

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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FURTHER PUBLIC HEARING

-----+ IN THE MATTER OF :	
PUD AND MAP AMENDMENT	
DOT HEADQUARTERS	Case No. 03-05
SOUTHEAST FEDERAL CENTER	
-----+	

Monday.
November 24, 2003

Hearing Room 224 South
441 4th Street, N.W.
Washington, D.C.

The Further Public Hearing of Case No. 03-05 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C. 20001, Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
JOHN PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

ALBERTO BASTIDA	Secretary, Zoning Commission
SHARON SCHELLIN	Office of Planning

OFFICE OF PLANNING STAFF PRESENT:

ANDREW ALTMAN	Director
ELLEN McCARTHY	Deputy Director
JOEL LAWSON	Office of Planning

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D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

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

(6:42 p.m.)

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Monday, November 24, 2003. My name is Carol Mitten, and joining me this evening are Vice Chairman Anthony Hood and Commissions John Parsons.

The subject of this evening's hearing is a Further Hearing in Zoning Commission Case No. 03-05, and that's the planned unit development for the Department of Transportation Headquarters. The testimony tonight will be limited to the items outlined in the letter that we sent to the parties, specifically related to the traffic impact of the operation of the project if a portion of the former Third Street, S.E. right of way remains closed to vehicular traffic.

We would like the parties this evening to specifically address the anticipated traffic impacts that can be directly attributable to motor vehicles being precluded from traveling upon the former right of way in light of the proposed project, whether the mitigation measures proffered by the Applicant offset these impacts and if not, whether the public benefits

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1 of the project outweigh the unmitigated impacts.

2 The order of procedure this evening will
3 be as follows. Preliminary matters followed by the
4 presentation by DDOT and/or its consultant,
5 presentation by the Applicant, presentation by ANC6-B
6 and/or 6-D if they're represented here this evening,
7 and then the Office of Planning will make the final
8 presentation. Each party will be given 15 minutes for
9 their presentation, not including questions and cross
10 examination.

11 Since this is a continuation, I won't read
12 the entire opening statement again. I'll just remind
13 everyone to fill out two witness cards if you plan to
14 testify, and when you come forward, give them to the
15 reporter. I'd ask you all to turn off all your
16 beepers and cell phones at this time so as not to
17 disrupt the proceedings.

18 Mr. Bastida, do we have any preliminary
19 matters?

20 MR. BASTIDA: Madame Chairman, the staff
21 has no preliminary matters. Thank you.

22 CHAIRPERSON MITTEN: Anyone else,
23 preliminary matters?

24 All right. Anyone who wasn't previously
25 sworn, if you would now rise to take the oath, who

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1 plans to testify. Mrs. Schellin?

2 MRS. SCHELLIN: Do you solemnly swear or
3 affirm that the testimony you will give this evening
4 will be the truth, the whole truth, and nothing but
5 the truth?

6 Thank you.

7 CHAIRPERSON MITTEN: We're ready for the
8 presentation by DDOT, and I'd have to welcome the
9 Director this evening. It's a distinct pleasure for
10 the Commission to see you. Would you turn on the
11 microphone for me?

12 MR. TANGHERRLINI: Thank you very much,
13 Madame Chair, and I am derelict in filling out my
14 witness cards, so I will do that, if you don't mind,
15 as I proceed.

16 CHAIRPERSON MITTEN: If you'd state your
17 name for the record so he can at least --

18 MR. TANGHERRLINI: My name is Dan
19 Tangherrlini. I'm the Director of the District of
20 Columbia Department of Transportation. I have some
21 prepared testimony which Rachel MacCleery will share
22 with the Commission.

23 Again, good evening, and again my name is
24 Dan Tangherrlini, and I'm the Director of the District
25 of Columbia Department of Transportation. I'm joined

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1 by Rachel MacCleery, who may help me as matters arise
2 and questions that you may be asking. I'm please to
3 be here this evening to present testimony and answer
4 questions about the District Department of
5 Transportation's position on the United States
6 Department of Transportation planned unit development
7 application, filed jointly by GSA and JBG.

8 As you know, DDOT staff have been involved
9 in the review of this application from the very early
10 states. We have worked with the Applicant to address
11 the many issues that inevitably arise during review of
12 an application as complicated and as large as this
13 one.

14 One issue that we have not seen eye to eye
15 on has been the issue of Third Street, S.E. The
16 Applicant believes that this street cannot be opened
17 to vehicular traffic for security reasons, and DDOT
18 wishes this were not the case.

19 All over the city, the Department is
20 facing street, lane, and alley closures, loss of
21 parking, loss of sidewalks, and other public space
22 impacts, all in the name of increased security. As
23 Director of the Department of Transportation, I'm
24 charged with maintaining and enhancing mobility in and
25 around the city.

