

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1179th Meeting Session (7th of 2005)

+ + + + +

MONDAY,

MAY 9, 2005

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W. Washington, D.C. 20001, pursuant to notice at 6:30 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

| | |
|-----------------|-------------------|
| Sharon Schellin | Zoning Specialist |
|-----------------|-------------------|

OFFICE OF PLANNING STAFF PRESENT:

| | |
|----------------------|-----------------|
| Ellen McCarthy | Deputy Director |
| Steven Cochran | |
| Arthur Jackson | |
| Jennifer Steingasser | |

D.C. OFFICE OF CORPORATION COUNSEL:

| | |
|----------------------|--|
| Alan Bergstein, Esq. | |
|----------------------|--|

This transcript constitutes the minutes from the Public Meeting held on Monday, May 9, 2005.

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

6:50 P.M.

1
2
3 CHAIRPERSON MITTEN: This is the May 9th,
4 2005, public meeting of the Zoning Commission of the
5 District of Columbia, and my name is Carol Mitten.
6 Joining me this evening are Vice Chairman Anthony Hood
7 and Commissioners Kevin Hildebrand, Greg Jeffries and
8 John Parsons.

9 Copies of our meeting agenda are available
10 to you, and they're in the wall bin by the door. I'd
11 just like to remind folks that we don't take any
12 public comment at our meetings unless the Commission
13 specifically requests someone to come forward.

14 Please be advised that this proceeding is
15 being recorded by a court reporter, and it's also
16 being webcast live. So, please don't make any
17 disruptive noises. I'd ask everyone to turn off their
18 beepers and cell phones at this time, so as not to
19 disrupt the meeting.

20 Mrs. Schellin, do we have any preliminary
21 matters before we proceed?

22 MS. SCHELLIN: No, ma'am.

23 CHAIRPERSON MITTEN: All right. I just
24 want to announce a couple of things. We will have a
25 special public meeting on Monday, May 16th at 6:00

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1 P.M. That's preceding our public hearing schedules
2 for 6:30 P.M.

3 And the items that will be taken up at
4 that time are Zoning Commission Case No. 05-13, which
5 is the Sua Sponte Review of JBG Louisiana, LLC. And
6 the second item will be what is the second item under
7 proposed action this evening, which is Case No. 04-25
8 for proposed action - the Map Amendment for Catholic
9 University.

10 So the Catholic University case will not
11 be on the agenda for this evening. So, first, we have
12 four public meeting minutes to take action on. First
13 is December 13, 2004.

14 All Commissioners were present. The
15 second is January 13, 2005. All Commissioners were
16 present. Third is March 14, 2005. All Commissioners
17 were present. And then we'll take the special public
18 meeting of March 22, because we were missing myself at
19 that meeting.

20 So, we can take the first three together.
21 And I would move approval of the minutes of the
22 December 13, January 13 and March 14 meetings.

23 VICE CHAIR HOOD: Second.

24 CHAIRPERSON MITTEN: Thank you. And, as
25 usual, that's with any editorial corrections that are

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1 required. Are there any corrections that anyone would
2 like to call out now? All right, then all those in
3 favor please say aye.

4 ALL: Aye.

5 CHAIRPERSON MITTEN: None opposed, Mrs.
6 Schellin.

7 MS. SCHELLIN: The staff recorded the vote
8 5-0-0 to approve Zoning Commission meeting minutes
9 from December 13, 2004, January 13, 2005 and March 14,
10 2005. Commissioner Mitten moving, Commissioner Hood
11 seconding, Commissioners Hildebrand, Parsons and
12 Jeffries in favor.

13 CHAIRPERSON MITTEN: Thank you. Mr. Hood,
14 do you want to handle the last one?

15 VICE CHAIR HOOD: The special public
16 meeting for March 24, 2005, is in front of us. With
17 that, I will move approval of the March 24, 2005,
18 minutes with the necessary correction. Can I get a
19 second?

20 COMMISSIONER HILDEBRAND: Second.

21 VICE CHAIR HOOD: Moved the second into
22 discussion. Hearing none, all of those in favor?

23 ALL: Aye.

24 VICE CHAIR HOOD: Any opposition? So
25 ordered, staff, would you record the vote?

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1 MS. SCHELLIN: Yes, sir. Staff will
2 record the vote 4-0-1 to approve the Zoning Commission
3 meeting minutes from March 24, 2005. Commissioner
4 Hood moving, Commissioner Hildebrand seconding,
5 Commissioners Parsons and Jeffries in favor,
6 Commissioner Mitten not voting having not
7 participated.

8 CHAIRPERSON MITTEN: Thank you. Next,
9 we'll have the monthly status report by the Office of
10 Planning. Ms. Steingasser?

11 MS. STEINGASSER: Thank you, Madame Chair,
12 Commissioners. I'd like to bring the Commissioners'
13 attention to the items under Reports and
14 Supplementals, Section 205 - Adult Daycare.

15 We had hoped to get that back to the
16 Commission for their June meeting, but as the research
17 has continued, Ms. Thomas has had extensive
18 discussions with the Zoning Administrator and is very
19 concerned about being able to get back to the
20 community with what she's proposing for new language
21 and working with OHE.

22 So, it looks like that would probably be
23 coming back to you in July, if there's no objections
24 to that. And the only other case that I wanted to
25 flag was the Recook Overlay, which I've now moved to

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1 cases ongoing.

2 And the Recook Text Amendment proposed to
3 redefine the standards for the affordable housing
4 provision. And I'm proposing that we hold that until
5 after the inclusionary zoning public hearing, so that
6 we have a better understanding of the full economics
7 of what that means and hold that until later in the
8 summer as well.

9 CHAIRPERSON MITTEN: Okay.

10 MS. STEINGASSER: That's all I have any
11 questions on.

12 CHAIRPERSON MITTEN: Can you pass down
13 another copy. I think I was skipped over. Any
14 questions for Ms. Steingasser? Mr. Hood?

15 VICE CHAIR HOOD: Yes, Madame Chair, I had
16 a question about the - I believe it was the elderly
17 child - what was it, the child?

18 MS. STEINGASSER: Adult daycare?

19 VICE CHAIR HOOD: Yes, thank you. I think
20 the visa was waiting on some guidance from us. What's
21 going to happen with that case?

22 MS. STEINGASSER: I don't know. I'd have
23 to refer to OHE for that answer.

24 VICE CHAIR HOOD: Okay, I think I raised
25 some --

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1 MR. BERGSTEIN: Mr. Hood?

2 VICE CHAIR HOOD: Yes.

3 MR. BERGSTEIN: I'm sorry. But I imagine
4 what will happen is that, if there's not action taken
5 they'll just be reported and the visa is likely to
6 just continue to matter until you do take an action.

7 VICE CHAIR HOOD: Okay, I don't even know
8 how to respond to that, so...

9 CHAIRPERSON MITTEN: Anyone else? Okay,
10 thank you. We have one consent calendar item this
11 evening, which is Case No. 00-38a, which is a request
12 for a minor modification to the order for the
13 Frederick Douglass/Stanton Hope VI project, which
14 would basically extend the time by which construction
15 would have to be completed. And I would move approval
16 of the consent calendar item.

17 COMMISSIONER PARSONS: Second.

18 CHAIRPERSON MITTEN: Is there any
19 discussion? All those in favor, please say aye.

20 ALL: Aye.

21 CHAIRPERSON MITTEN: Ms. Schellin, there
22 are none opposed.

23 MS. SCHELLIN: The staff recorded a 5-0-0
24 to approve consent calendar action, Case No. 00-38a.
25 Commissioner Mitten moving, Commissioner Parsons

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1 seconding, Commissioners Hildebrand, Hood and Jeffries
2 in favor.

3 CHAIRPERSON MITTEN: Thank you. And the
4 first item under hearing action is one we've been
5 eagerly awaiting, which is the Case No. 04-33, which
6 is the application for inclusionary zoning by the
7 Center for Community Change. And, Ms. McCarthy?

8 MS. MCCARTHY: Thank you, Madame Chair.
9 My name is Ellen McCarthy, Interim Director of the DC
10 Office of Planning, and I'm here tonight to introduce
11 the concept of inclusionary zoning for set down for
12 public hearing.

13 OP believes that inclusionary zoning could
14 be an important tool for affordable housing and, most
15 importantly, a tool for creating the diverse
16 communities that are a major goal of the District's
17 comprehensive plan.

18 We are introducing inclusionary zoning at
19 a conceptual level to the Zoning Commission because of
20 the complexity of the topic and the need for extensive
21 public debate. We envision an ongoing discussion,
22 between now and the public hearing, to work out the
23 important details of how a program might work, and to
24 determine the impacts on the District.

25 But, I just wanted to say that just

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1 getting to this point has required the efforts of -
2 the collaborative and cooperative of - a large number
3 of people to whom we wanted to extend a great deal of
4 thanks.

5 The Campaign for Mandatory Inclusionary
6 Zoning: Nina Dastur, Cheryl Cort, Tad Baldwin. The
7 ULI Taskforce for Workforce Housing, headed by Mark
8 Silverwood and David Mayhood.

9 And a number of developers that have met
10 and helped OP understand the potential impacts of
11 inclusionary zoning, including: Stan Slaughter of
12 Paradigm Development, Stewart Bartley of JBG, Michael
13 Hoffman and Steve Earl of PM Hoffman.

14 Jeff Gelman of DCBIA, Jeremy Rubenstein,
15 Michael Darby of Monument, Jerry Widdicomb of the
16 Downtown Bid, and many people - because I shouldn't
17 have done a list because you're guaranteed to leave
18 out someone when you do that list.

19 But people have spent, really, hours and
20 hours working collaboratively in taskforces and trying
21 to arrive at the right relationships between bonus
22 density and affordable requirements.

23 We'd also like to thank the residents of
24 the District who, through their ANCs, have already
25 weighed in with their thoughts and concerns. And,

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1 lastly, John McIlwain, who's the Senior Fellow of the
2 Urban Land Institute, who not only lent his expertise,
3 but also helped facilitate some of the discussion.

4 And, Chairman Linda Cropp, who also lent
5 the weight of her office to try to encourage all
6 sides to reach a consensus. So, I'd now like to
7 turn over OP's presentation to Steve Cochran and Art
8 Rogers, of our staff, who drafted the report and who
9 will present it in brief format - a severely
10 abbreviated version of it tonight.

11 MR. COCHRAN: Thank you, Madame Chair.
12 Yes, we would like to keep our report, tonight, as
13 brief as the report that we submitted. First, I have
14 a couple of housekeeping functions.

15 There is yet another errata sheet. This
16 is a compendium of all previous errata sheets. It is
17 dated May 9th. On one page, we've managed to compile
18 all of the substantive corrections that we had to our
19 report.

20 That's available, for anyone on the
21 audience, on the table over there. Finally, we would
22 refer you to our planning website, which is
23 planning.dc.gov, which has a complete copy of the most
24 up-to-date version on the web.

25 Now, tonight, Art Rogers, to my left, is

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1 going to be letting you in on what the problem is that
2 needs to be addressed. He'll briefly describe market
3 and income trends, and the patterns of housing
4 location that are making it increasingly difficult for
5 even moderate income households to afford to live in
6 the District.

7 I'll be looking, a little bit, at what the
8 comprehensive plan says about the lack of
9 affordability, and whether it's a problem. Art will
10 be looking at what is inclusionary zoning, and giving
11 you a brief overview of it.

