The Gibson Condominium Association
1140 23rd Street, NW
Washington, DC 20037
202-775-8273

June 1, 2004

Ms. Carol J. Mitten, Chairman
Zoning Commission of the District of Columbia
One Judiciary Square, Suite 210-South
441 Fourth Street, NW
Washington, DC 20001

Re: ZC Case 00-27

Dear Chairman Mitten and Members of the Commission:

Following is my testimony in opposition to Mr. James Pedas' petition for a zoning map amendment to effect the southern portion of Square 37.

Todd Sherbacow
Owner Representative and Owner of Unit 902

ZONING COMMISSION
District of Columbia
Case No. 00-27
Exhibit No. 81

ZONING COMMISSION
District of Columbia
CASE NO.00-27
EXHIBIT NO.81

Thank you for the opportunity to testify as a party to this case. My name is Todd Sherbacow and my wife, Diana and I, own and reside at 1140 23rd Street in the Gibson Condominium. The Gibson is the closest residence to the petitioner's parking lot. We are separated only by a public alley. I was elected by the residents of the Gibson and by the Condominium's Board to represent our interests to see the petitioner's amendment denied in this case. Our community is united its opposition to the petition and hope the Zoning Commission hears our voices. Our local Advisory Neighborhood Commission, ANC 2A, the Foggy Bottom Association, the Tiverton Residential Association and the Gibson Condominium Association have all voted against the amendment to rezone the southern portion of Square 37. I submit to you a petition signed by 52 residents of the Gibson in opposition to the petition.

Those of us who have been in the area know that the current zoning for the square is adequate as we remember the historic town homes that existed in place of the parking lot before Mr. Pedas tore them down. We also remember other historic structures that Mr. Pedas purchased and after receiving permission to tear them down on a Friday afternoon he tore them down over the weekend before appeals could be heard. Appropriately, at this stage in the process the public has a voice in determining if Mr. Pedas should be allowed to replace the historic town homes he destroyed with a huge box structure. Thankfully for the residents of this community, Mr. Williams on behalf of Mr. Pedas has used a flawed interpretation of the law as the basis of their case. We accepted Mr. Williams offer to visit our community in early May to reintroduce Mr. Pedas' plans to rezone the lot adjacent to the Gibson. Mr. Williams presented his legal case that the Comprehensive Plan and the current zoning in Square 37 are inconsistent and that the law states implicitly that this inconsistency must be fixed and here we are today at a public hearing to consider the merits. But if we look carefully at the language within the Comprehensive Plan we'll see there is no mandate that the zoning change in Square 37. Mr. Williams in his Pre-Hearing submission submitted (at §112.3) "...zoning may not be inconsistent with the Comprehensive Plan..." Yet the whole paragraph reads:

112.3 Except as specifically required by other law, the District elements of the Comprehensive Plan, or the Home Rule Charter provision that zoning shall not be inconsistent with the Comprehensive Plan in An Act Providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and of the uses of land in the District of Columbia, and for other purposes, approved December 24, 1973 (87 Stat. 792; D.C. Code 5-414), [redacted].

"and are not binding policy directives". The non binding nature of the Comprehensive Plan's language means that the Zoning Commission is able to use its good judgment of whether the current R-5-B zoning is consistent with the character of the neighborhood

and appropriate zoning. There is no mandate that a change needs to be made. We believe the zoning amendment is not based in law and should be denied.

Another section of the DC Comprehensive Plan further bolters the citizen's case. 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." Again, we believe this clearly gives the Zoning Commission the opportunity to make a decision with the best land use impact in mind and not as Mr. Williams states the obligation to amend the zoning in favor of Mr. Pedas.

These are points of law that we believe we've uncovered but we are not attorneys and did not hire an attorney. In fact, as we investigated the idea of hiring an attorney we had great difficulty finding anyone that has either not worked for Mr. Pedas or simply did not represent community owners. As you can understand the real money is in representing those who own land that may be developed in the future.

While we feel we have uncovered important facts in law this is a community movement and let us now impart the beliefs of the citizens of the West End. Mr. Williams states in the Pre-Hearing submission and repeated in his comments at the Gibson, ANC hearing, and Foggy Bottom Association meeting that residents greatest fear are the "o" word and "h" word, Office and Hotel. In fact, what the resident fear is the "b" word- box developments of any type. While the petition states that the zoning alternatives include commercial options such as C-2-C and CR it then hedges and states that R-5-E is the best option. We see this as a crafty attempt to frame the debate and the compromise without the true input of the tax paying citizens. Ultimately we're against what we've coined and please pardon the pun, "u – squared", unlawful up zoning.

