

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

NOVEMBER 22, 2005

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The Special Public Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:00 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Acting Secretary
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OFFICE OF PLANNING STAFF PRESENT:

ELLEN MCCARTHY
JENNIFER STEINGASSER
STEVEN COCHRAN
ARTHUR ROGERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.
SHERRY GLAZER, ESQ.

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This transcript constitutes the minutes from the Special Public Meeting held on November 22, 2005.

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

6:16 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a Special Public Meeting of the Zoning Commission of the District of Columbia for Tuesday, November 22, 2005. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood, Commissioners Kevin Hildebrand, John Parsons and Greg Jeffries.

We have a single item on our agenda for tonight which is Zoning Commission Case No. 04-33 which is the Text Amendment for Inclusionary Zoning that we have been discussing for a while. Before we move into further deliberation I'll ask Ms. Schellin if there's any preliminary matters?

MS. SCHELLIN: No ma'am.

CHAIRPERSON MITTEN: Okay. Thank you.

We now have a version of the summary of the issues that has numbered pages. We left off on page 6.

If you recall, there were a couple of things. One is that we had been talking about how we would prescribe, or what level of detail we would use to prescribe how the prices and the rents would be set. We decided in large measure to leave that up to

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1 the Government agency that will be in charge of
2 implementing and calculating the income levels and so
3 on.

4 We also had reached, I will say, a
5 preliminary consensus regarding the control period.
6 I think we had a consensus with three Commissioners on
7 the side of basically having no termination of the
8 control period. And then we had two Commissioners
9 that were in favor of at least having a control period
10 on the for sale units, and we agreed to revisit that
11 at the end.

12
13 So unless anyone has any other
14 understanding I just want to proceed where we left off
15 then which is page 6 and we were basically at number
16 6. Number 6 relates to the ownership of the
17 affordable units. Some of this will be resolved by
18 the issue of the control period, but there's two
19 issues that had been raised. One is that whether non-
20 profits or the Housing Authority or some other similar
21 entity should be given the right to purchase a certain
22 percentage of affordable units when they're made
23 available. That's one issue. And then probably an
24 issue that even precedes that should be should a non-
25 profit or the Housing Authority be allowed to own the

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1 units in the first place. So I think one of the
2 reasons motivating that was to insure a longer period
3 of affordability. It may also be another mechanism
4 for providing a further subsidy so that there's that
5 additional benefit, I guess as a possibility.

6 So the threshold question is, I guess, in
7 the case of units that are for sale should a non-
8 profit housing provider or the Housing Authority be
9 able to purchase for sale units and then offer them,
10 I guess, to renters in a for-sale building or do we
11 want to have this basically be targeted exclusively
12 that the renter or the owner is the actual occupant?
13 And if you didn't understand what I said, I'll be
14 happy to take another shot at it.

15 Mr. Parsons.

16 COMMISSIONER PARSONS: No. It seems to me
17 given our tentative discussion or decision about this
18 being in perpetuity it seems to me that when an
19 applicant or when an owner, that is somebody that
20 bought it originally, has the opportunity to or wants
21 to sell and move on, that the opportunity for the
22 Housing Authority to come in and buy that even if they
23 had to write it down as they moved on, that is to buy
24 it at market value and write it down for resell, that
25 this is a good provision. So that we could

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1 accommodate the dilemma we have on the Commission of
2 people needing to realize the gain in their
3 investment. If the Housing Authority could step in
4 and acquire that at market value and then somehow
5 write it down to resell it to keep it as a unit that--
6 what's the term we've been using? I can't remember.

7 CHAIRPERSON MITTEN: Affordable?

8 COMMISSIONER PARSONS: Well, no there's a
9 new term for this.

10 MR. BERGSTEIN: Workforce?

11 COMMISSIONER PARSONS: Workforce.

12 CHAIRPERSON MITTEN: Okay, workforce.

13 COMMISSIONER PARSONS: So the workforce
14 could continue to acquire these properties. And I'm
15 not sure that's the intent of this.

16 CHAIRPERSON MITTEN: Yes, that's actually
17 an interesting idea.

18 COMMISSIONER PARSONS: That's what could
19 occur here. As people move through five or ten or 20
20 years, they want to sell it at market rate, they sell
21 it to the Housing Authority. The Housing Authority
22 then uses what resources they have to write it back
23 down and sell it on the marketplace again.

24 CHAIRPERSON MITTEN: Okay.

25 COMMISSIONER PARSONS: I mean sell it at

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1 an affordable rate again.

2 CHAIRPERSON MITTEN: So the unit itself
3 would remain affordable?

4 COMMISSIONER PARSONS: Yes.

5 CHAIRPERSON MITTEN: And this non-profit
6 or the Housing Authority could basically fill in that
7 gap that is the concern of some of the Commissioners
8 that people would not be building wealth. It gives
9 them a chance to realize that wealth accumulation.

10 COMMISSIONER PARSONS: Right.

11 CHAIRPERSON MITTEN: So basically it puts
12 the burden on the Housing Authority or the non-profit
13 to say, "Yes, that's our priority here is to create
14 wealth for this particular --

15 COMMISSIONER PARSONS: Correct. That's
16 the idea.

17 CHAIRPERSON MITTEN: -- owner."

18 COMMISSIONER PARSONS: Correct. That's
19 the idea. But I'm not sure providing them the
20 opportunity to acquire these in the beginning makes
21 sense.

22 CHAIRPERSON MITTEN: Yes.

23 COMMISSIONER PARSONS: It's more at the
24 longer term that I would suggest that.

25 CHAIRPERSON MITTEN: Okay. Reactions to

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1 that?

2 MR. BERGSTEIN: I would say just that as
3 I understand the intent of the provision it's to
4 permit the Housing Authority or whoever it would be to
5 then be able to sell these units at either a deeper
6 level of affordability. You know what I'm saying?
7 That even though the idea is to do everything 50/50,
8 let's say, within a particular zoned district if DHCD
9 has the ability to purchase those units and is willing
10 to further subsidize, it would create a deeper level
11 of affordability than even these provisions would
12 provide for.

13 CHAIRPERSON MITTEN: I think we understand
14 that. Mr. Parsons is suggesting a variation.

15 MR. BERGSTEIN: Right. As I understand a
16 variation, I don't know if you could tell a seller, an
17 actual private person, who to sell to. But what
18 you're saying is that it would be a way for the seller
19 to get an exemption in essence from the controls if
20 they sell it to DHCD at market?

21 CHAIRPERSON MITTEN: Correct.

22 MR. BERGSTEIN: Okay.

23 CHAIRPERSON MITTEN: But then the controls
24 wouldn't lapse. They would only lapse as it related
25 to that seller and that buyer. Because that buyer in

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1 paying the market rate they would have an expressed
2 interest in allowing that owner to recognize the
3 wealth that they would have created without
4 sacrificing the affordability of the unit long term.
5 Okay?

6 Mr. Hildebrand.

7 COMMISSIONER HILDEBRAND: The discussion
8 has moved into a completely different direction than
9 I thought it was going.

10 I thought this provision was to allow the
11 Housing Authority the first shot to buy a unit in a
12 development and then perhaps rent it for a period of
13 time. And my concern was changing the mix of
14 occupants in a building from owner-occupied to a
15 combination of owner-occupied and rental with the
16 affordable units being rented as opposed to owned.
17 This new aspect I thought had been dealt with with the
18 concept of the unit being affordable in perpetuity or
19 at least for the lifespan of the building. If that's
20 the case, then how would the unit be sold at market
21 rate to begin with?

22 CHAIRPERSON MITTEN: Well, there's a
23 couple of issues and then Mr. Parson's threw in
24 another one.

25 So first we have to decide do we want

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1 anyone other than the beneficiary of the
2 affordability. So do we want anyone other than the
3 person who's going to actually occupy it to be able to
4 own it? That's the first thing.

5 Then if you get over that hurdle, then
6 it's a question of do you want to give non-profits or
7 the Housing Authority like up front sort of first
8 claim on some percentage of those units? And one
9 purpose is to lengthen the affordability period, which
10 perhaps is not relevant anymore. The other would be
11 as Mr. Bergstein reminded us, to offer a deeper level
12 of affordability. Okay. So there are two possible
13 purposes that could serve.

14 And then Mr. Parsons is saying well here's
15 yet another way we can could create a provision where
16 this non-profit to the extent that there is a true
17 priority, which it's not my priority; my priority is
18 to have the affordability to last as long as possible
19 because it serves more people. But if the housing
20 community really wants to benefit certain individuals
21 who have owned their properties for a certain length
22 of time or whatever criteria they want to use to
23 judge, that they would allow that person to capture
24 the wealth that they would have created if they were
25 able to sell the unit at market by saying we'll pay

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1 you market rate. But we will keep the affordability.

2 So that from the Zoning Commission's
3 perspective there has been no change. But the Zoning
4 Commission has allowed an individual selling to a non-
5 profit housing provider or the Housing Authority to
6 give them the sort of one-time benefit of capturing
7 their equity that we would at least allow for that.

8 COMMISSIONER HILDEBRAND: What do you do
9 when the Housing Authority says no, and the person's
10 only option is then to sell it at an affordable rate?

11 CHAIRPERSON MITTEN: Then that would be
12 what would be the case if we didn't put the provision
13 in there. I mean, frankly, I think what it would do
14 is basically call the question with the housing
15 providers and I don't think they would be basically
16 just handing out windfalls to people.

17 COMMISSIONER HILDEBRAND: Right.

18 CHAIRPERSON MITTEN: I think they want to
19 spend their money creating affordability, which is
20 what I'm suggesting that we should do as well.

21 COMMISSIONER HILDEBRAND: My suggestion
22 really goes to the Housing Authority which has the
23 resources in the housing trust fund to offset what I'm
24 talking about.

25 CHAIRPERSON MITTEN: Right.

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1 COMMISSIONER HILDEBRAND: It seemed to me
2 as a compromise to where we were last week --

3 CHAIRPERSON MITTEN: Yes.

4 COMMISSIONER HILDEBRAND: -- I wanted to
5 make it mandatory as I thought about it, that this
6 option would be available to owners. And then I said
7 well how long do they need to stay there? What's the
8 threshold? Do they need to stay there five years or
9 what?

10 CHAIRPERSON MITTEN: But we couldn't make
11 the Housing Authority pay them the money. That's the,
12 you know --

13 COMMISSIONER HILDEBRAND: Yes, that's why
14 I hesitated to bring this up. But I think it's a way
15 for people to -- because I was persuaded by Mr.
16 Jeffries' argument that housing is the way we have
17 gained personal wealth in this country and that
18 there's an opportunity to do that and still keep these
19 affordable.

20 CHAIRPERSON MITTEN: Yes. I think it's a
21 creative idea, and I don't want you to think
22 otherwise. Maybe we could hear from Mr. Jeffries and
23 Mr. Hood given that they were troubled by not having
24 a termination of the control period. Is this
25 attractive to you at all as a compromise?

