

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

-----:

IN THE MATTER OF: :

:

OFFICE OF PLANNING - PROPOSED: Case No.

TEXT AMENDMENT TO SUBTITLE X : 19-06

TO CLARIFY VOLUNTARY DESIGN :

REVIEW FAR AGGREGATION :

:

-----:

Thursday,

May 30, 2019

Hearing Room 220 South

441 4th Street, N.W.

Washington, D.C.

The Public Hearing of Case No. 19-06 by the

District of Columbia Zoning Commission convened at 6:30

p.m. in the Jerrily R. Kress Memorial Hearing Room at 441

4th Street, N.W., Washington, D.C., 20001, Anthony J.

Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson

ROBERT MILLER, Vice Chairperson

PETER G. MAY, Commissioner (NPS)

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

DONNA HANOUSEK, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director, Development
Review & Historic Preservation

JOEL LAWSON
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.
MAXIMILIAN TONDRO, ESQ.

The transcript constitutes the minutes from
the Public Hearing held on May 30, 2019.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

6:36 p.m.

CHAIRMAN HOOD: Okay, we're ready to begin. Good evening, ladies and gentlemen. This is the public hearing of the Zoning Commission for the District of Columbia. Today's date is May the 30th, 2019. My name is Anthony Hood. We're located at Jerrily R. Kress Memorial Hearing Room.

Joining me this evening are Vice Chair Miller, Commissioner Shapiro, Commissioner May, and Commissioner -- well, we're not joined tonight by Commissioner Turnbull. We're also joined by the Office of Zoning staff, Ms. Donna Hanousek, Office of Attorney General, Mr. Tondro and Ms. Lovick, Office of Planning, we have Ms. Steingasser, Mr. Lawson, and Ms. Vitale.

This proceeding is being recorded by a court reporter. It's also webcast live. Accordingly, we must ask you to refrain from any disruptive noise or acts in the hearing room, including display of any signs or objects. Notice of today's hearing was published in the D.C. Register and copies of that announcement are available to my left, on the wall near the door. The hearing will be conducted in accordance with provisions of 11(z), DCMR, Chapter 5, as follows, preliminary matters, presentation tonight by the Office of Planning, reports of other government agencies, reports of the ANCs, this is city-wide, organizations and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 persons in support, organizations and persons in opposition,
2 organizations and persons who are undeclared.

3 The Office of Planning will be giving us their
4 report, organizations five minutes, individuals three
5 minutes. All persons wishing to testify before the
6 Commission at this evening's hearing are asked to register
7 at the witness kiosk to my left and fill out the two witness
8 cards. These cards are located to my left, on the table near
9 the door.

10 The staff will be available throughout the hearing
11 to discuss procedural questions. Please turn off all
12 electronic devices at this time, so as not to disrupt these
13 proceedings. At this time, the Commission will consider any
14 preliminary matters. Does the staff have any preliminary
15 matters?

16 MS. HANOUSEK: Yes, sir, we have -- you need to
17 deal with a motion for the closed meeting next week.

18 CHAIRMAN HOOD: Okay, thank you. Let's deal with
19 that first, Ms. Hanousek. As chairman of the Zoning
20 Commission for the District of Columbia, and in accordance
21 with 405(c) of the Open Meetings Act, I move that the Zoning
22 Commission hold a closed meeting on Thursday, June 6, 2019,
23 at 5:30 p.m., for the purpose of receiving legal advice from
24 its counsel, per 405(b)(4), and to deliberate, but not vote,
25 on the contested cases, per 405(b)(13) of the D.C. Official

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Code 2-575(b)(4) and (13). Is there a second?

2 COMMISSIONER SHAPIRO: Second.

3 CHAIRMAN HOOD: Ms. Hanousek, please take a roll
4 call vote on the motion before us now, as it has been
5 seconded.

6 MS. HANOUSEK: Chairman Hood.

7 CHAIRMAN HOOD: Yes.

8 MS. HANOUSEK: Vice Chairman Miller.

9 VICE CHAIR MILLER: Yes.

10 MS. HANOUSEK: Peter Shapiro.

11 COMMISSIONER SHAPIRO: Yes.

12 MS. HANOUSEK: Peter May.

13 COMMISSIONER MAY: Yes.

14 CHAIRMAN HOOD: Okay, as it appears that the
15 motion has passed, I request that the Office of Zoning
16 provide notice of this closed meeting in accordance with the
17 Act. Anything further, Ms. Hanousek?

18 MS. HANOUSEK: No, sir.

19 CHAIRMAN HOOD: Okay, with that, let's go right
20 to the Office of Planning. I believe Ms. Steingasser will
21 start us off.

22 MS. STEINGASSER: Yes, sir, Mr. Chairman Hood and
23 Commissioners. We would ask that -- OP's going to open the
24 hearing and give our report and recommendation in its normal
25 form. We would ask that we have an opportunity to speak

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 again at the end of the hearing, prior to its closure.

2 CHAIRMAN HOOD: Okay. Any objections? Okay.
3 Because I know I do have some questions, but I really want
4 to hear from the public. We do have submissions. I don't
5 see any problems with that because we may want to follow up
6 and ask some questions of some of the information we may hear
7 this evening, so I have no problems with that. I don't think
8 my colleagues do, as well. Is there anything else? Okay,
9 Ms. Vitale.

10 MS. VITALE: Good evening, Mr. Chair and members
11 of the Commission, Elisa Vitale with the Office of Planning.
12 On March 11th, the Zoning Commission requested that OP bring
13 forward a proposed text for consideration that would clarify
14 floor area ratio or FAR aggregation as part of a voluntary
15 design review application.

16 On March 25th, the Commission set down for public
17 hearing a proposed text amendment to the design review
18 provisions in Subtitle X to clarify that the voluntary design
19 review process contemplated FAR aggregation across a
20 voluntary design review project boundary.

21 A number of the comments in the record for this
22 evening's case relate to a particular voluntary design review
23 case. We appreciate that working through that case
24 highlighted some inconsistencies with the voluntary design
25 review language in the regulations. However, we just want

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to reiterate that the issue before the Commission this
2 evening is not case specific. OP would also like to
3 reinforce that voluntary design review is an important tool
4 in the zoning regulations, with origins that date back to the
5 early ZRR working groups. A good deal of thought and
6 discussion have brought us to where we are today.

7 The Zoning Commission provided direction in case
8 08-0612 early on in the zoning regulations review process,
9 and also formalized the voluntary design review process in
10 Subtitle X, Chapter 6, of the 2016 zoning regulations.

11 Tonight's case is an opportunity to clarify the
12 language in Chapter 6 and to ensure that the process for a
13 voluntary design review works effectively. A voluntary
14 design review falls between a Board of Zoning Adjustment
15 special exception or variance case, where dimensional or
16 use-related relief might be sought, and a planned unit
17 development, where a superior project with benefits and
18 amenities might gain additional height or density.

19 Voluntary design review, in the middle ground
20 there, allows the Commission to tie flexibility that could
21 be handled through the BZA with a detailed review of the
22 overall design of a project, so it really hits that middle
23 ground. And OP, again, wants to be clear that voluntary
24 design review does not provide for a transfer or increase in
25 density. There are other tools in the zoning regulations

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 available to accomplish that.

2 To reinforce this, OP is recommending to clarify,
3 through the text amendment, that a voluntary design review
4 boundary would be limited to covering only one zone. You
5 wouldn't be able to combine properties of multiple zones
6 within a voluntary design review boundary.

7 Again, OP thinks this is a very important tool and
8 very important process in the regulations, and we believe
9 it's important to make sure that it's working effectively
10 because this provides an important opportunity to facilitate
11 the development of under-utilized sites.

12 Furthermore, in recognition of the mayor's order
13 on housing, it's critical to ensure that the city has all of
14 the tools available at its disposal to bring housing,
15 particularly affordable housing, to all wards of the city.
16 OP has worked very closely with OAG staff to draft the
17 proposed text. Should the Commission take proposed action
18 this evening, OP would request the flexibility to continue
19 to work with OAG to refine the language for the notice of
20 proposed rulemaking to reflect this evening's discussion.
21 This concludes my report, and I'm happy to answer questions,
22 or we can hold those until the end. Thank you.

23 CHAIRMAN HOOD: Okay, Commissioners, any questions
24 right now, or do we want to ask ours after we hear from the
25 public, as well? We may have some interchangeable questions,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 but let me hear how we want to proceed. Commissioner
2 Shapiro.

3 COMMISSIONER SHAPIRO: I'm happy to hold any
4 questions until after we hear from the community.

5 CHAIRMAN HOOD: I think that's the consensus up
6 here, so we can put it all together. Okay, okay. We do have
7 a number of -- we do have some groups, and I'm sure some of
8 them are represented here, so I won't try to go down the
9 list. All right. We're just trying to get some things, make
10 sure we proceed correctly. With that, do we have the list
11 up, Ms. Hanousek? You know what? It's eight chairs there,
12 and I see one, two, three, four, five, six, seven, eight.
13 Let me see a show of hands of who's going to testify tonight.
14 Okay so everybody can come to the table. I saw two people
15 that didn't raise their hands.

16 Everybody's who here, except the two who didn't
17 raise their hands, all come to the table. If you want to
18 testify, just come right on up. I would ask each person, as
19 we get started, if you can identify yourself, make sure you
20 give the two cards to the reporter, as well as just let us
21 know if you are opponent or proponent.

22 So is there one more person who would like to
23 testify, who would like to join this group? Is there another
24 person in the audience who just walked in, would either one
25 of you all would like to testify? Okay, this is the only

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 panel that wants to testify. I'll start to my left and work
2 to my right. We'll start with you. Identify yourself and --

3 MR. TATUM: My name is Richard Tatum. I live on
4 Windom Place, Northwest. I'm strongly opposed to this
5 proposed change. Exhibit 6 states that the proposed text
6 would clarify FAR use in a VDR application. However, this
7 proposal violates the original intent of Title 11, Section
8 601(c) and (e), by allowing extra density where it is now
9 prohibited.

10 Since at least two sections in the current
11 regulation agree, clearly the original intent was not to
12 allow aggregation of the FAR. There were no errors in
13 copying, as OP states in Exhibit 6. This rewrite is no
14 clarification, but a substantial change to the VDR
15 requirements. The clarification to Section 605.2 further
16 confuses VDRs and PUDs.

17 Why is the term PUD mentioned in the section about
18 VDRs? Is this another clerical error? This proposed change
19 violates Section 601(b) because it removes recognition of the
20 unique characteristics of neighborhoods by making this
21 provision uniform over the city.

22 Each block will resemble the next, resulting in
23 a city that has an overall sameness and eliminates the charm
24 of distinct neighborhoods, which is an attractive feature
25 that benefits residents and makes the city attractive to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 visitors. I want to be able to differentiate my neighborhood
2 from another. The proposed change does not benefit the
3 community. Case 16-23 is the genesis of this proposed
4 change. If any changes are made to the regulations, they
5 should not be made retroactive, and certainly should not be
6 applied to Case 16-23, or any other existing cases.

7 To illustrate, if one had committed a crime and
8 the case had been sent to the jury for a decision, it would
9 not be an appropriate time to ask the lawmakers to change the
10 law. That would not be fair. Similarly, Case 16-23 is at
11 the point of a decision.

12 Testimony is over, and the Zoning Commission is
13 starting deliberations. Changing the rules would not be fair
14 to my neighborhood. We have a lot at stake in this decision.
15 I recommend making procedural and regulatory changes to the
16 VDR process to distinguish it from a PUD are eliminated.

17 Its purpose is not clear, nor when it should be
18 used. I end with a statement from the 16-23, March 11th
19 hearing transcript. One of the commissioners, quoting the
20 VDR process, stated, I think that's been an absolute failure
21 here, that it, sic, hasn't been more efficient. Without
22 there being a PUD, the public benefits aren't there, and
23 they're being offered, but they're not. They're kind of in
24 this never never land. Thank you for your attention.

25 CHAIRMAN HOOD: Thank you. Next.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SMITH: My name is Tom Smith, and I'm an
2 officer of the Spring Valley-Wesley Heights Citizens
3 Association. Spring Valley-Wesley Heights Citizens
4 Association board of directors met last night to consider and
5 authorize the following testimony before the Commission.

6 As you know, we're a party in ZC Case 16-23, the
7 first case before the Zoning Commission to apply the new
8 ZR-16 regulations on voluntary design review. The text
9 amendments are tailor made by OP to allow the density being
10 proposed in that case.

11 The issue before us tonight is not what the intent
12 of the Commission was when it approved the design review
13 regulations. The question is in light of our first
14 experience with these regulations in the Valor case, are the
15 text amendments proposed by OP good for the city? We say no.
16 The Citizens Association opposes the text amendments for the
17 following reasons. The text amendments do not offer clarity
18 and, in fact, create even more ambiguity that will invite
19 legal challenges to zoning decisions utilizing VDR standards.

20 Two, FAR aggregation is inconsistent with the
21 purpose of design review. If the Commission chooses to
22 include FAR aggregation as part of VDR, however, we recommend
23 you clarify the FAR aggregation rules to require the
24 following.

