

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :
: :
TEXT AMENDMENT :
RESIDENTIAL RECREATION SPACE : Case No. 05-02
: :

Monday,
June 27, 2005

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

The Public Hearing of the District of
Columbia Zoning Commission convened at 6:30 p.m. in
the Office of Zoning Hearing Room at 441 4th Street,
Northwest, Washington, D.C., 20001, Carol Mitten,
Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
KEVIN L. HILDEBRAND	Commissioner (AOC)
GREGORY JEFFRIES	Commissioner
JOHN G. PARSONS	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN	Zoning Specialist
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OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

This transcript constitutes the minutes
from the hearing held on April 14, 2005.

AGENDA ITEMSPAGECALL TO ORDER:

Carol Mitten 4

OFFICE OF PLANNING:

Joel Lawson 6

PROPOSERS IN FAVOR:INDIVIDUAL:

Lindsley Williams 34

PROPOSERS IN OPPOSITION:FIRST CITY WASHINGTON:

Harold DeBlanc 38

HARRIS AND MALONE DEVELOPMENT COMPANY:

Merrick Malone 41

METROPOLIS DEVELOPMENT COMPANY:

Scott Pannick. 44

GREENSTEIN, DELORNIE & LUCHS:

Jacques DePuy, Esquire 48

COMMITTEE OF 100:

Laura Richards 55

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

6:41 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This a public hearing of the Zoning Commission of the District of Columbia for Monday, June 27, 2005. My name is Carol Mitten, and joining me this evening are Vice Chairman Anthony Hood and Commissioners Kevin Hildebrand, John Parsons, and Greg Jeffries.

The subject of this evening's hearing is Zoning Commission Case No. 05-02. This is a request by the Office of Planning for a text amendment to Title 11 of the DCMR, to amend the requirements pertaining to residential recreation space requirements in the C, CR and SP Zone Districts.

Notice of today's hearing was published in the D.C. Register on April 8, 2005, and copies of the hearing announcement are available to you in the wall bin by the door.

This hearing will be conducted in accordance with the provisions of 11 DCMR, Section 3021, and the order of procedure will be as follows. We'll take up any preliminary matters, then we'll have the presentation by the Office of Planning, reports of any other Government agencies, reports of any ANCs,

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1 organizations and persons in support, and
2 organizations and persons in opposition. And, there's
3 probably a sign-in sheet by the door, so if you are
4 interested in testifying please sign up.

5 The following time constraints will be
6 maintained in this hearing. Organizations will have
7 five minutes. Individuals will have three minutes.
8 The Commission intends to adhere to these time limits
9 as strictly as possible, in order to hear the case in
10 a reasonable period of time. The Commission reserves
11 the right to change the time limits for presentations
12 if necessary, and notes that no time shall be ceded.

13 All persons appearing before the
14 Commission are to fill out two witness cards. Those
15 cards are also on the table near the door. Upon
16 coming forward to speak to the Commission, please give
17 both cards to the reporter who is sitting to our
18 right.

19 Please be advised that this proceeding is
20 being recorded by the court reporter, and is also
21 being web cast live. Accordingly, we ask you to
22 refrain from making any disruptive noises in the
23 hearing room.

24 When presenting information to the
25 Commission, come forward and sit at the table, and

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1 then turn on and speak into the microphone, first
2 stating your name and home address. When you are
3 finished speaking, please turn your microphone off so
4 that it's not picking up any background noise.

5 The decision of the Commission in this
6 case must be based on the public record. To avoid any
7 appearance to the contrary, the Commission requests
8 that persons present not engage the members of the
9 Commission in conversation during a recess or at any
10 other time. Ms. Schellin will be available throughout
11 the hearing to answer any questions you may have.

12 Please turn off all beepers and cell
13 phones at this time, so as not to disrupt the
14 proceeding.

15 And now, we'll take up any preliminary
16 matters. Ms. Schellin?

17 MS. SCHELLIN: Staff has no preliminary
18 matters.

19 CHAIRPERSON MITTEN: All right.

20 Then we're ready to move to the report by
21 the Office of Planning.

22 Mr. Lawson?

23 MR. LAWSON: Thank you, Madam Chair, and
24 members of the Commission.

25 My name is Joel Lawson, I'm with the D.C.

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1 Office of Planning. The Office of Planning is
2 proposing a series of relatively minor changes to the
3 residential recreation space provisions within the C,
4 CR and SP, Commercial, Mixed Use and Special Purpose
5 Zone Districts.

6 As part of a series of broad amendments to
7 Zoning Regulations, in the 1970s these regulations
8 were initially put in place. The required amount
9 varies from zone to zone, ranging from 5 percent to 20
10 percent of the total gross residential floor area.
11 There's no equivalent requirement in the Residential
12 Zone Districts.

13 There are over 2,000 acres of developable
14 land in these zones, about 5 percent of the total area
15 of the district. Much of it, particularly, in the
16 downtown core, is already developed at or close to the
17 maximum permitted by the zoning and is not anticipated
18 to undergo redevelopment, although there has been some
19 conversion of commercial to residential use, for which
20 the residential recreation space must be provided.

21 However, a significant amount of land in
22 the lower density commercial zones outside the
23 downtown area is either on or under developed.

24 With a strong resurgence in housing demand
25 in the District, there have recently been many

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1 residential and mixed use projects proposed and
2 constructed within the Commercial and Mixed Use
3 Districts. The residential recreation space
4 provisions have proven difficult, and the Board of
5 Zoning Adjustment and the Zoning Commission have
6 approved many requests for relief.

7 The most common reasons cited include the
8 presence of other neighborhood amenities, such as
9 parks, museums, restaurants and retail space, smaller,
10 oddly-shaped lots, adapted reuse of an existing
11 building, provision of private outdoor area, Code
12 issues, and loss of residential units to the District.
13 Such space can also be a financial drain on new
14 residents, since its construction and maintenance
15 costs add to the cost of each unit through unit sales
16 cost, condo fees, and rental fees.

17 The Department of Parks and Recreation,
18 OPNCPC and the National Park Service have initiated a
19 joint study of park and recreation space needs and
20 provisions throughout the District. It's anticipated
21 that the study will commence in the fall, with a one-
22 year completion schedule.

23 Following completion of that study, a
24 comprehensive review of residential recreation space
25 requirements is anticipated in conjunction with an

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1 overall review of addressing parks and recreation
2 needs in the District. However, specific issues
3 associated with the recreation space provisions have
4 been identified, and OP feels that it's appropriate to
5 address them at this time.

6 As such, OP has proposed an interim
7 measure intended to provide more consistency and ease
8 of use, and to establish a special exception process
9 for relief from regulations. OP is not, at this time,
10 proposing changes to the amount of recreation space
11 required.

12 To get this process going, OP met with a
13 number of area architects, builders and land-use
14 lawyers, who have experience with these requirements.

15 At a workshop session held in October of
16 2004, participants noted a number of problems
17 associated with the existing regulations. These
18 included meeting requirements on smaller, irregular
19 sites, or in small buildings, largely due to service
20 core constraints and zoning and building code
21 restrictions, meeting requirements in existing
22 buildings being converted to residential use,
23 especially when the building is historic or within a
24 historic district, due to design and structural
25 constraints, requirements and regulations varying from

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1 zone to zone making interpretation more difficult, the
2 cost of the BZA variance process to obtain relief from
3 the regulations sometimes leads to the provision of
4 ineffective but technically conforming recreation
5 space to avoid the process altogether, and units in
6 these areas are usually targeted to single
7 professionals, couples and empty-nesters, who tend to
8 value public over private amenity space.

9 The participants also made a number of
10 general and specific recommendations for changes to
11 the regulations, including keep the regulations
12 simple, easy to use and understand, and as certain as
13 possible, findings ways to reduce the costs associated
14 with BZA applications for relief, reducing the amount
15 required, permitting credit for the provision of
16 private recreation space, allowing enclosed accessory
17 space associated with rooftop recreation space,
18 eliminate or reduce the 25-foot minimum width
19 requirement for rooftop space, and recognizing
20 neighborhood public open space and recreation
21 opportunities.

