

**GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

ZONING COMMISSION

PUBLIC HEARING**

IN THE MATTER OF:

CHAIN BRIDGE ROAD/UNIVERSITY CASE NO. 97-6(I)
TERRACE (TREE AND SLOPE)
OVERLAY ZONE

Thursday,
January 28, 1999

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C. 20001

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

ZONING COMMISSION MEMBERS PRESENT:

JERRILY R. KRESS	Chairperson
ANGEL F. CLARENS	Commissioner
ANTHONY HOOD	Commissioner
JOHN F. PARSONS	Commissioner

STAFF PRESENT:

Sheri Pruitt-Williams, Interim Director,
Office of Zoning
Dave Colby, Office of Planning
Vincent Erondy, Office of Zoning

On behalf of Gilbert Hahn:

of: CHRISTOPHER H. COLLINS, ESQ.
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INDEX

	<u>PAGE</u>
Preliminary Matters	7
Presentation by David Colby, Office of Planning	8
Presentation by Christopher Collins, Counsel for Gilbert Hahn	35
Persons in Opposition:	
Michael Boland	17
Gilbert Hahn	54
Steven Kupferberg	61

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

(7:08 p.m.)

CHAIRPERSON KRESS: Good evening, ladies and gentlemen.

I'm Jerrily Kress, Chairperson of the Zoning Commission for the District of Columbia.

Joining me this evening are Commissioners Hood and Parsons, and we expect

Commissioner Clarens to be joining us this evening as well.

I declare this public hearing open.

Zoning Commission Case No. 97-6(l) is an initiative of the

Zoning Commission for the District of Columbia, resulting from the deliberations of

the Zoning Commission for ZC Case Number 97-6, Chain Bridge Road/University

Terrace (Tree and Slope) Overlay Zone.

On May 18th, the Zoning Commission held a public hearing,

Case Number 97-6. On September 14, 1998, the Commission took proposed action

in that case but did not address the issue raised during the public hearing of

potential boundary expansion. On October 19, 1998, the Zoning Commission

authorized an additional hearing to address the boundary extension issues that were

not fully within the scope of the May 18, 1998, hearing.

The instant case, 97-6(l), contains the overlay boundary

extension issue. Specifically, it includes advertised properties for the consideration

of their inclusion in the Chain Bridge Road/University Terrace Overlay Zone. Those

properties are located adjacent to the proposed overlay boundaries in Case Number

97-6.

The subject properties include Lots 21, 23, 28, 907, 921, and

947, in Square 1426. Lot 947 has been subdivided into Lots 38, 41, 42, and 43.

The specific TSP provisions are contained in the Notice of Public

Hearing for this case. Copies of that notice are available for the public. Notice of

today's hearing was published in the D.C. Register on December 25, 1998, and The

Washington Times on December 23, 1998.

1 Next is supposed to be the presentation of the petitioner, which, I
2 was going to say, isn't that the Office of Planning? Because we had Office of
3 Planning listed separately, so I was a little confused.

4 MS. PRUITT-WILLIAMS: Right.

5 CHAIRPERSON KRESS: All right. With that, we will begin with
6 the Office of Planning.

7 MR. COLBY: Thank you, Madam Chairman. As I think you
8 noted, the Commission held a public hearing on May 18th to consider the
9 community petition for the Chain Bridge Road/University Terrace Overlay Zone
10 District. It was based on an earlier TSP overlay zone already in the Zoning
11 Regulations and mapped elsewhere in the District, with the objectives of protecting
12 existing character and natural assets of the area, existing slopes and mature trees,
13 and so on.

14 The proposed overlay contained a number of distinctive features
15 relative to the basic TSP model, in order to address the unique aspects of the
16 particular area, and -- and I emphasize "and" -- to provide those compromises
17 necessary to ensure the essentially unanimous support of all of the affected property
18 owners.

19 In fact, this is probably the only way that such a community
20 petition could be adopted and be effective. The perceived need for unanimity also
21 played a role in the establishment of the original proposed boundaries, as I
22 understand it, leaving out property owners who were opposed to being included and
23 for whom no compromise seemed possible.

24 The original basis for expanding the boundaries came out of the
25 hearing when there was a concern by a resident within those boundaries on
26 University Terrace, but on the edge of the boundaries, who felt that it was
27 inequitable that his property should be contained in the boundary, whereas other
28 properties across the street appear to be -- large properties across the street appear
29 to be eligible for such an overlay and were not being considered for that.

1 And he noted further that those large properties, he felt, could
2 have a much greater lot coverage than his lot could, and that, ultimately, his property
3 value would suffer.

4 At the request of the Commission, the Office of Planning
5 evaluated the boundaries initially proposed for the overlay and found that, with one
6 exception, they seem to meet the criteria. And that one exception is essentially this
7 case tonight.

8 The wooded area to the north and west of that original overlay
9 contained what we understood then was six lots, each of which we -- one of which
10 we believed was almost 70,000 square feet in size, and we believed that the area
11 was similar in nature and should probably have been included as part of the
12 originally defined overlay area.

13 Following setdown of the boundary expansion case for public
14 hearing, the Office of Planning met with the largest property owner, Mr. Gilbert
15 Hahn, who expressed concern about his property being within the proposed
16 boundaries and was further made -- we were made aware of a number of errors in
17 our original report, which I will be quick to note, or agree there were errors.

18 In part, even the current -- what used to be called "LUS
19 Directory," and which we refer to for lot and square numbers and use religiously,
20 does not contain the current numbers that you noted in your opening statement.

21 So we had used and didn't recheck -- we used an earlier or a
22 then-current directory. It changed and has changed since, and we've come up with
23 wrong numbers, and, in fact, therefore, wrong square footages of property.

24 As noted in Mr. Hahn's letter to us, attached to our report, the lot
25 upon which his home is located is now -- is not 70,000 square feet. It's about 40,000
26 square feet. The property has been subdivided, and there is one built lot, which we
27 didn't reference, in which one of his daughters resides, and two other lots which
28 have been platted which are Lots 41 and 42, intended for his two children, two other
29 children.

1 The subdivision potential was, and is, limited to the -- clearly, to
2 the Hahn property, now 39,785 square feet. Mr. Hahn, in his letter, has noted he
3 strongly believes that the property is unlikely to be subdivided in the future due to
4 reasons of topography, the quality of the house and landscaping, the difficult access,
5 and so on.

6 And, furthermore, the property has a strange tagged on piece of
7 about 6,000 square feet that really has no development potential and is part of the
8 almost 40,000 square feet of his land. We attached a diagram, basically a revised
9 diagram, from our earlier one showing that what, in theory, if one tore down the
10 Hahn residence and could actually gain access as indicated by carving out the land
11 from Arizona Avenue, it could now support four -- theoretically, four dwellings rather
12 than the seven we had originally shown.

13 The biggest concern of the Hahns, as they had noted in their
14 letter, was that the vacant lots for their two children, the ones that are not built on,
15 the vacant ones, would not be developable as a matter of a right because of the tree
16 cutting provisions, but require special exception relief.

17 And yet the topography is such that the siting of the houses is
18 fairly restricted, and going to the BZA would really gain nothing except be an
19 unnecessary hurdle to -- and -- but, nevertheless, would reduce the value of those
20 properties.

21 So at that meeting, the Hahns, who would have preferred not to
22 have been in the overlay, offered a compromise plan. And that plan, as noted in our
23 report, would have put the larger property, the almost 40,000 square feet, and the
24 13,000 square foot property built on, in which the daughter resides, and leave out
25 the two smaller roughly 7,500 square foot so-called inheritance lots.

26 The Hahn compromise plan has many positive aspects. First, it
27 demonstrates their belief that their primary property will not be subdivided, and so
28 they were willing to put that into the overlay. And they believe strongly that it would
29 not be subdivided.

1 Secondly, it brings into the overlay most of the wooded area,
2 which was originally recommended by the Office of Planning.

