

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

IN THE MATTER OF:

Rezoning, Square 516, Lotsw 29,
30 and 62 from HR/C-2-C to
DD/C-2-C, requested by
K-4 & Associates

Case No.
00-24MA

AND

AND

Text Amendment of Subsection 1706.8
for Square 377, Lots 36, 37, 806
and 42, from
Arnold and Porter on behalf of
JBG Companies

Case No.
00-20TA

Thursday
January 25, 2001

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

The Public Hearing convened at 7:00 p.m. in
the Office of Zoning Hearing Room at 441 4th Street,
Northwest, Washington, D.C., Anthony J. Hood,
Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairperson
CAROL J. MITTEN	Vice Chairperson
HERBERT M. FRANKLIN	Commissioner
KWASI HOLMAN	Commissioner
JOHN G. PARSONS	Commissioner

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COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, ZC
Gerald Forsburg, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Andrew Altman, Director, Office of Planning
Maxine Brown-Roberts, Office of Planning
John Fondersmith, Office of Planning
Ellen McCarthy, Deputy Director,
Office of Planning

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

(7:04 p.m.)

CHAIRPERSON HOOD: Good evening, ladies and gentlemen. This is public hearing of the Zoning Commission of the District of Columbia for Thursday, January 25, 2001. My name is Anthony J. Hood, Chairperson of the Zoning Commission for the District of Columbia.

Joining me this evening are Commissioners Herbert Franklin, Kwasi Holman, Carol J. Mitten, who serves as vice chair, and John G. Parsons. I hereby declare this hearing open.

We will be hearing two cases this evening.

The first being Zoning Commission case No. 00-24MA, the subject of which is a request made by K-4 & Associates.

And the second being Zoning Commission Case No. 00-20TA, the subject of which being a request to amend Title 11 of the District of Columbia Municipal Regulations pertaining to zoning.

These hearings will be conducted in accordance with the provisions of 11 DCMR 3020. Specifically, the hearing for Case No. 00-24MA will be conducted in accordance with the provisions of 11 DCMR Section 3022 for contested cases, whereas the hearing for Case No. 00-20TA will be conducted in accordance with the

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1 provisions of 11 DCMR Section 3021 for rule-making cases.

2 Notice of today's hearing was published in
3 the Washington Times on November 7, 2001 and in the D.C.
4 Register on November 10, 2000. Copies of the agenda are
5 available to you and are located to my left near the door.

6 The record will be closed at the conclusion of each
7 hearing, except for any materials specifically requested
8 by the Commission, and the staff will specify at the end
9 of the hearing exactly what is expected.

10 To avoid any appearance to the contrary, the
11 Commission request that persons present not engage the
12 members of the Commission in conversation. We request
13 that you direct all procedural questions to the staff
14 sitting to my right. Please turn all beepers and cell
15 phones off at this time so as not to disrupt the
16 proceedings.

17 The order of procedure for the first case,
18 00-24MA, is as follows. Preliminary matters.
19 Applicant's presentation. Report of the Office of
20 Planning. Report of other agencies. Report of Advisory
21 Neighborhood Commission, I believe it's 2C. Parties and
22 persons in support. Parties and persons in opposition.
23 Closing remarks by the applicant.

24 Those presenting testimony should be brief
25 and non-repetitive. If you have a prepared statement,

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1 please give copies to staff and orally summarize only the
2 highlights. All persons planning to testify, either in
3 favor or in opposition, are to fill out two witness cards.

4 These cards are located on each end of the table in front
5 of us. Upon coming forward to speak to the Commission,
6 please give both cards to the reporter who is sitting to
7 my right. Would all persons wishing to testify in Case
8 No. 00-24MA please rise and take the oath. But before
9 I do that, I would ask that you would keep your seat.

10 I just have a question. Is there anyone here
11 in opposition of the first case, which is Case No. 00-24MA,
12 requested by K-4 & Associates?

13 Colleagues, with that I would like to propose
14 something a little different. I would ask that since we
15 have no one here in opposition, we've dealt with this
16 previously in an emergency, I would ask, if my colleagues
17 wish it, that we will let the record stand for itself,
18 the submittals, unless any one of my colleagues has a
19 question that they may want to ask the applicant, or we
20 can bring the applicant forward to do a presentation.
21 I'd like to put that out there for discussion.

22 VICE CHAIRPERSON MITTEN: I think the record
23 is sufficient for me.

24 COMMISSIONER HOLMAN: No objection, Mr.
25 Chairman.

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1 CHAIRPERSON HOOD: Good. Please tell the
2 city that the Zoning Commission is efficient and
3 effective.

4 So with that, colleagues, let's proceed.
5 Would anyone like to make a motion or do you have any
6 questions?

7 SECRETARY BASTIDA: Mr. Chairman, I do have
8 a preliminary matter.

9 CHAIRPERSON HOOD: Oh, you know, okay,
10 preliminary matters, Mr. Bastida.

11 SECRETARY BASTIDA: Yes. The affidavit and
12 posting was provided and is complete and appropriate, and
13 I just want to put that on the record. Thank you.

14 VICE CHAIRPERSON MITTEN: Mr. Chairman, I
15 would move approval of Zoning Commission application No.
16 00-24MA to amend Lots 29, 30 and 62 square 516 from HRC-2C
17 to DD/C-2C.

18 COMMISSIONER HOLMAN: Second.

19 CHAIRPERSON HOOD: Okay, it's been moved and
20 seconded. All those in favor.

21 (Chorus of Ayes.)

22 CHAIRPERSON HOOD: Any opposition? So
23 ordered. Staff, would you record the vote.

24 SECRETARY BASTIDA: Yes, Mr. Chairman, the
25 staff will record the vote 5-to-0, Ms. Mitten moving and

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1 Mr. Holman seconded, and the result the Commission voted
2 in the affirmative. Thank you.

3 CHAIRPERSON HOOD: Okay. Thank you. With
4 that, I will close Case No. 00-24MA, K-4 & Associates.

5 As previously stated, the hearing for Case
6 No. 00-20TA will be conducted in accordance with the
7 provisions of 11 DCMR Section 3021. Again, joining me
8 for this are Commissioner Franklin, Commissioner Mitten,
9 who serves as vice chair, Commissioner Parsons and
10 Commissioner Holman.

11 The order of procedure for this case is as
12 follows. Preliminary matters. Applicant's
13 presentation. Report of the Office of Planning. Report
14 of other agencies. Report of Advisory Neighborhood
15 Commission, I believe that too is 2-C. Persons in support.
16 Persons in opposition. Closing remarks by the applicant.

17
18 Again, we would request that those presenting
19 testimony be brief and non-repetitive. Give copies of
20 your prepared statement to staff and orally summarize only
21 the highlights, and fill out two witness cards which are
22 located on each end of the table in front of us, and give
23 both cards to the reporter who is sitting to my right.

24 Let me do this. Would all persons wishing
25 to testify in this case, 00-24MA, please rise to take the

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1 oath.

2 This is rule-making, you may be seated.
3 Forgive me, once in a while we do make a mistake. Is there
4 anyone here in opposition of what we have proposed in front
5 of us? Okay. With that, I will ask for the applicants
6 to come forward.

7 Let me ask Mr. Gross, about how much time do
8 you think you need to present your case?

9 MR. GROSS: Mr. Chairman, thank you. Mr.
10 Bastida called a couple of days ago and said if we could
11 keep it to 20 minutes and I said we could do that, so we're
12 prepared to do it that short. I think originally we
13 estimated one hour but we definitely do not need an hour.

14 CHAIRPERSON HOOD: Okay, if that's
15 sufficient. I also want to remind you that my colleagues
16 and I have read your submittals, so with that you may
17 proceed.

18 MR. GROSS: Great. Thank you. Ms. Giordano
19 will.

20 MS. GIORDANO: Good evening. My name is
21 Cynthia Giordano with Arnold & Porter law firm for the
22 record. We have a brief presentation, as we indicated,
23 this evening. We have two witnesses that have prepared
24 remarks and we also have the project architect, Mr. Dove,
25 who's here to answer any questions. We hadn't planned

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1 to do a presentation unless the Commission would like that.

2 To my left is Mr. Stewart Bartley, who is
3 Managing Director of JBG Residential Properties and, of
4 course, Mr. Gross is a planner and we would ask that he's
5 going to be appearing tonight as an expert witness in
6 planning, and particularly downtown planning policy. And
7 I'd ask the Commission to accept him as an expert. I think
8 he's appeared before this Commission as an expert on many
9 occasions in the past. Mr. Gross.