25 A project presented for design review should not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 result in an increase in density over what is allowed as a
2 matter of right, period, inclusive of any FAR aggregation.
3 FAR aggregation should be a warning sign to the Commission
4 that the proposed application is not a simple project seeking
5 minor dimensional flexibility and, therefore, may not meet
6 the standards of voluntary design review.

7 All properties within the voluntary design review
8 application boundary should be owned by the applicant. If
9 an applicant is to use density from another property on a
10 separate lot, or even a portion of that lot, the applicant
11 should be expected to own that property. All properties
12 within the voluntary design review application boundary
13 should be contiguous and may be separated by an alley or
14 right of way, but not by a public street.

15 No relief from the IZ zoning requirements should
16 be permitted under voluntary design review. Consider how we
17 got here tonight. Nearly 18 months ago, on January 11, 2018,
18 at the first hearing in the Valor case, in which testimony
19 was offered, I asked OP to cite the legal basis for the FAR
20 aggregation that was being proposed in the case.

21 Because OP had recommended the Commission support
22 the Valor application, OP had a responsibility to clarify the
23 legal basis for approving the FAR transaction in the case.
24 The hearing transcript highlights OP's response that the
25 flexibility already provided under the rules allowed for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 FAR aggregation.

2 OP went further, saying that the Office of the
3 Attorney General confirmed that the regulations, as written,
4 allowed for the FAR aggregation and that OP would work with
5 OAG to provide a one-pager documenting this opinion. The
6 case record never included a formal opinion from the OAG, one
7 page or more, that OP's interpretation was legally
8 sufficient. Finally, on March 11, 2019, when deliberating
9 in this case, a majority of the commissioners raised
10 questions about whether the aggregation of FAR is permitted
11 in the VDR process.

12 It all appears we were misled by OP in January
13 2018 when the issue was first raised. In our view, this
14 compromises the evidentiary integrity of the case. Instead,
15 the Commission is faced now with clarifying standards after
16 all evidence has been taken in the case, perhaps going down
17 a treacherous path of reapplying a new standard to decide the
18 case after the record in the case is closed, and maybe even
19 having to revisit the decision to create voluntary design
20 review.

21 The text amendments are, at best, sloppy, and at
22 worst, a legal quagmire. The Commission should take the time
23 necessary to get this issue right, so that we do not have
24 another repeat of the Valor case. We do not believe the text
25 amendments add clarity. The text amendments create two

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 conflicting standards, the first in Section 600.1(e) that
2 would allow for a significant increase in density as a result
3 of FAR aggregation, and the second in Section 600.5 that an
4 increase in density shall not be permitted as part of a
5 design review application.

6 Given the structure of the regulations, one
7 section does not trump the other, so which is to prevail,
8 Section 600.1(e) or Section 600.5? The text amendments in
9 Section 601.E also conflict with Section 600.4, which
10 specifies that voluntary design review should not be used to
11 circumvent the intent and purposes of the zoning regulations,
12 as well as Section 600.1(c), which specifies that design
13 review can be used only for a project that is superior in
14 design, but does not need extra density.

15 The proposed text amendments create something akin
16 to a Catch-22. It's as simple as this. If you don't need
17 extra density, you don't need to aggregate FAR. The rules
18 also would allow a developer to aggregate FAR across major
19 streets and still meet the contiguous standard. Finally, at
20 a time when affordable housing is a priority for our city,
21 no applicant should be eligible for relief from the IZ
22 requirements, as would be allowed in Section 605.1. If the
23 Commission decides otherwise, there should be rigid standards
24 for granting such relief -- I have one more sentence -- for
25 example, developing a site in an upper-middle-class

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 neighborhood that has only been partially empty, and where
2 some neighborhood-serving retail businesses continue to
3 thrive, as Valor proposes, should not qualify for such
4 relief.

5 I would encourage you to -- you can read our whole
6 testimony, which is submitted as part of the record, and that
7 you have been given tonight.

8 CHAIRMAN HOOD: Thank you. Next.

9 MS. GATES: Good evening, Chairman Hood and
10 members of the Zoning Commission. I am Alma Gates,
11 representing Neighbors for a Livable Community before the
12 Commission tonight. Our full testimony is in the case
13 record, at Exhibit 10.

14 NLC opposes the text amendments proposed for
15 Subtitle X. The proposed text amendments intended to bring
16 about clarification are outright changes to the intent and
17 purpose of design review. The design review process is a
18 useful zoning tool and should not be turned on its ear to
19 meet the immediate needs of a single developer. Design
20 review is not a PUD process. It is a standalone zoning
21 process which may also be applied to a one-stage consolidated
22 or two-stage PUD application.

23 Design review specifically prohibits an increase
24 in density or a map amendment and, as a result, carries with
25 it no requirement for public benefits other than superior

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 design. FAR is the means by which density is measured in
2 other than residential zones.

3 An increase in FAR is an increase in density. The
4 aggregation of FAR within a zone amounts to an increase in
5 density within the zone. The proposed text amendments have
6 not been reviewed by the Attorney General for legal
7 sufficiency.

8 The Office of Planning has exercised a level of
9 deception regarding its dealings with both the Commission and
10 the public concerning involvement with the Office of the
11 Attorney General regarding the transfer of FAR in a design
12 review case, as well as the justification for the proposed
13 text amendments. With regard to the proposed text
14 amendments, in the set down and prehearing report of this
15 case, OP attempts to justify FAR aggregation by stating the
16 procedural aspects were inadvertently not copied into the
17 design review chapter and concludes that FAR aggregation
18 would continue to be available to the design review.

19 It can also be said that Subtitle X, Chapter 6 is
20 purposely silent on aggregation of FAR because the design
21 review process does not permit flexibility for an increase
22 in density or FAR. Perhaps the attached OP-produced PUD
23 worksheet from 2010 is the most compelling evidence regarding
24 the basis of the design review process.

25 I'm skipping ahead here. Section 603, which

1 addresses design review flexibility, is very clear regarding
2 flexibility available to the Commission, but also states the
3 design review process shall not be used to vary other
4 building development standards, including FAR, inclusionary
5 zoning, or green area ratio. It therefore seems disingenuous
6 to state it is appropriate to conclude that FAR aggregation
7 would continue to be available to the design review. There's
8 simply no justification for this statement as, throughout the
9 design review chapter, the same prohibition is made regarding
10 an increase in density.

11 Proposed text amendments aggregating transferring
12 or combining FAR of all buildings within a zone or zones to
13 increase density is contrary to the purpose of design review.
14 And given the Commission decided to separate design review
15 from the PUD process, there's reason to reject this PUD
16 amendment outright.

17 It turns -- excuse me, there is reason to reject
18 this text amendment outright. It turns design review into
19 a PUD process, without public benefits or a robust public
20 process. Combined lot provisions, as well as aspects of the
21 TDRs allowed in some downtown zones, appear to creep into the
22 purpose of what is being proposed.

23 While not specific to 19-05, it is difficult not
24 to regard the proposed text amendments in ZC Case 19-06 as
25 being tailor made for Valor Development. In Case 16-23 --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 excuse me, Case No. 16-23 sits in abeyance, but would be
2 pulled off the shelf in a heartbeat if the proposed text
3 amendments were approved. Valor would get its needed density
4 increase, would not be required to accept the carefully
5 crafted ANC conditions, would seek flexibility from the IZ
6 requirements, and would withdraw its onerous PUD application,
7 Case No. 19-10.

8 Approval of ZC Case 19-05 should not be granted,
9 as it is not in the best interests of the city, as a whole.
10 I ask that you read the rest of our submission. Thank you.

11 CHAIRMAN HOOD: Thank you. Next.

12 MS. RICHARDS: I'm Laura Richards, appearing on
13 behalf of the Committee of 100 on the Federal City. Before
14 I turn to my prepared remarks, which are in the record, I'd
15 like to respond to the Office of Planning's statements that
16 they are amending the proposed rulemaking to disallow
17 aggregating across different zones.

18 That's a huge change. It's an improvement, if you
19 are going to try to improve something that's so fatally
20 flawed. Office of Planning says if you're -- the Zoning
21 Commission may be inclined to act on this tonight. I think
22 that a major change of that sort should not be acted upon
23 tonight. It needs to -- the public needs to see this major
24 amendment in text, redlined text, and it also needs to have
25 some analysis on the likely impact of this change. Also, as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 required of any rulemaking, there needs to be some kind of
2 reasoning and analysis for why this is being done.

3 So far, the only explanation for the proposed
4 amendments at any stage of this has been inadvertent
5 omissions. Obviously, if there's going to be this huge,
6 major change, that's not -- if there was an inadvertent
7 omission, then it ought to be corrected.

8 Clearly, the changes were never inadvertent
9 omissions. They were an attempt to obtain the benefits of
10 a PUD without having to go through the rigorous PUD process.
11 While the amendment is certainly an improvement over what's
12 before you, it's not in any position to be acted upon
13 tonight.

14 As everyone else has said, which is so true, it
15 bears affirming, this is -- the proposed aggregation will
16 turn design review into PUDs without the protections and
17 benefits of the PUDs. I wanted to focus, in particular, on
18 some of the workings of the PUD working group when ZR-16 was
19 in play. We met for five different times. The last of these
20 meetings concluded in 2010. At the end of that session, the
21 proposals that essentially were -- wound up in ZR-16, as
22 design review, although not, then, so designated, were much
23 as they are then, no additional height above matter of right,
24 no map amendment, height to existing limits.

25 These provisions were exhaustively discussed. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 rules, as finally adopted, on design review state that there
2 should be no additional density three or four times. Whether
3 or not you're going to aggregate within a zone or across
4 zones, there can be no increase in density under design
5 review.

6 There is a perfectly -- I won't say adequate, but
7 there's a perfectly clearly laid out PUD process in the
8 zoning regulations. That's what ought to be followed. There
9 have been numerous so-called clarifications, rulemaking cases
10 since ZR-16 was promulgated.

11 There have been so many substantive provisions
12 that have been put forward under the guise of clarification.
13 But this is one, I would say, of the more, I guess, blatant
14 examples of using the clarification process to write a
15 substantive rule that we have seen in the two and a half
16 years since ZR-16 became the governing rules. Do not throw
17 out ten years of citizen work and public input from all
18 participants because a particular developer in a particular
19 case, and then potentially other developers, wish to be
20 accommodated.

21 I would just like to highlight, also, the
22 importance of retaining inclusionary zoning and -- let me see
23 -- yes, and the importance of maintaining compliance with the
24 comprehensive plan, which allowing aggregation within or
25 across zones is certainly to create inconsistencies.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN HOOD: All right, thank you, next.

2 MS. MILLS: Hello, my name is Sondra Mills. I
3 live in the 4800 block of Alton Place. I am here this
4 evening to speak specifically on behalf of Citizens for
5 Responsible Development, CRD as we are called, which is
6 supported by many residents of American University Park,
7 Spring Valley, and other areas of Ward 3. Let's just step
8 back for a minute and look at how we got here. We got here
9 because Valor Development wanted to build a project that's
10 just too big on the lot that was occupied by the Superfresh
11 Market. The project is too big for the surrounding
12 residential neighborhood of two-story homes. It's too big
13 for the surrounding commercial area of one to three-story
14 businesses.

15 In fact, it's too big for the Superfresh lot,
16 itself, which yielded a good bit of its density rights to
17 allow the larger building that is now owned by American
18 University to be constructed.

19 So to get around this deficiency in density
20 rights, Valor teamed up with American University and the
21 adjacent Spring Valley Shopping Center to create a so-called
22 project lot. Then to aggregate density among these lots, but
23 specifically by transferring supposed unused density from the
24 Spring Valley Shopping Center.

25 Valor opted to not file for a PUD for this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 project. Instead, it sought approval under the Commission's
2 design review regulations. Then, of course, it ran into this
3 little problem, being that the design review regs expressly
4 do not allow for an increase in density. And as others have
5 explained, FAR aggregation is resulting here in an increase
6 in density. That's why they're doing it. Otherwise, Valor
7 couldn't build this big project on the former Superfresh lot.
8 And so, as others have said, there's absolutely no basis for
9 saying that somehow, there was a mistake, a slip up, a
10 clerical error in not incorporating this opportunity to
11 aggregate FAR into the design review regulations.

12 There are repeated references in those regulations
13 to the fact that an increase in density is not allowed. This
14 particular provision was created in a separate chapter from
15 PUD to provide an expedited process for consideration of
16 projects that need approval of minor dimensional flexibility.
17 The flexibility that's been requested in the Valor case is
18 hardly minor.

19 It's going to result in a grossly oversized
20 project. And so, again, I'm not going to go through the whole
21 history of the creation of design review, but I think that
22 history, as others have spoken to it, is quite clear. The
23 second problem here is that this completely disincentives
24 developers from pursuing a PUD. Let's say you're a developer
25 and you want to get your project approved. What you could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 do is -- and this is what's going on here -- you could file
2 for both a design review and for a PUD. If those amenities
3 that the ANCs want prove to be too expensive and too onerous,
4 you can just skip that and you can go the design review
5 route.

