

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

In the matter of:

1901-1917 N Street Associates

Case No. 96-11

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

Monday,
May 19, 1997

The above-entitled matter came on for hearing, pursuant to notice at 7:10 p.m.

BEFORE:

MAYBELLE TAYLOR BENNETT, Chairperson
HERBERT FRANKLIN, Commissioner
JOHN G. PARSONS, Commissioner

STAFF PRESENT:

MADELIENE DOBBINS, Office of Zoning
STEFANIE BROWN, Office of Zoning
DALE COLBY, Office of Planning
NATE GROSS, Office of Planning

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APPEARANCES :

On Behalf of the Applicant:

NORMAN M. GLASGOW, Esquire

of: Wilkes, Artis, Hedrick & Lane
Washington, D.C.

On Behalf of ANC:

DOROTHY MILLER

of: Advisory Neighborhood Commission (ANC-2A)
c/o St. Mary's Court
725 24th Street, NW
Washington, D.C. 20037
(202) 659-0011

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<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Melvin Lenkin	15			
Randy Harrell	17			
Steven Sher	21			
(Rebuttal)				
Steven Sher	57			

OPENING STATEMENTS: PAGE:

Dorothy Miller,
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CHAIRPERSON BENNETT: Are we ready?

Good evening, ladies and gentlemen. My name is Maybelle Taylor Bennett, I'm Chairperson of the Zoning Commission for the District of Columbia. Joining me this evening are Commissioners Franklin and Parsons.

I declare this hearing open. The case that is the subject of this hearing is Case No. 96-11, which is an application from the law firm of Wilkes, Artis, Hedrick and Lane on behalf of the 1901-1917 N Street Associates, requesting the Zoning Commission for the District of Columbia for a change of zoning from DCOD/SP-2 to DCOD/C-3-C for Lot 84, Square 115 located at 1300 19th Street, N.W.

The applicant is requesting the Commission to rezone the subject property from DCOD/SP-2 to DCOD/C-3-C to conform the subject site's zoning to the Comprehensive Plan General Land Use Map designation of the property as "high density commercial" and to allow for wider variety of tenants than is allowed for under SO zoning.

Notice of today's hearing was published in the D.C. Register and the Washington Times on april 4th 1997. This hearing will be conducted in

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1 accordance with the provisions of 11 DCMR 3022. The
2 order of procedure will be as follows:

3 First, preliminary matters including
4 certification of the maintenance of posting, and the
5 identification of parties.

6 Second, the applicant's case.

7 Third, the report of the Office of
8 Planning.

9 Fourth, the report of other agencies.

10 Fifth, the report of the Advisory
11 Neighborhood Commission 2B.

12 Sixth, the parties and persons in
13 support.

14 Seventh, parties and persons in
15 opposition.

16 The Commission will adhere to this
17 schedule as strictly as possible. Those presenting
18 testimony should be brief and non repetitive. If
19 you have a prepared statement, you should give
20 copies to staff and orally summarize the highlights
21 only. Please provide copies of your statement
22 before summarizing.

23 Each individual appearing before the
24 Commission must complete two identification cards
25 and submit them to the reporter at the time you make
26 your statement. If these guidelines are followed,

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1 an adequate record can be developed in a reasonable
2 length of time.

3 The decision of the Commission in this
4 contested case must be based exclusively on the
5 public record. To avoid any appearance to the
6 contrary, the Commission requests that parties,
7 counsel and witnesses not engage the members of the
8 Commission in conversation during any recess or at
9 the conclusion of the hearing session. While the
10 intended conversation may be entirely unrelated to
11 the case that is before the Commission, other
12 persons may not recognize that the discussion is not
13 about the case. The staff will be available to
14 discuss procedural questions.

15 All witnesses who wish to testify,
16 please rise to take the oath.

17 All right, let's deal with preliminary
18 matters first.

19 MS. DOBBINS: Good evening, Madam
20 Chairman and Members of the Commission. I have the
21 affidavit of maintenance of posting for this
22 application of this case and it is in order.

23 CHAIRPERSON BENNETT: Thank you.

24 MS. DOBBINS: There are no formal
25 requests for party status in this case as of yet.

26 CHAIRPERSON BENNETT: All right.

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1 Then the parties will be the applicants
2 and Advisory Neighborhood Commission 2B.

3 MS. DOBBINS: 2B.

4 CHAIRPERSON BENNETT: Thank you.

5 Let's move on then with the Applicant's
6 case.

7 Come forward. You can't speak from the
8 audience.

9 MS. MILLER: My name is Dorothy Miller.
10 And that borders, the street runs between 2-A --

11 CHAIRPERSON BENNETT: Ms. Miller?

12 MS. MILLER: -- and 2-B. I'm Dorothy
13 Miller, ANC --

14 CHAIRPERSON BENNETT: Okay, I want you
15 to make sure your microphone is on.

16 MS. MILLER: Which button do you push?

17 CHAIRPERSON BENNETT: Give us your home
18 address.

19 MS. MILLER: Thank you. I'm Dorothy
20 Miller from ANC 2A and this borders our area. The
21 street runs between 2-B and 2-A. We have talked to
22 2-B and we had this schedule and I have a letter
23 that I brought in from our ANC asking that we have
24 time to respond.

25 CHAIRPERSON BENNETT: Okay. Well, we
26 don't have a problem with your responding. Tell me

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1 again where you are in relationship to this case as
2 opposed to 97-7, where is your border?

3 MS. MILLER: N Street is the border,
4 yes. And the south side of N Street is 2-A and the
5 north side of N Street is 2-B.

6 CHAIRPERSON BENNETT: I see. I don't
7 have a problem with that.

8 Colleagues, do you have any difficulty
9 with that?

10 COMMISSIONER FRANKLIN: No.

11 COMMISSIONER PARSONS: No.

12 CHAIRPERSON BENNETT: So why don't we
13 then admit A and C-2-A and 2-B as parties. And we
14 will probably leave the record open for some time.

15 MS. MILLER: Oh, that would be very
16 good.

17 CHAIRPERSON BENNETT: Okay. Because I
18 have given a letter --

19 MS. MILLER: We have that.

20 CHAIRPERSON BENNETT: -- I had four
21 Commissions that I could reach --

22 MS. MILLER: Okay.

23 CHAIRPERSON BENNETT: -- scheduled
24 tonight.

25 MS. MILLER: Okay.

26 CHAIRPERSON BENNETT: Thank you.

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1 All right, then let's move on the
2 Applicant's case.

3 Ms. Glasgow?

4 MR. GLASGOW: Madam Chair, I just wanted
5 to have someone check that ANC boundary because when
6 we did the 1920 N Street case we were an ANC-2-B,
7 which was on the south side of N Street.

8 CHAIRPERSON BENNETT: When was that
9 case?

10 MR. GLASGOW: That case was last year.

11 CHAIRPERSON BENNETT: Okay.

12 Can someone on staff check where that
13 border is, because I know there have been some
14 slight adjustments over the years go ANC borders.

15 MR. GLASGOW: Yes, there have been.

16 CHAIRPERSON BENNETT: And I'm not
17 certain. But certainly, if I were to err, I'd just
18 as soon err in the direction of being inclusive than
19 not. And generally where there are shared borders
20 we would allow both ANC's to participate as parties.

21 MR. GLASGOW: Sure. I just wanted to
22 make sure of what the proximity is.

23 CHAIRPERSON BENNETT: No problem.

24 Do we have an answer?

25 MS. DOBBINS: Yes.

26 CHAIRPERSON BENNETT: Okay. That was

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1 fast.

2 MS. DOBBINS: Yes, Madam Chair, looking
3 at the map, and that's the new map that shows the
4 ANC's after the redistricting, it is adjacent.

5 CHAIRPERSON BENNETT: All right.

6 MS. DOBBINS: It's right at the very
7 corner, and it goes right between. There is lot, I
8 mean Square 1 --

9 CHAIRPERSON BENNETT: 15.

10 MS. DOBBINS: -- 15 is in 2-B and the
11 next adjacent lot was 99 and is in 2-A.

12 MR. GLASGOW: Square 99?

13 MS. DOBBINS: Yes.

14 MR. GLASGOW: Okay, I know where that
15 is.

16 CHAIRPERSON BENNETT: Thank you.

17 Why don't we proceed with the
18 applicant's case. ANC 2-A is a party, ANC 2-B is a
19 party and of course the applicant is a party.

