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BEFORE THE ZONING COMMISSION

D.C. OFFICE OF ZONING

OF THE DISTRICT OF COLUMBIA

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In the Matter of Zoning Commission Case No. 06-32

**PREHEARING STATEMENT IN SUPPORT OF
APPLICATION TO AMEND THE TEXT OF THE ZONING REGULATIONS TO
INCLUDE SQUARE 766 IN THE CAPITOL SOUTH RECEIVING ZONE**

In accord with 11 DCMR Section 3013, Washington Telecom Associates, LLC (“Washington Telecom”), as the long term lessee¹ of 225 Virginia Avenue, LLC, owner of certain real property that is collectively known as Square 766 (inclusive of all lots. 21, 808, 809, 812, 813, 823 and 824), respectfully submits this statement to the Zoning Commission (the “Commission”) in support of its application to amend the text of the Zoning Regulations to include Square 766 in the Capitol South receiving zone. Zoning, D.C. MUN. REGS tit. 11, § 1709 18 (2006) In furtherance thereof, Washington Telecom states as follows:

1. Square 766 is located in the southeast quadrant of the District of Columbia. It is bordered by Second Street on the West (90 ft ROW), Virginia Avenue on the North (160 ft ROW), Third Street on the East (90 ft ROW) and Eye Street on the South (90 ft ROW) It consists of approximately 92,400 square feet and is improved with a five-story building that was formally known as the “Evening Star Building” and then later as the “Washington Post Building” The site currently contains 50 off-street surface parking spaces. It is within walking distance of the Navy Yard metrorail station serving the Green Line and five blocks from the Capitol South metrorail station serving the Blue and Orange Lines. There is immediate access to I-395 and to the Southeast/Southwest Freeway (I-295). It is near to the emerging Washington Navy Yard, the M Street Southeast corridor, the Southeast Federal Center and to the new

¹ Washington Telecom leases the entire property until 2059 with an option to renew the lease for another 30 years

ZONING COMMISSION

District of Columbia

CASE NO. ZONING 06-32

District of Columbia

EXHIBIT NO. CASE NO. 06-32

EXHIBIT NO. 18

Washington Nationals Baseball Stadium complex. The 13-story Marriott Courtyard hotel and Capitol Hill Towers apartments are nearby on Square 741

2 Square 737 is to the immediate west of Square 766 and is currently used as a surface parking lot. Upon information and belief, the owner of that square is contemplating a major retail, residential and commercial “town-center” development of approximately one million square feet, which will include the receipt of transferable development rights (“TDRs”) to enhance its matter-of-right density and height. This level of bulk will be consistent with that which is immediately to the south of Square 737, but substantially more than that which is currently permitted on Square 766. The difference is not due to the underlying zoning, but rather to the beneficial impact of Square 737 being mapped in the Capitol South receiving zone.

3. To the east of Square 766, the old Arthur Capper public housing facilities on Square 797 have been demolished to be replaced by three to four story apartment buildings. Plans call for 1,625 rental and ownership units, 300 of which are reserved for seniors and 525 of which will be “affordable” units. Immediately to the south of Square 766, a six-story 147-unit apartment building is planned, an eleven-story 295-unit apartment building is planned on the next block, Square 768, and a ten-story 107-unit apartment building adjacent to a ten-story office building are planned on Square 769, one block further. Each of these properties is bordered to the west by an area known as Canal Park, a part of which is currently used as a school bus parking lot.

4 Square 766 is included in a “medium to high density” commercial category on the Comprehensive Plan Land Use Map and, accordingly, is zoned C-3-C, a district designed to accommodate “major business and employment centers providing substantial amounts of employment, housing and mixed uses.”

5. This application is brought because there is insufficient past and no current reason to treat Square 766 differently than adjacent properties in the same zone. That is, Square 766 is the only square in the nearby C-3-C zone district that is not included within the Capitol South receiving zone, an omission which is not only inconsistent with the underlying zoning and the Comprehensive Plan Land Use Map, but which also ignores emerging development trends. The exclusion of Square 766 from the Capitol South receiving zone also translates into a significant loss of economic value to the entire square, unfairly making it less attractive for redevelopment than others that are similarly situated in the same neighborhood.² We have researched the reasons that Square 766 was not included within the Capitol South receiving zone and have found them, as stated, to be at least unsupported and clearly overtaken by development events in the area. It is for this reason that this text amendment is necessary and is therefore requested.

6. On August 21, 1997, at the request of the Commission, the Office of Planning (the "Office") recommended that a series of zoning amendments be made in furtherance of the 1994 Amendments to The District of Columbia Comprehensive Plan. Memorandum from Jill C. Dennis, Director and Nathan W. Gross, Chief of Comprehensive Plan Implementation, to the D.C. Zoning Commission *passim* (Aug. 21, 1997) (Z.C. Case No. 97-14Z, Exhibit No. 1); Comprehensive Plan Amendments Act of 1994, D.C. Act 10-323 (1994). The Office's recommendations included the following language implementing the creation of the Capitol South receiving zone, a new receiving zone for the purposes of receiving TDRs from the Downtown Development District

1709.18 The Capitol South receiving zone consists of the C-3-C zoned portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, N743, 766, 769 and 800

² There are several other squares in the same C-3-C zone that are also outside of the receiving area: those located to the West of South Capitol Street and parts of those squares along M Street, S.E. that are deemed "too shallow" to accommodate medium to high density development.

Memorandum from Jill C. Dennis at 14 (emphasis added) The purpose for creating the Capitol South and two other receiving zones was clearly stated:

The opportunity to create TDRs for residential development is greatly enhanced by...a mandate to create three additional receiving zones for TDRs The intent of this policy is to provide stronger demand (available sites) for TDRs and enhance the value and feasibility of the use of TDRs

Id. at 11.

The Commission's Notice of Public Hearing for the February 23, 1998 hearing on Case No. 97-14Z (Remaining Text and Map Amendments – Downtown Development District (DD) – Consistency Case, Part 3) and the February 13, 1998 Report submitted for that hearing by the Office reiterated the proposed language verbatim. District of Columbia Zoning Commission Notice of Public Hearing (Z.C. Case No. 97-14Z, Exhibit No. 2); Jill C. Dennis, Hearing Report, Downtown Development District (DD): Remaining Zoning Text & Map Amendments Based on the 1994 Amendments to the Comprehensive Plan (97-14Z) at 13 (Feb 13, 1998) (Z C. Case No 97-14Z, Exhibit No. 18)

7. In recommending the creation of the new receiving zones, the Office lauded the appropriateness of the areas for the receipt of TDRs:

All three areas are zone C-3-C, having been rezoned within the past three years pursuant to the 1994 amendments to the Comprehensive Plan, which redesignated the official land use policy for these areas C-3-C is the same zone as the two existing receiving zones ..

[The Office] recommends that the full height and bulk formulation. be advertised for public hearing. The three areas in question are all designated office precincts in the Comprehensive Plan, with good to excellent vehicular and public transit access and little potential for adverse affect on adjacent areas from high density office buildings rather than medium-high density office buildings.

