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April 2, 2004

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VIA HAND DELIVERY

Zoning Commission of the District of Columbia
One Judiciary Square, Suite 210-South
441 Fourth Street, NW
Washington, D.C. 20001

Re: ZC Case 00-27M: Pre-Hearing Submission from Petitioner

Dear Members of the Commission:

At your direction, this firm, on behalf of James Pedas et al, the original petitioner in Case 00-27M, hereby provides you a Pre-Hearing submission consistent with the requirements of Section 3013 of the Zoning Regulations and suggested text for the Notice of Hearing that must be issued by the Office of Zoning under §§ 3014 and 3015.

Requirements of Section 3013:

Section 3013, Paragraph/Provision	Supplemental Information, If Any
3013.1(a) Any additional information ...	None
3013.1(b) A list of witnesses who are prepared to testify on ... petitioner's behalf.	William Durkin (owner's representative; lessee's representative) Lindsley Williams – expert in land use, planning and zoning Louis Slade – expert in traffic and transportation planning Richard Harps – expert appraiser Eric Colbert – architect (expert)

ZONING COMMISSION
District of Columbia
CASE NO. 00-27
EXHIBIT NO. 50

ZONING COMMISSION
District of Columbia
CASE NO.00-27
EXHIBIT NO.50

Section 3013, Paragraph/Provision		Supplemental Information, If Any
3013.1(c)	A written summary of testimony or the written report and expertise of any expert who will be called to testify at the hearing	Included herein: expertise as above, summary of testimony or report, below:
3013.1(d)	Any additional information, reports or materials ... petitioner may wish to submit	None
3013.1(e)	Reduced plans ... with " north arrow" reading up, and include a bar scale	Included herein, below, and separate plans for apartment building
3013.1(f)	A list of maps, plans, or other documents that are readily available to the general public that will be introduced into evidence	Comprehensive Plan for the District of Columbia District of Columbia Generalized Land Use Map Zoning Map of the District of Columbia Zoning Commission Orders, including: • Order 540 • Orders 721, 721-A, and 721-B • Order 766 • Order 833 • Orders 855 and 855-A • Order 03-11 Case Log for Case 00-27 (Two folders, four pages) Illustrative Plans Submitted to Record of Case 01-33TA by Eric Colbert
3013.1(g)	An estimate of the time required for the presentation of the ... petitioner's case	One hour
3013.2	... when necessary to support the ... petition, ... two sets of full size plans	Not needed

Section 3013, Paragraph/Provision		Supplemental Information, If Any
3013.3	In the case of a map amendment pursuant to §3021, ...names and addresses of the owners of all property proposed to be rezoned	Details set forth below for: • James Pedas, et al • Charles Ahlgren • Michael Gluck • William Beckett • Government of the District of Columbia
3013.4	If the application is processed as a map amendment ... and proffers any benefit or amenity listed in §3103.5	While petition seeks a map amendment, no such benefit or amenity is proffered as this is a "consistency" case.
3013.5	[Details of benefits and amenities]	Not applicable
3013.6(a)	Names and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property...	Provided separately (in single copy as a report and as mailing labels)
3013.6(b)	Name and address of each person having a lease with the owner of all or part of any building located on the property involved in the application	Provided separately (in single copy as a report and as mailing labels)

Petitioner's Suggested Text for Notice of Public Hearing:

The Zoning Commission of the District of Columbia hereby gives Notice that it will conduct a public hearing at the above-stated date, time, and place to receive comments concerning review and approval of a Zoning Map Amendment under Chapter 30 of the District of Columbia Zoning Regulations, 11 DCMR (July 1995, as amended). The proposed rulemaking would change the base zone district for the subject properties from their present R-5-B classification to R-5-E, C-2-C, or CR

The District of Columbia Administrative Procedures Act, DC Code 2-505, provides that this Notice also means that the Commission can consider not just rezoning to the three stated alternatives but may also apply other zone district classifications that are more permissive than the present R-5-B zone but that are more restrictive than either the referenced C-2-C (such as C-2-B) or the referenced R-5-E (such as R-5-D), for some or all of the land area involved. The Commission is not obligated to find a single base zone to apply to all of the land.

The petitioner is asking the Zoning Commission to effect a Map Amendment to the southern portion of Square 37 (land lying south of that Square's single, east-west public alley; specifically applying to Lots 810, 811, 812, 831, 836, and 855, to resolve an inconsistency among the principles of the Comprehensive Plan, present zoning, and D.C. Code.

In short, the Comprehensive Plan and its associated Generalized Land Use Map call for the area to be for a mixture of high-density residential uses along with medium-density commercial uses.

In contrast, the present R-5-B zoning classification provides for "moderate density" residential uses at "moderate" heights. All R-5 zones permit apartment houses (technically, "multiple dwellings"), flats and one-family dwellings, along with hospitals, clinics, and museums, as a matter of right. Density is limited to a Floor Area Ratio ("FAR") of 1.8. FAR is the ratio of the "gross floor area" to the area of the land. Gross floor area excludes "cellar" areas but includes the horizontal area of "basements" (whose ceiling extends four feet or more above the adjacent grade) and the horizontal area of all floors from the ground up other than a penthouse, which contains stairways, elevator and other mechanical equipment. In the R-5-B zone, height is limited to 50 feet, with an additional allowance for a penthouse. Colleges and universities, along with art galleries, are among uses allowed after an owner seeks and secures the approval of the Board of Zoning Adjustment ("BZA") under the BZA's Special Exception process.

As summarized within the present District of Columbia Comprehensive Plan (at §112.3) "... zoning may not be inconsistent with the Comprehensive Plan..." Thus, present zoning does not comport with the broad principles established by the Plan, particularly its land use element.

The zone district alternatives to be considered include the following:

R-5-E The R-5-E zone exists to allow compact, high-rise residential development that may extend to a height of 90 feet and provides the highest allowed purely residential density in the District of Columbia's zoning program, namely an FAR of 6.0. This zone district, as with R-5-B, R-5-C, and R-5-D, permit apartment houses (technically, "multiple dwellings"), flats and one-family dwellings, along with hospitals, clinics, and museums, as a matter of right. Colleges and universities, along with art galleries, are among uses allowed with the approval of the BZA under that Board's Special Exception procedures. The R-5-E zone limits FAR of new uses other than apartment houses to 5.0.

