**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**Office of Zoning**

**Z.C. CASE NO.: 00-27**

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**Office of Zoning**

ZONING COMMISSION
District of Columbia
CASE NO. 00-27
EXHIBIT NO. 99



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**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**ZONING COMMISSION**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**
**Z.C. Order 975**
**Case Number 00-27**
**Zoning Map Amendment – Square 37, Lots 810, 811, 831, 836, 837, and 855**
**July 12, 2004**

## ORDER DENYING MAP AMENDMENT PETITION

On October 10, 2000, a petition was submitted to the Office of Zoning on behalf of James Pedas, the co-owner of Lot 855 in Square 37 (the "Petitioner"0. The petition requested a map amendment rezoning Lots 810, 811, 831, 836, 837, and 855 in Square 37 ("Subject Properties") from R-5-B to a classification more consistent with the Generalized Land Use Map of the District of Columbia Comprehensive Plan ("Land Use Map"). The Land Use Map designates the area for a combination of high-density residential and medium-density commercial development. The petition suggested that a more appropriate classification was C-2-C, CR, or R-5-E.

At the initial set down meeting for this case, held November 19, 2001, the Commission postponed scheduling a public hearing on the matter until after it considered a proposal submitted by the Office of Planning ("OP") to create a floating overlay zone called the High-Density Residential Retail Overlay ("HDRR"). The Commission believed the HDRR Overlay would address some of the issues raised by the petitioner's map amendment request. However, after several hearings and revisions to the proposed overlay text, the Zoning Commission voted to deny the petition to create the HDRR Overlay at its public meeting held on January 12, 2004. Order No. 972 published on May 7, 2004, 51 DCR 4912, made the denial effective.

At the same January 12, 2004 public meeting the Commission denied the HDRR Overlay petition, the Commission set this map amendment case down for a public hearing. On April 23, 2004, the Zoning Commission advertised that the public hearing would be held on June 10, 2004. The notice was published in the *D.C. Register* at 51 DCR 4070. The public hearing notice erroneously noted that the case would be heard in accordance with the "contested case" provisions of the Zoning Regulations.

The case was initiated in furtherance of the Comprehensive Plan. Pursuant to Zoning Regulation § 3010.4, the "rulemaking" provisions of the Zoning Regulations apply to petitions for map amendments proposed in furtherance of the Comprehensive Plan, not the "contested case" provisions. Accordingly, the Commission heard and decided this case pursuant to its "rulemaking" standards.

Area Description and Existing Zoning

The six parcels that make up the Subject Properties comprise the southern half of Square 37, bounded by M Street to the north, L Street to the south, and 23rd and 24th Streets to the east and west respectively, located in the District's West End neighborhood in the Northwest quadrant of the District of Columbia. South of the existing alley between 23rd Street and 24th Street is Lot 855, developed with a parking lot, and Lots 810, 811, and 831 developed with two-story row houses, and the Tiverton, a 46-unit 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 are improved with the West End Public Library and the Metropolitan Police Department Special Operations Division building.

The Subject Properties are zoned R-5-B.

The area to the north the Subject Properties consists of three lots developed with the Westin Grand Hotel (2350 M Street, N.W.), an office building housing the European Union (2300 M. Street, N.W.), and a condominium apartment building (1140 23rd Street, N.W.). These lots are zoned C-2-C. South of L Street in Square 38 are six lots developed with two story row houses containing apartments, zoned R-5-B. To the east is the Millennium (Ritz-Carlton) Planned Unit Development (1100 23rd Street, N.W.), which contains condominiums, a hotel, a restaurant, and a health club. The underlying zoning is CR. To the west is the former site of the Columbia Hospital for Women, currently being developed as a planned unit development into a mixed-use building containing 235 residential units and up to 28,000 square feet of ground floor retail. The underlying zoning for this parcel is C-2-C.

Public Hearing

On June 10, 2004, the Zoning Commission held a public hearing on the map amendment proposal.

