

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 08-19

As Secretary to the Commission, I hereby certify that on **APR 14 2009** copies of this Z.C. Order No. 08-19 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 7. Office of Planning (Harriet Tregoning) |
| 2. Dennis Hughes, Esq.
Wayne Quin, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006 | 8. DDOT (Karina Ricks) |
| 3. Armando Irizarry, Chair
ANC 2A
c/o West End Library
1101 24 th Street N.W.
Washington, DC 20037 | 9. General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 4. Commissioner David Lehrman
ANC/SMD 2A01
2020 F Street, N.W. #431
Washington, DC 20006 | 10. Office of the Attorney General
(Alan Bergstein) |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 11. Phillip Appelbaum, Chief Assessor
D.C. Assessor's Office
941 N. Capitol St. - 4 th Floor
(all map amendment cases) |
| 6. Councilmember Evans | 12. West End Citizens Association
P.O. Box 58098
Washington, D.C. 20037
Attn: Barbara Kahlow |

ZONING COMMISSION
District of Columbia

CASE NO. 08-19
EXHIBIT NO. 37

ATTESTED BY: Sharon S. Schellin

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcocz@dc.gov

Web Site: www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO.08-19
EXHIBIT NO.37

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-19**

Z.C. Case No. 08-19

(The HSC Foundation – Map Amendment at Square 101, Lot 874)

March 9, 2009

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved Jun 20, 1938 (52 Stat. 787, *et seq.*; D.C. Official Code § 6-641.01), having held a public hearing to consider the application from The HSC Foundation (the "Applicant"), and referred the proposed amendments to the National Capital Planning Commission for a 30-day review pursuant to § 492 of the District Charter, hereby gives notice of its adoption of an amendment to the Zoning Map of the District of Columbia that rezones Lot 874 in Square 101 (the "Property") from the R-5-D to the C-3-C Zone District.

FINDINGS OF FACT

Procedural Background

1. On June 6, 2008, the Office of Zoning received an application from the Applicant requesting the Commission to rezone the Property, with premises address of 2013 H Street, N.W., from R-5-D to C-3-C.
2. Notice of the public hearing was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
3. The Office of Planning ("OP") reviewed the Applicant's proposal to rezone Lot 874 in Square 101 to the C-3-C Zone District ("Application") and, in its August 28, 2008 report, recommended that the Application be set down for public hearing. OP also recommended approval of the Application through a written report dated December 8, 2008 and through testimony at the Commission's December 18, 2008, public hearing.
4. By letter dated November 4, 2008, and received by the Office of Zoning on November 6, 2008, the West End Citizens Association ("WECA") requested to participate as a party in this proceeding.

5. By memorandum dated December 17, 2008, the District of Columbia Department of Transportation ("DDOT") stated that it supports the Application.
6. On December 18, 2008, the Commission held a public hearing on the Application. As a preliminary matter, the Commission considered the party status application of WECA. The Applicant had no objection to the grant of party status to WECA. WECA was granted party status by the Commission. Mr. Steven E. Sher was accepted as an expert in land use and zoning and testified on behalf of the Applicant. Mr. Asher Corson, chairman of ANC 2A, testified on behalf of Advisory Neighborhood Commission ("ANC") 2A. Ms. Barbara Kahlow testified on behalf of WECA. The Commission acknowledged receipt of correspondence, dated December 17, 2008, from George Washington University, owner of properties to the immediate north, east, and west of the Property, indicating no objection to the Application.
7. At the December 18, 2008, public hearing, the chairman of ANC 2A indicated that the ANC voted unanimously to oppose the Application. The ANC chairman also submitted a resolution of ANC 2A in opposition to the Application. The Commission determined that the ANC submission did not meet the regulatory requirements necessary for the Commission to give great weight to the ANC's written statement of its issues and concerns position and left the record open following the hearing for the ANC to submit a conforming letter or resolution.
8. The ANC submitted a subsequent correspondence on December 22, 2008, indicating that the ANC unanimously passed a resolution in opposition to the Application at the ANC's December 17, 2008, public meeting. The resolution stated in relevant part that, "the site is located in a huge R-5-D area with the only all-commercial zoning either along Pennsylvania Avenue or in approved Planned Unit Developments (PUDs) in which some amenities are required as quid-pro-quo for the adverse impacts on our community;" and that the ANC was concerned that the change in zoning would "set a dangerous precedent which could adversely change the residential and mixed-use character of both Foggy Bottom ... and of the West End..." The resolution also included statements regarding the development proposal submitted by the Applicant to the District of Columbia Historic Preservation Review Board ("HPRB"), and a variance that the ANC asserts the Applicant will seek in the future.
9. At its public meeting on January 12, 2009, the Commission voted to reopen the official record to accept a letter dated November 25, 2008, and received by the Office of Zoning on December 22, 2008, from the Bureau of Catholic Indian Missions, owner of property at 2021 H Street, N.W., in support of the Application. The Commission confirmed receipt of the conforming correspondence from ANC 2A in order to give great weight to the comments

