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PRELIMINARY MATTERS

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CHAIRPERSON KRESS: Good evening, ladies and gentlemen. I am Jerrily Kress, Chairperson of the Zoning Commission for the District of Columbia. Joining me this evening are Commissioners Franklin, Hood, Clarens and Parsons. I declare this hearing open. Case 97-7(I) is an initiative of the Zoning Commission resulting from previous deliberations in Case No. 97-7 (SP Text and Map Amendments).

On July 21, 1997, the Zoning Commission conducted a public hearing for Part 1 of Case No. 97-7 (SP Text Amendments). Subsequent public hearings for Part 2 of the case (SP Map Amendments) were conducted on January 5 and 8, 1998.

The Commission took proposed action to act on a number of proposed text and map amendments on March 9 and April 13, 1998. However, a number of other map amendments located within the Logan Circle/Thomas Circle subarea were not acted upon at those meetings and were the subject of a notice to reopen the record for further public comment.

Subsequently at its regular monthly meeting on November 9, 1998, the Commission decided it would not act on certain additional properties originally proposed for map amendments in the same subarea. Finally, on December 14, 1998, the Commission authorized an additional public hearing to consider all of the properties for which proposed map

1 amendments remained undecided. These properties will now be
2 the subject of further consideration at this public hearing.

3 The Zoning Commission will consider the
4 remaining proposals of the Office of Planning, any
5 modifications, or alternative proposals that are presented and
6 reasonably related to the scope of the proposed amendments in
7 this case. Moreover, the Commission agreed at its meeting on
8 February 8, 1999, to advertise and consider an alternate
9 proposal for rezoning portions of Square 280. Notice of this
10 evening's hearing was published in the D.C. Register on April
11 2, 1999, and was rescheduled from April 1, 1999.

12 This public hearing will be conducted in
13 accordance with the provisions of 11 DCMR 3041. The order of
14 procedure will be as follows. First, preliminary matters;
15 second, presentation of the petitioner, in this case the
16 Office of Planning; third, reports of other agencies; fourth,
17 report of the Advisory Neighborhood Commission 2F; fifth,
18 individuals in support; and sixth, individuals in opposition.
19 The following time limits will be imposed on all oral
20 presentations; the petitioner 60 minutes, organizations 5
21 minutes, and individuals 3 minutes. The Commission intends to
22 adhere to these time limits as strictly as possible in order
23 to hear the case in a reasonable period of time. In addition,
24 the Commission reserves the right to change the time limits as
25 necessary. No time shall be seated. Those presenting
26 testimony should be brief and non-repetitive. If you have a

1 prepared written statement, please give copies to staff and
2 orally summarize the highlights only. Please submit copies of
3 your statement before beginning your oral presentation. Each
4 individual appearing before the Commission must complete two
5 identification cards and give them to the reporter at the time
6 you make your statement. If these guidelines are followed,
7 the record in this case can be developed in a reasonable
8 period of time. The staff will be available to discuss any
9 procedural questions.

10 All individuals who wish to testify please rise
11 to take the oath.

12 (ALL WITNESSES SWORN.)

13 CHAIRPERSON KRESS: Preliminary matters?

14 MS. PRUITT-WILLIAMS: Madam Chair, there are no
15 preliminary matters.

16 CHAIRPERSON KRESS: The Commission recognizes
17 Mr. Williams.

18 MR. WILLIAMS: Thank you, Madam Chair. I guess
19 I should speak loudly and somebody will tell me if they can't
20 hear me.

21 CHAIRPERSON KRESS: I think we will all try that
22 this evening.

23 MR. WILLIAMS: Thank you, Madam Chair. My name
24 for the record is Lindsley Williams, and I want to bring to
25 your attention two possible preliminary matters and we can
26 pursue them to the degree you feel is appropriate. The first,

1 which relates to a portion of the OP Report, in which they
2 make a recommendation calling for a change to R5-C zoning
3 along the north side of N Street in Square 243. This is found
4 at page 6 of their report and discusses a now accomplished
5 Zoning Commission Order 862 dated November 9, 1998. Basically
6 that portion of the case had been decided, and by the remarks
7 of OP, they are suggesting that it be reopened. I don't know
8 whether you have anything to say about this as a preliminary
9 matter, but I have a preliminary question because it somewhat
10 shapes the way in which our argument goes. If you are
11 inclined to agree with it, then we would head in one direction
12 in our conversation. If you are inclined to disagree with
13 that recommendation, it would somewhat change the context in
14 which we would be proceeding with our portion of the case
15 later on. I don't mean to force you to make a declaration on
16 that right now, but perhaps as OP presents its report, you can
17 issue some kind of clarifying -- have a clarifying
18 conversation so that I will know where your head is at and
19 where the Commission's head is at in relationship to that
20 issue, and the public as well.

21 The second preliminary matter, Madam Chairman,
22 is for me to simply take this opportunity to make sure that
23 the record in this case is absolutely clear about my status in
24 it and the status of my former partner in this matter, Mr.
25 Douglas Patton. Mr. Patton, as you probably all know, assumed
26 the duties of Deputy Mayor for Planning and Economic

1 Development earlier this year. And at the time that he was
2 engaged with discussions with the city about taking that
3 position, this was among the things that was discussed, and
4 upon the discussions moving forward as they did, he separated
5 himself from any further work in this case in accordance with
6 the tenants of his profession and that is a matter of record.

7 On March 3 in the morning, I received a call
8 from Mr. Patton at my residence and he asked me to come down
9 and meet with him about what he needed in the way of
10 assistance in his office. And he suggested that I assist that
11 office in matters relating to land use, planning and zoning,
12 and I agreed to do so but with the proviso that I would not
13 abandon my client, Mr. Calomris and his partner, Steven
14 Harris, in the matter that is now before you. Thus, I set up
15 something of a Chinese Wall, as did he. So I didn't talk
16 about that to him and I didn't talk about that in any official
17 capacity. And I have no official capacity -- I will describe
18 that in a moment -- with the Office of Planning. I continue
19 to represent my client as best as I can, and I entertained
20 this idea with the notion -- remember, this was early March --
21 that there was a hearing scheduled April 1 to continue this
22 matter and hopefully resolve the matter. We all know the
23 April 1 hearing got canceled for a variety of reasons. We are
24 here tonight to pursue it. But what was meant to be a one-
25 month bridging function kept going for an additional month --
26 actually for about five weeks.

1 We are here tonight and I hope we can finish the
2 matter, but I wanted my relationship here to be understood.
3 Specifically, I am a contract employee to the District of
4 Columbia. I am not an employee of the organization, but I do
5 provide advice on matters relating to land use, planning and
6 zoning, but not at all with respect to this case. There is a
7 total bar to anything being said by me on that regard, and as
8 far as I know, nothing has been communicated to OP from, if
9 you will, the parent organization. You may want to clarify
10 that with staff. But as far as I know, the wall has been
11 built and maintained and they have been on one side and I have
12 been on the other and I am here tonight. But I wanted it to
13 be on the record.

14 CHAIRPERSON KRESS: Thank you. Let me ask a
15 moment -- Office of Planning staff, are you comfortable with
16 Mr. Williams and his testimony?

17 MR. COLBY: I am for a number of reasons. One
18 is much of his testimony has been in the record for a long
19 time. And two, there has been no contact since then on the
20 case and we have moved forward in our own direction. I think
21 you will see it is not the same direction that he was moving
22 with his client.

23 CHAIRPERSON KRESS: So you are not
24 uncomfortable?

25 MR. COLBY: We are not uncomfortable. I guess
26 that is to say we are comfortable.

1 CHAIRPERSON KRESS: Is there anyone else here
2 who is uncomfortable with that? All right. Thank you for
3 bringing that to our attention. I would just say that I
4 believe that the preliminary matter that Mr. Williams has
5 addressed relating to the Office of Planning proposal to
6 reevaluate the south side of Square 243 is something perhaps
7 we should take up after we hear Office of Planning's report
8 and ask questions and then take it up as a preliminary matter
9 if we so wish. Is that all right with you? Any objections or
10 problems? Staff, do you have any differences of feeling?

11 MS. PRUITT-WILLIAMS: Well, typically unless it
12 is advertised, you really don't discuss it at a hearing. If
13 it is something that you would like -- if you think it is
14 worth investigating, then I would suggest you could re-
15 advertise it as unfortunately another part of the SP case.
16 Because unfortunately people here have not had the benefit of
17 knowing that you are going to discuss this -- you know, that
18 this was something that the Commission would be considering at
19 this time.

20 CHAIRPERSON KRESS: So your advice would be then
21 to --

22 MS. PRUITT-WILLIAMS: If you think it is
23 something of merit that should be explored, then we would set
24 another hearing date. And maybe after Office of Planning's
25 presentation, you would discuss whether or not you would like
26 to consider revisiting those issues.

1 CHAIRPERSON KRESS: Well, I don't mean that we
2 would discuss it tonight to make a decision on it. It is a
3 matter of whether any testimony about it would be allowed in.
4 You are of the feeling that we should not allow any testimony
5 in?

6 MS. PRUITT-WILLIAMS: Yes, because -- only in
7 the fact that it has not been advertised. So that if there
8 was somebody who was either in favor or opposition to that,
9 they have not had the benefit of notice.

10 CHAIRPERSON KRESS: All right. Commissioner
11 Parsons, you seem to be agreeing?

12 COMMISSIONER PARSONS: Correct.

13 CHAIRPERSON KRESS: Commissioner Hood and
14 Commissioner Franklin, what are your feelings? Are you
15 agreeing that we should not allow discussion about the
16 southern portion of Square 243 this evening?

17 COMMISSIONER FRANKLIN: I feel it would be
18 appropriate to hear OP's comments about this in so far as it
19 may relate to the overall case. It doesn't mean that we are
20 reopening that for decision-making purposes. But I don't
21 consider such comments to be out of bounds if they have some
22 relevance to the overall case before us. I mean, we might --
23 a number of cases have comments made about land that is not
24 the subject of an advertisement but where the condition might
25 be pertinent to something we are dealing with. So I don't have
26 any problem with hearing something about it. I think that

1 deciding it is a different story. So it is not necessarily
2 irrelevant in my view.

3 CHAIRPERSON KRESS: Do you have a feeling one
4 way or another, Commissioner Hood?

5 COMMISSIONER HOOD: Well, I just don't want
6 anything to come back to us. Like she said, if it wasn't
7 advertised, we may have some people in opposition. But then
8 again, if the Office of Planning has some comments, I am open
9 to hear the comments.

10 CHAIRPERSON KRESS: All right. We seem to be
11 split. I will allow Office of Planning to briefly reference
12 that property, the southern part of Square 243 for the
13 purposes of discussing just as -- I agree with Commissioner
14 Franklin -- just as one discusses often the property, and we
15 will on some of these properties, the zoning on either side.
16 In that context, we will allow discussion of that. But not
17 discussion on that property per se to rezone it. That would
18 be a separate issue. But only as it may affect the surrounding
19 zone, if that makes sense.

20 COMMISSIONER HOOD: It does make sense.

21 CHAIRPERSON KRESS: With that, we will go ahead
22 and proceed and turn this over to Office of Planning.

23 MR. COLBY: Thank you, Madam Chairman. We, as
24 you -- well, first of all, I guess I would like to introduce
25 my cohort here. Steve Cochran, who is new with the Office of
26 Planning. He has been in the planning field for a long, long

1 time and is known to many people in the planning community.
2 We have been struggling, as you can see, to get a slide show
3 going for you. I am not sure -- I guess I would say just to
4 sort of hold off the final show a minute more that you have
5 probably noticed from our report that we are attempting to do
6 a lot of things differently than we have done before.

7 CHAIRPERSON KRESS: I was going to wait until
8 your presentation was over to say good things, but already I
9 am very impressed.

10 MR. COCHRAN: If I might say something, Madam
11 Chair. I have been in the planning community for a while, but
12 I haven't been in the computer community for a while. I am
13 afraid that a little bit of the interruption of the fire drill
14 that you might have heard we had today. I am going to have to
15 go back to the office and see if the other zip disk is
16 available, Dave, if you would like to start.

17 MR. COLBY: Okay. Sure. What that will mean is
18 that we will be using a different sort of report to go through
19 the same kind of process, unfortunately, at this hearing, at
20 least at the beginning. And if Steve gets back, we will take
21 you back -- cycle back through some of the context, which
22 ideally you would have up front.

23 And I would only say that if we aren't able to
24 show the slides tonight, and I am sorry that they are not here
25 at the front, we may have an opportunity to -- and that is the
26 worst case -- to provide you with some of that context. I am

1 not sure how this works legally, but to show you some at the
2 decision meeting. It is not a contested case and all the
3 information we can get to you in any form I would guess about
4 the area would be helpful to you. And I am really talking
5 about the slides. They will give you basically a tour of the
6 area. Of course, the rest of the presentation, a lot of it is
7 on the PowerPoint. So I am going to have to go through it
8 from my familiarity with the case.

9 But be that as it may, let's start. This is the
10 --

11 CHAIRPERSON KRESS: I guess I should formally
12 accept a waiver of our rules for your late submission.

13 MR. COLBY: Thank you very much. This is the, I
14 won't say last because I could be proved wrong -- but it is
15 hopefully near the end of the SP rezoning case. I carry this
16 in my records as SP-3, because I see this as having a third
17 iteration or third chapter of the SP case. 97-7(I) suggests
18 it is only the second. But in any case, it covers -- as you
19 are aware from the report -- the northeast portion of Thomas
20 Circle and the south of Logan Circle. The two most southerly
21 squares, 245 and 281, were heard by the Commission previously
22 and a decision made and then reopened at our recommendation.
23 So the case has been around and in fact all of this has been
24 in front of the Commission before. They asked for more
25 information and then we suggested introducing these two --
26 reintroducing these two squares on the south. Again, I am

1 sorry the slides aren't here to walk you through it.

2 Most of the area south of N Street is zoned SP-
3 2. The area north of that, and the portion that the chair
4 said we weren't to talk about zoning for, is currently zoned
5 per the chair's fairly recent decision R5-E. The area to the
6 north of that is R5-D. Our original proposal for everything
7 above N Street was R-5B. We have modified that, as we will
8 get to. And then there have been -- there are a number of
9 letters in the file as to what various parties would do with
10 the zoning and what they think about the proposed zoning.

11 I guess I should say that after -- we have
12 changed our posture on what the zoning should be. We are no
13 longer suggesting it should be R-5B all above N Street. And
14 on going back out and looking at the area and driven by the
15 Commission to get into more detail, which we have done, we
16 have come to the conclusion that M Street is a major -- N
17 Street, excuse me, as in news -- is a major line of
18 demarcation in the community, particularly along 13th Street,
19 which is a major spine in this part of the community. North
20 of that -- south of that, the buildings are really R5-E
21 buildings for the most part. They are. North of that, you
22 really get into a transition or a mix of building types and
23 heights.

24 So what we have concluded is that -- well, that
25 is one point. There is a magic line, we believe, at N Street,
26 and I can try and demonstrate that even without the slides in

1 a few minutes. Another important point is the issue of non-
2 conformity and the importance of non-conformity in an area
3 like this, which is so mixed in its height and bulk and the
4 use of the land.

