



This transcript constitutes the minutes from the Public Hearing held on November 27, 2006.

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<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>WELCOME:</u>	
Carol Mitten . . . . .	4
 <u>CASE NO. 06-33</u>	
<u>OFFICE OF PLANNING PROPOSED TEXT AMENDMENT</u>	
<u>PARKING FOR HISTORIC BUILDINGS: . . . . .</u>	4
 <u>OFFICE OF PLANNING:</u>	
Travis Parker . . . . .	8
 <u>PERSONS IN SUPPORT:</u>	
Gary Peterson . . . . .	16
 <u>PERSONS IN OPPOSITION:</u>	
Gary Nettler . . . . .	19
Joe Sternlieb . . . . .	26
Allen Greenberg . . . . .	31
Anne Adams . . . . .	41
Carolyn Brown . . . . .	47
 <u>RECORD TO REMAIN OPEN TO JANUARY 26, 2007: 56</u>	
 <u>ADJOURN:</u>	
Carol Mitten . . . . .	57

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

2 6:41 p.m.

3 CHAIRPERSON MITTEN: Good evening,  
4 ladies and gentlemen. This is a Public  
5 Hearing of the Zoning Commission of the  
6 District of Columbia for Monday, November 27,  
7 2006. My name is Carol Mitten and joining me  
8 this evening are Vice Chairman Anthony Hood  
9 and Commissioner John Parsons.

10 First, an announcement regarding  
11 Case No. 06-37, this is a Map Amendment near  
12 Ft. Reno Park, that hearing will be postponed  
13 until March 19, 2007 at 6:30 in this room.

14 Next is Case No. 06-33 and this is  
15 a request by the Office of Planning for  
16 amendments to Title 11 to clarify parking  
17 requirements for historic landmarks and  
18 buildings contributing to an Historic  
19 District.

20 Notice of this hearing was  
21 published in the D.C. Register on September  
22 22, 2006 and copies of the hearing

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1 announcement are available to you and they are  
2 in the wall bin by the door.

3 This hearing will be conducted in  
4 accordance with the provisions of 11 DCMR  
5 section 3021 and the order of procedure will  
6 be as follows: We will take up any  
7 preliminary matters followed by the  
8 presentation by the Office of Planning;  
9 reports by any other Government Agencies;  
10 reports by ANCs, organizations and persons in  
11 support and organizations and persons in  
12 opposition.

13 The following time constraints  
14 will be maintained in the hearing.  
15 Organizations will have five minutes and  
16 individuals will have three minutes. The  
17 Commission intends to adhere to these time  
18 limits as strictly as possible in order to  
19 hear the case in a reasonable period of time.  
20 The Commission reserves the right to change  
21 the time limits for presentations, if  
22 necessary, and notes that no time shall be

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1 ceded.

2 All persons appearing before the  
3 Commission are to fill out two witness cards.  
4 They look like this and the cards are on the  
5 table by the door. Upon coming forward to  
6 speak to the Commission, please, give both  
7 cards to the reporter who is sitting to our  
8 right.

9 Please, be advised that the  
10 proceeding is being recorded by the Court  
11 Reporter and is also being webcast live.  
12 Accordingly, we ask you to refrain from making  
13 any disruptive noises in the hearing room.

14 When presenting information to the  
15 Commission, we ask you to take a seat at the  
16 table in front of us and then turn on and  
17 speak into the microphone stating your name  
18 and address. When you are finished speaking,  
19 we ask you turn the microphone off, because it  
20 tends to pick up background noise.

21 The decision of the Commission in  
22 this case must be based on the public record.

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1 And to avoid any appearance to the contrary,  
2 the Commission requests that persons present  
3 not engage the Members of the Commission in  
4 conversation during a recess or at any other  
5 time. Mrs. Schellin will be available  
6 throughout the hearing to answer any  
7 procedural questions you might have.

8 I would ask you to turn off all  
9 beepers and cell phones, at this time, so as  
10 not to disrupt the proceeding and I would just  
11 announce again, since we have had some other  
12 folks come in, that the hearing in Case No.  
13 06-37, which is the Map Amendment in the Ft.  
14 Reno area, is being postponed until March 19,  
15 2007 at 6:30.

16 Mrs. Schellin, do we have any  
17 preliminary matters?

18 MS. SCHELLIN: No, ma'am.

19 CHAIRPERSON MITTEN: All right.  
20 Then we are ready to proceed to the Office of  
21 Planning presentation and I would just note  
22 that Mr. Callcott has joined us this evening

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1 and welcome. Not that we don't welcome you,  
2 too, Mr. Parker.

3 MR. PARKER: Thank you.

4 CHAIRPERSON MITTEN: But we see  
5 more of you.

6 MR. PARKER: That's right. Good  
7 evening, Madam Chair. And for the record, my  
8 name is Travis Parker with the Office of  
9 Planning. The Text Amendment that we have  
10 submitted for review tonight is an attempt to  
11 clarify section 2100 to what OP feels was its  
12 original intent.

13 As you are aware, section 2100  
14 deals with when parking spaces are required.  
15 And for buildings built before 1958, there are  
16 two times when additional parking spaces are  
17 required. First, when a use of the building  
18 has changed to one that requires more parking  
19 and, second, when the existing use has  
20 increased through an addition or other  
21 increase in the intensity of use.

22 The first case is covered under

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1 2100.4, which covers change of use, and it  
2 specifically calls out an exception for  
3 historic buildings by referring to 2100.5.

4 The second case, when you increase  
5 the intensity of the use is then covered by  
6 2100.6. .6 calls out that it is subject to  
7 2100.7, .8 and .9, but says nothing about  
8 2100.5. This specific reference to .5 and .4  
9 and a lack of such records at .6 appears to be  
10 conclusive evidence that 2100.5 modifies .4  
11 and is not meant to apply elsewhere.

12 But even if you read .5 in  
13 isolation, it talks about no spaces being  
14 required for buildings or structures that are  
15 landmarked or certified as contributing. And  
16 it says nothing about buildings or structures  
17 that are added on to or built next to  
18 contributing buildings.