10 CHAIRPERSON HOOD: Okay. No problems.
11 We'll accept him definitely.

12 MS. GIORDANO: Okay. We're just going to go
13 right ahead and proceed. I know that the Commission had
14 asked for a brief presentation this evening, so I'm going
15 to ask Mr. Gross to begin at this point.

16 MR. GROSS: Good evening, Mr. Chairman and
17 members of the Commission. I believe you have a copy of
18 my testimony which is in summary form. Several points
19 to emphasize. Point one is there have been previous text
20 amendments to the downtown development district based on
21 private petitions from property owners, as well as those
22 coming out of comprehensive plan amendments, so I've
23 simply listed four of those there.

24 I think this has been and, hopefully in this
25 case also, is a worthwhile type of adjustment to the details

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1 of the zone where a particular property comes along and
2 wants to do something fully consistent with the zone and
3 the comprehensive plan, but an adjustment by way of a text
4 amendment is needed to help make it happen.

5 I won't go through those but there have been
6 precedents and we hope this is another one in a positive
7 way.

8 Secondly, I suppose the big highlight of this
9 case is the subject of four lots which are zoned DDC-4
10 and are technically in the retail core sub area of the
11 downtown development district. You would normally expect
12 an 8.5 FAR office building on this site. JBG is proposing
13 an apartment house of 8.5 FAR but they need the leverage
14 of the combined lot development in order to make the project
15 work financially. And so the request is simply to add
16 these four lots to housing priority area C, and I'll show
17 that on a map in a couple of minutes.

18 Our major public benefits, in keeping with
19 the comprehensive plan, are listed there in Section 2.

20 I'm sure you read that in the pre-hearing statement.
21 Increase in population both in the city and then in
22 downtown, and the activity that goes along with that.
23 Business development in terms of population to support
24 retail and entertainment businesses downtown.
25 Pedestrian activity, public safety on the streets. Tax

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1 base. Given our income tax as well as the property taxes,
2 the building will generate approximately the same as an
3 office building would on the site in total tax return to
4 the city.

5 Transportation and environmental benefits.

6 Less vehicular traffic to the site, most residents either
7 walking to work or taking transit to work. And this is
8 unsubsidized. The buildings that have been built as
9 apartments in downtown so far have been subsidized by the
10 Pennsylvania Avenue Development Corporation. You also
11 have the one PUD modification resulting I the conversion
12 of the former Catholic Charities building to apartment
13 use, but that's about it.

14 And so this will be the first, or one of the
15 first, truly unsubsidized apartment houses in downtown.

16 There will also be ground floor retail uses
17 oriented to E Street, providing continuity of retail uses
18 along there. And I think this is especially important
19 opposite the FBI Building because, obviously, there's
20 nothing in the FBI Building, so it makes it especially
21 important to have those uses continuous on the north side
22 of E Street.

23 There will also be artists' studios accessed
24 from historic Booth Alley and with lighting on Booth Alley,
25 and JBG is committed to working with other property owners

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1 who are now building or renovating properties that will
2 back up to that alley to work with them to help upgrade
3 the alley and make it more of a pedestrian and heritage
4 tour destination.

5 Historic preservation. We've received
6 approval by the Mayor's Agency for Historic Preservation
7 for the subdivision of lots and the partial demolition
8 involved, and we are required to go back to the Historic
9 Preservation review board for final design approval.

10 Roman III there, the point here is that this
11 is a logical and adjacent extension of the boundaries of
12 existing housing Priority Area C. I was planning to mount
13 this map on a board with clips -- do you have a board handy,
14 George?

15 CHAIRPERSON HOOD: Mr. Gross, I'm going to
16 ask if you could turn on the microphone there so you can
17 be picked up. Thank you. You just turn it on and you
18 speak a little louder. Thanks.

19 MR. GROSS: Okay, on this map we have the
20 boundaries of housing Priority Area C in blue, and this
21 is a property also in DDC-4. In yellow we have apartment
22 buildings, or mixed use buildings already built. I'm
23 sorry, that's the red. So you have the Market Square
24 buildings with four storeys of apartments on top of office
25 buildings. You have the Lansburgh Apartments, which is

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1 over 800 units. You have the Lexington, which is part
2 of the Market Square North development, and the
3 Pennsylvania.

4 Nearing ground breaking would be the other
5 part of Market Square North, the other apartment house
6 that's part of that. Square 456, the Murray Building which
7 would be basically doubled in size and made into
8 apartments, and then you have the DOES site, which will
9 have apartments as well as the Newseum.

10 The two sites in violet tones, one is Square
11 406 which is the probable linkage site for combined lot
12 development, and then the subject property that was
13 proposed to be added to Housing Priority Area C. I guess
14 I would point out that we're just a half block away and
15 the amount of housing, as you'll see on the last two pages
16 summary of my testimony, there is either two and a half
17 times or four times the amount of housing that would
18 normally occur on these two sites together.

19 By way of explanation, there's no housing
20 requirement of course on the subject site at all. Square
21 406 has a housing requirement of two FAR. if the two FAR
22 were to be built, that would be 71,000 square feet of
23 residential, whereas the approximately 180,000 proposed
24 for the E Street property is about two and a half times
25 that.

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1 On Square 406, a developer could provide
2 off-site affordable housing or make the in lieu payment
3 and provide 1.2 FAR of housing instead of the two FAR on
4 site, which would mean that the subject property would
5 be providing four times the amount of housing, so basically
6 you go from zero to 8.5 FAR in this property. And the
7 two FAR of 1.2 FAR requirement moves over a half a block
8 away.

9 And so in a way this is somewhat comparable
10 to the extension of the Housing Priority Area C that was
11 done to pick up the DOES site a couple of years ago.

12 Final point is that we do have broad-based
13 community and government agency support, from the Office
14 of Planning, ANC 2-C, downtown cluster of congregations
15 in downtown housing now. And if you want to look at the
16 numbers on the combined lot development options on pages
17 4 and 5, the first one is simply without the text amendment
18 the range of office and residential uses that you get under
19 existing zoning in normal development in which the
20 residential development ranges from 10 percent to 18
21 percent of total development, whereas it becomes a much
22 higher amount of residential and higher percentage of
23 residential with the text amendment.

24 That concludes my statement. Thank you, Mr.
25 Chairman.

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1 CHAIRPERSON HOOD: Okay. Ms. Giordano,
2 we'll wait and come back in and ask any questions that
3 we may have.

4 MS. GIORDANO: Okay. Thank you. I'll ask
5 Mr. Bartley to proceed now.

6 MR. BARTLEY: Thank you, Mr. Chairman and
7 Members of the Commission. I appreciate the opportunity
8 to speak with you here tonight and I will be brief as you
9 suggested. I think Mr. Gross very well summarized our
10 case tonight. I understand that the Commission is fairly
11 familiar with JBG but perhaps not as familiar with the
12 residential division which I am responsible for.

13 JBG Residential operates over 3,000 apartment
14 units in the Metro area, including two in the West End
15 of D.C. The operation of those properties have led us
16 to conclude, about 18 months ago, that the time was right
17 where we could achieve the living downtown. And therefore
18 we began looking for sites and are now working on sites
19 to provide over 900 units in and around the downtown area.

20 We've been very, very pleased with the
21 cooperation and efforts of the many varied constituencies,
22 both public and private, that have worked with us in these
23 efforts. But, as you know, for all that effort and talk,
24 there still aren't very many cranes building residential
25 in the downtown.

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1 And the reason remains the same -- the fragile
2 economics associated with that. In particular, we've seen
3 construction costs spiraling out of control here recently,
4 and that's why the question before you tonight is so
5 important. Simply stated, as I think Mr. Gross did, we're
6 simply asking you to afford this site the same incentives
7 to place it on a level playing field with other potential
8 housing sites in the downtown area -- namely, to make it
9 eligible to enter into a combined lot development
10 agreement.

11 While I was not around when the initial lines
12 were drawn, I can only presume that this site was not
13 included, probably not to add just one more burden to the
14 site, not because anyone didn't want housing on the site,
15 it's probably just they didn't envision housing being on
16 the site.

17 We have had to, by reason of those economics,
18 seek out sites and think a little bit outside the box in
19 trying to determine where we could place housing in viable
20 locations downtown. And this is one that we think housing
21 will be an extremely desirable use, with the whole mixed
22 use package on the site including the first level retail
23 and the artists' spaces.

24 So, again, I believe the central question is
25 can we just put this one on a level playing field? Although

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1 that is the central question, much has been made about
2 what we would intend to do on Square 406, which is our
3 targeted combined lot development partner. And, again,
4 while I don't necessarily see that as the central question,
5 that is a site where we are the development manager and
6 not the owner. But we wanted to reassure everyone that
7 we remain committed to making the development on Square
8 406 to have a very, very strong street level presence,
9 including strong and high quality arts and retail uses.