5 Our originally proposed R5-B, which is quite
6 consistent with the moderate density residential that the
7 comprehensive plan calls for in this area, is -- the R5-B is a
8 zone, which while it conforms very well with the low density
9 more historic portions of Logan Circle to the north, would not
10 have allowed some of the residential redevelopment that is
11 occurring in the area now. When we started the case with all
12 of the other SP rezoning, we weren't aware of any -- and I am
13 not sure there was any evidence of residential revitalization
14 in this area. It was, in our mind, really an abstraction.
15 But in fact it has been occurring. It had occurred already
16 and has been occurring right up until now and is occurring
17 along Logan Circle at the moment. So there is a market in
18 Logan Circle for residential development and it is not an
19 abstraction. The problem is that one of the models in the
20 area that we have come upon, the Bartlett Condominium, is a
21 project that could not have been built under R5-B. A number
22 of the buildings of the existing grand row buildings in the
23 Logan Circle area far exceed R5-B density at 1.8 FAR. They
24 far exceed it, and I think lot occupancy in many cases.

25 So in order to encourage development of the kind
26 that we are seeing -- in order not to stop the kind of

1 development that we are seeing and the kind of development
2 which the community seems to be receptive to, we have modified
3 a great deal of our zoning for the area and are recommending
4 an R5-C zone instead of R5-B. And further, we are
5 recommending some R5-D zoning where we had not recommended
6 that previously. And we are also responding to a
7 comprehensive plan. But perhaps I am jumping ahead.

8 Let me just go right to the recommendations and then go
9 on from there. The concept of stepping down zoning from south
10 to north is simple. The difficult question is where and how
11 that transition should occur. That, of course, is what has
12 been the problem with translating SP zoning to other zones all
13 through this case. And as the report notes, N Street is the
14 best dividing line, we believe, between the high and the
15 moderate density residential zones. We believe that R5-C and
16 R5-B zoning should be north of N Street. R5-D and R5-E -- if
17 you look at page 2 in our report, you will see what we are
18 proposing and what I am talking about will be clearer in
19 graphic terms. I am sorry everybody in the audience doesn't
20 have a copy, but that is where we are at the moment.

21 More particularly, we recommend that the
22 Commission place the southeastern two-thirds of the area north
23 of N Street in the R5-C zone. And you can see that on the map
24 in Figure 3 on the bottom of page 2. South of N Street, we
25 recommend maintaining the SP zone for the land already planned
26 for the expansion of the SP-2 zone Washington Plaza Hotel.

1 That is where we were in the case before and I believe that is
2 where the Zoning Commission was previously when they initially
3 dealt with Square 245. We are in the same place and have no
4 reason to change our recommendation. The remaining portion of
5 Square 245 should become R5-E, as would all of Square 281.
6 And again, that is where the Zoning Commission did previously
7 before they reopened these squares in this continued case.

8 The remaining northwestern third near Logan
9 Circle toward Rhode Island Avenue should become an R5-B zone,
10 which is what we were recommending for the larger area
11 previously. You can see on the map that this covers -- it is
12 on both sides of Vermont Avenue and narrowly goes up to P
13 Street crossing Rhode Island Avenue. The limits of this
14 zoning, with the exception of those two squares that the Chair
15 referred to earlier, are essentially the same limits that we
16 have been dealing with through this case for the Logan Circle
17 area. The only part that has been -- and there was some more
18 that was decided further to the west, which is out of the case
19 now.

20 The portions of Square 314 along 12th Street and
21 M Street are more problematical. They were to the Commission
22 and to the Office of Planning in our previous go-around on
23 this case. Because of the lower existing densities but less
24 than robust condition of the 1200 block of 12th Street, we
25 recommend R5-D zoning. That is also adjacent to the higher
26 intensity R5-E zoning which we have recommended to the west.

1 It is OP's belief that the medium density apartment houses
2 permitted in this zone will encourage renovation and in field
3 development that the block needs but will not overwhelm the
4 less dense areas to the east.

5 The zoning of the remaining six lots in Square
6 314 on the south, which are as I recall lots 3 and 4 -- if I
7 am not mistaken -- 41, 42, 43 and 44. I think that is
8 correct.

9 CHAIRPERSON KRESS: 3 and 4.

10 MR. COLBY: Is correct?

11 CHAIRPERSON KRESS: What you just said is
12 correct.

13 MR. COLBY: The Commission advertised 3 and 4
14 for -- which is currently SP zoned for C2-C. And they did
15 that -- and it slipped by me. I was here at the time, but it
16 got past me. But they did that, I am certain, in large part
17 because the comprehensive plan which we are about to begin
18 implementing in terms of its consistency -- or implement
19 zoning that will be consistent with the comp plan -- shows
20 that to be mixed use medium density/commercial medium density/
21 residential, which the C2-C zoning fits. Also, the area to
22 the east of that is C2-C zoned also.

23 That would take care of those two squares. The
24 remaining -- or two parcels. The remaining four lots closer
25 to 12th Street, while they were covered in the new designation
26 in the comprehensive plan in the same way that the two we

1 recommended to be C2-C, they were not advertised in the case
2 to be C2-C. And thus, we don't believe that -- and thus we
3 have in this case recommended that they be rezoned R5-E, and
4 that we revisit it as part of zoning consistency and determine
5 whether or not it should be rezoned C2-C or left as R5-E. We
6 have got -- I think we have discussed some of that here. We
7 think 12th Street should maintain the residential character
8 that it has. We are less concerned about M Street, and we
9 probably would sort out those properties on that basis. But
10 right now we are recommending they be part of the large R5-E
11 zoning which we have recommended to the east -- west, I mean,
12 I am sorry.

13 CHAIRPERSON KRESS: That is just 41 and 42?

14 MR. COLBY: Yes. 41 and 42 and 43 and 44 are
15 the two small pieces on top.

16 CHAIRPERSON KRESS: Right.

17 MR. COLBY: 41 and 42 face M Street and 43 and
18 44 face 12th Street. And that is in our mind a major
19 difference in the two sets of properties. The blocks closest
20 -- and I am on page 3 of our report -- the blocks closest to
21 Logan Circle and along Vermont and Rhode Island Avenue are
22 buildings like those in the Logan Circle historic district.
23 There are no vacant lots and the existing structures have been
24 fully rehabilitated, are in excellent shape, and are very
25 handsome. And as I said, they appear to be significantly
26 higher density than R5-B would permit. But the community does

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1 not seem to be concerned in this case about non-conformity.
2 It is more important to almost send a signal that these intact
3 blocks next to historic Logan Circle that have potentially
4 historic properties on them should have the same R5-B zoning
5 that is surrounding Logan Circle. And we have kind of come to
6 the conclusion that where properties exist and are non-
7 conforming, we have less concern about the conformity issue
8 than we do where a property is trying to be revitalized and
9 redeveloped. You are not going to get -- if you restrict to
10 R5-B standards, you are not going to get full or renovation of
11 the properties that need it. And so that is where we have
12 called for R5-C in areas where redevelopment is occurring
13 under R5-C standards. Where it has already occurred and there
14 is no redevelopment coming and needed, then I think the issue
15 of non-conformity is not a problem. In other words, you've
16 got to conform for new development to get it and get the
17 financing. But once you've got it, it is less relevant and
18 less important. I may not have stated that very well, but I
19 think it is very clear to us and that is the distinction we
20 are making between these various areas.

21 As regards R5-C, again on page 3 you can see the
22 fairly large area, including all of Square 281 and the Iowa --
23 both the major apartments and the condominiums -- the Calomris
24 property, the fairly new I think they are condominiums near
25 the corner of 13th and N Street, and the remainder of the
26 block and all the 12th Street frontage in Square 281. And

1 then the rest of the area that you see, primarily the PEPCO
2 block to the east of 12th Street and going up to Logan Circle
3 north of O and across 13th, we are recommending for R5-C
4 zoning. That is in large part a height issue. R5-C rather
5 than R5-B because R5-C permits the kind of development that is
6 occurring in that block in Square 281 right now, residential
7 development. At the same time as not R5-D, which it was or is
8 currently zoned, and certainly not R5-E because of the height
9 distinctions. It is important to keep the character of the
10 area at the same time as provide enough potential density for
11 development.

12 The apartment block -- well, the Iowa is
13 sufficiently renovated. Our information shows that the FAR
14 for the total complex is 1.7 FAR, even though you wouldn't
15 know that from the appearance of the buildings, and
16 particularly for the Iowa itself as part of that complex. But
17 the lower FAR is due to the amount of open space and the
18 Iowa's height is what it is. It is an exception, clearly, to
19 what we would see the area -- I mean, it is a wonderful
20 exception perhaps, but it is an exception to what the R5-C
21 zoning would permit.

22 And again on page 4, you will see a picture in
23 the upper left-hand corner of the Barrett condominium where
24 two existing row dwellings were renovated and two new
25 dwellings were built beside them. What you get is a fairly
26 intense rowhouse development of four units with I am not sure

1 that the 3 FAR is correct, but something close to 3 FAR of
2 development with sort of piggyback duplex units occupying the
3 English basement and first floor and then second and third
4 floor. The R5-C, while it permits a 60-foot structure, we
5 believe the 60-foot structure isn't going to be built. We
6 feel like R5-C is needed for that kind of development, but an
7 R5-C to build it fully to 60 feet would -- if one did that,
8 one would require elevators and quickly get into costly
9 construction and really would require larger lots. That is
10 really an R5-E type of development when you get to that point.
11 So the height didn't seem to be an issue with the R5-C.

12 As far as R5-E goes, OP recommended again all of
13 Square -- did I get the squares wrong before -- yes, all of
14 squares 281 and 245 to be R5-E. They already have 90-foot
15 apartments and hotels and 90-foot heights and 6 FARs are
16 appropriate and would not be intrusive. And the area south of
17 M Street is built in the same way, high density apartments.

18 There are some problem areas that you know from
19 reading the record and having been involved in this case to
20 date, which we point out in the report. One is the area which
21 we won't talk about rezoning, but clearly we would see that a
22 problem and we would consider coming back to sort that problem
23 out. But in any case, a problem which is part of this case,
24 which we have titled 1A in the report on page 5, figure 12, is
25 the car wash/liquor store property on 13th Street. The owner
26 is seeking R5-E zoning, and rather than seek it for just that

1 spot, it is suggested that it should occur along the street.
2 And I guess I will let that applicant and his representative
3 speak to that issue. We feel, as we have pointed out, that
4 that is inappropriate north of N Street. That we really need
5 to hold the line and the stronger you make the line, the more
6 likely you are to hold to it, and that should be on N Street.
7 The gas station has been a problem all along because it is
8 non-conforming no matter what zoning we put on here. Once it
9 becomes any of the R zones, it is non-conforming. So as we
10 have said, we just think that the whole square should be R5-C,
11 and clearly the gas station is non-conforming in that
12 situation. We think the gas station will remain no matter
13 what. It is unlikely that residential development will be
14 built where the gas station is. And so we haven't tried to
15 accommodate it specially. There doesn't seem to be any need
16 to, and it would do harm to this concept. The liquor store
17 and the car wash are commercial properties likely to remain
18 profitable uses we believe for some time. Should the
19 residential market continue to develop as it has, the
20 development could at least in theory be achieved under R5-C
21 zoning. I think that as long as that operation is profitable,
22 it won't be developed under R5-C zoning or under any
23 residential zoning. But the future will tell on that. But
24 R5-E development on these sites would bring with it a
25 considerable change in the visual characteristics of 13th
26 Street north of N. I wish we had the slides because you could

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1 really see that there is a major difference, again, at N
2 Street. The pictures in our report, while they give you a
3 hint of that, don't really tell that story.

4 There would be no gateway to Logan Circle at
5 13th and N, but rather a step-down from the 90-foot heights
6 south of N and that intense development, and that would, with
7 R5-E, continue right up to O Street and there would be no
8 transition into the historic district. It would just start
9 suddenly at Logan Circle. So OP is, again, trying to get the
10 Commission to buy into N Street as being an important line.
11 We believe it is. Without the major high rise apartment
12 building that is outside the case area in -- well, I won't
13 even get into 243.

14 The owners of the Evergreen Apartments, that is
15 another issue. It was before the Commission previously and is
16 one reason the Commission reopened this part of the case. We
17 recommended the same. Given the importance of the -- oh, are
18 we into the presentation?

19 MR. COCHRAN: It is nowhere to be found.

20 MR. COLBY: Okay. Sorry. Given the importance of N
21 Street as a dividing line and the hotel needs SP zoning -- to
22 put a spot of SP would be not inappropriate in terms of height
23 and bulk in that area where the Evergreen wants to go. I am
24 looking to see if there is not a -- do we have it on a -- we
25 don't have it on a --

26 MR. COCHRAN: What do you want, the Evergreen?

1 MR. COLBY: Yes. It is dotted in on figure 18.
2 It is halfway up between M and N Streets on 13th. If you
3 leave that as a spot of SP, we think the spot zoning and bad
4 zoning, while it would accomplish the Evergreen's ability to
5 put a hotel there, I should say that the Evergreen has
6 proceeded through a BZA case and gotten a hotel -- the site
7 has been approved for hotel use. The order has not been
8 completed as I understand it, but it is expected. And once
9 the order has been approved, the hotel can be built there.
10 The applicant has argued that as a non-conforming use, the
11 hotel will have a hard time achieving the funding. The only
12 way to reach SP across is either directly across from the
13 Washington Plaza Hotel on the West, crossing over a
14 residential Sutton Place/Sutton Plaza apartment building, and
15 basically redesignating in a sense an apartment building as
16 SP. In this case this is very difficult for us to recommend
17 because the case is all about pulling these apartment
18 buildings out of SP and designating them R5-E.

19 That is an issue, and I guess I will respond to
20 Commission questions on that, which I am sure we will get, and
21 also there will be more testimony on it. Number 3, as we have
22 spoken to already, the properties at the bottom of Square 314
23 have been recommended for various zoning -- C2-C for
24 properties 3 and 4, and for lots 41, 42, 43 and 44, R5-E along
25 at least as a placeholder along with the others in 281. We
26 will sort that out and see if they should all be a mixture of

1 R5-D and C2-C in the future.

2 So, again, I think if you look at the
3 conclusion, it is important to recognize that this is about
4 preserving a character of an area in Logan Circle. It is
5 about permitting the kind of development that will help to
6 preserve that and revitalize the area, which has struggled in
7 some sense to achieve that revitalization away from the
8 Circle. It is now getting more of it along the Circle and
9 back into the community south of P Street. And it is about
10 how to take an area which is very much mixed in terms of its
11 uses and sort them out in an imperfect way, which has been
12 true of all the SP. I think -- I don't know, Steve, you
13 weren't here to hear what I said. Do you want to say -- this
14 is Steve's report and you may gather that it is not mine by
15 the way I sort of mused through it.

16 MR. COCHRAN: First, Madam Chair and fellow
17 Commissioners, I apologize. I was born a month prematurely,
18 and I seem to have been overcompensating for that ever since
19 by being late. I wish that our PowerPoint presentation were
20 working. It seems to be nowhere to be found on a zip disk. I
21 hope that someday you will have built in zip disks over here.

22 Anyway, I would like to run through a few
23 things, and please feel free to cut me off if David has
24 already run through it.