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1 The cumulative impact of security related
2 closings makes this job a little more difficult.
3 However, DDOT understands that without the closure of
4 Third Street, this PUD could not move forward with
5 U.S. DOT as a tenant, and because we believe that
6 keeping U.S. DOT in the District is important, we've
7 worked with the Applicant to create a mitigation
8 package that will address the impact of not having
9 Third Street available to traffic after this project
10 is built.

11 As you know, DDOT conducted an analysis
12 that showed that the impact of not having Third Street
13 available to traffic had some annual value in
14 monetized costs for extra delays and queues for
15 commuters. In the past few days, DDOT has conducted a
16 second analysis which showed that the delay can be
17 mitigated by improving transit connectivity along M
18 Street, as we've proposed in working with the
19 Applicant.

20 This report took the first analysis one
21 step further. How many vehicular trips we ask would
22 need to be foregone as a result of light rail in order
23 to reduce delays by that same amount that closing of
24 Third Street increased delays. Our analysis found
25 that if light rail on M Street reduced trips to and

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1 from future development on M Street by ten percent and
2 reduced trips to and from future developments near M
3 Street by five percent, then the financial impact of
4 closing Third Street falls to near zero.

5 That is, the original impact of closing
6 Third Street would be effectively cancelled out is a
7 five to ten percent reduction in trips is achieved by
8 light rail. A five to ten percent reduction is a very
9 reasonable assumption for transit of this nature.

10 This is good news because DDOT, in
11 partnership with the Washington Metropolitan Transit
12 Authority, or METRO, is in the initial phases of
13 planning for light rail, street car, or other similar
14 service along M Street. This service will connect
15 both sides of the river, link the growing M Street
16 office corridor, and service the new residential and
17 retail development hoped and planned for along this
18 corridor.

19 As you are aware, the language we
20 submitted on October 27 essentially commits the
21 Applicant to work with DDOT to organize and finance
22 the creation of such a light rail system on M Street.

23 Because we believe the trip productions will be so
24 large and the impact on delays so substantial, DDOT is
25 excited about the prospect of partnering with JBG to

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1 create light rail facilities along M Street, and we
2 believe that this agreement sets the stage for a
3 larger M Street agreement that includes developers on
4 the Southeast Federal Center and along the rest of the
5 corridor.

6 One question is how this agreement will be
7 enforced. Although the only real enforcement
8 mechanism is the city's right to recall the building
9 certificate of occupancy, I believe that the Applicant
10 is genuinely interested in working with the city to
11 make light rail on M Street a reality. In fact, it is
12 in their best financial interests to do so.

13 Annual returns of about 14 percent
14 annually have been estimated on similar light rail
15 investments in the city and along this corridor. I
16 also believe that JVG will want to work with the city,
17 the Zoning Commission, and my staff on future
18 development project and will find it in their long-
19 term interests to be true to their word on this
20 agreement.

21 Given the preliminary nature of the
22 District's planning on M Street corridor, I believe
23 that a rather general agreement to cooperate and
24 finance the light rail is the best that could be hoped
25 for at this point. I believe that having light rail

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1 on M Street will effectively mitigate any impact
2 created by not having Third Street available to
3 traffic, and I look forward to working with the
4 Applicant and the Zoning Commission to bring light
5 rail to M Street.

6 Thank you, and I'd be happy to take any
7 questions you might have.

8 CHAIRPERSON MITTEN: Thank you. I had a
9 couple of questions, and I wanted to start with the
10 analysis that you had provided to us that was done by
11 Dimjim Harris. I believe that it said at some point
12 that you were going to analyze the traffic impacts
13 with and without the DOT headquarters being built with
14 all the other build-outs that were planned, but the
15 analysis, at least as best I could identify, the
16 exclusion from the analysis was with and without the
17 Southeast Federal Center development. I was
18 wondering, is there an analysis that the only
19 differential is the DOT headquarters analysis?

20 MR. TANGHERLINI: We didn't do that other
21 bit of analysis, which would have said what's the
22 existing condition plus Southeast Federal Center. We
23 have the existing condition. That's kind of inherent
24 in the report. That's that first part.

25 So, what we do then is we add the DOT

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1 headquarters and then we either open Third Street or
2 keep it closed as it is currently laid out, and then
3 after that, we add Southeast Federal Center
4 development, and we either open Third Street, or we
5 keep it closed.

6 We've now gone another step and say okay,
7 given the impact that we've estimated that a closed
8 Third Street would have, what would we need to do in
9 the way of a mass transit alternative to drive that
10 back down to zero. What we've found is a very
11 reasonable mode shift of ten percent to get us back to
12 zero.

13 CHAIRPERSON MITTEN: And that's, just to
14 bring closure to my question, is that just related to
15 what additional traffic would be generated by the DOT
16 headquarters, or the broader build-out of the
17 Southeast Federal Center?

18 MR. TANGHERRLINI: I think the ten percent
19 -- sorry.

20 CHAIRPERSON MITTEN: Just state your name
21 for the record when you start.

22 MS. MACCLEERY: Hi, I'm Rachel MacCleery
23 with DDOT. The chart on page 34 includes U.S.
24 Department of Transportation related traffic in those
25 figures. So, there is no separate analysis of no U.S.

