

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

IN THE MATTER OF:

TEXT AMENDMENT RELATED TO THE  
APPROVED P.U.D. FOR THE FORMER  
WOODWARD & LOTHROP BUILDING

Case No.  
ZC 01-06TA

Thursday  
July 26, 2001

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

The Public Hearing of Case No. 01-06TA by  
the District of Columbia Zoning Commission convened at  
7:25 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 Chairperson
JAMES HANNAHAM	Commissioner
PETER G. MAY	Commissioner
JOHN G. PARSONS	Commissioner

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## COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, ZC

## OTHER AGENCY STAFF PRESENT:

Andrew Altman, Director, Office of Planning  
Arthur Jackson, Office of Planning  
Ellen McCarthy, Deputy Director,  
Office of Planning

## D.C. OFFICE OF CORPORATION COUNSEL:

Mary Nagelhout, Esq.

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

7:25 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a Public Hearing of the Zoning Commission of the District of Columbia for Thursday, July 26, 2001.

My name is Carol Mitten. Joining me this evening are Vice Chairman, Anthony Hood, Commissioners John Parsons, Peter May and James Hannaham, and I apologize that we are starting a little bit late.

Copies of today's hearing agenda are available to you and are located to my left near the door.

The subject of this evening's hearing is Zoning Commission Case Number 01-06TA concerning proposed test amendments related to the approved PUD for the former Woodward & Lothrop Building.

Notice of today's hearing was published in the *D.C. Register* on June 1, 2001, and in the *Washington Times* on May 25, 2001.

This hearing will be conducted in accordance with the provisions of 11 D.C. Section 3021 for rule-making hearings. The order of procedure will be as follows.

Preliminary matters, applicant's case, report of the Office of Planning, reports of other

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1 government agencies, testimony of the ANC's. In this  
2 case, it would be ANC2C that's affected. Organizations  
3 and persons testifying in support, organizations and  
4 persons testifying in opposition.

5 All persons appearing before the Commission  
6 are to fill out two witness cards. These cards are  
7 located near the door and at end of the table in front  
8 of you. Upon coming forward to speak to the Commission,  
9 please give both cards to the reporter sitting to my right.

10 Please turn off all beepers and cell phones  
11 at this time so as to not to disrupt these proceedings.

12 Mr. Bastida, do you have any preliminary  
13 matters?

14 SECRETARY BASTIDA: The staff has no  
15 preliminary matters, Madame Chairman.

16 CHAIRPERSON MITTEN: Very good, thank you.

17 Mr. Glasgow? Hi. I thought we would just stand on the  
18 record and direct any questions that we might have to  
19 you. Does anyone have any questions for Mr. Glasgow?

20 All right, then we'll go to the report of  
21 the Office of Planning, and I would ask the Office of  
22 Planning the same, to stand on the record and just let  
23 us direct any questions that we might have if that would  
24 be fine your way.

25 I read your report, and I guess I need to

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1 hear it articulated because I could quite understand what  
2 your resistance is to having Lot 805 removed from the  
3 list of lots that are restricted to 6 FAR, given that  
4 the existing building already exceeds that. Could you  
5 just articulate that?

6 DEPUTY DIRECTOR MCCARTHY: The existing  
7 building exceeds 6 FAR, but that means that it's covered  
8 by the other provision of the regs which says that historic  
9 buildings that exceed 6 FAR basically are limited to their  
10 existing FAR, and so our feeling was the PUD gave the  
11 applicant all of the density that the applicant had  
12 requested, and that density was part of a series of -

13 There were two basic things which the  
14 applicant received as benefits from the PUD, one was the  
15 extra density, and one was the ability to have general  
16 office in the building, and you know, in exchange for  
17 that, the applicant provided a number of amenities, and  
18 based on that, the Commission approved it.

19 So, our feeling was why - if the applicant  
20 received the density that they requested, why remove  
21 essentially part of the quid pro quo and make it easier  
22 for the applicant at some point to decide to walk away  
23 from the PUD.

24 Were the applicant able to have, for example,  
25 a Smithsonian, national portrait museum, national

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1 portrait gallery, decide to move their offices there,  
2 it would be a non-profit arts office. They could get  
3 basically GSA-type rents, would be able to get around  
4 the general office requirement.

5 So, then the only thing that the Commission  
6 was providing as a benefit in exchange for the amenities  
7 was the extra density - and when we talked to the  
8 applicant's attorney, he said, you know, that's fine.

9 CHAIRPERSON MITTEN: I just - the only  
10 disconnect for me is what is it about - given that the  
11 building already significantly exceeds 6 FAR, what I'm  
12 missing is what is it about being in that list that you  
13 think is protective of something-

14 DEPUTY DIRECTOR MCCARTHY: Because right now  
15 the building is only entitled to its existing FAR. The  
16 applicant plans to add two stories where there's only  
17 partial stories right now, and is in the process of getting  
18 permission from the Historical Preservation Review Board  
19 to do that.