received from the ANC. The Commission took proposed action to approve the map amendment.

10. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by action dated February 5, 2009, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
11. The Commission took final action to approve the map amendment at its regularly scheduled meeting held on March 9, 2009.

The Merits of the Request

12. The Property is located in Square 101, which is bounded by I Street, N.W. on the north, 20th Street, N.W. on the east, H Street, N.W. on the south, and 21st Street, N.W. on the west. The Property fronts on the north side of H Street, mid-block between 20th and 21st Streets, with approximately 36 feet of frontage along H Street and 5,373 square feet of land area. The Property does not meet the 15,000 square foot minimum area requirement for consideration as a planned unit development, as established pursuant to 11 DCMR § 2401.1(c).
13. Along with the bulk of property in Square 101, given its location within the boundaries of the George Washington University (the "University") campus, the Property is designated for Institutional uses on the District of Columbia Comprehensive Plan Future Land Use Map and Generalized Policy Map. The portion of Square 101 that fronts on I Street to the north is designated for High Density Commercial uses. Square 101 is split-zoned C-3-C and R-5-D, with C-3-C zoning covering roughly the northern half of the square as well as the square's southeast corner pursuant to prior map amendments and planned unit development approvals by the Commission.
14. The immediately adjacent area to the Property is comprised of the following:
 - C-3-C zoned property to the immediate north of the Property, improved with an eleven-story (approximately 110 feet tall) office/retail building with premises address of 2000 Pennsylvania Avenue owned by the University.
 - Immediately east of the Property is a surface parking lot, also owned by the University, which has been rezoned to C-3-C as part of the University's Campus Plan/PUD (Zoning Commission cases # 06-11/-6-12), with the rezoning to take effect upon approval of the second stage PUD. According to

its application materials, the University intends to construct a 90-foot building with a density of 7.5 FAR on the site, to be devoted to academic/administrative/medical building use and/or residential/campus life/athletic uses.

- Immediately south of the Property, across H Street, is University Yard, a landscaped open space occupying the core of Square 102. Pursuant to the Campus Plan/PUD approval, the University intends to reduce the footprint of University Yard by enclosing it through construction of at least two new buildings in Square 102. One of those buildings will be constructed over what is now open space immediately across from the Property and will measure approximately 65 feet in height and 80,000 square feet of gross floor area devoted to the University's academic, administrative and/or medical uses.
 - To the immediate west of the Property is vacant land owned by the University, which is landscaped and paved for pedestrian passage to and from the adjacent 2000 Pennsylvania Avenue office building. Further west is a three-story building utilized for office purposes by the Bureau of Catholic Indian Missions.
 - At the southwest corner of Square 101 is a six-story building utilized by the University for non-residential purposes. This building was constructed pursuant to a Campus Plan processing (BZA Order No. 16379), which permitted construction of an 80-foot mixed-use (faculty office, classroom, auditorium) building.
15. The Property is improved with a three-story-plus-cellar masonry townhouse building with an accessory two-story masonry carriage house/garage at its rear, both of which appear to have been constructed in the late nineteenth century. The existing improvements abut the eastern property line of the Property, leaving roughly the western half of the Property vacant and unimproved.
16. The Property is one of a number of properties located within the proposed boundaries of a contemplated "Foggy Bottom/George Washington University Campus Historic District", which district is the result of a proffer made by the University as part of the public benefits package it submitted in its application for first-stage PUD approval in Zoning Commission Case No. 06-12. Specifically, the University agreed to file an application with HPRB to: (1) achieve the designations of University-owned individual landmarks identified in the University's Historic Preservation Plan; and (2) work with the District's Historic Preservation Office ("HPO") in the preparation of documentation to be filed with said office supporting designation of a proposed historic district, again as identified in the University's Historic Preservation Plan submitted as part of its

