.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7617 (November 3, 1989).

1303 LIMITATIONS ON DRIVEWAYS AND CURB CUTS

1303.1 No drive-through accessory to any use shall be permitted in the NC Overlay District.

1303.2 Within the area of the NC Overlay District, notwithstanding the provisions of §2117.8(c)(1) of this title, no driveway providing access from any designated roadway to required parking spaces or loading berths shall be permitted.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7619 (November 3, 1989).

1304 SPECIAL EXCEPTIONS

1304.1 Exceptions from the requirements of this chapter shall be permitted only as a special exception, if approved by the Board of Zoning Adjustment after public hearing, in accordance with the conditions specified in §3108 of this title, and subject to the following requirements:

(a) The excepted use, building, or feature at the size, intensity, and locat[illegible] proposed will substantially advance the stated purposes of the [illegible] Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity;

(b) Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, which justify the exception or waiver;

(c) Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions; and

(d) The Board may impose requirements pertaining to design, appearance, signs, size, landscaping and other such requirements as it shall deem necessary to protect neighboring property and to achieve the purposes of the NC Overlay District and the particular overlay district.

1304.2 This section shall not operate to allow any exception to the height or floor area ratio limits of any NC Overlay District.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7619 (November 3, 1989).

1305 PLANNED UNIT DEVELOPMENT GUIDELINES

1305.1 In the NC Overlay District, the matter of right height and floor area ratio limits shall serve as the guidelines for Planned Unit Developments.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7620 (November 3, 1989).

1306 CLEVELAND PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1306.1 The Cleveland Park ("CP") Overlay District is applied to a compact geographic area surrounding the Cleveland Park Metrorail Station and within the Cleveland Park Historic District, comprising those lots zoned C-2-A in Squares 2218, 2219, 2222, 2068, 2069, and 2082.

1306.2 In addition to the purposes that are set forth in §1300 of this chapter, the purposes of the CP Overlay District are as follows:

(a) To provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic, so as to improve access to retail services, the Metrorail station, and other uses in the area;

(b) To encourage compatibility of development with the purposes of D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978; and

(c) To provide for retention of existing housing within the CP Overlay District, so as to help meet the need for affordable housing; and to enhance pedestrian activity, safety, and consumer support for businesses in the commercial area.

1306.3 For purposes of §1302 of this chapter, the designated use area shall include any lot within the CP Overlay District that fronts on Connecticut Avenue or Macomb, Newark, Ordway, or Porter Streets.

1306.4 For purposes of §1303.2 of this title, the designated roadway within the CP Overlay District shall be Connecticut Avenue.

1306.5 In the CP Overlay District, no dwelling unit or rooming unit in existence as of October 1, 1987 shall be converted to any nonresidential use, or to a transient use as hotel or inn; Provided, that this restriction shall not apply to the ground floor of the building, i.e., that floor which is nearest in grade elevation to the sidewalk.

1306.6 The maximum permitted height for any building or structure in the CP Overlay District shall be forty feet (40 ft.).

1306.7 The matter of right floor area ratio in the CP Overlay District shall be 2.0, not more than 1.0 of which may be occupied by non-residential uses.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7620 (November 3, 1989).

1307 WOODLEY PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1307.1 The Woodley Park ("WP") Overlay District is applied to a compact geographic area surrounding the Woodley Park/Zoo Metrorail station, comprising those lots zoned C-2-A in Squares 2202 and 2203, and those lots zoned C-2-B in Square 2204.

1307.2 In addition to the purposes which are set forth in §1300 of this chapter, the purposes of the WP Overlay District are to provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic, so as to improve access to retail services, the Metrorail station, and other uses in the area.

1307.3 For purposes of §1302 of this chapter, the designated use area shall include any lot within the WP Overlay District that fronts on Connecticut Avenue, Calvert Street, or 24th Street.

1307.4 For purposes of §1303.2 of this title, the designated roadway within the WP Overlay District shall be Connecticut Avenue.

1307.5 No hotel, inn, or fast food restaurant shall be permitted in the WP Overlay District.

1307.6 The maximum permitted height of any building or structure in the WP Overlay District shall be as follows:

(a) Forty feet (40 ft.) in the WP/C-2-A District; and

(b) Fifty feet (50 ft.) in the WP/C-2-B District.

