

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DISTRICT OF COLUMBIA ZONING COMMISSION
PUBLIC HEARING**

THE APPLICATION OF:

WASHINGTON DEVELOPMENT
GROUP, INCORPORATED

Thursday
May 21, 1998

Hearing Room 221 South
441 4th Street, N.W.
Washington, D.C.

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

BEFORE:

JERRILY R. KRESS, Chairperson

ANGEL CLARENS, Commissioner

ANTHONY HOOD, Commissioner

STAFF PRESENT:

SHERI PRUITT-WILLIAMS, Office of Zoning

STEFANIE BROWN, Office of Zoning

ALBERTO BASTIDO, Office of Planning

BRUCE BRENNAN, Corporation Counsel

On Behalf of the Applicant:

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1 statement. If these guidelines are followed, and adequate record can be developed
2 in a reasonable length of time.

3 To avoid any appearance to the contrary, the Commission
4 requires that the parties, counsel, and witnesses not engage the Members of the
5 Commission in conversations during the recess or at the conclusion of the Hearing
6 session. While the intended conversation may be entirely unrelated to the case that
7 is before the Commission, other persons may not recognize the discussion as not
8 about the case.

9 The Staff will be available to discuss procedural questions. All
10 individuals who wish to testify please rise and take the oath.

11 COURT REPORTER: Please raise your right hand. Do you
12 solemnly swear or affirm that the testimony which you are about to give is the truth,
13 the whole truth and nothing but the truth?

14 WITNESSES: I do.

15 COURT REPORTER: Thank you. Please be seated.

16 (Whereupon, all witnesses were sworn.)

17 CHAIRPERSON KRESS: Thank you. First we'll start with the
18 preliminary matters.

19 COMMISSIONER HOOD: Madam Chairman, I have a
20 disclosure I would like to make. I -- I am the President of Woodbridge Civic
21 Association. We're in the process of 501(c)(3). And Harrison Institute, Georgetown
22 Law Center helped us get that through.

23 And we're also doing some other work with them. At no time or
24 in any way will this affect my decision in any way. But Madam Chairman, if anyone
25 has any problem with me hearing the case, then I will reclude myself.

26 CHAIRPERSON KRESS: I think we should begin there. Does
27 anyone have a problem with Mr. Anthony Hood hearing this case? If so, please step
28 forward at this point.

29 (No response.)

1 CHAIRPERSON KRESS: Seeing no person step forward, with
2 that, we will move on. Thank you, Mr. Hood. Other preliminary matters, Ms. Pruitt-
3 Williams?

4 MS. PRUITT-WILLIAMS: Staff has no preliminary matters.

5 CHAIRPERSON KRESS: You want to handle the certification of
6 posting and those issues or no?

7 MS. PRUITT-WILLIAMS: I believe there is someone from the
8 audience. We can do certification.

9 CHAIRPERSON KRESS: Normally that is handled --
10 certification of the maintenance and posting.

11 COURT REPORTER: We ask you to please come forward --
12 certification of the maintenance and posting.

13 CHAIRPERSON KRESS: Is someone coming forward?

14 MS. PRUITT-WILLIAMS: Yes.

15 CHAIRPERSON KRESS: Oh, I'm sorry.

16 MR. AGUGLIA: I'm Richard Aguglia. I'm from the audience.

17 MR. BRENNAN: Richard, you have to talk
18 on --

19 CHAIRPERSON KRESS: Yes, you cannot speak until you get
20 on the mike and identify yourself. Thank you.

21 MR. AGUGLIA: This is on?

22 MR. BASTIDO: Is the green light on?

23 MR. BRENNAN: Press it until it comes on.

24 CHAIRPERSON KRESS: I know it's difficult. Just hold it until it
25 comes on.

26 MR. AGUGLIA: Richard Aguglia, -- for the Applicant in the case.
27 My law clerk filed the affidavit of posting sometime ago with the --

28 MS. PRUITT-WILLIAMS: I would like you to certify that you
29 maintain posting.

1 MR. WESTBURY: Good evening. My name is Eric Westbury,
2 President of Washington Development Group, and we did maintain those postings.

3 CHAIRPERSON KRESS: You did maintain the postings?

4 MR. WESTBURY: That is correct.

5 CHAIRPERSON KRESS: Thank you. Is there anyone who has
6 an objection to the certification or the maintenance of posting?

7 (No response.)

8 CHAIRPERSON KRESS: Hearing none, I'll move to the next
9 part of our preliminary matters. Is there anyone here who wants to identify
10 themselves as a party who has not done so previously?

11 (No response.)

12 CHAIRPERSON KRESS: Seeing no persons, I move ahead to
13 the next issue. Would you like to speak to that, Mr. Williams?

14 MR. WILLIAMS: It's the preliminary matters from the audience.

15 CHAIRPERSON KRESS: It's preliminary matters from the
16 audience?

17 MS. PRUITT-WILLIAMS: Yes.

18 CHAIRPERSON KRESS: And who is to speak to that issue?

19 MR. WILLIAMS: Whoever had preliminary matters.

20 CHAIRPERSON KRESS: Does anyone in the audience have
21 preliminary matters who'd like to speak to this issue?

22 MS. DWYER: Madam Chair, for the record, Maureen Dwyer with
23 the law firm of Wilkes, Artis, Hedrick & Lane, Counsel for Georgetown University, a
24 party in opposition. We have several preliminary issues that we would like to raise
25 this evening.

26 CHAIRPERSON KRESS: Thank you. Go ahead.

27 MS. DWYER: The preliminary issues I'm going to raise go to the
28 heart of this case, and specifically, whether it is right for hearing and decision. In
29 summary fashion, we have four issues.

1 These issues are first, whether the Zoning Commission has
2 jurisdiction to hear this case. Our review of the record indicates that the PUD
3 approval expired on September 1, 1997 when neither an application for a building
4 permit nor a request for an extension was filed.

5 Second, whether the application complies with the PUD
6 requirements. The new housing site is not, in our opinion, contiguous, but rather, an
7 off-site amenity, and we also do not believe that the plans meet the literal and
8 technical requirements of Chapter 24.

9 The third issue is whether the Applicant has complied with a
10 1991 agreement with Georgetown University to implement design changes and to
11 address impact issues.

12 And the fourth preliminary issue --

13 CHAIRPERSON KRESS: I'm sorry. Would you go back and
14 repeat number three please?

15 MS. DWYER: Whether the Applicant has complied with a 1991
16 agreement with Georgetown University to implement design changes and to address
17 impact issues.

18 CHAIRPERSON KRESS: This was an agreement that was
19 made in 1991 between?

20 MS. DWYER: 1991 between Georgetown University and the
21 Applicant.

22 CHAIRPERSON KRESS: Okay. Thank you.

23 MS. DWYER: And the fourth issue is whether Counsel for the
24 Applicant is disqualified from representing them this evening under the D.C. Bar's
25 Rules of Professional Conduct.

26 What I would like to do is address each of these issues in turn.
27 And to help you understand them as I walk through the issues, I've prepared an
28 exhibit booklet that contains copies of the Zoning Commission's Orders and
29 Regulations that I will be referencing, and I would like to file that in the record at this

1 time.

2 CHAIRPERSON KRESS: All right. That is accepted into the
3 record. I've asked my colleagues what their decision is, but I believe we should go
4 ahead at this point and hear preliminary matters on the jurisdictional issues.

5 MS. DWYER: All right. I will begin with the jurisdictional
6 question. The last Zoning Commission Order in this case was Zoning Commission
7 Order Number 664B, and it specifically provides that the PUD approval it granted
8 was valid for a period of two years or until September 1, 1997, and attached as
9 Exhibit A in the booklet is a copy of that PUD Order.

10 That PUD approval expired on that date, and no request for an
11 extension of time has been filed. The Zoning Commission regulations specifically
12 provide that a PUD approval lapses after two years unless an extension request,
13 along with a showing of good cause, is approved by the Commission. And in Exhibit
14 B, I've attached the relevant sections of Chapter 24, Sections 2408.8 and 2408.10.

15 While it might be argued that the subject modification application,
16 which was filed on August 15, 1997, should be treated as an extension request, this
17 is not what the Zoning Regulations say, and it is not the precedent of this
18 Commission. For every other Applicant, the Commission has required that an
19 extension request be timely filed, that good cause be shown, and the approval
20 lapses unless such is complied with.

21 In Zoning Commission Case Number 88-21C, and that's
22 attached as Exhibit C, involving the People's Involvement Corporation and a project
23 with the full support of the city and the community, the Zoning Commission
24 concurred with the recommendation of Ms. Madeliene Dobbins that the PUD
25 approval had expired, and that it thus, had no authority to extend the approval.

26 It had to treat the case as a new PUD application, and it was
27 filed and processed accordingly. Even when a modification request is pending, the
28 Zoning Commission has declined to treat that as an automatic extension of the PUD.
29 Attached as Exhibit D is a copy of Zoning Commission Case Number 88-33C.

1 In that case, the Zoning Commission had scheduled a hearing
2 on a modification request, but it became obvious that the completion of that process
3 would occur after the PUD approval had lapsed. The Applicant was required to file a
4 timely request for an extension to show good cause, and the Zoning Commission
5 approved the extension request so that the life of the PUD could be extended until
6 after its decision on the modification request.

7 The same rules that apply to other Applicants before this
8 Commission apply to this application. Since no extension request has been filed,
9 the original PUD approval has lapsed, and this case should be filed and decided as
10 a new PUD.

11 Accordingly, we believe that the Zoning Commission does not
12 have jurisdiction to consider this modification request, and we believe this fully
13 accords with the advice and recommendation given by Ms. Madeliene Dobbins in
14 her Memorandum to the Commission back in 1993 which has been followed by this
15 Commission since that time.

16 CHAIRPERSON KRESS: Do you want to continue?

17 MS. DWYER: I think it might help if I move to all of the issues.

18 CHAIRPERSON KRESS: Yes, I think -- why don't we go
19 through all of the issues and then we'll come back for questions. Thank you.

20 MS. DWYER: Even if the Zoning Commission were to decide to
21 go forward this evening, we do not believe that the application meets the PUD filing
22 requirements under Chapter 24 of the Zoning Regulations. In our opinion, the first
23 and most glaring deficiency is that the application does not comply with Section
24 2401.3, which is attached as Exhibit E.

25 That section requires that all the property included in a planned
26 unit development shall be contiguous except that the property may be separated
27 only by a public street, alley, or right of way. The new housing site is located north
28 of H Street and is separated from the original PUD site by a public park.

29 Thus, it is an off-site housing amenity not part of the PUD site.

1 The park cannot be used to establish or meet the contiguous property requirement.
2 The park was an off-site amenity in the original PUD approval, and one off-site
3 amenity cannot be used to link another off-site amenity.

4 Accordingly, we believe that the application needs to be refiled
5 and revised to reflect the correct site area for the PUD and to correct all calculations
6 for lot area, lot occupancy, and building FAR. And the housing proposal needs to be
7 understood and treated as an off-site housing amenity as in any other case.

8 The failure of the Applicant to meet the little and technical
9 requirements of Chapter 24 goes well beyond the contiguous property requirement,
10 however. And I would like to ask Steve Sher to explain how the plans and
11 information that were filed in the record which we have reviewed in great detail are
12 deficient.

13 And what makes this issue so important is that the purpose of
14 the filing requirement is to give parties advanced notice of what is being proposed.
15 This is what the Commission's own rules as well as the D.C. APA require. When, as
16 here, the plans do not meet the technical requirements, it is impossible for a party to
17 know what is being proposed and to effectively prepare for the hearing.

18 And I would now like to ask Steve to just list those areas in which
19 we believe the plans are deficient and do not meet the requirements.

20 CHAIRPERSON KRESS: All right. Thank you. Steve? So he's
21 going to actually deal with the last two points that you spoke to?

22 MS. DWYER: He's dealing with the second issue, and then my
23 third issue is the 1991 agreement, and the last issue is the question of
24 disqualification.

25 CHAIRPERSON KRESS: So he's just adding
26 to --

27 MS. DWYER: He's just finishing up. All I addressed is the
28 contiguous property issue, but there are many other respects in which we believe
29 the plans are deficient.

1 CHAIRPERSON KRESS: Thank you. Mr. Sher?

2 MR. SHER: Madam Chair and Members of the Commission.

3 For the record, my name is Steven E. Sher. I'm the Director of Zoning Services with
4 the law firm of Wilkes, Artis, Hedrick & Lane. What you've been handed is my
5 outline and testimony that deals with this case in its entirety, and so it's all put
6 together in one piece.