20 MR. GLASGOW: Good evening Members of
21 the Commission. For the record my name is Norman M.
22 Glasgow, Jr. of the law firm of Wilkes, Artis,
23 Hedrick and Lane representing the applicant in Case
24 Number 96-11.

25 Here with me this evening are Mr. Melvin
26 Lenkin on behalf of the ownership interest. Seated

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1 to my immediate right also is Mr. Randy Harrell, and
2 Mike Jones is in the audience, and they are Smithy
3 Braedon here with Mr. Lenkin.

4 We also have in the audience Mr. Steven
5 Sher who is our expert land planning witness. He's
6 been accepted by this Commission as an expert on a
7 number of occasions.

8 CHAIRPERSON BENNETT: Once or twice.

9 MR. GLASGOW: Mr. Robert Morris was not
10 able to attend the hearing tonight, but his report
11 is a part of the record, and also he submitted a
12 report in the 1920 N Street case.

13 We do not believe there are any traffic
14 issues connected with this application, and the
15 traffic report is included as Exhibit J of the pre-
16 hearing statement.

17 With the permission of the Commission
18 I'd like to give a brief opening statement and then
19 proceed with the testimony of the witnesses.

20 The application involves a 17,400 square
21 foot parcel of property located at the northwest
22 corner of the intersection of 19th and N Streets,
23 N.W. The site is presently zoned DC\SP-2 which the
24 applicant desired to have rezoned to DC\C-3-C
25 consistent with the comprehensive plan land use map
26 dated May of 1995.

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1 It is noteworthy that this site has been
2 in the high density commercial land use
3 classification since the original land use map was
4 issued in 1985, as will be testified to in more
5 detail by Mr. Sher. Therefore, we have a site which
6 has been designated high density commercial for
7 approximately 12 years yet has an underlying zoning
8 of SP-2, which as the Commission is aware, permits
9 only a 3.5 FAR of limited office use subject to BZA
10 approval. The applicant submits that this zoning is
11 not consistent with the comprehensive plan.

12 The Commission has previously found, and
13 that's in finding of fact 15 in Zoning Commission
14 Order Number 804 dated November 1st 1996, and a copy
15 of that order is attached as Exhibit L to the pre-
16 hearing statement, and it states "The generalized
17 land use of the comprehensive plan dated May '95
18 places the subject site in the midst of a large area
19 recommended for high density commercial use. The
20 existing DCOC-SP-2 zoning is not consistent with the
21 comprehensive plan designation of high density
22 commercial." This is from the 1920 N Street
23 decision.

24 As will be testified to by the witnesses
25 in this application there is no comprehensive plan
26 distinction between the subject site and the site

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1 located immediately across the street to the south.

2 With respect to timing, which is an
3 issue that was raised by the Office of Planning
4 Report, the applicant's witnesses will testify as to
5 the impact of timing on this case.

6 However, I would note that under the
7 comprehensive plan and the Zoning Enabling Act there
8 is no timing standards imposed on the applicant, but
9 the requirement is that zoning shall not be
10 inconsistent with the comprehensive plan.

11 Nonetheless, the applicant is prepared
12 to address that issue, but by way of background the
13 record reflects the following time frames proceeding
14 with this application:

15 The application was filed on September
16 13th 1996; the application was set down for hearing
17 on March 10th 1997, and that was delayed in some
18 part due to the request of the Office of Planning;
19 and now we have a public hearing in May of 1997. So
20 we're already at approximately nine months after the
21 filing of the application with the Office of Zoning.

22 The applicant has reviewed and is aware
23 of the proposal submitted to the Commission by the
24 Office of Planning to address the existing status of
25 the SP zone. And applicant's counsel has also met
26 with the Office of Planning representatives this

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1 past fall concerning those SP zoning efforts.

2 Suffice it to say we all hope that the
3 SP hearings scheduled for July for the text in
4 September for the map will all go quickly and
5 smoothly, however there are many issues raised in
6 that case and several neighborhoods are impacted.
7 We therefore do not wish to see our faith tied to
8 that case, particularly when we have a solid basis
9 for proceeding forward at this time when an existing
10 90 foot high 5.5 FAR office building constructive
11 pursuant to BZA order in 1978.

12 We therefore, with a case, we're going
13 forward in the central employment area, and the site
14 has already been approved with a significant
15 structure which is surrounded on all sides by
16 streets and alleys, so we in effect has a stand-
17 alone building which confronts 3-C-3 zoning already
18 on two sides, across N Street and also to the east.

19 If there are no preliminary questions, I
20 would like to proceed with the testimony of the
21 witnesses.

22 INVESTIGATOR CARPENTER: Please.

23 MR. GLASGOW: Mr. Lenkin.

24 Whereupon,

25 MELVIN LENKIN

26 was called as a witness, and having been first duly

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1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 MR. GLASGOW: Would you please identify
4 yourself for the record.

5 MR. LENKIN: My name is Melvin Lenkin,
6 and I am one of the general partners in the owning
7 entity for this property.

8 MR. GLASGOW: When did you construct the
9 building?

10 MR. LENKIN: The building was
11 constructed in 1978, give or take a few months.

12 MR. GLASGOW: Was that pursuant to BZA
13 approval?

14 MR. LENKIN: Yes, it was in accordance
15 with the approval, in accordance with the approval,
16 with the 5.5 FAR and a 90 foot height.

17 MR. GLASGOW: Is that building presently
18 occupied by a single master lease tenant?

19 MR. LENKIN: Yes.

20 MR. GLASGOW: When will the building be
21 vacant?

22 MR. LENKIN: The building will be vacant
23 in approximately 18 to 24 months.

24 MR. GLASGOW: And will that be 100
25 percent vacancy at that point?

26 MR. LENKIN: Assuming the tenant does

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1 not exercise a option that we've given them for
2 about 40 percent of the building. And it will be
3 100 percent vacant at that time.

4 MR. GLASGOW: Does the SP designation
5 that you currently have adversely affect the leasing
6 of the building?

7 MR. LENKIN: Yes.

8 MR. GLASGOW: And has that SP
9 designation caused you to proceed with this
10 application at this time?

11 MR. LENKIN: Yes.

12 MR. GLASGOW: Do you have any idea what
13 any delay in cost is with respect to vacancy and
14 leasing of the building?

15 MR. LENKIN: Of the proposed rentals
16 after rehabilitating the entire building would
17 occasion somewhere between \$250-\$300,000.00 a month
18 in gross rental that would be lost.

19 MR. GLASGOW: And have you looked at the
20 SP designation insofar as it affects the value of
21 the building and real estate tax assessments?

22 MR. LENKIN: Over the last five to six
23 years the reductions in value of that building which
24 we believe was partially, if not all, occasioned by
25 the SP zoning has caused the taxes on the building
26 to be reduced by almost \$400,000.00 a year.

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1 MR. GLASGOW: Do you have anything else
2 to add in your testimony at this time?

3 MR. LENKIN: Not at this time.

4 MR. GLASGOW: I'd like then to proceed
5 to the next witness. I'd like to have them identify
6 themselves for the record.

7 Whereupon,

8 RANDY HARRELL
9 was called as a witness, and having been first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 MR. GLASGOW: Mr. Harrell, would you
13 please identify yourself for the record?

14 MR. HARRELL: I'm Randy Harrell. I run
15 the downtown Washington office of Smithy Braedon.
16 I've been in commercial real estate concentrating on
17 leasing office space in downtown Washington for
18 approximately 13 years.

19 I'll speak to two major quantifiable
20 impacts that the zoning has on the property and our
21 ability to market and effectively lease it at this
22 stage. One involves the practicality of time
23 tables, the other involves the quantification of the
24 perspective tenant market today relative to the
25 percent, the percentage relative to those that we
26 can accommodate under the current zoning.

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1 We were hired about four months ago to
2 assess the property, establish, project some rents.
3 We informed Mr. Lenkin and his partners of the
4 potential negative impact of the current zoning.

5 By way of background, the current master
6 tenant that's in there now, a law firm, is actively
7 negotiating for an alternate location right now. We
8 expect that decision to be made officially in the
9 next two to four weeks. We have a construction time
10 table that for the rehabilitation of the building
11 that's going to take somewhere between 12 and 14
12 months to completely rehabilitate the building.

13 A distinct marketing advantage that we
14 feel we have and need in this highly competitive
15 marketplace with 7-8 million square feet of
16 comparable quality office space, comparable to 1300
17 19th Street available today, is the ability to allow
18 a lead tenant a hand in the architectural design for
19 the renovation of this building. There is a value
20 there that a tenant will pay to, for lack of a
21 better term, have their "signature" on this
22 property.