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1 COMMISSIONER JEFFRIES: Well I'll start
2 off I have a statement first. And I think this goes
3 back to what Commissioner Parsons said last week or
4 two weeks ago. I think this is very murky waters. I
5 think we're not fully qualified to be up here and
6 making these kinds of determinations, to be honest
7 with you. I just think there are people who have done
8 this kind of thing. I think we're being put in a very
9 awkward position. So that's just a statement. I just
10 don't know what this has to do with zoning.

11 But beyond that I just want to get a sense
12 and, Madame Chair, maybe you can help me or perhaps
13 Mr. Bergstein can help me out here. If you can just
14 illustrate to me what this particular -- I know we
15 talked about the intent of it, but I'm just trying to
16 put it in a practical sense of give me an example of
17 a building that has a certain percentage of
18 affordability and how this would work. And then I
19 want to also understand how this impacts upon our
20 discussion around the control period. I don't know
21 how this impacts on the issue around the control
22 period. And then I'm troubled as to trying to figure
23 how a scenario like this would apply.

24 CHAIRPERSON MITTEN: Okay. I'll take a
25 first swipe at it. Okay.

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1 Say you have a for sale building and it's
2 going to have 10 units that are available at 80
3 percent of AMI and then you have 10 units that are at,
4 what's the other percentage, 50? 50 I think.

5 COMMISSIONER JEFFRIES: 60 I think.

6 CHAIRPERSON MITTEN: No, it's 50.

7 COMMISSIONER JEFFRIES: Is it 50. That's
8 right, it's 50.

9 CHAIRPERSON MITTEN: So some non-profit
10 decides that they're going to buy the units, say
11 they're going to buy five of the ones that are at 80
12 percent or even five of the ones that are at 50
13 percent. And then they're going to say we're going to
14 subsidize it further and offer it at 30 percent to
15 someone else. And they can either then sell it to
16 somebody or they rent it to somebody.

17 COMMISSIONER JEFFRIES: Right.

18 CHAIRPERSON MITTEN: I think the notion
19 would be that they would rent it although there would
20 be no requirement for them to rent it. So they get a
21 little deeper than we're able to --

22 COMMISSIONER JEFFRIES: So the intent of
23 this is really to get deeper levels of affordability
24 and beyond --

25 CHAIRPERSON MITTEN: I think that's one

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1 agenda item. The other is depending on if you don't
2 know what the control period is. Let's say we decided
3 we only want to make it 10 years. Well you know these
4 entities could rent it or own it and say we're going
5 to rent it in perpetuity at the subsidized rate
6 because we don't want it to end after 10 years.
7 That's how it dovetails with the control period.

8 COMMISSIONER JEFFRIES: Okay. Okay.

9 CHAIRPERSON MITTEN: Because they wouldn't
10 be constrained by the control period. They could go
11 beyond the control period. And they could only do
12 that if they control the unit.

13 COMMISSIONER JEFFRIES: And all of this
14 assumes and based on what Commissioner Parsons stated
15 that these non-profits would have to buy into this
16 whole notion of wealth creation. They might have a
17 completely different agenda as relates to
18 affordability and policy and so forth.

19 CHAIRPERSON MITTEN: Well, the original
20 notion doesn't require them to buy into wealth
21 creation. The original notion is either to lengthen
22 the control period beyond what the Commission might
23 put in place or deepen the levels of affordability.
24 What Mr. Parsons suggested was another possible way of
25 treating this, which is to say we're not going to let

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1 the average owner sell to another owner at market rate
2 and get the gain at the cost of losing the affordable
3 unit. So he crafted a compromise which is how can we
4 get them the gain without losing the affordable unit
5 that would require a non-profit or the Housing
6 Authority to bridge the gap and basically pay them
7 their appreciation.

8 COMMISSIONER JEFFRIES: Yes. I certainly
9 don't have an issue with the non-profit or the DC
10 Housing Authority trying to a certain percentage of
11 units to create more deeper levels of affordability.
12 I don't have a problem with that concept.

13 But I do think that this needs to
14 obviously be waived. Maybe we can craft something
15 that these two sort of work sort of in tandem with one
16 another. If we were to set a longer control period,
17 or maybe a shorter control period, perhaps a non-
18 profit or DC Housing could come in and actually, as
19 you say purchase, give deeper levels of affordability.
20 And they could perhaps create longer periods for those
21 particular units.

22 In other words there is sort of a blended
23 scenario that we can put on the table versus --
24 because it seems to me that this is hard to just look
25 at this in isolation without obviously the control

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1 period piece.

2 CHAIRPERSON MITTEN: Yes. Right.

3 COMMISSIONER JEFFRIES: So to me I would
4 like to sort of look at again a shorter period of
5 time. I'm going back to my wealth creation piece.
6 But that the carve-out to that would be the non-
7 profits and the DC Housing Authority could come in and
8 offer lower levels of affordability for a longer
9 period of time.

10 CHAIRPERSON MITTEN: So what I'm hearing,
11 and Mr. Hood I'm going to let you speak next, is
12 you're not opposed to non-profits or the Housing
13 Authority given the opportunity to buy these units
14 when the opportunity presents itself. And I don't
15 think Mr. Parsons is either at the moment.

16 COMMISSIONER PARSONS: Right.

17 CHAIRPERSON MITTEN: And I'm going to work
18 my way down here.

19 But, do you want to give them a first
20 preference? At the beginning I think the original
21 notion was that they would be offered a certain
22 percentage of units as sort of like do you guys want
23 them, otherwise we're going to sell them to the people
24 that are qualified. How do you feel about giving them
25 a first right of refusal, if you will, on a certain

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1 percentage?

2 COMMISSIONER JEFFRIES: It seems to me
3 that they're the most qualified to identify the
4 population and so forth. I mean I guess I wouldn't
5 have a problem with them getting a sort of first right
6 of some sort.

7 CHAIRPERSON MITTEN: Okay. And, Mr.
8 Parsons, how do you feel about that?

9 COMMISSIONER PARSONS: Well I didn't see
10 this as a first right. I saw this as if they're not
11 moving in the marketplace that they would be offered.

12 CHAIRPERSON MITTEN: Okay. Let me work
13 this side for minute.

14 Mr. Hood?

15 VICE-CHAIRPERSON HOOD: I liked what
16 Commissioner Parson brought to the table, but when you
17 mention about the non-profit or the Housing Authority
18 bridging the gap, and I'm sure that's a concern for
19 everybody so when we get to that point, I think a lot
20 of that would depend upon their budgets and other
21 things like that. And past history may dictate we
22 don't have the money. Then I guess we'd have to have
23 some language or something crafted what if or
24 contingency plan if this is not available here. But
25 I would say that the Housing Authority or non-profit

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1 should have the first right.

2 But I appreciate and thank Mr. Parsons for
3 being very creative. I think that's getting us
4 moving.

5 CHAIRPERSON MITTEN: Mr. Hildebrand.

6 COMMISSIONER HILDEBRAND: I think it lacks
7 the clarity of our original discussion, which was that
8 the units would be in affordable or workforce housing
9 mode for perpetuity or at least the life of the
10 building. That said I'm not against the concept of
11 the Housing Authority or non-profit having the first
12 right to purchase a unit. My only concern goes to
13 whether or not then all the affordable units in the
14 building become rental units instead of ownership
15 units.

16 CHAIRPERSON MITTEN: Yes.

17 COMMISSIONER HILDEBRAND: I think that
18 ownership is the goal here and that we might be
19 creating a loophole in the process that eliminates the
20 very aspect that we're trying to achieve.

21 COMMISSIONER JEFFRIES: Excuse me.
22 Commissioner Hildebrand, I agree with you
23 wholeheartedly on that one, I mean in terms of the
24 ownership piece. If we can craft language to that
25 effect, that would be fine.

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1 CHAIRPERSON MITTEN: Okay. I think your
2 point is well taken Commissioner Hildebrand, because
3 you can still accumulate wealth owning an affordable
4 unit because over time, as we know, real estate values
5 only increase. And you won't get the full benefit of
6 it but you will get some. So if you're not owning it
7 and the Housing Authority's owning it, then you have
8 no chance.

9 COMMISSIONER JEFFRIES: Madame Chair,
10 values don't always increase.

11 CHAIRPERSON MITTEN: Over time in this
12 town . Over time in Washington, and I've studied this
13 over a period of like 40 years, they have.

14 COMMISSIONER JEFFRIES: So they dip and
15 they come back.

16 CHAIRPERSON MITTEN: I know but over time,
17 it's an average over time.

18 COMMISSIONER JEFFRIES: Okay. I've just
19 been in several markets --

20 CHAIRPERSON MITTEN: It's like the stock
21 market.

22 COMMISSIONER JEFFRIES: Okay.

23 CHAIRPERSON MITTEN: Buy low, sell high.
24 I know, I get it.

25 So that I guess that would then run to the

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1 issue if you have a general sentiment that perhaps we
2 want to let a non-profit or the Housing Authority own
3 some of the units but we don't want it to be very many
4 because we don't want to shift the balance, that's
5 where the percentage comes in.

6 So how about if I just throw something out
7 there, and you all can react to it. Because I think
8 the number was higher than what I'm going to suggest,
9 but I'll suggest 25 percent of the units in a for-sale
10 building, because the for-rent building if they want
11 to be the owner, they can be the owner. Or some other
12 number? I've just got to trying to start tying this
13 down. What would you like? You like 25? You like
14 10? You like 15?

15 COMMISSIONER PARSONS: I like 25.

16 CHAIRPERSON MITTEN: You like 25?

17 COMMISSIONER JEFFRIES: 25 is fine. This
18 is crazy. I'm sorry. Madame Chair, I appreciate --

19 CHAIRPERSON MITTEN: Would you clarify
20 that last statement?

21 COMMISSIONER JEFFRIES: -- what you're
22 doing. It's just very difficult, obviously. I mean
23 25 percent, I mean that might be a half a unit or one
24 and a half units of something.

25 CHAIRPERSON MITTEN: Right. Now remember

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1 what we're doing now is we're going through this sort
2 of thematically, and this will be refined much more
3 when we finally publish it. So just keep that in
4 mind.

5 COMMISSIONER PARSONS: I think it should
6 say up to 25 percent --

7 CHAIRPERSON MITTEN: Okay.

8 COMMISSIONER JEFFRIES: Yes.

9 CHAIRPERSON MITTEN: Okay.

10 COMMISSIONER PARSONS: -- to avoid the one
11 and a quarter units.

12 CHAIRPERSON MITTEN: Okay.

13 COMMISSIONER JEFFRIES: Okay.

14 CHAIRPERSON MITTEN: Okay. Is everyone
15 comfortable with that? Okay. So they would basically
16 be given the first right of refusal when they were
17 first initially offered for sale. Okay.

18 That's been taken care of.

19 Now we have basically the issue that Mr.
20 Parsons raised which is we have units that are owned
21 by regular just Joe Homeowner. And depending on where
22 we end up at the end of this, he's in an affordable
23 unit and he cannot sell it to anyone other than
24 another affordable buyer. Do we want to give him the
25 opportunity in the event that the Housing Authority or

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1 the non-profit wants to maintain the affordability but
2 to give him the opportunity to with the cooperation of
3 the non-profit or the Housing Authority, to realize
4 their full gain relative to market value? Do you want
5 to build something like that in?

