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August 29, 2002

DOUGLAS J. PATTON
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The Honorable Carol J. Mitten, MAI
Chairperson, Zoning Commission of the District of Columbia
One Judiciary Square, Suite 210
441Fourth Street, NW
Washington, DC 20001

Re: Comments and Supplemental Materials Relating to the Proposed High-Density Residential Retail Overlay Zone (Case 01-33, please also file under Case 00-27)

Honorable Members of the Zoning Commission:

You will recall that you held a hearing on July 29 of this year to hear testimony about the proposed "High-Density Residential Retail" overlay zone.

We offer a few additional comments and clarify one question the Commission posed to us to which we did not fully reply during the hearing.

As you know, we recommend that any adopted overlay zone be crafted to encourage, not require retail uses. We feel that imposing retail requirements, which is the posture the Office of Planning has been recommending since its first proposal, is a drastic step, lacking evidence of need or appropriateness. However, we realize that you must consider what they have recommended before taking appropriate action.

Should you determine that the zone should be crafted to require retail uses, please review the detailed submission that Lindsley Williams provided at the hearing carefully. A copy is enclosed herewith for your convenience. His document surfaces a number of issues that you should consider and resolve if the regulations emerge as requirements in spite of our recommendations to the contrary. To his earlier roster of issues, we add the following proposed additional total or partial exceptions:

- Property is a designated historic landmark or within an historic district – such an exception should run to the entire property. This type of exception is comparable to the "standard" exceptions currently allowing

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such properties to be used without complying with the parking and loading standards otherwise imposed by the zoning regulations.

- Property has a depth (from each pertinent street frontage) that exceeds a specified depth, such as one hundred feet (100 ft.) – such an exception exempt areas "behind" that not being counted as fronting the relevant street(s) from the total area on which the retail area requirements would be generated or retail uses would be established. You should consider, however, if such a measurement boundary should also be interpreted as a zone boundary for purposes of §2514. (The Commission need look only at the shape and size of the parcel on which Columbia Hospital for Women has been located to find a place whose dimensions would potentially result in far more total commercial use than may have been intended if that site came to be rezoned HDRR/R-5-D or HDRR/R-5-E.)

You also asked Mr. Williams to elaborate on his thinking about potentially applying a permissive overlay to encourage neighborhood-serving retail to the various commercial and mixed use zones. The thinking is this:

- Consider applying an enabling overlay, or comparable enabling provisions universally, to mixed use zones such as C-2-C, CR, W-2, W-3 and possibly the SP zone districts so as to provide them a modest additional FAR, such as 0.5, provided the property dedicates sufficient ground floor area to HDRR-type retail uses serving not only the residents of a given property but also those who live (or work) elsewhere nearby.

We suggest that some of those commenting on development changes in the West End may not have considered the overall sequence in which this took place over that past two decades. In the main, commercial uses were developed prior to newer residential uses. Because of this, the ground floor retail that was initially established focused on the commercial tenants as customers – in the absence of a strong base of local residents. Moreover, when new residential uses were developed, they operated only within the residual residential area limits, and even additional retail would have triggered a zoning exception since the relevant envelope had already been "used up." We can only speculate as to what might be different now had the both residential and commercial been developed concurrently or if new, higher-density residential had preceded commercial.

* * * * *

For your convenience, we provide the following in the nature of a *partial* summary of the hearing that took place July 29, 2002. This is not a full summary, but highlights elements of interest, at least to us. If any of these remind you of something you wish to explore, please refer to the Transcript itself so as to avoid any problem that would arise if anyone felt we had misinterpreted their remarks.

Opening Remarks (Transcript, pp. 1-6)

Preliminary Matters (Transcript, pp. 6-14).

Following discussion, the Chair:

- Requested persons testifying to speak to either the advertised text or the text the Office of Planning had recommended in the nature of a substitute a day prior to the hearing
- Acknowledged that the Commission might have to provide additional Notice and/or Hearing opportunity should the Commission wish to adopt some of the language the Office of Planning had recently recommended.
- Ruled that testimony that evening should not be directed at applying the text to any portion of Square 37 or any other specific location in the District of Columbia
- Ascertained that while the original Case as Notice contemplated potential application to portions of Square 37, the substitute did not contain any mapping component, but
- Established that the Hearing to be conducted October 3 includes rezoning in which the overlay zone subject to these proceedings could present some residue in that limiting development rights until the issues in the overlay case were fully resolved
- Ruled that the record in Case 00-27, as it existed up to the date of this hearing, July 29, would be viewed as part of the record in the instant case.