3 Third, it appears to meet the concern for equity raised by the
4 neighbor, Mr. Huja, across the street, who objected because his 10,000 square foot
5 property would have a smaller -- a 31-1/2 percent lot occupancy restriction. And
6 now, although we thought it was 40, the Hahn property would have -- properties, the
7 two of them, would have 35 percent lot coverage restrictions.

8 Fourth, the compromise plan represents the kind of compromise
9 that the Chain Bridge Road/University Terrace Preservation Committee entertained
10 and accepted during the original overlay debates within the community to ensure
11 essential agreement on the resulting restrictions.

12 And, finally, the ANC appears to support the compromise.

13 For all of the reasons contained in our foundry issue response
14 memorandum to the Commission, and for the reasons above, the Office of Planning
15 supports the report, notes that we support expansion of the Chain Bridge
16 Road/University Terrace overlay as defined in the Notice of Public Hearing and
17 corrected by this report, provided Lots 41 and 42 are not included.

18 And I would only add to that, we have attached -- we have
19 included a number of attachments that are important to understanding the case.
20 And I would only add that I am aware of a number of concerns that have come in
21 from others who would be covered by this overlay and who will be -- whose
22 communications you have and who will be testifying tonight.

23 Thank you very much.

24 CHAIRPERSON KRESS: Thank you.

25 Questions for Office of Planning? I wanted to ask: did you have
26 any remarks on which -- you've spent a lot of time talking about the Hahn property.

27 MR. COLBY: Yes.

28 CHAIRPERSON KRESS: Were there any particular remarks,
29 really, on 21, 23, 28, 907?

1 MR. COLBY: Clearly, the -- well, I could make excuses for how
2 we came to where we were with the -- or more excuses, really, for how we got the
3 lots confused and why --

4 CHAIRPERSON KRESS: But this is more of a --

5 MR. COLBY: I made some margin comments on some of the
6 materials that have come in to the records that were not addressed in our report.
7 And I can go through those, if you'd like.

8 I agree very strongly with some of the points made by those who
9 have a concern about this overlay being put over their property, and I strongly
10 support some of their notions, and I guess I disagree with others.

11 I would only say that when you -- that it's a matter of relativity.
12 When you look at the larger property, the 40,000 square feet, and include in that the
13 two 7,500 and 8,000 square foot lots -- all of the vacant lots, basically -- it's treed,
14 the topography is extreme, particularly as you -- not -- through the property, and,
15 particularly, as you reach Arizona Avenue.

16 The two properties to the north -- Boland and the other property
17 on Arizona Avenue -- are, in some sense, a transition between the more -- what
18 should I say -- normally developed properties further to the north, toward Loughboro
19 Road. And when you look for an obvious boundary, you take the best boundary you
20 can get. And that seemed, at the time, to be a boundary, as we stated in our earlier
21 report, that was separating one kind of development from another.

22 It's, again, all a matter of degree. If I went out there today, or if
23 we all went out and looked at the property, we might draw the line differently. But, at
24 the time, that seemed to be the obvious break point between more traditional lots
25 and the lots that are generally covered by this kind of overlay.

26 But I'd be happy to address any of the specific issues in the
27 letters.

28 CHAIRPERSON KRESS: All right. Thank you.

29 Any other questions for Office of Planning?

1 All right. Thank you. We might have some later.

2 There weren't really any reports of other agencies, were there,
3 other than the ANC, which I'm going to ask if anyone is here representing them. Is
4 that correct, Mr. Colby?

5 MR. COLBY: Yes, just the one. No agencies and the one ANC
6 letter that I'm aware of.

7 CHAIRPERSON KRESS: Okay. Is there anyone here from the
8 ANC that wishes to make a presentation tonight? No?

9 All right. With that, then, we'll move to persons in support. Is Mr.
10 Ahua -- there's a letter in the record.

11 MS. PRUITT-WILLIAMS: Yes, in the record.

12 CHAIRPERSON KRESS: All right. Thank you.

13 Any other person in support?

14 Persons in opposition? I have first on the list Wilkes, Artis,
15 Hedrick & Lane, representing Mr. Hahn.

16 MR. COLLINS: Madam Chair, Christopher Collins. I think the
17 Bolands signed up first. We'd be happy to have them go first.

18 CHAIRPERSON KRESS: All right. My list has it the reverse
19 order. I'd be happy to have the Bolands go first.

20 MR. BOLAND: Good evening.

21 CHAIRPERSON KRESS: Good evening.

22 MR. BOLAND: My name is Mike Boland. This is my wife, Lois,
23 and at the outset I'd like to clarify the time that we are allotted. We sent a letter in,
24 hand delivered on the 14th, that we planned to testify, and --

25 CHAIRPERSON KRESS: How much time do you feel you
26 need?

27 MR. BOLAND: I think I need about 15 minutes.

28 CHAIRPERSON KRESS: All right. We were chatting. If you
29 could try to keep it to 10, that would be helpful, and that excludes our questioning

1 because we will ask you questions after that.

2 MR. BOLAND: My wife and I own Lot 21, one of the lots within
3 the proposed overlay extension boundary. We have only resided at our current
4 home since 1992. Both my wife and I were born in the District of Columbia. My
5 wife's father was a District of Columbia police officer. I have resided in the District
6 for my entire life except for one short year. My parents were born in the District of
7 Columbia as well, and raised a large family here. This is truly our home.

8 My wife and I are opposed to the proposed boundary extension.
9 We are also opposed to the Office of Planning's recommendation in their January
10 19th report. At the outset, I'd like to mention some procedural issues.

11 On January 14th, I hand delivered a letter to the Office of
12 Planning declaring and explaining my position on the boundary extension. The ANC
13 filed a letter opposing the boundary extension on January 13th. The Office of
14 Planning published a report on the extension on January 19th, continuing to support
15 the extension and adopting a compromise offered by one of the lot owners in the
16 extension area.

17 The Office of Planning's 19th report mischaracterizes the ANC
18 letter as providing support for the Office of Planning's recommendation. Further, the
19 Office of Planning's report neither addressed the issues raised in my letter, which
20 was hand delivered the 14th, nor, as of noon, the 26th, or even, for that matter, noon
21 today, had it been included in the record. It was subsequently included because I
22 showed up again today. And so OP was not able to apparently -- I don't know
23 whether they saw my letter or not.

24 But, in any event, on the substantive issues, the arbitrariness of
25 the northern boundary -- this extension proceeding has its origin, as we all know, in
26 a proponent of the original overlay zone concern that a lot with large trees across
27 the street from them should have been included in the zone. In an effort to avoid
28 singling out that one lot owner, the Office of Planning has apparently had to try to
29 justify the inclusion of other lots in the extension area.

1 In doing so, the Office of Planning has arbitrarily selected the
2 northern boundary of the extension. The Office of Planning refrained from proposing
3 extension of the boundary to Loughboro Road, stating this extension would
4 encompass an area adjacent to Loughboro Road which was essentially fully
5 developed in recent years with few, if any, stands of mature trees remaining.

6 The Office of Planning then arbitrarily set the boundary to
7 exclude seven properties in that area, four along University Terrace and three along
8 Arizona Avenue. The Zoning Code, 11 DCMR Section 1511.4, provides, in its
9 second sentence, "that the TSP Overlay District is not suitable for mapping in
10 neighborhoods where nearly all lots are already developed on a rectangular grid
11 system and where the existing mature trees are either yard trees or street trees."

12 I respectfully submit that these criteria properly exclude those
13 seven properties along University Terrace and Arizona Avenue from the extension
14 area. And that my Lot 21, and possibly other lots in the extension area, such as Lot
15 28, satisfy those same criteria.

16 In fact, Lots 21 and 28, both rectangular and approximately
17 10,000 square feet each, continue an essentially rectangular grid system with the
18 seven excluded lots to the north. Because of their size, neither Lot 21, nor Lot 28,
19 can be subdivided into smaller lots.

