



OFFICE OF ZONING STAFF PRESENT:

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DONNA HANOUSEK Zoning Specialist  
ESTHER BUSHMAN General Counsel

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER  
TRAVIS PARKER  
KAREN THOMAS

The transcript constitutes the minutes from the Public Hearing held on April 5, 2007.

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

6:35 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. My name is Carol Mitten and this is a public hearing of the Zoning Commission for April 5, 2007.

My name is Carol Mitten and joining me this evening are Vice-Chairman Anthony Hood and Commissioners Greg Jeffries, John Parsons and Mike Turnbull.

We actually have two hearings this evening and I'm going to have a combined introductory statement.

So, the subject of the first hearing is Zoning Commission Case Number 06-47 and this is a request by the Office of Planning for text amendments to Title 11 of the District of Columbia Municipal Regulations to Sections 330.5(c), 401.3, 403.2 and new text for Section 401.11 and notice of hearing in Case Number 06-47 was published in the D.C. Register on December 29th, 2006.

1           The second hearing will be Case  
2           Number 07-03 and this is a request by the  
3           Office of Planning for text amendments to  
4           Title 11 of the DCMR and this is to Section  
5           402.1 and the notice in Case Number 07-03 was  
6           published in the D.C. Register on February  
7           23rd, 2007.

8           Copies of both those hearing  
9           announcements are available to you and they're  
10          in the wall bin by the door.

11          The hearings will be conducted in  
12          accordance with the provisions of 11 DCMR  
13          Section 3021 and the order of procedure will  
14          be as follows.

15          We'll take up any preliminary  
16          matters, followed by the presentations by the  
17          Office of Planning in each case, then reports  
18          by any other government agencies, reports by  
19          any ANCs that care to participate,  
20          organizations and persons in support and then  
21          organizations and persons in opposition and  
22          we'll have a sign-in sheet that would help us

1 keep track of who everyone is. If you  
2 wouldn't mind signing in if you intend to  
3 testify.

4 The following time constraints  
5 will be maintained in the hearing.  
6 Organizations will have five minutes and  
7 individuals will have three minutes.

8 The Commission intends to adhere  
9 to these time limits as strictly as possible  
10 in order to hear the case in a reasonable  
11 period of time. The Commission reserves the  
12 rights to change the time limits for  
13 presentations if necessary and notes that no  
14 time shall be ceded.

15 All persons appearing before the  
16 Commission are to fill out two witness cards.  
17 They look like this and they are on the table  
18 by the door.

19 On coming forward to speak to the  
20 Commission, please give both cards to the  
21 reporter who's sitting to our right and then  
22 take a seat at the table.

1           Please be advised that this  
2 proceeding is being recorded by the court  
3 reporter and is also being webcast live.  
4 Accordingly, we ask you to refrain from making  
5 any disruptive noises in the hearing room.

6           When presenting information to the  
7 Commission, please turn on and speak into the  
8 microphone first stating your name and  
9 address. When you're finished speaking,  
10 please turn the microphone off so that it  
11 doesn't pick up any background noise.

12           The decision of the Commission in  
13 this case must be based on the public record  
14 and to avoid any appearance to the contrary,  
15 the Commission requests that persons present  
16 not engage members of the Commission in  
17 conversation during a recess or any other time  
18 and we have Mrs. Schellin and Ms. Hanousek and  
19 Ms. Bushman and Mr. Bergstein available to  
20 answer any questions throughout the hearing if  
21 you have procedural questions.

22           So, I'd ask you to turn off all

1 beepers and cell phones at this time so as not  
2 to disrupt the hearing and we'll ask Mrs.  
3 Schellin if there are any preliminary matters.  
4 No.

5 Then we're ready to proceed and  
6 we'll have -- we'll keep these discreet. So,  
7 we'll have the presentation by the Office of  
8 Planning in Case Number 06-47 please. Ms.  
9 Thomas.

10 MS. THOMAS: Yes, good evening,  
11 Madam Chair, Members of the Commission.

12 We're recommending approval of the  
13 text amendment as it relates to minimum lot  
14 occupancy and minimum lot area for converted  
15 row dwellings in the R-4 District and we would  
16 like to stand on the record and take any  
17 questions you may have.

18 CHAIRPERSON MITTEN: Thank you.  
19 Any questions for Ms. Thomas on the proposed  
20 text? Any questions?

21 And I don't believe that we have  
22 any other government agencies represented.

1           Is there anyone from an ANC who'd  
2           like to give testimony in Case Number 06-47?  
3           Mr. Fengler, please come ahead.

