

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

+ + + + +

THURSDAY

SEPTEMBER 20, 2001

+ + + + +

The hearing came to order Suite 220, 441 4th Street, N.W., Washington, D.C. 20001, at 7:00 p.m., Carol Mitten, Chairperson, presiding.

PRESENT:

- CAROL MITTEN Chairperson
- ANTHONY HOOD Vice Chairperson
- HERBERT FRANKLIN Board Member
- JAMES HANNAHAM Board Member
- JOHN PARSONS Board Member

ALSO PRESENT:

- ALBERTO BASTIDA Secretary to the Board
- ANDREW ALTMAN Office of Planning
- UVA BRANDES Office of Planning
- ELLEN MCCARTHY Office of Planning
- ALAN BERGSTEIN, Esq. Office of Corporation Counsel

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7:06 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, September 20, 2001.

My name is Carol Mitten. Joining me this evening are Vice Chairman Anthony Hood and Commissioners John Parsons and Herb Franklin. We're expecting Commissioner Hannaham to join us momentarily.

Copies of today's hearing agenda are available to you and are located to my left near the door. There's also a sign-in sheet, and it would be very helpful if, in addition to listing your name and who you represent, if you list whether you're in favor or opposed because we take those two groups in different segments of the hearing.

Notice of today's hearing of Zoning Commission Case No. 96-3/89-1 regarding the Buzzard Point Capitol Gateway was published in *The D.C. Register* on June 1, 2001 and June 15, 2001 and in *The Washington Times* on May 28, 2001. 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.

On July 19, 2001, the Commission rescheduled this hearing to today, Thursday, September 20, 2001.

This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3021 regarding rulemaking

1 hearings. The order of procedure will be as follows.
2 Preliminary matters, report of the Office of Planning, reports
3 of other government agencies, testimony of affected ANCs -- in
4 this case, the affected ANCs are 2-D and 6-B -- organizations
5 and persons testifying in support and organizations and persons
6 testifying in opposition.

7 The following time constraints will be adhered to
8 in this hearing as strictly as possible. Organizations will be
9 given five minutes, individuals will be given three minutes.
10 Those presenting testimony should be brief and non-repetitive.
11 If you have a prepared statement, please give copies to staff
12 prior to commencing your testimony and orally present only the
13 highlights.

14 All persons appearing before the Commission are
15 to fill out two witness cards. These
16 cards are located near the door and at the end of each table in
17 front of us. Upon coming forward to speak to the Commission,
18 please give both cards to the reporter sitting to my right.

19 If these guidelines are followed, an adequate
20 record can be developed in a reasonable length of time. Please
21 turn off all beepers and cell phones at this time so as not to
22 disrupt these proceedings. And I'll tell you all now that at 9
23 p.m. when the President speaks, we will take a recess and we
24 have a radio here so that we can all listen and then we'll
25 recommence the hearing after his speech.

1 Mr. Bastida, do you have any preliminary matters?

2 MR. BASTIDA: Yes, Madam Chairman. The staff has
3 two preliminary matters. First, we would require the waiver of
4 the rules to accept the certificate of posting from the Office
5 of Planning.

6 CHAIRPERSON MITTEN: But you have that?

7 MR. BASTIDA: Yes, I have it now.

8 CHAIRPERSON MITTEN: All right. Is there any
9 objection to waiving the rules to accept the certificate of
10 posting?

11 COMMISSIONER HOOD: No objection.

12 MR. BASTIDA: Also, we'd like to have a waiver of
13 the rules to accept the Office of Planning report.

14 CHAIRPERSON MITTEN: Any objection to waiving the
15 rules and accepting the Office of Planning report?

16 COMMISSIONER HOOD: No objection.

17 CHAIRPERSON MITTEN: Without objection, Mr.
18 Bastida.

19 MR. BASTIDA: Thank you.

20 The third is if anybody would like to have a copy
21 of the Office of Planning report, I have some available right
22 here at the podium.

23 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

24 We'll turn now to the report of the Office of
25 Planning.

1 MR. BRANDES: Hello. My name is Uva Brandes.
2 I'm the Project Manager for the Anacostia Waterfront Initiative.
3 I'd like to just put a context for this case.

4 This case, Case 96-3/89-1, Buzzard's Point
5 Capitol Gateway Rezoning, is a mixed use zoning for an area
6 known as Buzzard's Point. This area, just to put in context of
7 the District, is an area generally south of M Street. It
8 straddles South Capitol Street so it's located both near
9 Southeast and the Southwest quadrants of the District. It is an
10 area that includes a very important stretch of waterfront,
11 generally speaking, between the Southeast Federal Center and
12 Fort McNair.

13 The case was originally heard in 1996, and there
14 were case decision meetings in 1997. What I'd like to do now is
15 move forward and just describe activity that has occurred in and
16 around this area since 1997.

17 There was the Florida Rock PUD and the
18 consolidation of NAVSEA to the Navy Yard which has been the
19 driver of development along M Street. There are three buildings
20 that have been constructed or are in construction along M
21 Street. There are a number of emerging destinations along the
22 waterfront. Notably, two nonprofit locations on the waterfront
23 operated by the Earth Conservation Corps.

24 There's a number of planning efforts that were
25 conducted by the National Capitol Planning Commission related to

1 both museums and memorials in the District, as well as
2 environmental guidelines there, a portion of the comprehensive
3 plan. I'm going to speak a little bit more about the Anacostia
4 Waterfront Initiative and two other important recent actions.
5 Federal legislation passed for the Southeast Federal Center
6 which immediately abuts this case and recently over the spring
7 and summer an application for the redevelopment of housing north
8 of M Street.

9 The Anacostia Waterfront Initiative is a long-
10 term planning effort that is being coordinated by the Office of
11 Planning and includes over a dozen federal agencies including
12 the Navy and the General Services Administration as well as the
13 Park Service and the Army Corps of Engineers. Together, there's
14 a Memorandum of Understanding which finds these organizations to
15 jointly create a new partnership which will help attain a vision
16 for the waterfront areas.

17 This is the general area encompassing the
18 Anacostia Waterfront Initiative. You can see that the case is
19 within this overall area.

20 In May of 2000, in order to kick off the
21 initiative, a planning shereotype was held in this general
22 vicinity which included kind of considerations of development
23 along M Street as well as the Southeast Federal Center and
24 industrial areas along South Capitol Street.

25 The kind of vision that was established in that

1 workshop related to supporting existing residents, the resident
2 population that lives in the public housing between M Street and
3 the Southeast Expressway, and really focused on breaking down
4 enclaves that had developed in this area, the public housing
5 being one of them, the Navy Yard and the Southeast Federal
6 Center, and focusing on mixed uses as a way to create a new
7 residential and mixed use neighborhood in this quadrant or area
8 that we describe as the near southeast.

9 As part of that workshop, Jonathan Barnette, the
10 noted urbanist, reviewed the zoning in that area and had coined
11 this term, zoning emergency, which was based on the following
12 issues. One was that under the previous zoning, the CM zoning,
13 there was no special bulk controls for waterfront sites.
14 There's no setback required from the waterfront nor was there,
15 in our eyes, an appropriate approvals process for waterfront
16 sites on Buzzard's Point.

17 Likewise, on M Street there were a series of
18 issues that were not dealt with in the zoning regulations
19 including appropriate setbacks along M Street anticipating a
20 pedestrian friendly environment along M Street. There were no
21 regulations requiring retail uses on the ground floor of
22 buildings being developed on M Street nor were there any urban
23 design controls.

24 As a result of this workshop and the ongoing
25 activities of the Waterfront Initiative, the Office of Planning

1 essentially revived this case which had been introduced over
2 four or even five years ago now.

3 Ellen.

4 MS. McCARTHY: So since you have the detailed
5 regulations before you, let me just very briefly review the
6 provisions of the overlay. The mixed use zoning. There are
7 several different classifications. The bulk of the land is
8 classified as BP/CR which would provide for six FAR residential,
9 three for commercial with a 90 foot height limit. The W-2 zone
10 which is mapped along the waterfront has the 40 and 20 FAR
11 limitations that are listed here for you, and we have proposed
12 that in the W-2 zone special exception would be mandatory for
13 the development of that property with a set of criteria that
14 require that the open space that's provided be treated suitably
15 with pedestrian and bicycle paths and encouraging a 50 to 75
16 foot setback. Next slide.

17 We provide for mixed use zoning and CR and W-2 we
18 restrict the use of the bonus that could be generated by the mix
19 of uses in the W-2 site, but we do allow that bonus to transfer
20 to additional sites. We also provide for combined development
21 so that if a site is too small to accommodate mixed use on that
22 site, the various uses can be transferred to other sites as long
23 as they retain the same total density mixture.

24 In terms of required setbacks for all new
25 buildings along the waterfront, as I indicated, 50' setback is

1 required, 75' is recommended, and the goal of that is to
2 preserve the notion of public open space, a continual band of
3 open space along the waterfront. The overall goal that the city
4 is looking for is one that's been described quite well in the
5 legacy document of the National Capitol Planning Commission
6 which is basically a ribbon of green space that would stretch
7 from the National Arboretum all the way around the Anacostia
8 Waterfront and all the way up to Georgetown. So we want to make
9 sure in that setback that the public open space is treated
10 sensitively.

11 And then with regard to buildings along M Street,
12 because that's such an important artery and such an important
13 corridor that connects to the Metro Stations, we are requiring a
14 15' setback from the curb line to increase the width of the
15 sidewalks around Metro Station and to create the kind of
16 suitable retail environment for the retail that we are requiring
17 along M Street.

18 In terms of the existing industrial uses, the
19 date is left blank in the text but we're envisioning that when
20 the Commission adopts this, they establish the date of adoption
21 that all industrial uses that are existing up until that point
22 would be grandfather'd in and would be considered conforming
23 uses which would permit them to expand but only within the
24 height and bulk limits of the applicable zone in which they're
25 located with the CM performance standards.

1 have a little bit of time and we would recommend just going
2 forward now with adopting this overlay and coming back later.

3 I believe you also have correspondence from
4 Florida Rock or we'll hear presentations from them today. They
5 had asked us to adjust the zoning on the amenity site which is
6 connected with the PUD but which was not governed by the zoning
7 in the approved PUD. That amenity site is at the base of South
8 Capitol Street where it meets the water, and the amenity that's
9 approved in that planned unit development would provide for that
10 site to be partially developed with residential uses at a
11 density that would be greater than could be accomplished under
12 the proposed W-2 zone and the other portion would be used by the
13 Earth Conservation Corps and would include some waterfront uses
14 and some public space.

