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GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION  
PUBLIC HEARING



In the Matter of:

TEXT AMENDMENTS - Case No. 97-15

CBRFs



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

Monday  
March 23, 1998

The above-entitled matter came on for public hearing, pursuant  
to notice, at 7:00 p.m.

BEFORE:

MAYBELLE TAYLOR BENNETT, Chairperson

HERBERT FRANKLIN, Commissioner

JOHN PARSONS, Commissioner

I-N-D-E-X

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CHAIRPERSON BENNETT: Are we ready? Good evening, ladies and gentlemen. I am Maybelle Taylor Bennett, Chairperson of the Zoning Commission for the District of Columbia. Joining me this evening are Commissioners Franklin and Parsons. I declare this public hearing open.

Tonight's hearing session is a continuation of the March 5, 1998 hearing case in case no. 97-15. This case is an initiative of the Zoning Commission resulting from a petition from the District of Columbia Office of Planning, the United States Department of Justice, with the District of Columbia Office of the Corporation and the District of Columbia Department of Consumer and Regulatory Affairs to amend the text of the District of Columbia zoning regulations and Title 11 of the District of Columbia municipal regulations.

The hearing will be conducted in accordance with the provisions of 11 DCMR 3021. The Commission will continue to hear testimony from the witnesses in the order indicated on the witness list. Those presenting testimony should be brief and non-repetitive. If you have a prepared statement, please give copies to staff and summarize the highlights only.

Please note that time limits have been set. The time limits will be enforced. Each individual appearing before the Commission must complete two identification slips and submit them to the reporter at the time you make your statement. If these guidelines are followed, an adequate record can be developed in a reasonable length of time.

And let me hasten to add that by time limits, I wasn't certain whether or not our time limits had been set last time. I think we had a small group and we may not have done that. This evening we want to try to limit our comments

1 to five to seven minutes max. We do have some time constraints and we're likely to  
2 lose a quorum if we are not disciplined this evening.

3 I'm going to ask staff if there are any preliminary matters?

4 MS. BROWN: There's only one preliminary matter, Madam  
5 Chair, and that's that you have a memo before you dated March 19th from Howard  
6 and Simon which the panel had requested to testify Campaign for New Community.  
7 The have a request that you add another day for this case since they were originally  
8 scheduled to go on Thursday and, since that was postponed, they'd like to schedule  
9 another hearing at a later date.

10 CHAIRPERSON BENNETT: All right. Thank you, Ms. Brown.  
11 Unfortunately, I do not believe we have the Director of the Office of Zoning's  
12 schedule and so we are unable to establish another date, a night. But, colleagues,  
13 you will remember that we asked the Campaign for New Community to enter into the  
14 record their materials referred to last time. So I'm predisposed to hearing from them  
15 at a subsequent date. The question is just when that will be. And that will have to  
16 be established after this particular hearing session.

17 Any other preliminary matters?

18 MS. BROWN: No.

19 CHAIRPERSON BENNETT: Thank you.

20 First on the witness list is the Office of Planning, and I'm going to  
21 turn to my left now and greet our Director of the Office of Planning, Ms. Dennis.

22 MS. DENNIS: Thank you, Madam Chair. At this time, we have  
23 nothing further to add to our testimony. I would just like to add for the record that  
24 Mr. Jim Randall from the Office of the Corporation Counsel is here with us tonight to  
25 answer any questions that the Commissioners might have or to address any  
26 concerns.

1 CHAIRPERSON BENNETT: All right. Thank you very much.  
2 I'm going down the list now and I do not see Ms. Hubbard, so  
3 she should probably stand by and call so she can be apprised of the next hearing  
4 session. We do not have the Campaign for New Community which called in and let  
5 us know that they would not be here today. Is Mr. Dino Drudi here? I don't see Ms.  
6 Zartman either. Mr. Don Crockett. Mr. Jerome Tobe.

