

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION
PUBLIC HEARING

- - - - -

In the matter of:

PETITION TO AMEND THE TEXT Case No. 97-15
OF THE DISTRICT OF COLUMBIA
ZONING REGULATIONS

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C. 20001

Thursday
March 5, 1998

The above-entitled matter came on for public hearing,
pursuant to notice, at 7:00 p.m.

BEFORE:

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

I N D E X

Opening Statement Chairperson Maybelle Taylor Bennett	3
Preliminary Matters	5
Presentation of Petitioner Mr. Colby, D.C. Office of Planning	7
Reports of Advisory Neighborhood Commissions Mr. John Chagnon, ANC Commissioner Ward 4 Ms. Mary Jackson, ANC Commissioner Ward 7	41
Persons in Opposition Mr. Lyle Schauer, Capitol Hill Restoration Society Mr. Richard Wolf, Capitol Hill Restoration Society Mr. Richard Hall, Campaign for New Community	57

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

CHAIRPERSON BENNETT: Good evening, ladies and gentlemen. My name is Maybelle Taylor Bennett, 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. 97-15. Case 97-15 is an initiative of the Zoning Commission resulting from a petition from the District of Columbia Office of Planning, the United States Department of Justice with the District of Columbia Office of the Corporation Counsel and the District of Columbia Department of Consumer and Regulatory Affairs, to amend the text of the District of Columbia Zoning Regulations, Title 11, District of Columbia Municipal Regulations.

Now if you are worried about what jurisdiction you are in, you have not been paying attention. The proposed amendments pertain to zoning and other code regulations governing housing for handicapped individuals by updating the rules regarding community-based residential facilities, with the intent of eliminating any inconsistencies between zoning, the Fair Housing Amendments Act of 1988, and the Americans with Disabilities Act.

The Zoning Commission will consider the advertised proposal, any modifications thereto, or alternative proposals that are presented and reasonably related to the scope of the proposed amendments. The specific proposal to amend the zoning regulations is contained in the notice of public hearing for this case. Copies of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 that notice are available for the public.

2 Notice of today's hearing was published in the D.C.
3 Register on January 23, 1998, and in the Washington Times on
4 January 20, 1998. This hearing will be conducted in accordance with
5 the provisions of 3021 of the District of Columbia Municipal
6 Regulations, Title 11, Zoning.

7 The order of procedure will be as follows. First,
8 preliminary matters; second, the presentation of the petitioner, the
9 District of Columbia, Office of Planning; reports of other agencies;
10 reports of Advisory Neighborhood Commissions; persons in support;
11 persons in opposition.

12 The Commission will adhere to this schedule as
13 strictly as possible. Those presenting testimony should be brief and
14 non-repetitive. If you have a prepared statement, you should give
15 copies to staff and orally summarize the highlights. Please give us
16 your statement before summarizing. Each individual appearing before
17 the Commission must complete two identification slips and submit
18 them to the reporter at the time you make your statement. If these
19 guidelines are followed, an adequate record can be developed in a
20 reasonable length of time.

21 Are there any preliminary matters?

22 MS. DOBBINS: Madam Chairman and members of
23 the Commission, the only matters I have is that you have in front of
24 you a witness list for this evening. These are the people who signed
25 up in advance of tonight's hearing. And you have a letter from Council
26 member Sharon Ambrose, Council member for Ward 6, requesting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 that you hold these hearings on all of the nights that have been
2 indicated. Those are the only matters that I have.

3 CHAIRPERSON BENNETT: All right. Thank you.
4 Colleagues, generally we hold hearings as needed. And usually what
5 that means is our first hearing date -- on our first hearing date, our
6 hearing room has standing room only and there is an obvious need for
7 people to testify at another time because they were not able to testify
8 in the time allotted on the first hearing date. And I would prefer to
9 maintain that particular procedure. I would ask my colleagues to help
10 us determine that. I am open to your suggestions -- as opposed to
11 establishing all three of the dates as definite hearing dates.

12 MS. DOBBINS: Madam Chairman, may I just also
13 indicate that in the public hearing notice, we do have a requested date
14 for persons to sign up to testify.

15 CHAIRPERSON BENNETT: That is right.

16 MS. DOBBINS: It was February -- I think 23rd.

17 CHAIRPERSON BENNETT: The 23rd.

18 COMMISSIONER FRANKLIN: And that notice went
19 out quite in advance?

20 MS. DOBBINS: Yes. It went out at least 40 days in
21 advance. It was published at least 40 days in advance in the register
22 and even before that in the times.

23 CHAIRPERSON BENNETT: January 20 in the Times
24 and January 23 in the Register.

25 MS. DOBBINS: And copies to all of the ANC's.

26 COMMISSIONER FRANKLIN: Well, I agree with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 Chair.

2 CHAIRPERSON BENNETT: All right.

3 COMMISSIONER FRANKLIN: We should see to
4 what extent we can't get through tonight.

5 CHAIRPERSON BENNETT: All right. Thank you.
6 Let's begin then with the petitioner. Oh, I am sorry, Mr. Parsons?

7 COMMISSIONER PARSONS: I just thought we
8 ought to wait until the end of the hearing before we do that.

9 CHAIRPERSON BENNETT: All right. I thought I
10 would get it out as a preliminary matter.

11 COMMISSIONER FRANKLIN: That is what I was
12 suggesting.

13 CHAIRPERSON BENNETT: All right. Why don't we
14 start with the petitioner, Office of Planning. Mr. Colby?

15 MR. COLBY: Thank you, Madam Chairman. Let me
16 first start with some background. As you have noted, the actual
17 amendments to the regulations are only two and fairly short. I think
18 their impact, though, far exceeds their length or the number of words
19 in them. But let me start with some background.

20 In 1991 and 1992, the Executive Branch and the
21 Zoning Commission undertook a comprehensive updating of the rules
22 regarding CBRF's or community-based residential facilities with the
23 same intent that we are pursuing tonight, that is, eliminating
24 inconsistencies between those zoning regulations and the Fair
25 Housing Amendments Act of 1988 and the Americans with Disabilities
26 Act. Tonight we are hearing two additional zoning amendments that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 the U.S. Department of Justice believes are required as a matter of
2 federal law to complete the process of bringing the District of
3 Columbia zoning regulations into full compliance with the Fair Housing
4 Act. The D.C. Government, with the Office of Corporation Counsel as
5 the lead agency, has negotiated an agreement with the Justice
6 Department as to text for public hearing by the Zoning Commission
7 together with other rulemaking by the Department of Consumer and
8 Regulatory Affairs.

9 The first zoning amendment would allow CBRFs for
10 handicapped persons in multi-family residential zones as a matter of
11 right with no restrictions not equally applied to housing for non-
12 handicapped persons. And the second amendment would create a
13 "reasonable accommodation" process applicable to housing for
14 handicapped persons so as to provide flexibility from the strict
15 application of normal rules to accommodate the special needs of the
16 handicapped.

17 In 1980 and 1981, going way back to when the
18 Commission first started dealing with these issues, the Zoning
19 Commission adopted an overall definition of CBRFs with the key
20 characteristic being a residential use for persons who have common
21 need for treatment, rehabilitation, assistance, or supervision in their
22 daily living. Seven specific facility types were defined and regulated
23 following the more detailed licensing definitions of each type of facility.
24 For zoning purposes, these facilities were classified as low-impact,
25 medium-impact, and high impact and regulated accordingly.

26 That is contained in the report, but let me say that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 low-impact -- and I have also handed out a chart that summarizes that
2 on one page -- low-impact are community residence facilities,
3 healthcare facilities, and youth residential care homes. We will get
4 into these in a little more detail in a minute. Medium-impact are
5 emergency shelters. High-impact are youth rehabilitation homes or
6 corrections, adult rehabilitation homes coming from corrections again,
7 and substance abuser homes or residential drug rehabilitation
8 facilities.

9 It is important to understand the definition of
10 handicapped. In 1988, the FHAA defined handicapped broadly to
11 include any physical or mental disability that substantially limits a
12 person in performing one or more major life activities. The latter in
13 turn include activities such as caring for oneself, performing manual
14 tasks, walking, seeing, hearing, speaking, breathing, learning, and
15 working. Finally, the definition includes individuals who are regarded
16 as having such handicaps. And in Section 802 of the Fair Housing
17 Act, it is described as follows. Handicapped means with respect to a
18 person a physical or mental impairment which substantially limits one
19 or more of such persons major life activities or a record of having such
20 an impairment or being regarded as having such an impairment. But
21 such term does not include current illegal use of or addiction to a
22 controlled substance.

23 The definition clearly affects which of the 7 defined
24 types of CBRF are and are not handicapped facilities. Those that are
25 handicapped facilities have special protection under the Fair Housing
26 Act. Thus a community residence facility is clearly a residence for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 handicapped persons. Adult and youth rehabilitation homes in the
2 correctional system are clearly not housing for the handicapped. The
3 remaining four types of CBRFs can be either handicapped or non-
4 handicapped depending on the resident population, and the zoning
5 administrator, under the proposed rules -- again, coming out of the
6 agreement with the Department of Justice -- would make a case-by-
7 case determination of whether a facility is handicapped generally as
8 discussed below. An emergency shelter provides overnight housing
9 for people in dire need. Few or no services are provided. Typically a
10 shelter accommodates a significant percentage of people who are
11 handicapped but is not usually considered a handicapped facility
12 because many of the residents are not handicapped. Specialized
13 emergency shelters, however, such as those for abused women,
14 might qualify as handicapped facilities on a case-by-case basis.
15 Similarly, a youth residential care home is typically not a handicapped
16 facility although some handicapped individuals may be among the
17 residents. A substance abusers home provides intense short-term
18 residential treatment for persons attempting to overcome drug or
19 alcohol addiction. Such a home is usually connected with a hospital.
20 It is not a handicapped facility if it houses persons who are currently
21 users of drugs or alcohol or are receiving treatment to overcome
22 addiction. However, persons who are "in recovery" from addiction are
23 specifically deemed handicapped under Fair Housing.

24 In today's zoning in multi-family zones, R4 and less
25 restrictive, R4 and above, there continues to be a maximum
26 occupancy limit or other restrictions such as spacing requirement or a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 special exception process for CBRFs in the zoning regulations. The
2 type of limitation varies according to the type and size of facility. The
3 issue is that any CBRF that is occupied by handicapped persons is
4 entitled to equal treatment with housing for non-handicapped persons.

5 So now we come to the regulation or the first of the
6 regulations which we are proposing, and the text comes essentially
7 right out of the agreement between the Corporation Counsel and
8 Justice Department as follows. Subsection 330.5, "The following uses
9 shall be permitted as a matter of right in an R4 district. Community-
10 based residential facility provided that notwithstanding any provision in
11 this Title to the contrary, the zoning administrator has determined that
12 such a community-based residential facility which otherwise complies
13 with the zoning requirements of this Title that are in general and
14 uniform applicability to all matter of right uses in an R4 district and by
15 implication less restrictive is intended and operated as housing for the
16 handicapped as that term is defined under Section 3602(h) of the Fair
17 Housing Act as amended..." There is a note added there. The issue
18 was whether 100 percent of the residents of a CBRF had to be
19 handicapped in order for it to qualify as such. The 100 percent
20 provision of a previously discussed version of the agreement has been
21 dropped.

22 The most straightforward effect of this rule is that a
23 community residence facility which is specifically intended and
24 operated for handicapped persons and any other CBRF specifically for
25 occupancy by handicapped persons would no longer be subject to any
26 restrictions such as special exception, numerical occupancy limit, or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 spacing requirements -- such as those particularly. This liberalization
2 of the rules would be applicable to CBRFs for handicapped persons in
3 the R4, R5, SP, commercial, and mixed use zones.