19 But this is the way that it has  
20 been interpreted by past Zoning Administrators  
21 as well as by the BZA. The result has been  
22 cases such as 1445 Church Street or 1830

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1 Jefferson Street where 7 or 8 story condo  
2 buildings are built behind or around  
3 contributing structures or contributing row  
4 houses to be specific providing several times  
5 the number of units while having absolutely no  
6 parking requirements.

7 In the case of 1445 Church Street,  
8 the neighborhood has vehemently opposed the  
9 project for the main reason that there is  
10 space to provide underground parking in the  
11 new building and the developers chose to take  
12 advantage of this section to provide none.

13 Which brings us to the language  
14 being proposed. OP has worked with both  
15 Historic Preservation staff and the Office of  
16 the Attorney General to draft the language in  
17 the OP report. The language is intended to do  
18 a couple of things. It is intended to clarify  
19 that 2100.5 does protect the existing  
20 structure of historic buildings from having to  
21 provide new parking no matter what the changes  
22 of use on the interior of the building.

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1           But it also clarifies that any  
2 expansion more than 25 percent of a pre-'58  
3 building including historic structures must  
4 provide new parking for the addition.

5           Since the sit-down, I have had  
6 conversations with interested parties  
7 regarding the proposed text and OP is aware  
8 that there is concern both about the confusing  
9 nature of the language that has been proposed  
10 as well as a concern about the possible  
11 unintended consequences where cases that  
12 shouldn't have to go for variances or for  
13 various obvious approvals will be sent to the  
14 Board of Zoning Adjustment.

15           OP is aware of several of these  
16 issues and we're open to possible language  
17 changes and possible other suggestions by  
18 parties, provided that the main intent of this  
19 section is honored.

20           One of the comments that we have  
21 heard is that many of these situations aren't  
22 actually trying to get out of providing

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1 parking, but due to the constraints of the  
2 historic site need relief from the size of the  
3 parking spaces or the widths of the aisles.  
4 We're open to some compromise that would  
5 relieve some of that without relieving the  
6 requirement to provide parking spaces.

7 Another suggestion we have heard  
8 is that for cases where there is obvious say  
9 100 percent lot occupancy, where there is  
10 obviously no opportunity to provide parking,  
11 that maybe the Historic Preservation officer  
12 or some other party could make that call that  
13 parking is not required at that site, short of  
14 going to the Board of Zoning Adjustment.

15 We're open to language changes of  
16 these types and, as you said, Mr. Callcott is  
17 here to answer any questions you may have  
18 regarding HP's thoughts on this matter and its  
19 effects on Historic Districts.

20 CHAIRPERSON MITTEN: Thank you.  
21 Questions from the Commission? Mr. Parsons?

22 COMMISSIONER PARSONS: I'm not

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1 sure I understood what you just said. That OP  
2 would somehow develop a process to rely on the  
3 Historic Preservation Review Board?

4 MR. PARKER: I think other parties  
5 will be presenting tonight. I'm just saying  
6 we're open to other options, but I think  
7 you'll hear more.

8 COMMISSIONER PARSONS: Okay.

9 CHAIRPERSON MITTEN: I just had a  
10 couple of things that I wanted to talk about.  
11 First is in 2100.5 it talks about in use  
12 change and then in 2100.6 it talks about  
13 intensity, increased intensity of use and then  
14 it sort of suggests that that would be without  
15 changing the use.

16 MR. PARKER: Correct.

17 CHAIRPERSON MITTEN: So, to me,  
18 there is a little slippage, because sometimes  
19 the use change itself isn't higher intensity  
20 than the existing use.

21 MR. PARKER: I think that's what  
22 2100.4 says. 2100.4 says if you change the

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1 use to something that requires more parking,  
2 you have to provide additional parking for the  
3 increase. So the change of use that it causes  
4 an additional parking increase is covered  
5 under .4.

6 CHAIRPERSON MITTEN: Okay.

7 MR. PARKER: As modified by .5.

8 CHAIRPERSON MITTEN: Well, okay.  
9 It says except as provided under .5 in 2100.4.

10 MR. PARKER: Yes. So .5 exempts  
11 contributing and landmarked buildings. So  
12 contributing landmarked buildings can change  
13 the use however they want within their  
14 structure without providing additional parking  
15 for the more intense use.

16 CHAIRPERSON MITTEN: Yes, I guess  
17 that's my point, which is that in certain  
18 circumstances that intensity could be quite  
19 significant. And so we just want to stick  
20 with the blanket?

21 MR. PARKER: I think that was the  
22 intent that within the existing envelope of a

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1 contributing or a historic building, you could  
2 do any matter-of-right use for that zone  
3 district, even if it would require more  
4 parking. Clearly, we don't want to go in and  
5 have people adjusting, you know, or renovating  
6 their historic buildings just for the purpose  
7 of providing some additional parking.

8 CHAIRPERSON MITTEN: Okay. The  
9 other thing that hasn't been dealt with in  
10 this case, when I was at the BZA last week as  
11 were you, and the issue came up and I don't  
12 want to suggest how the BZA will handle this  
13 and it is certainly an area that's open to  
14 interpretation, but rather than leave it open  
15 to interpretation, perhaps you have given some  
16 thought since last Tuesday about the issue of  
17 what constitutes the base number of parking  
18 spaces as existing, which is in 2100.5, no  
19 additional means over some base.

20 MR. PARKER: Right.

21 CHAIRPERSON MITTEN: That exist.  
22 And have you given that any thought since last

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1 Tuesday?

2 MR. PARKER: I've given a lot of  
3 things from that meeting thoughts, but in  
4 specific, I haven't come up with any solution  
5 of that problem.

6 CHAIRPERSON MITTEN: Okay. I  
7 think that's an important one, because I know  
8 the Zoning Administrator has to struggle with  
9 it and it's clearly going to be an issue each  
10 time this comes up, so we need to give that  
11 some thought. Okay. Do you have any  
12 additional questions? Is there any other  
13 Government Agency representative here that  
14 wants to give testimony in this case?