23 From the time table of 12 to 14 months
24 of construction time, it takes, from my experience
25 in this business in leasing a couple of million
26 square feet over the last 12 to 13 years, it's going

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1 to take anywhere from 8 to 16 months to an initial
2 presentation with a viable prospect through
3 negotiations, through design and implementation to
4 reach a satisfactory lease agreement from which we
5 can then commence construction. As of today that's
6 going to put us in mid 1999, standing right here
7 today.

8 Mr. Lenkin testified moments ago that
9 the rent is somewhere between \$250-\$300,000.00 a
10 month, and at this stage of the game we're looking
11 at what we believe is virtually a day for day or
12 month to month delay for cost based upon any delay.

13 My second category that I want to speak
14 to is the tenants that we know in track, that our
15 office tracks, that are in the market for space
16 between anytime between now and the next 24 to 30
17 months.

18 By way of example, the existing master
19 tenant of the building is making a decision in the
20 next 30 days for late '98, early 1999 occupancy. So
21 large tenants make decisions that far in advance so
22 that they can get the design, implementation and the
23 impact on their new home that they need to have.

24 There are about 10 million square feet
25 in aggregate of active requirements by both public
26 sector, private sector tenants that conform, and

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1 private sector tenants that do not conform to the
2 current zoning. Of that approximate 10 million
3 square feet our audience today that we can approach
4 to be a tenant in this building is only about 40
5 percent. We're at a distinct marketing
6 disadvantage.

7 By way of example there is a particular
8 tenant that we approach that does not conform to the
9 current zoning. We informed them of the process
10 we're going through and the reaction was exactly as
11 expected, we can't afford to invest our time at this
12 stage of the game on a zoning contingency basis, and
13 that's a reaction that we've received and will
14 continue to receive from the other 60 percent of the
15 tenant marketplace.

16 MR. GLASGOW: I have no further
17 questions or statements for this witness.

18 CHAIRPERSON BENNETT: Thank you.

19 Why don't you bring the other witness up
20 and then we'll open it up to the whole panel.

21 MR. GLASGOW: Mr. Sher.

22 Whereupon,

23 STEVEN E. SHER

24 was called as a witness, and having been first duly
25 sworn, testified as follows:

26 DIRECT EXAMINATION

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1 MR. GLASGOW: Mr. Sher, would you please
2 identify yourself for the record and proceed with
3 your testimony?

4 MR. SHER: Madam Chair and Members of
5 the Commission, for the record my name is Steven E.
6 Sher, the Director of Zoning Services with the law
7 firm of Wilkes, Artis, Hedrick & Lane.

8 I have examined this application and
9 would like to discuss a number of the relevant
10 features that may be of interest to the Commission.
11 What Ms. Brown is handing you is a short outline
12 summarizing many of the points which Mr. Glasgow has
13 already mentioned in his opening statement, but of
14 course he can't testify and I can, so I'm going to
15 go over them real quick because you've heard them
16 all already.

17 The property is 1300 19th Street. It's
18 at the northwest corner of the intersection of 19th
19 and N Streets, approximately 17,408 square feet.
20 It's rectangular with one corner missing.
21 Approximately 219 feet of frontage on N Street and
22 80 feet of frontage on 19th Street. There is a plat
23 which is marked as Exhibit D of the pre-hearing
24 statement. It's improved with a seven story 5.5 FAR
25 office building completed in 1979. The building was
26 approved by the BZA in case number 12415. That

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1 order of the Board is Exhibit M of the Applicant's
2 pre-hearing statement.

3 The property is located on the southern
4 side of Dupont Circle within the central employment
5 area and on the edge of N within the general office
6 building district. The Sanborn plat showing the
7 square and the squares to the north and the south is
8 Exhibit 8 to the Applicant's pre-hearing submission.

9 To the north you find townhouse type
10 offices along 19th Street and Sutherland Place,
11 followed by the Henrich Mansion, three high-rise
12 office buildings in the triangular square abounded
13 by 19th Street, Sutherland Place and New Hampshire
14 Avenue.

15 To the east you have high-rise office
16 buildings across 19th Street. To the south high-
17 rise office building at 1920 N Street, which this
18 Commission may remember from a zoning case that was
19 heard in June of last year, with two smaller
20 buildings sort of bookending that building on either
21 end of that block. Followed by more high-rise
22 office buildings south along 19th and M Streets.

23 To the west you have the Lauren
24 Condominium building which is residential and
25 professional offices, chancery offices for the
26 Government of Egypt, and the little triangular

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1 square of New Hampshire Avenue. And then across New
2 Hampshire Avenue further to the west residential
3 uses. There is also a hotel to the southwest of
4 this site at the corner of New Hampshire Avenue and
5 N Street.

6 The existing zoning f t his property is
7 DC or DCOD, take your choice, /SP-2. And I have
8 attached a map which shows the subject property
9 located in red. We have proposed that that property
10 be rezoned to DCOC/C-3-C. And if you look at the
11 map behind that one you'll see what the zoning
12 pattern would look like if this application were
13 approved and if the rezoning which the Office of
14 Planning has proposed in the SP map amendment case
15 are also approved, some of those go beyond straight
16 office zoning, but that's what the zoning pattern
17 would look like when the day is done if both of
18 these cases are approved.

19 As to what happens on this site, the
20 Dupont Circle overlay really is of no impact. We're
21 not talking about a plan development here. So what
22 you're looking at is the change from SP-2 to C-3-C.
23 There is no change in the permitted height, it's 90
24 feet. The FAR goes from 5.5 which was built and
25 which was what was permitted under SP-2 when the
26 building was built to 6.5 under C-3-C, but of course

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1 you have an existing building there.

2 The use, the difference between SP and
3 C-3-C you allow a hotel as a matter of right. You
4 allow retail service as a matter of right, but as
5 you heard from Mr. Lenkin and Mr. Harrell, the
6 primary impact is broadening the scope of office
7 tenants who might rent the existing building.

8 With respect to the comprehensive plan
9 in my view this is basically another zoning
10 consistency case. As you've heard described and as
11 you will see on the last map attached at the back,
12 this property is in the high density commercial area
13 on the generalized land use map which is in the
14 central employment area. And in fact New Hampshire
15 Avenue creates a hard line boundary on that map, and
16 in fact it's 120 feet wide and there is a
17 substantial difference between the east side of New
18 Hampshire Avenue and the west side of New Hampshire
19 Avenue.

20 Having said that I would like to focus
21 for a couple of minutes on the report of the Office
22 of Planning on a couple of issues that they've
23 raised. We've read that report and I'd like to
24 address a few things that I think the Office of
25 Planning is a little bit off the mark on.

26 Number one, the OP report talks about

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1 the neighborhood ring policies and how they might
2 apply to this site. But if you read the
3 comprehensive plan the neighborhood ring policies
4 apply outside the central employment area. The Ward
5 2 plan talks about the monumental core surrounded by
6 the central employment area, surrounded by a ring of
7 neighborhoods, Foggy Bottom, Dupont Circle, Logan
8 Circle, Shaw, etcetera. This site is within the
9 central employment area. And in my view, reading
10 the plan, the neighborhood ring policies don't
11 apply.

12 Second, the Office of Planning talks
13 about spot zoning, that somehow if the Commission
14 were to approve this application we'd wind up with
15 spot zoning. I'm not sure if that was a reference
16 to this site or to what would be left on other
17 sites. But in any event, if you look at the zoning
18 map which is the proposed zoning map, the second of
19 the two zoning maps that I have attached to this
20 outline, you'll see that there is no spot zoning no
21 matter which way you look at that. This property is
22 contiguous and would be contiguous to C-3-C zoning
23 on both the east and the south. The properties
24 around it would be SP-2 as Office of Planning has
25 proposed, but I don't see spot zoning somehow being
26 an issue in this case.

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1 Third, as Mr. Glasgow mentioned, with
2 respect to consistency of the SP district with the
3 high density land use designation in the
4 comprehensive plan, this Commission has previously
5 found in two cases that SP-2 is not consistent with
6 high density commercial. And you have copies of
7 those orders, I think one, at least one of them is
8 already in the record. Ms. Brown is going to give
9 you the other one. One is 1920 N Street, right
10 across the street, the other was National
11 Association of Homebuilders. Finding of fact 15 in
12 one order, finding of fact 7 in the other order.
13 This Commission made a finding of fact, SP-2 is not
14 consistent with the high density commercial
15 designation under comprehensive plan.

