

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

=====⌋
IN THE MATTER OF: :
Amendments to 1401 of the :
Zoning Regulations :Case No. 08-17
: :
=====⌋

Monday,
June 29, 2009

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No.
08-17 by the District of Columbia Zoning
Commission convened at 6:37 p.m. in the Office
of Zoning Hearing Room at 441 4th Street,
N.W., Washington, D.C., 20001, Anthony J.
Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
WILLIAM WARREN KEATING, Vice Chairman
KONRAD SCHLATER, Commissioner
MICHAEL J. TURNBULL, FAIA, Commissioner
(OAC)
PETER MAY, Commissioner (NPS)

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
ESTHER BUSHMAN, General Counsel

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
MAXINE BROWN-ROBERTS

The transcript constitutes the
minutes from the Public Hearing held on June
29, 2009.

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VOTE:CLOSING:**NEAL R. GROSS**

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

2 6:37 p.m.

3 CHAIRMAN Hood: Good evening,
4 ladies and gentlemen. This is the Public
5 Hearing of the Zoning Commission of the
6 District of Columbia for Monday, June 29,
7 2009. My name is Anthony J. Hood. Joining me
8 this evening are Vice-Chairman Keating,
9 Commissioner Schlater, Commissioner Turnbull,
10 and Commissioner May. We are also joined by
11 the Office of Zoning Staff and also the Office
12 of Planning Staff.

13 This proceeding is being recorded
14 by a court reporter and is also webcast live.

15 Accordingly, we must ask you to refrain from
16 any disruptive noises or actions in the
17 hearing room.

18 The subject of this evening's first
19 hearing is Zoning Commission Case No. 08-17.
20 This is a request by the Office of Planning
21 for text amendment to the Reed-Cooke Overlay.

22 Notice of Today's hearing was published in

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1 the D.C. Register on April 3, 2009. And
2 copies of that announcement are available to
3 my left in the rear, near the door.

4 This hearing will be conducted in
5 accordance with provisions of 11 DCMR Section
6 3021, as follows: First, preliminary matters;
7 two, presentation by the Office of Planning;
8 three, reports of other Governmental Agencies,
9 if any; four, report of the ANC1-C;
10 organizations and persons in support;
11 organizations and persons in opposition. The
12 following time constraints will be maintained
13 in this hearing. Organizations will get five
14 minutes; individuals three minutes. The
15 Commission intends to adhere to these time
16 limits as strictly as possible, in order to
17 hear the case in a reasonable period of time.

18 The Commission reserves the right to change
19 the time limits for presentations, if
20 necessary, and notes that no time shall be
21 ceded.

22 All persons appearing before the

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1 Commission are to fill out two witness cards.

2 These cards are located to my left, on the
3 table near the door. Upon coming forward to
4 speak to the Commission, please give both
5 cards to the reporter sitting to my right,
6 before taking a seat at the table. When
7 presenting information to the Commission,
8 please turn on and speak into the microphone,
9 first stating your name and home address.
10 When you are finished speaking, please turn
11 your microphone off so that your microphone is
12 no longer picking up sound or background
13 noise.

14 The decision of the Commission, in
15 this case, will be based exclusively on the
16 public record. To avoid any appearance to the
17 contrary, the Commission requests that persons
18 present not engage the members of the
19 Commission in conversations during any recess
20 or at any time. The Staff will be available
21 throughout the hearing to discuss procedural
22 questions.

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1 Again, joining us from the Office
2 of Zoning Staff, Ms. Sharon Schellin and Ms.
3 Ester Bushman. Also of the Office of Planning
4 Staff, Ms. Brown-Roberts and Ms. Steingasser.

5 Please turn off all beepers and
6 cell phones at this time, so as to not disrupt
7 these proceedings.

8 At this time, the Commission will
9 consider any preliminary matters. Does the
10 Staff have any preliminary matters?

11 MS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: Okay. We'll go
13 straight to the Office of Planning. Ms.
14 Brown-Roberts?

15 MS. BROWN-ROBERTS: Okay. Good
16 evening, Mr. Chairman and members of the
17 Commission. I am Maxine Brown-Roberts,
18 representing the Office of Planning. The
19 Office of Planning, on behalf of the Reed-
20 Cooke Neighborhood Association, requests a
21 text amendment to clarify that the uses within
22 Section 1401.1 are prohibited as primary uses

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1 as well as an accessory use to any other use
2 with the Reed-Cooke Overlay.

3 An appeal to the Board of Zoning
4 Adjustment resulted in a decision that the
5 uses listed in Section 1401.1 are prohibited
6 and are allowed as a matter of rights
7 accessory uses. The Reed-Cooke Neighborhood
8 Association, who initiated the overlay, stated
9 that it was their intention, at the time, that
10 the uses would be prohibited in all forms.
11 The proposed amendment is, therefore, to
12 clarify and explicitly state the intentions of
13 the Reed-Cooke Overlay.

14 OP, therefore, recommends that a
15 new subsection 1401.2 be added to read: "If
16 any of the principal uses prohibited by
17 Section 1401.1 would be permitted as an
18 accessory use in the underlying zone district,
19 that accessory use is also prohibited in the
20 RC Overlay District."

21 The proposal is not inconsistent
22 with the Comprehensive Plan and is to protect

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1 the neighborhood and not affect the
2 residential community. Representatives of the
3 Harris Teeter Supermarket has requested that
4 the proposed language be amended to include
5 language that would specifically exempt the
6 supermarket from the proposed language, as it
7 operates a liquor store that was granted and
8 permitted as an accessory use. The Office of
9 Planning does not object to this addition, but
10 has been advised by OAG that, if the proposed
11 text is adopted, any uses that were lawfully
12 established prior to the adoption of the
13 proposed amendment would become non-conforming
14 and would have a certificate of occupancy that
15 would validate that use.

16 The Office of Planning, therefore,
17 recommends approval of the proposed amendment.

18 Thank you. Mr. Chairman.

19 CHAIRMAN HOOD: Thank you, Ms.
20 Brown-Roberts. And I actually read your last
21 -- excuse me, but I'm going to start off with
22 that. I actually read your last comment and I

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1 was just trying to understand that. And I
2 don't know that we do have an request, except
3 for the accessory use located in the grocery
4 store, located in Square 2572, Lot 36. But
5 you said now we've been advised by the Office
6 of Attorney General that -- and I've read it,
7 but I'm going to say what? What have we been
8 advised?

9 MS. BROWN-ROBERTS: The Office of
10 the Attorney General advised that the
11 amendment that is being proposed the Harris
12 Teeter representative is unnecessary, because
13 any use, as of the adoption of this text,
14 would become non-conforming and they would
15 have a building permit that states that this
16 use was permitted at the time they -- that
17 they obtained their building permit.

18 CHAIRMAN HOOD: Okay. So that part
19 of the language would -- really is not
20 necessary?

21 MS. BROWN-ROBERTS: That's their
22 interpretation. Yes, sir.

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1 CHAIRMAN HOOD: Then, if we start
2 doing it there, we would have to do everyone
3 who's on there?

4 MS. BROWN-ROBERTS: Everyone.
5 Right, that was -- that's right. Yes.

6 CHAIRMAN HOOD: I understood it a
7 little bit better than I thought I did. Okay.
8 Let me open it up for questions.
9 Commissioner May?

10 CHAIRMAN HOOD: Yes. The --
11 alright, assuming that the supermarket were
12 not there.

13 MS. BROWN-ROBERTS: Yes?

14 COMMISSIONER MAY: And this text
15 amendment were passed, this means that, in the
16 future, they'd be able to put in a
17 supermarket, but not -- not the accessory use
18 of a liquor store?

19 MS. BROWN-ROBERTS: That is
20 correct.

21 COMMISSIONER MAY: And how is that
22 the liquor store got to be there in the first

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1 place?

2 MS. BROWN-ROBERTS: How did the?

3 COMMISSIONER MAY: I mean, in other
4 words, did the Zoning Administrator interpret
5 the regulations in such a way that the liquor
6 store, within the supermarket, was allowable
7 as an accessory use?

