

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1177th MEETING SESSION (5th of 2005)

+ + + + +

MONDAY
APRIL 11, 2005

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Carol J. Mitten, Chairperson presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairman
KEVIN HILDEBRAND	Commissioner
GREGORY JEFFRIES	Commissioner
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY
SHARON SCHELLIN

OFFICE OF PLANNING STAFF PRESENT:

ELLEN McCARTHY	Interim Director
ARTHUR JACKSON	
JOEL LAWSON	
JENNIFER STEINGASSER	

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D.C. OFFICE OF THE ATTORNEY GENERAL:

ALAN BERGSTEIN, ESQ.
LORI MONROE, ESQ.
JACOB RITTING, ESQ.

This transcript constitutes the minutes from the
regular meeting held on April 11, 2005

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

6:40 p.m.

CHAIRPERSON MITTEN: Good evening ladies and gentlemen. This is a regular public monthly meeting of the Zoning Commission of the District of Columbia. Today is April 11, 2005. My name is Carol Mitten, and joining me this evening are Vice Chairman Anthony Hood and Commissioners Kevin Hildebrand, John Parsons and Greg Jeffries.

Copies of today's meeting agenda are available in the wall bin near the door if you'd like to follow along. I'd just like to remind folks that we do not take any public testimony at our meetings unless the Commission specifically requests someone to come forward.

Please be advised this proceeding is being recorded by a court reporter and is also being web cast live. Therefore we ask that you not make any disruptive noises or actions in the hearing room. I'd ask everyone to turn off their beepers and cell phones at this time so as not to disrupt the meeting.

We'll begin with any preliminary matters.
Mrs. Schellin?

MRS. SCHELLIN: We have none.

CHAIRPERSON MITTEN: Thank you. So then

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1 we'll move to the monthly report from the Office of
2 Planning. Ms. Steingasser?

3 MS. STEINGASSER: Madam Chair,
4 Commissioners, I'm embarrassed to say we forgot the
5 Office of Planning status report this month. I'm so
6 sorry.

7 CHAIRPERSON MITTEN: Do you want to ad lib
8 it or not?

9 MS. STEINGASSER: No.

10 CHAIRPERSON MITTEN: Okay. Well then we
11 won't spend too much time on that.

12 MRS. MCCARTHY: If you'd like we could
13 prepare it and distribute it to you at the next
14 nearing.

15 CHAIRPERSON MITTEN: That will be fine.
16 That's Thursday night. That's great. Thank you.

17 All right. Then we'll move to the first
18 case under Proposed Action, which is Case No, 04-02,
19 which is the East M Street Target Area. I don't know;
20 Mrs. Schellin, did you have anything that you wanted
21 to say by way of summary?

22 MRS. SCHELLIN: No ma'am.

23 CHAIRPERSON MITTEN: All right. This is
24 something that we've been dealing with for a couple of
25 different meetings so far. This came to us initially

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1 as a request for rezoning of a specific parcel in the
2 little triangle that's formed down by M Street and the
3 water and the 11th Street bridge, and we decided we
4 wanted to take broader look at it.

5 And we've asked the Office of Planning
6 several times to consider our various permutations on
7 how we would zone this area, or rezone this area, from
8 its existing industrial zoning. I don't know how
9 close we are to having a conclusion but I think at
10 this point, because we have been toying with this, I
11 myself am not wholly satisfied with any of the
12 solutions that have been proffered, not that they
13 haven't been suggest in good faith, it's just that
14 it's a tricky little area to try and deal with.

15 And, further, the fact that we now have,
16 there's been a study, a consultant has been engaged by
17 the Office of Planning to study the industrial zones
18 in the city, where they are, what the demand for them
19 is, what the supply of space is. We have a case
20 before us where we're being asked to broaden the
21 number of uses in industrial zones to include CBRFs
22 and homeless shelters. I'm just not sure that the
23 time is right to undertake a rezoning that we haven't
24 seemed to be able to craft the right solution to.

25 So I don't know where everyone else's head

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1 is at but I think we made a valiant effort at studying
2 the area but I'm just not ready to go forward with the
3 rezoning at this time. Anyone else have thoughts
4 they'd like to share?

5 COMMISSIONER PARSONS: I would agree. I
6 mean we started with W3 and we tried to craft
7 something that we'd step down, but the inherent
8 problem is we continue to rezone industrial areas. I
9 think this particular area of the city is an area that
10 we should very carefully look at in the context of
11 rezoning other industrial areas as a potential
12 location for that kind of activity.

13 So I would concur with your conclusion
14 that we not rezone this, but rather look at it in the
15 context of other industrial areas in the city.