15 Florida Rock had proposed a covenant that would
16 control the development on that site. We had expressed our
17 concern to them that were we to increase the density of that
18 zone, first of all, it would be inconsistent because we were
19 trying to do a continuous band of W-2 along the waterfront and,
20 secondly, were the PUD not to go forward, that would leave that
21 land zoned at a higher density than we had thought appropriate.

22 But we stressed to Florida Rock that we are highly supportive
23 of the amenity and that at the point in time in which the PUD
24 goes forward, we would very quickly return to the Zoning
25 Commission and make sure that the zoning, if had not already

1 been connected in the comprehensive rezoning that we're looking
2 at in a year, that the zoning would be sufficient to accommodate
3 the amenity at that point in time.

4 And then I should add a special note. There was
5 a section of the overlay which was advertised in the alternative
6 as Section 1603.7. It's in the public hearing notice on page
7 eight, and the Office of Planning is supporting this alternative
8 wording which was, as you know, when we had originally come to
9 you and proposed some changes, we were proposing possibly
10 mandatory Nw or the establishment of design guidelines along M
11 Street.

12 After consultation with our consultants and with
13 the Office of Corporation Counsel, we proposed instead the text
14 that would establish that all of the buildings constructed along
15 M Street require a special exception with the criteria listed in
16 1603.7 that would address architectural design, site plan,
17 landscaping and sidewalk treatments, would require ground floor
18 uses on 50 percent of the ground floor along M Street, would
19 restrict certain inappropriate uses like car washes and drive
20 through accessory uses, gas stations, and office uses on the
21 ground floor of M Street and would require a setback of the
22 building 15' from the curb for the length of M Street.

23 It would also eliminate curb cuts or drive ways
24 from M Street but would not apply to buildings that are using
25 TDRs that have gotten building permits before August 31st of

1 this year.

2 So those are basically the provisions of the
3 overlay which we'd be happy to discuss with you further, and I
4 think Mr. Altman wanted to make some comments.

5 MR. ALTMAN: I would just add a couple of brief
6 comments to follow on what Ellen McCarthy said. First, in the
7 context of M Street, I think we do believe the special exception
8 provision is important in light of the amount of development
9 that's there. We don't believe that this would significantly
10 impede the development in any way and, in fact, we've been very
11 supportive of development along that corridor with the Navy
12 Yard.

13 But we do think that the design issues and the
14 provisions that were discussed related to setback and ground
15 floor uses are critical at a time as this area is developing and
16 what the nature of that corridor is, particularly as there is
17 significant public investment whether that's the streetscape
18 program that is being implemented and will continue to be
19 implemented that's creating the whole sense of a boulevard along
20 M Street, what's happening at the Southeast Federal Center and
21 other public investment, the feel of M Street is very, very
22 important and so we thought the special exception is a way of
23 addressing that which, as Uva Brandes mentioned earlier, was
24 identified in the community workshop that we held a year ago
25 which is why we put those controls in, particularly now.

1 I think some of the other issues that Ellen
2 addressed, some of the specifics that have been discussed,
3 whether that's Florida Rock, whether that's Square 701, or the
4 extension of M Street to 11th, I think some of those -- our
5 approach has been to stick pretty much to what the zone, the
6 base zones had been in the original case. The cases that I just
7 discussed are all pretty much related to specific projects and
8 developments that we think need to be analyzed in that context.

9 For example, Florida Rock will depend largely on
10 what happens with the PUD and the extension of the PUD. So at
11 that point, we would say if the Commission approved the PUD, you
12 could certainly make sure that the zoning for the amenity site
13 would meet that. I think the extension of M Street zoning is
14 one that will have to be critically looked at in light of the
15 Hope VI.

16 As many of you may know, the Housing Authority
17 has submitted a Hope VI application to HUD, Department of
18 Housing and Urban Development, which would essentially be an
19 entire transformation of public housing along M Street. It
20 would be demolition, it would be new housing as well as
21 replacement housing, as well as some commercial development. So
22 that could be an enormous change, and I think in light of
23 whether we in fact are successful in that award, we would then
24 be looking at a number of changes in zoning, not only on M
25 Street but others to facilitate that development. If we are not

1 successful, then I think we ought to evaluate in light of a
2 changed circumstance. So that's where our thinking on M Street
3 came into being.

4 Similarly, as you know from previous discussions
5 related to Square 701 where there was previous discussion here
6 at the Commission as to whether that should be the BP/CR or
7 whether that should be C-3-C. Our recommendation has been to
8 keep that as BP/CR, consistent with the mixed use zoning,
9 particularly in light of Southeast Federal Center which is its
10 neighbor where we are actively promoting and working with the
11 General Services Administration on mixed use development.

12 The Southeast Federal Center which is right here
13 at New Jersey Avenue which is a 55 acre parcel which has been
14 recently selected by the General Services Administration for
15 headquarters of the Department of Transportation. That's
16 something that will be coming to the Commission as a planned
17 unit development, and we are working very hard that that site
18 would have substantial residential, and we wanted to have the
19 consistency of mixed use zoning in this area, which is why we
20 are recommending staying with the zone that's there.

21 I think in summary, we believed it was important
22 to bring this forward, even though we do have the Anacostia
23 Waterfront Initiative which I think is going to give us a brand
24 new look at many issues and it's going to be a comprehensive
25 vision as well as program for the rebuilding of the waterfront.

1 At this time, we thought it very important to get this base
2 zoning in in terms of promoting mixed use development. The
3 protection of the waterfront along the BP/W-2 I think is very
4 important in terms of the protections for the shore line and
5 densities and setbacks as well as the M Street zoning provisions
6 for special exception I think starts to put us on the right path
7 toward the waterfront.

8 CHAIRPERSON MITTEN: Thank you. Any questions
9 for the Office of Planning? I'd like to ask you just a few
10 questions.

11 First, can you point out specifically where at
12 the Southeast Federal Center the Department of Transportation
13 will go?

14 MR. BRANDES: This is New Jersey Avenue right
15 here.

16 CHAIRPERSON MITTEN: Can you speak into a mike
17 when you do that?

18 MR. BRANDES: It is proposed to be located
19 between New Jersey Avenue and 4th Street. It's essentially two
20 squares on the south side of M Street. The site immediately
21 abuts M Street. It is roughly, I would say, a 10 1/2 acre - 11
22 acre parcel out of the 55 acres of the Southeast Federal Center.

23 CHAIRPERSON MITTEN: So the portion of the
24 Southeast Federal Center between New Jersey Avenue and I guess
25 First Street is on the west, what do you anticipate will be, not

1 the precise development but the mix of development there, given
2 that the Department of Transportation is going to be 100 percent
3 commercial?

4 MR. ALTMAN: The parcel between New Jersey and
5 First?

6 CHAIRPERSON MITTEN: Yes.

7 MR. ALTMAN: We're currently in discussions with
8 GSA right now about that. We're discussing a mixed use
9 possibility, residential and commercial, and that's something we
10 hope within the next 60 days to have completed essentially a
11 program with GSA for the entire redevelopment of that site. But
12 that is something that's still very much in discussion with
13 them.

14 CHAIRPERSON MITTEN: Okay.

15 MR. ALTMAN: Our hope though is that for the
16 remainder of this site from what is called Tingey Street down as
17 well as a parcel on 4th Street between 3rd and 4th on M, that we
18 are advocating for all that to be significantly residential with
19 a waterfront park culminating what would be close to New Jersey
20 Avenue if you could take that through to the water.

21 CHAIRPERSON MITTEN: There are several places in
22 the advertised language in 1603.1 for development in the BP/W-2
23 district and then in the alternative language of 1603.7 where
24 you're recommending there be a special exception approval
25 process and you're recommending that that be done by the Zoning

1 Commission. I know that we can do that, but can you speak to
2 why you're recommending the Zoning Commission as opposed to the
3 Board of Zoning Adjustment?

4 MS. MCCARTHY: I think our rationale there was
5 very similar to the rationale for the reason that we had
6 recommended that the Zoning Commission get jurisdiction over
7 campus plans, that because the Zoning Commission tends to deal
8 with broader planning considerations, the Commission is used to
9 looking at planned unit developments and, as I mentioned, one
10 alternative notion had been originally to have these be required
11 to be planned unit developments and not special exceptions. But
12 there had been some concern from the development community about
13 that being too lengthy and an onerous, expensive process. So we
14 moved to special exceptions as well.

15 But basically when the Board of Zoning Adjustment
16 is looking at cases, they're looking at specific instances in
17 which conformance with existing regulations isn't possible.
18 This is a special exception in a broader sense where we're
19 saying adverse impact not in the usual way but a set of impacts
20 judged in relation to a set of criteria that are articulated in
21 the regulations, and it seemed like something that was more like
22 the kinds of determinations that the Zoning Commission is used
23 to making than those which the Board of Zoning Adjustment is
24 typically involved in.

25 CHAIRPERSON MITTEN: Okay. One of the things

1 that I have in my notes that I think we talked about when we set
2 this down for this public hearing was we talked about -- and
3 there may be another reference to it -- but 1603.3A when we were
4 talking about the amount of the setback from the actual water.
5 At the time, I had suggested -- I think I had suggested some
6 alternative language that would really, instead of saying
7 preferably 75', would really make that stronger. I had
8 suggested that it say that the structure shall be set back 75'
9 unless such setback renders a development project infeasible and
10 in no case less than 50'.

11 So I was wondering if maybe that just slid
12 through the cracks or if that was something that you had
13 rejected for a particular reason.

14 MS. MCCARTHY: I think I may defer to the Office
15 of Corporation Counsel on that.

16 MR. BERGSTEIN: I think it slipped. I remember
17 that there were some written suggestions that we had from you
18 and it may be that that just did not make it into this draft.

19 CHAIRPERSON MITTEN: Okay. So then I'll go back
20 to the Office of Planning and say, well, given that's not what
21 we advertised, how do you feel about making the 75' a stronger
22 standard?

23 MR. ALTMAN: I think that's acceptable to us. I
24 think it's what we want to encourage.

25 CHAIRPERSON MITTEN: Okay.

1 MS. McCARTHY: When we had looked at the issue of
2 what was an appropriate setback and you start factoring in the
3 width of what you need for a bicycle path and for pedestrian way
4 and then any green space and then the mix of uses that we'd like
5 to see meeting that, the cafes, the retail, that was a lot to
6 have happen in 50'. So 75' is far more likely to give us the
7 kind of lively waterfront that we'd really like to see along
8 that stretch.