15 Okay. Any ANCs represented who  
16 want to give testimony in the case regarding  
17 the parking and historic structures? Okay.  
18 Then we will take organizations or persons in  
19 support of the Text Amendment. Okay. Okay.  
20 Mr. Peterson, please, have a seat.

21 MR. PETERSON: My name is Gary  
22 Peterson. I live at 810 Massachusetts Avenue,

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1 N.E., Washington, D.C. and I'm here on behalf  
2 of the Capitol Restoration Society. I see I'm  
3 all alone here in support. Last week I was on  
4 vacation and went to an aquarium where you  
5 could go snorkeling in a tank where you had to  
6 feed small sharks, barracudas and stingrays.  
7 I believe that was in preparation for this  
8 evening.

9           There I was all alone in this tank  
10 with these hungry fish and a little container  
11 of herring. But anyway --

12           CHAIRPERSON MITTEN: They don't  
13 look that vicious.

14           MR. PETERSON: Well, that was  
15 probably overstating it. As someone said when  
16 he saw my dog, well, I told him he doesn't  
17 bite. He said well, he has got teeth, doesn't  
18 he? So anyway, we support this, the  
19 recommendation, to change the Zoning  
20 Regulations and, frankly, up until this point,  
21 we, in the Historic District on Capitol Hill,  
22 haven't experienced a big problem yet, but I

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1 can see where this acts as a loophole and I  
2 think it would -- we would like it closed.

3 And I think it was the intent of  
4 the regulations to be what it is being  
5 clarified for, but we would like to see it  
6 clarified. There are a number of objections  
7 to this and when I hear the objections, I have  
8 to agree to them that they are stating the  
9 facts correctly. Yes, they say but if you do  
10 X, Y will occur and I'm saying, yes, that's  
11 the idea, that's what we want to occur.

12 So I don't disagree with them from  
13 the standpoint of what the conclusion is when  
14 my response is yes, that's what we want to do.  
15 We want to be able to in a Historic District  
16 both control the density and the amount of  
17 parking. And so I'm open to any questions you  
18 may have on this. I think this is a good  
19 amendment and I think it would help the  
20 Historic Districts in the city greatly.

21 CHAIRPERSON MITTEN: Thank you.  
22 Do you have any questions? Well, thanks for

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1 flying solo tonight. All right. If there is  
2 no one else who would like to testify in  
3 support, then I'll move to the witness list in  
4 opposition. And Mr. Nettler, Mary  
5 Mottershead, is she here? No. So we'll have  
6 Mr. Sternlieb then and Allen Greenberg and  
7 then we'll have a second panel after that.

8 MR. NETTLER: Good evening. My  
9 name is Richard Nettler from Robins, Kaplan,  
10 Miller and Ciresi. And I am here as an  
11 opponent of the proposed change to the parking  
12 regulations in this case. And while my  
13 testimony is lengthy, I'm going to try and get  
14 through it, at least in the three minutes I  
15 have, and with some recommendations as well.

16 With all due respect for the great  
17 work the Office of Planning has done over the  
18 last few years, the present recommendation  
19 proceeds from both a misunderstanding of the  
20 interplay between the current regulations  
21 governing parking and an application to  
22 historic structures and the purpose of those

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1 regulations.

2 More than 20 years ago, the Zoning  
3 Commission provided for a waiver of any  
4 parking requirements for historic landmarks or  
5 a building that was certified as contributing.  
6 The Zoning Commission adopted this waiver  
7 because it recognized, at the time, as all  
8 other cities which have adopted similar  
9 waivers have and as the Landmark Planning  
10 Association has commented upon.

11 Because the requirement to provide  
12 parking for either a change in use to such  
13 buildings or for expansions of such buildings  
14 would ensure that these historic buildings  
15 would not be reused or rehabilitated. The  
16 waiver provision was one of many regulations  
17 adopted by the Zoning Commission at the time  
18 to foster the historic preservation in concert  
19 with the District's newly adopted preservation  
20 law.

21 The proposal by the Office of  
22 Planning today runs counter to that sentiment

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1 and would seriously undermine future  
2 preservation efforts as well as the reuse of  
3 historic buildings, which have previously been  
4 rehabilitated.

5 While the Office of Planning  
6 suggests that the proposal before you today is  
7 simply a clarification of parking requirements  
8 with a codification of accepted practice does  
9 neither, rather than clarify the current  
10 regulations and address purported problems in  
11 providing parking in Historic Districts, the  
12 Text Amendment, if adopted, will create the  
13 very disincentive to reuse or redevelop  
14 historic properties that the Zoning Commission  
15 sought to respond to more than 20 years ago,  
16 because it would require property owners or  
17 developers to include parking and often  
18 unfeasible costs in prohibitive situations or  
19 seek zoning relief that under the current  
20 regulations of the case law will be impossible  
21 for the Board of Zoning Adjustment to grant.

22 Indeed, the proposed regulations

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1 will remove any distinction between historic  
2 buildings in the manner in which the  
3 grandfather principles of zoning laws that  
4 apply to every building constructed before  
5 1958.

6 More troubling, however, is the  
7 fact that this amendment will have unintended  
8 consequences that the Office of Planning has  
9 failed to understand or acknowledge. The  
10 ambiguity of the Office of Planning states  
11 that it is seeking to resolve arises from a  
12 misinterpretation between -- of the interplay  
13 between 2100.7 and 2100.5 that arose while a  
14 Member of the Office of Planning was detailed  
15 as Acting Zoning Administrator over a year  
16 ago, while the city sought a new Zoning  
17 Administrator.

18 Up until that time, there was no  
19 ambiguity in interpretation of the  
20 regulations. The Zoning Administrator  
21 consistently interpreted as has the BZA that  
22 section 2100.7, which governs the provision of

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1 parking for increases of more than 25 percent  
2 of the size of the buildings constructed prior  
3 to 1958, did not -- had nothing to do with  
4 requirement to the waiver of parking for  
5 historic structures.

6 That's because unlike historic  
7 buildings or Historic Districts, there is  
8 nothing inherently difficult in providing  
9 parking for expansion of non-historic  
10 buildings, albeit, ones that are constructed  
11 before 1958.