Memorandum from Jill C Dennis at 14. Further, none of the witnesses at the hearing provided testimony in opposition to the proposed amendments, including the language creating and delineating the Capitol South receiving zone Witness List (Z.C Case No. 97-14Z, Exhibit No.

20), *see also* Jill C. Dennis, Hearing Summary, Zoning Commission Case No. 97-14Z, Remaining 1994 Comprehensive Plan Related Downtown Development District (DD) Zoning Text and Map Amendments *passim* (Apr 9, 1998) (Z.C Case No. 97-14Z, Exhibit No 38). In fact, what testimony directly addressed the receiving zones commended their proposed locations and boundaries, as well as their harmony with nearby neighborhoods. *See, e g* , Testimony of Nate Gross, Zoning and Land Use Specialist, Arnold & Porter, via letter to the D C Zoning Commission *passim* (Feb. 23, 1998) (Z.C. Case No. 97-14Z, Exhibit No 22) (advocating expansion of the receiving zones); for summary of public comment, *see* Jill C Dennis, Hearing Summary. In response to the Commission's request that "the Office of Planning ..provide further information on. .[t]he geographic limits of the proposed Capitol South receiving zone," the Office attached to its memorandum a map identifying the specific boundaries thereof, *clearly including Square 766 in the zone*. Jill C. Dennis, Response to Commission Questions Re: Zoning Commission Case No. 97-14Z, Remaining 1994 Comprehensive Plan Related Downtown Development District (DD) Zoning Text and Map Amendments at 4 (Mar. 31, 1998).

8 In the absence of opposition to the Capitol South receiving zone's boundaries, the Commission met to consider the case at a Special Public Meeting on May 18, 1998. After limited discussion, the Commission voted "intentionally" to "leave out square[s] 766, 769, and 800." Transcript of District of Columbia Zoning Commission Special Public Meeting at 14 (May 18, 1998). The sole explanation offered for the action was.

"[T]he north and south limits of that overlay in the Capitol South receiving zone with a potential of 110 to 130 feet in height[,] was cheek to jowl, really, with two story residential dwellings.. even though 90 feet is no bargain, which is what *existing zoning* would allow, to go beyond that seems like going in the wrong direction next to those houses."

Id. at 13-14 (emphasis added) However, despite the Commission's vote, no change to the proposed amendments was advertised. In fact, the Notice of Proposed Rulemaking published

three months later still included Square 766 in the Capitol South receiving zone. 45 D.C. Reg 5824, 5826 (Aug. 24, 1998) Subsequently, then, without the correct notice, and thus without the appropriate opportunity for public comment on the actual language proposed, the Commission adopted a redefined Capitol South receiving zone in a final action at a special public meeting on October 19, 1998, amending the Zoning Regulations and Map to include a new section 1709.18 “The Capitol South receiving zone consists of those portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, and N743, each zoned C-3-C.” Notice of Final Rulemaking, 46 D.C. REG. 1016, 1018 (Feb. 5, 1999), D.C. MUN. REGS. tit. 11, § 1709.18³ Square 766 and the three residentially-zoned squares likewise removed were all previously published and thought to be included in the Capitol South receiving area. We do not contest the Commission’s authority to take that action but do cite the attenuated circumstances that supported that action and the development events that have since occurred as adequate justification to restore Square 766 to the status of similarly situated squares in the development area in which it is a part.

9 The exclusion of Square 766 from the Capitol South receiving zone had only limited rationale, the basis for which has since been overtaken by active market conditions and redevelopment. The record for Case No. 97-14Z evidences but one justification for removing square 766 from the Capitol South receiving zone: incompatibility with the surrounding neighborhood. The transcript of the May 18, 1998 Commission meeting shows the Commissioners’ concern that a building as tall as 130 feet would unduly tower over the existing two-story housing structures, mostly public housing projects located to the east of the square. Transcript of Special Meeting at 13-14. At the time, the Arthur Capper/Carrollsborg housing complex and assorted townhouses occupied the three squares to the south southeast of Square

³ See also the attached “Notice and Comment Timeline” for more detail on the progression of public notice and Zoning Commission action on Case No. 97-14Z.

766 (767, 768, and 769), the immediately adjacent property to the east (797), and nearby Squares 798, 799, 824 and 825, southeast of 766. None of these properties was then taller than three stories

Today, however, the area's redevelopment plans are dramatically different. The public housing units are being razed. Squares 767, 768 and a portion of 769, *directly to the south southeast of 766*, have received preliminary approval by the Commission, as part of a PUD, to be rezoned from R-5-B to CR. Zoning Commission Order No. 03-12/03-13 (February 6, 2004) (Z.C. Case Nos. 03-12 and 03-13) (minor correction to Order made by Z.C. Order No. 03-12C/03-13C, October 3, 2005). This change in zoning will increase the matter-of-right height for those properties—situated, like Square 766, between 2nd and 3rd Streets, just west of the former public housing site—from fifty feet to ninety feet. Preliminary plans for the sites include six-, eleven- and ten-story apartment buildings as well as a ten-story office building. The rest of the demolished projects area will be replaced by nearly 300 three- and four-story row houses. The south side of the redeveloped projects area will border the existing seven-story office building at 300 M Street (Square 800) and the seven-story Carroll Apartments on Square 825S. Already up and operating are the thirteen-story Marriott Courtyard hotel and the Capitol Hill Tower apartments on Square 742, and, on Square 737, adjacent to the west of Square 766, current plans include a one million square foot mixed-use “town-center” development. Clearly, the character and nature of the neighborhood have intensified as the area has become more dense and adapted to a higher concentration of taller structures in the vicinity (especially just west of Second Street—in the core of the Capitol South receiving zone) than when reviewed in 1998. A building constructed on Square 766 to the maximum height and bulk allowed in the Capitol South receiving zone will not alter or now be inconsistent with the development that has

occurred and is occurring in the area. Indeed, under the recently passed MIZ text, even residentially-zoned properties that are near to Square 766 may be built up to 80 feet in height.