7 But what I would like to have you address your attention to at this
8 point is the two-page list which follows the outline. It's labeled -- it's titled "Areas in
9 Which the Center Leg Freeway Does Not Comply with the Filing Requirements of
10 Chapter 24".

11 And we have made a fairly investigation of the filing in this case,
12 reviewed the plans, reviewed the record, both copies that we will file as well as the
13 official record before the Commission. And I have, in my view, listed items in four
14 categories that I believe are either missing entirely, inadequate or incomplete,
15 inconsistent internal, and in more case, failing to meet the specific requirements of
16 the Regulations.

17 I can sort of walk down that list if you want me to, but I think you
18 have it there in front of you, and you can read it as well as I can read it to you. But
19 in particular, there are certain plans that are required under the Regulations that you
20 just don't find at all. There are information that's inadequate or incomplete,
21 particularly in terms of the tabulation of development data. I mean the information is
22 just not there.

23 There is a tabulation development data, but it's just woefully
24 inadequate. In particular, in terms of things that are totally inconsistent, I'll just give
25 you a couple of examples. The form filed by the Applicant indicates that the housing
26 site is bounded by K Street on the north, yet every drawing that's filed in the record
27 shows that area bounded by I Street on the north.

28 It refers to certain lots and parts of lots, but nowhere is there any
29 official description of which part of lot 7000 is actually included in this application. I

1 don't see how a Commission can go forward without knowing precisely what's
2 before it.

3 Another example, the application form specifies that that new
4 housing site consists of 184,461 square feet. From my calculations, there's no way.
5 It's not even close. From record sources, lot 831 is in excess of 45,000 square feet
6 and lot 830 about 14,000 square feet. I did some computations on lot 7000, and I
7 got about another 44,000 square feet out of that lot. The total is only 103,000, not
8 184,000, not even close.

9 With respect to the building which is called Building B, which is
10 the building that is directly opposite the Georgetown University Law Center, the
11 University owns three properties in that area, the Law Library, the Law Center, and
12 the Student Center, the apartment building. The building that is proposed to be
13 directly opposite the Law Center itself on some drawings it seems like it's set back
14 from the curb. On other drawings, particularly the section, it shows it being right on
15 the curb.

16 I can't tell you where it is from anything that I've been able to
17 discern in the record. One more example, the drawings in the record which I
18 examined again yesterday show the floor plate for the typical floor of Building E,
19 which is described as a hotel to be clearly an office floor plate. There's no atrium.
20 There are no hotel rooms, and we can mount the plan if you'd like to see it because
21 we've got it mounted on a board over there, but it's not consistent with the other
22 plans that are filed in the record.

23 So I mean, I don't know if there's some long-term intention to
24 make that hotel an office building, but that floor plate's not a hotel. It just isn't. And
25 again, I'm not going to read all of them. They're all there, and you can see them.
26 But in my view, it is impossible to determine accurate and adequately what this case
27 is before the Commission based on the information that's in the record as of now.

28 I don't know what the Applicant will go ahead and present
29 tonight, but in terms of our being able to prepare for this, you just can't tell.

1 CHAIRPERSON KRESS: All right. Just a second. I -- normally,
2 we like to wait until the full presentation. Do you have anyone else you're going to
3 present, Ms. Dwyer?

4 MS. DWYER: No, I'm going to address the last two points, and
5 that will conclude our preliminary remarks, but I don't know whether it would be
6 helpful for Mr. Sher to pull out the drawing to show you some of the -- why don't you
7 --

8 CHAIRPERSON KRESS: I think that might be helpful,
9 personally, and I think I might change the normal procedure where I normally like to
10 listen to the full case. I think we have some substantial issues in this instance that
11 we might want to be addressing and pushing earlier.

12 MS. DWYER: All right. I will -- and address the plans. Wait.

13 CHAIRPERSON KRESS: I didn't tell them that they can do this,
14 and so we have some time involved in this.

15 MS. DWYER: All right. I'll go ahead then. The third issue that I
16 wanted to bring up is the failure of the Applicant to comply with a 1991 agreement
17 with the University that addressed certain design issues including the setting back of
18 one of the buildings along 2nd Street and other impact issues having to deal with
19 parking and loading.

20 And I have to be honest and say we're not sure whether, in fact,
21 the agreement has been complied with because we can't figure it out from the plans
22 as Mr. Sher said. On one drawing, it seems to show that the building is set back
23 from 2nd Street. But on another drawing, the section -- it doesn't show it. And we
24 don't know what set of plans will be approved by the Commission tonight, and we
25 need to preserve our right to speak to some of these issues.

26 The 1991 agreement is not part of the background record, and
27 we're filing it this evening. It was entered into as a private agreement between the
28 parties. The agreement is important because in exchange for Georgetown
29 University's support or withdrawal of any opposition to one of the prior iterations of

1 this PUD, Mr. Monts agreed to set the building back, agreed to work with the
2 University on parking and loading management, and agreed to work with
3 Georgetown on a construction management plan.

4 Those issues are the same concerns we have this evening, and
5 we believe they're important issues for the Commission to address. And to the
6 extent that the 1991 agreement reflects on the Applicant's ability or willingness to
7 live up to its commitments, we believe it is very germane to this evening's
8 proceeding.

9 Steve are you ready, or should I go onto the last issue?

10 COMMISSIONER CLARENS: I'm following up -- I'm following
11 you on everything else. This, I think
12 -- why is this a preliminary matter that should be the Commission and by that
13 agreement.

14 MS. DWYER: It's another example --

15 COMMISSIONER CLARENS: The fact that the plans may not
16 be clear, that's an issue, but the agreement?

17 MS. DWYER: Well, it ties into the fact that the plans are not
18 clear. And I wanted to file on the record this '91 agreement so that it is part of the
19 record. But again, it speaks to the fact that as to the three issues that are in that
20 agreement, if you look at that agreement and you look at the plans, you can't answer
21 it.

22 And it just speaks to the fact that as a party, we, at this point,
23 don't know whether to oppose this or support this, and it's just very difficult to
24 prepare for tonight's hearing. So it's yet another example of our difficulty as a
25 neighboring property owner in trying to prepare for tonight's hearing.

26 COMMISSIONER HOOD: Are you suggesting that it's a
27 separate preliminary matter?

28 MS. DWYER: I identified it as a separate preliminary matter, but
29 it could be tied into the second issue, which is the --

1 MR. SHER: The efficiency in the middle.

2 MS. DWYER: -- the efficiency of the plans.

3 CHAIRPERSON KRESS: I'd rather keep it tied only into the first
4 issue unless you have something you'd like to say? I would like to handle this as
5 one issue with multiple points perhaps rather than bifurcating them. I will listen to
6 our great advice here as we move along, and we may bifurcate them.

7 COMMISSIONER HOOD: Madam Chair, I just have one
8 question I just want to follow-up on. Did I understand you to say that different
9 drawings you have with different settings? Did I understand you to say that?
10 There's a number of drawings out there?

11 MS. DWYER: We received a full set of plans from the Applicant,
12 and in looking at those plans, we came up with certain questions. In fact, we met
13 with the Applicant on March 19 to say we really don't understand the plans.

14 In trying to get ready for tonight's hearing, we compared the
15 plans that we received with the plans that are on record, and our full-size plans
16 seem to be the same as the full-size drawings you have. But then there's a reduced
17 set of plans that seems different than the full-size.

18 So the full-size plans themselves are internally inconsistent, and
19 then there's a discrepancy between the large scale and the smaller scale. And we
20 really don't know what set of plans would be approved this evening. And Steve, if
21 you're ready, maybe I'll just ask you to point out those drawings so the Commission
22 understands.

23 MR. SHER: Just a couple of those examples. This is the --
24 these are the Applicant's plans. We just mounted them, but they're not our plans.
25 This is the sheet labeled Building E, typical level. It's the plan dated July 1997
26 prepared by Kaplan, McLaughlin & Diaz in association with Arnold B. Beckett. This
27 is the plan you have in the record. This is the building that's supposed to be a hotel.
28 Okay.

29 COMMISSIONER CLARENS: Madam Chair, I have another

1 plan in front of me. I mean if this adds to the confusion, I have a plan prepared by
2 the same architects dated July 1997, and it shows Building E, that's the building
3 you're referring to. And it shows the typical level, and it shows what appears to be a
4 hotel floor plate.

5 MS. DWYER: Mr. Clarens, is that their reduced scale plans?

6 COMMISSIONER CLARENS: This is the reduced scale plans.

7 MS. DWYER: And our question is which is the set of plans
8 before you. Is it the large scale or is it the reduced? What is the Commission
9 approving this evening?

10 CHAIRPERSON KRESS: We're only looking at the reduced
11 scale. You're quite right to question which set of plans we're looking at. I didn't
12 realize the large scale plans submitted was different from --

13 MS. DWYER: And generally, once an Applicant has received
14 the approval and they go to the permit office, it's the full scale drawings that go over
15 to the permit office. And our question is if the full scale drawings are not the same
16 as the reduced plans, we don't know what's being approved this evening. It's very
17 hard for us to prepare comments.

18 CHAIRPERSON KRESS: Obviously, we don't know what we're
19 approving if we have this dichotomy.

20 MR. SHER: One of the reasons I discovered that discrepancy
21 was quite honestly, I couldn't read the detail on those small scale plans. I couldn't
22 read dimensions. I couldn't read floor plan layouts and so forth, so I figured I'd
23 better look at the big plans. These are the ones they sent us. Now again, this
24 shows an atrium in that same building. This looks more like a hotel. But clearly, this
25 is not the floor plate for a hotel.

26 Second issue, the location of Building C, which in the earlier
27 version was called Building B. Two different drawings, both from the same set
28 again. This is the plan labeled Building C ground level, and as we colored in here,
29 there appears to be some degree of -- I'm sorry -- some degree of setback from the

1 curb.

2 I can't tell you exactly where that curb is, whether this is an
3 existing curb, a proposed curb, or something else, but there appears to be some
4 degree of setback from the curb. Same building in section -- section through the
5 office building, where does that building come down? This is -- this plan is identical
6 to the section that was before the Commission in 1989.

7 So there's clearly been no movement of this building, whereas
8 this would seem to suggest there has been. I don't know.

9 CHAIRPERSON KRESS: Let me become clear on the
10 difference of the plans we have and these ones you received. That came about by
11 your request?

12 MR. SHER: The Applicant furnished these plans to us, I guess,
13 at our request, but I have also compared these plans to the large scale plans that
14 you have in your record. I did that again yesterday, and they're the same.

15 CHAIRPERSON KRESS: Now, the large scale plans do not
16 match the small scale plans that we've reviewed?

17 MR. SHER: At least in some respects. In many respects, they
18 do, but not all.

19 CHAIRPERSON KRESS: Are there any respects that you are
20 speaking to us right now?

21 MR. SHER: With respect to that issue, to the extent that you can
22 read the small scale plans, they look the same.

23 CHAIRPERSON KRESS: All right.

24 MR. SHER: But they are totally inconsistent.

25 COMMISSIONER CLARENS: Madam Chairperson, we have a
26 large scale plans?

27 CHAIRPERSON KRESS: Yes, we do.

28 COMMISSIONER CLARENS: Are they here?

29 CHAIRPERSON KRESS: I assume they are. We have not been

1 privy -- my concern is that we have not been privy to the review of these previously.
2 Unless you have a particular question, I'll let you go ahead and present their contest
3 to this case.

4 MR. SHER: The last example, again, the completed application
5 form signed, in this case, by Duryea Smith as Secretary of D.C. RLA in describing
6 the premises says vacant land and slab north of Mass. Avenue, northwest bordered
7 by K Street, N.W., 2nd Street, H Street and 3rd Street.

8 This is their site plan. K Street is here. This is, in effect, I Street
9 extended. So is this area in the plan or not? Same situation prevails on this plan
10 and any other plan that purports to show the site. The site always stops at I Street
11 or what would be I Street if it crossed the freeway at that point, which it doesn't.

12 This is about the center line of I Street. And in fact, if you look at
13 other parts of the drawing, that seems to be the site, but I don't know.

14 CHAIRPERSON KRESS: Perfect. You're making me more
15 confused.

16 MR. SHER: Sorry. I have just one more exhibit. I don't know if
17 it helps or doesn't.

18 CHAIRPERSON KRESS: Yes, please do.

19 MR. SHER: What staff is about to hand you -- what staff is about
20 to hand you is a copy of a Sandborne atlas plat which is a, in part, a copy of the tax
21 plats of the District of Columbia. The area that is shown in, I'll call that orange, okay.
22 Some people might call it red. I'll call it orange, is lot 831. The area in green is lot
23 830, and the area in blue is a portion of lot 7000.