applications to the Commission. The proffer was made a condition of the first-stage PUD approval granted.

17. The Property is located in the R-5-D Zone District. This zone classification permits multiple dwelling residential buildings and other compatible uses to a maximum building height of 90 feet and a maximum building density of 3.5 FAR. Lot occupancy in the R-5-D Zone District is restricted to 75%. Office use is not included within the generally permitted uses in the R-5-D Zone District. The improvements on the Property have been occupied for non-residential purposes by a non-profit association for several years.
18. The Applicant requests rezoning of the Property to the C-3-C Zone District, consistent with properties to the immediate north and as designated for rezoning east of the Property. The C-3-C Zone District is a commercial district that permits medium-high density development, including office, retail, housing, and mixed-use development. Buildings in the C-3-C Zone District may be constructed to a maximum height of 90 feet and maximum density of 6.5 FAR as a matter-of-right. Buildings in the C-3-C Zone District may also occupy up to 100% of the lot on which they are situated.
19. The proposed Map Amendment to the C-3-C Zone District will facilitate use of the Property for office purposes and increased density compatible with the surrounding office and University institutional buildings in Squares 101 and 102. The Commission finds that less than 10% of the land area in Square 101 and in the six surrounding squares south of Pennsylvania Avenue is utilized for residential purposes, and the bulk of that residential use is for dormitory use by the University.
20. The Commission finds that the proposed map amendment is not inconsistent with the District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan") and is fully consistent with the following components of the Comprehensive Plan:
 - a. Land Use Element: The Comprehensive Plan specifies general policies to "ensure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; ...to sustain, restore or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries." (§ 302.1) Further, the proposal is reflective of the policy of concentrating redevelopment efforts near Metrorail station areas which offer the greatest opportunities for infill development and growth. (§ 306.11)

- b. Economic Development Element: The Comprehensive Plan states an office sector should be planned for that will continue to accommodate growth in service-sector office industries and that the primary location of this growth should be in Central Washington. (§ 707.6) The proposal will establish a long-term office use just outside the boundaries of the Central Employment Area. This space will potentially accommodate growth in a diverse array of office industries, including institutional and/or non-profit uses.
- c. Historic Preservation Element: The Comprehensive Plan encourages the appropriate preservation of historic buildings through an effective design review process. (§ 1011.6) As mentioned above, although the HPRB has not yet designated the proposed Foggy Bottom/George Washington University Campus Historic District, the subject property is one of a number of properties identified as within the proposed boundaries. The applicant has therefore worked closely with HPO staff even though the property is not currently designated.
- d. Comprehensive Plan Future Land Use Map: The Comprehensive Plan 2006 Future Land Use Map designates the property for Institutional Uses because of its location within the George Washington University Campus Plan boundaries, even though the property is not owned by the University. The Comprehensive Plan states that the areas identified as Institutional on will not necessarily remain static and that change and infill can be expected. Given that most such Institutional designations are the result of university campuses, such change and infill is expected to occur on each such campus consistent with campus plans (§ 223.22). Given that the site is not part of the University's holdings, such change must occur other than through the campus plan process, dictated by compatibility of the proposed use with the surrounding neighborhood.

The Comprehensive Plan states that if a change in use occurs, the new designations should be compatible in density or intensity to those in the vicinity, unless otherwise stated in the Area Elements or an approved Campus Plan (§ 226.1). The proposal is compatible with the existing or approved development in the surrounding vicinity.