9 CHAIRPERSON MITTEN: Okay. This is in 1603.7B
10 and your alternative language and you talk about having a retail
11 requirement and then talking about the kind of uses that are not
12 permitted. Is the retail requirement really more to -- who's it
13 supposed to be appealing to? Is it supposed to be appealing to
14 the office users, the commercial users, or is it really supposed
15 to be more to appeal to residents or potential residents?

16 MS. McCARTHY: I think it has -- our sense was
17 the retail mix would be adjusted to the mix of the neighborhood
18 as it changed. At this point in time, the bulk of the users
19 that are down there are office users. What we wanted to be sure
20 is that the space is down there, it's set aside and, as the
21 residential community develops, there is the ability to release
22 those spaces over time to uses that are in demand from the
23 people that are going to be there 24 hours a day and not just
24 those that are there eight hours a day.

25 MR. ALTMAN: I also think it's very important --

1 Ellen is absolutely right -- that as we see M Street developing
2 that at the street level that it's really active and that it's
3 inviting and that the buildings aren't simply all internalized,
4 that we actually start to have -- and you can see already in one
5 of the office buildings a deli that'll be opening shortly --
6 that you'll start to bring more people out of the Navy Yard and
7 out of the office buildings and onto M Street as well as
8 residential development occurs. I think that's part of also
9 what we're trying to encourage with the new streetscape design
10 and everything else. It's to create a much more lively
11 boulevard.

12 CHAIRPERSON MITTEN: Thank you. Mr. Franklin.

13 COMMISSIONER FRANKLIN: Just to follow up on this
14 business of retail in 1603.7B. Do you mean to say that there
15 has to be actual occupancy of the retail service or
16 entertainment uses or are you talking about ground floor shall
17 be appropriately designed for such uses?

18 MS. MCCARTHY: At least that it can't be occupied
19 by other uses plus I guess our sense was at this point in time,
20 that area is so short of retail services that the demand simply
21 for the office workers that are down there now to support that
22 much retail development. It's not like it would be displacing a
23 lot of other retail that's already in operation along M Street.
24 So the demand for convenience retail, dry cleaning, shoe
25 repair, food would be enough to make those viable uses at this

1 point in time.

2 MR. ALTMAN: And I think, just to follow on that,
3 if they're not viable at this time, that we do want them to be
4 designed to accommodate those uses and if that means that they
5 are not immediately used for that purpose, that they are there
6 when the market is strong enough to accommodate them.

7 COMMISSIONER FRANKLIN: Well, that's actually the
8 thrust of my point. In other words, the way the regulation
9 reads in draft sounds as though you can't get a special
10 exception approval unless that space is actually occupied by
11 retail service or entertainment uses.

12 MS. MCCARTHY: Right. When somebody wants to
13 move forward with the development along M Street and they would
14 come to us for a special exception, I think it would certainly
15 be reasonable if they had good strong market information that
16 would indicate that leasing it to retail is not possible. They
17 could come in at the same time that they're there for their
18 special exception and apply for a variance that would give the
19 Commission some opportunity to judge the individual
20 circumstances and to put a time limited variance or some sort of
21 zoning relief on that site as well.

22 MR. ALTMAN: I think the point that you're making
23 is that you can get the special exception. Let's say you don't
24 have proof that you can actually occupy the retail, but you're
25 applying for the special exception. If you've dedicated the 50

1 percent for those uses and you can't demonstrate that you have a
2 lease at that time, you could still qualify for the special
3 exception. It doesn't necessarily mean that you can't build
4 your building until such time that you can prove you have
5 occupancy of the retail, but you would have designed for it.

6 MR. BASTIDA: But is the intent to say that you
7 can not -- suppose the space is appropriately designed for those
8 uses, the market is not there. Are you saying that that space
9 has to be kept vacant and reserved for those uses and not
10 occupied by the preferred uses? Is that what you're saying?

11 MR. ALTMAN: Yes. Yes.

12 COMMISSIONER FRANKLIN: Well then, perhaps the
13 language ought to change a little bit and say appropriately
14 designed for and reserved for retail service or entertainment
15 uses because I think that you never know. There's an ebb and
16 flow of the market and if that's the intent, it ought to be made
17 clear so we don't have disputes over it down the line.

18 CHAIRPERSON MITTEN: I think that's a good point
19 because it's not unlike what we were discussing with the EEFs
20 and the idea that the first floor space along important
21 pedestrian corridors wouldn't be designed so that it would be
22 difficult to convert it, and we talked about ways of animating
23 the street frontage without actually having a retail tenant.

24 So I think that's a good idea and maybe anything
25 that you could suggest that would help us to incorporate ways,

1 even if in the special exception process if the timing wasn't
2 appropriate for retail or service establishment, that we would
3 have some guidance in the ordinance about at least animating the
4 street.

5 MS. McCARTHY: Fortunately, at least in this
6 instance, we know that the buildings would be occupied by one
7 occupant every 250 square feet or so, unlike EEFs where we knew
8 there wasn't even enough population in the buildings during the
9 day time to generate customers for retail.

10 CHAIRPERSON MITTEN: But the interesting this is,
11 when you think about, particularly now, when you think about
12 some of the federal buildings where there is no retail, it
13 doesn't really matter how many occupants there are in the
14 building. The building tends to be unfriendly to the average
15 pedestrian.

16 Mr. Franklin, were you finished?

17 COMMISSIONER FRANKLIN: Just one further
18 question, just I guess a very technical question. You had said
19 earlier that you propose this in a special exception mode
20 instead of a PUD process and I thought I heard you say you
21 thought that would make it less expensive and more expedited.

22 MS. McCARTHY: Right.

23 COMMISSIONER FRANKLIN: In what way would it be
24 more expedited? There still would be a hearing, wouldn't there?

25 MS. McCARTHY: There still would be a public

1 hearing. The hearing fees are substantially less. The actual
2 time limits are shorter. Nw have a longer requirement for
3 public notice and they have very detailed requirements in terms
4 of level of specificity of what has to be included for Nw. So
5 we thought -- Mr. Bergstein may want to comment on it, too,
6 because it was something that developed out of conversations
7 between the Office of Planning and the Office of Corporation
8 Counsel, but we felt in the end we could accomplish what we were
9 trying to accomplish in terms of preferred uses and design and
10 have a public review with community participation, but not have
11 to have the process be quite as open-ended and quite as lengthy
12 and expensive.

13 COMMISSIONER FRANKLIN: Well, my only reaction at
14 the moment, and I haven't looked at the regulations, but special
15 exception is an animal that generally is a use prescribed in
16 advance that is permissible only if there's no adverse impact
17 and other considerations. Everything here reads very much -- in
18 fact, it reads more specifically than a PUD does in terms of the
19 specificity of kinds of requirements there.

20 MR. BERGSTEIN: Mr. Franklin, I'm going to take
21 OP off the hook because --

22 COMMISSIONER FRANKLIN: I don't feel on the hook.

23 MR. BERGSTEIN: But this was primarily my
24 suggestion. I felt that saying that there be such a thing as a
25 mandatory PUD would be sort of mixing apples with oranges. It

1 seemed to me that the zoning statute envisions matter of right
2 zoning and then conditional zoning. You have matter of right
3 zoning and place absolute conditions on those things.

4 In other words, you can have a use or structure
5 but certain things must apply. Otherwise, you have conditional
6 zoning which is the Zoning Commission recognizes that certain
7 uses or structures may be all right in a certain place but you
8 go through a process of review which is a special exception
9 process.

10 A PUD is a request for relief. It's not
11 conditional zoning. It's really in essence a type of a variance
12 where, instead of having to prove practical difficulties, you go
13 to the Zoning Commission and prove that you have such a superior
14 project that some form of additional relief, whether it be
15 density or lot occupancy, would be called for. Even in the face
16 of adverse impacts, you can get a PUD under certain
17 circumstances.

18 So my concern was that the framework of zoning
19 would be that if you wanted to regulate this area, you would
20 regulate it either by saying there are certain uses or
21 structures upon which certain conditions would absolutely have
22 to follow and there would be a review that certain additional
23 standards could be met. But that's a special exception. The
24 special exception is provided for in the Zoning Act. It doesn't
25 say what it is. It just says the Zoning Commission shall

1 provide for special exceptions. It is the regulations that
2 establish the standard which is no adverse impact and in harmony
3 with the zoning regulations. But that's one standard that can
4 change. But it's a flexible approach.

5 So my view was that if you're going to have some
6 sort of review of structures or uses in this area, it's really a
7 special exception. That's what a special exception is. And
8 then it's a matter of customizing the special exception to your
9 needs. I just didn't think that a PUD, which is a request for
10 relief, would be appropriate. If there was things in the PUD
11 that you like, then that could be made part of the special
12 exception process. But in my mind, it didn't quite legally fit
13 into the framework of the Zoning Act.

14 MS. McCARTHY: And we did find some directly
15 analogous -- some precedence in the zoning regulations,
16 particularly in R-5-A where development of other than single
17 family dwellings has to take place through a special exception
18 process or, as Mr. Bergstein said, for any number of conditional
19 uses like accessory parking lots where they must be approved by
20 the Zoning Commission and there are specific standards
21 articulated like the amount of landscaping and visual screening
22 from adjacent residential areas. So there are clear examples
23 now in the zoning regs that are fairly analogous to this.

24 COMMISSIONER FRANKLIN: Well, I don't want to
25 prolong the discussion on this point. I'm just a little bit

1 concerned that, particularly in B, you've got a very specific
2 provision there that would not give the Commission any latitude
3 at all in making adjustments to respond to specific special
4 circumstances, which is often what we do with a PUD, as you
5 know, and I will think about it more and maybe come back to it
6 later in the hearing.

7 COMMISSIONER HOOD: Madam Chair, I just have a
8 question. Along the edge of the water, you're proposing BP/W-2.

9 Why not W-1 or W-3? Let me tell you my rationale for asking.
10 I don't want to particularly name the case but the Commission at
11 that time was concerned about height along the waterfront. I
12 see here now change from something that the Board of Zoning
13 Adjustment just voted on and I was concerned. Is the issue over
14 in Washington Harbor any different from the issue over here as
15 opposed to view and blocking the view to the waterfront?