24 Now, again, the application form talks about part of lot 7000, but
25 it doesn't ever really define what part of lot 7000. For the purpose of trying to
26 understand this, I assumed again that it was consistent with the plans that I showed
27 you, that it followed the center line of I Street extended.

28 I've calculated the area of those three colored portions, the
29 orange, the blue, and the green, and by my computations, that area is approximately

1 103,700 square feet. The application form says that area is 184,000 square feet.
2 Now, I could be off. I could be off 10, 20 percent. I'm still not anywhere near
3 184,000 square feet.

4 If you took this area of this -- these three colored lots and
5 squared it off, even then it's only 121,000 square feet. So somewhere in here, I
6 don't know where the other 60,000 square feet are. And if there are 60,000 square
7 feet more or less, it affects all of the computations made as to FAR occupancy and
8 so forth.

9 COMMISSIONER CLARENS: What is the amount that is
10 claimed?

11 MR. SHER: The application form itself says 184,461 square
12 feet. That's right off the form.

13 COMMISSIONER CLARENS: And what you're saying is that at
14 the -- at the south end of that property, property 393 feet?

15 MR. SHER: 185 and 150. 335 in an east-west direction and 363
16 in a north-south direction.

17 COMMISSIONER CLARENS: All right.

18 MR. SHER: And if you just took those two numbers and squared
19 off that site, again this is the one actually included --

20 COMMISSIONER CLARENS: 1500, 1500.

21 MR. SHER: -- that's 121,000. But the actual computation is less
22 than 104.

23 COMMISSIONER CLARENS: Okay.

24 CHAIRPERSON KRESS: All right?

25 COMMISSIONER CLARENS: Okay.

26 CHAIRPERSON KRESS: All right. You have a -- and please
27 stay here, Mr. Sher. You have a --

28 MS. DWYER: I have a final issue, yes.

29 CHAIRPERSON KRESS: -- final issues, yes.

1 MS. DWYER: The final issue that I'm raising is the possible
2 disqualification of Hunt & Williams as counsel. The D.C. Bar's Rules of Professional
3 Conduct are clear on our obligation to raise this issue when we believe that the facts
4 present a question. So we're raising it for the commissions consideration.

5 The D.C. Court of Appeals is equally clear on the fact that it is
6 the Commission -- up to the Commission not the Court, in the first instance, to
7 decide the issue within the context of the facts before it. In preparing for tonight's
8 hearing, we reviewed the transcripts of this case which go back to 1989.

9 What we realized was that Mr. Aguglia, in his capacity as Deputy
10 Corporation Counsel, had testified before this Commission and had issued a written
11 legal opinion on one of the central issues in this case, namely, whether the Zoning
12 Commission has jurisdiction to entertain a case involving the use of air rights over
13 the Central Leg Freeway. And I've attached as Exhibit G a copy of his legal opinion.

14 That issue is central to this case. If the Zoning Commission
15 does not have the jurisdiction over the air rights, there can be no PUD approval.
16 And there can be no doubt that the Zoning Commission relied on that opinion in
17 Zoning Commission Order Number 664 which is attached as Exhibit H, the same
18 Order number as the subject case.

19 The Zoning Commission stated its reliance on Mr. Aguglia's
20 opinion in finding of fact number ten. Mr. Aguglia is now employed by Hunt &
21 Williams and is representing Mr. Monts this evening. We believe that the Zoning
22 Commission must decide whether the firm is disqualified based on his prior
23 employment with the D.C. Government.

24 I have attached at Exhibit I a copy of Rule 1.11 of the D.C. Bar's
25 Rules of Professional Conduct. That rule states "a lawyer shall not accept other
26 employment in connection with a matter which is the same as or substantially
27 related to a matter in which the lawyer participated personally and substantially as a
28 public officer or employee."

29 It is our belief that this PUD modification request involves the

1 same subject matter on which Mr. Aguglia was involved in his prior employment.

2 And the purpose of the Rule is to prevent an attorney from benefitting from that prior
3 employment by representing a party upon leaving the Government.

4 The Rule is an absolute bar. There's no time limit. It does not
5 require a showing that the position be adverse. And it extends the disqualification to
6 the entire firm unless that individual attorney has been screened from participation
7 which is not the case here. Mr. Aguglia is clearly participating in this case.

8 For these reasons, we believe that the Rule mandates
9 disqualification. To summarize, we believe that the issues we are raising are
10 important preliminary issues which need to be addressed by the Commission before
11 proceeding further with this case. Basically, we do not understand the project. We
12 are professionals.

13 The team that Georgetown has used to try and understand these
14 plans include a traffic consultant, an architect and Mr. Sher, and yet we cannot
15 figure out the plans. And if we cannot understand the plans, we don't know how
16 others in the community can. We do not understand how this could be a
17 modification request when the original PUD approval expired on September 1, 1997.

18 And we do not know how we or anyone else can be expected to
19 prepare for a hearing given the lack of clarity of information. In the end, we may end
20 up endorsing the project, but right now, there are too many questions and too little
21 information. Thank you.

22 CHAIRPERSON KRESS: All right. Questions colleagues?

23 COMMISSIONER CLARENS: Only to clarify something. I -- you
24 said that there were four issues, four preliminary issues. Okay. I got four
25 preliminary issues. They are different from -- I have them as issues of jurisdiction, --
26 of site, inefficiency of submittals, and the conflict of interest?

27 MS. DWYER: That's correct.

28 COMMISSIONER CLARENS: Okay.

29 CHAIRPERSON KRESS: Thank you. I believe I would like to

1 get a response. Don't go too far away. I would like to get a response from the
2 Applicant to the issues that have been brought forth, and I would also like to say my
3 esteemed colleague has looked at the large scale plans, which we have not had
4 before us, and my esteemed colleague, Mr. Clarens, finds some of the same
5 discrepancies that Georgetown University does in its Complaint and concern.

6 So if you could in your -- and we're not looking for your
7 statement of presentation right now. We're looking for a rebuttal. We're in the
8 preliminary hearings. We're looking for your rebuttal to what has just been
9 presented to us. All right?

10 MR. AGUGLIA: Understood.

11 CHAIRPERSON KRESS: Thank you.

12 MR. AGUGLIA: I will handle the first issue.

13 CHAIRPERSON KRESS: First of all, start off by identifying
14 yourself.

15 MR. AGUGLIA: Richard Aguglia for the co-applicant, WDG. On
16 the first issue on the expiration date, met with Ms. Dobbins, brought this to her
17 attention. She explained to me that the filing of the application in August told the
18 time, and therefore, the PUD had not expired within the two-year period. And you
19 may have to check that with her, but I specifically met with her --

20 CHAIRPERSON KRESS: Sir, I'm sorry. You filed in the --
21 Press? You filed in August of '97?

22 MR. AGUGLIA: After it was filed by prior counsel in the case.

23 CHAIRPERSON KRESS: I'm sorry. And the date was?

24 MR. AGUGLIA: It was filed in August, roughly August 13, '97.

25 CHAIRPERSON KRESS: Okay. So your filing was first expired
26 in September, so you're filing 8/13/97. All right. Please continue.

27 MR. AGUGLIA: So we were then -- we were later retained as
28 counsel, met with Ms. Dobbins and brought this to her attention, and asked her if the
29 filing of the application did indeed toll the period, and she said yes. I would say the

1 distinguishing factor about Exhibit C that Georgetown's counsel points out, it talks
2 about a letter being filed requesting extension of the PUD and a map amendment.

3 It does not say that an actual application was filed, and I believe
4 substantial sums of money, substantial sums of money were paid with the
5 application at that point in time. So I think this was a different case, and I think that
6 Georgetown's counsel alludes to the fact that you could treat the application as a
7 motion for an extension and retroactively grant it.

8 I think that would be the fairer thing to do considering I met with
9 Ms. Dobbins, and she assured me that it told the time. For having been told that to
10 go through all this extraordinary expense, and time, and filling out all the other
11 requirements would be apparently unfair, I think the Commission could take that into
12 account and say the application should be treated as a motion and extend it.

13 All right. Now, with respect to the second point about whether or
14 not the application complies with the PUD regulations, the first issue was brought up
15 was a discussion about whether or not the site was actually contiguous. I thought
16 we made it clear that the park was going to be part -- was going to be incorporated
17 into the PUD, and therefore, the sites were, in fact, contiguous.

18 CHAIRPERSON KRESS: I'm sorry. Can you summarize this?

19 MR. AGUGLIA: All right. Mr. Westbury's had ongoing to --

20 CHAIRPERSON KRESS: No deference to Mr. Westbury.

21 MR. AGUGLIA: Mr. Westbury's had ongoing discussions with
22 the Department of Recreation for the District of Columbia Government which has
23 jurisdiction over the park, and they are in the process of executing an agreement to
24 give us the right to maintain and improve the park and essentially incorporate it into
25 the PUD next week.

26 And Mr. Westbury would be willing to testify to that if we have to.

27 CHAIRPERSON KRESS: And so the point you're making is the
28 manner in which this is made contiguous, excuse me, is through the park?

29 MR. AGUGLIA: Exactly.

1 CHAIRPERSON KRESS: Which is only now currently being
2 negotiated and has not been before?

3 MR. AGUGLIA: That's not correct. What we have had an
4 agreement --

5 CHAIRPERSON KRESS: You're saying -- I didn't mean to
6 dismiss you. Thank you so much for coming. -- was speaking.

7 MR. WESTBURY: Thank you. Eric Westbury, President of the
8 Washington Development Group. What we have is an agreement in place that
9 we've had in place since 1990 with the Department. In conversations and
10 negotiations with them, we're finalizing the agreement. It had been verbally
11 approved by Ms. Diane Quinn, and if anyone has any questions, by all means, they
12 can call her. I have her number written down.

13 CHAIRPERSON KRESS: But the agreement is in place?

14 MR. WESTBURY: Yes.

15 CHAIRPERSON KRESS: I'm sorry. Please state it again very
16 shortly? The agreement is that the park is what? I mean what have you come forth
17 to say?

18 MR. WESTBURY: We have rights to maintain and improve the
19 park that exists between our site.

20 MS. DWYER: Excuse me, sir. One clarification for the record.

21 CHAIRPERSON KRESS: Who owns title to the land and
22 jurisdiction of the park? Excuse me. Please identify yourself.

23 MR. MONTS: Thank you very much. My name is Conrad
24 Monts. I'm the Chairman of the Washington Development Group. Since 1990, we
25 have had an agreement with the Department of Parks and Recreation to both rebuild
26 the park once we start to build this project, and to maintain the park for the length of
27 the lease which is 99 years.

28 That agreement has been in place since 1990. We did not sign it
29 because we had a letter between the Department of Parks and us since that time.

1 We have now negotiated a full agreement to be signed on Monday. That agreement
2 was part of the original record. It was part of the -- it was part of the original
3 approval and has been in place since 1990. We must maintain that park, rebuild
4 that park.

5 CHAIRPERSON KRESS: Been?

6 MR. MONTS: In place since 1990.

7 CHAIRPERSON KRESS: 1991.

8 MR. MONTS: Original approval.

9 COMMISSIONER CLARENS: Original approval of this PUD?

10 MR. MONTS: Of this PUD, that's correct. It has been in place.
11 It has not changed. We only never signed a final agreement. There's been a letter
12 of intent. There's been a draft agreement. That agreement --

13 CHAIRPERSON KRESS: So nothing was signed before, but
14 there was a letter of intent?

15 MR. MONTS: There was a letter of agreement. There was a
16 draft agreement that says this is the agreement we will sign once we start
17 construction.

18 COMMISSIONER CLARENS: So the park was incorporated into
19 the original PUD that was approved by this Commission?

20 MR. MONTS: That's correct. Votes in 1990, in 1992 and in
21 1995. It has always been a part of this agreement.

22 COMMISSIONER CLARENS: So your argument is that was part
23 of the original PUD. The extension to the north is contiguous to the original PUD.
24 That's the argument?

25 MR. MONTS: Exactly. That's correct.

26 MS. PRUITT-WILLIAMS: Excuse me, sir. Could you provide us
27 a copy because we don't have one in the file.

28 MR. MONTS: Yes, yes, yes. He's got a copy of it. You've got a
29 copy of it.

1 CHAIRPERSON KRESS: That's very important because this is
2 very key in this case.

3 COMMISSIONER HOOD: Madam Chair, may I ask who Ms.
4 Diane Quinn?

5 MR. MONTS: She is Administrator of the Department of Parks
6 and Recreation.

7 CHAIRPERSON KRESS: Okay. Please continue. And I'm
8 sorry if we interrupt, but there's some things that are of a very necessary nature that
9 we would like to ask about. So excuse it. Normally, we like to hear the whole
10 presentation and comment later.