10. **The removal of Square 766 from the Capitol South receiving zone is inconsistent with the Comprehensive Plan, with the effect of making it a uniquely disadvantaged property.** To implement the 1994 amendments to the Comprehensive Plan, the Office followed the D.C. Council's mandate creating the three new receiving zones in the areas designated "Medium-High Density Commercial" on the Generalized Land Use Map Comprehensive Plan Amendments Act of 1994, D.C. Act 10-323, D.C. Law 10-193 § 2(a)(9)(X)(iii)(7)(B)(iii) (Aug. 8, 1994). Each of these areas is, and was then, designated as zoned C-3-C, the same as the then-existing receiving zones—the New Downtown and the Downtown East receiving zones. Memorandum from Jill C. Dennis at 12. Though the Home Rule Act requires that zoning "shall not be inconsistent with the comprehensive plan for the national capital" (D.C. CODE ANN. § 5-414(2)(2006)), the Office's recommendation was for the zoning changes to "eliminate inconsistencies between zoning and the Downtown Element of the Comprehensive Plan," thus furthering the intent of the Comprehensive Plan Amendments. *Id.* at 2. However, despite overwhelming testimony to the contrary, and little previous discussion of concern with Square 766's inclusion in the zone, the Commission changed the receiving zone boundaries "by just drawing up the boundary straight down Second Street, rather than going east of Second Street on those few properties that . . . are across Second Street and that are zoned C-3-C." Transcript of Special Public Meeting at 14. This action left Square 766 at a marked disadvantage in the market, being the only property east of Second Street zoned C-3-C, yet ineligible to accept TDRs to increase height and density (other than those portions of Squares 769 and 800 fronting on M Street, described by the Office as "very slender, very, very, very shallow properties" (*Id.*)). Square 766 is adjacent to a park, but that cannot justify its exclusion.

from the receiving zone Squares 739, 741 and 742, are all included within the Capitol South receiving zone and also abut that same park. The ongoing MIZ case furthers the uniquely disadvantaged character of Square 766. As the MIZ case map shows, the Capitol South receiving zone is excluded from inclusionary zoning requirements. With the receiving zone's current boundaries, this has the effect of leaving Square 766 as the sole higher density square subject to inclusionary zoning, with a TDR receiving zone to its west and lower density areas to its south and east. The effect is to "spot zone" Square 766 by, contrary to the Council's intent in the Comprehensive Plan Amendments, exclude this Medium-High Density Commercial, C-3-C property from the TDR zone, and then subject it to inclusionary zoning requirements.

11 **The Zoning Commission should exercise its authority, as it has in the past, to amend the Zoning Regulations to correct for inconsistencies in text rulemaking.** The instant case presents remarkably similar facts and questions to those brought to the Commission by Case No. 00-11MM/97-14Z in 2000. By Order No. 860A, the Commission included Lot 61 of Square 435 in the Southwest receiving zone after it had been excluded from the final rulemaking of Case No. 97-14Z. Notice of Final Rulemaking and Order No. 860A, Case No. 00-11MM/97-14Z (Minor Modification to the DD Text Amendments) 47 D.C. REG. 6230 (Aug. 4, 2000). The Commission found that when establishing the Southwest receiving zone, "the intent was to include all C-3-C zoned squares located in the Southwest Urban Renewal Area north of the Southeast-Southwest Freeway within the Southwest receiving zone. All other such squares except square 435 were included." *Id.* at 6231. Amending the regulation to include Square 435 in that zone, therefore, was considered "minor in nature." *Id.* Though the omission in that case likely resulted from much of the square remaining unzoned due to federal government ownership, the principles readily apply to the instant case. Here, the amendments originally included in the receiving zone all C-3-C zoned properties east of South Capitol Street between M

Street and the Southeast Freeway, but were edited at the last minute with little discussion or debate—leaving a C-3-C zoned property protruding into an otherwise residential area with none of the rights to receive TDRs accorded to its similarly situated neighbors. As it did in 2000, the Commission should correct this zoning irregularity which started out as questionable but has since become outdated and in need of change with respect to Square 766.

12. The Office of Planning Set Down Memorandum Misses the Point:

This application is not brought to avoid the proposed MIZ (which does not yet exist) but to create a fair and equitable zoning policy regarding Square 766 in a way that is not inconsistent with the Comprehensive Plan. The Office of Planning has suggested to the applicant and to the Commission that the primary motivation in seeking this text amendment is to avoid having to comply with the requirements of any mandatory inclusionary zone that the Commission and the D C Council may ultimately approve. This assumption is plausible but unfounded and incorrect. From the beginning of this application process, the applicant has firmly stated its intention is to be treated fairly: It merely seeks to be treated in the same fashion as other similarly zoned parcels in its zoning envelope. There is no equitable reason that Square 766 should not be in the same zoning category as each and every other square in the area that is zoned C-3-C.

To the extent that the D C Council and the Zoning Commission ultimately pass a mandatory inclusionary zone policy that would otherwise affect Square 766, the applicant is willing to condition the approval of this application with a covenant that would require any new housing development of ten or more units on Square 766 to produce and offer 8% of that new housing density for affordable housing uses. This covenant would be submitted into the Land Records of the District of Columbia thereby putting to rest the Office of Planning's unfounded assumption that the applicant's efforts in this case are to void affordable housing. The

applicant's efforts in this case are to be treated fairly and competitively with the owners of nearby properties that are similarly zoned.

13. **Development Projects to the East and South of Square 766 are of less dense because they are located in zones that require less density.** Developments to the East and South of Square 766 are zoned R-5-B but have been granted a PUD with a change of zoning to the CR zone district. The Commission has found that both of these zone districts are “not inconsistent with the Comprehensive Plan” so the height and density limitations that are imposed on both are proper. On the other hand, the applicant's competing squares located to the west of Square 766 have also been found by the Commission to be “not inconsistent with the Comprehensive Plan” and thus a higher level of height and density are appropriate and permitted. The great difference here, of course, is that the squares west of Square 766 are permitted to purchase TDRs and thereby increase their permissible height and density while any structure on Square 766, similarly zoned and similarly addressed by the Comprehensive Plan, is not.

The Office of Planning admits in its memorandum that a Comprehensive Plan does not contain specific distinctions between Square 766 and squares in the nearby area. To the contrary, the Office of Planning cites the draft proposed Comprehensive Plan as cautioning that “zoning changes should not diminish established provisions for transfer of development rights into the Capitol South area.” [Emphasis in original] The plain reading of this language makes clear that that draft plan document takes no issue with the expansion of established provisions for transfer of development rights into the Capitol South area. To the extent that the draft document refers to a “desirability of creating the Canal Blocks Park. to promote residential uses ..” the approval of extra TDR density on Square 766 will have no more impact on those residential uses

than the existing 130 foot structures that the current zoning has produced just west of the Canal Park squares

In sum, low to moderate density buildings that are being constructed to the East and South of Square 766 are the result of the Comprehensive Plan calling for such density and heights and the underlying zoning being not inconsistent with it. Square 766 has the same zoning as Squares 737, 739, 741 and 742 which, not inconsistently with the Comprehensive Plan, call for higher densities and heights. There is nothing inconsistent with this zoning policy except that buildings on Square on 766 are treated differently than those on nearby, similarly zoned properties.

14 **A density and height differential between a receiving zone structure and one that is located on an adjacent square carrying less density has been considered.** As discussed earlier in this brief, the Office of Planning and the Zoning Commission took into account those instances where the purchase of TDRs would allow a building in a more dense district next to a building located in a less dense district. To remedy that situation, the Commission enacted Section 1709.20 that limits the height of a receiving building that either abuts or is merely separated by an alley from a building located at a less dense zone to a height that cannot rise above a plane drawn at a 45 degree angle above the zone district boundary line between the abutting lot and the receiving, lot drawn from the matter-of-right height that the regulations allow for the abutting lot. What this means is that a building on a receiving lot will be required to be stepped back in height from buildings located in the less dense zone districts. This is the policy solution that the Commission accepted, on the recommendation of the Office of Planning, to address the interface between abutting buildings in different zoning envelopes. At point here is that the Commission chose not to limit TDR buildings that are separated from less dense districts by a street.

