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

IN THE MATTER OF:

DOWNTOWN DEVELOPMENT DISTRICT (DD) Case File No.
HOUSING-RELATED TEXT AMENDMENTS 99-3Z
BASED ON THE 1998 AMENDMENTS TO
THE COMPREHENSIVE PLAN

Tuesday, May 20, 1999
Hearing Room 220 South
444 - 4th Street, N.W.
Washington, D.C.

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

PRESENT

JERRILY R. KRESS Chairperson
ANGEL F. CLARENS Commissioner
HERBERT M. FRANKLIN Commissioner
ANTHONY HOOD Commissioner

STAFF PRESENT

VINCENT ERONDU Office of Zoning
DAVE COLBY Office of Planning

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On Behalf of Douglas Jemal

JACQUES B. DePUY, ESQ.
of: Greenstein DeLorme & Luchs, P.C.
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On Behalf of Rockcreek Partners, Square

247 Associates

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

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6:56 p.m.

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CHAIRPERSON KRESS: Good evening ladies and gentlemen. I am Jerrily

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Kress, Chairperson of the Zoning Commission of the District of Columbia. Joining me this

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evening are Commissioners Hood, Franklin and Clarens. I declare this continued public

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hearing open. It is not -- is it continued? No. Excuse me. Case No. 99-3Z, the zoning

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consistency project is an initiative of the Zoning Commission for the District of Columbia

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resulting from a petition from the District of Columbia Office of Planning. Zoning consistency

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projects are city-wide rezoning activities to eliminate zoning inconsistencies with the

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Comprehensive Plan Amendments Act of 1998. Among the amendments contained in the Act

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are three that potentially effect housing in the Downtown and can best be implemented by

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amending Chapter 17 of Title 11 of the District of Columbia municipal regulation zoning. These

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proposed amendments are intended to eliminate inconsistencies between existing zoning and

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the downtown elements of the Comprehensive Plan. The specific amendments to the DD

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regulations are contained in the Notice of Public Hearing for this case. Copies of the Notice are

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available for the public. Notice of today's hearing was published in the D.C. Register on April 9,

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1999, in the Washington Times on April 7, 1999.

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This hearing will be conducted in accordance with the provisions of 3021 of

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the District of Columbia Municipal Regulations, Title 11, Zoning. The order of procedure will be

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as follows. First, preliminary matters, second Office of Planning's report, third, report of other

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agencies, fourth, reports of the Advisory Neighborhood Commission, and fifth, persons and

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parties in support -- I mean, persons in support and persons in opposition.

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The Zoning Commission further gives notice that it intends to establish time

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limits for all presentations. Accordingly, the following time limits shall apply. The petitioner, in

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this case the OP, will be allowed 60 minutes. The ANC's -- 15 minutes, organizations -- 5

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minutes, and individuals -- 3 minutes. Those presenting testimony should be brief and non-

1 repetitive.

2 If you have prepared statement, you should give copies to staff and orally
3 summarize the highlights. Please give us your statement before summarizing. Each individual
4 appearing before the Commission must complete two identification slips and submit them to the
5 reporter at the time you make your statement. If these guidelines are followed, an adequate
6 record can be developed in a reasonable length of time.

7 With that, I will begin with preliminary matters. Do we have any preliminary
8 matters?

9 MR. ERONDU: No preliminary matters.

10 CHAIRPERSON KRESS: Thank you. With that, we will go to the Office of
11 Planning for its presentation, and there is a waiver of rules for late submission of the Office of
12 Planning report, which, with my colleagues' approval, we will so allow; and so with that we will
13 turn it over to you Mr. Colby.

14 MR. COLBY: Actually the report that requires a waiver is the meeting
15 report, if I am not mistaken, because, although the fact got a little confused on the date, the
16 hearing report was stamped in on May 10 -- ten days ago.