4                    COMMISSIONER    FENGLER:            Good  
5           evening, Madam Chairman, Members of the Board.  
6           Thank you for allowing ANC 6A to offer  
7           testimony this evening.

8                    We support the text amendment by  
9           the Office of Planning to clarify the number  
10          of apartment units and existing apartment  
11          houses located in the R-4 Zone District.  
12          Specifically, we encourage the Zoning  
13          Commission to adopt the changes not to allow  
14          apartment units unless there is 900 square  
15          feet of lot area for each unit whether it is  
16          a new unit or an existing unit.

17                   In addition, our Commission  
18          supports the imposition of a lot occupancy  
19          limit for buildings and structures converted  
20          to an apartment house in a R-4 Zone District.

21                   This text amendment is important  
22          because the Board of Zoning Adjustment in BZA

1 Case Number 17468(a) interpreted current  
2 regulations as allowing apartment buildings  
3 existing before March 18th, 1958 to increase  
4 the number of units without being subject to  
5 the requirement for a 900 square foot of area  
6 lot for each unit. We believe that BZA  
7 interpretation of the Zoning Regulations was  
8 misguided because it allowed the matter of  
9 right expansion of a nonconforming use.

10 In addition, BZA interpretation  
11 arbitrarily created two classes of apartment  
12 buildings. Apartment buildings created after  
13 1958 could only add units by obtaining an  
14 variance, but apartments created before 1958  
15 could add units as a matter of right.

16 We strongly urge the Zoning  
17 Commission to adopt the proposed text  
18 amendments in order to close this loophole and  
19 restore the Zoning Code's intent to prevent  
20 over intensification of land use in  
21 residentially zoned districts. Specifically,  
22 we believe that expanding the nonconforming

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1 use is not appropriate in our community when  
2 it comes to a residential neighborhood.

3 We do appreciate the time and  
4 consideration this evening of this text  
5 amendment and we would encourage its adoption.

6 CHAIRPERSON MITTEN: Thank you.  
7 Any questions for Commissioner Fengler?  
8 Anyone have any questions? Okay. Thank you  
9 very much.

10 And I would note for the record  
11 that we also have letters in support from ANC  
12 1A and ANC 6B.

13 Now, I'd ask is there anyone who'd  
14 like to testify -- any individual or  
15 organization who'd like to testify in support  
16 of Case Number 06-47? Anyone who'd like to  
17 testify in support?

18 Anyone who'd like to testify in  
19 opposition? Mr. Williams. You're welcome to  
20 have a seat at the table also.

21 MR. WILLIAMS: Good evening,  
22 ladies and gentlemen. Good evening, ladies

1 and gentlemen. My name is Lindsley Williams.  
2 I'm appearing here only on behalf of myself  
3 this evening on the case that you are  
4 discussing tonight and what I'm urging you to  
5 do is to review quickly some materials that  
6 I'm having -- that I've submitted to the  
7 Secretary.

8 This consists of a series of six  
9 diagrams which essentially tries to zero down  
10 on the R-4 Zone as it relates to the current  
11 comp plan. The one that has just been  
12 adopted.

13 Map 1 which you will have at the  
14 top shows in a sort of a orange color the R-4  
15 Zones in the city. It shows other -- the  
16 striped horizontal zones are the R-5 Zones.  
17 The big yellow areas are lesser R Zones, R-1,  
18 R-2, R-3. The red areas are commercial. The  
19 pinkish areas are the industrial. The blue  
20 areas are Federal and I won't take anymore  
21 time for that page.

22 The next page is simply the comp

1 plan map that's just been adopted.

2 The third map zeros in. It comes  
3 down close and looks at the areas that are  
4 currently zoned R-4 and you'll see that it's  
5 the broad swath of the orange color that is  
6 essentially -- that comports with the moderate  
7 density, medium density zones. Then I've  
8 taken -- the next chart and you will see I've  
9 got those two colors highlighted for your  
10 information.

11 Then what I've done is to circle  
12 on the next page the areas that are actually  
13 zoned R-4 and in the original, it came out  
14 with red around the R-4 and a more purple  
15 around the R-5 Zones and what I've tried to do  
16 on the following two pages is actually show  
17 you what kinds of uses are going on in there  
18 and that's the important part of this.