Here, the commercially zoned Square 766 is separated from the adjacent residential zones by 3rd Street and Eye Street both of which are 90 feet in width, significantly more than the typical eighteen foot alley width that the existing regulations provide building set back protection to potential 130 foot building on Square 766 will have no more impact on the nearby squares to its south than the existing and planned 130 buildings on Squares 737, 739, 741 and 742, the limitations of Section 1709 20 do not apply.

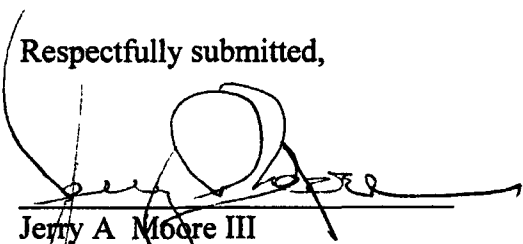
15. **Witnesses and Time Estimates.** The applicant currently plans to offer three witnesses at the public hearing.

- A representative of the Applicant
- An Architect (who will be offered as an expert)
- A planning consultant
- A transportation analyst (who will be offered as an expert)

Each of these witnesses will speak to the justifications discussed herein. It is estimated that the Applicant's total presentation, independent of questions and answers from the Commissioners, will take one hour.

Respectfully submitted,

Dated: October 19, 2006



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BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

In the Matter of Square 766

[Proposed] ORDER

This matter comes before the commission on the Application for Text Amendment filed herein. Having considered the Application and concluding that the Application should be granted, it is this ____ day of _____ 2006,

ORDERED, that Chapter 17 of the Zoning Regulation, Title 11 of District of Columbia Municipal Regulation, is amended by including Square 766 in Subsection 1709.18.

1. Amend Subsection 1709.18 as follows:

The Capitol South receiving zone consists of those portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, N743 and 766, each zoned C-3-C

It is further **ORDERED** that the Zoning Map be amended in accordance with the approved amendment to Subsection 1709.18.