17 CHAIRPERSON KRESS: So that was fine. So, the report that you are
18 asking for the waiver for is the --

19 MR. COLBY: Is for the special meeting.

20 CHAIRPERSON KRESS: Is for the special meeting. All right.

21 MR. COLBY: That was very late.

22 CHAIRPERSON KRESS: All right.

23 MR. COLBY: But the proposed text amendments, or the amendments
24 which we are proposing having to do with housing in the DD downtown development district
25 flow out of the Comprehensive Plan amendment in the 1998 Comp Plan amendments which
26 just became -- actually became effective late in March -- I think March 27. Those amendments
27 require an immediate zoning text amendment for Woodies to permit residential use, a zoning

1 text amendment to ensure that the entire 2 FAR requirement of housing for the DOES site be
2 developed on site, and encourage residential development in the Mount Vernon Square
3 subarea of downtown through rezoning or other means, and we are recommending TDR bonus
4 provisions. I will get into that in a second.

5 It is a fairly simple case on the face of it. That is to say, the information as
6 contained here is fairly simple. It will serve as a vehicle for more complicated issues primarily
7 regarding Woodies, but I think there are even other issues that will come up tonight.

8 On the residential use permitted or to be permitted in Woodies Department
9 Store building, the Council adopted a policy to enable residential use, and the plan says to add
10 residential to the list of allowed uses for the vacant Woodies Department Store building in
11 Square 346 in Downtown. We have done that. The language would add in Section 1702.5(a)
12 where it currently says the entirety of the gross floor area may be converted as a matter of right
13 to any accommodation of preferred retail service and arts-related uses permitted in Sections
14 1710 and 1711, we have added "provided that any conversion on Square 346 may also include
15 residential use as defined in this chapter," and that again on the face of that is very simple.
16 Square 491 on-site housing requirement, again that the Council adopted a policy very specific
17 to require that all 2 FAR required housing on the DOES site be provided on site and not sent off
18 site as low-income housing or sent elsewhere what you could do with 40 percent of it normally.

19 The Council did that as sort of a tradeoff to the loss of housing potential on
20 MCI Center. That was the rationale given for this particular amendment. We have taken care
21 of that by adding a Subsection 1706.22 which says the DOES site in Square 491 shall not be
22 eligible to send any of the required minimum 2 FAR residential use off site through the
23 combined law development or affordable housing provision of this chapter. Again, that is quite
24 direct and simple and based directly on the Comp Plan Amendment.

25 The third one, transferrable development rights or TDRs for housing within
26 Downtown. In 1994 in the Comp Plan Amendments, the zoning following those, the Zoning
27 Commission adopted transferrable development rights for development of housing Downtown.

1 Those TDR rules, however, were tied to housing priority areas "A", "B", and "C" which are
2 essentially mixed-use zones where housing was encouraged and the TDRs were a way of
3 helping to meet the housing requirement and provide some further economic basis for housing.

4 The formula then and is two-to-one for development south of Mass Avenue
5 where it would be harder to achieve and one-to-one north of Mass Avenue, which is to say you
6 get the equivalent of one square foot of TDRs to transfer for each one square foot of housing
7 that you provide or two square feet to transfer for each one square foot you would provide north
8 of Mass Avenue.

9 In 1998, the Council adopted a policy, as I earlier noted, to encourage
10 residential development in the Mount Vernon Square area. We expanded on that basic concept
11 that the Council put out to say why not encourage housing; everybody wants it in all of
12 Downtown in the DD area. Why not apply the TDRs elsewhere.

13 We have a map attached to this which shows where that elsewhere is at the
14 back of our report, and it would include such sites as Woodies where residential -- if you adopt
15 this change -- where residential would be permitted, it would assist there. It would assist in any
16 number of other smaller sites north of Massachusetts Avenue. It would occur in the Mather
17 Building, a historic building owned by the city, and we have gotten feedback that some
18 developments that are trying to proceed in the north side of -- the north edge of Downtown but
19 in the DD district, who were not in the housing priority areas, that this would be of big benefit to
20 them and hopefully will allow them to go forward with housing.

21 So, we would accomplish that through a text change which would say under
22 Subsection 1706.2, the housing requirements incentives of this section shall be applicable only
23 in the housing priority area which is depicted on Map B, and so on, provided that the
24 transferable development right provisions of Section 1706.3 shall be applicable throughout the
25 DD District and that be as incorporated by reference.

26 Again, as far as those go, I have gotten very positive feedback from housing
27 community activists on the TDRs and on developers. I have gotten no negative feedback on

1 that at all.