8 COMMISSIONER MAY: That's correct.

9 COMMISSIONER MAY: And it's -- oh,
10 I see. The whole list now includes this as a
11 prohibited accessory use?

12 MS. BROWN-ROBERTS: That's right.
13 Yes.

14 COMMISSIONER MAY: Okay. Got it.
15 And how's it been going, since they were
16 there? I mean, has it been the -- the problem
17 that some people anticipated it to be, or is
18 it --

19 COMMISSIONER MAY: I haven't heard
20 anything to that effect. But their
21 representative is here, so I'd sort of let
22 them answer that question.

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1 COMMISSIONER MAY: Okay. All
2 right. We'll get to that. Thanks.

3 CHAIRMAN HOOD: Commissioner
4 Schlater?

5 COMMISSIONER SCHLATER: Quick
6 question. In your report, it says the OP
7 believes that the proposed amendment is a
8 clarification of the original intent of the
9 Reed-Cooke Overlay. Why do you think it was
10 the original intent?

11 MS. BROWN-ROBERTS: Well, I spoke
12 to the -- a number of representatives from the
13 -- from the Reed-Cooke Neighborhood
14 Association who were the persons who were
15 instrumental in writing the regulations, at
16 the time. And -- and that was conveyed to me,
17 that -- that, at the time when they did that,
18 when they listed the prohibited uses, the uses
19 were prohibited -- they thought that the
20 language was stating would -- would also --
21 would affect or would prohibit the uses, both
22 as primary and as accessory uses.

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1 COMMISSIONER SCHLATER: So, does OP
2 oppose accessory uses, such as liquor, in
3 these grocery stores and whatnot?

4 MS. STEINGASSER: Not as a city-
5 wide policy, we do not. But, in this
6 particular case, when we read the transcript,
7 then the order, and interviewed the people who
8 had actually written the order -- written the
9 original proposal from the community, that was
10 clearly their intent and that was the
11 understanding of the Commission, at the time
12 they adopted the regulations. It just wasn't
13 clearly stated or clearly written.

14 COMMISSIONER SCHLATER: No further
15 questions.

16 CHAIRMAN HOOD: Any others?
17 Commissioner Turnbull?

18 COMMISSIONER TURNBULL: So,
19 basically, your understanding is that the
20 Reed-Cooke Overlay basically does not want any
21 alcohol within the overlay?

22 MS. BROWN-ROBERTS: Right. That's

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1 it, exactly. Yes.

2 COMMISSIONER TURNBULL: What
3 happens if, and I think Commissioner May
4 started going down the road, that let's say a
5 different grocery store comes in to where the
6 Harris Teeter is, they're out of luck?

7 MS. BROWN-ROBERTS: Yes, sir.

8 MS. STEINGASSER: Well, no. The
9 certificate of occupancy would -- would
10 continue and the non-conforming status of the
11 property would continue. And that would
12 include its accessory uses, which, in this
13 case, do include the sale of alcohol.

14 COMMISSIONER TURNBULL: Oh. So
15 another retailer -- another grocery store
16 going in would be under the same usage, then?

17 MS. STEINGASSER: Yes.

18 COMMISSIONER TURNBULL: Okay.
19 Thank you.

20 MR. McCLELLAN: That's, of course,
21 provided that the use is continuous or within
22 three years or whatever?

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1 MS. BROWN-ROBERTS: Yes. That's
2 correct.

3 CHAIRMAN HOOD: So I want to
4 elaborate a little bit on that, so I can
5 figure -- understand. If this grocery store
6 goes away and another one comes in, is there
7 any mechanism -- I mean, let's not even talk
8 about this site. Let's talk about a different
9 site under the overlay. Another store comes
10 in. There's no mechanism for them to be able
11 to use or apply for a beer and wine license as
12 an accessory use? Is there a mechanism there
13 for them to be able to use that tool, or will
14 this overlay prohibit any of that? Turn on
15 your microphone.

16 MS. BROWN-ROBERTS: I'm sorry.
17 There are -- there is some -- some language in
18 the text of the -- the overlay that allows
19 special exceptions. You'd apply for the
20 special exceptions.

21 MS. BROWN-ROBERTS: Okay. So there
22 is a conduit for that to happen if need be?

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1 MS. BROWN-ROBERTS: Yes.

2 CHAIRMAN HOOD: Okay. All right.
3 Any other questions or comments? Okay. I
4 have a letter here from -- do we have any here
5 representing ANC 1-C? Okay. And I'm not sure
6 if this -- Ms. Schellin, maybe you could --
7 Exhibit 4, colleagues, is Exhibit 4 an e-mail
8 or a letter from 1-C? It doesn't meet -- it
9 doesn't meet the -- okay. Let me see, Mr.
10 Reynolds, I'm going to ask you to come
11 forward. I didn't see anything, other than
12 the old orders and the reports -- any other
13 reports of any other government agencies,
14 except for Office of Planning's report. Okay.
15 I'm going to ask Commissioner Reynolds if he
16 could come up.

17 And, do you know what, this is a
18 rare occasions, so anywhere you want to sit.
19 Sit right there. That's great. Turn your
20 mike on, Commissioner.

21 MR. REYNOLDS: I think it's on.
22 Yes. Thank you.

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1 CHAIRMAN HOOD: You may begin
2 whenever you're ready.

3 MR. REYNOLDS: Okay. Good evening
4 and thank you for allowing me to be here. I
5 am here, this evening, on behalf of Advisory
6 Neighborhood Commission 1-C. At the
7 Wednesday, June 6th meeting of this year, the
8 Commission voted to adopt a motion in support
9 of this proposed change. And you have in
10 front of you now a piece of correspondence,
11 under my signature, which I was duly
12 authorized to execute as the Chair of the
13 Planning, Zoning, and Transportation Committee
14 of Advisory Neighborhood Commission 1-C. This
15 letter does, in fact, support adding a new
16 sub-section to the Reed-Cooke Overlay, which
17 would be Section 1401.2. And, of course, we
18 all know the language.

19 I would also like to draw your
20 attention to -- in reference to the other
21 comments that were made previously to this --
22 in the minutes of February 6, 2008, which I

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1 have provided for you, Advisory Neighborhood
2 Commission 1-C also took a position on then
3 Zoning Commission Case No. 07-33, dealing with
4 the participation of the BZA to be able to
5 enforce requirements and seek special
6 exceptions and variances. We believe that
7 there is a great deal of material that is
8 germane to this case, this evenings, as it
9 applies to the continuing support of ANC 1-C,
10 believing that the process of the BZA does
11 allow proper relief for any applicant seeking
12 to alter the uses that are prohibited under
13 the Reed-Cooke Overlay. We also believe, as
14 it is stated in this correspondence, that the
15 intent here is to make an amendment. It is
16 not a radical change. It is simply a
17 clarification and we agree with the Office of
18 Planning on that.

19 I would like to draw the attention
20 of the Commission to page 5, and the last
21 resolution, that's part of this document,
22 which basically states that ANC 1-C is not in

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1 opposition to Harris Teeter, itself, actually
2 having a license to be able to sell beer and
3 wine. But the intent of this was to ask them
4 to follow the rules and regulations to seek
5 relief through a procedure that is already
6 established. And, therefore, ANC 1-C went on
7 record as supporting Harris Teeter seeking a
8 special exception and cast our support in that
9 direction. We were not opposed to that idea.

10 We were simply saying, if you come into this
11 neighborhood, please comply by the same rules
12 that everyone else does. And I believe these
13 two pieces of paper clearly state the position
14 of the Commission.

15 In reference to the question that
16 was brought about intent, if you turn to the
17 Reed-Cooke Overlay, you can see that, under
18 Section 1400.4, there is a section which
19 reads, "Where there are conflicts between this
20 chapter and the underlying zoning district,
21 the more restrictive regulation shall govern."

22 Once again, there is an opportunity of relief

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1 through the BZA. But the Reed-Cooke Overlay,
2 I think, gives us fairly clear and direct
3 guidance that there is a procedure for going
4 off the reservation. Thank you.

5 CHAIRMAN HOOD: Okay. Thank you,
6 very much, Commissioner Reynolds. Let me see
7 if my colleagues have any questions.
8 Commissioner May?