6 You can aggregate your density or increase
7 density, however you want to do it, and get yourself approved
8 by this Commission. I don't really think this is what the
9 Commission intends. I think that disincentivizing people
10 from going through the PUD process and getting the ANCs and
11 the rest of the community to actually have real input into
12 these amenities is extremely important.

13 It also appears that this is going to be allowing
14 for the density increases in zones other than those five
15 designated downtown zones. This is going to result in,
16 basically, every neighborhood potentially being overrun with
17 oversized developments like the one that Valor has proposed.
18 Finally, I do want to object on a procedural basis to the
19 fact that Valor is now apparently pursuing two separate
20 applications for this same property. They have filed for a
21 PUD, and they are also continuing, I gather, to pursue a
22 design review approval. This is just gaming the Commission's
23 procedures, and it is absolutely unfair to the community that
24 surrounds this proposed development. Thank you.

25 CHAIRMAN HOOD: Thank you. Next.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. REPP: Thank you. I'm Shelly Repp here, also
2 from Citizens for Responsible Development, so you can give
3 me three minutes if you want. Anyway, I think one thing I'll
4 point out, it's telling here that there's -- nobody in this
5 room is here to support the text amendment. There's not one
6 written comment on the website, at least when I checked at
7 5:30, in support of this.

8 All the comments are in opposition. Everybody in
9 the room here is in opposition. As far as getting public
10 input, the public input is absolutely clear. It's negative
11 here. Also point out a couple of other things here.

12 With respect to the history here, Citizens for
13 Responsible Development pointed out three years ago, to
14 Valor, that there was an issue, not just in 2018, as Tom
15 Smith said, but three years ago, we pointed out that there
16 was a problem with respect to increasing FAR. I pointed out
17 at an ANC 3E meeting that this suggestion, this proposal was
18 too clever by half, and I still believe that to be the case.
19 Moving on here, as we've said here before, the OP says in
20 separating design review and the PUD requirement into two
21 chapters, some of the procedural aspects were inadvertently
22 not copied in design review.

23 There's absolutely nothing in the record that
24 would support this. On that same point, the record --
25 reading the record, you come up with the opposite conclusion,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as the Committee of 100 says in its testimony. Also, as Tom
2 Smith said, given the implications of this, the Zoning
3 Commission should be clear in its deliberations.

4 However, the text amendment is internally
5 inconsistent with the rest of section 600, both with respect
6 to IZ, both with respect to increasing density. The internal
7 inconsistencies, if this were approved, that would create
8 legal problems down the road, which I don't think that you
9 would want to walk into. As far as how quickly this was
10 drafted, if you take a look at the May 20th hearing report
11 from the Office of Planning, they refer to, in the text
12 amendment changes, to a PUD and a PUD site. This is not a
13 PUD and a PUD site. This is a voluntary design review. This
14 shows you how un-thought through this whole proposal was.
15 My final comment here is that Ms. Vitale pointed out how
16 there's a need in design review for a detailed review of the
17 design.

18 Certainly, you can still do that under the
19 voluntary design review without aggregating density. With
20 respect to housing, once again, in the context that we're
21 talking about in the Valor case, you can put almost as much
22 housing on the site in a way and still not increase density.
23 I'll just leave it there. We're certainly available to
24 answer questions.

25 CHAIRMAN HOOD: Thank you. Next.

1 MR. BOREK: My name is Walter Borek. I'm just a
2 private citizen. I live in the 4800 block of Alton Place.
3 It's not even a good long hard drive to put a baseball in the
4 backyard. I've talked about massing and density in FAR to
5 you. The thing I want to touch on tonight is called context.
6 First, this is really a complaint, the first few paragraphs.
7 OP created this text amendment after four days of
8 deliberation and a correction of an inadvertent, I'm using
9 the word mistake. This seems a rather significant mistake.
10 How can OP create a text amendment based on the correction
11 of a mistake without any type of due process and community
12 or ANC input?

13 Where are the documents upon which OP's mistake
14 is based? Are there documents, emails, meeting notes
15 pointing to the existence of the subject matter upon which
16 the mistake was made? Why was it a mistake? Could it just
17 as well have been intentionally not included, rather than
18 mistakenly not included? I can't believe that the zoning
19 ordinance wasn't proofread. The most important consideration
20 is how this proposed amendment will change our city.

21 As Chairman Hood specifically stated in his
22 letter, that, by turning design review into a PUD, without
23 an opportunity for community input that a PUD provides, the
24 amendment could pave the way for greater density in
25 lower-density areas, like Spring Valley and American

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 University Park. I would argue that it will affect
2 significantly more neighborhoods than just Spring Valley and
3 American University Park, as well as thousands of citizens.
4 This amendment will further densify what is already approved
5 densification. Most importantly, it will change D.C.'s urban
6 fabric forever. Please believe me, I am not against
7 development. This site should have been developed a long
8 time ago.

9 I've been an architect for 50 years. I've been
10 there for 30 years. I've taught, critiqued at two schools
11 of architecture. One of the most important concepts for
12 students to grasp is context. Context refers to the
13 environment or setting in which the architecture exists, both
14 the physical and non-physical.

15 It ensures and promotes continuity between the
16 building and its surrounding circumstances, its physical
17 setting, its sense of place, its historical meaning, its
18 neighborhood and all that means. Again, this amendment will
19 densify what is already densified.

20 It will change the city's context, and it will
21 change context within the city. This text amendment process
22 ignores one of the most basic tenets of context, community
23 input. OP is changing the rules at halftime and, in effect,
24 rewriting the zoning ordinance. As I have testified before,
25 Washington, D.C. deserves better than this, and I ask you to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 please not approve this.

2 CHAIRMAN HOOD: Okay, I want to thank you. Mr.
3 Borek, let me go right to you. Could you direct me to the
4 letter -- you said I wrote a letter. Maybe I misunderstood
5 what you -- it says Chairman Hood specifically stated, in his
6 letter. I usually don't write letters to cases.

7 MR. BOREK: I'm sorry, Case No. 19-06 proposed
8 text amendment. Text Amendment 19-06 was submitted by the
9 Office of Planning on March 15th, take final action, blah,
10 blah, blah. If approved, Text Amendment 19-06 would turn
11 design review into a planned unit development.

12 The current design review regulations -- next
13 paragraph. The design review and PUD regulations appear in
14 separate chapters of the zoning -- it seems like you wrote
15 a letter, my mistake if I didn't get that, and then you
16 signed it, or you put your name --

17 CHAIRMAN HOOD: I get accused of a lot of stuff,
18 but that's the first time I wrote a letter. I would like
19 somebody to show me that letter. Could you show it to me?
20 Do we have it up here? Oh, is it in the transcript? Show
21 it to the secretary. Oh no, that's too much writing. I know
22 I didn't do that. I know for a fact I didn't do that.

23 Okay, I need that to be on the mic because this
24 is in the record. Could you hand that back to her, and I
25 want to see it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BOREK: I made a mistake. I'm sorry. I
2 apologize.

3 CHAIRMAN HOOD: Okay, just hand it back to her.

4 MS. HANOUSEK: Just hand it back to me so I can
5 put it on the record.

6 MR. BOREK: Sure.

7 CHAIRMAN HOOD: Let's correct that on the record.
8 Most people know me; I wouldn't have wrote anything, not
9 anything good.

10 MS. HANOUSEK: This letter that was just referred
11 to was not written by Chairman Hood. It was written by
12 Barbara and Shelly Repp. Barbara and Shelly Repp refer
13 people to get in touch with Chairman Hood about the matter.

14 CHAIRMAN HOOD: Oh, okay. Thank you for the
15 clarification. Almost scared me. I thought I was losing my
16 touch, writing letters. Okay. I know I write a lot of
17 emails, but not letters, especially not zoning letters.
18 Let's open it up. Any questions or comments on what we've
19 heard, Commissioners? Commissioner May.

20 COMMISSIONER MAY: Yes, I have a few questions.
21 First of all, Mr. Smith, I was very confused by your
22 statement. Sorry, the first part of your statement, where
23 you're saying if we go ahead and allow FAR aggregation that
24 we shouldn't allow FAR aggregation. That's kind of what I
25 got out of it. Can you explain that to me better?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SMITH: That's not what we're saying. What
2 we're saying in the first point was that if you're going to
3 allow FAR aggregation, it should not be for the purposes of
4 increasing density, period. It shouldn't be used as a way
5 to increase density.

6 (Simultaneous Speaking.)

7 COMMISSIONER MAY: How else would you do it? What
8 else would happen?

9 MR. SMITH: There could be other reasons why you
10 might want to use -- why FAR aggregation might be -- why it
11 might be helpful. You could create any kind of --

12 (Simultaneous Speaking)

13 CHAIRMAN HOOD: Excuse me, Mr. Borek, could you
14 cut your mic off? We're getting feedback. Thank you. I'm
15 sorry.

16 MR. SMITH: You could create any number of
17 scenarios, but the bottom line is this. The bottom line is
18 --

19 COMMISSIONER MAY: No, I understand you equate FAR
20 aggregation with increasing density. I got that loud and
21 clear. Everybody said it in their letter. That's not what
22 I'm asking. What I'm trying to understand is what your point
23 was because it seemed like it was circular. What you're
24 saying is that FAR aggregation is okay except if it winds up
25 in increasing the density --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SMITH: -- density beyond the matter of right
2 allowed on the site. That's all we're saying. There could
3 be scenarios where --

4 COMMISSIONER MAY: Right, yeah I mean, voluntary
5 design review, this is -- the one case where this has come
6 up is one where there were multiple lots involved. Are you
7 saying within any given lot there shouldn't be an increase
8 in density?

9 MR. SMITH: No, we're saying two things. And I
10 mean if you want to relate it to the Valor case --

11 COMMISSIONER MAY: No, I don't want to relate it
12 to the Valor case, I want to keep it theoretical.

13 MR. SMITH: But it's a good example.

14 COMMISSIONER MAY: Just try and answer the
15 question the way I asked it, which is are you saying that you
16 would be opposed to increasing the density on any given lot
17 within the boundary of a voluntary design review? Is that
18 what you're asking? Is that what you're saying?

19 MR. SMITH: What we're saying is we'd be against
20 -- let's take, for example, theoretically, you have three
21 lots. Lot A is the lot where you're going to build this
22 project, and you're going to beg, borrow, or steal, whatever
23 you want to say, density from Lot B and Lot C. Okay? And
24 what we're saying is that if you aggregate the density -- if
25 you take density from Lot B and Lot C to build something on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Lot A, you still should not be allowed to have a project that
2 is any larger than what you'd be allowed to have as a matter
3 of right on Lot A, okay? Lot A should not have any more
4 density than you would be allowed to have as a matter of
5 right. That's what we're saying.

6 COMMISSIONER MAY: So within every single lot,
7 you'd be limited to the matter of right density that's
8 allowed on that lot under the zoning regulations --

9 MR. SMITH: Well, you're only looking to build on
10 one lot, if we're talking lots, or are we talking about
11 boundaries, about the VDR boundaries?

12 COMMISSIONER MAY: The VDR --

13 MR. SMITH: If we're talking about the lot where
14 the project is going to be, what we're saying is that project
15 should not be any larger than what would be allowable under
16 matter of right.

17 COMMISSIONER MAY: Well I mean, in most cases --
18 I don't know if it's most cases or not, but very frequently,
19 I would expect it to be multiple lots. So you're saying with
20 any given lot, it shouldn't be any greater --

21 MR. SMITH: Than that lot.

22 COMMISSIONER MAY: -- than what's allowed within
23 that lot.

24 MR. SMITH: The other piece that we're saying is
25 if you are going to aggregate the density over three lots,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 or you're going to use two lots to add additional density to
2 the site, you should be required to own all three of those
3 lots.

4 COMMISSIONER MAY: That's not what I'm asking.
5 That was a very clear point. I understood that one. It
6 seems like in effect, what you're saying is that say you had
7 those three lots, what you're suggesting wouldn't -- it
8 wouldn't make sense to have FAR aggregation at all if you
9 still couldn't push the FAR within one of those lots.
10 Because you could already do all that on that lot because
11 it's a matter of right.

12 MR. SMITH: There could be a scenario where
13 aggregating density over another lot might prove helpful for
14 purposes other than --

15 COMMISSIONER MAY: Well that's one of the essential
16 principles behind planned unit developments and other
17 development tools that exist not necessarily here, but
18 certainly in other places --

19 MR. SMITH: But without increasing the density on
20 the project site lot.

21 COMMISSIONER MAY: That's clearly what I
22 understand you want. I'm sorry if I was belaboring the
23 point, but I was trying to understand what you were
24 suggesting. Ms. Richards, you brought up the history going
25 back to ZRR and all those discussions. Was the term FAR

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 aggregation ever used in those discussions?

2 MS. RICHARDS: No, Commissioner May. If I may,
3 I would like to hand to the secretary the 2010 worksheet that
4 the Office of Planning -- you have it? Okay, good.