22 Some suggestions by workshop participants,
23 such as reducing the required amount are considered by
24 OP to be premature in this time, pending completion of
25 the District-wide open space recreation needs study.

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1 Other suggestions have been incorporated into the
2 proposed amendment.

3 Central to the OP proposal is the
4 establishment of a special exception process for
5 relief from the regulations against a set of review
6 criteria, which include type and location of proposed
7 recreation space, provision of private outdoor space,
8 such as balconies, recognition of other overlay
9 requirements for arts or retail uses within the
10 building, presence of neighborhood park and recreation
11 facilities, and specific site and building
12 constraints, such as lot size, ADA or Code
13 requirements, conversion or historic factors.

14 OP has also proposed a reduction in the
15 rooftop recreation dimension requirement from 25 feet
16 to 8 feet, since this regulation is particularly
17 difficult to meet for many buildings, and rooftop
18 space seems to be one of the more desirable forms of
19 recreation space for residents, also an amendment to
20 allow penthouses for storage and washrooms for all
21 forms of rooftop recreation space, not just swimming
22 pools as is currently the case, and wording
23 clarifications and clause reordering to add clarity
24 and provide more consistency between the zones.

25 At the set-down meeting in March, the

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1 Zoning Commission raised two specific issues for
2 clarification advertising in the alternative. The
3 first is the discrepancy between the CR Zone and the
4 SP and C Zones. As they were adopted at different
5 times in the 1970s, the regulations are somewhat
6 different. Although the wording is somewhat
7 ambiguous, the CR Zone has been interpreted as
8 permitting the inclusion of private outdoor recreation
9 space, such as balcony or terrace, in the requirement
10 amount, whereas the other zones clearly do not. The
11 CR Zone also requires a higher percentage of the
12 recreation space to be located outdoors.

13 The Commission wishes to consider whether
14 the regulations should be standardized, to either
15 amend the C and SP Zones to allow the inclusion of
16 balconies, or to amend the CR Zone to not allow the
17 inclusion of such spaces. Either change would have
18 broad ramifications, and OP is not recommending either
19 of them at this time. However, bringing the
20 requirements into conformance between zones will be an
21 important aspect of the more comprehensive amendment
22 initiative following the completion of the OP, DPR,
23 NCPC, NPS study.

24 The second Zoning Commission issue related
25 to the OP proposal to reduce the required width for

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1 rooftop recreation space from 25 feet to 8 feet
2 minimum, as an acceptable width to allow ease of use
3 and encourage the provision of rooftop space. OP
4 continues to feel that this is an appropriate
5 dimension.

6 Subsequent to set down, OP solicited
7 additional feedback from the workshop participants,
8 but received limited additional input that would have
9 resulted in changes to the OP recommendation.

10 OP also requested input and comment from
11 a number of District Government agencies, and no
12 department has indicated opposition to the proposal.
13 OP did not receive comments from any ANC.

14 A letter from the D.C. Building Industry
15 Association recommends a more aggressive approach at
16 this time, to either eliminate the requirement
17 altogether or to reduce the amount to 5 percent in all
18 zones.

19 There's no question that the interim
20 approach recommended by OP at this time does not
21 fully, or even substantially, address the underlying
22 issues associated with this regulation. Rather, OP is
23 proposing something closer to a housekeeping amendment
24 in anticipation of the more comprehensive set of
25 changes in the future.

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1 As noted in our reports, prior to
2 completion of the study mentioned earlier OP believes
3 that it would be premature to eliminate or to expand
4 the requirement, although the more comprehensive
5 review of the requirements following that study will
6 look at standardizing requirements across all zones,
7 not just the ones in question, in relation to the many
8 other requirements for developing housing or mixed use
9 developments in the District.

10 In summary, the Office of Zoning
11 recommends that the Zoning Commission approve the
12 amendment to the regulation's recreation space
13 requirement. These amendments are in keeping with the
14 Comprehensive Plan objectives related to the provision
15 of housing, resort preservation and land use, and with
16 the broad District goals and objectives related to
17 encourage housing and streamlined processes while
18 providing opportunities for community input.

19 And, this concludes our presentation, and
20 we are available for questions.

21 Thank you.

22 CHAIRPERSON MITTEN: Thank you, Mr. Lawson.

23 Any questions for Mr. Lawson?

24 I had a couple of questions for you. One
25 is that I was at a conference about, you know, green

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1 building and stuff, and somebody had an interesting
2 idea that I don't know if you can react to tonight,
3 but I'd be interested in your thoughts, that the
4 opportunity -- and this may be something you want for
5 a subsequent -- if there's a subsequent text
6 amendment, that people should be given the
7 opportunity, within certain parameters, to buy out of
8 the residential recreation space requirement by
9 providing the equivalent square footage of green roof.
10 I don't know if you've heard that one before or not.

11 MR. LAWSON: Absolutely, actually, we
12 talked about that one a lot in house. We thought that
13 that was a very interesting idea, very exciting idea,
14 again, something that would probably be more
15 appropriate for the next change.

16 CHAIRPERSON MITTEN: Okay.

17 MR. LAWSON: It is a little bit different
18 than the intent of the recreation space, a broadened
19 recreation space, to include more passive recreation,
20 as well as other kind of district-wide objectives.
21 And, I think it's our hope that as we go through the
22 future study that we would start to look at a number
23 of different issues that could relate to how we apply
24 the residential recreation space requirement, as well
25 as other requirements, things like retail, green

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1 buildings as you mentioned, possibly even things like
2 affordable housing, and start to look at all of these
3 issues a bit more comprehensively and come up with a
4 more comprehensive package, I guess.

5 CHAIRPERSON MITTEN: Okay.

6 I know that in some cases, and I don't
7 know what the position of the Zoning Administrator has
8 been on this, but I've seen some cases where at least
9 what was being proposed to be counted as part of the
10 residential recreation space requirement was the lobby
11 of the building, which troubles me because depending
12 on the kind of lobby, you know, not all lobbies even
13 have any furniture where you could possibly even sit,
14 so I wondered if the Office of Planning had a position
15 about whether or not the lobby of the building should
16 be counted.

17 MR. LAWSON: Lobbies are interesting, and,
18 you know, lobby is actually one of the more defensible
19 ones, we've seen other examples of, you know,
20 attempting to include things, you know, as wide as
21 washrooms and hallways and things like that in
22 recreation space, which we've opposed in the past.

23 Lobbies sometimes actually can be used as
24 recreation space, for example, they are often the site
25 of condo board meetings, and they are often the site

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1 of, you know, there often is seating, and people do
2 actually use it as space to meet their neighbors, and
3 that's one of the intentions, one of the more kind of
4 passive recreations' intentions of recreation space.

5 We did try to, I guess, firm up some of
6 the language a little bit, particularly, in the
7 special exception review process, by addressing the
8 nature and the location of the residential recreation
9 space that is to be provided. For example, if the
10 applicant is going -- or, the owner of the building is
11 thinking of providing, say, 5 percent recreation, you
12 know, where that recreation space is and how it would
13 function would be part of the review process, so that
14 as we saw in one case almost inaccessible space in the
15 basement wouldn't be counted as recreation space. It
16 just simply wouldn't qualify.

17 CHAIRPERSON MITTEN: Well, I guess I'm more
18 concerned with providing -- or I'm as concerned with
19 providing guidance to the Zoning Administrator as I am
20 to the Board of Zoning Adjustment, and the Zoning
21 Administrator doesn't have -- you know, isn't privy to
22 a dialogue. They are just evaluating a set of plans.

23 So, I guess I'd be interested in, first of
24 all, having the space that's counting being delineated
25 in some way, so that it's not just an abstract

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1 calculation that's taking place, so that someone could
2 go back at some point and say, look, you know, if we
3 are serious about this that the space be maintained
4 for this purpose, not that it can -- you know, let's
5 say it is the lobby, that can't be taken over later
6 for something like, you know, a business center or
7 something like that.