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1 DOT with U.S. DOT. They both assume that U.S. DOT is

2 --

3 CHAIRPERSON MITTEN: Part of.

4 MS. MACCLEERY: Is part of it, and then
5 the two assumptions that it compares is with the
6 Southeast Federal Center and without the Southeast
7 Federal Center Development.

8 You second question was in the ten to five
9 percent trip reduction that's required for transit,
10 the assumption there is that the Southeast Federal
11 Center would be fully built out. The reason that we
12 chose that is because, you know, the light rail will
13 come through in a time frame that we could expect the
14 Southeast Federal Center to be developed.

15 CHAIRPERSON MITTEN: Okay. I mean, I
16 understand why you would analyze it -- why you would
17 want to analyze the total built-out, but our charge as
18 it relates to the planned unit development is to
19 assess adverse impacts related to the project itself,
20 and we have to require either mitigation of those
21 specific adverse impacts or that there be sufficient
22 offsetting benefits and amenities that overcome that.
23 So, that's why I'm just trying to nail it down.

24 MR. TANGHERRLINI: Yes, and it wouldn't
25 be a very difficult effort of reverse engineering to

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1 look at the additional impact, the additional traffic
2 impact of the Southeast Federal Center without the
3 U.S. DOT headquarters, but we never -- I mean, in the
4 way the phasing goes forward, we never really
5 contemplated no U.S. DOT headquarters, but a Southeast
6 Federal Center.

7 CHAIRPERSON MITTEN: Right, understand.

8 MR. TANGHERRLINI: The point is what we
9 learned from the mass transit analysis, it's really in
10 many ways, it's the U.S. DOT headquarters that, and
11 the closure of Third Street, that has the largest
12 impact and the one that could be mitigated the most by
13 a mass transit investment.

14 CHAIRPERSON MITTEN: Okay. What
15 additional specificity, if any, can you give to the
16 Commission regarding the nature of the commitment that
17 you have at the moment with the Applicant to "work
18 with" DDOT on providing in the future for light rail
19 or whatever it is that you can do to get more people
20 on transit, what's the nature of that?

21 MR. TANGHERRLINI: I mean, for us, the
22 more important issue for the prospect of developing
23 light rail in the corridor is not, you know, trying to
24 get a single developer with a single PUD to make a
25 single contribution. Frankly, it's getting that

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1 developer on board to a broader effort, similar to the
2 New York Avenue METRO station in which a series of
3 developers realized that they could gain substantial
4 inure benefits by making that targeted investment.
5 Paying for a third of that in-fill railroad station's
6 development, they realize that they have a financial
7 incentive of having better connections to their
8 project because, you know, then people can get to
9 their project and it brings in the investments. It
10 brings in to the nearer term the prospect of having
11 that investment developed.

12 There are certain requirements that the
13 federal government has about proximity to mass
14 transit, and by creating an investment of mass transit
15 along this corridor, what we'd be doing is bringing
16 more of that area into compliance with some of those
17 requirements.

18 So, for us, it's really -- I know the real
19 question is why are you trading a bird in the hand for
20 two in the bush. For us, it's more of we're trading
21 to some extent a bird in the hand for a flock in the
22 bush, and the opportunity to actually bring in some
23 clear private developer interest in a bigger project
24 that would help us gain access to other private
25 developers and get the ball rolling.

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1 CHAIRPERSON MITTEN: Okay. Anyone else
2 have questions?

3 VICE CHAIRPERSON HOOD: Yes, Madame Chair.

4 CHAIRPERSON MITTEN: Mr. Hood?

5 VICE CHAIRPERSON HOOD: Thank you, Mr.
6 Tangherrlini, for joining us this evening. I just had
7 a question about your October 27 memo. The way I'm
8 reading and the way I'm hearing from your comments is
9 that basically what you're putting together here is a
10 study, a study group, is that correct? Because you're
11 bringing in other developers, and you're going to look
12 at trying to get them, like you say, to their sites.
13 So, the initial start here is a study, I believe.

14 MR. TANGHERRLINI: No, actually, we've
15 done the study, and we're doing the analysis with
16 Lamatta where we're far along the alternatives
17 analysis. We're even into the environmental reviews.

18 For us, it's less of studying the efficacy
19 of this particular solution. Right now, it's building
20 the financing team. Putting together the partnership,
21 the public-private partnership to move forward on a
22 proposal is really the phase we're in right now, and
23 actually, this project, this PUD, and this agreement
24 is a watershed for us in actually taking the project
25 to the next step and actually seeing it realized.

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1 We're moving forward on a demonstration
2 line corridor that will go between Pennsylvania Avenue
3 and the Boling Air Force Base, essentially, past the
4 Anacostia Station. For us, the next big link is
5 getting across the Anacostia and down that M Street
6 corridor to connect the residential communities east
7 of the river with the job opportunities west of the
8 river, and for us, this is really a watershed
9 agreement in actually getting some private
10 participation and making that a reality.