1307.7 The matter of right floor area ratio in the WP Overlay District shall be as follows:

(a) In the WP/C-2-A District, the matter of right floor area ratio shall be 2.5, not more than 1.0 of which may be occupied by non-residential uses; and

(b) In the WP/C-2-B District, the matter of right floor area ratio shall be 3.0, not more than 1.0 of which shall be occupied by non-residential uses.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7621 (November 3, 1989).

1308 MACOMB-WISCONSIN NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1308.1 The Macomb-Wisconsin ("MW") Overlay District applies to the neighborhood commercial area near and extending from the intersection of Macomb Street

and Wisconsin Avenue, N.W., comprising those lots zoned C-1 in Squares 1920and 1920N.

1308.2 In addition to the purposes that are set forth in §1300 of this chapter, the purpose of the MW Overlay District is to provide for public review of large developments as to their proposed uses, vehicular access, and the scale and massing of proposed buildings, so as to ensure compatibility with and enhancement of the primary neighborhood retail function of the commercial area and to advance the other purposes of this overlay district.

1308.3 Within the MW Overlay District, on a lot that has ten thousand square feet (10,000 ft.^{2}) or more in land area, construction of a new building or enlargement of the gross floor area of an existing building by fifty percent (50%) or more, shall be permitted, subject to review and approval as a special exception by the Board of Zoning Adjustment, pursuant to the same standards and criteria set forth in §1304 of this chapter.

1308.4 For purposes of §1302 of this chapter, the designated use area shall include any lot that fronts on Wisconsin Avenue or Macomb or Newark Streets within the WP Overlay District.

1308.5 For purposes of §1303.2 of this chapter, the designated roadways within the MW Overlay District shall be Wisconsin Avenue and Macomb Street.

SOURCE: Final Rulemaking published at 36 DCR 7616, 7622 (November 3, 1988).

1309 EIGHTH STREET SOUTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT

1309.1 The Eighth Street Southeast ("ES") Overlay District is applied to a compact geographic area along Eighth Street, S.E., near the entrance to the Navy Yard north, comprising those properties zoned C-3-A in squares 906, 907, 929, and 930.

1309.2 In addition to the purposes that are set forth in §1300 of this chapter, the purposes of the ES Overlay District are as follows:

(a) To encourage and allow new business and office development in close proximity to the Navy Yard, with emphasis on firms that will conduct business with the Navy, as well as neighborhood-serving retail and service businesses;

(b) To allow and encourage medium density commercial development in the interest of securing economic development, while restricting building heights to a low level so as to respect the historic scale of buildings and the entrance to the adjacent Navy Yard; and

(c) To provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic, so as to improve access to retail and other businesses in the area.

1309.3 For the purposes of §1302 of this chapter, the designated use area shall include any lot within the ES Overlay District that fronts on Eighth Street, L Street, M Street or Potomac Avenue, S.E.

1309.4 For purposes of §1302.5 of this chapter restaurants fast food restaurants, delicatessens, carry-outs, and similar eating or drinking establishments shall be subject to the following limitations: These uses shall occupy no more than fifty percent (50%) of the linear street frontage within the Eighth Street Overlay District, as measured along the lots that face designated roadways in the Eighth Street Overlay District of which up to one-half (1/2) of the fifty percent (50%) of the linear street frontage shall only be occupied by fast food restaurants.

1309.5 For purposes of §1303.2 of this chapter, the designated roadways within the ES Overlay District shall be Eighth Street, M Street and Potomac Avenue.

1309.6 The maximum permitted height for any building or structure in the ES Overlay District shall be forty-five feet (45 ft.).

1309.7 The maximum permitted gross floor area for permitted commercial and residential uses in the ES Overlay District shall be 3.0 FAR.