8 And then, what is it about certain lobbies
9 that would allow them, or at least a portion of a
10 lobby, to be counted as residential recreation space,
11 because, frankly, I don't find condo board meetings
12 recreational, but other people may.

13 MR. LAWSON: Well --

14 CHAIRPERSON MITTEN: Not the ones in my
15 building.

16 MR. LAWSON: -- I guess they can be
17 amusing, if not recreational.

18 I think that you are hitting on a really
19 important aspect, and it is something that we had a
20 lot of discussions about, how we could tighten up the
21 definition of what's considered recreation space.
22 And, it seems like every time we came up with a list
23 somebody was saying, well, how about, and how about,
24 you know, it just kept expanding and expanding, and
25 other people were thinking, you know, you must be

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1 crazy because that, obviously, is not recreation
2 space, and then it was contracting and expanding
3 again.

4 It was very difficult to come up with
5 that, I very much like the idea of each application
6 requiring that this space be delineated on the plan,
7 so that we know, at least with that application, what
8 was considered recreation space and what was not.

9 CHAIRPERSON MITTEN: Uh-huh.

10 MR. LAWSON: And, that's an excellent
11 suggestion as a start.

12 And, I think certainly as we -- you know,
13 I'd be happy to kind of take another crack at defining
14 what we would consider recreation space and what we
15 would not consider recreation space. We were just
16 finding, kind of in house in our meeting with the
17 participants, that there was simply no consensus on a
18 cross-broad project basis, because much of it is very
19 project specific. So, that's why it's not -- kind of
20 not in there as clearly as I think we'd all like it to
21 be there.

22 CHAIRPERSON MITTEN: Okay.

23 Mr. Parsons?

24 COMMISSIONER PARSONS: I'm trying to
25 express what I recall we were doing in the 1970s,

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1 which is difficult. We were trying to take advantage
2 of the fact that there were roofs on apartment
3 buildings, and we had no regulation that permitted use
4 of those roofs, believe it or not, that is, they were
5 for penthouses and not people. So, that's what we
6 were trying to do, is to say as apartment buildings
7 are built they should not be boxes to contain people,
8 but there should be places where they could recreate
9 and socialize. And, the roof was our target.

10 But, at the time, it was also very
11 popular, and I guess it is not now, to consider
12 exercise rooms, which I now understand are not
13 desirable because, especially women are intimidated by
14 using these facilities for fear that at some hour they
15 will not find a friendly environment, if you will.
16 But, that was the intent, that was what it was about.

17 So, I only jump in here to say that if we
18 are to -- if we are to substitute another use of
19 roofs, which is very popular now, to take care of our
20 storm water runoff problem by producing green roofs,
21 we are substituting a visual landscape that nobody can
22 really walk through or experience, to say let's make
23 all our roofs green, then the people can't use them
24 anymore.

25 But, the result in the storm drains is

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1 positive, so be a little cautious about that.

2 MR. LAWSON: You are absolutely correct.

3 COMMISSIONER PARSONS: There could be a
4 balance.

5 MR. LAWSON: Yeah.

6 COMMISSIONER PARSONS: If we are
7 restricting this rooftop to eight feet versus 25 feet,
8 maybe there's a shared regulation we could come up
9 with that says this half is green and this is for
10 people.

11 MR. LAWSON: I think you are absolutely
12 correct, and I think that's one of the reasons that we
13 didn't propose those kind of changes right now. I
14 think we need to look at them in a little bit more
15 depth and come up with -- come up with a reasonable
16 kind of solution that accounts for all of these
17 sometimes conflicting priorities.

18 I think that, you know, you'd be very
19 successful, you know, in the intent of the 1970s
20 changes, because rooftop spaces, what we are hearing,
21 are very popular with people, they are very popular
22 with developers and they are very popular with their
23 tenant. They are a good selling feature, and there
24 are also features that renters like. And, they are a
25 good place for people to meet the other people in

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1 their building, and they are very much used, which is
2 one of the reasons we are trying to encourage the use
3 of -- kind of continue what you are trying to achieve,
4 you know, early on, and encourage the use of the
5 rooftops for recreation space.

6 To substitute that for green space, you
7 know, again we'd have to -- you are right, we would
8 have to take a look at what the checks and balances
9 and priorities are.

10 CHAIRPERSON MITTEN: Mr. Jeffries?

11 COMMISSIONER JEFFRIES: Yes.

12 Mr. Lawson, did you do any research on
13 other municipalities and their level of recreational
14 space? I mean, did you come across any research on
15 that? I'm just trying to get a sense of just how does
16 D.C. stack up with other municipalities around this
17 recreational space requirement.

18 MR. LAWSON: I did do some research, and
19 I'm just looking to see if I brought it with me, and
20 I don't -- I don't think I did.

21 Generally, what I was finding, even in the
22 municipalities close to us, is that there's a very
23 broad interpretation of what's considered recreation
24 space. In many of the more suburban communities, for
25 example, there was a direct correlation between the

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1 provision of what's sometimes called recreation space
2 with the provision of setback space, in other words
3 providing green space around the building, lawns, you
4 know, essentially, lawns or that kind of thing.

5 I didn't find a lot of direct correlation
6 in neighborhoods or in communities around us for the
7 provision of kind of internal recreation space, with
8 the exception of, often with very comprehensive
9 development, large-scale developments where there are
10 large numbers of units, maybe including office
11 buildings or lots of retail or something, there in
12 some cases was some discussion of providing recreation
13 facilities, not necessarily within a particular
14 building, but recreation facilities for, you know, the
15 big development as a whole.

16 You know, certainly if you would like I
17 can kind of dig some of that research out and condense
18 it down a bit and provide it to you, but kind of my
19 bad memory of this research was that there wasn't --
20 it was difficult to find direct correlations between
21 what we are doing as a very kind of dense urban
22 community and what some of the other communities are
23 doing as a bit less dense, even in their denser areas.

24 COMMISSIONER JEFFRIES: And, I would also
25 be interested in those municipalities that, you know,

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1 have recreational space requirements that abolished
2 them or got rid of them altogether. I'd be interested
3 in knowing sort of in those situations what sort of --
4 what helped that particular municipality sort of move
5 to that decision.

6 MR. LAWSON: Yeah, I can't say this for
7 sure, but I didn't come across any communities that
8 said that they had abolished recreation space
9 requirements, it was more a question of they just
10 never existed in the first place.

11 COMMISSIONER JEFFRIES: And, never informed
12 them.

13 MR. LAWSON: I mean, certainly every
14 community has got some kind of requirement for
15 something. You know, like I said, it's often more for
16 setback for park space.

17 COMMISSIONER JEFFRIES: Or, it might be
18 size of project that might, you know, sort of be the
19 trigger.

20 And also, another question I had was this
21 study by the D.C. Parks and Rec, yeah, page seven,
22 well, it's their agency referrals, I'm sorry, Carol is
23 right, it's page three. So, they've initiated
24 assessment of parks and rec space needs, and that's --
25 it's going to commence in the fall, so it's going to

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1 be a full year, so this -- what you are putting
2 forward is going to be in effect for about a year and
3 a half or so?

4 MR. LAWSON: About that.

5 We would see that whatever changes in the
6 future, and I'm not sure how long it would take to
7 bring forward changes to the zoning regulations
8 following the completion of that study, hopefully, it
9 would happen shortly thereafter, and that's certainly
10 our intention, you know, and, hopefully, they would
11 build on these kind of more housekeeping type changes
12 to make that more comprehensive review a little bit
13 easier. But, that would happen -- we see that
14 happening after the overall recreation space study,
15 yes.

16 COMMISSIONER JEFFRIES: Okay.

17 Just an observation, just looking at land
18 costs in the District of Columbia, and some of the
19 difficulty in some of the locations, Shaw, Columbia
20 Heights, east of the river, you know, I do have some
21 concerns about, you know, some of the levels of
22 recreational space that I see. And so, you know, I
23 just want to, you know, take a really critical look in
24 some of the areas at the very least, maybe size of a
25 project where we can, you know, perhaps look at some

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1 sort of carve out for some of the recreational space,
2 because I do think it could be a hardship in some
3 instances, particularly, in those places where we'd
4 have lots of owners of land, but they have a huge
5 price they are putting on their land, and it's just
6 making it very difficult in some instances to make the
7 numbers work, looking at again, that recreational
8 space requirement.