District of Columbia
Zoning Commission

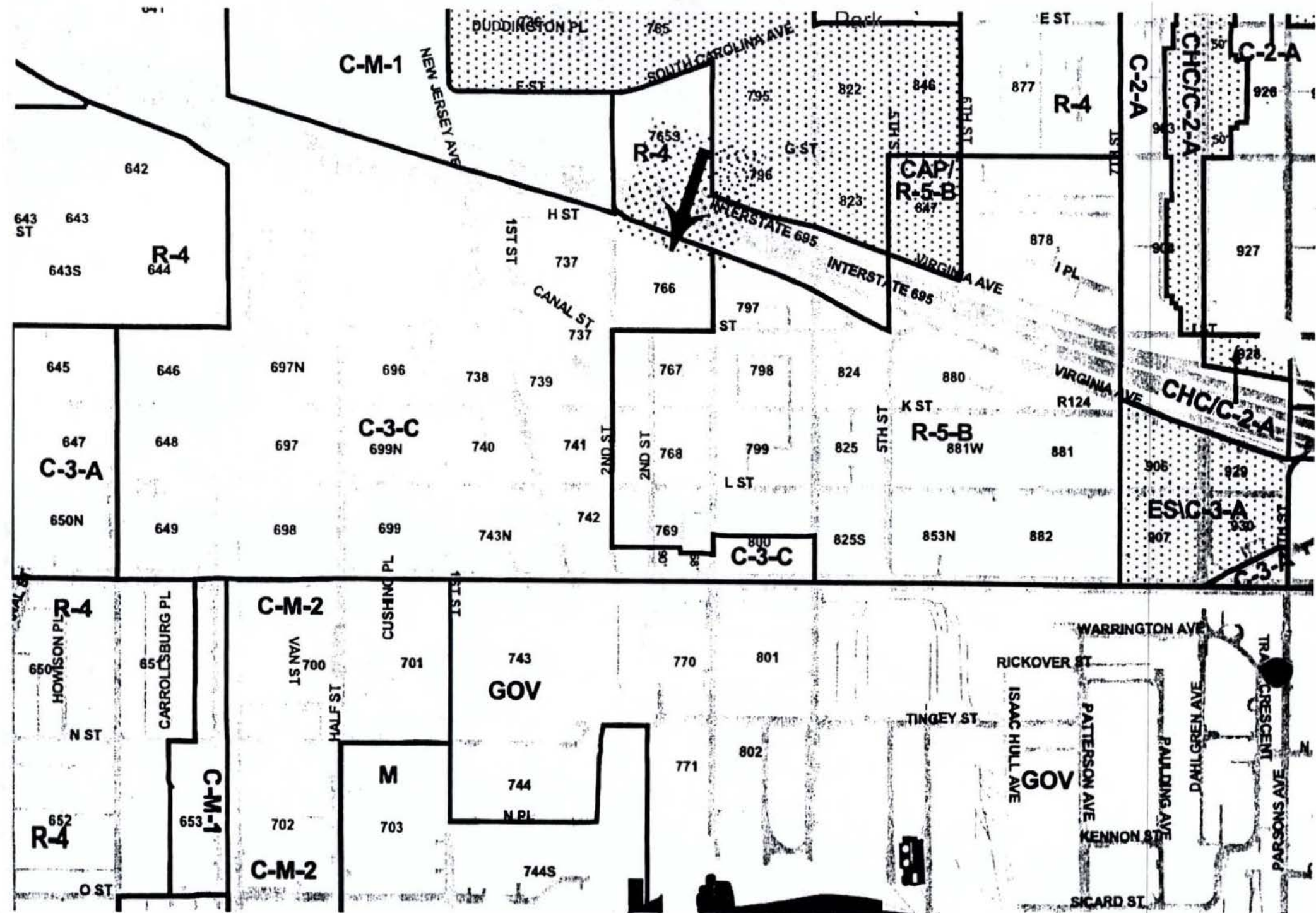
Carol J. Mitten, Chairperson

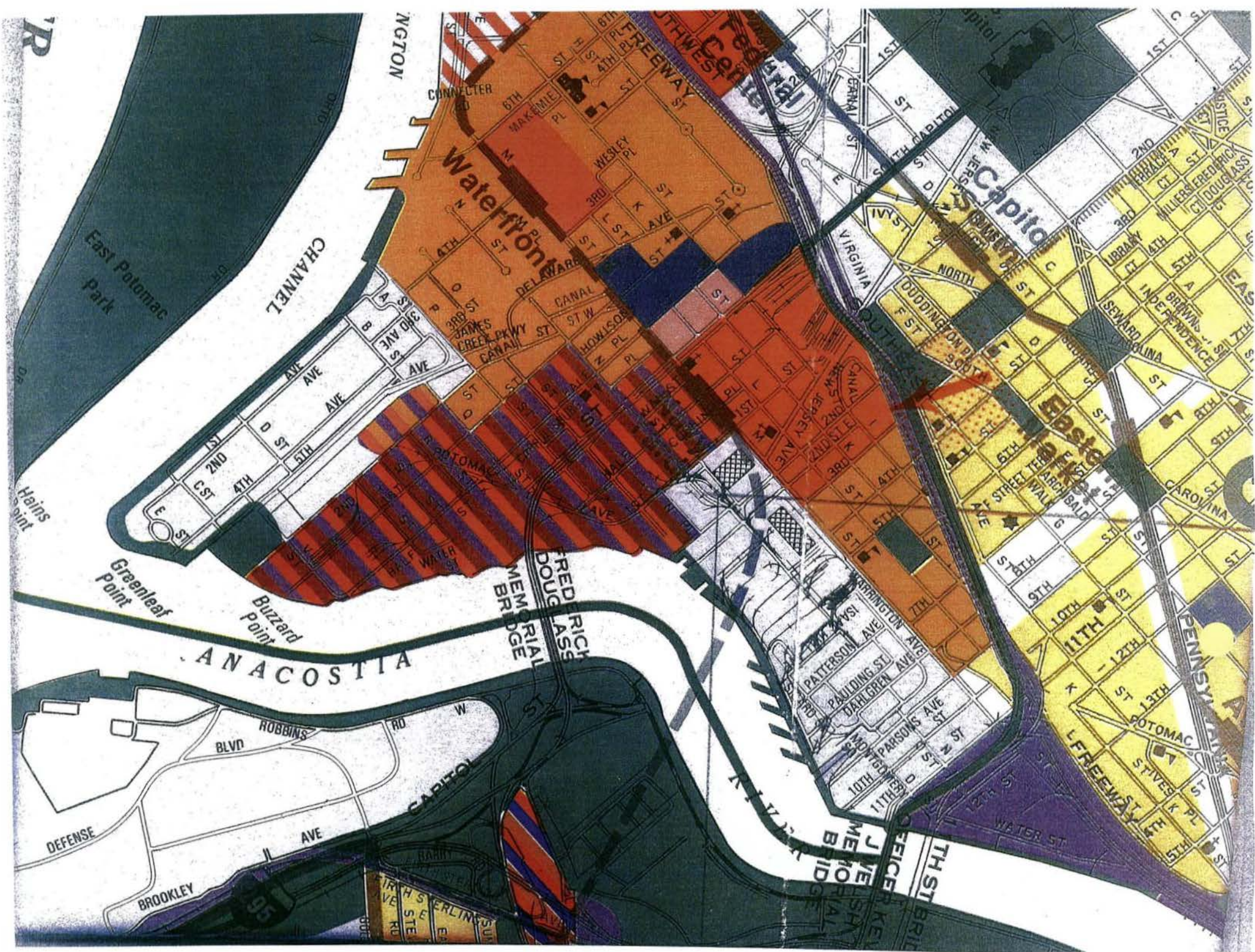
Anthony Hood, Vice Chair

Gregory N. Jeffries, Commissioner

Kevin Hildebrand, Commissioner

John Parsons, Commissioner





SQUARE 766

NOTICE AND COMMENT TIMELINE FOR CASE NO. 97/14Z

January 9, 1998: Notice of Public Hearing for February 23, 1998 (45 D.C. Reg. 161)

8. Add new Subsections 1709.17, 1709.18 and 1709.19 as follows:

...
1709.18 The Capitol South receiving zone consists of the C-3-C zoned portions of Square 695 through 697, N697, 698, 699, N699, 737 through 742, N743, 766, 769 and 800.

May 18, 1998: Special Public Meeting of the Zoning Commission

Vote to remove Squares 766, 769 and 800 from Capitol South receiving zone (p. 15 of hearing transcript)

August 24, 1998: Notice of Proposed Rulemaking (45 D.C. Reg. 5824)

C. Title 11 DCMR, Chapter 17, Section 1709, TRANSFERABLE DEVELOPMENT RIGHTS, is amended by

1. Adding three new sections numbered 1709.17 through 1709.19 to read as follows:

...
1709.18 The Capitol South receiving zone consists of those portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, N743, 766, 769 and 800, each zoned C-3-C.

October 19, 1998: Special Public Meeting: Zoning Commission Order No. 860 (46 D.C. Reg. 1054). Zoning Commission ORDERS APPROVAL of the following amendments to the Zoning Regulations and Map:

C. Title 11 DCMR, Chapter 17, Section 1709, TRANSFERABLE DEVELOPMENT RIGHTS, is amended by:

1. Adding three new sections numbered 1709.17 through 1709.19 to read as follows:

...
1709.18 The Capitol South receiving zone consists of those portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, and N743, each zoned C-3-C.

February 5, 1999: Notice of Final Rulemaking (46 D.C. Reg. 1016)

C. Title 11 DCMR, Chapter 17, Section 1709, TRANSFERABLE DEVELOPMENT RIGHTS, is amended by

1. Adding three new sections numbered 1709.17 through 1709.19 to read as follows:

...

1709.18 The Capitol South receiving zone consists of those portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, and N743, each zoned C-3-C.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DISTRICT OF COLUMBIA ZONING COMMISSION
SPECIAL PUBLIC MEETING

MONDAY
MAY 18, 1998

The Zoning Commission met in hearing room 220 South, 441 4th Street, N.W., Washington, D.C., at 6:34 p.m., Jerrily R. Kress, Chairperson, presiding.

PRESENT

JERRILY R. KRESS

Chairperson

HERBERT M. FRANKLIN

Commissioner

JOHN G. PARSONS

Commissioner

STAFF PRESENT

SHERI PRUITT-WILLIAMS

Office of Zoning

VINCENT ERONDU

Office of Zoning

DAVE COLBY

Office of Planning

1 P-R-O-C-E-E-D-I-N-G-S

2 CHAIRPERSON KRESS: I would like to call -- whoops -- I would
like to call our special meeting to order tonight. We had scheduled this special
meeting to discuss 97-14Z remaining zoning text and map amendments based on
the 1994 amendments to the comp plan.

6 And I'm Jerrily Kress. Joining me this night, this evening are
Commissioners Franklin and Parson.

8 And with that, I'll ask if there are any preliminary matters.

9 MS. PRUITT-WILLIAMS: No, Madam Chairperson, there are no
preliminary matters.

11 CHAIRPERSON KRESS: All right. Hearing, then, I would open
it for discussion for our preliminary action.

13 MR. COLBY: Did you want a report from the Office of Planning?

14 CHAIRPERSON KRESS: Would we like a report from Office of
Planning?

16 MR. COLBY: You have the report and I'm happy to summarize
it. It's in the form of a hearing summary and also, actually, three pieces: a hearing
summary, a response to questions by the Commission, and a gratuitous, really,
follow-up memorandum from the Office of Planning on the boundary issue in one of
the rezoning zones.

21 And as I think you remember, many or most of the items in the
advertised text, which our summary follows very closely, you might just go down the
summary.