9 COMMISSIONER MAY: Yes. I
10 appreciate your providing the minutes from
11 February 6, 2008. But I'm a little confused
12 by the -- the part about supporting the
13 special exception, or at least I'm not sure
14 what the relevance that is of this
15 circumstance of this moment. I mean, are you
16 saying -- suggesting that, if we were to take
17 action and adopt this, that therefore, Harris
18 Teeter should go back and get a special
19 exception for something they already have the
20 authority to do?

21 MR. REYNOLDS: There may be a
22 question that they may be grandfathered in.

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1 However, I think it is fairly clear here that
2 the position of the Commission is that, when
3 the time for renewal comes, we may be faced
4 with a circumstance where they would simply
5 come before the BZA.

6 COMMISSIONER MAY: There wouldn't
7 be a circumstance for a renewal. I mean, once
8 you've got the C-of-O, why would they have to
9 come -- go back to BZA and get a special
10 exception for this?

11 MR. REYNOLDS: In the position
12 where there might be resistance coming forward
13 in the community, we might find ourselves at
14 this crossroad again. And --

15 COMMISSIONER MAY: But how would
16 that come before BZA? I mean, you can oppose
17 their liquor license. I know that.

18 MR. REYNOLDS: Right.

19 COMMISSIONER MAY: But how would
20 they wind up coming before the BZA again?

21 MR. REYNOLDS: Well, it -- stranger
22 cases have come forward before. I think the

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1 best way to approach it is to be able to say
2 if standing was not necessary before the BZA,
3 seeking relief before the BZA was not required
4 or necessary, I still think that the intent of
5 this document was to be able to provide
6 guidance to say there was no opposition. This
7 is really the point. There was no opposition
8 to Harris Teeter having the beverage -- the
9 alcohol beverage license. It was more a
10 request or another way of saying we simply ask
11 them to follow the rules and the regulations
12 that are the intent of the Reed- Cooke
13 Overlay.

14 So you may be right. They may not
15 even be required to come before the BZA. But
16 I think the intent -- and this is really what
17 I'm speaking to -- is reflected in this
18 resolution.

19 COMMISSIONER MAY: I need to turn
20 to the Office of Planning for just a second.
21 Is there any circumstance under which they
22 would -- that Harris Teeter would need to come

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1 back before BZA, as a result of the action
2 that we take here?

3 MS. STEINGASSER: Not that I'm
4 aware of. No.

5 COMMISSIONER MAY: All right. So
6 they are -- I mean, they're in; they're
7 grandfathered, no matter what action we take.
8 And so it's -- unless their use were to
9 lapse, if it were to stop being a -- an
10 accessory use of a liquor store on the
11 premises for three years, then there isn't a
12 circumstance where they would need to come
13 back.

14 MR. REYNOLDS: What if there was a
15 circumstance -- and forgive me for
16 interrupting --

17 COMMISSIONER MAY: No. I was done.

18 MR. REYNOLDS: Oh. Thank you -- of
19 the store going away and then a new store
20 attempting to come in?

21 COMMISSIONER MAY: As long as it's
22 not been a lapse of more than three years,

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1 then the new uses or the new lessee, or
2 whatever, could continue the existing use.

3 MR. REYNOLDS: Thank you. I see
4 your point.

5 COMMISSIONER MAY: Okay. All
6 right. Well, thanks.

7 CHAIRMAN HOOD: Okay. Yes. And I
8 think that may be proffered before the ABRA,
9 as opposed to us. I'm not sure. But anyway,
10 I concur with my colleague, Commissioner May.

11 But, let me ask this question, Commissioner
12 Reynolds, I was -- you mentioned how the vote
13 was taken. This letter, June 29, 2009, and
14 one of the things we'd like to do is make sure
15 we always give the ANC great weight. And
16 because it doesn't meet our -- you know,
17 you're supposed to record the vote and I'm not
18 necessarily sure if we get to the motion, but
19 the vote is not recorded here. If -- let me
20 just say this, if we leave it open, which I'm
21 not sure where we're going, we would request
22 that you kind of tighten this up so your ANC

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1 would get the great weight.

2 MR. REYNOLDS: Oh, absolutely. I
3 mean, I can send up a following piece of
4 correspondence, absolutely nailing the vote.
5 My memory of it, though, was that we had a
6 quorum of seven people and the vote was
7 seven/zero. But I'll be happy to confirm
8 that.

9 CHAIRMAN HOOD: Okay. And is that
10 all we need, pretty much, to record the vote?

11 MS. SCHELLIN: Yes, sir. Yes.
12 It's the written document that's given great
13 weight. So it has to be in writing.

14 CHAIRMAN HOOD: Right. Okay. And
15 we know the ANC's are volunteers, so we want
16 to make sure we do all we can to make sure you
17 get the great weight you deserve.

18 MR. REYNOLDS: Well, I appreciate
19 the Commission granting that leeway.

20 CHAIRMAN HOOD: Okay. And
21 hopefully no one is upset about that. I'm
22 looking around to see if I see any nods.

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1 Okay. Any other questions? Okay. Well,
2 thank you very much, Commissioner Reynolds.
3 We appreciate it.

4 MR. REYNOLDS: Thank you,
5 Commissioners.

6 CHAIRMAN HOOD: Okay. Now I'm
7 going to go to the list that I have. I'm
8 going to start with proponents. Maureen
9 Gallagher and -- I'm sorry, Peter Lyden. And
10 is there anyone else who would like to testify
11 in support? Okay. Ms. Gallagher, you may
12 begin. Turn your microphone on. Thank you.

13 MR. GALLAGHER: Okay.

14 CHAIRMAN HOOD: Five minutes. Are
15 you all both representing the same--

16 MR. GALLAGHER: Yes. We are
17 representing the same --

18 CHAIRMAN HOOD: Okay. Who would
19 like the five minutes?

20 MR. GALLAGHER: Can we just -- can
21 I do a couple minutes, and then he finish up?

22 CHAIRMAN HOOD: Sure. Since we

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1 don't have that many people --

2 MR. GALLAGHER: I believe we won't
3 take that long. I understand that.

4 CHAIRMAN HOOD: Since we don't have
5 a room full, we can be very flexible.

6 MR. GALLAGHER: Okay. Great. I
7 promise I won't be that -- that long, either.

8 CHAIRMAN HOOD: Your -- okay.

9 MR. LYDEN: Very sweet and to the
10 point.

11 CHAIRMAN HOOD: Okay.

12 MR. GALLAGHER: My name is Maureen
13 Gallagher and I'm the President of the Reed-
14 Cooke Neighborhood Association. First of all,
15 I would like to thank the Commission as well
16 as the Office of Planning, particularly Maxine
17 Brown-Roberts and Jennifer Steingasser.
18 They've been very helpful to us in this -- in
19 this endeavor and also in several others that
20 we've done and talked to them. They've been
21 very helpful.

22 And I just wanted to reiterate

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1 that, of course, the Reed-Cooke Neighborhood
2 Association is wholly behind the OP and what
3 they have proposed to the Commission tonight.

4 And a lot of the discussion has been on the
5 intent of the Reed-Cooke Overlay and what the
6 crafters of the overlay meant. And, while I
7 was not in the neighborhood at the time,
8 however, I -- it has been -- it was very, very
9 evident to me, while we were going through
10 this, that the intention was to have all of
11 the exceptions -- or all of the prohibited
12 uses as both accessory and as primary uses.
13 And that we looked at it as the plain language
14 of the law. And that's what we're here to try
15 to clarify and make sure that everybody
16 understands that that's our intent, to begin
17 with.

18 And I think that what I'll do is
19 let Peter take over from here. He was
20 actually -- he was one of the people that was
21 very instrumental in having the overlay put
22 into practice, back in the early '90s.

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1 CHAIRMAN HOOD: Okay. Thank you.
2 Mr. Lyden, you may being.