7 MR. TOBE: Present.

8 CHAIRPERSON BENNETT: Please come forward. How are  
9 you?

10 MR. TOBE: Fine.

11 JUDGE THOMAS: Have a seat. Good evening.

12 MR. TOBE: Good evening.

13 Chairperson Bennett, Members of the Zoning Commission, my  
14 primary reason for being here tonight was to --

15 CHAIRPERSON BENNETT: Give us your name and your home  
16 address.

17 MR. TOBE: Oh, I'm sorry. My name is Jerome Tobe. My home  
18 address is 1434 Madison Street, N.W., Washington, D.C. The zip is 20011.

19 My primary reason for being here tonight was to enter myself  
20 and my organization officially on the record. I had just today learned of this meeting.  
21 I wanted to make sure that we were given the opportunity to present our position.  
22 What my board would like to do is submit to you a position paper in writing. We  
23 have not had an opportunity to compose this yet, but my reason for being here was  
24 to, like I say, meet with you and to basically let you know that we would like to  
25 submit a position paper.

26 CHAIRPERSON BENNETT: All right.

1 MR. TOBE: We are opposed to the present agreement as it is  
2 drafted.

3 CHAIRPERSON BENNETT: Okay. And as of right now, we're  
4 not certain when the record would close but it's going to be open until at least after  
5 the next scheduled hearing date, and we have not determined when that's going to  
6 be. So right now is a good time to get it in, any time from now until shortly after that  
7 time, and I don't know when that's going to be so you should have ample opportunity  
8 to submit something.

9 MR. TOBE: Okay. I would anticipate that we would have our  
10 response prepared within the week.

11 CHAIRPERSON BENNETT: That'll work.

12 MR. TOBE: That would work?

13 CHAIRPERSON BENNETT: Yes. You probably have more time  
14 than that.

15 MR. TOBE: Well, thank you very much. I appreciate your time.

16 CHAIRPERSON BENNETT: Okay. All right. Since nobody else  
17 came in, is there anybody else who wishes to testify? Mr. Wolf.

18 MR. WOLF: I do not wish to --

19 CHAIRPERSON BENNETT: You've got to speak to us from  
20 something electronic, please.

21 MR. WOLF: I'm Richard Wolf. I have testified at the previous  
22 day's hearing on this matter. I have no wish to further testify on the issues that were  
23 present before the Commission at that time.

24 However, you admitted into the record for whatever  
25 consideration the Commission is going to give the proposals of the Campaign for a  
26 New Community. I have just now seen their various proposals including briefs from

1 Howry and Simon and a planning proposal which would revise extensively the  
2 zoning code in connection with the overall proposals of the Campaign for a New  
3 Community which were prepared by the Rivkin Group and I presume they are  
4 planners and if those are going to be under consideration, I would suggest or  
5 propose that either the Commission re-advertise this case with those proposals in  
6 the advertisement or somehow those proposals be given enough consideration by  
7 the whole public -- and they're quite voluminous, as I say, both legal and planning  
8 proposals -- such that you get a well-considered critique of what they do propose.

9 That's all I have to say.

10 CHAIRPERSON BENNETT: Thank you and, as you know, their  
11 status here is for us to look at in the context of our consideration of the regs that are  
12 proposed to us. They don't carry the weight of a petition itself which would call for  
13 our re-advertisement of the whole thing and solicitation of comments by the public  
14 on the entire thing. We're looking at what is before us that came out of the  
15 agreement that was made.

16 MR. WOLF: I see.

17 CHAIRPERSON BENNETT: And if you recall, when we  
18 admitted them into the record, we queried whether or not the whole thing should  
19 come in or whether there should be excerpts that pertain to what we're looking at  
20 now. So I think what we're going to have to probably do is go through and glean  
21 what we need from them as they pertain this set of regulations, this set of proposed  
22 regulations. They certainly probably exceed what we're going to need for this  
23 particular exercise and I think it was the sense of this Commission that we undertake  
24 this first and then at some later date look at the array of issues that are raised by the  
25 New Community.

26 MR. WOLF: Thank you.

1 CHAIRPERSON BENNETT: Thank you.

2 MR. RANDALL: Madam Chair, I would welcome Mr. Wolf's  
3 comments on any of this material at this stage of the game. Not right now, but  
4 considered comments that would be submitted before the record closed.

