

This transcript constitutes the minutes from the Public Hearing held on November 27, 2006.

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

2 6:41 p.m.

3 CHAIRPERSON MITTEN: Good evening,
4 ladies and gentlemen. This is a Public
5 Hearing of the Zoning Commission of the
6 District of Columbia for Monday, November 27,
7 2006. My name is Carol Mitten and joining me
8 this evening are Vice Chairman Anthony Hood
9 and Commissioner John Parsons.

10 First, an announcement regarding
11 Case No. 06-37, this is a Map Amendment near
12 Ft. Reno Park, that hearing will be postponed
13 until March 19, 2007 at 6:30 in this room.

14 Next is Case No. 06-33 and this is
15 a request by the Office of Planning for
16 amendments to Title 11 to clarify parking
17 requirements for historic landmarks and
18 buildings contributing to an Historic
19 District.

20 Notice of this hearing was
21 published in the D.C. Register on September
22 22, 2006 and copies of the hearing

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1 announcement are available to you and they are
2 in the wall bin by the door.

3 This hearing will be conducted in
4 accordance with the provisions of 11 DCMR
5 section 3021 and the order of procedure will
6 be as follows: We will take up any
7 preliminary matters followed by the
8 presentation by the Office of Planning;
9 reports by any other Government Agencies;
10 reports by ANCs, organizations and persons in
11 support and organizations and persons in
12 opposition.

13 The following time constraints
14 will be maintained in the hearing.
15 Organizations will have five minutes and
16 individuals will have three minutes. The
17 Commission intends to adhere to these time
18 limits as strictly as possible in order to
19 hear the case in a reasonable period of time.
20 The Commission reserves the right to change
21 the time limits for presentations, if
22 necessary, and notes that no time shall be

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1 ceded.

2 All persons appearing before the
3 Commission are to fill out two witness cards.
4 They look like this and the cards are on the
5 table by the door. Upon coming forward to
6 speak to the Commission, please, give both
7 cards to the reporter who is sitting to our
8 right.

9 Please, be advised that the
10 proceeding is being recorded by the Court
11 Reporter and is also being webcast live.
12 Accordingly, we ask you to refrain from making
13 any disruptive noises in the hearing room.

14 When presenting information to the
15 Commission, we ask you to take a seat at the
16 table in front of us and then turn on and
17 speak into the microphone stating your name
18 and address. When you are finished speaking,
19 we ask you turn the microphone off, because it
20 tends to pick up background noise.

21 The decision of the Commission in
22 this case must be based on the public record.

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1 And to avoid any appearance to the contrary,
2 the Commission requests that persons present
3 not engage the Members of the Commission in
4 conversation during a recess or at any other
5 time. Mrs. Schellin will be available
6 throughout the hearing to answer any
7 procedural questions you might have.

8 I would ask you to turn off all
9 beepers and cell phones, at this time, so as
10 not to disrupt the proceeding and I would just
11 announce again, since we have had some other
12 folks come in, that the hearing in Case No.
13 06-37, which is the Map Amendment in the Ft.
14 Reno area, is being postponed until March 19,
15 2007 at 6:30.

16 Mrs. Schellin, do we have any
17 preliminary matters?

18 MS. SCHELLIN: No, ma'am.

19 CHAIRPERSON MITTEN: All right.
20 Then we are ready to proceed to the Office of
21 Planning presentation and I would just note
22 that Mr. Callcott has joined us this evening

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1 and welcome. Not that we don't welcome you,
2 too, Mr. Parker.

3 MR. PARKER: Thank you.

4 CHAIRPERSON MITTEN: But we see
5 more of you.

6 MR. PARKER: That's right. Good
7 evening, Madam Chair. And for the record, my
8 name is Travis Parker with the Office of
9 Planning. The Text Amendment that we have
10 submitted for review tonight is an attempt to
11 clarify section 2100 to what OP feels was its
12 original intent.

13 As you are aware, section 2100
14 deals with when parking spaces are required.
15 And for buildings built before 1958, there are
16 two times when additional parking spaces are
17 required. First, when a use of the building
18 has changed to one that requires more parking
19 and, second, when the existing use has
20 increased through an addition or other
21 increase in the intensity of use.

22 The first case is covered under

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1 2100.4, which covers change of use, and it
2 specifically calls out an exception for
3 historic buildings by referring to 2100.5.

4 The second case, when you increase
5 the intensity of the use is then covered by
6 2100.6. .6 calls out that it is subject to
7 2100.7, .8 and .9, but says nothing about
8 2100.5. This specific reference to .5 and .4
9 and a lack of such records at .6 appears to be
10 conclusive evidence that 2100.5 modifies .4
11 and is not meant to apply elsewhere.

12 But even if you read .5 in
13 isolation, it talks about no spaces being
14 required for buildings or structures that are
15 landmarked or certified as contributing. And
16 it says nothing about buildings or structures
17 that are added on to or built next to
18 contributing buildings.

19 But this is the way that it has
20 been interpreted by past Zoning Administrators
21 as well as by the BZA. The result has been
22 cases such as 1445 Church Street or 1830

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1 Jefferson Street where 7 or 8 story condo
2 buildings are built behind or around
3 contributing structures or contributing row
4 houses to be specific providing several times
5 the number of units while having absolutely no
6 parking requirements.

7 In the case of 1445 Church Street,
8 the neighborhood has vehemently opposed the
9 project for the main reason that there is
10 space to provide underground parking in the
11 new building and the developers chose to take
12 advantage of this section to provide none.