11 MS. SCHNEIDER: I'm Pauline Schneider, and I'm one of the
12 attorneys representing the Washington Development Group. A number of questions
13 were raised about whether there were some inconsistencies with the plans that
14 you've received. I want to point out that each of the inconsistencies noted were with
15 respect to buildings that are not the subject of this hearing tonight.

16 This application relates only to Building D, which was originally
17 designated as a residential property, and this request, this application is to change
18 the nature of that building from a residential property to a business or commercial
19 building and to relocate the residential to the other site more towards Massachusetts
20 Avenue.

21 To talk about what might be inconsistent in the plans with
22 respect to Building C or to the hotel site which is Building E is not before you this
23 evening. That -- there may be some inconsistencies, and we will clearly have to go
24 back and make sure that they're all -- that whatever is built is consistent with the
25 approved PUDs that this Commission has approved and reapproved on three
26 separate occasions.

27 But those are not buildings that are before you tonight. Building
28 D is and the proposed buildings on the new site more towards Mass. Avenue are
29 what are before you this evening. With all due respect, --

1 CHAIRPERSON KRESS: We understand. We need to hear
2 this, and we're appreciating both what the -- what you're saying as the Applicant as
3 well as what the other folks are saying as our concerns. We need to hear this.

4 MS. SCHNEIDER: In addition, there was the reference to a '91
5 agreement, 1991 agreement between Georgetown and Mr. Monts. Counsel for
6 Georgetown conceded that that agreement is not a part of this record, has never
7 been made a part of this record. It was private agreement.

8 Now, there were certain conditions in that agreement that Mr.
9 Monts agreed to live with, but it is an agreement that is between Mr. Monts and
10 Georgetown. It is not before this Commission, and it's not up to this Commission to
11 enforce that agreement.

12 Certain actions in that agreement were contingent on
13 construction starting at certain points in time, and we know construction did not start
14 when it was originally contemplated, but it might. So I would submit to you that the
15 1991 agreement that Georgetown has referred to is totally irrelevant to this
16 Commission this evening.

17 I also want to address the issue of the conflict because,
18 obviously, that is a very sensitive issue for us as lawyers and for our firm as
19 representative of Mr. Monts to be sure we considered that issue before we accepted
20 this representation and before Mr. Aguglia became involved in it.

21 I would call to your attention and we've submitted for the record
22 the leading case in this particular matter which deals with the issue of conflicts -- of
23 conflicts and whether there is a need to disqualify an attorney for representing on a
24 matter -- representation of a particular matter.

25 CHAIRPERSON KRESS: And that's a very essential issue, yes.

26 MS. SCHNEIDER: And the Court was concerned, is concerned
27 and the Rules of Professional Responsibility are concerned about whether an
28 attorney may have gained some advantage or some confidential information from
29 their prior representation of the Government and be able to use it to advantage this

1 particular Applicant.

2 Just to set the record straight on the fact, Mr. Aguglia left the
3 Government in 1991 and joined our firm.

4 CHAIRPERSON KRESS: 1990.

5 MS. SCHNEIDER: 1990, excuse me. At that time, there was no
6 evidence, there was no hint, there was no indication that Mr. Monts would seek at
7 some point in time to acquire the property north of Massachusetts Avenue on which
8 we are proposing to construct this housing.

9 Mr. Monts' agreement to acquire or enter into an exclusive rights
10 agreement with the Redevelopment Land Agency was not entered into until 1996, I
11 believe it was. We were not asked to become involved in this matter until 1997.
12 This is not the same matter that was addressed in 1989 and 1990 when Mr. Aguglia
13 was a employee of the Office of the Corporation Counsel.

14 And any reading of the leading case on this matter would clearly
15 indicate that this matter is distinguishable. It is not substantially the same. It does
16 not involve air rights, which was the issue on which Mr. Aguglia opined. This matter
17 involves whether we can incorporate into this PUD property north of Massachusetts
18 Avenue and whether we can relocate the housing requirement from the current site
19 to that site and convert the building that was designated for housing into an office
20 building.

21 It is very simple. It is not implicated by the Rules of Professional
22 Conduct, and I think the Courts have clearly ruled on this, and I -- we think that's
23 dispositive.

24 CHAIRPERSON KRESS: All right. Before you go on, I would
25 like to ask my fellow colleagues if they have any questions.

26 COMMISSIONER CLARENS: I don't have any questions.

27 CHAIRPERSON KRESS: Okay.

28 COMMISSIONER HOOD: I do. I have one question for Ms.
29 Schneider.

1 CHAIRPERSON KRESS: Not that we might not come back and
2 ask you more. This is just preliminary.

3 COMMISSIONER HOOD: To follow-up on something you said.
4 You said that we're only -- what's before the Commission tonight is only a zoning
5 thing, is that what you said?

6 MS. SCHNEIDER: No, I'm sorry. It's a modification, a map
7 amendment and a modification of an existing PUD, yes.

8 COMMISSIONER HOOD: Okay. Because my information says
9 something about the relocation of the apartment, and that's major.

10 MS. SCHNEIDER: That's correct. It's a modification of an
11 existing PUD and a map amendment.

12 COMMISSIONER HOOD: Right. Now, your last statement. Are
13 you trying to do away with the apartment? I read it. I'm just asking because you
14 said you want to change the apartment, the living to an office space. So what's
15 going to happen to the office space?

16 MS. SCHNEIDER: What we were --

17 COMMISSIONER HOOD: Excuse me. What's going to happen
18 to the apartment?

19 MS. SCHNEIDER: The residential is going to be moved to the
20 site north of Massachusetts Avenue consistent with a comprehensive plan of the
21 District which clearly provides for housing north of Mass. Avenue, and we will
22 provide, and instead of 234 units, 259 units, 30 percent of which will be for low and
23 moderate income residents.

24 COMMISSIONER HOOD: Madam Chairman, I don't know if I'm
25 out of place asking. I just wanted to know what community input is given when you
26 came up with your modifications?

27 CHAIRPERSON KRESS: That's not out of place. That's a very
28 good question. Actually, you're kind of asking questions when they make their
29 presentation. I think in light of this challenge in the initial, I think that's a reasonable

1 question to ask. And if you don't mind, I would like you to answer that as what input
2 have you had from the community on these changes?

3 MR. MONTS: We have -- I'm very sorry, ma'am. We have met
4 with the community at great length. We have met with the ANCs. We received the
5 support of the ANC for that area. We have met with the Joshua Group which has
6 raised several, several issues about affordable housing.

7 They raised issues regarding a daycare center and access to
8 that. They raised a number of issues, friendship training, job training, that sort of
9 issue which we were apprised of and made aware of. We have made many, many
10 written obligations to respond to those issues.

11 COMMISSIONER HOOD: Just one follow-up. I have a letter
12 here before me. Madam Chair, you can let me know if I'm going awry here.

13 CHAIRPERSON KRESS: All right. Go ahead.

14 COMMISSIONER HOOD: "We are reluctant to support this
15 project due to our concerns on how this project will benefit our community and
16 churches, and this is dated May 14, 1998.

17 MS. SCHNEIDER: We would like to respond to that because,
18 and we have some letters we'd like to submit for the record. We have an exchange
19 of letters going back to March of this year in which they asked us to meet. We sat
20 down and met. There were four items that they wanted agreement on. We agreed
21 to each of the four items.

22 The only issue which was outstanding was a request by the
23 Joshua Group that we make a commitment to contribute a certain dollar amount of
24 money to an educational endowment. We committed to making a contribution, but
25 we did not commit to a specific dollar amount because we said it would depend on
26 economics of the project.

27 But on each of the other points that they raised which had to do
28 with job training, commitment to make a certain number of jobs available to the
29 community, commitment to make housing available to the community, commitment

1 to access to the daycare center, we reached an agreement, and we have letters that
2 we would be happy to submit for the record indicating those agreements.

3 CHAIRPERSON KRESS: That one really is into your
4 presentation, and we're trying to do a preliminary hearing.

5 COMMISSIONER HOOD: I'm sorry.

6 CHAIRPERSON KRESS: No, don't be. Don't be sorry at all.

7 MR. AGUGLIA: Do you want us to submit the letters to the
8 Commission now or later?

9 CHAIRPERSON KRESS: Not right now, sir. Thank you very
10 much. We're trying to do a preliminary hearing. Did you have any further responses
11 to the four points made by the Georgetown University lawyers who objected, or have
12 you felt you've answered all of their four points?

13 MS. SCHNEIDER: I think I answered each of their points raised.

14 CHAIRPERSON KRESS: I think you have too. I just didn't want
15 to put words in your mouth. Since we interrupted you with questions, I wanted to
16 make sure that you had completed what you felt was your response to the issues
17 before us on the preliminary matters. All right. Thank you very much.

18 Please be very brief just so that you can make the points that
19 you wish before we proceed.

20 MS. DWYER: I will be very brief. On the first point, the
21 jurisdictional question about the PUD lapsing, Ms. Dobbins is, obviously, not here to
22 speak for herself. But I think that her written memorandum to the Zoning
23 Commission, which is behind Exhibit C, speaks for itself.

24 And she says in paragraph three that the Applicant was required
25 to either record a PUD covenant and file an application for a building permit or seek
26 an extension. Because these requirements were not met, the PUD expired. And
27 she goes onto say that since these are regulations and not rules of practice and
28 procedure, they cannot be waived by the Zoning Commission.

29 And behind Exhibit D, as I mentioned earlier, is the Order in

1 which the Zoning Commission required an Applicant with a pending modification
2 request to go ahead and file the request for an extension of time.

3 On the second issue, the park area and the contiguous property
4 question, everything the Applicant says supports what we said. The park is an off-
5 site amenity. It was an adopt-a-park off-site amenity in the original PUD. It remains
6 as such. The agency having jurisdiction over that is not here, has not appeared as a
7 co-applicant. The current Applicants do not have jurisdiction over that piece of
8 property, and consequently, the housing itself is also an off-site amenity.

9 On the third issue, the Applicants admit that the plans are
10 inconsistent. But the statement they make is what these plans are really concerned
11 with is the new housing site and the changes to Building D. But if their position is
12 that by filing this modification they are extending the PUD, the entire PUD is up
13 before you, and Building D is located in the air right space which was the subject of
14 Mr. Aguglia's opinion.

15 They can't have it both ways. We are either dealing with an
16 extension and modification of the entire PUD or not. The PUD modification includes
17 Building D, which is the air rights as well as the new housing site, and our belief is
18 that the plans that are filed with the Commission have to be accurate, have to meet
19 the filing requirements and have to clearly show the entire scope of the
20 development.

21 Even though they are saying that the only changes are to
22 Building D, all of their computations as required by the Regulations have to include
23 all of the buildings that are in the site area. We need to know the square footages of
24 every building, and we need to know whether it's 20 feet into 2nd Street or set back
25 from 2nd Street.

26 As the property owner across the street, and as perhaps the
27 other community representatives have the right to request this evening, we need to
28 know what is before you. We need to know in advance so we can come here and
29 comment on it. As for the 1991 agreement, we admit it is a private agreement

1 between the parties.

2 In that agreement, Mr. Monts committed to make design
3 changes. We hope that the plans on file reflect those changes. To the extent at
4 some point we will be able to understand the plans, we will know the answer to that.

5 But since that was a commitment that he made in return for
6 Georgetown University withdrawing its opposition, we would hope that whatever is
7 on file reflects those commitments, and I think that speaks well then of any future
8 commitments that are either part of the PUD or future commitments to provide
9 housing.

10 And then finally on the disqualification issue, we are very familiar
11 with the Brown decision since it involves several members of our firm. That is a very
12 different decision than this. In that case, it did not involve the same subject matter.
13 What we have here is the same property, the same issues, and the same parties.

14 Mr. Aguglia testified at earlier hearings, and he offered an
15 adjudicative decision or opinion on a contested legal issue. There is no requirement
16 that we have to prove that he had access to confidential information. What the rule
17 does is presume that because of the nature of that relationship, there was access.

18 The whole purpose of the rule is to protect the integrity of
19 Governmental office and the appearance of impropriety. We are required under the
20 Rules of Professional Conduct to raise the issue. We believe that in this case it is
21 the identical case, the identical project, and there is no way to suggest that because
22 we're only dealing with a housing site north of Mass. Avenue that it is not the same
23 subject matter. Thank you.