5 COMMISSIONER MAY: The answer is no.

6 MS. RICHARDS: The answer is no.

7 COMMISSIONER MAY: FAR aggregation was not used.

8 MS. RICHARDS: That is correct.

9 COMMISSIONER MAY: You understand that for planned
10 unit developments, FAR aggregation is sort of built in. It
11 may not be an explicit term that's used, but it was something
12 that's built in to PUDs, right?

13 MS. RICHARDS: Well that is part of the point, yes.
14 You aggregate your -- I think we've just seen a kind of --
15 a major example of that in Walter Reed. Huge lot, multiple
16 zones within it, and with a variety of mass and densities
17 within that lot. There was -- so yes.

18 COMMISSIONER MAY: It's a way of allocating the
19 density across a larger site --

20 MS. RICHARDS: That's right.

21 COMMISSIONER MAY: -- in a manner that's
22 theoretically -- brings you a better design than you would
23 otherwise get as a matter of right.

24 MS. RICHARDS: That's right. It may, or it may
25 not. However, as that aggregation capacity -- or ability to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 aggregate is not, I would say it is not unbridled.

2 COMMISSIONER MAY: I agree with that, and I think
3 we've had court cases that indicate that there's certain
4 reticence about that, but we'll see how that plays out.

5 MS. RICHARDS: Exactly.

6 COMMISSIONER MAY: One of the things I'm concerned
7 about is the -- what I seem to be witnessing here is that
8 there were assumptions about where this all started from, how
9 you could modify PUDs and come up with something that would
10 be faster, easier, less complicated, I don't know, maybe in
11 somebody's dreams less controversial, but that the starting
12 point was a PUD.

13 And then you -- Essentially, what the notion was,
14 I think, from one perspective, was you take out the idea of
15 doing a map amendment, which is where major increases in
16 density come from. Then what you're left with is -- because
17 there is not that major increase in density, there's not a
18 corresponding benefit or amenity that comes to compensate for
19 that, right?

20 I mean, so that's one way to look at it, and I
21 think that's probably the way the Office of Planning looked
22 at it. I'm struggling to understand why anybody thinks that
23 FAR aggregation was not in that starting part.

24 Clearly, it was not explicitly spelled out that
25 that was one of the things that was available, but it is one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the things that's available under PUD, and that was a
2 starting point. Why was it not an unreasonable position for
3 the Office of Planning to say hey, we started with a PUD and
4 we took out certain things? We took out map amendments, and
5 we took out the amenities that compensate for the map
6 amendments, so what we have left is the PUD light or the VDR.
7 Is that not an unreasonable position?

8 MS. RICHARDS: I think it's -- you know, it may
9 have not been unreasonable in certain circumstances. This
10 may be a case where we can see where whatever was intended
11 isn't playing out well. That's case specific. But no, I
12 don't -- just in terms of let's take a look at the text of
13 the rule and the regulatory history, no, it's -- it says if
14 you're not going to get additional -- not additional density.

15 You have dimensional flexibility. That's where
16 you get -- that is the benefit, and that is the purpose of
17 having design review. Again, even that is not unlimited
18 because I think one of the other witnesses was saying okay,
19 you can have three lots in a voluntary design review zone.

20 We're going to say they all have the same exact
21 zoning, so they all have the same -- whatever. Someone might
22 decide that oh, I'm going to put all my FAR from the three
23 lots on one of my lots because, for whatever reason, that's
24 going to work out for me. Since it's all within one zone,
25 that's okay under the terms of the bare reading of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 statute.

2 But because there is design review, someone has
3 to look at it and say is that still too much? Even though
4 you can do that, is that appropriate? That's the same kind
5 of constraint that rests upon the PUDs, where you can only
6 do so much.

7 COMMISSIONER MAY: Clearly, that was the intention
8 of voluntary design review.

9 MS. RICHARDS: Right. I think that one of the
10 problems here is that there was proposal to do the
11 aggregation across zones, where you had these differences in
12 matter of right FARs. Obviously, the problems are there, and
13 OP has recognized it.

14 But you also have the problem of aggregating
15 across streets and whatnot. Yes, you can do it
16 arithmetically, but you get some of these very weird results.
17 I tell you where it really becomes a problem and that's on
18 your corridors. The city's made quite clear it wants to
19 develop the corridors. You have all of the neighborhood
20 commercial overlay zones. They bump right up against
21 low-density residential zones. Even if you say we're all
22 going to keep this aggregation within a single zone, but
23 we're going to stretch it across alleys and main streets,
24 you're going to get the kind of anomalous results that you
25 have had experience with. Do you see what I mean?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MAY: I think I do. The neighborhood
2 commercial overlays do a lot of different things. In some
3 cases, they actually increase the density along the corridor
4 quite substantially.

5 MS. RICHARDS: That's right, but they're so highly
6 constricted. What I'm saying is --

7 COMMISSIONER MAY: I don't know. You been down
8 H Street lately?

9 MS. RICHARDS: Yes, but what I'm saying is they're
10 carefully defined. When I say constricted --

11 COMMISSIONER MAY: No, that's true. They are
12 carefully denied.

13 MS. RICHARDS: That's right. People decided to
14 live with what was there. But if we start applying voluntary
15 design review, even in a neighborhood overlay zone with maybe
16 generous flexibility, like H street, and you start --

17 COMMISSIONER MAY: I don't know that there's
18 necessarily flexibility; it was encouraging development along
19 H Street.

20 MS. RICHARDS: That's right. But still, parts of
21 the H Street corridor are very -- still adjacent to some very
22 low density --

23 COMMISSIONER MAY: Correct, they are.

24 MS. RICHARDS: -- residences. Let us say that we
25 start seeing a voluntary design review zone that goes from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 H Street and bumps back into some of these lower --

2 COMMISSIONER MAY: Well if it doesn't cross zones,
3 though, it shouldn't make a difference, right? You do have
4 RF-1 butting up against the H Street corridor, where you have
5 110-foot or 90-foot heights -- 90-foot heights? I can't
6 remember.

7 MS. RICHARDS: Well, yes, but when we walked in
8 here tonight, that's what was on the table.

9 COMMISSIONER MAY: You're right. When you walked
10 in, it was on the table. Let me ask you one other thing.
11 You had concerns about the process under which this is being
12 considered.

13 MS. RICHARDS: Absolutely, yes.

14 COMMISSIONER MAY: You compared it to other
15 clarifications that have come as a result of ZRR.

16 MS. RICHARDS: Yes.

17 COMMISSIONER MAY: I can see -- we've had some
18 reticence to undertake anything that was not truly minor
19 without doing hearings. And we've had multiple cases where
20 we wound up doing hearings. This seems to be one of those
21 cases, where there seems to be a need for greater clarity,
22 so we set it down as a case and we are hearing it. What's
23 the problem with that process?

24 MS. RICHARDS: I guess the -- normally, when you
25 have a rulemaking case, there's some kind of -- there's an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 explanation; there's a rationale. Yes, you're going through
2 the procedures for a rulemaking case, but substantively, it
3 is being presented to you as a clarification.

4 COMMISSIONER MAY: Got it, okay. I think that's
5 a valid point. I think maybe we will want to have -- that's
6 not been my perspective on it. I don't think this is a case
7 where we are doing something to correct or adjust the
8 regulations because of what happened before.

9 We all, most of us, lived through the rewrite of
10 the zoning regulations, and I mean many of the people in the
11 room, not just the people on the dais. We all went through
12 an awful lot to get to this point. It was a very long
13 document by the time we were done. There's certainly things
14 that got missed in the process.

15 There were things, frankly, before this, where we
16 were still correcting the 1958 regulations five years ago.
17 It seems to me, at this point, what we should be evaluating
18 is, is it important to have VDR within FAR aggregation --
19 sorry, FAR aggregation within VDR reviews or not?

20 That's the essential question, not was it
21 something we intended to do in the ZR-16. To the extent any
22 of the arguments argue for or against that, I think that's
23 vitally important. I'm not going to try to figure out what
24 we were thinking when we decided this under ZR-16. I think
25 that's a lost cause. So it is really about whether it's a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 good tool to have, or not, in the circumstances, or whether
2 there need to be further controls on it. Anyway, I
3 appreciate that. One other thing I was saying -- this is
4 just a statement about this. The notion that a 1,000-page
5 document is going to perfect when it's published is insane.
6 I read through the zoning regulations more than once as they
7 were being developed. Every time I went through it, I found
8 something else that was an issue.

9 We were all -- well, maybe not Commissioner
10 Shapiro, but the rest of us all read this in great detail as
11 it was being written and rewritten and rewritten. Many
12 people in the Office of Planning were reading it and
13 rewriting it and rewriting it.

14 It is not expected to be perfect. It can't be
15 perfect. We do have to continue to do clarifications. If
16 it is substantive, then we have to have hearings like this.

17 MS. RICHARDS: Well then, as you said, the real
18 question here is should we have aggregation within voluntary
19 design review. If that's the question, then that question
20 needs to be answered on a more robust record than is here
21 before you. I'm not talking about the comments. I'm saying
22 that --

23 COMMISSIONER MAY: No, I know what you're saying.
24 I think that's one of the things I'm interested in seeing,
25 as well. Thank you, Mr. Chairman. I'm done. I'm sorry, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Repp?

2 MR. REPP: Isn't the question, though, assuming
3 -- going down the path you are, why have design review, then?
4 If you can have FAR aggregation as part of design review, why
5 --

6 COMMISSIONER MAY: Why not just --

7 MR. REPP: -- which turns it into -- like a PUD,
8 what is the --

9 COMMISSIONER MAY: What's the advantage of doing
10 it?

11 MR. REPP: -- what's the advantage, then, yes?

12 COMMISSIONER MAY: It is less complicated when
13 there's not a map amendment, right? When there's a map
14 amendment, you get a substantial increase in FAR, and in some
15 cases, we go from a 2 FAR to a 6 FAR. That's a really huge
16 increase in development. So from those cases, we would
17 extract much greater benefits, much greater inclusionary
18 zoning, in particular, improvements to public space, things
19 like that.

20 That's a different class of case than what we
21 imagined would happen under voluntary design review. There
22 is an argument to be made that FAR aggregation is one of the
23 parts of the PUD that should be left when you move to a VDR.
24 Anyway, that's -- I don't really want to get into a debate
25 about it, but I did answer your question.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. REPP: Yes. One other thing is -- and I know
2 you said maybe you're not going to -- we can't figure out
3 what happened back in 2010 or in 2016, but back then, there
4 used to be --

5 COMMISSIONER MAY: There would just be no purpose
6 in that at all.

7 MR. REPP: -- but back then there used to be three
8 levels of PUDs, PUD 1, PUD 2, PUD 3. If you go through the
9 worksheet here, there's different levels -- there's no
10 density increase in one. There's slight density increase in
11 PUD Type 2, and more in Type 3. And now, Type 2's gone, as
12 far as density increase goes, or FAR aggregation, I guess the
13 public policy question here is should the Type 1 design
14 review, which is now voluntary design review, should that
15 have the same level of FAR aggregation permitted under what
16 is now -- used to be Type 3, but is now the only PUD version?

17 COMMISSIONER MAY: I think it's a valid question
18 whether, in fact, there should be some limits on how much FAR
19 aggregation can occur if we were to decide to go in a FAR
20 aggregation -- or to incorporate it explicitly in the
21 regulations. Anyway, thank you.

22 CHAIRMAN HOOD: Thank you. Commissioner Shapiro.

23 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Just
24 a few questions, and maybe more later on. But actually, one
25 comment. I appreciate your point, and Mr. Smith, you made the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 same point, which is this is -- I don't see our job -- and
2 I'm hearing you say the same thing -- that our job is some
3 kind of a search for original intent.

4 That makes no sense for me in this process, or
5 many processes. I'm glad that you said that, too. The
6 question I have is more around -- there's sort of a lack of
7 clarity that I'm getting from many of you in the panel around
8 the distinctions between FAR aggregation and increase in
9 density, and even TDR, transfer development rights. I'm
10 happy for anybody to take this on, but I'd like to hear from
11 you about what you see as the differences between these
12 things. I don't experience TDR as the same thing as FAR
13 aggregation or FAR aggregation as the same thing as an
14 increase in density. Why should I?

15 MS. GATES: The TDR points that have been made are
16 in the nature of an analogy or metaphor. What we're saying
17 is that in those -- there are some provisions in the zoning
18 code that allow for transfer of development rights or
19 combined lot developments.

20 They are strictly limited, and they tend to be
21 defined to high-density downtown areas, and even within those
22 high-density downtown areas, there are definitions as to
23 which part of downtown can be particularly densely received
24 or what have you. What we are saying here is that the
25 aggregation of FAR in the design review case is operating as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. GATES: When I say unchecked, I mean in the
2 sense of no limits. Supposedly, as we said --

3 COMMISSIONER SHAPIRO: But there are limits.

4 MS. GATES: No, there's -- let's say that -- as
5 we were saying earlier -- and I'll try to do this in two
6 seconds -- when you have a huge PUD, it still has to be
7 compliant with comprehensive plan on how much and --

8 On the smaller scale, within the design review,
9 if you're aggregating or combining across several lots within
10 your -- it still has to be compliant with the neighborhood
11 character, small area plan, or the -- It's got to -- or just
12 neighborhood design, neighborhood character. That's where
13 the unchecked aspect comes in. Not that it's not beaten to
14 death, but that it can be -- it was applied in this case, and
15 could, in the future, be applied without any kind of limits,
16 which is what design review is intended to do.

