

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

Monday,
March 17, 2003

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

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

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Commissioner
JAMES HANNAHAM	Commissioner
PETER MAY	Commissioner
JOHN PARSONS	Commissioner

COMMISSION STAFF PRESENT:

Alberto Bastida
Sharon Sanchez

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

I-N-D-E-X

Case No. 02-35
 Definition of Building Height 3

Case No. 03-01
 Map Amendment - Takoma Park 50

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

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

6:37 p.m.

MS. MITTEN: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Monday, March 17th, 2003.

My name is Carol Mitten, and joining me this evening our Vice-Chairman Anthony Hood, and Commissioners Peter May, John Parsons and James Hannaham.

We have two cases this evening, and the rules of procedure are the same for each, so I won't repeat that part of the opening statement. The first case, this evening, is Zoning Commission Case No. 02-35.

This is a request, by the Office of Planning, for a Text Amendment to Title XI of the District of Columbia Municipal Regulations, to change the definition of "building height" and to add a definition for "natural grade" in XI DCMR Section 199.1.

Notices of both of today's hearings were published in the DC Register on January 23rd, 2003, and in the Washington Times on January 29th, 2003. This hearing will be conducted in accordance with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 provisions of XI DCMR Section 3021.

2 And those are the procedures for
3 Rulemaking Hearings. Copies of today's hearing
4 announcements are available to you, and are located on
5 the table near the door.

6 The order of procedure in each case will
7 be as follows: Preliminary matters, followed by the
8 presentation by the Office of Planning, followed by
9 reports of other government agencies, report of
10 effected ANC's.

11 And, in the first case, all ANC's are
12 potentially affected. Organizations and persons in
13 support organization and persons in opposition. The
14 following time constraints will be maintained in this
15 hearing:

16 Organizations will have five minutes;
17 individuals will have three minutes. The Commission
18 intends to maintain these time limits as strictly as
19 possible, in order to hear the case in a reasonable
20 period of time.

21 The Commission reserves the right to
22 change the time limits for presentations, if
23 necessary, and notes that no time shall be ceded. All
24 persons appearing before the Commission are to fill
25 out two witness cards.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 These cards are also located on the table
2 near the door. Upon coming forward to speak to the
3 Commission, please give both cards to the reporter who
4 is sitting to our right.

5 The decision of the Commission in this
6 case must be based on the public record. To avoid any
7 appearance to the contrary, the Commission requests
8 that persons present not engage the members of the
9 Commission in conversation during a recess or at any
10 other time.

11 Staff will be available throughout the
12 hearing to discuss procedural questions. So, if
13 questions arise, please direct them to Mr. Bastida or
14 Ms. Sanchez.

15 Please turn off all beepers and cell
16 phones at this time, so as not to disrupt these
17 proceedings. At this time, the Commission will
18 consider any preliminary matters. Mr. Bastida?

19 MR. BASTIDA: Madame Chairman, the staff
20 has no preliminary matters in this case.

21 MS. MITTEN: Thank you. So, I think we're
22 ready to proceed to the presentation by the Office of
23 Planning in the building height text amendment case.

24 MS. McARTHY: Building height, or Takoma's
25 first?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MITTEN: We're doing building height
2 first.

3 MR. McGETTIGAN: Thank you, Madame Chair.
4 My name is David McGettigan, from the Office of
5 Planning. And, if I can have one moment, I thought we
6 were going to do Takoma first.

7 MS. MITTEN: It's always something.

8 (Laughter.)

9 MR. McGETTIGAN: There we go. Good evening.

10 MS. MITTEN: Good evening.

11 MR. McGETTIGAN: Since it's St. Patrick's
12 Day, I can give the presentation in my Irish accent,
13 but I'll pass.

14 (Laughter.)

15 My name is David Mcgettigan, from the
16 Office of Planning. The Office of Planning proposes to
17 change the building height definition on Section 199,
18 to add a clarification to the term "curb" in the
19 definition, and provide an alternate measuring point
20 for buildings fronting on bridges.

21 Additionally, a new definition was
22 provided for "natural grade", which was not previously
23 defined in the ordinance. Initially, the term "street
24 elevated above grade" was used, and OP is now
25 recommending that the term "bridge" or "viaduct" be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 used.

2 This report discusses this change, as well
3 as the "natural grade" definition, and some urban
4 design issues. In discussions with ANC's citizen group
5 representatives and developer representatives, a
6 concern was raised about the clarity of the term
7 "street elevated above grade".

8 The Holland and Knight memo of September
9 9th, which is in the Exhibit No. 2, argues the term is
10 not understandable. Some questions also arose whether
11 the definition applied in the case where the building
12 is below the level of a street that's above grade.

13 And a simple answer to it was to use the
14 term "bridge" or "viaduct". And if you can see that
15 little diagram, I show a case where the street is
16 still on-grade, but above the grade of the building.

17 And that was the question that was coming
18 up, does it apply to that. The street is elevated in-
19 grade above the building, but not what we intended -
20 we were intending a bridge or viaduct.

21 We can look to the definition in Webster's
22 Unabridged for a "bridge" - a structure erected over a
23 depression or an obstacle to travel, carrying a
24 continuous pathway or roadway.

25 And we felt this was a good definition

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that fit what we intended. Also, we wanted to add
2 "viaduct", which is a bridge, especially when resting
3 on a series of narrow, reinforced concrete or masonry
4 arches.

5 We felt that the inclusion of the term
6 "viaduct", as well as "bridge", makes the phrase more
7 inclusive by including continuous elevated streets,
8 like the Whitehurst Freeway, which, though technically
9 a bridge, is more clearly identified with the term
10 "viaduct".

11 The Office of Planning believes it is
12 important to add the definition for "natural grade",
13 as the term is not only used in the proposed text
14 amendment to the height definition, but it is used
15 elsewhere in the building height definition, and in
16 the 1910 Height Act.

17 The proposed definition has two parts.
18 First, the undisturbed ground part of the definition
19 explaining what natural grade is. And a second, where
20 undisturbed ground cannot be determined, the
21 undisturbed existing grade.

22 The second phrase is essential, in this
23 situation, where very little land remains unaltered in
24 the District. So, it's essential to have that second
25 part.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The inclusion of the phrase "the lower of
2 natural or finished grade" also helps this preserve
3 some relationship to the street, in cases where the
4 natural grade is much higher than the street, and
5 eliminates questions when the grade is changed to
6 increase the finished grade elevation.

7 However, the insertion of this phrase, and
8 the clarifying text, only effects properties fronting
9 a bridge. The Commission may want to consider this
10 phrase in other areas of the definition, where the
11 term "natural grade" and "finished grade" are used.

12 The urban design element of the
13 comprehensive plan seeks to strengthen and enhance the
14 physical image of the District, and maintain and
15 advance the horizontal character of buildings within
16 the District.

17 The interpretation that has been used in
18 the past has allowed the measurement of buildings from
19 bridges is not consistent with these policies, and the
20 text amendment addresses this.

21 It also addresses equity issues, in cases
22 where the building owner may not -- adjacent property
23 -- next to property, will not get to build as high as
24 somebody who had the benefit of abutting a bridge.

25 And this shows -- let me go back to that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It worked before, let's see. Oh well, I'm sorry,
2 that's not working. The video showed the buildings
3 adjacent to the H Street overpass, which you can see
4 here.

5 But when the video continued, you would
6 get to see it. Anyway, what it showed was the
7 buildings along the H Street overpass were noticeably
8 higher than one right next door along 1st or 2nd Street.

9 And, obviously, they're in the same zone,
10 and they got some extra height by being adjacent to
11 the H Street overpass. Wait a minute.

12 (Laughter.)

13 And we need to upgrade this laptop.

14 (Laughter.)