10 With that, I guess I would like to turn it
11 over to our architect, George Dove, if you would like to
12 see the proposed project.

13 CHAIRPERSON HOOK: Colleagues, normally in
14 a text amendment we don't normally go through the
15 architectural piece, but if it will help anyone, we can
16 do that. What is your pleasure? I'm seeing heads
17 shaking. Maybe you can give it to us another time after
18 the meeting.

19 MR. BARTLEY: I'm sure you're not hurting his
20 feelings.

21 MS. GIORDANO: That concludes our prepared
22 remarks. We're available for questions obviously from the
23 Commission.

24 CHAIRPERSON HOOD: Colleagues, let's open it
25 up for questions. Any questions? Commissioner Mitten?

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1 VICE CHAIRPERSON MITTEN: Mr. Bartley, is the
2 project on Square 377 contingent on getting this text
3 amendment approval?

4 MR. BARTLEY: Yes, we are contract purchasers
5 of this site at this point in time. The seller actually
6 envisioned putting an office building on the site, we felt
7 like a better use would be residential.

8 VICE CHAIRPERSON MITTEN: Well, I'm curious
9 that you went through the whole Mayor's agent process and
10 got approval contingent on residential and there was, at
11 least in the documents that were provided, there was no
12 mention that at the time going through that whole process
13 that it was contingent on getting this text amendment from
14 us. So are you saying if you don't get the text amendment
15 you're going to go through the whole historic preservation
16 approval process again?

17 MR. BARTLEY: No. No. Let me answer your
18 first question first. I know that the issue of the
19 necessity of entering into a combined lot development was
20 discussed. I don't know if that made it into the Mayor's
21 agent hearing statement.

22 But to answer the second part of your
23 question, we would not go back through the Mayor's agent
24 process. We probably just wouldn't buy the property.

25 VICE CHAIRPERSON MITTEN: I see. Okay. Thank

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1 you.

2 CHAIRPERSON HOOD: Commissioner Franklin.

3 COMMISSIONER FRANKLIN: You say you're the
4 development the manager on Square 406, but then you went
5 on to provide some assurance to the Commission about the
6 character of the street level uses. But typically the
7 development manager doesn't control that, the owner does.
8 Is that correct?

9 MR. BARTLEY: That is correct and I have to say
10 that my group is not responsible for the development
11 management work on Square 406. However, we have a
12 long-standing relationship with the owners of that site
13 and have been working with them on various projects for
14 many, many years. So they would hopefully rely on our
15 advice in those matters.

16 COMMISSIONER FRANKLIN: Is the owner of that
17 square an applicant for this text amendment?

18 MR. BARTLEY: No, they are not.

19 COMMISSIONER FRANKLIN: Should they be?
20 Need they be?

21 MS. GIORDANO: We're not planning any zoning
22 changes on that square.

23 COMMISSIONER FRANKLIN: I see. Okay. Well,
24 then that gets me to the next point. What assurance do
25 we have that if this text amendment were to proceed that

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1 there would actually be any development on the affected
2 parcels for housing?

3 MR. BARTLEY: We are -- I'll certainly speak
4 for my group. We are very much prepared to go and I know
5 that on square 406 they are prepared to begin designing
6 the building immediately.

7 COMMISSIONER FRANKLIN: 406 is?

8 MR. BARTLEY: Yes, 406. And we have again
9 conceptual designs. We have to go back to HPRB for final
10 design review on 377.

11 COMMISSIONER FRANKLIN: But the effect of a
12 text amendment that applies combined lot provisions to
13 these two sites relieves 406 of certain, or it does not?
14 Please educate me.

15 MS. GIORDANO: No, it doesn't. Combined lot
16 development is an optional method of development. It
17 allows you to combine the two sites but doesn't require
18 it and doesn't relieve 406 of any current requirements
19 for that site. It just allows a different allocation of
20 the combined development rights.

21 COMMISSIONER FRANKLIN: But if there were to
22 be -- so what you're telling us is that should the
23 residential lots not be developed, then tantamount to not
24 exercising the combined lot option and 406 would still
25 remain subject to a residential requirement?

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1 MS. GIORDANO: That's correct. In fact,
2 you're gaining a residential requirement on --

3 COMMISSIONER FRANKLIN: I understand. I
4 understand that, I'm just asking what if development
5 didn't proceed on the western sites here. And you're
6 saying that if that were to occur, that 406 would be subject
7 to residential requirements.

8 MS. GIORDANO: The same requirements that it's
9 subject to now. We're not changing the requirements for
10 that site, we're just allowing for an allocation between
11 the two sites to occur under this scenario.

12 COMMISSIONER FRANKLIN: So what if 406
13 proceeded through the development process and was
14 completed on a combined lot assumption, but the
15 residential never did proceed? Therefore 406 would have
16 been developed without the residential requirement.

17 MR. GROSS: Well, the requirement in the
18 downtown development district is that the residential
19 component has to be built at least concurrently with the
20 office of commercial component. So 406, if they don't
21 have a combined lot development with this site, they would
22 have to do a combined lot development with another site
23 anywhere in Housing Priority Area C or else build the
24 residential on site.

25 COMMISSIONER FRANKLIN: Well, suppose they

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1 proceeded with a combined lot proposal and complete 406
2 on the assumption that all the residential is going to
3 be on the other site. Okay? Is what I think you're
4 telling us.

5 MS. GIORDANO: Right. They cannot do that.
6 They have to account for the residential requirement, and
7 the combined lot process there's a covenant process that
8 ensures that the residential is going to happen on the
9 combination lot. There are legal provisions in the
10 combined lot which provides assurance that the residential
11 would happen.

12 COMMISSIONER FRANKLIN: Okay. That answers my
13 questions.

14 MR. GROSS: If I can add an answer to your first
15 question, Mr. Franklin, as to the arts and retail
16 requirements or what JBG or whoever would do on square
17 406, one FAR of combined retail and arts requirement that
18 applies in the downtown arts district is applicable to
19 406 and applies to all three street frontages -- Eighth
20 Street, E Street and Ninth Street. So they're really
21 essentially guaranteeing high quality of those but there's
22 no way of getting out of those. I mean they're
23 requirements in the zone.

24 COMMISSIONER FRANKLIN: And nothing with
25 combined lot would affect that particular requirement?

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1 MR. GROSS: Exactly.

2 COMMISSIONER FRANKLIN: Thank you.

3 COMMISSIONER PARSONS: I'm trying to figure out
4 a way that we can make sure what just occurred between
5 Mr. Franklin and the applicant really occurs. Mr.
6 Bartley, you're the residential component of this. We
7 all know the market is extremely fragile here and when
8 do you plan to start construction on 377?

9 MR. BARTLEY: Well, our targeted start is
10 around the first of next year. There are some existing
11 leases that have some term left to run and actually we've
12 learned it'll probably take us that long to finalize the
13 design of the building. But we would acquire the property
14 immediately and therefore we would have that great
15 incentive to complete our development plans.

16 I might also add that what we're asking here
17 for tonight is not specific to Square 406. We're simply
18 asking to be included in Housing Priority Area C. Is that
19 correct? So we're not limited to 406. We merely pointed
20 out in our application that we intended to do a transaction
21 with 406 to demonstrate the imminence of the transaction
22 because we are a development manager and have some degree
23 of influence, I'll say, over that development.

24 But we could enter into a combined lot
25 development with any other property within Housing

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1 Priority Area C if, for some reason or other, we didn't
2 make ends meet there with 406.

3 COMMISSIONER PARSONS: You have some more
4 acquisitions to conduct in this area? In 377?

5 MR. BARTLEY: We would like to acquire one more
6 parcel. In the Mayor's agent process we presented
7 projects in the alternative. We're a contract purchaser
8 of the parcels that basically run -- if you're familiar
9 with the site -- from Wendy's to what's now the Ritz
10 nightclub. On that property we could build approximately
11 130 to 138 I believe residential units. We are in active
12 and positive negotiations with McDonalds which would
13 basically complete the assemblage over to the Weshler's
14 Building to include that. And that would raise the amount
15 of residential we could develop to approximately 160 some
16 odd units.

17 And, again, they're actively looking for an
18 alternate and more suitable location for their restaurant.

19 COMMISSIONER PARSONS: The McDonald's?

20 MR. BARTLEY: McDonald's yes.

21 COMMISSIONER PARSONS: A very important
22 restaurant.

23 (Laughter.)