12 For example, while curb cuts are  
13 routinely denied in Historic Districts and  
14 many Historic Districts do not have alleys  
15 wide enough to accommodate motor vehicle  
16 traffic, thus making it impossible to ever  
17 provide parking for historic buildings. Those  
18 conditions do not exist necessarily for  
19 buildings built before 1958.

20 The Office of Planning has gone  
21 even further with its proposed amendment to  
22 seriously undermine the current use of for

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1 future building regulation of historic  
2 buildings. First, with regard to the specific  
3 provisions of section 2100.5, which provides  
4 that a building which was altered, expanded  
5 after either the date of designation of 1958,  
6 whichever date is later, and then undergoes a  
7 change in use with or without a concurrent  
8 addition or expansion would require parking  
9 for -- not only for the immediate use change,  
10 but for all changes to the building made after  
11 1958 or the date of designation, whichever  
12 date is later.

13 Under the District of Columbia  
14 law, no building is considered as a historic  
15 landmark or contributing building prior to  
16 1979 when the District's preservation law was  
17 adopted. However, if a historic building or  
18 a Historic District created in 1979 by virtue  
19 of the adoption of the District's preservation  
20 law was expanded, say in 1986, under the  
21 Office of Planning's proposal, that expansion,  
22 if a change in use occurs, would have to

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1 provide for parking, regardless of whether  
2 there was any additional density being added  
3 to the site and without regard to the present  
4 conditions affecting that building.

5 So that if you had a building,  
6 historic building, the Homer Building, let's  
7 say, if it didn't provide parking, it does,  
8 but just to use that as an example, you have  
9 an addition placed on the top of the building  
10 in the 1980s, under this proposal, if you  
11 change the Homer Building addition from one  
12 use to another, you would now have to put  
13 parking into a site that couldn't possibly  
14 provide for parking. You can't excavate  
15 underneath an existing historic building or  
16 are curb cuts allowed.

17 There are similar problems with  
18 the other sections as well that we have  
19 referenced in our testimony. I do have a  
20 suggestion as to how the Office of Planning's  
21 proposal can be met by other language that  
22 2100.5 --

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1                   CHAIRPERSON MITTEN:       Is that  
2 included in here?

3                   MR. NETTLER:   That is included in  
4 there.   And I also have a discussion as to  
5 what the real economic cost of providing  
6 parking are and why these provisions don't  
7 come to grips with that situation as well as  
8 the zoning law regarding the ability to obtain  
9 any variances for situations that clearly  
10 Historic Preservation will never allow for  
11 parking to be provided on.

12                   CHAIRPERSON MITTEN:   Okay.

13                   MR. NETTLER:   So I think there is  
14 a misunderstanding about this interplay that  
15 gets -- can be resolved by the suggestions I  
16 am making in my testimony.   And if you have  
17 any questions, I'm certainly here to answer  
18 them.

19                   CHAIRPERSON MITTEN:   Okay.   Mr.  
20 Sternlieb?

21                   MR. STERNLIEB:   Good evening.   My  
22 name is Joe Sternlieb.   I am vice president

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1 for Acquisitions at East Bank and I'm here  
2 this evening to oppose the proposed changes to  
3 the parking regulations for historic  
4 renovations in this case.

5 As many Zoning Commissioners know,  
6 East Bank has been -- has a great success  
7 taking under-performing historic buildings,  
8 primarily in Georgetown, and creatively  
9 redeveloping them into high-performing retail,  
10 residential and commercial buildings. We have  
11 won numerous design awards and praise for  
12 preservation from neighbors and District  
13 officials for our work in this area.

14 Over the last 10 years, East Bank  
15 has redeveloped over 50 buildings in Historic  
16 Georgetown, including the Pottery Barn, Smith  
17 Hawken Building at 3077 M Street, Club Monaco  
18 at 3235 M Street, the Puma Store at 1237  
19 Wisconsin Avenue, Ralph Lauren at 1247  
20 Wisconsin Avenue, Else at 3025 M Street,  
21 Sephora at 3065 M Street and 25 Katie's Alley  
22 Buildings on the block, the 3300 Block of M

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1 Street and the block behind it.

2 These were primarily industrial  
3 buildings that were expanded and converted  
4 into retail and residential use. Of these  
5 buildings that I have just mentioned, over 30  
6 buildings, all but one had greater than 25  
7 percent increase and many had a change in use.

8 In many cases, we expanded  
9 historic buildings more than 25 percent in  
10 altered uses all under the existing Zoning  
11 Regulations and exempted these properties from  
12 on-site parking requirements. In almost every  
13 case where it has been feasible for us to add  
14 parking, we have done so.

15 There were certainly -- this was  
16 certainly the case in the Incinerator Project  
17 which included several historic buildings that  
18 were moved off-site and returned to the site  
19 in the Eagle Building at 3333 M Street, N.W.  
20 Another case such as Katie's Alley where it is  
21 not -- where it was not possible, this  
22 important project would have been harmed or

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1 derailed if the proposed amendment to require  
2 parking as part of the expansion was enforced.

3 To date, we have not seen the  
4 regulations in section 2100 as either  
5 ambiguous or in conflict. They have  
6 historically been interpreted to both  
7 encourage and enable historic preservation.  
8 It is our view that the recommended Text  
9 Amendment would do real harm to the city's  
10 historic preservation goals by burdening  
11 historic properties, especially those that  
12 have outlived their economic usefulness with  
13 redevelopment requirements that are simply too  
14 difficult to meet.

15 As experts in both the technical  
16 and administrative hurdles of redeveloping  
17 historic structures, we attest to the  
18 difficulty of completing historic renovations  
19 in the District. It is our hope that the  
20 Zoning Commission in the District would look  
21 for ways to continue to encourage  
22 redevelopment, rather than place additional

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1 hurdles between structures and those who wish  
2 to preserve them and enhance them.

