

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

IN THE MATTER OF:

The Application of Summit		Case No.
Properties for a text amendment		99-8
to Chapter 7 of the Zoning		
Regulations, relating to expansion		
of the use of transfers of		
development rights (TDR's).		

Thursday  
April 13, 2000

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

The Public Hearing of Case No. 99-8 by the District of Columbia Zoning Commission convened at 7:00 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairperson
CAROL J. MITTEN	Vice Chairperson
HERBERT M. FRANKLIN	Commissioner
KWASI HOLMAN	Commissioner
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Jerrily R. Kress	Director
Stefanie D. Brown	Office of Zoning
Kenneth Karkeet	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Andrew Altman	Director, Office of Planning
Steven Cochran	Office of Planning
John Fondersmith	Office of Planning
Arthur Rodgers	Office of Planning

APPEARANCES:

On Behalf of the Applicant, Summit Properties:

JOHN T. EPTING, ESQ.  
of: Wilkes, Artis, Hedrick & Lane, Chartered  
1666 K Street, N.W.  
Suite 1100  
Washington, D.C. 20006-2897  
(202) 457-7800

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

(7:19 p.m.)

1  
2  
3 COMMISSIONER HOOD: Good evening, ladies and  
4 gentlemen. I am Anthony Hood, Chairperson of the Zoning  
5 Commission for the District of Columbia.

6 Joining me this evening are commissioners Mitten,  
7 Franklin, Parsons and Holman.

8 I declare this public hearing open.

9 The case that is the subject of this hearing is  
10 Case No. 99-8.

11 The applicant, Summit Properties has submitted  
12 proposed amendments to provide additional incentive for property  
13 owners to accomplish two goals for the citizens and government of  
14 the District of Columbia: The preservation of historic buildings  
15 in the downtown and neighboring areas and the creation of  
16 residential space within these areas, an integral component of the  
17 living downtown concept espoused in the District's comprehensive  
18 plan.

19 The Zoning Commission will consider the advertised  
20 proposal, any modifications thereto, or alternate proposals that  
21 are presented and reasonably related to the scope of the proposed  
22 amendments.

23 The specific proposal to amend the zoning  
24 regulations is contained in a notice of the public hearing for  
25 this case. Copies of that notice are available for the public.

1 Notice of today's hearing was published in the D.C.  
2 Register on December 31, 1999 and in *The Washington Times* on  
3 December 28, 1999.

4 This hearing will be conducted with provisions of  
5 3021 of the District of Columbia Municipal Regulations, Title 11,  
6 Zoning.

7 The order of procedure will be as follows:  
8 Preliminary matters, presentations of the applicant, Office of  
9 Planning report, report of other agencies, report of advisory  
10 neighborhood commissions, persons in support, persons in  
11 opposition.

12 The Commission will adhere to this schedule as  
13 strictly as possible. Those presenting testimony should be brief  
14 and non-repetitive. If you have a prepared statement you should  
15 give copies to staff and orally summarize the highlights.

16 Please give us your statement before summarizing.

17 Each individual appearing before the Commission  
18 must complete two identification slips and submit them to the  
19 reporter at the time you make your statement.

20 If these guidelines are followed, an adequate  
21 record can be developed in a reasonable length of time.

22 First, let me start off, are there any preliminary  
23 matters?

24 MR. COCHRAN: Mr. Chair?

25 COMMISSIONER HOOD: Yes.

1 MR. COCHRAN: I wonder if it would be appropriate  
2 even to consider having the applicant give its presentation, then  
3 the Office of Planning give its presentation? Then as the  
4 Commission to do the cross-examination after we have both been  
5 able to give our reports, as opposed to asking your questions  
6 after each report is done.

7 COMMISSIONER HOOD: Okay, Mr. Cochran, we will take  
8 that under advisement.

9 First, I think we have another preliminary matter,  
10 colleagues. Commissioner Mitten?

11 VICE CHAIRPERSON MITTEN: I just wanted to put on  
12 the record here what I had put on the record at our set-down  
13 hearing which is in my capacity as a member of the Ward II  
14 Democratic Commission.

15 This is prior to this case even coming up before  
16 us, I had solicited a donation from Summit Properties to benefit  
17 the Ward II Democratic Commission and as I said at our set-down  
18 hearing that I didn't think I would be biased by their willingness  
19 to make that contribution.

20 But I want to put it on the record and I guess to  
21 see if there are any objections to my participating in this case.