6 COMMISSIONER PARSONS: Well, I would like
7 to push this a little bit. I really think it's the
8 Housing Authority. I can't imagine the motivation for
9 the non-profits to do this.

10 CHAIRPERSON MITTEN: Okay.

11 COMMISSIONER PARSONS: But I'd certainly
12 like to circulate this concept in a proposed action
13 and see what kind of response we get.

14 CHAIRPERSON MITTEN: Okay.

15 COMMISSIONER PARSONS: I don't have any
16 language. I'll have to rely on others to do that
17 rather than to create it tonight.

18 CHAIRPERSON MITTEN: Okay. That's fine.
19 I think it's a good idea in terms of just putting it
20 out there --

21 COMMISSIONER JEFFRIES: I would be in
22 support of it.

23 CHAIRPERSON MITTEN: -- to have people
24 consider.

25 The one comment that I would like to make,

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1 and I think I sort of made it already, and this is the
2 reason why I feel so strongly that the control period
3 shouldn't lapse. Here you are at the juncture and
4 you're asking the Housing Authority, let's say, to
5 take X dollars and basically give it to somebody as
6 their reward for living in this affordable unit for 10
7 years, 15 years, or 20 years. And we're just going to
8 single out a few people and we're going to give them
9 okay you get this windfall because you made this
10 commitment. What else would that buy you as the
11 Housing Authority? What else would those dollars buy
12 you and could you use those to help more people as
13 opposed to a windfall to one or two or three people?
14 That's why I feel strongly about maintaining the
15 control period. Because I think for whatever Joe
16 Homeowner who doesn't get to realize the full gain on
17 the appreciation of their house if they could sell it
18 at market rate, that the benefit to more people far
19 outweighs the benefit to that one individual. And I
20 think faced with that choice the Housing Authority
21 would not give them that money because their purpose
22 is not to give a windfall to them. Their purpose is
23 to provide affordable housing for the many people that
24 will still remain that need it.

25 COMMISSIONER JEFFRIES: That will

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1 certainly continue to remain if they don't recognize--
2 and, Madame Chair, you're saying windfall. I guess I
3 wouldn't necessarily say windfall, because windfalls
4 seem to indicate that there's some sort of golden
5 parachute.

6 I think that, again, I'm just proposing a
7 whole notion that most people are able to create some
8 level of wealth and ownership in home ownership.
9 period.

10 CHAIRPERSON MITTEN: Yes.

11 COMMISSIONER JEFFRIES: And we should not
12 separate the market rate from the affordable in that
13 particular concept. And to me it would seem THAT a
14 good strategy is not just about creating numbers of
15 affordable units but also helping people move out of
16 affordable units into more market rate units. I'm
17 just concerned about maintaining sort of a permanent
18 low and mod population. Now I hear you, Madame Chair,
19 that that might not be the goals and objectives of the
20 Housing Authority. And I think we're going back to
21 the control piece again, but I just really do have a
22 strong concern about this whole notion of not
23 providing the sort of housing benefit that you and I
24 get as related to home ownership.

25 CHAIRPERSON MITTEN: Okay. Anybody else

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1 on this subject?

2 COMMISSIONER PARSONS: Perhaps this whole
3 notion is beyond our jurisdiction again or beyond our
4 control. But I would somehow like to surface this
5 idea.

6 CHAIRPERSON MITTEN: Yes. No, I think
7 it's good.

8 COMMISSIONER PARSONS: Perhaps this is a
9 job for the City Council to consider and not us. But
10 how do we surface that idea to that forum?

11 CHAIRPERSON MITTEN: Well, I think if we
12 at least advertise it, then we can ask the Office of
13 Planning to help us get feedback from the Housing
14 Authority and see what they think of it.

15 COMMISSIONER PARSONS: Okay. Okay.

16 CHAIRPERSON MITTEN: I think I know how it
17 would turn out in reality, but I support the idea of
18 exploring it further.

19 Anybody else?

20 Okay. Then the next issue would be --

21 MR. BERGSTEIN: Can I ask a follow-up
22 question and you may get to this later during the
23 control period. But in the event that this purchase
24 occurs with DHCD or non-profits, would the seller be
25 able to retain all of the net profit or as was

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1 proposed in the event of the end of the control
2 period, would there be a split between the seller and
3 the District? Though if DHCD is involved, that's sort
4 of circular. And the other option that you might want
5 to consider is reducing it to 50 percent of the market
6 rate. I mean that basically would have the same
7 effect. In any event if you leave it blank, I assume
8 that they'll be able to keep all the net profit.

9 CHAIRPERSON MITTEN: Well the way that I
10 would view it is that from our perspective depending
11 on how we decide about the control period, is that
12 from the perspective of the people who need the
13 affordability it doesn't change. So DHCD or the
14 Housing Authority can pay them a dollar more or they
15 can pay them \$100,000 more or a \$100 million more;
16 they can decide. If they want to help someone create
17 wealth by giving them something upon the sell of their
18 unit, it's up to them to figure out how much that is.
19 It doesn't even have to relate to market value.

20 MR. BERGSTEIN: The question I was asking
21 is that under the petitioner's proposal which assumed
22 that the control period would end that the --

23 CHAIRPERSON MITTEN: Yes, I know that. I
24 got that. I know that. I thought you just answered
25 your own question on that point which is at the time

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1 if there is a sale -- and we're talking about a sale
2 that basically we just give the opportunity for a sale
3 to take place between very specified parties that for
4 any of that money to flow back to the District, it's
5 just the authority to take out of one pocket and put
6 in another. But what I'm suggesting is whatever the
7 price is that the owner and the Housing Authority
8 would agree to doesn't even need to relate to market
9 value. So we can set it at a 100 percent of market
10 value, 50 percent of market value, we basically
11 shouldn't even concern ourselves with that particular
12 transaction. Because what we're concerned about is
13 maintaining the affordability of the unit.

14 MR. BERGSTEIN: Then, I'll just be silent.

15 CHAIRPERSON MITTEN: Do you follow me?

16 MR. BERGSTEIN: I understand but I'll just
17 leave it silent.

18 CHAIRPERSON MITTEN: Okay. The next set
19 of issues relate to a series of development standards.
20 One of the issues that was raised was should
21 affordable units that are being provided under other
22 programs or under other regulations, like we have some
23 in Reed-Cooke if you go above a certain level you have
24 to have affordable units, should those be able to
25 count against the affordable requirement?

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1 COMMISSIONER JEFFRIES: Do you mean if
2 they should be credited?

3 CHAIRPERSON MITTEN: Correct. Yes, to get
4 credit.

5 COMMISSIONER JEFFRIES: Yes. I would say
6 yes.

7 CHAIRPERSON MITTEN: But there's two
8 things I just want to be clear about to the extent
9 that you say yes. One is the number of units because
10 the requirements are not all the same as what we would
11 put in place. So there's a certain number of units
12 that be required to be affordable, and there's a
13 certain level of affordability.

14 COMMISSIONER JEFFRIES: Right.

15 CHAIRPERSON MITTEN: So are you suggesting
16 that they would have to equate?

17 COMMISSIONER JEFFRIES: Yes, if Reed
18 requires 10 percent and the particular District says
19 20 percent, the gap is what that particular developer
20 would have to cover.

21 CHAIRPERSON MITTEN: But I don't remember
22 what the requirements are in Reed-Cooke.

23 COMMISSIONER JEFFRIES: I don't know what
24 it is either.

25 CHAIRPERSON MITTEN: Let's just say it's

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1 100 percent of the AMI instead of 80 percent of the
2 AMI or 50 percent of the AMI. So we'd have to bring
3 those down. You're not suggesting that --

4 COMMISSIONER JEFFRIES: Oh, I see what you
5 mean.

6 CHAIRPERSON MITTEN: -- they would be able
7 to count 10 percent at a 100 percent AMI against 10
8 percent that would otherwise be required to be 50
9 percent or 80 percent?

10 COMMISSIONER JEFFRIES: I think we're
11 seeing the difficulty of mandatory inclusionary
12 rezoning.

13 COMMISSIONER HILDEBRAND: Madame Chair,
14 I'm not against the concept of other affordable units
15 going towards meeting the requirements of a mandatory
16 affordable housing program, but I think they would
17 only count to the extent that they met the
18 requirements of the affordable housing program. In
19 other words, if they didn't meet it if they didn't
20 reach the same level of affordability, they would not
21 count toward the program.

22 CHAIRPERSON MITTEN: Yes. Actually if you
23 think about it, if you were in -- I just want to keep
24 saying I'm not sure if I'm rendering Reed-Cooke
25 correctly, but just for the sake of an example. If

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1 you were required to have, say, 10 percent of the
2 units affordable and you were only required to go to
3 100 percent of the AMI and under inclusionary zoning
4 you were required to do 10 percent at 80 and 10
5 percent at 50, then those would count. You'd be
6 deeper in because of inclusionary zoning but they
7 would count towards the Reed-Cooke requirement or
8 whatever the other requirement is. So I actually
9 don't think it's too problematic. I think we just
10 need to say that they have to equate --

11 COMMISSIONER HILDEBRAND: Right.

12 CHAIRPERSON MITTEN: -- in terms of
13 quantity and level of affordability.

14 COMMISSIONER JEFFRIES: So we're just
15 talking about some way sort of super imposing
16 mandatory inclusionary rezoning over --

17 CHAIRPERSON MITTEN: But those units could
18 be counted for multiple purposes. Do you guys agree?

19 VICE-CHAIRPERSON HOOD: I would agree. An
20 easy equate, I would agree.

21 CHAIRPERSON MITTEN: Okay. Should the
22 affordable units be dispersed throughout the building?
23 We've dealt with that.

24 VICE-CHAIRPERSON HOOD: Yes.

25 ALL: Agree.

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1 CHAIRPERSON MITTEN: Should the mix of
2 unit sizes among the affordable units contain an
3 average of the same number of bedrooms, for instance,
4 as the balance of the project, the market rate portion
5 of the project?

6 COMMISSIONER JEFFRIES: Yes.

7 ALL: Yes.

8 CHAIRPERSON MITTEN: Yes. Okay. Should
9 the affordable units be indistinguishable in exterior
10 design, materials and finish from the market rate
11 units?

12 COMMISSIONER JEFFRIES: Yes.

13 ALL: Yes.

14 CHAIRPERSON MITTEN: I agree and I also
15 just wanted to add to that that, although I think most
16 of these are going to be in buildings, typical
17 apartment building, there may be some that are in
18 different kinds of configurations. And that it would
19 be when they were initially constructed, because I
20 don't know that we would want to try and have the
21 Zoning Administrator running around after them for
22 years and years. Okay?

23 How about the interior of the affordable
24 units? I think what had been suggested was that they
25 can be different but no less than standard materials,

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1 appliances and finishing. I just wouldn't know how we
2 might define the standard?

3 COMMISSIONER JEFFRIES: Just building
4 standard. I mean the developer would set sort of what
5 the building standard is. I think the affordables
6 would have to be at that minimum. And then the market
7 rates, the different finishes, obviously, they would
8 buy in increment over and above those building
9 standard finishes.

