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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: Your Actions of November 19 Regarding:

(1) Petition 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) – **Case 00-27M**, and

(2) Request from the Office of Planning to Create Text and Map a new Neighborhood Commercial Overlay to be Applied to Selected R-5-D and R-5-E zone districts – **Case 01-33TA**

Dear Madam Chairperson and Members of the Commission:

At your regular monthly meeting of November 19, 2001, the Zoning Commission agreed to take up the petition that our client filed as a "zoning consistency" issue to address the non-conforming R-5-B now applied to the southern half of Square 37 to C-2-C, CR, an appropriate intermediate zone district, or some combination of these **(your Case 00-27M).** However, before it took this action, the Commission determined that it should hear and potentially take proposed action on a new overlay zone case **(your Case 01-33TA),** although not set down as broadly as recommended by the Office of Planning (OP) in its companion report to that on the setdown petition. Both OP reports were filed in the Office of Zoning (OZ) at the close of business November 15, 2001, which we learned the following day, during which we received copies for our information and analysis.

ZONING COMMISSION
District of Columbia
Case 00-27M
Exhibit 21

ZONING COMMISSION
District of Columbia
CASE NO.00-27
EXHIBIT NO.21

OP's late filings made it difficult for us to comment, but, as you know, we were able to file a preliminary reaction to them, delivering it to you prior to the meeting of November 19 – but not necessarily in time for our comments to have been fully considered. We have now read both OP reports thoroughly and comment further. On the basis of our understanding of the actions sought by that Office and that you took November 19, we ask that you reconsider several aspects of the "set down" decisions you reached that afternoon in those two cases.

Fundamentally, we believe you acted too hastily to set down the new overlay zone that OP had developed and that the manner and sequence in which you have set the new overlay text and map down relative to the original petition raises substantial procedural issues, particularly as the overlay district's problems are further identified, studied, and resolved. This is all the more likely in this situation, where an untested and undiscussed new zoning philosophy is suggested, which in turn poses a significant risk of further delays in hearing the fundamental zoning consistency issues we first surfaced over a year ago. In effect, while the petitioner's clearly justified request for a hearing took over a year to complete its referral to OP, OP's request for a whole new zone classification emerged and was set down within one week of its being filed, got elevated to "first place," and nearly all of this took place without affording those affected any opportunity to review it.

We suggest that the Commission re-read the proposed overlay zone as developed by the OP and constrained by your discussions and decisions of November 19, and then further modify the nature of the set down appropriately. Thus far, we detect the following issues with the proposal:

- The newly proposed NC overlay district would initially be applied exclusively to half of one Square in the entire District of Columbia – but others might follow. Unlike other Neighborhood Commercial (NC) and most other overlay zones, this one finds no corresponding element among either the Federal or District elements of the Comprehensive Plan.

- The mix of high-density residential and medium-density commercial specified for the West End within the ***District of Columbia Land Generalized Land Use Map*** applies not to just a portion of Square 37 but to about a dozen surrounding Squares or portions thereof (already zoned either C-2-C and CR, whose zoning controls are arguably consistent with the mapped principles). The same land use policies are also specified for other areas of Foggy Bottom (the Watergate area, zoned SP-2) as well as at least one other area of the District of Columbia, namely the area along Wisconsin Avenue north of Calvert Street to New Mexico Avenue, which is immediately south of the Chancery of the Government of Russia (all zoned R-5-D). The same density/use mix is blended with a third, institutional uses, in the three Squares bounded by E, F, 19th and 22nd Streets, NW (zoned R-5-E and SP-2). However, the new NC overlay zone is not (yet) being considered for any of these, raising substantial issues of discriminatory "spot" zoning.

- The proposed text would establish a *requirement* for a type of use, not an option. While the proposed NC uses are sometimes set out as being "allowed," the proposed controlling text is nearly always mandating, with "shall" and "require" outpacing occasional permissive terms such as "may" and "allow." If this is the intent, it is a radical departure

from prevailing zoning philosophies, requiring careful consideration, particularly when it is not buttressed by specific policy declarations from the Comprehensive Plan itself.

- The proposed overlay appears to apply to all proposed uses, not just apartment houses. Thus, in theory an allowed town house would have to dedicate half of its first floor to NC uses.

- The proposed text ignores such routine issues as developments on smaller lots, where any requirement to have half its land area devoted to a particular use class is unworkable.

- The proposed text does not consider whether the lot occupancy for the first floor should be expanded in the overlay zones, even if the air space above that were restricted to the prevailing standard above that floor. First/ground floors must absorb all loading areas and functions, garage access, and access for all occupants, now along with at least half of that (at full lot occupancy) being required to be neighborhood serving retail.

- Finally, if the first floor is allowed to expand in terms of increased or full lot occupancy, what should be done about currently required rear yards?

Doubtless, other issues can and will be detected. We believe that the District as a whole could well benefit from the creation and mapping of zones that encourage a mix of retail and residential uses – but feel that this should be considered District wide, not in one small spot – and not at the expense of those owning property in the southern half of Square 37.

As we noted in our letter of November 19, we feel that the existing CR zone regulations could well provide the starting point for such a text. The rules for that zone already deal with such issues as allowed and disallowed uses, and lot occupancy and rear yard requirements above the "residential plane" (see §§ 634.2 and 636.4). Text could also take up the question of how to attribute gross floor area of hotel guest room and service areas, a source of concern among some residents of the Foggy Bottom and West End communities.

Accordingly, we suggest that the Commission:

- Suspend its set down of **Case 01-33TA** until such time as the Office of Planning can address the concerns identified above or, in the alternative, withdraw the specific mapping aspects that would focus it initially on the area of the petition in **Case 00-27M**, hearing the case without any mapping. Mapping could follow once the goals and policies were firmly established.

- Hear the case set out in our petition without waiting for the outcome of **Case 01-33TA,** advancing the hearing date for **Case 00-27M** to the earliest time available.

In addition, since this was not discussed or determined November 19, we suggest that the Commission take steps to clarify the basis on which the petitioned **Case, 00-27M,** will be heard, i.e., whether it will be "legislative" or "contested." We note that we filed the case as a "zoning consistency" case and it affects six (6) properties.

On behalf of the petitioner, *but not necessarily the other private owners of land and improvements in the area of the petition*, we are prepared to proceed with our petition and to discuss at that hearing means by which to limit, for a reasonable period of time, any resulting *matter-of-right* development on the petitioner's site (as contrasted with that under a Planned Unit Development) to either an all-residential program or, at the owner's discretion, a mix of residential and those neighborhood-serving retail uses already set out in the existing "NC" provisions on portions of the first/ground floor.

Thank you for your consideration.

HOLLAND & KNIGHT LLP

Douglas J. Patton

Lindsley Williams
Senior Advisor for Land Use,
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cc: The Honorable Eric W. Price, Deputy Mayor for Planning and Economic Development
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)
Private Property Owners in Southern Half of Square 37 (Lots 810, 811, and 831)