BEFORE THE DISTRICT OF COLUMBIA ZONING COMMISSION
ZONING COMMISSION CASE NO. 03-116

Testimony of Frederic W. Schwartz, Jr., Esq.

My name is Frederic Schwartz, Jr., and I appear this evening as a proponent with reservations in the matter before you. By way of background, I was from 1972-1973 Special Assistant to the Assistant Secretary of Transportation for Environment and Urban Systems and later the Staff Assistant to the Secretary of Transportation, United States Department of Transportation. Thus, I have some planning background. Since 1981, I have been in the private practice of law specializing, in part, in appellate work and administrative law. I last appeared before the Commission in 1989 with essentially the same concerns, and if this trend continues I expect to spend my 75th birthday in your company.

I have held a held a proprietary lease for Apartment 111 in Watergate West, located immediately adjacent to the property which is the subject of this hearing, for more than 25 years. While I have represented Watergate West before the Commission, I should point out that I do not represent Watergate West this evening–indeed I take a different view from that corporation–but I believe that my views will be of assistance to the Commission.

Relevant History of the Watergate PUD

The Office of Planning has provided to the Commission in tabular form a listing of Zoning Commission and B.Z.A. action relating to the staging approvals and alterations to the Watergate Complex. I believe, however, that the tabulation misses the flavor of the original proposal and so I have attached to my testimony a copy of the transcript of the original Zoning Commission hearing which took place on Friday, April 13, 1962. I note for the record that "[t]he

ZONING COMMISSION
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intent of the design of this project is to provide a well-planned development primarily residential, with related office and commercial facilities, which will offer a variety of building types in an attractive and efficient overall plan related to the general area." Tr. 7 As a hotel was permitted under the then current zoning regulation, there was little mention of that facility in the hearing. *See* Tr. 10-11 Of particular note in the original plan were 19 one-story patio type villas stepping towards the Potomac, an offer from the developer which was thankfully abandoned. Tr. 9 The project, when completed, was to contain three high-rise apartment buildings with 1,400 dwelling units, a hotel with 350 suites, 202,240 square feet of office space, 95,000 square feet of commercial space, and 438,000 square feet of underground parking for approximately 1,250 cars. Tr. 9, 17

Through the years, there have been a number of modifications to the Watergate Complex. Most significantly, the number of dwelling units actually constructed decreased by 756 units, more than 50%, to 644 units. Thus, the hotel conversion will help to restore this primary purpose of the PUD. The number of parking spaces decreased from 1,250 to what was supposed to be 1240, but as we will see later the number is considerably less. The commercial uses have been shifting as well with men's wear, *haute couture*, five star dining and a carry-out managed by RA among those entities disappearing from the scene. Similarly, a health club which was not originally envisioned has been added.

The Zoning Commission's Jurisdiction

As the Commission knows, its charge in considering a proposed PUD and a new use or structure in an approved PUD is to determine whether the impact on the surrounding area and upon the operation of city services and facilities will be favorable or acceptable given the quality of public benefits in the project. 11 DCMR 2403.3, 11 DCMR 2409.9 In this regard, the project or its amendment must be consistent with the Comprehensive Plan and other public policies. 11 DCMR 2403.4 To this end, the Commission should consider the specific public benefits and project amenities of the proposed development. 11 DCMR 2403.5 A public amenity is one type of public benefit that adds to the attractiveness, convenience, or comfort of the project for occupants and immediate neighbors and which would not be available as a matter of right. 11 DCMR 2403.6, 2403.7

Thus, the Commission is to evaluate the new residential structure to ensure it is consistent with the initial intent of the PUD and the overall zoning scheme. The authority of the Commission to regulate the discontinuance of a previous use, such as the hotel use, is problematic. It is within the authority of the Commission to insist that those concessions made by a developer in exchange for altering zoning requirements and closing streets, such as a theater or art gallery, be continued. Similarly, assurances made by a developer in relations to matters regulated by the zoning ordinance, such as parking, can be enforced through covenants or otherwise. In my view, however, the Commission lacks the authority to require the continuation of a use which was a matter of right such as the hotel. For this reason, the current owner of the hotel would not need the authorization of the Commission to discontinue its use as a hotel, to transfer the hotel's management to a more pedestrian chain, to close the Jean Louis restaurant, a

sad day in my life, or to shut down the hotel's health club which would likely lead to my divorce. Rather, the Commission's responsibility--as we see this evening–is to ensure that the new use is consistent with the goals and objectives of the PUD and the District of Columbia. I raise this point because those who object to the proposed residential project focus most of their attention on the loss of the hotel. This, in my view, is not a matter before the Commission. While the McNeil-Greene report submitted to the Commission by opponents is generally consistent with an enlightened view of the importance of a liveable city, it mischaracterize a mere convenience as an "amenity." As I have already discussed, the term amenity has a specific meaning in the zoning regulations. Having a hotel next door is a convenience to Watergate residents, but it is not an amenity within the meaning of the zoning regulations. There are within half a mile of Watergate West, if Expedia.com is to be believed, seventeen hotels including two Ritz Carletons, a Four Seasons, a Westin Grand, a Park Hyatt, and a Fairmont. (Indeed, the prevalence of premium properties in the neighborhood explains the Watergate Hotel's perilous position.) A block or so from Watergate West are two boutique hotels, the River Inn and the George Washington University Inn, as well as a Doubletree Guest Suites. Thus, it is clearly a convenience for some residents to have a hotel for their out-of-town visitors next door, but not a legal amenity whose continuance can be enforced by the Commission

The *Bona Fides* of the Proposed Use

A. Form versus Function

The opponents of the project have properly pointed out that the Watergate is of architectural merit, a fact which cannot be denied. Indeed, the curvilinear form of the Watergate Complex was new to Washington when it was proposed. At the first Watergate hearing, Mrs. Harold Hinton, President of what was then called the Progressive Citizens Association of Georgetown, suggested that the proposed structure "does not look like Washington. It looks something like a very attractive world's fair." Tr. P. 35.