10 CHAIRPERSON MITTEN: Is that how it
11 typically is? Is it like buying a car?

12 COMMISSIONER JEFFRIES: It's like, yes,
13 building standards. I mean you start off with just
14 formica or a standard refrigerator and then you move
15 up and up and up.

16 CHAIRPERSON MITTEN: And each additional
17 choice cost you additional money?

18 COMMISSIONER JEFFRIES: Absolutely.

19 CHAIRPERSON MITTEN: Okay.

20 COMMISSIONER PARSONS: I think it would be
21 helpful then to insert building standard because the
22 word standard to me went to the project. And then if
23 one guy had granite, the other one ought to. And
24 that's not what's meant here.

25 CHAIRPERSON MITTEN: Okay.

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1 COMMISSIONER PARSONS: If building
2 standard is a term of art, let's use it.

3 COMMISSIONER JEFFRIES: Right. I don't
4 think the developer should have the -- and they're not
5 going to have granite as a building standard. I mean
6 obviously, so --

7 CHAIRPERSON MITTEN: Okay.

8 COMMISSIONER JEFFRIES: -- unless it's a
9 completely luxury building.

10 CHAIRPERSON MITTEN: And then the
11 affordable units shall have granite.

12 Anyone else on this subject? Okay.

13 COMMISSIONER PARSONS: I'm not exactly
14 sure that that really defines anything. But it's
15 still up to the developer to establish what the
16 building standard is. So that we haven't set a
17 minimum. It's just that whatever the developer
18 chooses as standard for that particular project is the
19 baseline. Is that correct?

20 COMMISSIONER JEFFRIES: Yes, absolutely.
21 Yes, I mean we don't want to start making
22 determinations on what their standard should be.

23 CHAIRPERSON MITTEN: Yes. Okay. A series
24 of minimum square foot sizes had been suggested for
25 the different sizes of units.

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1 COMMISSIONER JEFFRIES: Can't they reflect
2 just what's set forth at the market rate? Why would
3 we not have them --

4 CHAIRPERSON MITTEN: We can do that.

5 COMMISSIONER JEFFRIES: I mean, does
6 anyone have comments on that?

7 CHAIRPERSON MITTEN: That's a good idea,
8 actually. So it would be not only the mix of units
9 sizes would reflect what the market rate portion of
10 the project but the sizes of those unit sizes.

11 COMMISSIONER JEFFRIES: If you're trying
12 to be indistinguishable.

13 CHAIRPERSON MITTEN: Okay. I think that's
14 good.

15 Okay. And then that just the delivery of
16 the affordable units and the market rate units will
17 basically be concurrent. Do we all agree with that?

18 ALL: Yes.

19 COMMISSIONER JEFFRIES: Now if the
20 development is being constructed in phases and the
21 developer chooses to in the first phase do all the
22 market rate and the second phase is where the
23 affordables -- wait. Does that really tie to what we
24 had discussed in the first?

25 CHAIRPERSON MITTEN: If they're dispersing

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1 it throughout the project, then they should be
2 delivering a certain percentage --

3 COMMISSIONER JEFFRIES: Okay.

4 CHAIRPERSON MITTEN: -- of affordable
5 units in phase one and a certain percentage in phase
6 two.

7 COMMISSIONER JEFFRIES: It could be easier
8 to --

9 CHAIRPERSON MITTEN: We could put some
10 language that if the project is built in phases, that
11 a proportionate number of affordable units will be
12 delivered concurrently with the market rate units.

13 COMMISSIONER JEFFRIES: I just really
14 would like for the developer to be able to determine
15 sort of how they will deliver these units.

16 CHAIRPERSON MITTEN: Well what if they
17 never do phase two?

18 VICE-CHAIRPERSON HOOD: And also, Madam
19 Chair, we're talking about equal distribution and I
20 agree with you. If they never do phase two sometime--
21 I'm not saying that happens. But once in a while we
22 weren't able to finish a project. So, therefore, we
23 don't get anything. Or the city doesn't get anything.

24 COMMISSIONER JEFFRIES: Okay.

25 CHAIRPERSON MITTEN: Okay. Then on page

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1 7 issue number 8 is the whole issue of the length of
2 the control period, which I think we don't need to
3 address. We'll come back to it, but I don't think we
4 need to address it now as a separate issue.

5 So then we get on page 8 to what relief
6 should be granted from the strict application of the
7 rules and under what circumstances. So there were
8 different proposals that were made about off-site
9 compliance. So the petitioner, the campaign, had
10 recommended that we not have a provision for matter of
11 right off-site compliance. The Office of Planning had
12 suggested that up to 50 percent of the affordability
13 requirement may be satisfied off-site. Can I get a
14 reaction to that as an initial issue?

15 Okay. I think if there's not an
16 extenuating circumstance, which we'll deal with
17 extenuating circumstances might be and what that might
18 look like, but I think just regular run-of-the-mill
19 project there shouldn't be a matter-of-right provision
20 to go off-site. I think there should be some
21 compelling reason that is inherent in the site or in
22 what they're trying to do with the project like we'll
23 see later if it's a specialized project with certain
24 kinds of fees and so on.

25 VICE-CHAIRPERSON HOOD: So this is the

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1 same area as I was talking about like TDRs to some
2 point?

3 CHAIRPERSON MITTEN: No, it's more like a
4 housing linkage type of provision where what we would
5 otherwise have you do on site you can do someplace
6 else because you'd rather.

7 VICE-CHAIRPERSON HOOD: I think it needs
8 to be on-site.

9 CHAIRPERSON MITTEN: Okay.

10 VICE-CHAIRPERSON HOOD: Is that in line
11 with -- I think it needs to be on-site. I don't think
12 we need to move because we also -- we're trying to
13 create affordable housing. We're also trying to
14 create things across the board if I'm dwelling into it
15 a little more. But if you're doing something to
16 Watergate, let it be at the Watergate. Don't put it
17 all on First Street.

18 COMMISSIONER JEFFRIES: But what if
19 there's a practical difficulty?

20 CHAIRPERSON MITTEN: Well, I think that's
21 a different matter.

22 COMMISSIONER JEFFRIES: Okay.

23 CHAIRPERSON MITTEN: And we'll get to
24 that. I'm asking so that wouldn't be matter of right
25 there would have to be a showing of practical

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1 difficulty. What I'm asking for as a routine matter
2 so we want people to be able to make the choice to
3 provide the affordable housing off-site?

4 Commissioner Hildebrand had his mike on
5 there.

6 COMMISSIONER HILDEBRAND: As a matter of
7 right without showing hardship, I would say no.

8 CHAIRPERSON MITTEN: Okay.

9 Mr. Parsons.

10 COMMISSIONER PARSONS: I would agree with
11 Mr. Hildebrand, and the petitioner called for the same
12 thing.

13 CHAIRPERSON MITTEN: Okay.

14 COMMISSIONER JEFFRIES: Excuse me. I'd
15 like to ask the Office of Planning to comment on this
16 one. The less than 50 percent of the affordability
17 requirement may be satisfied off-site as a matter of
18 right. What was the genesis of that particular --

19 MR. ROGERS: It was the opportunity if,
20 for instance, a developer within a very limited area,
21 a Census tract, could use the different construction
22 costs of a lower density building. So going from a
23 high density building to a lower density building
24 using lower-end construction costs, we would then
25 leverage -- actually we would increase the number of

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1 affordable units created by the entire deal, if you
2 will. Because the number of affordable units would
3 have to be increased. The number of affordable units
4 off-site would be increased by 50 percent. So, it was
5 the opportunity to leverage the differences in
6 construction costs between two different sites, land
7 costs, those kinds of things to get more affordable
8 units and still maintain a diversity of the
9 neighborhood.

10 CHAIRPERSON MITTEN: Can I just ask you to
11 clarify something on that point? Did that apply even
12 if the amount of off-site development didn't exceed 50
13 percent of the affordability requirement? Even if it
14 was below 50 percent of the affordability requirement,
15 you'd have them providing a higher percentage?

16 MR. ROGERS: So if they were moving 10
17 percent of their requirement off-site?

18 CHAIRPERSON MITTEN: Yes.

19 MR. ROGERS: Yes, it would be if they
20 chose to move two units, which may have been 10
21 percent of their requirement, they would add a third
22 unit. So it's 50 percent of what's moved off-site,
23 not 50 percent of the total requirement.

24 CHAIRPERSON MITTEN: Okay.

25 MR. ROGERS: That's what OP was proposing.

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1 CHAIRPERSON MITTEN: Okay. Does that
2 change anybody's mind? I'm not hearing anybody
3 changing their mind.

4 COMMISSIONER JEFFRIES: So if they were
5 doing it off-site, it would be an improvement. But,
6 Vice-Chair, your concern is this whole notion of
7 diversity and so forth?

8 VICE-CHAIRPERSON HOOD: Correct. Across
9 the board.

10 COMMISSIONER HILDEBRAND: Would the
11 opportunity be present to create an entirely
12 affordable building in that manner? I have three
13 parcels, and I'm doing development on two of them that
14 are quite dense. And I choose to move 50 percent or
15 more of my affordable units off to this third site and
16 then suddenly my third site is a 100 percent
17 affordable. Has that created the diversity in the
18 community that we're striving for or has that allowed
19 the development community to sort of circumvent that
20 intent?

21 CHAIRPERSON MITTEN: I think that the
22 situation you described would allow them to circumvent
23 it. I think the idea is you want the people living,
24 like you come out your door in the morning and then
25 you look down and you see somebody coming out of their

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1 door in the morning and they happen to make a lot less
2 money than you and you're living in the same place,
3 doing the same thing, walking down the same hall,
4 shopping in the same grocery store.

5 COMMISSIONER JEFFRIES: But, Madame Chair,
6 the Office of Planning has put forward a proposal that
7 gets you more affordable units. I mean --

8 CHAIRPERSON MITTEN: I know. Are you
9 advocating for it?

10 COMMISSIONER JEFFRIES: Oh, no, no, no.
11 I just. Excuse me. Were you going to --

12 CHAIRPERSON MITTEN: Ms. Steingasser.

13 MS. STEINGASSER: We argued through that
14 issue in-house when we worked through this provision.
15 And our feeling was we're still creating a mixed-
16 income community by keeping it within the Census
17 tract. That's why we had that discussion was it A and
18 C boundary or Census tract. And we felt that we were
19 still reaching that goal, but possibly the offset
20 would be that we would get more units at least in the
21 same neighborhood.

22 CHAIRPERSON MITTEN: Okay.

23 COMMISSIONER JEFFRIES: If you don't want
24 wealth creation, then you want more units.

25 CHAIRPERSON MITTEN: Are you advocating

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1 for it?

2 COMMISSIONER JEFFRIES: I would go with
3 OP. I would support OP on this one.

4 CHAIRPERSON MITTEN: Okay.

5 COMMISSIONER JEFFRIES: But seems like you
6 guys are in another direction, so --

7 CHAIRPERSON MITTEN: Does anyone want to
8 jump on board? Okay.

9 COMMISSIONER JEFFRIES: Got it. I'm cool.

10 CHAIRPERSON MITTEN: Okay. I want you to
11 stay cool.

12 COMMISSIONER JEFFRIES: I just want to say
13 that I do think that what Office of Planning proposed
14 was again a win/win situation. It helps diversity of
15 the neighborhoods and also creates more units. But
16 that's just the record from what I understand from
17 what they presented.