19 Because what goes on inside of an  
20 R-4 is a range of uses from row houses to  
21 semi-detached houses, occasional fully-  
22 detached houses, but also an awful lot of

1 conversions to flats, conversions to  
2 apartments and what we have in the purples and  
3 in the boxed areas are instances where you  
4 have properties that are currently possibly or  
5 probably nonconforming. They are a very,  
6 very, very common part of the development  
7 pattern in that area.

8 And the problem that I have with  
9 this regulation as has been proposed is that  
10 the condition is so prevalent that it would  
11 mean that you would -- it would be difficult  
12 to overcome the problem with the variance  
13 because it's a pretty standard operating  
14 condition of the area and to that end, I have  
15 prepared some suggested text which is what I  
16 would have you look at next.

17 And in that regard, I would just  
18 have you first focus on the middle paragraph  
19 of the top sheet which points out under the  
20 current comp plan what the moderate density  
21 residential zone is suppose to accommodate and  
22 it ranges from what goes on and talks about R-

1 1, R-3, R-4, R-5(a), but the whole unit --  
2 whole section is designed to cover two to  
3 four-unit buildings which is flats and the  
4 three to four-unit apartment buildings, some  
5 low-rise apartment buildings and it may even  
6 have some multi-stories. I'd like --

7 CHAIRPERSON MITTEN: Why don't you  
8 take two more minutes and cut to the chase on  
9 your suggestions for us?

10 MR. WILLIAMS: Okay. I'll be glad  
11 to. Thank you, Madam Chair.

12 I would then have you look at  
13 existing Section 350.4(d) which is the hotel  
14 clause in the current regulations and it  
15 provides a savings clause for hotels that was  
16 drafted up in the late '70s and adopted in the  
17 early '80s and it provides a savings clause  
18 that says you can have a hotel, but it then  
19 says the hotel can't go on and expand and  
20 expand and expand willy-nilly.

21 I believe something like that is  
22 the kind of language that ought to be

1 considered for the apartments, the converted  
2 apartments and the like in the R-4 Zones and  
3 I've suggested some language down at 330.5(c).

4 Finally, I would have you take a  
5 look at the excellent language that was  
6 developed for residences in 223 and I've  
7 developed a sort of a 423 model which  
8 essentially says if there is a problem that we  
9 can't overcome with the measurements that you  
10 could go to the Board and I do this as a  
11 special exception primarily because the  
12 condition that we see in the maps.

13 The diagrams show so much of a --  
14 so many properties where there are going to be  
15 problems where they're basically hemmed in.  
16 Right now, they are close to or are  
17 nonconforming uses. It's a depressant to  
18 having solid residential stock and I believe  
19 that we need to provide a relief valve.

20 That's what I've drafted up for  
21 the Commission's attention and I know I've  
22 gone over the time limit. That's what I

1 wanted to get into your thought patterns.

2 There are approximately 100,000  
3 properties in the District. The most common  
4 of these properties 44,000 of them are row  
5 houses, but of the ones that are in the  
6 residential walk-ups, there are about 3,000 of  
7 them and there are about 5,000 flats. I'm not  
8 saying they're all in the R-4 Zones, but there  
9 are a lot of them.

10 There are also a series close --  
11 according to the data from the Assessment  
12 Bureau, there are close to 6500 so-called  
13 conversions. These are the ones that are  
14 particularly uncertain in my mind as to what  
15 is the critter. You probably know from your  
16 background, Ms. Mitten, better than I do what  
17 they are. But, I don't know.

18 But, to me, there's a problem here  
19 and we're -- we have a problem that's been  
20 identified and a solution that may be more  
21 overkill.

22 Thank you.

1 CHAIRPERSON MITTEN: Okay. Thank  
2 you. Just hold your seat. I'm sure we'll  
3 have a few questions.

4 MS. WHITEMAN: Good afternoon.  
5 I'm actually -- I might -- well, first, let me  
6 state my name for the record. My name is  
7 Nicola Whiteman. I am the Vice President of  
8 Government Affairs for D.C. for the Apartment  
9 and Office Building Association.

10 The proposed amendments that are  
11 identified in the two cases before the  
12 Commission today were recently brought to our  
13 attention and we are here simply to ask for  
14 time to brief our members on the proposed  
15 issues and to possibly submit something for  
16 the record.