Nonetheless, Watergate's merit lies in its form, not its function. The replacement of hotel functions with residential functions will have a negligible effect on the meritorious architectural form for which Watergate is justly renown.

B. Cooperative versus Condominium

Early objections to the proposal related to the fact that the project would utilize a condominium regime rather than a cooperative structure. This should not be a matter of concern to the Commission. It was not a matter of concern to your predecessors, and the method of ownership is not impacted by the zoning regulations. If Watergate West, for example, decided to adopt a condominium regime, it need not seek the approval of the Commission. More important, there are a number of disadvantages associated with the cooperative structure which lowers the value of cooperative units. For this reason, there is a 30% reduction in the District of Columbia real property taxes assessed against cooperatives in acknowledgment of this reduced value. The Commission has no authority that I can find to require that a developer reduce the value of its project by adopting the cooperative structure. Equally important, the arguments

supporting a cooperative structure are specious. Section 45-1848, D.C. Code, specifically establishes the right of the unit owner's association to contract on behalf of the condominium owners. Thus the specter of 150 new and unruly member of the Watergate Council is unrealistic.

It is my understanding that in an effort to obtain the support of the Watergate cooperatives the developer of the new project has now agreed to adopt a cooperative structure. I urge the Commission to address this issue in its Findings of Fact and Conclusions of Law, however, should the parties to the agreement determine that a cooperative structure is no longer appropriate.

C. Loss of Conveniences

As I have discussed, most of the complaints against the new use concern the loss of current conveniences. While these losses are clearly genuine--and genuinely felt--the Commission under its grant of authority cannot offer a remedy. Of particular concern is the health club and the restaurant. While there is another restaurant in the Watergate Complex and the Kennedy Center across the street contains two additional restaurants, I understand that the developer of the new residential structure have agreed in writing to include a restaurant in the structure. The second prominent concern–at least in my house–is the continuation of the exercise facility. Again, I understand that the developers have agreed to include in the design an exercise facility open to the Watergate community. Neither of these agreements guarantees the continuation of such a facility after transfer to the condominium association, but the Commission can no more require that these two conveniences be continued than it could bar their closure under hotel management. The findings of fact and conclusions of law should incorporate the essence of these two agreements, however, to broaden the remedy in case of breach.

D. Parking

Finally, and most important, we come to the matter of parking. As I discussed earlier, the provision of parking is required by the zoning regulations. While the most recent Zoning Commission Order, 89-6M/62-19, provides that there shall be "no less than 1,240 parking spaces located in a three (3) level common garage that serves the entire complex," this requirement has never been met. Litigation in *Lund, et al. v. Watergate Investors, et al.*, CA95-4353, has demonstrated by general agreement of the parties that there are at least 30 less parking spaces than required, the actual number depending on how one treats the unapproved surface parking spaces that the hotel has included in its total. Watergate West and a number of individual parking space renters brought this deficit to the attention of the Zoning Administrator a number of years ago, but he declined to act. Consequently Watergate West and these individual renters brought an action against the successors in interest to the original developers to enforce parking rights and restrictions contained in the zoning regulations. The Court of Appeals in *Lund, et al. v. Watergate Investors, et al.*, 728 A. 2d 77 (D.C. 1999) validated the right to bring such an action, and the matter is now at the proposed findings of fact and conclusions of law stage.

This litigation is addressed this evening because the proposed redevelopment of the hotel will include the addition of 61 new parking spaces. The new parking spaces apparently will eliminate the current deficit, one of the major issues in the suit. This conversion of hotel space to parking spaces can take place whether that space, which is owned by Watergate East, is sold to the developers or leased for the remaining 62 years of the lease. Both scenarios can be justified legally. The imperative is that the developer's agreement to provide the new parking spaces be included in the requirements imposed by the Commission in its Order.

In this regard, the OP was concerned that the parking spaces to be provided by the developer would be purchased, thus depleting the number of public spaces available for the restaurant. This should not be a concern. There is a commercial underground parking lot adjacent to the hotel with approximately 135 public spaces serving the commercial mall. There would likely be sufficient spaces in this parking lot to service the restaurant as well.

Conclusion

This Commission is faced with a task which it has faced many times. It must exercise its authority to the extent permitted by statute and regulation, but no more. The Watergate residents who oppose the conversion genuinely and accurately believe themselves aggrieved because the hotel and its services are a useful and convenient adjunct to their residence at the Watergate cooperatives. They ask the Commission to maintain the *status quo*, but the Commission is limited in the remedy it can provide these residents. I have outlines those steps the Commission can and should take within its authority to ameliorate the loss these Watergate residents–and I include myself and my wife among their number–will experience by changing the use of the Watergate structure currently occupied by a hotel. In this way, the Commission can act within its authority and provide half a loaf where a full loaf is not legally permissible.

DISTRICT OF COLUMBIA

ZONING COMMISSION

PUBLIC HEARING

The Zoning Commission met, pursuant to notice, at 10:00 a.m., Room 500, District Building, 14th & Pennsylvania Avenue, Northwest, Washington, D. C., Friday, April 13, 1962.

MEMBERS PRESENT:

General F. J. Clarke, Presiding
Walter N. Tobriner
J. George Stewart

MEMBERS ABSENT:

John B. Duncan
Conrad L. Wirth

ALSO PRESENT:

H. G. Ashton
R. O. Clouser
H. O. Webb, Jr.

FRIDAY -- APRIL 13, 1962

INSERT #1
DATE
NAME

April 10, 1962

REPORT OF THE ZONING ADVISORY COUNCIL

April 13, 1962 HEARING

"Application of Island Vista, Inc. for consideration under the provisions of Article 75, of a large-scale planned development to be known as "Water Gate", said proposal being within the area bounded by New Hampshire and Virginia Avenues, F Street and the Rock Creek and Potomac Parkway, N. W., squares 2, 3, 7, 8, 9, 18, and reservation 133. Included also are all public streets within the area so bounded which are proposed to be closed and conveyed to the applicant."