16 MS. McCARTHY: I think there are some substantial
17 differences. In Georgetown you were talking about an area that
18 had a scale of development that was, with the exception of some
19 of the industrial buildings right by the waterfront, very small
20 scale, very low buildings. We don't envision that most of the
21 waterfront is going to develop that way. So you will have
22 behind the W-2 buildings that, under the CR, can go up to 90'.

23 We're talking about bonuses, 130' along M Street
24 so that I think the 60' height limit that we were talking about
25 for W-2 was not inappropriate but that's one reason why the

1 criteria that are in 1603.7 do provide that the Commission can
2 look at issues of you sheds and vistas and take those into
3 account. When it references the criteria at the beginning of
4 the overlay in the preamble and specifically suggests the
5 Commission look to those purposes as well when it's doing the
6 reviews in 1603.7. Not 1603.7. In 1603, the main body, not
7 what's advertised in the alternative and in 1603.3 in
8 particular.

9 COMMISSIONER HOOD: Okay. I guess my reasoning
10 for asking that question is because I didn't want to see us, if
11 we zone this BP/W-2 and everybody that comes forward wants to do
12 something 90', that we have a lot of special exceptions that
13 we're going to have to deal with. I guess I just wanted to make
14 sure that we were consistent with the other waterfronts
15 throughout the city and also to make sure that we were putting a
16 piece in place, if it's put in place, that would accommodate the
17 majority of the folks that want to do something down there along
18 the waterfront. Thank you.

19 CHAIRPERSON MITTEN: Any other questions for the
20 Office of Planning? Mr. Parsons.

21 COMMISSIONER PARSONS: The Anacostia Waterfront
22 Initiative is about to get back underway. You're asking us to
23 do this on an interim basis. I guess I have a couple of
24 questions. One is try to define interim. A year, two or three?
25 And can we predict at this time how much of what we're dealing

1 with tonight will be substantially changed by this initiative?

2 MR. ALTMAN: To the first question, I think the
3 importance of this and why we brought it back as opposed to
4 waiting until the initiative was done is that the basic
5 provisions and the basic intent of having mixed use zoning
6 allowing for residential, which is not allowed for, allowing for
7 residential and commercial and particularly putting in
8 protections along the waterfront with the W-2 zone, the setbacks
9 that Ellen discussed, the restrictions on density, the amount of
10 commercial that can be built, the amount of residential. None
11 of those are in place right now. Our concern was that,
12 absent that, we really have no mechanism to, 1) encourage and
13 incent those uses that we would like along the waterfront and,
14 2) to protect against those that we think would start to violate
15 some of those provisions along the waterfront.

16 Can I predict exactly how interim is interim? I
17 think we are hoping to within the next year bring back to the
18 Zoning Commission whatever revisions may be necessary based on
19 the Anacostia Waterfront Initiative, but we certainly felt that,
20 given the level of activity right now, we didn't want to wait
21 until we had every detail finally concluded. That the basic
22 mixed use zone was important, the basic setbacks were important,
23 the design criteria and use restrictions along M Street were
24 very important to have now, particularly in light of the
25 development we've seen. We frankly missed, I think, some of

1 that. I would have liked to have had that in earlier when
2 development was going in, and we certainly didn't want to miss
3 more opportunities as they're coming forward.

4 COMMISSIONER PARSONS: So if we were to approve
5 this evening or some time in the near future, do you see our
6 actions impeding the Anacostia Waterfront Initiative? In other
7 words, well, the Zoning Commission made that decision. It's
8 done. It's going to be W-2. Will you be hindered by our
9 actions?

10 MR. ALTMAN: No. The answer is I don't see
11 anything in the provisions that contradict a direction that
12 would come forward from the Anacostia Waterfront Initiative. I
13 think the question will be one of refinement, one of more
14 specificity. There may be more issues related to design, more
15 specifics related to use. But I don't think the basic structure
16 of what we're putting in place today will be anything that would
17 ultimately be contradictory or inhibit what we would like to
18 encourage along the waterfront. I think the Anacostia
19 Waterfront Initiative will just simply further refine this basic
20 premise.

21 COMMISSIONER PARSONS: Thank you.

22 CHAIRPERSON MITTEN: Any other questions? Mr.
23 Franklin.

24 COMMISSIONER FRANKLIN: I just wanted to throw
25 the ball back into Mr. Bergstein's court. I've looked again at

1 1603.7 and I'd like to refine my point as follows. When you
2 look at 1603.7 and the et al, Mr. Bergstein, subsection B and
3 subsection C and subsection D could be incorporated in a normal
4 zoning regulation because they do not, by their terms, grant any
5 discretion to the Commission or anybody else to vary them by
6 their terms.

7 So what the thrust of 1603.7 really is is design
8 review, which is in Subsection A, plus the exception to it in E.

9 So I'd like you maybe to give some further thought as to
10 whether that could be recast in a normal straightforward
11 regulation and then have the special exception deal only with
12 design review standards that are in A with the exception in E
13 and perhaps indicate that if there's to be any variance from
14 what is set forth in B, C, and D, that the Commission would be
15 enabled to grant such variance in the course of its design
16 review.

17 I think it would simplify the process
18 considerably because we should not be drafting things that make
19 it look as though there's some discretion when in fact it's not
20 the intention to have any discretion.

21 MR. BERGSTEIN: I understand exactly what you're
22 saying and I know exactly how I can redraft that if that would
23 be the consensus of the Commission, in other words. But that's
24 easily enough done.

25 CHAIRPERSON MITTEN: I think that's a great

1 suggestion.

2 COMMISSIONER PARSONS: I agree.

3 CHAIRPERSON MITTEN: So, Mr. Bergstein, I think
4 you're going to redraft 1603.7 for us.

5 MR. BERGSTEIN: Yes.

6 CHAIRPERSON MITTEN: Thanks.

7 Before we move on, I just want to ask the Office
8 of Planning if you would provide us with a copy of your power
9 point presentation for the record and also I understand that the
10 Florida Rock covenant is being reviewed by the Office of
11 Corporation Counsel now for legal sufficiency, but we would like
12 to have a copy of that in the record, either before or after
13 it's finally reviewed.

14 MS. McCARTHY: I believe that they're planning on
15 presenting that with their testimony.

16 CHAIRPERSON MITTEN: Okay. Mr. Bastida has asked
17 that any prepared written testimony be provided at this time and
18 that'll help facilitate the distribution of that to the
19 Commission.

20 MR. BERGSTEIN: Madam Chair, I wonder if I could
21 just get one bit of guidance from the Commission with respect to
22 what we just discussed. Mr. Franklin used the term variance
23 which, to me, is a term of art. I want to know whether or not
24 the discretion or flexibility that the Commission might be
25 looking to in granting any waiver from these requirements would

1 be the traditional, in essence, variance standard or whether or
2 not, for example, for good cause shown or upon a showing of
3 something else, that the Commission could vary or have a degree
4 of flexibility with respect to these requirements. In other
5 words, I'm asking what the standard might be in terms of looking
6 at the type of relief from these provisions.

7 CHAIRPERSON MITTEN: Well, before we give you our
8 input, can I get some input from the Office of Planning. I mean
9 I think the way that Mr. Franklin presented it was accurate,
10 which is at least the way that it reads, there's not intended to
11 be any flexibility so that would suggest it would be a very high
12 standard and that would be the variance standard. But is that
13 what you would intend. If there were to be some variance from
14 B, C, and D, would you want that high standard to apply?

15 MR. ALTMAN: We're conferring for a moment.

16 I think we're just debating here. I mean we were
17 just debating what the variance test would be and how one would
18 meet that in terms of uniqueness or hardship and whether, in
19 fact, that would be possible if the market change would be able
20 to make those tests. I mean I think we were comfortable with --
21 I mean I think we did want to set a very high standard for that
22 percent. We think that's a reasonable percent. I think that's
23 something we could look at though and maybe bring back to you
24 and give a little more thought to as part of the consideration.

25 CHAIRPERSON MITTEN: Okay. That was an excellent

1 question, but I think you're not going to get an answer right
2 away.

3 MR. BERGSTEIN: In other words, for the purpose
4 of proposing, if you go that far, at least drafting something,
5 I'll confer with the Office of Planning and present to you what
6 would be a possible standard or standards for your
7 consideration.

8 CHAIRPERSON MITTEN: Thank you.

9 Mr. Hood, did you have another question?

10 COMMISSIONER HOOD: Yes, just one quick question.

11 Ms. McCarthy, if you could take the pointer and show me in
12 relationship to this map -- my orientation is just a little off
13 -- where the Capper/Carrollsborg Hope VI application grant is
14 proposed.

15 MS. MCCARTHY: Let me have Mr. Brandes do that
16 because he's been involved in the preparation of the Hope VI
17 application.

18 MS. BRANDES: In a broad brush stroke way, it is
19 approximately located between 2nd Street and 7th Street north of
20 M Street and south of the elevated freeway. The project
21 includes 700 units of housing that are being proposed to be
22 replaced by approximately 1,500 units of housing.

23 COMMISSIONER HOOD: Okay. Thank you.

24 CHAIRPERSON MITTEN: Anything else? Are there
25 any other representatives of any government agencies that would

1 like to make a report?

2 We'll now have the testimony by any
3 representatives of the ANCs, a representative from ANC 2-D or 6-
4 B. Anyone present?

5 I only have one person who wrote whether they
6 were an opponent or a proponent, so I'm going to assume everyone
7 on the list is testifying in support and, if you're not, then
8 call that out as I call you up. I'll just call you up three at
9 a time. David Briggs, Fred Greene, Tim Kissler. Please come
10 forward and take a seat at the table.

11 Mr. Briggs, are you going to have two separate
12 presentations?

13 MR. BRIGGS: Yes. Yes, Ms. Mitten. I will defer
14 my presentation to the representative 20 M Street, the Learner
15 representative, which is Mr. Frank Gambino, and he will be
16 making the presentation on the 20 M Street issues.

17 CHAIRPERSON MITTEN: Is that Southeast Realty?

18 MR. BRIGGS: Yes.

19 CHAIRPERSON MITTEN: All right. And what's his
20 name again? I'm sorry.

21 MR. BRIGGS: Mr. Frank Gambino.

22 CHAIRPERSON MITTEN: You guys set up your stuff.
23 Is anybody ready to start their testimony? Mr. Greene, are you
24 ready to start your testimony? How about Mr. Kissler? Ms.
25 Prince, you look ready.

1 MS. PRINCE: And I'm Tim Kissler tonight.
2 However, I'm not in support. It would be hard to categorize my
3 position.

4 CHAIRPERSON MITTEN: So we'll put you in place of
5 Tim Kissler and we'll hold you back there a little bit. Don't I
6 have you down here for -- oh, that's for Riverside. That's the
7 same thing?