17 COMMISSIONER SHAPIRO: I imagine you would agree,
18 whether you agree with -- well, we don't even know where
19 we're going with this case or other cases, but I imagine you
20 would at least see our role as providing that kind of a
21 check. You would hope it to go a certain way, or not another
22 way, but that clearly is what we're designed to do.

23 MS. GATES: You are empowered to do it and,
24 therefore, you are presumed to have capacity. But you have
25 no kind of standards or guidance, in that sense, other than

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 what's in the plan, what's in small area plan, and what the
2 neighborhood character, overall, looks like. How you're
3 going to apply those and the weight they're going to be given
4 in design review is unarticulated.

5 COMMISSIONER SHAPIRO: I appreciate that. I also
6 appreciate you being careful -- I wouldn't take offense at
7 what you're saying at all. What I'm hearing you saying is
8 that part of is it's a political process, in your estimation.
9 You might be concerned about the decisions we make with the
10 authority we have. It's perfectly legitimate, and I
11 appreciate you saying that. That is our job. It's our role.
12 We don't always make decisions in the way that everybody's
13 happy with, and that's okay. No offense taken, and I hear
14 what you're saying.

15 MS. MILLS: Could I offer an additional comment
16 here?

17 COMMISSIONER SHAPIRO: Only to Commissioner May,
18 not me. Go ahead, yes, please, if it's okay, Mr. Chair.

19 MS. MILLS: I understand this amendment is broader
20 than the Valor development, but in this case, in the Valor
21 case, the only reason for the FAR aggregation is to provide
22 for increased density. It's essentially a mechanism for
23 transferring density and getting around the TDR restrictions.

24 That's the purpose here. Valor couldn't do this
25 otherwise. It's not as though this whole concept of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 three lots are being developed simultaneously to confer some
2 benefit that would not otherwise be available. This is just
3 a density transfer. I'm sorry; that's what it is.

4 COMMISSIONER SHAPIRO: Ms. Mills, if your
5 definition of aggregation of FAR is that it is a density
6 transfer, an increase in density, point blank, if you
7 conflate those two things, then setting aside Valor, if we
8 were to decide that aggregation of FAR is an appropriate part
9 of voluntary design review, then from your perspective, yes,
10 you're 100 percent correct.

11 It's just that I'm not sure I agree with your
12 interpretation of what aggregation of FAR is. There are
13 other cases in the pipeline right now, beyond this case.
14 This is a policy decision that's not linked to a single case.
15 I hear you loud and clear that in your estimation,
16 aggregation of the FAR is the same thing as increase in
17 density.

18 MS. MILLS: It may not always be, in every case,
19 but what I'm saying, in line with what Tom Smith was saying,
20 there should be some limitations. If, for example, all three
21 lots are owned by the same owner, or that you not do this
22 solely for the purpose of increasing density on the lot that
23 is subject to the development, the only lot that is subject
24 to the development, then all you're really doing is allowing
25 for a density transfer under the guise of FAR aggregation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER SHAPIRO: I hear you. Thank you.

2 MS. MILLS: That's my position.

3 COMMISSIONER SHAPIRO: Thank you. That's all I
4 have for now, Mr. Chair.

5 MR. SMITH: Mr. Chairman, can I --

6 CHAIRMAN HOOD: You want to answer that? Because
7 I want to go to Ms. Richards. I want to follow up with
8 something that --

9 MR. SMITH: Okay, just one really brief comment.
10 I appreciate Commissioner Shapiro's reference in our
11 testimony to saying we should not be looking at what has
12 happened in the past. But I think it's also -- that is a
13 strong --

14 CHAIRMAN HOOD: Hold on one second, so he can hear
15 what you're saying, once he finishes. He needs to hear more
16 than --

17 MR. SMITH: I was just saying I appreciate your
18 comment that you made that we shouldn't be so focused on what
19 happened in the past, but really assessing whether this is
20 good or bad and where we go from there. We feel very
21 strongly about that. Having said that, I think it's also
22 important to point out, at least, that one of the reasons why
23 I think there is so much focus at this panel on the past is
24 because of the scenario in which this proceeding is taking
25 place, that it's taking place within the scenario of a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 clarification of what was intended in the past.

2 I think there's a tendency, probably, for a lot
3 of folks to then focus on what happened in the past. We've
4 tried to look at this from the standpoint of what it means
5 going forward, but not just from a theoretical perspective,
6 but basing it on what we have learned going through this last
7 voluntary design review proceeding with Valor.

8 It's very difficult to separate the reality of
9 what we've seen, sometimes, from the theoretical of what
10 might seem like a good idea, and then as it's put into place,
11 not so much. I appreciate the opportunity.

12 COMMISSIONER SHAPIRO: Thank you for that. The
13 fantasy that somehow, Valor is not the 800-pound gorilla in
14 the room for some of the people in the room, we're looking
15 at the same folks who were here a few months ago on this
16 issue. I believe my job, and our role, is to look at this,
17 as you have said you think is appropriate for us, is to look
18 at this with a broader lens.

19 MR. SMITH: All that may mean is that the way this
20 is -- again, the opportunity to look at it from another
21 perspective, engaging with more people for comments. I will
22 tell you, for example, that the only reason we even know that
23 this is taking place is because we were a party in the case.

24 Had we been relying on notification from OP, we
25 didn't get any notification from OP. Our ANCs, the two ANCs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that have been involved in this case, didn't even put it on
2 their agendas for discussion. Maybe that's why they're not
3 here. I don't know.

4 I don't know the answer to that. Again, I think
5 that probably, if it were reframed, there would probably be
6 a lot more people here in this room tonight talking about a
7 lot of different things, maybe, than what we're talking
8 about.

9 COMMISSIONER SHAPIRO: Thank you. I just have to
10 say the Office of the Attorney General, when coming over
11 here, was reminding me, which I find helpful, that to your
12 point, Ms. Richards, when it comes to design review
13 standards, under DCMR 604, there's actually many, many pages
14 of very specific things that we take into account that are
15 part of the design review standards.

16 That's just a reaction to what you might have
17 characterized as we're virtually unchecked when it comes to
18 design review. I think that is a helpful thing to point out.
19 I appreciate that.

20 CHAIRMAN HOOD: What I want to do -- and I'm going
21 to go to the vice chair. We really want to be careful --

22 MS. MILLS: Mr. Chairman --

23 CHAIRMAN HOOD: Let me just say this. I keep
24 hearing about the room and attendance. That can work both
25 ways because some people may be -- you hear from people who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have the opposition the most, for the most part. The people
2 who support, why go down there? There's a good basketball
3 game on tonight or whatever else they're doing. We really
4 want to watch -- because we're going to deal with the people
5 who are here. I don't want this coming to no popularity
6 contest. You all are residents. I don't want us to say
7 because we're here, it's this way, and they're not, it's this
8 way.

9 Because everybody's voice counts in this city to
10 me. I just want us to be careful about saying how many
11 people's in the room and we're the only ones with notified.
12 Because I could take it -- no, I just want to say, not just
13 you, but I've heard that quite a bit.

14 Because it could work both ways, and we want to
15 be very careful. We want to hear from what we're hearing
16 tonight, so we can make an informed decision later on. I
17 just want to put that out there.

18 MR. SMITH: Mr. Chairman, that's not what I'm
19 saying at all.

20 CHAIRMAN HOOD: I've heard somebody say no one's
21 -- nobody here is in support.

22 MR. SMITH: I didn't say that. That's not what
23 I --

24 CHAIRMAN HOOD: No, I'm making a general
25 statement. I'm not necessarily saying who said what. I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 just making a general statement because I've heard that quite
2 a bit. I just want to caution us, when we turn something
3 like this into a popularity -- we're trying to get the facts.
4 We're trying to see whether or not FAR aggregation should be
5 included in VDR.

6 That's where we are, as been stated so eloquently
7 by my colleagues already. I just want to get away from the
8 popularity. Let's stay on the issue and see whether or not
9 it should be included or not. Ms. Gates, you had to go say
10 something. I want to go to the vice chair, and then I'll end
11 my comments.

12 MS. GATES: Mr. Shapiro, you talked about being
13 checked. Within a lot or this transfer ability, it says that
14 you can transfer -- that the lots have to be somewhat
15 contiguous. They can be separated by a street or an alley.
16 But here, again, clarification is needed.

17 What is a street? Are we talking about going
18 across Massachusetts Avenue, across Constitution Avenue, if
19 that's possible, that kind of thing? Are we talking about
20 major -- MacArthur Boulevard, major streets, boulevards,
21 which may actually be in a completely different, not zone,
22 but -- what does the District use when it divides -- oh,
23 square. It might be in a totally different square. In this
24 case, it could easily be in the -- I think the example that
25 Tom gave. You could be taking FAR from the other Spring

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Valley Shopping Center.

2 The other point, I think I didn't understand what
3 you said about FAR and density. Because in the zoning
4 regulations, it says in other than residential zones, the
5 density is calculated by FAR. That's B301.2. What is it
6 about density or FAR that we are confusing?

7 COMMISSIONER SHAPIRO: That's what I'm asking you.

8 MS. GATES: I don't think we are confused.

9 COMMISSIONER SHAPIRO: Okay, appreciate it. In
10 terms of your first point about what defines a street and
11 crossing squares, I don't know, but it's a good question, and
12 it's certainly a question that I would want OP to answer, as
13 well.

14 MS. GATES: As Commissioner May and others who
15 were around when the ZRR was being rewritten, we know that
16 there's a tendency, as we go on, to add amendments, new
17 regulations, that sort of thing. I think that's also why
18 there's concern about TDRs here. Because we're talking about
19 transfer of density. That is a term that was used throughout
20 the Valor case, transfer of density.

21 The only place that we hear about that kind of
22 transfer of density spelled out in the code is downtown.
23 Again, are we opening the back door here to permit that kind
24 of transfer to occur in areas outside of downtown?

25 COMMISSIONER SHAPIRO: Thank you for that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN HOOD: Okay, Vice Chair Miller.

2 VICE CHAIR MILLER: Thank you, Mr. Chairman, and
3 thank you for your testimony this evening to the entire
4 panel. I don't really have any questions of the witnesses
5 who testified.

6 I think I will have some questions of the Office
7 of Planning. I think it's -- one thing that is clear is that
8 the VDR, the voluntary design review regulations, need to be
9 clarified. I'm not sure this is -- the proposed text
10 amendment that's before us is the way to clarify it, but they
11 need to be clarified. There are purposes -- sections in the
12 purpose section that are still there and aren't even being
13 proposed to be taken out.

14 What OP has suggested is permit some -- this is
15 the third purpose of design review, voluntary design --
16 permit some projects to voluntarily submit themselves for
17 design review under this chapter in exchange for flexibility
18 because the project is superior in design, but does not need
19 extra density.

20 I think, as I said at the March 11 decision
21 meeting on the one voluntary design review case that is
22 pending in the Zoning Commission -- I'm not aware of the
23 others that are in the pipeline. I am aware of all the
24 mandatory design reviews for the Capitol Gateway, and maybe
25 other areas of the city, that have worked very well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Though I'm not sure, in any of those cases -- I'm
2 not aware, in any of those cases, but I'd be happy to see
3 information otherwise, where there was an issue about -- or
4 a proposal where FAR aggregation was a part of that case.
5 I don't really have any questions for the panelists because
6 I kind of agree, as I said at the March 11th decision meeting
7 -- well, I said then that I thought that case needed -- these
8 regulations need to be clarified. We need to hold up, and
9 we did. I appreciate all the work that's been done.

10 But I said then that there was another process,
11 when you're trying to get increased density beyond matter of
12 right, the PUD process. That seemed to be the more
13 appropriate vehicle to use in that one and only, 16-23, VDR
14 case that we have.

15 I'm sorry, Mr. Repp, that I wasn't paying enough
16 attention three years ago, or others a year ago, when we set
17 down the hearing, or when we first had the hearing on January
18 8, 2018 about this issue.

19 But that's the thing about zoning regulations;
20 they do get continuously amended, as Commissioner May said,
21 even up to five -- even right before the ZRR was taking about
22 this -- ZR-16 was about to take effect, we were amending them
23 to clarify issues then. I think we shouldn't be questioning
24 people's motives about what they were trying to do. There
25 is a vagueness in the regulations that needed to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 clarified. I, personally, would agree with many of your
2 bottom line that this VDR process should not be used to
3 increase -- to allow FAR aggregation to increase -- when the
4 end result is to increase density beyond the matter of right
5 density that would be allowed on the lot that's being
6 developed.

7 There's another process for that more complicated
8 extra development, and it involves balancing. You get the
9 public benefits all recorded in a covenant. I know Office
10 of Planning has proposed that there be a covenant now in the
11 VDR process, which is good if we're going to continue down
12 this path.

