Law Offices
HOLLAND & KNIGHT LLP

2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202

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

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October 10, 2000

DOUGLAS J. PATTON
202-828-1893

Internet Address:
dpatton@hklaw.com

The Honorable Anthony Hood
Chairperson
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 Mr. Chairman:

James Pedas is one of four private owners of land within Square 37 in the "West End." He has retained this firm to represent his interests in that Square, which is bounded by 24th Street, 23rd Street, L Street, and M Street, all in the Northwest sector of the District of Columbia. He owns Lot 855, the largest of four privately owned lots in the southern portion of Square 37.[1] Two other lots, Lots 836 and 837, that are owned by the Government of the District of Columbia. These six lots (the "Subject Area") occupy all of the land south of an unnamed east-west public alley located mid-block in the Square. The four privately held lots are now zoned R-5-B; the lots owned by the District Government are commonly thought to be zoned R-5-B as well but are more likely to be unzoned.[2]

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[1] The legal owners of Lot 855 are James Pedas, 50 percent, and Pedas Children's Trust, James Pedas, Trustee, 50 percent, as tenants in common.

[2] Lots 836 and 837 are likely to be unzoned as a function of the operation of §106.5 of the Zoning Regulations as in effect prior to amendments made to that provision under Zoning Commission Order 828. Until that became effective, February 27, 1998, §106.5 provided "Properties intended to be used for public buildings or use shall become ***automatically unzoned*** upon

ZONING COMMISSION
District of Columbia
CASE NO. 00-27
EXHIBIT NO. 2

We believe this R-5-B district classification is inappropriate in light of adjacent zoning districts, existing area development patterns, and the policies of the Land Use Element of the Comprehensive Plan. Moreover, District-owned land, when outside the Central Employment Area, should no longer be unzoned.[3]

On behalf of the owner of Lot 855, we are writing to request that the Zoning Commission of the District of Columbia initiate steps to change the zoning applied to the Subject Area from its present R-5-B zoning classification (and any unzoned land) to a more appropriate zone classification such as CR, C-2-C or, possibly, R-5-E.

Prior to making this request, the Mr. William Durkin of the Pedas organization contacted each of the other three property owners. Each has responded favorably. William W. Beckett, General Partner for 1121 24th Street Limited Partnership (Lot 831) did so by letter of August 5, 2000; Michael S. Gluck, owner of 1117 24th Street, NW (Lot 811) did so by letter of August 15, 2000; and Charles Ahlgren, owner of 1115 24th Street, NW (Lot 810) did so by email of August 14, 2000 – copies enclosed at Tab A.

The Office of Property Management ("OPM") is responsible for the District of Columbia's real estate interests. These interests include the two Municipal properties in Square 37, namely the West End Branch of the D.C. Public Library (located at 1101 24th Street, NW) and a part of the Special Operations Division of the Metropolitan Police Department (located at 2301 L Street, NW). As stated in their letter to you of August 29, copy enclosed at Tab B, OPM supports this request as a means by which to establish zoning on those properties.

Current Zoning Landscape:

Enclosed, at Tab C, you will find a copy of a portion of the 1996 Zoning Atlas showing the area now zoned R-5-B (or unzoned, but nevertheless depicted as though zoned) and the base zoning already in place for the surrounding Squares. This map does not reflect the rezoning (to CR) for the now nearly completed PUD that covers nearly all of Square 51.

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acquisition by the government of the United States or the government of the District of Columbia" (emphasis added). A public library is clearly a public use; the police facility was a district station, open to the public, at an earlier point in its history, although it is now used exclusively by components of the Special Operations Division and is arguably no longer open to the public. Neither prior nor replacement provisions of that section zone or reinstate zoning on any "automatically unzoned" lot. Rather, a map case must be heard and an Order issued.