3           Having said all this, we are  
4 sensitive to the potential for existing -- for  
5 the existing language to be abused as it has  
6 been anticipated by the Office of Planning.  
7 The loophole in the current regulations could  
8 allow developers to attach historic structures  
9 to their redevelopment projects in order to  
10 claim exemption from parking requirements and  
11 this loophole should be closed.

12           The solution to this problem,  
13 however, is to close the loophole without  
14 harming the type of work that East Bank has  
15 been doing and hopes to continue to do as the  
16 redeveloper of historic buildings. Therefore,  
17 we respectfully request the Zoning Commission  
18 reject the currently proposed amendment to the  
19 regulations and call upon the Office of  
20 Planning to come up with a more narrowly  
21 tailored response to the abuses of current  
22 regulations.

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1                   Thank you for the opportunity to  
2 testify.     I'll be happy to answer any  
3 questions.

4                   CHAIRPERSON MITTEN:     Thank you.  
5 Mr. Greenberg?

6                   MR. GREENBERG:     Thank you.     Good  
7 evening.     My name is Allen Greenberg.     I'm  
8 privileged to testify before you on behalf of  
9 the Washington Regional Network for Local  
10 Communities, a private, nonprofit organization  
11 that helps to create and sustain a network of  
12 diverse workable communities throughout the  
13 District.

14                   WRN supports the District Office  
15 of Planning's efforts to remove ambiguity from  
16 the Zoning Regulations, but only insofar as  
17 this does not codify bad policy.     In this  
18 case, some of what is included in the Office  
19 of Planning's proposed Text Amendment would be  
20 beneficial while some would not be.

21                   Reusing old buildings whether  
22 designated as historic landmarks or not is

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1 very important to the architectural vitality  
2 and economic health of this city. Older  
3 buildings in modern use bridge the District's  
4 past and present helping to retain the  
5 historic character of the neighborhoods where  
6 such buildings are located, while at the same  
7 time showing that a neighborhood's past is  
8 relevant to what happens here today.

9           Cities that have failed to keep  
10 their older buildings in productive use lose  
11 something very valuable, and that is an  
12 identity rooted in their history that brings  
13 generations of their residents together.

14           Off-street parking requirements  
15 interfere with adoptive reuse of older  
16 buildings and are anathema to affordable  
17 housing and to meeting the real estate needs  
18 of local businesses at a price they can  
19 afford. Requiring the construction parking  
20 excessive market demand adds 50,000 more to  
21 the price of housing units and guarantees more  
22 car ownership driving, traffic and air

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1 pollution than if such parking were not  
2 mandated.

3 Not only is parking very expensive  
4 to build, but also many older buildings simply  
5 can not be retrofitted at any price to  
6 accommodate it. If economic conditions are  
7 such that a vacant older office building that  
8 has no parking is no longer viable for office  
9 use, but is with interior rehabilitation  
10 viable for housing, then the District should  
11 encourage this conversion, rather than saddle  
12 it with new parking requirements.

13 Off-street parking requirements  
14 would be completed unnecessary if the District  
15 adequately managed public on-street parking  
16 through accommodation of regulations at market  
17 rate pricing. The Zoning Commission should  
18 not try to make up for the District's failure  
19 to do this by creating or reinforcing existing  
20 off-street parking requirements, especially  
21 since no amount of required parking will  
22 guarantee curb space availability.

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1           Instead, the only way to guarantee  
2           the availability of public on-street parking  
3           is to price it to achieve specific performance  
4           objectives.     For example, Redwood City,  
5           California enacted an ordinance to do this,  
6           which instructs city staff to continuously  
7           adjust on-street parking prices to achieve 80  
8           percent, 85 percent occupancy, thereby,  
9           ensuring the availability of spaces and  
10          reducing the congestion caused by vehicles  
11          circling in search of free parking.

12           The Office of Planning's proposal  
13          is commendable for not requiring new off-  
14          street parking for landmarked and contributing  
15          buildings where there are changes in building  
16          use, increased intensity of existing building  
17          use and new additions that add less than 25  
18          percent to building square footage.

19           The proposal is harmful though in  
20          requiring new parking in other instances such  
21          as for non-landmarked pre-1958 buildings with  
22          new or intensified uses and for all changes

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1 affecting post-1958 buildings, including  
2 landmarked buildings.

3           Rather than clarifying policies of  
4 which some are beneficial and some are  
5 harmful, the Zoning Commission should instead  
6 focus on creating good policies. It should  
7 amend the Zoning Code now by setting a date  
8 one or two years henceforth where off-street  
9 parking would no longer be required, at the  
10 very least in cases where development serves  
11 a critical public need, such as to restore  
12 older buildings or to create affordable  
13 housing.

14           The District City Council and  
15 Department of Transportation would then have  
16 ample lead-time to design and implement  
17 appropriate policies to manage public on-  
18 street parking, to the supply of such parking  
19 will not be overwhelmed with new demand.

20           One policy the District might  
21 choose to implement in response to the Zoning  
22 Code Amendment proposed here would be to take

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1 away in perpetuity the privilege of obtaining  
2 low cost residential parking permits from  
3 residents in newer modified buildings that  
4 build fewer off-street parking spaces than  
5 required under preexisting parking  
6 regulations.

7           Instead, a parallel residential  
8 parking permit program could be developed that  
9 really limits the number of permits made  
10 available to residents of both under-parked  
11 older buildings with new uses and new under-  
12 parked affordable housing developments and  
13 that then distribute such permits by auction  
14 to residents occupying these developments.

15           I thank you for this opportunity  
16 to testify. Our Washington Regional Network  
17 looks forward to working with the Zoning  
18 Commission in promoting adaptive reuse of  
19 older buildings and in supporting efforts to  
20 better manage per car parking, so as to  
21 facilitate such adaptive reuse. Thank you.

22           CHAIRPERSON MITTEN: Thank you.

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1 You always have interesting ideas, Mr.  
2 Greenberg. Thank you for sharing them with  
3 us. The interesting thing is the Commission  
4 is actually struggling with some of what you  
5 are suggesting, because we are in other  
6 circumstances putting pressure on developers,  
7 what pressure we can, to not put so much  
8 parking in their buildings with, you know,  
9 some success, limited success.