13 Again, Mr. Chairman, this case -- this text
14 amendment case, like the VDR case that spawned its city-wide
15 text amendment, has left me rambling. I think we'll get to
16 a good point, and I think we shouldn't be questioning
17 people's motives or what they were trying to do and end
18 around or that the system was being gamed.

19 There's always provisions that are in the zoning
20 regulations which should be utilized for the purposes that
21 they want to utilize them for, and we amend the regulations
22 if we think that there's not a public policy purpose --
23 appropriate policy purpose that's being pursued, or we want
24 to improve it. That's it. I thank you for your testimony,
25 and I'll have some questions for OP when we get to that, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Chairman.

2 CHAIRMAN HOOD: Thank you, Vice Chair. I really
3 don't like the position I'm in. While I'm up to the task,
4 I don't like to be in this position. These things do happen.
5 I still am not convinced that the FAR aggregation should be
6 in the VDR.

7 I'm not sure where I am on that. As I think the
8 Vice Chair was alluding to -- I think this is where -- I
9 don't want to put words -- but I'll say it for myself. There
10 are other tools for us to be able to deal with that.

11 VICE CHAIR MILLER: I agree.

12 CHAIRMAN HOOD: Again, we -- okay, good. The
13 other issue I'm having is when this was brought to our
14 attention and we tried to deal with it in another case, or
15 on other cases, because we have one coming up, I believe,
16 shortly. I'd like to see how that's going to go, probably
17 the same way. Anyway, in that context, we were trying to --
18 we scurried to try to make these corrections or try to make
19 these changes or try to figure out what to do. I think that
20 goes to my point that I made earlier, whether people are here
21 or not is not the issue for me.

22 For me, it's trying to make sure the path forward
23 and the regulations that we put in place are usable and, as
24 I think I heard Tom Smith say, for the best interests of the
25 city. That's where I posture to come from. Because I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 hearing a lot of things being tied in.

2 Ms. Richards, TDRs, the conversation you and
3 Commissioner Shapiro about TDRs joining in with the FAR
4 aggregation, all that together, to me, sometimes it's how we
5 interpret it. Because I believe -- I thought -- well, I
6 believe TDRs in the regulations are basically when you go
7 from a separate property.

8 This is a contiguous. I heard you mention that,
9 but tying that together, to me, those are two separate
10 things. It's two separate things. Help me understand that.
11 How are we tying TDRs in what -- how did that get into the
12 discussion?

13 MS. RICHARDS: I'll speak briefly to it, and then
14 I believe to my right had --

15 CHAIRMAN HOOD: No, I have another question for
16 her.

17 MS. RICHARDS: Okay, she had what I thought was
18 just a really, very, very good explanation of it, as to why
19 we -- again, the contention is that the voluntary design
20 review process is being used not for its intended purpose,
21 but as a vehicle to transfer density from a lot, a property,
22 whatever it is, where it is not being utilized, where there
23 is no intent to utilize it, to another square, lot, part of
24 the project boundary, so that more density can be obtained
25 than would be a matter of right on that particular parcel.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 There is no -- I think that the vice chairman's
2 comment about not allowing aggregation of FAR beyond the
3 matter of right that would be allowed is spot on because this
4 isn't a single project here.

5 It's all within a single boundary, but the
6 boundary was selected in order to get some density from where
7 it just wasn't being used and wasn't intended to be used, to
8 put it someplace that didn't have enough density. That runs
9 counter to the purpose of 600.1(c). The project is superior
10 in design, but does not need extra density. I think that
11 when this -- well, I know because we were all working on it.

12 When design review went into place, everyone
13 envisioned that this would be a totally new project, new
14 construction or substantial rehabilitation. It would work
15 as a whole, not that there would be an existing use under --
16 kind of that was not using its entire envelope and that
17 another -- it could be just combined with another property
18 or something, and then the density could be swapped over
19 without consideration for how they work as a whole.

20 That's not the purpose of design review. Design
21 review is a project tool. What we have seen is that it can
22 be used not to advance a project as a whole, but that it can
23 be used to further a project which would not qualify for what
24 the developer wants to do with it, but for tacking on an
25 unrelated piece of property.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN HOOD: I think we're kind of -- I just
2 think mentioning TDRs, which to me, when you're talking about
3 TDRs, you're transferring between completely separate
4 properties versus the VDR, which would only apply to
5 continuous properties. I'm just hearing all this being
6 thrown into the pot. To me, that confuses it more for me.
7 Again, back to the initial question, should FAR aggregation
8 be included in the VDR?

9 I still have not -- first of all, I'm not there,
10 honestly. I think, as we mentioned already, there's probably
11 other tools. Let me go back. A couple of people made some
12 comments and I want to address. I addressed the one about
13 the support in the room.

14 You mentioned about the two processes going
15 simultaneously. Help me understand; how did we get there?
16 I actually am not going to ask a question that I don't
17 already know the answer to, but I want you, for the record,
18 to help me think this thing through. How did we get the two
19 processes?

20 How did we get to -- was it because we've heard
21 -- was it because the Commission and Office of Planning and
22 Office of Zoning heard the concerns from the community,
23 regardless of how many people was here -- was it because we
24 heard the concerns and we say oh, we have a potential
25 problem, as has already been mentioned, that we go back and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 make -- since ZR-16, and as I think Commissioner May
2 mentioned, we were straightening up things from '58 in 2008.
3 We go back and we try to -- I think we got here because we
4 heard from the citizens. So help me, is that how you see it,
5 or you just think we're just trying to make something fit?

6 MS. MILLS: I think you heard from us that we had
7 -- we, I'm talking about Citizens for Responsible
8 Development, but I think, also, the other Spring Valley
9 groups were in this same mindset, that design review just did
10 not provide for an increase of density, which we saw was what
11 was going on, basically.

12 There was a so-called aggregation of density, but
13 the whole idea of the project lot and the boundaries that
14 were drawn around these three lots was being done not to
15 develop them as a project together, but rather just to
16 facilitate the transfer of density to the so-called
17 Superfresh lot. So you heard us on that point. We don't
18 know what you discussed with the Attorney General's Office
19 on this point, or perhaps subsequently with the Office of
20 Planning. So there may have been input that you received
21 from other parts of the District Government that advised the
22 Commission on these issues. Perhaps it was advice that was
23 given to you in response to the concerns that we had raised
24 about the use of design review in a context where the density
25 increased.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN HOOD: That's actually -- let me just
2 help you. That's actually where it initiated from. How we
3 got here tonight with this text amendment, which I'm not
4 necessarily in favor of even doing either, but that's how we
5 got here, because we heard from the residents. I think we
6 want to make sure we make that clear. We didn't get here
7 because of the Office of Planning.

8 We didn't get here -- we got here because of what
9 we heard in a particular case. We weren't going to
10 necessarily make this germane to a case. We want to make
11 this germane city wide because we do have another one coming
12 up real soon, extremely soon. I think that's important. I
13 heard you when you said simultaneously. I will be, frankly,
14 honest, I do share some of the concern, not just in this
15 case, but period. Anyway, Mr. Repp, you were going to say
16 something.

17 MR. REPP: Yes, on that issue, on March 11th, you
18 decided that they couldn't go forward with the design review
19 as it was. On March 15th, Valor filed its notice of intent
20 to -- for a PUD. In April, on April 8th, we -- they asked,
21 then, that design review be deferred. We opposed that.

22 We thought they should withdraw the design review
23 application, so they'd only have one. But we have two
24 applications pending, one may be in a deferral state, the PUD
25 application and the design review, because that's what Valor

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 has proposed.

2 CHAIRMAN HOOD: Here's the thing. I want to make
3 sure this is on the record, too. It wasn't necessarily Valor
4 proposed it. I think they heard our discussions and were
5 trying to do what everybody's trying to do. It's already
6 been stated. There are regulations people use or not use.
7 There are ways that people can go or not go. They heard our
8 discussions. I'm not saying we drove them to do that, but
9 they heard us having a conversation because of the concerns
10 that CRD and others had brought to this Commission. I just
11 don't want that to lose sight because it's not that Valor
12 volunteered to come in with a PUD; they just figured that was
13 a tool that they can use. I was going to ask a couple other
14 questions, clarifying questions.

15 Again, I have not really heard what I really need
16 to hear. Maybe I'll have a conversation with -- we'll have
17 some interaction with Office of Planning. I can tell you
18 that I am not there even with this text amendment. I've
19 never been there.

20 I just think that this is not necessarily the way
21 to go. But if it's a usable tool, I don't think -- this may
22 be the way it should be in the toolbox, but maybe I'll hear
23 something that will help me get there. I'm not saying this
24 just because a lot of people are in opposition or support.

25 I didn't like this path going down this way

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 anyway, but it was something that we had to deal with. I
2 wish the confluence of factors may impacted another way. It
3 would have been a little more easier -- the optics would have
4 looked better for us, I believe. It would look better --
5 when I say us, I'm not talking about the Zoning Commission;
6 I'm talking about all of us. I'm not excluding anybody.
7 We're all together in this. I'm trying to make this work.
8 What else?

9 Ms. Richards, you mentioned about -- I think they
10 talked about making it to one zone. I think that was a
11 concern of yours of us to say something that -- do you think
12 that needs to be another hearing? What do you think on that?

13 MS. RICHARDS: Clearly, limiting it to one zone
14 makes --

15 CHAIRMAN HOOD: Is better.

16 MS. RICHARDS: -- is better. But there was a
17 suggestion that the Zoning Commission might act on this
18 tonight. I'm saying this is -- there's too many of the
19 questions which have come out in the course of testimony and
20 your colloquies to just go forward.

21 We also need to know a little more about how
22 limiting it to one zone is going to work. Because even if
23 it's limited to one zone, that's not going to prevent the
24 kinds of issues that you have heard raised tonight. It's not
25 a cure all. It's an improvement, but it does not solve the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 problem that is before you.

2 CHAIRMAN HOOD: Ms. Richards, let me just ask --
3 and I missed a lot of stuff. I didn't get that we would be
4 acting tonight. Where did that come from?

5 MS. RICHARDS: The representative from the Office
6 of Planning said if you are inclined to act on this tonight
7 in her opening statement --

8 (Simultaneous Speaking)

9 CHAIRMAN HOOD: If we are inclined.

10 MS. RICHARDS: Right. She didn't say that you
11 would, but she opened the door. I'm just saying please
12 don't.

13 CHAIRMAN HOOD: If we are inclined, okay.
14 Anything else up here, any follow ups? Anybody else have
15 anything else they want to say? Ms. Gates, and then we'll
16 come to you, and then we'll go from there.

17 MS. GATES: A few minutes ago, you mentioned about
18 TDRs and buildings. If you look at 603.1, they're talking
19 about buildings. Again, if we're not talking about buildings
20 and transferring density between buildings, let's not say
21 that.

22 CHAIRMAN HOOD: I'll look at that. So noted.

23 MS. GATES: Did I give you Section 603.1?

24 CHAIRMAN HOOD: 603.1, yes, so noted. Yes.

25 MR. TATUM: I would just like just one quick

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 statement. I hope the Commission and the Office of Planning
2 can clearly differentiate between design review and a PUD.
3 It's ridiculous to even sit here talking about this if you
4 can't -- if a layman like me can't go to the regulations and
5 read the thing and make some sense out of it.

6 It makes no sense. If you're going to have three
7 different processes, then they ought to be clearly defined.
8 That's all I'd like to see. Thank you.

9 CHAIRMAN HOOD: All right, so noted. Thank you
10 all for your participation and for coming down tonight. We
11 appreciate it. Is there anybody else -- I know we had maybe
12 one or two who came in a little late. Anybody else who wants
13 to testify? If not, we will go to the Office of Planning.
14 Anybody? Okay. Thank you all again. Let's go to the Office
15 of Planning. Ms. Steingasser.

16 OFFICE OF PLANNING RESPONSE

17 MS. STEINGASSER: Yes. Chairman Hood,
18 Commissioners, we've heard a lot here tonight. Half of it
19 is not germane to the case before you. This is not a de
20 facto rehearing of the Valor case. That's really important
21 because the Valor case has not been resolved. It's not been
22 decided. The Commission's not deliberated that case on its
23 merits.

24 I'd put those issues aside that have come up. I
25 want to hit some of the issues that I heard raised this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 evening, or that we've heard together. I want to make some
2 clarifications. The transfer of development rights have no
3 bearing on the voluntary design review.

4 I don't understand why they're being mentioned in
5 this context. They're a very specific tool that has a very
6 focused purpose. They transfer density from one site to
7 identified receiving zones. Those receiving zones are
8 identified. They're usually very high density areas that
9 were -- when they were created were in dire need of
10 stimulated economic development, so they were allowed to have
11 that density transferred. That is not what's going on with
12 the voluntary design review. The voluntary design review,
13 the issue with aggregation is not a concentration of density.

14 I want to be really clear about how OP looked at
15 this and how, when this was written, we were part of it for
16 every step of the way. It's how you're defining what is the
17 project area. The project area cannot exceed its matter of
18 right height or density, but it can consolidate that density.