15 MS. MITTEN: It's building the suspense.

16 MR. McGETTIGAN: It's the building,
17 actually behind our office, that has CNN -- yes,
18 actually, I brought it and security caught me with it.
19 Here's the H Street overpass here, and the buildings
20 haven't come in yet to view.

21 But you might be able to see the corner of
22 it over here. Oh, okay. This is the railroad tracks
23 here. This is New York.

24 MS. MITTEN: Keep giving us reference
25 points as it changes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. McGETTIGAN: It skipped over. See these
2 buildings right here are higher than this building
3 right here, which is right next to this building. And,
4 the only -- the additional height comes from measuring
5 along the overpass, which goes in-between these two
6 buildings.

7 It's the H Street overpass that goes --

8 MS. MITTEN: Let's not have any help from
9 the audience for Mr. McGettigan.

10 MR. McGETTIGAN: Thank you. All right. It's
11 thinking about it. All right. We will be back on track
12 in just a second. And there we go. Well, you all have
13 probably gotten further on my presentation than I have
14 already.

15 (Laughter.)

16 Okay. This map shows, and it will show
17 when it gets bigger here momentarily, my computer's a
18 little slow today, that we did a GIS Study to look at
19 buildings along elevated streets, and found areas here
20 and here that we looked at the building heights, and
21 found that they weren't measured from an overpass.

22 If I can make that bigger, yes.

23 MS. MITTEN: Why don't you just keep going
24 with it as it is?

25 MR. McGETTIGAN: All right, sorry about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that. Okay, we also looked at -- so, we looked at
2 other jurisdictions: West Vancouver, Montgomery County
3 Maryland, Prince William County Virginia, Fairfax
4 County Virginia, San Francisco, New York City.

5 We also supplied, in our report, a
6 definition from a unified development ordinance from
7 the APA publication. All of these had various
8 definitions. They were consistent with what we're
9 proposing, and we felt that what's being proposed is
10 in line with what other jurisdictions are doing.

11 So, our recommendation is that we add --
12 the term "curb" shall refer to a curb at grade. In the
13 case of a property fronting on a bridge or viaduct,
14 the height of the building shall be measured from the
15 lower of the natural grade, or finished grade, at the
16 middle of the front of the building to the highest
17 point of the roof or parapet.

18 And then in "natural grade", as was set
19 down, the undisturbed ground level formed, without
20 human intervention, or where the undisturbed ground
21 level cannot be ascertained because of an existing
22 building or structure, the undisturbed existing grade.

23 And that concludes my presentation.

24 MS. MITTEN: Thank you, Mr. McGettigan. And
25 thank you for including some of this text from San

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Francisco and New York, because when people complain
2 how complicated our zoning ordinances are, we can just
3 show them this and they'll see how simple it really
4 is.

5 Any questions for Mr. McGettigan? Mr. May?

6 MR. MAY: Yes, I'm a little bit confused
7 about the examples that you had cited, where they had
8 measured the building height from the overpass -- and
9 these are the buildings that are adjacent to the H
10 Street overpass?

11 MR. McGETTIGAN: Yes.

12 MR. MAY: These are not buildings that
13 front on the H Street overpass.

14 MR. McGETTIGAN: They're property that
15 fronts on H Street, and on --

16 MR. MAY: So when they're multiple fronts
17 they can pick any one?

18 MR. McGETTIGAN: Yes, they can pick the
19 highest one.

20 MR. MAY: Okay, because it's -- Okay. And I
21 guess the other question -- I'll get into this later,
22 that's good. Thank you.

23 MS. MITTEN: Okay, I think the point that
24 might have been a little lost in the complications of
25 the slide show there were there are only two buildings

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that have measured their height from H Street, and
2 that when you look at them, the adverse urban design
3 consequences and the equity issues are more evident.

4 But, that when we looked at the broader
5 context to see whether anybody else had done that on
6 any other elevated structures in the city. We did not
7 find any examples of that, so we think it is quite
8 limited and we think it's important to establish this
9 clearly, so that there's a clear indication of what
10 the measuring point should be.

11 MR. MAY: That's all, thank you.

12 MS. MITTEN: Thank you. Anyone else?
13 Anybody else?

14 MR. HOOD: Madame Chair. Mr. McGettigan,
15 let me just ask you. As the Chairperson already
16 stated, you gave us information on different
17 jurisdictions. And, as I was reading through them, I
18 think that straight, specific and to the point was
19 West Vancouver's, British Columbia's, definition, and
20 their grade definition.

21 Why would we not be more geared to
22 adopting that definition, as opposed to what we have
23 here? For example, in our building height, we have the
24 term "curb shall refer to a curb at grade".

25 I just see so much that can be read into

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that. And I don't see -- unless, maybe, I'm not
2 understanding -- maybe you can explain it to me. First
3 of all, what does that mean - "the term curb shall
4 refer to a curb at grade"?

5 MR. McGETTIGAN: As opposed to the curb on
6 a bridge, which -- or on an elevated street, which has
7 been interpreted in the past. So, because we're
8 measuring the point as the curb, I wanted to make it
9 clear that the curb is on the ground, is acceptable.

10 But, if it's not on the ground, then we
11 have some problems. The West Vancouver looks simple.
12 But, actually, their calculation of the average
13 finished grade is very complex.

14 They have a complex form that they have.
15 And I think it was in initial package that I submit
16 their calculation. But it is good. The problem with
17 West Vancouver is not measuring from the curb, as all
18 of the buildings in DC are measured in relation to the
19 street, by measuring from the curb or the sidewalk to
20 the building height.

21 If we stray away from that, then we might
22 be changing the character of the District
23 significantly.

24 MR. HOOD: Okay.

25 MS. McARTHY: I think plus, as well, our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 staff member from West Vancouver attested to us that
2 being able to measure from the curb, which he felt was
3 generally far less arbitrary and there was less
4 confusion over the height of the curb, was one that
5 where we could do that, that that's what we ought to
6 use.

7 And, that otherwise, specifying that if
8 that curb was elevated, then how we should measure it
9 from there. He thought -- was that actually simpler to
10 administer than it seemed.

11 MR. HOOD: Mr. McGittegan, it was very
12 interesting in your opening statement, after reading
13 the letter from Holland and Knight, where there was a
14 claim made that they didn't have any input or no one
15 consulted wit them.

16 But, from what I'm hearing from you is,
17 developers and council and everyone was all at the
18 table along with ANC's, is that correct?

19 MR. McGETTIGAN: No, I spoke with Chris
20 Collins of Holland and Knight, and we've had meetings
21 with Akridge and Wayne Quin of Holland and Knight, and
22 I've also met with ANC 6C and representatives from
23 several of the other -- 3D and 3F and Forest Hills and
24 Palisades.

25 MR. HOOD: I just found page four of their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 letter, dated September the 9th to be very interesting.
2 They also had made a claim that this is basically
3 being developed for one specific case, and I hope
4 that's not true.

5 I hope we're looking at the whole city as
6 a whole, not -- I just wanted to get that from you on
7 the record, that we're not just looking at one
8 specific development or case.

9 We're looking at this across the board,
10 throughout the whole city?

11 MR. McGETTIGAN: Right, there's -- yes,
12 exactly.

13 MR. HOOD: Okay.

14 MS. McARTHY: Plus, I think it's also
15 important to note that that letter from Holland and
16 Knight was dated September 9th, before the set-down,
17 and I think subsequent to that time, we've met with
18 the Akridge Company, and with their council, and I
19 believe their feeling is that this definition does not
20 pose a problem for the development of the Union
21 Station air rights, which was the source of their
22 concern at the time.

23 MR. HOOD: Okay, did they send us a letter,
24 kind of retracting some of their statements of the
25 September 9th, 2002 letter?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. McARTHY: No.