3 MR. LYDEN: Yes. My name is Peter
4 Lyden. I live at 1726 Euclid Street NW and
5 I'm a resident of Reed-Cooke Neighborhood and
6 also a member of the Executive Board of the
7 Reed-Cooke Neighborhood Association. I'm
8 involved in the development -- was involved in
9 the development of the Reed-Cooke Overlay
10 District as a member of RAM Reed-Cooke
11 Neighborhood Association. And the RAM stood
12 for Residential Adams Morgan, which then
13 morphed into the Reed-Cooke Neighborhood
14 Association, where we went forward and got a
15 501-C3 designation and paid our Corporate
16 Counsel fees and became a licensed
17 organization. And I also was the Advisory
18 Neighborhood Commission -- Commissioner for
19 ANC 1-C08, which covered the Reed-Cooke
20 neighborhood, when this case was finally
21 heard.

22 I became involved with this in the

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1 early 1980's when a number of residents saw --
2 we were seeing destruction in the
3 neighborhood. They were literally coming in
4 with bulldozers and knocking down buildings.
5 And we felt that there was a real problem
6 looming, and we needed to do something to
7 guide the development in our neighborhood. At
8 the same time, the city was dealing with the
9 development of the Comprehensive Plan, which
10 had been mandated by the Home Rule Charter.
11 And, out of the development of the Comp. Plan,
12 came the ward plans. And then, within the
13 Ward 1, plan, this particular area of the
14 neighborhood -- of Ward 1 was designated as
15 the Reed-Cooke Special Treatment Area. And
16 that gave us the genesis to go forward. And
17 it took us about three years to do it. To get
18 through Office of Planning, to the Zoning
19 Commission, and have a zoning case kicked off,
20 which was 88-19. And, from that case, it was
21 split -- it was so big, it was split into two
22 pieces. Phase one was a very quick

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1 administrative text change and designations on
2 maps. Phase two was the -- was the bloody
3 fight. And our -- our work on that -- our
4 real concerns were to maintain the residential
5 character of our neighborhood and restrict
6 businesses and uses that would disrupt the
7 life in our neighborhood. And not -- more or
8 less, to push them out of the neighborhood,
9 like alcohol sales or alcohol uses; put them
10 up on 18th Street; put them up on Columbia
11 road. We weren't against running them out of
12 Adams Morgan. We just wanted to make sure
13 that whatever was in the interior of the
14 neighborhood was compatible with -- with the
15 neighborhood life.

16 That distilled down to the idea of
17 having businesses that would open -- I don't
18 know, 7:30 a.m. or 8:00 a.m. and close at 5:00
19 - 6:00 p.m. And the residents that leave
20 during the day, would come back at night, and
21 we would have both businesses during the day
22 and residents at night. We'd have a dual use.

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1 And they both would be compatible. And it
2 was from that, that we developed the list of
3 prohibited uses.

4 The rezoning case went on for quite
5 a while. But it was resolved with Zoning
6 Commission Order 523-A, issued on February 11,
7 1991. So you can see, between 1988 and 1991,
8 that a lot of ground was covered.

9 I'm also going to give you a copy -
10 - and I only have one of these. My wife was
11 really happy to see me walk out with paper in
12 my hand and lighten our house. But this is a
13 copy of documents. These are Zoning
14 Commission documents that do a good job of
15 summarizing the transactions that happened in
16 that time. And they're from Case 88-19.
17 They're Case Exhibit 14, Case Exhibit 50.
18 There's one that's unmarked. It's dated April
19 4, 1989, which is a large summary document.
20 Exhibit 106, 157, 173, 241, 252, 269, and 272,
21 the last one was a National Capital Planning
22 Commission document letter that, basically,

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1 concurred with what the Commission had -- had
2 decided as the way the case was going to go.

3 Nowhere, when you take a look at
4 these documents, no where in here do you ever
5 see the word accessory use used or mentioned
6 or considered. In all of the discussions,
7 meetings and collaborations in the development
8 of the Reed-Cooker Overlay District that I was
9 involved in, a prohibited use was a prohibited
10 use. That's the way we looked at it. No
11 meant no. We did relent, and you'll take a
12 look if you -- on the Commission Order on the
13 second page, down at the bottom, it starts out
14 RAM, R-A-M, the Reed-Cooke Neighborhood
15 Association urged that special exceptions not
16 be allowed as a means of relief from the Reed-
17 Cooke Overlay provisions. This goes to your
18 comment, Mr. May. We realized that -- and,
19 frankly, we were told we were being too -- too
20 hard about it -- too straight edged and that
21 there had to be some allowance for growth in
22 the neighborhood and changes for things in the

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1 future. So the special exception process was
2 set up, so that, if there was a looming use
3 that was prohibited, but could fit in within
4 the -- the use -- the intent and the
5 philosophy of the neighborhood of the overlay,
6 that it could be allowed to happen. And it
7 was -- it was there and it was put it. I
8 called it a circuit breaker so that no didn't
9 always mean no. But -- and that was
10 incorporated in DCMR 11, Paragraph 1403, as
11 the exception thing.

12 In the most recent Harris Teeter
13 case for 14 -- for 1631 Kalorama Road, the
14 property owner, through their legal counsel,
15 went out of their way, in every way possible,
16 to avoid using the exception process. They
17 had an avenue for recourse, but they chose not
18 to use it. This failure to use the
19 established exception process, frankly, is why
20 we're here this evening. We are very afraid
21 of how the loophole for accessory use may be
22 applied in the future or what uncontrolled

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1 impacts it may have on our neighborhood. And
2 the one I'd come up with and that -- is one I
3 keep thinking about is a laundromat. I've
4 seen these out in Texas or something, where
5 they hook up a tavern to it; suds and duds --
6 come in; throw your clothes in the laundry --
7 you know, in the -- in the wash machine or the
8 dryer; step over; shot a little pool or have a
9 beer or two. The laundromat could be the
10 principal use and the tavern could be the
11 accessory use. Now, I mean, this may -- you
12 may think this is a stretch, but it is
13 something that does exist. And we don't know
14 where things would be going.

15 So we see the Reed-Cooke Overlay
16 document has been a far-sighted document that
17 was an excellent job of guiding the
18 development in the Reed-Cooke neighborhood
19 since it was adopted. And I strongly urge the
20 adoption of the proposed change to Subsection
21 1401.2, to close this fictional accessory
22 loophole that was never allowed or intended in

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1 the lengthy Reed-Cooke Overlay development
2 process.

3 That concludes my -- my comments.
4 Do any of you have any questions?

5 CHAIRMAN HOOD: Okay. Let me see
6 if we have any questions of either one of the
7 witnesses. Okay. Well then, thank you both
8 for your testimony. We appreciate you coming
9 down.

10 MR. LYDEN: Last thing.

11 CHAIRMAN HOOD: Sure.

12 MR. LYDEN: The issuance of the
13 liquor license for -- for Harris Teeter is a
14 done deal, as far as we're concerned. And if
15 anybody was to come behind them, they could
16 use the exception process and they would have
17 the water plowed by the Harris Teeter
18 operation to use as justification and would be
19 able to demonstrate live impact or non-impact
20 on the neighborhood. And I would not see them
21 having trouble getting an exception through
22 the exception process.

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1 COMMISSIONER MAY: You do
2 understand that they wouldn't have to.

3 MR. LYDEN: They may not have to.

4 COMMISSIONER MAY: A subsequent
5 owner.

6 MR. LYDEN: There's that gap of
7 three years.

8 COMMISSIONER MAY: Right.

9 MR. LYDEN: But if it lapsed, there
10 would be the historic record of a -- of a
11 positive use.

12 COMMISSIONER MAY: Right.

13 MR. LYDEN: We're not the
14 abominable no people today.

15 CHAIRMAN HOOD: Okay. All right.
16 I want to thank you both. We appreciate your
17 testimony and your comments. Let's go to
18 persons and organizations in opposition. I'm
19 going to ask Mr. Glasgow and Mr. Sher and
20 anyone else who may be in attendance that is
21 in opposition, if you could come forward, at
22 this time. Okay, Mr. Glasgow, whenever you're

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1 ready.