5 MR. WOLF: We'll try and do that. Thank you.

6 CHAIRPERSON BENNETT: All right. Thank you.

7 Is there anyone else who's here with us this evening that would  
8 like to come forward and testify? Ms. Miller, I'm looking at you. You feel like coming  
9 up here while I'm in a good mood.

10 MS. MILLER: Good evening.

11 CHAIRPERSON BENNETT: How you doing?

12 MS. MILLER: I'm Commissioner Dorothy Miller of ANC 2A05  
13 and I have been aware of this for some time. Not the particular order because we've  
14 had so many others going on that I couldn't give this one my attention. But I did  
15 want to bring to your attention one particular house that's in the 16th Street Heights  
16 set up where they're supposed to be limited to 15 people in that house and I  
17 checked the voting roles. There were 65 people listed at that address to vote. Now,  
18 this is one of these semi-religious groups and it really puts a blight on the  
19 neighborhood and these are lovely family homes in a residential area.

20 But I would like a chance to speak when you reschedule it  
21 because I will have had a chance by then to study it because I think you know we  
22 fought a similar situation with the Presbyterian Church and went down the tube on  
23 that, but the courts later ruled in our favor. If we just could have fought a little longer  
24 and held off a little longer, we might have won.

25 CHAIRPERSON BENNETT: All right. Thank you.

26 MS. MILLER: Thanks for letting me speak.

1 CHAIRPERSON BENNETT: Anyone else? All right. Seeing  
2 none, we're going to adjourn and, Ms. Brown, do you -- can you share with us what  
3 our procedure will be when the Director of the Office of Zoning returns?

4 MS. BROWN: She will probably give us the new date.

5 CHAIRPERSON BENNETT: Then do we have to re-advertise  
6 since we could not announce it tonight?

7 MS. BROWN: I don't think so.

8 MR. ERONDU: We're not going to re-advertise. Just --

9 CHAIRPERSON BENNETT: All right. Is this Mr. Drudi?

10 MR. DRUDI: Yes, it is.

11 CHAIRPERSON BENNETT: Okay.

12 MR. DRUDI: It's pronounced Drudi and mispronounced in any  
13 dozens of ways.

14 CHAIRPERSON BENNETT: I'm certain. How are you?

15 MR. DRUDI: Fine.

16 CHAIRPERSON BENNETT: Give us your name and your home  
17 address.

18 MR. DRUDI: Dino Drudi, 938 Perry Place, N.E., 20017.

19 CHAIRPERSON BENNETT: All right.

20 MR. DRUDI: I'm here this evening on behalf of the Michigan  
21 Park Citizens Association.

22 CHAIRPERSON BENNETT: You may take a breath because I  
23 saw you just run in. You take a breath if you wish.

24 MR. DRUDI: Sure. Thank you.

25 I'm here this evening on behalf of the Michigan Park Citizens  
26 Association whose Executive Board met over the week end and was appalled by the

1 prospect of this consent decree and authorized me to speak against it on behalf of  
2 the Citizens Association.

3 How many copies of our statement would you like? Five?

4 CHAIRPERSON BENNETT: At least.

5 MR. DRUDI: Here are six.

6 CHAIRPERSON BENNETT: All right, Mr. Drudi, we have  
7 established a five to seven minimum limit on your testimony and I see that you've  
8 been very efficient. Thank you.

9 MR. DRUDI: I don't think it will take that long. Am I on?

10 CHAIRPERSON BENNETT: Yes, I think so. Please proceed.

11 MR. DRUDI: This is the resolution urging the Zoning  
12 Commission to decline to enact the consent decree -- I think I just voted to abstain; I  
13 wanted to hit the vote no -- resolution urging the Zoning Commission to enact the  
14 consent decree allowing community-based residential facilities matter of right  
15 development authority in R-4 and less restrictive residential zones.

16 Whereas currently pending is a consent agreement between the  
17 United States Department of Justice and the District of Columbia City Administrator  
18 which would establish matter of right development authority for any proposed  
19 community-based residential facility in any R-4 or less restrictively zoned residential  
20 neighborhood.

21 Whereas the consent decree essentially calls for preferential  
22 treatment for a particular use of property in contravention of the fundamental  
23 principles of zoning and urban planning.