16 The next issue, Lauren Condominium, that
17 is the building located immediately to the west of
18 the subject site, across the alley on the east side
19 of 20th Street between Anne and Sutherland Place,
20 and New Hampshire Avenue comes across there.

21 I don't think I understand what the
22 relevance of that case is to the zoning that ought
23 to be on this property. What's here is 1300 19th
24 Street, this lot, this square. The Commission needs
25 to make a decision on this case. And I know I
26 answered Mr. Parsons the last time we were here 11

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1 months ago about what the zoning ought to be on that
2 whole area, and I still believe that to be the case.
3 But that case isn't before you tonight, what's
4 before you tonight 1300 19th Street.

5 Beyond that there is a misstatement I
6 think about what the intent of the Lauren
7 Condominium is and that is they do not intend to
8 convert that entire building to office space. It's
9 a mixed use building, apartments and professional
10 offices, and that is what the intent is to keep it
11 as. So I just think that ought to be clear on the
12 record.

13 There is also a reference to a
14 comprehensive plan amendment which would affect the
15 Lauren property, but which wouldn't affect this
16 property. That is a proposed amendment that Office
17 of Planning has submitted to change the generalized
18 land use map. This site would remain high density
19 commercial. So if in fact there is a reason to
20 distinguish between one and the other, the Office of
21 Planning has made that distinction. So in my mind
22 we're talking about high density commercial here and
23 that's what the focus ought to be.

24 And lastly, the SP text amendment
25 alternative I think fails as a potential alternative
26 for three reasons. First, it doesn't address high

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1 density commercial, with the emphasis on the "high."
2 SP-2 permitting only 3.5 FAR, even though again the
3 existing building 5.5.

4 Second, the existing building remains a
5 non conforming structure. And while many would say
6 it's no great penalty to be a non conforming
7 structure, it's a conforming use but a non
8 conforming structure, you've heard testimony from
9 many people that it's no great privilege either.
10 That all things being considered there is no reason
11 to leave this as a non conforming structure.

12 And third, SP-2 zoning does not allow
13 retail or other non office uses which are
14 appropriate, particularly when you look at the
15 property on the other three corners of this
16 intersection, the southeast, the southwest and the
17 northeast corners of the intersection of 19th and N
18 Street would be zoned C-3-C could be used for any
19 permitted use under C-3-C, I don't see that there's
20 any basis or distinction between the fourth corner
21 on this square being restricted to SP-2.

22 Having said all that, my conclusions are
23 that the existing zoning is not consistent with the
24 comprehensive plan, the proposed zoning is not
25 inconsistent with the comprehensive plan, rezoning
26 to C-3-C would have no adverse affect. In fact my

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1 understanding is the closest residential building
2 would support the rezoning, and I thought they were
3 going to be here tonight, but they don't seem to be
4 at the moment, and that rezoning to C-3-C would meet
5 the intent and purpose of the Zoning Enabling Act
6 and the zoning regulations and the Commission should
7 approve the DCOD/C-3-C zoning.

8 CHAIRPERSON BENNETT: Thank you very
9 much.

10 You may want to bring, and I'm not
11 certain if my colleagues have questions of all of
12 your panelists, but you may want to ask them to come
13 back to the table, and I'll ask my colleagues if
14 they have any questions.

15 Thank you.

16 Mr. Franklin?

17 COMMISSIONER FRANKLIN: Mr. Sher, you
18 are far more expert than I, and therefore I ask you,
19 what is the rational basis for the limitation in the
20 SP zone of office of non profit groups, labor
21 unions, architects, dentists, doctors, engineers,
22 lawyers or other similar professional persons? I
23 gather you had this presented before?

24 MR. SHER: Yes. I've had occasion to
25 consider that question and perhaps it may be a more
26 appropriate question come July 20th and 24th of

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1 whatever those dates are.

2 However, when the Lewis plan, which was
3 the planning document which preceded the 1958 zoning
4 regulations was prepared, Harold Lewis and his chief
5 cohort in crime Walter Lewis came up with the idea
6 of a transitional zone, something that -- they
7 called it, they were the "T" zones. And there was
8 the idea that between the downtown central business
9 district area and the surrounding residential
10 neighborhoods there needed to be some kind of a
11 transition zone.

12 I don't know exactly how that got
13 changed in the course of two years worth of hearings
14 and considerations by the Commission because I found
15 many times over many years it is extremely
16 difficult, if not impossible, to actually track the
17 reasons why the Commission went from one proposal to
18 another proposal as part of that overall
19 consideration.

20 What came out of that was the SP zone.
21 It was special purpose. It was not SP-1, SP-2, it
22 was just SP. My understanding, and this is, I have
23 to admit I don't go back that far, so this is
24 somewhat just research into the records and my
25 understanding of what was involved, was that there
26 was a thought that if the buildings along

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1 Massachusetts Avenue, and to some extent along New
2 Hampshire Avenue, were zoned SP, many of them were
3 large mansion type buildings and the thought was
4 that doctors, lawyers or associations would buy
5 those buildings and would keep them as their offices
6 rather than develop new office type structures in
7 that area.

8 In fact the 1958 regulations had a
9 distinction between existing buildings where you
10 could put an office in as a matter of right and a
11 new building which required BZA approval to put in
12 an office building. So you had a townhouse or a
13 mansion already, one of those buildings, that could
14 allow conversion to offices as a matter of right.
15 That was changed in 1978 when the Commission in its
16 wisdom decided that it didn't make sense to allow
17 you to convert and not build, so we made everybody
18 come to the BZA.

19 I think that recalls a vision of Mass
20 Avenue and the area zoned SP that really doesn't
21 exist anymore. Probably we're talking 40 years ago
22 at this point, and that's changed substantially.
23 There were other areas zoned SP in addition to
24 Massachusetts Avenue. You have the corridor 16th
25 Street from Lafayette Square up to either P or Q
26 Streets. You have the area around Judiciary Square.

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1 This area right here which is now mostly gone in
2 terms of SP. That's an SP up along Mount Vernon
3 Square. But I think that's what they were thinking
4 about.

5 The Commission early on sort of came to
6 that same question yourself when it came to the
7 Watergate planned unit development because the
8 Watergate was zoned SP, but under a different theory
9 of PUDs the Commission as part of the approval said
10 you can use that for any office use. You didn't
11 need to limit it to SP uses even though it was zoned
12 SP, different legal counsel from the corporation
13 counsel advising the Commission about what it could
14 or couldn't do under the PUD regulations.

15 What's happened in any number of
16 situations I think is the Commission has looked at
17 that and said there is really no difference in terms
18 of impact. If you look at the National Education
19 Association, the National Rifle Association, the
20 American Chemical Association, all those right along
21 16th Street there and you compare them to 1666 K
22 Street wherein we work every day, this fellow and I,
23 we got all lawyers, architects, Arthur Andersen,
24 except for Andersen Consulting which I guess
25 technically might not be an SP use, it really
26 doesn't look any different.

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1 There's no difference I think you could
2 measure in terms of traffic or anything like that.
3 In fact in some respects medical offices probably
4 generate more traffic per square foot than any other
5 kind of office and yet that's a permitted SP use.

6 COMMISSIONER FRANKLIN: Well, then I put
7 it to you that there is no rational basis
8 distinction?

9 MR. SHER: I would agree.

10 COMMISSIONER FRANKLIN: Well, I haven't
11 heard it yet, let me say I haven't heard it yet.

12 Mr. Harrell -- oh, go ahead.

13 MR. SHER: I was only going to say there
14 are differences between the SP zone and other
15 commercial zones. You can't have retail for
16 example--

17 COMMISSIONER FRANKLIN: No, I'm talking
18 about --

19 MR. SHER: -- but in strictly in terms
20 of office space --

21 COMMISSIONER FRANKLIN: -- the
22 characterization of who the office tenants will be.

23 MR. SHER: I don't see it.

24 COMMISSIONER FRANKLIN: I don't see no
25 rational basis to make the distinction that I can
26 discern, unless somebody can educate me.

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1 Mr. Harrell, I was going to ask you,
2 what kind of tenants are precluded from occupying
3 this building under present zoning that one would
4 normally be marketing the building to?

5 MR. HARRELL: I couldn't move my office
6 into this building under present zoning.

7 COMMISSIONER FRANKLIN: Because you are
8 not considered professional?

9 MR. HARRELL: There is a distinction
10 that the professionals that are permitted have a
11 governing licensing authority and that kind of
12 thing.