24 MR. BARTLEY: Worst case, we may have a
25 McDonald's as one of our retailers in our building. I think

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1 that's --

2 COMMISSIONER PARSONS: Where are all the high
3 school visitors to the city going to go?

4 MS. GIORDANO: There's one on --

5 MR. BARTLEY: I'm sure they won't move too far
6 away.

7 COMMISSIONER PARSONS: So I'm wondering, and
8 I'll ask the staff to think about this, how we could do
9 this for a short period of time. I mean zoning changes
10 run in perpetuity in text cases and I guess I've been around
11 long enough to know how fast the market changes and we're
12 back here in a year saying, gee, it didn't work out,
13 wouldn't you like an office building here.

14 I mean this is a wonderful opportunity that you
15 present us certainly. I mean more housing units in Penn
16 quarter is what we all desire, but I'm fearful that we'll
17 be somewhere in no mass somewhere trying to find a location
18 for housing in order to trade off for something on 406.

19 Maybe Ms. Giordano can help.

20 MS. GIORDANO: Well -- I mean this is really
21 --

22 COMMISSIONER PARSONS: But I don't want to do
23 this for a year or so and then say well see you later.

24 MS. GIORDANO: But this is really a win-win
25 proposition. This increases the residential

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1 requirement, right.

2 COMMISSIONER PARSONS: I understand that.

3 MS. GIORDANO: And I mean it may even be an
4 unprecedented type of request to actually come in and ask
5 that you zone someone's property for a residential
6 requirement that doesn't exist there now.

7 COMMISSIONER PARSONS: That's absolutely
8 incredible isn't it. It really is. Look back ten years.

9 MS. GIORDANO: Look a gift horse in the mouth.

10 COMMISSIONER PARSONS: A few years we'd all be
11 insane here but I'm just trying to make sure that we're
12 not stumbling around a year from now saying, gee, it didn't
13 work out. McDonalds decided they had other opportunities,
14 or didn't have other opportunities. I'm kidding, but I'm
15 just concerned that we're going to do something here that
16 we'll be trading off for something else later, and I'm
17 struggling with that.

18 MR. GROSS: If I could make two points, Mr.
19 Parsons. One would be JBG is a very reputable,
20 established, well funded and so on developer and so I think
21 you have a high percentage chance there. Secondly, I guess
22 I would say in that worst case that somebody did come back
23 and say well the other deal just didn't work, they didn't
24 buy the property, we're back here. How bad would that
25 be? I mean if the numbers just didn't work and you had

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1 to undo it, it probably wouldn't take that long and I guess
2 I would say it sure seems like it would be worth a shot
3 to try it. And I think it's an 80 or 90 percent chance
4 myself and well worth doing. But that's just --

5 COMMISSIONER PARSONS: And what we end up there
6 with in that scenario, just to make sure everybody's clear,
7 is 377 is an office building and 406 still has a housing
8 requirement.

9 MS. GIORDANO: That's correct.

10 COMMISSIONER PARSONS: I just want to ask about
11 Ford's Alley and it has nothing to do with this hearing
12 but since you mentioned it, I've got to ask. The National
13 Park Service, who I have an association with, is down the
14 alley there and Ford's Theater and you said something about
15 you're willing to light the alley. Is that the degree
16 of improvement that's being called for here?

17 MR. GROSS: I think we agreed to work with other
18 property owners on the alley, to be a catalyst for creating
19 a nice experience in the alley. And I don't know that
20 the concept has been developed much further than that,
21 but as you know that should be of great benefit to our
22 development because those are always more difficult units
23 to rent with the alley view, so we're actually very
24 enthusiastic about the possibilities of making that alley
25 experience something other than an alley experience.

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1 COMMISSIONER PARSONS: John Wilkes Booth's
2 footprints. Booth dragging his right foot down the alley.

3 MR. GROSS: There is -- the Mayor's agent's
4 order, it does have a somewhat fuller statement about the
5 intention here and part of is it work with a group called
6 the Heritage Tourism and the other owners, just to make
7 it an amenable place for pedestrians with some activity
8 and, of course, JBG will have the artists' studios
9 accessing there. And I think 930 F may have some active
10 uses accessing that rear entrance to their building which
11 is imminent now. And that's the general intention there.

12
13 COMMISSIONER PARSONS: I'm pretty confident I
14 know the answer to this but the PADC area had nothing to
15 do with square 377, did it?

16 MS. GIORDANO: That's correct.

17 COMMISSIONER PARSONS: But 406 is included.

18 MR. GROSS: Correct.

19 COMMISSIONER PARSONS: Thank you.

20 CHAIRPERSON HOOD: Commissioner Holman.

21 COMMISSIONER HOLMAN: No questions.

22 CHAIRPERSON HOOD: Okay. I just want to touch
23 on a question that Commissioner Parsons, and maybe I need
24 some clarification. You were saying that if it didn't
25 work out, the market didn't allow it, it could be undone.

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1 Am I correct Mr. Gross?

2 MR. GROSS: That's right, Mr. Hood.

3 CHAIRPERSON HOOD: What happens if -- so in
4 other words the 377 will be built before 406 is finished?

5 MR. GROSS: Well they have to be at least
6 concurrent under regulations --

7 CHAIRPERSON HOOD: Simultaneously?

8 MR. GROSS: The actual rule says that you can't
9 get your C of O for the office building until and unless
10 you have your C of O for the apartment house, so they have
11 to be more or less concurrent.

12 Of course, your hearing Monday night will
13 consider some flexibility on that, but the way the rule
14 is
15 Right now they have to be concurrent.

16 CHAIRPERSON HOOD: I guess my concern is I see
17 where you have support from the housing groups downtown,
18 clusters and downtown housing now; one of the things that
19 I see in the community, which I have a problem with, I
20 shouldn't probably take it out here at this case but I
21 want to make you cognizant of it, is that they come to
22 the community with something great, you know, get
23 everybody to piggyback on it, to bring in their piece,
24 and I'm not necessarily talking about this applicant.
25 But to bring in their piece and once their piece gets done,

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1 the other pieces, like Mr. Parsons or Mr. Franklin said,
2 later on they come in front of us and they're trying to
3 change the other piece.

4 And I guess that's just my concern because since
5 I've been here, housing downtown has been a big issue.

6 We have tweaked a lot for that in trying to accomplish
7 that and make it happen and from my standpoint I would
8 like to really see housing downtown happen. I'm not saying
9 that I'm moving downtown, but I would really like to see
10 it happen because I think it would make it more viable.

11 And I was just going off on a soapbox.

12 Okay. Any questions of the Office of Planning
13 to the applicant? Do we have any Commissioners here from
14 ANC-2C? Anyone from ANC-2C? Okay. With that we will
15 have the report of the Office of Planning but before we
16 do that I think, colleagues, we need to waive our rules.

17 Any problems with waiving our rules? No objections?
18 With that the Office of Planning.

19 MS. MCCARTHY: Thank you, Mr. Chair, we will
20 keep our report also very brief.

21 Basically, as the applicant has outlined to you,
22 both site 1 and site 2 are extremely important sites in
23 the downtown because of the E Street theater row, because
24 it's where Penn Quarter, Gallery Place and the retail core
25 come together. The frontages on Ninth Street, 406 and

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1 377 is close to that. Metrorail access, close to the MCI
2 Center and the other major visitor attractions, like the
3 Portrait Gallery and others.

4 The Office of Planning obviously wants housing
5 in the city and housing in the downtown, so the possibility
6 of getting housing on square 377 housing with a housing
7 requirement that housing be built there where there has
8 been no requirement up till this point is clearly a win
9 for the city.

10 We also care about other preferred uses as well,
11 retail and arts. And I think as we had mentioned to the
12 Commission before, we had been actively working with the
13 applicant and the Shakespeare Theatre to see if we could
14 make a larger theater on square 406 work for the
15 Shakespeare. That just does not seem to be working in
16 terms of the owner's program for square 406. The applicant
17 even offered to put the Shakespeare Theatre on square 377
18 and has not totally ruled that out, but Shakespeare seems
19 to be more interested in another site that they're working
20 on.

21 We have communicated to the applicant that we
22 considered it extremely important, since we are going to
23 take the housing requirement off of square 406, which is
24 not only relieving them of a housing requirement on 406
25 but which is also providing that the office space that

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1 will now be able to be built on square 406 is a higher
2 rent and a higher quality office space because of the
3 unobstructed views, without having to take some of the
4 windowed area for housing.

5 But, as you've addressed tonight,
6 unfortunately, they can make a verbal commitment to us
7 that they recognize the importance of that ground level
8 of the exposures on E Street and Ninth and Eighth Streets
9 and that they, too, want to see high quality arts and retail
10 in the building. But there are PADC requirements, there
11 are DD requirements for one FAR of arts and retail on there.