18 COMMISSIONER HILDEBRAND: Could I just
19 offer another suggestion? Can that option be
20 available as long as the receiving parcel doesn't
21 become totally affordable? Is there a way to make
22 sure that it doesn't off-set the balance of
23 affordability in the receiving parcel?

24 CHAIRPERSON MITTEN: Let me just interject
25 a couple of things. One is that, Mr. Jeffries,

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1 there's a lot of ways to skin the cat here and so
2 there's trade-offs involved. And so I don't want it
3 to be like, "Oh, hey you don't want more affordable
4 units," so that's an inferior choice.

5 I think that we're just all moving towards
6 a solution that makes us all comfortable. And is it
7 perfect? It's not going to be perfect, and it's not
8 going to advance every single agenda. But we're going
9 to take our best shot here and get through it.

10 To Mr. Hildebrand's question, that would
11 be one way of approaching it. But every time that we
12 try and put more controls in place it gets more
13 complicated.

14 COMMISSIONER HILDEBRAND: Right.

15 CHAIRPERSON MITTEN: Another thing is it's
16 simpler. This is simple. No matter of right off-
17 site, that's simple. As I've been living with this
18 and thinking it through, simplicity has a lot going
19 for it in my book. So the simpler that we can make it
20 the better as well. So that's another reason why I
21 think it's a more simple solution to just say, "No you
22 cannot get relief matter of right."

23 COMMISSIONER JEFFRIES: Yes. Madame
24 Chair, and I apologize if I'm being too flip up here.

25 CHAIRPERSON MITTEN: It's late. It's a

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1 long day, and I know. I've busy all day today. Did
2 I tell you that?

3 COMMISSIONER JEFFRIES: Right, right,
4 right.

5 But I just would hope that the Commission
6 does not get so caught up on procedure and specificity
7 and miss the whole possibility of actually creating
8 more affordable units while maintaining a level of
9 diversity and so forth. And I think that's what the
10 Office of Planning has proposed. But we were four to
11 one. I'm a big boy, and we should move on.

12 CHAIRPERSON MITTEN: Okay.

13 VICE-CHAIRPERSON HOOD: I want to ask him
14 a question but first I want to say in the hearings it
15 came out to me loud and clear. A lot of people, I
16 hate to keep using Montgomery County, I'm not picking
17 on them, they revisited it 24 times. One I think
18 time while we weren't even dealing with it. So we may
19 have to come back and refine this, or whoever's
20 sitting up here may have to deal with it.

21 But you mentioned the Office of Planning
22 dealing with the off-site issue, you said that we can
23 get more affordable housing that way. I don't
24 understand that.

25 COMMISSIONER JEFFRIES: Well, I'm just

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1 basing it on what my understanding of what Mr. Rogers
2 said. That if you would have to move, let's say, two
3 of your affordable units off-site because of some
4 difficulty --

5 CHAIRPERSON MITTEN: No, because of your
6 choice.

7 COMMISSIONER JEFFRIES: Because of your
8 choice, you're right. Sorry. Correction. If you
9 choose to do two units off-site, your requirement
10 would be to increase that amount by 50 percent.

11 VICE-CHAIRPERSON HOOD: I missed that.
12 Okay. I got you.

13 CHAIRPERSON MITTEN: That's how they made
14 peace with it. H the Office of Planning made peace
15 with it, they said we're going to let you move it, but
16 you can't do that for free.

17 VICE-CHAIRPERSON HOOD: This still reminds
18 me of TDRs. I might be off a little. But, thank you.

19 CHAIRPERSON MITTEN: Okay. All right. So
20 then we all agree that we can move on by accepting
21 that there will be no off-site provisions matter of
22 right. But I think I also heard that in the event
23 that there is some practical difficulty, that we would
24 consider allowing units to be moved off-site.

25 There have been some suggestions made

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1 about what those circumstances might be. The
2 petitioner was a little bit more constrained I think
3 in their suggestions about what those circumstances
4 might be. And the Office of Planning was more
5 expansive. The two issues that the Office of Planning
6 included, and maybe the petitioner included it by
7 saying if there were any unique or unusual site
8 characteristics, but Office of Planning confronts it
9 directly if you can't get the full bonus density on-
10 site because of some physical constraint or if there's
11 some historical preservation consideration.

12 And going back to the previous discussion
13 that we had a week or so ago where we rejected having
14 the requirement for just a straight renovation. I
15 think we were sensitive to the fact that if you can't
16 get the bonus, we're not going to impose the
17 requirement. So in general I would be advocating for
18 the Office of Planning language with one exception.

19 So this would be the Office of Planning
20 language on the right side of the page 9. And the one
21 exception that I would say is that we really didn't
22 talk about parking a whole lot. So Office of Planning
23 is suggesting that if you can't achieve a .8 ratio of
24 parking spaces to units, that that would constitute a
25 practical difficulty. Me personally, I would hate to

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1 have parking trump affordable housing because of how
2 I feel about automobiles. I think I'd rather if we're
3 going to have a ratio like that, I'd rather have it be
4 lower or something.

5 COMMISSIONER PARSONS: I would recommend
6 that we delete it and not mess with it.

7 CHAIRPERSON MITTEN: Okay.

8 COMMISSIONER PARSONS: That's B.

9 CHAIRPERSON MITTEN: B, so we just delete
10 B? So parking is --

11 COMMISSIONER PARSONS: I just don't feel
12 that's a criteria.

13 CHAIRPERSON MITTEN: I guess if we could
14 just talk about it a little bit more. And I actually
15 have that solution depending on how that conversation
16 goes. The situation that might occur because we're
17 saying that you can build 20 percent more density is
18 that for a given site depending on how deep you might
19 have to go to build parking, that it may be difficult
20 to provide the parking for those additional units. I
21 think that's how this problem would be created and
22 maybe what I'd like the Commission to consider, I
23 can't swear I've thought this through for very long
24 but it might be something worth getting some feedback
25 on, is what if we waived the parking requirement for

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1 the bonus density so that you would only have a
2 parking requirement for what you started with as a
3 matter of right? And then the bonus density you
4 basically don't have to provide parking for it. And
5 I have a couple of --

6 COMMISSIONER PARSONS: Where are they
7 going to park? Because they're affordable units they
8 don't have cars?

9 CHAIRPERSON MITTEN: Well, you know that--

10 VICE-CHAIRPERSON HOOD: They're going to
11 ride their bikes.

12 CHAIRPERSON MITTEN: There is something to
13 that. We had this discussion. I know I wasn't
14 convincing when we did that Western Avenue PUD. You
15 know that Washington planning?

16 COMMISSIONER PARSONS: No, you weren't.

17 CHAIRPERSON MITTEN: But that doesn't mean
18 I'm not going to try again.

19 COMMISSIONER PARSONS: Sure, why not.

20 CHAIRPERSON MITTEN: If you think about
21 the places that we would eventually map this, you know
22 we've talked about that in general terms, but we would
23 have it on transit corridors and so on. And I'm not
24 just making this up, I read this. If it sounds good,
25 then maybe you'll believe me. That people who make

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1 less money, they're less likely to have a vehicle and
2 they're more likely to use public transportation. And
3 we tend to overpark these things anyway, to my mind.
4 So that's what I would throw out there.

5 COMMISSIONER HILDEBRAND: The only thing
6 that I keep coming back to is that in the majority of
7 the PUDs we've seen without exception they exceeded
8 the required parking fourfold in order to achieve a
9 one-to-one ratio or more for these residential
10 developments. And I think that the affordable units
11 should have as equal access to parking as anyone else
12 in the complex. Because even if you choose to use
13 public transportation more frequently, that doesn't
14 mean that you don't have a car.

15 CHAIRPERSON MITTEN: That's exactly what
16 they said in that other case. You weren't even there.

17 COMMISSIONER JEFFRIES: Madame Chair, I
18 would say too that some of the bonus density that
19 we're offering is not going to be used fully for
20 affordable units.

21 CHAIRPERSON MITTEN: Yes, right. Okay,
22 I've just got to take my shot at every turn to try and
23 get the parking down. Okay. But do we agree that we
24 can delete this provision B?

25 COMMISSIONER HILDEBRAND: I would support

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1 that.

2 CHAIRPERSON MITTEN: Okay. Now the one
3 thing, we don't need to flesh it out now but I just
4 want to put it in your mind for later, is that the BZA
5 is very I would say based on my experience, ambivalent
6 about how to approach economic hardship. They don't
7 know what to ask for, look at, they don't know what a
8 minimum submission would be from an applicant to make
9 that case. We talked about this when we did the Swiss
10 Spontae on Louisiana Avenue.

11 So I think as we work through this and
12 just in general we need, as guidance to the BZA, to
13 flesh out what kind of showing does there have to be
14 from an applicant to show they have economic hardship.
15 To my mind, merely asserting it is insufficient
16 showing. But I think we need to give them some
17 guidance. We don't have to figure that out tonight.
18 But I think they're going to have cases that they
19 won't know how to handle if we don't give them the
20 guidance.

21 COMMISSIONER JEFFRIES: What are you
22 referring to?

23 CHAIRPERSON MITTEN: I'm looking at if
24 you--

25 COMMISSIONER JEFFRIES: Oh, economic

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1 hardship at the top. Okay. I'm sorry.

2 CHAIRPERSON MITTEN: Yes. If you allow an
3 applicant to move some or all of their requirement
4 off-site because of an economic hardship or a
5 practical difficulty and then we have this list of
6 those kinds of things, then we're going to have to
7 provide some guidance about economic hardship.

8 For instance D, and this is another thing
9 we're going to need to flesh out in more detail. D
10 exceptionally high condo fees. Well, that's certainly
11 in the eye of the beholder what an exceptionally high
12 condo fee is. So, we're going to need to give them
13 guidance about that.

14 COMMISSIONER PARSONS: I think we ought to
15 delete that because if I was the applicant, I'd come
16 in and say well it's going to be a million dollars a
17 month for a condo fee. I'm kidding.

18 CHAIRPERSON MITTEN: Yes, I know.

19 COMMISSIONER PARSONS: I'd just jack it up
20 to get the board's concurrence.

21 COMMISSIONER JEFFRIES: We can figure out
22 some sort of percentage number or something. I mean
23 this relates to condo fees.

24 CHAIRPERSON MITTEN: Okay.

25 VICE-CHAIRPERSON HOOD: But wouldn't a lot

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1 of that would depend on the type of service that's
2 going to be provided, I would think.

3 CHAIRPERSON MITTEN: I think we should
4 leave it in and I think we should leave it in for this
5 reason: Is because if we don't leave it in and try
6 and flesh it out for the board, then people will come
7 to the board and say I have an economic hardship
8 because the services that we're offering make these
9 fees so high that we can't do the affordable units and
10 keep them affordable. So we need to give them some
11 guidance about how to maybe parse the fees and say
12 well --

13 COMMISSIONER PARSONS: Right.

14 CHAIRPERSON MITTEN: But if we don't leave
15 it in, then we won't give them the specific guidance.
16 But that won't stop anybody from coming in and making
17 an economic hardship case based on high condo fees.
18 Just because we don't include it doesn't mean that
19 somebody won't come in and suggest that that's a basis
20 for relief.