16 CHAIRPERSON MITTEN: Okay. Thank you.
17 Anyone else?

18 VICE CHAIRMAN HOOD: Madam Chair, I would
19 also agree. I'm sitting here trying to think though
20 because it seems like we always rezone industrial
21 areas outside of a particular ward, and I'm sitting
22 here trying to think, recollect, you know, I mean I
23 don't know. But anyway I would agree with the
24 comments of my colleagues, but I'm sitting here just
25 trying to digress and remember what we've done in the

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1 past, and it's not coming to me as quickly as I would
2 like it for it to. But I would associate myself with
3 your comments and Commissioner Parsons' comments.

4 CHAIRPERSON MITTEN: Anyone else? All
5 right. Well then I would move that we dismiss, since
6 this was our request, that we dismiss Case No. 04-02
7 which would then leave the existing industrial zoning
8 in place.

9 COMMISSIONER PARSONS: Second.

10 CHAIRPERSON MITTEN: Is there any further
11 discussion? All those in favor please say aye.

12 (Ayes.)

13 CHAIRPERSON MITTEN: Mrs. Schellin it's
14 unanimous.

15 MRS. SCHELLIN: Yes, staff will record the
16 vote 5-0-0 to dismiss Case No. 04-02, Commissioner
17 Mitten moving, Commissioner Parsons seconding and
18 Commissioners Hildebrand, Hood and Jeffries in favor.

19 CHAIRPERSON MITTEN: Thank you. The next
20 case under Proposed Action is a requested *Sua Sponte*
21 on BZA Case No. 17271, and this is coming to us from
22 Commissioner Hildebrand so I'll turn it over to you.

23 COMMISSIONER HILDEBRAND: Yes Madam Chair,
24 thank you, fellow commissioners.

25 My role in the Commission is primarily to

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1 protect and preserve the federal interests in
2 development as it occurs within the District.

3 I am in receipt of a final order created
4 by the Board of Zoning Adjustment for Case 17271,
5 granting a height variance for 51 Louisiana Avenue,
6 Northwest, which is directly adjacent to the Senate
7 Park section of the Capitol Grounds. The additional
8 height granted by this variance will allow the
9 developer to construct what will become the highest
10 structure immediately adjacent to the Capitol Grounds.

11 The Office of the Architect to the
12 Capitol, at the behest of the Senate Sergeant-at-Arms,
13 Chairman of the Capitol Police Board, submitted a
14 letter expressing their strong objection to the
15 variance due to the serious security risk it would
16 present to the Senate section of the Capitol complex.

17 The Senate Sergeant-at-Arms, assuming the
18 Board would appreciate the changed security conditions
19 in our post-9/11 world, accepted a meeting proffered
20 by the developer to discuss the variance rather than
21 attend the hearing.

22 It was only at the meeting, which was
23 concurrent with the BZA hearing, that the Sergeant-at-
24 Arms became aware that the developer was introducing -
25 at the last minute - a security context study in an

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1 attempt to disprove their security concerns. There
2 was no time to review the study, much less respond to
3 their security analysis, and adequately participate in
4 the BZA hearing at that late hour.

5 It is with this unique and extremely
6 unusual circumstance in mind that I move that the
7 Commission, pursuant to DCMR Title 11 Section 3128
8 undertake a *sua sponte* review of the record in this
9 case to determine if the Board's decision was based
10 on, and adequately supported by, a full, complete,
11 adequate record given the absence in the record of
12 evidence of the serious security concerns of the
13 Capitol Police Board whose statutory responsibility,
14 along with the Capitol Police, is to protect Senators,
15 Members of Congress, the core function of the federal
16 legislative branch of government as well as the
17 Capitol itself, a highly focused terrorist target and
18 a national treasure.

19 CHAIRPERSON MITTEN: Thank you. Could I
20 just ask you to address which of the three reasons for
21 a *sua sponte* review in 3128.7 that you see your
22 request coming in under?

23 COMMISSIONER HILDEBRAND: My request is
24 coming in under the unique and unusual circumstance,
25 the last of the three.

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CHAIRPERSON MITTEN: Okay. I had a chance to review the order and it's interesting because my issue is very different from yours and yet I think a *sua sponte* review is in order here as well.

The primary motivation for the requested height variance in this case is economic, and it's invoked a couple of different times in a couple of different ways. One way is that the order speaks to the fact that six levels of below grade parking will be constructed and Tiber Creek needs to be dealt with, and included in that discussion is the fact that the number of parking spaces that are required, I'm trying to find that, the required number of parking spaces is 301, the proposal from the applicant is to provide 443.

So first we have the applicant wanting to build more than they're required to build and saying, you know, that parking is expensive to build because the Creek needs to be accommodated, and then we have a height variance being requested to accommodate something underground rather than having the variance be directly related to what's causing the problem.