24 Whereas the consent decree demands zoning regulation  
25 revisions which would ignore the fiscal consequences from loss of tax revenue as  
26 properties migrate to nonprofit uses impact on affected communities or facts related

1 to specific cases.

2                   Whereas this consent decree would impair democracy by taking  
3 away notice to the Advisory Neighborhood Commissions and the community and bar  
4 public knowledge of information about a project the proprietor wished not to reveal.

5                   Whereas this consent decree creates a legal fiction by requiring  
6 the zoning regulations to pay homage to a particular use of property as if it had no  
7 potential adverse impact upon a community in contravention of experience.

8                   Whereas this consent decree leaves in the Zoning Commission's  
9 discretion whether or not to adopt regulations implementing the consent decree with  
10 failure to do so to bring on litigation on the merits of the United States Department of  
11 Justice's demands.

12                   Resolved that the Michigan Park Citizens Association does  
13 hereby call upon the Zoning Commission to decline to enact the zoning regulation  
14 revisions sought by the consent decree.

15                   Further resolved that should the United States Department of  
16 Justice not be satisfied with the Zoning Commission's action, the District of  
17 Columbia government prepare itself to represent the interests of the residents of the  
18 District of Columbia in any consequent litigation.

19                   I think that sums up the sentiments of the association. There is  
20 extraordinary concern that what this would do, it would completely take the public  
21 out of the process. It would take something which history has shown us, experience  
22 has shown us, has a record of adverse impact and, in fact, applications have been  
23 rejected and modified as a consequence of zoning hearings. So that in and of itself  
24 shows that there is a potential for problems in these particular uses and to take say  
25 well, let's pretend there isn't, let's act as if there isn't, let's let them do whatever they  
26 want, regardless of what happens to the community, I think is -- and the association

1 quite unanimously from its executive board thinks that it's simply appalling -- to take  
2 our elected Advisory Neighborhood Commissions completely out of the process as if  
3 they didn't matter when the people of the District of Columbia struggle for every  
4 shred of democracy that they can hold onto and see things taken away from them,  
5 to have something taken away from them that they really have not messed up.

6           The Advisory Neighborhood Commissions have represented the  
7 people's interests quite responsibly, unlike other entities of the District of Columbia  
8 government, one could argue, that got us into the present insolvency. But the  
9 Advisory Neighborhood Commissions have not. They've represented the people  
10 very responsibly. To take them out of the picture, to take the neighborhoods out of  
11 the picture and take away their rights to know what's going on and to have some say  
12 about it is unconscionable and to do it through sort of this back door process where  
13 the people's elected representatives don't even really-- there's nothing even they  
14 can do about it -- is extraordinary and extraordinarily troubling and I think people  
15 sense that and for the Zoning Commission to impose that outcome on the people  
16 would greatly shake what shred of faith the people have left in their government.

17           That's why you don't see scads of people here tonight, because  
18 many of them have become very disillusioned with this entire process which more  
19 and more seems to cut them out of any decision making. That is talked about and  
20 recognized. Ms. Barnett recognized it when she spoke to the Federation of Citizens  
21 Associations last week, and it's extraordinarily troublesome and I think that the  
22 Zoning Commission has to be cognizant of that and take that factor into account in  
23 determining how to handle this mischievous consent decree.

24           You don't have to enact it. You can let them go to court and let  
25 the chips fall where they do. The court decision is shoved down the people's throats  
26 and it gets appealed and the appellate court shoves it down the people's throats.

1 Well then, they got to live with it. But I don't see why they should surrender  
2 prematurely.

3 CHAIRPERSON BENNETT: Thank you, Mr. Drudi.

4 MR. DRUDI: Thank you.

5 CHAIRPERSON BENNETT: Questions for Mr. Drudi?

6 COMMISSIONER PARSONS: No questions.

7 CHAIRPERSON BENNETT: Thank you very much.

8 MR. DRUDI: Thank you.

9 CHAIRPERSON BENNETT: Ms. Zartman.

10 Mr. Drudi, did you submit your identification slips?

11 MR. DRUDI: I don't think so.

12 CHAIRPERSON BENNETT: Right here, would you give them to

13 the --

14 MR. DRUDI: These things?

15 CHAIRPERSON BENNETT: Yes. You need to submit two of

16 them.