13 Which brings us to the language
14 being proposed. OP has worked with both
15 Historic Preservation staff and the Office of
16 the Attorney General to draft the language in
17 the OP report. The language is intended to do
18 a couple of things. It is intended to clarify
19 that 2100.5 does protect the existing
20 structure of historic buildings from having to
21 provide new parking no matter what the changes
22 of use on the interior of the building.

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1 But it also clarifies that any
2 expansion more than 25 percent of a pre-'58
3 building including historic structures must
4 provide new parking for the addition.

5 Since the sit-down, I have had
6 conversations with interested parties
7 regarding the proposed text and OP is aware
8 that there is concern both about the confusing
9 nature of the language that has been proposed
10 as well as a concern about the possible
11 unintended consequences where cases that
12 shouldn't have to go for variances or for
13 various obvious approvals will be sent to the
14 Board of Zoning Adjustment.

15 OP is aware of several of these
16 issues and we're open to possible language
17 changes and possible other suggestions by
18 parties, provided that the main intent of this
19 section is honored.

20 One of the comments that we have
21 heard is that many of these situations aren't
22 actually trying to get out of providing

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1 parking, but due to the constraints of the
2 historic site need relief from the size of the
3 parking spaces or the widths of the aisles.
4 We're open to some compromise that would
5 relieve some of that without relieving the
6 requirement to provide parking spaces.

7 Another suggestion we have heard
8 is that for cases where there is obvious say
9 100 percent lot occupancy, where there is
10 obviously no opportunity to provide parking,
11 that maybe the Historic Preservation officer
12 or some other party could make that call that
13 parking is not required at that site, short of
14 going to the Board of Zoning Adjustment.

15 We're open to language changes of
16 these types and, as you said, Mr. Callcott is
17 here to answer any questions you may have
18 regarding HP's thoughts on this matter and its
19 effects on Historic Districts.

20 CHAIRPERSON MITTEN: Thank you.
21 Questions from the Commission? Mr. Parsons?

22 COMMISSIONER PARSONS: I'm not

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1 sure I understood what you just said. That OP
2 would somehow develop a process to rely on the
3 Historic Preservation Review Board?

4 MR. PARKER: I think other parties
5 will be presenting tonight. I'm just saying
6 we're open to other options, but I think
7 you'll hear more.

8 COMMISSIONER PARSONS: Okay.

9 CHAIRPERSON MITTEN: I just had a
10 couple of things that I wanted to talk about.
11 First is in 2100.5 it talks about in use
12 change and then in 2100.6 it talks about
13 intensity, increased intensity of use and then
14 it sort of suggests that that would be without
15 changing the use.

16 MR. PARKER: Correct.

17 CHAIRPERSON MITTEN: So, to me,
18 there is a little slippage, because sometimes
19 the use change itself isn't higher intensity
20 than the existing use.

21 MR. PARKER: I think that's what
22 2100.4 says. 2100.4 says if you change the

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1 use to something that requires more parking,
2 you have to provide additional parking for the
3 increase. So the change of use that it causes
4 an additional parking increase is covered
5 under .4.

6 CHAIRPERSON MITTEN: Okay.

7 MR. PARKER: As modified by .5.

8 CHAIRPERSON MITTEN: Well, okay.
9 It says except as provided under .5 in 2100.4.

10 MR. PARKER: Yes. So .5 exempts
11 contributing and landmarked buildings. So
12 contributing landmarked buildings can change
13 the use however they want within their
14 structure without providing additional parking
15 for the more intense use.

16 CHAIRPERSON MITTEN: Yes, I guess
17 that's my point, which is that in certain
18 circumstances that intensity could be quite
19 significant. And so we just want to stick
20 with the blanket?

21 MR. PARKER: I think that was the
22 intent that within the existing envelope of a

1 contributing or a historic building, you could
2 do any matter-of-right use for that zone
3 district, even if it would require more
4 parking. Clearly, we don't want to go in and
5 have people adjusting, you know, or renovating
6 their historic buildings just for the purpose
7 of providing some additional parking.

8 CHAIRPERSON MITTEN: Okay. The
9 other thing that hasn't been dealt with in
10 this case, when I was at the BZA last week as
11 were you, and the issue came up and I don't
12 want to suggest how the BZA will handle this
13 and it is certainly an area that's open to
14 interpretation, but rather than leave it open
15 to interpretation, perhaps you have given some
16 thought since last Tuesday about the issue of
17 what constitutes the base number of parking
18 spaces as existing, which is in 2100.5, no
19 additional means over some base.

20 MR. PARKER: Right.

21 CHAIRPERSON MITTEN: That exist.
22 And have you given that any thought since last

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1 Tuesday?

2 MR. PARKER: I've given a lot of
3 things from that meeting thoughts, but in
4 specific, I haven't come up with any solution
5 of that problem.

6 CHAIRPERSON MITTEN: Okay. I
7 think that's an important one, because I know
8 the Zoning Administrator has to struggle with
9 it and it's clearly going to be an issue each
10 time this comes up, so we need to give that
11 some thought. Okay. Do you have any
12 additional questions? Is there any other
13 Government Agency representative here that
14 wants to give testimony in this case?

15 Okay. Any ANCs represented who
16 want to give testimony in the case regarding
17 the parking and historic structures? Okay.
18 Then we will take organizations or persons in
19 support of the Text Amendment. Okay. Okay.
20 Mr. Peterson, please, have a seat.

21 MR. PETERSON: My name is Gary
22 Peterson. I live at 810 Massachusetts Avenue,

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1 N.E., Washington, D.C. and I'm here on behalf
2 of the Capitol Restoration Society. I see I'm
3 all alone here in support. Last week I was on
4 vacation and went to an aquarium where you
5 could go snorkeling in a tank where you had to
6 feed small sharks, barracudas and stingrays.
7 I believe that was in preparation for this
8 evening.