William Durkin, Richard Harps, Louis Slade, and Lindsley Williams testified on behalf of the Petitioner. Mr. Durkin stated that the Petitioner favored rezoning the Subject Properties from R-5-B to R-5-E, and that such a change in zoning was consistent with the Comprehensive Plan. Mr. Harps testified that such a change in zoning would likely result in an increase in tax revenue for the District. Mr. Slade discussed the impact such a change in zoning would likely have on traffic. Mr. Williams testified that a more intensive residential zoning designation was more consistent with the Land Use Map.

Arthur Jackson testified on behalf of the Office of Planning ("OP"). He testified that OP supported zoning consistency, but that consistency with the Generalized Land Use Map without taking into account other Comprehensive Plan policies could result in excessive commercial and office development in the area. He further testified that because commercial and office uses predominate in the northern half of Square 37, and because two planned unit developments in the Subject Property's immediate neighborhood include high-density residential and commercial uses, the land uses in the area already conformed with the Land Use Map, when considered in

the aggregate. He recommended rezoning Lots 831, 810, 811, and 836 from R-5-B to R-5-D, and lots 837 and 855 from R-5-B to R-5-E.

Dorothy Miller, Chairperson of Advisory Neighborhood Commission ("ANC") 2A, testified that the ANC voted unanimously to oppose a change from the current R-5-B classification. ANC 2A also submitted its resolution pertaining to the case into the record. In the resolution, ANC 2A stated that it supported maintaining the existing R-5-B designation for a number of reasons, including that the ANC favored maintaining the existing designation to encourage townhouse development, and that such development would enhance the attractiveness of the neighborhood, limit additional traffic congestion, and provide a variety of housing opportunities. The ANC also commented in its written submission that the neighborhood already suffered from what it termed "too much consistency in its zoning at the present time, resulting in sterile and monotonous blocks of 90 foot or higher buildings with office and hotel use dominating, compromising the overall attractiveness of the West End as a residential neighborhood and creating night dark and dead zones." The resolution also expressed concern that an upzoning would lead to the loss of affordable housing in the area and threaten the existence of the West End Library.

At the hearing, extensive testimony was received from the community in opposition to a change from the existing R-5-B zoning classification. Tenants in the Gibson and Tiverton apartment buildings expressed their concern that an upzoning would result in redevelopment of the existing affordably priced units to higher priced units that they could not afford. Other community members expressed a concern that an increase in residential intensity would reduce the light and air available to neighborhood residents, and would exacerbate crowded traffic and parking conditions. Community members further expressed a desire to maintain a variety of different intensities of development in the neighborhood, as a way of maintaining a variety of building heights and land uses, which they viewed favorably.

Consistency with the Comprehensive Plan

Under § 492(b)(1) of the Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 6-641.02 (2001)), zoning maps and regulations, and amendments thereto, shall not be inconsistent with the Comprehensive Plan for the National Capital.

The District Elements of the Comprehensive Plan are comprised of several elements with overlapping goals; the various elements should be studied and interpreted in concert with each other and interpreted broadly, and the interpretation of any element should take into account the objectives and policies of other elements. 10 DCMR § 112.1. Since the Land Use Element of the Comprehensive Plan integrates the policies and objectives of all other elements, it should be given greater weight than the other elements. *Id.* However, the Land Use Element does not identify or fix every use, height, and density on every block in the District, rather, the text and the maps construct a guiding framework within which public and private land use and zoning decisions are to be made. 10 DCMR § 1100.11. The interpretation of the District Elements should be guided by the major themes set forth in § 101.1. 10 DCMR § 112.2. The major themes are supported by the District Elements of the Plan. *Id.* The Commission must look to the Comprehensive Plan as a whole when determining whether a proposed modification to the

zoning map is "not inconsistent" with the Comprehensive Plan. *See Blagden Alley Assoc. v. District of Columbia Zoning Comm.*, 590 A.2d 139, 147 (D.C. 1990).

One, therefore, shall turn first to the Land Use Element of the Plan. The Generalized Land Use Map designates the Subject Property for *both* high-density residential and medium-density commercial uses.