C-2-C The C-2-C zone exists to provide for a mix of residential and commercial uses at the same density (FAR of 6.0) and height limits (90 foot) as R-5-E; areas so-zoned are to be "compact" and "located near the Central Employment Area." While overall development is limited to an FAR of 6.0, any development exceeding an FAR of 2.0 must be used for an apartment house or "other residential" use, which includes "guest room" areas of hotels and areas supporting these guest rooms. Uses allowed within the FAR limit of 6.0 include all uses allowed in the R-5 zones as a matter of right. General offices and a wide range of retail and other uses may utilize up to a limit of 2.0 FAR within the overall FAR limit of 6.0. The zone also allows international organizations, theatres and assembly halls, parking lots and parking garages, colleges, universities, and other academic institutions of higher learning, as a matter of right.

CR The CR zone allows the same total density in terms of FAR as both R-5-E and C-2-C, namely 6.0, and also limits development to 90 feet. Just as in C-2-C, the CR zone's rules interpret "guest room" and related service areas of hotels as "residential" space under the prevailing FAR limits. While C-2-C allows an FAR of 2.0 to be devoted to non-residential uses within the overall FAR limit of 6.0, CR allows non-residential uses to utilize an FAR of as much as 3.0. CR zones allow a range of commercial uses similar to those in C-2-C; it also prohibits certain uses allowed in C-2-C and other Commercial zones, including "parking lots" and "drive-through" establishments. Moreover, some uses allowed as a matter of right in the C-2 districts require approval in CR from the BZA, including hospitals, clinics, colleges and universities. The BZA may also allow a few light industrial uses such as warehouses and vehicle sales. The CR zone requires that developed properties provide "public space" at the ground level amounting to ten percent of the total area of the lot that is (a) adjacent to the property's main entrance, (b) open to the sky or have a minimum clearance of 10 feet or one story, (c) have ample illumination and appropriate landscaping, and (d) be continuously open to the general public.

The C-2-C zone, Commercial zones more restrictive than C-2-C, and the CR zone all require those developing residential uses to provide "residential recreation space." For C-2-C and CR, the space must be the equivalent to 15 percent of the gross floor area devoted to multiple dwellings, i.e., apartments and their supporting space such as lobbies and hallways. Of this, at least half that area must be "outdoors" in the Commercial zones and at least 70 percent must be "open to the sky" in CR districts.

The public hearing will be conducted in accordance with the provisions of Section 3015 (Contested Case Hearings), District of Columbia Municipal Regulations (DCMR) Title 11.

Through publication of this Notice, the Zoning Commission hereby supplants the Notice of Postponement in this Case published in the ***D. C. Register*** on September 20, 2002 (page 8715) relating to a hearing the Zoning Commission had scheduled on this case for October 3, 2002.

All individuals, organizations, and associations wishing to testify in this case should file a statement of intent to testify in writing with the Secretary of the Zoning Commission. Written statements, in lieu of a personal appearance or oral presentation, may be submitted for inclusion in the record.

All Statements should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, 441 Fourth Street, N.W., Suite 210, Washington, D.C. 20001. Please include the case number, whether you are a proponent or opponent of the rule, and your daytime telephone number. FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311

Basis of Petition:

The petition was filed so that the Zoning Commission would act to resolve the inconsistency between the zoning applied to the southern portion of Square 37 as contrasted with the land use policies set forth in the Comprehensive Plan.

Summary of Testimony and Evidence from Owner's Representative (William Durkin):

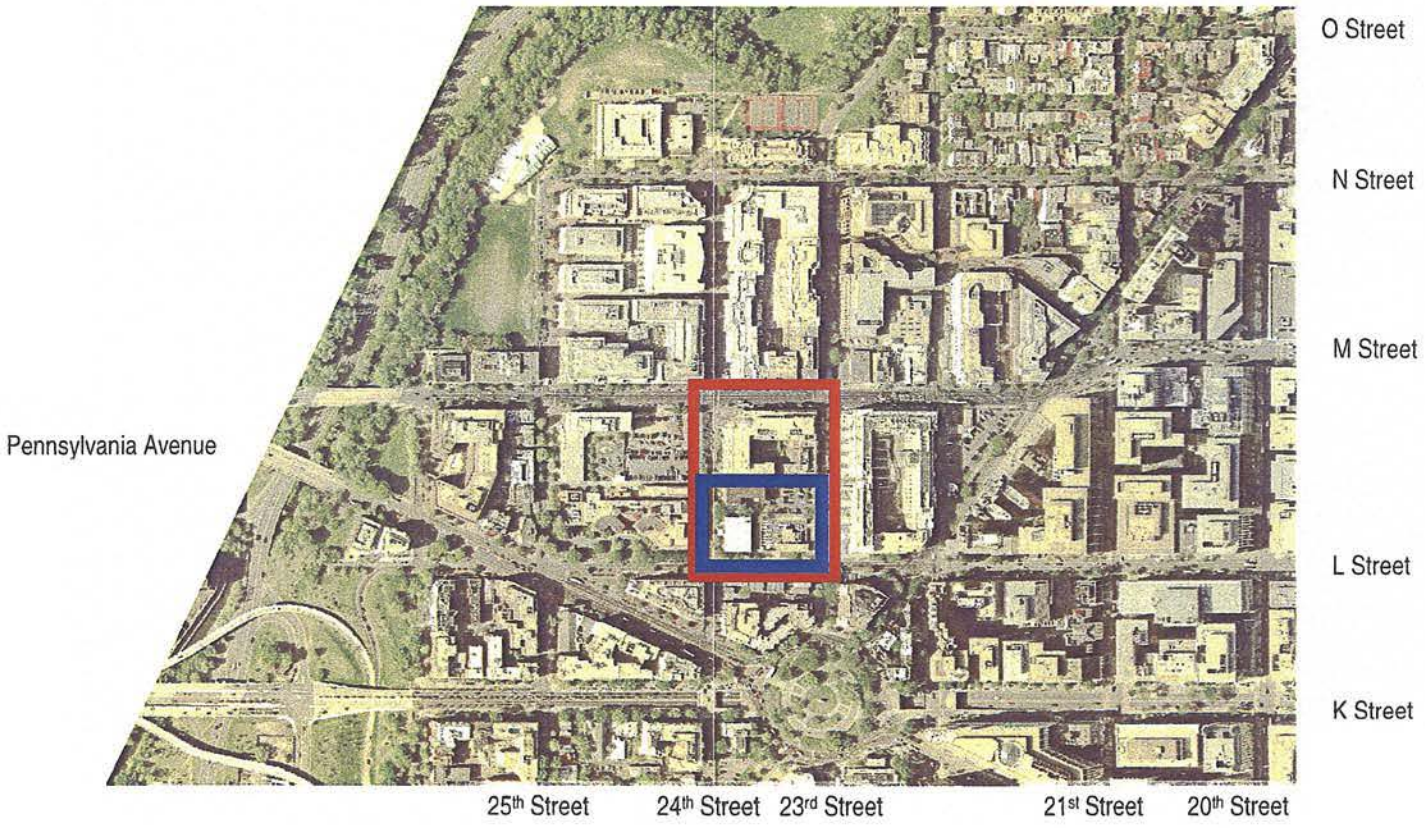
- History of petition
- Desire to complete consistency case
- Desire to achieve reasonable return on land through development permitted as a "Matter of Right," once property is properly zoned