4 And then there are some more charts appended to
5 our report which go into greater detail. As stated earlier, case-by-case
6 determinations of handicapped occupancy will need to be made to
7 determine eligibility for matter of right status. The previously adopted
8 restrictions would continue to apply to non-handicapped facilities. The
9 overall intent is that only the normal building standards of the
10 applicable zone district -- height, lot occupancy, and FAR -- would limit
11 the size of a residential building for the handicapped as is the case
12 now with rooming and boarding houses, road dwellings, flats, and
13 apartment buildings. Thus, handicapped persons would have equal
14 access with non-handicapped persons to these types of residential
15 buildings.

16 I would go on and add a note that was contained from
17 Corporation Counsel to the Department of Justice on the agreement.
18 "As you know, the District's original language was intended to address
19 the risk that an applicant would misuse the CBRF process by
20 establishing a residence with a primarily able-bodied population and
21 only a minimal number of handicapped residents. We have agreed to
22 the changes you suggest with the understanding that, as you note,
23 they are intended not to permit evasion of zoning rules, but to permit
24 able-bodied staff to live in what is otherwise a facility for the
25 handicapped." I draw a line there because what I am going to go into
26 now is reasonable accommodation, which while it supports the same

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 objectives is quite different.

2 Reasonable accommodation comes from the 1988
3 amendments to the Fair Housing Act which require governments to
4 make reasonable accommodation or rules regarding housing for
5 handicapped persons. For purposes of this subsection -- and this
6 comes from the Act -- "Discrimination includes a refusal to permit at
7 the expense of the handicapped person reasonable modifications of
8 existing premises if such modifications may be necessary to afford
9 such person full enjoyment of the premises. Or a refusal to make
10 reasonable accommodation and rules or policies or practices or
11 services when such accommodations may be necessary to afford
12 such person equal opportunity to use and enjoy a dwelling."

13 Reasonable accommodation.

14 In the earlier case 91-15, the task force and the
15 Commission assumed that -- the Zoning Commission assumed that
16 the special exception process was an acceptable mechanism to
17 provide just such reasonable accommodation. However, while some
18 courts have upheld the validity of that process for this purpose, many
19 others have not and the Department of Justice prefers a matter of right
20 interpretive process, which is why we are headed toward or why we
21 have proposed such a process.

22 The agreement with the Department of Justice
23 provides that a general reasonable accommodation rule will be
24 proposed for adoption in DCMR 14 housing regulations of the District
25 of Columbia. The key decision maker on request for reasonable
26 accommodation is the director of the Department of Consumer and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 Regulatory Affairs. This indicates that a broad array of licensing,
2 housing, and building code rules could be modified by individual
3 determinations as well as zoning waivers. OP's recommendation,
4 concurred in by the Office of Corporation Counsel, is that the zoning
5 regulations not include the lengthy general rule, but rather make
6 reference to it and indicate that the flexibility applies to zoning as well
7 as to other codes. In order for the proposed rule to be applicable to all
8 zones where residential uses are allowed, the amendment is to permit
9 matter of right uses in the R1 district as follows. That regulation would
10 be paragraph 201.1O which reads, "A community-based residential
11 facility for occupancy by handicapped persons shall be permitted as a
12 matter of right provided that the determination of handicapped facilities
13 shall be made according to the process and criteria set forth in 14
14 DCMR." And wherever it turns up in DCMR. So there will be a direct
15 reference from the zoning regulations to the housing regulations.

16 And for the reasons which I have just gone through,
17 the Office of Planning recommends that the Zoning Commission adopt
18 the two recommended text amendments one pertaining to reasonable
19 accommodation process and the other to matter of right uses in the
20 multi-family zone districts.

21 CHAIRPERSON BENNETT: Thank you.

22 MR. COLBY: And I am available for any questions
23 that I can answer.

24 CHAIRPERSON BENNETT: I know that is right.
25 Questions of Mr. Colby, colleagues?

26 COMMISSIONER FRANKLIN: Mr. Colby, on page 5

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 of your report, the following sentence appears. "The most
2 straightforward effect of this rule is that a community residence facility
3 (which is specifically intended and operated for handicapped persons),
4 and any other CBRF specifically for occupancy by handicapped
5 persons would no longer be subject to any restrictions." What is the
6 difference between a community residence facility specifically
7 intended and operated for handicapped persons on the one hand and
8 a CBRF specifically for occupancy by handicapped persons on the
9 other?

10 MR. COLBY: I am sorry, I think I have found where
11 you are reading. This liberalization -- is that how it starts?

12 COMMISSIONER FRANKLIN: The most
13 straightforward effect --

14 CHAIRPERSON BENNETT: The most
15 straightforward --

16 MR. COLBY: Oh, I have got it.

17 COMMISSIONER FRANKLIN: It seems to say there
18 are two categories of facilities and I don't understand the difference
19 between the two of them.

20 MR. COLBY: Well, the first one -- let me work
21 through it slowly -- the first one, the CBRF specifically for occupancy
22 by handicapped would no longer be subject to any is too strong as to
23 the restrictions as noted. The restrictions which set CBRFs apart from
24 regular buildings.

25 COMMISSIONER FRANKLIN: I follow that.

26 MR. COLBY: And then it says, "The liberalization of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 the rules would be applicable..." --

2 COMMISSIONER FRANKLIN: No, no. I am sorry,
3 sir. There are two references here. One is to a "community residence
4 facility (which is specifically intended and operated for handicapped
5 persons)," and then it refers to, "and any other CBRF specifically for
6 occupancy by handicapped persons." Is that the same thing or why
7 are there two --

8 MR. COLBY: No, a community residence facility is a
9 type of CBRF.

10 COMMISSIONER FRANKLIN: Okay. And would you
11 clarify to me what it is? CBRF stands for community-based residential
12 facility?

13 CHAIRPERSON BENNETT: Right.

14 MR. COLBY: Yes. A community residence facility is
15 a -- I think it is defined here or it is defined in the handouts. But it is a
16 -- it is the most basic facility.

17 COMMISSIONER FRANKLIN: Because the
18 proposed 330.5 refers only to something called a community-based
19 residential facility.

20 MR. COLBY: Right. Which is the umbrella category.

21 COMMISSIONER FRANKLIN: Yes, I thought it was.
22 But then I see in that sentence that there is something called a
23 community residence facility, and I need an education.

24 MR. COLBY: Let me see if I can --

25 COMMISSIONER FRANKLIN: Maybe the Chair can
26 help me.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 CHAIRPERSON BENNETT: Well, I am not sure.
2 You can't speak from the audience.

3 COMMISSIONER FRANKLIN: Let me look at the
4 definition here.

5 CHAIRPERSON BENNETT: We will give you an
6 opportunity shortly.

7 COMMISSIONER FRANKLIN: Let me look at the
8 definitions then.

9 MR. COLBY: Here is a definition on page 33 of our
10 handout. Let me read it to you.

11 COMMISSIONER FRANKLIN: You better because it
12 is very small type.

13 MR. COLBY: Yes. "A community residence facility is
14 a facility that meets the definition for and is licensed as a community
15 residence facility." That doesn't do you any good.

16 COMMISSIONER FRANKLIN: That is helpful.

17 MR. COLBY: Yes, that doesn't do any good. I am sorry.

18 CHAIRPERSON BENNETT: Mr. Franklin, what it
19 seems like you are capturing is a redundancy almost.

20 COMMISSIONER FRANKLIN: Well, I was just
21 questioning --

22 CHAIRPERSON BENNETT: But it may not be once
23 we get a hold of the --

24 COMMISSIONER FRANKLIN: I am curious as to --
25 that is why I -- well, there is something called youth care homes and
26 community residence facilities referred to in 303.1 under existing regs.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 Let me go to the definitions. Maybe somebody on our witness list will
2 clarify this in due course. So why don't we just -- let me just check our
3 definitions for a moment. Well, the only definition that leaps out at me
4 is community-based residential facility. So let's pass that by for the
5 moment and put it in what we call a parking lot.

6 My next question is -- has to do with the reasonable
7 accommodation section of the proposal. And I don't understand how
8 that language at 201.10 is supposed to address something called a
9 reasonable accommodation. Now I understand there is a cross-
10 reference to 14 DCMR. But with respect to zoning -- or let's say with
11 respect to -- is it anything that this Commission has to concern itself
12 with?

13 MR. COLBY: Yes. Because it is not -- if it were just
14 licensing, the answer would be no.
15 But --

16 COMMISSIONER FRANKLIN: Well, what kind of
17 reasonable accommodation would be contemplated to waive or adjust
18 a zoning regulation in this context?

19 MR. COLBY: Well, let me first start by saying that
20 you can't get a real good answer to what kinds of things will actually
21 be -- that this will be brought to bear on. But the kinds of things that
22 we can imagine that it would be brought to bear on would be those
23 regulations which -- for instance, which still exist in the R1 and R2.

24 COMMISSIONER FRANKLIN: Such as?

25 MR. COLBY: Such -- where there are still spacing --

26 CHAIRPERSON BENNETT: Where there are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 numerical occupancy limits or spacing requirements?

2 MR. COLBY: Where there is still spacing and still
3 numbers of persons permitted.

4 CHAIRPERSON BENNETT: Right.

5 MR. COLBY: As a matter of right. Of course, when
6 you go to the Board, that is another thing again for a special
7 exception.

8 COMMISSIONER FRANKLIN: So under the
9 language that is being proposed, would licensing or the zoning
10 administrator --

11 MR. COLBY: It would be their boss.

12 COMMISSIONER FRANKLIN: What?

13 MR. COLBY: It would be the boss of both. I mean, it
14 would be the head of the Department of Consumer and Regulatory
15 Affairs who covers both those territories.

16 COMMISSIONER FRANKLIN: Well, the language is
17 a little bit unclear to me because it just simply is saying that the
18 determination of handicapped facilities shall be made according to the
19 process and criteria set forth in 14 DCMR blank.

20 MR. COLBY: That is if you -- it is in the appendix
21 following -- Appendix C.

22 COMMISSIONER FRANKLIN: Well, I thought that a
23 handicapped facility is going to be defined as in sync with the Fair
24 Housing Act or the ADA, whatever.

25 MR. COLBY: Right.

26 COMMISSIONER FRANKLIN: Yes. The Fair

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 Housing -- so a handicapped -- housing for the handicapped is defined
2 under Section 3602(h) of the Fair Housing Act. Now 201.1 says that a
3 determination of handicapped facilities is going to be made according
4 to some other criteria. I just don't understand which is supposed to
5 apply or are they both or is the least restrictive?

6 MR. COLBY: The process -- I mean 14 DCMR is
7 really a process regulation. So the process that is defined there, which
8 comes out of the agreement, again, with the Justice Department, is a
9 process which they will have to go through to get reasonable
10 accommodation on their request.

11 COMMISSIONER FRANKLIN: Well, you are picking
12 out the word process and I am looking at the word criteria.

13 MR. COLBY: Well, it doesn't -- it includes no criteria.

14 COMMISSIONER FRANKLIN: 14 DCMR includes no
15 criteria?

16 MR. COLBY: No.

17 COMMISSIONER FRANKLIN: Well, then why do we
18 make reference to criteria if they are not there?

19 MR. COLBY: Well --

20 COMMISSIONER FRANKLIN: Maybe the reference
21 should be just to process.

22 MR. COLBY: The wording came from Justice. And I
23 can't -- I mean, they may think those are criteria. I don't -- they are
24 regulations which say who you apply to and how you go about
25 applying and what treatment you should get. But they don't define --
26 they don't apply criteria for applying and they don't provide criteria for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 applying reasonable accommodation. In fact, I don't think there are
2 such criteria.

