Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

Atlanta
Boston
Bradenton
Chicago
Fort Lauderdale
Jacksonville
Lakeland
Los Angeles
Melbourne
Miami
New York
Northern Virginia
Orlando
Providence
St. Petersburg
San Antonio
San Francisco
Seattle
Tallahassee
Tampa
Washington, D.C.
West Palm Beach

International Offices:
Buenos Aires*
Mexico City
Rio de Janeiro
São Paulo
Tel Aviv*
Tokyo
*Representative Offices

November 19, 2001

DOUGLAS J. PATTON
202-828-1893

Internet Address:
DPatton@hklaw.com

LINDSLEY WILLIAMS
SENIOR ADVISOR FOR LAND USE, PLANNING, AND ZONING
202-828-1873

Internet Address:
LWilliams@hklaw.com

The Honorable Chairperson and Members
Zoning Commission of the District of Columbia
One Judiciary Square, Suite 200
441 Fourth Street, NW
Washington, D.C. 20001

Re: Petition to Zoning Commission to Initiate Case to Amend Zoning Map for Portions of Square 37 to Resolve Inconsistency between Principles of the Comprehensive Plan and Present Zoning, and with D.C. Code (Lots 810, 811, 831, 836, 837 and 855)

Dear Madam Chairperson and Members of the Commission:

The undersigned represent the petitioner in the above captioned case, filed October 10, 2000, which seeks rezoning of the southern half of Square 37 from R-5-B to C-2-C or CR. We have reviewed the reports of November 15, 2001, of the Office of Planning (OP), one which recommends that a public hearing be held on a range of residential zone alternatives; however, that report, instead of supporting a hearing on the requested ***mixed use alternatives***, namely C-2-C and CR, proposes a new companion overlay zone. The second report of that Office provides details on the new overlay zone, which would apply, at least once set down and/or adopted, exclusively to this ***one spot*** in the entire District of Columbia.

We urge that the C-2-C/CR rezoning sought in the petition be heard as one case, and that the Commission consider the other case separately.

The *District of Columbia Generalized Land Use Map*, an integral part of the *Comprehensive Plan of the District of Columbia,* as amended, calls for a large area of the "West End" to be an area of mixed uses and densities, specifically –

00-27M
20

ZONING COMMISSION
District of Columbia
CASE NO.00-27
EXHIBIT NO.20

- ***high-density residential,*** and
- ***medium-density commercial***[1]

Over the years since 1973, the great bulk of the area so designated in the Comprehensive Plan was then or has since become zoned in either the C-2-C or CR classification, both zone districts providing for a mixture of commercial and residential uses. During the 1980s and 1990s, parcels on adjacent squares were rezoned from R-5-B (and other zone classifications) to C-2-C. ***The present R-5-B zoning allows no commercial uses and allows residential density far below that specified. Thus, the present zoning is, prima facie, inconsistent with the Comprehensive Plan.***

In its report of November 15, 2001 on the Petition, the Office of Planning has recommended creation of and mapping an overlay zoning system that would permit neighborhood-related retail uses, but not general offices, on the ground floor of apartment buildings.

In filing the petition over a year ago, we initiated a process by which the Commission could determine the appropriate zoning to place on the southern half of Square 37. We continue to believe that C-2-C and, perhaps CR, could and should be applied to much if not all of that land area. **Advertising a change to those zones would allow the Commission to consider *all* intermediate zones, both residential and commercial, in the range between the existing R-5-B and C-2-C and CR. It would also allow the Commission to see if the petitioned area should be split between existing base zone categories, such as C-2-C/CR and R-5-D/R-5-E.** See enclosed chart.

Time has not allowed us to fully review the new overlay zone, nor was it what we were engaged to do. While the concept and text may merit setdown, it would probably benefit from scrutiny before setdown. Clearly, it would create a new overlay area, which would inherently add complexity and confusion to both permit review and enforcement processes. It also appears the philosophy of the new zone might better be expressed within a new base zone series such as Residential-Commercial (RC) or an amended CR system that would retain the present CR but introduce two others with different use and density controls. In any event, we know from experience that when anything new and untested is attached to the setdown such as that sought in the petition, all complications or delays that arise in the course of the novel aspects of the case will protract the decision in the matter of the petition. Examples are the Buzzard Point overlay proposal and the effort from the mid-1990s to revise the SP rules and areas so mapped.

---

[1] The Office of Planning report incorrectly states that the Comprehensive Plan calls for the area to include "moderate-density" commercial, but then attaches the description that applies to "medium-density." See page 3. The same report also declares the zoning on the site of Columbia Hospital to be R-5-B; it was rezoned to R-5-C before the new R-5-C zone was created; the site is now, as the Office's accompanying zoning map shows, zoned R-5-D.