2 MR. McGETTIGAN: No.

3 MR. HOOD: That would have been nice.
4 Because when you read it, you get thrown for a loop
5 and you kind of read into that. So, if they're
6 listening, next time it would be nice if we could have
7 gotten a letter of that sort. Thank you, Madame Chair.

8 MS. MITTEN: Anyone else have any questions
9 for the Office of Planning? All right, I don't think
10 we have any other reports of other government
11 agencies, so I'll ask if there are any ANC
12 representatives that would like to testify. Mr.
13 Finney?

14 MR. FINNEY: Madame Chair --

15 MS. MITTEN: I need you to sit down and get
16 in front of a mic, if you would?

17 MS. McARTHY: Excuse me, Madame Chair, just
18 for the record, we do have a memo from the Zoning
19 Administrator indicating that he was comfortable with
20 the revisions we made in the hearing report.

21 MS. MITTEN: I don't think we've been given
22 a copy of that. Is that in the record?

23 MR. McGETTIGAN: I'll make sure a copy gets
24 to you.

25 MS. MITTEN: All right, thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. FINNEY: Madame Chair, members of the
2 Commission, my name is John Finney. I'm Chairman of
3 ANC 3D - that includes the neighborhoods of the
4 Palisades, Spring Valley, Wesley Heights, American
5 University and I think I have them all.

6 I very much appreciate this opportunity to
7 address you with a problem that has been an increasing
8 concern to our ANC and to others. We formed a task
9 force on the subject of building height.

10 Our Chairman has not arrived - I'm afraid
11 he's been obstructed by a tractor driver who went for
12 a bath in a pool in the mall. But he did have a show,
13 and I'm still hoping we'll get that on.

14 And we have another member here, George
15 Watson, who is a historian from Wesley Heights, and
16 myself who is sort of an exhibition member and
17 spokesman for the group.

18 Over the past several years, our
19 neighborhoods have experienced many situations where
20 developers demolish smaller homes, only to construct
21 huge mansions, high-rising houses that are out of
22 scale and context with the character of existing
23 residences.

24 We feel this violates the municipal zoning
25 regulations and their stated purposes. Although

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there's a requirement that measurement of the height
2 of a house shall, I underline "shall", mandatory
3 tense, shall be made from the curb to the highest
4 point of the roof or parapet, zoning officials have
5 for years elected to use an alternative method,
6 providing that residential houses may be measured from
7 the finished grade to the ceiling of the top floor.

8 The Zoning Office always uses this "may"
9 provision, standard as a matter of rule. This
10 effectively means that there is no height limit at all
11 for residential buildings, since many more feet can be
12 added atop the ceiling, whether it is a dome, a
13 steeple, or a minuet.

14 It should be noted that measurement to the
15 highest point of the roof, or parapet, controls all
16 other cases in the District of Columbia, including
17 buildings limited to 50-feet and those limited to 90-
18 feet.

19 Only in residential districts where
20 buildings are limited to 40-feet are the measurements
21 made to the ceiling of the top floor - the top story.

22 MS. MITTEN: Mr. Finney, I need to
23 interrupt you.

24 MR. FINNEY: Yes.

25 MS. MITTEN: While I'm very happy that you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have this task force, and your presentation is
2 terrific, it goes beyond the scope of what we're
3 looking at tonight, and --

4 MR. FINNEY: Yes.

5 MS. MITTEN: Because we set down some very
6 specific language to deal with one of many problems
7 that we have with measuring building height. And, what
8 I'd like to do, is ask you if you have anything
9 specific on the text, as it was proposed, and we will
10 take your recommendations and fold that into a future
11 rulemaking that we have every intention of dealing
12 with.

13 MR. FINNEY: I appreciate that, Madame
14 Chair. I realize that you were dealing with the
15 question of bridges and viaducts, and how to deal with
16 it. But, you see, I think that the suggestion that Mr.
17 McGettigan came forward with, provides a bridge to
18 what we want.

19 If I can just elaborate on that point?

20 MS. MITTEN: All right.

21 MR. FINNEY: Let me just skip ahead, then.
22 Mr. Mcgettigan has presented the Zoning Commission for
23 changing height measurement. While it differs in some
24 respects from the ANC proposal, we can wholeheartedly
25 support it, with several modest changes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 First, delete the language in the case of
2 a property fronting on a bridge or viaduct, so the
3 provision also would apply to all buildings facing the
4 street.

5 In other words, Mr. McGettigan has given
6 us the formula for dealing with houses, and height of
7 houses, on streets if we just broaden the context
8 beyond a bridge or viaduct.

9 If you would agree with my suggestion,
10 Madame Chair, the language in Section 199.1, stating
11 that the height of the building may be measured from
12 the finished grade level at the middle of the front of
13 the building to the ceiling of the top story, would be
14 deleted.

15 Also, since the McGettigan draft adds a
16 new definition for "natural grade", it would probably
17 be well to add a definition for "finished grade". For
18 example, finished grade is that grade level that
19 through human intervention has been raised or lowered
20 from the natural grade.

21 And then we can take Mr. McGettigan's
22 definition of how you begin to measure the height of a
23 building, from either the finished grade or the
24 natural grade, whichever is lower, at the middle of
25 the front of the building to the highest point of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 roof or parapet.

2 And that is what I think that we're aiming
3 for. So, I'm sorry to take up your time, I thought
4 that we were going to talk about the broader issues
5 here.

6 And, in fact, I thought that's what your
7 initial submission to the Office of Planning was
8 involved.

9 MS. MITTEN: Well, you raised some of the
10 issues that we do want to address. But, we
11 specifically did not address all of them in this
12 particular rulemaking, which is why I asked you to
13 focus.

14 But none of what you have suggested will
15 be lost.

16 MR. FINNEY: Well, Madame Chair, may I make
17 a part of your record, or at least give to you for
18 your future reference, a text of my testimony.

19 MS. MITTEN: Oh, we have that. Yes, thank
20 you.

21 MR. FINNEY: You have that, all right.

22 MS. MITTEN: And we have the submission
23 that the Chair of your committee delivered to us on
24 the 19th of December, as well.

25 MR. FINNEY: Well, I guess, then I have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 time to go home and hear the President declare we're
2 going to war.

3 MS. MITTEN: I think so, unfortunately.
4 Thank you, Mr. Finney. Mr. Morris?

5 MR. MORRIS: Yes. Thank you, Madame
6 Chairman and members of the Commission. I'm Bob
7 Morris, and I'm representing ANC 6C. On March 4th of
8 this year, ANC 6C heard a presentation by Mr.
9 McGettigan regarding the proposed text amendment.

10 On the definition of building height,
11 presented here as Case 02-35, the Planning and Zoning
12 Committee of ANC 6C had previously met with Mr.
13 McGettigan on this matter and thoroughly discussed the
14 proposed definition.

15 As representative of ANC 6C, I've
16 personally also communicated with Mr. McGettigan on
17 this case, and received and reviewed the materials
18 that he provided to the commission.

19 After thorough deliberation and our public
20 meeting, ANC 6C strongly endorsed the proposed text
21 amendment as a needed clarification of the existing
22 text regarding building height.

23 The neighborhoods in ANC 6C have
24 particular concerns regarding building heights and
25 proposed development projects that could overpower the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 adjacent residential areas, thereby devaluing the
2 economic, aesthetic and ambient character of our
3 homes.

4 This proposed amendment would provide some
5 protection for our homes against the understandable,
6 but sometimes detrimental, desire of developers to get
7 maximum value from their projects by increasing
8 building heights above the norm for Washington DC.

9 It is viewed as an improvement to the
10 tools that the Zoning Commission uses to provide
11 balance between commercial and residential concerns.
12 The neighborhoods of ANC 6C are currently in the prime
13 path of growth, from downtown to the northeast.