9 There I was all alone in this tank
10 with these hungry fish and a little container
11 of herring. But anyway --

12 CHAIRPERSON MITTEN: They don't
13 look that vicious.

14 MR. PETERSON: Well, that was
15 probably overstating it. As someone said when
16 he saw my dog, well, I told him he doesn't
17 bite. He said well, he has got teeth, doesn't
18 he? So anyway, we support this, the
19 recommendation, to change the Zoning
20 Regulations and, frankly, up until this point,
21 we, in the Historic District on Capitol Hill,
22 haven't experienced a big problem yet, but I

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1 can see where this acts as a loophole and I
2 think it would -- we would like it closed.

3 And I think it was the intent of
4 the regulations to be what it is being
5 clarified for, but we would like to see it
6 clarified. There are a number of objections
7 to this and when I hear the objections, I have
8 to agree to them that they are stating the
9 facts correctly. Yes, they say but if you do
10 X, Y will occur and I'm saying, yes, that's
11 the idea, that's what we want to occur.

12 So I don't disagree with them from
13 the standpoint of what the conclusion is when
14 my response is yes, that's what we want to do.
15 We want to be able to in a Historic District
16 both control the density and the amount of
17 parking. And so I'm open to any questions you
18 may have on this. I think this is a good
19 amendment and I think it would help the
20 Historic Districts in the city greatly.

21 CHAIRPERSON MITTEN: Thank you.
22 Do you have any questions? Well, thanks for

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1 flying solo tonight. All right. If there is
2 no one else who would like to testify in
3 support, then I'll move to the witness list in
4 opposition. And Mr. Nettler, Mary
5 Mottershead, is she here? No. So we'll have
6 Mr. Sternlieb then and Allen Greenberg and
7 then we'll have a second panel after that.

8 MR. NETTLER: Good evening. My
9 name is Richard Nettler from Robins, Kaplan,
10 Miller and Ciresi. And I am here as an
11 opponent of the proposed change to the parking
12 regulations in this case. And while my
13 testimony is lengthy, I'm going to try and get
14 through it, at least in the three minutes I
15 have, and with some recommendations as well.

16 With all due respect for the great
17 work the Office of Planning has done over the
18 last few years, the present recommendation
19 proceeds from both a misunderstanding of the
20 interplay between the current regulations
21 governing parking and an application to
22 historic structures and the purpose of those

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1 regulations.

2 More than 20 years ago, the Zoning
3 Commission provided for a waiver of any
4 parking requirements for historic landmarks or
5 a building that was certified as contributing.
6 The Zoning Commission adopted this waiver
7 because it recognized, at the time, as all
8 other cities which have adopted similar
9 waivers have and as the Landmark Planning
10 Association has commented upon.

11 Because the requirement to provide
12 parking for either a change in use to such
13 buildings or for expansions of such buildings
14 would ensure that these historic buildings
15 would not be reused or rehabilitated. The
16 waiver provision was one of many regulations
17 adopted by the Zoning Commission at the time
18 to foster the historic preservation in concert
19 with the District's newly adopted preservation
20 law.

21 The proposal by the Office of
22 Planning today runs counter to that sentiment

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1 and would seriously undermine future
2 preservation efforts as well as the reuse of
3 historic buildings, which have previously been
4 rehabilitated.

5 While the Office of Planning
6 suggests that the proposal before you today is
7 simply a clarification of parking requirements
8 with a codification of accepted practice does
9 neither, rather than clarify the current
10 regulations and address purported problems in
11 providing parking in Historic Districts, the
12 Text Amendment, if adopted, will create the
13 very disincentive to reuse or redevelop
14 historic properties that the Zoning Commission
15 sought to respond to more than 20 years ago,
16 because it would require property owners or
17 developers to include parking and often
18 unfeasible costs in prohibitive situations or
19 seek zoning relief that under the current
20 regulations of the case law will be impossible
21 for the Board of Zoning Adjustment to grant.

22 Indeed, the proposed regulations

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1 will remove any distinction between historic
2 buildings in the manner in which the
3 grandfather principles of zoning laws that
4 apply to every building constructed before
5 1958.

6 More troubling, however, is the
7 fact that this amendment will have unintended
8 consequences that the Office of Planning has
9 failed to understand or acknowledge. The
10 ambiguity of the Office of Planning states
11 that it is seeking to resolve arises from a
12 misinterpretation between -- of the interplay
13 between 2100.7 and 2100.5 that arose while a
14 Member of the Office of Planning was detailed
15 as Acting Zoning Administrator over a year
16 ago, while the city sought a new Zoning
17 Administrator.

18 Up until that time, there was no
19 ambiguity in interpretation of the
20 regulations. The Zoning Administrator
21 consistently interpreted as has the BZA that
22 section 2100.7, which governs the provision of

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1 parking for increases of more than 25 percent
2 of the size of the buildings constructed prior
3 to 1958, did not -- had nothing to do with
4 requirement to the wavier of parking for
5 historic structures.

6 That's because unlike historic
7 buildings or Historic Districts, there is
8 nothing inherently difficult in providing
9 parking for expansion of non-historic
10 buildings, albeit, ones that are constructed
11 before 1958.

12 For example, while curb cuts are
13 routinely denied in Historic Districts and
14 many Historic Districts do not have alleys
15 wide enough to accommodate motor vehicle
16 traffic, thus making it impossible to ever
17 provide parking for historic buildings. Those
18 conditions do not exist necessarily for
19 buildings built before 1958.