17 At the moment, it may -- it  
18 possibly could impact some of our members.  
19 Some of our members do own and manage smaller  
20 buildings, but we would like some time to  
21 review the matter with our members and submit  
22 a statement for the record.

1 CHAIRPERSON MITTEN: And how much  
2 time would you like?

3 MS. WHITEMAN: Two weeks.

4 CHAIRPERSON MITTEN: Okay.

5 MS. WHITEMAN: Thank you.

6 CHAIRPERSON MITTEN: Thank you.

7 Mr. Williams, one of the things  
8 that may have been misreading in your  
9 presentation, there seems -- in your  
10 presentation, there seems to be this  
11 underlying sense that we want to facilitate  
12 conversions to apartments in R-4 and so, that  
13 we shouldn't -- because there are these  
14 circumstances that would not allow that if we  
15 impose the text amendment as drafted by OP  
16 which to me is just a clarification of what  
17 was intended all along, that somehow that's  
18 going to be an impediment and, you know, the  
19 fact is that we have had -- I think the  
20 Commission has with the series of decisions  
21 that we've made indicated that we really want  
22 to protect the R-4 and so, that we don't want

1 to make it easier to do these conversions.

2 So, is that what's underlying the  
3 suggestions that you've made?

4 MR. WILLIAMS: Actually, no.

5 CHAIRPERSON MITTEN: Okay.

6 MR. WILLIAMS: I think that what  
7 I've done with my suggestions, Madam Chairman  
8 and Members, is very important. I've  
9 respected the 900-foot rule. I've respected  
10 the density rule that says they can only have  
11 a certain amount of percentage of lot  
12 occupancy.

13 I've drafted up the special  
14 exception in a way that says that in the event  
15 that you can't quite meet the 900-foot  
16 standard, you can consider, but the language,  
17 the details of it says you only get to have a  
18 special exception -- to even ask for a special  
19 exception down to 600 square feet and I'm not  
20 going to argue that 600 is the magic number.

21 I'm just trying to say that  
22 there's some relief because lot sizes and

1 other things don't always comport to the  
2 standard 1800-foot lot that's set out in the  
3 regulations and some degree of flexibility is  
4 in order in order to give the opportunity for  
5 investment to go into properties and that's  
6 what I was trying to do. I'm not trying to  
7 facilitate it. I'm trying to say that here's  
8 the matter-of-right standard.

9 I'm not opposing what you're  
10 doing, but in the event you can't quite meet  
11 it, give me a way to get there short of a  
12 variance and that's what I've tried to  
13 provide.

14 CHAIRPERSON MITTEN: Okay. Anyone  
15 else have questions? Okay. Very good. Thank  
16 you.

17 Anyone else who would like to  
18 testify in Case Number 06-47?

19 MR. WILLIAMS: My comments apply  
20 to the other case as well.

21 CHAIRPERSON MITTEN: Okay. Thank  
22 you.

1 MS. WHITEMAN: And mine as --

2 CHAIRPERSON MITTEN: And yours do,  
3 too. I got that. Okay. Then what I'd like  
4 to do then if that's all the testimony that we  
5 have is if you could give me a date two weeks  
6 out and then we could give AOBA a chance to --

7 MS. SCHELLIN: Three o'clock April  
8 19th.

9 CHAIRPERSON MITTEN: Okay. So,  
10 the record will be closed at 3:00 p.m. April  
11 19th and until then, the record is open for  
12 any submissions that anyone would like to make  
13 in Case Number 06-47. So, tell your friends.

14 VICE-CHAIRPERSON HOOD: Excuse me,  
15 Madam Chair. Excuse me. We'll be receiving  
16 any comments. I think Mr. Williams brought up  
17 a good point and I was just wondering if maybe  
18 the Office of Planning, not trying to give  
19 them any additional work because I know they  
20 don't want any, maybe they would like to look  
21 at that.

22 CHAIRPERSON MITTEN: Okay.

1                   VICE-CHAIRPERSON HOOD: I think he  
2 brings up a very --

3                   CHAIRPERSON MITTEN: Well, the  
4 record's open. If you'd like to respond at  
5 all, we would welcome your thoughts.

6                   VICE-CHAIRPERSON HOOD: Thank you.

7                   CHAIRPERSON MITTEN: Thank you,  
8 Mr. Hood.

9                   Okay. Well, then I think we've  
10 concluded then Case Number 06-47.

11                   (Whereupon, at 6:51 p.m., the  
12 hearing was concluded.)

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