11 VICE CHAIRPERSON HOOD: Okay, thank you.
12 I just think that when this hearing was called, I know
13 for me, the concern was something that I wanted to
14 make sure we were fair to the Applicant, but that has
15 been taken off the table. I can tell you from this
16 Commission's standpoint, it's good to see that this
17 process is starting. It's not just a study. Most of
18 the time, we have a study, and everything is all
19 gobbled up in the study, and I'm glad to see that we
20 are further here than just a study.

21 MR. TANGHERLINI: Yes, we're doers, not
22 studiers.

23 VICE CHAIRPERSON HOOD: Good, good. Thank
24 you.

25 CHAIRPERSON MITTEN: Thank you. Mr.

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1 Parsons?

2 COMMISSIONER PARSONS: Congratulations.
3 I'm glad we got this thing worked out. What is the
4 length of this trolley-way along M Street? Does it go
5 into Buzzard's Point? What are the dimensions of this
6 trolley?

7 MR. TANGHERLINI: Right now we're working
8 through Lamatta. We're asking the question where
9 would be the most reasonably likely crossing point for
10 a street car line, and we're looking at the South
11 Capitol Street corridor, but that's a longer term
12 strategy for us.

13 We're really focusing in on the 11th
14 Street corridor and the 11th Street Bridge, which
15 needs to be replaced already. We know we have to
16 replace the 11th Street bridge. We're beginning to
17 work with Congress to try to work on funding as part
18 of the reauthorization bill to help us get the funds
19 to replace the bridge, and in doing so, we think we
20 then have made the leap across the river because we
21 can engineer into that bridge the capability to carry
22 transit.

23 For us then, the missing piece is coming
24 down M Street, working our way down M Street then on
25 to Main Avenue and to the southwest waterfront. For

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1 us, that is the missing transportation link that will
2 really establish a connection between our existing
3 downtown, which we already have plans to serve with
4 our circulator service, a high quality, high
5 frequency, low cost service that will run along the
6 7th Street corridor and along the K Street corridor,
7 so accessing those people who work in the downtown
8 core and bringing them down to the southwest
9 waterfront.

10 By having this service, we could the
11 connect those people along this Main Avenue, M Street
12 corridor out to our emerging downtown and what we
13 would hope is across the river and get some of that
14 economic development happening in the east of the
15 river communities as well as what's beginning to
16 happen along the Anacostia corridor.

17 COMMISSIONER PARSONS: So, your best
18 estimate for this occurring is what, five, ten years
19 away?

20 MR. TANGHERLINI: I think actual
21 construction is in the five to ten year period.

22 COMMISSIONER PARSONS: So DOT would be up
23 and running before this system was in place, right?

24 MR. TANGHERLINI: Not very far up and
25 running.

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1 COMMISSIONER PARSONS: Right, but -- okay,
2 but you certainly don't mean to rush to get a small
3 link together between the METRO stop on M Street and
4 this project, a short segment?

5 MR. TANGHERRLINI: The real issue is not
6 so much how long it would take us to build it. I was
7 just in Portland, and they were able to knock their
8 system off, you know, at three weeks a block. So, we
9 could build it quickly.

10 The real question is how would we pay for
11 it, who's going to be in partnership with it, what are
12 the, you know, what are the technical aspects of
13 actually getting a deal put together. For us, we
14 think that this is a very positive first step in
15 actually seeing this through to fruition to actually
16 put some real meat behind a proposal.

17 COMMISSIONER PARSONS: Okay. Now, I
18 wanted to go outside your testimony a little bit. We
19 have a memo from Mr. Altman that hopefully you've seen
20 or have some awareness of.

21 MR. TANGHERRLINI: Depends on the memo.

22 COMMISSIONER PARSONS: It's dated today,
23 so I can't imagine in the press of today's business
24 that you know about it, but it talks about the \$1.5
25 million amenity proposed by the Applicant.

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1 MR. TANGHERRLINI: I'm well aware of it.

2 COMMISSIONER PARSONS: Okay, and
3 apparently you then have supported or hopefully have
4 supported its application to the Anacostia River Walk.

5 MR. TANGHERRLINI: Anytime Andy wants to
6 make contributions to the Anacostia River Walk, we're
7 happy to accept them.

8 COMMISSIONER PARSONS: No, how memo says
9 that -- I assume that this isn't going to support
10 these demonstration trails. You have adequate funds
11 for that, don't you?

12 MR. TANGHERRLINI: The demonstration
13 trails are very small segments, and I think what it
14 talks about are the fact that there is some there to
15 the Anacostia River Walk. I know there's concern on
16 the part of the Commission that maybe there's a great
17 idea, but maybe it's just that.