25 CHAIRPERSON KRESS: That doesn't provide any
26 amplification.

1 MR. COCHRAN: No, I thought it was just for the
2 record.

3 CHAIRPERSON KRESS: Yes. I was going to say I
4 don't know that you need to hold it. It is up to you.

5 MR. COCHRAN: Okay. I think David probably
6 mentioned that we view the character of the neighborhood as
7 being significantly different south of N Street as being north
8 of N Street. With all awareness of the perhaps
9 inappropriateness of the term, we viewed N street as a Maginot
10 line. I realize the Maginot line was broken through rather
11 quickly. We hope ours will be better than the one that the
12 French developed.

13 The Logan Circle historic district is up here.
14 As you probably know, the combination of the 14th Street
15 expanded historic district and the proposed Mt. Vernon West
16 historic district will wind up encompassing almost all of
17 this. In the Mt. Vernon West district, there is something
18 like 85 contributing properties. In the greater 14th Street
19 district, there are about 92 contributing properties. So we
20 are talking about a sensitive neighborhood.

21 David has already run through the existing
22 zoning. In through here along Rhode Island Avenue, Vermont
23 Avenue, the areas of O Street and P Street that are within a
24 block of Logan Circle, we are proposing R5-B zoning. We
25 realize that much of the stock that is already there would be
26 non-conforming under R5-B zoning. We have worked with the

1 ANC. The ANC would prefer to have their houses be non-
2 conforming rather than to risk after a fire or whatever new
3 and more incompatible housing being built.

4 Once we get outside of here, which is also the
5 healthiest part of the neighborhood, we are looking at some
6 sections that are fairly strong, but not completely there yet.
7 This is where we are proposing R5-C zoning, which has a 3.0
8 FAR, which allows you under a matter of right to go up to 60
9 feet. However, David, if you could find -- do you think you
10 could find the slide for the Barrett on this? It is listed on
11 12th Street on the west side on the Barrett. This is a new
12 condominium development that looks for all intents and
13 purposes from the street to be an old townhouse. It is
14 designed by Eric Colbert. It is a 3.0 FAR. It rises to
15 somewhere between 40 and 50 feet in height. We are viewing
16 this as the model for the R5-C zoning. We just don't think
17 that it is likely that a developer is going to bother going up
18 to 60 feet for the added floor and the expense of putting a
19 new elevator in. So we are looking at the Barrett as -- you
20 have to close that out and then go to file open and it is 12th
21 Street, west side. The Barrett would be the model. That is
22 why we are proposing R5-C for all in through here, where you
23 actually have much of the zoning in R5-C density. In through
24 these blocks, up through here, here -- basically the bulk of
25 the neighborhood north of N Street would become C.

26 Now I realize that we had earlier proposed B.

1 Well, we have looked at it some more and we have talked to
2 some developers. We think that although it is now R5-D, it
3 had been talked about as R5-B, we would rather strike the
4 middle ground, which we realize is legally possible, and we
5 are now recommending C instead.

6 When we get over to here on -- actually, I don't
7 believe that is it, David. When we get down here into Square
8 314, we are getting into significantly more of a deteriorated
9 condition. There are vacant buildings. There are boarded-up
10 5-story apartments. There is an apartment that is still shown
11 as being on the plats, but it doesn't even exist. It has been
12 torn down that recently. We are looking at a condition that
13 needs something more than C. So for this area, we are looking
14 at R5-D as an incentive to further development. Again,
15 somewhere between the more intensive E in here and the less
16 intensive C and B up here.

17 David has already spoken to these uses. Even
18 though these C2-C buildings are in fact public housing, 2-
19 stories high, and not likely to be turned into C2-C uses, the
20 comprehensive plan does say that this should be C2-C. We can
21 see the logic for continuing it along. However, while the two
22 buildings here are appropriate for C2-C, we would prefer that
23 you decide to make these into R5-E for now because that is
24 allowed, and eventually we will be coming back and asking you
25 to continue the C2-C zoning for here. It is another matter on
26 12th Street. We will eventually be asking you to go to R5-D

1 zoning for here to continue the basically residential
2 character of 12th Street on the east side. But for now, we
3 would ask you simply to keep it as SP -- to R5-E, rather.

4 MR. COLBY: What we are looking at is a map
5 indicating the height of the building.

6 MR. COCHRAN: Yes. The map indicates building
7 heights. The different colors indicate heights not proposed
8 zones. Sorry about that. We do have a map that indicates the
9 proposed --

10 CHAIRPERSON KRESS: We are needing again to wrap
11 up. We have covered a lot of this, if you don't mind.

12 MR. COCHRAN: Okay.

13 CHAIRPERSON KRESS: I am sorry.

14 MR. COCHRAN: Okay. This we would only ask you
15 to look into the -- this seems to be the most controversial
16 section. The proposed alternative to go back 110 feet and
17 make it all R5-E. We would ask you to look in the document
18 that we gave you last week. Look at the difference between
19 R5-E and R5-C. The possibility of 90-foot heights or at least
20 the 81 feet that the Iowa is versus what we think to be the
21 likely 50-foot heights that would develop under an R5-C zone.
22 We feel that the Iowa is the exception. Admittedly, it was an
23 early in the century exception, but still an exception to the
24 heights in this block. We show you through some microstation
25 presentations in the appendices, the difference, the
26 significant difference between a 50-foot height and a 90-foot

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1 height. We feel that in an historic area, as exists here,
2 that the 50-foot height that you are likely to get under the
3 R5-C zoning would respect the district more, and would at a
4 3.0 FAR allow reasonable return on investment, and make a
5 logical transition between the 90-foot heights south of N and
6 the shorter buildings right around the Circle in the old zone.
7 I hope by the time the decision meeting comes around I will be
8 able to show you the slide show.

9 CHAIRPERSON KRESS: Thank you. Are there
10 questions now of Office of Planning Commissioners or would you
11 rather hold them until after we have some more testimony?

12 COMMISSIONER PARSONS: I have no questions.

13 COMMISSIONER HOOD: Let me just check for a
14 second. I have a little question here.

15 CHAIRPERSON KRESS: Commissioner Franklin?

16 COMMISSIONER FRANKLIN: It can be held.

17 MS. PRUITT-WILLIAMS: No, go ahead. I am just saying
18 normally we ask OP questions and then kind of finish and come
19 back. I think in this case, I personally would like to hear
20 from the witnesses and then perhaps ask OP some questions.
21 But if there is something -- I don't want to cut off something
22 pressing. All right. With that, I will move to the ANC for
23 testimony.

24 MS. MILES: Madam Chair, good evening, and
25 members of the Commission. I am Leslie Miles. I am Chair of
26 ANC 2F. Beside me is Helen Kramer, who is the chair of our

1 committee on community development. We switched roles from
2 last year. We have sent in a considerable amount of
3 correspondence on these proposed zoning changes, and we would
4 just like to briefly address the three controversial issues.
5 I am going to turn this over to Commissioner Kramer to discuss
6 them. I would just like to say that I also think that the
7 Office of Planning did a truly commendable job on this. It
8 was a very nice presentation and they were very receptive to
9 our concerns and questions about their developed proposal. It
10 is very exciting to live in Logan Circle now, where even the
11 empty lots and the abandoned buildings are now being sold for
12 record prices.

13 MS. KRAMER: Thank you. Last night, the
14 Commission met at its regular monthly meeting and took
15 positions on the remaining controversial issues that we had
16 not already voted on. You have in your record letters that
17 the Commission sent in regard to several of the proposals. I
18 will just briefly review that.

19 In regard to Square 280, we would like to
20 reiterate our strong opposition to the alternative proposal,
21 which we believe would have a very adverse effect on the
22 existing townhouses in the square, cutting off light, and
23 would in our view destroy the conception offered by the Office
24 of Planning of the step-down approach to the gateway at Logan
25 Circle, which we support.

26 The second controversial matter is the request

1 by the owners of the Evergreen Apartments to retain the SP-2
2 zoning by extending a swath from the SP-2 zoning currently
3 held by the Washington Plaza Hotel through the Sutton Towers
4 Apartment building across 13th Street. The Commission voted
5 unanimously in opposition to this proposal. We think it
6 represents extremely bad urban planning and poses a threat of
7 possible future conversion of apartment buildings to office
8 uses, which we would not welcome at all.

9 The question of the zoning on 12th and M Street
10 is more problematical. We are already on record as supporting
11 the recommendation by OP for R5-D zoning in the 1200 block of
12 12th Street, that is the block between M and N. The empty lot
13 there and the boarded up apartment building on the east side
14 of the street are soon to be redeveloped as part of a PUD
15 connected to hotel development on New York Avenue. We have
16 been working with the developer, Art Lindy, in terms of design
17 review. However, the condominium development that he proposes
18 would not be feasible if the zoning were reduced below the R5-
19 D level, and we would hope that the Commission would support
20 the interest of the community in obtaining this positive
21 development in a block that has suffered from blight for at
22 least the last ten years.

23 Commissioner Miles will address the issue of the
24 proposed C2-C zoning along M Street, which is in her single
25 member district.

26 MS. MILES: Briefly, I just want to say that

1 this is the only point on which we are really disagreeing with
2 OP. That block, which is the block of M Street between 11th
3 and 12th on the north side, contains four original rowhouses
4 and some low rise development -- the Frontiers Public Housing
5 to the east. The SP zone was really there to accommodate the
6 two townhouses that were being used, one for an office and the
7 other for a dental lab. The office is no longer there. That
8 building has been sold. All that remains that is SP there is
9 the dental lab. The owner of the dental lab, who also lives
10 there, also owns the empty shell to his west. Those four
11 townhouses represent the way we think that block ought to
12 look. If it becomes commercial there to follow the logic that
13 OP presents of having the 11th Street commercial that wraps
14 around the corner onto M Street, commercial continuing across
15 that block, that makes less sense to us than continuing the
16 residential development or residential zone along the 12th
17 Street side and wrapping that along M Street. Those three
18 townhouses are all being used as residences or shells, and
19 there is no reason to make them into potentially commercial
20 development, which could be anything from a pool hall, a
21 bowling alley, or a CBRF. We feel very strongly about the
22 need to maintain a dividing line. We do not want to see even
23 office development particularly, which is what is severely
24 going to encroach upon our residential neighborhood, and we do
25 not want to see commercial zoning on that block. Are there
26 any questions about our view on this since this is in

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1 contravention to OP's recommendation? Any questions on any of
2 the other positions we are taking?

3 CHAIRPERSON KRESS: Just to summarize.
4 Basically you are in agreement in general with OP's
5 recommendations?

6 MS. MILES: Yes.

7 CHAIRPERSON KRESS: Except specifically what
8 you've just spoken to?

9 MS. MILES: Yes. We support the overall concept
10 for the community. We think that they have correctly grasped
11 the issues within the community and that the zoning that they
12 are proposing will overall be responsive to the needs of
13 developers and residents. We are supporting their position on
14 the Evergreen, on the Calomris interest property, and on the
15 east side of that block of 12th Street, the 1200 block of 12th
16 Street. It is only on this one little piece on M and the
17 little corner of 12th that we disagree.

18 MS. KRAMER: And I would like to add that last
19 night the Commission also voted unanimously to support the
20 recommendation to reconsider the R5-E zoning on the southern
21 part of square 243 north of N Street. And with the permission
22 of the chairperson, I would just like to say that the
23 Commission supports continuing the R5-C zoning to that site as
24 more consistent with the whole conception of the step-down as
25 you approach Logan Circle.

26 COMMISSIONER HOOD: I just have one quick

1 question. Where the C2-C zoning is, you would like to see --
2 you are in opposition of the C2-C?

3 MS. MILES: Right. I guess at this stage all
4 that we can ask for is that it remain SP, but that we would
5 ask that you re-notice it and rezone it as -- what did we
6 want, R5-D?

7 MS. KRAMER: R5-D.

8 MS. MILES: D.

9 COMMISSIONER HOOD: To continue?

10 MS. MILES: R5-D.

11 COMMISSIONER FRANKLIN: That goes to the corner
12 properties as well as to the lots 3 and 4 that are in the
13 recommendation as C2-C?

14 MS. MILES: I believe they do.

15 MS. KRAMER: Yes.

16 MS. MILES: Yes, they go around the corner.

17 Yes.

18 CHAIRPERSON KRESS: You saw this report. So you
19 know what we are talking about.

20 MS. KRAMER: Yes.

21 MS. MILES: Yes.

22 CHAIRPERSON KRESS: Okay, good. That is
23 helpful.

24 COMMISSIONER FRANKLIN: So you want the R5-D to
25 go down to M Street?

26 MS. MILES: And to encompass that block of M

1 Street between 11th and 12th -- in as much as there is already
2 low-rise --

3 COMMISSIONER FRANKLIN: On the proposal, it is
4 encompassing half of 314.

5 MS. MILES: Right. And based on the concept
6 that OP has presented would be to essentially continue this
7 commercial zone from around 11th Street. We would rather see
8 rezoning of the Frontier property essentially -- the eastern
9 side of that block -- to residential as well, retaining, of
10 course, commercial on the 11th Street side.

11 COMMISSIONER FRANKLIN: R5-D not R5-E?

12 MS. MILES: R5-D.

13 COMMISSIONER FRANKLIN: D?

14 MS. MILES: D.

15 CHAIRPERSON KRESS: So basically -- just to make
16 this clear -- what is shown in figure 19 on page 6 -- since
17 you have that book in front of you -- no wait a minute, that
18 is not it. I meant --

19 MS. KRAMER: There are two figure 19's.

20 MS. MILES: You mean the diagram?

21 MS. KRAMER: The diagram.

22 CHAIRPERSON KRESS: Yes. Excuse me. That area
23 that is noted right there is the area you want to see all of
24 it be R5-D?

25 MS. KRAMER: Right.

26 MS. MILES: And as well just to the immediate

1 east those low-rise structures shown there, those small
2 buildings, that are the Frontier Public Housing. To be
3 consistent, we think that those should also be zoned R5-D.

4 MS. KRAMER: And the ones to the right as well.

5 MS. MILES: Right, they are not part of this
6 case.

7 MS. KRAMER: Oh, that is right. Right. That is
8 why we are not talking about it.

9 CHAIRPERSON KRESS: Thank you. Any other
10 questions, Commissioners? Thank you so much for coming.

11 MS. MILES: Thank you very much.

12 CHAIRPERSON KRESS: We appreciate your time.
13 With that, I will move to Mr. Chris Collins, representing the
14 F.B. Partnership.

15 MR. COLLINS: Good evening. My name is
16 Christopher Collins. I am with Wilkes, Artis, Hedrick & Lane.
17 Seated to my right is David Miller. We are representing F.B.
18 Partnership, the owners of the property at 1225 13th Street,
19 N.W.

20 We submitted to you a letter of today's date,
21 May 6, 1999. I hope that you got it.

22 CHAIRPERSON KRESS: Yes, we did.

23 MR. COLLINS: And our position is very simple
24 and straightforward. Let me just summarize it for you briefly
25 in the few minutes we have. We have filed --

26 CHAIRPERSON KRESS: May I ask you just to get us

1 to the exact location on the map? Do you have this copy of
2 the Office of Planning Report?