Summary of Testimony and Evidence from Land Use, Planning and Zoning Expert Lindsley Williams:

Present Zoning:

Square 37 is located in the "West End" area of the District of Columbia and is bounded on the north by M Street, on the south by L Street, on the east by 23rd Street, and on the west by 24th Street, all Northwest. Its land area is bisected by a public alley that runs east-west situated mid-way between M and L Streets.

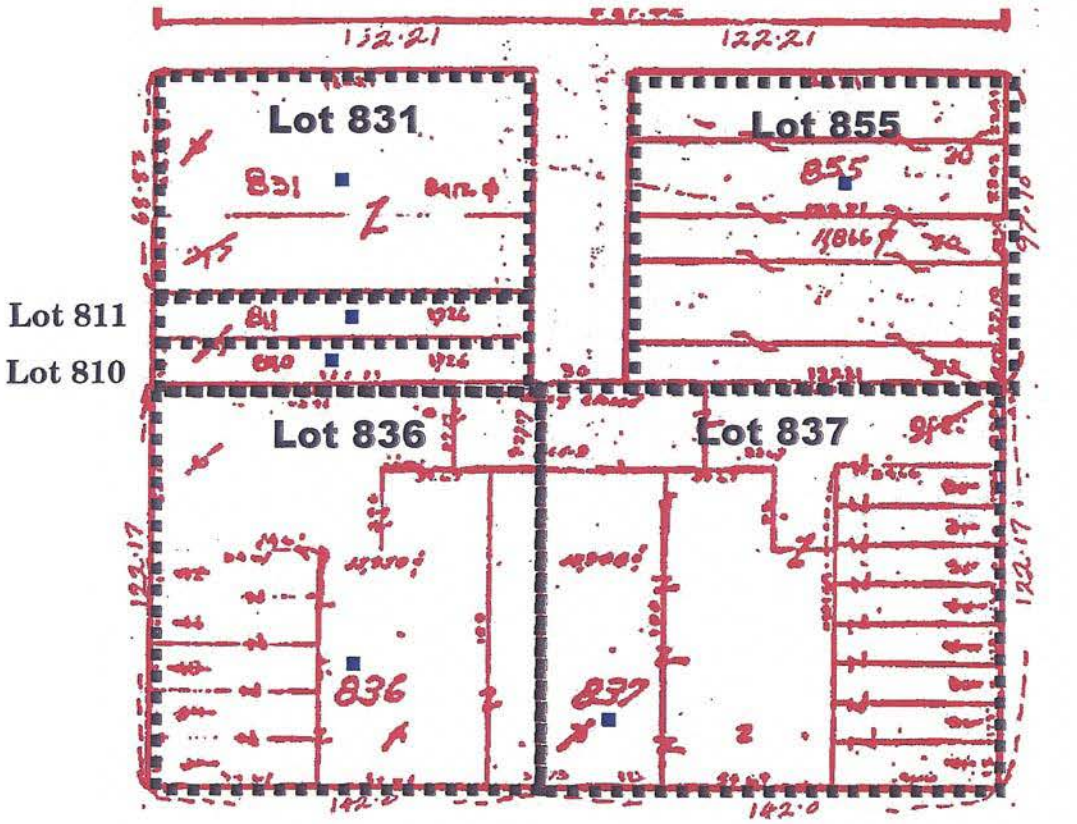
Aerial View (April 2002) of West End Highlighting Square 37 and Petition



As shown in the Aerial Depiction, the instant petition focuses on land located in the southern portion of Square 37, land that approaches 60,000 square feet in area, about half the entire block.

Specifically, the petition focuses on the six assessment and taxation lots that comprise the portion of Square 37 south of its single fifteen foot wide public alley, lots 810, 811, 812, 834, 838, and 855. Taken as a whole, the land area totals over 57,000 square feet, more than sixty percent of which is owned by the Government of the District of Columbia, lots 836 and 837. The land area is further divided north of city-owned lots by a thirty-foot wide public alley that connects to the narrower east-west alley.