24 The issues are in numbers, I believe the Commission's issues
will be with number three largely.

26 Well, why don't we --. I'm happy to go through it but --.

27 CHAIRPERSON KRESS: I might get some overview comments

if we decide to go through it, we might vote issue by issue and then ask for a summary.

3 MR. COLBY: Okay. Sure.

4 CHAIRPERSON KRESS: I would just like to ask one thing as I was reviewing it. It appears that, in the announcement for the public hearing and in your initial reports, we had, relating to Section 1706.3.B.

7 It's two square feet of bonus density for each square foot, and then that is revised in your February 13 to say, on page ten, "The ration south of Mass was mistakenly shown as two to one in the proposed zoning text in both OP's preliminary report and the notice of public hearing.

11 MR. COLBY: It was, that was, you're quite right. That was my trying to make more consistent the material that I had inherited from Mr. Gross.

13 I think, subsequent to that, it's become clear, both in what limited testimony there was on the case, as well as, in our minds, that I should have left well enough alone. That to get housing downtown, to get housing downtown will require as much incentive as we can provide, and at two FARs, the better number, even though it doesn't allow us step-down from north of Mass to south of Mass. It, too, we would recommend to go with --.

19 CHAIRPERSON KRESS: You recommend that to --.

20 MR. COLBY: Go back to the original two.

21 CHAIRPERSON KRESS: Go back to the two to one.

22 MR. COLBY: Yes.

23 CHAIRPERSON KRESS: Irregardless of this report.

24 MR. COLBY: Yes.

25 CHAIRPERSON KRESS: I just wanted to have that one item clarified.

27 Before we go into, and I was going to follow, basically, your

outline, which parallels the notice of public hearing, but I thought we might want to discuss this, perhaps generally, before we go item by item.

3 Is there any general discussion on the issues before we perhaps get a presentation and go item by item?

5 COMMISSIONER FRANKLIN: Well, Madam Chair, I speak as the least knowledgeable of the three of us and, therefore, I have to approach this issue with certain evasive commitments and principles in mind that are perhaps individual to me.

9 I am very much in favor of having more housing downtown, particularly south of Massachusetts Avenue.

11 I don't see how that goal is likely to be achieved by allowing the housing component that is otherwise required to be met off-site, at some distance.

13 I also think that the TDR approach makes a lot of sense. I think that, as Mr. Colby has said, we ought to be creating incentives for housing, but I don't think we ought to be creating a situation where you can buy your way out of providing housing where we want housing to be provided, even though, you know, affordable housing and other housing is needed elsewhere in the community.

18 So, I'm not prepared to vote for anything that would permit the residentially required elements to be satisfied at other than the sites that we are trying to get housing at.

21 Now, I know there are all kinds of arguments about whether that will work or not, but we are, I think, able to hope that it will work if we have a TDR approach such as the Office of Planning has recommended.

24 So, I'm ready to go with a TDR approach to this, but not with a buy-out approach.

26 CHAIRPERSON KRESS: Well, since there's only the three of us and, as you --

1 COMMISSIONER FRANKLIN: Now, you may wish, under those
 circumstances, since we don't have a full complement of commissioners, to have
 this thrown back open and have our two colleagues join us to --.

4 k: Well, the other thing, I wanted to talk about it generally
 because I do agree there's a lot going on. There are these new task forces,
 Congress is intervening, so I'm looking at some of the economic development kinds
 of issues.

8 We are in the process, or the Council's in the process, of redoing
 the comprehensive plan and, in fact, during my hearings on my --.

10 I'm sorry. We are in a formal meeting right now. Excuse me.
 We are meeting. If you have any conversation, please take it to the hall. Thank
 you. 12

13 We were offered by Linda Cropp to make our comments on the
 comprehensive plan and so there is an opportunity for us to look at some of these
 issues, make comments, and I think for the community to also be able to make
 comments on the comprehensive plan.

17 So, that's why I thought perhaps a general discussion was in
 order. 18 I realize that, or sense that, you felt an unreadiness to be able to vote on
 some of these issues, and perhaps we should deal with it in a general way and what
 we want to do before we get to specifics.

21 Where are you, Commissioner Parson?

22 COMMISSIONER PARSONS: Well, I'm with Mr. Franklin, which
 is no surprise to most folks that know where I come from, but --.

24 Mr. Colby, there was a housing summit the Mayor conducted
 some time in April, I think, or maybe March. Is anything coming from this, or we are
 we still going to be held to the comprehensive plan as it is?

27 MR. COLBY: The targets didn't change, and what the summit

did for me, what I have gotten from it and what you have gotten from it is that, is the product, basically, that went into the summit in terms of housing targets, the status of housing downtown.

4 Beyond that, I don't know of any, of any specific incentives to, beyond what we know about through the Council legislation.

6 COMMISSIONER PARSONS: So there's no movement to move the 40 to 50% percent required back to 40%.

8 MR. COLBY: No.

9 COMMISSIONER PARSONS: So, everybody wants housing, but nobody's willing to do anything about it. Is that it?

11 It's basically what's happening. And when started at 9300 units, we're lucky to get three, and everybody's still talking about a lively downtown and there's no question the people who weren't talking before are talking, the Director of DHCD.

15 I mean talking in a way where, where one believes them, but today there's no change or no lobbying of the Council to change that, that I'm aware of, to change those numbers.

18 Then, I must confess, I'm a little confused, maybe I didn't do enough homework.

20 We asked for testimony on this, but it's not an advertised action item, is that correct?

22 MR. COLBY: That's correct.

23 COMMISSIONER PARSONS: So, even though we're not inclined, apparently, to deal with this, what would have been our next move, to have a formal hearing on language to revise this?

26 MR. COLBY: I can only say that in the past, it's my, my, and I've never been asked the question. It's really an administrative question, I think, but the

Commission has, to my knowledge, in the past, acted on language which was presented, or questions presented in the, in the hearing notice and acted on them on the basis of testimony, I mean, has done the same thing on the Chain Bridge Road, have put things in just to invite testimony and then has acted upon that as, has considered that, I think, sufficient notice.

6 I'm, however, I'm not going to stand on that.

7 I was trying to determine whether we had enough information to act on this. It was falsely, it was mistakenly advertised, put in as officially advertised, so you've got as much notice, as much information from that notice as you possibly could have.

11 What the Commission intended to do was to send a stronger message to the public that they, that you weren't inclined to treat that as the rest of the text was being treated by asking for comments only.

14 But, effectively, you have advertised it, I believe, it had the effect of advertising it and receiving comments on it.

16 COMMISSIONER FRANKLIN: In other words, were we to choose to act tonight, we'd be legal.

18 MR. COLBY: I believe so, but I wouldn't want you to --.

19 COMMISSIONER PARSONS: The other issue is whether we have the option, if you will, the discretion to not follow the guidance of the City Council.