12 I'll be giving you a somewhat more
13 detailed look at what the proposals are that we're
14 recommending you set down tonight. And I'll point out
15 issues that would require input as part of a public
16 hearing process. And, finally, Ellen will conclude
17 our remarks.

18 MR. ROGERS: Thank you, Madame Chair, and
19 the members of the Commission. My name is Art Rogers,
20 of the Office of Planning. And, as Steve said, I'm
21 going to be going into - first of all, what's the
22 problem that we're trying to address with inclusionary
23 zoning as a tool?

24 In the last few years, the District has
25 seen an increase in housing prices and an increase in

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1 upper-level incomes that can afford these prices.
2 However, this has left many families unable to afford
3 to live in the District.

4 This includes people who provide basic
5 services to the District, such as teachers and
6 firefighters and policemen. And, while the District
7 has many successful housing programs, they tend to be
8 targeted to lower incomes.

9 And the programs, themselves, have not
10 contributed to de-concentrating pockets of poverty.
11 The District's market strength has been driven by
12 several important factors, such as increasing regional
13 job growth, lower interest development in mortgage
14 financing, regional traffic congestion, pent-up demand
15 in the District and, last but not least, the improving
16 quality of life and the delivery of public services in
17 the District itself.

18 Most, if not all, regional studies have
19 forecasted that the regional employment will continue
20 to increase over the next 20-25 years. More
21 importantly, the official Counsel of Government's
22 forecast predicts that the housing production will not
23 keep pace with this job growth.

24 This will result in even higher housing
25 prices throughout the region. While this will spur

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1 additional market rate development in the District, it
2 will also affect the ability of lower-income
3 households to find housing.

4 That is the essential relationship between
5 market-rate housing development and the need for
6 affordable housing. As higher incomes move into the
7 District, they will, first of all, drive up the cost
8 of housing because they can afford to pay more.

9 And, secondly, there will be an increased
10 demand for public and private services. These
11 services will, in part, be met by lower-wage jobs,
12 held by people who will need housing.

13 As the cost of housing increases, these
14 households filling the lower-wage jobs will either
15 have to live farther away to find affordable housing,
16 thereby increasing commute times and traffic
17 congestion, or they will be forced to live in smaller,
18 more over-crowded, units.

19 In response to these challenges that the
20 District is facing, the District Government has
21 focused on increasing production levels of major
22 preservation and new development of affordable housing
23 projects.

24 This has been accomplished through six re-
25 developments of public housing, the use of low-income

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1 housing tax credits, CDBG and Home Funds, and tax-
2 exempt bond financing. In addition, other efforts such
3 as the sale of District-controlled land and the Home
4 Again initiative have added even more affordable units
5 and returned vacant buildings and land to productive
6 use.

7 Unfortunately, many of these traditional
8 financing methods have steered affordable developments
9 to areas where the land is least expensive. And,
10 before I go any further, I wanted to point out that,
11 on the table by the door there, there's a handout that
12 I've referred to some of these things already,
13 including a map of where affordable housing and market
14 rate housing is going in the District.

15 This pattern of developing affordable
16 housing only where the land is cheapest, I think, OP
17 believes it's unsustainable. And it's for several
18 reasons. First, it makes it difficult to attract
19 private services, such as retail, to those
20 communities.

21 Secondly, it requires continued
22 reinvestment of public capital dollars to maintain
23 those neighborhoods, and doesn't leverage private
24 development the way it could be. And then, finally,
25 it harms the Districts goal of creating diverse

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1 neighborhoods.

2 And so, those are some of the challenges
3 that the District is facing. And so, now I'm going to
4 turn it back over to Steve for the comp plant.

5 MR. COCHRAN: The comp plant, it says
6 quite a bit about the District's goal of creating
7 diverse neighborhoods. Most of them are - what it
8 says is included in Section 5a of the report that we
9 filed.

10 And Art has handed out some of those
11 goals. The most important one is Section 301.1 - the
12 Housing goal, in which the District states that its
13 goal is to have adequate affordable housing for
14 District residents in communities that have access to
15 services and facilities to meet their needs.

16 Another important one is Section 303.2,
17 which establishes a policy to provide zoning
18 incentives to building low and moderate income housing
19 unites, such as preventing additional densities in
20 exchange for incorporating low and moderate income
21 housing and development projects.

22 But they're not all in the housing
23 elements. You can find something in the Land Use
24 elements, especially Section 1100.2, which is
25 establishing as a major policy to encourage a

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1 substantial amount of new housing, primarily in
2 housing opportunity areas and near Metrorail stations.

3 So, that gives us some guidance on where
4 this additional housing and density might be going.
5 In addition, every single one of the ward plans
6 includes a reference to the need to include additional
7 affordable housing.

8 The Generalized Land Use Policies Map
9 designates three types of areas where additional
10 density may be appropriate. If you're familiar with
11 the map, it has symbols on it for development
12 opportunity areas, housing opportunity areas and
13 special treatment areas.

14 That map is summarized in one of the maps
15 included in Attachment 5 to the report we submitted on
16 April 29th. In an IZ program that includes incentives
17 such as additional density to build affordable housing
18 in areas that have access to appropriate services and
19 facilities, such a program would not be inconsistent
20 with the comprehensive plan.

21 MR. ROGERS: I'm going to go into what is
22 inclusionary zoning. Essentially, it's a tool for the
23 development of diverse communities that's proven
24 itself across the country in a variety of communities.

25 These include high-density in-fill cities,

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1 such as Boston and San Francisco, and lower-density
2 green-fill communities such as Montgomery County - our
3 immediate neighbor to the north.

4 It's a land use technique for mixing
5 affordable units in among market rate units within the
6 same development. It's also a tool that works best in
7 strong housing markets, such as the one that the
8 District has been experiencing for the past five
9 years.

10 The best programs are always tailored to
11 the jurisdiction's specific needs - The goals and the
12 types of development that they seek. This causes a
13 significant variation in the programs across the
14 country, but each jurisdiction answers the same basic
15 questions.

16 The major decision is which to create a
17 mandatory program or an incentive-based voluntary
18 program. Each program, the mandatory and an
19 incentive-based program, have strengths and
20 weaknesses.

21 For instance, for mandatory programs, it's
22 far more productive. But, depending on the
23 predictability, it may harm development. A purely
24 incentive-based program produces far fewer units, but
25 it does have little potential for negatively affecting

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1 development.

2 Other questions include: Who should the
3 program help? How might it affect development? What
4 are the appropriate types and amounts of incentives?
5 And how is it administered?

6 So, for instance, in choosing who to
7 serve, there's a couple of things we should look at.
8 First of all, who lives in the jurisdiction currently?
9 And who is facing the most need in the District?

10 Who do existing programs serve? And who
11 can most efficiently be served by the technique? This
12 last one is important because of the limited value of
13 most of the inclusionary zoning incentives.

14 It is very difficult to both serve very
15 low incomes and deliver a substantial number of units
16 at the same time. Once the household income target
17 has been selected, the impact the potential revenues
18 of a new development can be quantified.

19 There is potential for inclusionary zoning
20 to upset development. In the short run, just because
21 the reduction of potential revenues is a new factor to
22 add to the economics of development.

23 However, inclusionary zoning can also
24 affect development in the long run, as it adds
25 uncertainty in places higher levels of risk on

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1 developers. And I'll discuss that point in just a
2 second.

3 Providing incentives, such as bonus
4 density, helps protect development in the short run by
5 compensating developers who may have bought land
6 expecting higher revenues for their projects.

7 So, they're already engaged in a project
8 and, all of a sudden, you affect their potential
9 revenues. It's OP's initial analysis, through the
10 help of developers, suggest that there's a potential
11 ratio between affordability requirements and the bonus
12 density that might be - we might offer.

13 And that this ratio will provide a balance
14 across the many locations of the District. In some
15 areas of the District, where land prices are very low,
16 or very high, it should have the same affect.

17 Next, I'll talk a little bit about the
18 administration. Research indicates that it's really
19 the administration of an inclusionary zoning program
20 that's one of the most important factors to it being
21 successful.

22 Administrative goals should accomplish the
23 following: It should be efficient and not
24 significantly add to the length of the approval
25 process. It should be understandable, so as not to

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1 cause confusion.

2 And it should be predictable, applying the
3 same standards to all projects, so as not to upset the
4 competitive balance between projects. Finally, it
5 should adequately monitor and enforce the
6 requirements, to both developers and the occupants, to
7 ensure that the goals of the program are achieved.

8 If these four goals are not met within the
9 administrative process, particularly the last two,
10 then there's potential for it to cause uncertainty in
11 the market - higher levels of risk, as I mentioned.

12 If, for instance, the Developer A would
13 have to compete with Developer B, who has improperly
14 received relief from the requirement, the Developer A
15 may not be able to invest in this project the way he
16 might like.

17 And, with that, I just wanted to pass it
18 back over to Steve.

19 MR. COCHRAN: OP is actually recommending
20 three proposals to you tonight. As Ellen noted, we're
21 asking you to set down concepts, not specific
22 language, so that everyone can focus on the ideas
23 behind the proposals first and then the specific
24 wording later.

25 Two of the concepts are mandatory, and one

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1 is incentive-based. While OP favors one of the
2 mandatory concepts, we are recommending that the
3 Commission schedule a public hearing on all three
4 concepts, in order to be able to hear as wide a range
5 of testimony as possible.

6 The proposals were outlined in Attachments
7 2 and 4 of the report that we submitted. Now, the
8 proposals differ in several different ways. They can
9 differ with respect to threshold, with respect to
10 target areas in projects, with respect to affordable
11 set-asides, with respect to their incentives or
12 compensations, their target incomes and various
13 administrative aspects.

14 OP, after working closely with the
15 campaign and several housing developers, is proposing
16 a mandatory program that would apply to all new and
17 substantially rehabilitated residential projects of 10
18 or more units around selective Metro stations and most
19 areas identified as development opportunity areas,
20 housing opportunity areas and special treatment areas
21 on that Generalized Land Use Policies Map in the
22 comprehensive plan.

23 These areas are shown in Map 1 of the
24 report, and there may be some extra copies left on the
25 table. It targets different income groups for

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1 different types of projects. These ranges go from 50
2 percent of the area median income for a family of four
3 to - 50 percent of that - to 70 percent of that area
4 median income for low-rise rental projects.

5 To give you an idea of what that range is,
6 50 percent is \$44,650 and 70 percent is \$62,510. And
7 it's the area median income, not the District's. So,
8 this is going to be somewhat higher than the
9 District's.

10 That's for low-rise rental projects. The
11 range would be from 60 percent to 70 percent of AMI
12 for mid-rise and high-rise rental projects, and 80
13 percent of AMI in for-sale units.

14 80 percent is \$71,440 for a family of
15 four. So, you can see, a lot of this is targeting
16 middle income. The set-aside amounts would be - they
17 would vary in project, and they would be based on a
18 ratio of square footage of affordable housing to
19 square footage of market rate housing beyond that
20 permitted as a matter of right.

21 Now, for rental housing, this would be a
22 one-to-one ratio. For for-sale housing, it would be
23 somewhere between a one-to-one and a one-to-one point
24 five ratio of affordable housing to market rate
25 housing.

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1 That has something that needs further
2 exploration, what that final ratio would be that we
3 would recommend. This ratio would apply to an
4 incentive bonus of up to 20 percent of the base
5 density within the target areas.