20 The Office of Planning's selection of the northeastern boundary
21 of the extension area along the northern side of Lots 21 and 28 is arbitrary. The
22 reasoning applied to exclude the seven lots south of Loughboro Road from the
23 boundary extension area applies equally well to Lots 21 and 28. This same
24 reasoning may apply to the exclusion of other lots in the overlay zone.

25 Issue 2 is the recent compromise which just announced more
26 arbitrariness. The Office of Planning now supports a compromise that would
27 exclude two fully treed lots, Lots 41 and 42, from the extension area. This exclusion
28 would create a tortured and even more arbitrary boundary from the overlay zone --
29 for the overlay zone.

1 Well, I'm not arguing for the inclusion of any lots in the extension.
2 Where is the logic to exclude two lots that are 100 percent in trees, while including
3 other lots that have very few or only yard trees? What are the standards for this
4 zone? And don't they apply?

5 They either apply or they don't. For reasons I will address later, I
6 submit they don't. Nevertheless, assuming for argument's sake that they do, under
7 this compromise, whoever owns 41 and 42 could cut down every single tree on
8 those lots, including trees along the boundary.

9 By contrast, owners of other lots in the extension area may need
10 a special exception to cut down even a single tree to put an addition on their house.
11 This result would be ludicrous. The recommendation of the Office of Planning for
12 this boundary compromise further illustrates the arbitrariness of their boundary
13 selection.

14 This proceeding is really about addressing inequity claimed by a
15 homeowner in the original zone. I respectfully submit that creating additional
16 inequities is not an appropriate solution to address a previous one. Two or more
17 wrongs never make anything wrong.

18 The Office of Planning's claim that the recommended
19 compromise maintains unanimity is absolutely not true. My wife and I did not
20 support the boundary extension before the compromise arose, and we do not
21 support the extension now.

22 Issue 3 is the ANC letter. The Office of Planning's July 19th --
23 January 19th report states, "The ANC applauds and supports the compromise."
24 This statement mischaracterizes and is totally unsupported by the ANC letter. The
25 ANC's letter concludes, "Therefore, we ask that you not cover any properties under
26 the overlay without the consent of the current owners." How can that statement
27 possibly be interpreted to support the compromise which would leave the extension
28 intact, save for the two excluded lots?

29 The ANC's letter also noted that their original conception of the

1 overlay was to focus it on properties adjacent to Battery Kemble Park, excluding
2 properties on the west side of University Terrace, since the properties were not
3 essential to our conception of the area that ought to be covered.

4 The letter also states that the ANC considered the Office of
5 Planning's suggested extension and voted to support the original boundary of the
6 overlay, except to the extent neighboring properties volunteer to be included within
7 the overlay. This may be characterized as a polite way for the ANC to say that it
8 voted against the extension proposal.

9 I would like to draw the Commission's attention to the fact the
10 ANC's views are to be accorded great weight under the law.

11 The fourth issue -- whatever lots in the proposed extension --
12 whether the lots in the proposed extension meet the criteria of the overlay zone.
13 The Zoning Code, 11 DCMR Section 1565.2(b), states that the overlay is designed
14 "to prevent significant adverse impact on adjacent open space, park land, stream
15 beds, and other environmentally sensitive areas."

16 The Office of Planning's July 20th report states on page 2 that
17 much of the property in the extension meets the criterion of being located at the
18 edge of stream beds or public open spaces. This statement is totally unsupported.
19 In fact, none of the property in the proposed extension area is adjacent to stream
20 beds, park land, or open spaces.

21 The extension area is bounded on the west and east by Arizona
22 Avenue and University Terrace, respectively, and on the north and south by other
23 private properties.

24 The nearest park land, open space, and stream bed are all in
25 Battery Kemble Park, which is neither adjacent to, adjoining, abutting, nor
26 confronting the extension area. A city square bounded by Chain Bridge Road and
27 University Terrace separates the extension area from the park.

28 There is not even a sight line or vista to Battery Kemble Park
29 from University Terrace. A review of the U.S. Geological Survey topographic map

1 for the area clearly shows that Battery Kemble is over the crest of a large hill from
2 the extension area. It shows that the only stream nearby is located in the park.

3 Importantly, it also shows that the extension area drains towards
4 Arizona Avenue -- a city street with storm drains. The properties in the extension
5 area don't even drain to University Terrace, much less the park. Thus, the extension
6 area can have no adverse impact on Battery Kemble Park or the stream located
7 therein.

8 The ANC has at least implicitly agreed with this view, since their
9 letter states that the ANC accepted the exclusions -- that is, referring to properties in
10 the extension area -- "since the properties were not essential to our conception of
11 the area that ought to be covered."

12 In any event, since the series of purposes set forth in 11 DCMR
13 Section 1565.2 are connected by the word "and" instead of the word "or," all of the
14 purposes must be satisfied in order for properties to be placed in the extension area.
15 If any one of the purposes is not satisfied, then the property does not satisfy the
16 criteria for inclusion in the overlay zone.

17 The second of the above-referenced criteria, relating to adjacent
18 park land, open space, or stream beds, is not satisfied. This is so because the park
19 land, open space, and stream bed are neither adjacent to the extension area, nor
20 can there be any adverse impact caused by the extension area on them, due to the
21 topography of the entire area.

22 Finally, the fifth issue -- inequity. The petitioners for the original
23 overlay zone, in Case 97-6, obtained exactly what they requested from the
24 Commission. Those petitioners made compromises to enable them to get to the
25 point of submitting a petition to the Commission that would not generate significant
26 opposition before the Commission.

27 One of those compromises appears to have been the elimination
28 of opposition by making some opponents believe that they would not be affected by
29 the proposal; namely, those on the west side of University Terrace.

1 It is grossly inequitable to now propose to include lots that the
2 original petitioners affirmatively excluded to submit their petition without opposition.
3 Additionally, the ANC did not consider those lots essential to its conception of
4 properties that should be included in the extension.

5 If, as I noted above, this proceeding is really about addressing
6 inequity claimed by a homeowner in the original zone, I respectfully submit that
7 creating additional inequities is not an appropriate solution to that problem.

8 In conclusion, I respectfully submit that the proposed extension
9 of the overlay zone is not supported by facts and analysis sufficient to permit a
10 reasonable finding in favor of the proposal. Such a finding would be arbitrary and
11 capricious. Further, it would be inequitable to lot owners excluded from the original
12 proceeding and create additional inequities among lot owners.

13 For the reasons stated above, and in deference to the ANC's
14 recommendations, I respectfully request that the Commissions not extend the
15 overlay zone to the lots advertised in this case, in general, and not extend the
16 overlay zone to Lot 21, in particular.

17 In the alternative, I would suggest that the zone only be
18 extended to those properties whose owners volunteer them for inclusion in the zone,
19 gain, per ANC's recommendation. I hereby expressly state that I do not volunteer
20 my lot, Lot 21, for inclusion in the extended overlay zone.

21 And I have already given a copy of my testimony to Mr. Erundu,
22 and --

23 CHAIRPERSON KRESS: We have a copy.

24 MR. BOLAND: -- thank you for allowing me to express my views
25 on this matter.

26 CHAIRPERSON KRESS: Thank you.

27 Questions?

28 COMMISSIONER CLARENS: It would be really helpful if I knew
29 where your lot is, sir.

1 MR. BOLAND: It is in the very northwest -- northeast corner of
2 the extension area.

3 COMMISSIONER PARSONS: I have a question.

4 CHAIRPERSON KRESS: Go ahead, Commissioner Parsons.

5 COMMISSIONER PARSONS: Mr. Boland, I wonder if you could
6 share with us why it is you object to this. I mean, you've been very articulate about
7 why you feel it's been arbitrary, that it doesn't apply to open space and Battery
8 Kemble Park, and so forth. But you haven't really brought us to the point as to why
9 you feel that this would be an imposition on you.

10 MR. BOLAND: I set forth in my letter, and also in my testimony,
11 that when the zone was developed there were criteria that were applicable that had
12 to be satisfied to include properties within the zone. If those criteria are met, then
13 you can include a property in. If they are not met, you cannot include a property in
14 the zone. And I don't know anybody that would volunteer to downzone their
15 property, other than out of altruism.