24 CHAIRPERSON KRESS: Thank you. Colleagues, do you have
25 any questions of Ms. Dwyer?

26 (No response.)

27 CHAIRPERSON KRESS: Hearing none, thank you. With that I
28 would like to ask for some opinions from both Office of Planning and Corporation
29 Counsel. Perhaps Corporation Counsel might like to comment on what we've heard

1 so far?

2 MR. BRENNAN: One of the issues is what prejudice, if any,
3 would be to proceeding with this hearing while the four matters that have been
4 raised are taken under advisement by the Commission. And if you identify which of
5 those preliminary matters might have caused that prejudice.

6 CHAIRPERSON KRESS: Could we perhaps, if Ms. Dwyer is still
7 here, please perhaps have the representative of the Applicant also here to respond
8 to our Corporation Counsel. Thank you. Questions? So we can be a little more
9 illuminated. Do you feel comfortable responding to the question?

10 MS. DWYER: Yes, I do.

11 CHAIRPERSON KRESS: Please, please.

12 MS. DWYER: I think on behalf of Georgetown University, the
13 prejudice to us is that we are unable to effectively prepare for this evening's hearing.
14 We honestly do not know what this project does or does not include at this point in
15 time. We have spent the last couple of weeks comparing our plans with the plans
16 that are on file.

17 We have a lot of unanswered questions, and we don't believe
18 that we should be placed in the position of having to guess at what this project is
19 going to look like. We believe we're entitled to have advance notice of what it being
20 proposed, clear information that is understandable to us, and an opportunity to
21 effectively prepare for the hearing.

22 So I don't believe that as a party to the case and as the adjacent
23 or budding property owner on 2nd Street that we're able to proceed forward this
24 evening with our effective case presentation.

25 MR. BRENNAN: And that goes towards preliminary matters two
26 and three as you identified?

27 MS. DWYER: Yes. The other matters, the prejudice to us, I
28 think, it's not a prejudice to Georgetown per se. I think our feeling is that every
29 Applicant that comes before the Zoning Commission should have to play by the

1 same rules.

2 And if other Applicants have been required to go back and revise
3 the plans to make certain that they have all of the property owners signing an
4 application and make certain that all of the requirements of the regulations are met,
5 that those same rules should apply to this application.

6 MR. BRENNAN: Do you have any suggestion that the
7 Commission can't and be extend the time or -- zone based on the submission of this
8 application?

9 MS. DWYER: I don't believe the Zoning Commission can
10 because the PUD has expired.

11 MR. BRENNAN: But the rules do provide for an extension.

12 MS. DWYER: The rules provide that before the expiration of a
13 plan in your development, you file a timely request for extension and you show good
14 cause. The PUD has expired now, and as Ms. Dobbins pointed out and as the
15 Zoning Commission ruled in the People's Involvement Corporation case, once the
16 PUD has expired, you do not have the authority to revive it.

17 That is a regulation that has not been met. And in that case,
18 what they did, since everyone wanted the project, there were many public benefits to
19 it, they expedited the processing of the new PUD application which we would have
20 no objection to hear. But in our opinion, it clearly has to be filed as a new
21 application. It has to be understood as a new application. And I think the other
22 deficiencies can then be corrected.

23 MR. BRENNAN: Or the Commission has to determine that,
24 indeed, the testimony it heard from the other Applicant about the understanding that
25 they had as the effect either of tolling which does not provide the corner rule, or
26 granting an extension that they can ratify at this point.

27 MS. DWYER: The Zoning Commission, yes, has the ability to do
28 that. We would hope that it would be able to cite to something in the Regulations, or
29 the caselaw, or prior Zoning Commission Orders, and we have been unable to find

1 any precedent for that action.

2 COMMISSIONER CLARENS: I have a question. The Director
3 of Zoning has no authority to extend the PUD?

4 CHAIRPERSON KRESS: No. Not singularly.

5 MS. DWYER: That is correct. The only person who has
6 authority to rule on extension requests is the Zoning Commission, and even you
7 don't have the authority once the PUD has lapsed.

8 CHAIRPERSON KRESS: Give me the dates again and why
9 again you say it has lapsed as compared to the responses we've heard?

10 MS. DWYER: The PUDs Order expired on September 1, 1997.
11 The Order was published in the D.C. Register on September 1, 1995. It had a two-
12 year life. There was no extension requests file prior to that time with any statement
13 of good cause, and there have been no building permit plans filed with D.C.R.A.
14 There is nothing to extend the life of that PUD.

15 CHAIRPERSON KRESS: As they testified, you heard their
16 testimony, I'm going back to my notes, they're saying they filed in August. Did I not
17 hear that correctly?

18 MS. DWYER: They filed a modification request in August. It did
19 not include a request for an extension of time. It was a straight modification request.
20 And if you follow the ruling of the Zoning Commission in the case I referenced in our
21 exhibits, a modification request -- there's nothing in the Regulations that says you
22 either file a request for extension or you file a modification.

23 You need to file a request for extension. You need to have a
24 showing of good cause, and the Commission has to act on that. And in the other
25 case, it was the same fact situation, pending modification, the hearing was
26 scheduled, but it was clear they wouldn't decide the modification before the PUD
27 expired, and they were required to file a formal request and to extend the PUD
28 which the Zoning Commission did.

29 MR. AGUGLIA: All right. May I respond to that? As I said

1 before, prior counsel filed the application before the September 1 deadline. We
2 were then later retained as counsel. I met with Ms. Dobbins, and I believe Mr.
3 Westbury was with me. And I specifically said to her are you treating the application
4 as tolling the time period, and she said yes because it meant an enormous amount
5 of time and expense.

6 The Applicant spent over \$43,000 in filing the application. So I
7 think that you can treat -- I'm not saying she extended herself. She treated it as
8 tolling it, and I think that you have the authority to find and treat that application as
9 an extension --

10 CHAIRPERSON KRESS: I just have to tell you, when we toll,
11 there is an application on which we toll. We do not, at this point, just toll without an
12 application. Please speak to the issue of a modification being filed versus a total
13 extension. That is very critical to me in this tolling issue.

14 MR. AGUGLIA: I'm sorry. I'm not done. In August, roughly
15 around August 15 --

16 CHAIRPERSON KRESS: Right.

17 MR. AGUGLIA: -- before the September 1 deadline --

18 CHAIRPERSON KRESS: Right.

19 MR. AGUGLIA: Prior counsel filed an application to -- for
20 modification.

21 COMMISSIONER CLARENS: This application that we have.

22 CHAIRPERSON KRESS: For modification?

23 MR. AGUGLIA: That's correct. All right.

24 COMMISSIONER CLARENS: But it was your understanding
25 that that constituted a tolling of the whole PUD?

26 MR. AGUGLIA: That's correct. So the two-year --

27 COMMISSIONER CLARENS: And you proceeded without any
28 written document supporting this with any memorandum acknowledging this kind of
29 conversation with the -- considering the importance of what was at hand?

1 MR. AGUGLIA: Well, the written document, so to speak, was
2 the acceptance of the application with the \$40 some thousand. That was --

3 MR. BRENNAN: You made a \$40,000 payment at that point?

4 MR. AGUGLIA: \$40,000.

5 CHAIRPERSON KRESS: For the modification?

6 MR. AGUGLIA: Right. And I specifically asked if we -- if it tolled
7 because we were then in the process of amending that application to include the
8 map amendment. So I didn't want to travel down that road unless it was clear that
9 the prior application had tolled the time, and we were told yes. And Mr. Westbury
10 was there with me when the conversation transpired.

11 CHAIRPERSON KRESS: Can I ask Corporation Counsel please
12 to speak to their best determination as we're dealing with whether this constituted
13 tolling or whether there was a need, as has been presented to us for the extension?

14 MR. BRENNAN: I don't see anything in the Regulations that
15 speak to tolling.

16 CHAIRPERSON KRESS: I do not either. We're working on that,
17 but we're not there yet.

18 MR. BRENNAN: I think the issue, as I see it before you here is
19 whether you are going to ratify the actions that the Director took at this point, and I
20 would suggest you have that authority. But that is a decision for today.

21 COMMISSIONER CLARENS: And the evidence that the
22 Director took that decision is in the acceptance of the application and of the fee.

23 MS. DWYER: Mr. Clarens, if I may clarify that. The fee that is
24 paid is paid. That is a hearing fee later in the process. The application fee itself is
25 very nominal. The \$40,000 fee is paid at the time of the prehearing statement. So
26 there was no \$40,000 fee at that time. It was the simple application fee.

27 COMMISSIONER CLARENS: But the acceptance of the
28 application might be -- might be understood by this Commission as supporting
29 because the acceptance of the application was done by the Director of the Office of

1 Zoning.

2 MS. DWYER: Only if you find that Ms. Dobbins, at the time, was
3 acting on behalf of the Zoning Commission knowing full well that it's the Zoning
4 Commission that makes that decision, and that she was acting contrary to the
5 advice she had given you in another case.

6 And again, since Ms. Dobbins is not here, there is nothing in the
7 record. And what we have in the record and the precedent decision is directly
8 contrary.

9 COMMISSIONER CLARENS: Okay. I'm clear on that issue.

10 CHAIRPERSON KRESS: May I ask our current Acting
11 Executive Director does she have any knowledge or anything to add on Ms. Dobbins
12 agreement or nonagreement for the record?

13 MS. PRUITT-WILLIAMS: No, for the record, not on this
14 particular case. And my understanding is on -- we do -- my understanding is we
15 have not tolled applications, that they've always been extended.

16 CHAIRPERSON KRESS: To my knowledge and while I've been
17 here a little longer than my fellow colleagues that happen to be here tonight, I've
18 never heard of any such thing as I have sat here in all these years.

19 MS. PRUITT-WILLIAMS: And I have checked the recent logs to
20 see if there has been some type of an extension and have gone back as far -- we're
21 going back through the file now to see if we can find any written or any file -- notes
22 to the file that may support or at least shed some light on this situation. So my
23 experience has been that when PUDs have -- when their time is sunset that they
24 either get extended or else they just die and come back later.

25 MS. DWYER: Madam Chair, in Exhibit B, I've attached the
26 Regulation Section 2408.11, says if no application for permit is filed, construction
27 has not started, or no extension is granted, the approval shall expire. It's clear. It's
28 mandatory.

29 The zoning reverts to the pre-existing regulations and map, and

1 the approval shall not be reinstated unless a new application is filed, processed, and
2 approved. I don't think anything can be clearer than the Regulations themselves.

3 CHAIRPERSON KRESS: Actually, I don't either personally, and
4 I'm only speaking for myself. I'm concerned about some communication. It happens
5 often with transition of personnel that there may have been some miscommunication
6 which I'm concerned about. And if that is the case, I -- we will look to handle that in
7 some way. I would like to ask Office of Planning what is your knowledge of this
8 situation?

9 MR. BASTIDO: The Office of Planning --

10 CHAIRPERSON KRESS: Alberto Bastido, I'm sorry.

11 MR. BASTIDO: Yes. My name is Alberto Bastido with the Office
12 of Planning. The Office of Planning haven't dealt officially with this matter before. It
13 is more legal interpretation of the Zoning Regulation, and I think that you would be
14 best advised following the advice of Corporation Counsel.

15 CHAIRPERSON KRESS: Thank you. I appreciate that. Okay.
16 Corporation Counsel, you're back on the hot seat again. Please give us your advice
17 again with everything you've heard.

18 MR. BRENNAN: I have explained -- my position is that the
19 Regulations do permit you to extend it. They do --

20 CHAIRPERSON KRESS: Extend -- say that again?

21 MR. BRENNAN: They do permit the Commission to grant an
22 extension of the time period. I do think that, indeed, it is clear that the two-year
23 period, otherwise without that grant of extension, the application expires. There is
24 no request for an extension here. You need to determine whether you are going to
25 ratify an action that was taken at the time that was applied that you would be able to
26 construe as a request for an extension for good cause shown at that time.

27 Also, I think for all of these matters, Madam Chairman, we're
28 going to face the question of whether any of them are sufficient to cause a
29 continuation of this hearing, or whether you're going to take them under advisement

1 and proceed with the hearing.

2 CHAIRPERSON KRESS: Thank you. I think --

3 MR. BRENNAN: And I think for each of those, it's going to be
4 important again to have a -- it would be helpful for the record for the parties to show
5 their prejudice to go forward or not to go forward.