8 MR. GAMBINO: We are ready.

9 CHAIRPERSON MITTEN: Okay, you're ready. Mr.
10 Gambino, would you like to go first?

11 MR. GAMBINO: Yes.

12 Good evening. My name is Frank Gambino. I'm the
13 Director of Construction for Lerner Enterprises. I'm here
14 representing Southeast Realty, LLC, the owners of lots one, two,
15 three, 20, 804 and 805, square 698, more commonly known as 20 M
16 Street, S.E. I'm joined by our legal counsel, David Briggs, of
17 Holland & Knight, LLP.

18 I would like to start by stating that Southeast
19 Realty LLC supports in part and requests a change in part to the
20 advertised text for the Buzzard Point Overlay and the related
21 mapping changes. The property at 20 M Street is bounded by four
22 fixed public right of ways, M Street, S.E. on the south, Half
23 Street, S.E. on the east, and two public alleyways on the north
24 and on the west.

25 To the west of the property is St. Vincent dePaul

1 Roman Catholic Church and to the north is a WMATA facility. The
2 property, therefore, is situated fully within the boundaries of
3 the proposed BP Overlay on M Street, S.E. We support the
4 advertised text on the 15' setback from the face of the curb
5 along M Street, S.E. in order to create a 15' wide pedestrian
6 way.

7 We do, however, think that projections such as
8 bay windows, balconies, canopies, including entrance canopies
9 and architectural embellishments, should be permitted to
10 introduce into the 15' setback provided that these elements do
11 not materially intrude into the air space of the 15' setback at
12 the ground floor of any building. This will generally provide a
13 clear, obstacle-free pedestrian space at the sidewalk level.

14 Of biggest concern to us is the provisions of the
15 advertised text to Buzzard's Point Overlay related to the
16 requirement that 50 percent of the gross floor area of the
17 ground floor of the building be devoted to retail and other
18 preferred uses. We find this provision to be unreasonably
19 restrictive and, in the case of our building, due to the small
20 size of our parcel, to be very difficult to meet.

21 We also feel that this course may not be the only way to urban
22 planning goals of an active pedestrian-friendly street
23 environment along M Street.

24 In our review of the proposed text with regard to
25 this particular provision, we would like to offer two

1 alternatives for consideration. Initially, while we appreciate
2 the Office of Planning's urban planning goal, our building, due
3 to the constricted footprint created by the four public rights
4 of way and its physically small size, we have difficulty meeting
5 these planning goals.

6 As you can see from the floor plan exhibit I have
7 provided, the pale blue area represents building common service
8 areas. These areas include the building entry vestibule, the
9 lobby, the elevators, bathrooms, stairwells and required egress
10 corridors, loading areas and garage entry ways as well as
11 mechanical and electrical rooms.

12 The gross square footage of these areas almost
13 comprise 50 percent of the total gross floor area of the first
14 floor of the building. The previously mentioned common service
15 areas are found in all buildings, regardless of size. However,
16 in this particular building, you can see from the exhibit the
17 potential retail area shown in pink are divided into three
18 distinct areas and they're separated by the public lobby and a
19 required egress corridor going out to the alley.

20 As you can see, Area A in the upper right, is
21 isolated from the rest of the building and faces out onto two
22 public alleys with no possibility for M Street retail frontage
23 or signage. It's essentially a dead retail space. We,
24 therefore, would first offer that consideration be given to
25 reducing the required percentage of preferred uses from 50

1 percent of the ground floor gross floor area to 35 percent and
2 requiring that 100 percent of the total frontage of a building
3 on M Street, S.E. but for any building entrance or required fire
4 control space be devoted to preferred uses.

5 We feel that this option is consistent with the
6 Office of Planning's urban planning goals as well as making
7 practical sense given the physical constraints every building
8 faces. It also forces retail and preferred uses to the glass
9 line at M Street and creates a system that is easy to administer
10 by zoning officials.

11 Alternatively, if the Commission feels it must
12 adopt the 50 percent preferred use space requirements, we
13 propose that phasing in the 50 percent requirement preferred
14 uses over time, perhaps during a five or 10 year window. During
15 that time frame, retailers and other preferred users could be
16 identified and solicited to move into the spaces set aside for
17 preferred users in the building. Given recent events and the
18 current retail climate in the country, it would be extremely
19 difficult, if not impossible, to meet the proposed 50 percent
20 requirement initially.

21 CHAIRPERSON MITTEN: You need to summarize, Mr.
22 Gambino. And we have your written statement.

23 MR. GAMBINO: Okay. Essentially, we'd like you
24 to give consideration to either one of these options. We think
25 they're both certainly viable and appreciate your time and

1 consideration. Thank you.

2 CHAIRPERSON MITTEN: Thank you. We'll have Mr.
3 Briggs give his testimony and then we'll take questions and then
4 I would like Mr. Greene and Don Collison to take their seats at
5 the table while Mr. Briggs testifies so you'll be ready to
6 begin.

7 MR. BRIGGS: Mr. Gambino is through and the next
8 witness on our behalf is Florida Rock Properties. When I
9 submitted the application, it was submitted in separate letters
10 on Florida Rock's behalf and Lerner's.

11 CHAIRPERSON MITTEN: So this is David.

12 MR. BRIGGS: This is David deVilliers.

13 CHAIRPERSON MITTEN: Please begin.

14 MR. deVILLIERS: Good evening, Madam Chairman,
15 members of the Commission. First of all, I'd like to introduce,
16 as you know, David Briggs who represents us as a member of
17 Holland & Knight, and Fred Greene, F.L. Greene Associates.

18 We have submitted an extended statement with the
19 appropriate exhibits to the record for your consideration, but
20 I'd like to briefly summarize our points for you at this time.

21 The advertised text of the Buzzard Point Overlay
22 district presents a predicament for FRP as to the development of
23 Square 664-E, a square along the banks of the Anacostia River
24 west of the Frederick Douglas Bridge in the Southwest. Square
25 664-E was designated as the amenity site in the planned unit

1 development approved by this Commission for FRP's property at
2 100 Potomac Avenue, S.E. FRP, or Florida Rock Properties, is
3 the sole owner of Square 664-E.

4 When this Commission approved the planned unit
5 development, it also fixed both the uses and the development
6 configuration of the amenity site and required that a covenant
7 be imposed upon legal title to the amenity site encumbering the
8 amenity site with this development program.

9 What was approved was a development envelope for
10 the amenity site that complied with the parameters of the
11 originally advertised proposal for the Buzzard Point Overlay. I
12 believe the Commission acted in approving the amenity site
13 development plan knowing that it complied with that originally
14 advertised proposal.

15 The original proposed called for the division
16 line between the BP/W-2 and BP/CR zone districts to be 110' from
17 the Anacostia River Waterfront. The present proposal calls for
18 the division line to be in the center line of Water Street to
19 the west of the amenity site with the amenity site in its
20 entirety now being mapped BP/W-2.

21 This change substantially changes the height and
22 density parameters for the amenity site and makes development of
23 the amenity site in accordance with the approved development
24 scheme captured in the approved planned unit development
25 impossible.

FRP requests two changes to remove this conflict.

1) return to the concept of mapping the amenity site with two zone districts but change the division line between the zone districts to be an extension of the center line of the right of way of South Capitol Street southward to T Street, S.W. This places the residential component of the approved development in a BP/CR district which can accommodate the necessary height and density of that component with the remainder of the amenity site zoned BP/W-2 which zone district supports the less intense park and maritime center uses of the amenity site.

#2) adopt a text change, as noted in our submission, which would have the effect of eliminating the requirement to further review and approve of the approved development scheme for the amenity site that was adopted with the Commission's planned unit development approval. There is no reason for the Commission to have to either substantially or procedurally re-review something that went under such extensive scrutiny previously.

These conflicts posed by the advertised text for the BP Overlay were reviewed with the Office of Planning. The Office has recognized the inherent conflict that the advertised text creates, but we gather OP is not prepared at this time to support a change to the BP Overlay proposal for mapping of the amenity site, notwithstanding the inherent conflict. The Office is apparently concerned that if the PUD for the

1 Potomac Avenue site expires, the amenity site would be left with
2 mapping inconsistent with its neighbors.

3 FRP has offered by covenant, a copy which was
4 included with our written statement, or some other mechanism to
5 provide assurances that if the PUD for the Potomac Avenue site
6 expires, the amenity site could be rezoned to BP/W-2 without the
7 opposition of FRP or its successors. A proposed covenant
8 document was proposed to OP for that purpose with the intent
9 that it would be recorded against a legal title to the amenity
10 site if the Commission adopts a split zone district mapping for
11 the amenity site.

12 This arrangement provides certainty to the
13 District that the amenity site could be rezoned if the PUD
14 expires. It also provides certainty to FRP and others,
15 including the Earth Conservation Corps, the beneficiary of the
16 amenity site condition in the PUD, that the contemplated
17 development scheme can be in fact developed. A BP/W-2 mapping
18 now requiring further action by this Commission in the future to
19 accommodate the mandated development does not provide that
20 certainty.

21 The process as suggested by the Office of
22 Planning further burdens the agenda and resources of this
23 Commission and the Office of Zoning for what we believe is
24 theoretical and not a real risk.

25 CHAIRPERSON MITTEN: Can you summarize now? You

1 have about five seconds left.

2 MR. deVILLIERS: All right. FRP has owned these
3 properties for many years, has active and profitable operations
4 on these properties and has no intention of abandoning them. If
5 it did, it clearly would not agree to encumber a property with
6 an agreement not to oppose the down zoning of the property.

7 We respectfully request that the Commission not
8 adopt a process that goes back on its prior approvals in
9 conjunction with the PUD. Our situation is unique. We do not
10 believe there would be any other impact on any other property,
11 and we thank you for your consideration.

12 CHAIRPERSON MITTEN: Thank you, Mr. DeVilliers.

13 Any questions for Mr. deVilliers or Mr. Gambino
14 from the Commission? Thank you very much and thanks for the
15 extensive written statement.

16 Mr. Greene and then if Mr. Collison from Potomac
17 Electric Power would take a seat at the table and Mr. Sher while
18 Mr. Greene gives his testimony.

19
20 MR. GREENE: Thank you very much, Madam
21 Chairperson. My name is Fred Greene. Address, 1411 K Street,
22 N.W. Suite 503, Washington, D.C.