The Council has reviewed this proposal and believes its approval in general is in the public interest. A similar recommendation has already been made by the National Capital Planning Commission and under applicable zoning rules a detailed report will be submitted prior to the scheduled hearing before the Zoning Commission.

The Council is of the opinion that it should neither preempt nor duplicate responsibility delegated specifically to the Planning Commission.

However to insure full compliance with the provisions of Section 5 of the Zoning Act (52 Stat.797) the Council requests permission to submit, following the Planning Commission recommendation, either concurring, supplementary or a rebuttal report if it believes any such report desirable for Zoning Commission consideration.

(S) R. O. CLOUSER

(S) WILLIAM F. McINTOSH

(S) H. O. WEBB, JR.

MR. ASHTON: (Continues) The Citizens' Zoning Advisory Committee discussed in general what type of action should be taken on this particular item on the agenda. Several members of the Committee raised objections to the wall like affect created on Virginia Avenue. They felt that there should be more openness from the land side of the project.

The Committee by majrority vote approved the following statement:

> "The Committee has no objections to the SP zoning and the 130 foot height, however, the Committee objects to the consistent use of the 130 foot wall like structure with no openings, blocking the city off from the river."

Here are copies then of the Planning Commission's report. Do you want that read?

CHAIRMAN CLARKE: I think you better.

MR. ASHTON: The letter of the National Capital Planning Commission reads as follows:

> (MR. ASHTON THEN READ THE LETTER OF THE NATIONAL CAPITAL PLANNING COMMISSION WHICH IS NOT INCLUDED IN THE TRANSCRIPT BUT ON FILE IN THE ZONING OFFICE.)

MR. ASHTON: It was signed by W. E. Finley, Director.

CHAIRMAN CLARKE: Will you proceed?

ATTORNEY FOR THE APPLICANT TAKES THE STAND.

MR. WILLIAM R. LICHTENBERG: If the Board please my name is William R. Lichtenbergand with Mr. Joseph Luria I am counsel for and appearing on behalf of the applicant, Island Vista, Incorporated. Mr. Nicolas Salgo is President of Island Vista and Mr. Milton Fisher, Architect for the Watergate Development.

In accordance with the provisions and requirements of Article 75 of the zoning regulations of the District of Columbia there has been submitted to the zoning commission, an application for its consideration of a large scale plan developmenton the property of Island Vista, Incorporated, consisting Lots 800 and 804 in Square 2, and Squares 3, 7, 8, 9, and 18 and in the District of Columbia under the provisions of that article. The application states compliance with provisions 7501.2 through 7501.23 of the zoning regulations, and appropriate drawings were submitted in accordance with the provisions of 7501.31 and 7501.32. We have set up on the easel a number of exhibits that this Commission has heretofore seen in connection with the zoning application heard some

time ago and for the purpose so that the Commission can visually see the matters to which we move.

The intent of the design of this project is to provide a well-planned development primarily residential, with related office and commercial facilities, which will offer a variety of building types in an attractive and efficient overall plan related to the general area. The architectural design we feel is both creative and imaginative. A prime consideration in the design was that it would complement the unique area of the property here involved and that, when completed, would add beauty to the city and the area, as well as enhance the values of surrounding areas.

We are advised that the record before the Commission indicates that the application is in compliance with the provisions of 7501.1 through 7501.32 of the zoning regulations, subject of course, as stated in the application, to the granting of the pending application for change of zoning from R-5-D to Special Purpose; and the matter of closing of the streets, now pending.

In the interest of time and in order to avoid duplication, we have attempted to in this presentation to eliminate that which has been previously submitted to you at your

hearing on October 25, 1961, in support of the application of Island Vista for change of zoning form R-5-D to Special Purpose. We, therefore, request that the record of that hearing and exhibits submitted at that time, be incorporated as part of the instant proceedings.

CHAIRMAN CLARKE: By reference.

MR. LICHENBERG: By reference. Yes.

We also subject to your approval, avoid the presentation of evidence relating to technical compliance of our application and design under Article 75, inasmuch as these matters have been fully examined by your staff and the staff of the National Capita Planning Commission, and their reports are in the record. We are advised these reports indicate compliance.

The proposals for the Watergate Development have been submitted to various departments of the District of Columbia Government and the interested agencies of the Federal Government, in order to obtain their suggestions, and to conform to their requirements. As a result of these submissions, agreements in principle have been reached.

It is contemplated that an area in excess of 10,000 square feet of land, for a new traffic circle at the intersection of

New Hampshire and Virginia Avenues, will be dedicated by us to the District of Columbia; covenants have or will be executed to the District of Columbia relative to sewer and water lines in the area; appropriate arrangements have been made with utility companies; approximately $100,000 has been deposited with the District of Columbia to defray the expense of street closings; and an agreement has been reached with the National Park Service whereby, in consideration of certain concessions, the applicant will convey certain of its land abutting the Rock Creek and Potomac Parkway, to the United States.

As is shown by the model, and as has been previously shown to you at the presentation of our application for zoning, the basic concept of the construction of the Watergate Development involves a building complex consisting of five inter-connected high-rise elements on one lot. Also, within the lot and part of the building complex are 19 one-story patio type villas fitting into the contour of the landscape stepping down toward the Potomac River. The building will consist of three high-rise apartments, a hotel, and an office structure. The project, as completed, would contain 1400 dwelling units, 350 hotel suites, 202,240 square feet of office space, 95,000 square feet of commercial areas, and 438,000 square feet of underground parking

areas.

To provide greater flexibility than would be otherwise possible under S.P. zoning, and in accordance with Section 7501.1 of Article 75, which allows diversification in the use, size, type and location of structures so as to improve circulation and site facilities, while at the same time insuring adequate standards relating to public health, safety, welfare and convenience in the use and occupancy of buildings and other facilities in the planned project group as shown on exhibit drawings, we are requesting the Zoning Commission approval of the following deviations from S.P. zoning. I might add that from the report of the National Capital Planning Commission the items which they were to check to see that we were in compliance with the public health, safety and welfare have been approved by the Commission. The deviations that we are requesting are as follows:

"A. Permitting a maximum height of 130 feet as allowed under the subsection of S.P. zoning.