3 MR. COLLINS: Well, I have the recommended
4 zoning map that everyone --

5 CHAIRPERSON KRESS: There we go. Sorry, that
6 works.

7 MR. COLLINS: If you look in the Square 281.

8 CHAIRPERSON KRESS: Yes.

9 MR. COLLINS: Where is says R5-E?

10 CHAIRPERSON KRESS: Yes.

11 MR. COLLINS: Look -- the building that is above
12 the 5 and the E.

13 CHAIRPERSON KRESS: The building that is above
14 both the 5 and the E?

15 MR. COLLINS: The 5 and the E.

16 CHAIRPERSON KRESS: Okay. Thank you.

17 MR. COLLINS: F.B. Partnership has filed and
18 obtained the Board of Zoning Adjustment ruling to approve
19 hotel use pursuant to the SP zoning. That was a ruling that
20 this Commission gave back in January that allowed that to
21 proceed in spite of the pending rezoning. We are asking now
22 that the Commission retain the SP-2 zoning on this property
23 for the simple reason that rezoning to R5-E would make the
24 hotel a non-conforming use. Non-conforming use status will
25 adverse affect the hotel project's financing because it will
26 impair -- rendering the use non-conforming will render the use

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1 non-conforming will impair the security for the loan. It is
2 very difficult -- it may be an unusual situation, but we have
3 the hotel approval and we are going forward. The OP report
4 indicated that F.B. Partnership had their financing. That is
5 not correct. They couldn't get their financing until they get
6 the zoning approval, and we don't have the order yet. So now
7 that we are going to get the order and going out on the market
8 with a building that is automatically going to be a non-
9 conforming use before it is even established, that makes it
10 somewhat difficult to obtain financing. As those of you who
11 are in the industry know, there are many, many opportunities
12 for lenders to give money, and anything that looks less than
13 totally buttoned down and tied up nicely does not attract the
14 attention of the lending community.

15 We think that the SP-2 zoning can be retained
16 without upsetting the zone plan because both the existing SP-2
17 zone and the R5-E zone allow a 90-foot height and a 6 FAR.
18 The only issue would therefore be the use. The hotel use was
19 permitted by the BZA with the support of both the Office of
20 Planning and the community. The Sutton Plaza Apartment
21 building, which is across the street, would be the link
22 between the existing SP-2 and the SP-2 retained on the hotel
23 property. That is a 90-foot plus or minus building, 10
24 stories, with what appears to be some apartment and a
25 penthouse, which is a whole different issue I understand. But
26 the uses there would be very limited matter of right SP uses

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1 that could go in there. But likely given the market, the
2 likely situation would be that the apartments, which were
3 recently renovated for the private market use, would continue
4 to remain as apartments.

5 We also believe that the proposed zoning to
6 retain SP-2 would not be inconsistent with the comprehensive
7 plan because the area was recently redesignated on the land
8 use map as high density residential from moderate density
9 residential at the request of the Office of Planning.

10 There is also language in the Ward 2 economic
11 development element that would support hotel use or
12 encouraging hotel use on this property. With that, I will
13 turn it over to Mr. Miller and ask if he has any other
14 comments.

15 MR. MILLER: There is only one thing I want to
16 add to Chris's statement, and that is the way this project is
17 coming together, this hotel, we believe and we have had
18 discussions with the ANC -- we all believe it will be
19 beneficial to the neighborhood and it will upgrade the area.
20 The areas that we had some concern on, this project is coming
21 together very tightly. The numbers are very tight. Bringing
22 the franchisers in is fairly difficult. Adding one more
23 inconsistent piece to this deal only makes the acquisition of
24 financing that much more difficult, and we have got some real
25 concern whether we are actually going to be able to secure
26 financing with this many hits against this project, even

1 though we think this project will be a good, viable project
2 once it gets off the ground. That is the extent.

3 COMMISSIONER CLARENS: Well, Mr. Collins, I fail
4 to see the difficulty. It is a non-conforming use. You have
5 a special exception. You have a special exception granted by
6 the BZA that is based on the SP. Now if the underlying zoning
7 changes, what happens to the special exception?

8 MR. COLLINS: The use would be a non-conforming
9 use. The use would become non-conforming if it is rezoned.

10 COMMISSIONER CLARENS: Wouldn't you seek then a
11 variance? You don't need to seek anything? It is a non-
12 conforming use, but it is grandfathered into the zone.

13 MR. COLLINS: Grandfathered. But if it is
14 destroyed to an extent greater than 50 percent, it cannot be
15 rebuilt. And that would impair -- that very fact would impair
16 the security for the loan and would case the lender to think
17 why should I invest my money on a building that if it is ever
18 destroyed more than 50 percent, we would not be able to
19 rebuild.

20 COMMISSIONER CLARENS: I understand. Could you
21 -- would that change if what you received from BZA was a use
22 variance?

23 MR. COLLINS: I don't think so. No, a non-
24 conforming use is a defined term in the zoning regulations.
25 And a use that was --

26 COMMISSIONER CLARENS: No, but the variance

1 doesn't go with the building. A use variance would go with
2 the property and it would allow the use of that property in
3 perpetuity for that hotel to the described FAR bulk, et
4 cetera.

5 MR. COLLINS: We did not seek a use variance. A
6 use variance is a very difficult standard.

7 COMMISSIONER CLARENS: I understand you haven't.

8 MR. COLLINS: You have to prove that the
9 property cannot be used for any purpose for which it is zoned.
10 When you are zoned SP-2, it is tough to ask for a use variance
11 for a hotel in the SP-2 zone because it is permitted as a
12 special exception in the SP-2 zone.

13 COMMISSIONER CLARENS: No. But you can come as
14 a unique situation because of the zoning history associated
15 with the property and the fact that you have gone through all
16 those issues, et cetera. You can make the case. I am sure
17 that if you put your head to it --

18 MR. COLLINS: Is this -- forgive me, are you
19 suggesting we make the case after the building is destroyed or
20 before? If it is before, we don't need to because we have the
21 hotel.

22 COMMISSIONER FRANKLIN: How long is the special
23 exception good for?

24 MR. COLLINS: Forever.

25 COMMISSIONER CLARENS: It is in perpetuity.

26 COMMISSIONER FRANKLIN: That is in perpetuity.

1 MR. COLLINS: Until the owner elects to change
2 the use and obtains a C of O for something other than a hotel.

3 COMMISSIONER FRANKLIN: What is the -- sorry, I
4 didn't mean to interrupt any questions.

5 CHAIRPERSON KRESS: No, I think it is on the
6 same point. Is that all right with you?

7 COMMISSIONER FRANKLIN: What is the status of
8 your financing at the present time?

9 MR. MILLER: We have only had preliminary
10 discussions of the different financing options.

11 COMMISSIONER FRANKLIN: Well, it seems to me
12 that the very pendency of this zoning would chill your
13 financing. Wouldn't that be the case? Are the people that
14 you are talking to aware of the pendency of this matter?

15 MR. MILLER: We haven't had that extensive of
16 discussions with the financiers.

17 COMMISSIONER FRANKLIN: It sounds to me like you
18 are very far away from getting a commitment. It sounds to me
19 like you are -- you sound like a lot of PUD applicants who
20 come here.

21 MR. COLLINS: It is difficult to -- until we
22 have the zoning in hand, it is hard to market a project that
23 is speculative. And the less speculative it is, you have to
24 time this precisely. And once we have the order, we are in a
25 position to go to the next step. We don't have the order yet.
26 We have the verbal approval but not the order I have nothing

1 to show anyone.

2 COMMISSIONER FRANKLIN: What is the nature of
3 the hotel that you are contemplating?

4 MR. MILLER: It is a limited service type of
5 property, 112 units, a franchiser like a Comfort Inn or
6 Quality Inn or Ramada Inn.

7 COMMISSIONER PARSONS: Mr. Collins, how many
8 buildings have been destroyed over 50 percent in this city in
9 the last 20 years?

10 MR. COLLINS: I don't know.

11 COMMISSIONER PARSONS: None. I have asked the
12 question before and I know the answer is none. And I think
13 this is a lending policy of 50 years ago that we can't seem to
14 turn around.

15 MR. COLLINS: I can't disagree with you.

16 COMMISSIONER PARSONS: These guys are dinosaurs.
17 It just doesn't happen. And to turn you down on a project
18 like this because of a non-conformity, I just don't
19 understand. Of course it is easy for me to sit here and say
20 that. I understand that too.

21 MR. COLLINS: Well, I can't disagree with you.

22 COMMISSIONER PARSONS: I have never had much
23 patience for this argument for that reason.

24 MR. COLLINS: Well, I understand your position
25 and I agree with your position that it is unreasonable because
26 buildings are not destroyed. This is a masonry building and

1 certainly the shell hopefully -- if there was a fire, God-
2 forbid, it would stay. The rehab, I am not sure, may include
3 sprinkling and advance fire suppression systems.

4 COMMISSIONER PARSONS: Certainly.

5 COMMISSIONER CLARENS: It definitely would
6 involve sprinklers.

7 MR. COLLINS: But notwithstanding that, we have
8 a lending community that has a lot of opportunity to pick and
9 choose where they place their money, and that is what we are
10 faced with. It is an education. I agree with you 100
11 percent.

12 COMMISSIONER CLARENS: Mr. Collins, then address
13 again perhaps briefly the issue regarding -- the issue of
14 inconsistency or consistency of the SP -- of a remaining
15 island on SP in the proposed rezoning in terms of the
16 comprehensive plan.

17 MR. COLLINS: The test is that the zoning shall
18 not be inconsistent with the comprehensive plan. In terms of
19 the physical features of the zoning -- zoning, forgive me,
20 regulates the structure on the property as well as the use on
21 the property. In terms of the structure, both the SP-2 and
22 the R5-E permit 6.0 FAR and 90 feet. So in terms of the
23 physical bulk on the property, there is a consistency there.
24 In terms of the use, we have a use in the next square over,
25 Square 245, the Washington Plaza Hotel, which is also in the
26 high density residential land use category that the council

1 recently enacted which is remaining SP-2. We are simply
2 asking that that SP-2 remain --

3 COMMISSIONER CLARENS: Where is that?

4 MR. COLLINS: Where is that? If you look on
5 this planned recommended zoning -- if you look in the lower
6 left corner of the diagram where it says SP-2 -- the building
7 -- what did I say, lower left?

8 COMMISSIONER CLARENS: This here?

9 CHAIRPERSON KRESS: It is the sliver marked SP-
10 2? Is that what you are saying?

11 MR. COLLINS: Where it says SP-2. It is the big
12 thing that says SP-2. That is remaining.

13 COMMISSIONER CLARENS: That is essentially the
14 Washington.

15 MR. COLLINS: That points to a little sliver
16 which also is remaining, I understand, per --

17 CHAIRPERSON KRESS: But the rest of it -- you
18 are pointing to the whole area?

19 MR. COLLINS: Where it says SP-2. That is SP-2.
20 That has a hotel.

21 COMMISSIONER CLARENS: But that is adjacent to -
22 - what is immediately -- the hotel is zoned right now what?

23 MR. COLLINS: SP-2.

24 COMMISSIONER CLARENS: SP-2.

25 MR. COLLINS: And it will remain SP-2. And the
26 land use map and comp plan designate it as high density

1 residential, the same as this property.

2 COMMISSIONER FRANKLIN: If F.B. the fee simple
3 owner now or just a contract owner?

4 MR. MILLER: A fee simple owner.

5 COMMISSIONER FRANKLIN: And if you didn't
6 develop a hotel on this property, what would you do with it?

7 MR. MILLER: We don't know. We have had it for
8 -- we have had the property for about 12 years give or take.
9 It is currently a community residential facility and it houses
10 different programs for the mentally ill and mentally retarded.
11 The city has wavered back and forth on whether they like that
12 use in such a large building. And on the most recent ruling,
13 if you would, by the advocacy groups is that they don't like
14 it. So we are in the process of outplacng the different
15 programs from the building.

16 COMMISSIONER FRANKLIN: Did you purchase it
17 while it was in that use?

18 MR. MILLER: No. We purchased it while it was
19 an apartment building and we had a special exception -- we
20 applied for a special exception.

21 COMMISSIONER FRANKLIN: And your belief is that
22 as an apartment, either as a condo or rental, it is not --

23 MR. MILLER: We have done preliminary financials
24 and the preliminary financials show that apartment use would
25 not support the debt service that the building is currently
26 carrying.

1 COMMISSIONER FRANKLIN: That it is currently
2 carrying. And this debt service was -- the debt was incurred
3 for the purpose of converting it to a community residential
4 facility?

5 CHAIRPERSON KRESS: A shot in the dark. Any
6 other way to go? I mean obviously I happen to agree with
7 Commissioner Parsons and the banking folks are in the dark
8 ages. Is there any other way to go about this other than
9 this, which appears to be a spot zoning?

10 MR. COLLINS: Well, it would not be a spot
11 zoning if the Sutton Plaza was included. And that is why we
12 suggested it as Exhibit B to our statement. That shows how
13 that would be achieved by linking --

14 CHAIRPERSON KRESS: Oh, yes. I saw that. I am
15 sorry. Anyone who wishes to take off their jackets, please
16 feel free. I didn't realize I had to remember to say that.
17 Forgive me.

18 COMMISSIONER HOOD: I may have missed something
19 dealing with the hotel. Let me just ask you a question. R5-E
20 -- the permitted use is apartment houses and a hotel. What am
21 I missing, the reason why you want this to remain SP-2?

22 MR. COLLINS: The R5-E zone does not allow a
23 hotel as a matter of right or by special exception. Given its
24 current SP-2 zoning, we applied for and obtained Board of
25 Zoning Adjustment approval for a hotel. When it is rezoned to
26 R5-E, the hotel use will become a non-conforming use. And we

1 are in the precarious position, as unusual as it may be, of
2 seeking to obtain financing for a use which is already going
3 to be a non-conforming use. This is certainly not of our own
4 making and we wish it were otherwise. But it is not.

5 CHAIRPERSON KRESS: Any other questions?

6 COMMISSIONER HOOD: I am still not quite
7 satisfied with my answer. My book is telling me something
8 else and I am trying to get clarification.

9 CHAIRPERSON KRESS: All right.

10 COMMISSIONER CLARENS: Part of the problem is
11 that this is speculative in nature. I mean, we don't know if
12 you have a problem. You are assuming you are going to have a
13 problem. But we in fact don't have a rejection from financial
14 entities saying, no, we will not give you financing because
15 this is being rezoned and it is going to be a non-conforming.
16 This might be based on experiences that you might have had, et
17 cetera. But the effort has not taken place trying to sell
18 this package, and you are assuming that this is another marker
19 against you and that the banks are not going to lend you the
20 money. But this is all speculative in nature and you are
21 asking us to all of a sudden introduce a big swath of SP into
22 what has been a somewhat rationally developed rezoning of this
23 whole area for something that might or might not be, in fact,
24 an issue.

25 MR. COLLINS: It is true, we have not -- the
26 owners have not been turned down on financing. We haven't

1 sought the financing at this point because they don't have the
2 use in hand to do that. But as you correctly point out, there
3 are a number of markers against it going in. It is a very
4 tight project in terms of budget and tight in terms of a lot
5 of different factors, and this would just be one more thing to
6 add on top. If this burden could be --

7 COMMISSIONER CLARENS: But it has other things
8 going for it. I mean, it has location. The whole area is
9 coming up. The convention center is going in. So there are
10 all kinds of positive elements. We cannot look only at the
11 negative elements.