Then, further, we have in Finding of Fact No. 21, a discussion of the fact that there are design concerns that cost additional money. So the economic

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1 loss that would be created without the variance is
2 \$7.5 million dollars, and I think a component of that
3 is for the parking. But the variance, unless a site
4 is very, very highly constrained to the point that you
5 really are limited in your economic use of the
6 property, I don't know that an economic argument can
7 be the primary basis for granting the variance.

8 And at one point in discussing, this is on
9 page 7 of the order, in discussing the practical
10 difficulty, the order says, moreover full compliance
11 with the regulations would render development of the
12 property economically infeasible. And yet there's no
13 discussion of the extent to which that's true because
14 it's one thing to say that it's not as economic, and
15 that's true you know, if things cost more because you
16 are accommodating a historic structure, it costs more
17 but that's a far cry from infeasibility, and there's
18 nothing in the record to suggest, nothing in the
19 order, I'm sorry, to suggest that it's at that extreme
20 level of infeasibility.

21 So I would say for wholly different
22 reasons, and I would say that my basis for voting in
23 favor of a *sua sponte* review would be because of
24 3128.7B, which is where it appears that a basic policy
25 of the Commission as expressed in the Zoning

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1 Regulations, has been violated as a result of action
2 by the Board, namely that the variance does not appear
3 to have been met properly in this case. So I'm in
4 favor but for different reasons.

5 Anyone else? Would you care to make a
6 motion?

7 COMMISSIONER HILDEBRAND: Yes. I move
8 that we undertake a sua sponte review of BZA decision
9 17271, which is the 51 Louisiana Avenue site, for both
10 meeting item 2728.B --

11 CHAIRPERSON MITTEN: 3128.B

12 COMMISSIONER HILDEBRAND: 3128.B relative
13 to the economic hardship, and C the unique and unusual
14 circumstance as far as the security aspect of the
15 record.

16 CHAIRPERSON MITTEN: Okay. And I'll
17 second that. Is there any discussion on the motion?
18 All those in favor please say aye.

19 (Ayes.)

20 CHAIRPERSON MITTEN: Any opposed please
21 say no. Mrs. Schellin?

22 MRS. SCHELLIN: Yes, staff would record
23 the motion to undertake a review of BZA Case No.
24 17271, that that motion is approved by a vote of 5-0-
25 0, Commissioner Hildebrand making the motion,

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1 Commissioner Mitten seconding, Commissioners Hood,
2 Jeffries and Parsons in favor. And I would also just
3 like to state that this will be Zoning Commission Case
4 No. 05-13. Thank you.

5 CHAIRPERSON MITTEN: All right. Then
6 we're ready to move to Hearing Action. And the first
7 case under Hearing Action is Case No. 05-07, and this
8 is a request from Joseph Washington for a map
9 amendment at 3700 Southern Avenue, Southeast. And
10 I'll turn it over to Mr. Jackson.

11 MR. JACKSON: Good evening Madam Chair and
12 Members of the Commission. My name is Arthur Jackson
13 in the District of Columbia, Office of Planning. I
14 will present a brief summary of the overall findings
15 and conclusions in the Office of Planning's
16 preliminary report on his application.

17 Joseph Washington, the applicant, is
18 asking the Zoning Commission for approval of a zoning
19 map amendment to change Lots 24 and 25 on Square 5684
20 from the current residential R1B zoned district to a
21 neighborhood shopping C1 zoned district, apparently to
22 house or extend commercial services directly to the
23 public.

24 The two abutting lots have a total area of
25 0.15 acre and are developed with a single one family

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1 detached dwelling.

2 Currently, 75 percent of the lots in the
3 square are developed with one family detached
4 dwellings. One lot is occupied by a resident's
5 conversion of less than four units, and the remaining
6 properties are classified as vacant, according to D.C.
7 land records.

8 The current R1B zoned district allows low
9 density residential development but not commercial
10 establishments. The generalized land use plan does
11 make the subject property, and surrounding properties,
12 for low density residential development characterized
13 by single family detached and semi-detached housing as
14 predominant uses.

15 The current zoning is consistent therefore
16 with this land use designation but not the requested
17 zoning map amendment.

18 Since this report was filed, OP received a
19 letter from Raymond Kief, Chair of Advisory
20 Neighborhood Commission 7B, stating that the general
21 consensus of the ANC commissioners is that the
22 proposed zoning change quote "would not be in the best
23 interest of the community."

24 Based on this information, the Office of
25 Planning does not support scheduling this request for

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1 Zoning Commission public hearing. Thank you.

2 CHAIRPERSON MITTEN: Thank you Mr.
3 Jackson. Well, I'm inclined to take the advice of the
4 Office of Planning in this case. There doesn't seem
5 to be any evidence to suggest that a C1 zoned district
6 is appropriate and, in fact, it would be inconsistent
7 with the comprehensive plan that we are not permitted
8 to take such actions, and there doesn't seem to be a
9 basis for the public hearing.