10 So we are sensitive to the issue,  
11 but then on the other hand, I mean, I know  
12 that I am at least one of the Commissioners  
13 who prodded this change from the Office of  
14 Planning, because we saw examples. I saw  
15 examples at the BZA where there was clearly  
16 the opportunity to put in some parking into  
17 it, because there would be, you know,  
18 relatively small historic structure and then  
19 a large addition and we have to strike the  
20 balance between the economics of the historic  
21 preservation project and the negative impact  
22 of not having any new parking.

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1           So I look forward to reading, you  
2 know, Mr. Nettler's suggestions. I take Mr.  
3 Sternlieb's point about, you know, like focus  
4 on if there is an egregious problem, focus on  
5 the egregious problem. But I definitely think  
6 there is some -- I mean, we have to do  
7 something. We haven't struck the right  
8 balance so far, in my view.

9           I don't have any questions per  
10 say, but I just wanted to have a few comments.  
11 Anybody else?

12           VICE CHAIR HOOD: Yes, I just had  
13 a question to the three panels at the table.  
14 While this text is being proposed, was there  
15 a work session with the Office of Planning and  
16 did you all have an opportunity to bring some  
17 of these ideas up for discussion at that point  
18 in time? Anybody can answer.

19           MR. NETTLER: There wasn't any  
20 work session. I actually had an off-the-cuff  
21 conversation with -- directly with the Office  
22 of Planning who informed me that something was

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1 in the works and then found out that actually  
2 it had already been set for a hearing. So we  
3 -- the opportunity to do something before it  
4 had been set for -- set down for hearing  
5 didn't appear and, therefore, we have sort of  
6 scrambled to redress something.

7 And we think in this period of  
8 time -- and we did have an opportunity because  
9 Travis mentioned to talk last week or the week  
10 before last actually about it to raise some of  
11 the concerns that we had about the unintended  
12 consequences, but I do think that some of the  
13 suggestions that we are making, and I think  
14 you're going to hear from some others,  
15 probably do address the egregious situation of  
16 the Office of Planning and the Zoning  
17 Commission has concerns about where you can  
18 provide parking and simply parking isn't being  
19 provided. That's a different situation, I  
20 think, than what we're concerned about, which  
21 is what we think this regulation, proposed  
22 regulation will have a greater impact on.

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1                   VICE CHAIR HOOD:    Okay.    Thank  
2    you.

3                   CHAIRPERSON MITTEN:    Mr. Parsons?

4                   COMMISSIONER    PARSONS:            Mr.  
5    Greenberg, in your, I guess, theoretical  
6    permits by auction, is this something you are  
7    proposing to the Department of Public Works or  
8    others?        Certainly it is beyond our  
9    jurisdiction.

10                  MR. GREENBERG:    The Mayor had a  
11    Parking Task Force and it is one item included  
12    as a sort of possibility, an element to  
13    include in pilot. But it's true it absolutely  
14    is beyond your jurisdiction. But what isn't  
15    beyond your jurisdiction is throwing the issue  
16    back to them.

17                  To a degree, there is a loophole  
18    now, for instance, dealing with historic  
19    buildings. I say yes, go ahead and close that  
20    loophole. I'm not telling you to change  
21    everything as of now. I'm saying do what you  
22    need to now, but also change what you need to

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1 a year or two years henceforth and put that  
2 date in the Code now and they will do what  
3 they will have to do to manage on-street  
4 parking, so that the spill-over problem is  
5 addressed. They will have to. They will have  
6 to for political reasons.

7 COMMISSIONER PARSONS: Thank you.

8 MR. GREENBERG: Thank you.

9 CHAIRPERSON MITTEN: It sounds  
10 like fun, doesn't it?

11 COMMISSIONER PARSONS: Yes.

12 CHAIRPERSON MITTEN: Okay. I  
13 think that's all our questions. Thank you.  
14 Anne Adams, Carolyn Brown, anyone else who  
15 would like to testify in opposition in the  
16 case, the Text Amendment case regarding  
17 parking an historic structures can take a seat  
18 at the table now. Go ahead.

19 MS. ADAMS: Good evening. My name  
20 is Anne Adams. I'm an architectural historian  
21 with Pillsbury Winthrop Shaw Pittman and I am  
22 here today to oppose the proposed

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1 clarifications of the intent of section 2100  
2 of the Zoning Regulations.

3           Ironically, until fairly recently,  
4 there has never been any confusion about the  
5 intent of those regulations, specifically with  
6 respect to section 2100.5 relating to historic  
7 buildings.

8           From the time of its original  
9 adoption in the mid-1980s seven different  
10 Zoning Administrators have interpreted section  
11 2100.5 to apply to historic buildings and any  
12 additions thereto. Jim Fahey, Joe Botner,  
13 Gladys Hicks, Armando Lourenco, Michael  
14 Johnson, Robert Kelly and Toye Bello all  
15 interpreted that section the same way.

16           There was never any question and,  
17 indeed, the Board of Zoning Adjustment  
18 consistently reinforced that interpretation.  
19 So we don't think any clarification is  
20 actually necessary and I think the language  
21 that has come out may actually be very  
22 confusing, the way it is proposed.

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1           The provisions of 2100 are  
2 separate, stand alone provisions and they, we  
3 believe, are meant to be read individually and  
4 separately. They don't modify any other  
5 provision. If they did, they would be  
6 codified differently, so we have a  
7 disagreement with the Office of Planning about  
8 how these are put forth. And our experience  
9 has been that people seek the waiver, seek the  
10 certification and waiver in order to have  
11 flexibility in how they provide parking.

12           We have never had a case where  
13 someone has not provided parking, because the  
14 market demands parking. But it is useful for  
15 developers to be able to not comply with the  
16 sort of strict technical requirements of the  
17 parking regulations, the size of the spaces,  
18 the aisle width, column clearance and all of  
19 those things.

20           I actually had not heard of any  
21 instance where no parking was provided until  
22 I talked to Travis the other day, and I think

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1 those situations are a very small percentage  
2 of the people or the projects where buildings  
3 are certified as historic and a waiver is  
4 sought. I think this is kind of major  
5 overkill for what really isn't a problem and  
6 something that has actually worked very well  
7 to the benefit of historic buildings over the  
8 past 20 years.