6 And by "the target areas", I mean the
7 areas that are shown as an overlay on the map that is
8 included in your report. Outside of the target areas,
9 an economic model developed by OP and its consultant
10 would be used to evaluate appropriate incentives,
11 which may also include expedited processing.

12 But I think we can assume that those
13 incentives would certainly not be any less than the
14 15-20 percent of the bonus that OP has been using,
15 with respect to PUDs, as proppers that we would like
16 to see for the last several years.

17 The OP proposal is discussed in more
18 detail in Section 6 of our report. The second
19 mandatory proposal is that by the Campaign for
20 Mandatory Inclusionary Zoning. It was actually the
21 first one submitted, and it goes somewhat further than
22 the OP proposal.

23 It has the same 10-unit threshold, and
24 applies to the same areas as the OP proposal. It adds
25 a few additional housing opportunity areas, or

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1 development opportunity areas. These are ones where
2 housing development has already occurred, and the
3 Campaign has since agreed that maybe those areas
4 should be dropped out.

5 So, they're not included in the map, but
6 it is included in their text. It includes all
7 District or NCRC properties that would be
8 residentially developed. Ours does not. And it adds
9 the downtown development district, which the OP
10 proposal does not.

11 It generally applies to all projects that
12 are over the 10-unit threshold, and it seeks density
13 increases. It targets two income ranges - 50 percent
14 of AMI and 80 percent of AMI.

15 It has varying requirements for how much
16 of the housing has to be affordable, ranging from a
17 low of 7.5 of the base number of units for substantial
18 rehabilitation projects, to 15 percent of the total
19 base number of units for new low-rise construction.

20 New high-rise construction, and mid-rise
21 construction, that is to say concrete frame
22 construction, comes out at 12 percent of the total
23 base number of units. The Campaign for Mandatory
24 Inclusionary Zoning proposal will provide an up to 20
25 percent density increase and a height increase, if

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1 needed, but where such a density increase is
2 available.

3 In the DD, where such an increase is not
4 available, it provides a period for land values to
5 adjust. The mandatory proposal by the Campaign is
6 discussed in more detail in Section 7 of OP's report.

7 Secondly, we have an incentive-based
8 concept that OP developed. While the Campaign's
9 proposal for mandatory represents one end of the
10 spectrum, OP felt that it was important to introduce
11 another end of the spectrum - and that is our
12 incentive-based proposal.

13 This would apply to the same areas as the
14 other two proposals, as well as to all PUDs. But, it
15 would seek to generate affordable units by providing
16 incentives to the market for providing these units.

17 The incentives would, therefore, have to
18 be higher than for either of the mandatory proposals.
19 They would vary according to a standardized economic
20 profile based on construction type.

21 The income ranges for OP's incentive-based
22 model would be between 50-80 percent of the area
23 median income. And this proposal is outlined in more
24 detail in Section 8 of the OP report.

25 All of these proposals have policy and

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1 administrative issues that go with them. And, in
2 addition to recommending the Commission set down the
3 three proposals I've just outlined for a public
4 hearing, we recommend that the Commission specifically
5 ask for comments on the following 11 matters:

6 What should be the geographic areas of
7 coverage? Do the proposals apply to the most
8 appropriate areas of the city - that is to say the
9 three proposals that we've outlined?

10 Is the interaction adequate between the IZ
11 proposal and areas already given special status, such
12 as historic districts? Second, how much of the
13 projects should be reserved for affordable units?

14 This comes down, to some extent, a cost
15 question. For any type of proposal, additional
16 information sharing is needed to continue moving
17 towards common ground on basic cost assumptions to
18 calibrate the economic model that OP has developed,
19 and generally to balance requirements with incentives.

20 Excuse me, third is costs. We need
21 additional information from a number of sources to
22 ensure that the requirements and incentives are
23 appropriately balanced. Fourth, what should be the
24 target incomes?

25 We've given you a range in our proposals.

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1 Should they vary to account for other project
2 variables? Fifth, what are the impacts on
3 neighborhood character transportation services and
4 other infrastructure.

5 Some neighborhoods are concerned that
6 using density increases as incentives will bring with
7 it increases in height, traffic, school enrollment and
8 competition for parking spaces.

9 This is a significant issue. OP has
10 calculated that if, for instance, the Campaign's
11 proposal had been in effect for the last five years,
12 there would have been approximately 750 additional
13 units of additional housing built out of the total
14 12,000 units that have been built in the last five
15 years.

16 Given the Campaign's suggested bonus
17 density, this would have meant that a total of market
18 rate and affordable units of 1,000 additional units
19 would have been built. Let me try that one again.

20 750 units of affordable housing - that's
21 a subset of the total of 1,000 units of total
22 affordable and market-rate housing that would have
23 been built over and above the 12,000 units that have
24 been built.

25 That represents a roughly 6.5 percent

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1 increase that would have had to have been absorbed.
2 The sixth concern: what are the economic impacts on
3 the housing market? OP will be working together more
4 information on this from a wide variety of sources.

5 We're particularly concerned about
6 understanding what the impact would be on production
7 of housing in mixed use areas, such as the C3C Zone
8 District. There are questions about waivers and
9 relief.

10 The venue for granting relief must be as
11 efficient and fair as possible. The more
12 administrative relief is granted, the greater the
13 possibility there is of expedited processing.

14 But this needs to be balanced with
15 ensuring appropriate weight for the BZA, the
16 Commission, the ANCs and the neighborhoods. If there
17 are provisions for granting relief through off-site
18 construction of affordable housing, for contributions
19 to a housing fund, we need to ask questions like, what
20 is the farthest distance from the market-rate project
21 that would be acceptable for the affordable units to
22 be located - a distance that would not under-cut our
23 objective of de-concentrating pockets of poverty.

24 The eighth set of issues will have to do
25 with legal matters - the role of the Council and the

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1 Mayor. There're clearly some provisions in the
2 Campaign's proposal that are beyond the Commission's
3 authority.

4 And the Campaign has recognized this. Any
5 other proposals will require some action by City
6 Council, as well as by the Commission. The Office of
7 the Attorney General will be advising further on this.

8 The ninth is the clarification of
9 comprehensive plan relationships - different
10 relationships among written policies and maps. The
11 tenth is administrative issues. How much of the
12 administration should be done by the city?

13 How much by the developer? How would the
14 program be accurately monitored? What will be the
15 cost, not only to the city, but also to the others who
16 are implementing and maintaining the program.

17 And, finally, how long should the required
18 affordability period be? Those are the policy issues.
19 Now, there are a few procedural requests we have. If
20 the Commission does set these proposals down for a
21 public hearing, there are three procedural issues that
22 we'd like to bring to your attention.

23 The first is vesting. OP and the
24 petitioner ask you to indicate that the set-down rule
25 does not apply with respect to vesting of the more

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1 restrictive of the proposed versus the standard.

2 That is to say, we want these concepts to
3 be considered, but we don't want anyone to be held to
4 the more restrictive standard, as would be typical
5 with something that involves a map amendment.

6 Second, public posting. OP, on behalf of
7 the petitioner, requests a waiving of that rule.
8 We're looking at about 12 square miles in the city.
9 Third, advertising and supplemental information.

10 OP and the petitioner ask the Commission
11 to waive the 20-day requirement in Section 313.1.

12 MS. McCARTHY: So, in a rather large
13 nutshell, those are the proposals that we're bringing
14 before you tonight, and recommending set-down. We
15 have focused most of the work, up until this point, on
16 the economics and trying to get agreement on the costs
17 and the relative relationship between affordability
18 and bonus units.

19 But, we know that there are a large number
20 of details relating to the issues that Steve just laid
21 out that also need to be nailed down. So, that's why
22 we are asking to just set it down today in concept.

23 We will continue meeting and researching
24 programs throughout the country to try to come back
25 with the best set of more specific procedures for your

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1 consideration at the public hearing, which we expect
2 will be in July.

3 CHAIRPERSON MITTEN: Thank you. Thanks
4 for acknowledging all of the people who worked on
5 this. it's clear that there's been a lot of
6 thoughtful and hard work that's gone into this.

7 And we have to thank the Campaign for
8 Mandatory Inclusionary Zoning for moving the debate.
9 And so, I look forward to working with everybody as we
10 go through this. I feel like I've just been given
11 like a huge plate of food.

12 MS. McCARTHY: Well, I did remember Chris
13 Smith and Merrick Malone were also very active in
14 helping us get through those meetings about cost
15 issues. So, I know I'll think of more, but...

16 CHAIRPERSON MITTEN: Okay, well you just
17 keep adding them in as you recall them. Let's start
18 with questions or comments for the Office of Planning.
19 Mr. Hood?

20 VICE CHAIR HOOD: I just have a quick
21 question. You mentioned about the waiver on the
22 public posting consideration. What was the
23 alternative? What other method - I realize it's quite
24 a bit to go across the city and put up posting notes.

25 But what other alternatives do we have

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1 with making sure that people are notified, other than
2 those who are on top of the subject?

3 MS. McCARTHY: Well, the alternatives
4 include the measures that we typically undertake, such
5 as advertising in the DC Register, sending
6 notification out to every ANC and sending notices out
7 to the libraries.

8 VICE CHAIR HOOD: You know, there's
9 something about that notice. If I'm not up on the
10 subject, and I realize it's in the Register, the ANC -
11 some ANCs get the notice, they say some of them don't.

12 I just want to make sure we cover as many
13 grounds as possible for those who, like myself in some
14 cases, go up and you see the sign and that sparks some
15 interest and, all of a sudden, you show here in the
16 Zoning hearing room.

17 I don't know. I don't really have any
18 solutions. But I just think that that notice - can we
19 do a few spots, or something like that?

20 MS. McCARTHY: Well, I should add that
21 that Campaign for Mandatory Inclusionary Zoning has
22 done an incredible job, so far, of visiting a very
23 large number of ANCs already, proposing it to them.

24 And you probably have in your files
25 already, resolutions from a number of ANCs that have

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1 already either endorsed the full concept or endorsed
2 portions of the concept.

3 So, there's already been quite a bit of
4 outreach. Plus, there are good, I'd say, 50 groups
5 that are a part of the Mandatory Campaign. Is that -
6 is he nodding there, that says that's about right.

7 So, I know there's a very broad base in
8 the mandatory groups as well.

9 VICE CHAIR HOOD: I realize, Ms. McCarthy,
10 we do as much as we can do, in getting the notice out.
11 But some people don't participate in ANCs. At least,
12 that's what I always said. I didn't have any way of
13 knowing.

14 I just think that maybe - even if we put
15 something in maybe - I don't want to advertise in the
16 newspapers, I just think that we want to get to those
17 people who don't participate and who are not up on the
18 subject. I just threw that out there for discussion.

19 CHAIRPERSON MITTEN: I think that's a
20 legitimate concern, because one of the other things
21 that we typically do is that we mail to people who are
22 affected, within 200 feet, and that would be a big
23 mailing.

24 And so, I think we have to be creative
25 about making sure that we put everyone on alert when

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1 the time comes. Mr. Parsons?

2 COMMISSIONER PARSONS: Well, I'm
3 wondering, in that you're asking us to set this down
4 conceptually, whether the issue of mapping is really
5 right - which brings us to the issue of notice, of
6 course.