23 I am here tonight in support generally of the
24 proposed case, 96-389-1, and in more particularly item #4 which
25 is the alternative proposal for rezoning Square 700 and 701 and

1 I'm representing property owners within Square 701 as an
2 alternative to #3 above which had recommended Square 701 to be
3 BP/CR.

4 Let me start by saying, Madam Chairperson, this
5 is a text amendment case. This is not a zoning map amendment in
6 the sense that you have specific standards and guidelines. I
7 think the main standards and guidelines in this case will be the
8 comprehensive plan. This is a policy. This is a land use
9 policy debate here.

10 So in that regard, I want us to not only think
11 about what's going to happen to M Street and not only about how
12 nice the waterfront should look, but in fact I think someone
13 should start thinking about growth management. How are we going
14 to manage all this growth that has been planned for this
15 particular area? In that regard, the main point of the
16 presentation that we put in front of you is to encourage that
17 you give and place emphasis on stacking some of this growth
18 around a second major asset, second to the waterfront perhaps,
19 which is the Metro stop.

20 Square 701 has direct access to the Metro and we
21 feel that it would only be smart planning in this case to at
22 least recognize the development that is about to occur, think
23 about the impact of this development, and think about the asset
24 being the Metro stop here.

25 Secondly, under Tab No. C, we introduce a report

1 from Spaldin and Sly which attempts to estimate the demand in
2 this area and, to summarize, there's about 1.5 million square
3 feet. This is commercial space. The point here is that the
4 Metro stop should be the place where some of this growth should
5 be challenged. Not that it should be spread all the way down M
6 Street. I just don't think that's again smart growth approach.

7 With regards to the comprehensive plan, we feel
8 that the medium to high density commercial designation is
9 consistent with C-3 zoning and, therefore, should be BP/C-3-C.
10 This is a Metro stop. Second point. Back in 1995, the
11 Zoning Commission zoned properties immediately north of this
12 site to C-3-C with the Metro stop being immediately south of M
13 Street. That's not good planning. We have included under Tab D
14 our discussion in terms of how it is consistent with the
15 comprehensive plan using reports provided by the Office of
16 Planning equating medium/high commercial with C-3-C zoning under
17 Tab No. D.

18 Under Tab E, Madam Chairperson, I have
19 participated in this case for the past four or five years. I
20 was able to find a copy of minutes, Zoning Commission minutes
21 dated March 10, 1997 under Tab E which talks about and in fact
22 approves BP/3-C-3 as a consensus after a lengthy discussion and
23 public hearing on this particular item. In fact, if you will
24 look under that Tab on page #4 at the bottom, you will see that
25 the Commission reached a consensus with regards to BP/C-3-C for

1 Square 700 and 701 at the bottom of the page three sentences
2 from the bottom.

3 I realize my time is moving. I was able during
4 my research to discover a report put out by the Brookings
5 Institute which is the last tab in the report. It is called
6 "The Future of the Corps of the Washington, D.C. Region." In
7 this, there's a lot of discussion from county executives,
8 including the mayor for the District of Columbia. I just want
9 to quote one thing from the mayor, and I will be finished. If
10 you just allow me to quote this one thing from the mayor, Madam
11 Chairperson.

12 CHAIRPERSON MITTEN: I'm looking forward to it.

13 MR. GREENE: Okay. We should --

14 CHAIRPERSON MITTEN: Just stay focused.

15 MR. GREENE: I was going to ask for more time but
16 that's okay. Let me just tell you what the mayor says here.
17 This is coming from Mayor Williams and you can find it somewhere
18 in this report. I would venture to say it on page --

19 CHAIRPERSON MITTEN: We're all looking trying to
20 help you.

21 MR. GREENE: I know, but you got me running here.

22 CHAIRPERSON MITTEN: I would have thought you had
23 a tab there or something.

24 MR. GREENE: I do, but here's the quote. Mayor
25 Williams indicated that, quote, "I believe that the first order

1 of business has got to be focusing on metro centers as one way
2 to galvanize our efforts because we haven't done that in the
3 past." He goes on to say, "We don't have the density around our
4 metro centers in the city that we ideally should." Then it goes
5 on to say, "But we have got to do that." This is supported by
6 the County Executive for Montgomery County and etcetera.

7 So in closing, what I want to recommend is that
8 you, Zoning Commission, realize that this is a master planning
9 effort that you are involved in and that yes, there will be some
10 sites with higher density than others. That's your
11 responsibility is to approve a master plan that's going to work
12 for this particular area. Make it a user-friendly, enjoyable
13 area.

14 CHAIRPERSON MITTEN: Thank you, Mr. Greene.

15 MR. GREENE: You're quite welcome.

16 CHAIRPERSON MITTEN: Thank you. Just hold your
17 seat and then we'll take questions after the panel is finished.

18 Mr. Collison from PEPCO.

19 MR. COLLISON: Yes, Madam Commissioner. My name
20 is Donald Collison. I'm manager of the Real Estate Department
21 at PEPCO. I thank you for the opportunity to be here tonight.
22 I'll make my comments short.

23 PEPCO has been a long-term property owner in the
24 Buzzard Point area since about the 1930s. We own numerous
25 properties there which are vital for our supplying the

1 electricity for the District of Columbia and serving the
2 residents of the District of Columbia. We can review the
3 properties very quickly if you want and some of the things that
4 are going on there.

5 Square 603, which is our meter reading
6 department, is located there and we've used that property for
7 storage and phasing of various projects for a long time also.
8 Square 603. Coming down to Square 607, that property is a
9 parking lot now but we've used that for phasing also on major
10 projects. We have a building in there which we use for storage.

11 We use that building in the manufacturing of concrete manholes,
12 lids, things like that. We've done that for numerous years.
13 Square 609 is parking now. It was large oil facility, storage
14 facility there also.

15 The heart of our property is the generating
16 facility. This is the old generating plant, Square 665. We
17 have a large switch yard in here. This building is the old
18 generating building. A third of that building is actually a
19 substation facility now which distributes the electricity for
20 this whole southwest area and is a major tie for the District of
21 Columbia. We have, again, outside switch yards here also and
22 combustion turbine systems here. There's eight of them located
23 on the property and then Square 661 is oil facilities there,
24 storage, and there is also parking.

25 All of the properties have been used in various

1 industrial and commercial uses. We signed up as a proponent for
2 this measure tonight, and we really are fairly neutral. I
3 guess the big thing that we're a proponent for is the Section
4 1605. It's vital for us to be able to continue to utilize this
5 property in the manners that we have utilized it in the past to
6 continue functioning and serving the community. That would be
7 our position.

8 CHAIRPERSON MITTEN: Thank you, Mr. Collison.
9 Did you have a written statement?

10 MR. COLLISON: No.

11 MR. GLASGOW: And Madam Chair, the reason why we
12 brought up and went through all of this is that we are in the
13 process of reviewing all of PEPCO's certificates of occupancy
14 for their facilities, and they are very general in scope in some
15 degrees.

16 For instance, there is no certificate of
17 occupancy that says combustion turbines on it anywhere. They
18 have been there for decades, and we want to make sure that,
19 assuming that this is adopted, the date that is put in here is a
20 date that coincides when we have certificates of occupancy for
21 the oil storage tanks and the other things because if somebody
22 said, well, you can't run those combustion turbines, well, the
23 first time we have an overload, we have a brown-out.

24 CHAIRPERSON MITTEN: Will you be able to advise
25 us with a subsequent submission as to when that date would be?

1 MR. GLASGOW: Yes. We are working on that at
2 this time.

3 CHAIRPERSON MITTEN: Thank you.

4 Mr. Sher.

5 MR. SHER: Madam Chair, Commissioners, I've given
6 staff an outline of the presentation. I'm going to skip right
7 to sort of the end in my one minute and 33 seconds or whatever
8 it is I've got.

9 CHAIRPERSON MITTEN: You've got five minutes.
10 You don't have to take them all but you have them.

11 MR. SHER: You know me. I can talk fast.

12 I want to go to VI at the bottom of page three
13 which are some specific comments and concerns and
14 recommendations with respect to the text that you have before
15 you. Specifically, review by the Zoning Commission of
16 development in the W-2 area. We would suggest some
17 clarification of Section 1603.1 and 2, that that section is
18 applicable to new buildings in the waterfront area, that it
19 doesn't apply to structures, fences, flag poles, retaining
20 walls, and so forth, nor would it apply to uses in existing
21 buildings as long as the new use is permitted by the underlying
22 zoning.

23 So you've got a building like two of Doctor
24 Talber's office buildings there. If he were to propose to
25 replace some of that office space with retail use, we would

1 think that's not something that has to come to the Zoning
2 Commission as long as the use is permitted by the W-2 zoning
3 that applies there. It's an existing building.

4 With respect to setbacks of buildings from the
5 river, Section 1603.3A, we would suggest that you should measure
6 that setback from the bulkhead line, not the shore line. The
7 reason for that, of course, is that the shore line varies
8 depending upon tidal and river flows. If it's a rainy season,
9 the shore line might be higher than if it's not a rainy season.

10 The bulkhead line is an established line. It's a series of
11 straight lines and arcs. It's clearly more appropriate for
12 determining how to set a building back from that edge rather
13 than the jagged edge of a shore line. So we would suggest use
14 of the bulkhead line.

15 With respect to the date for vesting of existing
16 uses, a subject that Mr. Collison just referred to, we just
17 wanted to confirm that the date that's left blank in that
18 section right now -- and Ms. McCarthy referred to this earlier -
19 - is to be the effective date of the new regulation. So it's a
20 date still to come, not a date that's past at this point.

21 With respect to the zoning applicable to Square
22 665, which is one of the squares Mr. Collison just talked about,
23 it's that large square that goes all the way from S to V between
24 Half and First Streets and it's got the old generating plant and
25 the combustion turbines and so forth. The notice describes the

1 rezoning of that square as being the northern half to BP/CR and
2 the southern half to W-2. If you look at the OP map
3 which I have attached to the back and which you had projected on
4 the wall before, it appears that that line is drawn more at
5 about a one-third/two-thirds boundary. In fact, it appears to
6 be drawn just north of the existing building rather than half
7 way up that square. So we would suggest a clarification which
8 suggests that the dividing line is the former southern right of
9 way line of U Street, S.E., now closed. That's about 400' up
10 that 1,200' dimension rather than half and half. It's just a
11 clarification between the text and the map.

