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

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May 3, 2002

DOUGLAS J. PATTON
202-828-1893

Internet Address:
DPatton@hklaw.com

LINDSLEY WILLIAMS
AFFILIATED LAND USE, PLANNING, AND ZONING CONSULTANT
202-828-1873

Internet Address:
LWilliams@hklaw.com

RECEIVED
D.C. OFFICE OF ZONING
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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

ZONING COMMISSION
District of Columbia
Case 00-27M
Exhibit 26

Re: **Zoning Commission Case 00-27M** – 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) and companion Zoning Commission **Case 01-33TA**

Dear Madam Chairperson and Members of the Commission:

You will recall that undersigned represent the petitioner in the above-captioned case, filed **October 10, 2000**. That petition sought, and still seeks, rezoning of the southern half of Square 37 from R-5-B to R-5-E, C-2-C or CR, curing, in the process, fundamental inconsistencies the present R-5-B classification has with both the use and density specifications of the adopted Land Use Element and Maps under the Comprehensive Plan of the District of Columbia, as amended. The scope of the petition was framed so as to enable you to consider intermediate high density Residential and mixed Residential/Commercial zone districts that are more permissive than R-5-B but less permissive than either C-2-C or CR to the extent you might determine some others might also be "not inconsistent" with the Comprehensive Plan.

Shortly after receiving the Office of Planning's **November 15, 2001** report, you agreed to move forward with this petition (at your meeting of **November 18, 2001**), but decided that it be heard *after* another case, also set down that day. More particularly, you will recall that in its dual reports of **November 15, 2001**, of the Office of Planning (OP),

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recommended, with respect to the petition, that a public hearing be held on just the Residential side of the petitioned alternatives. OP's second report urged the creation and mapping of a new companion Neighborhood Commercial ("NC") overlay zone that would apparently require (not just allow or stimulate) minimum levels of neighborhood-serving retail on the ground floor of apartment buildings where this overlay was applied. The specifications suggested that the equivalent of at least half the land area (0.5 FAR) be dedicated to these retail uses, but allowing as much as 1.5 FAR to be so utilized on some combination of the ground floor and elsewhere on the property. While deciding to clearly focus on retail uses, and explicitly excluding both general offices and hotels from its reach, you accepted OP's request to proceed with an overlay text and map case, now known as **Case 01-33TA**

On behalf of the petitioner, we met with key OP staff on **February 27, 2002** to review the progress being made on the critical "pre-hearing" filing they must provide you and the Office of Zoning (OZ) in both the NC overlay case **and** the petition we had filed before the cases can be scheduled, Noticed, etc.

We also apprised them of our client's desire, based on their careful study of the current residential market, to pursue development of a high-density apartment building – quite possibly as a condominium. We considered filing a specific map amendment request to change our client's lot to R-5-E, but concluded, partly from our discussion with OP, that such a request would itself be referred back to the OP for additional review on that new "set down" question, and that so doing would add complexity delay to the processing of the original petition, which would still need to be addressed.

Even though not specifically in our client's mind when we first filed their petition in October 10, 2000, by February of 2002 our client was (and remains) ready to –

- Engage an architect to prepare plans for an all-residential building that would fit within a conventional R-5-E zone district
- File and gain approval for building plans
- Seek and secure construction and project financing
- Proceed to and carry out construction to its completion, meeting all prevailing codes
- Seek and obtain a valid Certificate of Occupancy
- Market the residences and have residents move in.

Our client has already confirmed the viability of the site for residential development with a leading architectural professional who has prepared plans for many award-winning apartment buildings in the District of Columbia. That review suggests the client's lot size would allow eighty to ninety units in some configurations, fewer if units have multiple bedrooms or separate home office areas. Our client, however, has not engaged that or any other design professional to prepare plans since basic building rights remain so unsettled.

At our meeting of February 27th, OP staff identified a series of steps they were taking relative to both the NC Retail Overlay case and the original petition. They recalled your decisions on case sequencing, indicating their first obligation being to complete the Overlay setdown filing before they could examine our all-residential proposal or the procedural details of the original petition. We then asked that they assure us, which they did, that the pre-hearing materials OZ must receive from OP for both cases could be filed with the OZ in time for both cases to be scheduled, heard, and possibly decided (e.g., "proposed action" at the conclusion of the respective hearings or shortly thereafter), before the Commission takes its August recess.