20 The Office of Planning has gone
21 even further with its proposed amendment to
22 seriously undermine the current use of for

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1 future building regulation of historic
2 buildings. First, with regard to the specific
3 provisions of section 2100.5, which provides
4 that a building which was altered, expanded
5 after either the date of designation of 1958,
6 whichever date is later, and then undergoes a
7 change in use with or without a concurrent
8 addition or expansion would require parking
9 for -- not only for the immediate use change,
10 but for all changes to the building made after
11 1958 or the date of designation, whichever
12 date is later.

13 Under the District of Columbia
14 law, no building is considered as a historic
15 landmark or contributing building prior to
16 1979 when the District's preservation law was
17 adopted. However, if a historic building or
18 a Historic District created in 1979 by virtue
19 of the adoption of the District's preservation
20 law was expanded, say in 1986, under the
21 Office of Planning's proposal, that expansion,
22 if a change in use occurs, would have to

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1 provide for parking, regardless of whether
2 there was any additional density being added
3 to the site and without regard to the present
4 conditions affecting that building.

5 So that if you had a building,
6 historic building, the Homer Building, let's
7 say, if it didn't provide parking, it does,
8 but just to use that as an example, you have
9 an addition placed on the top of the building
10 in the 1980s, under this proposal, if you
11 change the Homer Building addition from one
12 use to another, you would now have to put
13 parking into a site that couldn't possibly
14 provide for parking. You can't excavate
15 underneath an existing historic building or
16 are curb cuts allowed.

17 There are similar problems with
18 the other sections as well that we have
19 referenced in our testimony. I do have a
20 suggestion as to how the Office of Planning's
21 proposal can be met by other language that
22 2100.5 --

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1 CHAIRPERSON MITTEN: Is that
2 included in here?

3 MR. NETTLER: That is included in
4 there. And I also have a discussion as to
5 what the real economic cost of providing
6 parking are and why these provisions don't
7 come to grips with that situation as well as
8 the zoning law regarding the ability to obtain
9 any variances for situations that clearly
10 Historic Preservation will never allow for
11 parking to be provided on.

12 CHAIRPERSON MITTEN: Okay.

13 MR. NETTLER: So I think there is
14 a misunderstanding about this interplay that
15 gets -- can be resolved by the suggestions I
16 am making in my testimony. And if you have
17 any questions, I'm certainly here to answer
18 them.

19 CHAIRPERSON MITTEN: Okay. Mr.
20 Sternlieb?

21 MR. STERNLIEB: Good evening. My
22 name is Joe Sternlieb. I am vice president

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1 for Acquisitions at East Bank and I'm here
2 this evening to oppose the proposed changes to
3 the parking regulations for historic
4 renovations in this case.

5 As many Zoning Commissioners know,
6 East Bank has been -- has a great success
7 taking under-performing historic buildings,
8 primarily in Georgetown, and creatively
9 redeveloping them into high-performing retail,
10 residential and commercial buildings. We have
11 won numerous design awards and praise for
12 preservation from neighbors and District
13 officials for our work in this area.

14 Over the last 10 years, East Bank
15 has redeveloped over 50 buildings in Historic
16 Georgetown, including the Pottery Barn, Smith
17 Hawken Building at 3077 M Street, Club Monaco
18 at 3235 M Street, the Puma Store at 1237
19 Wisconsin Avenue, Ralph Lauren at 1247
20 Wisconsin Avenue, Else at 3025 M Street,
21 Sephora at 3065 M Street and 25 Katie's Alley
22 Buildings on the block, the 3300 Block of M

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1 Street and the block behind it.

2 These were primarily industrial
3 buildings that were expanded and converted
4 into retail and residential use. Of these
5 buildings that I have just mentioned, over 30
6 buildings, all but one had greater than 25
7 percent increase and many had a change in use.

8 In many cases, we expanded
9 historic buildings more than 25 percent in
10 altered uses all under the existing Zoning
11 Regulations and exempted these properties from
12 on-site parking requirements. In almost every
13 case where it has been feasible for us to add
14 parking, we have done so.

15 There were certainly -- this was
16 certainly the case in the Incinerator Project
17 which included several historic buildings that
18 were moved off-site and returned to the site
19 in the Eagle Building at 3333 M Street, N.W.
20 Another case such as Katie's Alley where it is
21 not -- where it was not possible, this
22 important project would have been harmed or

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1 derailed if the proposed amendment to require
2 parking as part of the expansion was enforced.

3 To date, we have not seen the
4 regulations in section 2100 as either
5 ambiguous or in conflict. They have
6 historically been interpreted to both
7 encourage and enable historic preservation.
8 It is our view that the recommended Text
9 Amendment would do real harm to the city's
10 historic preservation goals by burdening
11 historic properties, especially those that
12 have outlived their economic usefulness with
13 redevelopment requirements that are simply too
14 difficult to meet.

15 As experts in both the technical
16 and administrative hurdles of redeveloping
17 historic structures, we attest to the
18 difficulty of completing historic renovations
19 in the District. It is our hope that the
20 Zoning Commission in the District would look
21 for ways to continue to encourage
22 redevelopment, rather than place additional

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1 hurdles between structures and those who wish
2 to preserve them and enhance them.

3 Having said all this, we are
4 sensitive to the potential for existing -- for
5 the existing language to be abused as it has
6 been anticipated by the Office of Planning.
7 The loophole in the current regulations could
8 allow developers to attach historic structures
9 to their redevelopment projects in order to
10 claim exemption from parking requirements and
11 this loophole should be closed.

12 The solution to this problem,
13 however, is to close the loophole without
14 harming the type of work that East Bank has
15 been doing and hopes to continue to do as the
16 redeveloper of historic buildings. Therefore,
17 we respectfully request the Zoning Commission
18 reject the currently proposed amendment to the
19 regulations and call upon the Office of
20 Planning to come up with a more narrowly
21 tailored response to the abuses of current
22 regulations.