Office of Planning (Transcript pp. 14-41).

The Office of Planning, through Ms. Ellen McCarthy and Mr. Arthur Jackson, presented its report and answered questions the Commission members posed. *[No summary herein attempted.]*

Other Government Agencies (none)

Advisory Neighborhood Commission 2-A (Transcript pp. 42- 50), through Commissioner Richard Price.

Among other things, Commissioner Price:

- Spoke of the "denuding" of retail from the neighborhood in the past two decades from his personal observation as a resident since 1979 (Transcript pp. 42, 46).
- Indicated the ANC had voted July 24th to support ". . .a modification to the proposed overlay to allow a floor area bonus for the provision of low to moderate income housing. . ."(Transcript, p. 47).

[When we examined the case record on Thursday, August 29, 2002, we did not find a written report from the ANC. We may have overlooked it. In any event, the Zoning Commission should establish if the ANC submitted a report or other written submission satisfying the Zoning Commission's own rules at §3012.5 for ANC submissions before according Commissioner Price's remarks "great weight." Please note that we are not suggesting that you disregard his remarks and observations as a person, as a Single Member District Commissioner or other capacities until you are satisfied that your requirements have been met or will have been by the time the record in case 01-33 closes.]

Proponents (Transcript, pp. 50-64)

EastBanc Development, through Anthony Lanier, Phil Esocoff, AIA, and Richard Nettler (pp. 50-61).

- Indicated general support of the concept of the overlay (Transcript, p. 52, Nettler)
- Indicated a need for changes to the text to make it work appropriately (Transcript, p. 54, Nettler)
- Concurred with the ANC as to providing additional FAR bonus when low-income housing is provided as part of the core residential use allowed in the base zone and a need for providing bonuses to those retail uses that are "truly" providing a mixed use of high density residential and retail (Transcript, p. 53, Nettler).
- Posed the question of how to "create draws" and establish "anchors" (Transcript, p. 55, Lanier)
- Recommended "none *[sic.]* for one bonus all the way to 2" FAR as part of the overlay. [Clearly, the context of this is not "none for one" but "one for one."] (Transcript, p. 55, Lanier)
- Described design constraints inherent in the R-5-D, R-5-E and proposed overlay zones (Transcript, p. 58, Esocoff).

- Recommended that buildings where retail is allowed have ample allowance such that the floors on which retail is located can have floor to ceiling heights of sixteen feet (Transcript, p. 58, Esocoff).
- Recommended allowing full coverage of lots where the HDRR overlay would be applied, to provide a non-penalty means of enclosing loading areas. (Transcript, p. 60, Esocoff).

Barbara Kahlow (Transcript, pp.62-64).

Ms. Kahlow, among other things:

- Supported establishing an overlay zone generally along the lines proposed to operate in conjunction with base zones of R-5-D and R-5-E, suggesting deletion of certain proposed restrictive provisions (e.g., the department store exclusion and maximum square footage for a dry goods store, percentage cap on restaurant uses), adding additional bonus opportunities (e.g., provision of affordable housing), affording greater bonuses for specific uses (i.e., grocery store and library), and allowing overall greater bonus FAR than [the 0.5 FAR] OP had recommended, as much as an additional 1.5 bonus FAR. (Transcript, pp. 63-64).
- Recommended taking steps to preclude establishment of community-based residential facilities within the overlay zone. (Transcript, p. 64).

Opposition (Transcript pp. 64-95)

Pedas Interests, by Eric Colbert, AIA, and Lindsley Williams (Transcript pp. 65-77)

Among other things, Mr. Colbert:

- Introduced architectural plans of a building under construction at a site where 0.5 FAR of retail had been required on a lot between 23,000 and 24,000 square feet, and in which the owner had applied to and been granted relief by the Board of Zoning Adjustment to allow a reduction in the amount of required retail arising from the size of the lot and the other programmatic requirements for space on the first floor. (Transcript, pp. 65-66).
- Articulated a list of these functional and market requirements, ranging from elevator core and fire stairs to trash facilities (code) to exercise facilities (market). (Transcript, p. 66).
- Introduced a plan for the same building with just the "required" residential elements, and no retail showing in the process that the minimum lot size for a competitive high-rise apartment building is 13,400 square feet (mathematically) and recommended that the minimum lots size when the proposed overlay's required 0.5 FAR could be workable as requiring a lot size of about 27,000 square feet, noting that some retail

could be introduced on lots between 15,000 and 27,000, but not as much as 0.5 FAR. (Transcript, pp. 67-68).