14 While we welcome the growth as vital to
15 improve the economic opportunities in our
16 neighborhood, we are also determined to ensure that
17 this growth does not come at the cost of destroying
18 the lifestyle that thousands of current and former
19 residents have worked, and are working, to build.

20 We are pleased to report that the Office
21 of Planning has shown every indication that they
22 recognize our concerns, and are working to assist us
23 in negotiating the path of economic growth, in a way
24 that benefits the residents and preserves their
25 neighborhoods.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We feel that the proposed text amendment
2 is one manifestation of that partnership between the
3 ANC and the Office of Planning. As the appointed
4 representative of ANC 6C, I respectfully call on the
5 Zoning Commission to give great weight to the support
6 of our ANC for this proposed text amendment in your
7 deliberations.

8 And I look forward to working with you on
9 the many future projects that are coming up in our
10 neighborhoods. And, I have to say, I was really sure
11 about everything until the presentation --

12 And I'm still pretty sure that what he's
13 saying is that they're not going to measure the grade
14 from the top of the bridge.

15 (Laughter.)

16 MS. MITTEN: That's right, Mr. McGettigan,
17 right?

18 MR. McGETTIGAN: That's correct.

19 MS. MITTEN: Yes, just to cut through all
20 of it, yes. Any questions for Mr. Morris? Thank you.

21 MR. MORRIS: Thank you, very much.

22 MS. MITTEN: Anyone else representing an
23 ANC in the building height amendment case?

24 MR. AICHES: I am.

25 MS. MITTEN: Take a seat. What ANC would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that be?

2 MR. AICHES: Well, my name is Alan Aiches
3 and I'm Chair of the ANC 3D Taskforce on Zoning. And I
4 just wanted to say that I had been -- I apologize for
5 being late, I had been caught in traffic.

6 I had assembled a Power Point presentation
7 that was to dovetail with John Finney's presentation
8 to you a few moments ago, and I have two copies of it,
9 and I'd be happy to leave it for your viewing
10 pleasure.

11 MS. MITTEN: That would be great.

12 MR. AICHES: Okay?

13 MS. MITTEN: And we'll have the Office of
14 Planning show us how that works.

15 (Laughter.)

16 MS. MITTEN: Thank you.

17 MR. AICHES: Thank you, very much, I
18 appreciate it. Who should I leave this with?

19 MS. MITTEN: Give it to Mr. Bastida. Thank
20 you, very much. All right, I think there's a little
21 bit of confusion on our sign-up sheet. So, I'll just
22 ask, for anyone who would like to testify in support -
23 - this is on the building height amendment case.

24 Anyone who wants to testify in support?

25 MS. ZARTMAN: Good evening, Madame Chair,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and ladies and gentlemen.

2 MS. MITTEN: Good evening.

3 MS. ZARTMAN: I'm speaking tonight on
4 behalf of the Committee of One Hundred on the Federal
5 City, which authorized this presentation. And, as both
6 it's Vice Chair and the Chair of its Zoning
7 Subcommittee, I want to thank you for the opportunity
8 to speak on what should be a straightforward, but very
9 important, text amendment case effecting the way in
10 which buildings are to be measured for compliance with
11 Zoning.

12 The Committee of One Hundred is supportive
13 of this clarifying language, which certainly appears
14 to comply with provisions of the comprehensive plan,
15 and with reasonable interpretation of the Height Act.

16 The grade, as defined in the proposed
17 definition, certainly seems more consistent with these
18 citations that the observations from Holland and
19 Knight, although I gather they perhaps have been
20 withdrawn.

21 Certainly, the arguments about variations
22 in natural grade have an element of truth, but less
23 logic than arguments about changing elevated surfaces.

24 If, as Mr. Parsons, I believe, once
25 suggested, when measuring building height from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Whitehurst Freeway, what would the impact of the
2 removal of the Whitehurst be?

3 Of course, the Whitehurst has no sidewalk,
4 but would the station place argument be moot if the
5 sidewalks were removed from the H Street Bridge? I see
6 the elements as constantly changing, and agree that
7 the approach that Office of Planning has recommended
8 seems the more sound and workable one.

9 Like others, our wish would be that the
10 proposal went further and articulated greater control
11 of the vague language about rooftop structures in
12 various regulatory provisions.

13 The recently considered Waterfront Open
14 Space proposal sought a restrained 40-foot height, but
15 allowed the regular 18.5-foot rooftop structure, and
16 potentially more allowance for staircase and other
17 structures, as an example.

18 It's possible that the definition that's
19 proposed needs an additional element to include the
20 high-water mark for the proposal on Waterfront Open
21 Space.

22 Further, height is normally measured, as
23 you well know, from the street most favorable to the
24 developer. The only W1 square in Georgetown intended
25 similarly to limit buildings to 40-feet now has a 100-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 foot structure along its riverside - another instance
2 of water Carter Brown would probably have called a
3 casuistry of datum.

4 The manner in which, for zoning purposes,
5 the several structures are considered a single
6 building because they were connected at a subterranean
7 garage level.

8 Or the interpretations that have allowed
9 other structures to be treated as a single building
10 because they are united by structural figments or
11 gossamer canopies.

12 We would welcome proposals for text
13 amendments that would eliminate such artificial
14 manipulations of what should be straightforward
15 analysis within a scheme to keep structures in design
16 relationship to one another and to the larger built
17 environment.

18 Such proposals, drafted without reference
19 to pending cases, would be a considerable benefit in
20 the present spate of development proposals, and would
21 position us all more fortuitously for the increase in
22 such development that many believe is coming.

23 Thank you for the opportunity to put the
24 Committee of One Hundred on record, and I'd be happy
25 to answer any questions you might have.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MITTEN: Thank you. Let's hear from Mr.
2 Clark first, and then we'll ask questions.

3 MR. CLARK: Thank you, Chairman. My name is
4 George Clark here as President as the Forest Hills
5 Citizens Association. And, like John Finney, I'm not
6 here so much to speak about the proposal, although I
7 think the proposal as presented by the Office of
8 Planning to deal with the specific situation that it
9 was facing here, is one that solves the problem.

10 And one, as a matter of principle, is one
11 that we could support. But we think, like John, it
12 does bridge to the issue of development in residential
13 areas, and in particular, in our 1A.

14 And that's why I am here, to ask that this
15 Commission look at the definition of building height
16 in our 1A. As the Chair is well familiar, there have
17 been two cases before the Board of Zoning Adjustment
18 in recent years, the last three years, from Forest
19 Hills, dealing with height.

20 The so-called four-story house in the
21 three-story zone, and also a forty-foot house at 2944
22 Chesapeake Street, where the question of where was
23 height measured from.

24 And that house became critical as to
25 whether or not the house violated the forty-foot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 limitation. The proposal that ANC 3D about measuring
2 height, at least to the peak of the roof or parapet,
3 rather than the height of the ceiling of the top
4 story, is something that we think is important, and
5 would help solve some of that problem.

6 There was a question posed, I think from
7 Commissioner Hood, that related to measurement from --
8 and Mr. McGettigan replied about measurement from the
9 curve.

10 And we have met with the Office of
11 Planning, and made them aware of what some of our
12 ideas and proposals are, and I think we've had good
13 and constructive proposals.

14 But one of the issues certainly has been
15 either the raising of the grade at the property, as
16 was done at 4512 28th Street, or the lowering of the
17 grade, as was done at 2944 Chesapeake Street.

18 Both of which can result in very strange
19 anomalies when it comes to measuring height.
20 Commissioner Hood, your question about should there be
21 some other type of measurement mechanism used other
22 than the middle of the front, I think is a good one.

23 I will confess that I think I don't have
24 an answer to that question tonight, as to what it
25 should be. Whether it should be the West Vancouver

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proposal, whether it should be done as it's done in
2 Fairfax County, and in a number of other ordinances
3 with different averaging positions.