3 COMMISSIONER FRANKLIN: But there is a process
4 set forth?

5 MR. COLBY: Yes.

6 CHAIRPERSON BENNETT: Right.

7 COMMISSIONER FRANKLIN: Okay.

8 CHAIRPERSON BENNETT: You will get to tell us
9 when you come up, okay? You cannot speak --

10 AUDIENCE MEMBER: I am not coming up. I am not
11 speaking tonight. I didn't plan to answer --

12 CHAIRPERSON BENNETT: But you cannot speak
13 from the audience. We are electronically recording. Okay?

14 COMMISSIONER FRANKLIN: The Commission can
15 invite you --

16 CHAIRPERSON BENNETT: So, Mr. Franklin, you
17 are wondering -- yes, in due course. You were asking who
18 determines what is a handicapped facility and whether it is the federal
19 -- the housing amendments, which determines what a handicapped
20 person or whether it is that person which is defined in 201.1 as having
21 the ability to determine --

22 COMMISSIONER FRANKLIN: Well, my overarching -
23 -

24 CHAIRPERSON BENNETT: -- what a handicapped
25 facility is.

26 COMMISSIONER FRANKLIN: Well, my overarching

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 question is how does all that relate to this notion of making reasonable
2 accommodation?

3 MR. COLBY: They are somewhat -- as I understand
4 it, they are somewhat simple. What is handicapped is fairly clearly
5 defined under the law, at least broadly. And that is treated here by
6 relaxing regulations so that handicapped are treated ostensibly as
7 everybody else and not singled out in the multi-family zones and
8 higher. As to reasonable accommodation, which applies to
9 handicapped living or the ability to get relief, additional relief, applies
10 to the handicapped where an individual applies for and is deemed to
11 need some special circumstances. And it is easier to think about it --
12 since it is an individual basis, it tends to apply not to a building, which
13 zoning would do, but rather to -- I mean, not to the building in terms of
14 its location and the like, but rather to some need that the door has to
15 be wider or something has to be maybe added to the house that
16 encroaches on the front yard because the handicapped person has to
17 get in a special way or a fire escape.

18 COMMISSIONER FRANKLIN: That I understand.

19 CHAIRPERSON BENNETT: But I understand that
20 there is another piece to it. I mean, one you would -- the reasonable
21 accommodation refers to making those kinds of modifications in
22 structure, but the other item that you describe in item B in midway 6 --
23 a) talks about modifications of existing premises; b) talks about
24 making accommodations and rules, policies, practices, services. And
25 that, I would imagine, refers to the kind of numerical occupancy limits
26 or spacing requirements that might be -- might pertain to some CBRFs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 in a given zone district.

2 MR. COLBY: Right.

3 CHAIRPERSON BENNETT: And so as I understood
4 it then, the Fair Housing Act amendment is saying that when a
5 jurisdiction has to consider an individual case or the establishment of
6 a facility for the handicapped that we ought to be prepared to do one
7 or both of those sets of things. We ought to be prepared to allow -- I
8 guess from code requirements and things -- allow there to be some
9 modification of the premises. And we ought to be prepared to relax
10 some of the spacing requirements and other kinds of requirements
11 that are attached to the establishment of such a facility.

12 COMMISSIONER FRANKLIN: The spacing
13 requirements go with 330.5. As I read your report and as I read the
14 language, if you mean by spacing requirements that it can't be within -
15 -

16 MR. COLBY: No. Yes, that is right.

17 COMMISSIONER FRANKLIN: There can't be more
18 than so many within a certain --

19 CHAIRPERSON BENNETT: Right. Right.

20 COMMISSIONER FRANKLIN: That is no
21 longer --

22 CHAIRPERSON BENNETT: That dies.

23 COMMISSIONER FRANKLIN: That dies with 330.5.

24 MR. COLBY: Right.

25 COMMISSIONER FRANKLIN: And I can understand
26 an example of let's say there may be a building restriction line or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 something of the sort which would prevent the construction of a ramp
2 or whatever kind of special facility would enable somebody who is
3 handicapped to gain access to a building. You know, I can
4 understand that. But I don't -- if that is what is intended, I don't think
5 the language in 201.10 does it or at least it doesn't do it for me
6 because it just simply says the determination of handicapped facilities
7 shall be made according to -- let's drop the word criteria -- according
8 to the process set forth in 14 DCMR blank. And I don't see why that is
9 responsive to a notion of reasonable accommodation, which is a
10 normative direction.

11 MR. COLBY: Yes, right.

12 COMMISSIONER FRANKLIN: And this is a very
13 neutral reference.

14 MR. COLBY: Yes.

15 COMMISSIONER FRANKLIN: And the fact that it has
16 been embedded within some agreement doesn't, at least to my mind,
17 require us to adopt it word for word if it doesn't make sense. And to
18 me, it doesn't make sense yet.

19 CHAIRPERSON BENNETT: All right.

20 MR. COLBY: Yes, I think, Mr. Franklin, what -- and I -
21 - as you know, this is one of the cases that I have picked up after Mr.
22 Gross left town, so to speak. But it is also something where the
23 language was clearly worked out by lawyers, no disrespect. And so it
24 is written in a way where it doesn't speak to the normal circumstances
25 to which it applies. I mean you really have to -- it is being cautious in
26 saying what it is saying. It is being broad because it wants to make

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 sure that the lawyers can continue to work to define what it means.

2 So it is -- I mean, for zoning purposes, it could be a lot clearer.

3 COMMISSIONER FRANKLIN: Okay. Well, I think --

4 MR. COLBY: I agree with you.

5 COMMISSIONER FRANKLIN: For even a recovered
6 lawyer to understand --

7 MR. COLBY: And I don't know how much flexibility
8 we have, but we have taken it as it came to us.

9 COMMISSIONER FRANKLIN: Well, unless it is
10 illuminated and explained to me, I would be inclined to ask
11 Corporation Counsel to come back to us with a better explanation of
12 what that is supposed to mean.

13 MR. COLBY: Yes.

14 COMMISSIONER FRANKLIN: Thank you. That is all
15 I have.

16 CHAIRPERSON BENNETT: Okay. Mr. Parsons?

17 COMMISSIONER PARSONS: Mr. Colby, I am trying
18 to determine the impact of this, and I haven't grasped it yet. I
19 remember how much effort we spent in our deliberations many years
20 ago and came to the conclusion that no facility should exceed 25, as I
21 recall. And the matter of right was at the 6 to 8 level because that was
22 a general family definition. Am I to understand here that -- for some
23 reason I don't grasp yet -- that there would be no numerical limit to
24 these facilities? They could be 200 or 300?

25 MR. COLBY: There would be no numerical limit,
26 except under the housing code. I mean if the structure were large

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 enough --

2 COMMISSIONER PARSONS: But I don't grasp that
3 concept at all as to why somebody could violate all of the regulations
4 that we have imposed to limit of size based on literally days of record
5 simply by assembling only handicapped people inside this facility.
6 That they can exceed all those and violate all those.

7 MR. COLBY: Yes, but in a -- I mean, I don't want to
8 be put in a position of defending something that I can't defend or
9 shouldn't try to, but an apartment building or a rooming house which
10 houses any number of persons unrelated, don't require special
11 services to enable them to live there, live there on their own and come
12 and go -- we are familiar with that. But think of it as -- think of these
13 250 people or 150 or whatever as living in a 150-room apartment
14 house except with caregivers there with them.

15 COMMISSIONER FRANKLIN: Well, if I can try to
16 answer Mr. Parsons as I understand it, it is not breaking open
17 otherwise applicable limits that apply to non-handicapped.

18 CHAIRPERSON BENNETT: Everybody else, right.

19 COMMISSIONER FRANKLIN: If there is a rule
20 relating to occupancy or density or whatever that is applicable across
21 the board irrespective of who is occupying the housing, those don't go
22 by the board just because it is a facility for the handicapped. What it is
23 saying is -- as I understand it -- if you have a -- you can't be more
24 restrictive on housing for the handicapped than you would be on
25 housing for the non-handicapped in the same zone.

26 COMMISSIONER PARSONS: Well, I guess what I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 am trying to figure out is why our regulations do that.

2 COMMISSIONER FRANKLIN: Well, I wasn't present,
3 but I have a --

4 COMMISSIONER PARSONS: I don't get it. I really
5 don't. I am not going to belabor this tonight, but I don't understand it
6 at all. Obviously --

7 COMMISSIONER FRANKLIN: I can give you my
8 speculation.

9 COMMISSIONER PARSONS: Apparently our
10 regulations say something that they shouldn't. But to waive all -- as I
11 understand it, we are waiving all spacing and all of the requirements
12 that we have simply to --

13 COMMISSIONER FRANKLIN: Well, what is the basis
14 for the spacing? What is the rational basis for requiring a spacing of
15 CBRFs?

16 COMMISSIONER PARSONS: Well, we -- well, that is
17 a tough quiz after 20 years.

18 CHAIRPERSON BENNETT: Well, it is not that tough
19 for me. I mean, the idea was that --

20 COMMISSIONER PARSONS: It was based on a
21 block width -- an average block width in the city, as I recall, and there
22 should be one per block, and that gave us a 500-foot spacing.

23 COMMISSIONER FRANKLIN: But why should there
24 be one per block occupied by handicapped when you don't say that
25 there ought to be one per block occupied by non-handicapped?

26 COMMISSIONER PARSONS: We do say that. That

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 is my point.

2 COMMISSIONER FRANKLIN: Well, if we do, then it
3 doesn't go out the window. In other words --

4 COMMISSIONER PARSONS: I will have to study this
5 more. I am obviously the only one that doesn't get it. But I am not
6 here.

7 COMMISSIONER FRANKLIN: I think what the
8 Justice Department is saying is that we can't impose on housing for
9 the handicapped greater restrictions than is imposed on housing for
10 the non-handicapped in the same district.

11 COMMISSIONER PARSONS: I understand that, but I
12 don't understand how our regulations do that.

13 COMMISSIONER FRANKLIN: Well, the spacing
14 does to some degree.

15 COMMISSIONER PARSONS: No. The spacing that
16 is there for non-handicapped is there for handicapped. I don't
17 understand it.

18 COMMISSIONER FRANKLIN: No, it is not there for --
19 when you are talking about spacing, are you talking about side yards
20 and the like?

21 COMMISSIONER PARSONS: No, spacing between
22 the units.

23 CHAIRPERSON BENNETT: No, no, no. 500 feet or
24 one in a block or one in a square.

25 COMMISSIONER FRANKLIN: But you don't have
26 that requirement for apartments.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 MR. COLBY: John is talking -- he is making another
2 distinction. He is comparing handicapped CBRFs and non-
3 handicapped CBRFs.

4 COMMISSIONER PARSONS: Right.

5 MR. COLBY: You are comparing, as I was, non-
6 CBRFs and any CBRF or handicapped CBRFs specifically. Now
7 having said that, I don't know how to -- I mean the answer is --

8 CHAIRPERSON BENNETT: We didn't -- as I recall it
9 -- let me see if I can take a stab at this. As I recall it, when we started
10 talking -- when you all -- because that was a year or two before I got
11 here -- started talking about CBRFs, you talked about them in terms of
12 impact, and they were organized in terms of what we felt were low,
13 medium, and high impacts. And the more egregious the impact and
14 the larger the numbers, the more the need for the kind of spacing and
15 whatnot that would protect the people in the neighborhoods.