12 MR. COLLINS: I agree. Our point is that this -
13 - what we are proposing is we believe not inconsistent with
14 the zone plan, nor it is inconsistent with the comprehensive
15 plan.

16 COMMISSIONER HOOD: Mr. Collins, I want to go
17 back to my question. From what I was reading from -- I don't
18 know if I have -- it was permitted from what I was reading
19 from, but apparently that law has been changed. For the
20 hotel.

21 MR. COLLINS: Oh, right, yes.

22 COMMISSIONER HOOD: Right. Okay.

23 MR. MILLER: We would have liked to have been
24 there.

25 COMMISSIONER FRANKLIN: The FAR provisions still
26 indicate hotel use in R5-E.

1 MR. COLLINS: That is because hotels that were
2 in existence as of May 15, 1980?

3 COMMISSIONER FRANKLIN: Before my time.

4 COMMISSIONER HOOD: Mine too.

5 CHAIRPERSON KRESS: I am sorry, have we
6 completed all our questions?

7 COMMISSIONER PARSONS: Yes, their five minutes
8 are up.

9 CHAIRPERSON KRESS: Thank you very much.

10 MR. COLLINS: Thank you.

11 CHAIRPERSON KRESS: With that, we will move on
12 to Steven Sher and Norm Glasgow representing U.D.G. New York,
13 LLC.

14 MR. SHER: Madam Chair and members of the
15 Commission, for the record my name is Steven E. Sher. I am
16 the Director of Zoning Services with the law firm of Wilkes,
17 Artis, Hedrick & Lane. I have given you some information,
18 some of which I was trying to make clear what was happening
19 having looked at the OP report, and I tried a little color to
20 indicate some of the things that were going on. When I signed
21 up to testify, I indicated that I was going to be appearing on
22 behalf of U.D.G. New York, LLC, which is the owner of two
23 properties or two lots which are contiguous on 12th Street.
24 And if you go four pages back, you will see out of the
25 Sandborne Atlas and the tax plats the two lots. They are the
26 lots that Ms. Kramer spoke of before as being on the east side

1 of 12th Street between M and N. They were originally part of
2 a package of properties that included a piece of property that
3 was then known as 1001 New York Avenue, which was the site of
4 a hotel PUD that was purchased by a developer and was brought
5 before the Commission back in 1988. And the last document in
6 this package is a copy of the original order of this
7 Commission approving that PUD. And I have underlined in a
8 number of places the references to this site as the off-site
9 housing amenity for that PUD.

10 I think the Commission is aware that we have
11 filed a PUD modification for that project to turn it into a
12 hotel rather than an office building. It is now known as 1000
13 K Street rather than 1001 New York Avenue. There is a hearing
14 scheduled on that for June 3. The housing amenity has changed
15 some on this site, in part because one of the buildings that
16 was on the site in 1988 has been demolished since then. And
17 you can see on the map that Office of Planning has put up, the
18 square in the lower right-hand corner right where the 314 is
19 indicated is now a vacant lot. That is one of the two lots
20 and the building immediately north of that shown in blue was
21 the other of the two lots. Those two lots are to be
22 combined to an apartment house of approximately 25 units. It
23 will exceed the FAR for the R5-B district. It would exceed
24 the lot occupancy for the R5-B district. It would not comply
25 with the parking requirements for the R5-B district, but it
26 does comply in all respects with the requirements of the R5-D,

1 as in dog, district. That is what the Office of Planning has
2 recommended. We support that zoning for that particular site
3 as well as that whole block because it would allow this
4 project to proceed as it has been contemplated. That is
5 really all I want to say about that.

6 CHAIRPERSON KRESS: Oh. That was a nice
7 surprise.

8 MR. SHER: But in the course of what has come
9 up, I need to say two other things. Our firm represents one of
10 the two owners of property on the north side of N Street
11 between 13th and Vermont Avenue, a property which has not been
12 advertised and which Mr. Williams brought up as a preliminary
13 matter and which the Commission has been around before.

14 As you will see on the second page of the
15 submission I gave you, those two properties were rezoned to
16 R5-E by order number 862 towards the end of last year. I only
17 think that somehow as a commission, you --

18 COMMISSIONER CLARENS: Excuse me. Where are we?
19 You lost me.

20 CHAIRPERSON KRESS: I am lost too.

21 MR. SHER: The second page of the original of
22 what I gave you is what you did in order 862.

23 COMMISSIONER CLARENS: I've got you. Yes, that
24 is right.

25 MR. SHER: It changed -- we represent the owners
26 of one of those two lots. One is a parking lot and the other

1 is an apartment building.

2 COMMISSIONER CLARENS: Okay.

3 MR. SHER: Nothing has been proposed or
4 advertised in this hearing to change that zoning. And I only
5 want to state for the record that we would object on the basis
6 of any -- of the Commission taking any action with respect to
7 rezoning those properties at this point because there is no
8 notice for that.

9 The other point I would make about that only,
10 and it also relates to the next thing I am going to say, is at
11 some point you need to get some finality in this process. As
12 Mr. Colby has indicated, we have been around this track three
13 times already. The Commission made a decision and issued an
14 order. I think you should be done with that. If there was a
15 rationale and a justification for zoning that property R5-E
16 back at the end of last year, I don't know what has changed
17 that at this point. Nothing -- the circumstances haven't
18 changed. The comprehensive plan hasn't changed in any way
19 that would suggest that zoning needs to be reexamined again.

20 The other point I need to make is with respect
21 to --

22 COMMISSIONER CLARENS: Okay. And help me one
23 second. Where in the Office of Planning recommendation do they
24 talk about the rezoning of that property?

25 MR. SHER: It is mentioned in two places in the
26 Office of Planning report and Mr. Colby mentioned it. It is

1 page -- in the middle column of page 6 at the top. Above the
2 area south of end street.

3 COMMISSIONER CLARENS: I've got you.

4 MR. SHER: It says while no changes have been
5 advertised, OP may ask the Commission to reconsider these
6 parts, especially if something else happens. And there is
7 another reference to it as well, I believe, earlier on in the
8 report in the sort of summary at the beginning.

9 COMMISSIONER CLARENS: Okay. I am clear now.

10 MR. SHER: I have said what I need to say about
11 that. The other thing which I didn't come here necessarily to
12 testify about because I thought it too had been a done deal
13 was the zoning of that corner of 12th and M Streets. Again,
14 the Commission discussed that and came to the conclusion back
15 in the early part -- I guess it was the early part of this
16 year or the end of last year that C2-C zoning was the most
17 appropriate zoning for those lots 3 and 4. Even since that
18 time, the comprehensive plan has been amended, and I just want
19 to submit for the record the excerpts of the plan that show
20 that particular section. I have highlighted it. It is there.
21 That says that this particular site should be -- this corner
22 should be mixed use, medium density commercial, medium density
23 residential. The only other point I want to make about this
24 is this property is now zoned SP-2, and what has been proposed
25 is to change it to C2-C. Any consideration of anything other
26 than that I believe is outside the scope of this hearing and

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1 the notice that has been given. So I don't think you can
2 reasonably consider R5 or something like that within the scope
3 of what you have here because that isn't what you proposed.
4 In fact, the Commission had before it last year the question
5 of rezoning this property to R5 and rejected that and said we
6 want to go forward with C2-C. Again, it just seems to me that
7 we ought to finally decide these things and take them to the
8 position we are going to get to and not keep revisiting them.
9 That is all I have to say.

10 CHAIRPERSON KRESS: I am sorry, so you are in
11 favor of the C2-C for lots 3 and 4?

12 MR. SHER: Yes.

13 CHAIRPERSON KRESS: And are you taking a stand
14 on 41, 42, 43 and 44?

15 MR. SHER: No.

16 CHAIRPERSON KRESS: All right. Questions for
17 Mr. Sher?

18 COMMISSIONER FRANKLIN: You've heard me on this
19 subject before. A comprehensive plan that goes into what the
20 zoning ought to be on specific lots in a block? Is that what
21 you consider --

22 MR. SHER: No, it doesn't say zoning. It says
23 those lots are to be included in the medium density
24 commercial/medium density residential land use category.
25 Zoning is what the Commission does.

26 COMMISSIONER FRANKLIN: Well, maybe then the OP

1 report is in error. Because it says in an usually specific
2 passage, "The 1998 comprehensive plan amendments indicated
3 that lots 3, 4, and 41 to 44 in Square 314 should become zoned
4 C2-C for high density community business centers." Is that a
5 misstatement?

6 MR. SHER: I believe it is. I think I gave you
7 -- you just were handed a copy of what the comp plan says.

8 COMMISSIONER FRANKLIN: That is what the zoning
9 would translate to if you went automatically --

10 MR. SHER: I think that is what the zoning
11 translates to given the pattern.

12 COMMISSIONER FRANKLIN: It was addressing those
13 specific lots?

14 MR. SHER: Yes.

15 COMMISSIONER FRANKLIN: Now do you consider that
16 kind of thing appropriate for a comprehensive plan?

17 MR. SHER: The council has been doing that ever
18 since it has been amending the comprehensive plan.

19 COMMISSIONER FRANKLIN: As you have been in the
20 planning community for many years, I value your judgment. Is
21 that comprehensive planning?

22 MR. SHER: It is what the council considered to
23 be comprehensive planning. I have to follow the law the same
24 way you do, right?

25 COMMISSIONER FRANKLIN: Well, if it is the law
26 and what the law says comprehensive planning is in my judgment

1 is not planning that addresses specific lots.

2 MR. SHER: Well, but the identification of lots
3 I believe is a means of trying to focus in on a corner and to
4 give some definition to what was going on at that corner
5 rather than all the way up the block or whatever.

6 COMMISSIONER FRANKLIN: And that is not in my
7 judgment what comprehensive planning is supposed to be doing.

8 MR. SHER: I only can say that I have been on
9 both sides of that argument. I have had the council -- going
10 back to the down-zonings along Wisconsin Avenue where specific
11 properties were singled out to say this should be changed this
12 way and this should be changed that way. That is the way this
13 council and this government has approached planning since home
14 rule. Now are you asking me would I do it that way? Probably
15 not. But that is what they are doing.

16 COMMISSIONER CLARENS: That is what he was
17 asking.

18 COMMISSIONER FRANKLIN: That is what I was
19 asking. Thank you.

20 MR. SHER: I also know I have got to play within
21 the rules.

22 COMMISSIONER FRANKLIN: If the rules are valid.

23 MR. SHER: Yes. I don't think they are invalid.
24 I don't know that I would necessarily do it that way, but I
25 don't know that it is an invalid exercise of the council's
26 authority.

1 COMMISSIONER FRANKLIN: Well, no. I am not
2 saying that, for example, I wouldn't give some respect to that
3 opinion. Because I do respect what the City Council does.
4 But the law says we are not to be inconsistent with the
5 comprehensive plan.

6 MR. SHER: Agreed.

7 COMMISSIONER FRANKLIN: And everything I know
8 about a comprehensive plan indicates that it is not something
9 that addresses lot by lot uses. Nor is it something that pops
10 out politically without any planning having been done.

11 MR. SHER: Again, if you went out to Montgomery
12 County and looked at their master plans -- you know, they have
13 a county-wide plan, they have regional plans, they have sector
14 plans, they have vicinity plans. Their plans get very
15 specific. Their plans get very specific as to uses, height,
16 density. Even their plans include zoning plans. Now I don't
17 --

18 COMMISSIONER PARSONS: They are based on
19 planning.

20 COMMISSIONER FRANKLIN: They are based on
21 planning, not this nonsense.

22 MR. SHER: You are asking could we have a better
23 planning process? Absolutely. We could have a better
24 planning process. I have been at this business too long to
25 know we couldn't have a better planning process.

26 COMMISSIONER CLARENS: It is an issue of degree.

1 MR. SHER: But I also know that we have gotten
2 decisions made by -- I am going to stick it to you guys too --
3 by this commission, by the BZA, by the NCPC, by all of our
4 planning agencies that are as parochial as anything else we
5 have done. So we all sort of share that burden. I sat up
6 there for 14 years. I share some of that burden too. But we
7 have a process and this is the way the process is working now.
8 Could the process be better? Sure. Could the process be
9 different? Yes. At the moment, this is our process. And I
10 am only looking at what the Council did. If the Council
11 hadn't done it, I wouldn't be here showing it to you. I have
12 had it thrown in my face too that this is what the Council
13 said. You guys have to down-zone that particular piece of
14 property. I mean, this is what they do.

15 COMMISSIONER HOOD: So in short, Mr. Sher, does
16 the comprehensive plan dictate zoning?

17 MR. SHER: As Mr. Franklin says, the legal
18 standard is zoning shall not be inconsistent with the
19 comprehensive plan. And there is a long discussion about the
20 double negative and why it doesn't say shall be consistent
21 with or in conformance with. It was not inconsistent with the
22 comprehensive plan. The Council in a couple of cases -- and I
23 will stick my neck out again -- directed the -- I think
24 crossed the line to zoning in a couple of places. If you look
25 in some language in the comprehensive plan. I don't think the
26 Council should be talking about zoning. I believe that that

1 is within the authority of this Commission. But I do believe
2 it is appropriate for the Council to say the generalized land
3 use map within the categories that they have included --
4 residential from low to high and commercial from low to high
5 and mixed use and all the other things -- to say here is our
6 view of a generalized land use map. It then falls to you
7 considering the map and the text and everything else that you
8 want to consider to determine what is not inconsistent with
9 that plan. That is what you do. That is what you have been
10 doing for as long as I have been here.

11 COMMISSIONER FRANKLIN: Let me clarify, and then
12 I think we can go on to other things, Madam Chair. I don't
13 think we need --

14 CHAIRPERSON KRESS: All right. Thank you.

15 COMMISSIONER FRANKLIN: I regard that language
16 such as we are examining here in the comprehensive plan as
17 equivalent to members of the Council, let's say a majority of
18 the Council, sending this Commission a letter saying we
19 believe that the zoning on such and such a parcel should be
20 such and such.

21 CHAIRPERSON KRESS: Which they have done.

22 COMMISSIONER FRANKLIN: And which they do. And
23 I would give the same weight and deference to this kind of
24 "legislation" as I would to a letter of that sort. That is
25 all I am saying.

26 CHAIRPERSON KRESS: We really don't allow

1 comment. I will allow you after we are finished perhaps a
2 second chance to testify so you can comment. How is that?

3 MS. MILES: This is more in the nature of a
4 question.

5 CHAIRPERSON KRESS: I don't really have the
6 vehicle to do that. I am sorry.

7 MS. MILES: All right.

8 CHAIRPERSON KRESS: Any more questions here?
9 Thank you. If it is brief, why don't you come up.

10 MS. MILES: My concern is ANC 2F received
11 absolutely no notice of Mr. Sher's clients going to our
12 Council member and obtaining a political favor to get the comp
13 plan changed. So if his concern is about lack of notice to
14 coming before the Zoning Commission, I would question whether
15 or not that is an appropriate concern given the circumstances.