7 Should we be posing a mapping of this at
8 this early stage? Shouldn't we have a much better
9 discussion of whether it should be voluntary or
10 mandatory, and those kinds of issues, without the
11 emotion of tweak this particular map or that map?
12 What are your thoughts on that?

13 MS. McCARTHY: I think it's safe to say we
14 had a number of discussions about this and we felt, in
15 order for the Commission to get a good gauge of how
16 extensive the areas could be and what some of the
17 issues might be in conjunction with them, the Campaign
18 had already included those areas as part of their
19 proposal.

20 And we thought that we - giving a little
21 more specificity would allow people to live in those
22 areas to weigh what they considered to be the impact
23 on those areas without being - as you can see, we've
24 just drawn circles around Metro stations.

25 We haven't really gone and diagramed

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1 anything off a particular street or across a
2 particular alley because even the mapping was
3 conceptual, so to speak.

4 MR. COCHRAN: We are viewing the map as
5 merely illustrative. The map, while it's certainly
6 possible that it may cause alarm among some people,
7 can also assure many more people that this is a
8 proposal that is more of conceptual concern to them
9 than any actual direct close to home impact.

10 When you look at the map of the city,
11 you'll see that more areas are not covered that are
12 covered, you know? You have to weigh whether that's
13 an important thing for people to know.

14 COMMISSIONER PARSONS: I certainly can
15 take these maps and find my house. You know, I mean,
16 they may be conceptual, but you can draw, pretty
17 easily, where these circles land. I'm just hoping we
18 don't have an emotional kind of reaction.

19 MR. COCHRAN: I understand. And there are
20 --

21 COMMISSIONER PARSONS: --the intellectual
22 discussion, if you will. So I'm wondering why we need
23 the map, or the proposed map as opposed to the text.

24 CHAIRPERSON MITTEN: You mean, as a first
25 step?

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1 COMMISSIONER PARSONS: Right, thank you.

2 CHAIRPERSON MITTEN: What Mr. Parsons is
3 suggesting is we take this big plate of food and we
4 take smaller bites.

5 MS. MCCARTHY: Right, and we definitely
6 did. We put the maps in there, as Steve said, for
7 illustrative purposes. We expected that the
8 Commission, as part of a future action once it had the
9 proposal that it was comfortable with, would then map
10 it to specific locations.

11 But this way, by having at least
12 illustrative concepts in there, you're able to get
13 when people respond to the concept of inclusionary
14 zoning, you'll also be able to get some feedback from
15 them about applicability and advisability of different
16 areas.

17 Now, I hear Mr. Parsons saying maybe
18 that's not an issue that you want to complicate the
19 consideration of the merits of inclusionary zoning
20 with. And, certainly, that - can argue it either way,
21 and it's definitely up to the Commission's pleasure.

22 MR. COCHRAN: And there are certainly some
23 areas, even within the boundaries shown on that map,
24 where it ranges from very unlikely to impossible to
25 generate the bonus density that would provide the

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1 incentive or compensation for some of the mandatory
2 proposals - certainly for the OP proposal.

3 If you can't get that, you're relieved of
4 some of that responsibility. And that might include
5 some portions of some historic districts. Now, Art
6 did an analysis of various PUD proposals in historic
7 districts, and realized that they were able to
8 generate bonus density in some of them, but certainly
9 not in all.

10 But there would be places like TDR
11 Receiving Zones, the boundaries of which are included
12 in a portion of this map. Well, you can't get any
13 more density in TDR Receiving Zones. A lot of those
14 TDRs have already been bought up.

15 That kind of level of complexity, I don't
16 think - it's difficult to advertise that right now.
17 So, it's more of an alarm.

18 CHAIRPERSON MITTEN: Mr. Jeffries?

19 COMMISSIONER JEFFRIES: Thank you, Madame
20 Chair. I appreciate the comments of Commissioner
21 Parsons. I was reviewing this yesterday, and I was
22 quite alarmed, looking at this map, just at the onset.

23

24 I mean, clearly understanding that the R1
25 and R2 zones. And then, once you start to really drill

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1 down on Capitol Hill, historic nature, and then Dupont
2 Circle's not in this. I think there's really, you know
3 - just looking at the map, it really starts to get
4 into some really heavy policy issues about how we deal
5 with affordable housing.

6 I mean, because - and so, my questions are
7 really around geography and so forth. I live in Ward
8 1, Columbia Heights, and I get a sense that there's
9 quite a bit of subsidized affordable housing.

10 I know it's changing rapidly, but there's
11 other areas. And I think we're really going to have to
12 get into those discussions. And so, I would agree
13 with Commissioner Parsons.

14 I think there's some broad issues that we
15 need to talk about, and I have some questions. But
16 I'll just wait until other Commissioners comment.

17 MR. COCHRAN: Whatever you decide to do,
18 I think it's important to keep framing this in terms
19 of the income ranges that we're proposing. This is
20 not subsidized low-income housing. This is,
21 essentially, workforce housing.

22 COMMISSIONER JEFFRIES: And that's one of
23 my questions. Give me definitions between workforce
24 housing and low and mod housing. Because I know that
25 some people are using workforce housing as a more

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1 palatable term, and more comfortable for
2 neighborhoods.

3 But what is the difference? Is it just
4 the 50-80 percent versus 30-80 percent?

5 MR. COCHRAN: I think if you remember in
6 our report, we laid out a couple of the questions.
7 First, who lives in the District? And then, one of
8 the other questions is who works in the District?

9 And, of course, the District is a rare
10 city that has more jobs in it than housing. A
11 tremendous larger amount of jobs and housing, in fact.
12 And there's a chart that lays out the, sort of,
13 distribution of wages of people who live in the
14 District.

15 But the median, for instance, occupational
16 wage is - I believe it's around \$46,000. And then, of
17 course, the median for a family of four living in the
18 District is around \$55,000.

19 And so, those two charts were inserted in
20 there just for that reason, to give an understanding
21 of what we mean by "workforce housing". The other
22 thing to consider is that the standard by which most
23 affordable housing programs are measure by is the
24 regional AMI.

25 And, of course, the region's AMI is much

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1 higher than the District's. The region's right now,
2 for 2005, is \$89,300. So, if you look at the
3 District's median income, which is \$55,000, you can
4 see the difference between the region and the District
5 itself.

6 COMMISSIONER JEFFRIES: Okay, what page -
7 can you refer me back to the distribution of the
8 incomes?

9 MR. COCHRAN: For the Mandatory Campaign's
10 proposal, or the Campaign for Mandatory Inclusion's
11 proposal, they're proposing that half of their units
12 be at 80 percent of the AMI, and then the other half
13 would be at 50% of AMI.

14 And so, on average, on dollar terms, it
15 would average to 65 percent of the AMI.

16 COMMISSIONER JEFFRIES: Oh, yes. Okay.
17 But my question - you said that there was a
18 distribution within your write-up about your incomes.
19 I just wanted to find out where that was.

20 MR. COCHRAN: Yes, if you look at Figure
21 3 on Page 28 of the report... There's a chart on the
22 distribution of employees by occupational wage. And,
23 I think, one of the important things that this chart
24 shows is that, while the median is around \$46,000 for
25 one type of job, you can see it's sort of weighted

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1 towards the very low end and towards the higher ends.

2 And so, if you talk about a range of that
3 occupational, that's an important consideration beyond
4 just the median.

5 COMMISSIONER JEFFRIES: Okay. I mean,
6 this is - we're looking at a set-down here, so I know
7 that we don't really need to drill down too much.
8 And, Madame Chair, can I just finish my other
9 questions and so forth?

10 So, if there was no inclusionary zoning,
11 what does housing look like in the next 10 years?
12 Don't refer to your report, just tell me.

13 MR. COCHRAN: Yes, well, as I said, the
14 regional job market is continuing to grow and there's
15 no expectation that that's going to abate. Now there
16 are other factors, like interest rates rising and
17 things like that, that might slow development, for
18 instance.

19 But, housing prices are going up by double
20 digits each year. And so, what that's done is it's
21 caused a lot of things to happen. As the price of
22 condominiums, particularly, have risen, we've seen a
23 lot of conversion of both larger buildings and smaller
24 buildings.

25 And so, what might have been a row house

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1 for a family has now been chopped up into two or three
2 units. And, I think, using the Greater Capitol Area
3 Association of Realtor's data, in the last four or
4 five years, condo prices have gone up 96 percent.

5 COMMISSIONER JEFFRIES: Yes.

6 MR. COCHRAN: So, they've almost doubled.
7 And that's the median condo price. It's almost
8 doubled in the past four or five years. And it's gone
9 from roughly three times the District's median income
10 of \$55,000 to over six times the median income of the
11 District.

12 COMMISSIONER JEFFRIES: So, in ten years,
13 we'll have a city that is virtually like Georgetown?

14 MR. COCHRAN: It's potentially possible.
15 One of the other things, there's a chart developed for
16 the Comprehensive Housing Strategy Taskforce, which -
17 and it's actually in the handout that I've given to
18 the Commission, and it's on the table - that incomes
19 under \$60,000 over the past 15 years, households under
20 \$60,000, have been declining as a percentage of the
21 population.

22 And households over \$60,000 have been
23 rising as a percentage of the population. And, in
24 fact, in the past four years, there's been one or two
25 of the higher incomes that are actually growing at a

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1 faster rate than they were between 1990 and 2000.

2 So, that's another factor that we just
3 recently learned from the Comprehensive Housing
4 Strategy Taskforce.

5 MS. McCARTHY: We also have recognized
6 that the District alone can't solve the affordable
7 housing problem in the region, and we've blown the
8 whistle at COG. When all of the forecasts came in
9 from all of the neighboring jurisdictions, they were
10 all showing thousands of jobs and thousands fewer
11 housing units that each of the suburban jurisdictions
12 were projecting - just forcing people further out into
13 Frederick and West Virginia and Prince William and
14 other locations.

15 And even those locations were still
16 planning for more jobs than people. So, we have
17 raised the issue to the COG board and to the planning
18 directors and urged COG to get people to reconsider
19 and to be more realistic about accommodating just
20 housing, let alone affordable housing in their
21 jurisdictions as well.

22 COMMISSIONER JEFFRIES: Yes, I just - the
23 concern is that, you know, sort of end all be all -
24 mandatory housing, mandatory inclusionary zoning is
25 going to sort of really be the silver bullet, as it

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1 relates to dealing with our affordable housing issues
2 when, quite frankly, there's a lot - this is obviously
3 going to have work in tandem with a lot of other
4 things, and so forth.

5 And I just wanted to make certain that I
6 can get comfortable with, sort of, the "what if" in
7 terms of if we didn't do these things, what's the city
8 look like? I mean, what's the quality of life?

9 What are we talking about racially, and so
10 forth, that could give, at least, the Commission a lot
11 more comfort with going down the road. Because, I
12 think - to me, this really needs to, perhaps, go down
13 the mandatory route.

14 But, just getting very comfortable about
15 really looking at what the city will look like if we
16 didn't do something like this, in tandem with several
17 other things.

18 MS. MCCARTHY: We expect, by the time of
19 the public hearing, that the report of the
20 Comprehensive Housing Strategy Task Force will be out.
21 And that, I think, will provide very important policy
22 direction on housing, in general, in the District, and
23 the role of market rate versus affordable housing, and
24 what kinds of incentives the Comprehensive Housing
25 Strategy Taskforce is recommending.