17 MR. DRUDI: Two of them?

18 CHAIRPERSON BENNETT: Two. What's the case number?

19 CHAIRPERSON BENNETT: 97-15.

20 MR. DRUDI: One five?

21 CHAIRPERSON BENNETT: Yes.

22 Good evening.

23 MS. ZARTMAN: Hello.

24 CHAIRPERSON BENNETT: How are you?

25 MS. ZARTMAN: Good evening, ladies and gentlemen. My

26 name is Barbara Zartman and I'm President of the Federation of Citizens

1 Associations of the District. At its full assembly meeting last Friday, the Federation  
2 of Citizens Associations took a unanimous position against the plan for CBRFs that  
3 is before the Zoning Commission tonight. I confess I thought there was a panel of  
4 14 persons before me so I thought I was going to have the opportunity to hear their  
5 arguments this evening.

6 We took our position at the Federation with the full  
7 acknowledgement that all communities should accept their share of facilities for  
8 those in need of institutional living arrangements and with the awareness that  
9 federal courts have held that special exception procedures for such CBRFs were  
10 acceptable mechanisms to provide for reasonable accommodation.

11 However, in dismissing this special exception procedures the  
12 District uses, the Department of Justice takes this laudable goal and makes of it a  
13 missile aimed at the heart of Washington communities. That the Department of  
14 Justice prefers a matter of rights standard for CBRFs strikes me as an incredibly  
15 high-handed and arrogant approach to a sovereign government.

16 More, by establishing such an extremely loose standard for  
17 establishing CBRFs, the District would become a magnet for such facilities for the  
18 entire region. There is a world of difference between compassionate provision of  
19 reasonable accommodation through zoning rules and matter of rights supremacy  
20 over zoning rules. As the EEO Officer for the Peace Corps when I was its Deputy  
21 Director, I have more than a passing familiarity with the range of requirements the  
22 ADA presents and I believe the current proposal goes far, far beyond what is  
23 required.

24 Some members of the Commission will be familiar with my belief  
25 that the zoning code represents a covenant between the city and its people. For the  
26 Federation's constituency, this would particularly affect the residential communities

1 that strive to maintain viability under great pressure. Those communities that have  
2 won zoning overlays to prevent excessive institutional encroachment will find that  
3 theirs is a pyrrhic victory. The communities that have strived to maintain historic  
4 properties will find that they must sacrifice their achievements on the alter of a  
5 greater good as DOJ sees it.

6 What appeal rights would they have? What recourse from the  
7 bad decision of the Zoning Administrator? How would they even understand the  
8 justice of a decision rendered by the Zoning Administrator in the partial secrecy that  
9 this consent agreement suggests?

10 Under the covenant that I respect, my own community believed  
11 its government honored. We allowed for the residential zoning to support a large  
12 university and its hospital plant, large public and private schools, nonprofit  
13 institutional uses, child care facilities, very large embassy complexes, and yes,  
14 community residential facilities that met zoning requirements. That story can be  
15 repeated in large measure across the Foundation's member communities from  
16 Michigan Park to Hillcrest to Southwest to Pallisades to Chevy Chase to upper 16th  
17 Street.

18 Moreover, beyond the residents' concerns, I would argue that  
19 even commercial property developers, whose case I do not normally feel the need to  
20 defend, will find their multi-million dollar investments harder to justify in the District  
21 when ungovernable, matter of right and potentially undisclosed large residential  
22 facilities can be added without restriction.

23 How can policies aimed at stabilizing residential communities be  
24 reconciled with this proposal? How can economic development proposals under  
25 consideration by the Council, the Control Board, and Congress have any integrity  
26 when DOJ makes the District an attractive haven for other jurisdictions' problem

1 projects?

2 Those from whom I have sought legal advice suggest that this  
3 Commission is wholly free to refuse to write the legislation that would embody the  
4 terms of this consent agreement. On behalf of the dozens of Federation member  
5 organizations and the many thousands of District families they represent, I urge you  
6 in the strongest terms to do so. Do not give these families one more reason to vote  
7 with their car keys for saner jurisdictions.