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1 Thank you for the opportunity to
2 testify. I'll be happy to answer any
3 questions.

4 CHAIRPERSON MITTEN: Thank you.
5 Mr. Greenberg?

6 MR. GREENBERG: Thank you. Good
7 evening. My name is Allen Greenberg. I'm
8 privileged to testify before you on behalf of
9 the Washington Regional Network for Local
10 Communities, a private, nonprofit organization
11 that helps to create and sustain a network of
12 diverse workable communities throughout the
13 District.

14 WRN supports the District Office
15 of Planning's efforts to remove ambiguity from
16 the Zoning Regulations, but only insofar as
17 this does not codify bad policy. In this
18 case, some of what is included in the Office
19 of Planning's proposed Text Amendment would be
20 beneficial while some would not be.

21 Reusing old buildings whether
22 designated as historic landmarks or not is

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1 very important to the architectural vitality
2 and economic health of this city. Older
3 buildings in modern use bridge the District's
4 past and present helping to retain the
5 historic character of the neighborhoods where
6 such buildings are located, while at the same
7 time showing that a neighborhood's past is
8 relevant to what happens here today.

9 Cities that have failed to keep
10 their older buildings in productive use lose
11 something very valuable, and that is an
12 identity rooted in their history that brings
13 generations of their residents together.

14 Off-street parking requirements
15 interfere with adoptive reuse of older
16 buildings and are anathema to affordable
17 housing and to meeting the real estate needs
18 of local businesses at a price they can
19 afford. Requiring the construction parking
20 excessive market demand adds 50,000 more to
21 the price of housing units and guarantees more
22 car ownership driving, traffic and air

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1 pollution than if such parking were not
2 mandated.

3 Not only is parking very expensive
4 to build, but also many older buildings simply
5 can not be retrofitted at any price to
6 accommodate it. If economic conditions are
7 such that a vacant older office building that
8 has no parking is no longer viable for office
9 use, but is with interior rehabilitation
10 viable for housing, then the District should
11 encourage this conversion, rather than saddle
12 it with new parking requirements.

13 Off-street parking requirements
14 would be completed unnecessary if the District
15 adequately managed public on-street parking
16 through accommodation of regulations at market
17 rate pricing. The Zoning Commission should
18 not try to make up for the District's failure
19 to do this by creating or reinforcing existing
20 off-street parking requirements, especially
21 since no amount of required parking will
22 guarantee curb space availability.

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1 Instead, the only way to guarantee
2 the availability of public on-street parking
3 is to price it to achieve specific performance
4 objectives. For example, Redwood City,
5 California enacted an ordinance to do this,
6 which instructs city staff to continuously
7 adjust on-street parking prices to achieve 80
8 percent, 85 percent occupancy, thereby,
9 ensuring the availability of spaces and
10 reducing the congestion caused by vehicles
11 circling in search of free parking.

12 The Office of Planning's proposal
13 is commendable for not requiring new off-
14 street parking for landmarked and contributing
15 buildings where there are changes in building
16 use, increased intensity of existing building
17 use and new additions that add less than 25
18 percent to building square footage.

19 The proposal is harmful though in
20 requiring new parking in other instances such
21 as for non-landmarked pre-1958 buildings with
22 new or intensified uses and for all changes

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1 affecting post-1958 buildings, including
2 landmarked buildings.

3 Rather than clarifying policies of
4 which some are beneficial and some are
5 harmful, the Zoning Commission should instead
6 focus on creating good policies. It should
7 amend the Zoning Code now by setting a date
8 one or two years henceforth where off-street
9 parking would no longer be required, at the
10 very least in cases where development serves
11 a critical public need, such as to restore
12 older buildings or to create affordable
13 housing.

14 The District City Council and
15 Department of Transportation would then have
16 ample lead-time to design and implement
17 appropriate policies to manage public on-
18 street parking, to the supply of such parking
19 will not be overwhelmed with new demand.

20 One policy the District might
21 choose to implement in response to the Zoning
22 Code Amendment proposed here would be to take

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1 away in perpetuity the privilege of obtaining
2 low cost residential parking permits from
3 residents in newer modified buildings that
4 build fewer off-street parking spaces than
5 required under preexisting parking
6 regulations.

7 Instead, a parallel residential
8 parking permit program could be developed that
9 really limits the number of permits made
10 available to residents of both under-parked
11 older buildings with new uses and new under-
12 parked affordable housing developments and
13 that then distribute such permits by auction
14 to residents occupying these developments.

15 I thank you for this opportunity
16 to testify. Our Washington Regional Network
17 looks forward to working with the Zoning
18 Commission in promoting adaptive reuse of
19 older buildings and in supporting efforts to
20 better manage per car parking, so as to
21 facilitate such adaptive reuse. Thank you.

22 CHAIRPERSON MITTEN: Thank you.

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1 You always have interesting ideas, Mr.
2 Greenberg. Thank you for sharing them with
3 us. The interesting thing is the Commission
4 is actually struggling with some of what you
5 are suggesting, because we are in other
6 circumstances putting pressure on developers,
7 what pressure we can, to not put so much
8 parking in their buildings with, you know,
9 some success, limited success.

10 So we are sensitive to the issue,
11 but then on the other hand, I mean, I know
12 that I am at least one of the Commissioners
13 who prodded this change from the Office of
14 Planning, because we saw examples. I saw
15 examples at the BZA where there was clearly
16 the opportunity to put in some parking into
17 it, because there would be, you know,
18 relatively small historic structure and then
19 a large addition and we have to strike the
20 balance between the economics of the historic
21 preservation project and the negative impact
22 of not having any new parking.