18 The River Walk is a reality, as
19 demonstrated by these four segments, as demonstrated
20 by the partnership we've had with the Park Service to
21 do some work on Kenilworth Parkside. So, what we see
22 is just another opportunity to make a targeted
23 investment towards one of the biggest amenity
24 improvements we could have on the Anacostia
25 Waterfront, and that's that River Walk Trail.

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1 COMMISSIONER PARSONS: Okay, so these are
2 just here in the memo for an example of progress, not
3 that the \$1.5 million would be applied to these
4 demonstrations which you already have money for?

5 MR. TANGHERRLINI: No, we would be looking
6 to go beyond that.

7 COMMISSIONER PARSONS: Good.

8 MR. TANGHERRLINI: And we're actually
9 working with Congress to get additional resources now.

10 COMMISSIONER PARSONS: Yes. Thank you.

11 MR. TANGHERRLINI: Thank you.

12 CHAIRPERSON MITTEN: Thank you. Mr. Quin?
13 No, Mr. Quin is going to ask you some questions.

14 MR. TANGHERRLINI: Oh, Mr. Quin is going
15 to ask me.

16 MR. QUIN: That was something that's not
17 going to be true.

18 CHAIRPERSON MITTEN: Oh, it isn't?

19 MR. QUIN: No. It's rather unusual for an
20 attorney to come up with an opportunity to cross
21 examination and then say no, we really don't want to.

22 CHAIRPERSON MITTEN: Okay.

23 MR. QUIN: But I do have some statements
24 to make.

25 CHAIRPERSON MITTEN: I'll give you that

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1 opportunity. I just want to do the cross examination
2 first, and Mr. Jarbow is here, and I didn't know if he
3 might have --

4 MR. QUIN: Okay. Just state your name for
5 the record.

6 MR. JARBOW: Madame Chair, my name is Ken
7 Jarbow. I am ANC Commissioner for 6B-05 and the Vice
8 Chair of ANC6-B's planning and zoning committee.

9 I just have one question to follow up on
10 Mr. Parsons questions. Where the links are on the
11 other ends of this proposed light rail. We've seen
12 various versions of it. The one I'm most familiar
13 with would be a loop that would basically come down
14 from RFK in some fashion. So, you would go down the
15 waterfront to the southwest waterfront.

16 So, essentially you'd be tieing together
17 the RFK METRO stop, M Street at 8th Street, the Navy
18 Yard METRO stop, and then the southwest waterfront.
19 Is that essentially what we're still talking about
20 here?

21 MR. TANGHERRLINI: We called that the 20-
22 12 proposal, and I scratched it out and made it 20-16
23 because we didn't get the Olympics, but our focus
24 right now on the corridor is really essentially
25 Minnesota Avenue down to Anacostia Station on to

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1 Boling Air Force Base, and hopefully some day on to
2 Princes Georges County. Then either one of the other
3 or both, the 11th Street Bridge and South Capitol
4 Street Bridge, coming down the M Street corridor from
5 roughly 11th Street all the way down to the southwest
6 waterfront.

7 Then we'd hope to link up with another
8 rail corridor we're studying, which actually goes all
9 the way up 7th Street, Georgia Avenue, and on to
10 Silver Spring.

11 MR. JARBOW: Thank you.

12 CHAIRPERSON MITTEN: Thank you. Is there
13 anyone here representing ANC6-D that I just don't
14 recognize? Okay. Thank you very much for coming down
15 and visiting with us this evening.

16 Now, Mr. Quin, sorry.

17 MR. QUIN: Thank you. This was sort of in
18 lieu of cross examination. What we really wanted to
19 say is that we would like to cross examine, but really
20 in this case, we've worked so well with DDOT that we
21 feel we have a partnership, and the Applicant is
22 thoroughly approving of the conditions that are set
23 forth in the order in the recommendation of October
24 27, and believe that that can be implemented very
25 well.

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1 There are a couple of other points. One
2 is that of course the land, all the area south of M is
3 titled in the United States, and there are no public
4 streets, as you know, today. So, it's really through
5 this application that New Jersey Avenue, 4th Street,
6 and Tengi are being dedicated to public use.

7 That in turn has a very solid financial
8 benefit to the city and to the Southeast Federal
9 Center. In fact, the vision of the Southeast Federal
10 Center couldn't occur without this dedication because
11 neither DDOT nor the District of Columbia has any
12 authority to condemn those streets because, as you
13 know, are titled in the United States.

14 So, that really has a value in and of
15 itself in terms of access down. Without those, you
16 wouldn't have the access, so that can sort of be
17 matched on the other side of the balancing part, which
18 was recognized to some extent in the earlier report.

19 Really one other point that I wanted to
20 make is that the condition is, as you know, made
21 effective by covenant, which makes that condition part
22 of a contract. So, in fact, that provision is really
23 a contractual obligation of the Applicant that runs
24 with the land. So, you can be assured that that is
25 part of a condition that attaches all of the time,

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1 which is a little unusual in zoning because this is
2 the city's only form of conditional zoning to assure
3 that what you see is what you get.