16 But I can tell you this: it will create great inconvenience, either to
17 my wife and I or someone else in the future.

18 COMMISSIONER PARSONS: For what reason?

19 MR. BOLAND: For one, it proposes to decrease lot coverage,
20 reducing flexibility. Someone may not want to build the biggest house in the world,
21 but if they want a larger residence, and they want it all in one level, they need the lot
22 coverage. As people get older, they get tired of going up and down stairs.

23 The other is the tree issue. I like a wooded area. I like to watch
24 birds as much as the next person. Or maybe some people don't, but I do. My wife
25 and I love to go birding. The fact of the matter is, if I have small trees in the back of
26 my house, which I do, that don't meet any of the criteria of the current tree
27 restrictions, if I continue to let them grow, then they will be an impediment to me in
28 the future if I want to expand.

29 And you've put me in a very bad position of having to decide, do

1 I want to cut small trees now, just because of the possibility in the future, or do you
2 want to allow those trees to grow and allow me some flexibility in the future with my
3 own property?

4 COMMISSIONER PARSONS: So the current size of your
5 house, or the coverage of your house, is right at the standard of this? Is that it?

6 MR. BOLAND: No, it's not. The house was built in the '70s.

7 COMMISSIONER PARSONS: So it is larger than would be
8 permitted in the overlay zone, or --

9 MR. BOLAND: If it was larger than what would be permitted, I
10 don't think I would be worried, because then I'd have a footprint that's already
11 existing. I assume that that would be all right. In fact, my house is much smaller.

12 COMMISSIONER PARSONS: So you're fearful that with this
13 zone overlay you will not be able to expand. Is that basically it?

14 MR. BOLAND: With this zone overlay, it takes away the
15 flexibility that I have under the current R-01-A zoning, which is the zoning that was in
16 place when I bought the house.

17 COMMISSIONER PARSONS: But you have no current plans to
18 do that.

19 MR. BOLAND: I have no current plans. Why should I give up
20 flexibility in the future? But, I mean, all of this -- I don't know that it's so much
21 relevant if the criteria aren't met for inclusion of the property in the zone.

22 COMMISSIONER PARSONS: Well, I'd rather get your personal
23 opinion. I mean, so many of your neighbors have bought into this that -- as to why
24 you felt it was an intrusion on your --

25 MR. BOLAND: I think that's -- I can only speculate against some
26 of my neighbors. Well, and they're not even my neighbors if they live two or three
27 blocks away. But I think what they want to do is they want to use other people's
28 property for their own purposes. Basically, they've got theirs; they don't want
29 anybody else to develop.

1 COMMISSIONER PARSONS: Thank you.

2 CHAIRPERSON KRESS: Thank you.

3 Commissioner Hood?

4 COMMISSIONER HOOD: Mr. Boland, I just have a few
5 questions. I heard you refer to the ANC. Do you agree with their -- what they have,
6 what they propose? Or is it that you disagree with the part about them just dealing
7 with the specific houses, if each specific landowner wanted their piece of land to
8 come up under the overlay? I --

9 MR. BOLAND: I'm sorry. I don't understand --

10 COMMISSIONER HOOD: In your testimony --

11 MR. BOLAND: Right.

12 COMMISSIONER HOOD: -- you referred, on occasions, and I
13 just saw it, dealing with -- talking about the ANC. Do you support what the ANC has
14 said, or do you just support the idea of them saying that we should only deal with the
15 people -- the landowners that only want their land to be -- come up under the
16 overlay?

17 MR. BOLAND: I'm still not understanding you. What I'm reading
18 in the ANC letter here is that they basically voted against this extension area. To the
19 extent that that's what they did, then I support it. If somebody is making some kind
20 of tortured interpretation of that, then I don't.

21 COMMISSIONER HOOD: I'm just trying to follow your
22 testimony. It seemed two times -- and I stand to be corrected, because I haven't had
23 a chance to really look back over it -- but it seemed like you stated you were with --
24 you were concurring and had no problems with what the ANC said. And then, at the
25 end, you were saying that the ANC is -- well, the ANC -- let me find it. The last --

26 MR. BOLAND: I mean, if you want a statement, we concur with
27 the vote they took that said they concur with the original boundaries. In other words,
28 the proceeding that has already taken place and has been closed.

29 And if anybody wants to volunteer a property -- they want their

1 property in the zone, then we concur with that. But we're not volunteering.

2 COMMISSIONER HOOD: Excuse me a minute. I lost my place
3 here. I'm looking.

4 Okay. The last sentence here where it says, "Therefore, we ask
5 that you not cover any properties under the overlay without the consent of the
6 current owners." What I'm asking you is: do you agree with that part of the ANC -- I
7 mean, of what the ANC said?

8 MR. BOLAND: Yes.

9 COMMISSIONER HOOD: Okay. And this is a question to the
10 Commission, because I'm not familiar. Would this be a form of spot zoning, if we
11 were to go along with that? I'm just -- I don't know. I'm just asking.

12 COMMISSIONER PARSONS: I think the exhibit attached to Mr.
13 Hahn's testimony would -- if we concurred with the Office of Planning, I think Mr.
14 Boland has a point that if we're going to eliminate certain lots, his are on the other
15 side of that, and you're starting to reach here, if that's what you mean about spot
16 zoning.

17 He is talking about Lots 21 and 28. The Hahns have suggested
18 42 and 41 be eliminated. And we're beginning to get kind of a patchwork
19 arrangement.

20 COMMISSIONER HOOD: And that's what I was -- I was just
21 trying to depict if we're going to start doing one for this lot and that lot, what
22 eventually will you have? Everybody will be doing something different, and there's
23 no consistency across the board. And that's just basically why we're going with this.
24 Maybe what I'll do is reserve some of my -- the rest of my comments until I hear
25 some more testimony.

26 CHAIRPERSON KRESS: All right. Thank you.

27 Any other questions?

28 Thank you for coming to testify this evening.

29 Next we'll hear from Mr. Hahn and --

1 MR. BOLAND: May I ask a question? Do you have a copy of
2 my July 14th letter as well? January 14th, I'm sorry. Yes? Okay.

3 COMMISSIONER PARSONS: Yes

4 MR. COLLINS: Good evening, Madam Chairperson and
5 members of the Commission. My name is Christopher Collins with Wilkes, Artis,
6 Hedrick & Lane. Seated to my left is Mr. Gilbert Hahn, Jr. To my right, behind me,
7 is Mrs. Hahn and their daughter and son-in-law, the Ernsts. We're here tonight to
8 speak in opposition to this application.

9 We oppose the extension of the overlay for a number of reasons,
10 which I'll explain in more detail. But to summarize, first of all, after seven years of
11 deliberation by the community, and a lot of time and effort and money spent, an
12 application was submitted to the Zoning Commission with distinct and rational and
13 defensible boundaries.

14 As an afterthought at the end of the hearing last May, one or two
15 neighbors raised the question, "Well, how come I'm in it and they're not?" And the
16 Commission said, "Well, let's take a look at that," and instructed Office of Planning to
17 take a look.

18 There was an OP report produced in July of '98, with no
19 apparent consultation with the community that initiated the petition and spent years
20 -- years drafting and crafting an overlay. The report, as Mr. Colby pointed out, has
21 inaccuracies, and a subsequent report was issued recently, a January '99 report,
22 which also has inaccuracies. And I'd like to go into that -- all of that in some detail at
23 this point.

24 I've got some handouts to pass out to the Commission. And I'd
25 ask, when you get your handout, if you'd turn to page number 1. I've numbered the
26 pages on the upper right-hand corner, and these are maps and plats and other
27 information that I will refer to during the course of our presentation this evening.

28 Map number 1 is labeled "Hahn property," and I'll refer to both
29 the Hahn and Ernst property together as the Hahn property for shorthand purposes.