2 MR. GLASGOW: Okay. Thank you.

3 CHAIRMAN HOOD: Mr. Sher doesn't
4 need but a minute, so you can go right ahead.

5 MR. GLASGOW: Okay. Thank you.
6 Good evening, members of the Commission. For
7 the record, my name's Norman M. Glasgow, Jr.
8 with the law firm of Holland & Knight. We are
9 here on behalf of Harris Teeter, the occupant
10 of a full-service grocery store at premises
11 1631 Kalorama Road.

12 By way of background, before
13 opening this store in the District of
14 Columbia, there are two Harris Teeters open
15 now, one is at Pennsylvania and Potomac Avenue
16 SE and this store, and there's a third store
17 under construction in the Noma area, on First
18 Street, NE. Harris Teeter was encouraged and
19 sought out by the District to -- and now I'm
20 talking about the District government -- to
21 open stores in the District of Columbia. This
22 was by the Deputy Mayor's office, the Ward

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1 Counsel Member, and there were other people
2 that were -- had approached Harris Teeter
3 within the District government. During these
4 discussions, Harris Teeter said -- stated that
5 they were desirous of opening stores in the
6 District -- this was back in 2004-2005 -- that
7 broke the normal mold of a grocery store
8 facility with substantial surface parking and
9 being in suburban areas. Harris Teeter, in
10 contrast, was one of the very first grocery
11 store chains in the -- in the United States,
12 to embrace the idea of locating in urban
13 neighborhoods. However, in doing this, Harris
14 Teeter made it clear to the District officials
15 involved they would not be able to open this
16 facility without the ability to sell beer and
17 wine. In fact, Harris Teeter purchased a
18 Class A license that was in safe keeping with
19 the Alcoholic Beverage Control Board, which
20 would have permitted the sale of spirits, but
21 on its own, unilaterally turned that license
22 back in; said we only need a Class B license

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1 because what we want to do is sell beer and
2 wine.

3 During the course of processing the
4 ABC license, Steve Sher and I met down -- we
5 didn't handle the ABC case. That was ABC
6 counsel that handled that. But there was a
7 question raised as to the ability to have the
8 use in the -- in that locations. So we went
9 down and met with the Zoning Administrator and
10 confirmed that an accessory use that permitted
11 the grocery store -- and we confirmed that
12 accessory sales of beer and wine was a
13 permitted accessory use, matter of right, and
14 did not require BZA approval. That's why we
15 didn't go to the BZA. We had a ruling saying
16 that we didn't need to. And we are not in the
17 habit -- while I love trying BZA cases and
18 cases before this Commission, we don't go to
19 BZA when we're told by the Zoning
20 Administrator we don't need to go.

21 This ruling, then, was submitted to
22 the ABC and then later was appealed to the

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1 Board of Zoning Adjustment. The purpose of
2 this background is to tie into the proposed
3 text, which we submitted to the Office of
4 Planning, and which we submit here tonight.
5 And it's referenced at page 3 and 4 of the
6 Office of Planning report. That would exempt
7 this Harris Teeter grocery store from the
8 proposed text amendment. So it's a very
9 limited -- as limited as we could possibly
10 make it, that it applies to this store, which
11 was sought out -- this chain, which was sought
12 out to be in this facility by the District of
13 Columbia Government. We came; we opened up
14 the store; it had certain uses. That's the --
15 that's the basis upon which we came and we
16 don't want the rules of the game changed after
17 the store is now operating. That's what part
18 of this case, from our standpoint, what it
19 boils down to. And we understand others have
20 a different point of view, but that's the way
21 that we are looking at this case. And it
22 obviously was a very important accessory use

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1 within the grocery store, because Harris
2 Teeter said if we don't get that use, we
3 wouldn't be there. So we -- we believe that
4 we have crafted our proposal in the narrowest
5 sense so that the text amendment would go
6 through; that it would then exempt the Harris
7 Teeter store, and we'd have all the rights
8 that we had when we came to the District of
9 Columbia. And it would be specific to this
10 location, to this store. If somebody else has
11 to go through a different process in the
12 future, they have to go through that different
13 process. But, with respect to this facility,
14 in this location, we would be exempt from this
15 position, with respect to accessory uses.

16 And with respect to some of the
17 testimony on accessory uses, the accessory
18 uses always are not permitted in the
19 underlying use. That's why they're accessory
20 uses. And that's why there's a provision that
21 says that you can have the principal use and
22 any accessory uses. We submitted evidence to

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1 the Board of Zoning Adjustment that there were
2 64 grocery stores with ABC licenses and they
3 -- and they were licenses -- and they had C-
4 of-Os as a grocery store, not as a liquor
5 store, because grocery stores now -- the
6 majority of them, particularly the new ones
7 that got -- that went into being after certain
8 incentives were passed by the District of
9 Columbia, they all have ABC licenses.

10 So I appreciate to -- the
11 opportunity to give my testimony. I see I'm
12 within my time. And we hope that our very
13 narrowly crafted and drafted proposal will be
14 responded to favorably by the Commission.
15 Thank you.

16 CHAIRMAN HOOD: Thank you, Mr.
17 Glasgow. And we may have some questions for
18 you. Mr. Sher?

19 MR. SHER: Mr. Chairman and members
20 of the Commission, for the record, my name is
21 Steven E. Sher, the Director of Zoning and
22 Land Use Services with the law firm of Holland

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1 & Knight. We went through some of this with
2 the BZA, but I'd like to go through it, very
3 quickly, with you this evening.

4 Modern day grocery stores like the
5 - the recently opened Harris Teeter store at
6 1631 Kalorama Road NW, provides a range of
7 goods and services which previously had been
8 part of separate establishments. You had a
9 butcher shop. You had a fruit and vegetable
10 purveyor. You had a pharmacy. You had a beer
11 and wine store. You had a delicatessen. Now
12 these goods and services are all provided
13 within one establishment called a grocery
14 store, and they're provided in an
15 indistinguishable manner from all of the other
16 goods and services provided. When the
17 customer gets to the cash register, whether
18 his or her cart contains milk, cereal, meat,
19 fish, or beer, it doesn't matter. You get to
20 the cash register; you pay; they put your
21 items in a bag and you take them out and you
22 go home. In many respects, these uses -- the

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1 sale of meat, fish, beer, or wine -- they're
2 not really accessory uses. They're part of
3 the very essence of the principal grocery
4 store use. All of these things combine to
5 make a grocery store. They're all what you
6 expect to find when you go into a modern
7 supermarket or grocery store.

8 The use that's -- that's mainly at
9 issue here is the sale of beer and wine. If
10 there was a rationale for prohibiting that use
11 as a principal use, it must have been because
12 there were some actual or perceived negative
13 impact from having that use occupy space in
14 the Reed-Cooke Overlay. Whatever those
15 reasons were, we can see no real or tangible
16 basis for prohibiting that use when it's
17 located internal to and encompassed entirely
18 within the physical framework and structure of
19 a permitted use. There would be no difference
20 in exterior appearance nor any difference in
21 external impacts, whether this Harris Teeter
22 sold beer and wine or not. You don't see it

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1 when you're standing outside the store. You
2 don't, frankly, have people walking into the
3 store in any greater numbers because they sell
4 beer or wine than if they don't.

5 I researched the record in the
6 Reed-Cooke Overlay proceeding, when it was
7 before this Commission, back in the late '80
8 and early '90's and, as OP stated in its
9 report, I was unable to find anything
10 definitive in the material submitted by the
11 petitioner, the Reed-Cooke Neighborhood
12 Association, or the RAM group, at that point,
13 in the OP reports, or in comments from
14 Commission members as to whether the
15 prohibition on uses in Section 1401.1, was
16 intended to apply to both principal and
17 accessory uses, or only principal uses. There
18 weren't any discussion of it, period. So I
19 don't know what was in the minds of people.
20 But whatever was in their minds, didn't make
21 its way into the record. Because I couldn't
22 find it. I looked at it a couple of years ago

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1 when we were going through the BZA and I've
2 got the files in my bag. I brought them with
3 me in case anyone wants to see what they look
4 like. I have significant extracts.