9           Certifications, the certification  
10 application requests and address a lot and  
11 square number. Buildings are designated and  
12 identified for historic purposes by lot and  
13 square. DCRA deals with building by lot and  
14 square. It doesn't just say they are dealing  
15 with the actual specific structure on the lot,  
16 and it stands to reason as far as we're  
17 concerned that the waiver goes to the whole  
18 lot and the building and any addition thereto.  
19 It's still part of the building.

20           One of the things that we see as a  
21 problem with the proposed regulations actually  
22 have been brought up already, but the

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1 difficulty people are going to run into where  
2 parking may be required, but they can't get  
3 approval to provide it because they have to go  
4 through review under the Historic Protection  
5 Act, and the current review board is  
6 disinclined to allow curb cuts. They are  
7 disinclined to allow garages in the fronts of  
8 buildings.

9           So this doesn't -- what has been  
10 proposed doesn't take into consideration the  
11 sort of practical difficulties that many  
12 people may have to providing parking, which  
13 they would up until now not have to provide.

14           Other difficulties would be where  
15 you have buildings that have 80 or 100 percent  
16 lot coverage. The additions are going up, but  
17 you're not planning to excavate. We don't  
18 think that those people should be required to  
19 do something beyond what they were going to do  
20 in order to provide parking that they wouldn't  
21 until now have to provide. Let's see.

22           CHAIRPERSON MITTEN: You're about

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1 out of time, so if you could wrap it up.

2 MS. ADAMS: I have talked to  
3 Travis and if the -- our first suggestion is  
4 that the Commission doesn't need to do  
5 anything, but if you are so inclined, I think  
6 there are things that we could all work out  
7 that would perhaps achieve Office of  
8 Planning's objectives while not creating some  
9 of the difficulties some of us perceive with  
10 the way it is being proposed.

11 CHAIRPERSON MITTEN: Did you put  
12 those suggestions in your testimony or is that  
13 something you want to work further on with  
14 them?

15 MS. ADAMS: I didn't. I think  
16 that is something we would certainly be  
17 interested in working with Office of Planning  
18 and the other folks who are here today.

19 CHAIRPERSON MITTEN: Okay.

20 MS. ADAMS: Because I think there  
21 are things that would potentially be useful.

22 CHAIRPERSON MITTEN: Okay. Thank

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1 you.

2 MS. BROWN: Good evening, Madam  
3 Chair and Members of the Commission. My name  
4 is Carolyn Brown. I am with the Law Firm of  
5 Holland and Knight. I am here in opposition  
6 to the proposed amendments. Our office  
7 represents numerous property owners who have  
8 been able to rehabilitate, adaptively reuse  
9 and expand historic buildings.

10 As a result of this parking  
11 exemption available under section 2100.5, it  
12 has been an invaluable tool and it has  
13 provided the needed flexibility to proceed  
14 with complex redevelopment of historic  
15 properties that are by their very nature  
16 financially and structurally challenging.

17 Most of my comments mirror what  
18 has already been said, so I will try to be  
19 succinct and get right to my suggestions.  
20 But, first, I agree that the clarifications  
21 are unwarranted in light of the consistent  
22 historical interpretation of this section.

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1                   From 1985 when they were adopted  
2                   up until last month when the BZA issued its  
3                   most recent confirmation of the current  
4                   interpretation, there has only been really a  
5                   three month period where someone has  
6                   questioned that and that is during the period  
7                   when there was an Interim Zoning Administrator  
8                   during the summer of 2005, and the reason it  
9                   has been so consistently interpreted is  
10                  because it does serve a very vital purpose.

11                  The second reason for our  
12                  opposition to this proposed Text Amendment is  
13                  that there is no adverse consequence that is  
14                  generated by the current interpretation. As  
15                  Ms. Adams said and as even Mr. Parker  
16                  conceded, there has only been two instances so  
17                  far that have raised concerns in a 21 year  
18                  history of the interpretation of this  
19                  provision.

20                  And, again, as Ms. Adams pointed  
21                  out, it is very difficult for historic  
22                  properties to accommodate parking,

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1 particularly where you have 80 percent or 100  
2 percent lot occupancy and the addition is  
3 going up, and I can think of two recent  
4 examples that were before the BZA.

5 And the response to that might be,  
6 well, there is your practical difficulty and  
7 exceptional circumstance that would  
8 demonstrate or meet the variance test. And  
9 our argument is why do we need to go through  
10 that extra layer of process time, money and  
11 uncertainty on the ruling when we already have  
12 a provision in the regulations that is working  
13 right now? Essentially, if it's not broken,  
14 there is no need to fix it.

15 And as Mr. Sternlieb and Mr.  
16 Nettler also mentioned, there are economic  
17 consequences to the proposed Text Amendment.  
18 I believe, as they do, that it would  
19 discourage effective rehabilitation of  
20 historic properties.

21 Let me jump now to some of our  
22 recommendations. I, too, believe that there

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1 is no reason to change the current  
2 interpretation. Again, it doesn't need to be  
3 fixed. It's not broken. However, if you do  
4 go forward, I do have a couple of suggestions.

5 One, if the real concern is an  
6 enormous addition tacked onto a very small  
7 historic building, set a threshold for the  
8 amount of demolition that is occurring for the  
9 historic building.

10 If it's, you know, more than, you  
11 know, 50 percent or 75 percent that is being  
12 demolished, then it would trigger the variance  
13 requirement or the relief requirement or if  
14 you're adding \$50,000 or \$100,000 of -- 50,000  
15 or 100,000 square feet of commercial space and  
16 it's a horizontal expansion instead of  
17 vertical, then maybe that could be the way to  
18 trigger the requested relief.

19 And our third suggestion is let's  
20 not make it a variance. Make it a special  
21 exception and there is precedent for that  
22 under section 2108 of the parking regulations

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1 that says if you're going to try to reduce it  
2 by more than 25 percent, you can do so as a  
3 special exception.