4 CHAIRPERSON MITTEN: Yes.

5 MR. QUIN: Other than that, we have a
6 traffic consultant that can talk about our views, but
7 I'm not sure it serves any real purpose now because we
8 agree with Mr. Tangherrlini's recommendations, not
9 necessarily how he gets there, but that's not
10 important. What's important is that we agree at this
11 point and would like to move forward.

12 We have a revised condition for you to
13 approve, and we would love to see you take action
14 tonight to approve this case. You remember this
15 started, we were to have a hearing back in July, and
16 that was postponed to September, and as we started
17 pushing the case forward, or backward, so to speak,
18 back to today, we had understood that maybe there
19 would be an extra effort by the Commission to try to
20 move this case along by a decision.

21 I know there are some other questions that
22 you want to deal with tonight, but as far as the
23 traffic goes, we feel we've essentially answered them,
24 and if you don't think so, we can call our traffic
25 expert who's prepared to deal with the report and the

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1 recommendation, but I'm not sure it serves any
2 purpose.

3 CHAIRPERSON MITTEN: Okay. Did you have a
4 revised condition that you want to give us?

5 MR. QUIN: Yes.

6 CHAIRPERSON MITTEN: Okay. And while
7 you're getting that, let me just see. Anybody have
8 any questions? Mr. Parsons, Mr. Hood, any questions?
9 Mr. Jarbow, any questions for Mr. Quin?

10 MR. JARBOW: No.

11 CHAIRPERSON MITTEN: Well, I guess you're
12 not really testifying.

13 MR. QUIN: I'll answer them anyway. There
14 are really two, and what you're about to receive is
15 there are really two changes. One is on paragraph 15,
16 there's an alternative there that relates to Mr.
17 Altman's proposal. Then there's a paragraph 20 that
18 deals -- if I can find it here.

19 CHAIRPERSON MITTEN: We should focus on 15
20 and 20?

21 MR. QUIN: Well, it's really three, 15, --
22 it's really 15, the second 15 that says "OP
23 alternate," and 20, which is the condition recommended
24 by DDOT on page four.

25 CHAIRPERSON MITTEN: Okay.

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1 MR. QUIN: And then I know that there are
2 other issues, but I'll wait for you to ask those
3 questions, and I could raise them at that point,
4 whenever you wish to.

5 CHAIRPERSON MITTEN: Okay, thank you. Mr.
6 Jarbow, did you want to make a presentation, or are
7 you just here for cross examination?

8 (Answer off mike.)

9 CHAIRPERSON MITTEN: Okay, thank you.
10 Then we'll have the report by the Office of Planning
11 the memo that they submitted this evening.

12 MR. ALTMAN: Thank you, members of the
13 Commission. As Commissioner Parsons already pointed
14 out, I will go through it. That's okay. You did a
15 very good report for us.

16 We wanted to respond to in previous
17 deliberations some of the concern that the Commission
18 had about the specificity of the amenity and the
19 concern that a specific project was not identified,
20 that there was not a guarantee of where those funds
21 would go, that it seemed more of a holding, putting
22 money into a holding account rather than taking action
23 and being very clear about the nexus between the
24 amenity and the project before you.

25 So, what we've done is we've gone back.

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1 We heard what the Commission had to say. We looked at
2 the overall waterfront initiative that we have been
3 working on. We have had conversations with the
4 Applicant, conversations with Dan Tangherrlini and the
5 Department of Transportation.

6 I really think we've come up with
7 something that really works all around, something that
8 we think will add a significant benefit for the entire
9 area, and you'll see what we've proposed is
10 essentially that the \$1.5 million, which is amenity
11 dollars -- I do want to point out that this is in
12 addition to the \$2.5 million which the Applicant has
13 already agreed to contribute to the Canal Block Parks.

14 What's very nice about this is that this
15 further contributes to the overall open space network
16 of the near southeast area, and as you'll recall in
17 the presentation about the planning for the near
18 southeast, some of the critical components of that
19 open space network were the canal blocks, which will
20 serve this entire community, which we anticipate
21 between the Southeast Federal Center and the Arthur
22 Capper Carlsburg redevelopment, will be greater than
23 4,000 units of housing, over 8,000 people.

24 So, it really serves an area-wide amenity,
25 and then the River Walk, because that will be the

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1 linear connection that will really, the Navy Yard, we
2 already see a piece of that esplanade, the
3 demonstration project, and now by having this \$1.5
4 million to go to the River Walk, we think we'll make a
5 significant contribution.

6 As you know, overall from the Anacostia
7 waterfront initiative, there's over 18 miles
8 ultimately of River Walk that we want to see
9 constructed and Dan Tangherrlini has been out there
10 every year, diligently trying to get funding for.
11 This will really go a long way to adding to this
12 overall amenity, both for this project for this
13 neighborhood and for the city.