5 The issue of whether the sale of
6 beer and wine was a proper use within a
7 grocery story, under the existing terms of the
8 overlay, was raised in two appeals before the
9 BZA. And the board voted unanimously to
10 uphold the ruling of the Zoning Administrator
11 and concluded in pertinent part, and I quote,
12 "The impact of a liquor store on a residential
13 neighborhood is different from that of a full
14 service, national chain supermarket selling
15 beer and wine as an accessory use. While
16 liquor stores have historically been
17 accompanied by such adverse impacts as
18 loitering, full service grocery stores selling
19 beer and wine as an accessory use have not."

20 There's only one large grocery
21 store or supermarket in the Reed-Cooke Overlay
22 area. And we, as Mr. Glasgow has indicated,

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1 we're talking only about that one location.
2 We don't desire to protect anybody else, any
3 of the smaller stores or any new stores that
4 might come along. The opportunity for any
5 other large new stores is pretty slim. There
6 aren't sites available of a size and magnitude
7 that would accommodate another large
8 supermarket like this one. You may wish to
9 think about the policy implications for other
10 stores in a broader context, but all we're
11 trying to do here is protect the one location
12 where they went in prior to the overlay --
13 sorry, under the overlay with a ruling that
14 said they were permitted; didn't need to go
15 the BZA. And changing the rules on them, we
16 think, is something that ought not to happen.

17 And so I'll conclude at that point.

18 CHAIRMAN HOOD: I want to thank you
19 both for your comments. Mr. Glasgow, I don't
20 know if you -- well, I'm sure you heard the
21 discussion between me and Ms. Brown-Roberts.
22 And I actually pointed out the exert that you

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1 guys wanted included. And the conversation
2 with her, I'm under the assumption that --
3 from the conversations they've had with OAG,
4 is that it's really not needed because you're
5 grandfathered and you're in there. So I'm
6 just trying to figure out the language, and
7 also, from what I've heard, we're at the same
8 place. But I guess you just -- I'm not sure
9 why we need to put that in there, because
10 we're already there.

11 MR. GLASGOW: Well, we do have a
12 certificate of occupancy, a copy of which I
13 have and, of course, is a public record. And
14 it says grocer store with accessory
15 delicatessen, prepared food shop, and off
16 premises alcohol beverage sales, as an
17 accessory use, subject to BZA orders 17395A,
18 17675, and 17677. If there was -- if there
19 was absolutely no difference from being a
20 matter of right use and a non-conforming use,
21 under the regulations, we wouldn't be here
22 tonight. But clearly, there is. That's why

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1 there's the non-conforming chapter within the
2 regulations. There are certain restrictions
3 that go with having the non-conforming use.
4 That's not the basis upon which we came into
5 the city and opened this establishment. While
6 it is an accessory use, it was made clear when
7 Harris Teeter came here that it was on the
8 basis that we could have the beer and wine
9 sales in that facility or -- or they weren't
10 going to be able to establish the facility.
11 I'm not talking about it in the context of a
12 threat or whatever. It's a statement of the
13 fact of how it is that they had to operate
14 with a grocery store. And, in fact, the city
15 subsequently had come and -- and told new
16 major grocery stores that come into the city,
17 you can have a beer and wine license. That's
18 elsewhere in the code and you can go and get
19 them. And the prior restrictions that
20 occurred weren't there. The city was doing a
21 lot to encourage grocery stores. And, when
22 this decision was made to come here, the city

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1 was doing -- there were a lot of incentives,
2 tax abatements for, I think, it's a ten year
3 period of time, came into play, and other
4 things to get grocery stores in the city. And
5 this was -- was part of that. And Harris
6 Teeter embraced it and said, okay, under those
7 terms and conditions, we'll be here. And they
8 have been here. They've -- they've done what
9 they said they were going to do down at
10 Potomac and Pennsylvania Avenue, SE. Because
11 they've gone in some neighborhoods where it
12 wasn't a slam dunk as to how everything was
13 going to turn out. The one at Potomac and
14 Pennsylvania Avenue SE and in Noma, worked
15 with the city; got a tax abatement there for
16 the underground parking. So it has -- it has
17 worked -- worked well, to date, as a
18 partnership with the city and Harris Teeter
19 coming in. And we're saying we don't want a
20 rule change. We don't want to have the
21 restrictions that come with Chapter 20 of the
22 regulations. We want to be as we are today.

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1 CHAIRMAN HOOD: And, in this
2 language, except for accessory uses located in
3 the grocery store located in Square 2572, Lot
4 36, gives you that comfort level. And you
5 feel like the rule -- the government is still
6 predictable and nothing's changed, if that's
7 added?

8 MR. GALLAGHER: That is correct.

9 CHAIRMAN HOOD: Okay. All right.
10 Let me open it up to my colleagues.
11 Commissioner May?

12 COMMISSIONER MAY: Okay. You made
13 reference to the chapter that would govern
14 non-conforming uses. What is that
15 specifically going to mean? When -- when is
16 the Harris Teeter actually going to be
17 affected by being a non-conforming use, and in
18 what substantive way?

19 MR. GLASGOW: I think that, with
20 respect to substantively, while I -- I know
21 we've -- we've made this argument many time
22 before the Commission, sometimes it's -- it's

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1 received better than others. When you're a
2 non-conforming use and you go out to refinance
3 or you sell a business or a business gets
4 acquired because there's always a lot of
5 change in the -- particularly now -- corporate
6 structures within the United States, in major
7 companies, when you have a non-conforming use,
8 they're going to ask alright, what's your
9 certificates of occupancy when they're doing
10 their due diligence. And when something's
11 non-conforming, people are concerned that
12 somehow they can lose it. As opposed to, you
13 know, lose that use or the right to have that
14 use under certain terms and conditions. And,
15 when it's a matter or right use, that is
16 viewed differently by lenders and others. And
17 we don't want to be in a position where we
18 have to call up on a major use -- an important
19 use within the store, albeit an accessory use,
20 is subject to a different set of rules and
21 regulations, that it's non-conforming and the
22 regs have changed since they went in.

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1 COMMISSIONER MAY: Anything more
2 substantive than that?

3 MR. GLASGOW: Well, if you -- if,
4 for some reason, we lose the use, that will be
5 a problem. That would be a serious problem.

6 COMMISSIONER MAY: If you were to
7 lose the use?

8 MR. GLASGOW: Yes.

9 COMMISSIONER MAY: You lose the
10 accessory --

11 MR. GLASGOW: The accessory use.

12 COMMISSIONER MAY: But what would
13 cause you to lose it?

14 MR. GLASGOW: I guess I'll almost
15 look at flipping the question back the other
16 way. If everybody's saying that there's
17 almost no way you can lose that accessory use,
18 great, give us our language and we don't need
19 to worry about it.

20 COMMISSIONER MAY: Okay. But that
21 doesn't work for me. So tell me how it
22 actually really affects it. So far, you've

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1 told me that there's -- that it might,
2 somehow, put a -- a cloud over future
3 financing, refinancing, acquisition, something
4 like that.

5 MR. GLASGOW: Right.

6 COMMISSIONER MAY: What else?

7 MR. GLASGOW: Well, you would have
8 to have -- as you indicated, you would have to
9 have the three year lapse. I -- I would say
10 that that's probably highly unlikely.

11 COMMISSIONER MAY: Right.

12 MR. GLASGOW: That we would have
13 that kind of lapse. I guess the other
14 questions is, when you have a use within the
15 property -- and we haven't researched all of
16 this -- are we going to get down to the basis
17 of this is how many linear feet within the
18 store that we have of beer and wine sales? I
19 know that, in every grocery store I've been
20 to, it seems like every five years or so, they
21 redo the interior of the store. Sometimes the
22 aisle widths are narrower; sometimes they're

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1 wider. They put the produce over here. They
2 put the meat over here. You know -- I --

3 COMMISSIONER MAY: Is any of that
4 now legally defined? Is your -- is the limits
5 of the square footage or linear footage of the
6 accessory use, within the store --

7 MR. GLASGOW: Under the ABC rules,
8 when you have the beer and wine sales, it is
9 shown, within the store, where it is. And we
10 don't want to go to BZA to say we're not going
11 to shift where that location is.