19 If they wanted to have -- if it were a green field
20 development and they wanted to leave the predominant half of
21 the site as a green open area, they could consolidate that
22 density over on one side. In this case, in some hypothetical
23 areas, it can also open up density that would otherwise go
24 unused.

25 In certain parts of the city, there are older

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 developments that have certain -- maybe there are landmarks.
2 Maybe there are other non-commercial, non-residential
3 developments that have consumed the density, leaving other
4 matter of right densities stranded. While I don't want to
5 talk directly to the Valor issue, that's what's happened.
6 There is stranded density. When you look at the project
7 boundary, that density is matter of right.

8 It does not exceed the matter of right density,
9 and it does not exceed the height, but it provides a vehicle
10 to tap into that density that's residential and allows for
11 that residential density to be used. That's one of the
12 fundamental values of the voluntary design review. It has
13 a flexibility.

14 We don't expect to see it used as often as we see
15 a PUD because it doesn't provide the bonus density. It
16 doesn't have the 20 percent by right density and the increase
17 in height that comes along with the PUD, but it does get to
18 those sites that are bigger than a variance and smaller than
19 a PUD.

20 I don't know how many there are throughout the
21 city and how many would actually tap into it, but this is a
22 very purposeful process that was intended to achieve this
23 flexibility to allow for this kind of movement of density,
24 as long as it's consistent with its project boundary. A
25 project boundary may have more than one lot. In a case where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you've got five lots, yes, that density can move within that
2 project boundary. That's not a transfer of development
3 rights. That's not a combined lot. That's just flexibility.
4 It's still got to maintain its height.

5 Any flexibility that it asks for, in terms of
6 yards, it has to identify that, and it has to prove that it's
7 superior. It's the Commission's discretion and
8 determination, as they review the boundaries, are the
9 boundaries appropriate?

10 Should the street be included? Maybe they're
11 proposing that it's not. The Commission can say no, that's
12 not appropriate. To try to define it down to it can only be
13 a matter of right per lot, regardless of how many lots are
14 in there, nobody would use it.

15 There'd be absolutely no reason to use it.
16 There'd be nothing that -- that's what the BZA's for. It
17 could go to the BZA and it could request that variance, but
18 at the time, they would also lose the ability to participate
19 in the design review. There would be no design review
20 involved in the BZA cases. They're just simply variances.
21 They could come in; somebody could make the argument about
22 why that density is stranded, why the properties are not
23 fulfilling their intended purpose for mixed use, and probably
24 make a sufficient case to get a variance, but there would be
25 no design review.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 There'd be no participation for the community
2 involved in that. I don't want to keep conflating this down
3 to one bad experience with a particular development that got
4 kind of twisted and turned and maybe overstepped in some
5 areas and understepped in others, in terms of how they were
6 negotiating with the community.

7 It is a very important tool. We feel very
8 strongly that it's an important tool. We absolutely agree
9 that it needs clarification. It needs -- maybe deaggregation
10 is not the only clarification.

11 I think we've heard this evening that there are
12 additional areas that we should be looking at. But it is a
13 tool we feel very strongly about keeping that tool. We feel
14 it's necessary, in light of the recent mayor's order about
15 finding opportunities for additional housing. In some parts
16 of the city, these little mixed use zones are the only place
17 that affordable housing can go because it is not -- the
18 residential, single-family detached zones are not subject to
19 inclusionary zoning. These are the only place that we can
20 try to work to maximize their matter of right potential, not
21 -- and still maintain, moving forward, the housing needs, in
22 terms of both market rate and affordable housing.

23 I don't know if my colleagues want to add anything
24 else to my spiel. We do feel pretty strongly about that.
25 We feel that the Zoning Commission has the experience and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 expertise to look at a project and determine whether it's
2 gone too far, and whether it's appropriate or not
3 appropriate.

4 You do not operate without limits. The Zoning
5 Commission has limits. You write the regulations. You adopt
6 the regulations that you then operate under. I don't think
7 that's right. But this is not a combined lot. This is a
8 project boundary. It's defining that denominator. That,
9 then, decides what is the matter of right and what is the
10 height. Like I said, the importance of this, in terms of
11 fulfilling the need for tapping into unused density is
12 critical. Thank you.

13 CHAIRMAN HOOD: Thank you for that, Ms.
14 Steingasser. I think you've heard the conversations and the
15 testimony. I know you've been involved with this intimately.
16 What I'm hearing from you is -- I guess that maybe that will
17 help us out on a public standpoint.

18 I think Mr. Borek mentioned that from a layman's
19 standpoint, it should be easy to read, and it shouldn't be
20 confusing. You heard my question of Ms. Richards about the
21 TDRs and bringing all that stuff in there and just mixing it
22 all up. To me, that's what it seemed like we were doing.
23 Hearing from you, I just think that maybe we can do some --
24 I don't want to say clarifying, but some layman clarifying
25 language.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. STEINGASSER: I think so. I think there is
2 room to clarify and to further provide guidance and intent
3 of what this can achieve and get to those issues.

4 CHAIRMAN HOOD: We're not transferring TDRs, and
5 we're not -- because I didn't necessarily -- after I heard
6 so much testimony, I start trying to figure this stuff out.
7 I'm saying wait a minute, now, we shouldn't be doing TDRs
8 because that's on a separate lot. All that, to me, got mixed
9 up into this, separate properties. All that, to me, started
10 running together. I said maybe this is running afoul.

11 But after hearing that, if we clarify layman's
12 clarification -- I'm going to use that word -- then maybe we
13 can come to something -- maybe it'll be easier, not just for
14 this community, because I know we have others across town and
15 everywhere else that are coming up.

16 I want to make sure it's not just for -- no
17 specific case, as you already mentioned. This is about what
18 we do, what's best for the city. That's where I am.

19 MS. STEINGASSER: We're happy to continue working
20 with the Office of the Attorney General on this language.

21 CHAIRMAN HOOD: Let me hear from others. Any
22 follow-up questions or comments? Commissioner May.

23 COMMISSIONER MAY: Yes. I'll try to make this
24 very quick. I appreciate your closing argument, if you will.
25 I think that, actually, it would be very good to have that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on paper in the record for people to review. I don't want
2 to get into a really lengthy supplemental report, but I think
3 that a report that goes more to the reasons why this is a
4 useful tool, as opposed to why it was not clear in the zoning
5 regulations.

6 MS. STEINGASSER: Absolutely, yes.

7 COMMISSIONER MAY: I think that would be useful.
8 I think it might be worth looking at -- and again, I'm not
9 talking exhaustive investigation, but the question of whether
10 there should be some overall limits, or whether the existing
11 limits, on bulk, are sufficient, in terms of what could
12 happen as a result of FAR aggregation.

13 Now, again, it is something that is controlled by
14 the design review process, but is there something that
15 actually should be written in to give ourselves and future
16 commissions some guidance about how far this tool could go.
17 It may not be worth it. I just -- it's a question.

18 MS. STEINGASSER: We'll take a try at that. That
19 was one of the reasons we added the language on covenants,
20 to make sure that the order referenced a covenant.

21 COMMISSIONER MAY: I think that's very good.
22 There is -- I'm confused by the treatment of inclusionary
23 zoning because in the first part of the revised regulation,
24 it seems to imply that no relief should be granted for
25 inclusionary zoning, but then the reference to covenants says

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that there shouldn't be any change to inclusionary zoning
2 unless there's -- unless it was relief that was specifically
3 requested and the Commission decided to grant it.

4 MS. STEINGASSER: That's just an error. That'll
5 absolutely be taken out.

6 COMMISSIONER MAY: So it just should not --
7 (Simultaneous Speaking).

8 MS. STEINGASSER: It should not be in there.
9 There is absolutely no relief to inclusionary zoning through
10 this process.

11 COMMISSIONER MAY: Okay, very good. I think
12 that's a good clarification. I think that's it from my
13 perspective. Thank you.

14 COMMISSIONER SHAPIRO: Thank you. One thing that
15 you said, Ms. Steingasser, that caught my attention. I'm not
16 sure -- it's a version of what Commissioner May said, as
17 well. This issue that some tools can be more useful in some
18 parts of D.C. than others, based upon, broadly, how they're
19 zoned, and that this tool, perhaps, in areas -- broadly
20 defined areas west of the park in D.C., based upon how
21 they're zoned and these pockets of commercial density that
22 we have here, or there is there, that some way this tool
23 could be useful in areas like that broadly.

24 It's a way of getting at what Commissioner May is
25 saying, perhaps, that what would the implications of this be,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and where might it be more helpful to achieve some of the
2 mayor's goals and our broader goals for the city. Is there
3 a way of getting at that? I'm amplifying a piece of what you
4 said and Commissioner May touched on.

5 MS. STEINGASSER: We could look at the maps and
6 identify some areas where this might be useful, but those
7 areas could also come in with a much more aggressive approach
8 through a PUD. Usually, what we would get through a PUD
9 would be an increase in height and an increase in density
10 because the lift for a PUD, from the filing fees through the
11 whole process and just the soft costs of getting -- are just
12 that much greater.

13 COMMISSIONER SHAPIRO: But that's why you have
14 this -- what I'm hearing is that's why you like this tool
15 because it allows for something in between.

16 MS. STEINGASSER: Right, it allows for certain
17 areas that have some -- I think it said, in the statement,
18 unique and distinctive characteristics. The accusation that
19 it's going to somehow homogenize the city and strip
20 neighborhoods of their character is just wrong because this
21 tool is meant to do exactly the opposite.

22 COMMISSIONER SHAPIRO: That's the other piece of
23 it. Without, by any stretch, casting aspersions on the
24 motives of folks who were testifying, there's kind of a
25 catastrophizing of what a tool like this could do. One of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the things that I want to hear is some clarification around,
2 really, what are the parameters that are set by our design
3 standards and the inclusion of this tool if we were to allow
4 it to happen?

5 MS. STEINGASSER: Okay.

6 COMMISSIONER SHAPIRO: That's all I have, Mr.
7 Chair.

8 CHAIRMAN HOOD: Okay. Any other comments or
9 questions? Vice Chair Miller.

10 VICE CHAIR MILLER: Thank you, Mr. Chairman. I
11 appreciate the dialogue, Ms. Steingasser, that you had with
12 Commissioner May about the inclusionary zoning. That was
13 going to be my first question as to what is being proposed
14 here and why would we want to allow for any kind of waiver
15 from inclusionary zoning.

16 You've stated that's an error and that the
17 language is going to be further clarified to not allow for
18 a waiver from inclusionary zoning requirements.

19 MS. STEINGASSER: That's correct.

20 VICE CHAIR MILLER: What is the -- in the
21 mandatory design review cases that we've reviewed many of --
22 the ones that come to my mind are all the ones in Capitol
23 Gateway. I don't know if there are other areas where that
24 specifically --

25 MS. STEINGASSER: Southeast Federal Center has a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 few, and then I think Hill East, also.

2 VICE CHAIR MILLER: Has there been any FAR
3 aggregation and an increase in density in any of those cases?

4 MS. STEINGASSER: There has not, but that's
5 because those --

6 VICE CHAIR MILLER: They're high-density areas.

7 MS. STEINGASSER: -- projects allow between 8 and
8 10 FAR as a matter of right. They seldom use the full FAR
9 that they're entitled to because there's so much flexibility
10 granted there.

11 VICE CHAIR MILLER: We have specific design
12 criteria that we were trying to obtain of certain different
13 levels of height in different subzones of those zones --

14 (Simultaneous Speaking)

15 MS. STEINGASSER: That's correct. Hill East,
16 everything -- it was a form base where the buildings were
17 already well established through the small area plan and the
18 zoning plan were tied together.

19 Capitol Gateway, it's already a high density, high
20 height neighborhood. The main focus for us there was
21 maintaining the views to the Capitol along South Capitol
22 Street and the ground floor, making sure that that ground
23 floor pedestrian level was active and animated.

24 VICE CHAIR MILLER: In any of those cases, was
25 there a -- was the development that was being considered in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the mandatory design review, as part of the mandatory design
2 review process, was it across multiple ownership, across lots
3 that had multiple ownership?

4 MS. STEINGASSER: There have been cases where
5 there've been multiple ownerships, yes.

6 VICE CHAIR MILLER: Have they crossed public
7 streets or alleys?

8 MS. STEINGASSER: Down by the stadium, there is
9 one that crossed Half Street, I believe. It connected two
10 buildings of different owners.

11 VICE CHAIR MILLER: I think we --

12 MS. STEINGASSER: The issue of multiple owners is
13 -- it's not really relevant to how property is built or
14 developed. Multiple owners frequently come in as LLCs.
15 You'll see three or four property owners operating together.