Exhibit 5

Foggy Bottom and West End
Advisory Neighborhood Commission (ANC-2A)

c/o St. Mary's Court 725 24th Street, NW Washington, DC 20037 (202) 736-1775

November 13, 2001

Mr. Andrew Altman, Director
D.C. Office of Planning
801 No. Capitol Street, NE, 4th Floor
Washington, DC 20001

Dear Mr. Altman:

THE FOGGY BOTTOM AND WEST END ADVISORY NEIGHBORHOOD COMMISSION (ANC-2A) passed the following Resolution #01-11C

Resolution to approve ANC-2A's Report on Square 37

Advisory Neighborhood Commission 2A (ANC-2A), at its regularly scheduled public meeting held November 13, 2001, duly noticed and with a quorum present voted Resolution #01-11C to approve the attached report as containing its findings on the southern half of Square 37 as well as ANC-2A's position that setdown be opposed and existing zoning for the site not be changed. This report should be included with materials forwarded to the Zoning Commission by the Office of Planning for the setdown proceeding scheduled for November 19, 2001.

Respectfully submitted,

Elizabeth Elliott, Chair
Advisory Neighborhood Commission 2A

Attachment (1)
Copy of Report of ANC-2A on Square 37

Foggy Bottom and West End
Advisory Neighborhood Commission (ANC-2A)

c/o St. Mary's Court 725 24th Street, NW Washington, DC 20037 (202) 736-1775

REPORT OF ANC-2A ON SQUARE 37
November 7, 2001

The Southern Half of Square 37 and Its Environment

The southern half of Square 37 is bounded by L Street on the south, 23rd Street on the east, 24th Street on the west, and an alley on the north which divides the Square in half. It is zoned R-5-B and contains the West End Branch of the DC Public Library, two beautiful town houses, a moderate income apartment building, a DC Police Department Special Operations Unit that currently serves as headquarters for Emergency Preparedness and a parking lot.

- The West End Branch of the Library has interior space that is among the most attractive of any DC Library branch--very bright and open. By the branch's 35th anniversary in February 2002, the first floor of the Library will be completely renovated–painted, new carpeting, new furniture and computers, refurbished bathrooms, a new roof-- paid for with Library capital funds, a Millenium (Ritz Residences/Hotel) PUD amenity, and West End Branch Friends. The exterior of the building was painted in 2000 with funds from the Millenium PUD. Of the Library's 21 branches, the West End ranks sixth in terms of circulation. The Friends of the West End Branch has spent significant sums to enhance the collections of the Branch over the past several years. The Friends also hopes to upgrade the Library's meeting rooms on the second floor and is also planning on exploring a partnership with a business to operate a coffee house/café in a portion of the second floor of the Library to make the Library as attractive a place to browse for books as Barnes and Noble. (To be able to compete credibly with book stores is one of the goals of the Director of the DC Public Library system.)

- The two townhouses on 24th Street, north of the Library, could be considered for historic designation. They are intact and well-maintained examples of housing that dominated this part of the West End late in the 19th, early 20th centuries.

- The moderate income apartment building north of these townhouses may be the only such rental building left in the West End.

Square 37 is one of three parcels with low density residential zoning left in the West End. One other, Square 38, is directly across L Street from the southern boundary of Square 37, and the third is on 25th Street, between L and M Street. Like Square 37, these two are zoned R-5-B.

Square 38, to the south and across L Street, contains 10 two/three story townhouses. Four of these, built in the late 19th/early 20th centuries, have recently been purchased by Abdo Development. Abdo is restoring and rehabilitating these houses, with consultation from the DC Historic

Preservation Review Board, and converting them to luxury rental apartments. Due west is Columbia Hospital for Women in a park-like setting along L Street and zoned R-5-D.

The zoning map specifies that New Hampshire Avenue, in its entirety, north of the Kennedy Center, through Washington Circle, and north of the Circle is to be used for residential purposes. The subject area of the southern half of Square 37, due west of New Hampshire Avenue, fronts on that residential core. Its R-5-B designation is not inconsistent with human-scale residential uses for the neighborhood and the integrity of that boundary separating residential from commercial uses is worth preserving.

The zoning map is also clear in designating M Street north of the subject area as a commercial area, actually a mixed use residential-commercial area zoned C-2-C and CR.