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1 So I look forward to reading, you
2 know, Mr. Nettler's suggestions. I take Mr.
3 Sternlieb's point about, you know, like focus
4 on if there is an egregious problem, focus on
5 the egregious problem. But I definitely think
6 there is some -- I mean, we have to do
7 something. We haven't struck the right
8 balance so far, in my view.

9 I don't have any questions per
10 say, but I just wanted to have a few comments.
11 Anybody else?

12 VICE CHAIR HOOD: Yes, I just had
13 a question to the three panels at the table.
14 While this text is being proposed, was there
15 a work session with the Office of Planning and
16 did you all have an opportunity to bring some
17 of these ideas up for discussion at that point
18 in time? Anybody can answer.

19 MR. NETTLER: There wasn't any
20 work session. I actually had an off-the-cuff
21 conversation with -- directly with the Office
22 of Planning who informed me that something was

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1 in the works and then found out that actually
2 it had already been set for a hearing. So we
3 -- the opportunity to do something before it
4 had been set for -- set down for hearing
5 didn't appear and, therefore, we have sort of
6 scrambled to redress something.

7 And we think in this period of
8 time -- and we did have an opportunity because
9 Travis mentioned to talk last week or the week
10 before last actually about it to raise some of
11 the concerns that we had about the unintended
12 consequences, but I do think that some of the
13 suggestions that we are making, and I think
14 you're going to hear from some others,
15 probably do address the egregious situation of
16 the Office of Planning and the Zoning
17 Commission has concerns about where you can
18 provide parking and simply parking isn't being
19 provided. That's a different situation, I
20 think, than what we're concerned about, which
21 is what we think this regulation, proposed
22 regulation will have a greater impact on.

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1 VICE CHAIR HOOD: Okay. Thank
2 you.

3 CHAIRPERSON MITTEN: Mr. Parsons?

4 COMMISSIONER PARSONS: Mr.
5 Greenberg, in your, I guess, theoretical
6 permits by auction, is this something you are
7 proposing to the Department of Public Works or
8 others? Certainly it is beyond our
9 jurisdiction.

10 MR. GREENBERG: The Mayor had a
11 Parking Task Force and it is one item included
12 as a sort of possibility, an element to
13 include in pilot. But it's true it absolutely
14 is beyond your jurisdiction. But what isn't
15 beyond your jurisdiction is throwing the issue
16 back to them.

17 To a degree, there is a loophole
18 now, for instance, dealing with historic
19 buildings. I say yes, go ahead and close that
20 loophole. I'm not telling you to change
21 everything as of now. I'm saying do what you
22 need to now, but also change what you need to

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1 a year or two years henceforth and put that
2 date in the Code now and they will do what
3 they will have to do to manage on-street
4 parking, so that the spill-over problem is
5 addressed. They will have to. They will have
6 to for political reasons.

7 COMMISSIONER PARSONS: Thank you.

8 MR. GREENBERG: Thank you.

9 CHAIRPERSON MITTEN: It sounds
10 like fun, doesn't it?

11 COMMISSIONER PARSONS: Yes.

12 CHAIRPERSON MITTEN: Okay. I
13 think that's all our questions. Thank you.
14 Anne Adams, Carolyn Brown, anyone else who
15 would like to testify in opposition in the
16 case, the Text Amendment case regarding
17 parking an historic structures can take a seat
18 at the table now. Go ahead.

19 MS. ADAMS: Good evening. My name
20 is Anne Adams. I'm an architectural historian
21 with Pillsbury Winthrop Shaw Pittman and I am
22 here today to oppose the proposed

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1 clarifications of the intent of section 2100
2 of the Zoning Regulations.

3 Ironically, until fairly recently,
4 there has never been any confusion about the
5 intent of those regulations, specifically with
6 respect to section 2100.5 relating to historic
7 buildings.

8 From the time of its original
9 adoption in the mid-1980s seven different
10 Zoning Administrators have interpreted section
11 2100.5 to apply to historic buildings and any
12 additions thereto. Jim Fahey, Joe Botner,
13 Gladys Hicks, Armando Lourenco, Michael
14 Johnson, Robert Kelly and Toye Bello all
15 interpreted that section the same way.

16 There was never any question and,
17 indeed, the Board of Zoning Adjustment
18 consistently reinforced that interpretation.
19 So we don't think any clarification is
20 actually necessary and I think the language
21 that has come out may actually be very
22 confusing, the way it is proposed.

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1 The provisions of 2100 are
2 separate, stand alone provisions and they, we
3 believe, are meant to be read individually and
4 separately. They don't modify any other
5 provision. If they did, they would be
6 codified differently, so we have a
7 disagreement with the Office of Planning about
8 how these are put forth. And our experience
9 has been that people seek the waiver, seek the
10 certification and waiver in order to have
11 flexibility in how they provide parking.

12 We have never had a case where
13 someone has not provided parking, because the
14 market demands parking. But it is useful for
15 developers to be able to not comply with the
16 sort of strict technical requirements of the
17 parking regulations, the size of the spaces,
18 the aisle width, column clearance and all of
19 those things.

20 I actually had not heard of any
21 instance where no parking was provided until
22 I talked to Travis the other day, and I think

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1 those situations are a very small percentage
2 of the people or the projects where buildings
3 are certified as historic and a waiver is
4 sought. I think this is kind of major
5 overkill for what really isn't a problem and
6 something that has actually worked very well
7 to the benefit of historic buildings over the
8 past 20 years.