12 A number of issues with respect to M Street. We
13 would oppose the alternate provisions requiring Zoning
14 Commission review, kind of picking up on a theme Mr. Franklin
15 raised before, and that is if you look at the proposed
16 provisions of 1603.7, which is the Zoning Commission review, and
17 the other provisions of 1604, which is not Zoning Commission
18 review, the only difference is that paragraph A and so if you
19 set out the specific standards that you have to meet, the idea
20 of coming here to show that you have something of generally
21 superior quality suggests to me a kind of inappropriate and
22 somewhat vague standard. What does that mean? How do I advise a
23 potential client or developer that you've got a generally
24 superior quality building when the standards say if you set back
25 15' and if you've got 50 percent or however that finally works

1 out, why do you need to come here? That would be our
2 suggestion. You've got them in there as a matter of right.
3 Make them a matter of right.

4 On the setbacks from the curb, Section 1604.2, we
5 would suggest clarification that the setback is from the face of
6 the curb which is a term of art rather than just the curb and
7 there's some language in there that says the face of the curb of
8 the right of way line. Well, the right of way line isn't the
9 face of the curb, so we would suggest deleting, quote, "of the
10 right of way line," unquote.

11 We suggest that the Commission allow, as you
12 heard before, balconies, bay windows, canopies, and other
13 architectural embellishments as long as they're above the level
14 of the first floor and they don't take more than half the
15 building.

16 CHAIRPERSON MITTEN: Have you given him three
17 minuets or five minutes?

18 MR. BASTIDA: Actually, there was a confusion and
19 he has about four minutes and 44 seconds.

20 CHAIRPERSON MITTEN: You're doing good. Just
21 finish up.

22 MR. SHER: I've got two more points or three. On
23 the first floor use requirement, if you're going to stick at 50
24 percent, we would suggest that that should exclude elevators,
25 stairs, required means of egress, required parking and loading

1 because those are access functions of a building rather than
2 rentable floor space in a building.

3 And we would also suggest that you clarify that
4 once the 50 percent requirement is met, that the remaining area
5 may be used for office purposes by deleting from the end of
6 proposed 1604.3, quote, "and any office use," unquote. If you
7 met the 50 percent requirement and you've got space in the
8 building, as you saw on the design of the one building, you've
9 got interior space, maybe it's suitable for a messenger office
10 floor, a receiving office floor, a conference room, but if
11 you've met the 50 percent of active uses, why can't you use some
12 of that other space for office use?

13 Last point. With respect to the zoning of Square
14 769 which is bounded by 2nd and 3rd, L and M Streets, we support
15 the proposed rezoning to the depth of 145'. That is essentially
16 half that square. The square is 290' from one to the other, so
17 you're taking half of that. We support that on behalf of a
18 potential developer in that square.

19 We would further request that the Commission
20 include that BP\C-3-C site in the Capitol South receiving zone.

21 That's within approximately 450' of the entrance to the Navy
22 Yard Metro Rail Station at the corner of New Jersey Avenue and M
23 Street. It's comparable to the properties which are immediately
24 along M Street to the west of there, and we think that will help
25 expand the receiving zone capacity given the potential for

1 generation of TDRs downtown if everybody builds all that
2 residential that's out there.

3 I just sort of skipped over all the other things,
4 but you got it.

5 CHAIRPERSON MITTEN: We appreciate your very
6 careful reading of the proposed ordinance, and I know there's a
7 lot of helpful suggestions in here.

8 Any questions for Mr. Sher, Mr. Greene, or Mr.
9 Collison or Mr. Glasgow, who is here? I just had one quick
10 question for Mr. Glasgow. If the effective date, as Mr. Sher
11 was asking to be clarified, if the effective date for the
12 vesting of existing uses is the effective date of the new
13 regulations, that wouldn't cut PEPCO out in any way, would it?
14 I mean you anticipate that you'll have these certificates of--

15 MR. GLASGOW: We anticipate we'll have all the
16 certificates of occupancy, but we assume that the record will be
17 kept open so that we can advise you of our progress because I
18 didn't know whether you were going to take action tonight or
19 what was going to be happening.

20 We have certificates of occupancy in hand for the
21 properties, but it is unclear that they are broad enough for all
22 the existing facilities and operation center on site at this
23 point. That's why we wanted to get into the record before the
24 Commission and have the aerial photograph. This is what we have
25 going on on those properties right here today, and most of those

1 uses have been going on on those sites for decades.

2 CHAIRPERSON MITTEN: So give me a little help
3 about how long we should leave the record open.

4 MR. GLASGOW: If you take some action tonight,
5 unless it's an emergency, you still have to go to the rulemaking
6 and publication.

7 CHAIRPERSON MITTEN: Right.

8 MR. GLASGOW: So that we would hope within the
9 next 45 days or so that we would have those certificates of
10 occupancy.

11 CHAIRPERSON MITTEN: Okay. Thank you.

12 COMMISSIONER FRANKLIN: Do you have certificates
13 of occupancy, Mr. Glasgow, for things that aren't occupied?

14 MR. GLASGOW: We have certificates of occupancy
15 for all the property, but we'll have a certificate of occupancy
16 like in Square 665, I think it says substation. We have switch
17 yards, we have oil tanks, we have combustion turbines.

18 COMMISSIONER FRANKLIN: You don't have a
19 certificate from some other governmental agency?:

20 MR. GLASGOW: Well, we would use those if we had
21 to in the inspections that occur and all of that, but we're
22 going to use this as an opportunity to get those several squares
23 that we have extensive uses on and get the certificates of
24 occupancy modernized and get that up to date as to what all is
25 going on.

1 COMMISSIONER FRANKLIN: The other only other
2 question I had, Madam Chair, is to ask the Office of Planning
3 for a further explanation of why they oppose Mr. Green's
4 suggestion.

5 MR. ALTMAN: Is that at this time or do you want
6 it as a follow-up?

7 CHAIRPERSON MITTEN: Whatever way you all would
8 prefer. I mean I know you've had conversations with Mr. Greene.
9 Maybe you'd like to look at his submission and give us a
10 supplemental report that deals directly with that question.

11 MR. ALTMAN: I'm happy to do that and to review
12 the submission and to give you a report on that. I can tell you
13 generally, as I mentioned earlier, it was that when we looked at
14 Square 701 fronting M Street, the question for us is I agree
15 with Mr. Greene that exactly around Metro stations that you want
16 to encourage smart growth and encourage density. The question
17 is you also want to encourage mixed use. Our concern was that
18 with an entirely commercial property -- and again, I'll look at
19 the details of those proposals, I'm just giving you a general
20 impression --that we thought that it's very important that there
21 be both residential and commercial.

22 As you can see, its adjacency to the Southeast
23 Federal Center and at the Southeast Federal Center we are, as I
24 said earlier, encouraging mixed use development with substantial
25 residential. We want to bring that residential over toward

1 First Street as close as we can get to First Street and we want
2 that to be met by some residential development on this parcel as
3 well. So while the commercial density could certainly be
4 fronting M Street, we don't want the entire depth of that lot to
5 be entirely commercial but to be in fact encouraged to be mixed
6 use.

7 Again, this zone does not mandate residential.
8 It encourages residential, and what this would say is that if it
9 was going to go up to the 6.0 FAR, that in fact that be for
10 residential development, particularly because of the Metro stop.

11 We think it's the right place to try to introduce some more
12 mixed use along the M Street corridor if possible.

13 Again, we'll examine it in detail because I
14 haven't seen Mr. Greene's brief and I'd like to review it.

15 CHAIRPERSON MITTEN: Thank you. Any other
16 questions?

17 COMMISSIONER PARSONS: Mr. Glasgow, it's been
18 some time since I've heard those combustion turbines, but when I
19 heard them about 10 years ago, to me they were the most
20 obnoxious land use in this city. They sound like jet aircraft.

21 I wonder if you could provide for the record, if my information
22 is up to date, what the decibel level is, what the frequency of
23 use of those are. I can tell you, if they're still the same
24 that I heard them eight or 10 years ago, I've got no tolerance
25 for continuing that use. I think it would be helpful to let us

1 know what the decibel level is, the frequency and what can be
2 done to silence them.

3 CHAIRPERSON MITTEN: Any other questions? Thank
4 you, gentlemen.

5 COMMISSIONER HOOD: Madam Chair, I just wanted to
6 ask. Is there any way we can kind of -- there have been a
7 number of issues. Any kind of way. I don't know if we can ask
8 the Office of Planning. I'm not trying to put any more work on
9 anyone -- if it's possible to kind of frame the issues. I don't
10 know if the Commission is ready to proceed to vote tonight. I
11 don't think I am. But I want to make sure that I understand and
12 have all the issues in front of me. This piece that Mr. Sher
13 had I think was great. I can read through this material that
14 Mr. Greene had. But some kind of way, if someone has been
15 taking notes, to kind of frame the issues so we can have a sound
16 bite and we can put it all together and then proceed.

17 CHAIRPERSON MITTEN: I think Office of Planning
18 can assist us in getting a structure for decision making. We've
19 been given some detailed submissions that deserve more attention
20 than we could give them this evening. So we need to have more
21 time to study that. So thank you, gentlemen.

22 Mr. Cantwell from D.C. Rock, Mr. Newman--

23 COMMISSIONER HOOD: Madam Chair, Mr. Newman would
24 be an opponent.

25 CHAIRPERSON MITTEN: Oh, an opponent as well as

1 Mr. Newman. Okay. Are there any other persons or organizations
2 that want to testify in support of this application? Then we'll
3 move to organizations and persons testifying in opposition and
4 I'll ask all three that have identified themselves so far. Ms.
5 Prince representing the John Ackridge Company, Mr. Cantwell
6 representing D.C. Rock, and Mr. Newman representing Opportunity
7 Concrete. If you would come forward and take a seat at the
8 table. I don't want to rush anybody but if we could get through
9 all three of you by 9:00, we won't have to have anyone staying
10 unless they choose to listen to the President's speech. So Ms.
11 Prince.

12 MS. PRINCE: Good evening, members of the
13 Commission. My name is Allison Prince with the law firm of Shaw
14 Pittman. I represent Riverside Associates, the owner of all of
15 Square 602.

16 The site is adjacent to the northern portion of
17 Fort McNair. It is bordered by S and Q Streets, S.W. and by 2nd
18 Street and the Fort property. The subject site includes a
19 portion of now closed Canal Street on the western edge of the
20 property. The large property, over eight acres, has remained
21 vacant and undeveloped for many years.