8 This Commission issued well thought out CBRF regulations in  
9 case 91-15. The DOB proposal would gut the Commission's conclusions in that  
10 case, all subsequent ruling and case laws. It would mandate the blanket waiver of  
11 all facially neutral zoning policy and rules regardless of facts. That is not a sane  
12 approach.

13 Moreover, this would make virtually impossible this  
14 Commission's enactment of protections against unscrupulous developers who would  
15 seek through this provision to wrongfully locate large residential facilities where  
16 policy has said they should not be. Do not let this happen. Preserve the covenant.  
17 You literally stand at the gate. We urge you to use the powers that have been  
18 conferred on you to keep very bad means from being enacted in the service of an  
19 unquestioned good.

20 Let DOJ press if it must this rash course of punishing public  
21 policy all the way to the Supreme Court. This could actually be a matter on which  
22 pro bono legal assistance jointly from residents and commercial developers could  
23 support the Office of Corporation Counsel in defending citizens' property rights while  
24 protecting reasonable approaches to accommodation.

25 I thank you and, if you have questions, I'd be happy to answer  
26 them.

1 CHAIRPERSON BENNETT: Thank you, Ms. Zartman.

2 Questions of Ms. Zartman?

3 COMMISSIONER PARSONS: No questions.

4 COMMISSIONER FRANKLIN: I have a couple. I don't want to  
5 prolong it to the point where you have to leave.

6 CHAIRPERSON BENNETT: No. Go right ahead. I'm good so  
7 far.

8 COMMISSIONER FRANKLIN: Your testimony, Ms. Zartman,  
9 and the preceding testimony are very eloquent and I think all of us here are  
10 struggling with this issue. Let me ask you what in your view would be the adverse  
11 effects of having, let's say, a household of 10 handicapped persons living in a zone  
12 in the District that would permit that density without having them to go before the  
13 BZA? What's the adverse effect, as you see it, assuming that they are not violating  
14 any occupancy code and creating an over-crowded condition in the premises they  
15 occupy? What's the adverse impact on the neighborhood?

16 MS. ZARTMAN: I guess I would turn the question on you, Mr.  
17 Franklin. What would be the adverse impact on them of having to come before the  
18 Board of Zoning Adjustment and hear whether their plans for removal of on street  
19 parking to accommodate buses could be rearranged in ways that would better suit  
20 other community purposes?

21 COMMISSIONER FRANKLIN: Well, I'm not talking about plans  
22 that affect parking or anything else. I'm just talking about occupancy without any  
23 further request for changes in parking or what have you in terms of ancillary public  
24 requirements. What's the adverse effect, let's say, of 10 or 12 mentally handicapped  
25 people living and not violating any occupancy requirements in a zone where there  
26 are 10 or 12 people living in a similarly situated premises who are not handicapped?

1 MS. ZARTMAN: There would be none. In fact, that's exactly  
2 what the consequence of the current situation is but when it is not one 15 person  
3 establishment but two, three, four, 10, 15 in a comparatively small area, I believe  
4 there are consequences.

5 COMMISSIONER FRANKLIN: Could you spell those out?

6 MS. ZARTMAN: I believe that if you have that kind of density it  
7 would become a circumstance in which --

8 COMMISSIONER FRANKLIN: I'm presuming that the density of  
9 rules, whether they're occupancy or zoning, would permit the occupancy of persons  
10 who were not handicapped under similar situations. What does the occupancy of  
11 handicapped persons bring to the neighborhood in the way of adverse impact?

12 MS. ZARTMAN: The character of the handicapped in some  
13 cases brings consequence.

14 COMMISSIONER FRANKLIN: For example?

15 MS. ZARTMAN: Formerly incarcerated individuals who occupy  
16 apartment houses in neighborhoods that are intended for residential and family use  
17 can create circumstances in which residential use is no longer a viable option, where  
18 the density of what under the current rules requires special exception becomes the  
19 character of the neighborhood. Now, that may be a perfectly laudable thing to do  
20 but it will change the character of a community in which people will want to raise  
21 their families, in which they will feel a community of interest with their neighbors,

22 This Board is familiar with issues of density of renters in what  
23 was established as single family homes. We don't buy single family homes to feel  
24 as though we are living in youth hostels or in transient hotel communities. We buy  
25 them because of the character of the neighborhood because there is a zoning policy  
26 that supports.