"B. The provision of 55,000 square feet of commercial space above ground, to include luxury type shops open to the public, as well as adjunct commercial space, and not to be

correspondence.

CHAIRMAN CLARKE: What you're really saying is that we shouldn't have any restricted office use anywhere in the city?

MR. LICHTENBERG: Well, the purpose, General, is this. If it adversely affects the residentes in the area and for the life of me I can't see how the residents in the area can be adversely affected. But here is another example. An insurance trade association or the building trade union would be permitted, but an insurance company or an construction corporation would not. Now in what way would one way have against the other adversely affect residents in the area. When you consider and this is another thing to be considered in the consideration and intent of the provisions of Article 75, when you consider the tremendous investment inherent in such a project it is inconceivable thatthe developers would lease to anyone adverse to their interests and their investment. It would be encumbent as well as to our interests to the interests of the neighbors as well and if we are protecting the interests of the neighborhood we are protecting our own interests because we're going to have 1400 families living in the project.

CHAIRMAN CLARKE: I think the main distinction is the amount of traffic that certain office uses generate as compared

subject to the restrictions under Section 4101.51 of the zoning regulations.

"C. Underground commercial facilities to approximate 40,000 square feet not to be subject to restrictions of Section 4101.5 (a) and (c).

"D. Commercial office space of 202,240 square feet with unrestricted occupancy.

"E. Provision for the inclusion of a gasoline station in the event that negotiations now being carried forward with the owner of the Esso gasoline service station at the north corner of our project are successful and not subject to restrictions of Section 4101.45 (a) and (b).

MR. TOBRINER: That part "D" is at variance with the recommendation of the Planning Commission?

MR. LICHTENBERG: Yes, that is at variance with the Planning Commission.

CHAIRMAN CLARKE: Your request on signs is also at variance isn't it?

MR. LICHTENBERG: No, I don't think that that was objected to. I think the only objection was the question of the

unrestricted use of the commercial space.

MR. TOBRINER: Would you spell out the differences?

MR. LICHTENBERG: Yes. In the restricted use of office space under SP zoning the requirement would be for a tendency of non-profit organizations and professional office use whereas an unrestricted use would be the type of use that may be in other office buildings such as a corporate offices, a -- an electronics organization, or an insurance company. Any type of business or commercial office use. Any time you would like us to illucidate as to why we feel that way we would be happy to --

CHAIRMAN CLARKE: I'd like to know why you feel that way?

MR. LICHTENBERG: Very well, I can see no valid reason for disallowance of unrestricted office use. I as a lawyer, or someone else as a dentist, someone else as a doctor or in the case of a labor union or trade association. All these would be permitted under the restricted use. Why and in what way would the public in the area be adversely affected if an insurance company or an electronic organization or corporate offices were permitted to occupy the space? They do the same thing as a lawyer or a trade association would do. They have a stenographer. They have a secretary and they do their typing and take care of their

to other. I am not only speaking of automotive traffic but the amount of contact which is carried on with the public. I think you would agree that with one unrestricted use you can have an employment agency, for instance with continuous streams of people going in -- going up and down -- as distinguished from a church institutional office with limited contact.

MR. LICHTENBERG: Well, I agree that you're absolutely right under those circumstances.

MR. CLARKE: I appreciate your feeling for the consideration of the owners I think, perhaps, if you were to develop this point along the lines of the one of traffic generated in SP type offices as compared to normal commercial uses this is the only point I think which would have any validity.

MR. LICHTENBERG: I would say, General, you are perfectly right insofar as the automobile --

CHAIRMAN CLARKE: You don't have to say that I'm right. You can argue it.

MR. LICHTENBERG: There are certain types of office use that would generate a great deal of traffic and a great deal more than others. But certainly administrative offices would not. And we ~~sure~~ SHOULD not be limited or restricted from having

administrative offices of corporate organizations or other organizations. Because the same high type of tenancy would be available in that type of usage.

MR. TOBRINER: I think you'll agree with me that lawyers offices don't generate much traffic.

MR. LICHTENBERG: I think I will agree with you.

Now having in mind that we are both trying to arrive at the same basis of reasonable limitation the unrestricted use that I am talking about we would certainly have no objection to being restricted to eliminate the type of usage that generally exists that the General has just mentioned. I don't mean specifically an employment agency but one that would generate a great deal more traffic than an ordinary business office would.

MR. LURIA: Doctor's offices.

MR. LICHTENBERG: Mr. Luria tells me we might have to eliminate doctor's offices under these circumstances.

Article 75 is designed to encourage combinations of residential hotel, and office developments, such as is here proposed, irrespective of use requirements of the general zoning regulation. Unrestricted office us in the office building is an integral part of our plan in the interest of obtaining appropriate financing and in the facility of leasing office space. We firmly

believe that, in view of the development of the area, namely, the Cultural Center, Columbia Plaza, the State Department, other governmental agencies and it not being too far from the Pentagon in related offices across the river, and of course our own project, there is and will be a definite demand for the office space we are proposing in this project.

The applicant is negotiating with the owner of the Esso gasoline station, with a view to partially incorporate the station into our project, as far as possible, and for the purpose of improving the area in general, our building, and the gas station; and at the same time making it possible for the National Park Service to improve the north bound traffic turn into Virginia Avenue. And we are now in agreement in principle with the Esso people; however, we are unable to further implement an agreement with them until such agreement could be made meaningful by the accomplishment of our goals in connection with our applications for street closings, zoning and approval under Article 75.