1 The Hahn property and the proposed overlay extension -- the Hahn property is in the
2 hash mark, dark area, and the blue outline is the entire extension area. You can see
3 that the Hahn property comprises virtually -- or all, with the exception of five lots, all
4 of this overlay extension area that is proposed.

5 The genesis of this proposed extension was the result of
6 comments made by one or two witnesses who live across the street, across
7 University Terrace from the Hahn property. Both of those individuals who expressed
8 concern about whether they should be in because other people across the street
9 were not in, both of those properties back up or front on Battery Kemble Park. And
10 protection of the park land was one of the original reasons for this overlay.

11 I've spoken about the seven years of work; the boundary is
12 carefully crafted. The original intention of this overlay was revealed again, yet again,
13 in dialogue at the end of the hearing on May 18th when, I believe it was, Mr. Franklin
14 requested information from the attorneys for the petitioners back then, Mr. Nettler
15 and Ellen McCarthy, planner.

16 They pointed out that, originally, only the east side of University
17 Terrace was intended to be included because of its proximity to the park land and
18 Chain Bridge Road, in that area.

19 Then, as they looked, they saw other large parcels with
20 extensive open developable area on the other side of University Terrace, and looked
21 at those and determined, after study, to include those areas as well, and to leave out
22 areas that were already subdivided into smaller lots with developable sites.

23 There were four criteria in this overlay that were looked at. And
24 as the attorney for the petitioners pointed out back then, in the colloquy with the
25 Commissioner, said, "If you look at any one or two of those criteria alone, this
26 overlay would be much, much larger." But the idea is to look at all four criteria, to
27 see if these sites fit all four of those criteria. The intent was to include the properties
28 which met all four of those criteria, and I'll go through those in a second.

29 But at the time of the hearing -- it's important to note that at the

1 time of that hearing, the Hahn property was already subdivided. That was not in the
2 record. People were not aware of that fact. It's clear from the notice, even the more
3 recent notice of this hearing, that the subdivision to create these four lots, two of
4 which had houses on them, which also was not known, was a fact at the time of that
5 hearing.

6 The Hahns were not present at that hearing because they were
7 outside the overlay. There was no need for them to appear and testify to protect
8 their rights because they were not notified as being within. In fact, their property
9 was not within.

10 And the Hahn property does not back up to the park land and
11 Battery Kemble Park. The property is on the east side.

12 Based upon the Zoning Commission's directions at the hearing
13 to the Office of Planning to study it, OP prepared a July 20, 1998, report. The report
14 points out those seven years of effort to devise an overlay with distinct and rational
15 boundaries.

16 As to this proposed expansion area, the OP report points out that
17 the area in question meets at least three, and in some instances four, of the criteria.
18 Well, we respectfully disagree.

19 First of all, the intention was to meet all four, as was stated at the
20 hearing. The four criteria that were identified were properties with steep slopes, with
21 stands of mature trees, with development potential, and properties at the edges of
22 stream beds or public open spaces.

23 If you look at map numbers 2 and 3 and compare those two
24 maps in our handout, you'll see that the map number 2, the source of that is the July
25 20, 1998, OP report. That is the one that showed area Z, which was in the overlay,
26 comparing that to area X, which was the proposed expansion area, and comparing
27 the two to see, are there, in fact, similarities or not?

28 OP concludes that there were similarities. I think that if you look
29 simply at page 3, or map number 3, you'll see that the similarities really aren't --

1 there aren't -- there is quite a few differences. Area X is the area in green, and
2 area Z is the area in blue. I have superimposed on the area X map the Ernst house,
3 which people seem to forget about. It's there.

4 You have -- in area X, you have essentially two developable
5 sites, and those are Lots 41 and 42, which were subdivided for that very purpose by
6 the Hahns prior to the hearing in 1998.

7 If you compare area X with those six homes to a much larger
8 area Z, with much greater open space, you'll see that the similarities just are not
9 there. They are quite distinct, quite different from each other. There are significant
10 opportunities for development in area Z. There are essentially two opportunities for
11 development on already-subdivided, matter-of-right record lots in area X.

12 OP then, in their report, produced a map -- map number 4 I
13 direct your attention to -- which is Exhibit Number 3 from the July 20, '98, OP report,
14 which is labeled the "Potential Development Sites." I've outlined in green the Hahn
15 property, so you can see that they've identified that the Hahn property has an
16 adjusted development potential for seven lots.

17 I want to point out to you that that is not, in our view, a correct
18 statement. There is nothing that indicates that those seven lots would meet the
19 requirements of the zoning regulation for development. In fact, Lots 4, 6, and 7, I
20 think do not. Lots 4, 6, and possibly 7, would require a theoretical lot subdivision to
21 go before the Board of Zoning Adjustment.

22 And, you recall, in a theoretical lot subdivision in a residential
23 zone, you require a front yard setback that's equal to the rear yard setback. Rear
24 yard setback in the R-01-A is 25 feet. You're also required to have a front yard
25 setback of 25 feet.

26 So you have 50 feet of setback to deal with on Lots 4, 6, and 7.
27 I'm not sure there's room left over for a house with that required setback.

28 Secondly, if you look at Lot 7 specifically, that lot could not be
29 created, except by theoretical lot subdivision, because it would not have the required

1 street frontage. In the R-01-A zone, in all residential zones, the minimum lot
2 frontage is required to be no less than 40 percent of the required minimum lot width.
3 The lot width requirement is 75 feet. The lot frontage requirement is, therefore, 30
4 feet.

5 The pipe stem driveway out to University Terrace for Lot 7 would
6 not allow that lot to be created as a matter of right. So that would also be a
7 theoretical lot subdivision.

8 This subdivision potential that OP proposes here, or holds up for
9 comparison purposes, would require the total excavation and flattening and removal
10 of all trees on that site, with extensive retaining walls and regrading.

11 The point of reference you ought to be looking at -- this is plan
12 number 4 -- is if this plan came to the Board of Zoning Adjustment, and you
13 Commissioners were sitting as the Commission members on the BZA, would you
14 approve such a subdivision?

15 I was talking to Mr. Hahn about this, and I said to him that if he
16 came to me with a seven-lot development that looked like this, just north of the
17 overlay zone, in this area of Washington -- in Ward 3 -- I said, "This case would be a
18 non-starter."

19 So why are we looking at this as the benchmark from which we
20 are to decide whether the overlay is appropriate? I don't think that this seven-lot
21 subdivision would survive the light of day, before the ANC, the Office of Planning,
22 the neighbors, or the Board of Zoning Adjustment.

23 OP's January 1999 report, at page 2, points out that one of those
24 two individuals who appeared at the end of the May '98 hearing wanted the Hahns'
25 property to be included for -- really, for competitive economic advantage. He said,
26 "If my property is limited, and theirs is not, then I won't be able to sell my property as
27 easily." There was no discussion of the criteria.

28 I think this Commission was correct in saying, "Okay. There's a
29 question raised, a legitimate question. Let's go study it." And I don't mean to cast

1 aspersions on anyone, but I just think that this study that was done was not done as
2 carefully as it otherwise might have been.

3 There was no discussion with the proponents of the overlay. I've
4 pointed out some of the what I believe to be inaccuracies in the adjusted
5 development potential map that was drawn up. The Office of Planning's January
6 report also says, at page 2, that the subdivision of the Hahn property would be
7 unlikely because of architectural, siting, landscaping, topography, access issues,
8 plus the qualities of the existing home, and the fact that there is 6,000 square feet of
9 unusable land. The unusable portion of Lot 43 is landlocked, and, therefore,
10 undevelopable.

11 If you look at pages 5, 6, and 7, these are from -- 5 and 7 are
12 from the January 1999 report. Again, I've outlined in green the Hahn property, with
13 the Ernst house also drawn in. This is OP's version of the existing subdivision on
14 page 5. I say OP's version because it does not include the driveway to Lot 38.

15 If you flip over to page 6, you'll see the existing subdivision as it
16 is today, and I want to show you on the easel -- I'll just walk up and flip over, and
17 then I'll come back to explain. On the easel before you is -- and I hope you can see
18 it. It's the only copy that we have.