6 CHAIRPERSON KRESS: I understand. I believe Commission
7 Clarens has a question for you?

8 COMMISSIONER CLARENS: Yes. And the question is would it
9 be appropriate that the Applicant, in fact, contact Ms. Dobbins?

10 CHAIRPERSON KRESS: No. I'm sorry, sweetheart. We are
11 what we are. We are where we are.

12 COMMISSIONER CLARENS: No, I disagree. My question is to
13 the Corporation Counsel. My question is that if --

14 MR. BRENNAN: The authority lies with you which is why I said
15 you get to exercise it today.

16 COMMISSIONER CLARENS: But we need to understand the
17 nature of or the corroboration of the understanding that there was between the
18 Director and the Applicant before we can make a decision as to whether there was,
19 in fact, an understanding.

20 CHAIRPERSON KRESS: I -- dear friend, I must agree with you -
21 - disagree with you in the sense that first of all, there were communications that
22 happened, and I am not acknowledging or denying any communication that
23 occurred. I'm only speaking as to where we come from.

24 Where we come from, if there was a mistake made on behalf of
25 the Executive Director, I was trying to walk over those words a little easier, I certainly
26 want to be helpful to the current Applicant if there was some miscommunication. To
27 me, the miscommunication, if there was one, I'm not sure what really transpired, but
28 this is very clear to me. They should have filed for an extension.

29 COMMISSIONER CLARENS: That's correct.

1 CHAIRPERSON KRESS: There is absolutely no way, other than
2 I see it personally, that anything else should have happened. So to me, there's been
3 a mistake made. It may have been a mistake in good faith, and I will personally vote
4 to waive any additional fees or any additional things that has to happen, but on the
5 first go, we have a very big mistake.

6 They should -- they are not able to be here tonight on a regular
7 format that we normally deal with. This -- we do not have automatic tolling on this.
8 We do not have these kinds of things in place. So we have a mistake that has been
9 made, be it a miscommunication on their part or on the past Executive Director's
10 part.

11 MS. PRUITT-WILLIAMS: Madam Chairman, may I make a point
12 here? The question was raised what would the prejudice be. We have proceeded
13 in good faith, based on --

14 CHAIRPERSON KRESS: I agree. I agree you have. I agree.

15 MS. PRUITT-WILLIAMS: -- we have prepared our case. We
16 have responded to communications from the previous Executive Director that certain
17 things needed to be done in a certain timeframe. And we've attempted to adhere to
18 that. What is being proposed here if you take it to its logical conclusion is that we
19 start over from ground zero.

20 We have no original PUD. We have nothing to ask you to extend
21 or nothing -- because if you take this to its logical conclusion --

22 CHAIRPERSON KRESS: Yes.

23 MS. PRUITT-WILLIAMS: What Georgetown is arguing is that
24 the PUD has expired. Therefore, we have to start over from ground zero with
25 nothing. You talk about prejudice, let's be real.

26 CHAIRPERSON KRESS: I am not saying that. I am not saying
27 that.

28 MS. PRUITT-WILLIAMS: Well, but that is, if you accept --

29 CHAIRPERSON KRESS: I am --

1 MS. PRUITT-WILLIAMS: -- if you accept the argument that
2 Georgetown is making --

3 CHAIRPERSON KRESS: Well, first of all, we're having kind of
4 an in-house discussion. I'm not saying that. I am not saying that.

5 MR. BRENNAN: We're having an on the record discussion.

6 CHAIRPERSON KRESS: We're having an on the record --

7 MR. BRENNAN: Discussion.

8 CHAIRPERSON KRESS: -- discussion. All right. And I have
9 allowed you to speak into that discussion. That is not what I am saying. I am very
10 concerned there has been a miscommunication, but I am also concerned that that
11 miscommunication does not follow the procedure and our rules.

12 And in fairness to you is only going to set you all up to a major,
13 perhaps, future conflict in lawsuit. I mean we have not done something that's
14 according to our own procedures, in my mind, as Chair of this Commission. And I
15 am very concerned about that and what the future of whatever you're going to do,
16 whatever effect that's going to have on us, and whatever future effect it might have
17 on you.

18 It appears, unfortunately, this is very difficult since the person
19 who is in communication with you is not here to speak, and I, excuse me, I am very,
20 very, very concerned about defending that person and you in this particular situation.
21 But here is where we are right now, and in my personal opinion, and I have to rely
22 on my colleagues, but this does not meet our criteria.

23 We have a major problem, and we have to decide how to handle
24 this acknowledging, in my heart, a good faith on your behalf to do it the best way.
25 And so I want to talk to my colleagues and see if there's some way we can handle
26 this.

27 MR. AGUGLIA: I would just like to add that I see no reason why
28 you could not treat the application filed in August before the deadline as an
29 extension because based upon the fact that we were told it effectively tolled the

1 situation, we were then sent written correspondence to file this, to file that.

2 We checked with the Commission regularly to make sure it was
3 accepted. It was all accepted. I can dance that suspicion to make that
4 determination.

5 CHAIRPERSON KRESS: I thank you.

6 COMMISSIONER CLARENS: Can you cite any case in which
7 this Commission has actually acted in a similar fashion where an application for
8 modification has been understood as an extension request?

9 MR. AGUGLIA: I would have to research that.

10 (Whereupon, the foregoing matter went off the record at 8:47
11 p.m. and went back on the record at 8:53 p.m.)

12 CHAIRPERSON KRESS: I give my tremendous apologies to
13 everyone in the audience. I, quite frankly, in all the years I've been associated with
14 this Commission, never had anything like this come before me. I would very much
15 like to ask for some further questions as has been proposed via Corporation
16 Counsel, and then have us as a Commission make a decision on how to go forth.
17 So with that, would
18 you --

19 MR. BRENNAN: We didn't get to all the preliminary matters.
20 Some of the issues that I'm raising are -- feel it would be more information on relate
21 to the other preliminary matters. The Commission can determine whether they wish
22 affidavits or anything particular on parties to that earlier transaction regarding the
23 filing.

24 And I don't know whether the Chairman expects to be able to go
25 to a full hearing this evening.

26 CHAIRPERSON KRESS: Actually, we're at 9:00. I'm having a
27 little bit of a question, but let's continue.

28 MR. BRENNAN: It would helpful, I think, to hear Georgetown's
29 position spelled out a little clearer on why this is the same issue. It's my

1 understanding or I thought there had been some discussion that the property owners
2 were different than at the time of Mr. Aguglia's hearing.

3 Certainly, you have argued that it is a different property. It is a
4 noncontiguous property, and therefore, the argument of the Applicants that it's a
5 different property seems to be one that you agree with in your first statement and
6 later on back away from.

7 I think both parties have that same problem, and it would be
8 helpful if they both addressed that seeming contradiction between whether it's
9 contiguous or not and whether it's the same matter or not. And I'm not asking you to
10 do so now.

11 I think the deficiency of the plans is something that the Board just
12 has to deal -- the Commission just has to deal with. Whether upon reviewing them
13 in light of Ms. Schneider's comments that they relate to buildings not before you
14 tonight, obviates the prejudice that has been presented on behalf of Georgetown by
15 Ms. Dwyer.

16 MS. DWYER: If I may just respond to that. The plans are to be
17 in accordance with the prior PUD approval, if, in fact, what the Applicant is saying is
18 we're just changing one of the buildings. I'm not sure -- you -- we can't, perhaps you
19 can tell whether these plans do, in fact, accord with the prior approval.

20 So even if they're not revisiting the other buildings, but only want
21 us to look at one building, you can't tell whether these plans, in fact, comply with the
22 prior PUD approval, and I think we need to know that and the Commission needs to
23 know that.

24 And if one of the buildings does not, then it becomes an issue
25 of failure to comply with the prior PUD approval and also for Georgetown failure to
26 apply with the 1991 agreement.

27 MR. BRENNAN: And then the issue of the proper enforcement
28 and result of such a failure if there is one, and whether that's separate from or
29 germane to this modification hearing.

1 MS. DWYER: We would submit that it's germane, and it's not
2 separate from, and with respect to even the 1991 agreement, if we end up having to
3 go into Court to enforce that agreement to affect a change in the plans different than
4 the plans that are before the Commission in this case --

5 MR. BRENNAN: I guess I'm suggesting some of the issues that
6 -- since my sense is we will not get to a full hearing on these preliminary matters will
7 remain before the Commission, those are some of the issues that they will be
8 looking at to resolve it, and you're well -- I'm proceeding to inform you of what those
9 are in case you wish to input anything.

10 I guess that is all that I would have on those. Again, if the
11 Commission does have some other issues or wishes to resolve any of them.

12 CHAIRPERSON KRESS: Yes. Colleagues?

13 COMMISSIONER HOOD: Madam Chair, I'd just like to say
14 something about the -- from what I've been hearing from both sides, Ms. Dwyer, Ms.
15 Schneider and others, it seems like they're not that far apart, and I may be putting
16 the cart before the horse here. It's just that the informational process has not been
17 opened.

18 I think we realize that we in retail, things like that in the city, but
19 you really want to communicate effectively with the surrounding community and all
20 players involved. That would just be my suggestion, Madam Chair, along with the
21 other issues that we have to look into.

22 CHAIRPERSON KRESS: I -- do you have anything you'd like to
23 add, Commissioner Clarens?

24 COMMISSIONER CLARENS: Well, Madam Chairperson, I think
25 that, first of all, on the issue of jurisdiction, I think we need, first of all, to clear that
26 hurdle. We obviously cannot proceed much further without clearing that hurdle, and
27 that hurdle cannot be cleared, in my opinion, unless we receive some explanation in
28 one way or another from the prior Director of Zoning as to what motivated her to
29 accept this application knowing that the application was or, I'm assuming she knew

1 because she was a very -- she is a very efficient and capable individual, that the
2 application was expiring 15 days after the time of the application.

3 So we need to have a rationale from her as to what made that
4 decision. Lacking that rationale, we have to conclude that, in fact, if I understand
5 correctly, the PUD has expired, and therefore, it's improperly before us as a -- as a
6 modification because there is no PUD. That's the first item that needs to be cleared,
7 and I don't know how it can be done, but we need to hear as to the rationale.

8 If no rationale is forthcoming, then an error was made at some
9 point in proceeding, and we cannot proceed. The -- on the issue of internal
10 inconsistencies of the plan, regardless of the stage or the reason or whatever it is
11 that is in front of us, this Board cannot proceed with inconsistent plans. We have to
12 have material in front of us that is internally consistent, that is, the obligation and the
13 duty of the Applicant before this Commission to come up with consistent plans.

14 How else can we operate with any kind of rationality and any
15 kind of consistency ourselves if we have plans that are inconsistent, and they are
16 obviously inconsistent between the small scale plans that are in front of me in the
17 package that I received and the large scale plans that are filed with the Commission.
18 Those needs to be clarified as well as each area --

19 CHAIRPERSON KRESS: Yes, they were submitted as similar or
20 same exhibits, and in this case, they happen to be very different which is the point
21 that you were able to ascertain for us.

22 COMMISSIONER CLARENS: Well, and the point is regardless
23 of whether it is in front of us or not, we cannot operate on the basis of materials
24 supplied to us which is internally inconsistent. On the issue of contiguity of site, that
25 needs clarification. I'm not sure exactly from where, and I think that it is the
26 responsibility of the Applicant to make a case for the contiguity of the site.

27 And the ownership of the property and the precedents that you
28 can cite by which this Commission can proceed accepting your proposition that, in
29 fact, this entire site is contiguous. And then finally, on the issue of conflict of interest

1 of Mr. Aguglia, well, that is an item that I feel very uneasy about making any kind of
2 decision on that.

3 And I would like to hear an opinion from Corporation Counsel as
4 to whether, in fact, the regulations or the rules of the D.C. Bar are, in fact, applicable
5 to this case, and whether, in fact, Mr. Aguglia should be disqualified from
6 representing the Applicant. That's my opinion on the four issues.

7 CHAIRPERSON KRESS: Dear colleague, I happen to agree
8 with you completely, and I do feel it's the Applicant's responsibility. I feel that for all
9 the material we had, these things were not covered in our materials. This is new
10 information we're receiving tonight.

11 I feel it's the application -- the Applicant's responsibility, but I also
12 think, in this case, it's Georgetown University to also respond to these issues. I
13 believe the Applicant who has not had the benefit of perhaps hearing these issues
14 before need some appropriate time to respond to these issues.

15 And we would also like to ask our Corporation Counsel and
16 Office of Planning to respond to these issues. So with all due respect, what I would
17 like to suggest is that we -- table, whatever the appropriate term is and allow to have
18 in our records responses from both the Applicant, and in this case, Georgetown
19 University.