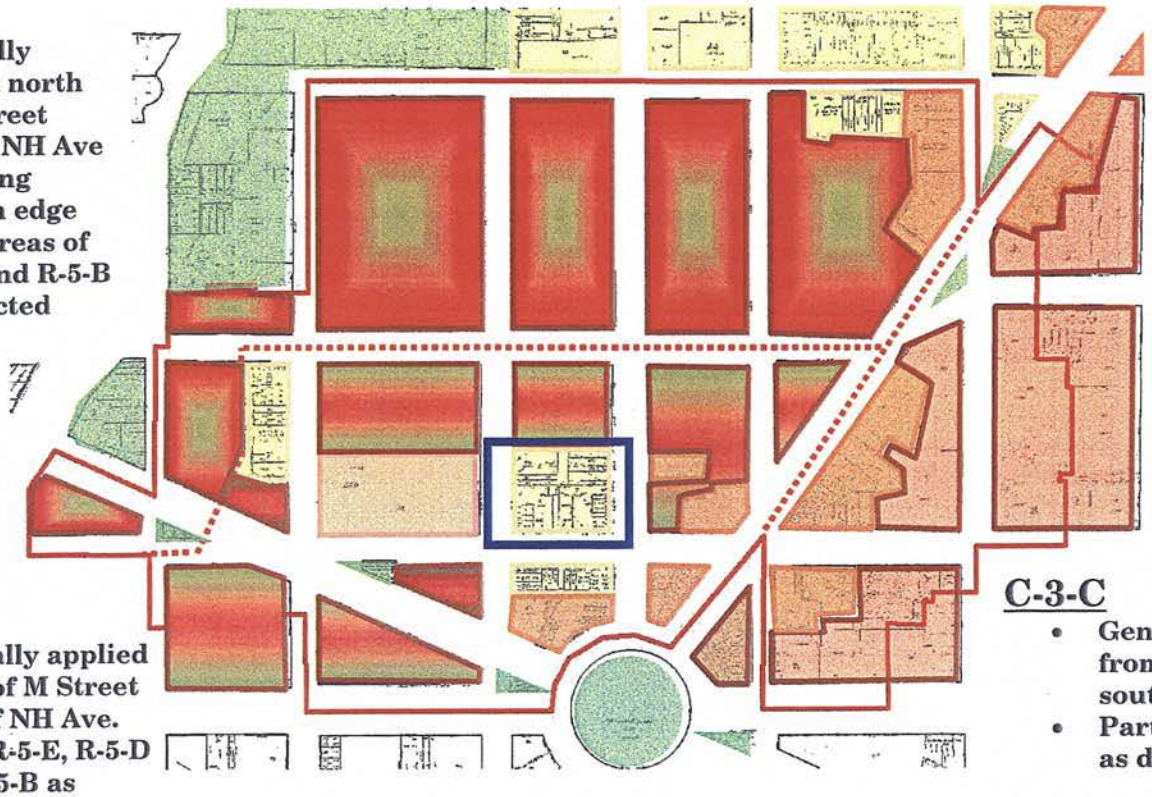
Diagram of Lots Involved within the Southern Portion of Square 37:



Current Map of Base Zones Applied to the "West End" Area (2004):

CR

- **Generally applied north of M Street west of NH Ave and along western edge**
- **Small areas of R-5-E and R-5-B as depicted**



C-2-C

- **Generally applied south of M Street west of NH Ave.**
- **Some R-5-E, R-5-D and R-5-B as depicted**

C-3-C

- **Generally applied from NH Ave south and east**
- **Parts zoned R-5-E as depicted**

R-5-B

R-5-D

R-5-E

C-2-C

C-3-C

CR

GOV (unzoned)

Outer Limits of Properties Reached by the by "High-Density Residential" Mixed Use Classification within the West End Area on the Generalized Land Use Map of the Comprehensive Plan's Land Use Element

Area of Petition

Zoning provides for a range of uses, densities, and heights – among other controls.

Within the overall West End area, the zones mapped provide for moderate to high density residential and moderate to medium-high density commercial. The height limit ranges from 50 to 90 feet (some additional height being allowed in some PUDs when CR zoning exists or is applied as part of the PUD process). It also provides a range of

overall FAR from 1.8 to 6.0 (again, somewhat more FAR may be allowed under CR zoning under a PUD).

The "West End" area includes a number of approved and developed Planned Unit Developments. While no such PUD resulted in concurrent rezoning to CR in land already established with CR *base* zoning, some PUDs developed outside the CR base zone area also approved significant changes in PUD-based zoning, particularly to the immediate east and west of the southern portion of Square 37.

- The southern portion of Square 25 immediately west of the focus of this petition – the site of the former Columbia Hospital for Women –was rezoned from R-5-D to C-2-C under Order 03-11 September 8, 2003, which approved its rezoning from R-5-D to C-2-C as a Planned Unit Development ("PUD"). Both the R-5-D and C-2-C zones allow height of up to 90 feet; the PUD's conditions require some retail and allow additional retail uses. The FAR limit of 3.5 inherent in R-5-D is retained in development conditions for that site as do private covenants. An FAR of 3.5 is also the same overall bulk allowed on a matter-of-right basis for C-2-B zone districts.

- The majority of Square 51 – now known as the "Ritz Carlton" hotel and the "Residences at the Ritz Carlton," covering all of Square 51 other than that occupied by the Carriage House – was rezoned to CR as part of multiple PUD approvals. Under that PUD, gross floor area was allowed to 6.9 instead of the normal 6.0 as heights of 110 feet instead of the normal 90 feet, 15 and 22 percent respectively more than normal limits. See Finding of Fact 9 and Condition 14 in Order 855, Order 855-A and Order 833..

The southern portion of Square 37 is surrounded on the southwest, west, northwest, north, northeast, and east and southeast sides by zones allowing –

- 90 feet of height, and by a PUD approved and built to a height of 110 feet (Millennium PUD).
- An FAR of 6.0, except immediately west where the FAR is limited to 3.5 (the former Columbia Hospital for Women, a historic landmark with additional development limits under its PUD approval)
- A mix of residential and commercial uses on each record lot, as permitted under the prevailing mixed use zone limits for C-2-C and CR, which effectively limit commercial development to 2.0 and 3.0 respectively on a matter of right basis.

The area facing Square 37's southern side is zoned identically to the area of the petition, R-5-B. That zone allows an FAR of 1.8, allows no commercial uses, and limits height to 50 feet on a matter of right basis. However, as noted below, it is treated distinctly within the Comprehensive Plan's Land Use Element and Generalized Land Use Map.

Governing Policies:

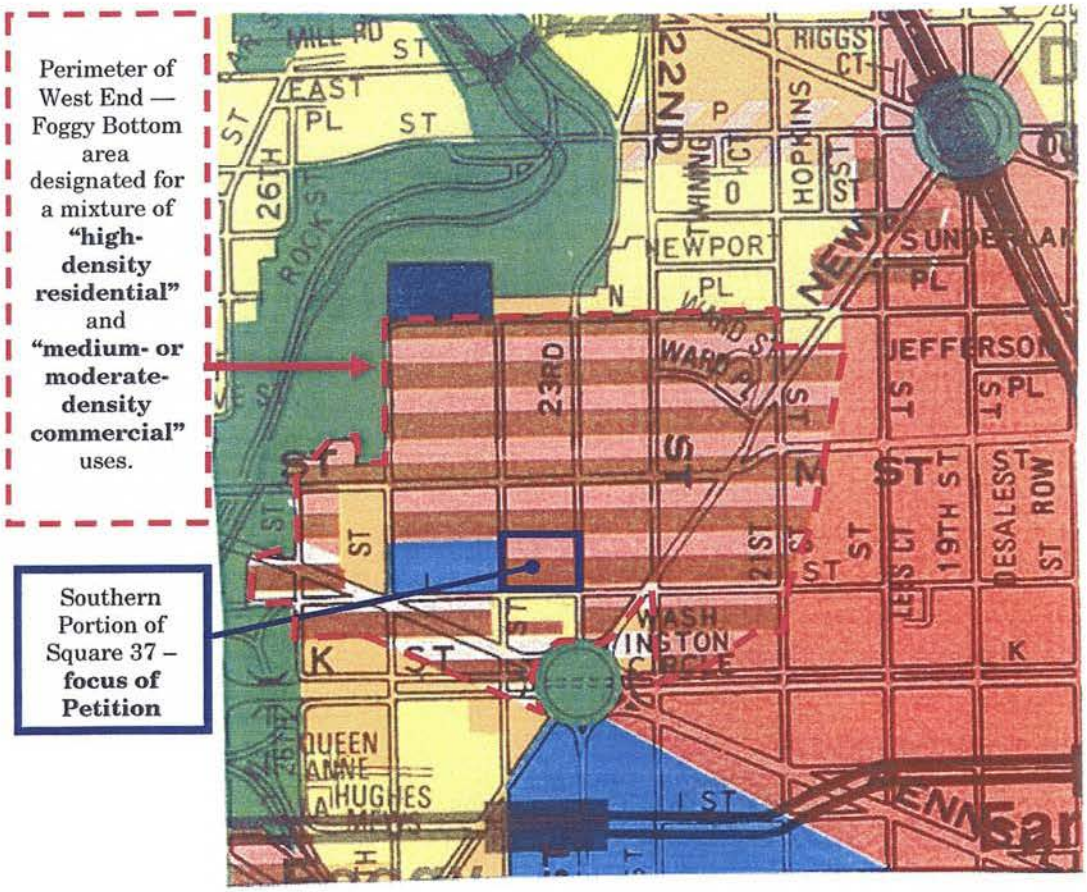
Within the District of Columbia, zoning may not be "inconsistent" with the provisions of the Comprehensive Plan for the District of Columbia.

The principal land use policies that apply to Square 37 are the same as those applied to a broad area of the "West End," specifically calling for a mix of "high density residential" along with "medium density" commercial uses.

This is set out in the Land Use map adopted as part of the Comprehensive Plan, a portion of which is depicted below:

Extracted from the Adopted Generalized Land Use Map – Annotations Added

Excerpt from "Map 1"



Juxtaposing the shape of the overall mixed use area from the Generalized Land Use map to the present zoning map demonstrates that the zoning applied to the southern portion of Square 37 is fundamentally, and impermissibly, inconsistent with the guiding provisions of the Land Use element of the Comprehensive Plan.

Other than the southern portion of Square 37, the remaining land area guided by the same Generalized Land Use Map's specification of high-density residential uses along with moderate- or medium-density commercial uses allows, by right, development to an FAR of 6.0 with heights to a maximum of 90 feet. Within that edge, some areas limit commercial uses to an FAR of 2.0, others to 3.0; but all allow residential development to an FAR of 6.0, or 6.5 in areas zoned C-3-C (which also allows commercial uses to the same overall FAR limit).

It is important to note that the overall perimeter of the land use map's mixed use area includes areas along New Hampshire Avenue, NW that are zoned R-5-E, or sometimes DC/R-5-E. These are mapped on Squares where CR, C-2-C, or C-3-C zoning allow and supply a range of commercial uses that satisfy the overall specification of a "mix" of high-density residential and medium-density commercial uses".[1]

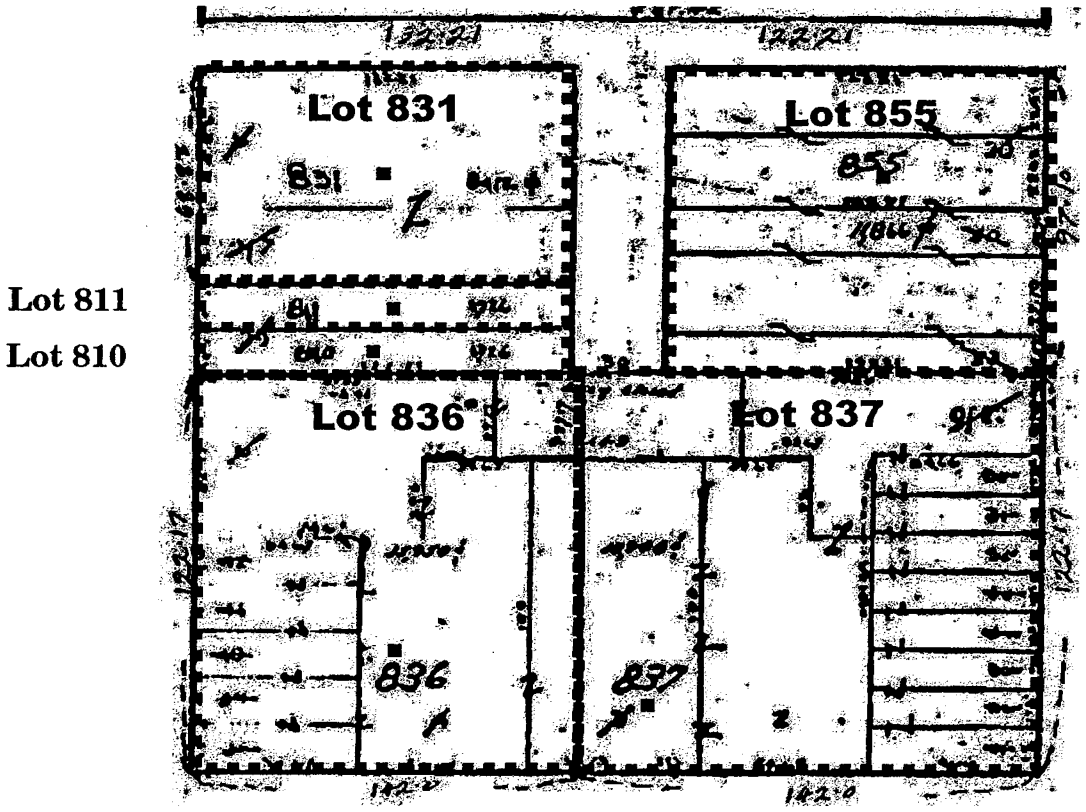
The Land Use policies applicable to the northern portion of Square 38 – which is the Square immediately south of Square 37 – differ with the Plan specifying a mix of moderate- and high-density residential along with low density commercial uses. This is not inconsistent with the split zoning and development on that Square, which includes both its northern portion, the area zoned R-5-B (which is developed with row houses, some converted to apartment buildings) and low-rise apartment buildings, and a larger area zoned R-5-E. Square 38's R-5-E area includes a 90 foot high rise apartment building within which both apartments and medical offices exist, the latter being an allowed use by right in that zone when operated as a "clinic for humans.")