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1 COMMISSIONER JEFFRIES: Thank you.

2 CHAIRPERSON MITTEN: I just want to
3 mention a couple of things that I'm interested in
4 hearing more about, in particular. The notion that,
5 first of all, we could figure out a way to control
6 whether units would be for sale or for rental, and
7 that we could have these different ratios, interests
8 me if we can devise something.

9 But the thing that probably interests me
10 more is why there should be a difference. Because,
11 what we're trying to do is protect land prices. Land
12 prices right now - the land is zoned for residential,
13 and the value is not dictated by whether it's rental
14 or whether the ultimate product is for rent or for
15 sale.

16 So, I'm interested in learning more about
17 that. And the other thing is that, in areas - if I
18 understand it correctly, the affordability is dictated
19 by your income level.

20 So, your income says you can afford to pay
21 X for - if you're in that percentage of AMI category,
22 you can pay X. So, to provide a unit that's affordable
23 to that household, in a very high value neighborhood,
24 to me, the opportunity cost is a lot higher because
25 they're sacrificing more than it is in an area where

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1 land prices are lower and the opportunity cost is not
2 as high.

3 So, I'm kind of interested in
4 understanding more about how the economics work there.
5 And then, just to pick up on what Commissioner
6 Jeffries said, I think, in introducing the Office of
7 Planning recommendation and the Campaign's
8 recommendation, and then having this third
9 alternative, which is for voluntary you're trying to
10 widen the debate.

11 And I have to agree with Commissioner
12 Jeffries that I would like to narrow the debate, to
13 talk about mandatory. Because, I don't think anything
14 else means we're serious. So, I would like to propose
15 to the Commission that we only advertise the two
16 mandatory proposals, and that we take up Mr. Parsons'
17 suggestion, and that we not focus on geographic.

18 I mean, we'll get that anyway, we know
19 that. But to focus on what kind of a tool do we want
20 to create. And we can think about whether the tool
21 should be adapted, depending on where values are and
22 so on.

23 But to provide a tool with as much
24 flexibility as possible, and then map it afterwards.
25 So, I think we should have the - let's talk about a

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1 concept that we can make that works and go forward
2 from there. Mr. Hildebrand?

3 COMMISSIONER HILDEBRAND: The only thing
4 I wanted to throw in there was that I do agree with
5 the concept of taking the emotion out of the initial
6 discussion. But I think it's also important, in
7 however we broadcast to the community at large, that
8 we capture as much of the opinion as possible.

9 And one of the things about mapping it is
10 that you at least focus interest into particular
11 neighborhoods. I'm wondering, are we going to illicit
12 as much response if there's no map associated with the
13 text amendment?

14 CHAIRPERSON MITTEN: I think maybe one way
15 we could do it is by just - there's some sort of
16 philosophical things that are included here, like the
17 philosophy that density should be focused at Metro
18 stations, so that there's - okay, if you live near a
19 Metro station, you should pay attention.

20 If you're on a transit corridor, that
21 might not be a Metro subway but is a bus corridor,
22 maybe you should pay attention. If you're in, as Mr.
23 Cochran said, a housing opportunity area, or if you're
24 in a special treatment area, maybe you should pay
25 attention.

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1 So we could talk in general terms without
2 specifically having a map or picking out which special
3 treatment areas we're going to consider. But maybe we
4 can add that into it.

5 COMMISSIONER HILDEBRAND: And I think that
6 goes a long way into determining how it's actually
7 advertised to the public. Is there some way that
8 there could be some kind of press release that
9 generates some interest on a citywide scale, as
10 opposed to community-focused. It would be a great
11 idea.

12 CHAIRPERSON MITTEN: Well, we can work
13 with crafting the public hearing notice after we get
14 the gist of what we want to set down. So, I would
15 move that we set down Case No. 04-33 for the two
16 proposals; one, the Office of Planning mandatory
17 proposal, and the Campaign for Mandatory Inclusionary
18 Zoning's mandatory proposal.

19 And that we craft the public hearing
20 notice in such a way that we do not specifically call
21 out areas, or associate a map with it. But, that we
22 include enough information about where it's likely to
23 be mapped that we illicit the kind of input from the
24 affected individuals as possible.

25 COMMISSIONER JEFFRIES: Second.

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1 CHAIRPERSON MITTEN: Mr. Hood?

2 VICE CHAIR HOOD: Yes, a discussion. I'm
3 just still concerned, Madame Chair, about if we're
4 going to have more density around a Metro station, you
5 should pay attention. I mean, I know you want to do
6 a little more specific than that, I guess we can leave
7 that up to staff to help us with the advertising.

8 You should pay attention. Normally, at
9 least in some neighborhoods, not anybody in here's,
10 but in my neighborhood, sometimes we don't pay
11 attention until after the fact.

12 CHAIRPERSON MITTEN: Yes.

13 VICE CHAIR HOOD: And I just want to make
14 sure we do everything we can, before, to make sure
15 that we get as much as the word - and it's clear in a
16 sound byte way as possible. That's just my concern.

17 CHAIRPERSON MITTEN: Well, I think we can
18 work collectively to craft the notice and to figure
19 out the forms of advertisement, as you had suggested,
20 to make sure that we get the maximum exposure and we
21 get people to take notice of this, if they in fact
22 will be affected.

23 MR. BERGSTEIN: Madame Chair? Maybe I
24 could ask for some elaboration on that, in terms of
25 what the scope of the hearing would be. We have,

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1 based on what the motion is, is that this would be a
2 text amendment.

3 CHAIRPERSON MITTEN: Yes.

4 MR. BERGSTEIN: But, would an additional -
5 would the scope of the hearing include, what I think
6 was one of Mr. Cochran's questions, which is in
7 essence the general methodology for determining
8 appropriate mapping, which would then allow a
9 reference to the map that's been offered here, as
10 illustrative, as an example of how one formula would
11 result in this.

12 CHAIRPERSON MITTEN: Yes.

13 MR. BERGSTEIN: And then, so, the scope of
14 the hearing would include the questions of, well, are
15 there other alternative formulas that would be
16 available, in terms of when you get to the mapping.

17 That would, therefore, include the general
18 issue of geographic coverage -

19 CHAIRPERSON MITTEN: Yes.

20 MR. BERGSTEIN: - within the text
21 amendment, without getting specific in terms of the
22 map itself.

23 CHAIRPERSON MITTEN: I think that's a
24 helpful distinction. Does the rest of the Commission
25 think so?

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1 MR. BERGSTEIN: The other question I have
2 is that, in not advertising what amounts to the
3 alternative being offered by the Office of Planning,
4 which is not denominating their alternative as a
5 petition, is it that you're holding it in advance,
6 pending your resolution of the mandatory approach, so
7 that if you decide to go with the mandatory approach
8 you wouldn't consider the alternative approach.

9 But then, if for some reason you decide
10 not to go with the mandatory approach, you would then
11 consider and incentive-based approach? Or is it just
12 something that, in essence, if this were a petition,
13 it would be dismissed?

14 CHAIRPERSON MITTEN: Do we really have to
15 decide that right now?

16 MR. BERGSTEIN: No, I'm just posing it as
17 a question because I don't know how we're going to --

18 CHAIRPERSON MITTEN: You're making my head
19 hurt right now. (Laughter).

20 MR. BERGSTEIN: All right, I'll leave it
21 alone then.

22 CHAIRPERSON MITTEN: Okay, thank you. Is
23 there any further discussion? Okay, all of those in
24 favor, please say aye.

25 ALL: Aye.

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1 CHAIRPERSON MITTEN: None opposed, Mrs.
2 Schellin.

3 MS. SCHELLIN: The staff recorded the vote
4 5-0-0 to set down Case No. 04-33, as discussed.
5 Commissioner Mitten moving, Commissioner Jeffries
6 seconding, Commissioners Hildebrand, Hood and Parsons
7 in favor.

8 CHAIRPERSON MITTEN: Thank you. Now, I
9 think we've - because of the approach we're taking,
10 we've dealt with the procedural issue of the vesting
11 considerations and the posting considerations.

12 But, we still have the last issue that Mr.
13 Cochran raised, which is the advertising and
14 supplemental information and the timeframe during
15 which that can be submitted.

16 And I would move that we waive our rules
17 to permit the petitioner to file supplemental
18 materials, as long as it's no later than 20 days prior
19 to the hearing date. Can I get a second?

20 VICE CHAIR HOOD: Second.

21 CHAIRPERSON MITTEN: Is there any
22 discussion on that point, the waiver? Then, all of
23 those in favor please say aye.

24 ALL: Aye.

25 CHAIRPERSON MITTEN: Again, none opposed,

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1 Mrs. Schellin.

2 MS. SCHELLIN: Staff recorded the vote 5-
3 0-0 to allow the petitioner to supplement their filing
4 not later than 20 days prior to the hearing.
5 Commissioner Mitten moving, Commissioner Hood
6 seconding, Commissioners Jeffries, Parsons and
7 Hildebrand in favor.

8 CHAIRPERSON MITTEN: Thank you.

9 MR. BERGSTEIN: Madame Chair, one more
10 part of that waiver request.

11 CHAIRPERSON MITTEN: Yes?

12 MR. BERGSTEIN: It also includes a request
13 that the Office of Zoning be permitted to immediately
14 advertise the petition, and not wait 20 days, which
15 otherwise would have to do.

16 CHAIRPERSON MITTEN: Oh, thank you for -
17 okay. Can we just have a consensus that that's
18 included?

19 MR. BERGSTEIN: I was asking for
20 permission to do that.

21 CHAIRPERSON MITTEN: Yes.

22 MR. BERGSTEIN: All right.

23 CHAIRPERSON MITTEN: Thank you. Okay,
24 that's it for Case No. 04-33. And then, the next case
25 for hearing action is a proposed PUD modification for

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1 1616 Rhode Island Associates, LP, which is Case No.
2 02-51A.

3 We're having a changing of the guard here.
4 Could I just ask you to be quiet as you leave, so we
5 can proceed. Mr. Jackson, are you presenting 1616
6 Rhode Island?

7 MR. JACKSON: Yes, Madame Chair.

8 CHAIRPERSON MITTEN: Okay, feel free to
9 begin.

10 MR. JACKSON: Good evening, Madame Chair,
11 and members of the Commission. My name is Arthur
12 Jackson. I'm a Development Use Specialist for the
13 District of Columbia Office of Planning.

14 And I will present a free summary of the
15 overall findings and conclusions in the Office of
16 Planning's preliminary report on his application. The
17 Applicant, Rhode Island Associates, LP, is requesting
18 Zoning Commission approval of a modification to Order
19 No. 871-b, a previously approved planning development
20 that encompasses lots 82 and 83 on square 182.

21 Lot 83, or 1608 Rhode Island Avenue, is
22 improved with a 176,000 square foot University of
23 California building that includes office and classroom
24 space and 100,000 square feet if student apartments.

25 Instead of developing lot 82 as an inn, as

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1 provided in the Zoning Commission order, the Applicant
2 would now like to construct a 10-story office building
3 with approximately 131,000 square feet of floor area
4 and onsite parking for 120 vehicles.

5 The proposal, as presented, would be
6 allowed in the Dupont Circle overlay district, and the
7 C3 zone districts. Regarding the evaluation criteria
8 under Section 2400 of the Zoning Regulations, the
9 application lists the primary amenities of his
10 proposal as urban design, superior architecture and
11 site planning of this mid-block location.