16 COMMISSIONER PARSONS: And BZA review.

17 CHAIRPERSON BENNETT: That is right. In the
18 neighborhoods and BZA review. What may not have been considered
19 at that time was any distinction between those CBRFs that cater to the
20 handicapped versus non-handicapped, with the thought in mind that
21 handicapped could be in any one of them.

22 COMMISSIONER PARSONS: Sure.

23 CHAIRPERSON BENNETT: You could have
24 handicapped youth. You could have handicapped who occupy
25 healthcare facilities or emergency shelters or any of those things. But
26 handicapped didn't lift up as a special class or a special population

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 around which there were certain concerns. Substance abuse did.
2 Correctional facilities did. But handicapped status did not. And so
3 they got regulated in the same way that non-handicapped did.

4 COMMISSIONER PARSONS: That is exactly my
5 point.

6 CHAIRPERSON BENNETT: And now what the feds
7 are saying is that whether we intended it or not, there is an inadvertent
8 discrimination against folk who are handicapped and that there
9 shouldn't be any more restrictive regulations applying to them or the
10 facilities that they inhabit.

11 COMMISSIONER PARSONS: But these, as I
12 understand it, are less restrictive. That is my point. I mean --

13 CHAIRPERSON BENNETT: You are now making
14 them less restrictive than other CBRFs, but not other facilities for non -
15 - oh, I see what you are saying.

16 COMMISSIONER PARSONS: Yes, the regulations
17 for the same -- I don't get it. But let's proceed with the hearing. I just
18 don't understand it at all.

19 CHAIRPERSON BENNETT: For non-handicapped in
20 other CBRFs is what you are saying?

21 COMMISSIONER PARSONS: It ought to be the
22 same. If they exceed 8, they ought to go to the BZA and let us know
23 what the impacts are going to be. And not give them a way -- you
24 know, they can put as many people as they want and no spacing
25 requirement. It is giving an incredible advantage to a handicapped.
26 Not equal treatment, an incredible advantage.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 MR. COLBY: Over other CBRFs?

2 COMMISSIONER PARSONS: Yes.

3 CHAIRPERSON BENNETT: Over CBRF's as
4 opposed to --

5 COMMISSIONER PARSONS: It is just a no rules
6 apply.

7 MR. COLBY: That is because the law applies to in
8 fact advantages -- I won't say advantages, but applies to the
9 handicapped, which is the basic for these exemptions or these
10 changes in the rules. That is not to say that we shouldn't be
11 consistent. But what it -- you know, we live in the past. In the past,
12 these rules were set because of the potential impact of having non-
13 people like us living in a neighborhood or next door, and we wanted as
14 many like us as we could have because that is how we formed our
15 communities. And it was a protection. It was a protection against the
16 unknown in a sense. And we are all a product of that past as well as
17 the present. I mean, I am not doing very good at philosophizing here
18 except to say that it is hard to take issue. I believe that it is hard to
19 take issue with the regulations or with the Fair Housing Act, with the
20 thrust of it. As to whether that should apply to all CBRFs independent
21 of an act to assist them, other CBRFs that aren't for handicapped, I
22 can't answer that.

23 CHAIRPERSON BENNETT: Maybe it would be
24 useful to have --

25 MR. COLBY: I don't know what the distinction is.

26 CHAIRPERSON BENNETT: We mentioned the need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 to have Corporation Counsel here as someone who had participated
2 in the discussions or the deliberations.

3 MR. COLBY: We can, but I think it is a philosophical
4 question almost.

5 CHAIRPERSON BENNETT: Well, yes. But as
6 philosophical as it can get, the reason we are here is because the
7 Department of Justice told this jurisdiction that we have got to get our
8 act together so that it comports with what federal law says. So I guess
9 what I am saying is that if our colleagues feel as though what the
10 impact of these rules would be is to give handicapped CBRFs an
11 incredible advantage over CBRFs that are designed to cater to non-
12 handicapped persons, we need to hear someone who was a part of
13 that discussion come here and talk to us about their thinking.
14 Because I don't want to be promulgating or preserving regulations that
15 fly in the face of what the feds say we need to do. At the same time, I
16 don't want to -- it is like a sweater. You pull one thread and it unravels
17 the whole thing. And I think that is what Mr. Parsons is talking about.
18 We need to look at that and ask -- I am sure they asked themselves
19 the same questions. I am sure this same issue came up and got a
20 good deal of debate and discussion. I would like to be privy to that.
21 So maybe we need to do that in another one of our sessions and
22 invite somebody.

23 COMMISSIONER PARSONS: I think so. Just to
24 make it clear.

25 CHAIRPERSON BENNETT: Maybe Corporation
26 Counsel and a DOJ person.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 COMMISSIONER PARSONS: I am opposed to this.
2 Okay? I am opposed to this as I understand it. I must not get it or we
3 wouldn't be here. If it is as simple as I think it is, there is no reason for
4 us to do this. And others have determined that we need to do
5 something, but I -- that is where I am.

6 MR. COLBY: Well, as I think the materials say, the
7 stick here is, of course, that this district was about to be sued and the
8 suit would go forward.

9 CHAIRPERSON BENNETT: That is right.

10 MR. COLBY: If we don't act within the 450 days or
11 whatever we have got to push this through.

12 COMMISSIONER FRANKLIN: How many days are
13 left?

14 MR. COLBY: There is plenty of time.

15 CHAIRPERSON BENNETT: Okay. Is that -- does
16 that conclude our discussion with the Office of Planning for the time
17 being?

18 COMMISSIONER PARSONS: Well, and if I am
19 wrong, which I am sure I might be, my first question is what is the
20 impact of this. And I think without an evaluation of that in a
21 quantifiable way, I can't imagine how we would be prepared to deal
22 with it.

23 COMMISSIONER FRANKLIN: I suspect there are
24 going to be people tonight who will let us know about the impact.

25 COMMISSIONER PARSONS: Yes. I mean, I think
26 we know enough about these facilities after this many years to be able

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 to assess what the impact will be of these regulations, that is, how to
2 quantify it, I mean. How many of these facilities are expected or
3 anticipated in the industry? What are the experiences of other
4 jurisdictions if they have done this? Will there be hundreds or tens of
5 these?

6 CHAIRPERSON BENNETT: Is that it?

7 COMMISSIONER PARSONS: Thank you.

8 CHAIRPERSON BENNETT: Okay. You want
9 quantifiable evidence of the impact of these regs.

10 COMMISSIONER PARSONS: Thank you.

11 CHAIRPERSON BENNETT: All right. Let's move on
12 then. Are there any other agencies represented in the audience?

13 MR. COLBY: Oh, I am sorry. I thought that we were -
14 -

15 CHAIRPERSON BENNETT: I just thought maybe
16 someone from DOJ might have sneaked in.

17 MR. COLBY: And I apologize for not leaning on
18 Corporation Counsel to be here to answer some of your questions
19 tonight. Because they certainly could have taken a stab at that.

20 CHAIRPERSON BENNETT: Well, Corporation
21 Counsel or a DOJ representative. That would work for me too.
22 Because they are the ones who are about to take us to court if we
23 don't do something like this. So I would recommend that we get one
24 of each at least. Let's move on to the reports of Advisory
25 Neighborhood Commissions since there are no other agencies. It is
26 8:03. Is Mrs. Jourdain Brown or John Chagnon here?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 AUDIENCE MEMBER: Ms. Brown is not here tonight.

2 CHAIRPERSON BENNETT: All right. Good evening.

3 MR. CHAGNON: Good evening, Commissioners. My
4 name is John Chagnon. I am an ANC Commissioner in Ward 4. I
5 appreciate the opportunity to express our communities position on the
6 proposed regulations for reasonable accommodations, and it applies
7 to the R4 changes as well.

8 With the assistance of ANC Commissioner Jourdina
9 Brown and two attorneys from our community, Dave Wilson and Larry
10 Schwartz, I am able to fill in for Ms. Brown and provide you with a
11 composite of our views. DC zoning regulations presently take into
12 account the strain CBRFs can place on residential neighborhoods.
13 Ward 4 has been saturated with institutional uses of neighborhood
14 homes for both the disabled as well as youth detention homes,
15 halfway houses, and shelters. My colleague, ANC Commissioner
16 Brown, circulated a petition in Ward 4 and obtained over 700
17 signatures requesting a moratorium be placed on the location of
18 additional CBRFs in Ward 4. Communities have relied on the zoning
19 regulations to help assure a reasonable level of dispersion of CBRFs,
20 to limit their density and the impact of institutional uses. The
21 regulations now in place have not solved the disparate dispersement
22 of CBRFs throughout the city and the proposed regulations would
23 make a bad situation worse in Ward 4.

24 In my testimony, I make three points regarding why
25 the proposed regulations require substantial revision. First, the
26 proposed DCRA regulations fail to provide public input when a request

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 for reasonable accommodation is made under the Fair Housing Act.
2 Second, instead of providing that the request be filed with the Board of
3 Zoning Adjustment, which has a system for making such decisions,
4 proposed regulations delegate such authority to the Department of
5 Consumer and Regulatory Affairs, which lacks such a system. Third,
6 the proposed regulations do not provide a mechanism for an appeal
7 from the decision of DCRA. In addition, there is a technical deficiency
8 in requiring the issuance of a detailed decision only when the
9 applicant is denied. The Fair Housing Act requires
10 reasonable accommodation in rules, policies, practices, and services
11 when such accommodations may be necessary to afford a person
12 equal opportunity of the use of a dwelling. The Fair Housing Act does
13 not require, however, that cities abandon procedural requirements in
14 zoning matters of a public hearing by a zoning agency with a system
15 of holding such hearings and rendering decisions on zoning matters
16 and for an appeal of a zoning determination. Holding a hearing in
17 which opposing parties can effectively participate before an agency
18 that is experienced in creating a record and rendering decisions that
19 can be appealed are indispensable requirements for insuring that the
20 zoning decisions are enriched by the debate of the opposing parties.
21 These requirements are the landmarks of the U.S. administrative
22 system. Zoning officials should not be required to make important
23 decisions that affect the public interest based only on the arguments
24 made by the requester of a reasonable accommodation. All sides of
25 the issue must be heard in order for the administrative process to
26 properly function.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 The proposed regulations should be redrafted to
2 permit the administrative process to operate within the defined
3 parameters that now govern the operation of BZA. First, as to the
4 public hearing point, the proposed regulations are intended to provide
5 reasonable accommodations as previously said. However, the Fair
6 Housing Act does not require cities to eliminate public hearing. For
7 example, in Oxford House v. Virginia Beach, the Court found that
8 Congress surely did not mandate a blanket waiver of all facially
9 neutral zoning policies and rules regardless of the facts. Rather, the
10 Court noted that the facts are collected and interests are balanced
11 through the process of applying for a conditional use permit. The
12 Court pointed out that the zoning process provides for hearings and
13 that if such hearings were not provided, the Courts would become not
14 an Appellate body, but they would instead become zoning boards of
15 first instance that would inappropriately be required to become
16 involved in the finding of fact.

17 The proposed regulations do not provide any public
18 input. There is no provision for providing notice to the public or notice
19 to ANC Commissioners, further exacerbating the problem of hiding the
20 public from the process. Section 111.5 of the proposed regulation
21 provides that the applicant for reasonable accommodation may mark
22 any information that it submits as confidential and only Agency
23 personnel shall have access to the confidential information. As
24 drafted, there is nothing to stop an applicant from marking the entire
25 file as confidential, which would eliminate any realistic opportunity for
26 obtaining public comments. If there is confidential information, it could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 be made available under a protective order to interested parties. We
2 propose that confidentiality provisions be redrafted to permit the
3 protection of information that is truly confidential while preserving the
4 ability of interested parties to gain access to the confidential
5 information for the purpose of analyzing the validity of the claims being
6 made by the requestor of the reasonable accommodation.