10 And I'd just like to get the sense of the
11 Commission first before we move to a motion. Sir,
12 could you sit down please? Thank you. What's the
13 sense of the Commission?

14 COMMISSIONER PARSONS: Well, I concur with
15 your remarks.

16 CHAIRPERSON MITTEN: Anyone else?

17 COMMISSIONER HILDEBRAND: In looking at
18 this, too I was struck by the inconsistency this would
19 create. As opposed to solving a problem, it seems to
20 generate one and therefore I would be favorable to
21 move against setting this down for a hearing.

22 CHAIRPERSON MITTEN: Okay. Are you Mr.
23 Washington? Okay, if you'd like to take a seat at the
24 table. Before we deny a request for hearing, we give
25 the applicant the opportunity to speak for five

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1 minutes, up to five minutes, if you'd like to say
2 anything. But the sense of the Commission is that
3 we're not in favor of granting a hearing on this, but
4 we'll give you a few minutes to respond if you like.
5 And what you do is you push the button in the base,
6 identify yourself for the record by stating your name
7 and your home address.

8 MR. WASHINGTON: Joseph Washington, I'm
9 with the Washington Group Local Community ANC. I was
10 just informing the gentleman that there's documents
11 filed in your records that stated that that property
12 be zoned C2 for commercial office space only, you
13 know, for hotel use under that clause. And it's
14 already filed in the public record and he has a copy
15 of it but he didn't read that, he gave you the one
16 that I crossed out on.

17 CHAIRPERSON MITTEN: So you're saying your
18 request was for C2A?

19 MR. WASHINGTON: Yes. That's the zoning
20 right just to use it for the office space for, you
21 know, residential.

22 CHAIRPERSON MITTEN: Well the sense of the
23 Commission here is that the existing zoning is
24 appropriate, so whether it's C1 or C2, we're not
25 inclined to grant a public hearing for that.

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1 MR. WASHINGTON: Okay. Well how about the
2 map amendment because I paid for that and that's like
3 an amendment of right because it doesn't, you know,
4 interfere with any environment or safety clauses that
5 will, you know, there's no construction going on with
6 the property. It's just being zoned so it can be
7 refinanced under that, so when an appraiser looks at
8 it he pulls it up on the map, he can see that it's
9 zoned C2 and it's in commercial use. I have six
10 operations that I run out of there that I pay
11 corporation tax for.

12 CHAIRPERSON MITTEN: Well your map
13 amendment that you're asking for, that's what the
14 hearing would be about and we're saying we don't see
15 any reason to have such a hearing because the zoning
16 that's in place is appropriate given the context.

17 MR. WASHINGTON: Well I'm talking about
18 the particular land use. I know you all do the zoning
19 by the blocks in the area.

20 CHAIRPERSON MITTEN: Yes.

21 MR. WASHINGTON: But there is what you
22 call a land use right under the old Turtle Allen
23 clause, Indian clause, the area and the land that's
24 used to occupy, and it's applicable to the state law,
25 you know, the area that's used strictly for business

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1 production as far as service, I have two commissions
2 that I run out of the same structure that are global
3 commissions. And it's also zoned as an embassy and
4 that's falls under 1920 Grandfather clause.

5 So just under the Grandfather statute
6 alone, for the ongoing operation inside of there which
7 has a colonial office as far as law, I mean a law
8 office, that's been established there since, you know,
9 over a period of time, way past the statute where the
10 state can contest it under a matter of right to
11 operate and do a business service out of there, as a
12 taxable entity.

13 So in other words, I already got the okay
14 from the federal government by the arrangement of the
15 - and licensed corporation to be able to conduct this
16 type of activity outside their structure.

17 CHAIRPERSON MITTEN: Well the zoning is
18 put in place locally by this body, so the federal
19 government is not involved in the zoning.

20 MR. WASHINGTON: I understand. I
21 understand that too but when the federal government
22 come in it's global land use and I'm a global ANC
23 commission so I know the surveying and all that, I
24 have those that work with me for land use. I'm owner
25 of 100 acres down in Edgeville, South Carolina, so I'm

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1 pretty much familiar with that land that's been in my
2 family since the 1500s, of how to structure that and
3 what's applicable under the 14th and 15th amendments
4 under the freedom of enterprise and zoning that's
5 strictly for commercial use.

6 Now where the city may get involved in it,
7 or the state, is where you're going to do some type
8 of, you know, physical reconstruction of the land and
9 it may cause an environmental safety issue. This is
10 not the case here. This is a matter of right that a
11 person has to operate as a business structure and have
12 a particular land or lots there to be used inside of
13 their operation because the land itself can be used to
14 store vehicles with the commercial, under the
15 commercial insurance, and because of the insurance
16 purposes and the lending practice, they require that I
17 get a zoning certificate. It's no more than just 140-
18 day temporary just for the refinance for the use of
19 that property commercially, I'm way due over that and
20 I paid for that, too.