21 COMMISSIONER JEFFRIES: I agree, Madame
22 Chair, I just think we need to say what that is, you
23 know to give greater definition as to what a high
24 condo fee is.

25 CHAIRPERSON MITTEN: Yes.

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1 COMMISSIONER PARSONS: So maybe we move
2 that over into the regulatory side of this regulation
3 rather than -- I don't know where we're going, but to
4 have the other units subsidized. In other words, the
5 market rate units would pay more condo fees than the
6 affordable units. Can we regulate that or are we
7 stepping beyond ourselves?

8 CHAIRPERSON MITTEN: That's why I
9 suggested that we should give the board some guidance
10 about how those fees could be divided. Some of the
11 fees are like you're paying for the management, you're
12 paying for the person who's sitting at the front desk.
13 Everybody gets that regardless. But then maybe
14 there's a health club. So if you're in an affordable
15 unit, you pay less but you don't get the health club,
16 you don't get the service. Some of the services you
17 can't avoid getting and other ones are discretionary.
18 So I think that's one of the ways we could --

19 COMMISSIONER PARSONS: What I'm saying is
20 couldn't we put that into the regulations and not in
21 this category of --

22 CHAIRPERSON MITTEN: I'm afraid that if we
23 do that, though, that the BZA is going to be
24 confronted with that issue.

25 COMMISSIONER PARSONS: Okay.

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1 CHAIRPERSON MITTEN: I just think they're
2 going to be confronted with the issue.

3 COMMISSIONER JEFFRIES: I mean the issue
4 is going to obviously come up with taller luxury condo
5 developments that have the beautiful lobbies and so
6 much of those costs will really fall in the condo fee.
7 It will be interesting to see whether or not being
8 part of the health club or other parts, how much that
9 will bring down the condo fee. My suspicion is that
10 it probably won't do that much.

11 But I was curious. The Office of
12 Planning, could you just comment briefly and real
13 briefly as to what were some of the solutions around
14 the condo fee issue?

15 MR. ROGERS: One of the solutions that we
16 were looking at, and this is going to be part of our
17 empowering legislation, was to make it clear that the
18 condo fees could be assessed at the par value of the
19 unit. And if the Zoning Commission is going with the
20 route of in perpetuity, I think that makes more sense.
21 Because there was some concern that someone's paying
22 low condo fees and then all of a sudden their unit
23 appreciates rapidly and they're paying low condo fees.
24 But if you're going to keep the units affordable in
25 perpetuity, then condo fees assessed on a par value

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1 basis as opposed to a square footage or some other
2 calculation makes more sense.

3 I think the intent of the campaign's
4 proposal was not that the affordable units would be
5 excluded from some of the luxury services like the
6 health club, but that they would pay at "market rate"
7 for those services. So health club, the swimming
8 pool, whatever it may be if the household decided to
9 budget those, they could. They would just pay the
10 market rate. So I think those were the two different
11 approaches that we looked at.

12 COMMISSIONER JEFFRIES: Okay.

13 MR. COCHRAN: Whereas the Office of
14 Planning's approach is more akin to what the Chairman
15 talked about. You walk down the corridor and you
16 really don't know whether you're saying hello to a
17 market rate or an affordable unit person. The
18 assumption being that in many of these condominiums
19 with the recreation space, the socialization,
20 etcetera, you would ultimately be known as an
21 affordable unit resident if you can't join somebody in
22 the health club, etcetera, etcetera.

23 CHAIRPERSON MITTEN: Either that or you're
24 just not sociable.

25 COMMISSIONER JEFFRIES: Okay.

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1 CHAIRPERSON MITTEN: Okay. That's
2 important, but I don't think we need to flesh that out
3 right now. But we do need to consider that.

4 The other thing that the Office of
5 Planning has suggested, there's a couple of things.
6 One is how much relief can you get and fall under the
7 economic hardship practical difficulty test versus the
8 higher standard for use variance which is undue
9 hardship. They were suggesting that up to 50 percent
10 you're at one level of burden of proof and then above
11 50 percent you're at another level.

12 And then also again the issue of where the
13 off-site units -- we're saying under certain
14 circumstances you can move some of them off-site, and
15 that's a question of where. Within the same Census
16 tract I think that's what Office of Planning was
17 suggesting. I think the campaign was suggesting within
18 the same ward or a two-mile radius. I think there's
19 things on either side of it. But within the same
20 Census tract I think that gets you into a smaller,
21 you're more in the immediate area if you're in the
22 Census tract with some exceptions. So what's --

23 VICE-CHAIRPERSON HOOD: Census tract. Is
24 that smaller than the ANC area?

25 CHAIRPERSON MITTEN: No, not necessarily.

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1 VICE-CHAIRPERSON HOOD: So, it's larger
2 than the ANC area. I'm trying to get --

3 CHAIRPERSON MITTEN: It varies. The sizes
4 of Census tract varies just like SMD boundaries vary
5 because it depends on how many people are concentrated
6 in that area.

7 VICE-CHAIRPERSON HOOD: But I'm saying
8 that's divvied up though as far as people are
9 concerned, I think. Well, you're right. It wouldn't
10 be mileage. It would be people. Okay. All right.

11 CHAIRPERSON MITTEN: So are you in favor
12 of Census tract?

13 VICE-CHAIRPERSON HOOD: Yes, I was just
14 trying to see how narrow the scope was.

15 CHAIRPERSON MITTEN: Okay. Commissioner
16 Hildebrand, you have a comment?

17 COMMISSIONER HILDEBRAND: I guess I don't
18 have a clear idea on what the availability of
19 additional land inside the same Census tract is going
20 to be and what does that do to meet the burden of
21 economic hardship or undue hardship. Does it
22 automatically give you a use variance if there's no
23 property within your Census tract that you can acquire
24 for your affordable housing units?

25 CHAIRPERSON MITTEN: I think the Office of

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1 Planning is suggesting that you could move up to 50
2 percent of the on-site requirement off-site within the
3 same Census tract if you could show an economic
4 hardship or practical difficulty. If you went above
5 the 50 percent or outside the Census tract, you're in
6 undue hardship.

7 COMMISSIONER HILDEBRAND: My question
8 though is if you can't acquire land within the Census
9 tract, does that give you automatically an undue
10 hardship?

11 CHAIRPERSON MITTEN: I think that's what
12 they have been suggesting. Isn't that what you guys
13 have been suggesting? I'm getting a nodding. Yes.

14 COMMISSIONER HILDEBRAND: Okay.

15 CHAIRPERSON MITTEN: I think that would be
16 a pretty tough case to make, actually. Well, let's
17 just put it out there and maybe we'll get some
18 feedback about it.

19 Oh, I'm sorry. And actually I misspoke.
20 I guess the Office of Planning was saying, because
21 they had originally said that they were advocating for
22 being able to move it off-site as a matter of right,
23 so they were saying that as long as you were within
24 the same Census tract, forget the 50 percent number,
25 as long as you're in the same Census tract and you

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1 have the various reasons, that that would be economic
2 hardship or practical difficulty. You go outside the
3 Census tract then you're into the undue hardship.

4 Yes?

5 MR. COCHRAN: If I could interpret where
6 I think you've been heading in a way that's sort of
7 consistent with what we've been suggesting. If you
8 look at the top of page 9, it would then be saying
9 basically up to but not including 50 percent or more
10 located off-site within the same Census tract would be
11 covered by the upper portion of the column. And then
12 you would go down to the second bullet and it would be
13 more than 50 percent within the same Census tract or
14 more than 50 percent off-site outside the same Census
15 tract.

16 CHAIRPERSON MITTEN: I appreciate your
17 trying to help me, and I actually think I was just not
18 understanding what you guys had written. I was not
19 trying to re-cast what you guys had written. So what
20 we need to confront though is do we want to put a
21 limitation on the amount of relief that one can get
22 with a showing of economic hardship or practical
23 difficulty or is it sort of like if you can't get the
24 bonus or because you're serving an elderly population
25 or something, are we going to change the test because

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1 of the amount of relief? Do you know what I'm saying?

2 MR. COCHRAN: That's what I'm saying
3 exactly.

4 CHAIRPERSON MITTEN: So we can make it
5 simpler by saying that if you can show economic
6 hardship or practical difficulty, then you can move
7 all or some of your requirement within the same Census
8 tract. If you want to do all or some of your
9 requirement outside the Census tract, you have to show
10 undue hardship.

11 COMMISSIONER HILDEBRAND: Yes.

12 COMMISSIONER PARSONS: Yes.

13 VICE-CHAIRPERSON HOOD: I would agree with
14 that.

15 CHAIRPERSON MITTEN: Okay.

16 VICE-CHAIRPERSON HOOD: I understand the
17 Census tract varies, but I would agree with that.

18 CHAIRPERSON MITTEN: Okay. So we've
19 actually dealt with this is the means of achieving the
20 off-site compliance. We've dealt with some of this
21 already because we've decided where the target areas
22 are. What the campaign had suggested and the Office
23 of Planning supported was that the site, which would
24 be the off-site site, the site where you will meet
25 your requirement may not have received any development

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1 subsidies from federal or District programs
2 established to provide affordable housing. Everybody
3 agree with that?

4 CHAIRPERSON MITTEN: Just like we require
5 on-site, the off-site units have to be comparable in
6 size and type to the market rate units being created
7 and no fewer number than the number of units.
8 Basically all the comparability types of things.

9 Then the question would be timing of
10 delivery. The campaign talked about construction
11 commencement. I think we should focus on, as we have
12 done in other cases, delivery which is basically
13 certificates of occupancy as opposed to construction
14 commencement.

15 So then it would be a question of I think
16 given that you're meeting a requirement on property A
17 by building units on property B -- I don't know how it
18 was handled in some of those housing linkage cases,
19 but I would say that you can't get the certificate of
20 occupancy for the housing units on property A until
21 you've build the affordable units and received a
22 certificate of occupancy for them on property B.

23 So the affordable wherever it's going to
24 be constructed is going to be delivered at the same
25 time as the market rate that generated the

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1 requirement.

2 COMMISSIONER HILDEBRAND: I would agree
3 with the concurrent delivery.

4 COMMISSIONER PARSONS: I would agree.
5 Although to answer your question I think in other
6 cases we've said that the building has to be out of
7 the ground, which is the other alternative. Not that
8 I agree with that, but if you were looking for
9 precedent and I think we've done that before. And I
10 can't remember where.

11 CHAIRPERSON MITTEN: Well I remember we
12 had talked about this in the downtown development
13 District overlay, and I don't remember all the -- Mr.
14 Bergstein, do you remember when we? We had talked
15 about it a lot at one point. What were we talking
16 about? Do you remember?

17 MR. BERGSTEIN: In terms of delivery
18 within DD?

19 CHAIRPERSON MITTEN: Yes.

20 MR. BERGSTEIN: The original rule was that
21 the certificate of occupancy for the non-residential
22 development couldn't be granted unless the residential
23 use had gotten a certificate of occupancy. That was
24 modified to allow for an escrow instead.