7 Second, the reasonable accommodation request
8 should be ruled on by the BZA. It is the type of issue that the BZA
9 traditionally rules upon. A reasonable accommodation request is in
10 the nature of a zoning variance or a special exception requirement in
11 which BZA has expertise. BZA is set up to provide written notice to
12 potential parties, hold public hearings, and draft decisions which
13 include findings of fact and conclusions of law. DCRA lacks the
14 procedural and substantive background to perform these functions. It
15 is simply not designed to handle these decision-making processes.
16 Consequently, we strongly recommend that reasonable
17 accommodation requests be considered by BZA.

18 The Courts have upheld having agencies similar to
19 the BZA making reasonable accommodation determinations, the 7th
20 Circuit Court in U.S. vs. the Village of Palantin in Illinois. In this case,
21 the Court found that requiring the request for reasonable
22 accommodation to seek a special use approval does not constitute a
23 violation of the Fair Housing Act's reasonable accommodation
24 provision.

25 Third, the Appellate process, if any, is at best unclear.
26 We recommend that the proposed regulations be amended to provide

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 that appeals from the BZA decisions on a request for reasonable
2 accommodation be handled in the same manner as our other appeals
3 of BZA appeals.

4 Finally, I note the technical matter in Section 111.11.
5 The proposed regulations provide in the second sentence that if the
6 director denies a request in whole or in part, the director shall explain
7 in detail the basis for the decision. The proposed rule as drafted does
8 not provide that the director shall explain in detail the basis of the
9 decision if the request is granted in the event that there is an appeal,
10 so that the Appellate Tribunal has a basis for reviewing the Agency's
11 decision. That should be provided and reworked in the regulations
12 that provide for the BZA resolving reasonable accommodation
13 requests.

14 We ask that the Zoning Commission revise the
15 proposed regulations to provide a public hearing, requiring
16 applications to be filed with the BZA, explicitly identify the Appellate
17 procedure, and eliminate or substantially limit the use of
18 confidentiality, and require that all decisions to be made after due
19 process is given to all parties with written decisions incorporating
20 findings of fact and conclusions of all. Making these changes will
21 permit the processing of a request for reasonable accommodation to
22 be applied in a consistent manner and less subject to political
23 manipulation.

24 CHAIRPERSON BENNETT: Thank you, Mr.
25 Chagnon. Questions of this witness?

26 COMMISSIONER FRANKLIN: Just an observation --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 oh, go ahead, Mr. Parsons.

2 COMMISSIONER PARSONS: I guess I am having
3 trouble finding the issue of confidentiality in the regulations that we are
4 proposing.

5 COMMISSIONER FRANKLIN: It is DCMR -- this is
6 the --

7 CHAIRPERSON BENNETT: That is in the 14 DCMR.

8 COMMISSIONER FRANKLIN: The Consumer
9 Regulatory Affairs -- Appendix C of the report. The last document in
10 the OP report. It is not our regs.

11 COMMISSIONER PARSONS: Well, that is my point.

12 CHAIRPERSON BENNETT: It is the 111.5.

13 COMMISSIONER PARSONS: This has nothing to do
14 with this proceeding.

15 MR. COLBY: But it is effectively incorporated into
16 ours by --

17 CHAIRPERSON BENNETT: By reference.

18 MR. COLBY: By reference. And would have, if it
19 weren't so lengthy, been just -- we would have tried to bring it into
20 ours if it made any sense to do that, and it doesn't.

21 COMMISSIONER PARSONS: But what I mean is we
22 have no authority to change these. So is the witness suggesting that
23 we revise these regulatory -- we can't. We have no authority to do
24 that. And say, well, in this case confidentiality won't apply?

25 COMMISSIONER FRANKLIN: Well, I interpret what
26 the witness is saying is that we ought to have our own way of handling

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 reasonable accommodation which would follow the criteria that has
2 been suggested, namely to have some public input.

3 COMMISSIONER PARSONS: I would support that.
4 But I am trying to get to the issue of confidentiality, which is --

5 COMMISSIONER FRANKLIN: Well, the question is
6 whether we ought to cross-reference these under our regulations, as I
7 see it.

8 COMMISSIONER PARSONS: All right. Thank you.

9 COMMISSIONER FRANKLIN: And he is raising a
10 legitimate question as to whether we ought to do that.

11 COMMISSIONER PARSONS: All right.

12 COMMISSIONER FRANKLIN: Am I interpreting you
13 correctly?

14 MR. CHAGNON: Yes. Absolutely.

15 COMMISSIONER PARSONS: Thank you for
16 answering the question.

17 MR. CHAGNON: That was made a lot easier by Mr.
18 Franklin.

19 CHAIRPERSON BENNETT: Well, let me just say that
20 if I follow Mr. Chagnon's suggestions all the way to their logical
21 conclusion, we get back to exactly what we had, and that is a set of
22 regulations that required, not as a matter of right, but with some public
23 review, which is our BZA process, certain CBRFs above a certain
24 number located in certain places and having certain populations. I
25 mean that is exactly why the BZA process was there. That is exactly
26 why the special exceptions process was established in the first place.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 COMMISSIONER FRANKLIN: Well, I think Mr.
2 Chagnon's testimony is very interesting because it cites some Federal
3 Courts of Appeal that are addressing specifically the question as to
4 whether something like our BZA procedure violates the reasonable
5 accommodation provisions of the Federal Fair Housing Act. And if
6 these are properly cited, and I have no reason to believe they aren't,
7 there are at least some cases -- none in this Circuit are cited -- that
8 would suggest that our BZA procedure is not a violation of the Fair
9 Housing Act. And I think it would be very useful to hear from Corp
10 Counsel and the Department of Justice with appropriate citations as to
11 why our existing procedure violates the reasonable accommodation
12 provisions of the Fair Housing Act.

13 COMMISSIONER PARSONS: Well put.

14 CHAIRPERSON BENNETT: And that is what our OP
15 summarized on page 6. It says, "However, while some courts have
16 upheld the validity of the special exception process for this purpose,
17 many others have not. And DOJ prefers the matter of right
18 interpretive process." So what you would like to have them do is
19 come here and tell us why.

20 COMMISSIONER FRANKLIN: Yes. And there may
21 be some controlling precedent within this Circuit.

22 CHAIRPERSON BENNETT: Okay.

23 COMMISSIONER FRANKLIN: It would have been
24 nice if they had cited that in their agreement.

25 CHAIRPERSON BENNETT: All right. Thank you
26 very much. Ms. Jackson? Good evening.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 MS. JACKSON: Good evening. First of all, let me
2 say I am sorry I did not bring any copies with me. I just did this at
3 work this evening. But copies will be faxed to you tomorrow morning.
4 I will drop this past the ANC office so the secretary can get it typed up.
5 MS. DOBBINS: We can do it. We can make the
6 copies.
7 MS. JACKSON: Oh, okay.
8 MS. DOBBINS: They can make them here.
9 MS. JACKSON: If you can understand my scribbling.
10 I would prefer to have it typed.
11 MS. DOBBINS: Oh, okay.
12 MS. JACKSON: It will look a little more professional.
13 I did it in a rush at work this evening.
14 MS. DOBBINS: Okay.
15 MS. JACKSON: We had got on the list early as soon
16 as we got the notice, and I just -- the time just went past me real fast.
17 CHAIRPERSON BENNETT: How are you doing this
18 evening. It is good to see you.
19 MS. JACKSON: Let me say good evening again.
20 MS. DOBBINS: Ms. Jackson, is your microphone on?
21 There is a green light. If it is not on, your microphone is not on.
22 MS. JACKSON: No.
23 MS. DOBBINS: Hold that button down until it stays
24 on. There it is.
25 MS. JACKSON: Okay. Once again, let me say good
26 evening. My name is Mary D. Jackson. I am an ANC Commissioner

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 in Ward 7. I am Chairperson of ANC 7E. My single member district is
2 7E04. I am here tonight as an ANC -- as an Advisory Neighborhood
3 Commissioner and a born-Washingtonian. I am here tonight to protest
4 this zoning amendment.

5 I think the Office of Planning, the Justice Department,
6 the Corporation Counsel, and DCRA have some nerve petitioning this
7 Board to ask that our neighborhoods once again be dumping grounds
8 for handicapped individuals whose disabilities have not been
9 completely spelled out to the community. A disability could mean a
10 number of medical or physical conditions. Most of the city can no
11 longer continue to accept these houses with open arms. I know that
12 Ward 7 is already overrun with drug dealers, private homeless
13 shelters, a large population of public housing projects, and too many
14 Section 8 housing certificates.

15 The Planning Office played with our zones two years
16 ago without any input from our community. One side of the street is
17 zoned R2 while the other side is zoned R5A. There never were any
18 hearings held. And when we questioned this Board, we were told
19 nothing had been changed. Well, we have maps of two years prior to
20 that, and that said something different.

21 The Zoning Board has the same mentality as the ABC
22 Board. I am sorry to say that to you all, but that is the way we feel. In
23 this city, the wards with the most poor and black population, I guess
24 you are saying let's keep them overcrowded and drunk. They won't
25 be able to tell the difference anyway. The changing of these zones to
26 accommodate all of the federal dollars that is coming into this city

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 since the city is an enterprise community and some parts of it will
2 become an empowerment zone could best be served by carefully
3 evaluating where the zone changes will be and what area of the city it
4 will have the greatest impact on.

5 As an ANC, I will circulate petitions in my Ward from
6 this day forward to protest any zoning changes you have planned in
7 Ward 7. What I would like to see you do is rezone where the drug
8 dens and close up some of these crack houses and apartment
9 buildings that have been eyesores for years in our community, and I
10 think that would make much better sense than this amendment that
11 we have before us tonight.

12 So I didn't mean to come and step on anybody's toes
13 or insult anybody, but this is just how we feel because we have just
14 been overburdened with a lot of things that zoning and ABC
15 regulations have done to us in my particular part of Ward 7.

16 CHAIRPERSON BENNETT: Thank you, Ms.
17 Jackson. Questions of Ms. Jackson? Questions? All right. Thank
18 you very much.

19 MS. JACKSON: Okay. Thank you. And I will get this
20 back, and I will be sending a copy of it to Corporation Counsel, DCRA,
21 and to the Justice Department.

22 MS. DOBBINS: Ms. Jackson?

23 MS. JACKSON: Yes.

24 MS. DOBBINS: Madam Chair, may I ask one
25 question about the report?

26 CHAIRPERSON BENNETT: Certainly.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 MS. DOBBINS: Ms. Jackson, did the ANC take an
2 official vote and have a quorum and all of that present to come up with
3 this?

4 MS. JACKSON: No. No.

5 MS. DOBBINS: Okay.

6 MS. JACKSON: This is -- what we did was we sent a
7 copy of the notice and a short letter to all of the commissioners in
8 Ward 7.

9 MS. DOBBINS: Okay. So what you are --

10 MS. JACKSON: So this room should be full with
11 them. This view is my view for my single member district.

12 MS. DOBBINS: Okay. That is what I wanted to
13 know.

14 MS. JACKSON: It is not reflecting my entire --

15 MS. DOBBINS: Because I was going to ask when
16 you put it in writing to make sure we have that information.

17 MS. JACKSON: We will vote on it Tuesday when we
18 have our regular meeting.

19 MS. DOBBINS: And you will send us -- you will send
20 the Commission a report of the ANC?

21 MS. JACKSON: Yes.

22 MS. DOBBINS: Okay.

23 MS. JACKSON: Thank you.

24 CHAIRPERSON BENNETT: Okay. Lyle Schauer?

25 MR. WOLF: Before Mr. Schauer, we both represent
26 the same group, the Capitol Hill Restoration Society.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 CHAIRPERSON BENNETT: You need to tell us who
2 you are for the record.