22 MR. COLBY: Is that a separate question?

23 CHAIRPERSON KRESS: I think that's a separate question, yes.

24 COMMISSIONER PARSONS: You don't need to answer either one. 25

26 COMMISSIONER FRANKLIN: On that point, we have been given large submission by Wilkes, Artis, on some of the legal issues, and I'm,

notwithstanding that submission, not persuaded that we have the authority to, in effect, require housing off-site.

3 I know they say it would be voluntary, but it's obviously something that wouldn't be done but for regulations, when the whole purpose and intent of those regulations is to get housing on-site, so I don't see the connection.

6 I mean, if maybe you could give me, as I said at the outset, when we first discussed this, maybe if we need more parks, we can require parks. Or something else as a way of buying your way out of what would otherwise be regarded as an onerous regulation.

10 I think the TDR approach does save it, in the sense that it creates the kind of incentives that tend to work. So, that's where I am, Sharon, now if it's decided that we punt on this and just readvertise and let our colleagues come on board and hear the pros and cons, I would be happy.

14 CHAIRPERSON KRESS: Well, it's obvious that we're split and I feel that, from reading the, all of the information, I feel that if, if, that the new members would need more than just reading the transcript, because I think there's a lot of history here, and there were a lot of other discussions pertinent to all this.

18 So, to me, it's obviously, it's obvious that we're split and so on the issue that we're split on, we've got two choices. One, either ask the other two members to read it, or to open it up to hearings. And my sense would be to open it up for more hearings so that this can be aired and discussed, and that they have the opportunity to ask questions and whatnot.

23 That would, that's what my sense is.

24 COMMISSIONER PARSONS: I would agree. I'm trying to figure the timing of that. Is there anything going on in the city as a result of that symposium, that summit, that we should be waiting for? Like if we had hearings in October or November, would some progress be made?

1 MR COLBY The Comp Plan mark-up is supposed to occur in
 2 September. Assuming that does occur in September, and it's a reasonable
 3 assumption now, there could be something coming out of that, but I can't tell you
 4 what it would be. There frequently is some message coming out

5 CHAIRPERSON KRESS: And I say that we can have an
 6 opinion. If we want to sit and discuss among ourselves and have an opinion and put
 7 it to the City Council as a part of that, whatever that opinion is can be heard

8 MR COLBY Let me add, I would implore you to act if you see
 9 fit on the remainder of the case tonight. And if that one goes off to the side, why
 10 then, send it off to the side

11 CHAIRPERSON KRESS. I thought some of these are
 12 dissociated issues and I feel comfortable -- I was just trying to get a handle on the
 13 general. I'm prepared to vote on everything, I was just jumping ahead to, I was just
 14 jumping ahead to knowing what was going to happen

15 MR COLBY Now you know

16 CHAIRPERSON KRESS Well, if there isn't any other general
 17 discussion, why don't we go back and just deal with the specific issues that we can
 18 deal with

19 Is there, may we use the Office of Planning because it parallels
 20 the --

21 COMMISSIONER PARSONS March 31

22 CHAIRPERSON KRESS No, the February 13 March 31 only
 23 hits a couple of high points, I believe

24 If not, if you have the hearing notice they're really the same

25 COMMISSIONER FRANKLIN Sure

26 CHAIRPERSON KRESS. The first issue is the reference to
 27 period amendments, I think that's bookkeeping, and it just basically adds the words

"as amended "

2 So item number one, can I say by consensus we all agree?

3 COMMISSIONER PARSONS: Sure. Keep going.

4 CHAIRPERSON KRESS Item number two, to me, is not
controversial Is that true? Either one of --

6 COMMISSIONER PARSONS. Fine

7 COMMISSIONER FRANKLIN Go ahead.

8 CHAIRPERSON KRESS Okay There's a consensus on item
number two

10 Item number three, I think is what we've been discussing, and
we should skip Is that correct?

12 MR. COLBY Pass, yes

13 CHAIRPERSON KRESS Item number four, square 491, any
discussion about that? And if you want, and I'm not allowing Office of Planning to do
any presentation here, I mean, I am, I don't mean to not allow Office of Planning to
do any presentation

17 That's basically, is coming out and it's including square 491 in
Housing Priority Area C Am I not correct?

19 MR COLBY Yes

20 CHAIRPERSON KRESS Is there a problem?

21 COMMISSIONER FRANKLIN Is there a buy-out possibility in
this to be here?

23 MR COLBY I don't, I think the very fact that it's in Housing
Priority Area C would give it the same buy-out potential that anything else in Area C

-- 25

26 COMMISSIONER FRANKLIN I'd vote for it without buy-out
potential As recommended by the downtown Christian congregations.

1 CHAIRPERSON KRESS Can we do -- I don't know that we
can do that with the words "and as advertised," can we?

3 And I mean can, not may? Are we able to somehow vote on four
with -- 4

5 See, I 'm looking down the road at your concern, Commissioner
Franklin, of --

7 COMMISSIONER PARSONS How is it the buy-out provision is
in here? I mean, it's not, is it? This would be adding 491 to a list of other squares

9 COMMISSIONER FRANKLIN I think you're right, Mr Parsons.
I am looking at 1706.8 It says "Housing Priority Area C, the down core area,
comprises DDC4 zoned properties located in various blocks," and this would simply
add another block, 491.

13 So, if that is the case, I would certainly favor that

14 COMMISSIONER PARSONS This is the block owned by the
District of Columbia that's being shopped around? And we have an FAR require -- a
housing requirement on it

17 Some of the proposals coming in, hopefully, will have that Not
the MOC proposal, but how about the opera proposal? No, I'm kidding

19 So I don't see any problem with this, from that standpoint.

20 CHAIRPERSON KRESS. Can I assume that there's a
consensus -- May I have a consensus on this issue then?

22 All right We have a joint consensus on approving item four.
What about item five

24 Oh, by the way, with item four, may I also put in the map
amendment which is number nine in the public hearing notice? Because these run
in tandem, am I not correct? The map amendment and the text amendment we're
on a consensus on both of those issues relating to square 491

1 All right What about item five which, to me, does seem to be
housekeeping

3 COMMISSIONER FRANKLIN That's a fair accomplish

4 COMMISSIONER PARSONS Yes, it's just telling it like it is

5 CHAIRPERSON KRESS So, may I have consensus on item
five? 6

7 UNIDENTIFIED Indeed

8 CHAIRPERSON KRESS All right. Item six Is this, do we want
to deal with item six, or because of the hold on item three, deal with item six in the
re-hearing? What's your pleasure/

11 COMMISSIONER FRANKLIN Well, this is just the TDR, I'm
assuming?

13 MR COLBY Yes, it is It's just, TDR is which are going to help
housing downtown I guess the only issue is whether it's one and a half, I think, or
two FAR

16 COMMISSIONER PARSONS And you're recommending two?

17 MR COLBY Yes

18 CHAIRPERSON KRESS Which is what was published in, which
was advertised, yes, excuse me

20 COMMISSIONER FRANKLIN I would be in favor of the
measure

22 COMMISSIONER PARSONS At two?

23 COMMISSIONER FRANKLIN Yes

24 CHAIRPERSON KRESS As published All right then We have
a consensus on item six

26 Item seven These are the three additional receiving zones for
the TDRs

1 MR COLBY I think seven is just a renumbering, at least in our -

2

3 COMMISSIONER FRANKLIN Yes, where seven is simply a
renumbering for

5 MR COLBY. The next one would be the --

6 CHAIRPERSON KRESS. I'm sorry It's, yes, it's under item six
Excuse me You're correct. Yes.

8 Here's --. See, I was going by yours Your number seven was
the three additional and in the public hearing number seven is the renumbering. But
the renumbering we need regardless So now we're talking about adding the new
subsection

12 I don't think, I think we all can say we're in consensus with
number seven as published in the notice of public hearing

14 Now, we're really talking about number eight, and adding the
three new subsections

Is then

16 COMMISSIONER FRANKLIN I would endorse that measure

17 COMMISSIONER PARSONS Well, on OP's report, they said
that they neglected to request advertisement of a change to 18, which we made
clear Do we need to amend anything there, Mr Colby?