12 That's all we have to work with at this point in time.

13 And, you know, as you've recognized the applicant isn't
14 even the owner of square 406.

15 So although we would have liked to have used
16 more leverage with the creation of the housing on square
17 377, there's no direct connection and it's just undeniably
18 the case that there's more benefit to the city from having
19 that site on square 377 developed as housing than would
20 be the case -- particularly would be the case if it were
21 developed as is the matter of right on there now office
22 space, particularly since as buildings that are
23 contributing buildings to the historic district, it would
24 not end up being high quality office space.

25 The residential use seems much more appropriate

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1 there and this is our opportunity to get 140 to 160 units
2 on that site. We're not losing any FAR of housing from
3 what we would have had. We're gaining FAR.

4 Would we prefer that that housing be across the
5 street from the Portrait Gallery and the Tariff Building
6 instead of the FBI? Yes. It's definitely a more
7 attractive site on square 406 but we're getting more
8 housing.

9 It's on the E Street theater row, there will
10 be retail on the ground floor that will be in consonance
11 with the E Street theater row and certainly will improve
12 what's now, you know, a not particularly attractive block
13 especially in the evening. The FBI is not creating any
14 street life in the evening, so having a building there
15 with eyes on the street, with people coming in and out,
16 is going to really help anchor that block and create the
17 bridge between the rest of the retail core and what's going
18 to be a fabulous area now with the Tariff Building, with
19 the new Kempton Hotel connecting onto square 456 and up
20 to MCI Center.

21 So the kind of activity that's going to provide
22 is very important, as well as the fact that we're going
23 to be able to get more housing downtown than we would
24 normally be able to have. So for those reasons, the Office
25 of Planning is enthusiastically in support of this

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1 application.

2 CHAIRPERSON HOOD: Okay. Thank you, Ms.
3 McCarthy. Colleagues, do we have any questions of the
4 Office of Planning? Commissioner Franklin.

5 COMMISSIONER FRANKLIN: Ms. McCarthy, do you
6 agree with the answers we've been given by counsel to the
7 applicant that there really is no risk that 406 will proceed
8 in a way that will escape the housing requirement if, in
9 fact, combined lot option is not pursued?

10 MS. MCCARTHY: As the rules now stand, the C
11 of O for office on square 406 could not be granted until
12 the C of O for the housing on square 377 were granted.

13 As you know, we'll be before you with the housing text
14 amendments next week and they will propose some delinkage
15 of that timing requirement, but it still will require that
16 a covenant be made to place the full value of any
17 transferred combined lot requirement on a site in addition
18 to whatever housing requirement is on that site.

19 So even under the new rules, while there's
20 slightly less control because you don't absolutely have
21 to have a C of O in hand, you will have now a requirement
22 on site one that will be not only the 2.0 housing
23 requirement that will exist on there because of the
24 extension of DDC-4 but then you will have the additional
25 requirement of the additional 70,000 square feet that is

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1 the housing requirement on square 406 which will now be
2 transferred to site one if the combined lot is executed
3 between the two sites.

4 COMMISSIONER FRANKLIN: Okay. Thank you.
5 The other question is not entirely related to that. The
6 northern part of 406 is showing something as plan. Could
7 you tell us a little more about that.

8 MS. MCCARTHY: The Atlas and LeDroit buildings
9 and the historic works that fill that site, that site was
10 bid out by the GSA, the applicant was an unsuccessful bidder
11 for that site. But the successful bidder was Douglas Jemal
12 who plans to put a small number of housing units there,
13 a Spy Museum or museum to the Cold War basically, and then
14 office space. And that design has been approved by the
15 Pennsylvania Avenue Development Corporation, I'm sorry,
16 by the NCPC as the inheritor of the PADC plan and internal
17 demolition has begun, although recently there doesn't seem
18 to be a lot of action on the site. But there was some
19 initial clearance that took place there.

20 COMMISSIONER FRANKLIN: Thank you.

21 COMMISSIONER PARSONS: Ms. McCarthy, this is
22 a hypothetical, but I think the worst thing that could
23 happen to us on 406 is that it is leased out to a federal
24 agency. Have you thought about that possibility? What
25 I mean by that is what we've learned with many federal

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1 agencies at this point in time is they're so paranoid about
2 security that they're not interested in any ground floor
3 activity.

4 Do you think the rents are high enough here to
5 preclude that? I know that has nothing to do with this
6 case but we've got this requirement for lively ground floor
7 and so forth.

8 MS. MCCARTHY: Unless the federal government
9 were to buy that property outright, and I bet even the
10 federal government probably couldn't take it away from
11 its existing owner.

12 (Laughter.)

13 COMMISSIONER PARSONS: I think you're right.
14 This has been the most problematic square in PADC's
15 history.

16 MS. MCCARTHY: And tenaciously held onto.
17 Unless the federal government were to buy it and then it
18 would become unzoned, the requirement on that site under
19 zoning is for one FAR of arts and retail. So that
20 requirement will be there whether there's a federal
21 government office building on there or not.

22 COMMISSIONER PARSONS: What I meant was a
23 potential lease opportunity for a federal agency, which
24 would get the building going. I wonder if these rents
25 in this location are so high that the federal government

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1 wouldn't be interested.

2 MS. MCCARTHY: Well, the applicant may want to
3 comment on that. The argument that they have made to us
4 is that with the elimination of -- one of the reasons that
5 they did not want to see the theater on that site is it
6 would reduce the amount of office space they could offer
7 on the site to about 190,000 or less. Their comment to
8 us was that there are a number of large users in the market
9 now, particularly some law firms, that are looking for
10 at least a quarter of a million square feet, and I think
11 without the theater it's about 250,000 square feet on
12 square 407.

13 MR. BARTLEY: Again, with the caveat that
14 that's not my group that does that, that sounds about right.

15 And, yes, I think it would be very pricy for the federal
16 government. The view is that it would be a trophy
17 headquarters-type building and one of the last available
18 sites, certainly in the East End. So that's why they've
19 been so patient in their development plans.

20 COMMISSIONER FRANKLIN: Well the Spy Museum
21 might be a great place for the CIA. And we never know
22 how much money they spend.

23 (Laughter.)

24 MS. MCCARTHY: Well that's true. That could
25 possibly be the exception, but I mean it certainly seems

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1 to me when I look at the other possibilities for development
2 in the East End, there is not a single other site which
3 is as conveniently located and as attractive a site as
4 this one.

5 That's one reason why we're so adamant that the
6 ground floor is really important because, you know, the
7 Eighth Street vista, the charm of Eighth Street, the
8 quality of the buildings around there, we're hoping that
9 the public space there just continues to have the same
10 sort of liveliness that you find around the Shakespeare
11 Theatre and around Julea's Restaurant and Market Square
12 and the activity that's taking place on the southern end
13 of that block. I doubt that the federal government will
14 be in the running.

15 COMMISSIONER PARSONS: Mr. Gross attracted my
16 attention to Tab D and now I'm onto some whole new subject
17 here. Thank you Mr. Gross. It has nothing to do with
18 Booth's Alley or footprints or signage or anything.

19 Mr. Dove, are you still in contemplation of a
20 potential 30 foot setback on these historic structures
21 as the Historic Preservation Review Board apparently was
22 urging you to do? You started at ten, you went to 20.
23 They were looking for 30. You have to go back to them
24 again. Where are you in that forum?

25 MR. DOVE: I wouldn't hazard to guess

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1 everything that's going to happen, but I do know that the
2 basis for the Mayor's agent review was clearly 20 feet
3 and it's in the record that that is the position that has
4 been taken and presented and I would say justified by the
5 presentation there.

6 COMMISSIONER PARSONS: As I understand it from
7 this Tab D, if you did that, went back to 30 feet, you'd
8 lose seven units. Is that correct? Seven to eight units?

9 MR. DOVE: Approximately.

10 COMMISSIONER PARSONS: And that would render
11 the project economically unviable? That's what's said
12 in here --

13 MR. DOVE: I mean it's much more complex than
14 that.

15 COMMISSIONER PARSONS: I would hope so. I mean
16 seven units drops the whole thing.

17 MR. DOVE: Well, there's no view down E Street,
18 you're further back. I mean there were many, many issues
19 that we presented and the Mayor's agent ruled on.

20 My understanding is that really the issues that
21 we're going back to the Historic Preservation Review Board
22 are the compatibility of our new architecture to the 20
23 feet and the facades that will be preserved. And at the
24 time, especially given that we were still working with
25 two different alternatives, had not developed the design

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1 to the point that we felt like we were ready to go to that
2 level. And that's why we readily agreed to the process
3 whereby we would need to go back once we've developed our
4 design further.