20 So, our sense was since he already has  
21 permission to do that under the PUD, why do anything that  
22 would provide an incentive in effect not to follow the  
23 PUD, to just say, okay, wait a minute, I've changed my  
24 mind, I'm not - I'm just going to let the PUD expire,  
25 I'm not going to go forward with that PUD. It

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1 was not something - right, and still be entitled to the  
2 extra density.

3 CHAIRPERSON MITTEN: I guess I did not make  
4 the connection between a property being on the list that's  
5 limited to 6 FAR and being limited to your existing density  
6 of your historic building. I don't see the relationship.

7 DEPUTY DIRECTOR MCCARTHY: Oh no, that's -  
8 do we have the citation in here? There are two provisions  
9 of the zoning regs that govern the density on Woodies  
10 and - that's right and so it's paired.

11 There's the requirement that it not be more  
12 than 6 FAR, and then there's at the top of Page 5 on our  
13 report said if you know 7.7, which says if you exceed  
14 6 FAR, you shall be permitted to occupy all the floors  
15 of the buildings for permitted uses, but that in  
16 conjunction with the 1707.4, basically, limits any  
17 buildings that are more than 6 FAR to their existing  
18 density.

19 So, in effect, by taking it out of the list  
20 with the 6 FAR limitation, you take away any density  
21 limitation on the property you would permit it as a matter  
22 of right to go up to 10 FAR, whereas now it's limited  
23 to its existing - what is it 8.5, 8.6, whatever it's  
24 existing density is right now.

25 So that was, I mean, it wasn't something we

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1 were, you know, going to fall on our sword for, we just  
2 figured the Commission gave this to the applicant as part  
3 of the PUD. He has it already. Why then permit him to  
4 get that same thing as a matter of right if for some reason  
5 the PUD were to fall through.

6 CHAIRPERSON MITTEN: Okay.

7 SECRETARY BASTIDA: Are you persuaded by  
8 that?

9 CHAIRPERSON MITTEN: I still don't make - I  
10 haven't made all the connections, but that's fine. I  
11 don't need to bog us down over this. Any other questions  
12 for the Office of Planning?

13 All right then, I'd like to move to reports  
14 of other government agencies, and we were handed late  
15 this evening a memo from the Office of the Corporation  
16 Counsel, and I'd just like to ask Ms. Nagelhout to walk  
17 us through that since we haven't had a change to look  
18 at it, briefly.

19 MS. NAGELHOUT: Yes. Just briefly, the  
20 applicant's first request involves adding the particular  
21 lots in Square 377, including them in Housing Priority  
22 Area C.

23 In my opinion, the listed lots are already  
24 in Housing Priority Area C because they are zoned DDC-4  
25 and they are located south of H Street. They're on F

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1 Street, so to me the important part of the definition,  
2 which is 1706.8(c), the important part of the definition  
3 is that they are zoned DDC-4 and they are located south  
4 of H Street, not whether or not the square happens to  
5 be listed - the square and lots happen to be listed in  
6 that section.

7 So, in my opinion, the first request is just  
8 kind of an unnecessary.

9 I had some of the same concerns as the Office  
10 of Planning with regard to Square 346. I didn't know  
11 how the requested relief in the density 6.0 limit worked  
12 with the PUD application.

13 It just seemed like a strange thing to do,  
14 and I didn't have time to really think about what is the  
15 impact of taking off the six, you know, would that affect  
16 the housing requirements or any other regs in the DD  
17 chapter. So, I just thought it needed some more  
18 information on how to - before that could be evaluated.

19 With regard to the 411 on Square 377, let's  
20 see, I didn't have any particular comment on that. I  
21 wondered a little bit why they came here for text amendment  
22 rather than getting a variance, but I think I understand  
23 that now, and so my only advice would be I think the text  
24 amendment should be evaluated with respect to Section  
25 1707.1, which is the first DD provision relating to

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1 historic preservation, and it sets forth the goals of  
2 the comprehension plan and other policies for downtown  
3 historic preservation.

4 CHAIRPERSON MITTEN: Okay. If I could just  
5 get you to maybe just give a little bit more specificity  
6 about why you, in your initial concern relating to  
7 including these lots in Square 377 in Housing Priority  
8 Area C, why it is that you believe that the enumeration  
9 of the squares is not what designates what's in the housing  
10 priority area.

11 MS. NAGELHOUT: Well, again, I've done no  
12 research on the Commission order adopting this change  
13 or if there's anything in there, but just strictly based  
14 on reading it, to me, the important part of the definition  
15 is DDC-4, south of H Street, and my impression was that  
16 the squares that are listed there were just illustrative.

17 They might have been all the squares that  
18 were zoned DDC-4, south of H Street, at the time that  
19 particular provision was adopted. It meant to me, you  
20 know, it says including. It doesn't say are exclusively  
21 those particular squares. I thought the squares were  
22 just for illustrative purposes.