4 Because I agree with the Chair that some
5 of those can get pretty complicated, although I will
6 suggest that perhaps sometimes diagrams might be
7 useful in helping to figure that out, so that the
8 developer can know what he can do, and the citizens
9 can also know what is permissible at their site.

10 I agree with the Committee of One Hundred
11 that there are a number of text amendments that may be
12 useful in this area. I'm thinking of another house at
13 2800 Davenport Street, which was before the Commission
14 of Fine Arts on any number of occasions.

15 And when you look at where the height is
16 measured from at that house, you would see at 2800
17 Davenport and the side of the building that faces
18 Davenport Street, it meets the forty-foot height
19 requirement.

20 It meets the three-story requirement,
21 although if you go around the corner of the house to
22 where the front actually faces Broad Branch Road, you
23 look at more -- what is closer to a four or a maybe
24 even a five-story house, depending on where you're
25 looking at.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So, I think where it is measured from, and
2 the ability of the builder to decide which street you
3 may be measuring from, is an important consideration
4 to be taken up by this Commission as well, and one
5 that might minimize the concerns that have been raised
6 in the neighborhoods about the so-called McMansion
7 building, either in a tear-down or in an brand new
8 development, as 2800 Davenport Street is.

9 That's all I have to offer tonight.
10 Although I had intended to bring some pictures, maybe
11 it was a good thing tonight that I didn't have any.

12 MS. MITTEN: Thank you. Any questions for
13 Ms. Zartman or Mr. Clark? All right, thank you both
14 for coming down tonight. Anyone else who'd like to
15 testify in support? Support? Oh, great.

16 Now that is a proper green tie and green
17 shirt for St. Patrick's Day. I need you to turn your
18 mic on now though.

19 (Laughter.)

20 MR. QUIN: So now it's going to be really
21 recorded. Madame Chairperson, and members of the
22 Commission, my name is Wayne Quin of the Law Firm of
23 Holland and Knight, representing in this matter
24 tonight, the John Akridge Company, in connection with
25 their proposed acquisition and development of the air

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rights parcel north of Union Station on both the north
2 and south side of H Street, between 1st and 2nd Streets,
3 NW.

4 I'm pleased to report to you, that after a
5 great deal of discussion and analysis, that the John
6 Akridge Company has reached an agreement with the
7 Office of Planning, and with the Zoning Administrator,
8 on an appropriate methodology for locating the point
9 of measurement for this project.

10 And you'll see that in the letter, one-
11 page letter, which we received just today, from the
12 Zoning Administrator - in fact, it was late in the
13 afternoon.

14 Along with that exhibit, I'm submitting
15 our request for confirmation from the Zoning
16 Administrator, which contains a history of the point
17 of measurement, and a lot of history dealing with the
18 1910 Height Act, which I hope you'll read before you
19 make a final decision.

20 I do want to note that the Akridge Air
21 Rights case will come before the Zoning Commission as
22 a planned unit development, so you'll have approval
23 rights in terms of the height and massing.

24 It will also -- at least a major portion
25 of it, if not all, will go before the Commission of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Fine Arts. I have several brief points, but I think
2 they're important.

3 First, I think it's clear that we
4 recognize the specific issue that's troubling a lot of
5 people, which is by virtue of a bridge, or some type
6 of passageway that goes way above the normal grades,
7 could someone raise the point of measurement to some
8 point that it would not be appropriate to build that
9 building.

10 So, we recognize that. But, however, I
11 want to point out as we set forth in our memorandum of
12 September 9th of 2002, that that memorandum, I believe,
13 continues to be applicable, with reference to the 1910
14 Height Act.

15 And, which is a very clear, an unambiguous
16 way to determine how height is measured. And I think
17 it has served the city well. It's important to
18 recognize that the language of the Act, while setting
19 overall limits of height, as it relates to streets,
20 clearly allows, in fact requires, interpretations
21 permitting greater heights where there's an
22 alternative, rather than lesser heights, where, for
23 example, there are more than one front, rather than
24 requiring the lesser of the alternatives.

25 And there's a reason for that, because

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there's an overall limitation in the District of
2 Columbia. And I think the legislative history is
3 clear, that it's to encourage new construction and
4 development within those overall limitations.

5 The second point I'd like to make is that
6 the injection into the point of measurement provisions
7 of natural grade, as proposed, I believe is
8 problematic.

9 It's somewhat vague, and not that
10 applicable to urban areas. So, I suggest,
11 specifically, two changes. First, when you look at the
12 report from Mr. Mcgettigan, the first amendment that
13 adds the term "curb shall reflect the curb at grade" -
14 -

15 By the way, the 1910 Height Act refers to
16 sidewalk, not curb, that's been an interpretation. The
17 case of a property funding on a street that is
18 elevated above grade, the height of the building shall
19 be measured from the lower of the natural grade, or
20 finished grade.

21 And we would submit that that should be
22 from the higher, it may be from the higher. In fact,
23 the 1910 Height Act is mandatory when it says you have
24 a higher street, you shall measure from the street
25 that provides the higher point of measurement.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So, I think to be consistent
2 philosophically, and still acting within the
3 constraints of this Commission, which is one of the
4 reasons we're appearing in support is that there are
5 appropriate overall restraints and constraints.

6 But, that within that, you should provide
7 flexibility. So, we would suggest that the word
8 "lower" be changed to "higher". Secondly, and this is
9 very important, in the definition of natural grade,
10 where we're now reading in the case of property
11 fronting on a bridge or viaduct, a building shall be
12 measured --

13 -- vision, it would say natural grade is
14 the undisturbed ground level formed without human
15 intervention, which you're not going to find much in
16 the District of Columbia.

17 I'm just finishing, where the undisturbed
18 ground level can be ascertained, or the undisturbed
19 existing grade, because the other language is
20 confusing.

21 That really completes our testimony. I'd
22 be glad to answer any questions, I wanted to keep it
23 under three minutes.

24 MS. MITTEN: Thank you. Did you have
25 something to submit to us in writing on your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 suggestions, or did you just have the memo?

2 MR. QUIN: I just had the memo, I'd be glad
3 to submit that for the record. They're fairly simple.

4 MS. MITTEN: Right, I just wasn't keeping
5 up with the second one quite rapidly enough, so?

6 MR. QUIN: If you read that section,
7 specifically, the way it reads now, it says or where
8 the undisturbed ground level cannot be ascertained
9 because of an existing building or structure --

10 MS. MITTEN: Okay, and you were suggesting?

11 MR. QUIN: Striking the cause of an
12 existing building or structure. There may be other
13 situations where the undisturbed ground level cannot
14 be ascertained.

15 For example, specifically in our case --

16 MS. MITTEN: Okay.

17 MR. QUIN: The point of measure will be
18 from the upper level of the track bed, where there are
19 two levels. And there is an improvement there of
20 tracks running across the bed, and we would be
21 measuring from the upper tracks.

22 MS. MITTEN: Okay. Thank you. Any questions
23 for Mr. Quin? Thank you, very much.

24 MR. QUIN: Thank you.

25 MS. MITTEN: Anyone else to testify in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 support? Mr. Watson? I believe I remembered your name
2 correctly.

3 MR. WATSON: That's right.

4 MS. MITTEN: I need you to turn on that
5 microphone and identify yourself for the record,
6 please.

7 MR. WATSON: I'm George Watson. I'm
8 president of the Wesley Heights Historical Society,
9 and I'm on the ANC 3D Task Force. As John Finney said,
10 we are trying to get you to consider, at a future
11 date, the question of the height of buildings, and the
12 measurement of the height of buildings, in residential
13 areas.

14 I think the only reason that I'm up here
15 to say anything to you is, I have had horrible times
16 with equivocation -- in other words, when there's an
17 either/or and you can do whichever way you want.