5 COMMISSIONER PARSONS: So you don't feel any
6 risk any more that this project is unviable because the
7 Board might push you a little farther?

8 MR. DOVE: All I can say --

9 COMMISSIONER PARSONS: I shouldn't ask you to
10 speculate but I mean it was the basis of how fragile this
11 project is but it had to do with the marketability of
12 vistas?

13 MR. GROSS: There's also, Mr. Parsons, the
14 factor of being able to create a viable parking garage
15 underground that has to have certain dimensions or it just
16 doesn't work, and without a certain minimal amount of
17 parking, whether it's an office building or an apartment
18 house, and I also believe that if JBG ultimately couldn't
19 go forward for some reason and it went back to office
20 development, I don't think the office developer would find
21 it feasible to do more than a 20 foot setback either.

22 COMMISSIONER PARSONS: Okay. Well, the reason
23 for my question is getting back to this, is this project
24 really viable? I mean and are we going to be back here
25 in a year saying it didn't work for other reasons. But

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1 you're confident that the 20 feet is it as far as the Board's
2 concerned, even though they have three new members. Watch
3 out.

4 MR. GROSS: But the Mayor's agent approved
5 this level of partial --

6 COMMISSIONER PARSONS: I understand. Watch
7 out. I was here this afternoon sitting there talking to
8 that panel about another project. Okay, thank you. Sorry
9 for the diversion, Mr. Chairman.

10 CHAIRPERSON HOOD: Okay, Mr. Parsons. If you
11 can just remind me where we were. No, I'm just playing.
12 Any other questions of the Office of Planning?
13 Commissioner Mitten.

14 VICE CHAIRPERSON MITTEN: The whole genesis of
15 this was, looking back on the original, the set down report,
16 was to create leverage to have a high quality arts project
17 within square 406. Are you at all concerned that you're
18 basically giving up that leverage?

19 MS. MCCARTHY: I think what concerned us was
20 that the leverage was not very good leverage. That among
21 other things, the applicant always had the option of buying
22 into a combined lot arrangement with square 457, which
23 is way over its housing requirement and therefore, you
24 know, could easily sell 70,000 square feet worth of space.

25 While there were some indications from the GSA

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1 that they would be willing to prohibit that as part of
2 their deal with square 457, and we could pursue that, that's
3 a deal that's fairly far along. It could involve
4 litigation. So in other words, the combined lot did not
5 prove to be as strong a leverage point as we would have
6 liked.

7 And Shakespeare blanched at some of the numbers
8 that we were looking at of what kind of subsidy it would
9 take for them to be able to be in this building because
10 they need more than the one FAR of arts use. They need
11 substantially more because of the fly space, and it would
12 cut into what would otherwise be prime leaseable space
13 in square 406. So if we're talking something like \$50
14 dollars a square foot for that leaseable space and
15 Shakespeare is needing a fairly large amount of that, it
16 was turning out to be a very expensive proposition and
17 not one, even with the city subsidy which we were willing
18 to provide, Shakespeare felt it was probably beyond their
19 fund raising capabilities.

20 VICE CHAIRPERSON MITTEN: Okay. Taking a
21 slightly different twist but on this idea of, you know,
22 creating a subsidy and measuring the subsidy against the
23 benefit to the property owner on square 406, have you done
24 any kind of analysis comparing the benefit to the property
25 owner on square 406 of being relieved of the housing

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1 requirement there versus the additional housing that's
2 being provided on square 377?

3 MS. MCCARTHY: We did have an economic analysis
4 done, or Shakespeare working with us had an economic
5 analysis done, of what the benefit to the property owner
6 was for being freed of the housing requirement on square
7 406. We didn't specifically then compare that dollar for
8 dollar with the benefit of the additional housing on square
9 377, but we knew from all the work that we had done that
10 each new resident that we might be able to bring into the
11 District is a substantial contribution to the District.

12 It's always hard to tell because the market,
13 because there has been no new housing on the market in
14 downtown for so long, we don't have a very good handle
15 on the nature of that market now so it's hard to tell how
16 many of those would be new residents and how many are just
17 existing residents that want to move downtown from being
18 some place else in the city.

19 So it makes it a little hard for us to get an
20 exact sense of what the benefit is but, you know, our sense
21 from the studies that have been done a long time ago about
22 the existing downtown housing was that it was a substantial
23 benefit.

24 VICE CHAIRPERSON MITTEN: I asked Mr. Bartley
25 if they didn't get the text amendment and then he said

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1 that they would probably walk away from the property.
2 Have you done any kind of analysis that would answer the
3 question whether or not this property on square 377 would
4 be developed with residential anyway, given some of the
5 things that I've been hearing and reading, which is you
6 had mentioned that it wouldn't be good quality office space
7 because it's a mid-block lot and faces the FBI and things
8 like that?

9 It's unlikely that they would get the same
10 consideration from the Mayor's agent or HPRB regarding
11 demolition and then that would have an impact, as Mr. Gross
12 mentioned, on the ability to provide adequate parking.

13 And so all of that would seem to suggest that if you did
14 a comparison between what an office development would look
15 like, and all of the constraints that you could imagine
16 that that would have, versus this very nicely designed
17 and planned apartment, it seems like the apartment would
18 win out anyway. Have you done any kind of analysis of
19 that?

20 MS. MCCARTHY: You mean that the apartment
21 would win out in terms of other applicants being interested
22 in building it even if this applicant were not?

23 VICE CHAIRPERSON MITTEN: Right. But
24 considering all the economics of the situation, in spite
25 of the fact that we have this sort of knee jerk reaction

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1 that people always build office instead of residential,
2 given that land prices for housing have just been going
3 up and up and up and there is somewhat of a limit to
4 commercial land prices and particularly when you talk
5 about the constraints on this particular site, it's not
6 clear to me that this wouldn't be a residential project
7 anyway. Have you done any analysis for that?

8 MS. MCCARTHY: We certainly imagined that
9 scenario and looked at it and tried to make our own
10 assessment of how likely that was. It seemed to us the
11 first big risk was it wasn't a great office site, it wasn't
12 a fabulous housing site, there was a real risk that it
13 would just remain as it is for a considerable period of
14 time.

15 And, as Mr. Parsons indicated, while that
16 McDonald's does make a major contribution to feeding the
17 hordes that are going to the FBI, it and the Wendy's next
18 door are not at all major contributions to E Street. So
19 we had that as a risk that nothing would happen.

20 The second sense was well, okay, it's not a great
21 office site, and I certainly agree with you that were it
22 not housing there, the Historic Preservation Review Board
23 would have been reluctant to approve this design. But,
24 you know, maybe it would have been 40 feet back, maybe
25 it would have been 50. On the north side of the block

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1 they approved a hotel that was 60 feet back. Some place
2 at that level, you know, they probably would have been
3 willing to approve something, especially if the site
4 stayed vacant for a while longer and was continuing to
5 be a drag on what otherwise was redeveloped downtown.

6 So it wasn't clear to us that there definitely
7 would not be an office building there, particularly
8 because, as I said, with the lack of new housing actually
9 coming on line, we've been trying to do pro formas in
10 conjunction with the housing amendments that we're
11 bringing to the Commission next week and it's even hard
12 to get a consensus on what is going to be a good rental
13 price to us.

14 Property at 16th and R just went on the market
15 as being rented at almost \$3 dollars a foot. That's
16 getting darn close to office rents.

17 VICE CHAIRPERSON MITTEN: That's what I'm
18 talking about.

19 MS. MCCARTHY: But, you know, then we said it's
20 16th and R, it's not 9th and E.

21 VICE CHAIRPERSON MITTEN: What I'm getting out
22 of what you're saying is the most important thing is that
23 this is a trigger to get this done and get it done soon.

24 Am I correct?

25 MS. MCCARTHY: And of getting a permanent

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1 housing requirement on that site so that, you know, as
2 opposed to speculating whether it may or may not be an
3 office building, we can say at least with certainty there's
4 going to be a housing requirement on that site. If JBG
5 doesn't go forward with their project, somebody that buys
6 that property after them is going to have property now
7 with a housing requirement on it.

8 VICE CHAIRPERSON MITTEN: So you wouldn't
9 support the little back and forth that went on which is
10 if it doesn't work out we'll just reverse it, that had
11 gone on earlier? The little conversation.

12 MS. MCCARTHY: It seemed unlikely to me that
13 the Office of Planning, after going through this this year,
14 would be supporting someone coming back with a text
15 amendment to change it back to office.