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[1] The Comprehensive Plan, at §1100.11 provides that *"The Land Use Element does not identify or fix every use, height, and density on every block in the District. The text and the maps construct a guiding framework within which public and private land use and zoning decisions are to be made."*

Characteristics of the Southern Portion of Square 37:

The diagram below outlines the six lots that are the focus of the instant petition, lots 810, 811, 831, 836, 837, and 855 of Square 37. Petitioner owns Lot 855.



As to the uses, the southern part of Square 37's six lots are improved as follows and have the following characteristics:

- Lot 810 – One-family row dwelling at 1115 24th Street, NW has two (2) stories, originally a unit in the middle of a longer row of dwellings that extended to the south. It has a rear yard that appears to satisfy rear yard requirements of the R-5-B and more permissive Residence zones. The lot is rectangular and contains 1,726 square feet, consistent with stated dimensions of 122.21 foot depth and a width of 14.12 feet. Lot occupancy appears to be under 50 percent.

- Lot 811 – One-family row dwelling at 1117 24th Street, NW has two (2) stories, originally and still an end unit or a longer row of row dwellings to the south. It has a rear yard that appears to satisfy rear yard requirements of the R-5-B and more permissive Residence zones. The lot is rectangular and contains 1,726 square feet, consistent with stated dimensions of 122.21 foot depth and a width of 14.12 feet. Lot occupancy appears to be under 50 percent.

- Lot 831 – "The Tiverton" apartment house is located at 1121 24th Street and has four (4) full residential stories containing 44 apartment units, 43 on floors 1-4 and an additional unit on the ground floor. The building occupies over 78 percent of its land area and achieves, solely from the four floors of apartments, an FAR exceeding 3.12. The ground floor is partly below grade. Much of the ceiling of that lower floor appears to be 4' 0" or more *above* the adjacent grade; to the extent this is the case, the FAR could be as much as 3.9. The building has no rear yard. Its long, slender open court on the north side, adjacent to public alleys, satisfies any standard for minimum width. The smaller open court at the southeast corner of the property likely may not satisfy court width requirements that now exist. The larger closed court appears to have adequate width and area under any court standard adopted by the District of Columbia. The lot is rectangular in shape and contains 8,412 square feet, being 122.21 feet deep with a frontage of 68.83 feet (along 24th Street).

- Lot 836 – Located at 1101-1111 24th Street, the "West End Branch" of the District of Columbia Public Library system occupies a rectangular, two story building with a footprint of about 10,000 square feet. The lot is rectangular in shape and is a corner lot. The lot's area contains 15,950 square feet in assessment records, consistent with its dimensions of 127.17 feet (along 24th Street) and 125.42 feet (along L Street).

- Lot 837 – Located at 2301 L Street, this lot contains one building and an accessory building now utilized by the Special Operations Division of Metropolitan Police Department. The principal building is a two-story brick building with one-story component and an attached single story garage; a separate accessory building open on one side (large carport) exists along the northern limits of the property. The lot is rectangular in shape, is a corner lot, and contains 18,948 square feet, consistent with its dimensions of 149 feet (along L Street) and 127.17 feet (along 23rd Street). Lot occupancy is about 50 percent.

- Lot 855 – Located at 1120 23rd Street, this lot is paved, fenced, and used as a parking lot with a small attendant's booth. The lot is rectangular in shape and contains 11,866 square feet, consistent with its depth of 122.21 feet and its 97.10 foot frontage (along 24th Street).

- A segment of public alley 30 feet wide running north south separates Lot 855 from Lots 810, 811, and 834. It's southern edge abuts Lot 836 (for about 3 feet) and Lot 837 (for about 27 feet). It's area is 2,913 square feet.

The total area under the scope of the petition is thus the sum of the areas of the lots: 58,628 square feet. The mid-block north-south alley segment contains 2,913 square feet of land area. If the 15 foot wide east-west alley were closed, half of its land would revert to owners south of its centerline, adding no more than 2,058 additional square feet. **Thus, the scope of the rezoning petition could never exceed 63,599 square feet (under one and a half acres) even if all public alleys were closed.**

Streets and Rights of Way:

The area of the petition is bounded by 23rd Street, 24th Street and L Street.

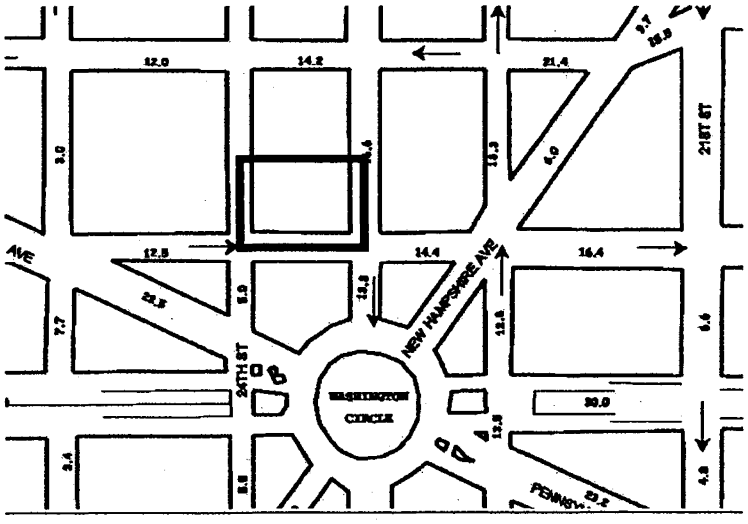
- 23rd Street provides a roadway of 30 feet centered in the overall 100 foot right of way, with the outermost 23 feet on each side dedicated to "the parking" after which 12 additional feet are set aside and used for a public sidewalk, tree boxes and the curb. The street operates one-way southbound with three lanes in weekday rush hours, two at all other times, and is a major arterial in the District of Columbia highway functional classification system.