18 We're dealing with the DCRA, with the
19 Zoning Administrator, and it has caused innumerable
20 headaches. I see in the testimony that you've just
21 had, equivocation.

22 You can either make the measurement from
23 the front of the building, or you can make it around
24 the corner. If that slopes up, you can have another
25 measure.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I think there ought to be just one
2 measurement that is specified in the Zoning
3 Regulations, so that we do not have the possibility of
4 somebody driving a black truck through a loophole in
5 the Zoning Regulations.

6 Thank you, very much.

7 MS. MITTEN: Thank you, Mr. Watson. Does
8 anybody have questions for Mr. Watson?

9 MR. HOOD: Madame Chair, not just for Mr.
10 Watson, but also Mr. Clark. I would like for them to
11 give us their comments pertaining to this text
12 amendment.

13 If they could provide something for the
14 record, to us, so that we can have it.

15 MS. MITTEN: Written comments is what he's
16 looking for.

17 MR. HOOD: Written comments.

18 MR. CLARK: I'd be happy to do that,
19 Commissioner.

20 MR. HOOD: Thank you.

21 MS. MITTEN: Thank you.

22 MR. WATSON: I'll go home and do it after
23 the President speaks.

24 MS. MITTEN: Thank you, Mr. Watson. All
25 right, I have no one else in support? Okay, we'll move

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to opposition. Mr. Grigg, Mr. Collins, Ms. Hubbard?
2 Mr. Grigg, why don't you go first?

3 Oh, Mr. Collins is going to speak, okay.

4 MR. COLLINS: Good evening, Madame
5 Chairperson and members of the Commission. My name is
6 Chris Collins, with Holland and Knight, and seated to
7 my right is Steven Grigg, who's president of the
8 Republic Properties Corporation.

9 We're here -- we're opposed -- Republic
10 Properties Corporation is opposed to the original
11 proposed language, as published in the DC Register for
12 this case.

13 However, we are here to support the
14 revised language in the OP report, that would portal
15 site from the coverage of this proposal. What I've
16 just submitted to the Commission is a memo, that I've
17 prepared for the Office of Planning, which they've
18 already seen, which was submitted to them prior to the
19 revisions that they put in their report, giving a
20 background history about the development of the portal
21 site.

22 The portal site is between 12th and 14th and
23 is bisected by Maryland Avenue SW. The portal's
24 project has been ongoing since 1986. Maryland Avenue
25 was actually constructed as part of the portal's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 project, to provide access to the buildings in that
2 development.

3 There have been a series of approvals,
4 over time, for development of that site, all using
5 Maryland Avenue as the point of measurement. There are
6 two office buildings that have been constructed.

7 The Mandarin Oriental Hotel is under
8 construction, presently, all using Maryland Avenue as
9 a point of measurement. The Fine Arts Commission has
10 looked at the project, both the existing buildings and
11 the buildings under construction, and those proposed
12 for the north side of Maryland Avenue, all using
13 Maryland Avenue as the point of measurement.

14 The RLA has approved, obviously, the
15 buildings on the south side of Maryland Avenue. The
16 RLARC will have jurisdiction over design on the north
17 side. The council has also, as part of an amendment to
18 the schedule of heights back in the late 90's,
19 recognized -- and you'll see in the documents we
20 submitted, that the portal's project is to be
21 developed using Maryland Avenue as the point of
22 measurement.

23 The thrust of the Office of Planning's
24 amendment was really to take out issues where you have
25 a raised roadway that connects from maybe one side to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the other side, like in the H Street issue, and to
2 exempt those which just provide an access to the site.

3 And I had several discussions with Mr.
4 McGettigan about that and the language about a viaduct
5 or a bridge was specifically chosen so that it would
6 recognize that the portal's project was not intended
7 to be swept into this amendment.

8 And I think that the language on the
9 bottom of page two of the report, which summarizes the
10 recognition that the portal site was not intended to
11 be part of this.

12 And we just wanted to give you, for the
13 record, the background information, in case you had
14 any questions about that. One last point that Mr.
15 Mcgettigan wrote, he said other wording, referring to
16 his amendment, other wording may be contemplated to
17 exempt this complex development, but OP felt that the
18 change to the use of bridge or viaduct would provide a
19 simpler, cleaner solution that meets the intent of the
20 amendment.

21 It certainly is the cleanest and simplest.
22 If you want to consider other types of things, other
23 ways to exempt the portal site, certainly the 1910
24 Height Act makes exemptions by lot and square and
25 address.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 That's one way. Certainly the DD
2 regulations have exemptions by square and lot, so
3 that's a thought. But, to keep it as simple as
4 possible, I think that the proposal that was developed
5 by OP in their report, that there's the recommended
6 action that they put as Applicant in this case, is
7 that which we would support.

8 MS. MITTEN: Thank you, Mr. Collins.

9 MR. COLLINS: Thank you. And we're here to
10 answer any questions you may have.

11 MS. MITTEN: Okay, we'll here from Mrs.
12 Hubbard and then we'll ask questions. Mrs. Hubbard,
13 can you turn on that mic for me please?

14 MS. HUBBARD: As you know, I don't
15 represent an organization tonight. But I have, for
16 many, many years, testified before this Commission and
17 the VZA and taken an interest in everything to do with
18 height of buildings in the District.

19 I've testified in many, many zoning cases.
20 Now, I too agree with some of the earlier witnesses,
21 from the ANC's and the Commission, that you need to
22 take an overall look at the entire height program, and
23 this particular thing, which is designed to solve a
24 particular problem for a case that we should never
25 have.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Because this is involved with height too.
2 This idea of transferring building height, plain air,
3 off the Union Station to the north, that should never
4 be done.

5 That adds to the height. And what you
6 should try to do, as you talk about urban design, is
7 to keep things lower, not allowing any transference of
8 height.

9 Look at the terrible situation that's
10 created in the west end, with that little tiny library
11 across the street, and that horrible big building to
12 the south.

13 I mean to say, Ms. Mitten, Mr. McGettigan
14 talks about the horizontal nature of the District.
15 What's horizontal when you've got a little low
16 building like the west end library and this horrible
17 big building across the street.

18 That's transfer of air rights. I mean to
19 say, there's nothing horizontal about that. Now,
20 there's the other thing --

21 MS. MITTEN: You only have a minute left,
22 so if you want to tell us something specific?

23 MS. HUBBARD: I have a lot more to say, Ms.
24 Mitten. The business of roof structures. Here, it says
25 it's going to go up to the parapet - it should go up

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to the top of the roof structures.

2 You saw the pictures he presented. You see
3 all of those little roof structures, that's a bunch of
4 warts all over the District of Columbia. Now, we have
5 testified against roof structures ever since the
6 regulation was written.

7 Now, no other cities - New York doesn't
8 have a roof structure thing like that. You have got to
9 reform the roof structure thing right away, quick,
10 before any of these people get away with adding 18
11 feet to air rights, which is what they're planning to
12 do.

13 You're going to get a great big building.
14 There's also a woman that's thinking of getting into
15 politics, Donna Brazil, maybe you've heard of her?

16 MS. MITTEN: She's already in politics
17 already.

18 MS. HUBBARD: All right.

19 MS. MITTEN: But I'm going to need you to -
20 -

21 MS. HUBBARD: She is in favor of raising
22 the height limit and abolishing the 1910 Act, and how
23 do you know they're all in cahoots with her?

24 MS. MITTEN: I don't know.

25 MS. HUBBARD: I mean to say --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MITTEN: Ms. Hubbard, I'm going to need
2 you to put the rest of your comments in writing --

3 MS. HUBBARD: Now let me ask --

4 MS. MITTEN: Your time is up, and I'm going
5 to need you to put the rest of your comments in
6 writing.

7 MS. HUBBARD: Oh, I have a great deal, I
8 have eight pages here all written out.

9 MS. MITTEN: We don't have time, you're
10 limited to three minutes.

11 MS. HUBBARD: You know, let me just say one
12 thing to you, Ms. Mitten. Your regulation with regard
13 to limiting our time, this is not a judicial case, not
14 a contested case. This is a case where you're supposed
15 to hear philosophy - this is a legislative case.