3 MR. WOLF: I am Mr. Wolf, and I put my card in. If
4 you want me to stand back and come seriatim, I will do that.

5 CHAIRPERSON BENNETT: No. You are welcome
6 to stay as a panel if you wish. Good evening.

7 MR. SCHAUER: Good evening.

8 MR. WOLF: Lyle, do you want to go first?

9 MR SCHAUER: My name is Lyle Schauer. I reside
10 at 1107 Independence Avenue, S.E. I am the Zoning Chair of the
11 Capitol Hill Restoration Society. Mr. Wolf, who has joined me tonight,
12 is the City Planning Chair of the Society.

13 CHAIRPERSON BENNETT: Please proceed.

14 MR. SCHAUER: I am going to try to hit just a few of
15 the high spots in this rather than to read the thing into the record. The
16 Capitol Restoration Society is a civic association. We have about 800
17 members. Our interest area is on Capitol Hill, bounded on the north
18 by H Street, N.E., on the east and south by the Anacostia River, and
19 on the west by North and South Capitol Streets. We are very
20 concerned with this proposal because almost all of our residential
21 districts are zoned R4. It is probably the biggest single
22 conglomeration of R4 zoning in the District of Columbia. It starts at
23 the Southeast/Southwest Freeway in Southeast Washington and goes
24 north to about the Soldiers Home, that great wide band running up into
25 Northeast Washington. All of our -- or almost all of our residential
26 districts, therefore, are R4. And we feel that this will impact us very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 heavily because it will encourage proprietors to come into the R4 zone
2 to establish CBRFs for handicapped people if all of these
3 requirements are swept away as are proposed in the 330.5.

4 We believe that the R4 districts will be particularly
5 affected because they are characterized by modest-size row houses.
6 By and large we are not talking about big buildings here. They are
7 modest-size row houses which are very well suited for CBRFs for
8 handicapped people. And I -- we do have CBRFs for handicapped in
9 our neighborhoods. I have one around the corner from me. It is for
10 severely retarded persons, six residents. It causes absolutely no
11 problem. It is a well-run facility. It is one facility in the block. If we
12 were to add a number of other facilities, it might and would, I think,
13 change the character of our neighborhood, which would have a bad
14 effect on the residents of the CBRFs also. Because the whole idea is
15 to get them into a home-like surrounding. The one around the corner
16 from me is very much like a home-like surrounding. The building
17 looks exactly like the single-family dwellings next to it. The people
18 blend into the neighborhood very nicely. I am sure they find it a lot
19 better than being in a great large institution. So this is not a "not in our
20 backyard" kind of thing. We do have facilities like this and they work
21 well as long as there aren't too many of them. If there are too many,
22 they are going to change the character of the neighborhood.

23 Now the proposed changes in 330.5 apply, of course,
24 as Mr. Colby pointed out, to the more intensive use districts as well,
25 the R5's and so on up. All of the more intensive use districts where
26 residences are allowed. But we think because of the kind of housing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 stock we have, our R4 districts are more likely to receive CBRFs than
2 the more intensive districts. And that is for a couple of reasons. One,
3 the more intensive use districts, R5 and up, tend to have bigger
4 buildings, which are not very amenable to CBRFs. Our problem isn't
5 that there are going to be big establishments. It is going to be a lot of
6 little ones. And there is an effort to put handicapped persons into that
7 kind of small facility. So I don't think the operators are going to go into
8 the R5 zone or the commercial zones where the buildings tend to be
9 larger and where you have less of a home-like atmosphere. They are
10 going to try to go into the R4 zone because that is going to be the
11 easiest place for them to go.

12 We think that some of the principles that were
13 expressed in the 1980/1981 comprehensive case really do apply very
14 well today. For one, the CBRFs should be dispersed as equally as
15 possible around the city so that no area will have a disproportionate
16 share of those facilities. And second, that smaller family-sized
17 facilities should be encouraged so as to lessen the neighborhood
18 impacts and provide a home-like environment for residents. I think
19 those are sound principles.

20 Now I want to assume just for the sake of argument
21 that the stipulated agreement accurately -- let me take it off my paper
22 here. Let us assume for the sake of argument that regulation of
23 CBRFs under the Fair Housing Act is correctly stated by the stipulated
24 agreement. In other words, the argument that I wanted to make is,
25 okay, we accept the stipulated agreement as being properly
26 interpretive of the Fair Housing Act. The regulations that will be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 affected by that are in the R4 and more intensive zones, and they
2 include such restrictions as spacing and special exception, and those
3 that apply to the CBRFs for the handicapped but do not apply to
4 housing for non-disabled persons. So my proposal is a very simple
5 one -- very simple. And it will, I think -- if you start with my assumption
6 that the stipulated agreement properly states the Fair Housing Act -- if
7 you start with that assumption, I would change one number in the
8 330.5, and that is the number 4. I would change it to 1. That is,
9 where it now reads R4, it would say R1. In other words, the
10 requirements would be swept away for handicapped CBRFs in all the
11 residential zones, not just the R4 and more intensive use. All the
12 residential zones. That would open R1, R2, and R3 to the kinds of
13 small CBRFs that are to be encouraged under the regulations.

14 I think the reason we got into these complications is
15 because the stipulated agreement -- well, it reminds me of the story
16 told of the camel. The camel was the product of the committee that set
17 out to invent the horse. And I think that is where many of the
18 complications come in. The committee set out and they made certain
19 assumptions. And one of those assumptions was that this must apply
20 only to single-family -- it must not apply to single family district
21 residences because the Fair Housing Act does not reach single-family
22 structures as I understand it. Therefore, we have to apply it only to
23 zones that permit multi-family residences, because clearly it is going
24 to apply there.

25 Now this Commission does not have to follow
26 slavishly that provision. They can simply say let's apply it to all the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 residential districts. And if we do that, then I don't think we need
2 220.5 and this strange little procedure that is introduced into the
3 zoning regulations. Now the procedure is not a bad procedure, but it
4 doesn't really apply to zoning or it wouldn't have to apply to zoning if
5 these regulations applied to all the residential zones. Then you don't
6 need it anymore. You need it for other purposes. I am not saying that
7 DCRA should not enact it. But it is not needed for zoning purposes. It
8 is needed for building code adjustments and a number of other such
9 things -- housing code adjustments. It is not needed any longer for
10 the zoning codes.

11 There is my proposal, Madam Chairperson and
12 members of the Commission.

13 CHAIRPERSON BENNETT: Thank you, Mr.
14 Schauer. Let's hear from Mr. Wolf and then we will open up for
15 questions. Is that all right? Good evening, Mr. Wolf.

16 MR. WOLF: Good evening. My name is Richard
17 Wolf, and as Mr. Schauer has indicated, I am the Chair of the City
18 Planning Committee and have been for some time of the Capitol Hill
19 Restoration Society. I live at 146 11th Street, S.E. And just for the
20 record, I want to indicate that I have been doing this kind of thing for
21 about 30 years. I am a lawyer. I was on the board of a hospital in the
22 District, Capitol Hill Hospital. I was on the Audit Committee of Med-
23 Atlantic Healthcare Corporation. I am involved as a board member of
24 the CDC in rebuilding a public housing project. I have been there and
25 done that. I think I know what the issues are on a very real level. I
26 was also one of the original staff members at the U.S. Commission on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 Civil Rights. So I think I understand -- I think I understood at one time
2 at least what I thought was the civil rights issue. I am not sure I
3 understand it today.

4 But in any event, I want to pose a couple of issues to
5 you. I haven't formally written them down, but I will after this is over
6 and submit it for the record. First of all, there have been a number of
7 references to the settlement. The vagueness and unknowability of
8 some of what is contained in that settlement -- and it is too bad that
9 the Corporation Counsel is not here to explain some of it. But I have
10 got to tell you that I don't understand why the District rolled over for
11 the Justice Department on this issue. Because I don't think what we
12 have is necessarily unreasonable.

13 Secondly, I don't understand why when the
14 accommodation was made to the Justice Department to go for matter
15 of right they started with R4. I don't think the Corporation Counsel or
16 the Planning Office understands that most of the R4 in the District of
17 Columbia really is quite modest housing. In fact, it is the housing
18 which contains most of the families that are now leaving the District of
19 Columbia and has been so aptly characterized as one of the problems
20 that the District of Columbia has. Where people of modest means
21 who are raising their families are leaving the District for reasons that
22 obtain to the conditions in their neighborhood.

23 Then I want to address this issue -- and before I leave
24 that, I want to say that leaving out all the other residential zones from
25 this agreement is really a beggar thy neighbor approach. And I think it
26 smacks of the grossest kind of unfairness when it comes down to who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 is going to get the problem, if you will.

2 Now let me address the issue of is this a problem or is
3 this not a problem. Are these small home-like places for the
4 handicapped, which embraces a very broad range of people with very
5 varying kinds of conditions, what are these? Well, I can tell you from
6 having been on the board of a hospital that these are institutions.
7 They are not homes as we understand it. They very often have to
8 meet certain building code requirements because they are institutions.
9 They very often have to accommodate staff 24 hours a day in their
10 parking requirements. For whatever reason, the Congress has been
11 sold some notion that many institutions in neighborhoods are not
12 institutions, but they are. And we have them. We have at least 2300
13 beds of such institutions stretching from North and South Capitol
14 Street to the river, in what is popularly known as Capitol Hill or the
15 west side of Ward 6. And we have maps showing and identifying
16 where those facilities are. The Planning Office should have provided
17 you all with all of that stuff -- Because that is where we got our
18 information -- showing the impact of what you are considering today.

19 And I also want you to understand something you
20 probably do understand already, but I will say it for the record. These
21 institutions are run as businesses. There are many -- there are
22 hundreds of contractors in the District of Columbia, and they are not
23 all non-profits or idiomonisonary organizations who are running these
24 institutions. They are businesses, and they are a very powerful
25 element in the business community of this city.

26 I just want to also tell you, just as an informational

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 matter, that because of what the Justice Department has done in
2 these cases, and because of the split among the courts in the way in
3 which the Fair Housing Act is treated, that the League of Cities and a
4 number of municipalities have supported a change in the Fair Housing
5 Law, a change which is now being marked up in the House Banking
6 Committee, to deal with some of the issues that are before you today.
7 But I think you can do a better job than what has been presented to
8 you by the Corporation Counsel and the Justice Department. And I
9 also think that ultimately when you have to make a decision which
10 may be confined by the settlement that has been reached that you
11 remember that the distribution of these homes throughout the District
12 of Columbia in all residential zones is a necessary component of
13 acting fairly to all the citizens of the District. That is my testimony.

14 CHAIRPERSON BENNETT: Thank you, Mr. Wolf.
15 questions of Mr. Wolf or Mr. Schauer?

16 COMMISSIONER FRANKLIN: Mr. Wolf, if many or
17 most of these facilities are businesses, why aren't they here telling us
18 they think this is great?

19 MR. WOLF: They have got what they want. Why do
20 they have to tell you? You are supposed to do what the stipulation
21 tells you to do, Mr. Franklin.