- 24th Street provides a roadway of 32 feet centered in a right of way of 90 feet; "the parking" extends for 17 feet on each side along with a 12 foot wide strip for sidewalk, tree boxes, and curb. The street operates in both directions and is functionally classified as a "collector." Parking is allowed on both sides, but not allowed during the afternoon rush hours along the western side.

- L Street provides a roadway of 32 feet centered in a right of way of 90 feet; "the parking" extends for 17 feet on each side along with a 12 foot wide strip for sidewalk, tree boxes, and curb. It operates one-way eastbound with three lanes in the morning rush hour and is a functionally classified as a minor arterial. Some parking is allowed on its north side after the morning rush hour period.

The width of the various rights of way impact the maximum height of buildings by the terms of the Height Act of 1910. With certain exceptions, that Act limits the height of buildings in Residence zones to the width of the right of way less ten feet and it limits the height of buildings in other zones to the width of the street plus twenty feet. The Height Act's limits apply even if the Zoning Regulations' terms allow greater heights.

A street grid diagram showing average daily traffic volumes appears below:



The Petitioner's Recommendation:

On behalf of James Pedas, *et al*, the original petitioner in the instant case, we recommend that the Zoning Commission apply R-5-E zoning to the southern portion of Square 37 starting from the north at the public alley bisecting the Square and extending south *at least* to the southern limit of the north-south alley that extends south from the east-west alley, *preferably* to the entire 24th Street frontage. This would include all of Lots 810, 811, 812, and 855. R-5-E zoning could arguably and rationally applied to the entire southern portion of Square 37, including Lots 836 and 837 (the ones owned by the Government of the District of Columbia as well).

While CR is mapped as a base zone for areas north of M Street within the West End, it is only mapped south of M Street in conjunction with approved PUDs east of 25th Street. Petitioner finds that CR base zoning, while allowing somewhat greater flexibility for overall development than C-2-C in terms of ratio of residential to "other approved uses," is a source of significant concern to some community organizations and the ANC. For a number of reasons, petitioner does not recommend its adoption as the base zoning for any part of the southern portion of Square 37.

Rezoning the entire area within the petition to R-5-E maximizes the potential of the land to "yield" the largest number of apartment units helping achieve the Mayor's goal of having 100,000 new residents and consistent with the objectives of many in the surrounding community and its Advisory Neighborhood Commission to have more residents in the West End area. It also prohibits "by right" redevelopment of the District-owned land, should development rights transfer to private interests or a public-private partnership, with uses that some members of the surrounding residential community appears to oppose, particularly "offices" and "hotels."

Should the Commission wish to have development and densities in the southern portion of Square 37 be more in line with those facing them across 23rd, 24th, and L Streets, then the southern portion of the Square could be rezoned such that the 23rd Street frontage is zoned R-5-E (facing PUD-based CR at FAR of 6.9 and with 110' height), and the 24th and L Street frontages zoned R-5-D, or even R-5-C along L Street if the intent is to reduce the vertical development rights so as have a scale similar to the row houses on across its southern face, specifically in Square 38.[2] In our view, were the overall FAR allowed within southern portion of Square 37 to exceed 5.0, then the area would be within acceptable reach of being seen as "high density."

Should the Commission wish to provide limited commercial rights within the area of the petition, bolstering its appearance of consistency with that aspect of the Comprehensive Plan, then it could apply C-2-B or C-2-C zoning to specific portions of the area, such as the first sixty feet (60 ft.) north from the L Street frontage, with the balance being R-5-E.

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2 The Commission should note that development of buildings facing either L or 24th Streets with any Residence zone classification would be limited to 80 feet as measured under the Height Act, notwithstanding the greater height allowed in the Zoning Regulations.

Sixty feet is typically the greatest depth of most neighborhood serving retail establishments; it is also the approximate depth of the front yard from L Street after which the original Y-shaped wings of the original Columbia Hospital building begin, though new "wings" extend somewhat closer to L Street than those "Ys."

There are numerous other alternatives that could cure the present "inconsistency" that the Commission could consider and apply, options that would allow the critical mix of uses and overall densities spelled out in the Plan while respecting the scale of development to the immediate south and west of the area of this Petition.

No recommended zone classification, be it R-5-E, C-2-C or CR, would establish limits on use or bulk that would be adverse to the public uses now located in the Square (public library and police station) or to the uses in private ownership (apartment house, row dwellings, and parking lot). No recommended alternative would result in anything becoming non-conforming, but some existing non-conformities could remain on lot 831.

The point is, there are a number of reasonable choices that can be made that would achieve consistency with the Comprehensive Plan, all of which include zoning allowing FAR 6.0 and height of 90 feet on Lot 855 (for that lot, alternatives include R-5-E and C-2-C, even CR). What is unreasonable is to leave the present R-5-B zoning in place, particularly on the land in private ownership (Lots 810, 811, 831 and 855).

Purpose of the R-5-E Zone:

The R-5-E zone is the most permissive residential zone that currently exists.

The Zoning Regulations include a section in which all the zones are identified and classified, at §105.1 That section distinguishes the R-5 zones as shown in the first two columns of the table below. The table also notes overall restrictions on FAR and height from other sections of the Regulations.

Zone	Sub-Heading (§105.1(a)(5))		Max FAR (§402.4)	Max Height (§400.1)
R-5	General Residence, subdivided as follows:			
(A)	R-5-A	Low Density	0.9	40
(B)	R-5-B	Moderate Density	1.8	50
(C)	R-5-C	Medium Density	3.0	60
(D)	R-5-D	Medium-High Density	3.5	90
E)	R-5-E	**High Density** *[bold added]*	6.0	90

The R-5-E zone allows multi-story apartment buildings to rise as much as ninety feet (90 ft.). That same height is also allowed in the R-5-D zone but R-5-D limits total development to an FAR of 3.5 while R-5-E allows an FAR of 6.0.[3]

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[3] Another difference is the ratio of *required* parking, where R-5-D requires parking at a rate of 1:3, R-5-E requires 1:4. As a practical matter, this distinction has minimal impact as market conditions currently require that parking in new rentable/saleable, apartment buildings/ condominiums outside of the downtown core be provided at a rate approaching 1:1.