22 In 1989, the zoning of the property was changed
23 from unzoned to W-1 and W-3. The map amendment was done as a
24 companion case to a PUD. The PUD involved the rezoning of the
25 property to CR. The purpose of the map amendment to W-1/W-3

1 effectively was to place hold a zone classification on the site
2 so that if the PUD were to expire, the site would not be
3 unzoned.

4 At the time the waterfront zoning was approved,
5 the Commission was aware that the entire Buzzard Point area was
6 in the process of being rezoned and that the subject site could
7 be reconsidered in the context of the area-wide rezoning. In
8 light of the overall rezoning that is now being proposed, this
9 land locked area should not remain zoned as waterfront,
10 particularly W-1. Given the designation of the generalized land
11 use map of the comp plan is medium density commercial, medium
12 density residential and PTE and the inland location of the site,
13 waterfront zoning may not be appropriate.

14 In 1992, the final PUD order for the site was
15 approved which rezoned the property to CR in connection with the
16 PUD and approved a mixed use commercial and residential
17 development which was sensitive to the height issue with
18 adjacent Fort McNair. The height of the portion of the proposed
19 development adjacent to the fort was significantly restricted,
20 40' within 115' of the western property line, 60' within 165',
21 and 90' within 224' with a no build setback zone of 50' along
22 the entire western property line. Over the years, the PUD has
23 been extended due to lack of immediate interest in the property.

24 We believe that the BP/CR zoning is now most
25 appropriate for the property. Waterfront zoning, particularly

1 W-1, is not appropriate given the comp plan designation. The
2 density permitted in the W-1 zone is clearly not in line with
3 the medium density designation in the comp plan as it permits a
4 commercial FAR of only 1.0 and a total FAR of only 2.5.

5 Secondly, after a survey of the zoning map, we
6 determined that this is the only waterfront zone site which is
7 completely land locked by properties which are not zoned
8 waterfront.

9 We propose a reasonable solution. Since the W-1
10 zoning was initially imposed on the west side of the property
11 because of height concerns and issues, we suggest that the
12 property be zoned BP/CR with added height and set back
13 restrictions similar to those approved by the Commission in the
14 PUD process. And I've detailed those set backs in the
15 submission that I gave to Alberto earlier.

16 These restrictions could be made an integral part
17 of the BP overlay zone and would apply only to Square 602 which
18 is very specifically affected by its proximity to Fort McNair.
19 Our approach would provide the desired set backs while ensuring
20 that the zoning is not inconsistent with the comprehensive plan.

21 The difference in commercial density between CR and the
22 existing W-1/W-3 mix is negligible and that's not why we're
23 requesting the change.

24 We're requesting the change in order to secure
25 development flexibility. Maximum flexibility in the design of

1 the project which will make the project more viable and
2 ultimately more attractive and successful.

3 As far as design review, were this project to
4 proceed as a matter of right and not under the PUD, large tract
5 review would pertain. In addition, the site is subject to
6 review by the Commission of Fine Arts. So there would be ample
7 opportunity for review of any development of this exceptionally
8 large tract in the event that the site was rezoned to BP/CR.

9 To summarize, CR is the most appropriate zoning
10 for the site considering its designation in the comprehensive
11 plan generalized land use map and its considerable distance from
12 the waterfront, a minimum of 1,500' at its closest point. The
13 site is located adjacent to a large area that is proposed for
14 BP/CR zoning, as you can see from the map that's before you
15 tonight. Virtually the entire area to the east is proposed for
16 BP/CR. It is only our square that is singled out for retention
17 of waterfront zoning.

18 CR zoning with additional restrictions for height
19 and set back adjacent to Fort McNair would provide security to
20 the fort, design flexibility to the property owner and
21 consistency with the comprehensive plan.

22 I appreciate the opportunity to make my comments
23 this evening on behalf of Riverside.

24 CHAIRPERSON MITTEN: Thank you. And did you have
25 a written statement besides just this?

1 MS. PRINCE: I've made several notes. I was
2 anticipating an Office of Planning report tonight that I might
3 be able to address, but my site wasn't really addressed. So I'm
4 going to make some changes to my statement and submit it for the
5 record.

6 CHAIRPERSON MITTEN: Thank you.

7 MR. NEWMAN: Madam Chair, my name is Monte
8 Newman. I represent Opportunity Concrete Corporation.

9 We reside on Lot 660 which is bounded by South Capitol
10 Street, Potomac Avenue, R Street and Half Street, S.W. I'm
11 pretty much in opposition to a change in the zoning from M to
12 BP/CR for the main reason there's very little M zone property in
13 the city anywhere, and we're part of an industry, the concrete
14 industry. There are four concrete plants currently located in
15 the city.

16 In the southeast/southwest section, you have one
17 plant that sets on the Florida Rock property which is going to
18 be gone before long and our plant over on the southwest side of
19 the bridge. You have one at Fort Todd and then you have one up
20 in northeast off of New York and --

21 COMMISSIONER HOOD: Bladensburg Road.

22 MR. NEWMAN: Bladensburg Road. Yes. We
23 represent, just in the southwest section or the
24 southeast/southwest section, those two concrete plants down
25 there represent over 60 percent of the production capabilities

1 of the concrete companies in the city. I'm very much in favor
2 of development. However, we need places that we can have these
3 concrete plants in order to supply the city. And if you take 60
4 percent of the capacity away from the city, which we represent
5 in the southeast and southwest section there, there's very
6 little that's going to be constructed in the city.

7 By us being on the west side of the Anacostia
8 River where we are now, the infrastructure is there for us to
9 maneuver within the city. If we are on the east side or some
10 place else within the city, it's very difficult to get down
11 town. 1) there's no property, 2) the traffic is horrendous
12 trying to get anywhere, and where we are we're bounded by 395,
13 by 295 it's easy access in and around the city. We are in an
14 industrial section right now. Virtually all the companies that
15 are down there, all the property owners down there, are
16 industrial right now. PEPCO is down the street from us. You've
17 got the recycling yard down the street. You've got a salvage
18 yard down the street from us. By creating this a commercial and
19 residential section down there, it puts a tremendous impact on
20 the industry that we have today.

21 So I'm in favor of what is the language in 1605
22 of this, of continued industrial uses. However, some day
23 there's going to be commercial or residential buildings down
24 there. So in the long term, where do we go? So this is
25 something I think the Office of Planning and the Zoning

1 Commission needs to look at. Where does our industry go in this
2 city when those days come when we have to move out of that
3 section down there? Thank you.

4 CHAIRPERSON MITTEN: Thank you, Mr. Newman.

5 Mr. Cantwell.

6 MR. CANTWELL: Name is Dave Cantwell from D.C.
7 Rock which is similar in name only to Florida Rock. I occupy
8 Square 662 commonly known as the Stewart property in Southwest
9 D.C. I manufacture graded aggregate base stone for the D.C.
10 roadways and construction projects in the city. I take
11 demolition material from the buildings that are torn down in the
12 city and manufacture that into crushed concrete.

13 I want to expand on Monte's statement in that if
14 you allow commercial development within our areas, we are by the
15 very nature manufacturers and we tend to create nuisances. We
16 get along well because our neighbors are manufacturing
17 facilities and we work well with each other. We don't work
18 against each other. If we had commercial establishments
19 starting to encroach upon us, clearly they would win out by the
20 very financial nature of the business and we would be forced out
21 of the area.

22 I am the sole producer of crushed concrete in
23 this city and, if I were forced out of business, I clearly can
24 tell you I do not see any place on any map where I could
25 possibly move in this city. That would conclude what I have to

1 say.

2 CHAIRPERSON MITTEN: Thank you, Mr. Cantwell.
3 Are there any questions for any of these witnesses? I think I'd
4 like to ask the Office of Planning in that you're going to be
5 giving us some supplemental reports. I think the issues raised
6 by Mr. Cantwell and Mr. Newman are very important from the broad
7 planning perspective. You may not have all the answers but if
8 you could in a supplemental report tell us where your thinking
9 is at the moment about where industrial uses like this that are
10 so important to the construction industry and the cost of
11 construction in this city, where are you planning for these
12 folks to be in the long term? That would be very helpful to us.

13
14 COMMISSIONER HOOD: Also, Madam Chair, I would
15 just like to add that I do believe that some of these
16 facilities, concrete facilities, can also be located in -- M
17 zones. So if you could also let us know exactly how many other
18 zones in the District that are zoned M, where the focus of those
19 are and also if they're allowing -- I believe they are allowing
20 CM-2 and 3. If they're not, then I think we have a problem.
21 But I'm just curious.

22 MR. NEWMAN: I think it's only --

23 COMMISSIONER HOOD: Okay. I'll just wait to hear
24 from Office of Planning.

25 COMMISSIONER FRANKLIN: Madam Chair, if I could

1 just elaborate. I agree with your concern and maybe the
2 Anacostia Waterfront Initiative can include amongst its
3 initiatives a real focus on what can be done to assure that
4 there is a manufacturing base retained within the District of
5 Columbia. Obviously, the overall vision for this area is not
6 consistent with a continuation of some of these uses, but those
7 uses are very, very imprudent to the economy of the District.

8 The other thing I would add which is I think
9 related is that I would hope that AWI would also focus on the
10 real transportation problems in that part of the city. At our
11 hearings five years ago, I noted that because of the way in
12 which the bridge is designed and its approaches, it's very, very
13 difficult to use the limited access highways to access this area
14 of the city and some new thinking has to go on in terms of how
15 the transportation system can be redesigned.

16 CHAIRPERSON MITTEN: Thank you. Any other
17 questions? Thank you. Thank you all for coming down this
18 evening.

19 Ladies and gentlemen, the other members of the
20 Commission and I wish to thank you for your testimony and
21 assistance in this hearing. The record in this case will now be
22 closed except for information specifically requested, and that
23 information, we'll leave the record open to be filed no later
24 than the close of business on October 15, 2001 in Suite 210 of
25 this building. The Commission will make a decision on this case

1 at one of its regular monthly meetings following the closing oaf
2 the record.

3 You should also be aware that, should the
4 Commission propose affirmative action, the proposed action must
5 be published in *The D.C. Register* as a proposed rulemaking with
6 a period of time for comments. In addition, the proposed
7 rulemaking will be referred to the National Capital Planning
8 Commission for federal impact review. The Zoning Commission
9 will then take action at a public meeting following receipt of
10 public comments and the NCPC comments after which a written
11 final rulemaking and order will be published.

12 I now declare today's public hearing adjourned.

13 (The hearing was adjourned at 8:57 p.m.)

14