9 So, I'd just like to make sure some of the
10 economics are somehow considered as we go forward.

11 MR. LAWSON: Absolutely, that would be part
12 of the broader study. You know, certainly we would be
13 taking a much more comprehensive and detailed look,
14 once we get into that future study, and we wouldn't be
15 looking at -- at least I don't see us looking at
16 across-the-board changes, what's recommended for the
17 downtown core may end up being different from what's
18 recommended for different parts of the City, in terms
19 of how the regulations may over time play out and how
20 they may change and respond to the different needs and
21 the different expectations as well that different
22 communities may have for park and recreation space.

23 While I recognize, you know, the economic
24 concerns associated with recreation space, it's also
25 an important part of quality of life, and so we

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1 certainly don't want to do away -- at this point I
2 wouldn't want to see us do away with the requirement,
3 you know, in any part of the community, but I think
4 what we want to make sure of is that we are providing
5 the best type of recreation space, you know, get the
6 best bang for our buck in the form that makes the most
7 sense for the community that we are going into.

8 COMMISSIONER JEFFRIES: Yeah, I agree with
9 that, but I would also like to add that, you know, I
10 think that the general market will make determinations
11 as to the kind of interior spaces that they are
12 looking at. I mean, developers are not going to -- I
13 mean, if buyers are saying, listen, I'm not going to
14 buy in this building unless I have 15 percent
15 recreational space, I think you'll start to see lots
16 of recreational space.

17 I think to some degree we really need to
18 let, you know, the whole notion of how people live
19 really set the stage as to how we set these regs. So,
20 I hear what you are saying, Mr. Lawson, I just want to
21 make certain that that is considered.

22 CHAIRPERSON MITTEN: Mr. Hood?

23 VICE CHAIRMAN HOOD: Madam Chair.

24 Mr. Lawson, you mentioned the workgroup
25 that I guess you completed in October, 2004. In that

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1 workgroup, was there ever a time that a discussion
2 came up of abolishing the residential recreation space
3 requirement?

4 MR. LAWSON: That was probably the first
5 thing that came out. Absolutely. There was certainly
6 a lot of discussion that maybe the recreation space
7 requirement should either be abolished or reduced
8 significantly, kind of getting back to the point that
9 was just made, letting the market decide if the space
10 is desirable then the market will provide it. If
11 nobody wants it, then it won't be provided.

12 And, you know, as we go through the study,
13 as we take a look at, you know, much more
14 comprehensively what makes sense for the District over
15 the long term, we certainly may end up with a
16 reduction in the requirement, or an abolition of the
17 recreation space requirement altogether. I don't
18 know.

19 Right now, until that study is done, I
20 simply think it's premature to get to that point. I
21 do think it's appropriate to come up with a somewhat,
22 not as much as maybe the development industry would
23 like, but a somewhat streamlined process for looking
24 at relief from those regulations. There's no question
25 that some of the zones, in particular, have a very

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1 high residential recreation space requirement, 15 and
2 20 percent, that's a lot of space. And, you know,
3 like I think I mentioned in our first report, we
4 found, you know, approximately 30 examples of BZA
5 relief from the requests, every single one of which
6 the Office of Planning supported, and every single one
7 of which was approved.

8 So, there's definitely a pattern emerging,
9 and that's going to kind of come to fruition as we get
10 further into the more comprehensive study.

11 VICE CHAIRMAN HOOD: So, what I'm saying
12 is, I'm looking at your report, and we just got two
13 letters, and I was looking at what they were
14 requesting. And then, I remember you mentioning the
15 workgroup, so I guess there was a consensus of the
16 workgroup to do away with the requirement, and I guess
17 you just took that in for general knowledge, and this
18 is what you -- this report does not reflect the
19 outcomes of the workgroup, I guess that's my point.

20 MR. LAWSON: Yeah, I'm not even sure I
21 would characterize that there was a consensus that as
22 you go down to zero they should be abolished. If we
23 had actually taken a vote on that or something that
24 may have been the consensus, but I wouldn't be able to
25 say for sure, but there was definitely a strong

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1 feeling from many people at that workgroup that the
2 recreation space wasn't serving them or wasn't serving
3 their -- the requirement wasn't serving their
4 residents well.

5 VICE CHAIRMAN HOOD: Okay. All right.
6 Thank you.

7 Thank you, Madam Chair.

8 CHAIRPERSON MITTEN: Anyone else, Mr.
9 Hildebrand?

10 COMMISSIONER HILDEBRAND: Yes, just a
11 couple of things. I wanted to make sure I understood
12 that you are not making any recommendation to change
13 the current restriction against using private balcony
14 space as recreation space, is that correct?

15 MR. LAWSON: In the CR Zone, that's
16 correct.

17 COMMISSIONER HILDEBRAND: Just in the CR
18 Zone.

19 MR. LAWSON: That's the only zone right now
20 that allows the inclusion of that space, yes.

21 COMMISSIONER HILDEBRAND: So, I was looking
22 at the proposed text amendment for the SP Zone, and it
23 looked as though as part of the special exceptions
24 that the presence of outdoor balconies would be part
25 of that consideration, and that didn't translate into

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1 the other zones. Is there a reason for that?

2 MR. LAWSON: Well, it's already in the CR
3 Zone, so that's already accommodated in CR, and I hope
4 I put in the C Zone section. If it was left out,
5 we'll definitely add that, because it should be in
6 there.

7 COMMISSIONER HILDEBRAND: Okay.

8 And, I think the other thing, I still
9 remain concerned about the eight foot minimum
10 dimension. Could you talk a little bit more about how
11 that was established?

12 MR. LAWSON: Well, I guess first of all, I
13 guess I would note that there was a very strong
14 feeling among the workshop participants that the 25
15 foot minimum width requirement was unwieldy. It was
16 difficult to apply, particularly, on small buildings,
17 but not just on small buildings, because of all the
18 conflicting things that have to go up on the roof.
19 Some of it relates to the access ways to get up to
20 that recreation space, but also the mechanical
21 equipment, air ducts, you know, all that kind of stuff
22 that also takes up roof space.

23 And so, we would often see examples of
24 space that was 18 or 20 feet, or 15 feet, or whatever,
25 that was very accessible and would probably be valued

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1 and used, but couldn't technically be counted as
2 recreation space.

3 So, we agreed with the workshop
4 participants that 25 feet was probably more than
5 necessary. Twenty-five feet is nice, if it can be
6 provided, it makes for very flexible space, but
7 rooftop space doesn't have to -- doesn't necessarily
8 have to be that flexible to be useable.

9 We suggested eight feet, we are certainly
10 open to -- continue to be open to suggestions. We
11 suggested eight feet as being a space that allows for
12 some flexibility, allows for the placement of chairs,
13 for example, and still allows for passage by.
14 Whereas, for example, we propose five feet, once you
15 put a lounge chair in there that -- you can't get by
16 anymore, so it makes the rest of the space
17 inaccessible.

18 So, we thought that a minimum was
19 necessary, and we suggested eight feet as kind of an
20 accepted minimum standard for good interior volume, so
21 maybe it makes sense for an exterior volume as well.
22 But, as I said, we are somewhat open to suggestions on
23 this. We don't think it should be much smaller than
24 that, and we don't think it needs to be much bigger
25 than that.

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1 COMMISSIONER HILDEBRAND: It just seems to
2 me that that eight foot equates to a private space
3 dimension, not a public space dimension. I know the
4 back porch at my house is eight feet deep, and when I
5 have more than four people there it's very crowded.
6 That's the genesis of my concern there. It seems much
7 more like a private residential scale, as opposed to
8 a communal space that's meant to engender
9 communication between fellow residents of a building.