14 We really think, and if you look in the
15 report where it really speaks to what constitutes a
16 public benefit and under Section 2403.6, talks about
17 public benefits or superior features of a proposed
18 PUD, that benefit the surrounding neighborhood or the
19 public in general to a significantly greater extent
20 than would likely result from the development of the
21 site under matter of right provisions of this title.

22 I think there's no question that this does
23 that under matter of right, you would not see a
24 contribution to the River Walk or this kind of benefit
25 that will serve an entire area. This really provides

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1 that very strong nexus, and we also think it gives the
2 Commission the specificity to know that this is a real
3 project. This isn't a -- as Dan says, it's not just a
4 study project. Dan has done very detailed work.

5 As you can see, we've put in not only a
6 pretty little picture -- that's what planning does
7 for, the little pictures, but actually the whole
8 network here that would be constructed. So, this is a
9 real project. Dan has, you know, people in his office
10 who are dedicated to the Anacostia waterfront.
11 They're actively out there building, and we hope that
12 this will give the Commission the confidence that it
13 needs to feel that this amenity really meets the
14 requirements for the regulations and offers
15 significant benefit for the area.

16 We certainly do, and that's what we wanted
17 to bring to you today. I'm sorry this wasn't to you
18 earlier. We didn't realize there was sort of a filing
19 issue to get this to you, so we apologize for that.
20 We think this responds to what your request was.

21 CHAIRPERSON MITTEN: Thank you. Any
22 questions for Mr. Altman? Any questions? Mr. Quin,
23 any questions? Mr. Jarbow, any questions?

24 All right, so that leads us into the other
25 two questions that we were going to wade into this

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1 evening that we had raised when we deliberated on this
2 the first time, which is the degree of specificity of
3 the \$1.5 million and how it would be administered.
4 So, if there are any outstanding questions about that,
5 now would be the time to ask those.

6 Then the issue of whether or not the
7 proposed development constitutes a single building. I
8 don't know if the Office of Planning has a position on
9 this. We have a pretty persuasive memo from the
10 Office of the Corporation Council as to how this
11 building should be considered, or how this project
12 should be considered as two buildings. Ms. Monroe,
13 would you just give a brief overview of that, and then
14 we'll have Mr. Quin give his take on it, and then
15 we'll see where we go from there.

16 MS. MONROE: Briefly, we looked at the
17 definition of building, which says that if you're
18 connected only underground that -- a structure that is
19 only an underground connection, was not connected
20 above ground or above the first level, would be
21 considered two buildings. So, we started with the
22 definition, and we realize that the Applicant feels
23 that 3202.3 is an exception to that, but we don't
24 think it is.

25 We think that 3202.3 is essentially being

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1 blown out of proportion and used as an exception to
2 the definition of a building, and we don't think it
3 applies. In this case, we feel that this is
4 essentially two separate buildings because there is no
5 above-ground connection.

6 I know the Applicant has given several
7 options of ways to deal with this because the height
8 question comes up because you would have to measure
9 the height. They want to measure the height from New
10 Jersey Avenue, which allows a taller building.
11 There's a way of maybe reconfiguring the lots to do
12 that or possibly redesigning the atrium to bring it
13 down to a lower height.

14 Any solution that can be worked out I
15 think is agreeable, but we do feel pretty strongly
16 that it is two separate buildings. It might be even
17 one structure, if you want to get into the semantics
18 of structure versus building, but we feel it's two
19 separate buildings for the purposes of height.

20 CHAIRPERSON MITTEN: Thank you. Mr. Quin,
21 did you want to make any response to that?

22 MR. QUIN: Yes. I think there are at
23 least three ways to resolve this, which we put in our
24 memorandum to you on October 30. We do not agree with
25 corporation counsel, and I think the Zoning

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1 Administrator, we have not had a chance to really sit
2 down with the Zoning Administrator and go over the
3 legislative history because we think the legislative
4 history is absolutely clear on the intent to make this
5 deemed a single structure for purposes of calling it,
6 if you will, a building.

7 That's been the interpretation like on
8 Market Square, which was -- I did that personally, and
9 I can represent to you that that was a ruling by the
10 Zoning Administrator. The point here is we'd like to
11 reserve and preserve our flexibility.

12 So, as we've stated in the draft order,
13 paragraph three, that's what we would hope you would
14 approve. The fact of the matter is that we can
15 accomplish this in any number of ways, and if we have
16 to reduce the atrium because the Zoning Administrator
17 doesn't agree with us, we'll do that, or, if we do it
18 some other way.

19 But the point here is that we can
20 accomplish what I think is your desire; namely, that
21 we can comply with the zoning regulations one way or
22 the other, and it really is always, as you are quite
23 aware, in the first instance, the Zoning
24 Administrator's ruling because he's the one that has
25 to actually interpret. Ultimately it could get to

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1 you, but really it's an issue that he must look at the
2 legislative history, the precedence, the consistency
3 of interpretation, what does it mean, what did it mean
4 in 1958 when it was initially put it, and why was the
5 language changed. All of that, I think, is really
6 better put to him since he is or she is supposed to
7 determine that.