21 So it was two different things but the
22 people in the office, they was under the impression
23 that I was paying for one fee altogether and it's the
24 same thing so I will be coming for the hearing for the
25 \$15 dollar application and also the \$250.

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1 CHAIRPERSON MITTEN: Okay. Is there
2 anything else you want to say before the Commission
3 takes its vote?

4 MR. WASHINGTON: Yes, okay, if you can't,
5 I've been having problems getting to the right people
6 to handle the certain civic duties that they will have
7 inside of their structure, your structure. It's no
8 more than right now if I can just get a zoning
9 certificate to turn into the appraiser for the
10 commercial appraisal on that property so I can send it
11 in to my lender.

12 See I also own Global Native Securities,
13 so the commercial structure where I do a lot of loan
14 document processing too --

15 CHAIRPERSON MITTEN: You're about out of
16 time so just wrap it up.

17 MR. WASHINGTON: Yes. I wouldn't be able
18 to facilitate that if it wasn't properly zoned for the
19 use of putting economic equity inside the property to
20 be able to use it into the estate.

21 CHAIRPERSON MITTEN: Okay. Thank you.
22 You can take your seat. Thank you.

23 Okay. So we've had a chance to hear from
24 the applicant and we have the recommendation from the
25 Office of Planning and we have the consensus, the

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1 initial consensus of the Commission. And I would move
2 that we deny set down for Case No. 05-07. Is there a
3 second?

4 COMMISSIONER HILDEBRAND: Second.

5 CHAIRPERSON MITTEN: Any discussion? All
6 those in favor please say aye.

7 (Ayes.)

8 CHAIRPERSON MITTEN: Mrs. Schellin it's
9 unanimous.

10 MRS. SCHELLIN: Yes. Staff will record
11 the vote 5-0-0 to deny Case No. 05-07, Commissioner
12 Mitten moving, Commissioner Hildebrand seconding,
13 Commissioners Hood, Jeffries and Parsons in favor of
14 denial.

15 CHAIRPERSON MITTEN: Thank you. Next is
16 Case No. 03-22 which actually is related to the case
17 that we had under Proposed Action in the East M Street
18 target area.

19 This is the application that initiated our
20 consideration of that broader area over there east of
21 the 11th Street Bridge.

22 So I don't believe that we - I think in
23 lieu of taking up Case 04-02 for consideration we
24 initiated our own case so I don't think we've ever
25 actually addressed set down for Case No. 03-22 and so

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1 today's the day to do that.

2 I've been doing a lot of talking so I'm
3 more than happy to have another Commissioner take the
4 lead on this. Or not. Okay.

5 Well I guess for the same reasons that I
6 proposed that we dismiss Case No. 03-22, I'm not in
7 favor of moving forward on a rezoning from industrial
8 zoning at this time. I don't think that it's
9 appropriate to single out this one parcel for R5B
10 zoning, which wasn't even of the zones that we
11 considered I don't think before, and certainly
12 wouldn't be appropriate to do it in the context of the
13 remaining industrial zoning that's there.

14 And for the reasons that I stated in the
15 discussion of 04-02, I just don't think that we're
16 ready to rezone any more industrial land at this time.

17 COMMISSIONER HILDEBRAND: The other thing
18 that comes to mind about this property too that I
19 didn't mention when we were talking about the prior
20 case, was that this property is completely isolated
21 from the residential community by an extensive system
22 of roadways, railroad tracks and bridge abutments for
23 what is that, the 11th Street Bridge, which gives it
24 sort of a unique place.

25 I mean it is a perfect place for

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1 industrial use because it is so isolated from the rest
2 of the residential community and it seems that we
3 should carefully consider that before we change the
4 zoning to allow residential in that particular area.

5 CHAIRPERSON MITTEN: Anyone else?

6 COMMISSIONER PARSONS: Well I think our
7 initial reaction to this case was residential is
8 absolutely the wrong thing to do here and that's why
9 we went through this other process. I mean there's
10 nothing in that process that has brought us to the
11 conclusion that R5B is even worth a hearing. So I
12 agree with what you said about this.

13 CHAIRPERSON MITTEN: Okay. Well then
14 let's have, Mr. Greene, would you like to say
15 anything?

16 MR. GREENE: Thank you very much Madam
17 Chairperson. My name is Fred Greene, address 1625
18 Mass. Avenue, Northwest, Suite 400, Washington, D.C.

19 A couple of comments. We talk about R5B
20 but the Office of Planning recommendation is in
21 support but advertising W2 as an alternative.

22 And I guess, secondly, we would like for
23 the Office of Planning report to be put in the record
24 here, Madam Chairperson. I notice the Office of
25 Planning did not, I mean was not asked to make a

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1 presentation.