22 COMMISSIONER HOOD: Are there any objections to  
23 Commissioner Mitten participating in this case?

24 Hearing none, I think it is okay.

25 Any other preliminary matters before I go on to the

1 issue that I have?

2 One of the concerns is that we receive the Office  
3 of Planning report. We are not trying to make anyone look bad,  
4 but today we didn't read it until 6:00 p.m.

5 We want to make sure that any case that we deal  
6 with here, for the best interests of the City, we want to be sure  
7 that we are able to evaluate the Office of Planning report along  
8 with the submittals by the applicant.

9 Before I get into that, I will ask the applicant to  
10 come to the table. We want to give you the opportunity to see  
11 whether or not you want to respond or how you want to deal with  
12 how we are going to proceed tonight.

13 MR. EPTING: Mr. Chair, John Epting with Wilkes,  
14 Artis. We picked it up at 2:30 today.

15 COMMISSIONER HOOD: So, you got it before we did.

16 MR. EPTING: Right. So, we looked at it. We are  
17 prepared to proceed with our case.

18 I think what we would like to ask because we  
19 haven't really had time to digest it, and we haven't, of course,  
20 heard the Office of Planning's presentation, to have the  
21 opportunity at the end of the hearing to have essentially, a  
22 rebuttal or to address things that the Office of Planning raises.

23 I think that if we have that opportunity, we should  
24 be fine.

25 COMMISSIONER HOOD: Okay. Is that all you want to

1 say on that issue?

2 MR. EPTING: Tonight's hearing is important to us.

3 We have already delayed 55 days from the February 17 date, so we  
4 would like to proceed.

5 COMMISSIONER HOOD: Colleagues, let's open it up  
6 for discussion because I know we do have a concern. We would like  
7 to weigh both sides; both the Office of Planning report as well as  
8 the submittals that were given to us so that we can make an  
9 intelligent and informed decision.

10 With that, I will open it up for discussion.

11 COMMISSIONER PARSONS: As you know, we have had  
12 this for about an hour, Mr. Epting, and at least I feel that we  
13 all benefit from a more studied response to this, both from your  
14 side and our side.

15 I would like to suggest a two week postponement for  
16 your consideration. Then we could have your studied response.

17 I guess what I feel about this is we could hear  
18 both sides tonight, if you will, of this fairly complex issue of  
19 TDRs, and then I think we'd all agree at the end of the night that  
20 we needed to come back together and look at it anyway.

21 So, the suggestion that I would make is that we  
22 wait two weeks until specifically April 27, and hear your studied  
23 response to this rather than picking it up at the end of the  
24 hearing tonight.

25 MR. EPTING: Mr. Parsons, this is a case where the

1 applicant on its own doing, because we thought we had a good  
2 project and a good idea, went to the Office of Planning last July  
3 and met.

4 We were told they liked the idea. We wouldn't have  
5 gone forward unless they had supported it at that time.

6 We filed them a draft copy in October. Based upon  
7 their review, we filed it last November. As you are aware, there  
8 was no set-down report in December which is the first time I have  
9 ever had that situation, but we proceeded and got a hearing.

10 We met four times with the Office of Planning. We  
11 filed nine letters with them providing information.

12 We agreed to delay the hearing in February so that  
13 they could basically analyze things on a comprehensive basis and  
14 get to the point that they have now gotten to.

15 But this is the type of project that, if it is  
16 going to happen, the sooner it happens the better, because they  
17 have been scrambling to pull the building permits, start work, and  
18 the thing that has turned out for this type of project, and we  
19 suspect for other residential projects, that the costs are  
20 enormous when you are doing development downtown.

21 So, to keep delaying, I perfectly understand why  
22 you would want to do that because this is a 16 page report and  
23 there is a lot of stuff there.

24 But I am feeling pressure too to go ahead. I think  
25 we have answers to everything and I think we have a good case. We

1 have support, and I never thought I would have this kind of  
2 support, the Downtown Housing Committee and Terry Lynch's  
3 congregation and DCPL; I almost don't know what I am doing here.

4 COMMISSIONER PARSONS: It is good to have a  
5 positive letter from Mr. Doctor, isn't it?

6 MR. EPTING: Absolutely.

7 COMMISSIONER PARSONS: A rare item in this town.

8 MR. EPTING: So, I am a little bit non-plussed in  
9 where to go with this because we have worked very hard on this and  
10 maybe I will let Ms. Ford -- maybe I have talked enough.

11 MS. FORD: I'd just like to stress that the timing  
12 is very critical to our project. We were ready to go back in  
13 February and we were approached by the Planning Office to delay.