The maximum coverage permissible under S.P. zoning is 75%. In the Watergate project this coverage has been considerably reduced as a result of planning with 130 foot height allowed under Article 75 and subject to the approval of the Commission

The high rise structures cover only thirty-one percent of the total land area, leaving sixty-nine percent of the area for open landscaped gardens.

A part of the sixty-nine percent is eleven percent and is reserved for the one-story villas and even these have landscaped roof structures -- roof terraces. An additional three percent is covered by the dining and dancing pavillion and connections. This leaves 55% of the total area as open parklike uncovered space, representing 220% of the requirement for the public and enjoyment of the 1400 families living in the development. A high proportion of the ground level areas covered by the high-rise structures consist of open collonades. That is on the ground level of the building.

The total F.A.R. of the project represents one-sixth less than that permitted under the regulations and the underground parking is providing for approximately 1250 cars, nearly twice the requirement based on these plans of 653. No surface parking will be provided or permitted.

A breakdown of the figures by area and percentage is contained in an exhibit and includes also, in condensed form, all information and figures which are included in our application, drawings and site plans submitted with the application.

Equity capital is available to the Watergate Project and negotiations have been entered into for the necessary permanent long-term financing. The sponsors' ability to obtain the permanent financing is unquestionable. The important feature in the development of Watergate is that it is being handled entirely by private capital. To the best of our knowledge, this is the first major urban renewal project encompassing nearly 10 acres of downtown Washington to be undertaken exclusively by private capital with no financial or material assistance whatever from any governmental source.

The estimated construction cost of the project is $45,000,000 To this amount must be added the very substantial land value, and development expenses which cumulatively will benefit the District of Columbia by reason of the substantial real estate taxes that will be provided.

In addition, we submit, there will be added District revenue derived from local income taxes, sales, and other miscellaneous taxes, additional employment and new funds that the operation shall bring into the communtiy.

This project, in the view of the owners and the architets, represents the prototype of the concept that is most desirable in the District of Columbia. This follows the thinking of present day urban planning.

It is the considered opinion of the owners that the salient features of our plan, the gross area, the height, and the open spaces are so inter-related that any variation with reference to these features would render this type of concept economically unfeasible.

Gentlemen, in my efforts to avoid duplication, and not to repeat testimony to or facts which your staff has already examined, and found to be in compliance with the regulations I have perhaps been too brief. I hope that you will bear with me, inasmuch as there is no precedent for presentation under Article 75, as I understand we are pioneering in this hearing. However, Messrs. Selgo, Fisher, Luria and myself are here and with all the facts and figures involved in the Watergate Project and will be happy to enlarge and elucidate on any point which may be of interest to you, or which perhaps has not been made clear to you by this presentation.

Thank you.

MR. STEWART: I'd like to ask Mr. Fisher a question.

What part of this is reserved for office space? What percent?

MR. FISHER: Approximately ten percent.

MR. STEWART: I was thinking about a possible project on the Hill with 2 million square feet.

CHAIRMAN CLARKE: I wonder if you would speak a little on what you have in variance on the signs?

MR. FISHER: May I --

MR. LICHTENBERG: Surely.

MR. FISHER: Our concept of signs and may I say that this will be subject to the Fine Arts as you know so that in itself would indicate that the public interests would be preserved. It is our intent mainly to have the type of signs which will merely direct people to the necessary facilities without being of the advertising nature. I think this is the only way I can describe it. Very restrained and certainly in line with the development.

MR. TOBRINER: Do you have an elevation showing the relation of your proposed project with the Cultural Center?

MR. FISHER: Yes, we do, Mr. Tobriner, we can have that put up. The one on the floor if you'll set it up, please. I think that you will see that irrespective of the completion of the Cultural Center we have at that point come lower than the building and it shows both in the model and in the drawing

Would you point out the actual section related to the Cultural Center?

MR. TOBRINER: How many feet is that now?

UNIDENTIFIED WITNESS: Ninety feet.

MR. FISHER: We're approximately 200 feet.

MR. LICHTENBERG: I might point out that we are giving to the National Park Service a piece of the land on the southwest corner of our land so that it will be back further and provision for a break in the street leading from the Parkway if that is where the road will determined to be.

MR. SALGO: In addition a part of the buildings were removed and furhher away from the Cultural Center. It's the area marked in heavy red.

CHAIRMAN S CLARKE: I have one other question which I think Mr. Fisher could answer? With regard to the Virginia Avenue approach could you discass a little the heighth as compared to the width of the street and the gap that will exist between your structure and the Howard Johnson Hotel which will be on the other side?

MR. FISHER: Actually it would be a -- the building itself is on a 120 foot right of way which is what Virginia Avenue is and we have further back from our property line -- I don't have the actual figures on the Howard Johnson setback from the property line but it would appear that they also set back on their property line what seems to me a considerable distance between our building proper and theirs.

CHAIRMAN CLARKE: In the nature, perhaps, of 150 feet?

MR. FISHER: Oh, yes.

MR. LICHTENBERG: May I point out that the report of the National Capital -- of the design planner for the National Capital Planning Commission states before the National Capital Planning Commission as follows: "Another aspect is the extraordinary width of Virginia Avenue. The setback between the buildings. There is a building proposed at this location, Howeard Johnson Motel, five and ten stories. The distance between those is in excess of 160 feet which is the greatest distance in between any street in the District of Columbia." I think that pretty much covers it.

MR. CHAIRMAN: I have one other question. The Citizens Advisory Board commented that with regard to screening the view of the river to those people on Virginia Avenue, would you speak to that, please?

MR. FISHER: Yes. We do have openings that are misconstrued as to openings I think because of the model we have there and the photographs. We have there an opening as you can see which is in excess of 45 feet between the office building and apartments and at the opposite end of the office building there are actually balconies all the way down. Now we have given this considerable thought and are going to eliminate that

eliminate that obstruction between the buildings at that point. We do have to connect the buildings. We do have to have the equivelent of two stories from the gourne level at this point. This is a requirement of the District itself.