20 And I guess it's their questions that we're asking the Applicant to
21 respond to. I would like to have these, and I'm sorry. You have given us some
22 things here tonight that obviously we haven't had time to read them.

23 MS. PRUITT-WILLIAMS: Right. Before you go on, also, there
24 are three other organizations or groups that would like to be parties. Georgetown
25 was the only one that filed in time. But the Joshua Group, Second Baptist Church,
26 and Mt. Carmel Baptist Church have requested party status but did not make the
27 filing date and would require a waiver.

28 And I believe, in your package, they also have some concerns,
29 and I didn't know if you wanted

1 to --

2 CHAIRPERSON KRESS: I think that's a good idea. My initial
3 response was this --

4 MS. PRUITT-WILLIAMS: -- parties so they can also be part --

5 CHAIRPERSON KRESS: I thought we were going ahead
6 tonight. Now, that we're continuing on, I think that it's reasonable to address their
7 party status. You're quite correct. With my colleagues' approval, I think that's
8 reasonable to request their party status.

9 MS. PRUITT-WILLIAMS: So that they could be part of the
10 whole?

11 CHAIRPERSON KRESS: So that they can be part of both the --

12 MS. PRUITT-WILLIAMS: Disclosure of information.

13 CHAIRPERSON KRESS: -- for all of the disclosure of
14 information and copied by both of the -- the Applicant and Georgetown University on
15 all of the correspondence.

16 COMMISSIONER CLARENS: I have a question, a procedural
17 question. In my previous life as a BZA member, the usual way was for the Applicant
18 to submit a response, and then that was served on the parties. Is that the way the
19 Zoning Commission operates?

20 CHAIRPERSON KRESS: Yes.

21 COMMISSIONER CLARENS: Okay. And they have time to
22 respond. They have to respond to the response.

23 COMMISSIONER HOOD: Madam Chair, I have a question if
24 that's okay.

25 CHAIRPERSON KRESS: Certainly.

26 COMMISSIONER HOOD: Did I understand you to say that if
27 you were privy to the information at hand, you may even go along with it, but the
28 point is, you need the information.

29 MS. DWYER: Yes. We need the information, and we need to

1 understand the project. We do, as I said, we have design issues. We have parking
2 and loading issues, and we don't know whether they're addressed in this or not.
3 And we do have an issue with the -- which is separate from that which is with the
4 loss of residential on the original PUD site and moving it off-site. We do have that
5 as another issue.

6 COMMISSIONER CLARENS: I want to make a small
7 recommendation to the Applicant. In the resubmittal, if plans are resubmitted, if they
8 are, that the reproductive process by which the plans are reduced be improved, and
9 then perhaps a photographic means of reducing the drawings might be used as
10 opposed to this xerographic because a significant amount of detail has been lost in
11 the drawings.

12 CHAIRPERSON KRESS: With the Commission's approval, and
13 I would like to go onto the party status of the three other groups that have been
14 recommended by Acting Zoning Administrator. I would like to hear from the
15 Applicant and from Georgetown University whether they are in agreement with us
16 postponing this to a next available date, which I don't think will be very far away, but
17 with enough time for you to be able to -- for the Applicant to be able to respond to
18 the questions of Georgetown University, and for Georgetown University to submit its
19 information after it receives yours.

20 I happen to agree with my dear colleague friend, Mr. Clarens. I
21 think we need the drawings matching, the information a little more complete. Is that
22 comfortable for you for us to propose to table this and extend it until you can have
23 some more information put together that you can share with perhaps other parties
24 after you leave this time which you might acknowledge which you've already been
25 named that you can complete your work and presentation and share it with the
26 community so that we can be prepared when we meet next time to not have the call
27 of the question of whether we're prepared to go forward.

28 MS. SCHNEIDER: We have no objection to that.

29 CHAIRPERSON KRESS: Terrific. I'm sure that's all right with

1 you?

2 MS. DWYER: That's fine with us because I think that allows time
3 to cure the other deficiencies that we mentioned. We still believe that it needs to be
4 treated as a new PUD, but we have an expedited hearing date would be fine with us,
5 a waiver of certain notice of filing requirements in terms of time periods, we would
6 have no objection to.

7 And I think perhaps the easiest would be to coordinate a meeting
8 with all of the community at one time, and we can all sit down and understand the
9 plans and be ready for the next hearing.

10 CHAIRPERSON KRESS: Could you -- I'm sorry. Could you
11 help with whatever other parties that we designate this evening to put together a
12 community meeting?

13 MS. DWYER: Yes. In fact, we had been talking with some of
14 them earlier who had some of the same questions that we did, and we're happy to
15 coordinate with them and to meet with the Applicant.

16 CHAIRPERSON KRESS: All right. We need to hear their party
17 status before they are officially parties. I just wanted to ask you. I'm sorry. You had
18 a point to make?

19 MS. SCHNEIDER: Well, I just was trying to be clear if the
20 Commission had decided that we would be starting with a new PUD as Ms. Dwyer
21 seems to assume?

22 CHAIRPERSON KRESS: No, we have not made that decision.

23 MS. SCHNEIDER: I just wanted to be clear on that.

24 CHAIRPERSON KRESS: No, we have not made that decision.
25 I think we need some more information before we're ready to make that decision,
26 and that -- those are the four points that have been put forward to you while you
27 have responded to them in a cursory off the cuff manner tonight. And I'm not saying
28 that you didn't respond well.

29 It would be, for our benefit, better to have some more information

1 -- time to review with our own in-house staff, and to hear what the others parties
2 have to say on the issue. We will make that decision as we get the information.

3 COMMISSIONER CLARENS: As a preliminary matter at the
4 time of the next hearing.

5 CHAIRPERSON KRESS: Exactly. We'll make it as a
6 preliminary matter as a part of the next hearing once we have the additional
7 information.

8 COMMISSIONER CLARENS: Correct.

9 CHAIRPERSON KRESS: All right.

10 MS. PRUITT-WILLIAMS: Is the record clear -- Joshua Group,
11 the Second Baptist Church, and the Mt. Carmel Baptist Church are parties to --

12 CHAIRPERSON KRESS: Would you like to -- pardon me?

13 MR. BASTIDO: Usually the Commission before deciding about
14 somebody having party status establishes what is the impact that that group -- how
15 that group is impacted by the proposed PUD and the reviews and so on.

16 CHAIRPERSON KRESS: Thank you. Actually, please state that
17 because that was my intent to bring each group up and to have a party status since
18 they have not filed in sufficient time.

19 MR. BASTIDO: They should come forward and establish --
20 explain to the Commission why they should be granted party status since this is a
21 privilege that the Commission either grants or not.

22 CHAIRPERSON KRESS: And tell them again the basis, since
23 you have this memorized better than I do, can you please say for the parties?

24 MR. BASTIDO: It's basically how the PUD proposal will impact
25 their community or the area, and based on those reasons, then the Commission --

26 CHAIRPERSON KRESS: And also the geographical location.

27 MR. BASTIDO: Location, the Commission will review that
28 information and either grant or deny party status.

29 CHAIRPERSON KRESS: And I'm prepared to do that tonight as

1 I think my colleagues are. So with that, I would like to ask representatives of the
2 three groups to come forward to please give their identification slips, and I would like
3 to ask them to speak to their request for party status tonight. Please begin and be
4 sure to identify yourself for the record.

5 MS. THORNHILL: Madam Chair, my name is Carrie Thornhill. I
6 reside at 2059 36th Street, S.E., Washington.

7 CHAIRPERSON KRESS: And we don't know anything about
8 who you are. I'm sorry. That was -- that was great.

9 MS. THORNHILL: Thank you. It's unusual for me to be on this
10 side of room.

11 CHAIRPERSON KRESS: Yes, it is.

12 MS. THORNHILL: I have been designated by my church, the Mt.
13 Carmel Baptist Church, as the spokesperson. First, I want to apologize that we, as I
14 understand it now, we did not meet the required timetable for requesting party
15 status, and we regret that.

16 I was out of town, and in fact, learned just a few days ago that I
17 was the designated spokesperson on this case. So we would want, certainly in light
18 of possibility that you will be continuing the case, it would certainly provide an
19 opportunity for us to meet the requirement, and we would certainly offer that.

20 First of all, we want you to know that our property is located at
21 901 3rd Street, N.W. We have been in that location for in excess of 70 years. We
22 also, that is, that the main building of our church, and then we also own six lots right
23 across the street from the church. All of our property is within 150 feet from the
24 subject application -- cite of that application.

25 So I want to point out that while there have been some
26 conversations between some representatives of our church and the Applicant, we do
27 have real concerns with regard to clarifications of what is the scale, scope and
28 extent and nature of this project. And we would certainly, for that matter, join
29 Georgetown in the questions of lack of clarity.

1 It has been a continuing concern. We do not feel prepared to
2 effectively represent the interest of our church as a major property owner in the
3 immediate surrounding area based on what we know as of this date because there
4 are inconsistencies. And so the full extent that and impacts that this property -- this
5 proposed development could have on our property, all of our property in the way of
6 traffic and density and other kinds of issues, we're not able to ascertain at this point.

7 CHAIRPERSON KRESS: So that's why you're not really able to
8 say the impacts because you haven't even been able to identify them.

9 MS. THORNHILL: We are not clear. We need further
10 clarification on the full nature of this project.

11 CHAIRPERSON KRESS: Thank you. Fellow Commissioners,
12 I'm inclined to allow Mt. Carmel Baptist Church as a party. What is your feeling?

13 COMMISSIONER HOOD: Should we make a motion?

14 CHAIRPERSON KRESS: We can do it by consensus. Okay.
15 We rule that we have consensus. Thank you, Ms. Thornhill. I'm very proud to have
16 you here. Thank you very much for coming.

17 MS. THORNHILL: Thank you.

18 CHAIRPERSON KRESS: And we rule that Mt. Carmel Baptist
19 Church is a party to the case.

20 MS. THORNHILL: Thank you.

21 CHAIRPERSON KRESS: Thank you.

22 MR. TERRELL: Thank you very much, Madam Chair. My name
23 is James E. Terrell. I'm Pastor of the Second Baptist Church. We're located at 816
24 3rd Street, N.W., which is directly across the street from the center of what this
25 proposed project is supposed to -- where it's supposed to be.

26 We've been on that site for 150 years, and we are very disturbed
27 by the fact that we have not been given any indication of what's going on with this
28 project. It seems to change from day-to-day. And because of it, of the changes in it
29 and our lack of clarity in terms of what is going to be there ultimately, we really want

1 to be able to participate as a party.

2 This has major implications for our church. As I said, we're there
3 for 150 years. We have --

4 CHAIRPERSON KRESS: What are the major implications for
5 your church?

6 MR. TERRELL: Well, in terms of our congregation, how are we
7 going to be impacted. We see many problems in terms of being able to have
8 services at the church because of the traffic, all of the problems that go along with
9 the construction that will be an ongoing process, the landscape of 3rd Street in the
10 middle there.

11 It's a beautiful street at this point in time. The trees that go right
12 down the middle, and it is really a beautiful location. All of that is going to change.
13 We are not yet clear on what the change is going to be, and at the same time, the
14 matter of parking, the matter of going back to traffic, this presence of a hotel.

15 And we have had many meetings with the Washington
16 Development Group, and I'm very disturbed as my church is disturbed and the
17 officers in that church because in the meetings, and I'm a person who's been trained
18 to listen. I don't miss details. And hearing about the hotel was something that I just
19 learned about a few weeks ago.

20 And so again, there seems to be a great need on our part to
21 know, exactly, what form this project is going to take. In addition to that, as a matter
22 of -- what I see as just fundamental good faith, that they -- we ought to be able to
23 have questions answered and to be clearly involved in this planning process.

24 At the same time, we're representing the Joshua Group, and that
25 group is made up of --

26 CHAIRPERSON KRESS: Oh, you're also representing the
27 Joshua Group?

28 MR. TERRELL: Yes, ma'am, both groups. But essentially, we
29 have the same questions in terms of what is really involved with this, how are they

1 making an effort to involve the community, how are they attending to the issues as
2 far as that community is concerned, but largely in terms of I believe that as part of
3 the community, that we really have a right to be part of this process.