16 MS. MITTEN: That's right. And in order to
17 get through the other case we have this evening --

18 MS. HUBBARD: No, I'm sorry --

19 MS. MITTEN: That's why we put limits. But
20 we read absolutely everything you submit for us in
21 writing. So, I'm going to have to ask you if you have
22 further comments, to submit it in writing.

23 MS. HUBBARD: All right. Please ask him to
24 write a comprehensive look at the whole thing.

25 MS. MITTEN: We will.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. HUBBARD: I have one more very
2 important thing to say.

3 MS. MITTEN: You're going to have to put it
4 in writing.

5 MS. HUBBARD: All right.

6 MS. MITTEN: Any questions for Mr. Collins
7 or Mrs. Hubbard? Any questions?

8 MR. HOOD: I will say, Mrs. Hubbard says
9 she has eight pages. I hope that we can get all eight
10 of those pages. We'll copy them, if you just give us
11 that one copy, we'll make sure we get copies. Thank
12 you.

13 MS. HUBBARD: Thank you.

14 MS. MITTEN: Thank you, all. Anyone else
15 who would like to testify in opposition of the
16 building height measuring point text amendment? All
17 right, I think we need to leave the record open for
18 just about a week, Mr. Bastida, in order to give
19 anyone time who might want to submit something in
20 writing, for the record.

21 MR. BASTIDA: We could do that, Madame
22 Chairman. I was thinking of being a little more
23 generous and giving two weeks, until the 31st of March,
24 but we can do it on the 24th.

25 MS. MITTEN: Oh, that's fine, 31st of March

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is fine.

2 MR. BASTIDA: Which is Monday, the 31st of
3 March at 3:00 p.m. in the afternoon.

4 MS. MITTEN: All right, we will leave the
5 record in this case open until -- did you say it's
6 Monday March 31st?

7 MR. BASTIDA: Correct, Madame Chairman.

8 MS. MITTEN: And all the filings must be in
9 the office by 3:00 p.m., and then we will put it on
10 the agenda of one of our regular monthly meetings. So,
11 I think we're ready now to move to the Takoma Park
12 case.

13 MS. MITTEN: As I said, I'm not going to
14 repeat the rules of procedure, which I read initially.
15 But the second case for this evening is Zoning
16 Commission Case No. 03-01.

17 And that is a request by the Office of
18 Planning for a map amendment in square 3187, lots 50,
19 823, 826 and 834. And that would be re-zoning from CM1
20 to C2A.

21 MS. STEINGASSER: My name is Jennifer
22 Steingasser, with the Office of Planning. The case
23 before you proposes to re-zone the subject property
24 from CM1 to C2A, consistent with both the
25 comprehensive plan, as well as the Takoma Plan.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The Takoma Plan was a product of an 18-
2 month community-driven planning effort that OP led,
3 beginning in the summer of 2000, and culminating in
4 its adoption by the city council, by resolution on
5 June 4th, 2002.

6 The purpose of the plan was to engage the
7 citizens in a community participation process that
8 created a future vision for development, preservation
9 opportunities and leads, and lead to a revitalization
10 for the entire commercial district.

11 To that goal, the subject properties
12 tonight are proposed for re-zoning, and include the
13 lots you've read into the record. They're bound by
14 Blair Road, Chestnut Street and Spring Place.

15 The site is also surrounded by existing
16 R1B single-family district to the north and C2A
17 moderate density commercial to the south and east. The
18 property is also in the historic district.

19 The generalized land use map identifies
20 the area under consideration for mixed use, moderate
21 density commercial and moderate density residential.
22 The proposed C2A district permits low density uses
23 that are generally low in scale and character.

24 The predominant zoning for the surrounding
25 areas, as I've stated, are the C2A and the R1B. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 C2A zone is consistent with the generalized land use
2 map, for identification, in that it is designed to
3 provide facilities for shopping and business needs,
4 housing and mixed use outside the central core.

5 It's development standards are low and
6 moderate density, and it's conceived to be adjacent to
7 residential areas and along main highways. In the
8 staff report, we've provide several ward four top plan
9 consistencies, including sections 1505 and 1506, which
10 are both objectives and actions in support of economic
11 development, 1508 which are objectives for housing,
12 1529 and 1530, most notably, are objectives and
13 actions in support of land use and zoning.

14 They go into great detail, which I won't
15 read into the record, but will stand on detailing the
16 property and its desire to be re-zoned to C2A. As far
17 as nonconforming structures and uses in the area, a
18 survey of the existing properties revealed only one
19 expected nonconforming use, which is a stained-glass
20 manufacturer in the zone.

21 However, the owner of the property land is
22 construction, is considering and has been working with
23 our preservation office, as well as the neighborhood
24 planner, to design a project consistent with the new
25 proposed zoning.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We've met with all of the property owners
2 that would be affected, and they've had no objection
3 to the proposed re-zoning. As a result, we recommend
4 that the re-zoning be adopted.

5 MS. MITTEN: Thank you. You were so eager
6 to jump in there, I didn't get to my one preliminary
7 matter, which is the Office of Planning has requested
8 a waiver of the rules for the late submittal of the
9 posting and affidavit of posting.

10 It was late posting, and late submittal of
11 the affidavit of posting. Is there any objection?

12 MR. MAY: It seems to me it was very late.
13 Is that right? It was 10 days instead of 40, is that
14 what it was?

15 MS. MITTEN: I think that's about right.
16 You can ask them if they can address --

17 MS. STEINGASSER: Yes, it was 30 days late.
18 Yes, sir. And then, we provided a list of other
19 outreach that we've done, both to address this case
20 and this plan.

21 There was the standard Office of Zoning
22 notification to the Washington Times, notification of
23 the 200-foot property owners, notification of the ANC.

24 In addition, the Office of Planning met
25 with the ANC 4B November 21st, and the Plan Takoma on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 November 26th, of 2002. We had a community briefing
2 with council member Adrian Fenty on December 2nd, prior
3 to the set down, and then of course we had the set
4 down in January.

5 And we do, respectfully, request that the
6 public hearing be commenced and the rule be waived.

7 MS. MITTEN: Is there any objection?

8 MR. MAY: I'm just a little bit
9 uncomfortable about it because for most people who
10 just live in the area, not within 200-feet, this is
11 the major means by which they're notified.

12 MS. MITTEN: Right.

13 MR. MAY: And it's very obvious when it
14 occurs, and it's out there for an extended period,
15 because the notice is usually out there and it starts
16 to blur and you can't read it, but at least you know
17 something's happening.

18 MS. MITTEN: We can leave the record open.

19 MR. MAY: We ought to take some means to
20 make sure there's comment on it.

21 MS. MITTEN: Okay.

22 MR. HOOD: Madame Chair, I would also agree
23 with Commissioner May. But one of the things, when I
24 was looking at the other list of advertisements, not
25 too many people, at least that I know, read the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Washington Times.

2 The ANC stuff, I think, gets very
3 confusing. What gave me a little comfort was the 200-
4 feet property owners. So, I have a note here to
5 myself, and I'm glad Commissioner May brought it up,
6 but it would be good if we leave the record open.

7 Because I know, a lot of times, running
8 through the city, we all look at those posting, just
9 to see what they are. But the 200-feet, so I feel fine
10 with moving on and leaving the record open.

11 MS. MITTEN: Okay, thank you.

12 MS. McARTHY: We should probably also note
13 that this is a zoning change to implement the plan
14 change, that not only went through an extensive public
15 process in and of itself, but then the city council
16 further held public meetings in conjunction with that.