25 CHAIRPERSON MITTEN: Oh, yes.

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1 MR. BERGSTEIN: And the escrow would be
2 released once an architect had certified that 50
3 percent of the residential had been completed.

4 CHAIRPERSON MITTEN: Okay. This is
5 simpler. Simple is good. Okay.

6 The next part here relates to when there
7 was going to be a bonus. You'd have to do more
8 affordable units that gave you the opportunity of
9 movement as a matter of right, which I think is not an
10 issue now. And then --

11 MR. BERGSTEIN: Sorry. Could I just ask
12 what you decided on the delivery? The OP proposal was
13 based upon the last market unit and the last
14 affordable unit. So that the last affordable unit
15 would have get its certificate of occupancy before the
16 last marketplace unit. Is that what you're agreeing
17 with or are you requiring a broader type of delivery?

18 CHAIRPERSON MITTEN: I would rather have
19 a broader type of delivery where there's like
20 proportionate release or something.

21 MR. BERGSTEIN: Okay. I mean the other
22 option is that none of the market rate unit
23 certificate of occupancies can be received until all
24 of the affordable certificate of occupancies have been
25 issued or the other option is your proportionality.

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1 CHAIRPERSON MITTEN: I think that the one
2 problem with what you just suggested, which under
3 normal circumstances I would agree with, is just in
4 the case that Mr. Jeffries had raised earlier which is
5 what if it's phased?

6 MR. BERGSTEIN: So you're suggesting that
7 there be a rough proportionality that the Zoning
8 Administrator would have to -- in essence the person
9 asking for the certificates of occupancy for the
10 market rate would have to in essence present a
11 proportion. This is the number of units I have on-
12 site. This is the number of units I have off-site.
13 The proportion is roughly 40 percent. Is that what
14 you're --

15 CHAIRPERSON MITTEN: Yes.

16 MR. BERGSTEIN: Okay.

17 CHAIRPERSON MITTEN: Do you guys agree
18 with that? Okay. Okay.

19 So there are a variety of ways that the
20 Office of Planning had suggested we could achieve off-
21 site compliance. And we've talked about building
22 affordable units off-site that would not otherwise
23 have been built. Another one would be that the owner
24 would donate land to the District government, which
25 frankly I'd rather ensure delivery of units rather

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1 than just getting land.

2 COMMISSIONER PARSONS: Right. And what
3 this goes to is creating an enclave of affordable
4 housing as opposed to a mix.

5 CHAIRPERSON MITTEN: Yes. Okay. So we're
6 not in favor of that.

7 COMMISSIONER PARSONS: So they go and
8 acquire a piece of property in another ward somewhere
9 and say here, you can build it all.

10 COMMISSIONER JEFFRIES: I will say that as
11 the conversation continues to go, I mean we should
12 really try to cover all those loopholes to allow
13 potentially for developers to move these things in
14 other areas. Because you're not creating the
15 diversity and so forth. So, Vice-Chair, I agree with
16 what you're trying to do there.

17 COMMISSIONER PARSONS: Same with cash,
18 which is the next one.

19 CHAIRPERSON MITTEN: Yes, I agree. Do we
20 agree? It's not for us. It's for the --

21 COMMISSIONER PARSONS: Cash to the
22 District of Columbia.

23 CHAIRPERSON MITTEN: Okay. Everybody
24 agree with nixing the cash option? Yes.

25 Okay. Then we talked about this a little

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1 bit already but we probably need to talk about it some
2 more, which is the burden of proof. And I had
3 mentioned to trying to meet an undue hardship standard
4 would be difficult because we were talking about
5 whether if you had to move outside the same Census
6 tract. So what you're going to have to do in order to
7 show that you can't find a place within the Census
8 tract to build, is you're going to basically have to
9 go property by property and show either it wasn't
10 suitable or you couldn't afford to buy it. That's a
11 very tough case to make. Or that doing it within the
12 Census tract with whatever might be available, if you
13 were forced to do the development on-site or because
14 that would be the only place within the Census tract
15 that was available, that you would lose all economic
16 use of the property. I don't know, Mr. Bergstein, do
17 you have any ideas about how we could express that
18 differently?

19 MR. BERGSTEIN: You're talking about what
20 the burden of proof would be where -- and again we're
21 talking about a BZA proceeding.

22 CHAIRPERSON MITTEN: Yes, we are.

23 MR. BERGSTEIN: Where somebody's already
24 met a burden to show that they can't provide the
25 affordable units within the building itself. And so

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1 the question is for the BZA should they permit or
2 should they require all of the housing to be provided
3 within the same Census tract. And if not, what should
4 that standard be?

5 CHAIRPERSON MITTEN: Right.

6 MR. BERGSTEIN, ESQ.: If they've already
7 shown practical difficulty in terms of the building
8 itself, then you have to focus on what would be the
9 test in terms of providing it within the land area.
10 And actually the only test I can think of is the non-
11 availability within that land area. I mean it's sort
12 of like that they've made good-faith efforts. It's
13 sort of similar to there's provisions when somebody
14 overlays about allowing interim uses instead of
15 preferred uses and the standards that you make a good-
16 faith effort to try to rent for the preferred uses and
17 then if not, you can use these interim uses. The only
18 thing I can think of is that you've made a good-faith
19 effort to try to acquire property within the Census
20 tract but were unable to do so. And I have to say
21 that the petitioner doesn't offer any alternative to
22 that.

23 CHAIRPERSON MITTEN: Yes.

24 MR. BERGSTEIN: But that would seem to be
25 the only reasonable test that I can think of. But

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1 that doesn't mean there might not be others, but that
2 would be the most clear nexus between an offering
3 before the BZA of saying this is where I do intend to
4 place the affordable housing because that would be
5 part of the BZA order.

6 CHAIRPERSON MITTEN: Yes.

7 MR. BERGSTEIN: And at the same time if
8 they're suggesting it's going to be beyond the Census
9 tract, then they could show these are the efforts I
10 made. I don't have property here, whatever would be
11 sound business practices were a landowner seeks to
12 acquire property. And the other question is whether
13 or not what the market cost would be would make the
14 provision of affordable housing within an area not
15 economically feasible.

16 CHAIRPERSON MITTEN: Okay. The thing that
17 makes this interesting is we're basically saying
18 you're going to build this someplace. And where we've
19 gotten to is that we're not giving them relief of what
20 the requirement. We're just saying you don't have to
21 build it on-site. You don't have to build it in
22 Census tract. But, by God, you're going to find
23 someplace in this city to build this. I'm just kind
24 of processing it. Is everybody comfortable with that?

25 COMMISSIONER HILDEBRAND: I guess my

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1 question is are there certain circumstances where you
2 could get relief? If you cannot achieve the bonus
3 density, how is the developer able to finance the
4 construction of the affordable housing off-site? Are
5 there certain cases where the affordable units would
6 be completely eliminated if for example they can
7 achieve the density or if they're in a historic
8 density where you can't achieve the density, would
9 that then eliminate the requirement for the affordable
10 units? If not, how are they paying for them?

11 CHAIRPERSON MITTEN: Yes.

12 COMMISSIONER HILDEBRAND: Then there are
13 other cases where they can achieve the density but
14 they want to move some of it off-site because of
15 economic reasons.

16 CHAIRPERSON MITTEN: Good point. Okay.
17 We lost track of the distinction I think as we moved
18 through the conversation.

19 COMMISSIONER HILDEBRAND: Right.

20 CHAIRPERSON MITTEN: You guys? Okay.
21 You're right.

22 COMMISSIONER JEFFRIES: We're going to
23 build it regardless.

24 CHAIRPERSON MITTEN: Yes. Boy, we are
25 committed, aren't we?

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1 Okay. So let's go back. So keeping with
2 our desire not to penalize the property owner if they
3 can't get the bonus, it would seem that if you could
4 show that you couldn't access the bonus, that you
5 would be relieved of the requirement.

6 COMMISSIONER JEFFRIES: Right.

7 CHAIRPERSON MITTEN: Not move it off-site
8 and that you would be relieved. But I think we need
9 to show -- see, this is going to be some tough stuff
10 for the BZA I think. So let's make sure there's a
11 Zoning Commissioner there to help them flesh this out
12 since we struggled with it. The relief would have to
13 be proportional so that if you can generate some
14 bonus, then you --

15 COMMISSIONER JEFFRIES: Yes.

16 CHAIRPERSON MITTEN: Okay. I think the
17 same would be true -- I'm just wondering about the
18 historic preservation. It's not that I don't
19 understand that sometimes historic preservation
20 considerations limit a property owner's opportunity to
21 use the full zoning envelope. I understand that. But
22 my concern would be if someone basically went to HPRB
23 and said would you approve this building and it
24 doesn't have any bonus density and they go yes, we
25 like that. And then they come to us and they say well

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1 this is what HPRB approved, and they never put the
2 question to them would you approve the building with
3 20 percent more density? I don't know how we flesh
4 that out.

5 COMMISSIONER JEFFRIES: If they went
6 before the HPRB, wouldn't that be set forth in the
7 regs as to that this building would have to provide 20
8 percent bonus density? I guess --

9 CHAIRPERSON MITTEN: I know. But you know
10 what happens when sometimes -- I think it happens more
11 at BZA where the applicant has the decision to make do
12 I go to Zoning, BZA first or do I go to HPRB first?
13 Because no matter where I go I might have to go back
14 again because this one doesn't give me the relief that
15 I want or this one won't let me build my building as
16 tall as I want to or whatever. So they tend to go to
17 historic first.

18 So what I'm saying is in order to know
19 that they couldn't access the bonus density they have
20 to ask HPRB will you approve a building that's more
21 dense in order to establish that in fact the answer is
22 no.

23 COMMISSIONER PARSONS: So they would have
24 to give evidence that they made an application to the
25 HPRB for an addition to the structure or whatever to

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1 achieve the density and were turned down.

2 CHAIRPERSON MITTEN: Okay.

3 COMMISSIONER PARSONS: As opposed to
4 loosey-goosey, which is the way it is now.

5 CHAIRPERSON MITTEN: Yes.

6 COMMISSIONER PARSONS: Historic
7 preservation, whatever that means.

8 CHAIRPERSON MITTEN: Well we generally
9 don't have anything that requires someone to --I
10 don't think there's any other zoning mechanism quite
11 like this where we say we're going to make you do
12 something and we're going to -- the only other thing
13 was TDRs where we said we're going to impose something
14 on you and your reward is going to be TDRs. And
15 that's not really a good parallel to this. So they
16 have to give evidence that they sought the higher
17 density.

18 COMMISSIONER PARSONS: Right.

19 VICE-CHAIRPERSON HOOD: Let me ask a
20 question. I'm not too familiar with HPRB, the process
21 of going there first. They usually go there first,
22 right? What's going to trigger that? When this is
23 implemented, what's going to trigger them to do that
24 when they're there as opposed to coming in front of
25 the BZA and saying oh we didn't do that?

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1 COMMISSIONER PARSONS: We're going to
2 require that they show evidence that they've made an
3 effort and were turned down.