13 Specific entities an insurance company,
14 various types of consultants, government relations
15 offices, Fortune 500 companies, which as you know,
16 you know, dominate the central business district.

17 COMMISSIONER FRANKLIN: If Mobile Oil
18 wanted a downtown office, they couldn't move into
19 this space?

20 MR. HARRELL: That's correct, that's
21 correct.

22 COMMISSIONER FRANKLIN: Okay.

23 MR. HARRELL: Government service --

24 COMMISSIONER FRANKLIN: GSA?

25 MR. HARRELL: -- GSA cannot occupy this
26 building. That might be desirable, I don't know.

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1 COMMISSIONER FRANKLIN: That exhausts my
2 questions.

3 CHAIRPERSON BENNETT: All right, thank
4 you.

5 Mr. Parsons?

6 COMMISSIONER PARSONS: Mr. Harrell, you
7 mentioned 40 percent of the market is all you can
8 reach with the existing zoning, 40 percent of the
9 market is all you can reach with the existing
10 zoning, is that understanding correct?

11 MR. HARRELL: 40 percent of the tenants
12 known to us, and by us I mean our real estate firm,
13 that have active requirements for space within the
14 next, between today and the next 24 to 30 months,
15 that's correct.

16 COMMISSIONER PARSONS: And why aren't
17 they viable tenants?

18 MR. HARRELL: They are, but the point
19 being that we're at a significant competitive
20 disadvantage when the building right across the
21 street can compete for 100 percent of that pie, we
22 can only compete for 40 percent.

23 COMMISSIONER PARSONS: So there is
24 nothing going on in the marketplace with this 40
25 percent wanting to move elsewhere? I'm trying to
26 get some testimony as to why this 40 percent isn't a

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1 viable tenant in this building and I haven't heard
2 anything yet that says why you can't rent it to the
3 40 percent. I understand you want to be competitive
4 100 percent of the market, but what is it about the
5 40 percent that doesn't want to move here, or
6 they're going to Alexandria, or the kind of things I
7 normally hear testimony of this kind. Not to make
8 it up, but I'm surprised that you haven't spoken
9 about the 40 percent and why it's not viable to try
10 to even market them, or is it?

11 MR. HARRELL: It is viable to market to
12 the 40 percent. It's not viable to market to the
13 other 60 percent.

14 COMMISSIONER PARSONS: I understand
15 that.

16 MR. HARRELL: As I mentioned before, if
17 we're marketing to -- if the building across the
18 street has C-3 zoning and there are five 50,000
19 square foot tenants that are looking for office
20 space in that corridor, and two of them, only two,
21 can come to our building, then we can't even compete
22 with the building across the street.

23 COMMISSIONER PARSONS: I understand.
24 You know, I understand your argument, not your
25 argument, but the argument, this is not in
26 conformance with the comprehensive plan and that

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1 kind of thing, I guess I was looking for something
2 about this market of 40 percent that makes this
3 building, it's too big, it's too small, this isn't
4 what this marketplace is looking for, or something,
5 what is it, where is the 40 percent looking for
6 space, all over the city? They don't want to move
7 into SP, is that it?

8 MR. HARRELL: They are looking at, I
9 mentioned before the 7 to 8 million square feet of
10 office space that is of like kind and quality that
11 is available today, the majority of which is already
12 zoned C-3.

13 COMMISSIONER PARSONS: Now, how many
14 dollars per square foot would you be marketing this
15 building for as opposed to the C-3-C across the
16 street, the same?

17 MR. HARRELL: We would probably be a
18 dollar to \$2.00 a square foot less.

19 COMMISSIONER PARSONS: So why isn't that
20 attractive?

21 MR. HARRELL: We're losing value. When
22 we can --

23 COMMISSIONER PARSONS: No, I don't mean
24 to you, I mean to the tenants who might want to rent
25 this space versus the C-3-C across the street?

26 MR. HARRELL: Well, we're not only

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1 competing on dollars, we're competing on quality,
2 we're competing on location, the ability to have a
3 hand in the design or the renovation. We're trying
4 to capture as much money as we possibly can and in
5 order to do that we need to be able to compete for
6 the widest segment of the tenant marketplace that we
7 can and we need to be in a position to offer the
8 tenant -- just to be able to have any kind of
9 marketing edge with the C-3 building we're holding
10 up a renovation so that -- our equalizer, if you
11 will, is to be able to allow a tenant to have a
12 tenant to have a hand in the design of the
13 renovation. And there is a cost to holding that up.

14 COMMISSIONER PARSONS: Okay, so \$2.00 a
15 square foot is not attractive to possible tenants?

16 MR. HARRELL: It's in the eyes of the
17 beholder.

18 COMMISSIONER PARSONS: Mr. Lenkin, is it
19 possible in the renovation to add another floor to
20 this building?

21 MR. LENKIN: It's not designed,
22 structurally designed, to be added on to even if the
23 height limit and the density were increased.

24 COMMISSIONER PARSONS: All right. So
25 there is no way to capture the additional one FAR
26 that this would give them?

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1 MR. LENKIN: There is always a way to
2 capture it, but the expense of doing it wouldn't
3 make it an economical winner.

4 COMMISSIONER PARSONS: Okay, thank you.

5 COMMISSIONER FRANKLIN: Mr. Parsons'
6 questions have stimulated a few others of mine, if I
7 may, Madam Chair?

8 CHAIRPERSON BENNETT: Sure.

9 COMMISSIONER FRANKLIN: I think it was
10 Mr. Harrell or Mr. Lenkin, I can't recall who,
11 testified that the District loses an estimated
12 \$400,000.00 a year in real property taxes because of
13 the reduced operating income from this building.
14 Assuming that to be the case, I address this to any
15 member of the panel or to Mr. Glasgow, if he wishes
16 to comment on it, what are the benefits derived by
17 the District for the loss of this tax revenue
18 because of the classification of the tenancies in
19 this building?

20 MR. GLASGOW: Well, as the existing
21 position, and the reason why I'm responding to the
22 question is because of the real estate tax appeal
23 work that our firm does, so I'm doing it in the
24 nature of a proffer to the Commission, is we have
25 found that the SP zones, particularly since 1990,
26 have had an extreme loss of value particularly

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1 compared with other buildings in the city. That's
2 why when you had the case like 1920 N Street up in
3 the same area, massive losses of values lost to the
4 District, lost to the property owners, the same type
5 of situation here.

6 And the District now has even though
7 this building, as we indicated, has not yet lost the
8 tenant that it has, we had 1920 N Street where we
9 were having trouble leasing the building, a high
10 vacancy rate, extreme loss of value. Here you have
11 a tenant still in the building, but the value of the
12 building has dropped from, 1991 it was
13 \$29,285,000.00, this is from the District's records,
14 now it's assessed at \$11,353,000.00. That's why
15 you've come up with a loss, in more specific terms,
16 \$387,000.00 a year loss of tax revenue to the
17 District of Columbia.

18 So we have seen the SP zone go from a
19 situation in 1988, 1989 around those years where it
20 was pretty well holding its own with C-3-C values.
21 The accountants, the architects and the law firms
22 were adding a lot of people, they were taking up big
23 blocks of space in the city, leasing the high rates.
24 All of that has changed and now we have these, in
25 the SP zones, these massive drops in value and they
26 are real and they are, what's that major office,

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1 district there? Tysons Corner, Tysons Corner used
2 to have about a 25 percent vacancy rate about five
3 or six years ago. We all thought they were going to
4 be in the tank the next decade. They now on their
5 class A space have a two or three percent vacancy
6 rate. We've been at nine to 12 percent vacancy the
7 whole way through. We're flopping along, we are not
8 making advances.

9 COMMISSIONER FRANKLIN: What category of
10 professional is subject to the professional license
11 tax in the District?

12 MR. GLASGOW: Steven, do you want to run
13 that?

14 We're talking lawyers, architects,
15 engineers, doctors, lawyers, similar professional
16 persons, international organizations, non profit
17 organizations, those are all SP office users.

18 COMMISSIONER FRANKLIN: How many of them
19 are subject to a professional tax, do you know?
20 Lawyers are, are they not? Lawyers are subject to a
21 professional --

22 MR. GLASGOW: We have a tax.

23 COMMISSIONER FRANKLIN: Are any other
24 professionals, accountants?

25 MR. GLASGOW: I can't answer the
26 remainder of the question.

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1 COMMISSIONER FRANKLIN: My understanding
2 was that a number of large professional
3 organizations were leaving the District when their
4 leases were up because they would no longer be
5 subject to the professional tax?