10 MR. LAWSON: I understand your point.

11 CHAIRPERSON MITTEN: Anyone else?

12 Okay, thank you, Mr. Lawson.

13 I would just note under Other Government
14 Reports that attached to the Office of Planning Report
15 is a memo from DOES that doesn't address the --
16 doesn't take a position on the text amendment, and
17 then a letter of support from -- or a memo of support
18 from DHCD.

19 Is there anyone here representing an ANC?
20 I didn't think so.

21 All right, then I have on my witness list,
22 I have one person who is in support, and we'll ask Mr.
23 Williams to come forward and testify in support.

24 Anyone else who would like to testify in
25 support?

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1 Okay.

2 MR. WILLIAMS: Good afternoon, ladies and
3 gentlemen of the Commission. My name is Lindsley
4 Williams, and if you'll look at your checklist, Ms.
5 Mitten, you'll see that I've noted myself as being
6 both in support and in opposite.

7 CHAIRPERSON MITTEN: Okay.

8 MR. WILLIAMS: And, I'd like to use a
9 moment of my time to explain that.

10 CHAIRPERSON MITTEN: I was so excited to
11 see someone in support, I just didn't look over there.

12 MR. WILLIAMS: It has to do with this.
13 What you have is a proposal, as you know, to
14 substantially amend, but in the nature of
15 housekeeping, as Mr. Lawson has explained the existing
16 rules.

17 Where I come down on this is that, I
18 believe that we need to get some changes made. I
19 associate myself with the position that's been taken,
20 by among others, DCBIA, which is the five -- let's go
21 back down to nothing or 5 percent. But, right now,
22 even getting the change to a special exception to the
23 variance is a positive thing, even getting a change
24 from 25 feet down to some lesser number like eight is
25 a good thing, and those are the kinds of things that

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1 I find myself very much supportive of, but I wish we
2 could further than the rulemaking that you are taking
3 up tonight. And, in that sense I'm in favor of the
4 direction you are going on, but I wish you were going
5 further.

6 So, am I opposed or am I in favor? I
7 leave for you to figure out, if you need to put me
8 into a single box.

9 Ladies and gentlemen, I had made about six
10 comments that I wanted to share with you. The first
11 of them was, essentially, that in the 1970s, I'm glad
12 Mr. Parsons could comment on what their aim was, but
13 looking back I think that it tried to accomplish too
14 much, too soon, and that right now what we have is a
15 situation where there's too little, too late.

16 I would suggest that the regulations that
17 you are looking at, if you do get into housekeeping,
18 strive to bring about greater consistency and
19 parallels than what has been suggested in the text.
20 Notice that many of them begin with nature and
21 location of, and then for the private recreation space
22 in the two instances where that occurs it's simply the
23 test of presence of, instead of nature and location of
24 the outdoor space. It seems to me that we should have
25 parallel construction of all three elements where

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1 there are three, and of the two elements where they
2 are just the two for CR.

3 The overlay requirements themselves, under
4 Section D of the places listed as overlay requirements
5 for retail or art space, the overlay requirements
6 relate to relate service and art space, and I believe
7 that term should be expanded to include that.

8 You've also indicated that you will be
9 seeking comments on applications under the special
10 exception process from OP and from the Department of
11 Parks and Recreation. It seems to me that instead of
12 having it go to them for an assessment of the impact
13 of the proposal, and I take "the proposal" to mean the
14 wholeness of the project, that it's really to find out
15 whether or not the proposed reduction or change in the
16 recreation space is such as to have the Parks
17 Department say that a public facility would become
18 overtaxed by reason of the change that is being
19 proposed, the diminution from 15 percent to 8 percent
20 or whatever it is. Is that going to take a situation
21 of a nearby public facility and tip it over the edge
22 so that it becomes totally unworkable? That, it seems
23 to me, is something we should get out of the
24 Recreation Department rather than some broad-scale
25 assessment of the "the proposal," whatever that means.

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1 I think it's extremely vague.

2 CHAIRPERSON MITTEN: Can you sum it up?

3 MR. WILLIAMS: Well, I would like to say,
4 continue the hearing, try to get it further down the
5 pike than Mr. Lawson is getting it, and if you keep
6 the record open I'll send you a few more comments.

7 CHAIRPERSON MITTEN: Okay.

8 MR. WILLIAMS: And, we'll do it that way.

9 CHAIRPERSON MITTEN: Okay, that sounds
10 good.

11 MR. WILLIAMS: Thanks.

12 CHAIRPERSON MITTEN: Thank you.

13 Before you go away, maybe some of the
14 Commissioners have comments, I don't know.

15 Anybody have a question for Mr. Williams?

16 Okay, sorry I called you back, didn't want
17 you to get away.

18 All right. Now, we'll turn to folks in
19 opposition.

20 Merrick Malone, Harold DeBlanc, Mark
21 McGillan, I know Shalone Baronis isn't here, Scott
22 Pannick, come on forward. How many people have I
23 called up now?

24 MR. DeBLANC: Four.

25 CHAIRPERSON MITTEN: We'll get you on the

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1 next round, Jacques.

2 Why don't we work from one end down, so
3 you are on already -- no, you just turned it off. You
4 can tell by the light around the top.

5 MR. DeBLANC: I got it.

6 Thank you, Ms. Mitten, and Members of the
7 Commission, for an opportunity to speak to you about
8 this issue.

9 My name is Harold DeBlanc. I'm at 1615 L
10 Street, and I'm with First City Washington, Director
11 of the Southeast Federal Center Project, which I'm
12 sure you are aware of. It's a 42-acre project on
13 Anacostia, next to the Navy, next to the new stadium,
14 and a project that is going to contain as much as 6
15 million square feet and quite a bit of very generous
16 open public spaces.

17 The project that I mentioned is also going
18 to be highlighted by sustainable practices for which
19 First City is very well recognized in the industry.

20 Getting to the point, I'd like to talk to
21 you about four reasons for abolishing the RRS
22 requirements.

23 First, the policy is inappropriate for the
24 community that we've planned, the Southeast Federal
25 Center. SEFC is a pedestrian and street safe oriented

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1 project. We want people out seeing the outdoors,
2 enjoying what there is to enjoy, dining, shopping,
3 recreating, actively and passively, and people
4 interacting with people out in the public spaces.

5 This policy runs counter to those goals.
6 It actually encourages isolation and insular behavior,
7 people locked in their private complexes.

8 Second, the requirements conflict with
9 objectives adopted by the Zoning Commission since the
10 1970s, many of which are applicable here, the overlay
11 at the Southeast Federal Center, for example, ground
12 floor retail requirements, design requirements, our
13 objections to that requirement is building size
14 restrictions, complying with these is often very
15 expensive, and further adding on to that the RS
16 requirements, we've added unnecessary costs, not only
17 for developers, but for the end users, the residents,
18 renters and purchasers of condominiums.

19 Third, the overlay map's different zoning
20 districts within our site, the CR Zone, R5E and R5D
21 Zoning Districts, this means that some buildings
22 probably will require that these facilities exist, and
23 others right across the straight, next door, or around
24 the corner won't, and we think this creates an unfair
25 situation. Some buildings and residents have these

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1 facilities, they must pay for them, and others don't.

2 Finally, and most importantly, with no
3 regard to what these requirements are whatsoever, we
4 are already cooperating with the District to provide
5 for quite a bit of space and ample recreational
6 facilities, a park, the river front, health clubs, and
7 these facilities are for use by all, people
8 intermingling with others in the public spaces.

9 Additionally, by providing common
10 facilities, we believe we can use expensive land more
11 effectively, provide more efficiently and provide more
12 residential units in the overall development, if we
13 are not required to meet the specific RRS requirements
14 within each project, and by doing that we believe we
15 are more effectively implementing the vision expressed
16 in Section 1801 of the Zoning Regulations, which I
17 quote, "... to provide for the development of a
18 vibrant urban mixed use waterfront neighborhood,
19 offering a combination of uses that will attract
20 residents, office workers and visitors from across the
21 District and beyond."