MR. LICHTENBERG: The collonades --

MR. FISHER: Yes, we are also supposed to have the open collonades and at that point of Virginia Avenue and particularly in the last building. This is all open here.

CHAIRMAN CLARKE: How high are your columns at that point?

MR. FISHER: Approximately twelve feet.

CHAIRMAN CLARKE: About twelve feet.

MR. FISHER: Now at that point at the end we actually have two stories. The twelve foot is at the other end and twenty seven at that end. That's the park side.

MR. TOBRINER: Could you give me the relative height of the four buildings involved?

MR FISHER: At this point here we have 130 foot height (indicating on the drawings) and at this point we get an additional 27 feet. That would be approximately 157 at this point. At this point we have fpulled back from the original property line. This was after complete discussion with the planning commission and

the National Park Service. At this point we have approximately 90 feet.

MR. J. GEORGE STEWART: Is it your intention to limit the office center, that is the offices to one space for each --

MR. FISHER: May I say that the Zoning Commission, that the zoning regulations and requirements are that we have one car for every 1800 square feet of occupancy of the office space under the SP zoning which means that this allocation at the very minimum would be made. However, I think you can see that with the advantange of having residential in the same area the possibility that additional car spaces will be available because of fearness and there is a tremendous possibility there.

The tenants would be assigned to spaces within the project. May I state this that since a high portion of the project will be cooperatively owned there will be assigned spaces for ownership.

Does that answer your question, Mr. Stewart?

MR. STEWART: To a point. Yes. What about the persons coming to the doctor or dentist or so forth that might be in the neighborhood, have they areas?

MR. FISHER: Yes, we have taken care of that as well.

MR. SILGO: When we started out we said that there would be no surface parking either for visitors or commercial and as

a consequence on the part of a the Planning Commission request we broke down our figures into assigned and street parking and we will have assigned parking for the tenants and the commercial tenants. We expect to have about 30% more and will probably have 250 here or 400 available -- all underground.

MR. STEWART: I just raised the point. I hope you have sufficient.

MR. SALGO: We believe really that the garage space at least in the initial year period will be an economic burden. We believe that we oversized it. And that is the opinion of the professional parking people.

CHAIRMAN CLARKE: Are there any other proponents?

MR. JAMES C. WILKES, JR: Mr. Chairman may I submit for the record a letter from Mrs. Marjory Hendricks, the owner of the Water Gate Inn, who favors the proposed project.

CHAIRMAN CLARKE: Very well. Thank you. Mrs. Hinton.

WITNESSES IN OPPOSITION:

MRS. HAROLD B. HINTON: Godd Morning. I'm Mrs. Harold B. Hinton, Chairman of the Planning and Zoning Committee of the Progressive Citizens Association of Georgetwon. We don't oppose the Watergate but we do oppose the 130 foot height. About fifteen

years ago when the gas tanks started to move from there it was zoned for 60 foot height. I imagine the idea was to keep it low around the river. When the gas tanks began to move they asked for a change to 90 foot. We opposed that. Now it is coming to 130 feet height. I want to ask you to consider that all these plans, and all these models, and drawings look from the top -- from a top view -- and it looks as if it is a low thing. It is not going to a be a low thing. It is is going to be a Trojan Wall right betweenthe Cultural Center and all this part of town and that part of town and cut off from the river. It is just too tall and I think it would be very hard to visualize it until you see it and then you realize that it is too tall. Aesthetics is not a unamerican it was planned into this capital. The L'Enfant plan and General Washington, the most of their planning was on aesthetics and having everything subordinated to the capital to the White House and, of course, they didn't have the Lincoln Memorial in mind. That is one of the main monumental areas and should be increased as a monumental area and that was the idea of putting the cultural center there and this is going to be an obstruction there and is going to be a Trojean Wall between it and the northwest part of town. Nothing but a Trojan Wall would something like this be. And I'd just like

to ask you to please consider that and I am very deeply distressed that the Zoning Commission gave permission to Mr. Cafritz to build that 130 foot building beside the Treasury Building and that building that he is going to tear down --

CHAIRMAN CLARKE: Mrs. Hinton, I don't think we have given any such permission. I think you're in error.

MRS. HINTON: Didn't you?

MR. TOBRINER: The Commissioners have to give that under the Act of 1910.

MRS. HINTON: Well, haven't they done it?

MR. TOBRINER: No.

MRS. HINTON: Oh, good.

(LAUGHTER FROM THE AUDIENCE.)

MRS. HINTON: Because that theater building that they are going to tear down is a very beautiful building. It's very ornate, but the trouble is that many of our buildings are beautiful buildings such as that one across the street and they have stores in the bottom and you'd think that it is not worth saving but if you go up there and look at it. Look at that Albee Building by the Keith Theater. It's a very ornately decorated building with marble all the way across it and entirely suitable to be hear the White House and the Treasury. The only

thing that ought to be done to it is to have those shops and stores improved in the bottom so that they would live up to the rest of the building. But anyway I won't keep you any longer and just am glad to have you to please consider the height and really wish you would think about it as how it would look when it is built up and not as you look at it there from the top like this.

CHAIRMAN CLARKE: Thank you, Mrs. Hinton.

Mr. Wilkes?

MR. WILKES: No, I didn't have anything.

CHAIRMAN CLARKE: Next.

FURTHER OPPOSITION:

MR. C. L. MARTIN: My name is C. L. Martin, counsel for the Commission of Fine Arts. I would like to read a statement which Mr. Finley would have presented himself, but unfortunately he was unable to attend.

(THE FOUR PAGE STATEMENT OF THE COMMISSION OF FINE ARTS IS ON FILE WITH THE ZONING OFFICE AND IS THEREFORE NOT INCLUDED IN THE OFFICIAL TRANSCRIPT. WITNESS READ THE STATEMENT VERBATIM.)