[3] The Central Employment Area ("CEA") is defined in the Comprehensive Plan, 10 DCMR 199. In the West End, areas to the northwest of New Hampshire Avenue, NW, including Squares 37 and 38, fall outside the CEA. Order 828 further provided that District-owned public buildings within the CEA are to be exempt from zoning but require approval of the National Capital Planning Commission and are, as part of a revised §106.5, but renumbered §106.6, not only exempt but also "automatically unzoned."

The following base zone districts exist on the *perimeter* of the Subject Area. The relevant *base* zones around this perimeter are these:

- C-2-C — In the northern half of Square 37 as well as to immediately east and southeast (both in Square 51) and immediately west (in Square 51) of that northern portion of Square 37— part of the original "band" of C-2-C first mapped in 1958. (The C-2-C zone allows mixed-use development to 6.0 FAR and development to 90 feet high).[4]

- R-5-E — To the east of Square 37 (in Square 51, see below), to the southeast (in Squares 52 and 53), and also abutting the southern edge of the R-5-B zoned parcels in Square 38. (The R-5-E zone allows a maximum FAR of 6.0, and development to 90 feet high.)

- R-5-D — To the west of Square 37 (in a portion of Square 25), where it is the zone district now applied to the southern, and older, part of the Columbia Hospital for Women. (The R-5-D zone allows a maximum FAR of 3.5 and development to 90 feet high.)

- R-5-B — To the south of Square 37, where it is the zone district applied to the northern edge of Square 38. (The R-5-B zone allows a maximum FAR of 1.8 and development to 50 feet high.)[5]

Enclosed, at Tab D, you will find a copy of the most recent Generalized Land Use Map (1995) associated with prior Comprehensive Plan amendments (through 1994). This area is unaffected by amendments made to the Comprehensive Plan in 1998, so the enclosed map, while dated, is still accurate as a depiction of land use policies for the area in question, including the "institutional" purpose to be served by the land where Columbia Hospital for Women now exists. While the plan declares all of Square 37 to be one in which high-density residential uses are to be mixed with medium density commercial ones, that broad range of uses and densities can never be attained within the current mapping as an R-5-B zone district.

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[4] The PUD recently approved and now nearly completed for Square 51 also remapped most of Square 51 from a combination of prior zone districts, including some that was part of the area historically zoned R-5-B, to CR, the zone that is the base zone for the area north of M Street as described above.

[5] The Generalized Land Use Map associated with the Comprehensive Plan projects lower density mixed uses in Square 38 than apply to Square 37, so that the portion of Square 38 that is zoned R-5-B is not as fundamentally inconsistent as it is in Square 37. We, however, are not arguing that Square 38's zoning is "not consistent." The Commission and Office of Planning may wish to evaluate that as our petition is considered, but not at our behest.

History:

The "West End" was the name originally given to land north of Pennsylvania Avenue, NW from Fifteenth Street, NW to Rock Creek, which formed the boundary with Georgetown, already a separate and distinct community. Over time, as the Dupont Circle and Scott Circle communities developed and became separately identified, the remaining West End area continued under that rubric, but became confined to the area bounded by Pennsylvania Avenue on the south, Rock Creek on the west, New Hampshire Avenue on the east and, loosely, N Street on the north.

In 1958, the "West End" area was completely rezoned as part of the District's zoning amendments and reforms adopted that year (the "1958 Zoning Regulations and Map").[6] The changes that year provided for a series of Residential zones of various densities and use restrictions, along with a similar range of Commercial (C) and Manufacturing (CM and M) zones.[7] Typically, the Zoning Commission applied the zone category that best characterized the development then existing. However, there was no single zone category that blended residential and light industrial uses, and the Commission chose the latter for much of the West End in 1958.[8]

At the same time that the Light Industrial zone was applied to much of the West End, the moderate density R-5-B zone was applied to some other nearly contiguous areas of the West End, originally including much of the area to the *north* of L Street between 25th Street and 21st Street, specifically the eastern portion of Squares 4, the southern half of Squares 14, 25, 37, and parts of Square 51. However, what started as an arguably rational band of R-5-B over forty years ago has, over time, become discontinuous and irrational.