9 Certifications, the certification
10 application requests and address a lot and
11 square number. Buildings are designated and
12 identified for historic purposes by lot and
13 square. DCRA deals with building by lot and
14 square. It doesn't just say they are dealing
15 with the actual specific structure on the lot,
16 and it stands to reason as far as we're
17 concerned that the waiver goes to the whole
18 lot and the building and any addition thereto.
19 It's still part of the building.

20 One of the things that we see as a
21 problem with the proposed regulations actually
22 have been brought up already, but the

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1 difficulty people are going to run into where
2 parking may be required, but they can't get
3 approval to provide it because they have to go
4 through review under the Historic Protection
5 Act, and the current review board is
6 disinclined to allow curb cuts. They are
7 disinclined to allow garages in the fronts of
8 buildings.

9 So this doesn't -- what has been
10 proposed doesn't take into consideration the
11 sort of practical difficulties that many
12 people may have to providing parking, which
13 they would up until now not have to provide.

14 Other difficulties would be where
15 you have buildings that have 80 or 100 percent
16 lot coverage. The additions are going up, but
17 you're not planning to excavate. We don't
18 think that those people should be required to
19 do something beyond what they were going to do
20 in order to provide parking that they wouldn't
21 until now have to provide. Let's see.

22 CHAIRPERSON MITTEN: You're about

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1 out of time, so if you could wrap it up.

2 MS. ADAMS: I have talked to
3 Travis and if the -- our first suggestion is
4 that the Commission doesn't need to do
5 anything, but if you are so inclined, I think
6 there are things that we could all work out
7 that would perhaps achieve Office of
8 Planning's objectives while not creating some
9 of the difficulties some of us perceive with
10 the way it is being proposed.

11 CHAIRPERSON MITTEN: Did you put
12 those suggestions in your testimony or is that
13 something you want to work further on with
14 them?

15 MS. ADAMS: I didn't. I think
16 that is something we would certainly be
17 interested in working with Office of Planning
18 and the other folks who are here today.

19 CHAIRPERSON MITTEN: Okay.

20 MS. ADAMS: Because I think there
21 are things that would potentially be useful.

22 CHAIRPERSON MITTEN: Okay. Thank

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1 you.

2 MS. BROWN: Good evening, Madam
3 Chair and Members of the Commission. My name
4 is Carolyn Brown. I am with the Law Firm of
5 Holland and Knight. I am here in opposition
6 to the proposed amendments. Our office
7 represents numerous property owners who have
8 been able to rehabilitate, adaptively reuse
9 and expand historic buildings.

10 As a result of this parking
11 exemption available under section 2100.5, it
12 has been an invaluable tool and it has
13 provided the needed flexibility to proceed
14 with complex redevelopment of historic
15 properties that are by their very nature
16 financially and structurally challenging.

17 Most of my comments mirror what
18 has already been said, so I will try to be
19 succinct and get right to my suggestions.
20 But, first, I agree that the clarifications
21 are unwarranted in light of the consistent
22 historical interpretation of this section.

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1 From 1985 when they were adopted
2 up until last month when the BZA issued its
3 most recent confirmation of the current
4 interpretation, there has only been really a
5 three month period where someone has
6 questioned that and that is during the period
7 when there was an Interim Zoning Administrator
8 during the summer of 2005, and the reason it
9 has been so consistently interpreted is
10 because it does serve a very vital purpose.

11 The second reason for our
12 opposition to this proposed Text Amendment is
13 that there is no adverse consequence that is
14 generated by the current interpretation. As
15 Ms. Adams said and as even Mr. Parker
16 conceded, there has only been two instances so
17 far that have raised concerns in a 21 year
18 history of the interpretation of this
19 provision.

20 And, again, as Ms. Adams pointed
21 out, it is very difficult for historic
22 properties to accommodate parking,

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1 particularly where you have 80 percent or 100
2 percent lot occupancy and the addition is
3 going up, and I can think of two recent
4 examples that were before the BZA.

5 And the response to that might be,
6 well, there is your practical difficulty and
7 exceptional circumstance that would
8 demonstrate or meet the variance test. And
9 our argument is why do we need to go through
10 that extra layer of process time, money and
11 uncertainty on the ruling when we already have
12 a provision in the regulations that is working
13 right now? Essentially, if it's not broken,
14 there is no need to fix it.

15 And as Mr. Sternlieb and Mr.
16 Nettler also mentioned, there are economic
17 consequences to the proposed Text Amendment.
18 I believe, as they do, that it would
19 discourage effective rehabilitation of
20 historic properties.

21 Let me jump now to some of our
22 recommendations. I, too, believe that there

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1 is no reason to change the current
2 interpretation. Again, it doesn't need to be
3 fixed. It's not broken. However, if you do
4 go forward, I do have a couple of suggestions.

5 One, if the real concern is an
6 enormous addition tacked onto a very small
7 historic building, set a threshold for the
8 amount of demolition that is occurring for the
9 historic building.

10 If it's, you know, more than, you
11 know, 50 percent or 75 percent that is being
12 demolished, then it would trigger the variance
13 requirement or the relief requirement or if
14 you're adding \$50,000 or \$100,000 of -- 50,000
15 or 100,000 square feet of commercial space and
16 it's a horizontal expansion instead of
17 vertical, then maybe that could be the way to
18 trigger the requested relief.

19 And our third suggestion is let's
20 not make it a variance. Make it a special
21 exception and there is precedent for that
22 under section 2108 of the parking regulations

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1 that says if you're going to try to reduce it
2 by more than 25 percent, you can do so as a
3 special exception.

4 And that would seem to be the
5 appropriate mechanism for this, a special
6 exception not just from the number of parking
7 spaces, but from the aisle width requirements,
8 the size requirements and the whole package,
9 so that the developer of a historic property
10 does have that flexibility.