19 I tried to highlight the outline of Lots 38 and 41 in pink, and then
20 in a yellow I've outlined the footprint of the Ernst house on Lot 38, so that you can
21 see that. I just didn't want you to accept my freehand sketch as the accurate
22 delineations of that.

23 But it is a home that has been developed, taking great pains to
24 respect the topography of the site. Mr. Ernst's brother was the architect. And you
25 can see the topography on there. You can also see that Lot 41, in the front, is
26 relatively flat. It has no slopes. Lot 38 has a small sloping area in the corner, but
27 the house is not on that.

28 If you look at the plat on page 6, you'll see Lot 43 has an unusual
29 appendage. If you follow up to the -- from the number 43 and you go toward the top

1 right-hand corner of the page, you'll see a little square area, and you'll probably
2 wonder, why is that attached to Lot 43?

3 Well, the reason that's attached to Lot 43 is because the way
4 that you measure average lot width to get a lot width of 75 feet in the R-01-A zone
5 for irregularly shaped lots is that you draw a line every 10 feet parallel to the street.
6 You measure up the distance of all of those lines and divide by the number of lines,
7 and then you get your average lot width.

8 Well, you can see, had Lot 42 extended all the way back to
9 include that little 6,000 square foot appendage, the average lot width would have
10 been less than 75 feet. That had to be cut off and put someplace, so it was put in
11 Lot 43. It's essentially undevelopable. It's a steep slope, heavily wooded site which
12 no one intends to develop. It cannot be developed because it is landlocked. As
13 long as this subdivision stays in its existing configuration, that land will remain in its
14 existing configuration.

15 And then, finally, you have Lot 42, which is irregular in one of its
16 sides. You can see it juts in and out, and the reason it juts in and out is because of
17 the improvements on Lot 43 -- the pool deck and patio around the deck, which, if
18 you look at page 8, you'll see how those jut into what is now Lot 42. And that's why
19 it was drawn in that configuration.

20 But, again, going to page 7, you'll see that this now shows -- this
21 is, again, OP's report of January 19th -- a potential subdivision of just the Hahn
22 property, just Lot 43, and it shows four lots.

23 Again, I take issue with this four-lot subdivision for this reason:
24 Lots 1 and 2 could possibly be configured that way. 3 and 4 could not likely be
25 configured that way without going to the Board of Zoning Adjustment, because of the
26 very way that you measure average lot width.

27 When you have a long pipe stem leading from a street to a lot in
28 the back, again, you draw the lines every 10 feet, measure them up, divide by the
29 number of lines, you get your lot width. Lot 4 would not achieve 75 feet of average

1 lot width, nor, in my estimation, would Lot 3. These would have to go against the
2 Board of Zoning Adjustment.

3 And I'd like to point out, as I'm sure some of you know, the Board
4 of Zoning Adjustment has turned down a number of these type of cases.

5 You already have a mechanism in place to look at proposed
6 developments of this type.

7 CHAIRPERSON KRESS: Could you wrap it up, please?

8 MR. COLLINS: Yes, I am starting to do that now.

9 The compromise by the Hahns was not, in fact, a volunteer effort
10 on their behalf. It was done in the face of a threat to their estate plan. Their estate
11 plan provides a home site for each of their three children. One has already been
12 taken care of. The Ernsts have built their house, and it is on Lot 38. Lots 41 and 42
13 are the smaller -- the two remaining lots. They are developable lots. Lot 41 is a flat
14 site facing on University Terrace. Lot 42 on Arizona Avenue has some topography
15 in the rear, and it has flat development sites.

16 The Hahns offered that, really, out of a sense of desperation.
17 They did not want to lose the opportunity to provide for their children in their estate
18 plan as they've set it up. But they -- in looking at the criteria, in looking at the
19 original rationale, in looking at the seven years of work that the community put
20 together to come up with a plan, the Hahns have concluded that they do not wish to
21 be included in this overlay zone.

22 I think it's telling that there is not a single person here in support
23 of this application.

24 The original coordinator, Mr. Richard England, submitted a letter
25 to the Hahns -- it's at page 9 -- in which he says at the end of the first paragraph on
26 his letter, "The tree and slope overlay that was obtained by your neighbors on Chain
27 Bridge Road and University Terrace had nothing whatsoever to do with your
28 property." It was never anyone's intention, of the petitioners, that the overlay be
29 extended to this area that the Hahns and the Bolands live in.

1 Office of Planning, as Mr. Boland accurately pointed out,
2 mischaracterizes the ANC position. I think the ANC positions can be fairly
3 summarized to say that "We support the original boundaries. And if someone wants
4 to come in and voluntarily put their piece of property in, so be it." I think that's a fair
5 characterization of that report.

6 The Hahns do not consent to be included. The Bolands do not
7 consent to be included. You may hear from other neighbors here this evening, but
8 the Hahns do not wish to be included in this application.

9 Thank you very much.

10 CHAIRPERSON KRESS: All right. Thank you.

11 Questions, colleagues?

12 COMMISSIONER PARSONS: Mr. Collins, I'm confused. We
13 have a January letter that says that they are voluntarily placing Lots 41 and --
14 excuse me -- Lots --

15 MR. COLLINS: 43.

16 COMMISSIONER PARSONS: Thank you. 43 and 38 into the
17 zone.

18 MR. COLLINS: Right.

19 COMMISSIONER PARSONS: What has occurred that changed
20 that?

21 MR. COLLINS: Well, that was out of a sense of desperation.
22 When someone feels threatened, they will do what they can to try and protect their
23 interest. Since the time of that letter, there have been discussions with the
24 proponents, Mr. England who is out of town, unavailable, until January, and also
25 with the ANC.

26 And the more the discussions ensued, the more it became clear
27 that it was really never anyone's intention to include -- from the neighborhood, in any
28 event, to include this area. And looking at it more carefully, we believe it doesn't
29 meet the criteria.

1 COMMISSIONER PARSONS: So this was an act of
2 desperation? I don't understand that. I mean, certainly, the Hahns don't intend to
3 subdivide and destroy this beautiful home that they have portrayed in this letter, nor
4 do anything to affect it.

5 And I guess I didn't anticipate desperation here, but, rather, a
6 sense of participation in something the community was doing, especially with the
7 parent home, I'll call it. But that is not the case. It has been withdrawn. It's not for
8 consideration. The Office of Planning has supported that. But as of now, at 8:15,
9 it's not on the table. Is that correct?

10 MR. COLLINS: That's correct.

11 COMMISSIONER PARSONS: That's very unfortunate. Thank
12 you.

13 CHAIRPERSON KRESS: Any other questions?

14 COMMISSIONER CLARENS: Yes. Well, I am very troubled by
15 this whole thing. I mean, this is very difficult.

16 In which way -- and maybe you might want to clarify this a little
17 bit better. In which way does area Z -- and maybe this goes, also, to the Office of
18 Planning -- meets the criteria for the overlay -- overlay criteria? And maybe
19 Planning should answer first. In which way does it meet the criteria?

20 MR. COLBY: I've been looking for an opportunity to respond to
21 some of the issues raised by Mr. Boland, but also mostly by Mr. Collins. And it will
22 answer your question, too, I think.

23 If you look at each lot in an overlay, the overlay has general
24 criteria for the overlay as a whole. And if you were to expand the overlay, existing
25 overlay, it would have to have the same -- the resulting overlay, larger overlay,
26 would then have to have the same criteria.

27 If you look at each lot, you will find that each lot -- there's not an
28 existing overlay approved by this Commission. Each lot does not abut Battery
29 Kemble Park or open space, but --

1 MR. COLLINS: That's correct.

2 MR. COLBY: -- but the overlay as a whole does.

3 All properties within the overlay that exists do not have
4 developable land. Many of them are developed to their full extent, except that there
5 could be, I suspect in almost every case, some additional increase in impervious
6 surface or increase in the footprint of the house.