- Indicated that successful retail had other requirements and characteristics, including sufficient ceiling heights (Transcript. p. 68)
- Noted that retail space within apartment buildings is not readily absorbed by the market, providing an example of same (Transcript, p. 68)
- Noted the design problem of "inserting" retail into the frontage of a residential building in a way that did not compromise the identity of the residential building (Transcript, p. 69).

Among other things, Mr. Williams:

- Introduced a chart comparing both the original recommendations from the Office of Planning relating to the proposed zone, the amended text recommended by the Office, and setting forth his own comments about each. (Transcript, p. 69).
- Recommended conversion of the regulations from prescriptive to enabling, from directory to discretionary and to allow market factors to operate. (Transcript, p. 70).
- Identified numerous shortcomings in the basis of the determinations by the Office of Planning as to a workable minimum lot size at which the overlay zone could be expected to be realistic, part of which rests on exclusions elsewhere in the zoning regulations that allow apartment buildings of fewer than 50 units to have no loading zone or service delivery space [there is very limited construction of apartments of fewer than 50 units in this era]. (Transcript, p. 70).
- Identified other flaws in the proposed regulations, such as the fact that the overlay would only operate in conjunction with apartment uses, not others that could well be established in Residential zones, such as a public library. (Transcript, p. 72).

1121 24th Street Apartment Tenants, by Michael Malloy, Bill Wicker, Kathleen Highland and David Wagner (Transcript, pp. 76-83).

- Mr. Malloy articulated concerns about maintaining affordable housing in general and within the building in which the tenants reside (Transcript, p. 78)
- Mr. Wagner, among other things, posed two questions "So you're going to force something instead of letting it be market driven?" to which the Chair answered "yes" [as to the nature of the text under consideration] and, moments later asked, "Has that worked in the past?" (to which there was no specific response or additional direct testimony). (Transcript, p. 82).

Ann Hargrove, Barbara Zartman, and Harriet Hubbard (as individuals). Transcript, pp. 84-95)

- Ms. Hargrove, among other things, suggested that the combination of rezoning with a new overlay may be less appropriate than creating and applying a new residential zone, noting that among other things the Alcohol Beverage Control rules would not allow licenses for premises in Residential zone districts. (Transcript, p. 85)
- Ms. Hargrove also noted the potential of the overlay as proposed to allow existing hotels in Residential zones to expand their commercial activities should the overlay be applied to the land they occupy, upsetting a general ban on such expansions (Transcript, p. 86).
- Ms. Zartman, among other things, noted the importance of streetscapes and design to creating and maintaining attractive retail areas, citing specific examples of locations lacking same in her view (Transcript, p. 88)
- Ms. Hubbard, among other things, recommended "moving in solid residential" to create a strong base of individual residents (Transcript, p. 89, but attributing same to Ms. Zartman throughout that section of the transcript)

Concluding Portion of Hearing (Transcript pp. 95-99)

- The Chair, following collaboration with the Secretary to the Commission, announced the hearing record would remain open until noon, Friday, August 30, 2002 – a date selected to enable the Commission to be in a position to consider the case at its meeting of September 9, 2002.

* * * * *

We look forward to your discussion of the issues presented in the course of the text phase of this case and hope this letter will be of some assistance therewith.

Thank you.

HOLLAND & KNIGHT LLP

Douglas J. Patton, Esq.

Lindsley Williams
Land Use, Planning, and Zoning Consultant
to the Law Firm of Holland & Knight LLP

Enclosure (as stated)

cc: Director, Office of Planning
Chairperson, Advisory Neighborhood Commission 2-A
President, Foggy Bottom Association
President, Tiverton Apartment Tenants' Association (1121 24th Street, NW)
ZC Case Files 01-33 and 00-27