The existing zoning permits only medium density residential and does not allow commercial uses. The existing R-5-B designation, therefore, does not permit the full extent of uses contemplated by the Land Use Map. However, there are other several components of the Land Use Element that support maintaining the existing R-5-B designation.

The first residential objective of the Land Use Element is to "to conserve and enhance the essentially satisfactory qualities of the District's many stable residential neighborhoods including those qualities that make them unique." 10 DCMR § 1102.1(a). In addition, a policy in support of the residential neighborhood objectives is to "[c]onserve 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*." 10 DCMR § 104.1(b) (emphasis added). The West End neighborhood is a stable residential neighborhood. Thus, the Land Use Element makes it an objective to conserve and enhance the neighborhood's satisfactory qualities, and a policy in support of that objective is to maintain the level of existing residential uses, densities, and heights.

In addition, there are other elements of the Comprehensive Plan that support a finding that the current R-5-B zoning designation is not inconsistent with the Plan. One major theme of the Plan is the preservation of existing residential neighborhoods. 10 DCMR § 101.1(a). One of the District Elements of the Plan is the maintenance and improvement of the residential character of neighborhoods. 10 DCMR § 102. In this Element, the Comprehensive Plan spells out that "[m]any city neighborhoods are historic or possess social, economic, and physical qualities that make them unique and desirable places in which to live. These qualities can also lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods desirable. These pressures and potential adverse impacts must be controlled to ensure that the character of our neighborhoods is preserved and enhanced." 10 DCMR § 102.2.

By judging, balancing, and reconciling the various elements of the Comprehensive Plan cited above, the Commission believes the existing zoning is "not inconsistent" with the Comprehensive Plan.

## DECISION

The Zoning Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, D.C. Official Code § 6-641.01 (2001)) ("Zoning Act"). Section 1 of the Zoning Act authorizes the Commission to regulate the uses of property in order to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital." D.C. Official Code § 6-641.01. Section 2 of the Zoning Act provides that the "zoning regulations

shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein." D.C. Official Code § 6-641.02. Section 3 of the Zoning Act, among other things, authorizes the Commission to amend the zoning regulations and maps. D.C. Official Code § 6-641.03. The District of Columbia Court of Appeals has interpreted these statutes as granting the Commission a broad general authority over zoning matters. *Blagden Alley Assoc. v. District of Columbia Zoning Comm.*, 590 A.2d 139, 142 (D.C. 1991) (*citing Dupont Circle Citizens Ass'n v. District of Columbia Zoning Commission*, 355 A.2d 550, 556 (D.C. 1976)).

In amending the zoning maps, the Commission is constrained by the limitation in the District Charter that the zoning map be "not inconsistent" with the Comprehensive Plan. § 492(b)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, effective December 24, 1973 (Pub.L.No. 93-198; 87 Stat. 774; D.C. Official Code § 6-641.02 (2001)).

The Commission is faced with a difficult decision in this case, because the zoning designations suggested by the petitioners are arguably more consistent with the Comprehensive Plan's Land Use Map than the existing designation. However, several factors weigh in favor of maintaining the existing zoning designation: (1) the present zoning designation is not inconsistent with the Comprehensive Plan as a whole; (2) evidence was presented at the hearing that the community overwhelmingly supported maintaining the present character of the neighborhood; (3) evidence was presented that rezoning the area to the more intensive zoning designations suggested by the Petitioner would likely lead to redevelopment of the area, displacement of residents, and a reduction in the supply of affordable housing; and (4) evidence was presented that maintaining a variety of zoning classifications in the neighborhood would contribute to diversity of building heights and land uses, and that such variety was viewed favorably by the community.

While it may be true that a C-2-C, CR, or R-5-E zoning designation would be more consistent with the Comprehensive Plan's Land Use Map, § 492(b) does not require that the Commission adopt the designation most consistent with the Land Use Map. The Commission's obligation is to designate zone districts that further the goals established by §§ 1 and 2 of the Zoning Act, subject to the limitation that the designation is "not inconsistent" with the Comprehensive Plan as a whole. The Commission concluded above that the present zoning is "not inconsistent" with the Comprehensive Plan.