6 MR. GLASGOW: We have seen a lot of loss
7 in the SP type users, particularly associations
8 moving to Virginia. And also law firms now that,
9 what they'll do is they'll keep a presence in the
10 District if they want, but they'll move the bulk of
11 their operations out. The last two lease extensions
12 we've had in our building, we've turned them down.
13 We have expanded in the other jurisdictions.

14 COMMISSIONER FRANKLIN: Of course that's
15 maybe the reflection also of lower rental rates.

16 MR. GLASGOW: It's a reflection of the
17 cost of doing business in the District. If you need
18 to hire a person, it's cheapest to hire in Virginia
19 first, Maryland second, and last, the District of
20 Columbia. D.C. is so much higher it's not even
21 funny.

22 So, if you have a choice as many firms
23 and organizations have now, you will put the people
24 where it's cheapest to put them.

25 COMMISSIONER FRANKLIN: So the 40
26 percent of something is the target that you're

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1 shooting at at the moment, but that's something is a
2 diminishing target?

3 MR. GLASGOW: It's the weakest 40
4 percent of the market. Now, the three A's that used
5 to drive our market, architects, accountants and
6 attorneys are where the District is having a real
7 problem with retaining those market segments.

8 COMMISSIONER FRANKLIN: Thank you.

9 CHAIRPERSON BENNETT: All right, any
10 further questions?

11 That's going to do it. Thank you,
12 gentlemen.

13 Next is the report of the Office of
14 Planning.

15 MR. GROSS: Good evening, Madam Chair.
16 Nate Gross of the Office of Planning.

17 You have our report dated May 9th 1997.
18 I will just make some general comments heading what
19 we consider to be the most important issue. The
20 subject of timing came up in the Applicant's
21 presentation. Part of the background of our request
22 for a delay is that there has been since about 1990
23 a working agreement between the Office of Planning
24 and the Zoning Commission that we will generally
25 rezone the city in accordance with the comprehensive
26 plan on an area-wide and text amendment basis at

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1 government initiative was realized after the 1989
2 conference plan amendments that if we entertained a
3 whole series of 50 or 100 piecemeal rezonings by
4 private applicants we would never get the job done.

5 By way of context probably the property
6 owner supports the notion of general office use in
7 SP buildings, if we had more individual applications
8 we would be slower getting major projects like that
9 done. One of the reasons we felt reasonably
10 comfortable last fall asking for a few months, it
11 did drag out more than we had originally hoped in
12 terms of getting the general office text amendment
13 into the hearing room. I think the Applicants
14 still need to pin down the timing on the leases a
15 little bit more because I seem to recall Mr. Glasgow
16 telling us last fall it was 18 months then and now
17 it's 18 to 24. But we are concerned, we don't want
18 this building to suffer either. The question is
19 whether one to three month's difference, assuming
20 the general office amendment might be adopted, is
21 critical.

22 I think many of the comments in our
23 report will come out, if I comment on Steve Sher's
24 comments on our report. Neighborhood ring policies
25 apply outside central employment area, I don't think
26 so, Steve. The central employment area definition

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1 just says that central employment is the biggest
2 concentration of office employment in the city, it
3 doesn't say there can't be or shouldn't be
4 residential uses in it, especially at the edges.
5 Maybe you can submit a specific. I'm not aware of a
6 specific place where the boundary is intended to be
7 mutually explicit. Maybe it's there and I haven't
8 read it, but our understanding is at the
9 transitional edge it's going to be a somewhat uneven
10 boundary and that that's a reasonable real world
11 situation.

12 Spot zoning, we were not -- the report
13 may be a little bit ambiguous on that, but in
14 hearing Steve mentioned that just now and I looked
15 at it again. On page three, third full paragraph
16 about in the middle, it was in the context of the
17 Lauren. You can say that the Lauren is outside the
18 scope of this case, and I'm going to get to why we
19 thought the context was important, what we were
20 saying there is that if this whole square remained
21 zoned SP, then the Lauren would have a problem apply
22 for C-3-C zoning because they would have a spot
23 zoning problem. We're not saying that this case
24 raises a spot zoning issue.

25 On the other comments on the Lauren
26 before, and I'm going over Steve's list, I would

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1 emphasize in our general SP case we are proposing to
2 leave it SP as a mixed use building, so we're
3 saying, you know, is a mixed office residential
4 building and would be eligible for general office
5 use as part of the text amendment.

6 We don't necessarily see that C-3-C
7 zoning, if they pursued their intent to rezone, is
8 the solution to their problems of value. I mean
9 this is in particular true in the 1990s when
10 residential values have been flat to declining
11 around the city. To comment on our report about
12 condominium values and Dupont Circle being strong is
13 based on new construction, we probably should have
14 said that.

15 Projects such as the new condominiums on
16 Rhode Island Avenue near 14th Street, a proposed
17 project at 16th and O, the Brookings Institution
18 apartment house, and 1312 Massachusetts Avenue are
19 all reportedly doing very well.

20 But we're not trying to pick on the
21 Lauren, we're really just trying to follow up on
22 public policy to emphasize the importance of
23 retaining residential buildings and population
24 everywhere but on the edge of downtown, particularly
25 where commercial expansion pressures in the past
26 have removed a number of buildings.

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1 Continuing down Mr. Sher's list, the
2 Commission has previously found SP is not
3 inconsistent with high density commercial. What we
4 said in our report is that this existing building at
5 5.5 FAR and if allowed to be used for general office
6 use at a permitted height of 90 feet can also be
7 considered not inconsistent with the comprehensive
8 plan. And of course the plan is not only the
9 generalized land use map, but other policies as
10 well.

11 And back to they don't intend to convert
12 the entire building. What we have in the 1990s is a
13 highly unusual office market in downtown Washington.
14 Anytime from World War II to about 1989 the office
15 market in greater downtown was booming year after
16 year with a few little downturns. And if you had a
17 building like this zoned C-3-C those leases would be
18 bought out in a hurry and the building knocked down.

19 So we may be being too aggressive
20 bringing it up in this case, but if we just look at
21 the maps in the back of the OP report, I just want
22 to make a couple of points and that is, if you look
23 at the square where the Lauren is and where the
24 subject office building is, the townhouses to the
25 north have the same high density commercial
26 designation. Now, of course you could say they

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1 shouldn't have, but it really gets impractical to
2 have too many fine grain boundaries in generalized
3 land use map because it really can't be a zoning
4 map. And right on the map itself there is a
5 footnote that says "Note, this is not a zoning map,"
6 so the map has to be interpreted.

7 But regarding the townhouses the SP-2
8 zoning gives them a 3.5 FAR. If they were to apply
9 and say well SP-2 is considered inconsistent with
10 generalized land use map of the comp plan, then they
11 go to 6.5 FAR. They're in the Dupont Circle
12 historic district, so you can say you can't knock
13 them down because it doesn't matter, however in this
14 setting the issue in that context is so-called
15 facadomies or facade preservation in new development
16 project, this would be a question of pressures on
17 what you want. And so basically by way of context
18 our overall proposal would be, you know, the SP-2
19 zoning for the whole square.

20 I think you have to take the property
21 owners' considerations about timing and marketing
22 into account and we don't take those lightly, and
23 probably the participation of the potential lead
24 tenant is definitely a factor.

25 I guess on the question of SP building
26 suffering more than others, I can't help wondering

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1 if part of that is (a) they're at the periphery of
2 downtown, and (b) a lot of them are smaller
3 buildings and the most, not over-built, but the
4 greatest slack in the marketplace downtown as I
5 understand it is for smaller tenants because so many
6 newer buildings that had new lead tenants still have
7 leftover pieces of space that they will let to
8 smaller tenants, and meanwhile the previous building
9 that was vacated and maybe it has been renovated
10 also has space. And so many the SP buildings suffer
11 not only because of the SP limitations, which we
12 agree with at OP, but also because of being at the
13 periphery of downtown and in many cases being
14 smaller buildings.

15 I believe that makes our major points,
16 Madam Chair. And our recommendation would be that
17 you defer the decision on the application at least
18 until you have the hearing on the text amendments in
19 case 97-7. And that concludes our report.

