Mrs. Barbara F. Kahlow
The Westbridge #404
2555 Pennsylvania Avenue, N.W.
Washington, DC 20037

November 17, 2001

Ms. Carol Mitten
Chairperson
D.C. Zoning Commission
441-4th Street, N.W. - 2nd Floor
Washington, DC 20001

Re: Zoning Commission Case No. 00-27, Proposed Map Amendment, Square 37

Dear Chairperson Mitten and Other Commission Members:

I am writing to express my opposition to the Zoning Commission's consideration on November 19, 2001, of a set down for Zoning Commission Case No. 00-27, a proposed map amendment for the Southern half (6 lots) of Square 37 in the West End. I have both procedural and substantive objections.

Background

Since 1988, I have lived near Square 37 in the West End and, thus, I could be directly affected by a change in zoning. Since 1988, I have been active in many land use cases throughout Foggy Bottom-West End and have also been involved in some land use cases in the downtown. My principal interest relates to liveable communities, which are safe and contribute to the economic vitality of the District of Columbia. I am also concerned about traffic and parking as they adversely affect liveable residential communities.

In some instances, I have supported proposed projects, such as the mixed-use (with zero commercial office space) Millennium/Ritz planned unit development (PUD) in Square 51 (which is directly to the East of Square 37) and the WETA PUD in Square 101. In other instances, I have opposed proposed projects, such as the International Monetary Fund PUDs in Squares 120 and 119.

Procedural Objections

First, for the Zoning Commission to consider this case on November 19, 2001, it would need to waive the 10-day prior notice requirement for submission of the Office of Planning's (OP) report providing its technical advice on the case (11 DCMR §3012.3). In fact, OP's report was not submitted until 5:07 PM on Thursday, November 15th. This late submission only provided the affected community one full business day to review this report. This inadequate amount of time could unfairly disadvantage many homeowners and other residents in the immediately affected area.

The Administrative Procedure Act (APA) establishes a "good cause" standard for waiving due process procedural rights. The considerable Federal and DC case law defining good cause allows waivers for statutory or judicial deadlines or emergencies to protect the public health and safety.

ZONING COMMISSION
District of Columbia
Case 00-27
Exhibit 19

ZONING COMMISSION
District of Columbia
CASE NO.00-27
EXHIBIT NO.19

The Zoning Commission's rules state, "The Commission may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law" (11 DCMR §3000.8). OP did not provide a good cause justification for a waiver in this case. In addition, I believe that a waiver is unfair and would prejudice the rights of many owners and residents in the West End, including me.

Second, OP's report on this case is accompanied by a November 15th "Preliminary Report" on proposed amendments to 11 DCMR Chapters 3 and 13, which are also proposed for set down. I believe that this companion case -- **stripped of its four specific mentions of Square 37** -- should be completed -- proposed for public comment and then finalized -- before a set down is considered for Square 37, especially since there is no pending land use proposal for Square 37. In fact, the applicant owns only one of the six affected lots.

Substantive Objections

OP's Exhibit 6 includes a January 2001 letter from Michael Thomas, then President of the Foggy Bottom Association (FBA), who was speaking for himself, not for the FBA. In fact, neither the FBA nor the West End Citizens Association, the two major citizens associations in the Foggy Bottom-West End community, have yet submitted their views on a map amendment for Square 37. Both Mr. Thomas and the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) (see Exh. 5) expressed concern about the affect of a map amendment on parking and traffic for the Foggy Bottom-West End residential community. Mr. Thomas stated, "We would of course be concerned about the potential impacts of higher density uses on traffic, parking, noise, and other environmental factors" (p. 2, Exh. 6).

In fact, OP states, "Traffic impact analysis: Transportation impacts are the principal concern. OP is working with the Department of Public Works [DPW] to undertake a study of the existing West End traffic and parking conditions, to quantify existing problems ..." (p. 7). Why can't the Zoning Commission wait for completion of this important DPW study before prematurely considering a map amendment case?

OP's report concludes by stating that, "the final OP recommendation will depend on the results of the more detailed studies outlined above" (p. 7). Why can't the Zoning Commission wait for the completion of these studies as well as the companion case before prematurely considering this map amendment case?

For a variety of substantive reasons, ANC-2A also opposes a set down (11/13/01 resolution, Exh. 5). I have a different point-of-view on Square 37 but agree that a set down is untimely.

Thank you for your consideration of my opposition to a set down of this case at this time. If you have any questions about my views on Square 37, I can be reached during the day on 226-3058.

Sincerely,

Barbara J. Kahlow

cc Andrew Altman & Ellen McCarthy, OP