7 But it's when you look at the overlay as a whole that you have to
8 -- and the overlays tend to generalize the specifics of the individual property. So
9 having said that, area Z is clearly heavily treed. It is part of the larger overlay, and,
10 therefore, abuts Battery Kemble Park as an extension of that.

11 It has, I'm quite -- one of those lots had development
12 opportunities on it. I could go back to the chart that went with that in our original
13 evaluation of the Commission's question on the boundaries, which showed --
14 recognizing that there were a number of errors in area X that -- regarding the Hahn
15 property.

16 But in area Z, there was a lot of developable land. There were
17 large lots that were, clearly, treed. The topography was -- change in topography
18 was substantial. And if you added on to the original overlay, the whole thing abuts
19 Battery Kemble Park.

20 And so, in that sense, I think when you take area Z, it does, in
21 fact, meet the criteria to be included in the larger overlay. When you -- with the
22 questions raised by area X, I'm not sure that it does.

23 But I would also say there's a fifth criteria, which is not part of the
24 four -- it's not part of the four environmental criteria, which is that the community
25 support an overlay.

26 That's not set out in that manner, but I think it's an unstated,
27 understood aspect of these petitions by the community, that they will work among
28 themselves, work out the problems, compromise where they can, and come to you
29 essentially unanimously in favor of what is effectively a downzoning of their land in

1 order to -- for some greater good for -- that they see for their community.

2 So I think -- I have no reason to think that the area Z does not, in
3 fact, reflect the criteria for the Chain Bridge Road overlay.

4 As to area X, why that's -- you know, we're hearing testimony on
5 that, and there were clearly some errors on our original report.

6 COMMISSIONER CLARENS: So a follow up to that question,
7 why did it stop there? Why did it go originally? And were the Hahns, Mr. Collins, in
8 discussion with the group that originally initiated this process? Were you, Mr. Hahn
9 -- obviously, you know Mr. England and Mr. Dormlin, etcetera, etcetera. So were
10 you in contact with them?

11 And why was the edge established at that, if, in fact, there are
12 some common elements between those properties that were included and your
13 property and the properties immediately adjacent to yours?

14 MR. HAHN: Mr. Clarens, let me spend a few minutes with you.
15 Now, you may or may not know, I used to be Chairman of this Commission.

16 When this overlay first started on the Chain Bridge Road, we
17 were not intended to be included. We were invited to give money, and we did, to
18 support the program. And I hope my record -- and I've served the state here in
19 some capacity. I have always tried to do what's best for the city.

20 A meeting was held, at which I was not present, and the group, I
21 thought, overreached by increasing the lot size from 7,500 feet to 10,000. Mrs.
22 Hahn and I went to them and said, "Look, we have just replatted our property at
23 7,500 feet. You're ruining our estate plan. We have these four lots, and we've set
24 two aside for our other two children."

25 And they said, "Fine. That's fair. We will leave you out." And I
26 think if I was still on this Commission, I would vote to stand by that agreement. By
27 the way, I see no reason why you should include Mr. Boland. I'm not a desperate
28 person.

29 And the offer was made originally to include our two developed

1 properties. I don't want to flatter myself, but I think nobody would ever tear down our
2 house to develop even two lots, let alone three or four. And I think anybody who
3 bought our lot after we died would even want the lot on Arizona Avenue.

4 The point was that we thought, in view of all of the errors that
5 had caused this hearing to be held, we might avoid a hearing altogether by making
6 this offer. When you're hooked, you're hooked. We have offered the property, just
7 our two properties, to be in the plan, provided our estate plan is respected. And by
8 that, I don't mean to include any of our other neighbors like Mr. Boland.

9 That's how it happened, and that's how we got where we are.
10 And I hope the Commission will respect what we're trying to do and the effort we're
11 making to be a good citizen by including our two developed properties.

12 COMMISSIONER CLARENS: I have a rude question. Who
13 owns Lot 907?

14 MR. HAHN: What is that, 907?

15 COMMISSIONER CLARENS: That's the one that is to the right
16 of the stem pipe that leads into your house.

17 MR. KUPFERBERG: I do. I'm Steve Kupferberg.

18 COMMISSIONER CLARENS: Okay. And you will testify, sir?

19 MR. KUPFERBERG: Yes.

20 COMMISSIONER CLARENS: Okay. Okay. Then, I will reserve
21 the question for why was that not included originally.

22 But, in essence, except for the agreement that the community
23 forged with the neighbors that established that boundary, from a physical point of
24 view, and if we accept the explanation that Mr. Colby gave us that it is the area, as a
25 whole, that meets the criteria and not the individual lots, there is not a significant
26 difference between the area included in area X and those that the rest of the -- the
27 rest of the overlay has included. Was that something that you would agree -- to a
28 statement like that, or disagree?

29 MR. COLLINS: I think that if you -- as you look at page 3 of our

1 submission, you'll see that area Z has homes with large open spaces. And at some
2 point, as you march northward towards the top of the page, the houses tend to get
3 closer together. You don't have these large undeveloped, potentially developable
4 areas which this overlay was intended to protect.

5 And the northern boundary of the original overlay, as enacted,
6 seemed like a logical place to make that distinction. It seemed logical to the
7 neighbors who were working on it over the seven-year period. It seemed logical to
8 the Office of Planning at the time when they supported the original overlay. It still
9 seems logical today.

10 CHAIRPERSON KRESS: You can't speak from the audience.
11 You can only speak from the mike. I'm sorry. You need to be on the record.

12 COMMISSIONER PARSONS: Can we continue the questioning,
13 then?

14 CHAIRPERSON KRESS: Yes. We wanted to finish the
15 questioning with Mr. Hahn. Do you care to continue, Commissioner?

16 COMMISSIONER PARSONS: Mr. Hahn, I want to make sure I
17 just understood you. You are willing, then, again, as proposed in your letter, to
18 include Lots 43 and 38 within the zone. Is that correct?

19 MR. HAHN: Yes. I mean, it won't make any difference. Nothing
20 is going to happen to those two lots. It doesn't make any difference whether they're
21 in or out.

22 COMMISSIONER PARSONS: Well, I hope you'll continue that
23 pledge, and I think --

24 MR. HAHN: Well, if you've read my letters, and I hope you will
25 before the proceedings are over --

26 COMMISSIONER PARSONS: Oh, I have.

27 MR. HAHN: -- I said --

28 COMMISSIONER PARSONS: That's why I was so encouraged
29 with it and was concerned with Mr. Collins' statement earlier that maybe you had

1 changed your mind.

2 MR. HAHN: Mr. Collins is a good lawyer, and he is doing his
3 best job for me.

4 COMMISSIONER PARSONS: Yes, he is. Thank you very
5 much. I think you're doing the right thing here, sir.

6 CHAIRPERSON KRESS: Any other questions?

7 COMMISSIONER HOOD: Mr. Hahn --

8 MR. HAHN: Mr. Hood --

9 COMMISSIONER HOOD: -- I believe that, from what I've just
10 heard from Commissioner Parsons, including Lots 38 and 43 -- the lots that you
11 have planned in this estate for your children, what are those lots again? And I know
12 I have it in front of me, but I have quite a bit --

13 MR. HAHN: Lots 41 and 42. 42 is -- fronts on Arizona Avenue,
14 7,500 feet.

15 COMMISSIONER HOOD: Okay.

16 MR. HAHN: It's a buildable lot, except that if -- if it was included
17 under the overlay, it wouldn't be buildable because it's not 10,000 feet.

18 Lot 41 is on Arizona Avenue. I have said in the -- I mean, on
19 University Terrace. As I have said, I do think that, for the reasons that I set out in
20 my letter, the more likely course of events as far as we can see into the future is that
21 nothing will happen to those lots, and every robin can nest in all of those trees for
22 the foreseeable future of his life.

23 COMMISSIONER HOOD: From what I'm seeing, I see that you
24 want to leave some flexibility there because you're passing it on to your kids. Okay.
25 Thank you.