8 We would just like to preserve that
9 flexibility. It will not make any significant impact
10 on this case, and we don't think that the tail should
11 wag the dog.

12 CHAIRPERSON MITTEN: Okay, thank you. Any
13 questions on these three subjects before we decide how
14 we want to proceed? Mr. Parsons?

15 COMMISSIONER PARSONS: Well, I wanted to
16 ask Mr. Quin. I haven't read number three yet. Does
17 this give you or give the project the flexibility to
18 reconfigure the lot lines to get you to New Jersey
19 Avenue, because I've got no interest in that?

20 MR. QUIN: I think theoretically it could,
21 but you know, you would have a right to put this in
22 two record lots if you wanted to. I don't think it's
23 necessary.

24 COMMISSIONER PARSONS: But to stretch this
25 lot around to New Jersey Avenue to get a measuring

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1 height just seems like a precedent that we shouldn't
2 be messing with.

3 MR. QUIN: I don't think it's correct
4 either. I think it's okay, and it would comply with
5 the regulations, but I think that the law is pretty
6 clear. If we have to reduce the height, we'll reduce
7 the height.

8 COMMISSIONER PARSONS: All right. So,
9 does number three allow that reconfiguration? I
10 haven't read it. Or does it just deal with the Zoning
11 Administrator's judgment as to whether this is one
12 building or two?

13 MR. QUIN: I think it's the Zoning
14 Administrator's judgment as to whether it's one
15 building or two.

16 COMMISSIONER PARSONS: All right.

17 MR. QUIN: But I would want to, frankly,
18 preserve that right.

19 COMMISSIONER PARSONS: I know you would,
20 but I've got no interest in that.

21 MR. QUIN: But I mean, it would have to be
22 a lot that would comply. It would have to have the
23 right width. It would have to be, you know, all the
24 rest of it.

25 COMMISSIONER PARSONS: Yes. All right.

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1 CHAIRPERSON MITTEN: Thank you. Any last
2 questions?

3 Let me ask then, I know there's only three
4 of us, but are you interested in moving to a decision
5 tonight, or our next meeting is December 8.

6 COMMISSIONER PARSONS: Oh, no, I wasn't
7 prepared to do that. I appreciate the request.

8 CHAIRPERSON MITTEN: Okay.

9 COMMISSIONER PARSONS: I'm sure Mr. May
10 would want to weigh in, and he unfortunately can't be
11 here tonight, but yes, I just --

12 CHAIRPERSON MITTEN: Okay. We're not
13 going to get to final action any quicker. Would you
14 turn on your mike?

15 MR. QUIN: Yes, we understand.

16 CHAIRPERSON MITTEN: And we had thought
17 Mr. May would have been here and, you know, we're
18 doing the best we can.

19 MR. QUIN: We just want to move forward.

20 CHAIRPERSON MITTEN: Understand.

21 MR. QUIN: And we understand that it has
22 to go to NCPC and then come back, but anything that
23 could be done to expedite it would be appreciated.

24 VICE CHAIRPERSON HOOD: Madame Chair, I
25 realize my colleague isn't here, but I think he would

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1 have an opportunity to propose to do anything.

2 CHAIRPERSON MITTEN: You mean at final
3 action?

4 VICE CHAIRPERSON HOOD: Not proposed,
5 final action, if we wanted to move forward. I think -
6 - I won't get into this hearing tonight, but I think
7 they were very sufficient, and when I see a letter
8 from ANC6-D, from what I see here, they've definitely
9 done a lot of ground work in doing some things to
10 bring everybody closer together and close the gap.
11 So, I'm ready to proceed tonight, and not trying to
12 leave Commissioner May out.

13 COMMISSIONER PARSONS: You want to move
14 before the ANC changes their mind.

15 VICE CHAIRPERSON HOOD: Possibly.
16 Possibly, because I can tell you that this ANC is very
17 strong, and to see the cohesiveness of the letter that
18 we got today, actually I was very surprised. So, that
19 shows that the Applicant and all those involved have
20 done a lot of work, including the Office of Planning
21 with that ANC.

22 So, you're right.

23 COMMISSIONER PARSONS: I'm kidding, for
24 the record.

25 CHAIRPERSON MITTEN: Well, are you

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1 persuaded?

2 COMMISSIONER PARSONS: No, I'm not
3 persuaded, no.

4 CHAIRPERSON MITTEN: Okay. Mr. Parsons is
5 reluctant to go forward, and so we're just going to
6 put this on the agenda for the 8th of December.

7 VICE CHAIRPERSON HOOD: Okay.

8 CHAIRPERSON MITTEN: Thank you. All
9 right, I'd like to thank you all for coming out and
10 helping us out this evening with just filling out the
11 record on these matters. As I said, this will be on
12 the agenda for our December 8 public meeting.

13 The hearing for this evening is adjourned.

14 Thank you.

15 (Whereupon, the above-referenced meeting
16 was adjourned at 7:24 p.m.)

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