14 It was a difficult time for us. We were ready to  
15 start construction. We agreed, reluctantly, to a delay in order  
16 to be cooperative.

17 Basically, what we are seeking through this  
18 amendment is assistance that is very critical to this project, and  
19 we need to make a decision one way or another about it.

20 The work that we have done in the project could be  
21 used for any project, and we need to know whether we should be  
22 proceeding on the track we have been pursuing, as a residential  
23 project.

24 We have also discussed most of these issues that  
25 are in the report with representatives in the Planning Office, and

1 as John indicated, feel that there is nothing new that we haven't  
2 been considering and we feel like we are able to discuss it. I  
3 believe our testimony will address many of these issues.

4 MR. EPTING: Could I just talk to Ms. Ford just for  
5 a second, too?

6 I think we have made our pitch, but at the same  
7 time, if it will help the Zoning Commission, I think we could  
8 concede to the two week delay. Hopefully, we will be at the  
9 point, at that point, where we could get a bench decision, one way  
10 or the other, at that point.

11 COMMISSIONER HOOD: I don't want to go out and say  
12 we will be able to do a bench decision, but I will tell you that I  
13 think, I don't want to put the burden on anyone, but I think two  
14 weeks is fair, especially to us who have just gotten this report  
15 at 6:00 p.m.

16 We want to make sure that we are able, even though  
17 you are able to respond, I will be frankly honest, some of the  
18 stuff in here I have not seen.

19 So, you may be responding to something and I may  
20 have another way of questioning it.

21 MR. EPTING: I understand that, I do.

22 COMMISSIONER HOOD: Any other comments

23 Mr. Holman?

24 MS. KRESS: I would just like to say that I was  
25 able to read most of the Office of Planning report. I understand

1 large portions of it.

2 I have some issues I would like to be resolved,  
3 especially as it relates to the scope of the relief that is being  
4 requesting and if there is any fine tuning that can be done there.

5 I would hate and sit here and do it tonight. I  
6 will, if necessary, with my colleagues, but I think a more studied  
7 approach over a couple of weeks might get us to where we all want  
8 to be, in a much better fashion.

9 COMMISSIONER FRANKLIN: Mr. Chairman, could I add  
10 something?

11 I know that you have been delayed unreasonably, in  
12 my view, heretofore, but I would benefit with a written response  
13 from the Office of Planning, submitted to us before April 27. I  
14 think it will save us a lot of time and would help us prepare  
15 ourselves for a lot of issues.

16 I would hope that would be possible so that we  
17 wouldn't basically, have a kind of debate going on all evening,  
18 but be able to narrow the issues because there is a lot in the  
19 planning report that is quite interesting, but in my view, not  
20 necessarily on point.

21 I would like to narrow the issues and get your  
22 response.

23 MR. EPTING: We would be prepared to file something  
24 next week with the Commission, a week from tonight.

25 VICE CHAIRPERSON MITTEN: I guess I would just like

1 to add something which is I am very sympathetic to what you have  
2 been put through in terms of the delays, and I know that I am in  
3 the minority that I would be willing to go forward tonight.

4 But what I think would be helpful, but to the  
5 extent, I don't know if this appropriate, but to the extent that  
6 we can articulate if we have areas of concern, so that you can  
7 speak to those and then we won't be, yet again, after we have our  
8 hearing, asking for some input or struggling still.

9 Is that appropriate to do?

10 COMMISSIONER HOOD: I think that is fine, we can  
11 put it out there.

12 I have concerns for the hearing, but in my case,  
13 the Office of Planning report may answer, they are relatively  
14 simple, nothing that will delay.

15 Anything else any other colleagues may have?

16 Any questions you want to put, so hopefully when we  
17 come back in two weeks --

18 COMMISSIONER PARSONS: I am sure you will cover  
19 this, but I want to understand better what your definition is of  
20 residential. What is this truly? A residential property in an  
21 apartment context or an extended state facility or what is it?

22 I am sure you are going to cover that, but since  
23 the Chairman asked what our concerns might be, it is the  
24 definition of residential.

25 VICE CHAIRPERSON MITTEN: One of the things I would

1 like to hear more on is this idea that if once we depart from the  
2 downtown development district, per se, as a generating point of  
3 origin, I will call it that, how can we restrict this so that we -  
4 - given that there is a supply and demand issue about TDRs and we  
5 don't want to be put in a position where we are being inconsistent  
6 with other requests to step outside the downtown development  
7 district, and yet we are very sympathetic to promoting  
8 residential, but we want to make sure that we don't, sort of, open  
9 the door to other requests that then we really do have this larger  
10 issue of oversupply.