4 And that would seem to be the  
5 appropriate mechanism for this, a special  
6 exception not just from the number of parking  
7 spaces, but from the aisle width requirements,  
8 the size requirements and the whole package,  
9 so that the developer of a historic property  
10 does have that flexibility.

11 So with that I will conclude my  
12 remarks. Thank you.

13 CHAIRPERSON MITTEN: Thank you.  
14 Any questions from the panel? Any questions?

15 COMMISSIONER PARSONS: I did have  
16 a question of Ms. Brown. Tell me again about  
17 the thresholds you're talking about. You said  
18 a 50 percent increase. What?

19 MS. BROWN: I'm sorry. The  
20 purpose of the provision is to protect  
21 historic properties or allow greater  
22 flexibility to historic properties. And in

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1 many cases, I can think of one that was just  
2 approved by the BZA, 2160 California Street,  
3 where it was a corner building where the  
4 addition was going to be two stories on top of  
5 it. There is no way to excavate below it.

6 COMMISSIONER PARSONS: Correct.

7 MS. BROWN: So in that instance, I  
8 would say there is no need for variance  
9 relief, that that should be exempted under  
10 2100.5.

11 However, if you have something  
12 more along the lines of the Atlantic Building  
13 where you just have the facade and you have a  
14 huge building going up behind it, then perhaps  
15 in that instance where the extent of the  
16 demolition is so extensive, maybe that is  
17 where you decide, well, you're getting an  
18 additional, you know, 50,000, 100,000 or  
19 however many square feet of commercial space.  
20 In that instance, you would need to seek in my  
21 proposal a special exception for that.

22 COMMISSIONER PARSONS: But,

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1       somehow, as I grasp it, you were linking that  
2       to the amount of demolition. Is that correct?

3               MS. BROWN: Yes.

4               COMMISSIONER PARSONS: Okay.

5               MS. BROWN: Yes, because if the  
6       purpose is to promote rehab and protection of  
7       historic properties, the more demolition you  
8       do, the less you need the waiver.

9               COMMISSIONER PARSONS: Thank you.

10              CHAIRPERSON MITTEN: Mr. Hood?

11              VICE CHAIR HOOD: Let me just ask  
12     Ms. Brown very quick. You mentioned, as Mr.  
13     Parker mentioned, about two cases where the  
14     reason that this was flagged, I guess this  
15     whole Text Amendment evolved, would you say  
16     that something needs to be done about that,  
17     those two cases, or you just say let it ride?

18              MS. BROWN: I say nothing needs to  
19     be done. That's the whole purpose of this, is  
20     to help promote the development of historic  
21     properties by letting -- giving them some  
22     flexibility with the parking requirements,

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1 particularly when they are very small sites  
2 where I know in the instance of the Church  
3 Street property, it was very difficult to try  
4 to get a ramp in below grade to accommodate  
5 what would still be less than the required  
6 number of spaces. It just wasn't economically  
7 feasible.

8 VICE CHAIR HOOD: And including  
9 your last statement, even those two cases  
10 which prompted this Text Amendment?

11 MS. BROWN: Correct, yes.

12 VICE CHAIR HOOD: Okay.

13 MS. BROWN: Those are the  
14 exception, not the rule.

15 VICE CHAIR HOOD: Okay. All  
16 right. Thank you.

17 CHAIRPERSON MITTEN: Thank you.  
18 Thank you both for your testimony. Is there  
19 anyone else who would like to testify in  
20 opposition?

21 I would just like to add something  
22 that I would be less -- I just want to put my

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1 understanding on the record, which is that I  
2 have on several occasions voted in the  
3 minority on a BZA interpretation of the  
4 existing regulations, and I think other  
5 Commissioners have done the same or at least  
6 stated their concerns.

7 So I just don't want, you know,  
8 any one individual to be sort of blamed for  
9 the fact that we have this before us, and I  
10 appreciate the Office of Planning bringing it  
11 to us. And, clearly, there is some more work  
12 to be done, but I will take my responsibility  
13 for prompting it.

14 So if I was misguided, I will  
15 become educated in the process, but I did see  
16 some things that I -- you know, longstanding  
17 interpretations are -- you know, if we stuck  
18 with everything, we wouldn't have very much  
19 work to do here. So I'm glad for everyone's  
20 contribution tonight.

21 What I would like to do is leave  
22 the record open for two months, get through

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1 the holidays and give you time to talk to  
2 folks and respond to the submissions that we  
3 have seen. I would be interested in Mr.  
4 Callcott's responses to some of the specific  
5 issues that have been raised, whether you  
6 agree with the concerns to the same extent  
7 that they have been expressed here.

8 January 26<sup>th</sup>. So the record will  
9 remain open until January 26, 2007. And,  
10 again, thank you all for your --

11 VICE CHAIR HOOD: Madam Chair?

12 CHAIRPERSON MITTEN: Sure.

13 VICE CHAIR HOOD: Can I just  
14 interrupt? I would think it would be more in  
15 an organized fashion maybe if -- and I'm not  
16 sure if Mr. Parker wants to do this, but maybe  
17 pull some of the folks together and you guys  
18 sit down and kind of pull some of this  
19 together.

20 And then when it comes back to us,  
21 it would be more specific and maybe we can  
22 touch on those points. That's just my

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1 suggestion. It's not mandatory, but that's  
2 just my suggestion. Instead of doing one at  
3 a time, maybe just bring everybody together.

4 MR. PARKER: Yes, absolutely, we  
5 can do that. We can have a working session or  
6 a round table, I think, as you call it. Not  
7 a problem.

8 CHAIRPERSON MITTEN: Thank you.  
9 So the record will remain open until January  
10 26, 2007 and if anyone is interested in  
11 following the case further, you can call the  
12 Office of Zoning and ask for Mrs. Schellin and  
13 she'll tell you where we are with it. Thanks  
14 again and we will reconvene in about five  
15 minutes for the continuation of the Florida  
16 Rock Hearing.

17 (Whereupon, the Public Hearing was  
18 concluded at 7:30 p.m.)

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21  
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