12 The Applicant proposed to provide a
13 package of amenities similar to that approved out of
14 the PUD modification for the University of California
15 building, as well as contributing \$100,000 for
16 affordable housing.

17 The proposed office building would further
18 themes of the DC Conference of Plan, by providing a
19 new center for offices and, possibly, ground floor
20 retail uses, thus increasing the number of employment
21 opportunities within the central employment area.

22 Based on this information, the PUD
23 proposal does not appear inconsistent with the
24 conference plan. The Office of Planning, therefore,
25 recommends the modifications be scheduled for public

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1 hearing.

2 The staff will continue to work with the
3 Applicant to clarify whether zoning relief is required
4 to identify alternative approaches to build affordable
5 housing and with the District Office of the Department
6 of Transportation to determine the appropriate width
7 of the abutting alley to the west.

8 That concludes the Office of Planning's
9 summary of the report, and the staff remains available
10 to answer questions.

11 CHAIRPERSON MITTEN: Thank you, Mr.
12 Jackson. I just want to clarify something with Mr.
13 Bergstein. The action that we're being asked to take
14 is to set down the modification, but we have this
15 other request that we can just hold out there for the
16 extension?

17 MR. BERGSTEIN: You can - well, normally
18 with a time extension you don't have a hearing.

19 CHAIRPERSON MITTEN: Right.

20 MR. BERGSTEIN: Before. So, you can keep
21 that in abeyance.

22 CHAIRPERSON MITTEN: Okay.

23 MR. BERGSTEIN: Now, there was another
24 case we once had where that was seen as, therefore,
25 being the automatic extension of - even though this

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1 has expired, it stays in place as a bridge.

2 It doesn't mean that they can go forward
3 with the PUD. But it allows them to keep it in place,
4 so that they can, in essence, request a modification.

5 CHAIRPERSON MITTEN: Okay, thank you.
6 Okay, any questions for Mr. Jackson? I just wanted to
7 clarify something, since I was asked about it earlier,
8 where I had recused myself when this had come before
9 the Commission previously on, I think, another
10 modification.

11 And I did that because I was on the ANC at
12 the time, and I'm no longer on the ANC. So, I'm
13 comfortable sitting on the case. I just wanted to
14 clarify that. Okay, any questions? Mr. Hildebrand?

15 COMMISSIONER HILDEBRAND: I wanted to make
16 sure that I understood that the rear elevations of
17 this building - are they visible from M Street or from
18 17th Street?

19 MR. JACKSON: There's high-rise
20 construction around all three sides of this building.
21 So, there's an alley, but the rear elevation shouldn't
22 be visible from M Street.

23 COMMISSIONER HILDEBRAND: Okay, so that
24 explains the starkness of what they're proposing.

25 MR. JACKSON: They're spending all of the

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1 design money up front.

2 COMMISSIONER HILDEBRAND: Okay. It's a
3 little austere. I'd also like to have them look at
4 the penthouse setbacks, and make sure they're in
5 conformance with the requirements.

6 MR. JACKSON: Certainly.

7 CHAIRPERSON MITTEN: Anyone else?

8 COMMISSIONER PARSONS: Mr. Jackson, I
9 don't see anything - any discussion in the Applicant's
10 case or submission, or your report, as to why
11 complying with the existing quarters is not possible.

12 What is it that's changed that doesn't
13 allow them to proceed with an inn?

14 MR. JACKSON: Well, as was the case with
15 the previous modification, the Human Rights Campaign,
16 they were pursuing an office building because of what
17 was seen as a very restrictive hotel market.

18 And, due to the fact that that was fairly
19 close to the 9-11 events, of course, and there were a
20 number of motels that were undergoing renovation, they
21 had marketed the property as a hotel for a period of
22 time, but no buyers came forth.

23 And as we saw with the Human Rights
24 Campaign, they were able to come to an agreement with
25 a purchaser, but the purchase was never consummated.

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1 So that the Applicant has continued to market the
2 property, and their discussions with us are that,
3 although the market is much better for hotels, that
4 market's, that demand, is being addressed by
5 additional construction and renovation.

6 And then there's also the looming
7 possibility of a convention hotel, which would
8 actually tilt the market even further. Their
9 experiences have so far been that they haven't been
10 able to find a buyer.

11 They have said that they have pursued it,
12 and would continue to pursue it, but they don't see
13 that that market would allow for this, another
14 boutique hotel, in this location.

15 Now, we have contacted the Hotel
16 Association, and we've encouraged the Applicant to, as
17 before, go through more detail about the process
18 they've gone through to try to market the property.

19 And we will update our earlier report for
20 the previous modification. But we looked at the
21 numbers of rooms that have come online, and the amount
22 of constructions that actually occurred up until the
23 date of the last hotel - it's just what's happened
24 since 2002 and today.

25 So, there will be additional information

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1 about that in our final report.

2 COMMISSIONER PARSONS: Thank you, that's
3 exactly what I was asking for.

4 CHAIRPERSON MITTEN: All right, any other
5 questions? Okay, we have a recommendation from the
6 Office of Planning to set down the requested
7 modification, in Case No. 02-51A, and I would so move.

8 COMMISSIONER PARSONS: Second.

9 CHAIRPERSON MITTEN: Is there any
10 discussion? All of those in favor, please say aye.

11 ALL: Aye.

12 CHAIRPERSON MITTEN: Mrs. Schellin, there
13 are none opposed.

14 MS. SCHELLIN: The staff recorded the vote
15 5-0-0, to set down Case No. 02-51A. Commissioner
16 Mitten moving, Commissioner Parsons seconding,
17 Commissioners Hildebrand, Hood and Jeffries in favor.

18 CHAIRPERSON MITTEN: Thank you. The next
19 item on our agenda is for proposed action in Case No.
20 05-14, which is the Sua Sponte Review for the Non-
21 Profit Community Development Corporation, which was
22 BZA Case No. 17302.

23 And, if you remember, we voted - I think
24 it was a special public meeting, recently, to
25 undertake the review, and we've been provided with a

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1 copy of the record, including the transcript of the
2 hearing.

3 And the case is now before us for
4 discussion. I'd be happy to frame it for everyone, if
5 it would be helpful. This is a case where there was
6 a request for a height variance from the BZA for a
7 project that was already under construction, for which
8 a building permit had been issued.

9 And the genesis of the request was that
10 the first floor retail space was designed to have a
11 ceiling height of eight feet. The Applicant found,
12 after attempting to market the space, that the type of
13 retailers were not high quality retailers who sought
14 higher ceiling height, but rather were lesser quality
15 retailers of a sort that the Applicant was not
16 interested in attracting.

17 The first prong of the variance tests, as
18 presented to the Board of Zoning Adjustment, was that
19 the land development - land disposition agreement,
20 whatever the LDA stands for - with the National
21 Capitol Revitalization Corporation, who had sold the
22 property to the Applicant, required that there be a
23 certain amount of first floor retail space, that there
24 be a childcare facility, that there'd be a certain
25 number of residential units, and that half of those

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1 units would be affordable.

2 And it was that privately-negotiated
3 agreement that created the unique condition to the
4 property. And because of the various requirements,
5 the Applicant felt that the eight foot ceiling height
6 on the first floor provided a practical difficulty to
7 attracting the type of tenants that they wanted.

8 And the relief that was granted consisted
9 of a total of eight feet, four feet of which was
10 applied to the first floor and four feet of which was
11 sort of balanced among the upper floors of the
12 residential part of the project, which was everything
13 that was above the first floor, to give more - I
14 hesitate to use the word gracious, but more generous
15 ceiling heights to the upper floor units.

16 And we undertook the review because we had
17 concerns about a number of things, including the
18 ability of a privately-negotiated agreement to provide
19 the basis for the unique characteristic of the
20 property, and whether the lack of sufficient ceiling
21 height on the first floor to give - when you clearly
22 have a market for the space, but where that market is
23 one that doesn't suit you, whether that rises to meet
24 the second prong of the test of an exceptional
25 practical difficulty.

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1 And then, finally, whether granting the
2 relief was harmful to the zone plan, and whether that
3 was specifically harmful or harmful in general. So,
4 that's the recap, and I'd be happy to have anyone else
5 start the discussion, or I will. Mr. Hildebrand,
6 you're a brave man. Thank you.

7 COMMISSIONER HILDEBRAND: One of the
8 aspects of this that really caused me concern was the
9 broadening of the decision for the non-profit groups
10 where, in the initial case, there was an actual
11 hardship that impacted the operations of the non-
12 profit group in that particular location, as opposed
13 to this situation where it is a desire of the non-
14 profit to provide something better than they had
15 originally proffered in their agreement.

16 And that becomes very arbitrary to me, and
17 it seems to undermine the original concept of that
18 particular hardship test. So, that's the thing that
19 caused me the most concern.

20 CHAIRPERSON MITTEN: Thank you. And I'm
21 glad you mentioned that, because I had neglected to
22 include the BZA's reliance on that in the Monaco case.
23 Anyone else? Mr. Parson?

24 COMMISSIONER PARSONS: Well, this case
25 certainly is unique. If all was right, this would

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1 have been a PUD. It wouldn't have been under
2 construction when they discovered the need for
3 additional height to accommodate retail to provide,
4 I'll say, an amenity to the upper floors where they
5 were at it.

6 And, however, they found themselves in a
7 circumstance and tried to bring this argument of
8 exceptional difficulty and apply it to the fact that
9 they were a non-profit that was engaged in a very
10 complex arrangement with NCRC.

11 But that kind of precedent is very
12 troubling, to say well, okay, if somebody has a
13 contractual agreement on a particular property, that
14 now becomes an exceptional situation.

15 I have a great deal of difficulty with
16 that. But, at the same time, in this community which
17 is evolving, and this is a viable and good project.
18 How do we accommodate that? We have two options, I
19 see, as to take the case to re-hear the matter
20 ourselves.

21 Or we hand it back to the Board for
22 consideration. The third circumstance of denying
23 this, if you will, sets the project into a mode of,
24 most likely, building what it's approved - what it got
25 approved, or what it bid on, what it contractually

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1 agreed to, with eight foot ceilings and retail, which
2 we've learned from numerous hours here isn't right for
3 good retail, even though it could be rented for lesser
4 quality.

5 I'm at a real pivotal point here, because
6 I don't see what would be achieved by handing it back,
7 as to what additional hearing, what additional
8 information consideration, nor can I.

9 Imagine what we would be telling them.
10 What I'm very troubled by the precedent that has been
11 set, along the lines of exceptional situations. So,
12 that isn't very helpful. I'm kind of rambling here,
13 so I'll stop.

14 CHAIRPERSON MITTEN: Well, I mean, I think
15 it's good that we first get everything out. So, that
16 was helpful. Thank you for sharing that. (Laughter).
17 Anyone else? Mr. Jeffries?

18 COMMISSIONER JEFFRIES: Thank you, Madame
19 Chair. This is an incredibly tough case. I've been
20 going over and over the file, and really trying to
21 figure out a way in which to find some accommodation
22 for the Applicant.

23 I do believe that the Applicant has made
24 some serious missteps, and I would also say that NCRC,
25 there was clearly a ball dropped in that department as

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1 well. And I should also disclose that I'm a Ward 1
2 resident, and I don't live very far from the location.