Note that within §105.1, **the R-5-E zone is the only one with a "high density" sub-heading.** For that and other reasons, we feel the R-5-E zone is the only zone district classification that can be viewed as fully "consistent" with the term "high density residential" in the Comprehensive Plan.[4]

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[4] Within the expanded descriptions of the separate zones, the various R-5 zones are also distinguished one from another at §350.2. Unfortunately, that section's text has not been amended or codified appropriately since the Commission adopted Order 721, effective October 19, 1992 (amended thereafter in Orders 721-A and 721-B thereafter, but not in a manner relevant to the immediate issue). Order 721 created a new R-5-C zone to "fill in the gap" between the prior R-5-B zone (similar to the present R-5-B zone other than allowing height to 60 feet) and the prior R-5-C zone (which was re-designated as R-5-D).

Prior to the adoption of Order 721, §350.2 provided (underscore and bracketed text added):

> **The R-5 districts are subdivided into R-5-A, R-5-B, R-5-C and R-5-D districts. In R-5-A districts, within the first (1st) of which only a low height and density shall be permitted; within the second (2nd) of which a medium height and density shall be permitted, and within the last of which *[namely, R-5-D]* a relatively high density shall be permitted.**

In its second specification, page 4, Order 721 amended section 350.2 to read (underscore added):

> **The R-5 districts are subdivided into R-5-A, R-5-B, R-5-C R-5-D and R-5-E districts. In R-5-A districts only a low height and density shall be permitted; in R-5-B a moderate height and density shall be permitted; in R-5-C a medium height and density shall be permitted, and in R-5-D and R-5-E districts a relatively high height and density shall be permitted.**

The declaration adopted above fails to fully distinguish between the R-5-D and R-5-E zones and is at odds with the semantic distinctions at §105.1. Unfortunately, the present Zoning Regulations, while changing §350.2 somewhat, continue to describe R-5-D and R-5-E in a single, combined phrase, one that is less correct than what the Commission directed in Order 721, above. The present regulations, at §350.2, provide (underscore added):

> **The R-5 Districts are subdivided into R-5-A, R-5-B, R-5-C, R-5-D, and R-5-E Districts. In R-5-A Districts, only a low height and density shall be permitted; in R-5-B, a moderate height and density shall be permitted; in R-5-C, a medium height and density shall be permitted; and in R-5-D and R-5-E, a relatively high height and medium-high density shall be permitted.**

Over year before the present regulations were published, Mr. Williams pointed out this issue and suggested language that we understood was accepted by the Office. Indeed, the version of the regulations downloaded from the Office of Zoning's website October 28, 2003) provided a different, and in our view more correct summary as follows (underscore added):

> **The R-5 Districts are subdivided into R-5-A, R-5-B, R-5-C, R-5-D, and R-5-E Districts. In R-5-A Districts, only a low height and density shall be permitted; in R-5-B, a moderate height and density shall be permitted; in R-5-C, a medium height and density shall be permitted; and in R-5-D, a relatively high height and medium-high density shall be permitted; and in R-5-E, a relatively high height and density shall be permitted.**

We feel that the last of these statements most accurately describes the *differing* purposes of the R-5-D and R-5-E zones, is consistent with the table of zones at §105.1, and is consistent with the distinctions drawn within the Comprehensive Plan. *Thus, the text now published should be corrected.*

Evidence from Traffic and Transportation Planning Expert Louis Slade:

- History of traffic and transportation studies and changes in West End and Foggy Bottom
- Areas of historic congestion
- Sources of congestion
- Effects of various uses on traffic generation at times of congestion
- Total area is under 1.5 acres and that small size alone greatly limits urban impact
- Projections of change in area traffic statistics as a function of changing present zoning R-5-B to the following (for each 12,000 square feet of land area: Petitioner (1/5 of overall area); western privately owned (lots 810, 811, and 831, or 1/5 the overall area); and District owned (3/5):
    - R-5-E zoning – FAR and Use mix
    - C-2-C zoning – FAR and Use mix
    - CR zoning – FAR and Use mix
- Conclusion: zoning may be changed to any of the above, even the most permissive zone classification, without perceptibly affecting existing traffic patterns, including virtually all points and times of congestion

Evidence from Expert Appraiser Richard Harps:

- History of tax assessments of land and improvements in southern portion of Square 37
- Effect of zoning on real estate tax assessments – general
- Projections of change to valuations and tax assessments of properties in southern portion of Square 37 (from the present R-5-B zoning for each 12,000 square feet of land area) and for taxable income of residents
    - Under R-5-D zoning
    - Under R-5-E zoning
    - Under C-2-B zoning
    - Under C-2-C zoning
    - Under CR zoning
- Conclusion: Changing the zoning to anything more permissive than R-5-B will result in higher land valuations and, therefore, increases in assessments and real property tax revenues. Actual development of vacant lots within the area will result in significant increments to the base for real estate "improvements." Development of residential properties that appeal to those for whom the District becomes, or remains, their "home" for tax purposes will increase revenue from income tax returns as well. Of all the zones listed, R-5-E has the greatest potential to generate revenues for the District while producing low marginal municipal costs for public education, welfare, and a range of municipal protective functions (fire, police, emergency medical services).

Evidence from Expert Architect Eric Colbert:

- Design specification from client
- Lot involved: Lot 855
- Characteristics of that lot
- Design resulting from analysis of site and surrounding conditions and constraints (separate submission of illustrative plan documents)
- Effect of recommended R-5-E Zoning (development "by right")
- Effect of alternative C-2-C or CR zoning (BZA relief must be sought: to address issue of "Residential Recreation Space," which requires that area equivalent to at least fifteen percent (15.0 %) be provided for residents to use for their recreational purposes, of which half or more must be more outside the building but nevertheless on the subject lot

We believe this submission satisfies the requirements for a pre-hearing materials and urge that the matter now be scheduled for hearing.

If you have any questions, please contact the undersigned by phone at (202) 828-1893 or Mr. Lindsley Williams at (202) 828-1873.

Thank you.

Holland & Knight LLP

Douglas J. Patton

Attachments (One copy only):
Property Owners Report and Labels
Tenant Report and Labels

cc: Advisory Neighborhood Commission 2-A
Office of Planning

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