16 The case of concern -- and where this voluntary
17 design review -- the case that everyone is concerned about,
18 it's what freed up the residential density of one owner. By
19 participating as a group, as a project, together, it freed
20 up --

21 (Simultaneous Speaking)

22 VICE CHAIR MILLER: Right. I was thinking about
23 that issue because I had dialogue with the applicant in that
24 case about what were these separate agreements that weren't
25 being presented to us in a public forum.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 It was hard to be judging what we were actually
2 approving on those other sites or disallowing on those other
3 sites because we were told that was proprietary information.
4 I don't know if that particular applicant was an LLC with
5 those contiguous -- with those owners.

6 MS. STEINGASSER: I don't know what their
7 agreement was. I know that through the covenant, they would
8 be restricted from further development. The residential FAR
9 --

10 VICE CHAIR MILLER: But was that going to become
11 part of a covenant that we would record with our zoning
12 order?

13 MS. STEINGASSER: Yes. I think it was in the
14 draft order. It was certainly one that OAG and OP had
15 recommended. It allowed for the -- there was a landmark.
16 It allowed for the development rights from that landmark to
17 be moved and incorporated into another part of the project
18 site.

19 VICE CHAIR MILLER: I guess I am having trouble
20 seeing the usefulness of a -- of the voluntary design review
21 process to increase density beyond the matter of right that
22 would be allowed for the project that's actually being
23 developed. Tell me why it's not.

24 MS. STEINGASSER: Let's take a case where there's
25 three separate properties.

1 VICE CHAIR MILLER: Why wouldn't the PUD process
2 work better?

3 MS. STEINGASSER: The PUD process does work, but
4 it is a very heavy lift. It creates expectations of benefits
5 and amenity package that are not commensurate because the
6 project doesn't have any bonus density. It's not availing
7 itself of any bonus density.

8 It's using the voluntary design review as a way
9 to utilize the residential FAR that is otherwise stranded on
10 the site because the non-residential FAR has consumed either
11 the land area or the overall FAR of the site, and then there
12 may be a complication that there's a landmark on the site
13 that can't be built in front of or on top of. And so that
14 residential FAR is abandoned. You've got all this
15 residential FAR that can't be used. You're right; it could
16 come through a PUD, but since they're not asking for more
17 than the matter of right would allow for that total land
18 area, which would be the project area, it's not a preferred
19 -- it's a very expensive alternative. It would probably
20 result in a very different project if it were to start from
21 scratch as a PUD.

22 VICE CHAIR MILLER: We had this discussion in that
23 case about the density that can't be used on the landmark
24 site. I asked you -- I think you -- about if we were
25 starting with a blank slate, from an urban planning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 perspective, wouldn't you want to put the density on that
2 site with the surface parking lot on a major corridor, that
3 that's so wide, instead of adjacent to a two-story single
4 family home?

5 MS. STEINGASSER: I think if everybody -- if this
6 were a clean site, I think it would have a very different
7 approach to it. But we do have a building with covenants on
8 it. We have a building that's a landmark. Part of that
9 landmark is the parking in front of it. It's a very
10 difficult site. We're trying to find -- I think the property
11 owner was trying to find a way to make something out of it,
12 to capture that unused density. We were supportive because
13 it was one of the few ways to get additional housing,
14 market-rate housing, and market rate produced affordable
15 housing through the IZ program.

16 VICE CHAIR MILLER: I'm all for that. I would
17 have been in favor of the Planning Office coming forward and
18 saying -- recommending the historic site, maybe, to be
19 developed that way, instead of transferring it closer to the
20 smaller density neighborhood.

21 MS. STEINGASSER: Unfortunately, the historic
22 site's not eligible to be developed that way because it's a
23 landmark.

24 VICE CHAIR MILLER: You were the Office of
25 Planning that has the HPO in it. You could be recommending

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that.

2 MS. STEINGASSER: I don't think that would -- I
3 think it would be contrary to the purpose of the landmark.
4 I don't have the whole landmark history with me of that
5 particular building, but yes, it's not -- that's not an
6 option that's on the table, so we were trying to work with
7 --

8 VICE CHAIR MILLER: Yes, I --

9 MS. STEINGASSER: Again, I'm uncomfortable talking
10 about that case in this because it's really conflating the
11 issues. Throwing out the baby with the bathwater because of
12 one case in one community is, I think, ill advised. We
13 really don't recommend it.

14 We feel very strongly that this can be a valuable
15 tool. I think we need to work on getting clarification and
16 possibly some more guidance in going through the information
17 that's been asked of us this evening.

18 VICE CHAIR MILLER: It could be a valuable tool
19 because it allows unused density on an adjacent property to
20 be used on that --

21 MS. STEINGASSER: That's one scenario --

22 (Simultaneous Speaking)

23 VICE CHAIR MILLER: Even though it's saying -- you
24 still are proposing, in your text amendment, in the purposes
25 section, you're leaving the language that says doesn't need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 extra density, the project doesn't need extra density.

2 MS. STEINGASSER: Because we're looking at what
3 is the project boundary? That project boundary can include
4 multiple lots. The project boundary is different than the
5 lots within it. The project boundary includes three separate
6 properties. They're agreeing that their unused density can
7 be used within that property boundary, so they're subject to
8 the conditions of this whole project.

9 It's going to be put over here or there or
10 wherever is available because they are constrained in their
11 particular areas. If we keep conflating what is a property
12 boundary with just the building pad, that's what's causing
13 the confusion. The building pad is not the project boundary.

14 VICE CHAIR MILLER: I'm generally in support of
15 increasing density. I just see this as a -- we already have
16 a vehicle to do that in our zoning regulations through --
17 consistent with the comp plan, which I also think should be
18 increased -- the density should be increased in many areas.

19 You've got a comp plan amendment pending before
20 the Council, and you have another cycle coming up. I hope
21 you're going to -- proposing some density increases, coupled
22 with affordable housing requirements, since that's what the
23 goal is here and increasing the housing supply at all levels.
24 I guess I would need a lot more information to be convinced
25 how valuable a tool this is, since I only have this one bad

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 case in my head for voluntary design review. All the
2 mandatory design review has worked very well. Capitol
3 Gateway and Southeast Federal Center have very specific
4 design criteria for subzones within that lot.

5 None of them involved increasing -- none of the
6 cases involved increasing density. I never saw the design
7 review process as another vehicle to increase density. We
8 have a vehicle to increase density. It's comp plan map
9 amendments. It's other zoning map amendments, and it's PUD
10 process.

11 MS. STEINGASSER: I guess that's where --

12 VICE CHAIR MILLER: You get things in return.

13 MS. STEINGASSER: Right. In this case, they're
14 not asking for more. They're asking just to use the matter
15 of right.

16 VICE CHAIR MILLER: Because they created a
17 boundary that -- they created an artificial boundary.

18 MS. STEINGASSER: That allowed for the densities
19 within those --

20 VICE CHAIR MILLER: It wasn't a natural boundary,
21 other than they were adjacent and went across an alley.

22 MS. STEINGASSER: It served as a way to capture
23 what we're calling stranded density. Because but for that,
24 it would be stranded, and it would be --

25 (Simultaneous Speaking)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR MILLER: So that's the main purpose now
2 of the voluntary design review process --

3 MS. STEINGASSER: No.

4 VICE CHAIR MILLER: -- to increase -- to capture
5 unused density.

6 MS. STEINGASSER: That's an option that has been
7 (Simultaneous Speaking) to this. It is not the main purpose.
8 I really --

9 VICE CHAIR MILLER: I can see how it's a purpose,
10 and I can see that's a reasonable argument to make. I'm not
11 challenging you on that. I'm just saying we have a track
12 record of a vehicle that's been used for decades to capture
13 -- also capture unused density and increase density. I guess
14 I'd need more information as to how this is going to be a
15 good process to do that. Maybe we'll get a good case that'll
16 show that, but I'm not comfortable with moving forward with
17 the information I have right now.

18 CHAIRMAN HOOD: Going forward, I think Ms.
19 Steingasser and the Office of Planning has agreed to --
20 they've heard the comments to kind of clarify layman
21 language. Going forward, I think that's kind of where I am.
22 I believe Commissioner May is in tune with that, as well.
23 I don't know about Commissioner Shapiro.

24 Yes, Commissioner Shapiro, as well. I think it
25 would be helpful to not just us, but the public, as well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Any other questions up here? Let me do this. Because I did
2 go out of order, and I'm going to just take one person --
3 this is not a go back and forth.

4 I'm going to ask Mr. Repp if you have anything
5 that you want to come up and say. Do you have anything you
6 want -- Mr. Repp or Ms. Repp, you all want to come up to the
7 -- here's the thing. I don't want to get into -- I'm just
8 going to let you just -- I'm going out of form because I went
9 out of form when I took the Office of Planning last because
10 everybody -- I know you all wouldn't go home and say Anthony
11 Hood let the Office of Planning go last. You all wouldn't
12 go home and do that, so I'm going to cut that right now. I'm
13 going to let you come up and say something.

14 But I don't want you to -- I want you to direct
15 it to me, not to any comments -- I'm giving you an
16 opportunity to say something because people go home -- I know
17 you all wouldn't do that -- he let the Office of Planning go
18 last. Nobody's going to do that.

19 MR. REPP: Probably everybody wants to go home and
20 watch the basketball game.

21 CHAIRMAN HOOD: True.

22 MR. REPP: Anyway, no. I've heard the dialogue
23 here with the Office of Planning and the Commission. I
24 thought it was a healthy dialogue. You couldn't get away --
25 frankly, we couldn't get away from the Valor case. As much

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as you tried to direct them away from the Valor case, that
2 was clearly the case. It's a flawed case, a bad case, as Ms.
3 Steingasser said. There's a way to get housing on the site
4 --

5 CHAIRMAN HOOD: Let's keep it germane to --

6 (Simultaneous Speaking)

7 MR. REPP: -- without increasing --

8 CHAIRMAN HOOD: I asked for this. I want to keep
9 this germane to the text. I am going to control us getting
10 away from the Valor case. Let's keep it to the text. Give
11 us one or two sentences, and we'll be done.

12 MR. REPP: I think with respect to the text
13 amendment, I think the text amendment, based on what we heard
14 today from everybody, needs a lot more work. I guess I'll
15 just leave it there for now.

16 CHAIRMAN HOOD: Okay, thank you very much,
17 appreciate it.

18 MR. REPP: Thank you for everything.

19 CHAIRMAN HOOD: Okay, thank you. I did that
20 because I know nobody's going to go home -- I'm going to say
21 that again. I know you all are not going home and saying
22 Anthony Hood let the Office of Planning go last. Who would
23 do that to me? Okay, good, thank you. Do we need to do any
24 final closing or anything? Do we need any dates? Normally,
25 we do dates.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. LOVICK: Yes, in terms of when you'd want the
2 -- if you want the Office of Planning to submit something by
3 a date certain. You could also clarify whether or not you
4 want to continue this hearing, or whether or not you're going
5 to just put this onto the meeting calendar.

6 CHAIRMAN HOOD: Here's the thing. I don't know
7 what kind of changes we may have. We may have to have --
8 continue to have a discussion. I'm not sure. It depends on
9 what kind of changes come back. Commissioner --

10 (Simultaneous Speaking)

11 COMMISSIONER MAY: Mr. Chairman, at this point,
12 I think the -- I think we've had robust testimony. We have
13 definite questions. I think that I would happy, at least
14 initially, just getting the further report back from the
15 Office of Planning and having an initial discussion.

16 Maybe that first discussion, the objective would
17 not be to take a specific action, but to see if we have
18 further questions. At that point, we can decide what else
19 we might need.

20 CHAIRMAN HOOD: Then at that point, if we move
21 forward, then there's a comment period, also. Let's just
22 play that by ear because we may -- let's go with that
23 suggestion by Commissioner May. I think that's the way to
24 do it. We'll set a date. Ms. Steingasser, how much time do
25 you think you all need?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. STEINGASSER: I'd say at least three weeks.

2 CHAIRMAN HOOD: Three weeks?

3 MS. STEINGASSER: Yes, sir.

4 CHAIRMAN HOOD: Ms. Hanousek, we have three weeks.

5 We'll set it down for our next meeting to have that

6 discussion.

7 MS. STEINGASSER: So you'd have it before the

8 24th, is that right, June 24th?

9 CHAIRMAN HOOD: When's our next meeting?

10 MS. HANOUSEK: We'd want it by the 17th for the

11 24th meeting.

12 MS. STEINGASSER: Okay.

13 CHAIRMAN HOOD: You said three weeks, though,

14 right? Is that three weeks?

15 MS. HANOUSEK: No.

16 (Simultaneous Speaking.)

17 CHAIRMAN HOOD: That'll work.

18 MS. HANOUSEK: Okay, then.

19 CHAIRMAN HOOD: What's the date, again, the 24th?

20 MS. HANOUSEK: The 24th meeting, and they will get

21 something in by the 17th.

22 CHAIRMAN HOOD: Okay, is that good? All right,

23 I think we're on the same page. Anything else, Ms. Hanousek?

24 Anything else?

25 MS. HANOUSEK: No.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN HOOD: Anything else, anybody,
2 Commissioners? I want to thank everyone for their
3 participation tonight, and this hearing is adjourned.

4 (Whereupon, the above-entitled matter went off the
5 record at 8:50 p.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCZC

Date: 05-30-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701