23 CHAIRPERSON MITTEN: Well, we've had a couple  
24 - this would be the second amendment to this section to  
25 include properties that are west of Ninth Street in

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1 Housing Priority Area C, and I think there's at least  
2 the - the way that properties are being treated that are  
3 not where the squares or the lots are not enumerated is  
4 that they're not in a housing priority area.

5 So, if your interpretation is accurate, then  
6 there's people with a housing requirement that don't know  
7 they have one. So, I just want-

8 MS. NAGELHOUT: It's strictly my  
9 interpretation. Just reading the provisions, I think  
10 if that's what is meant, I mean, if it means only those  
11 squares, it should say only those squares. If you're  
12 just reading it, to me, the important part, as I've said,  
13 is DDC-4 and south of H Street.

14 CHAIRPERSON MITTEN: Okay.

15 COMMISSIONER PARSONS: Well, it's always been  
16 my understanding that - I find the term illustrative  
17 curious because why would we put any lots or squares in?

18 MS. NAGELHOUT: I don't know. If I had  
19 written it, they wouldn't have been there, because I think  
20 it's confusing. Do you mean only those squares or-

21 COMMISSIONER PARSONS: Yes.

22 MS. NAGELHOUT: That's not exactly what it  
23 says, and to me, it's - I mean, it's at best ambiguous,  
24 so - certainly listing lots, which - you know, lots can  
25 change with every development proposal, so-

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1                   COMMISSIONER PARSONS: Well, certainly the  
2 intent was to be very specific. Now, if we didn't say  
3 that, fine, but I've always understood it to mean that,  
4 that you're in or you're out, and to make sure there's  
5 no confusion as to where the line's drawn and that kind  
6 of thing, and that we put - we were very specific. It  
7 certainly wasn't meant to be illustrative.

8                   COMMISSIONER MITTEN: Perhaps what we could  
9 do is proceed with the understanding that the list is  
10 definitive, and there is no other - there are no other  
11 properties that are included other than what's in the  
12 list, but put - you know, we have this long list of test  
13 amendments that we need to make that some are simple and  
14 some are not, put this on the list, so that we can clarify  
15 that so there is no ambiguity there in the future, but  
16 not to get bogged down in that right now. Any questions  
17 for Ms. Nagelhout?

18                   All right, there's no one here from the ANC,  
19 and I don't believe we have a report from the ANC on this,  
20 is that correct?

21                   SECRETARY BASTIDA: That is correct, Madame  
22 Chairman.

23                   CHAIRPERSON MITTEN: All right, and there's  
24 no one here to testify either in support or opposition.  
25                   So, I think that Mr. Glasgow has something I know he

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1 wants to ask us.

2 MR. GLASGOW: Just - well, obviously we'd like  
3 to have the Commission act on this as soon as possible,  
4 but I guess in the sense that we are in support of the  
5 Office of Planning's report in this text amendment.

6 CHAIRPERSON MITTEN: Thank you.

7 MR. GLASGOW: Okay, thank you.

8 CHAIRPERSON MITTEN: How would the Commission  
9 like to proceed at this point?

10 COMMISSIONER PARSONS: Proceed to approve the  
11 application with the recommendation of the Office of  
12 Planning regarding the FAR, which - but I'm not sure you're  
13 ready to go there, because-

14 CHAIRPERSON MITTEN: I'm willing to go there  
15 - I'm willing to go there.

16 COMMISSIONER PARSONS: Okay.

17 CHAIRPERSON MITTEN: So, basically, we would  
18 - if I understand your motion correctly, that we would  
19 approve the request to add Lots 828, 829, 847 and 848  
20 in Square 377 to Housing Priority Area C, remove the 6  
21 FAR limitation for those lots, and deny the request to  
22 remove Lot 805 on Square 346 from the list of properties  
23 that are limited to 6 FAR. Does that capture it?

24 COMMISSIONER PARSONS: I'll second that.

25 (Laughter.)

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1 CHAIRPERSON MITTEN: Okay, we have a motion  
2 and a second to basically approve this application as  
3 recommended by the Office of Planning. All those in  
4 favor, please say aye.

5 COMMISSIONER PARSONS: Mr. Bastida's having  
6 trouble, he thinks that I moved and seconded that motion.

7 CHAIRPERSON MITTEN: No, he didn't. I moved  
8 it. All those in favor, please say aye.

9 COMMISSIONER PARSONS: Aye.

10 MR. HANNAHAM: Aye.

11 MR. MAY: Aye.

12 CHAIRPERSON MITTEN: Aye. Those opposed,  
13 please say no.

14 Mr. Bastida?

15 SECRETARY BASTIDA: The staff will record the  
16 vote five to zero. Ms. Mitten moved, Mr. Parsons seconded  
17 it. Mr. Hannaham, Mr. May and Mr. Hood voting in the  
18 affirmative.

19 CHAIRPERSON MITTEN: Thank you, and thank  
20 you, Mr. Glasgow, for bearing with us this evening. I  
21 now declare this public hearing adjourned.

22 (Whereupon, the foregoing Public  
23 Hearing was adjourned at 7:42  
24 p.m.)

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