12 COMMISSIONER MAY: Okay. But I
13 can't imagine that shifting the location would
14 change it -- would trigger, you know, the
15 special exception provision. If you were to,
16 you know, increase the size of it, I could see
17 that potentially happening. I mean, is that
18 -- is it -- if you were to -- well, sorry.
19 The liquor license right now that allows --
20 allows this use, it's limited in square
21 footage or linear footage of shelf space?

22 MR. GLASGOW: It's shown -- it's

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1 shown -- the location was shown on our
2 building permit plans and was shown --

3 COMMISSIONER MAY: Within a
4 specific area.

5 MR. GLASGOW: It was shown, this
6 where it is.

7 COMMISSIONER MAY: And the language
8 of the license defines it as being limited to
9 that area?

10 MR. GLASGOW: I'm not sure the
11 license says that one way or the other. I'm
12 not the ABC attorney.

13 COMMISSIONER MAY: Okay. I mean, I
14 could see if it were defined in some way and
15 it was going to be 200 square feet. And, if
16 you were to expand the accessory use to 250
17 square feet, that that might trigger a special
18 exception. But, you know, there's nothing
19 that -- that you've told me, so far, that
20 indicates that that would be the case. That
21 would be a substantive thing that I would be
22 concerned about.

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1 MR. GLASGOW: We can -- we can
2 submit for the record the ABC license and that
3 --

4 COMMISSIONER MAY: Well, I mean, if
5 there's any kind of argument that goes with
6 it, that explains how you could see this as a
7 limitation, that might be used in the future
8 to limit the use. I mean, clearly, if you're
9 -- if you were going to -- if, in the future,
10 the -- the business model of the Harris Teeter
11 were to change significantly enough that it
12 were to -- you know, the use -- the, you know,
13 the accessory use, for this purpose or,
14 frankly, any other purpose, you know, were to
15 expand so much to sort of set it off balance,
16 so that it's no longer an accessory use, or if
17 it were to evolve into a, you know, duds and
18 suds operation, and there were, you know, the
19 accessory uses were to some other primary use,
20 those are the sort of substantive things that
21 I would think would be appropriate for a
22 special exception review.

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1 MR. GLASGOW: I agree. If it's no
2 longer a -- an accessory use, then it's not
3 permitted as a matter of right as a part of
4 the grocery store.

5 COMMISSIONER MAY: Right.

6 MR. GLASGOW: We agree with that.

7 COMMISSIONER MAY: Right.

8 MR. GLASGOW: Now, there are
9 certain things, with respect to the ABC laws
10 that -- that protect, with respect to that,
11 without having to go and get a different type
12 of license in use.

13 COMMISSIONER MAY: Yes.

14 MR. GLASGOW: Our sales are limited
15 to 15 percent of the gross revenue of the
16 facility.

17 COMMISSIONER MAY: Right.

18 MR. GLASGOW: With having a grocery
19 store or supermarket that has an ABC license.

20 COMMISSIONER MAY: Right.

21 MR. GLASGOW: So there's a lot of -

22 -

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1 COMMISSIONER MAY: So maybe that's
2 where the ceiling is defined. In other words,
3 that your square footage may not be limited by
4 the license, but you're -- the sales volume is
5 what the limiting factor is.

6 MR. GLASGOW: That -- that's
7 correct. It's the sales -- the sales volume
8 is that, not the square footage. And,
9 certainly, we would want to -- to understand,
10 if we change our square footage, if changing
11 the square footage and we don't hit the peak
12 with that, we don't want to be going to the
13 BZA for that.

14 COMMISSIONER MAY: Well, and that's
15 the sort of thing that I could understand,
16 where, you know, going from 200 square feet to
17 240, it's still less than 15 percent of the
18 overall dollar volume. You know, that's a
19 real reason to include an exception for -- or
20 to consider an exception for this property,
21 particularly. But it's -- it's hard to
22 imagine a circumstance where simply being a

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1 grandfathered non-conforming use is
2 substantively different from it being a
3 matter-of-right accessory use.

4 MR. GLASGOW: And I -- and I
5 understand where you're coming from and see
6 that. I think where we don't want to get
7 tripped up is we don't want to be coming back
8 as grocery stores evolve and change, because
9 they do. As long as we're not hitting our 15
10 percent, under the ABC law, if we change
11 around somehow how we have that facility
12 operate, we don't want to be coming back to
13 the BZA all the time.

14 COMMISSIONER MAY: Right. And I
15 don't -- I don't believe, unless somebody is
16 out there to just outright get rid of the
17 liquor store or the alcoholic beverage sales
18 within the supermarket, I can't imagine
19 anybody making a big issue or wanting it to go
20 back to BZA, just because it moves from one
21 part of the building to another. I mean,
22 that's --

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1 MR. GLASGOW: We don't know. We've
2 been told several times please just go through
3 the special exception process. We support
4 your -- your ABC license. And we said we did
5 not. We had a ruling that we didn't have to
6 do that.

7 COMMISSIONER MAY: Yes,

8 MR. GLASGOW: And we don't want to
9 be going through a process, just to go through
10 a process because someone thinks we should.
11 We've been exposed to that. And I think
12 that's -- I think you're getting some of our
13 sensitivity.

14 COMMISSIONER MAY: Okay.

15 MR. GLASGOW: To that issue.

16 COMMISSIONER MAY: It's a fear.

17 MR. GLASGOW: And, I guess, when
18 you're sitting up there, all of you may say
19 what in the world is all this issue about when
20 we're talking about a lot of theoreticals.
21 Well, a lot of theoreticals, I guess, possibly
22 led to a couple of hearings on appeals before

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1 BZA, different things being filed in different
2 forums, and I think we're saying that once
3 we've gone through the process, we will go
4 through the processes that we have to go
5 through and once we've completed those, then
6 we want to say alright, we've been through the
7 process. That's it. We don't keep going back
8 through it.

9 COMMISSIONER MAY: Okay. I would
10 be interested in any other area of that,
11 whether it would potentially be a substantive
12 effect like that. You know, the potential for
13 triggering a future special exception case, as
14 a result of it being a non-conforming use, or
15 anything else in the non-conforming use
16 category.

17 MR. GLASGOW: I guess in that list
18 that we had, because Steve and I spent a lot
19 of time going through that list and said,
20 okay, where are the real issue areas with the
21 non-conforming list.

22 COMMISSIONER MAY: Yes.

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1 MR. GLASGOW: And you really got -
2 - you've got two. You've got the off-premises
3 sales of alcohol, which is what most of us are
4 talking about tonight. And then there's the
5 restaurant. Now, we have a prepared food --
6 and that's why I read the -- the C-of-O,
7 because we have delicatessen and a prepared
8 food shop. We don't have a restaurant. I
9 don't know, when somebody says a prepared food
10 shop and a delicatessen turns into a
11 restaurant and then you have a -- a potential
12 BZA case there. Because a lot of -- a lot of
13 food stores now, there's place where you can
14 go and pick up things and you can eat.

15 COMMISSIONER MAY: Yes.

16 MR. GLASGOW: There are a lot of
17 supermarkets that have that type of facility.

18 COMMISSIONER MAY: Yes.

19 MR. GLASGOW: And Harris Teeter was
20 one of the first chains, I think, to really
21 explore that type of use within the facility.

22 COMMISSIONER MAY: It does not now

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1 include that type of use?

2 MR. GLASGOW: No. We've got a
3 prepared food shop that has eight seats. And
4 we have a delicatessen. But that's all in the
5 C-of-O.

6 COMMISSIONER MAY: But that's not
7 considered a restaurant?

8 MR. GLASGOW: It's not considered a
9 restaurant.

10 COMMISSIONER MAY: Right. But if
11 they were to actually put in something that
12 would cross the threshold into restaurant?

13 MR. GLASGOW: If it was a
14 restaurant, we'd need to and, under the
15 regulations -- under what's being proposed
16 here and under our amendment, because we don't
17 have a restaurant today, you'd have to go to
18 BZA for that.

19 COMMISSIONER MAY: You'd still have
20 to go to BZA?

21 MR. GLASGOW: Yes. You would have
22 to go to BZA for that. We're asking to be

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1 grandfathered -- not grandfathered. We want
2 to have our existing rights the way we are
3 today, under the regulations the way they are
4 today.