20 CHAIRPERSON BENNETT: Thank you, Mr.
21 Gross.

22 Questions, colleagues, of Mr. Gross?

23 COMMISSIONER FRANKLIN: I have just one
24 or two.

25 CHAIRPERSON BENNETT: Mr. Franklin?

26 COMMISSIONER FRANKLIN: We have been

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1 shown previous zoning commission orders number 804,
2 case 96.1, and case 796, and case 95-1. How is this
3 case distinguished from those two

4 MR. GROSS: I don't remember those, that
5 case number --

6 COMMISSIONER FRANKLIN: Oh, I'm sorry.

7 MR. GROSS: -- Mr. Franklin, could you
8 mention what they were?

9 COMMISSIONER FRANKLIN: 1920 N Street
10 and 1412 Massachusetts Avenue --

11 MR. GROSS: Oh, yes.

12 COMMISSIONER FRANKLIN: -- National
13 Association of Homebuilders.

14 MR. GROSS: Okay, yes. 1920 N Street in
15 particular is highly relevant. When I mentioned
16 about timing and that OP and the zoning commission
17 have had a working agreement to generally try to
18 keep the general area rezonings going rather than
19 piecemeal, private applications, what has generally
20 happened is projects of exceptional merit or
21 exceptional problems being allowed to go forward as
22 private applications, the 1920 N Street building as
23 I recall was vacant either at the time they applied
24 or to be vacant very shortly thereafter. I guess it
25 would be in the findings of fact. I'm not positive
26 that I remember that exactly.

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1 COMMISSIONER FRANKLIN: So you think we
2 should wait until the patients gets on the critical
3 list?

4 MR. GROSS: Well, you know another
5 factor is this zoning case will not change the
6 downtown office market in the 1990s. There are
7 hurting buildings all over downtown. A lot of them
8 are zoned C-3-C and C-4. I don't mean to be
9 unsympathetic, but one of the reasons for doing the
10 SP text amendment is to take care of a whole class
11 of SP buildings rather than one at a time is the
12 main point we're making.

13 1412 Massachusetts Avenue, highly
14 unusual situation which counsel put a specific
15 recommendation to rezone to C-4 in the comprehensive
16 plan and this was, I would say, not a bad thing.
17 Mr. Colby in particular and myself in some of the
18 meetings have been meeting with them for something
19 like two to three years trying to resolve their
20 development problems on the triangular square. I
21 guess the Commission visualized where they are, with
22 the small building on the triangular square, and
23 trying to keep them in the city and meet their
24 expansion needs.

25 CHAIRPERSON BENNETT: This is
26 Homebuilders?

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1 MR. GROSS: Yes. And they really felt -
2 - we really wanted them to do a PUD with C-4 and
3 could have supported that as long as we could see
4 the design and the public could see the design.
5 They really emphasized over and over that their
6 board of directors was too far flung when it came to
7 Washington once every six months or once a year and
8 didn't want to listen to it if they had to go
9 through a PUD, they'd just go to Virginia where they
10 had a possible site. And I forget where we finally
11 were when the council said we'll just stick this in
12 there.

13 COMMISSIONER FRANKLIN: But what I hear
14 you --

15 MR. GROSS: Well, the Commission may
16 have said the zoning is inconsistent, but it might
17 be a somewhat different factual basis too. I don't
18 know that there is anything that says that every
19 location zoned SP-2 is identical and therefore the
20 zoning in that location is inconsistent.

21 COMMISSIONER FRANKLIN: Well, I'm not
22 suggesting that, I just wanted to know what the
23 special circumstances were in your mind that
24 justified the treatment in those cases. And it
25 seems to me that we are presented also with special
26 circumstances where we are being told that the last

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1 two lease is expiring and the opportunities for
2 dealing with major tenants of 60 percent of the
3 market requires a long lead time if you're going to
4 get somebody in who will have some effect on what
5 the rehab of the building would be, so you're not
6 rehabbing the building on specs so to speak. I --

7 MR. GROSS: -- that issue --

8 COMMISSIONER FRANKLIN: -- I think that
9 that's not an insignificant special circumstance.

10 MR. GROSS: I agree. Why don't you ask
11 him to put in a specific date. I shouldn't be a
12 range of 18 to 24 months. It's a piece of paper
13 with a date on it.

14 COMMISSIONER FRANKLIN: Well, I don't
15 know that I'm inclined, you know, to hold people to
16 that specific date. We're not -- I don't think we
17 sit to fine tune their policies. I think, if in
18 fact, and it seems to me that public policy that we
19 sit to adopt is really in your view something that
20 should change. You know the Office of Planning has
21 recommended change in the public policy with respect
22 to who will be eligible to occupy offices in SP
23 zones. Then the question comes down to, at least in
24 my mind, as to whether the timing is in this case
25 premature. And we are being told now I guess our
26 general zoning hearing is in July?

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1 MR. GROSS: Right.

2 COMMISSIONER FRANKLIN: And that is
3 going to be not an uncomplicated hearing, and there
4 is going to be a lot of testimony and that record is
5 going to be kept open for a period of time and I
6 suspect that the decision on that case will not come
7 down much before the middle of the fall.

8 So what I'm hearing you say is that this
9 applicant should wait a full year for the resolution
10 of its application.

11 MR. GROSS: A full year from when they
12 filed?

13 COMMISSIONER FRANKLIN: Well --

14 CHAIRPERSON BENNETT: It was filed in
15 September.

16 COMMISSIONER FRANKLIN: -- September.

17 MR. GROSS: All right.

18 COMMISSIONER FRANKLIN: September '96
19 and get some kind of resolution in September '97, is
20 that what --

21 MR. GROSS: Yes, they filed without a
22 pre-meeting with OP which is a little unusual. It's
23 not required, just dropped it in. But I guess
24 that's true. It's fair. It's your decision.

25 COMMISSIONER FRANKLIN: I have no other
26 questions.

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1 CHAIRPERSON BENNETT: Mr. Parsons?

2 You know, what I did not do, I didn't
3 ask for cross examination of the applicant by the
4 ANC. Did you want to cross examine the applicant?

5 MS. MILLER: Not at this time.

6 CHAIRPERSON BENNETT: You cannot speak
7 from there.

8 MS. MILLER: Not at this time because
9 the person who have -- on the District could not be
10 here, and the Commission has spoken of it, but I
11 don't have the authority to testify or to take it,
12 just to bring the letter asking for the extension of
13 time and when we filed. That will cover all of the
14 points.

15 CHAIRPERSON BENNETT: All right.

16 MS. MILLER: But I'm taking information
17 back, so if there was anything that was not included
18 in what we had, that it would be. And I did want to
19 say that your notice of zoning says 2-A and 2-B.

20 CHAIRPERSON BENNETT: All right, thank
21 you.

22 Sorry for that oversight. Now, we have
23 the Office of Planning and I want to find out if
24 there are any parties who would like to cross
25 examine them.

26 MR. GLASGOW: No cross.

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1 CHAIRPERSON BENNETT: Any cross-ex of
2 the Office of Planning? Okay, all right.

3 And there are no other reports from
4 other agencies am I correct?

5 MR. GROSS: Correct.

6 MR. GROSS: All right.

7 We do not have a report of the Advisory
8 Neighborhood Commission 2-A or 2-B, and we will
9 leave the record open.

10 Are there parties? I guess there are
11 not.

12 Persons in support?

13 Are there persons in opposition?

14 Okay, we're leaving the record open for
15 you to get something into us, okay? All right.

16 And do we have some closing statements?

17 Rebuttal?

18 MR. SHER: Madam, Chair, it's quicker
19 than cross examination.

20 CHAIRPERSON BENNETT: I can tell by the
21 smirk. I've been learning to read smirks and
22 forehead wrinkles.

23 MR. SHER: The record read that a smirk
24 was noticed.

25 CHAIRPERSON BENNETT: All right.

26 MR. GLASGOW: Mr. Sher, do you want to

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1 proceed with your rebuttal so I can proceed with my
2 closing statement?

3 DIRECT EXAMINATION

4 MR. SHER: Madam Chair, just two points.

5 CHAIRPERSON BENNETT: All right.

6 MR. SHER: Without extending the debate
7 any longer, section 1324 of the comprehensive plan
8 were to land use. And 1324.2 in the center of Ward
9 2 was the monumental core. 1324.4, the second ring,
10 is the central employment area which surrounds and
11 includes the monumental core. 1324.5 around the
12 central employment area on the north and the south
13 is a third ring of distinctive areas. I don't see
14 that those policies overlap, but there it is, okay.

15 The second issue, timing, this is just
16 factual and not critical. It's just factual. If
17 you look at how long the Commission is taking to
18 decide rule making cases, I have on the sheet that
19 Stephanie is going to hand you, listed five of the
20 more recent rule making cases. I forget about solid
21 waste, but you all know about that one, okay.