1 COMMISSIONER FRANKLIN: Of course, we have a similar  
2 issue before us in connection with people who were upset with students living in  
3 similar situations.

4 MS. ZARTMAN: Yes, I'm quite familiar with it.

5 COMMISSIONER FRANKLIN: I'm sure you are. And if the  
6 occupancy limits are not exceeded and presuming that behavior that is antisocial is  
7 dealt with under policies that govern that kind of behavior, why should the  
8 Commission -- I'm just raising this in an inquiry. I don't know where I'm coming  
9 down on this, but I need some help --

10 MS. ZARTMAN: You're raising the very issue we raise. If they  
11 can meet the standards, why give them matter of right use?

12 COMMISSIONER FRANKLIN: If they can meet the standards?

13 MS. ZARTMAN: If they can meet the standards, there would be  
14 no basis for --

15 COMMISSIONER FRANKLIN: Why not give them that?

16 CHAIRPERSON BENNETT: That's the question.

17 MS. ZARTMAN: Why give the matter of right use?

18 COMMISSIONER FRANKLIN: If the occupancy of the premises  
19 is going to be within occupancy limits as set by housing code, help me to understand  
20 why their occupancy -- let's take -- I have on my block, in fact across the alley from  
21 me, what from outward appearances is a single family residence, but it happens to  
22 be occupied I don't really know by how many frankly people who are recovering  
23 alcohol addicts. There's nothing about that occupancy that outwardly indicates that  
24 anything but a single family or a single household, put it that way, is living in the  
25 premises.

26 What I need help in is identifying what the adverse effects are

1 that we should be concerned with. Not just the fears. You know, some years ago  
2 there were fears if people of a different skin color moved in, certain things would  
3 happen, and they don't.

4 MS. ZARTMAN: Mr. Franklin, I view racial suggestions very  
5 offensively and I would hope that all of us in this day and age can trust one another  
6 well enough to realize that we're not speaking in shibboleth's fears and hatreds. We  
7 are talking about rationality. One handicapped facility, one recovering alcoholic  
8 facility on the block can easily be absorbed. The second, the third, the fifth, the  
9 tenth creates problems. You see the same issue --

10 COMMISSIONER FRANKLIN: But will you please specify for me  
11 what those problems are.

12 MS. ZARTMAN: They become the character of the  
13 neighborhood.

14 COMMISSIONER FRANKLIN: And the character is -- you mean  
15 to say that the character of the neighborhood --

16 MS. ZARTMAN: It becomes institutional use.

17 COMMISSIONER FRANKLIN: Institutional use.

18 MS. ZARTMAN: Institutional use. I saw this very well in  
19 Rochester, New York at a time when New York zoning code allowed single room  
20 occupancy nursing homes. Every large home along East Avenue, an historically  
21 designated avenue, became an SRO, became painted the same battleship gray. I  
22 swore somebody made a fortune selling battleship gray paint. The fire code had to  
23 be accommodated through the mounting of escape stairways and the character of  
24 the neighborhood became a neighborhood in which ambulances came and went all  
25 day long.

26 COMMISSIONER FRANKLIN: Now, this is developing a little bit

1 more of a coloration forming. Of course, that may be an example that's -- are there  
2 examples from the District of Columbia that you can point out?

3 MS. ZARTMAN: Well --

4 COMMISSIONER FRANKLIN: We're struggling with a federal  
5 law that's supposed to be the supreme law of the land, accompanied by committee  
6 reports that are directly on four points, on all fours, as the lawyers say, telling us that  
7 we have to do what is being proposed. That's how I read the federal law and the  
8 associated committee reports and the court decisions. Now, if there is some way in  
9 which we can spell out the kind of adverse effects that we are trying to prevent  
10 which are not discriminating under the terms of that law --

11 MS. ZARTMAN: All zoning code is discriminatory, Mr. Franklin.  
12 The code that says you may have 15 discriminates against 20. The code that says  
13 six discriminates against those who would wish seven. There's someone far better  
14 qualified to speak about the impact of matter of right religious use on upper 16th  
15 Street than I. That community is concerned that you will obviate the benefit of the  
16 overlay that they sought long and hard to have enacted. Jerome Tobe is here to  
17 speak tonight and will do that.