Later, in 1974, the Zoning Commission, composed then as it was in 1958 of the Mayor and other appointed District Commissioners, conceived and adopted (in Order 108, Case 74-8) the CR, or Mixed Use Commercial-Residential zone district, and in a companion Order (109, Case 74-9) applied that zone and another commercial zone to much of the former light industrial zones in the West End. Both the band of what is now C-2-C zoning running across the northern half of Squares 25, 37, and 51, and the entirety of Square 71 and the even larger band of CR zoning running across all of Squares 13, 24, 36, and 50 reflect this approach to the mapping of zone districts in the West End. With very few exceptions, the implementing Order in that case (Order 109, Case 74-9) rezoned areas in the West End that had been C-M-2 to CR. It also elevated portions of the West End that had been zoned C-2-A to C-2-B. Later, the Commission inserted a new, intermediate zone

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6 Effective May 12, 1958.

7 Two other zone groups were also created at that time, including Special Purpose (SP) or transitional/buffer zones, and the Waterfront (W) zones.

8 Within the Light Industrial zone category, residential uses were then and still are non-conforming. Many residential properties in the area designated for Light Industrial uses became vacant over time as resident homeowners and residential tenants left the area, not to be replaced, and the former vitality of the area eroded.

district between the prior C-2-A and C-2-B classifications. This had the effect of re-designating all earlier C-2-B areas as C-2-C, the dominant commercial zone now mapped in the West End, explaining the difference between the terms of Order 109 and the current map.

The areas then zoned C-2-B (now re-designated C-2-C) and CR by the Commission in 1974 resulted in substantial, if not immediate, changes in the West End. Pre-existing uses and structures, then mostly row houses mixed in with light industrial uses in a variety of structures, were replaced by new projects that mixed apartments, hotels, and commercial uses.

The "Home Rule Act" of 1974 required the Mayor to propose and the Council to enact a Comprehensive Plan. First completed in 1984, it has been amended from time to time thereafter. A provision of the Home Rule Act requires that zoning be "not inconsistent" with the principles of the Comprehensive Plan. Subsequent to its adoption, there have been several zoning amendments that the Commission must have found to be "not inconsistent," including:

- The southern portion of Square 25, the site of older portion of Columbia Hospital for Women, (directly west of the Subject Area) has been rezoned as R-5-D.

- Most of Square 51 (directly east of the Subject Area) has been rezoned within the Planned Unit Development that now occupies the bulk of that Square under CR zoning.

As to Square 37, the map associated with the Land Use Element of the Comprehensive Plan, as amended, calls for all of Square 37 to be developed at the highest density of residential use "mixed" with a medium density commercial classification.

Clearly, the present zoning in the Subject Area is <u>not consistent</u> with the Comprehensive Plan.

<u>Request for Zoning Change:</u>

Specifically, this letter requests that the Zoning Commission of the District of Columbia initiate steps to change the zoning applied to Subject Area from its present designation as R-5-B and unzoned parcels to a more appropriate zone district, such as CR, C-2-C, or R-5-E. This would be consistent with virtually all surrounding areas, which permit much higher densities than those allowed under the current R-5-B zoning.

The first step is a formal referral to the Office of Planning ("OP"). We are supplying OP with a copy of this letter, with the hope that they can convey their comments to you by the time of your November meeting.

Our client has no current plans to develop or sell its parcel. To the best of our knowledge, that is also the case for the others owning property in the Subject Area.

Likewise, we know of no plans to make any changes to either the branch library, which provides a vital service to area residents, or to the facility now used by the Metropolitan Police Department.