Mixed-Use Zoning of C-2-C and CR and the Reality of Living in West End

The West End is dominated by the mixed use zoning of C-2-C and CR. The promise of this zoning (with C-2-C requiring two-thirds of a building's FAR to be residential and CR requiring 50% residential) was to create a thriving, largely residential area with retail shops supporting the area. This promise is an unfulfilled promise–for a variety of reasons:

- Zoning law was changed to allow developers to meet the residential requirement of C-2-C or CR project with hotels. As a result, the West End saw at one corner, 24th and M Streets, the building of three hotels in the 1980s. These, of course, are not the West End's only hotels. Others were built and still others resulted from the conversion of long-term residential apartment buildings to hotel use. In addition, George Washington University purchased one apartment building in the West End to use as a dormitory. While the law may consider hotels as residential, persons living in the West End know this use for what it really is–commercial.

- Mixed-use zoning for the West End has resulted in an extension to the West End of the unrelieved monotony of block after block of 90-110 foot buildings of the commercial strips of the K Street, L Street, M Street corridors which comprise mid-town D.C. The historic residential and architectural fabric of the area was destroyed in rezoning to C-2-C and CR. Neighborhoods are at their most attractive and appealing when they include a variety of heights and textures and periods of architecture. The uniformity of building height in the mixed-use zone of the West End, together with sterile architecture, make much of the environment of the West End unappealing to residents and potential residents. The West End simply does not look or feel like a residential neighborhood, as the city promised it would.

- Furthermore, in the West End, many mixed use buildings have housing on top of office space which dominates the street level. Commercial/office use has also created many dead, dark zones at night, again compromising the attractiveness of the West End as a residential neighborhood.

- Commercial use in the area has created extraordinary traffic congestion during rush hours and sometimes on week-ends, especially along 22nd, 23rd, 24th, and L Streets. An "F" service level, the worst of traffic ratings, already prevails on many of these streets. The street infrastructure of the West End simply cannot accommodate the density of zoning

and commercial use allowed with C-2-C and CR. The appeal of the area as a residential neighborhood is once again undermined.

- The West End has lost significant retail–in particular, neighborhood retail–during the past two decades and mixed-use zoning has been responsible for this phenomenon. During this period, the area has lost 6 movie houses, a Townhouse Safeway at 21st and M Streets, another Safeway farther south at Virginia Avenue, and numerous small businesses that had provided services residents of the greater Foggy Bottom/West End neighborhood could walk to. Many restaurants, local pubs, as well as a famous jazz club have disappeared. What is left is largely a plethora of bank branches and retail space converted to office use.

Mixed-use zoning in the West End has lead to an area with little identity and a neighborhood that has yet to live up to its promise as a residential area. A writer in *City Paper* (July 20, 2001, p. 18) referred to the West End as a "sort of netherworld that's not quite downtown but not really residential." This can be fixed by ensuring that yet to be developed property retains the residential character and scale of the old West End.

Hope for the Future

Despite these problems, the rebirth of demand to live in the District of Columbia has not exactly passed the West End by, although the growth in residential has not been as strong as has been seen in Dupont Circle and Logan Circle or other close-in neighborhoods. The Ritz Residences has brought new condominium owners to the area, and another project with 28 condominium units has opened at 2600 Pennsylvania Avenue. One other project now under construction and next to the Park Hyatt Hotel will bring renters.

North of Columbia Hospital for Women, JBG Properties will be developing a rental apartment building along 25th Street and a joint venture between JBG and Columbia will result in another rental building on M and 24th Streets. This latter project is significant for a number of reasons. The land on which it would be built is zoned C-2-C, but the joint venture will include only residential apartment use above the first floor. At this point, JBG also has a letter of intent with a large grocery chain to operate a 25,000-30,000 square foot full-service grocery store in the building, and Blockbuster Video has expressed interest in operating a store in the project as well.

And as noted above, historic townhouses along L Street between 23rd and 24th Streets are being rehabilitated for luxury apartment living by a developer of sought after residential units in Dupont and Logan Circles.

The West End may be on the threshold of becoming a more defined residential neighborhood in the near future.