2 Let me just talk about one matter here.
3 When we talk about isolation let's keep in mind,
4 Commissioner Hildebrand, that while it is on the other
5 side of the track, it is in an area that has begun to
6 take shape and form as a mixed use. It is more than
7 just this particular slip of industrial land. You
8 have one or two office buildings already built and you
9 have a hotel plan, parking. The site has direct
10 access off of M Street coming from a major development
11 area spawned by the Anacostia Waterfront project and,
12 incidentally, the Office of Planning report recommends
13 very, very strongly that this is consistent with the
14 goals and objectives of the Anacostia Waterfront plan,
15 as well as the comprehensive plan.

16 I don't think it's a mistake to at least
17 hear what the public has to say with regards to this
18 being a residential.

19 I must say this, I get at least three to
20 four hits on my web site asking when residential
21 development is going to occur, and they're asking
22 about things like prices.

23 Now I would say if you need this for the
24 record, I have saved at least 25 or 30 that I'd be
25 happy to present this at the appropriate time, so I

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1 think it's a mistake to just ignore it and ignore it
2 on the fact that it's just a sliver of industrial land
3 over there. Quite honestly, that particular area is
4 changing. It is becoming a mixed use and this is a
5 waterfront. As the Office of Planning says in its
6 report, housing on the waterfront is not that unusual.

7 And I guess my final point is this, it is
8 not so much R5B, it is W2; W2 is one of the zoned -?
9 that you did consider in a broader context, W2 is the
10 zone that is quote unquote as you just said a few
11 minutes ago, "the step down." This is the step down,
12 going from M all the way down to W2, waterfront
13 residential, market to luxury housing, town houses.
14 Parking on site. And I think it fits extremely well
15 what is developing in a smaller area right now around
16 Lincoln. This is within a stone's throw of Lincoln,
17 actually you can walk, it's probably less than 40
18 steps from this property to Lincoln office building.

19 So I would ask you, Madam Chair and
20 Members of the Commission that you do reconsider, and
21 that you do set it down at least to hear what kind of
22 comments you would get from the public. Thank you.

23 CHAIRPERSON MITTEN: Thank you Mr. Greene.
24 I just wanted to address a couple of things that you
25 mentioned. The Office of Planning report was actually

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1 presented when we initiated Case No. 04-02 on this
2 one, because they made the initial presentation and
3 that's what triggered our discussion. So I just
4 wanted to comment on that. So I'd ask you to resume
5 your seat.

6 MR. GREENE: I'd just like to comment on
7 that. The Office of Planning report that I'm talking
8 of is dated April 1, 2005. This is a different
9 report.

10 CHAIRPERSON MITTEN: Okay.

11 MR. GREENE: There was another report but
12 this is a different report.

13 CHAIRPERSON MITTEN: You are correct.
14 Thank you.

15 MR. GREENE: Thank you.

16 CHAIRPERSON MITTEN: Since you raised a
17 good point, Mr. Greene, we'll ask Office of Planning
18 for a few words if they would like to say anything
19 about your latest report.

20 MR. LAWSON: Anything?

21 CHAIRPERSON MITTEN: As long as it's
22 relevant.

23 MR. LAWSON: Sorry. Madam Chair, my name
24 is Joel Lawson, I'm with the D.C. Office of Planning.

25 Just very briefly, our report that was

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1 submitted for this hearing did recommend that the
2 Office of Planning was not opposed to setting this
3 application down as W3 with R5B in the alternative,
4 which is what was proposed by the applicant.

5 The reason that we didn't have a major
6 problem with that is that W2 was one of the zones that
7 was being looked at at the time as part of the East M
8 Street study and, of course, we weren't at that time
9 aware of what the results of that study were going to
10 be and now we are.

11 I would point out that W2 does permit a
12 broader range of uses than R5B, including by special
13 exception, manufacturing and industrial uses, so it is
14 closer in line to the existing M zone certainly than
15 R5B is.

16 So I guess I would summarize it by saying
17 that, you know, again the Office of Planning wouldn't
18 be opposed to setting this down but that the table has
19 shifted a little bit in accordance with what you voted
20 earlier tonight.

21 CHAIRPERSON MITTEN: Okay. Thank you. So
22 we did have a public hearing that, as Mr. Lawson
23 suggested, took into consideration a broader mix of
24 uses and I guess the question would be do we want to
25 have, we have the opportunity to either have a public

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1 hearing on R5B alone or we have an opportunity to have
2 a public hearing on R5B or W2 or no public hearing at
3 all.

4 My preference is I think we heard
5 everything we needed to hear when we had the hearing
6 in Case No. 04-02, so I don't know that it's an
7 efficient use of the Commission's time to hear that
8 again. But I'm open to other people's suggestions.