CONCLUSIONS OF LAW

The Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, D.C. Official Code § 6-641.01) ("Zoning Act"). Section 1 of the Zoning Act authorizes the Commission to regulate the uses of property in order to "promote the health, safety, morals, convenience, order, prosperity,

or general welfare of the District of Columbia and its planning and orderly development as the national capital.” D.C. Official Code § 6-641.01. Section 2 of the Zoning Act provides that the “zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.” D.C. Official Code § 6-641.02. Section 3 of the Zoning Act, among other things, authorizes the Commission to amend the zoning regulations and maps. D.C. Official Code § 6-641.03.

The Commission finds that the proposed C-3-C zoning of the Property is consistent with the surrounding uses, intensity of uses, and heights of surrounding properties and that approval of the Application will result in no adverse effect on neighboring properties.

The Commission acknowledges the issues and concerns raised by ANC 2A and WECA, and fully credits the unique vantage point that ANC 2A holds with respect to the impact of the requested map amendment on the ANC’s constituents. However, for the reasons stated below, the Commission does not find WECA’s position and the written recommendation of ANC 2A to be persuasive.

The Commission does not agree that its grant of the Application will result in construction on the Property that will overwhelm the existing improvements on the Property and neighboring properties. Instead, the Commission finds that: (1) the Applicant has worked extensively with the HPRB and HPO regarding its renovation plans for the Property even though the Property is not currently designated historic; (2) the Application is supported by the Bureau of Catholic Indian Missions and the University, which are the owners of all the properties in the immediate vicinity of the Property; (3) and that, with respect to impacts on light and air of adjacent properties, permitted building height in the existing R-5-D Zone District is the same as in the proposed C-3-C Zone District. The Commission acknowledges that the Application is supported by the owners of all the surrounding properties to the Property.

Nor does the Commission agree with ANC 2A and WECA regarding the potential impact that the approval of the Application may have upon the delicate balance of residential, institutional, and commercial uses in the Foggy Bottom neighborhood in the event other owners of residentially-zoned properties should pursue rezoning of their properties.

Rather, the Commission concludes that approval of the map amendment will not have any impact on the balance of uses in the area, since there are now no residential uses in the building on the Property. Further, the Commission recognizes the exceptional circumstances involved in the Application and finds that its approval of the Application will have no precedential effect upon other properties. In the present Application, the Commission is presented with a property that is: (1) zoned for high-density, albeit residential, uses; (2) is too small to qualify for review as a planned unit development; (3) is immediately adjacent to existing and proposed construction measuring between 90 and 110 feet or more in height; (4) is located immediately adjacent to medium-density commercial, C-3-C, zoned properties, allowing for an extension of the existing zoning boundary line; (5) is designated for Institutional use by the Comprehensive Plan; (6) has a history of non-residential use of the existing improvements on the Property; (7) has virtually no residential use within its square or any tangent squares; and (8) has the support of the owners of all immediately abutting properties, the Office of Planning and the Department of Transportation.

Although the Applicant has proffered the sensitivity of its proposed design to the Commission, the issue is entirely irrelevant to this decision. Once this amendment becomes effective; the Applicant may build any structure consistent with the matter of right standards under the rezoning, subject to other constraints, such as historic preservation review, as may apply. The Commission approval makes no assumption as to whether the design favored by the Applicant will ever be built.

By virtue of the preceding discussion, the Commission has accorded the issues and concerns raised by ANC 2A the "great weight" to which they are entitled pursuant to D.C. Official Code § 1-309.10. The Commission fully credited the unique vantage point that ANC 2A holds with respect to the impact of the requested map amendments on the ANC's constituents. However, for the reasons stated above the Commission concludes that the ANC did not offer persuasive advice that would cause the Commission to deny the map amendment requested.

In amending the Zoning Map, the Commission is constrained by the limitation in the District Charter that the Zoning Map be "not inconsistent" with the Comprehensive Plan. §492(b)(1) of the District of Columbia Home Rule Act, effective December 24, 1973 (Pub.L.No. 93-198; 87 Stat. 774; D.C. Official Code §6-641.02).