3 Again, it's the whole business of process
4 over outcome. And I am just more compelled about the
5 result, the outcome, of what this building looks like.
6 And I'm very concerned about the possibility that this
7 could - this project could continue with eight foot
8 floor to ceiling retail in a location that is still
9 relatively tender around economic development.

10 I am compelled with the aspect that this
11 particular project has a high percentage of affordable
12 housing units, which is very much tied to our
13 discussions earlier. And I am, at this point, leaning
14 towards either affirming the decision of BZA or,
15 perhaps, I can perhaps be convinced that we should
16 perhaps remand the case and have them take another
17 look at it, although I don't quite fully understand
18 what that gets us.

19 The other thing I wanted to add is that,
20 being a developer, I do recognize that construction
21 costs are going up every month. And I would hate to
22 have this Applicant, even with the missteps that have
23 occurred, be harmed with a very long and lengthy
24 process between the BZA and the Zoning Commission, as
25 to where this project should go.

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1 So, Commissioner Parsons, I am too
2 troubled. But I would really like to try to move the
3 ball up the field and figure out, sort of, how we can
4 protect the test of variances while still not harming
5 this very important project.

6 CHAIRPERSON MITTEN: Thank you, Mr.
7 Hildebrand?

8 COMMISSIONER HILDEBRAND: My only concern
9 is that if we agree that the interpretation of Monaco
10 was too broad, and on that aspect that it did not
11 establish hardship, I'm not sure that remanding it
12 back to the BZA would have any effect.

13 I don't know what they would do at that
14 point. I'm curious if we can explore whether there is
15 any process where this could be moved forward more
16 quickly as a PUD application than our standard
17 procedure?

18 COMMISSIONER JEFFRIES: Would that be
19 precedence-setting?

20 COMMISSIONER HILDEBRAND: I'm not sure
21 that I can answer that question.

22 COMMISSIONER JEFFRIES: Madame Chair, can
23 you speak to that?

24 CHAIRPERSON MITTEN: Well, I guess - and
25 Mr. Bergstein can weigh in - I doubt that by - there's

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1 a very unusual - Mr. Parsons said that this case is
2 very unusual. Sua Sponte reviews are not common, even
3 though we have two pending right now.

4 And then, to have one that we want to kind
5 of encourage an Applicant to become a PUD Applicant
6 instead, these circumstances are unlikely to be
7 repeated. So, I wouldn't think it would be precedent-
8 setting. Mr. Bergstein, do you have any thoughts on
9 that?

10 MR. BERGSTEIN: I just know of two
11 instances where - at least there was a metamorphosis
12 involving a PUD. One is the Medstar case, which
13 started off as a map amendment, and then as the Zoning
14 Commission expressed its misgivings with the controls
15 of the map amendment, suggested strongly that the
16 application become a planning of development.

17 And that is what occurred, and there was
18 no further hearing on the actual planned unit
19 development. The actual hearing of the map amendment
20 became the hearing on the PUD. And the Applicant
21 simply put in more defined elevations and other
22 requirements that were required for a second-stage
23 PUD.

24 The other case that comes to mind is the
25 Albemarle PUD, which started off as one project in

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1 which there was hearings over - that project, I think,
2 had something like 15-18 townhouses.

3 And then, in the middle of it, after the
4 hearing, there was a modification, in essence a
5 settlement between the community and the developer,
6 and it became five or seven row houses.

7 And, again, there was no hearing to
8 reflect the change in that. It was just the change -
9 plans were accepted, and that became accepted as a
10 PUD. But, in both cases, it requires the Applicant to
11 agree to the process.

12 The process can't be foisted on the
13 Applicant. But if the record that you have before you
14 in the BZA would suffice for the PUD standards, in
15 terms of the public benefits of the project and
16 whether or not the degree of zoning flexibility is
17 offset by those public benefits, then the only
18 question would be; one, whether or not the Applicant
19 would agree to have what is considered a PUD and two,
20 whether or not the hearing fee, which is substantial
21 in a PUD, would be weighed, and three, what aspects of
22 the submittals that have been provided in the BZA
23 proceedings need to be supplemented in order for it to
24 be considered a second-stage PUD.

25 CHAIRPERSON MITTEN: And in the event that

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1 whatever supplemental materials needed to be
2 submitted, we could choose to waive those submissions,
3 couldn't we?

4 MR. BERGSTEIN: You would need to explain
5 why.

6 CHAIRPERSON MITTEN: Okay.

7 MR. BERGSTEIN: It's different from a
8 procedural rule.

9 CHAIRPERSON MITTEN: Okay.

10 MR. BERGSTEIN: You can diverge, but you
11 need to present an explanation why you're doing that.

12 CHAIRPERSON MITTEN: Okay. I'm glad to
13 know what our options are there. Can we also
14 accelerate the hearing notice, so that we can have a
15 hearing sooner than typical?

16 MR. BERGSTEIN: You can - the only thing
17 I'm worried about is the 30-day ANC requirement.
18 There's no map amendment involved here. So, and the
19 zoning regulations - Zoning Act, which is used for
20 notices, only really requires a 30-day period of
21 notice.

22 45 is what's in the regulations, and I
23 think that was originally to accommodate, I guess, a
24 greater need for posting for notice. But under the
25 new ANC Act, you need to give 30 working days before

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1 an action is taken.

2 But that has been interpreted to mean at
3 least the hearings that they would have an opportunity
4 to present their views. So, because they have a right
5 to put in their report, which is the thing that's
6 given great weight, and they really have 30 working
7 days to do so. So that's the thing that drives the 45
8 days notice.

9 CHAIRPERSON MITTEN: Okay. Let me let Mr.
10 Hood have a chance.

11 VICE CHAIR HOOD: I was just going to add,
12 Madame Chair, that I agree with my colleagues. And it
13 is an unusual situation, but there's a strict
14 application in the variances of the burden of proof.

15 But that's what I was going to say before
16 I heard Mr. Bergstein. But let me go back to what I
17 said about Medstar and Albemarle. Unfortunately, he
18 did mention Medstar, but let me just say this about
19 it, because as far as I'm concerned it lasted too
20 long.

21 But, anyway, well, he mentioned it. He
22 brought it up. But, anyway, I think that those two
23 cases - and I'm glad Mr. Bergstein brought those up.
24 It worked out for a win-win, I think, for everybody.

25 Even though Medstar took a little longer

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1 than what I thought it should have. And I see us
2 going this way. But, as was stated earlier, it would
3 be up to the Applicant to buy into that.

4 I would like to see it done that way, so
5 I'm not going to my other comments. Thank you.

6 CHAIRPERSON MITTEN: Mr. Jeffries, do you
7 want to go again?

8 COMMISSIONER JEFFRIES: I just want to be
9 clear. I mean, given that this project has been
10 reviewed by - Because this project has been reviewed
11 by the ANC, by the community, is it possible to even -
12 that we could waive even the whole notion of community
13 -

14 MR. BERGSTEIN: I guess what you could say
15 is - because I was thinking as I was speaking what
16 you're now articulating, which is, in essence, the
17 project itself, including the relief that was
18 requested, has been provided to the ANC.

19 And I can't remember what happened at the
20 BZA case. I think it's my recollection that there was
21 no objection.

22 COMMISSIONER JEFFRIES: I don't think
23 there was any objection.

24 MR. BERGSTEIN: Right. So, in a way -

25 CHAIRPERSON MITTEN: There's a layer of

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1 support.

2 COMMISSIONER JEFFRIES: Yes.

3 MR. BERGSTEIN: Yes. So, in a way, one
4 could say that the ANC - in terms of ANC issues, the
5 impact the project has been given notice and has
6 stated its views.

7 So, I suppose you could say that this
8 entire proceeding was viewed as a continuum, that the
9 ANC notice has been given. And I suppose, then, you
10 could just do this within the 30 days.

11 I mean, going from the actual
12 advertisement to a decision meeting. Assuming that -
13 well, you still have to - I'm sorry, you still have to
14 have a hearing.

15 COMMISSIONER JEFFRIES: But we could - I
16 mean, the hearing could be next -

17 MR. BERGSTEIN: The hearing would still
18 have to be - you'd still. Well, this is the funny -
19 I'm sorry to get so complex here. But, literally
20 speaking, PUDs are sort of funny in that the Zoning
21 Act talks about changes to the zoning text and the
22 zoning map.

23 A PUD without a map change is really
24 neither. But it's been seen as being governed by that
25 provision anyway, even though it is really no more

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1 than a variance, in essence, in terms of its true
2 impact.

3 So, to say that you can't even - you'd go
4 shorter than the 30 days, that would be, in essence,
5 saying that the Zoning Act, which talks about a 30-day
6 notice before this changes, in the Zoning Regulations,
7 really doesn't apply to PUDS at all.

8 And it's just the regulations which do,
9 which you can waive. So, it's under that theory that
10 you could really - I suppose you could do this - well,
11 I think some notice would probably be appropriate.

12 But it could be an extremely attenuated
13 notice period.

14 CHAIRPERSON MITTEN: I'd like to just kind
15 of move us to some decisions. And I'd like us to
16 think first about the variance tests, and then think
17 secondly about the Applicant.

18 Because we don't - the Sua Sponte is taken
19 for one of three reasons, and it's - in this case,
20 it's because we feel that the BZA erred in applying
21 the Zoning Regulations.

22 And I'm not asking for a vote, and I'm not
23 asking for an action, but do we agree that the
24 Applicant - we've heard bits and pieces from
25 everybody.

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1 Do we agree that the Applicant did not
2 meet the burden of proof? Do we have a consensus on
3 that? And without figuring out what we're going to do
4 next, do we agree?

5 ALL: Yes, I agree.

6 COMMISSIONER JEFFRIES: Madame Chair, I'm
7 just having difficulty drawing the line between sort
8 of the applicant and the -- I mean, if you look at
9 just sort of, you know, the zoning, the variance test,
10 and not at all consider who this applicant is and so
11 forth, just without any -- knowing that there's a hole
12 on 14th Street.

13 CHAIRPERSON MITTEN: Forget there's a hole
14 there.

15 COMMISSIONER JEFFRIES: Yes, yes, right,
16 forget the -- yes. Then you can make the case. I did
17 not feel comfortable with this whole notion of the LDA
18 sort of, you know, creating hardship and so forth. I
19 would agree.

20 CHAIRPERSON MITTEN: Okay. So we have
21 that as a basis. So now what we have is -- and I
22 don't think anyone -- I mean, I think we've proven by
23 our action earlier, we've proven by our action in the
24 past that we're very supportive of affordable housing.
25 So this is not to penalize the applicant. We don't

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1 want to penalize the applicant, but we don't feel that
2 -- what the BZA's task, they erred in meeting their
3 obligation to hold the applicant to the test. So then
4 it becomes a question of the solution, okay? So while
5 I don't want to unduly penalize the applicant, I do
6 think that moving in the direction that Commissioner
7 Jeffries was trying to elicit from Mr. Bergstein about
8 how can we expedite this so that we can take this up
9 as a PUD which it should properly have been. It's in
10 the record that the applicant -- I mean, I don't know
11 to what extent the Office of Planning talked about
12 their discussions with the applicant, but it was clear
13 that that had been put to them, and they did not avail
14 themselves of that recommendation.