11 So with that I will conclude my
12 remarks. Thank you.

13 CHAIRPERSON MITTEN: Thank you.
14 Any questions from the panel? Any questions?

15 COMMISSIONER PARSONS: I did have
16 a question of Ms. Brown. Tell me again about
17 the thresholds you're talking about. You said
18 a 50 percent increase. What?

19 MS. BROWN: I'm sorry. The
20 purpose of the provision is to protect
21 historic properties or allow greater
22 flexibility to historic properties. And in

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1 many cases, I can think of one that was just
2 approved by the BZA, 2160 California Street,
3 where it was a corner building where the
4 addition was going to be two stories on top of
5 it. There is no way to excavate below it.

6 COMMISSIONER PARSONS: Correct.

7 MS. BROWN: So in that instance, I
8 would say there is no need for variance
9 relief, that that should be exempted under
10 2100.5.

11 However, if you have something
12 more along the lines of the Atlantic Building
13 where you just have the facade and you have a
14 huge building going up behind it, then perhaps
15 in that instance where the extent of the
16 demolition is so extensive, maybe that is
17 where you decide, well, you're getting an
18 additional, you know, 50,000, 100,000 or
19 however many square feet of commercial space.
20 In that instance, you would need to seek in my
21 proposal a special exception for that.

22 COMMISSIONER PARSONS: But,

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1 somehow, as I grasp it, you were linking that
2 to the amount of demolition. Is that correct?

3 MS. BROWN: Yes.

4 COMMISSIONER PARSONS: Okay.

5 MS. BROWN: Yes, because if the
6 purpose is to promote rehab and protection of
7 historic properties, the more demolition you
8 do, the less you need the waiver.

9 COMMISSIONER PARSONS: Thank you.

10 CHAIRPERSON MITTEN: Mr. Hood?

11 VICE CHAIR HOOD: Let me just ask
12 Ms. Brown very quick. You mentioned, as Mr.
13 Parker mentioned, about two cases where the
14 reason that this was flagged, I guess this
15 whole Text Amendment evolved, would you say
16 that something needs to be done about that,
17 those two cases, or you just say let it ride?

18 MS. BROWN: I say nothing needs to
19 be done. That's the whole purpose of this, is
20 to help promote the development of historic
21 properties by letting -- giving them some
22 flexibility with the parking requirements,

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1 particularly when they are very small sites
2 where I know in the instance of the Church
3 Street property, it was very difficult to try
4 to get a ramp in below grade to accommodate
5 what would still be less than the required
6 number of spaces. It just wasn't economically
7 feasible.

8 VICE CHAIR HOOD: And including
9 your last statement, even those two cases
10 which prompted this Text Amendment?

11 MS. BROWN: Correct, yes.

12 VICE CHAIR HOOD: Okay.

13 MS. BROWN: Those are the
14 exception, not the rule.

15 VICE CHAIR HOOD: Okay. All
16 right. Thank you.

17 CHAIRPERSON MITTEN: Thank you.
18 Thank you both for your testimony. Is there
19 anyone else who would like to testify in
20 opposition?

21 I would just like to add something
22 that I would be less -- I just want to put my

1 understanding on the record, which is that I
2 have on several occasions voted in the
3 minority on a BZA interpretation of the
4 existing regulations, and I think other
5 Commissioners have done the same or at least
6 stated their concerns.

7 So I just don't want, you know,
8 any one individual to be sort of blamed for
9 the fact that we have this before us, and I
10 appreciate the Office of Planning bringing it
11 to us. And, clearly, there is some more work
12 to be done, but I will take my responsibility
13 for prompting it.

14 So if I was misguided, I will
15 become educated in the process, but I did see
16 some things that I -- you know, longstanding
17 interpretations are -- you know, if we stuck
18 with everything, we wouldn't have very much
19 work to do here. So I'm glad for everyone's
20 contribution tonight.

21 What I would like to do is leave
22 the record open for two months, get through

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1 the holidays and give you time to talk to
2 folks and respond to the submissions that we
3 have seen. I would be interested in Mr.
4 Callcott's responses to some of the specific
5 issues that have been raised, whether you
6 agree with the concerns to the same extent
7 that they have been expressed here.

8 January 26th. So the record will
9 remain open until January 26, 2007. And,
10 again, thank you all for your --

11 VICE CHAIR HOOD: Madam Chair?

12 CHAIRPERSON MITTEN: Sure.

13 VICE CHAIR HOOD: Can I just
14 interrupt? I would think it would be more in
15 an organized fashion maybe if -- and I'm not
16 sure if Mr. Parker wants to do this, but maybe
17 pull some of the folks together and you guys
18 sit down and kind of pull some of this
19 together.

20 And then when it comes back to us,
21 it would be more specific and maybe we can
22 touch on those points. That's just my

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1 suggestion. It's not mandatory, but that's
2 just my suggestion. Instead of doing one at
3 a time, maybe just bring everybody together.

4 MR. PARKER: Yes, absolutely, we
5 can do that. We can have a working session or
6 a round table, I think, as you call it. Not
7 a problem.

8 CHAIRPERSON MITTEN: Thank you.
9 So the record will remain open until January
10 26, 2007 and if anyone is interested in
11 following the case further, you can call the
12 Office of Zoning and ask for Mrs. Schellin and
13 she'll tell you where we are with it. Thanks
14 again and we will reconvene in about five
15 minutes for the continuation of the Florida
16 Rock Hearing.

17 (Whereupon, the Public Hearing was
18 concluded at 7:30 p.m.)
19
20
21
22

NEAL R. GROSS

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