5 COMMISSIONER MAY: That's it.

6 CHAIRMAN HOOD: Any other questions
7 or comments? Commissioner Turnbull?

8 COMMISSIONER TURNBULL: Thank you,
9 Mr. Chair. Mr. Glasgow, we've heard quite a
10 few comments from the ANC and others regarding
11 the feeling that the original document was
12 misinterpreted. You were granted approval by
13 the ZA to be able to put this in. Do you feel
14 that this language is sort of being vindictive
15 at the Harris Teeter?

16 MR. GLASGOW: Well, I -- I think
17 that there is -- I think it was expressed by
18 some of the people that, you know, the Harris
19 Tetter is there and we did have -- there was a
20 renewal that was handled in September of '08,
21 about six months after the ABC license went
22 in, just -- just because that's the -- that's

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1 the way the timing was. There were no
2 objections. There was no protests and
3 everything else. The feedback that -- that
4 we've gotten is that the store has been
5 exceedingly well received. So I'm going to
6 take this on its -- on its face. However it
7 was when it was first applied for, I guess
8 back in 2008, when maybe emotions were running
9 higher, that I -- I viewed -- I take them at
10 their word, that they're worried about other
11 potential users that would come in and somehow
12 have a -- have a -- and it's one of these uses
13 as an accessory that somehow harms the
14 community.

15 COMMISSIONER TURNBULL: Right.

16 MR. GLASGOW: I mean, we don't --
17 we're not here to debate that. We -- we
18 recognize that, if the community has got a
19 concern about that and we can structure these
20 regulations so that it doesn't affect us, then
21 we're -- we're fine with it.

22 COMMISSIONER TURNBULL: Okay. And

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1 it does sound like there was a little bit of
2 confusion. I don't think, in some of the
3 testimony that we've heard and the written
4 testimony, sort of gave the impression that
5 you were subverting the system. But actually,
6 you were actually following the system in
7 getting the accessory use.

8 MR. GLASGOW: Yes. That's --
9 that's -- and that's what the Board of Zoning
10 Adjustment found.

11 COMMISSIONER TURNBULL: Yes. Okay.
12 Thank you.

13 CHAIRMAN HOOD: Any other
14 questions? Commissioner Schlater?

15 COMMISSIONER SCHLATER: Just a
16 quick question. You've accounted a story
17 where Harris Teeter had considered using a
18 Class A liquor license at this location. And,
19 in fact --

20 MR. GLASGOW: They had one. They
21 had a Class A license and they didn't need it.

22 COMMISSIONER SCHLATER: They had

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1 one.

2 MR. GLASGOW: I don't know that
3 they understood -- that they understood the
4 full ramifications of that when they bought
5 it.

6 COMMISSIONER SCHLATER: Do you
7 think it's within their rights, as of now,
8 under the zoning, to sell liquor at their --

9 MR. GLASGOW: No. They turned that
10 license back in.

11 COMMISSIONER SCHLATER: They turned
12 it in?

13 MR. GLASGOW: They turned the Class
14 A license back in.

15 COMMISSIONER SCHLATER: But they
16 could, in the future, if they were able to
17 secure another Class A license.

18 MR. GLASGOW: I don't think that's
19 where we heading. We're Class B. We're beer
20 and wine.

21 COMMISSIONER SCHLATER: Okay. Just
22 to clarify, are you here representing Harris

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1 Teeter or the property owner?

2 MR. GLASGOW: Harris Teeter.

3 COMMISSIONER SCHLATER: Okay.

4 MR. GLASGOW: I've represented the
5 property owner on this site, previously, and
6 on many sites before this Commission.

7 COMMISSIONER SCHLATER: Okay.
8 Thank you.

9 COMMISSIONER MAY: Mr. Chairman?

10 CHAIRMAN HOOD: Oh. I'm sorry.

11 COMMISSIONER MAY: I wanted to
12 follow up on something. The language that I
13 have in front of me that I guess has been
14 suggested in the Office of Planning report
15 includes an exception for accessory uses
16 located in the grocery store located at Square
17 2572, lot 36.

18 MR. GLASGOW: Right.

19 COMMISSIONER MAY: So it's all of
20 the current accessory uses. And so, if it
21 were -- I mean, going back to the restaurant
22 example, since there isn't an existing

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1 restaurant --

2 MR. GLASGOW: There is no existing
3 restaurant.

4 COMMISSIONER MAY: When you cross a
5 threshold from prepared food with seating to
6 an actual restaurant, then it would trigger
7 the special exception.

8 MR. GLASGOW: Correct.

9 COMMISSIONER MAY: Okay. And also
10 following up on the Class A/Class B situation,
11 there's nothing in the -- if we were to vote
12 in favor of the changes, plus your amendment,
13 and Harris Teeter changed their mind and did
14 want to have a Class A, they could still do
15 that, from a zoning point of view. Could they
16 not?

17 MR. GLASGOW: I will -- I will have
18 that confirmed with the -- with ABC counsel,
19 because they would have to get a different
20 license and go through that process.

21 COMMISSIONER MAY: But just from a
22 -- I'm not talking about whether it's possible

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1 from a liquor license point of view, just from
2 a land use point of view, because we don't
3 differentiate.

4 MR. GLASGOW: Right. Right. You
5 don't have the different classes of license.
6 So I would say that that would be yes.

7 COMMISSIONER MAY: Okay.

8 MR. GLASGOW: I will -- I will
9 confirm that and, in our post hearing
10 submission, we will make sure that we've got
11 that right.

12 COMMISSIONER MAY: Okay. All
13 right.

14 CHAIRMAN HOOD: Any other
15 questions? Okay. I want to thank this panel.
16 We appreciate you coming down and providing
17 testimony. Let me just see how far we go. I
18 had actually expected for us to deliberate and
19 try to deal with this tonight. But I think my
20 colleague, Commissioner May, had asked for a
21 few things and I guess the issue is, Ms.
22 Schellin, if we could get those things that

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1 were asked for within a week. Then if we need
2 to do some wavering of our rules or whatever
3 so we can try to get this on our first meeting
4 in July.

5 MS. SCHELLIN: Yes.

6 CHAIRMAN HOOD: So we may have to
7 do some waiving of rules. I think everything
8 we asked for is from you, Mr. Glasgow, for us.

9 MS. SCHELLIN: Yes. So we don't
10 really need to waive any rules. We can --

11 CHAIRMAN HOOD: Okay. Okay.

12 MS. SCHELLIN: -- just leave the
13 record open until July 6th, Monday. And also,
14 to allow the ANC a week to provide us with a
15 report, so we can give them great weight. And
16 then we'll take this up at our first meeting,
17 which would be July 13th.

18 CHAIRMAN HOOD: Okay. Yes. So,
19 hopefully, we can save some time.

20 MS. SCHELLIN: Mr. May can provide
21 us with an absentee ballot.

22 COMMISSIONER MAY: I'll have to.

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1 Yes. Right.

2 CHAIRMAN HOOD: Yes. I understand
3 the 30th is --

4 MS. SCHELLIN: The 27th is getting
5 extremely full.

6 CHAIRMAN HOOD: Yes. The 27th is
7 full. That's all right? Okay. All right.
8 So, with that, we'll expect those things in
9 the time frame. And if you have any further
10 questions, you can speak with Ms. Schellin. I
11 want to thank everyone for their participation
12 tonight. Ms. Schellin, do we have anything
13 else?

14 MS. SCHELLIN: Chairman Hood, I
15 just want to clarify. Are we leaving the
16 record only open for those specific things?

17 CHAIRMAN HOOD: Just those things.

18 MS. SCHELLIN: The ANC report and
19 the items from Mr. Glasgow? Okay.

20 CHAIRMAN HOOD: Okay. Anything
21 else, Ms. Schellin?

22 MS. SCHELLIN: I don't think so.

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1 CHAIRMAN HOOD: Okay. With that, I
2 appreciate everyone's participation and this
3 hearing is adjourned.

4 (Whereupon, the hearing was
5 adjourned at approximately 7:41 p.m.)
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