11 MS. KRESS: And I guess my concern is along the  
12 lines of Commissioner Mitten, especially when you look at your  
13 exhibit A and you look at the potentially affected properties, is  
14 there any way to refine the request so that it doesn't have as  
15 broad an impact, and again, these are some initial thoughts based  
16 on about ten minutes of reading. That is something that I would  
17 like to know about.

18 VICE CHAIRPERSON MITTEN: And I would just like to  
19 piggy back on what Commissioner Holman just said which is we had a  
20 case before us that kind of just zipped through here and the  
21 Office of Planning, I think, wrote a very short report about it,  
22 and it was 13th & L Street, and this sort of very specialized  
23 idea.

24 If there is any way of narrowing the scope of it,  
25 it would actually make everyone more comfortable.

1 So, if you have any suggestions toward narrowing  
2 the scope, that might help.

3 COMMISSIONER HOOD: Commissioner Franklin?

4 COMMISSIONER FRANKLIN: Yes. Following up on the  
5 implications of one of the earlier questions, much is made in the  
6 Office of Planning report about the glut of TDRs in the city, and  
7 I need an education about why I ought to be concerned about that  
8 glut.

9 Maybe Dr. Fuller can enlighten us on that.

10 MR. EPTING: We plan to give you that.

11 COMMISSIONER FRANKLIN: Good. Fine. And to get it  
12 in writing, in advance, would be helpful.

13 Secondly, there is a glancing reference that this  
14 might be a pied de terre kind of property, where the people who  
15 buy or rent would not be tax-paying residents of the District.

16 Could you address that? Whether that is true or  
17 not? If true, whether this Commission has any legitimate concern  
18 with that?

19 COMMISSIONER HOOD: Colleagues, anything else?

20 Office of Planning, would you like to say a word?

21 MR. COCHRAN: I think we would just like to give  
22 you the opportunity to throw some questions at us too, so that we  
23 can be better prepared.

24 COMMISSIONER HOOD: Colleagues, do you have any  
25 questions for the Office of Planning?

1 COMMISSIONER FRANKLIN: I'll send the same two  
2 questions to you as I sent to the applicant: Why should we be  
3 concerned about a glut of TDRs?

4 COMMISSIONER HOOD: Anything else?

5 Give us a few minutes please.

6 (PAUSE)

7 VICE CHAIRPERSON MITTEN: I have a question for the  
8 Office of Planning which is what other incentives are available to  
9 offer these people if they don't get the TDRs?

10 COMMISSIONER FRANKLIN: That we can offer?

11 VICE CHAIRPERSON MITTEN: No, that are available  
12 from the city that are outside of our scope.

13 COMMISSIONER HOOD: Any other questions, to either  
14 the Office of Planning or the applicant?

15 With that, I think you have heard our concerns, the  
16 applicant, Mr. Epting, and the Office of Planning, Ms. Ford?

17 MS. FORD: Can I just say that I do understand your  
18 needs and this is many pages to digest in a short period of time  
19 and we would like to be cooperative.

20 I appreciate your willingness to limit to the two  
21 weeks.

22 COMMISSIONER HOOD: Let me just say we appreciate  
23 everyone understanding our side of it. When I first found out  
24 about it, frankly I was a little disturbed today about 2:00 p.m.,  
25 because we do want to move forward for the best interests of the

1 City, while keeping in mind that Office of Planning is going  
2 through a revamp.

3 But these things are critical to us, and we don't  
4 want a fly-by-night judgement, and keep moving.

5 While I also know it is critical to you all, too.  
6 So, again I apologize for the inconvenience.

7 Unless there are any other statements or comments?

8 MS. KRESS: Just one. I would like to say that the  
9 Office of Planning report was thought-provoking and raised some  
10 issues that we think we need to delve into and resolve.

11 So, this was not a decision that was lightly taken.

12 There are some broader implications that they are raising that we  
13 would like to be able to think through so that we understand what  
14 their thinking is and the direction they are going.

15 So, that is the only thing I wanted to add.

16 COMMISSIONER HOOD: Okay, Commissioner Mitten?

17 VICE CHAIRPERSON MITTEN: I just wanted to suggest  
18 -- I don't know if it is convenient for folks and this would be  
19 not making any promises, but if we were able to start earlier than  
20 7:00 p.m. on the 27th and we got through everything and were  
21 satisfied, we might still be peppy enough to make a bench  
22 decision, if we started earlier.