ANC 2A, as well as many residents who live in the area, expressed overwhelming support for maintaining the existing R-5-B zoning. The community representatives expressed several reasons for maintaining the current zoning including: that an up-zoning will provide an incentive to redevelop the properties and displace the current residents and that the current affordable

housing units will be replaced with either office uses or more expensive housing beyond the reach of most District residents.

The Commission concurs with the community representatives that the requested up-zoning is likely to displace existing residents, and is likely lead to production of either non-residential space (if the new designation would permit it) or in the production of housing units that are not affordable to low- or middle-income residents. In addition, the Commission also concurs with the community representatives that the existing zoning designation contributes to the diversity of building heights and land uses in the West End neighborhood, and that this diversity positively contributes to the neighborhood and to the general welfare of the District.

In light of the foregoing, the Commission concludes that a change in the zoning designation was not in the best interest of the District of Columbia.

Great Weight Given to Recommendation of ANC 2A

Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Official Code § 1-309.10(d)(3)(A)), requires the Commission to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. To give "great weight," the Commission must articulate with particularity and precision why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns.

In this case, the ANC 2A recommended that the Commission maintain the existing zoning designation. In its resolution, ANC 2A stated that it supported maintaining the existing R-5-B designation for a number of reasons, including that the ANC favored maintaining the existing designation to encourage townhouse development, and that such development would enhance the attractiveness of the neighborhood by being lower scale, limit additional traffic congestion, and provide a variety of housing opportunities. The ANC also commented in its written submission that the neighborhood already suffered from what it termed "too much consistency in its zoning at the present time, resulting in sterile and monotonous blocks of 90 foot or higher buildings with office and hotel use dominating, compromising the overall attractiveness of the West End as a residential neighborhood and creating night dark and dead zones." The resolution also expressed concern that an up-zoning would lead to the loss of affordable housing in the area and threaten the existence of the West End Library.

The Commission carefully considered the ANC's advice and, as described more fully above, agrees with ANC 2A's concern that up-zoning the property would encourage more intensive development to the detriment of the neighborhood.

Great Weight Given to Recommendation of the Office of Planning

The Office of Planning, in its final report dated June 1, 2004, recommended rezoning Lots 831, 810, 811, and 836 from R-5-B to R-5-D and Lots 837 and 855 from R-5-B and R-5-E. OP listed several reasons for this recommendation in its report, including that: no single zone district that matches the prescribed land use pattern for the area; that the new zoning designations would

eliminate non-conforming aspects of existing multi-family development dwellings; commercial zoning would increase traffic congestion; and, given the dominant commercial and office uses in the northern half of the square, residential zone districts would most effectively achieve the mix of uses called for in the area by the Comprehensive Plan.

The Commission carefully considered OP's recommendation and has given it great weight. The Commission agrees with the OP recommendation to the extent that additional commercial zoning in the square would be undesirable. As described above, however, the Commission decided not to rezone the Subject Properties to the more intensive residential designations because: (1) the present zoning designation is not inconsistent with the Comprehensive Plan as a whole; (2) the more intensive zoning designations suggested by the Petitioner would likely lead to redevelopment of the area, displacement of residents, and a reduction in the supply of affordable housing; and (3) maintaining a variety of zoning classifications in the neighborhood would contribute diversity of building heights and land uses.

At the public meeting held July 12, 2004, the Zoning Commission voted to **DENY** the petition by a vote of **4-0-1**. (Anthony J. Hood, Kevin L. Hildebrand, Gregory N. Jeffries, and John G. Parsons to deny; Carol J. Mitten, having not 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 AUG 25 2006.

Anthony J. Hood
**ANTHONY J. HOOD**
**Vice Chairman**
**Zoning Commission**

Shawn L. Schellin for
**JERRILY R. KRESS, FAIA**
**Director**
**Office of Zoning**