20 CHAIRPERSON KRESS He is talking 1709 18

21 MR COLBY You have a map which we provided in a May 1
memo which shows that receiving zone -- The issue that we had raised earlier in
the public hearing, that on, at north and south of, at the north and south limits of that
overlay in the Capitol South receiving zone, area, excuse me, the receiving zone
area with a potential of 110 to 130 feet in height was cheek to jowl, really, with two
story residential dwellings

27 And that, even though 90 feet is no bargain, which is what

existing zoning would allow, to go beyond that seems like going in the wrong direction next to those houses. And it's easily resolved by just drawing up the boundary straight down Second Street, rather than going east of Second Street on those few properties that, that are across Second Street and that are zoned C3C.

5 The two properties on the south, were rezoned recently as part of a most recent Comp Plan map amendment, per the council's direction. But they are very slender, very, very, very shallow properties, and they are literally up against two-story dwellings that are part of the housing project.

9 COMMISSIONER PARSONS So you would have us move the line over, then?

11 MR. COLBY To Second Street. Yes.

12 CHAIRPERSON KRESS Well, is 1709 18, as written, correct, or you're saying no, it is not?

14 MR. COLBY It would leave out square 766, 769, and 800.

15 COMMISSIONER FRANKLIN Intentionally.

16 MR. COLBY Yes. To draw the line on Second Street would leave out those three.

18 CHAIRPERSON KRESS So, your, OP's proposal is that 1709 18 read as it is with those three squares cut out?

20 MR. COLBY Yes.

21 COMMISSIONER PARSONS Seven sixty-six, sixty-eight, and eight hundred?

23 CHAIRPERSON KRESS No, 69 and 800. Seven sixty six, sixty-nine --

25 MR. COLBY The last three squares on the advertised.

26 COMMISSIONER PARSONS All right.

27 CHAIRPERSON KRESS Are you comfortable with that? All

right, then we have a consensus among ourselves on number eight, with the change eliminating, on 1709 18, eliminating squares 766, 769, and 800 All right

3 Number nine, since now I think we're kind of following the notice of public hearing, number nine is amending the zoning map regarding square 491

5 MS PRUITT-WILLIAMS Excuse me, Madam Chair Could you repeat the last, number eight, please? Eliminating squares

7 CHAIRPERSON KRESS Eliminating squares number 766, 769, and 800

9 MS PRUITT-WILLIAMS: Thank you.

10 CHAIRPERSON KRESS And then, number nine, since we're following the numbering, at this point, of the notice of public hearing, number nine is amending the zoning map by rezoning square 491 on the map as well, which we've already discussed and said we were in agreement

14 Perhaps, then, I would ask for a motion that would formalize, and I'd be happy to make it I have the notes, if you would like Why don't I do that?

16 I would make a motion regarding case number 97-14Z that we accept as written, was written, in the notice of public hearing, as advertised, items number one, two, four, five, six, seven, eight, with the change of elimination of the three squares that are 766, 769, and 800, and number nine, as written

20 Is that, is the motion clear?

21 COMMISSIONER PARSONS So moved

22 CHAIRPERSON KRESS Is there -- I moved it. Okay I moved it and you would second

24 COMMISSIONER FRANKLIN. Seconded

25 CHAIRPERSON KRESS Commissioner Franklin seconds All those in favor, signify by saying aye

27 (Chorus of ayes)

1 Opposed?

2 (No response)

3 Motion carries Would you record the vote?

4 MS PRUITT-WILLIAMS Staff would record the vote as being
made by Mrs Kress, seconded by Mr Franklin, three to zero to approve All except
for item three

7 CHAIRPERSON KRESS Item three And item eight as
modified

9 All right. Any other discussion? Hearing none, I will call the
public

11 COMMISSIONER FRANKLIN Before you do that, Madam
Chairman, I want to discuss what to do with --

13 CHAIRPERSON KRESS Item three? Yes

14 COMMISSIONER FRANKLIN Which we haven't acted on

15 CHAIRPERSON KRESS I had proposed earlier to readvertise
item three, so that our colleagues could hear the whole case and have an
opportunity to examine and question the participants themselves prior to making the
final decision

19 COMMISSIONER PARSONS I think we should do that in the
fall I don't see any, I guess I'm quite hopeful that we'll get some further guidance
from the comprehensive plan, or other things going on in the community to achieve
this objective and for us to conduct hearings in the middle of that, I'm not sure is very
helpful

24 COMMISSIONER FRANKLIN Not having gotten very good
guidance from the 94 comp plan amendments on this subject, you're hopeful --

26 COMMISSIONER PARSONS You're afraid it will go to 60%,
aren't you?

1 COMMISSIONER FRANKLIN We may get better guidance in
 98 if we ourselves may make some suggestions But, you know, whatever the chair
 thinks is desirable is fine with me

4 CHAIRPERSON KRESS Well, it sounds like we are in
 agreement for a rehearing It's a matter of when And perhaps we need a little more
 investigation ourselves on the status of some of these other endeavors that appear
 to be going on

8 So, I would suggest that we just say we will schedule another
 hearing and then check for ourselves on the other kinds of studies going on and
 then, on the basis of that, we will set down another time

11 COMMISSIONER FRANKLIN So our colleagues understand
 the delay that awaits them, we are postponing action on a matter so the two of you
 can join us in hearing all about how to get more housing downtown

14 MS PRUITT-WILLIAMS Excuse me, Madam Chair, are you
 postponing action, are you going to bifurcate the case, or do want to hold the whole
 thing off?

17 CHAIRPERSON KRESS Yes No, I believe we've just
 bifurcated the case Excuse me

19 MS PRUITT-WILLIAMS Just wanted to be sure that we were
 going to move forward that way

21 CHAIRPERSON KRESS Any objection from my colleagues?
 Any further discussion? Hearing none, I call the special meeting regarding case 97-
 142 closed Thank you

24

25 (Whereupon, the above entitled special meeting of the District of
 Columbia Zoning Commission was concluded at 7 07 p m)