But realistically this is not about what Mr. Pedas wants to build for he is not known as a developer. Mr. Pedas business model is to purchase land, sit on the land while working to increase the allowable zoning and then sell at a handsome profit. The most recent history of such activity was across the street from Square 37, On Square 51, the location of the Millennium Ritz Carlton project. Mr. Pedas did not develop this land, he increased the allowable zoning and sold at the eleventh hour to maximize his profits. The West End community does not expect that on Mr. Pedas' small piece of property within our Square will ever develop the plans that Mr. Colbert has presented to the Zoning Commission. In fact, the design has not been touched since 2002 when this petition was originally pulled from consideration. The drawings still have markings referring to the failed overlay attempt. Mr. Pedas' plans are clear not by the drawing he submits but from the scope of his application. He seeks to change the zoning not just for his parking lot but also for the entirety of the southern half of Square 37. The expensive counsel from Holland & Knight, the land use experts, and the traffic consultants could have been paid less by Mr. Pedas were their focus only on the land owned by the petitioner. But, as Mr. Lindsley so adeptly alerted us weeks ago at the ANC 2A meeting, "Mr. Pedas is a skilled investor". Mr. Pedas knows his parking lot, just as the one he once owned across the

street, is more valuable to sell to a future developer with five adjacent parcels all with the greatest zoning density possible.

But despite Mr. Pedas' investment in attorneys and consultants the community has once again come together as we did not too long ago to stop another ill conceived plan when land use expert Mr. Lindsley came to you with a novel overlay plan which the Zoning Board is all together too familiar was defeated. While we as a community have not invested tens of thousands of dollars on lawyers and consultants we have talked to a few experts of our own who inform us that not only do we have cause as concerned citizens interested in maintaining our quality of life, but also in the law we have an ally to defeat this amendment. Collectively as owners of property in the West End, the citizens before you have invested millions of dollars in our homes and we will defend our rights. Passion and the facts are on our side.

This case involves the southern portion of Square 37 which consists of: Lot 855, which is currently a parking lot owned by the Petitioner; Lot 837, the Special Operations Division of the Metropolitan Police Department; Lot 836, the West End Branch of the District of Columbia Public Library System; Lots 810 and 811 two, two-story family dwellings; and Lot 831, The Tiverton, a rent-controlled apartment house.

The southern portion of Square 37 with a zoning of R-5-B, 50-foot height limit, provides a transition in zoning from the 90-foot structures in the northern portion of the square. The lower structures in the southern portion provide the necessary height to effect a transition of proportions to the adjacent Square to the south which lines L Street with 50-foot structures zoned R-5-B.

Current zoning is not inconsistent with the Comprehensive Plan for the District of Columbia. High-density residential and medium-density commercial are in place. In fact, Square 51, immediately to the East of Square 37, is under a PUD that allows for a FAR 15% above traditional high-density zoning and a height 22% above the normal high-density limits. Within the latitude afforded the Zoning Board, it would not be inconsistent to balance this over-development in Square 51 with lower-density areas within the West End.

Square 25, immediately to the west of the subject of this petition, is currently being redeveloped. Two 90-foot residential structures are being built, as well as a lower-density residential project, The Columbia. The latter project is consistent with a transition to the lower height of the Public Library across the street, has a FAR of 3.5, and through a PUD has granted amenities to the area in exchange the increase in its zoning as a matter of right.

The southern portion of Square 37, aligned with the southern portion of Square 25 and the northern portion of Square 38, are all in proportion to each other and are zoned low-density residential. The southern portion of Square 38 via a P.U.D. has increased to moderate-density residential.

The completed plans submitted to the Record of Case 01-33TA by architect Eric Colbert were introduced to residents of The Gibson as a representative structure that took into account the residents' perceived interests. The Petitioner is under no obligation to utilize these plans if the amendment is granted and the plans do not meet our needs. The blue prints include a farm of 21 air condensers exposed on the roof that directly faces the Gibson. These unsightly units are a far cry from the broad view we now enjoy which includes the historic town homes on L Street, a wonderful tree-scape in front of the parking lot, and the gorgeous trees on Washington Circle, which can be viewed, be resident with Southern facing windows in the Gibson. We are gravely concerned that the patrimony of our West End/Foggy Bottom neighborhood is being denigrated. Our neighbors, Georgetown and Dupont Circle are able to preserve their historic nature yet we're to expect square cement boxes on every corner? The developers of the Millennium Ritz Carlton project visited the Gibson to present their plans. We were promised greenery and instead we got concrete. Any so-called amenity to the neighborhood in terms of beauty was instead afforded only to the owners and guests of the Ritz who face an ornate internal courtyard complete with waterfalls and ponds. We on the street see empty storefronts of smoked glass, and concrete with no grass and almost no trees. Thanks for nothing.

The neighboring community is concerned that a change in zoning will place pressure on the owner of the Tiverton to sell its property and thereby deprive the neighborhood of its last bastion of affordable housing. The Office of Planning accepts the Petitioner's statement that current zoning is inconsistent with the Comprehensive Plan, yet suggesting that it would also be desirable to lessen the pressure on the Tiverton's owner to sell, it recommends lower-density zoning for the portion of the Square where the Tiverton sits. The Office of Planning has displayed the willingness to be flexible that is called for in the law but this is the very flexibility denied by the argument of the Petitioner. The framework does allow the Zoning Commission to consider the benefits of low-income housing when it considers the height of neighboring structures of Square 37. It would also be harmful to the community to create two neighboring squares in the West End that are fully occupied with 90-foot boxes, thereby creating a monotonous street-scale and depriving residents of light and air.