The Commission concludes that approval of the requested map amendment from the R-5-D to the C-3-C Zone District is not inconsistent with the purposes of the Comprehensive Plan and is consistent with the other requirements of the Zoning Act. The Commission concludes that the requested map amendment is not inconsistent with the Comprehensive Plan, including the District's general policy in support of general strengthening of the established urban core through new infill development, and the more specific policy of avoiding sharp contrasts in height and bulk between the George Washington University

campus and the surrounding community, and will promote orderly development in conformity with the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map. The present request is not inconsistent with the designation of Square 101 for Institutional Uses on the Future Land Use Map.

The map amendment is not spot-zoning because it is not inconsistent with the Comprehensive Plan. To constitute illegal spot-zoning, the Commission's action must (1) pertain to a single parcel or limited area; and (2) must be inconsistent with the 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. *Daro Realty, Inc. v. D.C. Zoning Comm'n*, 581 A.2d 295, 299 (D.C. 1990). The proposed map amendment does not constitute spot-zoning under this test. The proposed C-3-C zoning is not inconsistent with the Comprehensive Plan, as set forth in this Order.

The Commission also concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the community in which the Property is located.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. The Commission concurs with OP's recommendation for approval, and has given its recommendation the great weight to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the Application for an amendment of the Zoning Map to change the zoning of Lot 874 in Square 101 from R-5-D to C-3-C.

The Applicant is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2038, as amended, D.C. Official Code § 2-1401.01 *et seq.* ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color religion, national, origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or

refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On January 12, 2009, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the Application by a vote of 3-0-2 (Peter G. May and Michael G. Turnbull to approve; Gregory N. Jeffries to approve by absentee ballot; Anthony J. Hood, not having participated, not voting; third Mayoral appointee position vacant, not voting).

On March 9, 2009, upon the motion of Commissioner May, as seconded by Chairman Hood, the Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of 3-0-2 (Peter G. May to adopt; Gregory N. Jeffries and Michael G. Turnbull to adopt by absentee ballot; Anthony J. Hood and William W. Keating, III, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on APR 10 2009.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., December 24, 2007

Plat for Building Permit of: SQUARE 101 LOT 874

Scale: 1 inch = 20 feet Recorded in Book A&T Page 3710-L

Receipt No. 01805

Furnished to: HOLLAND & KNIGHT

Bob Nye
For Surveyor, D.C.

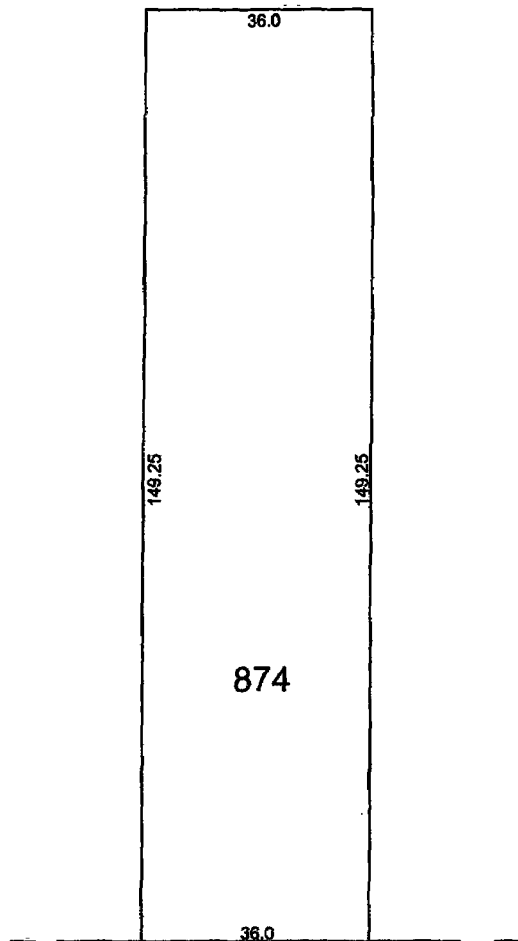
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rise of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or lots, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

By: L.M.A.

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



H STREET, N.W.

Z.C. Case 08-19