MP

INSERT # 2
DATE 4/13/62
NAME

Statement of the Commission of Fine Arts Before the Zoning Commission, 13 April 1962

The members of the Commission of Fine Arts at its meeting on March 20th unanimously expressed their disappointment with the preliminary plans and designs for the proposed Watergate Town apartment and office complex which would be located on a triangular area in Northwest Washington, bounded by New Hampshire and Virginia Avenues, 25th Street and the Rock Creek and Potomac Parkway. The site is of particular significance in the plan of the city, bordering Rock Creek Park, and adjoining the lands authorized by Congress for the construction of a National Cultural Center. Situated only a short distance to the south is the Lincoln Memorial. The Commission has been expressing its misgivings about the design since sketch plans for these buildings were submitted for preliminary review by the Commissioners of the District of Columbia Government on August 9, 1961. At that time the members of the Commission discussed the scope of the entire project with the representatives of the development corporation and the architects. In its initial study of the architectural plans, the Commission was primarily concerned with the density of land coverage of the proposed structures in relation to the physical size of the site. They believed that the maximum park character should be preserved in any new project in this location; and they have reported on October 2, 1961 to the District of Columbia Commissioners and on October 24, 1961 to the Zoning Commission their opposition to the small proportion of open area which

would remain as public space. The architects in turn replied that the plan would provide nearly one and one half times the amount of open area as presently allowed under existing zoning, or a proposed 45% coverage of buildings as opposed to 75% coverage possible under current regulations. Such a comparison, however, ignores the great amount of open public space that is represented by the existing street system. If this amount of open public space is taken into consideration, as it certainly should for fair comparison of the two schemes, it will be seen that the proposed plan for the new construction would leave only approximately 5% more open public space than the minimum allowed under existing zoning. The Commission does not agree therefore with the architects' contention that the open park-like character of adjoining lands has been extended into the site plan of the building project.

In addition the Commission has carefully studied the architectural designs for the project and is greatly concerned over the height and the character of the proposed structures. A nearly continuous wall of building would extend from the southern boundary of the triangular site, north on New Hampshire Avenue to Virginia Avenue, and west on Virginia Avenue to Rock Creek and Potomac Parkway. The buildings would rise to their minimum height of 130 feet at the intersection of Virginia Avenue and New Hampshire Avenue, and to nearly 165 feet along the Rock Creek and Potomac Parkway. The designs of the building masses would be strongly sculptural in their derivation, with sweeping curvelinear forms focused toward the Potomac River and Theodore Roosevelt Island and away from the rest of the city. A continuous arrangement of building masses along Virginia Avenue and New Hampshire Avenue, rising to such an extended

encroach on or mar the Federal area. The Congress decreed in this public law that the development of the City of Washington should proceed along the lines of good order, good taste, and with due regard to the public interests involved, and directed the Commission of Fine Arts to recommend such changes as in its judgement are necessary to prevent reasonably avoidable impairment of the public values belonging to public buildings and parks.

The members of the Commission believe that it is entirely possible to design a distinguished group of buildings that would provide for similar facilities in this location, and yet conform to the existing height limitations and other established zoning measures. These zoning measures were passed for good reason to provide for continuity in scale and other architectural effects that comprise the fabric of the city of Washington.

To depart radically from this framework is to invite a chaotic disharmony to the architectural growth of the city plan, not only for this location but for other parts of Washington as well. In short it will begin to erode and destroy the qualities that give Washington its particular beauty.

The Commission has asked me to say that they will be glad to discuss these matters with one or more members of the Zoning Commission at the next meeting of the Commission of Fine Arts on April 18th.

height, would, for all intents and purposes, shut off the important views of the Potomac River and Roosevelt Island from the surrounding area. In turn the overpowering mass of the total composition, as seen along the vistas from major approaches to the city, would be the dominent feature of the landscape, overshadowing the great public monuments nearby.

In the developers' own words, as contained in the illustrated brochure describing the proposals, the Watergate Town is to be a "city within a city, a showplace for Washington and a daring development."

The Commission of Fine Arts recognizes the desirability of providing living facilities in such a unique location close to important employment centers in the city, but disagrees entirely in the concept of providing such a dramatic contrast with the character of the surrounding area. The height and the curvelinear forms of the composition bear little or no relation to the rest of the city, as can clearly be seen in an examination of the photographs which show the model superimposed on the boundaries of the actual site.

The Commission adheres to the principle that large scale developments should be subordinate to the city as a whole, especially in instances where the site is of such prominence and in close proximity to important monumental areas. In the opinion of the Commission this project seeks to do the opposite and has been conceived as a self-contained entity or "a city within a city". "As a show piece", its primary effect is to invite attention, not to compliment and fit into the surrounding area.

Under the Shipstead-Luce Act of 1931 the Commission of Fine Arts has been charged by the Congress to review all construction that might

CHAIRMAN CLARKE: Thank you, Mr. Martin.

Are there others in opposition?

NO RESPONSE.

CHAIRMAN CLARKE: Do you have any final remarks that you would like to make?

REBUTTAL TESTIMONY BY THE APPELLANTS:

MR. LICHTENBERG: I might say that the same objection was made before the National Capital Planning Commission and Mr. Wirth who is a member of this Commission has executed a contract as of two days ago with the applicant in which objections were made on our part to take care of exactly what the Fine Arts Commission is talking about. We definitely on our overall coverag have only 31% of actual coverage. All of the streets, the area which will remain as open space in a much larger land area than the total area of the streets that are closed. The area in public spaces that are required by the zoning regulations exclusive of the streets is 67,000 feet and the area in open public spaces in excess of that required by zoning regulations -- exclusive of closed streets is: 15,340 square feet. The area in the open public spaces due to street closing is 150,000 or a total of 233,040 total open public space and that does not include I might say or I should say that there is an addition to that

of square footage that will be conveyed to the Park Service.

Anything else?

(MR LURIA AND MR. LICHTENBERG CONFER OFF THE RECORD)

MR. LICHTENBERG: I think --

MR. TOBRINER: Would you speak of the height objection?