16 VICE CHAIRPERSON MITTEN: Okay, that's good to
17 know. Thank you.

18 CHAIRPERSON HOOD: Colleagues, any other
19 questions for the Office of Planning? Okay. The
20 applicant, do you have any questions of the Office of
21 Planning? Okay.

22 Again, I'm going to call for the ANC, anyone
23 from ANC-2C? I don't believe we have anyone here tonight
24 from ANC-2C.

25 Report of other agencies. Report of Advisory

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1 Neighborhood Commission 2C. I just wanted to make a
2 comment about the letter that was in the submissions and
3 colleagues I just wanted to know how we wanted to accept
4 this ANC letter of support.

5 First of all, let me ask the Office of Planning,
6 did ANC-2C support the project or the text amendment?

7 MR. FONDERSMITH: Let me re-look at the --

8 CHAIRPERSON HOOD: Let me just say that the
9 reason why I asked, the way I read this and the way I look
10 at it, in order for one would have to happen for the other,
11 and I believe that's the way they were looking at it.
12 So I just wanted us to be able to put on the record that
13 ANC-2C supported the text amendment as well as the project.

14
15 I mean that's where I was going with it and I
16 wanted to kind of find out from Office of Planning because
17 you all have had discussions with them.

18 MR. ALTMAN: Well to fill time while Mr.
19 Fondersmith is -- we hate downtime in the Office of
20 Planning. But I did want to add to Commissioner Mitten's
21 point to what Ellen McCarthy was saying, is that we're
22 all hoping that this housing market is as strong as it
23 appears to be gaining. But nothing has really
24 materialized yet, so in many ways what we're hoping, I
25 mean we have projects such as JPI at Seventh and E, we

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1 have Gallery Place which is just a block away, two blocks
2 away, but we have not seen yet that market. We want to
3 get our first couple of projects in.

4 So I think our risk analysis was let's do what
5 we can to support these projects. The risks seem pretty
6 minimal at the bottom line, particularly with this, in
7 terms of expanding this area so that if this can help
8 facilitate that and it's still by the way in terms of our
9 thinking, still is within the Penn Quarter neighborhood
10 so helps continue to concentrate the residential
11 neighborhood effect that we were looking for. And,
12 hopefully, these things will give that market, the housing
13 market the push that we all see happening.

14 So I think that was kind of our bottom line
15 analysis of it.

16 VICE CHAIRPERSON MITTEN: Good filler.

17 MR. ALTMAN: John, are you ready yet, or I'll
18 have to start talking about something else. Thank you.

19 CHAIRPERSON HOOD: You know, Mr. Fondersmith,
20 I really think colleagues at ANC-2C did support this
21 project. I mean supported the text amendment.

22 COMMISSIONER FRANKLIN: Well the
23 recommendation, Mr. Chairman, as we cited of I guess a
24 subgroup of the ANC, says that they recommend that the
25 ANC approve and fully support the application of JBG before

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1 all D.C. government agencies, including I assume us. So
2 the application is an application for a text amendment.

3 That will clarify that.

4 CHAIRPERSON HOOD: Thank you, Mr. Franklin.
5 I appreciate that. I just wanted to make sure that we
6 recorded the ANC-2C what they do. They did have a quorum
7 I believe. Okay. With that, so noted. That's in the
8 record.

9 Moving on with our agenda, persons in support.

10
11 MR. LYNCH: Good evening. I've been busy
12 scouting the 22 locations in the CBD that the existing
13 strip clubs can move into now that the City Council has
14 said they can move into downtown. So there's 22 of them
15 coming so get ready.

16 Anyway, I wanted to come down tonight just to
17 strongly support the application. I think the answer to
18 your question, Mr. Parsons, is don't undo it. And I don't
19 think your deliberations should be decided by your
20 considerations for square 406. Square 406 is going to
21 do a combined lot most likely with somebody, whether it's
22 this site or somebody else. That owner is clearly going
23 to do a combined lot.

24 Your decision tonight should be decided on
25 whether or not this site is appropriately zoned for

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1 housing. And I strongly believe that the site in square
2 377 should be for housing, is appropriate for housing.

3 I mean tonight you have an application, and I think it's
4 important that you look at the big picture of what is
5 transpiring here. Tonight you have an application for
6 housing in the 900 block of E Street. Next week,
7 hopefully, DHCD will issue an RFP for housing at the Mather
8 Building in the 900 block of G Street.

9 Next month, Mr. Jemal's going to come in here
10 and ask you to rezone and put covenants for housing in
11 the 900 block of F Street.

12 So what's happening here? We see that sites
13 in the 900 blocks of E, F and G are all going to be proposed
14 for housing. I don't think it's appropriate really for
15 you to be looking at spot zoning. I don't like spot zoning
16 places. I think really you need to look at an area-wide
17 resolution.

18 It's been over ten years since we've looked at
19 the sites that would be appropriate for housing. The
20 market has changed dramatically. I think that it would
21 be very appropriate for the Commission to request of the
22 Office of Planning a review of those areas west of Seventh
23 Street, at least to Tenth Street, if not possibly further
24 up to 12th Street, that would be appropriately included
25 in Housing Priority Area C.

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1 There is a number of historic buildings, low rise
2 buildings and others, in the zone clearly by the trend
3 that you're about to see over the next few weeks, that
4 say, yes, housing belongs in these areas. And I don't
5 think it should be a spot zoning case here, there and
6 everywhere, but rather a comprehensive approach that the
7 Office of Planning should be putting forward.

8 So I would urge you to get the Office of
9 Planning, not that I like to give anybody more work to
10 do, and I know some of the owners will be surprised, but
11 I think it would be highly appropriate to do an area wide
12 review of what should be in Housing Priority Area C.

13 You might also want to take a look at a couple
14 of the sites that were sort of spot zoned out of Housing
15 Priority C, including the old Hecht's site and a couple
16 of the other possibilities in the zone, basically
17 stretching from Penn Avenue north to Mass Avenue and
18 Seventh Street West over to at least Tenth Street. I think
19 that would be the most appropriate.

20 What is not to like about this project? It is
21 going to deliver about 90,000 square feet more, you know,
22 75 to 90 more units than if we don't have it zoned for
23 housing. We'll get 75 to 90 more units. You're going
24 to get 70,000 to 90,000 square feet, hopefully of grade
25 A retail. Hopefully we'll get about 2,500 square feet

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1 of artist space, studio space, which is actually a very
2 critical need at the moment given some other developments.

3 And, hopefully, we're going to get them to work
4 cooperatively with the other property owners to get some
5 improvements and enhancements to Booth's Alley there and
6 work with the other property owners.

7 JBG's absolutely a grade A company and I think
8 they're going to do right by the neighborhood, so I urge
9 you to view the project in terms of the appropriateness
10 of the site for housing, which I think is appropriate,
11 should have been included ten years ago. And also look
12 at an area wide resolution of the situation that's coming
13 before you quickly rather than the spot zoning effort.

14 So those would be my thoughts.

15 CHAIRPERSON HOOD: Okay, thank you, Mr. Lynch.
16 Colleagues, any questions of Mr. Lynch? No questions.

17
18 COMMISSIONER FRANKLIN: Mr. Lynch always gets
19 to the heart of the matter and I appreciate those insights
20 very much.

21 This is an irrelevancy but I'm kind of
22 intrigued. Who named Booth's Alley Booth's Alley?

23 MR. LYNCH: Well I'd refer that to Mr. Parsons.
24 I guess it was John Wilkes Booth himself by his notorious
25 action and use of that alley as his escape route. But

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1 in the papers that I've seen and the Mayor's agents and
2 otherwise, it's been referred to as Booth's Alley. But
3 I could be in error there.

4 COMMISSIONER FRANKLIN: It doesn't have any
5 legal standing does it?

6 MR. LYNCH: No, but it definitely, it's an alley
7 that could be more of a tourist attraction, part of the
8 Heritage tour, and I think a lot of the tourists who visit,
9 you know, Peterson House and the Ford's Theater, it should
10 be highlighted on that tour and it's not. Currently it's
11 just, you know, totally neglected.

12 COMMISSIONER FRANKLIN: I might have a very
13 weird idea, but I just don't like the idea of naming
14 anything for an assassin. That's all. Thank you.

15 CHAIRPERSON HOOD: Any further questions for
16 Mr. Lynch? Okay. Thank you.

17 MR. LYNCH: Thank you.

18 CHAIRPERSON HOOD: Anyone else in support?
19 Okay.

20 Now we'll move right along with our agenda.
21 Persons in opposition. Persons or person.

22 MR. STOUT: Thank you for having me. My name
23 is Rick Stout, I'd frankly rather not be here for a couple
24 of reasons. You brought up the issue of support, whether
25 people support the project or support the zoning. I would

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1 like to start by saying we would generally support the
2 project, we are not in support of the zoning.

