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May 13, 2008

VIA HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N.W.
Suite 210-S
Washington, DC 20001

ZONING COMMISSION
District of Columbia

USE NO. 08-02

EXHIBIT NO. 12

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Re: **Zoning Commission Application No. 08-02 of Hay-Adams Holdings, LLC**
Prehearing Submission in Support of Application for a Zoning Map Amendment
(Square 186, Lot 809)

Dear Members of the Commission:

On behalf of Hay-Adams Holdings, LLC (the "Applicant"), and in compliance with section 3013.1(a) of the Zoning Regulations, we submit this letter prior to the hearing in the above-reference case in support of the proposed zoning map amendment from the SP-2 District to the C-4 District for Lot 809 in Square 186 (the "Property"). At its public meeting on April 14, 2008, where this matter was set for a hearing, the Commission raised the following issues to be addressed at the public hearing. Each of the Commission's concerns is discussed below.

A. **The Proposed Map Amendment Is Consistent with the Comprehensive Plan and Does Not Represent Impermissible Spot Zoning**

The rezoning of the property to C-4 supports, implements and is consistent with the policy set forth in section 1708.11 of the Comprehensive Plan. That section provides for the retention and expansion of existing hotel uses, and specifically calls for a one-story addition to the Hay-Adams Hotel. The requested map amendment will permit the retention of the existing hotel and the construction of a one-story addition that has a maximum height of 16 feet, as articulated in the Comprehensive Plan. Accordingly, the proposed map amendment complies with the policies set forth in the Central Washington planning area element.

At its April 14, 2008, meeting, the Commission requested confirmation from the Office of Planning that the requested map amendment does not represent impermissible spot zoning. As OP advised the Commission, the map amendment does not constitute "spot zoning" because

it does not meet the criteria established by the D.C. Court of Appeals. The court has held that in order for a map amendment to constitute illegal spot zoning:

the Commission's action (1) must pertain to a single parcel or a limited area ordinarily for the benefit of a particular property owner or specially interested party *and* (2) must be inconsistent with the city's comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of the zoning regulation, i.e., the public health, safety, and general welfare.

Citizens Ass'n of Georgetown v. D.C. Zoning Commission, 402 A.2d 36, 39-40 (D.C. 1979) (emphasis added).

The Court of Appeals has emphasized that a map amendment does not constitute illegal spot zoning unless both of these requirements are met. *See Daro Realty, Inc. v. D.C. Zoning Commission*, 581 A.2d 295, 299 (D.C. 1990). In *Daro*, the Court noted that:

[t]o date, we have issued four decisions on spot zoning. All four involved the rezoning of small parcels of land to the benefit of single property owners and, thus, in all four the first prong of the test was satisfied. However, we affirmed the Commission in each case, because the petitioners failed to satisfy the second prong by showing that the rezoning either was inconsistent with the comprehensive plan and/or surrounding environment or that it failed to serve the purposes of zoning by contributing to the public welfare.

Id. (internal footnotes omitted).

Here, as with the *Daro* case, the proposed map amendment for the Hay-Adams Hotel is not inconsistent with the Comprehensive Plan. This case is even stronger than *Daro* since the map amendment is necessary to implement the Comprehensive Plan concerning the Hay-Adams Hotel and is fully consistent with the site's designation on the Future Land Use Map and section 1708.11 of the Comprehensive Plan. Instead, as discussed below, it is the *current SP-2* zoning that is inconsistent with the site's high-density commercial land use designation on the Future Land Use Map.

B. The Property's Current Zoning Is Inconsistent with Its Designation on the Future Land Use Map of the Comprehensive Plan

The Property is currently located within the SP-2 District. The SP-2 District allows a maximum building height of ninety feet and a maximum density of 6.0 FAR, no more than 3.5 FAR of which may be devoted to nonresidential uses. 11 DCMR §§ 530.1, 531.1. This zoning designation is designed to "act as a buffer between adjoining commercial and residential areas, and to ensure that new development is compatible in use, scale, and design with the transitional function of this zone district." 11 DCMR § 500.2. As illustrated on the Zoning Map attached as Exhibit D of the Statement of the Applicant previously submitted, there are simply no residential zoning districts in the vicinity of the Property that require protection from nearby commercial

uses. The existing SP-2 District along 16th Street, N.W. is wedged between two large C-4 Districts and is bounded by the White House on the south.

As noted above, the Future Land Use Map designates the Property for high-density commercial land uses. The Framework Element of the Comprehensive Plan provides that areas designated for high-density commercial uses are generally characterized by office and office/retail buildings that are greater than eight stories in height. The Framework Element further notes that the C-2-C, C-3-C, C-4, and C-5 Districts are consistent with this land use designation. While each of these commercial zoning districts allows hotels as a matter of right, 11 DCMR § 701.6(h), the Property's current SP-2 zoning permits hotels only as a special exception. 11 DCMR § 512. In other words, the current zoning of the Property is inconsistent not only with the site's designation on the Future Land Use Map, but with the established and longstanding use of the Property as well. The requested map amendment is necessary to bring the Zoning Map into conformity – not just consistency – with the Comprehensive Plan and the Future Land Use Map.

C. The Proposed Addition to the Existing Hotel Was Referenced for the Information of the Commission

While map amendment applications are limited to the question of whether the proposed rezoning is consistent with the Comprehensive Plan, the Applicant furnished copies of architectural drawings for the proposed addition with its application to provide as much information to the Commission as possible. The Applicant has been fortunate to receive positive endorsements on the design from the U.S. Commission of Fine Arts, the D.C. Historic Preservation Review Board, and the U.S. Secret Service.

D. Compliance with Supplemental Filing Requirements of Section 3013.1

In compliance with section 3013.1 of the Commission's Rules of Practice and Procedure, the following information is attached this letter:

Exhibit A: List of Witnesses and Outlines of Testimony (§§ 3103.1(b) and (c))

Exhibit B: Names and Addresses of Owners of Property to be Rezoned (§ 3013.3)

Exhibit C: Names and Addresses of Property Owners within 200 Feet (§ 3013.6)

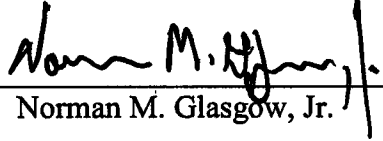
The Applicant estimates that it will require approximately 30 minutes to present its case to the Commission. See 11 DCMR § 3013.1(g). Pursuant to section 3013.7, the Applicant hereby certifies that it has complied with all the requirements of section 3013.

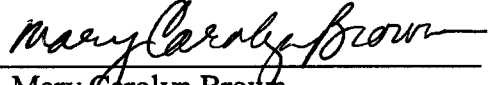
E. Conclusion

Because the requested map amendment is consistent with the Comprehensive Plan, the Property's designation on the Future Land Use Map, and the purposes of the Zoning Regulations and Zoning Map as set forth in D.C. Code § 6-641.02, the Applicant respectfully requests that the Commission approve the application.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Norman M. Glasgow, Jr.

By: 
Mary Carolyn Brown

cc: Jennifer Steingasser, OP
Karen Thomas, OP
Advisory Neighborhood Commission 2B

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