22 Department store text amendment, Union Station,
23 North Capitol Street, Southwest Area C, the PUD
24 housing linkage regulations on the Good Cause text
25 amendments.

26 Looking just at how long it's taking to

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1 get a decision from the time at which the Commission
2 votes proposed action, for getting just from that
3 point forward, in the department store text
4 amendment it's been more than ten months and we
5 still don't have a final decision.

6 In the Union Station, North Capitol
7 Street it's been more than 15 months and there is no
8 final decision.

9 Southwest Area C more than nine months.
10 PUD housing linkage, it will be 12 months and four
11 days.

12 And Good Cause which was the narrowest
13 of those five cases, involving the smallest range of
14 issues, took approximately nine months from the date
15 of proposed action to the notice of final rule
16 making.

17 So we're adding from Mr. Franklin's
18 projection of fall for a proposed action a
19 considerable length of time after that until you get
20 a final action that you can do something with.
21 That's all I have to say.

22 CHAIRPERSON BENNETT: Thank you.

23 MR. GLASGOW: All right, now that Mr.
24 Sher has --

25 MR. SHER: I'm finished.

26 MR. GLASGOW: -- concluded his rebuttal

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1 I'll go to the closing statement very briefly.

2 I would say over the period of time with
3 the couple of zoning commission cases that we've
4 worked on in the Dupont Circle area with the Office
5 of Planning we've worked together pretty well to
6 bring those to conclusion. I think particularly the
7 only issue that we have right now is there is a
8 slight divergence which is coming out here at this
9 hearing with respect to, you know, what's the
10 timing, how are we going to deal with this.

11 Everybody recognizes that there is a
12 problem with the SP buildings and how it is that you
13 deal with them. The Office of Planning has chosen
14 to say well we'll have all the different types of
15 office users be able to go into those buildings. So
16 there is a clear recognition overall that there is
17 an issue here that has to be addressed.

18 And we are concerned about what our
19 timing is. We handled the case for 1920 N Street.
20 We're very pleased that we got the rezoning. That
21 building was about 25 to 30 percent vacant when we
22 came in, that vacancy is down, the assessment is up
23 in the building, so we know from experience that
24 having these type of cases and getting the decision
25 is helpful. We know it's helpful for the city with
26 respect to increased tax revenues, we know it's

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1 helpful to us with respect to the valuation of the
2 building.

3 With respect to the legal issue and the
4 timing of the application and the request for delay,
5 I would just want to point out just briefly to the
6 Commission in the TACPEC decision of the D.C. Court
7 of Appeals at 550 Atlantic 2nd, and I'm going to
8 just read very briefly from pages 340 and 341, "The
9 D.C. Council expected interested parties or
10 individuals to initiate cases before the zoning
11 commission where inconsistency between current
12 zoning regulations and the comprehensive plan
13 allegedly exists," and they go through a whole
14 series of sites in the committee reports and all of
15 that.

16 Then they go on to state at 341 the
17 court states "However the zoning commission is the
18 only forum capable of granting the zoning change
19 TACPEC seeks and therefore TACPEC's failure to
20 pursue any action before the zoning commission
21 amounts to a failure to exhaust administrative
22 remedies. Formerly we hold that the zoning
23 commission is exclusive agency vested with
24 responsibility for assuring that the zoning
25 regulations are not inconsistent with the
26 comprehensive plan and that TACPEC failed to exhaust

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1 its administrative remedies."

2 So the court is encouraging applicants
3 to go forward to the Commission. And while there
4 may or may not be this understanding between the
5 Commission and the Office of Planning nonetheless we
6 have the right to be here, and we are here tonight.
7 Ware entitled as a matter of law to have the case
8 decided upon the law as of the date of the decision
9 as we come forward. And we don't particularly
10 believe that it's fair that we be delayed in any
11 fashion on the basis of what may happen in another
12 case, particularly when those cases have been taking
13 a long period of time to decide and can have
14 multiple and complicated issues that have nothing to
15 do with this property or the applicant that's now
16 before the Commission.

17 We're here now to present a case now,
18 and either we've met our burden of proof or we
19 haven't, and I don't think that we should be held
20 hostage to the other. I have a memorandum on the
21 issue with the two cases attached, and I don't want
22 to spend a lot of time going through that, but we
23 anticipated that obviously that this may be an
24 issue, and the standard law is that we are entitled
25 to move forward and we are entitled to obtain a
26 decision on the basis of the law of the fact and the

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1 facts at the time that the decision would normally
2 come up.

3 So I will introduce this into the record
4 and hopefully it's of some assistance if there's
5 still an issue on this. And that concludes my
6 closing statement.

7 CHAIRPERSON BENNETT: Thank you.

8 MR. GLASGOW: Thank you.

9 CHAIRPERSON BENNETT: Are we going to
10 get copies of what was just passed up? Do you have
11 to make copies? Oh, I see.

12 COMMISSIONER FRANKLIN: Shall we wait?

13 CHAIRPERSON BENNETT: We shall wait.

14 MR. GLASGOW: Madam Chair, I have three
15 other copies of the memorandum, but not the attached
16 cases, so you can copy the attached cases. I would
17 be shocked if you could read those while you sit up
18 there.

19 CHAIRPERSON BENNETT: Oh, I see. Well,
20 then we shall not wait. As long as we get the full,
21 and we can get the balance, that way we don't hold
22 up the recorder and everybody else.

23 COMMISSIONER FRANKLIN: May I ask Mr.
24 Glasgow one question?

25 CHAIRPERSON BENNETT: Sure.

26 COMMISSIONER FRANKLIN: Mr. Glasgow,

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1 there has been a lot of talk about the residential
2 ring, etcetera. What's the relevance of the
3 residential ring to this case?

4 COMMISSIONER FRANKLIN: Mr. Franklin,
5 that's a great question because in my notes right
6 here where it says "The Ward 2 plan includes a
7 residential ring policies which in general call for
8 retention" and all that, I just had a comment that
9 says "We do not impact or change that." I don't see
10 where -- we don't impact. We have a 5.5 FAR 90 foot
11 high office building today and that's what this case
12 is about on a specific 17,408 square feet of ground.
13 It doesn't have anything to do with the residential
14 ring.

15 COMMISSIONER FRANKLIN: The whole
16 relevance of that point just alluded me.

17 MR. GLASGOW: I has alluded me also.

18 COMMISSIONER FRANKLIN: Thank you.

19 CHAIRPERSON BENNETT: All right, ladies
20 and gentlemen, I want to thank you for your
21 testimony and assistance in this hearing.

22 The record in this case will not be
23 closed except for information specifically requested
24 by the Commission. Any special information or
25 reports specifically requested by the Commission
26 should be filed during the period ending on May 30th

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1 1997 in Suite 210 of 441 Fourth Street, NW.

2 Any party to the case may file a written
3 response to any information or report filed after
4 the close of the hearing. Such responses should be
5 filed no later than seven days after May 30th 1997,
6 which is June 6th 1997.

7 Parties in this case are invited to
8 submit proposed findings of fact and conclusions of
9 law. Any party who submits proposed findings and
10 conclusions should do so by June 6th 1997.

11 Parties are reminded that their findings
12 of fact should not include findings stating how
13 witnesses testified. The findings should be those
14 findings the party believes the Commission should
15 make based upon the testimony and other evidence in
16 the record. Citations to exhibits and the
17 transcript are appropriate and encouraged.

18 To assist parties in the preparation of
19 these findings of fact and conclusions of law, a
20 copy of the hearing transcript will be available for
21 review in the Office of Zoning in about two weeks.
22 Copies of the transcript may also be purchased from
23 the recording firm. When the transcript is received
24 the Office of Zoning will contact the parties.

25 After the record is closed the
26 Commission will make a decision on this case at one

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1 of its regular monthly meetings. These meetings are
2 generally held at 1:30 p.m. on the second Monday of
3 each month and are open to the public. Any person
4 who is interested in following this case further may
5 contact the staff to determine whether this case is
6 on the agenda of a particular meeting.

7 You should also be aware that if the
8 Commission proposes to approve the application, the
9 proposed decision must be referred to the National
10 Capitol Planning Commission for federal impact
11 review. The zoning commission will take final
12 action at a public meeting following the receipt of
13 the NCPC comments, after which a written order will
14 be published.

15 I declare this hearing closed.

16 (Whereupon, at 8:33 p.m., the hearing
17 was adjourned.)

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