22 COMMISSIONER FRANKLIN: Okay.

23 MR. WOLF: None of the advocacy organizations are
24 here. They believe they have won their battle.

25 COMMISSIONER FRANKLIN: Well, I am also struck,
26 though, by the absence of large numbers of citizens.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 MR. WOLF: I am struck by that too. And quite frankly
2 I think it is because, if you want my opinion -- and I will give it to you --
3 because of the political changes that have taken part in this city.
4 People basically are shell-shocked and they don't believe that
5 participation in what is -- this is part of the political process -- is going
6 to be meaningful. And I will tell you, with respect to this issue, with the
7 stipulation that is before you, it is hard for me to understand why my
8 participation might be meaningful, since it appears that you may be
9 compelled to act, whether you like it or not, to enact these matters. Or
10 if you fail to act, that somehow they will go with the stipulation to a
11 local court or Federal District Court and say they have stipulated to
12 these and here is what we are going to do. And, Your Honor, we want
13 to enjoin the Zoning Commission either to do it or that you do it for
14 them. Put you all at receivership like the rest of the District agencies.

15 COMMISSIONER FRANKLIN: Do you believe that a
16 Court can direct us to take a legislative act?

17 MR. WOLF: That is a good question. And I believe
18 there was a case involving the Counsel of the District of Columbia
19 being directed to do something and I think they took it to court. And
20 because they were acting as a legislature, the Court
21 -- another court overruled the Court that had issued the injunction or
22 mandamus to do whatever they were supposed to do. I don't know
23 whether you are going to fall within that category. You are acting in a
24 quasi-legislative mode at this point.

25 COMMISSIONER FRANKLIN: It is rulemaking.

26 MR. WOLF: Rulemaking.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 CHAIRPERSON BENNETT: Okay. Is that all?

2 Thank you, gentlemen.

3 MR. WOLF: Thank you.

4 CHAIRPERSON BENNETT: Now will the gentleman
5 who was so eager to speak from the audience, I know you are not on
6 this list, but if you wish to come forward, we would like to here you.

7 MR. HALL: My name is Richard Hall.

8 CHAIRPERSON BENNETT: All right now, Mr. Hall,
9 we have got to fill you out some slips if you have not already done so.

10 MR. HALL: I have not and I am happy to do it.
11 Should I do it now or should I speak and then fill them out.

12 CHAIRPERSON BENNETT: No, you can speak now
13 and fill out the slips later.

14 MR. HALL: My name is Richard Hall. I am speaking
15 tonight or I came here tonight on behalf of the Campaign for New
16 Community. I am a lawyer. I am the zoning coordinator for the
17 Campaign for New Community. It may be that people always think
18 they are going to catch everything, but we flat did not catch this notice,
19 so I did not sign up. I am prepared to file written comments and have
20 done so on several matters.

21 The Campaign for New Community filed a petition
22 with the Zoning Commission in August of 1997, after two years of
23 legal work on behalf of a dozen prominent zoning lawyers in the city,
24 churches, church organizations, non-profits, petitioning the Zoning
25 Commission to consider the very issues that are now before the
26 Zoning Commission on the proposed Department of Justice

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 Agreement.

2 Our proposal to you was a comprehensive one which,
3 for instance, would have allowed in effect or largely -- ours was in a
4 sense more detailed and specific, but it would have allowed changes
5 in zones R1, R2, and R3. It was comprehensive. It may have had
6 problems here or there, but it attempted to deal with it as a whole. It
7 was referred to the Office of Planning, who declined to issue a report,
8 although we had asked them in several meetings -- we had met with
9 them face-to-face. And we had asked this Commission to take our
10 petition up at the same time that you took up this matter which is
11 pending before you now. And in a vote in November, you declined to
12 do so.

13 But we would urge you to consider our petition. It is a
14 substantial process supported by extensive legal briefs, extensive
15 planning analysis, detailed text. And in addition, we have provided to
16 the Office of Planning an entire printout of where every provision of
17 the zoning code would be affected by -- I assume you still have that.

18 So we believe there is pending before the
19 Commission a very thorough -- debatable certainly -- but a very
20 thorough proposal that would, we think, in a balanced way deal with all
21 of these issues. We believe that the Department of Justice and the
22 District of Columbia agreement do not go far enough. And I don't
23 necessarily mean far enough in terms of a particular outcome for a
24 particular advocate of a particular position. It does leave a fair amount
25 to later interpretation and it leaves a very large amount to the
26 implementation and the interpretation of the reasonable

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 accommodation provision.

2 It attempts to resolve one particular issue, which I
3 understand historically the way it is structured, dealing with R4
4 because it sort of arose out of concern about the Luther Place fight.
5 But instead of dealing with it in an across the board manner, however
6 they deal with it, it was shorter hand to deal with it as R4 and leave for
7 the reasonable accommodation provision picking up whatever pieces
8 needed to be picked up in zones R1, R2, and R3 and elsewhere. And
9 we do believe they need to be picked up. This is, we believe, a
10 problem that spreads across all zones.

11 So while you may not want to reconsider your
12 decision in November not to take up our petition simultaneously, we
13 do think it has merit. Because it lays out what many of the
14 considerations are across all zones. It has got maybe 120 pages of
15 legal briefs split between the Fair Housing Act and the Religious
16 Freedoms Act issues. So we dealt with those together, which would
17 be churches who are trying to provide facilities for the needy as well.
18 But in any case, there is a good 60 or 70 pages on the Fair Housing
19 Act. I think the cases are much more broadly presented. And I would
20 have filed this as a written comment and will plan to file it, but that is a
21 somewhat backhanded way, in a sense, to answer a particular and
22 good question about what do the cases say and what are we dealing
23 with here.

24 Now I also don't have a full -- I didn't come prepared
25 to sort of speak extemporaneously endlessly about a very detailed
26 topic. I will say that the reasonable accommodation provision does

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 have a criteria in it. The Campaign for New Community filed
2 comments, in fact, in the rulemaking -- lengthy comments in the
3 rulemaking before the Department of Consumer and Regulatory
4 Affairs where we discussed them and made some suggestions for
5 changing and for improving them, we think. But nevertheless, there
6 are comments. They are rather soft type criteria, but they are criteria
7 nevertheless. It isn't just procedure. That answers one question you
8 had and a fair question. If it is just a procedure, what are we doing
9 here.

10 I will also say that I think, Mr. Parsons, that the
11 agreement with the Department of Justice was taken out of concern
12 for the position -- I think Mr. Franklin has correctly stated as did Chair
13 Bennett -- that they are looking to solve the disparity between housing
14 for the non-handicapped with housing for the protected handicapped.
15 Now in doing that, they clearly left the unprotected handicapped over
16 in a different corner. You are absolutely correct. But they focused on
17 what Congress has created, which is the Fair Housing Act, which
18 protects a certain class of people. That is the law and the other
19 classes, if they are protected, they are protected by abstract
20 constitutional principles that don't have the direct immediate
21 application. So the result is as you say, but the concern and the
22 intention was as you say, Mr. Franklin.

23 We also in the Campaign for New Community have
24 made extensive effort trying to build up the ability of community
25 groups who are interested and churches to learn to reach out to
26 communities. To maintain and build bridges to communities. And we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 have many stories of disputes that have arisen because of bad
2 communication about a church or some other group that wants to
3 build something that is good. The community gets very concerned.
4 We can understand that. And a much better way is to reach out to --
5 and we have had trainings on that. We have provided materials on
6 that. We have had video tapes on that. It is equally our mission to try
7 to create bridges between those groups, private and public, who want
8 to -- and non-profit -- who want to help the needy and the communities
9 that have every right to be concerned about what goes on in their
10 neighborhood.

11 I remember -- I live in Ward 3. I live up near Chevy
12 Chase Circle. I remember when a D.C. housing for mildly retarded
13 blind men was brought into the neighborhood. There were a lot of
14 concerns. My wife was an ANC commissioner then. She was not
15 concerned. We were not concerned. They are completely integrated
16 into the neighborhood. We have all been through that cycle in some
17 way. If it is a well-run facility, it actually ends up being a plus in many
18 ways because you recognize that no man is an island unto himself.
19 He is in your community. And you are a better person for it and the
20 community is a better place for it. But these fears do exist. They are
21 real fears and they need to be addressed.

22 Now I don't have -- I have been somewhat involved
23 with the Department of Justice agreement and the District of
24 Columbia. I may say that James Randall is the Corporation Counsel
25 attorney who negotiated that. And that may be the person you need
26 to speak to if you want to speak to him. Kenneth Zimmerman is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 Department of Justice lawyer who negotiated it. But I certainly can't
2 represent to you what went on in that and those are the people you
3 need to speak to. I can offer, despite my failure to catch this in the
4 notice, and it is really my failure -- I can offer you a panel of providers,
5 religious and non-religious lawyers, to answer all your questions if you
6 wish, and I will do that on any occasion you want. I can offer you and
7 would be happy to offer you the opportunity to visit one or more
8 facilities of this nature. You bring who you want. I am not trying to
9 exclude other people of a different view, but I make that offer on
10 behalf of the Campaign for New Community. We can do that and will
11 do that and offer that to you.

12 CHAIRPERSON BENNETT: All right. Thank you, Mr.
13 Hall. Colleagues, questions of Mr. Hall?

14 COMMISSIONER FRANKLIN: Well, Mr. Hall, I am
15 very grateful that you have come forward. I have to confess that I
16 don't recall the basis on which we acted on that petition last fall. I
17 frankly don't recall it.

18 CHAIRPERSON BENNETT: As I recall it, we saw
19 this -- at least I saw this as relatively narrowly defined and thought that
20 there was going to be a time, and we have been saying this for a
21 couple of years now, where we would look at the larger set of issues.
22 But that if that were that narrowly defined, we could deal with this and
23 then look at the other issues later in a case scenario that I lovingly
24 described as a bear.

25 COMMISSIONER FRANKLIN: Well also, and
26 perhaps Mr. Hall can clarify this, my vague understanding of your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 petition at the time, and I think you renew it tonight, is that it was
2 premised on the Religious Freedom Restoration Act?

3 MR. HALL: I would say about 75 or 80 percent of it
4 was based on the Fair Housing Act, and it dealt with the very issues
5 that are before you.

6 COMMISSIONER FRANKLIN: Okay. I see.

7 MR. HALL: There was a 20 or 25 percent -- it is hard
8 to say percentage in lines or number of issues or however you want to
9 call it -- the relatively small minority was on the Religious Freedoms
10 issue. It was a combined petition. That may have been part of the
11 confusion.

12 COMMISSIONER FRANKLIN: Yes, that may be.

13 MR. HALL: But if it had been picked up and looked
14 at, you would easily see how it was structured and that it was a
15 comprehensive presentation across the board. The great majority
16 was on the Fair Housing Act.

17 COMMISSIONER FRANKLIN: Well is there -- were
18 there recommendations in that petition which one could say were
19 reasonably within the scope of what we have advertised tonight for a
20 change in zoning?

21 MR. HALL: Yes, I think they are. I mean I think they
22 are, in fact, all within the scope. They are, in some instances, more
23 particular and more detailed. But that is the kind of working out of
24 what the -- I think it is a fairly intended consequence of the reasonable
25 accommodation procedure that provisions of the zoning code in effect
26 in R1, R2, and R3 would be subject to in the right case to waiver so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 that there would be the result that Mr. Schauer mentioned. That, in
2 fact, for instance, the family-size issue of 4 or 6 unrelated people
3 would be subject to in the right showing waiver, as it was in the Oxford
4 House litigation which the District of Columbia entered into. So in a
5 sense if that is a potential involvement of the reasonable
6 accommodation provision, which we believe it is, then ours is all within
7 that. Because we attempt to make it specific as opposed to it is all
8 over here in a very general clause and we will let people thrash it out,
9 which could be very messy.