9 COMMISSIONER PARSONS: I completely
10 concur.

11 CHAIRPERSON MITTEN: Okay. All right.
12 Well I'll move to deny - oh go ahead, Mr. Jeffries.

13 COMMISSIONER JEFFRIES: I just want to be
14 clear. Perhaps something happened before I joined the
15 Commission, but has there been plans that have been
16 put forward as related to sort of what a development,
17 a mixed use development would look like on this site?

18 CHAIRPERSON MITTEN: It was a townhouse
19 development.

20 COMMISSIONER JEFFRIES: It was a townhouse.
21 Was that last year? When was it presented?

22 CHAIRPERSON MITTEN: Whenever the initial
23 case came forward. Even though it was a map
24 amendment, they did submit drawings.

25 COMMISSIONER JEFFRIES: They did? Okay.

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1 COMMISSIONER PARSONS: I thought it was
2 2003.

3 CHAIRPERSON MITTEN: Yes, it's 03-22 so it
4 was the 22nd case of 2003. So it's been with us. Well
5 I'll move that we deny set down for Case No. 03-22.

6 COMMISSIONER PARSONS: Second.

7 CHAIRPERSON MITTEN: Is there any further
8 discussion? All those in favor please say aye. Aye.

9 (Ayes.)

10 CHAIRPERSON MITTEN: Those opposed please
11 say no.

12 COMMISSIONER JEFFRIES: No.

13 VICE CHAIR HOOD: I'm going to abstain.

14 CHAIRPERSON MITTEN: Okay. So we have one
15 opposed and one abstention. Okay.

16 MRS. SCHELLIN: Staff will record the vote
17 3-1-1 to deny Case No. 03-22, Commissioner Mitten
18 moving, Commissioner Parsons seconding, Commissioner
19 Hildebrand in favor, Commissioner Jeffries against and
20 Commissioner Hood not voting, having abstained.

21 CHAIRPERSON MITTEN: Thank you. Next is
22 Case No. 05-12, which is a request for a text
23 amendment from Hostelling International USA. And I
24 believe Mr. Jackson's back up.

25 MR. JACKSON: Madam Chair, Members of the

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1 Board. Again, this is Arthur Jackson, D.C. Office of
2 Planning and I'm going to briefly summarize the Office
3 of Planning's preliminary report on this application.

4 The applicant, Hostelling International
5 USA and the Potomac Area Council of American Youth
6 Hostels, request Zoning Commission review an approval
7 of several text amendments that would allow expansion
8 of the existing hostel, located 1009 11th Street,
9 Northwest, up to a ratio of 9.5 in a C3C zoned
10 district with a downtown development overlay zoned
11 district. And would exempt the existing hostel use
12 from the current requirement that expansions of non-
13 residential uses in a DD C3C zoned district provide
14 3.5 FAR residential uses on or off site.

15 The current youth hostel was first
16 occupied in the existing building, seventh story
17 building, in 1987 under a Certificate of Occupancy
18 issued for a rooming house. The existing facility has
19 a 5.5 FAR and can accommodate 250 beds.

20 Without pursuing combined lot development
21 the maximum non-residential development potential FAR
22 of the site is 6.0 FAR, only 0.5 FAR more than what
23 currently exists.

24 Establishing a planned unit development on
25 the site is not an option because the subject property

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1 does not have the minimum area of 15,000 square feet
2 required in the underlying zone district.

3 OP's review of this proposal considers
4 whether or not it is generally consistent with the
5 intent of the zoning regulations and the comprehensive
6 plan. The proposal would allow the existing transient
7 accommodation, the only one of its type in downtown,
8 to expand to an extent intended to accomplish the
9 balanced mixture of uses essential to a living
10 downtown.

11 Maintaining and expanding the existing
12 unique transient housing opportunity tailored for
13 individuals and groups from all over the world would
14 support that vision.

15 The project would also further several
16 themes and objective in the comprehensive plan that
17 are outlined in the OP report.

18 Based on this information, OP concludes
19 that the proposed zoning map amendments do not appear
20 inconsistent with the comprehensive plan and support
21 more specific goals pertaining to hotels and
22 particularly with regard to tourist accommodations.

23 OP will work with the applicant and the
24 Office of Attorney General to further refine the
25 proposed provisions, and has requested that the

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1 applicant provide more information and specifics about
2 the need for low cost hostel accommodations in this
3 area.

4 Based on this information, the Office of
5 Planning supports scheduling this request for a Zoning
6 Commission public hearing. That concludes the Office
7 of Planning report.

8 MR. BERGSTEIN: Madam Chair, I wonder if I
9 could just update something that perhaps Mr. Jackson
10 wasn't aware of.

11 CHAIRPERSON MITTEN: Thank you.

12 MR. BERGSTEIN: After some discussion this
13 afternoon, I spoke with petitioner's counsel about
14 whether it was really necessary in order to resolve
15 the particular issues of this property to create a new
16 stand alone use for a hostel and to permit those uses
17 in other zones beyond DD under that use, although they
18 are permitted under the existing end definition.