22 So, we believe that the policy -- I didn't
23 talk about this, but we believe that it's really never
24 appropriate and that it competes with other more
25 important objectives of the Commission and the

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1 community, and fundamentally it's unfair and unduly
2 burdensome on developers, renters and condominium
3 buyers.

4 CHAIRPERSON MITTEN: Thank you.

5 I'd just ask you to hold your seat and
6 we'll ask questions of the whole panel at the end.

7 MR. DeBLANC: I will.

8 CHAIRPERSON MITTEN: Thank you.

9 Mr. Malone.

10 MR. MALONE: Good evening, Chairman and
11 Members --

12 CHAIRPERSON MITTEN: Would you turn on your
13 mic for me? Thank you.

14 MR. MALONE: Good evening, Chairman and
15 Members of the Commission.

16 My name is Merrick Malone. I'm here in my
17 capacity as President of Harris & Malone Development
18 Company, which is a minority-owned company here in the
19 District of Columbia, but I'm also a principal and
20 partner in Metropolis Development Company, and I'm
21 sitting next to my partner, Scott Pannick, who you
22 will hear from.

23 Not wishing to be redundant, I think my
24 colleague to my left has expressed the position I feel
25 in terms of the total elimination of the requirement.

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1 I'd only add a couple of things.

2 I would recommend elimination of the RRS
3 requirement for the following reasons, and they were
4 already articulated, but what we found out is that
5 there our tenants and condo unit purchasers of our
6 projects today simply don't want party rooms, small
7 exercise rooms, which Mr. Parsons mentioned, ping pong
8 tables or card tables in our outdated facilities. Our
9 tenants are very clear in our purchases of the -- they
10 seek the larger, private balconies, the high ceilings,
11 the hard wood floors, quality design and finishes, and
12 the storage space that -- as much storage as they can
13 possibly get.

14 But, equally important, they want to rent
15 or own their units in a vibrant neighborhood, where
16 they can go outdoors for their entertainment and
17 recreation, to restaurants, to theaters, to shop, to
18 health clubs, coffee houses, and many of those things
19 we're putting in our buildings already. They don't
20 have a desire to go to a party room.

21 Obviously, you've heard that these
22 requirements do conflict with the public policy
23 objectives and requirements that were adopted in the
24 '70s, and, of course, they are included -- these
25 include, but are not limited to, the mandatory ground

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1 floor retail service uses, architectural design
2 requirements, use restrictions, the FAR and building
3 height limitations, and the fact of the matter is that
4 it's very difficult to comply with this requirement,
5 while at the same time trying to provide these ground
6 floor retail and service uses, or incorporating then
7 and retaining historic buildings in the new
8 construction providing these high requirements. It's
9 also expensive, as was pointed out.

10 I think it's based on some of their ruses
11 that have been used to talk about defining --
12 definition of recreational space I think illustrates
13 the fact that it is so outdated.

14 We talked about the fundamental unfairness
15 to developers of residential buildings who are doing
16 these projects and the land is zoned as C, SP or CR,
17 to provide this space while others who are doing
18 projects in residentially zoned have no such
19 requirement. It's fundamentally unfair.

20 So, I hope that you will agree and
21 understand that we think that the RRS requirement is
22 antiquated public policy, which is no longer necessary
23 or appropriate, if it ever was. It competes with the
24 other far more important public policy objectives and
25 is unfair and truly unduly burdensome.

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1 So, however, if for some strange reason
2 that you would disagree with the total elimination of
3 it, we would -- we, collectively, we, the developers
4 and our urban residents, would hope that you would, at
5 a minimum, reduce the requirement to 5 percent or less
6 of the residential space provided, and redefine the
7 residential recreation space so that private balconies
8 or patio spaces are included within the meaning of the
9 RRS.

10 Thank you.

11 CHAIRPERSON MITTEN: Thank you, Mr. Malone.

12 Mr. Pannick?

13 MR. PANNICK: Chairperson Mitten and
14 Members of the Commission, I'm Scott Pannick. I'm the
15 Founder and President of Metropolis Development
16 Company, and we are a leading Washington-based
17 condominium development company.

18 Metropolis develops high-quality
19 condominiums in fairly dense areas, principally along
20 14th Street in the C3A, C2B and CR Zones.

21 Over the past several years, we've sought
22 four variances from the residential recreation space
23 requirements of 15 to 20 percent in these zones.
24 While BZA has provided this relief, we've needed to
25 undertake this process to confirm the reduction, and

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1 it's both burdensome and time consuming to undertake
2 the process.

3 The OP set down report indicates that the
4 residential recreation requirements were adopted in
5 the '70s and that they did not receive much discussion
6 at the time. Whatever the reasons for the adoption of
7 the recreation space requirements, they are
8 unnecessary and unreasonable in today's housing
9 environment. High-quality projects in dense urban
10 areas are no longer housing of last resort, but rather
11 housing of choice for a wide variety of singles,
12 couples and urban professionals.

13 The residents make housing choices based
14 on amenities in these buildings, and not -- those
15 amenities that they are asking for do not tend to be
16 public recreation spaces.

17 Our company, like many others, continues
18 to provide some amount of recreation space in our
19 application to BZA, but, frankly, even the amount that
20 we provide tends to be a concession to the process,
21 rather than because we really think that that's what
22 our residents are requesting.

23 We thought that OP's comments on the
24 adverse financial, social and other impacts of the
25 residential recreation requirements were right on

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1 target. To quote from the OP report, "Such space can
2 be a financial drain on residents of the building,
3 since construction and maintenance of the space adds
4 to the cost of each unit through sales costs, condo
5 fees and rental fees, and can limit opportunities for
6 neighborhood interaction and the successful
7 establishment of local businesses.

8 How much does it cost? Well, in an
9 average building with average 1,000 square foot units,
10 a 20 percent requirement means that we have to build
11 200 square feet of recreation space for each one of
12 these residents. Construction costs today are about
13 -- our all-in costs are pretty close to \$500 a foot
14 including land. Now, part of that is indoors and part
15 of it is outdoors, but at least 50 percent of it is
16 indoors, so we have to provide 100 feet at probably
17 \$500 a foot indoors, probably \$50,000 a unit, and
18 something more outdoors. It's often, you know, on the
19 roof, so we don't have the full cost of creating it,
20 but we do have to create decks, we have to bring
21 elevators up, and now I understand we have to bring
22 bathrooms in there.

23 So, I would say on average to provide that
24 space is someplace between \$50,000 and \$100,000 a
25 unit, it's an enormous expense.

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1 Finally, notwithstanding a thorough and
2 comprehensive well-written report by OP, we are a bit
3 baffled by the Office of Planning's recommendation
4 that seems to frankly run contrary to the underlying
5 report. As this issue has developed over the past
6 many months, we've heard virtual unanimity from
7 everyone, including the Office of Planning, that these
8 things should be reduced and, frankly, we were just
9 surprised when the OP report came out and suggested
10 that this be tabled for a year.

11 We advise the Commission to take action on
12 this matter consistent with the opinion of the wide
13 sector of the public and professional communities and
14 eliminate these requirements. To do so -- to not do so
15 would place a continuing burden on the residential
16 development business, which has gained momentum for
17 the first time in many years.

18 I have one last comment that occurred to
19 me as I was sitting here this evening, and that is
20 that my concern is that the reaffirmation of this
21 process, the acceptance of this report, might
22 conceivably be a reaffirmation of the 15 to 20 percent
23 requirement that the Board of Zoning Adjustment has
24 been looking at, and it would certainly not be the
25 intention of this process to then have for the next

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1 year prior to the issuance of the report BZA to say,
2 well, the 15 to 20 percent has now be reaffirmed, so
3 we now feel that we have to conform to that standard.
4 I don't think that that would be a good outcome for
5 the next year.