16 CHAIRPERSON KRESS: We work differently than the
17 Council does.

18 MS. MILES: I know you do. That is all I wanted
19 to say. Thank you.

20 CHAIRPERSON KRESS: Thank you. With that we
21 will move ahead to Lindsley Williams. Lindsley, you are on.

22 MR. WILLIAMS: This isn't going to be as bad as
23 it looks.

24 CHAIRPERSON KRESS: Don't forget to introduce
25 everybody.

26 MR. WILLIAMS: I am going to introduce

1 everybody. Good evening, ladies and gentlemen of the
2 Commission. My name for the record is Lindsley Williams. I
3 am joined here this evening I am pleased to tell you by
4 Richard Harps to my left, who is an expert appraiser
5 previously associated with this endeavor. And second to my
6 right, one of the owners of the operation and venture and land
7 in question, Mr. W. George Calomris. Mr. Harps will testify
8 briefly on some matters of valuation we have already touched
9 on earlier in the hearing. Mr. Calomris is here so that
10 should you have any questions which he would be appropriate to
11 answer, we can have those answers occur this evening rather
12 than having to trot off and extend the record on past what has
13 been a very, very, very long time. So I appreciate enormously
14 his coming down here. And with all due respect, I hope he
15 doesn't have to say anything.

16 What I have brought down for you this evening,
17 ladies and gentlemen, is a number of documents which I have
18 prepared hopefully to make life easier for you in the work
19 that you have in front, which is in the form of making this
20 decision. I have asked Mr. Harps to assist me in bringing
21 these documents forward.

22 The first of these documents which you are
23 getting is a memo from myself to the Commission entitled
24 copies of materials already submitted to the record in cases
25 97-7 and 97-7(I). What it consists of is a series of letters,
26 mostly from myself and occasionally from Mr. Patton to you.

1 And what I was trying to do was to spare you the dilemma of
2 plowing back through many, many folders worth of material so
3 that you can find what we said. This basically says it all in
4 one place, and it is nothing that is not already in the
5 record. It is there for your convenience. It also includes
6 all the arguments we have advanced before and I won't take you
7 through those arguments again.

8 The second thing that I have prepared for your
9 consideration, Madam Chairman and members, is a set of
10 materials on historic districts. I ask Mr. Harps to bring
11 that forward and briefly explain what you have here. This
12 memo is entitled additional background materials being
13 submitted to the record in Case 97-7 and 97-7(I) relating to
14 existing and proposed historic districts. And what that
15 contains are the documents relating to the establishment of
16 three distinct historic districts as follows. First, the
17 Logan Circle historic district, the landmark nomination and
18 map dated April 17, 1972. Second, the greater 14th Street
19 historic district documents, the decision of the Historic
20 Preservation Review Board much more recently, May 26, 1994,
21 which includes the delineation of properties and
22 determinations as to whether they contribute or not and a map
23 of that district. The Logan Circle documents also include the
24 map. Finally, the third district that is included as an
25 established district is the L'Enfant Plan of the City of
26 Washington and the adopted registration materials. Now what

1 that does is convey -- in addition I should say the memorandum
2 conveys the nomination to enlarge the current Blagdon Alley
3 historic district, about which there were some remarks by OP.
4 But I believe the way they characterized it was it was a done
5 deal. That is a matter that will be heard by the Historic
6 Preservation Review Board later in this month, probably in
7 this very room, and determined at a subsequent time. Those
8 materials also include an inventory of the properties as to
9 whether they be contributing or non-contributing, but they are
10 not yet established.

11 What you then have in the short version of the
12 materials that I handed to you is just my cover letter to you,
13 which I have been reading from, a depiction of the maps of the
14 two established districts, a map that is included in the
15 nomination materials for the Mt. Vernon West area, in which I
16 am highlighting the word proposed. Proposed is the very
17 nature of it. My client is in the process of evaluating that
18 proposal and may elect to participate in the determinations
19 that HPRB will make.

20 And finally I include from the staff of HPRB the
21 map of the District of Columbia that includes all of these
22 except the proposed nomination that we just spoke of. And you
23 will see that among other things when you open that map up, if
24 you elect to do so this evening, a number of green streets.
25 These are the streets of the L'Enfant plan which are part of
26 the very thick document, the entire bulk of which is in the

1 record and I have just tried to give you the highlights of it
2 here. That is item number 2 of the preliminaries.

3 Item 3 of the preliminaries, Madam Chair, is a
4 memo from me to you entitled relevant traffic analysis. The
5 memorandum conveys to the record in this case the
6 professionally conducted traffic study conducted in connection
7 with the BZA case about which you have just heard from Mr.
8 Collins, F.B. Partnership. This traffic study was conducted
9 by O.R. George and Associates. That study found the area's
10 roadneck and curbside parking were sufficient to meet the
11 demands of that hotel. That finding was not disputed by
12 anyone participating in that case. While the case was granted,
13 the order has not yet been issued, making it conjectural to
14 declare the degree of reliance placed on this report.

15 Part of the reason I am doing this, Madam Chair,
16 is to make sure that you understand that in terms of public
17 facilities and infrastructure and the like, and particularly
18 as it relates to traffic, the direction that we are going in,
19 which is to recommend some up-zoning along the 13th Street
20 spine, but going along with the recommendations of OP,
21 particularly now that they have backed away from the R5-B, are
22 totally supportable in terms of every tenant of reasonable
23 planning. Will there be water? Will there be sewage? Is
24 there carrying capacity on the roadnet to handle this and the
25 answer is yes, yes and yes. And part of the study that you
26 just see addresses it as that relates to a nearby property.

1 And it is my hope, Madam Chair, that you will determine that
2 that study is sufficiently proximate, both in time and space,
3 so that you will determine that it is also relevant to the
4 proceedings that you have before you this evening.

5 Finally, what I have brought together for you is
6 a set of materials that we have prepared, hopefully for your
7 edification, and you will come to understand what we are
8 seeking. Madam Chair, as this case moved on through its early
9 stages, you will doubtless remember that the Commission said,
10 we need more information. We need more information. We don't
11 have enough. And you were very gracious not to act in a kind
12 of a knee-jerk fashion in response to the original OP
13 recommendations to R5-B. You provided us the opportunity to
14 go forth and get additional information. You may remember
15 that in the original materials that you were given by the
16 Office of Planning in the early parts of this case, there was
17 an axonometric drawing prepared in part by Joseph Passeneau
18 Associates, and that drawing itself we identified as having
19 some difficulties. Part of our effort in pursuing this case
20 was to go to Mr. Passeneau, who we engaged his services, to
21 prepare materials that would better depict the existing
22 conditions. In connection with that, Madam Chair, we prepared
23 a diagram which I will hand you. But in the absence of
24 photographs from the Office of Planning -- I hadn't expected
25 to do this tonight, but I brought down the photos that were
26 used by Mr. Passeneau in preparing the new axonometric drawing

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1 which you will shortly receive. I did not come down expecting
2 to submit these for the record but brought them just in case,
3 and I am glad that they did. Because they will inform you as
4 to the character of the area, and I would appreciate their
5 being made a part of the record now.

6 Additionally, what we have prepared for you and
7 for others that are interested -- the ANC in particular, we
8 want them to understand what we are doing -- is a comparison
9 chart. A little of this has been seen before, but much of
10 this is new to you. The first comparison chart that you have
11 reviews the characteristics and attributes as they would
12 relate to the 14,269 square feet of land area that Mr.
13 Calomris and his partner, Mr. Harris, and others in their
14 group have together under four different zoning scenarios.
15 This is the diagram chart I submitted earlier in the case. It
16 looks at R5-B, which was the original advertised, R5-C, then
17 only an option being considered under the principles of the
18 Administrative Procedures Act, R5-D, which was the existing,
19 and R5-E, which at that time was something that existed nearby
20 but not within the reach of this case. You will recall, we
21 applied to you to consider in the alternative that there be
22 R5-E along certain portions of the land, which we are here to
23 talk about this evening.

24 The next chart then shows you how we would
25 propose those same things -- the R5-B, now the R5-C, which is
26 the new OP recommended, the R5-D existing. What it would be

1 if the entire 14,000 square feet were rezoned to R5-E, which
2 is not what we asked for it to be advertised or recommended,
3 but I am giving you the numbers so you can see it. And what I
4 want to call a couple of different combo plates, R5-E with R5-
5 C and R5-D with R5-C. Let's be clear. R5-D with R5-C means
6 you leave some of the zoning the way it is and you put the
7 rest down to R5-C. R5-E means you build up a little in one
8 area and you bring it down in another. If you will
9 turn to the next page, I will try to give you the
10 characterizations of what are the uses that are permitted
11 under the different zones. In this case it shows SP-2 along
12 with R5-E, D, C, and B. It shows what is allowed as a special
13 exception and accessory uses. Then on the second page, it
14 gives you some of the physical characteristics. Many of the
15 zones involve a 90-foot height potential, but not one that is
16 always going to be reached given the FARs. In R5-C, the
17 height limit is 60 feet and then it goes down to 50 with some
18 differences into the planned unit development.

19 The next page, ladies and gentlemen, if you will
20 turn it so that north is up, you will see the subject property
21 is the car wash in the middle of the block. It is to the
22 immediate block of the words 13th and 13th Street. The liquor
23 store that has been discussed is to the immediate north of
24 that. And these are the drawings that Mr. Passeneau prepared
25 not knowing that OP was going to move into the 20th Century or
26 the 21st Century, so that you would have a better idea of the

1 conditions there. His original drawings mistakenly showed the
2 row of townhouses at the same height as the Iowa, for example.
3 This corrects that error at a scale that you can read and
4 understand.

5 The following diagram on that shows what would
6 be the outer building limits. Let me be very clear. This is
7 not a building plan. It is the development envelope of an R5-
8 E zone. So it shows something that looks something like a
9 lopped off UN office tower, and that is not buildable. But it
10 does show the development rights to what 90 feet would be on
11 100 percent lot occupancy. Again, that is not buildable, but
12 it shows you the envelope, and it probably also shows why the
13 ANC would have some of the concerns it has expressed already,
14 and you need to understand that it is not developable and
15 isn't what we are requesting.

16 The next page after that shows a way in which
17 you could take and step it down in front. This is a
18 hypothetical. This is not a development proposal. In my
19 dealings with the ANC, they have repeatedly asked me what are
20 our development plans. Mr. Calomris has advised me he has
21 none at this point. The market conditions had not been ripe
22 all through the pendency of this case. But I am trying to
23 show you a step-down type of situation here.

24 COMMISSIONER FRANKLIN: That is R5-E?

25 MR. WILLIAMS: Pardon? That is R5-E, yes. But
26 it is stepped-down. It is trying to do something that is

1 respecting the immediate neighborhood. And then on the
2 following two pages, you will see a hypothetical building -- a
3 hypothetical building drawn in in a way on top of an existing
4 photograph that shows the Iowa, the Iowa townhouses below it,
5 the Calomris property, the Amoco property without anything
6 further, and then the properties further to the south along
7 13th Street. I think you need to understand this is a
8 hypothetical vista, and it would be my contention that this
9 does not do any disrespect to the nature and character of 13th
10 Street, 110 feet wide with ample capacity both visually and in
11 terms of traffic to absorb this kind of thing. You may
12 remember the step-back that I showed you just a page or so
13 ago. The following page shows the kind of effect you could
14 have that would come about were there to be a step-back. This
15 is not a planned unit development case. I cannot offer this
16 into the record as something that we would say is the only
17 thing that could happen, but it shows you what you can do if
18 you put a design mind and try to do the right thing. And what
19 I have tried to do here is to show that by having the frontage
20 on 13th Street respect the character of the townhouses, drop
21 back and then proceed up.

22 I would like you at this point, if you would, to
23 put down my materials and pick up the materials you got from
24 the Office of Planning and their report. The reason I am
25 asking you to do that is I want you to go into the materials
26 that were, I guess, the PowerPoint -- microstation. And you

1 will see a number of vistas that are identified -- condition
2 7A, 7B, 7C and 7D. First and point of fact, I believe you
3 will find that those are in fact pictures which depict the
4 view looking north from M as in Mary Street, not N as in Nancy
5 Street. You can see quite a way up on drawing 7A on the right
6 side the existing car wash. It is not in the near portion of
7 the materials. And what I am trying to ask you to do is to
8 fill in that line above the white space of the car wash there.
9 And you will see that you are going to get a condition that is
10 not one that is deleterious to the character of the area. I
11 believe the same thing can be said when you look at the
12 remainder of the materials, and you may want to get OP to
13 clarify the vantage point of these various diagrams before you
14 conclude the case.

15 CHAIRPERSON KRESS: Since we would like to get
16 everything clarified, could we ask OP is there -- are these
17 mislabeled as to what these are?

18 MR. COCHRAN: Right about -- the vantage point
19 is approximately one-third of the way north of the block
20 between M and N in the middle of the street.

21 CHAIRPERSON KRESS: So you have not reached N
22 yet?

23 MR. COCHRAN: No, Madam Chair, we have not.
24 Consequently, the subject property would appear smaller in the
25 drawings. If we had gone to N, it would have appeared larger.

26 CHAIRPERSON KRESS: Would you mind also showing

1 us the location where you are looking south from Logan Circle
2 to M? Where your vantage point would be?

3 MR. COCHRAN: Okay. The vantage point going
4 south is from the lane going north around the circle as you
5 are facing south, presumably in low traffic conditions.

6 CHAIRPERSON KRESS: All right. Thank you.

7 MR. WILLIAMS: I would just indicate, I
8 appreciate the clarification. I believe it is even somewhat
9 further more south than that. But I am trying to make a
10 general point and that was what I was trying to make when I
11 showed you these pictures. We will submit these color
12 renditions for the official record. That this is an area
13 which with good design can absorb the kind of thing that we
14 are talking about. I would like you to go back to my diagram,
15 the one where we worked on the combo, if you will, and you
16 will note the materials that we said two things. First, that
17 we were willing to covenant to an 81-foot cornice. We have
18 been expressing this throughout the case. We haven't found
19 anybody to covenant with, but we have been willing to say that
20 because we believe that 13th Street is and has the
21 characteristics to become legally a special street, which is
22 one of the principles of the special street's designation that
23 there should be an alignment of the cornice lines flowing
24 along that. That would apply to both sides. We also -- I
25 want to go back also to what Mr. Sher was talking about
26 briefly in terms of the character of the area. Clearly the

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1 area to the south of N Street -- N as in Nancy Street -- is
2 going to have buildings that can rise to 90 feet. In large
3 part they are already established and new buildings will
4 establish it in order to get maximum economic benefit. They
5 will rise to that height. And it will be consistent. They
6 will have cornice lines that are essentially even. The land
7 is flat. Now the land to the north of N Street across from my
8 client's property, the IBEW, International Brotherhood of
9 Electrical Worker's site, which Mr. Sher's firm represented
10 and later on the Eddiestone behind that, that has now been
11 zoned. The decision has been made by your group in November
12 to zone it to R5-E. That creates a 90-foot height limit, an
13 FAR of 6, a lot occupancy of 75 percent, and when that
14 building is built, you can bet that it is going to rise to 90
15 feet. So we have 90 feet to the south on one side, 90 feet to
16 the south on the other, 90 feet to the north of N Street, at
17 least for some of the distance, and then the proposal that we
18 have this group of buildings that will be, in my view, out of
19 sync and out of character in the name of stepping down. The
20 place for a step-down is not in the middle of a street. The
21 place for a step-down is behind the first row of buildings
22 within the several squares. The place for the step-down from
23 the higher density on Square 245 has been properly drawn. The
24 place to do it on Square 280 is in the areas that I am
25 suggesting to you in this proceeding.