23 COMMISSIONER HOOD: I believe we can do that.  
24 Thirty minutes earlier? An hour earlier?

25 VICE CHAIRPERSON MITTEN: One hour would be good.

1 COMMISSIONER HOOD: Six o'clock; is that  
2 satisfactory to everyone? So, if we are able to do the bench  
3 decision?

4 MR. EPTING: Absolutely.

5 COMMISSIONER HOOD: Let me just say we have been  
6 joined by the Director of the Office of Planning. I wanted to  
7 know if he wanted to say a word or two?

8 MR. ALTMAN: I missed the earlier session.

9 The only thing I can say, well, there isn't much to  
10 say other than extreme apologies to the applicant and the  
11 Commission about the report.

12 I think Chairman Hood, you put it well, we are in  
13 the process of trying to take on many, many, many projects that  
14 have been handed to us, we are extremely short staffed, and we are  
15 bringing on some new staff to do that and that is coming. But  
16 that takes time, as you know, in any organization.

17 As both Jerrily and I pointed out in the budget  
18 hearings that the volume of cased has increased significantly in  
19 the City, with the economy.

20 So, there is no really great excuse, but I did want  
21 to officially apologize and to the applicant.

22 We did, however, take this report very seriously  
23 which is why we did a much more comprehensive report and took time  
24 with it.

25 Let me just say one thing about this, this is a

1 very hard case for us which is why we took time in drafting it and  
2 thinking about it, only in this sense, that we wanted to do a  
3 thorough review of TDRs, how they have been used, what are the  
4 implications in terms of the overall policies that have been for  
5 downtown and understand those.

6 One of the things that we have heard over and over  
7 since being here is, from the development community in particular,  
8 and this started from the day of my interview, have the rules be  
9 certain, have them be understandable, and have them be  
10 predictable, and be very concerned about changes in zoning text or  
11 changes in the zoning regulations without a very firm policy  
12 basis.

13 Don't just ad hoc what may appear, case b case,  
14 because that has been the history in the City. So, your  
15 responsibility is to take that seriously.

16 So, when this comes along, I think the dilemma for  
17 us is obviously this is a project that is a great project. No  
18 question about it.

19 The question for us was, given the TDR system, is  
20 this the right mechanism to support this project, or is there  
21 another mechanism that may be more appropriate to support this  
22 project.

23 So, we went back to look at the history of TDRs,  
24 went back to look at what is on the market, we went back to look  
25 at the objectives to reach our conclusion that we brought forth in

1 the report.

2 COMMISSIONER HOOD: One of the things that I am  
3 going to ask, and Mr. Altman I thought about it, one of the things  
4 that was going through my mind when I just had the applicant's  
5 submittals, and I could direct this question to both sides, and it  
6 may already be in the Office of Planning report, I didn't see it  
7 in the applicant's submittals, was if we approve this the way it  
8 is, what are some of the down sides?

9 I would like both the applicant and the Office of  
10 Planning to put that in. It may already be in here. But if not,  
11 if you could cover that.

12 MS. KRESS: Mr. Chairman, Mr. Altman's statement  
13 brought to mind another one of my concerns that I just remembered  
14 when I glanced through the report.

15 I would like to hear something about the other  
16 remedies that were mentioned in the report. I think one of them  
17 was tax abatement and the other was TIF.

18 I am not aware that the City has even done any tax  
19 abatements and from what I can gather, just from listening to the  
20 applicant this brief amount of time, there is a certain sense of  
21 urgency.

22 So, obviously we are not the City Council, we  
23 cannot fashion remedies and implement them.

24 But, I just want to make sure that whatever we end  
25 up doing and whatever solutions are provided, are real-time

1 solutions.

2 So, if there is anything that you can add about the  
3 status of any other remedies, I would be interested in hearing  
4 about that, in your response, not now, necessarily.

5 COMMISSIONER HOOD: Okay, colleagues. With that,  
6 any other questions? Because if we resume, we might as well have  
7 the hearing.

8 So, with that, I again want to apologize to the  
9 Office of Planning, Office of Zoning, the Zoning Commissioners,  
10 the applicant, audience, everyone.

11 With that, we will continue this hearing of 99-8,  
12 the Summit proposal, to April 27, 2000 at 6:00 p.m.

13 Thank you.

14 (Whereupon, the proceedings were adjourned at 7:44  
15 p.m.)