6 That's my thoughts. Thank you for your
7 attention.

8 CHAIRPERSON MITTEN: Thank you.

9 Did you want to testify? Oh, okay.

10 Any questions for this panel? No
11 questions? Okay.

12 Thank you, gentlemen.

13 Mr. DePuy.

14 MR. DePUY: Thank you, Madam Chair and
15 Members of the Commission.

16 I'm Jacques DuPuy, an attorney with
17 Greenstein, Delornie & Luchs.

18 In conjunction with our review of this
19 proposed text amendment and the Office of Planning
20 report, we were asked by a number of clients to
21 explain to them the underlying rationale for the
22 residential recreation space requirements. We were
23 also asked to determine whether or not in the '70s,
24 when these requirements were adopted, there were
25 studies or analyses that were done that formed the

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1 basis for the recommendations.

2 We thought these were important questions,
3 and as a result several members of my office spent
4 many, many hours in the basement of this office going
5 through files from 1974, the CR case, and from 1978,
6 the Commercial case and the SP case, looking for all
7 references to residential recreation space
8 requirements.

9 And, the purpose of my testimony is to
10 simply report on our findings, and our findings are as
11 follows. First, most significantly, the residential
12 recreation space requirement proposals generated very
13 little interest by witnesses in 1974 and 1978, and
14 relative to the amount of discussion of all other
15 topics that were before the Commission also generated
16 an exceedingly minute amount of discussion among
17 Zoning Commission members.

18 Secondly, notwithstanding this meager
19 record on residential recreation space issues, the
20 1978 Commercial case, surprisingly, we were surprised
21 by this, indicated that most of the testimony that
22 specifically pertained to residential recreation space
23 requirements, including from ANCs and community
24 organizations, expressed opposition or concerns about
25 the proposed requirements, and I'll get back to some

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1 of the details in a minute.

2 Third, we confirmed, as we had suspected,
3 that there were no written studies or reports by any
4 consultants, by the predecessor to the Office of
5 Planning, which was then known as the Office of
6 Planning and Management, or by the industry, or by any
7 public witnesses.

8 Fourth, in some colloquy between the
9 Office of Planning and Management and Members of the
10 Commission, the Office of Planning and Management
11 acknowledged in the 1978 Commercial case that the only
12 actual experience with residential recreation space in
13 the CR Zone, which had preceded the Commercial case by
14 four years, pertained to a single building, namely,
15 the Eastbridge at 26th and Pennsylvania Avenue, and
16 that the experience in that one project had led the
17 architect of that completed project "... to recommend
18 some changes in the residential recreation space
19 provisions." And, I've attached to my testimony,
20 which I will give copies to the Commission, the
21 colloquy from which that quote was taken.

22 Fifth, the Office of Planning and
23 Management, in response to a question from Commission
24 Member Parsons, who asked, "What is the benefit to the
25 City of the residential recreation space

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1 requirements," the Office of Planning and Management
2 responded, "The purpose of it is for the tenant of the
3 building," not necessarily that it was a public
4 purpose, but that the purpose was for the tenants of
5 the buildings.

6 In further colloquy between OPM
7 representatives and Zoning Commission members, the
8 Office of Planning and Management stated that the
9 residential recreation space was all to be provided
10 outdoors, which is consistent, Mr. Parsons, with your
11 very good recollection, and, perhaps, entirely at the
12 roof level. OPM's examples, and the only examples
13 that we found throughout 1,600 pages of transcript and
14 12 thick files of the record were to three facilities,
15 a rooftop tennis court, and from my own personal
16 experience I'm not aware that any building in town has
17 a tennis court, I could be wrong, that is, on the
18 roof, secondly, rooftop swimming pools, and third,
19 rooftop lounge.

20 Sixth, and again, this is now a detail of
21 an earlier point, those community groups which
22 commented on the residential recreation space in the
23 1978 Zoning Commission case --

24 CHAIRPERSON MITTEN: Just keep going
25 because we are enjoying this.

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1 MR. DuPUY: -- a majority opposed the
2 requirements. Concerns included noise and lights
3 caused by rooftop use, that the requirements were "too
4 burdensome," and thirdly that the RRS requirements
5 would result in only upper-income development.

6 The Dupont Circle ANC, for example,
7 testified that it thought the general thrust of the
8 residential recreation space requirements was good,
9 but, nevertheless, questioned the possible impact the
10 requirements might have on lot occupancy requirements
11 and suggested that further studies should be made
12 prior to implementation of the requirements.

13 In my testimony, I've indicated the files
14 we reviewed, the amount of testimony and other
15 materials that we reviewed. Essentially, what I've
16 summarized here is all that we could find,
17 notwithstanding the voluminous record in these cases
18 that pertain to many other matters. From this,
19 therefore, we concluded, as I indicated at the outset,
20 that the residential recreation space requirements in
21 1974, for the CR Zone and later in the Commercial Zone
22 in 1978, really had very, very little attention, very
23 little foundation, certainly no studies, no in-depth
24 analyses, and because of that we would -- and at this
25 point I'll now kind of summarize what this all means,

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1 what this means to me anyway is that as a matter of
2 public policy this is a policy that doesn't have a
3 strong foundation, and that the Commission ought to
4 look very hard at, without any presumptions that this
5 is, perhaps, a correct policy, or the right policy.
6 I think it should, based on this, look very hard at
7 whether or not this really is a policy going forward
8 that the Commission thinks is appropriate.

9 As I said, I have copies of the testimony,
10 including the ten pages, which is all we could find of
11 colloquy dealing with the residential recreation space
12 requirements and involving Mr. Parsons, Commissioner
13 Lewis, and two members of the Office of Planning and
14 Management at the time, and I think, as a personal
15 note, Mr. Parsons and I are probably the only members
16 in this room who were involved in that particular case
17 and have a recollection of what happened in that
18 proceeding.

19 I might also say, on a personal note, and
20 this does not come out of what we reviewed, but as
21 I've thought about this, what we found, it occurs to
22 me that when the CR Zone, which was the first one, of
23 course, that had the residential recreation space
24 requirements, was adopted, the CR Zone, as Mr. Parsons
25 and probably all Members of the Commission knows, was

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1 initially mapped primarily in the west end. The west
2 end was an area that had a lot of industrial uses,
3 auto body repairs, it was an area that really was
4 fairly barren, and it seems to me, and this is
5 speculation on my part, that the Commission and the
6 Office of Planning and Management might have well
7 determined that in that particular instance that that
8 was an area where residential recreation space made
9 sense because there were no other facilities. It was
10 an area that really was, at the time, really devoid,
11 not only of hotels, the hotels that are there now, the
12 residential, but the office space, it really was a
13 very different area.

14 So again, it's speculation on my part, but
15 I was trying to think through why these regulations
16 might have been adopted initially, and then, again, I
17 would speculate that they, perhaps, took on a life of
18 their own and got merged into other areas where
19 instead of the 70 percent outdoor requirement, which
20 was the original CR, and is still the CR requirement,
21 then they became 50 percent outdoors, which meant more
22 indoor FAR space, as was testified, had to be devoted
23 to, or generally was devoted to, residential
24 recreation space.

25 Thank you very much.

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1 CHAIRPERSON MITTEN: Thank you. That was
2 -- that was really interesting, and I mean I think
3 your notion about what happened with CR makes a lot of
4 sense.

5 Anyone have any questions for Mr. DuPuy?
6 We very much appreciate the written copies of the
7 testimony.

8 Thank you.

9 COMMISSIONER PARSONS: I guess I should
10 say, that's my recollection now that he's refreshed my
11 memory.

12 CHAIRPERSON MITTEN: Okay.

13 COMMISSIONER PARSONS: I was not involved
14 in CR, but certainly the Commercial. I don't know how
15 the file was that thick, because the dialogue was not
16 that extensive, as you point out.

17 CHAIRPERSON MITTEN: Anyone else?

18 Okay, we have last call for folks in
19 opposition. Okay.

20 Please, go ahead.

21 MS. RICHARDS: Thank you.

22 Good evening, ladies and gentlemen. I'm
23 Laura Richards, representing the Committee of 100.
24 Thank you for this opportunity to appear and testify.

25 In 1974, the Zoning Commission authorized

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1 residential recreation space in CR zones. It also
2 provided for it in Commercial Zones that had
3 residential uses, and this amenity has been eroding
4 ever since.