MR. LICHTENBERG: Yes, I think that what I have have said in my statement previously that it is impossible to have the open spaces that we are projecting under our plan with a lessor height than the amount that we have asked for. It is economically unsound. At the present time and under the present zoning the open space required is or the coverage that we have a right to cover is 75% leaving only 25% that remains open. That is without any change from the regulations as they now exist. It would be utterly impossible to have this concept which was contemplated by the intent of Article 75 in order to have a unique, unusual and an overall project of the combination of this type of usage.

Mr.SAlgo would like to make a statement further in connection with that if the Board please.

MR. NICHOLAS SALGO: If the Commissioners please, I would like to make the following remarks. These are more than hunches on the remarks of the Fine Arts Commission and they use the remark of creating "a city within the city" we did nothing

but architectural interpretation. We recieved from your Planning Commission and were given the assignment to create an area which provides, and I am quoting one of your professional men who is an outstanding man in the profession, a twenty-four hour living area where people in the direct development and from surrounding of it have occupation, home, shelter, without having to invade the rest of the city of Washington or the suburbs and consequently create and fight traffic problems. If we request an extension of the restricted covenant of the commercial space use it was only to permit practically anybody who so desires has a normal administrative function to have an office space next door to his home. If we requested to close the street that was not to create a wall which would close out the rest of the city but to the contrary to turn paved area into green area and we cannot see the argument that 150,000 square feet of pavement to be maintained partially created by the city to serve better either the future residents or the neighborhood than 220,000 square feet of green area created, maintained and on the tax rolls by the proposed zoning. We cannot follow the idea that if we go back to conventional treatment -- referring to the little photo which you see on the left and create, excuse me the expression, a "stone jungle" that any of the conditions that the Fine Arts rightfully

imposes would not serve any of the purposes that project is intended for and which is practical and can be built by private capital and which we believe is a very desirable substitution which you want to have there -- the parking lot that is there now or conventional development. I think there are plenty of examples in the direct neighborhood or anywhere else and if you would care to hear about that our experts on that will speak of it.

I would very much like, if you care to hear, about that from our expert in this project, Mr. Jacob Crane some specific recommendations on the specific requirements of the Fine Arts Commission which I believe would be of interest and which I believe a we have followed.

MR. LICHTENBERG: Mr. Crane was called in as a consultant on this question that Mr. Tobriner inquired about and before calling him I want to point out his qualifications to testify. He is the past president of the American Institute of Planners, formerly Assistant to the Administrator of Home and Housing Finance Administration, he is the author of sixty zoning plans and ordinan and is consultant on a high rise river front project in Louisville, a member of the Architect Review Panel of the Redevelopment Land Agency in the capital, he is a member of the Planning Commission in Annapolis and has had a great deal of other experience in

connection with planning. I would like to call on Mr. Owens at this time.

MR. JACOB L. CRAMER: Mr. Chairman, my name is Jacob L. Cramer. Last October, about six months ago, Milton Kirby brought Mr. Mishler asked me to take a look at their then proposed project primarily from the point of view of the height problem and to take a look objectively to the problem and let them know what I thought about their proposed solution of that problem. Realizing, of course, that the question of height would be a matter for consideration. On the 30th of November I addressed a letter to the architects of the Water Gate project and if you will permit me I should like to read that letter And I think reading that would be the easiest way to summarize my views of this particular angle of the project. You have asked me to reiveiew the drawings and models of the Water Gate Development to study the site and its relationships; and to give you my professional opinion as a planner on the question of whether it is better, in the public interest, to establish the height limit for the buildings at 130 feet rather than 90 feet. I have studied this matter carefully, and my opinion follows.

(MR. JACOB L. CRAMER, EXPERT WITNESS, READ LETTER OF NOVEMBER 30, 1961 VERBATIM WHICH IS ON FILE IN THE ZONING OFFICE.)

MR JACAB L. CRANE: I hope that didn't take too long in reading this now old letter. I might add, if you'll permit me to, that Annapolis where I sit on the Planning Commission we have problems on a smaller scale but not so different from those you deal with here. We have a matter of the extension of the Naval Academy that I'd like to bring before you. Their problems aren't so different.

MR. TOBRINER: What will be the exterior of the walls, what will be the material on the exterior of the walls?

MR. FISHER: As we have discussed with the Fine Arts Commission we intend to keep the project in off-white color. That is possibly ceramic brick of an off-white color. We do not intend to go into any bazaar treatment.

MR. TOBRINER: It will be brick and not stone then?

MR. FISHER: It would be a combination of brick and stone and marble in part also.

MR. TOBRINER: And what?

MR FISHER: And marble in part also.

MR. SALGO: No metal.

MR. FISHER: But no metal as such.

MR. LICHTENBERG: Mr. Salgo would like to make just one closing remark.

MR. SALGO: If the Board permits I would like to address myself to one single point. It is true that Washington does not have a project of this kind with curvilinear lines and it is used to straight lines, it's always difficult. At the same time it is difficult to understand how remarks can be made about Trojan Walls which generally are, evidently speaking, straight lines as against these curvilinear lines. These curvilinear lines lets you pass by and gets the impression of movement and through movement -- freedom. You see on the left there a feeble account of how our building would look and this isn't a view of the top but the ground level view. I think, gentlemen, there is only one thing basically wrong about Island Vista and that is that it is not yet built so you can't see it.

CHAIRMAN CLARKE: Anything further on this case?

NO RESPONSE.

CHAIRMAN CLARKE: In that case we'll proceed to the next case.

MRS. HINTON: I want to say just one thing.

CHAIRMAN CLARKE: Mrs. Hinton.

MRS. HINTON: All this business about motion is very well. But that does not look like Washington. It looks something like a very attractive world's fair.

CHAIRMAN CLARKE: Thank you, Mrs. Hinton.

Proceed to the next case.

MR. ASHTON: Case Number One which reads as follows:

(MR. ASHTON READ INSERT # 3 WHICH APPEARS ON THE FOLLOWING PAGE OF THE TRANSCRIPT.)