15 I think the reason there's a hole in the
16 ground is because this developer is not, and they said
17 as much, they're not experienced. They're experienced
18 in doing residential. They're not experienced doing
19 retail. So you know, they bear some responsibility
20 for their lack of expertise in undertaking a project
21 of this kind. There is an approach that they could
22 use if they wanted to, rather than trying to attract
23 what they call premium grade tenants. If they chose
24 to go forward with this project, instead of having
25 check-cashing facilities and so forth, they could have

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1 incubator retail space for people who are trying to
2 start their own businesses and stuff. But if they
3 choose not to do that there is a PUD route that we
4 could go. I think what I've also heard in terms of
5 the consensus here is that we'd be interested in
6 expediting that as much as possible. But I guess, and
7 so do we have consensus about that? That we would be
8 interested in expediting this if they chose to make a
9 PUD application?

10 COMMISSIONER JEFFRIES: Am I responding to
11 that question, or your -- because you said a lot
12 before that.

13 CHAIRPERSON MITTEN: Right. I'm now
14 asking do we have a consensus about wanting to
15 encourage the applicant by way of expediting a PUD
16 review, that we want to encourage them to make a PUD
17 application?

18 COMMISSIONER JEFFRIES: The concern that
19 I would have around that, Madame Chair, is obviously
20 there's really no guarantees as relates to how much
21 time this PUD application could take. I mean, it
22 sounds very attractive and soothing from the dais here
23 that perhaps we can do a PUD in 30 days, and you know
24 you look up and it could be 90 days. So I'm just
25 really concerned, again, about the applicant perhaps

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1 looking at a situation where, you know, they sort of
2 agree to come in and sit down and revisit this whole
3 PUD, and then we're looking at a much longer term. I
4 just have some serious concerns around the whole
5 notion of having this applicant come back in and take
6 their chances on a PUD that could take considerably
7 much longer.

8 And another comment that I wanted to make,
9 Madame Chair, is that while I think that the applicant
10 does bear some responsible, there is a greater
11 community here that does not -- should not be burdened
12 as related to what I consider to be inferior retail.
13 I mean, retail that you step down to, it just simply
14 doesn't work. An 8-foot floor to ceiling, that's
15 something that I'm just not comfortable with. Again,
16 that's outcome versus what I understand is not meeting
17 the strict test of the variance.

18 COMMISSIONER HILDEBRAND: What I was going
19 to suggest is that if we're leaning in a certain
20 direction, and that is that the case didn't meet the
21 variance test, it would be fair to the applicant to
22 give them an opportunity to submit a brief in response
23 to our general consensus feeling. And perhaps at that
24 time they could also respond to the concept of the PUD
25 process.

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1 CHAIRPERSON MITTEN: Well, I mean, I think
2 you actually just laid out the two alternatives,
3 because we can't -- I mean, we should do something.
4 And we either have to set a briefing schedule and work
5 towards a solution that way, or because as Mr.
6 Bergstein said, we can't make them submit a PUD
7 application. So it's a question of picking their
8 poison, I guess. Because unless we vote to affirm
9 tonight, and just say, you know, we had a chance to
10 review it, we agreed that they didn't meet the burden
11 of proof, and yet we're going to give them a pass. I
12 would have very serious reservations about doing that,
13 because then that encourages people to go out and have
14 private agreements to do their homework as the project
15 is coming out of the ground, to basically not be as
16 responsible as they should be, and that's certainly
17 not -- that's not an outcome I want to encourage
18 either. So I guess --

19 MR. BERGSTEIN: Madame Chair?

20 CHAIRPERSON MITTEN: Yes.

21 MR. BERGSTEIN: You could set one date in
22 the future and say by that date one of two things has
23 to be received, either a brief explaining why the BZA
24 should not be reversed, or an application for a PUD.
25 And then at least if they chose their poison, they

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1 could choose it the same date.

2 CHAIRPERSON MITTEN: Okay. That's fair.

3 VICE CHAIR HOOD: Madame Chair, I would
4 just like to agree with Commissioner Hildebrand. I
5 think that's the fashion I would like to move. I just
6 don't like the phrase of "choose your own poison".

7 CHAIRPERSON MITTEN: Okay. Well, I think
8 we have moved so far as expeditiously as possible.
9 You know, we took up the case as soon as we heard
10 about it, we set this for decision as soon as we
11 could. And so I'd like to, I don't know, Mr.
12 Bergstein, do you think two weeks is too abbreviated?

13 MR. BERGSTEIN: I don't know if the party
14 is here, if they could tell us. If they could just
15 approach us and just tell us.

16 CHAIRPERSON MITTEN: Yes, just approach
17 Mr. Bergstein.

18 MR. BERGSTEIN: It's my understanding that
19 the party in the case below could provide one or the
20 other in seven days.

21 CHAIRPERSON MITTEN: Okay, seven days.
22 That's great. So what I will do, let's see seven days
23 from now is the sixteenth. All right. Then I would
24 -- do we vote, or do we have a consensus?

25 COMMISSIONER HILDEBRAND: Madame Chair?

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1 May I say one thing?

2 CHAIRPERSON MITTEN: Yes.

3 COMMISSIONER HILDEBRAND: It's my
4 understanding that since there is a significant
5 component of affordable housing that they could
6 request a waiver of the filing fee for the PUD just
7 because of the affordable housing component.

8 CHAIRPERSON MITTEN: Okay. Okay, first
9 Mr. Bergstein. Do we have to vote?

10 MR. BERGSTEIN: No, I think you can reach
11 a consensus.

12 CHAIRPERSON MITTEN: Okay.

13 MR. BERGSTEIN: You're not taking an
14 action, you're just coming up with some briefing
15 dates.

16 CHAIRPERSON MITTEN: Okay. Then one of
17 the consensus points that I would like to communicate
18 is would we be inclined to waive the fee for a PUD?
19 Because I would.

20 VICE CHAIR HOOD: I would too.

21 CHAIRPERSON MITTEN: For the affordable
22 housing, or just to get them in front of us, whatever
23 incentive that we can use. Just bear with me a
24 second, I was just thinking about something.

25 There is an additional point that I want

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1 to bring up with the commission to get your sense,
2 because in the event that the applicant chooses to
3 brief the matter, as opposed to applying for a PUD, is
4 one of the additional aspects of the case that
5 troubled me was the fact that the applicant came to
6 the BZA saying that they had this first floor issue
7 with the retail and they needed more ceiling height.
8 And while they were there they got another four feet
9 from the BZA to augment the ceiling heights on the
10 upper floors. And there is absolutely nothing in the
11 record to support that second four feet of height. So
12 can we -- do we have a consensus, can I get a
13 consensus that even if we affirm the BZA case, that
14 the additional four feet of height that's not related
15 to first floor retail will not be granted?

16 COMMISSIONER PARSONS: Absolutely.

17 COMMISSIONER HILDEBRAND: I definitely
18 agree with that.

19 CHAIRPERSON MITTEN: Mr. Hood, Mr.
20 Jeffries?

21 COMMISSIONER JEFFRIES: I'm not recalling
22 sort of what the -- if you could help me out here.
23 Sort of what the rationale was for the addition of
24 four feet needed for the upper floors.

25 CHAIRPERSON MITTEN: There was no

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1 rationale given, other than it would be more generous
2 in terms of just a more generous ceiling height.

3 COMMISSIONER PARSONS: Well, they were
4 comparing it with market rates of housing in the area.
5 They said they wouldn't be as competitive in the
6 market rate floors at that lower level. But there was
7 casual conversation about that.

8 CHAIRPERSON MITTEN: There was no unique
9 characteristic, exceptional practical difficulty that
10 led to that.

11 COMMISSIONER JEFFRIES: So, currently the
12 upper floors are 8'6, and they would go to, with the
13 BZA's approval, would go to 9?

14 CHAIRPERSON MITTEN: I forget what the
15 numbers are exactly. Does anybody else have them?

16 COMMISSIONER PARSONS: I think it was
17 designed to give you an 8-foot ceiling clear in the
18 residential units, which meant a probably 8'8 floor to
19 floor. And they were going to 9'5 floor to floor in
20 the final proposal.

21 VICE CHAIR HOOD: Oh, floor to floor.
22 Okay.

23 COMMISSIONER PARSONS: Floor to floor, so
24 that the ceiling heights would be more than 8 feet.

25 CHAIRPERSON MITTEN: And I'll just further

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1 say that I would, however, be inclined to give that
2 additional four feet if they had a PUD in front of us.

3 COMMISSIONER JEFFRIES: I think that under
4 a PUD, given the level of affordable housing that this
5 project is going to proffer, and then given that it's
6 going to be a daycare center, I mean four feet on the
7 ground floor didn't seem to me -- I mean, if we're
8 going to allow the applicant to come forward with a
9 PUD, then let's not start picking apart the PUD.

10 CHAIRPERSON MITTEN: No, what I'm saying
11 is -- maybe you misunderstood me. As it relates to
12 the variance --

13 COMMISSIONER JEFFRIES: Oh, the -- okay.

14 CHAIRPERSON MITTEN: Okay? Then -- and we
15 have a consensus that that additional four feet is not
16 appropriately granted under the variance, regardless
17 of what we do. But if the applicant were to come to
18 us with a PUD that that additional four feet would be
19 appropriate for just what you're describing.

20 COMMISSIONER JEFFRIES: Yes, okay.

21 CHAIRPERSON MITTEN: That's what I'm
22 trying to --

23 COMMISSIONER JEFFRIES: I'm sorry, I
24 misunderstood you, Madame Chair.

25 CHAIRPERSON MITTEN: Okay. Well I guess

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1 I'm done sending my signals. All right. So that's it
2 for the --

3 COMMISSIONER JEFFRIES: Now, we talked
4 about waiving the fee. Is there anything else that we
5 can put forward as it relates to waiving something
6 tied to the PUD right now?

7 CHAIRPERSON MITTEN: I guess just
8 expediting --

9 MR. BERGSTEIN: The fee that gets waived
10 is the hearing fee, not the application fee, as far as
11 I can read this. But you're talking about waiving
12 just the hearing fee right now? Which you don't even
13 get to until you set it down.

14 COMMISSIONER JEFFRIES: Yes, but I'm
15 saying --

16 MR. BERGSTEIN: As opposed to the
17 application fee, which I don't see a waiver for.

18 COMMISSIONER JEFFRIES: No, but I'm saying
19 are there any other things that we could -- I mean, we
20 voted here to waive some fees tied to the PUD. Is
21 there anything else that we can vote to get consensus
22 on right now?

23 MR. BERGSTEIN: The only thing I'm going
24 to assume is that if they do file an application for
25 the PUD, they would want the Office of Zoning to

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1 schedule some sort of special meeting for set down,
2 rather than wait until the next meeting. Because you
3 still have to set it down for hearing. I don't think
4 you're saying you want to set it down before --

5 COMMISSIONER JEFFRIES: No, no, no. But
6 I'm just -- I guess what I'm trying to put as much out
7 here as possible.

8 MR. BERGSTEIN: Off the top of my head I
9 can't think of anything, but if anything was relevant,
10 I think it could be handled at the set down meeting.

11 COMMISSIONER JEFFRIES: Okay. Thank you.

12 CHAIRPERSON MITTEN: Thanks. I think
13 that's it for the 0514. As I said, Case Number 04-25
14 is coming up on Monday at 6 o'clock. And I don't
15 think there's any more business before the commission,
16 and we're adjourned.

17 (Whereupon, the foregoing matter was
18 concluded at 8:47 p.m.).

19

20