26 CHAIRPERSON KRESS: Any other questions for Mr. Hahn?

27 COMMISSIONER HOOD: No.

28 COMMISSIONER PARSONS: No.

29 CHAIRPERSON KRESS: Thank you. Appreciate your coming

1 tonight.

2 MR. HAHN: Thank you, Ms. Chairman.

3 CHAIRPERSON KRESS: Did you have a quick statement you
4 wished to add to your testimony before we go on to --

5 MR. BOLAND: If I may. My name was raised by Mr. Colby on
6 the point of the -- only the zone having to -- adjacent to the park land. Basically,
7 under that theory, and if you get everybody to go along with it, you can get the whole
8 city. That doesn't seem to make a lot of sense.

9 But he did raise a good point, which shouldn't be overlooked,
10 and that is community support. And Mr. Hahn said Mr. England asked him if he
11 wanted to be involved. Mr. England also approached me, and I let him know that I
12 didn't want to be involved either. And I think the community that wanted to be
13 involved got the boundaries that they wanted and are satisfied with them.

14 CHAIRPERSON KRESS: Thank you.

15 Anyone else wish to testify in opposition?

16 MR. KUPFERBERG: Good evening. My name is Steve
17 Kupferberg. I'm Lot 907, the one next to the pipe stem that borders Mr. Hahn's lots.

18 I bought my house in 1981. It was built in 1935 by Ms. Leaf, who
19 lived there for her entire life until she died. When I bought the lot, I did not know that
20 I was part of the Hahn Ponderosa that stretched from University Terrace to Arizona
21 Avenue.

22 Lot 32 was a wooded lot at the time, and I did not know and was
23 not made aware of the subdivision of that just prior to the application of this zone
24 going into effect. I only found out when the bulldozers appeared on my property,
25 next to my property, that that was the case.

26 It is not often that I find myself in agreement with Mr. Hahn,
27 either as a neighbor or as an individual. His pipe stem that goes along the side of
28 my property is a driveway that he bought from Mr. McGovern before I bought the
29 property. On the day that I moved to that piece of property, I had a garage and a

1 driveway, and a fence went up along that pipe stem. I no longer have a driveway or
2 a garage. Nonetheless, I oppose this overlay for a number of reasons.

3 I was not at the last hearing because I -- it was my
4 understanding that we were omitted from that, and, therefore, did not raise any of
5 the issues that have been raised here tonight by my other fine neighbors, including
6 the Hahns and the Ernsts.

7 I do not know why the line was there. I'm sure Mr. Hahn is much
8 more aware because he was part of the committee, and because it substantially
9 affected his economic rights on those pieces of property, as it does mine. And for
10 what reasons it was omitted in the first place did not affect me because it was
11 omitted.

12 I did attend, however, the initial meetings with the rest of the
13 group up on Chain Bridge Road, and noticed that that area was much different than
14 our property to the east.

15 If you decide to gerrymander, even with a compromise -- even
16 with a compromise -- I will find myself with a rather large lot, with a bunch of little
17 houses that are to be built by the Hahn family around me. I do not know what the
18 value of my property would be if that were to occur, but, nonetheless, I do not wish
19 to be included in what would be a ragged, rag-tag, gerrymander, with a compromise.

20 I think the line that has been drawn now is a rather distinct line
21 that goes down the pipe stem from University to Arizona. It does not affect the park
22 area.

23 And I think that, in terms of Mr. Colby's statements and Mr.
24 Boland's statements, for the most part I think that all of the neighbors are here and
25 telling you that we did not oppose that overlay because we were not included in it.

26 Had we been included in it, there wouldn't have been unanimity
27 among the neighbors, and we wouldn't have had what appeared to be a clear
28 compromise of individuals that had larger lots down University Terrace, and much
29 larger lots bordering Battery Kemble Park off of Chain Bridge Road, which I think

1 was the real reason for the tree and slope overlay, if I'm not mistaken.

2 That the Gibsons and the -- I can't remember the name of the
3 other builder -- was about to build between University Terrace and Chain Bridge
4 Road. And that's what changed things, and all of a sudden those estate owners on
5 Chain Bridge Road began to feel threatened.

6 My piece of property is not quite an estate. I am just a piece of a
7 sharecropper of the Hahn estate. I would ask you not to include me.

8 CHAIRPERSON KRESS: Thank you.

9 Any questions?

10 COMMISSIONER PARSONS: Mr. Kupferberg, as I understand
11 it from a chart before us, which was produced by Mr. Hahn, your property is 13,400
12 square feet.

13 MR. KUPFERBERG: Approximately.

14 COMMISSIONER PARSONS: And the size of your building is
15 3,000 square feet.

16 MR. KUPFERBERG: Yes, sir.

17 COMMISSIONER PARSONS: So what is it in this overlay that
18 causes you concern?

19 MR. KUPFERBERG: I think if you gerrymander the way that
20 we're being asked to do -- I'm not sure of the compromise versus the -- because I
21 was listening to Mr. Colby rather intently. But there seems to be two proposals here.

22 COMMISSIONER PARSONS: I'm sorry.

23 MR. KUPFERBERG: I find myself having to argue against both
24 of the proposals.

25 COMMISSIONER PARSONS: My question was not very well
26 articulated. Let's try it again. I was trying to get to the same point I was with Mr.
27 Boland. What is it that concerns you about this overlay on your own property? I
28 mean, what are you worried about?

29 MR. KUPFERBERG: My house is a rather small house, and I

1 have --

2 COMMISSIONER PARSONS: 3,000 square feet is --

3 MR. KUPFERBERG: My house. Yes.

4 COMMISSIONER PARSONS: -- a small --

5 MR. KUPFERBERG: My house was built with bricks by Ms. Leaf
6 that were brought to that property one by one. I have two bedrooms on the bottom
7 floor that are 11 by 14, and one on the top floor that's about 20 by 15. I have a very
8 small house compared to the houses in that neighborhood. It's a cottage. It is not --
9 it's a 3,000 square foot house. Inside dimensions, it's 1,200 square feet. So it
10 would be less than an apartment, and certainly less than an office.

11 So my inside dimensions of my home, although my footprint is
12 there, my garage is there, etcetera, but the inside of my home, the livable space, is
13 approximately 1,200 feet, 1,280 feet. So, in the scope of things in that
14 neighborhood, it's a very small house.

15 COMMISSIONER PARSONS: I agree.

16 MR. KUPFERBERG: And I think probably no bigger than Ivan --
17 I can't remember Ivan's last name, but one of the directors of the committee, whose
18 house was being affected by the large house that was being erected across the
19 street from the Dunlings.

20 I think it will affect the economic value of my property, and I am
21 as concerned about trees. I have trees on my property, and have had them for 18
22 years. And I'm an avid gardener and an avid birder.

23 But I see no reason for us to spread out even further, those of us
24 who opposed it in the first place, when you had unanimity --

25 COMMISSIONER PARSONS: You've answered my question.

26 Thank you.

27 CHAIRPERSON KRESS: Any other questions?

28 COMMISSIONER PARSONS: No.

29 CHAIRPERSON KRESS: Thank you.

1 MR. KUPFERBERG: Thank you.

2 CHAIRPERSON KRESS: Is there anyone else here who wishes
3 to testify in opposition?

4 Ladies and gentlemen, and other members of the Commission, I
5 thank you for your testimony and assistance in this hearing. The record is closed.

6 The Commission will make a decision on this case at one of its
7 regular monthly meetings. These meetings are held at 1:30 p.m. on the second
8 Monday of each month, with some exceptions, and are open to the public.

9 If you are interested in following this case further, contact the
10 staff to determine whether it is on the agenda of an upcoming meeting.

11 You should also be aware that if the Commission proposes
12 affirmative action, the proposed action must be referred to the National Capital
13 Planning Commission for federal impact review. The Zoning Commission will take
14 final action at a public meeting following receipt of the National Capital Planning
15 Commission Review, after which a written order will be published.

16 I now declare this hearing closed.

17 (Whereupon, at 8:39 p.m., the proceedings in the foregoing
18 matter went off the record.)