5 In 2001, it reduced the requirements in
6 the C2C and the 3C3 Districts from 15 percent down to
7 5 percent, and in addition to these grants broadly
8 applicable relief you have, through PUD applications
9 and individual requests for special exceptions,
10 routinely allowed people to get away with 5 percent or
11 no recreation space at all.

12 We've looked at about 70 orders in your
13 admirable word searchable system, and we could only
14 find a couple of cases where you denied relief.

15 A typical order reads that it's
16 impractical for a variety of reasons, for applicants
17 to provide the required space, first it can only be
18 provided at the expense of important and desirable
19 amenities, such as parking and design. Okay.
20 Providing the required level of recreation space will
21 needlessly increase cost to the customers without
22 providing valuable or desired amenity. Those are the
23 BZA cases in Logan Circle, and that's just typical.

24 The instant case proposes to routinely
25 allow the reduction or elimination of recreation space

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1 in CR and lower-density Commercial Zones that are
2 still subject to the 15 to 20 percent requirement.

3 The Committee of 100 had occasion to
4 discuss this before the set down, as kind of an
5 academic exercise, and we thought that there should
6 not be special exceptions granted below 15 percent,
7 and the applicable relief should be in the form of
8 transfers to -- a recreation space could be provided
9 off site, but within the same square.

10 Why bother? Why not let new urbanites
11 join health clubs, et cetera, et cetera, jog the
12 streets, visit the parks. Individual grants of relief
13 from rec space are negligible, they are not felt.
14 It's the cumulative impact.

15 By analogy, we look at side-yard
16 encroachments. Nobody notices one carport, or one
17 trellis or addition, but if you don't kind of enforce
18 it fairly strictly you have an R1B neighborhood with
19 side yards that over time becomes a block-face row
20 house. So, it's just a case of amenity creep, I
21 guess, or loss of amenity creep.

22 This issue was brought to us by the 1400
23 Q Street Association about a year ago, and we would
24 think that they have a voice to listen to, because
25 they are living in the middle of the neighborhood

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1 where our requests for relief are routinely granted,
2 and they are starting to feel the cumulative impact of
3 the loss of on-site recreation space.

4 The situation will result in increasing
5 demands on the D.C. Department of Parks and
6 Recreation, along with providing market opportunities
7 for gyms, et cetera. The residential real estate
8 market is, in effect, shifting the responsibility to
9 provide recreational space to the public sector. This
10 amounts to public subsidy without the benefit of
11 public debate.

12 The regulations contemplate that public
13 recreation facilities will be supplemented by private
14 space associated with a particular zone structure, and
15 the Commission has noted, single family dwellings and
16 flats, regardless of location to provide recreation
17 space which is largely independent and self-sufficient
18 through lot occupancy, et cetera. Apartment
19 buildings, however, can be constructed without
20 providing adequate recreation space, even while
21 complying with all zoning requirements. And, it's
22 this situation which the residential open space
23 requirements were designed to correct. That's a 1979
24 case.

25 The current regulations and various

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1 precedents acknowledge the importance of recreation
2 space as an adjunct to residential property. The
3 proposed amendments create a presumption in favor of
4 avoiding the requirement.

5 As stated above, the Committee supports a
6 15 percent requirement with nearby transfers. That
7 proposal is not before the Board. Until it is, the
8 regulations should stay as they are.

9 CHAIRPERSON MITTEN: Thank you, Ms.
10 Richards.

11 I hope that you will get a copy of at
12 least Mr. DuPuy's testimony, because there is some --
13 his firm did a lot of interesting research into how
14 this whole requirement came about.

15 MS. RICHARDS: Uh-huh.

16 CHAIRPERSON MITTEN: I think the Committee
17 would be interested in that.

18 MS. RICHARDS: Certainly will.

19 CHAIRPERSON MITTEN: Any questions for Ms.
20 Richards?

21 Okay, thank you.

22 MS. RICHARDS: All right, thank you.

23 CHAIRPERSON MITTEN: Glad you made it in
24 time.

25 We are getting a little more efficient, so

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1 don't be too late to our hearings.

2 Mr. Lawson, would you like to make any
3 closing comments or observations? You are not
4 compelled to, I'm just giving you the opportunity.

5 MR. LAWSON: That's a nice opportunity.

6 Thank you, Madam Chair.

7 I'm not going to make a lot of comments at
8 this time. I did just find, though, in my file,
9 something that addresses one of the questions raised
10 by the Commissioner earlier, and that relates to what
11 some other jurisdictions require in this regard.

12 There was some research done by the
13 Department of Parks and Recreation, not so much on the
14 provision of recreation space, but in the imposition
15 of what are normally called impact fees, which is a
16 fairly common requirement in other communities, and I
17 don't believe that the District has one for parks,
18 although I may be wrong on that. I'd have to check to
19 make sure about that.

20 Those fees can range, I'm just kind of
21 going through the list right now because I kind of
22 forgot I had this, obviously, range -- and they seem
23 to apply to all residential, as opposed to the
24 district where our recreation space requirement
25 applies just to specific zones, but they seem to

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1 range, for example, in Atlanta it's about \$410, to
2 about \$285 per unit, up to almost \$600 in a commercial
3 building. In California, the rates are considerably
4 higher, for example, San Diego, a single-family
5 dwelling is almost \$4,000, multi-family dwelling is
6 about \$4,000, and a commercial is about \$2,000.

7 So, this, I guess, would be one of those
8 examples, it's certainly not exactly what we are
9 requiring, but it's somewhat comparable to what other
10 communities do, in lieu of providing recreation space
11 on site, having an impact fee, and then the fees go to
12 the provision of more communal public space, would
13 possibly get to some of the concerns that the
14 representative from the Committee of 100 was raising.

15 Other than that, I would also note, I see
16 he's left, but just to remind the Commission that
17 actually for the Southeast Federal Center, we actually
18 did reduce the recreation space requirement down to 5
19 percent. They would apply only to the CR Zone
20 property, a fair amount of the property is actual not
21 zoned Commercial, so the recreation space wouldn't be
22 required at all because it's zoned R, various R Zones.

23 And, I believe, again, I don't have it in
24 front of me so I can't remember all the details, but
25 I believe we also allowed for the recreation space to

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1 be consolidated, and I believe it's within a block, to
2 allow for the provision of, again, somewhat more
3 communal space, again, something more similar to what
4 the Committee of 100 was suggesting. So, we move in
5 that direction with Southeast Federal Center, in part
6 because they were providing -- or they are going to be
7 required to provide a large amount of recreation space
8 in the form of park space, as well as street
9 improvements that in urban settings like this often
10 function as recreation space.

11 And, I think that's it.

12 Thank you, Madam Chair.

13 CHAIRPERSON MITTEN: Thank you, and if you
14 wanted to submit that stuff about impact fees for the
15 record that would be helpful.

16 MR. LAWSON: I will. I'll add to that the
17 other information that I did find -- this is mostly
18 communities, large urban districts throughout the
19 United States. They aren't necessarily local, but I
20 know that I have some research on some of the local
21 communities, and I'll submit that as well.

22 CHAIRPERSON MITTEN: Okay, thank you.

23 Anyone have any closing comments or
24 questions for Lawson? Okay.

25 Then I think we'll keep the record open

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1 for 30 days, and then anyone who would like to submit
2 any additional information we can do that, and then
3 we'll put it on the -- put this on for decision at
4 our, whatever the next regular public meeting of the
5 Commission would be after the closing of the record.

6 And, if you'd like to find out when that's
7 going to be, you can contact Ms. Schellin in the
8 office.

9 And then, you should also be aware that
10 should the Commission propose affirmative action, that
11 proposed action must be published in the D.C. Register
12 as a proposed rulemaking, where there will be an
13 additional period of time for comments, and in
14 addition that rulemaking would be referred to the
15 National Capitol Planning Commission for federal
16 impact review, and then we would take final action at
17 a subsequent meeting.

18 I thank you all for your participation
19 this evening, and we are adjourned.

20 (Whereupon, the above-entitled matter was
21 concluded at 7:47 p.m.)
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