17 So, we had a change in staff members
18 responsible for this case, which is why the
19 notification sort of slipped through the cracks, as
20 the person who was originally responsible left.

21 But we do feel confident that we've met
22 with all the potentially affected parties, or reached
23 them somehow.

24 MS. MITTEN: Thank you. Any questions?

25 MR. BASTIDA: Madame Chairman, in addition,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this would be a proposal we're making. And if the
2 Commission so wishes, we can extend the time of the
3 proposal making it open to receive more comments.

4 MS. MITTEN: Thank you. So, we have two
5 ways to approach the notification problem, but we can
6 deal with that when we get to the closing. Any
7 questions from Ms. Steingasser on the re-zoning?

8 Any questions?

9 MS. MITTEN: All right, are there any other
10 government reports that you're aware of?

11 MS. STEINGASSER: No, Ma'am.

12 MR. BASTIDA: Sorry to interrupt again, but
13 I would also like for the Commission to leave the
14 record open, to file a notarized maintenance of
15 posting by the Office of Planning.

16 Unfortunately, they couldn't get it
17 notarized today, but they can get it tomorrow.

18 MS. MITTEN: Well, the record will just be
19 open in general, so you can submit that.

20 MR. BASTIDA: Okay, thank you.

21 MS. MITTEN: Thank you. Is anyone here
22 representing ANC 4B? All right, then we'll move to
23 organizations and persons in support. Just come
24 forward, anyone who'd like to testify.

25 Are you representing a group, or yourself?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MOSS: Historic Takoma.

2 MS. MITTEN: Oh, Historic Takoma. So she'll
3 have five minutes.

4 MS. MOSS: Actually I sent this in on
5 Friday and you have it, so I actually don't feel that
6 I need to go through the whole thing.

7 MS. MITTEN: That's fine.

8 MS. MOSS: I'd just like to say that we are
9 --

10 MS. MITTEN: Would you identify yourself
11 for the tape?

12 MS. MOSS: Oh, I'm sorry. I'm Bonnie Moss,
13 I'm Chair of the DC Preservation Committee of Historic
14 Takoma. And we are in support of this. This area is
15 adjacent to one of our most historic streets, which
16 probably because of the industrial nature of what is
17 going on in Spring Place, has gotten to be very run
18 down.

19 So, we're hoping that the changes that
20 would follow this would make an improvement there.

21 MS. MITTEN: Great, thank you. Are there
22 any questions for Ms. Moss? We have her submission
23 and?

24 MR. HOOD: Yes, Ms. Moss, I was looking
25 over your submission. What is the unattractive

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 placement of the unattractive industrial quality?
2 What's going on over there now?

3 MS. MOSS: There are some body shops and a
4 rug cleaning company there, and mostly the body shops
5 - there are cars up and down the street. The street
6 there is kind of all sort of broken up and lined with
7 cars in various states of repair and disrepair.

8 MR. HOOD: Thank you.

9 MS. MITTEN: Any other questions? Thank
10 you, very much.

11 MS. MOSS: Thank you.

12 MS. MITTEN: And are you representing a
13 group or yourself?

14 MS. WHEELER: I am representing myself,
15 although I am an ANC Commissioner for 4B02. The
16 Commission, however, has not had a chance to discuss
17 this and taken a position on this in this round.

18 MS. MITTEN: All right.

19 MS. WHEELER: The new Commission, started
20 in January.

21 MS. MITTEN: Okay.

22 MS. WHEELER: So I'm representing myself.

23 MS. MITTEN: Could you identify yourself
24 for the record?

25 MS. WHEELER: Yes, Faith Wheeler, I live in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Takoma, DC. I'd like to wish you all a Happy St.
2 Patrick's Day, and thank you for holding this hearing.

3 The character of the street, of the area
4 right now, as Ms. Moss indicated, is not at all
5 attractive, and so we're really looking forward to a
6 change, and the zoning supports it.

7 I am, again speaking for myself. I believe
8 that it will contribute to the important
9 revitalization of Takoma, DC. My concerns, however,
10 would be that any changes, any construction that may
11 result from this zoning, be respectful of the
12 character of the community - particularly the
13 Victorian architecture and the neighboring streets, of
14 Chestnut.

15 As you heard Ms. Moss indicate, Chestnut
16 is one of the oldest streets in the city. This
17 architecture is one of the signature components of the
18 residential community of Takoma.

19 It's also one of the factors that draws
20 destination shoppers to the area. In order for
21 commercial revitalization to take hold in Takoma, DC,
22 which we hope to do starting --

23 Well, we're starting this process now to
24 gear up to apply to DC main streets, in fact. It's
25 very important to support and enhance the unique

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 character of the community.

2 As we speak, our neighboring larger
3 community of Silver Spring, is now undergoing very
4 important changes in becoming an intense urban center.
5 We, in the Takoma community, can offer a vibrant
6 compliment and alternative to their urban re-design.

7 And, in so doing, contribute to attracting
8 more destination shoppers. This is particularly
9 important for the viability of the future revitalized
10 main street of Takoma - all speaking in future tense.

11 Right now, if you're familiar with Takoma,
12 DC, our main street, 4th Street, is not very
13 attractive. We're looking to something very wonderful
14 there. This is important for that.

15 And it's also important to generate
16 synergy with Takoma Park, MD, which is far ahead of us
17 in the game of revitalizing. But it's struggling. The
18 shops there are truly struggling.

19 I happen to be a secretary of the Takoma
20 Old Town Business Association as well. And we're very
21 concerned. That organization -- I'm not representing
22 them, but I can tell you that that organization, which
23 has members on both sides of the city/state line is
24 very concerned.

25 The members are very concerned about this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 particular point, the revitalization of the entire
2 area - their shops, as well as ours coming up, and
3 becoming very important to develop a real small town
4 shopping center.

5 So, I urge you to vote in favor of this
6 proposed change.

7 MS. MITTEN: Thank you, Ms. Wheeler. Do you
8 know, does the ANC intend to take a position on this
9 case?

10 MS. WHEELER: I don't know. I can't answer
11 either yes or no.

12 MS. MITTEN: Can you tell us when the next
13 meeting of the commission is?

14 MS. WHEELER: March 27th.

15 MS. MITTEN: March 27th?

16 MS. WHEELER: Yes.

17 MS. MITTEN: Okay. Any questions for Ms.
18 Wheeler? All right, thank you.

19 MS. WHEELER: Thank you, very much.

20 MS. MITTEN: Anyone else who'd like to
21 testify in support of the map amendment? All right,
22 anyone who'd like to testify in opposition to the map
23 amendment?

24 Anyone who'd like to testify in
25 opposition? All right, then, Mr. Bastida, we can talk

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about a date to close this record. And I'd just like
2 to leave the record open long enough, if the ANC would
3 like to take a position, that the record will still be
4 open.

5 MR. BASTIDA: I was thinking, Madame
6 Chairman, of Friday, April 4th at 3:00 p.m. And that
7 way, the ANC would have approximately a week after --
8 let me check.

9 Yes, slightly over a week after the
10 meeting.

11 MS. MITTEN: Okay, so we will leave the
12 record, in this case, open until Friday, April 4th,
13 2003 - all filings to take place no later than 3:00
14 p.m. And then we will put it on for decision at one of
15 our monthly meetings.

16 And then if we take affirmative action, it
17 will be advertised in the DC Register, with a period
18 of time for comments. And I would suggest to my fellow
19 commissioners, that we'll leave the record open for a
20 period and if we sense that there is some need to
21 leave the record open, or extend the comment period,
22 we can do that when we take proposed action.

23 I'd like to thank you all for coming out
24 tonight, and I now declare this public hearing
25 adjourned.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

(Whereupon, the foregoing matter went off
the record at 7:55 p.m.)