However, as the present zoning is not consistent with the Comprehensive Plan, we request that the Zoning Commission set down a case under which the zoning for those parcels in Squares 37 that are now either unzoned or limited to R-5-B would be changed to (or, for areas that are now unzoned, established as) CR or, in the alternative, C-2-C,[9] both being zone districts allowing greater total density (FAR of 6.0) and height (90 feet) than R-5-B, each of which allows high density residential uses and, in the case of CR, requires at least a proportion of the use to be residential. Within their common FAR cap of 6.0, CR allows up to 3.0 FAR, and C-2-C allows up to 2.0 FAR, for non-residential uses. Both CR and C-2-C are consistent with the high-density residential and medium density commercial classification that is prescribed for Squares 37 by the Comprehensive Plan.

The requested change would not create a significant area of greater intensity than that already contemplated in Square 37 by the Comprehensive Plan. Rather, it would bring the area's zoning into conformity with the precepts of the Comprehensive Plan and also respond to the Council of the District of Columbia's intent that District-owned land be zoned and be used in accordance with zoning. The same holds for actual development, i.e. the Subject Area is now surrounded on the west, north, and east by high-density uses that mix both residential and commercial uses.

Additional information about the parcels in the Subject Area is enclosed at Tab E.

Within the firm, I am collaborating with Lindsley Williams, Senior Advisor for Planning, Land Use, and Zoning. Mr. Williams has already had preliminary discussions with the Office of Planning and Office of Property Management in this regard. We are asking you to seek the Office of Planning's views on whether a case should be "set down" along the lines we propose. We are prepared, if you to desire, to assist the Commission with support a case such as this would require, including identifying property owners that would need to be given notice, and placing and maintaining placards. We are also prepared to supply either OP or the Commission with additional information about contiguous properties if needed for your, or their, analysis.

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[9] While setting the case down and advertising it for CR Zoning would have to be independent of advertising it for C-2-C, for purposes of legal notice, the latter sweeps in all the uses of higher-density R-5 zones and, we believe, would not require separate advertisement to allow the Commission to entertain R-5-E zoning (or, for that matter, R-5-C or R-5-D) on some or all of the parcels in the Subject Area.

Thank you for your consideration.

HOLLAND & KNIGHT, LLP

Douglas J. Patton

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

cc: The Honorable Jack Evans, Member, Ward 2, Council of the District of Columbia
The Honorable Eric W. Price, Deputy Mayor for Planning and Economic Development
Director, Office of Planning (Andrew Altman)
Director, Office of Property Management (Timothy Diamond)
Chief, Metropolitan Police Department (Chief Charles H. Ramsey)
Deputy Chief, Metropolitan Police Department (Deputy Chief Andrew Gainer)
Director, District of Columbia Public Library (Mary Raphael)
Head Librarian, West End Public Library (Barbara Kubinski)
Commissioner Barbara Spillinger, Chairperson, Advisory Neighborhood Commission 2A
Commissioner Richard J. Price, Commissioner, Single Member District 2, ANC 2A
Chairperson, Foggy Bottom Citizen's Association (Michael Thomas and Ellie Becker, Vice Chairperson and Acting Chairperson, c/o West End Library)
President, West End Citizen's Association (Jack Batham)
General Partner, 1121 24th Street Limited Partnership (William W. Beckett, for Lot 831, Square 37)
Charles S. and Marianne C. Ahlgren (owners, Lot 810, Square 37 – 1115 24th Street, NW)
Michael S. Gluck (owner, Lot 811, Square 37 – 1117 24th Street, NW)
James Pedas, Circle Management, Inc.
William Durkin, Esq., Circle Management, Inc.

Enclosures:
Tab A – Letters from Messrs. Beckett, Ahlgren, and Gluck
Tab B – Letter from Harold Nelson, Interim Director, Office of Property Management
Tab C – 1996 Zoning Atlas of Subject Area and Surrounding Squares (Excerpt)
Tab D – Generalized Land Use Map (1995) (Excerpt)
Tab E – Sanborn Atlas Depicting Improvements to Square 37 and Portions of Surrounding Squares
Sanborn Atlas Depicting Lot Numbers on Square 37 and Portions of Surrounding Squares
Property Information Summaries for Lots in the Subject Area (6 Pages)