3 I represent Bergman's Inc. who's another
4 property owner in Housing District C, and Bergman's Inc.
5 will be adversely affected by this zoning action. Perhaps
6 what I should indicate is that, you know, I think JBG has
7 come forward with a good, creative plan, they're hard
8 working, I think everything they've said tonight was
9 correct and properly represented.

10 It's just the simple fact that, in this
11 particular case, this particular zoning action it will
12 be adverse to my client who has a 250 unit residential
13 project planned on Sixth Street in conjunction with
14 Gallery Place. As the Office of Planning is aware, we've
15 been for the last, what five years, negotiating with
16 Gallery Place. Their access to Sixth Street comes through
17 our property, we've got a combined lot deal in concept
18 worked out with them. Obviously, the delays that that
19 project has suffered has held our project back.

20 But among the things that we looked at in
21 planning to do a residential project were the needs of
22 Gallery Place and obviously our client, like everyone else
23 in the District, is looking at the economics and saying,
24 how do we subsidize this particular use. And everyone
25 looks for linkage TDRs and the economic value of the site

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1 as residential by itself.

2 And simply running our analysis, we look at this
3 particular zoning effort as creating a problem for us,
4 as much as we like the project. I might also add on what
5 Mr. Lynch had to say which is I think, frankly, we could
6 support a broadening of Housing District C. There are
7 just a limited number of sites and I've heard language
8 to the effect that this is the last site. In other words,
9 this is not a game in which you can -- there are winners
10 and losers in this process.

11 And with that said, we find ourselves in
12 opposition to the zoning.

13 CHAIRPERSON HOOD: Go ahead, Ms. Mitten.

14 VICE CHAIRPERSON MITTEN: Well, I'm just not
15 completely clear on the manner in which you're adversely
16 affected. Is it because another site is becoming eligible
17 for combined lot that they wouldn't look to you?

18 MR. STOUT: In essence that's correct. In
19 other words, there are a limited number of places. Housing
20 District C isn't that large. Mr. Lynch referred to the
21 people who effectively gerrymandered their way out of the
22 District when it was first put together. And we find
23 ourselves with a limited number of options, and this
24 particular zoning case, in other words we've had
25 discussions, I don't mean to represent that we have any

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1 kind of an agreement at all, but there's been at least
2 some level of understanding that under the right
3 circumstances if we could move Gallery Place forward, that
4 we would be an appropriate linkage site within the existing
5 Housing District C.

6 VICE CHAIRPERSON MITTEN: But as it stands now,
7 given that Gallery Place is a stalled project, I mean it
8 won't be stalled indefinitely but that people are not
9 looking to your site because Gallery Place is stalled?

10 MR. STOUT: That's correct.

11 VICE CHAIRPERSON MITTEN: So why would that
12 change? I mean that's the problem, not adding another
13 site to the Housing Priority Area it seems to me.

14 MR. STOUT: Well, the reality is that the site
15 that you're referring to that wants to unload its housing
16 requirement is also effectively stalled. And, again, I'm
17 not denying this creates a mechanism perhaps to unlock
18 that, but it comes at the expense of what we've been
19 planning for many years as a residential project. It just
20 means that one of the things that would underpin our project
21 gets pulled out from under it.

22 And I apologize, frankly, for not coming forward
23 much sooner. We weren't really aware, I didn't get the
24 notice of this particular action. I thought it was going
25 to be handled in some way and the case, I don't know if

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1 it's a case, but the hearing coming up next Monday, and
2 then discovered that in fact it was a separate matter.

3 So we're coming forward now.

4 VICE CHAIRPERSON MITTEN: Thank you.

5 COMMISSIONER FRANKLIN: Are you telling us,
6 sir, that you've been in some sort of negotiation with
7 the owners of 406?

8 MR. STOUT: It's a question of how you want to
9 characterize that, but we've certainly been in discussion
10 about the possibility of a linkage transaction, yes.

11 COMMISSIONER FRANKLIN: With 407 or was it
12 406. Well, I don't know that the Commission can base its
13 judgments on what are basically competitive market
14 conditions amongst different developers. I mean in a
15 sense, you're asking us to basically give you a potential
16 leg up in this process.

17 MR. STOUT: Well, I can't disagree with you
18 entirely. The fact is the status quo has been that Housing
19 District C was limited. It's the game that everybody had
20 to play and it's been this way for quite a few years.
21 I don't think, frankly, you had many owners who were
22 thrilled to have the housing requirement when it was
23 originally imposed. It became a burden for everyone in
24 the District and everyone looked for ways they might work
25 their way out of it. And it's taken a much better market

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1 and a lot of work on a lot of people's parts to find ways
2 to get around this.

3 And all I'm indicating is that by changing
4 effectively the rules in mid-stream, it means that
5 thousands of dollars that have been spent in a planning
6 process and projections that we have made on what our
7 sources of revenues would be to support this residential
8 project, now may very well not hold water. That's the
9 simple reality.

10 Again, I'm making a point. I think what JBG
11 has done is very creative, it makes perfectly good sense
12 as a way to solve the problem that exists in Lot 406.
13 But it happens to be adverse to my client.

14 COMMISSIONER FRANKLIN: But if we did not act
15 and did not, you know, grant the application, there's no
16 assurance that your client would be able to strike a deal
17 on 406 is there?

18 MR. STOUT: That's absolutely correct because
19 we don't have any assurance that Gallery Place will move
20 forward.

21 COMMISSIONER FRANKLIN: I see. Thank you.

22 CHAIRPERSON HOOD: Sir, if you'd just hold your
23 seat. Colleagues, any other questions? Okay. Thank
24 you. And your opposition is so noted.

25 MR. STOUT: Thank you.

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1 CHAIRPERSON HOOD: Closing remarks by the
2 applicant.

3 MS. GIORDANO: I don't think that that's quite
4 the procedure in the rule making but I'm happy to say I
5 don't have any further --

6 CHAIRPERSON HOOD: Maybe I can get you to do
7 my agendas that I have here in front of me because I usually
8 just read what I have in front of me and it has closing
9 remarks by the applicant. Unfortunately.

10 MS. GIORDANO: Okay. We would urge the
11 Commission to approve this amendment and to do so
12 expeditiously. We think that it will facilitate a very
13 worthwhile project for the city that furthers their
14 planning policies and the downtown goals and objectives.
15 Thank you.

16 CHAIRPERSON HOOD: Okay, thank you, Ms.
17 Giordano. That was a chance for you to get up and still
18 do closing remarks.

19 Colleagues, I don't know how you choose to
20 proceed, but I will say that one of the questions that
21 I was going to ask earlier and not knowing what Mr. Stout's
22 point was, was that it seems that, and I probably have
23 stated this previously, it seems that whenever we do
24 something like this and we're trying to accomplish
25 something, we always seem to cause another effect. And

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1 we always seem to do something else, that it causes us
2 to do something else.

3 So I guess my point is I know there's some harm
4 somewhere and, again I would agree with Commissioner
5 Franklin, we have to deal with what's in front of us.

6 So, with that, colleagues, how would you like
7 to proceed? Do we want to vote tonight? Or vote at
8 the next meeting?

9 COMMISSIONER FRANKLIN: Well, I'm prepared to
10 vote tonight, Mr. Chairman.

11 CHAIRPERSON HOOD: I'll accept any motions.

12 COMMISSIONER FRANKLIN: Well, to get the ball
13 rolling, I'll move to approve the application in Case No.
14 00-20TA.

15 CHAIRPERSON HOOD: Okay, it's been moved. Is
16 there a second?

17 COMMISSIONER HOLMAN: To keep the ball rolling
18 I'll second it.

19 CHAIRPERSON HOOD: It's been moved and properly
20 second. All those in favor by the usual sign of voting.

21 (Chorus of Ayes.)

22 Any opposition? So ordered. Staff, would
23 you record the vote.

24 SECRETARY BASTIDA: The staff would record the
25 vote 5-to-0. Mr. Franklin moving and Mr. Holman

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1 seconding, and the rest of the Commission has voted in
2 the affirmative. Thank you.

3 CHAIRPERSON HOOD: Okay. Thank you for the
4 hearing. I have a closing statement but I'm a little
5 scared to read it, so what I will do is just adjourn this
6 hearing.

7 (Whereupon, the above-mentioned matter went off
8 the record at 8:33 p.m.)

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