10 COMMISSIONER FRANKLIN: Well, Madam Chair,
11 unless the staff indicates that it would be improper, I don't see any
12 reason why the petition to which Mr. Hall refers ought not to be added
13 to the record of this case, notwithstanding the fact that some of it
14 might not be relevant, as an aid in so far as it is relevant to what we
15 are considering.

16 CHAIRPERSON BENNETT: Okay. Or the other way
17 we could do that is --

18 MR. HALL: The religious freedoms portion is actually
19 backed by -- the religious freedoms brief and actual text amendments
20 are in a separate document. They came in simultaneously. The text
21 amendments and legal brief that deals with the Fair Housing Act
22 issues is a separate document. It was all in one petition. So it is easy
23 enough -- the zoning or the planning document that we submitted is
24 predominantly housing. That may be one where there is a few
25 references to religious institutions which are -- it is maybe merged
26 some, although it is predominantly housing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 CHAIRPERSON BENNETT: Let me ask this. I
2 remember the document, and it is relatively thick, at least the one -- it
3 had a blue cover on it?

4 MR. HALL: The blue one is the Religious Freedoms
5 Restoration Act. The green one is the Fair Housing Act.

6 CHAIRPERSON BENNETT: Okay. I guess what I
7 am -- in lieu of having the entire petition, is there a way to lift what is
8 most appropriate at least for our consideration here?

9 MR. HALL: Well --

10 MS. DOBBINS: Excuse me. I was about to say the
11 Campaign for New Community has withdrawn that petition and have
12 filed the religious portion, a new petition.

13 CHAIRPERSON BENNETT: I see.

14 MS. DOBBINS: So the cleanest way that I think for it
15 to come into the record in any way in this situation would be for the
16 Campaign to submit the portions that they think are related to this as
17 testimony to you.

18 CHAIRPERSON BENNETT: I think that is --

19 MR. HALL: Let me explain why we withdrew it. We
20 withdrew it, Ms. Dobbins, at your suggestion because we felt that this
21 was the same area. We were disappointed that the more
22 comprehensive proposal hadn't been taken up, but that we had had --
23 in a sense, there was a proposal covering that area and that there was
24 no proposal in what you have before you now covering the religious
25 area. So we would make that discreet. But it has -- just among the
26 five witnesses here, it is clear that the work we did in that withdrawn

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 petition is all -- on the housing side is all relevant because it raises
2 these questions about what happens in R1 and what happens in R2
3 and what is really at stake. So I will submit that and I will do it if you
4 wish -- I will do it tomorrow or Monday by messenger, so that if there
5 is any -- I mean, as part of comments, as long as I can maybe have an
6 opportunity to comment later on in addition.

7 COMMISSIONER FRANKLIN: Well, I don't know how
8 long the record is going to be kept open, Madam Chair, but I don't see
9 any reason why Mr. Hall, when he submits his petition, could not
10 accompany it with whatever additional comments he wants to make.

11 CHAIRPERSON BENNETT: I don't have a problem
12 with that. It looks like -- especially since we are going to be asking for
13 additional input from DOJ and Corporation Counsel, that certainly
14 makes sense to me.

15 MR. HALL: And we would be -- we are a group of
16 lawyers in substantial part, some of the prominent lawyers of the city
17 have participated in this. And I believe they would have something to
18 offer if you cared to ask them if you wanted to hear lawyers speak. So
19 if you cared to have a discussion where they were there to answer
20 your questions if you posed them as well as the Department of Justice
21 and/or the Corporation Counsel. I know the Corporation Counsel, at
22 least James Randall, wouldn't mind. We have been communicating
23 for months now as this process went forward. But I make that offer.
24 Partners in the prominent law firms in the city have devoted several
25 years to this effort and I think may be a resource that you want to
26 plumb.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 COMMISSIONER FRANKLIN: We often do hear from
2 lawyers.

3 MR. HALL: And they aren't getting a fee in this case,
4 which makes it a little quirky, right? COMMISSIONER

5 FRANKLIN: Well, I would welcome the opportunity to have some light
6 shed on what to me is a very puzzling proposal. While you are before
7 us, Mr. Hall, do you have any comments about this provision before us
8 which is supposedly addressing the reasonable accommodation
9 provision?

10 MR. HALL: Yes, Your Honor -- I am so used to
11 saying Your Honor.

12 COMMISSIONER FRANKLIN: I won't reject that.

13 MR. HALL: You won't reject that. I do. Let me say
14 first that the Campaign for New Community also filed a petition with
15 the DCRA about a year and a half ago to start a rulemaking on their
16 prior reasonable accommodation provision. We believed that it was
17 seriously inadequate and we -- I wrote an 8-page letter discussing that
18 old provision and what we thought were the hallmarks of a proper
19 provision, including case law for it and citations. I think it is a rather --
20 it is kind of an odd twist of affairs, but several courts have held that
21 public notification of reasonable accommodations for the handicapped
22 violates the Fair Housing Act. And perhaps the nearest one is the
23 District Court for the District of Maryland and the Maryland Attorney
24 General has ruled that Maryland statutory requirements for public
25 notice and possibly hearing, but there it was just public notice, of the
26 pendency of a reasonable accommodation provision for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 handicapped was treating them to kind of painful exposure of their
2 conditions, treatment that was different from the people who ordinarily
3 were buying houses. That it was, as you said, a kind of a continuation
4 of a discriminatory practice. So the Attorney General in Maryland has
5 ruled that it violates federal law, accepting the authority of the District
6 Court for the District of Maryland.

7 COMMISSIONER FRANKLIN: Nothing in the District
8 of Columbia Circuit is controlling?

9 MR. HALL: I don't believe there is. I would like to go
10 back and be sure. The last time I looked, which was about a year ago,
11 there wasn't. I am not 100 percent certain there isn't now. There is
12 some discussion of the statute in the decision against the District of
13 Columbia involving the Tabatha House, which you may have heard
14 about. But I don't think it would be considered controlling precedent
15 because the issue wasn't directly presented. It is favorable to the
16 notion of what the District Court did in Maryland. So whether you
17 would view that as controlling or not, it depends to some extent on
18 how you view the law.

19 CHAIRPERSON BENNETT: Okay. Thank you, Mr.
20 Hall. We appreciate it. Mrs. Dobbins?

21 MS. DOBBINS: Yes.

22 CHAIRPERSON BENNETT: When were we
23 supposed to get together next time?

24 MS. DOBBINS: I think it is the 19th.

25 CHAIRPERSON BENNETT: March 19th?

26 MS. DOBBINS: March 19th.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 CHAIRPERSON BENNETT: What is the procedure
2 for asking Mr. Randall and Mr. Zimmerman to come back or to come
3 over, not to come back.

4 MS. DOBBINS: I will send a letter.

5 CHAIRPERSON BENNETT: Okay.

6 COMMISSIONER FRANKLIN: March 19. Is that a
7 Monday?

8 MS. DOBBINS: I think it is a Thursday.

9 COMMISSIONER FRANKLIN: A Thursday. Okay.

10 CHAIRPERSON BENNETT: That is one of the things
11 that we said we wanted to do so that they could come here. The other
12 is that we wanted -- colleagues, do you -- I think it was Mr. Wolf who
13 suggested that we get a hold of some maps showing the locations of
14 CBRFS, especially in R4 zone districts. That those existed in the
15 Office of Planning. Is it your wish to have these entered into the
16 record?

17 COMMISSIONER FRANKLIN: Sure. Why not?

18 CHAIRPERSON BENNETT: All right. And then the
19 last, of course, is that portion of the petition previously submitted by
20 the Campaign for New Community that best addresses the issues that
21 we have before us. Those are the three things that I have that we
22 said we wanted. And we will reconvene then on March 19.

23 MS. DOBBINS: I think the ANC is going to submit a
24 report.

25 CHAIRPERSON BENNETT: Right. But the record is
26 open to receive that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 COMMISSIONER FRANKLIN: I have a conflict on
2 March 19. So I will be glad to read the record. I regret very much that
3 I won't be here.

4 COMMISSIONER PARSONS: Well, why don't we go
5 to the next date.

6 CHAIRPERSON BENNETT: Well, but we may -- let
7 me suggest this. Is Mrs. Kress going to be able to join us on that day?

8 MS. DOBBINS: She may. She hasn't indicated that
9 she won't be able to.

10 CHAIRPERSON BENNETT: And the reason why
11 -- I mean, despite what I said earlier --

12 MS. DOBBINS: Yes, I know.

13 CHAIRPERSON BENNETT: This is my concern. We
14 don't tell Counsel how to schedule their hearings. MS.
15 DOBBINS: Right.

16 CHAIRPERSON BENNETT: Do you know what I am
17 saying?

18 MS. DOBBINS: Right.

19 CHAIRPERSON BENNETT: So if we have a reason
20 to schedule or to proceed with a future hearing, then that makes
21 sense. And such a reason has arisen out of these proceedings, so it
22 makes sense to do that.

23 MS. DOBBINS: Right.

24 CHAIRPERSON BENNETT: I would try to see if we
25 can't schedule the 19th with Mrs. Kress. Because I suspect that the
26 next meeting may be better attended, number one, and may overflow

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 into yet a third meeting. And at least we have saved those dates. We
2 have those dates established already.

3 MS. DOBBINS: Okay.

4 COMMISSIONER FRANKLIN: The next date is
5 what?

6 COMMISSIONER PARSONS: The 23rd. The
7 following Monday.

8 MS. DOBBINS: After the 19th.

9 CHAIRPERSON BENNETT: That following Monday.

10 COMMISSIONER FRANKLIN: I may not be able to
11 do that too. So I have a problem. I will know soon whether I can do
12 that.

13 MS. DOBBINS: So as of now, you are scheduling for
14 the 19th as indicated in the public hearing notice?

15 COMMISSIONER FRANKLIN: Right now, I cannot
16 come on the 19th.

17 MS. DOBBINS: Right.

18 COMMISSIONER FRANKLIN: That is definite. That I
19 know.

20 MS. DOBBINS: Okay.

21 CHAIRPERSON BENNETT: Why don't you come
22 forward. You can't speak from the audience.

23 MS. DOBBINS: Make sure your microphone is on.

24 MS. JACKSON: It is on. This is Commissioner
25 Jackson speaking again. I just wanted to make sure the record states
26 that we are not anti-handicapped in Ward 7. We have homes already

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1 there that blend in perfectly with our community. As a matter of fact,
2 they have added some value to some of the houses there. These
3 houses are operated and run by folks that came from Forest Haven
4 some years ago. My grandchildren have even put together reading
5 groups to go read to these grown-ups on certain days. The only thing
6 I want the record to show, because I have listened to some of the
7 testimony from some of the legal side of these issues, is that you have
8 to be a lot more lenient in neighborhoods that are very highly dense
9 already with a lot of rental properties and less homeowners as to
10 where these facilities are put. And I have to agree with Mr. Wolf that a
11 lot of these places are for-profit organizations that run these facilities.
12 Because one such facility in my neighborhood -- I don't want to call
13 the name -- they went bankrupt because of mismanagement and
14 someone else took over. So we have to look at the issue of who is
15 going to run these places, how often are they going to change hands,
16 who is going to handle the legal side of it, and how well the community
17 is going to be protected. That is what we are here for and that is what
18 we stand for.

19 CHAIRPERSON BENNETT: Thank you. We will
20 reconvene our next session at 7:00 on March 19, 1998.

21 (Whereupon, at 9:08 p.m., the public hearing was
22 concluded.)

23
24
25
26

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433 WASHINGTON, D.C. 20005-3701 (202) 234-4433

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON, D.C. 20005-3701

(202) 234-4433