26 No elsewhere --

1 CHAIRPERSON KRESS: Do you have it drawn
2 somewhere?

3 MR. WILLIAMS: Yes, I do.

4 CHAIRPERSON KRESS: In plans clearly?

5 MR. WILLIAMS: Thank you. Specifically, Madam
6 Chair, what we are recommending is this. That you strike the
7 R5-E line to include the Amoco station, which by the way is
8 not a non-conformity as OP would suggest or a spot. Rather it
9 is the logical extension of the R5-E zone that you have
10 already mapped to the south and that you have already mapped
11 to the west. And to draw it up narrowly and tightly against
12 the spine of 13th Street. This will make the properties, of
13 the Iowa included, so that they will be conforming properties.
14 By mapping it in a combination fashion, the Iowa becomes
15 conforming. Everything in the block becomes conforming in
16 terms of the R5-C designation, and our client enjoys an
17 opportunity to package the development of his parcel in such a
18 way that it has a reasonable chance of coming out from its
19 current uses in the foreseeable future. I repeat, however,
20 the diagrams I gave you earlier depicting buildings and zoning
21 envelopes, those are my efforts working with Mr. Passeneau.
22 They are not development proposals by Mr. Calomris.

23 In the alternative -- in the alternative, should
24 you find that you are unable to deal with this R5-E matter, I
25 am proposing -- and I believe you will find consistent with
26 all of the tenants that I have already articulated, leave the

1 R5-D in place. Create R5-D on the Amoco site and put the
2 balance of the property R5-C. Go back to my charts. What are
3 you getting? It is a difference of .5 in FAR. Go over, if
4 you will, sometime in your mind or sometime when you are in
5 this wonderful part of town and drive or walk or stop in front
6 of the apartment buildings immediately to the north of the
7 Eddiestone on Vermont Avenue. I will go over and point that
8 on the diagram that OP has prepared. The orange mark to the
9 left of the number 243 on the plan diagram prepared by OP is a
10 contemporary structure which I believe absolutely reflects the
11 flexibility of the R5-D zone. The R5-David zone. That
12 property will be rendered non-conforming if you accept the R5-
13 C recommendation. In my view, R5-D should start at that
14 property and move in a swath to the east and the part
15 immediately to the north of that should be R5-C. This is a
16 new building. It is not a contributing building, although it
17 is a dandy. It is a beautiful building. But in terms of the
18 way the historians look at it, it is not a contributing
19 building.

20 And what you would achieve by that --

21 CHAIRPERSON KRESS: Commissioner Parsons has
22 said we have really way gone past the 5 minutes. Is there
23 anyway you could maybe just do a sentence to kind of close it
24 up?

25 MR. WILLIAMS: Sure. Mr. Harps, say your
26 sentence and then I will say mine.

1 MR. HARPS: My sentence is I have my report from
2 a year and a half ago. I don't know whether you would like me
3 to resubmit it so that you don't have to go back through. I
4 can if you wish. The bottom line is that we have had -- as
5 Mr. Colby stated -- some significant improvement in values,
6 especially land values in that area. FAR prices are getting
7 up above \$30.00 for some of the development sites. They are
8 \$15.00 to \$20.00, \$25.00 for the high rise development sites.
9 The lower the density that you place on those properties on
10 13th Street -- Mr. Calomris's properties -- the less likely
11 you will have any redevelopment of those properties out of
12 their current uses within the foreseeable future. A 1.8 FAR
13 density makes it very difficult to conceive that they would
14 change. A 3.0 starts to get better. 3.5, even though it is a
15 .5, allows for full density on the front of the site without
16 exceeding the height limit of the Iowa further north and would
17 allow for the entire back of the property to be left open if
18 they so chose. R5-E basically can be bulked up across the
19 front of the property leaving the back third of the property
20 open and available for space. The higher the density that the
21 commission feels comfortable placing on the site, the more
22 likely that the gas station -- excuse me, that the car wash
23 and the liquor store will be redeveloped with residential
24 uses. They are already non-conforming. Changing the non-
25 conforming use, as we all know, is difficult anyway. I have
26 to believe that the neighborhood would be improved with a very

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1 nice looking apartment complex as opposed to the existing
2 uses, no offense to my client.

3 MR. WILLIAMS: Thank you. Madam Chairman, in
4 conclusion, I have prepared a memorandum elegantly called case
5 summary. I won't try to read it all through for you, but I
6 have tried to identify a set of planning and zoning principles
7 that have driven every bit of the work that I have done here.
8 Making sure that we have things that are not inconsistent with
9 the comp plan and trying to make sure that we accommodate
10 current uses in general and densities and accommodating
11 current metrics. It should minimize non-conformities and
12 maximize matter of right activity and effect zoning changes on
13 the interior blocks, not at street center lines. Look at your
14 zoning atlas. That is where you do it across town. Why all
15 of a sudden we draw a line in the middle of the street and
16 create, I think, a havoc as a result of that. I have
17 identified and discussed with you our recommendations.

18 The hour is late. I have gone on longer than you
19 probably wanted. There are a number of other observations
20 here. One I would just like to touch on briefly is that you
21 should pay attention as a group to your set-down rule. What
22 the set-down rule is supposed to do is to keep things from
23 happening that weren't supposed to be allowed under the zones
24 under question. When this case was set down several years
25 ago, the Commission basically said that everything within this
26 area is going to be effectively down-zoned for the pendency of

1 this case to R5-B. Now there have been a number of remarks
2 about the Barrett. And the Barrett is a splendid building but
3 it is in my view a building the permit for which was
4 mistakenly issued because it exceeded the R5-B limit that was
5 the supposed intent of the set-down rule. There are
6 situations where if you are intending for a set-down rule to
7 apply, you've got to make it work. It clearly didn't here.
8 Fortunately, no harm has been done. It is a splendid building
9 and it contributes to the neighborhood, if not to the historic
10 district. So I want to -- you can read over my other things.
11 I would just add one other. And that is with the historic
12 properties that are about to come on line in the case for the
13 Mt. Vernon West, it is my belief and recommendation that a
14 case could be made to allow for the transfer of development
15 rights of historic properties or those that contribute to the
16 district in question to other land within the square. If you
17 have something that has been designated and you basically are
18 capped as to what you can do because of that, you should be
19 able to sell that off and I will be talking with you further
20 about that at another time. Ladies and gentlemen, that
21 concludes my remarks and those of Mr. Harps. Do you have any
22 questions for me, him, or Mr. Calomris?

23 CHAIRPERSON KRESS: Questions, colleagues?

24 COMMISSIONER PARSONS: Yes. Mr. Williams I am
25 looking at this diagram or the one prior to it, it makes no
26 difference. And I think I heard you say that this diagram

1 respects the adjacent townhouses. And I just have to hear you
2 repeat that. I don't understand it.

3 MR. WILLIAMS: Well, then I will repeat. It
4 respects it. What I am trying -- now to explain, Mr. Parsons.

5 COMMISSIONER PARSONS: Please.

6 MR. WILLIAMS: Which I am sure is your intent.
7 What I was trying to do with that is instead of having the
8 sheer wall of the building that was earlier brought right out
9 onto the sidewalk edge of 13th Street, what I was trying to do
10 was to have the building -- the larger height of the building
11 be set back and to basically pick up on the height that is
12 reflected not only in the townhouses to the north of the
13 structure, but also in the older historic properties directly
14 across 13th Street that are part of the greater 14th Street
15 historic district.

16 COMMISSIONER PARSONS: So you only meant to
17 respect the facade on 13th Street, not the townhouses that lay
18 along the alley?

19 MR. WILLIAMS: I was -- those houses are along
20 the alley. Each one of the townhouses, Mr. Parsons, if I am
21 correct, is parallel to 13th Street. They walk back in a
22 sequence from 13th Street through to 12th Street. And what I
23 was trying to do was to make sure that as this would be
24 visualized by anyone passing by or in the community that they
25 would see a cornice line, not only of the overall structure,
26 which was respecting of the height of the Iowa apartment, but

1 a cornice line for the lower part that was in line with the
2 lower massing of the townhouses to the north and those across
3 the street. This is my effort to try and express a
4 possibility. It is not a development plan.

5 COMMISSIONER PARSONS: Help me again, here. You
6 are saying that we should not allow a step-down -- I can't
7 remember how you put it. Let me ask the question. You've got
8 townhouses to the south. You've got townhouses to the north.

9 MR. WILLIAMS: To the south? No, sir.

10 COMMISSIONER PARSONS: What is that?

11 MR. WILLIAMS: Yes, that is true.

12 COMMISSIONER PARSONS: Rowhouses.

13 MR. WILLIAMS: That is true. I am sorry.

14 COMMISSIONER PARSONS: Rowhouses to the south.
15 Rowhouses to the north. And you are proposing a 90-foot high
16 building or maybe even 81 in the middle of that, and I don't
17 understand your logic to your argument here at all.

18 MR. WILLIAMS: Well, the logic, Mr. Parsons is
19 to -- and what that shows again is a total building envelope
20 with a step-back. You could never put in something as massive
21 as that with the FARs that we are recommending. Go to my
22 charts. You would never see something as significant as that.
23 It shows the outer -- it takes that first set of points, the
24 points on the box which showed the full width, the full height
25 and the full depth, and it simply lops something out. It is
26 not a building plan. It would never be that massive. The

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1 numbers wouldn't permit it and it would be offensive if it
2 were that large. But it wouldn't be that way because we
3 simply don't have the numbers to allow that to happen in the
4 first place. What I was trying to say is that by knocking
5 back the front, that shows a respect to the immediately
6 adjacent houses, particularly on the 13th Street frontage.

7 COMMISSIONER PARSONS: Thank you.

8 CHAIRPERSON KRESS: Any further questions? Mr.
9 Franklin?

10 COMMISSIONER FRANKLIN: Notching it back,
11 though, seems to me certainly undermines your notion of 13th
12 Street as a special street with a uniform cornice line.

13 MR. WILLIAMS: You are right. It is at some
14 odds with that, but it actually has two cornice lines that are
15 then uniform, the lower one as well as the higher one.

16 COMMISSIONER FRANKLIN: Well, it would have been
17 interesting if you would have shown what some good designer
18 might do with the zoning that is being proposed by OP.

19 MR. WILLIAMS: Well, with all due respect, Mr.
20 Franklin, the zoning that is proposed by OP has only emerged
21 within the last several weeks. These are materials which we
22 commissioned when we were anticipating a January hearing on
23 this case. I have to say, as others have, that I am pleased
24 with the general direction and the data that backs up much of
25 OP's report, but we did not try to go through a crash effort
26 to redesign the materials that we had previously commissioned

1 for that purpose. I understand your point.

2 CHAIRPERSON KRESS: All right. Thank you for
3 your testimony this evening. I just wanted to -- was anyone
4 here to testify this evening? Oh, I am sorry, I wasn't aware
5 -- you weren't on our list. Whomever, please come forward.
6 Forgive me. And we will try, if possible, to stay to 4 or 5
7 minutes so we can stay this evening. All three of you might
8 as well come forward and sit at the table and then we can move
9 a little more quickly and not wait for folks to come back. We
10 will just start with you, if you would identify yourself for
11 the record.

12 MR. BRODSKY: My name is Mark Brodsky, and I am
13 here representing the owner of Lot 42 in Square 314. I have
14 heard a lot of dialogue and a lot of monologue and a lot of
15 logical and legal internal inconsistencies with respect to why
16 my client's property on the northwest corner of 12th and M
17 ought to be down-zoned from SP-2 to R5-E, when the two
18 adjoining lots -- well, not adjoining -- along with the
19 immediate adjoining lot, which is 41, the immediate lot to the
20 east -- while all of that is going on and the backdrop of the
21 comprehensive plan, suggesting that lot 42, my client's
22 property, ought to be zoned C2-C, without rolling Mr. Sher's
23 client under the bus. It just doesn't seem to me to make any
24 sense, again with what I have heard from the ANC Commissioners
25 and what I have heard in connection with Commissioner
26 Franklin's dialogue with Mr. Sher. This is not comprehensive

1 planning. I think this is spot zoning. There is not one
2 reason that I can think of why every other property to the
3 east facing M Street to the corner, lot 806, and my client's
4 property shouldn't be zoned exactly the same. That having
5 been said, we would much prefer -- our first preference is we
6 would like the C2-C zoning for the same reason that Mr. Sher's
7 clients are being given the C2-C zoning.

8 CHAIRPERSON KRESS: Excuse me, you want the C2-C
9 where right now R5-D is being proposed?

10 MR. BRODSKY: R5-E is being proposed as I
11 understand it.

12 CHAIRPERSON KRESS: You are in 314?

13 MR. BRODSKY: I am in 314, lot 42. There is an
14 exhibit, a base plat map that I attached to --

15 CHAIRPERSON KRESS: Oh, you are lot 42. I am
16 sorry.

17 MR. BRODSKY: It is the corner lot.

18 CHAIRPERSON KRESS: I am sorry. Forgive me.
19 There are a lot of lots and squares here. Please continue. I
20 am with you now.

21 MR. BRODSKY: It just seems to me to be
22 logically inconsistent and legally inconsistent to down-zone
23 my client's property from SP-2 to R5-E and give an adjoining
24 property owner and the rest of the block C2-C zoning. I
25 suppose that I would request that in the alternative to be
26 consistent with the comprehensive plan, and I add by way of

1 caveat that we have done no lobbying with the City Council and
2 listening to Commissioner Franklin perhaps that is not
3 necessary or beneficial. But we certainly, it seems to me
4 that we ought to be left alone, i.e., allow us to remain our
5 SP-2 zoning, the purpose of which is transitional commercial
6 towards residential on M Street, which I quote the Office of
7 Planning's opening remarks -- I believe it is Mr. Camden -- as
8 being less concerned about M Street with respect to C2-C
9 zoning. Well, if you are less concerned about it, give it to
10 us too. We face on M Street.

11 CHAIRPERSON KRESS: What is your second choice.
12 Your first choice is to leave it SP-2. What is your second
13 choice?

14 MR. BRODSKY: The first choice would be to get
15 the C2-C zoning, which is obviously more long range
16 economically beneficial. And our fall-back position is leave
17 us alone and allow us to retain the SP-2 zoning that presently
18 attaches to the property.