ANC 2A's Position on Square 37

The designated zoning for Square 37 should be retained. This designation will ensure that its use will be residential and that revenues to the District will be maximized through income taxes, sales taxes, real estate taxes, and fees. It will assure variety in the streetscape of the West End to make the neighborhood as attractive as possible to current and future residents. Furthermore, it will produce the least amount of new traffic congestion in the area. The history of commercial zoning

in the West End, even i[illegible]ixed-use, tells us that more commerci[illegible]will produce more dead zones, maybe another hotel, and more traffic on streets that already are at failure levels. It will compromise the prospect of a more fully developed residential neighborhood. Furthermore, commercial zoning will not guarantee new retail that is meaningful to residents. The Ritz project, for example, promised significant new retail as part of its plan, but has not yet delivered one establishment. Restaurant space remains vacant in the West End because the neighborhood simply does not have a large enough residential base or sense of community and neighborhood. Finally, the suggestion that commercial zoning will give us a library, or a new one, is empty, since we already have a library and we do not need a new one.

Exhibit 6

MEMORANDUM
January 31, 2001

TO: **Ellen McCarthy**
Kasia Grzelkowski
Arthur Jackson
Richard Price

FROM: **Michael Thomas**

SUBJECT: **Rezoning of Square 37**

Thank you for the opportunity to discuss the possible rezoning of the southern portion of Square 37. It is a critical piece of property in the West End, and the handling of the pending petition by owners of some of the property will make a significant difference, positive or negative, for decades to come.

At this point let me give you a very non-technical, results-oriented summary of what many of us in the neighborhood would like to happen. We can then discuss what is feasible legally or by negotiation to move toward that result.

What is desirable.

- Residential development, medium density, aimed at long-term residents (condo, coop, long-term rental)
- A replacement library, located on the ground floor, with adequate square footage to accommodate meeting rooms and growth of the book and other collections, and enhanced wiring and AV capabilities.
- If the library is to be replaced, an interim library in the neighborhood with adequate facilities.
- To the extent commercial uses are accommodated, we want them to create "destination buildings" for daytime and nighttime life – a market, restaurants, coffee shops, theater.
- The two townhouses should be retained and integrated into any development.

What is not desirable.

- Hotel, office building, time-share apartments, corporate suites, short-term rentals. We want to the maximum extent feasible, full-time taxpaying residents.
- The library pushed upstairs or into a basement. It is possible that meeting rooms, AV facilities and storage could be on other than the ground floor, which might even facilitate security for evening use of meeting rooms.
- More banks, real estate or insurance offices (i.e., daytime commercial) or another CVS.

We appreciate that zoning decisions do not generally dictate the kind of detail the above list implies. However, the city and the local neighborhood have a very real interest in

maintaining and enhancing the livability of West End and Foggy Bottom and its attractiveness to permanent residents. We have lost a lot of taxpayers over the past couple of decades due to GWU's growth. West End benefited twenty years ago from several CR developments, but also got the city's largest concentration of upscale hotels. More recently, we have seen more hotels (the Ritz, the addition to the Park Hyatt). Some pending developments seem destined to cater to short-term residents (2501 Pennsylvania, which is to be a time-share building to the extent it is residential). Even the Ritz condos seem likely to attract as many absentee owners as owner-occupants. To the extent we can, those of us who live here want to push back against this trend.

The library is critical to us. It is a key community asset. It is used intensely. It is the mail drop for the Foggy Bottom Association because everyone goes there anyway. Hence the emphasis on what would work and what would not as to the library. We don't have the same connection to the Special Ops station.

Some people feel strongly about a full-service grocery store. With the closing of the L Street Townhouse/Safeway, we have only the small and inadequate Watergate Safeway within walking distance, and some find it beyond their comfort zone to walk to. There is a grocery chain that has done its market studies and announced its desire to open an upscale store in West End. We don't necessarily favor that chain over any other, but an accessible full-service store would be very desirable.

It is perhaps noticeable that the above does not rail against any up-zoning of the square. We would of course be concerned about the potential impacts of higher density uses on traffic, parking, noise, and other environmental factors. We do not favor maximum density uses or office uses. And we have not surveyed the residents of the Gibson or the south side of L Street about their particular concerns, something that should be done. But generally we accept that some more intense use will undoubtedly be made of this block, and that the goal should be to make those new uses compatible with a thriving residential West End community.

cc: FBA Board