4 VICE-CHAIRPERSON HOOD: So they would know
5 that by looking the regs.

6 COMMISSIONER PARSONS: And if they made no
7 effort and weren't approved.

8 VICE-CHAIRPERSON HOOD: Okay. So they
9 would know that by looking at the regs even before it
10 went to HPRB?

11 COMMISSIONER PARSONS: Yes.

12 VICE-CHAIRPERSON HOOD: All right.

13 COMMISSIONER HILDEBRAND: Depending upon
14 where this map, this maybe a foolish question. But
15 what happens to an owner of a site who wants to
16 develop it and wants to develop it to less than matter
17 of right density and height? Are they automatically
18 forced to go to the bonus height and density by this
19 proposal? If I'm in the area that allows you to go
20 seven stories, 80 feet, and I decide I want to build
21 a 40 foot high building does this force me to go to 80
22 feet and seven stories because otherwise how am I
23 going to afford the affordable unit?

24 COMMISSIONER JEFFRIES: And you're doing
25 10 units or above?

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1 COMMISSIONER HILDEBRAND: Right.

2 CHAIRPERSON MITTEN: Yes, it does.

3 COMMISSIONER JEFFRIES: I think it does.

4 MR. BERGSTEIN: It doesn't force you to
5 build but the bonus density would be determined based
6 upon what your land area could achieve. So if you
7 choose to build a smaller building, the affordable
8 housing requirement is still going to be based upon
9 the bonus density you could achieve, not the bonus
10 density you use.

11 COMMISSIONER HILDEBRAND: So what in
12 effect we're doing is we're going to be maxing out the
13 zoning envelope on every site that this is mapped?

14 MR. BERGSTEIN: I would ask that you refer
15 that question to the Office of Planning. And also
16 correct me if I misstated the principles.

17 MR. ROGERS: If a builder, let's say they
18 were permitted to do a 100 units and they decided to
19 do 80 and they had a 10 percent requirement, they
20 would still be 10 percent of the 100 but the other 70
21 units would be market rate. So then it's their option
22 to build whatever they want to build but they would
23 still have the minimum matter of right requirement.
24 So whether it's the 10 percent in the lower density
25 areas or the 80 percent in the higher density areas

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1 they will still have that minimum matter of
2 requirement for affordability no matter what they
3 built.

4 COMMISSIONER HILDEBRAND: Yes. I guess
5 I'm just trying to think this through in my own head.
6 Is there a scenario out there where that would be
7 possible? I mean many developments don't use the full
8 zoning envelope today in the city. We've had the
9 luxury of that for years. I guess my question is is
10 this zoning statute going to require that every
11 development where it's mapped go to the maximum zoning
12 envelope?

13 MR. ROGERS: No, it won't require so long
14 as they deliver the minimum affordable.

15 COMMISSIONER HILDEBRAND: The units?

16 COMMISSIONER JEFFRIES: And normally for
17 the development to make sense, I mean for the
18 developer to get the kind of return they'd be looking
19 for based on the level of risk, you know chances are
20 they're going to have to take advantage of that?

21 CHAIRPERSON MITTEN: I think it won't
22 require it but it will certainly encourage it. This
23 reminds me of a case that I sat on at the BZA where it
24 was a request for a special exception for a parking
25 lot in a SP zone. The direction that the conversation

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1 took was that some of the neighbors were suggesting
2 that you're only supposed to be able to give short-
3 term, I forget, approval for a parking lot in that
4 particular zone and perhaps others. The notion being
5 we don't want vacant lots. We want you to build
6 something. That's the whole idea. That's being
7 consistent with the comprehensive plan, not preserving
8 open parking lots.

9 So it was kind of an interesting twist on
10 the comprehensive plan, which is we are intending to
11 encourage development, full envelop development, full
12 zoning envelope development on these transportation
13 corridors. It's only because that happens can you
14 have the lower density areas and have it all make
15 sense.

16 So I think it's an appropriate thing to do
17 even though some people I'm sure would violently
18 disagree with me in certain parts of the city.

19 I think we might have to work a little bit
20 more on some of these other areas, but I don't know
21 that we need to do it tonight. But just on terms of
22 the condo fees and stuff. Maybe we wouldn't want to
23 give wholesale -- you know we're talking about perhaps
24 giving wholesale relief if you can't access the bonus
25 density. Perhaps giving wholesale relief if you can't

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1 access the bonus density because of site conditions or
2 because of historic preservation requirements. I
3 think there might be another way. We might give a
4 different kind of consideration to if you have very
5 high condo fees; that's more your choice not something
6 that's constraining from the outside. It's your
7 choice for the kind of development. So that maybe in
8 those cases we would allow people to move off-site but
9 still have a requirement. Do you know what I'm
10 saying?

11 Mr. Bergstein, have we said enough that
12 you can put something together on this item?

13 MR. BERGSTEIN: I just want to say because
14 in a way you jumped to the next issue. In that the
15 last scenario was where somebody asked for partial
16 complete relief but doesn't provide any off-site. The
17 Office of Planning and the petitioner both agreed that
18 the test should be that to do so would deprive the
19 property owner of all economically viable use of the
20 land. I think what you've done is said but you can
21 get complete relief also without offering off-site
22 affordable units if you can prove that you can't
23 access a portion of the bonus density and either as a
24 result of constraints that are related to the land
25 itself or constraints imposed upon you by historical

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1 preservation.

2 CHAIRPERSON MITTEN: Yes, external
3 constraints.

4 MR. BERGSTEIN: Okay, I understand.

5 CHAIRPERSON MITTEN: Okay, good. You said
6 that very well.

7 COMMISSIONER PARSONS: How are we going to
8 do that?

9 CHAIRPERSON MITTEN: That's what Mr.
10 Bergstein was just saying.

11 So, what we've said is that the standard
12 of proof for complete or partial relief due to
13 external constraints is that you show that you can't
14 access the bonus density.

15 COMMISSIONER PARSONS: And that's the only
16 basis for relief? In other words, this sentence that
17 we're both looking at which says, "The standard should
18 be proof that compliance will deprive the developer."
19 I mean, how's he going to prove that to us?

20 CHAIRPERSON MITTEN: Right. An that's not
21 the test.

22 COMMISSIONER PARSONS: We're eliminating
23 that test?

24 CHAIRPERSON MITTEN: Correct.

25 COMMISSIONER PARSONS: Okay.

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1 CHAIRPERSON MITTEN: We're saying that you
2 can't access the bonus --

3 COMMISSIONER PARSONS: I wanted to do
4 that. That's why I --

5 CHAIRPERSON MITTEN: Okay. But then I
6 think the next step we have to take is, that I think
7 Mr. Bergstein understands, that for what I'll call
8 just for parallels, internal constraints, self-imposed
9 constraints, like high condo fees or services that you
10 would have an off-site requirement because you're
11 choosing to do that.

12 COMMISSIONER PARSONS: Right.

13 CHAIRPERSON MITTEN: Okay.

14 COMMISSIONER PARSONS: And these
15 miscellaneous issues?

16 MR. BERGSTEIN: You need to deal with the
17 monetary contribution issue.

18 CHAIRPERSON MITTEN: We said we didn't
19 want to --

20 MR. BERGSTEIN: Oh, okay.

21 COMMISSIONER PARSONS: Yes, no, no.

22 CHAIRPERSON MITTEN: We didn't like it and
23 we passed over it quickly.

24 COMMISSIONER PARSONS: Yes.

25 CHAIRPERSON MITTEN: Okay.

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1 COMMISSIONER PARSONS: These issues seem
2 to me to be, as Mr. Bergstein said, maybe the Council
3 is the one that should be dealing with this. Not us.

4 CHAIRPERSON MITTEN: Okay.

5 COMMISSIONER PARSONS: And I don't know
6 what his final comment meant.

7 MR. BERGSTEIN: Well, I don't know if they
8 could do -- the Council can make things stricter with
9 respect to zoning regulations. They can't make things
10 more lenient. So if you are saying there is no option
11 for monetary relief from this requirement, they can't
12 impose one. They can't allow one, I should say.

13 CHAIRPERSON MITTEN: And we actually
14 weren't talking about that. We were talking about the
15 miscellaneous issues.

16 MR. BERGSTEIN: Oh, I'm sorry.

17 COMMISSIONER PARSONS: Standards for sale
18 and those things that you thought the Council could
19 deal with. Pages 12 and 13.

20 MR. BERGSTEIN: I understand, and you
21 could leave all issues that relate to the actual
22 occupants to the Council.

23 COMMISSIONER PARSONS: And your final
24 remark in caps NEVER MATERIALIZED.

25 MR. BERGSTEIN: I decided that I couldn't

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1 do that to you, so I didn't.

2 CHAIRPERSON MITTEN: Okay. So now to the
3 extent that anyone wants to discuss the control period
4 again.

5 COMMISSIONER PARSONS: I guess we're out
6 of time then.

7 VICE-CHAIRPERSON HOOD: This could go for
8 20 or 30 years.

9 COMMISSIONER JEFFRIES: Commissioner
10 Hildebrand, I think as we were finishing up threw out
11 that he could quite possibly look at a 30-year with a
12 renewal option.

13 CHAIRPERSON MITTEN: I don't recall
14 hearing that.

15 COMMISSIONER JEFFRIES: And I just wanted
16 to know if he could expound on that a little bit more.
17 If he's willing to.

18 COMMISSIONER HILDEBRAND: No, I'm not
19 actually willing to go in that direction.

20 COMMISSIONER JEFFRIES: Thank you.

21 CHAIRPERSON MITTEN: Do you want to take--
22 I didn't want to foreclose any further discussion if
23 you --

24 COMMISSIONER JEFFRIES: Well, I mean we're
25 commission and we'll to vote. Right?

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1 CHAIRPERSON MITTEN: Okay. So I think
2 what we were trying to do is get some general
3 consensus about all the various general directions
4 that we want to move in and then Mr. Bergstein and Ms.
5 Glazer what they'll have to do is try to capture this
6 in zoning text so that we can flush it out further
7 before we publish it. But because it was an issue I
8 just want to be clear that the consensus at least as
9 how it relates to the control period is that there
10 will be no termination of the control period for a
11 given project.

12

13 Mr. Hildebrand, do you agree with that
14 one? And, Mr. Parsons, do you agree with that one?

15 COMMISSIONER HILDEBRAND: Yes.

16 COMMISSIONER PARSONS: Yes.

17 VICE-CHAIRPERSON HOOD: You took an
18 informal vote basically?

19 CHAIRPERSON MITTEN: Well, I don't want to
20 take a formal vote because then --

21 VICE-CHAIRPERSON HOOD: No, an informal
22 vote which is okay.

23 CHAIRPERSON MITTEN: Right.

24 VICE-CHAIRPERSON HOOD: All right.

25 CHAIRPERSON MITTEN: And then I think the

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1 other things we had a more broader consensus that it
2 will be clear from reading of the record.

3 So this is our first pass through this.
4 We'll look forward to seeing the text, and we'll flesh
5 it out even more. And then we'll publish it and get
6 some more feedback and keep moving.

7 So thank you all. Thank you all for
8 coming. We're adjourned.

9 (Whereupon, the meeting was adjourned at
10 8:03 p.m.)

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