19 CHAIRPERSON KRESS: Questions of Mr. Brodsky?
20 Seeing none, thank you for coming this evening.

21 MR. BRODSKY: Thank you.

22 MR. FUNK: Madam Chair, may I go next because it
23 pertains to what Mr. Brodsky just addressed.

24 CHAIRPERSON KRESS: Is that all right with you?
25 All right. Then please go.

26 MR. FUNK: I am Thomas Funk and I am --

1 CHAIRPERSON KRESS: I can't hear you. I am
2 sorry.

3 MR. FUNK: I am Thomas Funk, and I am the owner
4 of 1113 M Street, which is in Square 314, Lot 41. And I
5 pretty much agree verbatim with what Mr. Brodsky just said. I
6 would rather have the C2-C zoning. I was not informed of any
7 of these proceedings until about less than 2 weeks ago, so I
8 am a little ill-prepared. I bought the property almost one
9 year ago around the end of this month. When I bought it,
10 there were two businesses in the apartment, which I am now
11 renting out as residential rental units, but I had always in
12 mind the idea of perhaps opening a business. I am in the hair
13 business. Not a pool hall, as was mentioned earlier, but a
14 day spa or something else. I don't feel like I am a part of
15 Logan Circle. I am three blocks from the convention center --
16 less than three blocks from the new convention center site. I
17 bought the property knowing that it was SP-2 zoning. I was
18 quite shocked to realize that suddenly it is going to be
19 changed to R5-E. So I would respectfully request that my
20 property be considered as well as the other four properties in
21 that block to be made upgraded and rezoned as C2-C, or at the
22 very least to retain the SP-2 zoning that we now have.

23 CHAIRPERSON KRESS: Thank you. I think that is
24 very similar testimony and for similar reasons. Does anybody
25 have any questions of Mr. Funk?

26 COMMISSIONER CLARENS: Just a clarification on

1 where exactly his property is. You are at the corner of 13th

2 --

3 MR. FUNK: On the north --

4 COMMISSIONER CLARENS: You are north of the
5 corner of M?

6 MR. FUNK: The north side of M Street in the
7 1100 block.

8 COMMISSIONER CLARENS: You are one of the
9 rowhouses or the first rowhouse that faces 13th Street?

10 MR. FUNK: I am the third one going west.

11 CHAIRPERSON KRESS: So, sir, you are the second
12 one if you said 41.

13 MR. FUNK: Well, there is Mr. Lassa's two
14 properties, one of which is a dental laboratory and the second
15 being a shell. The third one is 1113, and that is my
16 property. The fourth one being the one that Mr. Brodsky just
17 mentioned, which is 1115 M Street.

18 COMMISSIONER CLARENS: And that is at the
19 corner?

20 CHAIRPERSON KRESS: The second off the corner.

21 MR. FUNK: Okay, the second off the corner.

22 Okay, I am going from the other corner.

23 COMMISSIONER CLARENS: You are second off the
24 corner and Mr. Brodsky was the first rowhouse at the corner.

25 MR. FUNK: Right. So what I am saying is that
26 we perhaps could keep that entire block as a C2-C. It would

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1 just come right around 11th Street. It makes good sense to
2 me. M Street is a spoke which will come right out from the
3 convention center. It is a much more -- it is a very
4 different kind of a neighborhood than as you go north up 13th
5 Street.

6 COMMISSIONER CLARENS: I understand.

7 CHAIRPERSON KRESS: Okay. Thank you. Any other
8 questions?

9 MR. FUNK: It is surrounded by high rises, I
10 might add.

11 CHAIRPERSON KRESS: And we do have more than you
12 have seen. So we do have a little more information and we will
13 be studying it prior to our decision. Would you like to --
14 thank you for coming, Mr. Funk. Could you identify yourself?

15 MR. KHALDAR: Yes. Hello, Mrs. Chairperson. My
16 name is Jamshid Khaldar. I am the owner of the property
17 located at 1220 13th Street, N.W. We strongly oppose the
18 rezoning of the property from SP-2 to R5-E. We purchased this
19 property about 4 years ago. The reasons behind my decision to
20 buy this building were as follows. The building was designed
21 --

22 CHAIRPERSON KRESS: Sir, one second. So we can
23 make sure that we are looking at the property, it is lot --

24 MR. KHALDAR: Lot 834, Square 245.

25 CHAIRPERSON KRESS: Thank you.

26 MR. KHALDAR: 1220 13th Street, N.W.

1 CHAIRPERSON KRESS: Thank you.

2 MR. KHALDAR: The building was designed and
3 built about 30 years ago for the purpose of commercial use
4 only. All the architectural features of this building -- for
5 example, the windows, side garage, back garage, loading dock,
6 interior electrical loading lift, 20 parking spaces, customer
7 parking. In addition, this building has only two stories, but
8 it structurally has been built with concrete slabs, concrete
9 column and solid brick surrounding for heavy commercial
10 applications. The zoning at the time of purchase was SP-2.
11 But historically, the premises have always been used for
12 commercial purpose since it was built. Our certificate of
13 occupancy, we have and we can show it to you to prove this.
14 For many years, it was used as a tire, battery, oil change and
15 other related services for automobiles. For some period as a
16 showroom and for a long period of time as Morris Electric
17 Company. Some part of the building has always been used as
18 commercial office space. The other buildings in the same
19 block where this property is located, M and N between 13th
20 also have always been used commercially. At the present time
21 across the street of the property, the supermarket is licensed
22 to sell beer and wine, a car wash, a hotel, a gas station. On
23 the other side exactly next to the building, there is a check
24 cashing store, a variety store, a dry cleaner, a liquor store
25 and some vacant lots. In the back, the building faces the
26 Washington Hotel, which is -- that is a big hotel. On the

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1 other side, there is an alley separating my building with the
2 rest of the block. Therefore, while considering the common
3 sense definition of SP-2, I went ahead and bought the
4 property. It was quite certain that if a zoning change should
5 be proposed and should go into effect, it would be one step
6 forward, namely a new zoning that would generate future
7 economic development for the city. This requires that at
8 least the part of the block between the alley on the north of
9 my building up to the corner of M Street to be rezoned from
10 SP-2 to commercial to conform with the historic usage and
11 present use character of the block. What is proposed now by
12 the Office of Planning exactly the opposite, which is
13 downgrading the zoning rather than upgrading it. In other
14 words, instead of going forward one step, we are going
15 backward. I respectfully ask the Zoning Commission to modify
16 the proposed plan in such a way that at least some part of the
17 block as explained above to be rezoned from SP-2 into C
18 commercial. I have enclosed some surrounding pictures of the
19 building and we have given it to you.

20 Madam Chairperson, this property is very unique.
21 It is all with a concrete slab with 20 car parking in such a
22 location in downtown Washington, which is very hard to find.
23 And across the street is a liquor store and next door we have
24 a liquor store. And these people that have the liquor store,
25 they are the property owner. They are not going to move. Who
26 is going to put a building with a residential that your kids

1 next door are going to go and buy liquor. Plus, if you want
2 to change the whole properties to R5-E, people have to have
3 someplace to go. When I bought this I had in mind one day to
4 put a big supermarket over there with the 20 parking spaces.
5 So if you change the zoning to R5-E, in the future I cannot do
6 anything with this property. I would like to open a
7 supermarket, something that even if people has residential
8 places, we have something to offer them, a unique gourmet
9 place or a supermarket. This place is 12,000 square foot and
10 20 parking spaces. It is not residential. It has always been
11 commercial. Next to it, everything is commercial. Across the
12 street is a gas station, supermarket, liquor store, check
13 cashing, dry cleaners, Chinese carryout. I mean, how can you
14 have a building which is residential and your kid grow among
15 this. This is uniquely built for something commercial that
16 can support and not cause the people to drive all the way to
17 Virginia to go to Magruders or to some other place or to
18 Giant. We can provide for them this.

19 COMMISSIONER PARSONS: It is five minutes, Madam
20 Chair.

21 CHAIRPERSON KRESS: Yes, thank you. Are there
22 any questions?

23 MR. KHALDAR: I am sorry we had to come here --
24 on April 1, we couldn't come because it was our holiday, the
25 Passover. So we had to postpone it. And I am the last person
26 here. I hope you will fix this. We are very concerned about

1 this.

2 CHAIRPERSON KRESS: I think you have heard us
3 this evening and I think we have been most thorough in
4 evaluating all of this.

5 MR. KHALDAR: We have six elderly people from
6 back home investing in this property so we can generate a shop
7 or a supermarket or something that can they come and work.

8 CHAIRPERSON KRESS: Thank you. I appreciate
9 your coming and waiting to the very end.

10 MR. KHALDAR: Thank you.

11 CHAIRPERSON KRESS: Were there any other
12 questions?

13 COMMISSIONER HOOD: Madam Chair, I just have one
14 thing I want to say to Office of Planning. I was wondering --

15 CHAIRPERSON KRESS: Well, it is not part of our
16 witness -- I am sorry, you are completed for the evening.
17 Thank you.

18 COMMISSIONER HOOD: I was wondering, and maybe I
19 overlooked it, but I was trying to look and see a pictorial
20 diagram of the existing zones in our packet.

21 COMMISSIONER CLARENS: They are in the front in
22 the first --

23 COMMISSIONER FRANKLIN: There is a small graphic
24 that shows that.

25 COMMISSIONER CLARENS: The first picture.

26 COMMISSIONER FRANKLIN: It is figure 2. It is a

1 little hard to see the underlying street boundaries. It is
2 this one here.

3 COMMISSIONER HOOD: Right.

4 COMMISSIONER FRANKLIN: But it is not very
5 helpful.

6 COMMISSIONER HOOD: Right. Exactly. I guess
7 that was my point.

8 CHAIRPERSON KRESS: It is a little hard to read,
9 yes.

10 COMMISSIONER HOOD: I guess that was my point.
11 If we could get something that we could -- because right now,
12 if you could see what I have, I have a mess going back and
13 forth. If we could get something before we make our decision
14 that we can go from one side to the next. I think that would
15 be more accommodating. Thank you.

16 CHAIRPERSON KRESS: Yes. That would probably be
17 a good idea as we go to vote on it just to have that clear
18 because I was having trouble myself, especially on the
19 peripheral areas, exactly what they were. Any other comments
20 or questions?

21 COMMISSIONER FRANKLIN: Well, I would like to
22 build on what Commissioner Hood has just said to ask whether
23 the staff could take this hearing and in a very abbreviated
24 way respond to all of the comments that have been made that
25 oppose the OP proposal and give us their considered judgment
26 on each of them so that, if you will, there is a case summary

1 that comes from OP that can be helpful.

2 CHAIRPERSON KRESS: Yes, they have often done
3 that for us in the past. Is that all right with you, Mr.
4 Colby?

5 MR. COLBY: That is our normal procedure. It is
6 difficult in a case like this because it is such a mixed are.
7 But, yes, that is what we would expect to do.

8 CHAIRPERSON KRESS: Actually, you have already
9 covered quite a bit of it in your report where you point out
10 the areas of conjecture. So I think it would just be
11 amplifying those areas a little bit, if that is all right.
12 And clarifying or enlarging the map of the existing zoning.

13 COMMISSIONER FRANKLIN: Well, with brevity,
14 please.

15 MR. COCHRAN: Unfortunately, it is in the
16 PowerPoint show on the hard drive. So we have already done
17 most of it.

18 CHAIRPERSON KRESS: All right. Any other
19 questions?

20 COMMISSIONER FRANKLIN: I also want to welcome
21 Mr. Cochran. I have known him for some time and I am
22 delighted to have him join the staff.

23 CHAIRPERSON KRESS: Please, on behalf of all of
24 us, welcome. Any other comments or questions? All right.

25 MR. COLLINS: Madam Chair?

26 CHAIRPERSON KRESS: Oh, I am sorry, I didn't

1 even see you sitting there. I guess I was trying not to look.

2 MR. COLLINS: I will try not to prolong this
3 long evening. I just would like to point out I submitted a
4 letter dated April 29 into the record highlighting what I
5 believe is a typo in the advertisement for this case, and I
6 just want to make sure that that is in the record and that is
7 explained. I can go through it very briefly by calling your
8 attention to the notice of the public hearing, if you have it.
9 If you have it, you can turn to the second page under item C,
10 where it says rezone from SP-2 to R5-E. There are three dots
11 underneath that. The second dot says --

12 CHAIRPERSON KRESS: Wait a minute. Let me get
13 there.

14 MR. COLLINS: Okay. Second page, item C, rezone
15 from SP-2 to R5-E.

16 CHAIRPERSON KRESS: Yes.

17 MR. COLLINS: The second dot under that says
18 Square 245. And then it begins lots 27, 28, 803-907.

19 CHAIRPERSON KRESS: Yes?

20 MR. COLLINS: That should be 807. It started
21 out as 807 back in January of 1997. It became 907 at some
22 point. And you can see where it is a typo because it goes
23 803-907 and then it picks up again 821.

24 MR. COLLINS: 821. Good point.

25 MR. COLLINS: So it should be 807. And then
26 also piggybacking on that, my April 29 submission talked about

1 lot 807 and why that should retain its SP-2 zoning and the
2 Office of Planning report recommended retaining SP-2 zoning
3 for that piece as well. So I just wanted to call that to the
4 Commission's attention.

5 CHAIRPERSON KRESS: All right. Thank you.
6 Office of Planning, can you help pick up the 807 typo?

7 MR. COLBY: Yes.

8 CHAIRPERSON KRESS: Thank you.

9 MR. COLLINS: It is all explained in my April 29
10 letter, exactly where it came from and why it is there and why
11 it should be different.

12 CHAIRPERSON KRESS: I just don't want to lose
13 any pieces. Thank you.

14 MR. WILLIAMS: In the same spirit, Madam Chair,
15 if you will permit me, under alternative F, where it describes
16 the notice and the alternative, it makes reference to tax lots
17 2233 through 2242 at the address 1225-1227 M Street, that I
18 have determined subsequently is lot 31 in the surveyor's
19 system of records. Lot 31.

20 CHAIRPERSON KRESS: All right. Thank you.
21 Anything else? All right. With that I will say, ladies and
22 gentlemen, the other members of the Commission and I wish to
23 thank all of you for your testimony and assistance in this
24 hearing. The record in this case will be kept open until May
25 21, 1999, for submissions of any additional information.
26 Actually, I don't think we are going to keep the record open.

1 We haven't asked for anything except for from Office of
2 Planning, which is their normal procedure anyway. So unless
3 you all can think of anything else, I hereby say that on
4 behalf of all us that the record is closed. The Commission
5 will make a decision on this case at one of its regular
6 monthly meetings following the closing of the record. These
7 meetings are held at 1:30 p.m. on the second Monday of each
8 month with some exceptions and are open to the public. If any
9 individual is interested in following this case further, I
10 suggest that you contact the staff to determine whether your
11 case is on the agenda for a particular meeting. You should
12 also be aware that if the Commission proposes affirmative
13 action, that proposed action must be referred to the National
14 Capitol Planning Commission for impact review. The Zoning
15 Commission will take final action -- I don't have anything
16 else, but it will take final action at its next meeting.

17 MR. COCHRAN: Madam Chair, about the record
18 being closed, since we weren't able to get the PowerPoint
19 presentation in when I went back, I could send you a printed
20 copy of it if you would like. It did contain some additional
21 pictures that might be useful for your reference.

22 CHAIRPERSON KRESS: I would suggest you include
23 that with Office of Planning's summary and report.

24 MR. COCHRAN: Thank you.

25 CHAIRPERSON KRESS: With that, I declare this
26 hearing closed.

1 (Whereupon, at 10:03 p.m., the hearing was
2 closed.)
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