19 Ms. Giardano indicated that she would
20 agree to an advertisement of this in a far more narrow
21 setting so that what would be advertised would be to
22 permit the existing hostel at this particular
23 location, in the event it expands, to be developed to
24 a full 9.5 FAR and not be subject to the minimum
25 requirements of DD. And so you may want to consider

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1 that as a substitute for the broader text amendments
2 that have been petitioned for.

3 CHAIRPERSON MITTEN: Thank you. I think
4 simplifying in this case is definitely warranted.
5 Okay. And we've had language circulated so we know
6 exactly what we're voting on and the meaning of the
7 language is just as Mr. Bergstein articulated.

8 Any questions for Mr. Jackson or comments
9 on the proposal? All right then, I would move that we
10 set down Case No. 05-12 with the alternative language
11 that Mr. Bergstein introduced. Is there a second?

12 COMMISSIONER HILDEBRAND: Second.

13 CHAIRPERSON MITTEN: Thank you. Any
14 discussion? All those in favor please say aye. Aye.

15 (Ayes.)

16 CHAIRPERSON MITTEN: Mrs. Schellin?

17 MRS. SCHELLIN: The staff will record the
18 vote

19 5-0-0 to approve for set down Case No. 05-12 with the
20 alternative language as discussed, Commissioner Mitten
21 moving, Commissioner Hildebrand seconding,
22 Commissioners Hood, Jeffries and Parsons in favor and,
23 just to confirm, this would be a rule making case?

24 CHAIRPERSON MITTEN: Yes. Thank you. All
25 right. The first case under Final Action is one from

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1 which I am recused and that's Case No. 04-11, Rocky
2 Gorge, and Mr. Hood will take over.

3 VICE CHAIR HOOD: Thank you Madam Chair.
4 Colleagues, we have Zoning Commission Case No. 04-11,
5 Rocky Gorge, and let me begin with Mrs. Schellin.

6 MRS. SCHELLIN: Just to let the
7 Commissioners know that we did receive a report from
8 the NCPC stating that there would be no adverse
9 impacts.

10 VICE CHAIR HOOD: Okay. Thank you Mrs.
11 Schellin. And this is before us for final action and
12 I will tell you that I've looked at the construction
13 management plan, it tailors to some of the ones that
14 we have approved previously, as was stated in the
15 submittal. Also, there's a document from the
16 Department of Transportation that the Department of
17 Transportation has received a proposed easement. They
18 mentioned in their letter they intend to support the
19 easement contingent upon legal sufficiency.

20 So with this, if anyone else has anything
21 else they want to add, I will move approval of Zoning
22 Commission Case 04-11, Rocky Gorge, and also to say
23 that I believe that they have fine tuned, with a date
24 certain, of some of the amenities which had been
25 negotiated. Can I get a second?

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1 COMMISSIONER JEFFRIES: Second.

2 VICE CHAIR HOOD: Any discussion? All
3 those in favor. Aye.

4 (Ayes.)

5 VICE CHAIR HOOD: Any opposition? So
6 ordered. Staff would you record the vote.

7 MRS. SCHELLIN: Yes. Staff will record
8 the vote 4-0-1 to approve final action in Case No. 04-
9 11. Commissioner Hood moving, Commissioner Jeffries
10 seconding, Commissioners Hildebrand and Parsons in
11 favor, Commissioner Mitten not voting having not
12 participated.

13 CHAIRPERSON MITTEN: Thank you. Last up
14 is Case No. 04-04 which is the Carver 2000 Tenants
15 Association. We had the order in front of us when we
16 took proposed action. There had been a few suggested
17 changes. I think we fleshed out the issues raised by
18 the ANC sufficiently when we took proposed action and
19 I would move approval of Case No. 04-04.

20 COMMISSIONER PARSONS: Second.

21 CHAIRPERSON MITTEN: Any discussion? All
22 those in favor please say aye. Aye.

23 (Ayes.)

24 CHAIRPERSON MITTEN: None opposed, Mrs.
25 Schellin.

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1 MRS. SCHELLIN: Yes. Staff will record a
2 vote 5-0-0 to approve Case No. 04-04 final action,
3 Commissioner Mitten moving, Commissioner Parsons
4 seconding, Commissioners Hildebrand, Hood and Jeffries
5 in favor.

6 CHAIRPERSON MITTEN: Great. Anything else
7 for us today?

8 MRS. SCHELLIN: No ma'am.

9 CHAIRPERSON MITTEN: Okay. Thank you.
10 We're adjourned.

11 (Whereupon, the above-entitled matter went
12 off the record at 7:24 p.m.)
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