18 COMMISSIONER FRANKLIN: We'll leave the record open for  
19 some considered responses from you or anyone else present so that we can get an  
20 education, at least I can get an education on the subject. I was not present when  
21 the regulation --

22 CHAIRPERSON BENNETT: And give the Board an education.

23 MS. ZARTMAN: How long will the record be left open? I know  
24 that there are some others who would wish to --

25 COMMISSIONER FRANKLIN: I think it'll be left open at least --  
26 well, I don't want to prejudge that issue but it'll be left open for a significant period of

1 time. We've got some court cases, for example, that are very specific on the  
2 question of whether you can subject persons with a handicap as defined by the Fair  
3 Housing Act Amendments to what is the equivalent of our BZA special exception or  
4 variance procedures, and they indicate, at least so far as I've been able to read -- I  
5 haven't finished reading all the stuff that's been presented -- that the courts regard  
6 singling out persons with federally defined handicap status for special public scrutiny  
7 in terms of our special exception process is a discriminatory act on the part of the  
8 municipality. So I mean we're not operating here with a blank  
9 slate or simply because there's some kind of a consent agreement. There's a whole  
10 backdrop here and I understand that it may not be the last word because, if you read  
11 the newspapers, there's some effort in the Congress to -- there's a backlash --

12 MS. ZARTMAN: Yes. The National League of City sends a very  
13 strong position on this issue and again, I would argue that all of us understand  
14 communities must share a burden, but I am opposed to dumping problems on  
15 another neighborhood. I'm opposed to other states --

16 COMMISSIONER FRANKLIN: Your language talks about  
17 burdens and problems and what I'm asking for is an elucidation of what those  
18 problems and burdens are in reality, maybe supportable by the record of certain  
19 situations. That's all. Instead of us talking at large about burdens, problems and  
20 what have you, let's be specific about what they constitute and maybe there's a way  
21 in which we can try to live within the strictures that are being presented to us and at  
22 the same time not create serious social problems in the city. That's all I have.

23 COMMISSIONER FRANKLIN: And you're welcome to submit  
24 additional information. I was not being rude. I was trying to see if I could give those  
25 of you who have taken the time to come down this evening another date because  
26 Mr. Tobe has asked to be able to present additional comments from 16th Street, Ms.

1 Miller would like to do the same. We've invited Mr. Wolf to take a close look at the  
2 Campaign materials and to respond to them to the extent that they may be  
3 considered by this Commission to be pertinent to the proposed regulations that are  
4 before us and the Campaign has also asked to join us and were not able to come  
5 tonight. So we were looking for an alternative date. How does April 6 sound to my  
6 colleagues? Mr. Franklin?

7 COMMISSIONER FRANKLIN: Are you talking about a hearing?

8 CHAIRPERSON BENNETT: Continuation starting at 7:00.

9 MS. ZARTMAN: I will note that date. I also did give to the  
10 secretary the testimony on behalf of the Georgetown Residents Alliance.

11 CHAIRPERSON BENNETT: We have that.

12 MS. ZARTMAN: Since Mr. Crockett could not be here tonight,  
13 we have that in writing. But I'm sure he'll be pleased to submit additional material.

14 CHAIRPERSON BENNETT: I'm sure.

15 MS. ZARTMAN: Well, in response to the particular questions the  
16 Commission has raised.

17 COMMISSIONER FRANKLIN: That's okay with me.

18 CHAIRPERSON BENNETT: All right. Let's do it then for April 6,  
19 1998, 7:00.

20 MS. ZARTMAN: Thank you.

21 CHAIRPERSON BENNETT: And thank you, Ms. Zartman. Glad  
22 you were able to get in here because the gavel was going down.

23 All right. This hearing is adjourned. Thank you all very much.

24 (Whereupon, the hearing was adjourned at 8:01 p.m.)

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