On April 26, we learned that the pre-hearing materials needed to proceed with the overlay case were still being developed. We feel the proposed overlay case has profound implications not only for Square 37, but also much of the medium-high and high-density residential areas along arterial corridors and near downtown for the entire District of Columbia. OP Staff are identifying and addressing many of its critical issues. While that is professionally gratifying, that delay effectively pushes back the date for hearing the overlay case – greatly diminishing the chance the overlay, let alone the petition, could be heard before or even sometime immediately after, August of this year. These factors and prospects caused us to write and send this letter requesting that you reconsider the scope and sequence of hearings in both cases. Accordingly, we suggest and request that at your May 13 meeting the Zoning Commission:

- **Advance** the portion of the **petitioner's case to consider rezoning** at least the petitioner's lot (Lot 855), if not all of the southern half of Square 37, so that this question is both heard and that you take proposed action prior to your August recess and prior to hearing the overlay case, **but restricting the scope of this *initial* hearing under the petition to the high density Residential zone district, namely R-5-E.** This could be an interim solution or a final outcome (see third bullet).

- **Revise** the scope of the "NC" overlay case such that it becomes **only a text case**, initially with **no map component**. Hear the map case second, initiating that later, once you have determined the overlay zone's ultimate principles and can project where it should, and should not, be applied. (This also addresses "spot" issues the original plan poses.) You could then proceed with mapping as a further stage in that case or in a subsequent map case.

- **Consider later**, if and as warranted, whether some of all of the southern half of Square 37 should have a base zone classification that is other than the high-density Residential zoning the Commission might have established earlier as an interim measure on some or all of the southern half of Square 37 – with or without any "NC" overlay. Proceed then to consider aspects of the petition not already addressed or any portions of the land in the southern half of Square 37 that was not examined in the initial review, completing the case or concluding it without further proceedings, whichever is appropriate.

We fully recognize that the Comprehensive Plan calls for all of Square 37 to be zoned in a manner that allows both high-density residential and medium-density commercial. While "consistency" could be achieved by either CR or C-2-C zone classifications, if the Commission chooses to do so it could declare that the commercial rights and activities already in place elsewhere on the northern half of Square 37 and to the east in the overall Millennium Planned Unit Development, provide sufficient commercial density for the area at this time and justify mapping just a high density residential zone district on our client's portion of the petitioned area.

We feel R-5-E zoning would be both logical and legally supportable, either with respect to just our client's land (Lot 855) or additional area within the southern half of Square 37. Among other things, your records will reflect that R-5-E is already legally and legitimately applied as the base zoning that to the land due east of the Pedas' lot on Square 37, part of a larger area now rezoned CR for the lifetime of the Millennium PUD.

In any event, we all know from experience that when anything new and untested is being explored, such as the ideas emerging in the new overlay, complications that arise in the course of that case will protract its proceedings. Recall the extended duration of the just completed Buzzard Point overlay case (Mr. Parsons being the only Commissioner to outlast it), or the earlier efforts to amend the text of the SP zone together with "related" map amendments (another marathon case that spanned more than five years).

We want ask that you take up these issues at your next regular monthly meeting, May 13 and establish a firm hearing date for at least a portion of the petitioned rezoning to high-density Residential prior to your August recess. For our part, we will provide whatever assistance we can to the OP so that it can submit appropriate pre-hearing materials, including names and mailing labels for nearby Property Owners, to the Office of Zoning and to you and both Offices during the course of such a case.

We hope you will allow us to proceed soon, rather than later, bringing new residential development to the District of Columbia without displacing existing residents or businesses (other than our client's parking lot). Moving forward in the manner suggested will also remove this case from the list of those open for the longest time without hearing since filed, a distinction we wish it did not hold. Thank you for your consideration.

HOLLAND & KNIGHT LLP

Douglas J. Patton

Lindsley Williams
Affiliated Land Use, Planning, and
Zoning Consultant

Zoning Consultant

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