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December 6, 2001

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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: Acreage of Existing Overlay Districts and 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 – **Cases 00-27M and 01-33TA**

Dear Madam Chairperson and Members of the Commission:

We note that our letter to you and your colleagues of November 28, concerning the actions you took on Case 00-27M and a now-projected related case 01-33TA, is on your agenda for the Commission's meeting of December 10. In that letter we declared our sense that the area of the "set down" is too small and poses significant risk of being found, if not by you then by the courts, to constitute "spot zoning." We now have objective information to share with you about overlay zones in the District of Columbia.

Since that filing, we have been able to obtain estimates of the acreage of existing overlay zone districts. We do not certify these as accurate, inasmuch as they were developed by others based on existing, uncertified "shape files" that are part of the emerging geographic information system. They may well include both areas of lots along with streets and alleys, but they serve to illustrate the fact that the areas range from ones that are quite extensive to some that are as small as seven acres. Thus, the smallest existing overlay zones are at least four times larger than the one projected for mapping under Case 01-33TA as initially set down. See enclosed Table, which you may wish to consider as you discuss our letter of November 28 at your upcoming meeting.

ZONING COMMISSION
District of Columbia
Case 00-27M
23

ZONING COMMISSION
District of Columbia
CASE NO.00-27
EXHIBIT NO.23

The southern portion of Square 37, were it all to be zoned either R-5-D or R-5-E, conditions necessary for the overlay to apply as drafted, contains no more than 60,000 square feet, about one and one-fourth (1¼) of an acre, less if the existing alley system remains intact, less if any parcel or area is rezoned to something other than R-5-D or R-5-E. Establishing a single overlay zone on such a limited land area raises serious issues under prevailing legal standards.

On the other hand, the ideas within Case 01-33TA are worth exploring for application in a number of areas. We simply urge that you remove the mapping aspect of that case until its basic rules are clarified.

Thank you for your consideration.

HOLLAND & KNIGHT LLP

Douglas J. Patton

Lindsley Williams
Senior Advisor for Land Use,
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Enclosure

cc: Director, Office of Planning (Andrew Altman)
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)

Acreage of Existing Overlay Zones in the District of Columbia (December 2001)

Overlay Zone District	COUNT	TOTAL ACRES
Capitol Interest	1	224.5
Chain Bridge University Terrace	2	75.1
Diplomatic	13	276.4
Downtown Development District	1	373.1
Dupont Circle	1	291.0
Eighth Street Southeast	1	9.7
Foggy Bottom	1	14.6
Fort Totten	2	115.9
Hotel Residential	1	49.9
Langdon	1	27.2
Naval Observatory	2	89.2
Neighborhood Commercial-Cleveland Park	2	22.2
Neighborhood Commercial-Macomb-Wisconsin	1	7.4
Neighborhood Commercial-Woodley Park	1	7.6
Reed Cooke	2	13.9
Sixteenth Street Heights	1	85.0
Tree and Slope Protection-Wesley Heights	1	211.5
Tree and Slope Protection	1	98.2
Uptown Arts	1	105.4