4 And I really feel that the Joshua Group as well as the Second
5 Baptist Church -- and the Joshua Group also involves Mt. Carmel, the Center City
6 Community Corporation, Second Baptist, St. Aloisius, North Capital Neighborhood
7 Developing Corporation, the Maynard Northwest, and Perry School Community
8 Service Center, that because of the community that's represented within those
9 entities, that it really is important that we have some --

10 CHAIRPERSON KRESS: Can I ask you one thing? Would you
11 both be willing -- it's often complicated to have many parties and many people cross
12 examining.

13 MR. TERRELL: Oh yes, certainly, yes.

14 CHAIRPERSON KRESS: Are you saying that you would
15 represent these many, not many but several diversified groups as a single party and
16 work and only work in that way as an individual unit?

17 MR. TERRELL: Well, I really -- I've been asked to represent the
18 Joshua Group, but at the same time, I have to represent Second Baptist. So
19 essentially we're talking about two groups.

20 CHAIRPERSON KRESS: Two groups?

21 MR. TERRELL: Yes, ma'am.

22 COMMISSIONER CLARENS: Okay. Madam Chairperson, I feel
23 I've heard enough because of the location to grant party status to the Second Baptist
24 Church. I feel a little bit more leery about the Joshua Group because that seems to
25 me that includes churches that are only indirectly effected by this project and are
26 further away from the project, and might not be as clearly meet the test for party.

27 MR. TERRELL: Well, in the sense that those churches really do
28 represent the community, and not only churches, but also community organizations
29 that are, indeed, a very vital part of that community. And so that's important that

1 they, I believe, also that they're part of this process.

2 CHAIRPERSON KRESS: I think that I would just say that --
3 excuse me. I'll come right back to you. As long as there are concerns, it is always
4 helpful to us when group -- community groups can get together and speak with one
5 voice. Personally, and I will ask my colleagues, but for me, this would be helpful for
6 party status that -- because certainly among the ones you're representing, one is
7 clearly party status.

8 If you want to pull other groups in, as far as I'm concerned, that's
9 up to you as long as you're representing them in a party status way as appropriate to
10 the major group who does have the geographical and the immediate community
11 people, financial interest in it. So as long as you're asking for just to represent one
12 group, and you feel more comfortable with Joshua Group, then we'll make that
13 Joshua Group.

14 COMMISSIONER CLARENS: No, I feel more comfortable with
15 Second Baptist.

16 CHAIRPERSON KRESS: Second Baptist, okay. If you
17 represent Second Baptist, and I don't want to cut off Ms. Thornhill, but if you feel
18 comfortable representing Second Baptist and any other groups you might like to
19 bring into that umbrella, that would be acceptable to you?

20 COMMISSIONER CLARENS: Yes, well, they're two different
21 things, right. There's an argument for all the community groups and the churches
22 around it, and that's one thing. And the second is Second Baptist. Second Baptist
23 is a neighbor of this property, and therefore, is directly affected by it. So I don't think
24 there is a question about the granting of party status to Second Baptist.

25 Now, whether we're granting party status to Joshua Group is a
26 different issue. Whether then they become represented by the same person at this
27 proceedings, that's again a different issue. So I see three different things. I see one
28 is Second Baptist, I have no problem with that. Second is the Joshua Group, and I
29 would like to think that the argument that this is a community in which a major,

1 tremendously large project is going to be created would have impact beyond the
2 immediate vicinity and would impact the entire community, I would be inclined to
3 accept the Joshua Group as representative of the community, at least partial
4 representative of the community and give them party status for those reasons.

5 CHAIRPERSON KRESS: You do agree we don't want all the
6 individual party status, and basically what I'm saying is if you feel comfortable with
7 that, as long as several groups come together under the auspices of the Second
8 Baptist Church as the primary leader, as far as I'm concerned, they can include in
9 that any groups that they feel comfortable with as long as it's under the auspices of
10 the major, major groups that we're giving party status to.

11 MR. TERRELL: So Madam Chair, to be clear then, so what I
12 think I hear you saying is that it would be okay for us to place that under the
13 umbrella of the Second Baptist Church, okay.

14 CHAIRPERSON KRESS: That's what I'm hearing. Let me just
15 check with my colleagues.

16 COMMISSIONER HOOD: I was thinking just the reverse from
17 looking at your letterhead. It seems like Perry School has some part, and others,
18 and maybe all of that should come up under the Joshua Group, but however you
19 want to handle that. I'm just looking at how the letter is formulated here.

20 CHAIRPERSON KRESS: I think for us, basically, what party
21 status gives you is all of the information and right to cross examine. Rather than
22 having four or five or six different things to cross examine, I would rather have one
23 be in charge, but I can't force you to do that, but I would prefer that as far as it
24 involves interaction with us and with this whole case. The fewer number of people
25 speaking, the easier it is, to be quite frank, for us.

26 COMMISSIONER HOOD: So Madam Chair, whatever group
27 they decide to take -- come to us as will be speaking for the rest of groups?

28 CHAIRPERSON KRESS: Right. With -- and I'm at the advice of
29 --

1 COMMISSIONER CLARENS: I'm disagreeing with the rest of
2 you.

3 CHAIRPERSON KRESS: Yes, go ahead. Disagree.

4 COMMISSIONER CLARENS: I think that the Joshua Group has
5 distinct and different concerns or could possibly have distinct and different concerns
6 than the Second Baptist Church. I think that the two have a right to party status.
7 And whether they are represented by the same person or at some point are
8 represented by different persons, both should be granted party status. That's what
9 I'm saying. I know I have -- this is what I meant.

10 CHAIRPERSON KRESS: I thought I heard you saying you were
11 a little uncomfortable with --

12 COMMISSIONER CLARENS: You misunderstood what I was
13 saying, but this is what I've been saying all along. It is not the first time that that
14 happened.

15 CHAIRPERSON KRESS: I'm sorry.

16 MR. TERRELL: Madam Chair, I also wanted to make it clear
17 that we are very, very interested and anxious to also work with Georgetown
18 University in terms of trying to get a clearer understanding of this entire matter.

19 CHAIRPERSON KRESS: And as you know, and you have been
20 in these things before, if in fact, you even want to give your voice and your cossacks
21 to Georgetown University, anything you wish to do in that way as far as
22 consolidating things makes us quite happy. Do you feel, in deference to my
23 colleague, do you feel that you can represent both Second Baptist Church and
24 Joshua, or do you feel it needs to be separated?

25 MR. TERRELL: I think I can, but I think as we prepare for the
26 days to come with this particular issue that it may, indeed, change in terms of who's
27 going to represent the Joshua Group.

28 CHAIRPERSON KRESS: And as you know, anyone can testify
29 as an individual. The difference between party status, as you know, is making sure

1 you're mailed everything and having cross examination rights in all of this. And so
2 that's something that if it breaks out -- off later, we'll deal with that. But if you feel
3 comfortable right now, I feel comfortable granting you party status with the other
4 groups that you have mentioned in your writing and with the Joshua Group.

5 MR. TERRELL: Thank you very much.

6 MR. BRENNAN: And so he will be the single addressee for all
7 those?

8 CHAIRPERSON KRESS: Yes, and I should say to you all as
9 one of the things we're really trying to do is coordinate community groups because
10 otherwise these hearings can go on for days and days and days. When I think
11 community groups actually have many of the same kinds of issues as my colleague
12 has said.

13 Not always true, maybe different issues, but that's where we look
14 to you to draw the lines and say where we can work together and where we can't.

15 MS. THORNHILL: We have the same interest to consolidate.

16 CHAIRPERSON KRESS: Oh wonderful. Oh, I'd love you to be
17 over helping them. That would be just perfect. But that sounds really wonderful to
18 me. To me, the best thing is getting the community groups together and having
19 them resolve the issues rather than them leaving it to us to resolve diverse issues.

20 MR. TERRELL: Thank you very much.

21 CHAIRPERSON KRESS: So I'd be very pleased with that, if that
22 suits both my colleagues, that will be as it is. Right now, you have separate party
23 status, but you can combine them. Wonderful. Thank you.

24 MS. THORNHILL: Thank you.

25 MR. TERRELL: Thank you.

26 CHAIRPERSON KRESS: Anyone else who wishes to have
27 party status? If not, we will continue this hearing. Do we have a date?

28 MS. PRUITT-WILLIAMS: Well, we have a couple of dates.

29 CHAIRPERSON KRESS: We have several dates, all right.

1 MS. PRUITT-WILLIAMS: Depending upon how quickly things
2 can be turned around, we could possibly have a hearing June 26, which would
3 require the Applicant to submit to parties on June 4 or 6 with responses by parties to
4 us by the 15th.

5 CHAIRPERSON KRESS: That seems a little close. I would --

6 MS. PRUITT-WILLIAMS: You said you can expedite. I was
7 trying to get you the closest -- the quickest one.

8 CHAIRPERSON KRESS: That's expedited.

9 MS. PRUITT-WILLIAMS: That's too close.

10 CHAIRPERSON KRESS: I will let both the Applicant and
11 Georgetown University speak.

12 MS. PRUITT-WILLIAMS: 25th, 25th, excuse me.

13 CHAIRPERSON KRESS: I was going to say June 4 is just awful
14 close.

15 MS. PRUITT-WILLIAMS: That's --

16 CHAIRPERSON KRESS: No, you're expediting and I appreciate
17 that, and that was their request.

18 MS. PRUITT-WILLIAMS: We can go further on if that's --

19 CHAIRPERSON KRESS: Let's just ask. How does -- and
20 especially since I think the community groups need to get together. I would prefer to
21 push that off a little further. May I ask where the Applicant feel -- the community
22 would like more or is June 4 okay? More time, okay.

23 MS. PRUITT-WILLIAMS: There's another possible hearing date
24 of July 23.

25 CHAIRPERSON KRESS: And what would be the dates of
26 information exchange?

27 MS. PRUITT-WILLIAMS: Well, we can actually back it up a little
28 bit more then. Responses from the Applicant by the 12th serving to the parties by
29 the 12th of July.

1 CHAIRPERSON KRESS: Okay. At least it's not Friday the 13th.

2 At least we can be sure where the churches were.

3 MS. PRUITT-WILLIAMS: We could have service to the parties
4 on June 26, responses from parties July 10.

5 CHAIRPERSON KRESS: And the hearing would be?

6 MS. PRUITT-WILLIAMS: July 23.

7 CHAIRPERSON KRESS: May I hear the response from the
8 Applicant, from the parties on how those dates sound?

9 THE PARTIES: They're fine.

10 MS. PRUITT-WILLIAMS: Hopefully, that will give everybody
11 enough time.

12 CHAIRPERSON KRESS: Where's the Applicant? How does the
13 Applicant feel? Is that good for you? Please come forward. We can't hear you.
14 You have to speak on the mike. I'm sorry. I'm being too informal.

15 MR. AGUGLIA: What was the date for the hearing?

16 MS. PRUITT-WILLIAMS: The hearing date will be July 23,
17 Thursday.

18 MR. AGUGLIA: All right.

19 MS. PRUITT-WILLIAMS: Your submission to the parties would
20 be June 26. Responses from parties would be July 10.

21 MR. AGUGLIA: That's fine. So we're due
22 -- we're due to make our responses on the 26th with the hearing on the 23rd, and
23 the opposition will be July 10?

24 MS. PRUITT-WILLIAMS: Correct.

25 MR. BASTIDO: Excuse me. Before that, parties are supposed
26 to submit their briefings by July -- by June 26. Then everybody would have a
27 chance to answer by July 10. Right, is that what you're trying to say?

28 MS. PRUITT-WILLIAMS: Yes.

29 MR. BASTIDO: Okay. So everybody has to submit by June 26.

1 MS. PRUITT-WILLIAMS: And responses by --

2 MR. BASTIDO: And responses to that submittal by July 10,
3 right?

4 MS. PRUITT-WILLIAMS: Sorry if I misspoke. That's what I
5 meant, yes.

6 MR. AGUGLIA: Each will have a chance to rebut the other.

7 CHAIRPERSON KRESS: You'll all have time to exchange
8 information in response.

9 MR. BASTIDO: Sorry, Maureen, you can go ahead now. Thank
10 you for letting me go ahead.

11 MS. DWYER: Certainly, anytime. One quick clarification. The
12 filing on June 26, will that include a set of plans that would have been corrected to
13 be internally consistent?

14 MS. SCHNEIDER: Of course.

15 MS. DWYER: Thank you.

16 CHAIRPERSON KRESS: Any other comments? Does this meet
17 all of the parties and Applicants timetable? Okay. I'm hearing no dissention. I
18 continue this hearing until then. Thank you all. I'm so sorry to take all your time.
19 Thank you all so much for coming this evening.

20 (Whereupon, the hearing was adjourned at 9:29 p.m. to July 23.)

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