The neighboring community is also concerned with the pressure that will be placed on the District of Columbia to sell its land if the petition is granted. The Special Operations Division of the Metropolitan Police Department is located on Square 37 and serves the White House and Secret Service. As a matter of national security, the proximity to the White House of the police cars and motorcycles that make up the President's motorcade is of utmost importance, especially in a time of war. Alternative locations are much further from the White House and are therefore unacceptable to the Secret Service. A rezoning decision that would apply pressure on the District of Columbia to relocate the Special Operations Division during a time of war would therefore be harmful to national security.

The neighboring community opposes any rezoning decision that would pressure the District of Columbia to sell the land that houses the West End Branch of the District of

Columbia Public Library system. While DC Councilman Jack Evans of Ward 2 is on record supporting the retention of the library within a redevelopment of its current location, or its relocation within the area, citizens are concerned about the lack of long-term planning. Attracting more residents to the District is a worthy cause and maintaining amenities such as the public library will assist in these efforts.

In its Pre-Hearing Submission, the Petitioner states that its zoning amendment would be consistent with the Mayor's goal of attracting 100,000 more residents to the District, and the neighborhood and ANC are also supporting this cause. Currently three developments are ongoing in Square 25. These developments will bring hundred of additional residents to the West End. Residents of Square 37 have already lived through the inconvenience of living across the street from the development of the Millennium Project, which resulted in residential units of which over 40% remain unsold years after completion. The "Exxon" Project has been approved on the other side of the Millennium project next to the gas station. This will bring more high-end condominiums in a box structure that cuts of view and takes away from the neighborhood feel of the West End. While we live in a mixed-use area we see the West End residential area being developed to close in the nature of downtown DC with every nook and cranny other than park areas developed as a grand box. Four major residential projects are currently being built within a block of the area under petition. The Zoning Commission must await the results of the construction and have time to judge the impacts on traffic congestion, pedestrian traffic, and the ability to attract residents before having sufficient information to make decisions about public and private land use and zoning.

The bedrock in the general vicinity has required blasting in order to dig deep enough to offer underground parking. Ongoing blasting on the northern portion of Square 25 has caused damage and danger to neighboring residents and businesses. The Westin had a chandelier come crashing to the floor. Noise, dirt, loss of street parking, loss of travel lanes, and resulting traffic congestion have inconvenienced residents. Carl Brown, General Manager of the Westin Grand has confirmed that there are structural damages to his hotel. Foundation cracks and cracks in the wall of guest rooms on 24th Street resulted from the blasting for the JBG blasting that was needed to dig out the earth for the garage. The residents of the Gibson asked that James Pedas commission a study of the earth beneath his parking lot and the possible need to use explosives to excavate to his planned three underground levels of parking. Mr. Pedas did not respond to the Gibson's request. We are concerned about the damage to our foundation that may be caused by heavy blasting.

Traffic on 23rd Street is heavily congested throughout the evening rush hour. Cars traveling toward Washington Circle on their way to Virginia sit in bumper-to-bumper traffic. Meanwhile, guests of the Ritz Carlton and daily use members of the L.A. Sports Club within the Ritz complex flood the same area and utilize the alley cutting through Square 37. The resulting noise pollution as drivers honk their horns when either the alley entrance or the intersection of L Street and 23rd Street is blocked is a nuisance to residents of TheGibson, especially during the dinner hour.

It is reasonable to conclude that the introduction of 90-foot structures with underground parking on the southern portion of Square 37 in place of currently undeveloped land, a police station that runs the Presidential motorcade, a library with no parking, two small residences with no parking, and an apartment with no parking will dramatically increase the traffic flow into and around Square 37. Recent traffic assessments rate the traffic in the area as an "F." Three residential projects are underway on Square 25, which will increase traffic and reduce the already limited metered parking to accommodate the neighborhood's first supermarket. The goal of the Zoning Board is not to worsen traffic for the citizens of the West End, which would be the result of granting the Petitioner's amendment.

The existing zoning is R-5-B in the area facing Square 37's southern side. The Petitioner's pre-hearing filing states that the land across the street from the area under consideration "is treated distinctly within the Comprehensive Plan's Land Use Element and Generalized Land Use Map." However, 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." Where the Comprehensive Plan benefits the Petitioner, it quotes chapter and verse. But the Petitioner conveniently ignores the broad and interpretive language, which gives the Zoning Commission considerable leeway in making decisions that are in the best interests of the neighborhood.

The amendment should be denied as the petitioner used flawed legal arguments, the community is against the change in zoning, and the preceding arguments prove that the Zoning Commission would be acting in the best interest of law and the community to deny the petitioner's request.