Should the Commission decide today that it will limit the scope of the case solely to that recommended by the Office of Planning, the petitioner hereby requests the opportunity to present its views to the Commission as this represents a denial of elements of the petition. See § 3011.3. However, we propose an **alternative** for your consideration:

> **Retain the C-2-C proposal for the *entire* area petitioned and *limit* the CR alternative to the eastern side of Square 37 now zoned R-5-B facing the Millennium PUD, that PUD's land and project being already zoned CR, developed to a height of one hundred ten feet (110 ft.) and an FAR of approximately 8.0.**

Thank you for your consideration.

HOLLAND & KNIGHT LLP

Douglas J. Patton

Lindsley Williams
Senior Advisor for Land Use,
Planning, and Zoning

Enclosure:
Table: Comparison of Existing, Petitioned and Intermediate Zoning Controls and OP Suggested Substitution Overlay Zone & Likely Ramifications of Each as Lot Occupancy, FAR, and Other Factors Operate

cc: The Honorable Eric W. Price, Deputy Mayor for Planning and Economic Development
Deputy Chief Financial Officer, Julia Friedman, Ph.D.
Director, Office of Planning (Andrew Altman)
Director, Office of Property Management (Timothy Dimond)
Head Librarian, West End Public Library (Barbara Kubinski)
Commissioner Elizabeth B. Elliott, Chairperson, Advisory Neighborhood Commission 2-A
Commissioner Richard J. Price, Commissioner, Single Member District 2, ANC 2-A
Chairperson, Foggy Bottom Citizen's Association (Jacqueline Lemire, c/o West End Library)
President, West End Citizen's Association (Jack Batham)

COMPARISON of Existing, Petitioned and Intermediate Zoning Controls and OP Suggested Overlay Substitution and LIKELY RAMIFICATIONS of Each as Lot Occupancy, FAR, and Other Factors Operate: Case 00-27M

Control	New Overlay?	*Existing R-5-B*	R-5-C	*OP-Suggested R-5-D*	*OP-Suggested R-5-E*	C-1	C-2-A	C-2-B	*Petitioned C-2-C*	*Petititoned CR*
Max. Height (feet)	none	50	60	90	90	40	50	65	90	90
	yes	*-na-*	*-na-*	*no change*	*no change*	*-na-*	*-na-*	*-na-*	*-na-*	*-na-*
Max. Pct. Lot Occupancy	none	60%	75%	75%	75%	60 % (R)	60 % (R)	80 % (R)	80 % (R)	75 % (R)
	yes	*-na-*	*-na-*	***unknown***	***unknown***	*-na-*	*-na-*	*-na-*	*-na-*	*-na-*
Max. Floor Area Ratio										
Residential (incl. sleeping rooms in hotels in C-zones)	none	1.8	3.0	**3.5**	6.0	1.0	2.5	**3.5**	6.0	6.0
	yes	*-na-*	*-na-*	*same*	*same*	*-na-*	*-na-*	*-na-*	*-na-*	*-na-*
Other Permitted Uses (OPUs)	none	-na-	-na-	-na-	-na-	**1.0**	**1.5**	**1.5**	**2.0**	**3.0**
	yes	*-na-*	*-na-*	*-na-*	*-na-*	*-na-*	*-na-*	*-na-*	*-na-*	*-na-*
Overlay NC Retail / OPUs	none	-na-	-na-	0.0	0.0	-na-	-na-	-na-	-na-	-na-
	yes	*-na-*	*-na-*	*0.5 / **1.0** **	*0.5 / **1.5** **	*-na-*	*-na-*	*-na-*	*-na-*	*-na-*
Total	none	1.8	3.0	3.5	6.0	1.0	2.5	3.5	6.0	6.0
	yes	*1.8*	*3.0*	*3.5*	*6.0*	*-na-*	*-na-*	*-na-*	*-na-*	*-na-*
MOR Lot Occup / FAR Induce (why)	**none (logic)**	**3 stories (0.6x3=1.8)**	**4 stories (0.75x4=3.0)**	**<=7 stories (Fire Code)**	**9+ stories (0.75x8=6.0)**	**2 stories (0.6x2>1.0)**	**4 stories (0.6x4=2.4)**	**4/5 stories (0.8x4=3.2)**	**8+ stories (0.8x8>6.0)**	**8+ stories (0.75x8=6.0)**
				1st fl. NC; any OPU above on single floor	***1st fl. NC; OPUs above, multiple floors***					
OP's "NC-type" Overlay induces	***yes***	*-na-*	*-na-*			*-na-*	*-na-*	*-na-*	*-na-*	*-na-*

Notes:

*** -** Provided residential component exists or is created at a ratio of at least 2:1 and at least 0.5 of "commercial space" is NC retail.

- na - Does not apply

NC - Neighborhood Commercial, particularly the uses allowed where so mapped per Chapter 13 of the Zoning Regulations

(R) - Applies only to buildings containing residential uses

Unknown - Functional requirements for access/egresssof persons, cars, goods and refuse; requires attention

Consider: Fire Code - BOCA (DC) fire code demands heavier construction and protection for occupied buildings exceeding seventy-five feet (75 ft.)