2 You have got a letter in your package from Charlie Doctor who may or may
3 not testify and I have talked to him, and I am not sure he will testify on the issue where he
4 wanted to up the ante on the DOES site. From discussions with GSA, that was the problematic
5 in terms of their ability to market the site, unless somebody we are going to do all residential
6 anyway and, if they were, you would not have to require additional residential, and the
7 Comprehensive Plan does not say to require 4 FARs, so that would be some other basis for
8 that.

9 The third one is the residential use of Woodies, which is again specifically
10 part of the Comprehensive Plan amendments, and we went around and around on variations on
11 that with the proposers of that as it was going through the Comprehensive Plan amendment
12 process and it finally ended up, I believe, being supported by those who had been on various
13 sides of that issue and I do not know of anybody who expressed any reticence to allowing
14 residential use on Woodies site, or in the Woodies historic building.

15 I guess I would add, although you have not had a chance to discuss it, I
16 would propose that, if there is no testimony to the contrary, that you just cleanup this one and
17 do a bench decision before we get on to other issues that will follow on to this at the special
18 meeting. And that is the end of my presentation.

19 CHAIRPERSON KRESS: Thank you. Some questions of Mr. Colby,
20 Commissioners?

21 COMMISSIONER CLARENS: I have a very simple question I view as a
22 clarification. There is a discrepancy between -- in 1702.5 -- the uses described for the Woodies
23 site are referred to as retail service and arts-related uses. And then in your recommendation for
24 the set-down hearing, you referred to them as retail entertainment and --

25 MR. COLBY: Yes. I apologize for that. They are defined in the use table
26 as arts, elsewhere in the various writings on the DD district, they are referred to as arts
27 entertainment, and I refer to them in my other report for tonight as arts entertainment, but

1 technically they are arts in the regulations.

2 COMMISSIONER CLARENS: And then what is service?

3 MR. COLBY: Service is retail services, barber shops, whatever you --

4 COMMISSIONER CLARENS: And what is then retail?

5 MR. COLBY: Retail would be restaurants, hard goods.

6 COMMISSIONER CLARENS: And that is differentiated that way in the
7 regulation?

8 MR. COLBY: Yes, yes. As defined specifically by about 30 or 40 uses for
9 each category in the DD district regulations. I have got a copy here if you want it.

10 COMMISSIONER CLARENS: So then the regulations say retail, service,
11 and arts. They would be the same. You were consistent on it.

12 MR. COLBY: Yes.

13 COMMISSIONER CLARENS: A minor point -- I use one interpretation.

14 CHAIRPERSON KRESS: Do you have any questions?

15 COMMISSIONER HOOD: No questions.

16 CHAIRPERSON KRESS: I do not want to rush you but, anything else.

17 COMMISSIONER CLARENS: No, I think that each of the TDRs -- I might
18 need some clarification, but I think that they are going to come out in perhaps some of the
19 testimony that we are going to hear.

20 CHAIRPERSON KRESS: All right, thank you. There aren't any other
21 reports from any other agencies are there? Mr. Colby?

22 MR. COLBY: No. Not on this.

23 CHAIRPERSON KRESS: Is there anyone here representing an ANC who
24 wishes to testify on behalf of their ANC? All right, seeing none, then we will move on to
25 persons in support and then persons in opposition. So, persons in support. Why don't you
26 come forward. And, of course, please identify yourself for the record.

27 MR. DePUY: Thank you Madam Chair, members of the Commission. I am

1 Jacques DePuy, attorney with Greenstein, DeLorme & Luchs, appearing with Douglas Jemal
2 who is the new purchaser of the Woodward & Lothrop building, and Mr. Jemal is here to make
3 essentially three points to the Commission.

4 One, he is in full support as the new owner of the former Woodies building
5 of the first amendment that was discussed by Mr. Colby, which is to authorize residential uses
6 of the Woodies building.

7 Secondly, he is here to indicate support for a further amendment, which I
8 believe is the subject perhaps, as Mr. Colby said of a potential further meeting by this
9 Commission of a proposed text amendment to be heard in the future dealing with office use of
10 the Woodies building, and then third his request to move as expeditiously as possible on that
11 further text amendment in order to get the Woodies building back on line.

12 Having made those points, I would like to ask Mr. Jemal to address the
13 Commission.

14 MR. JEMAL: Thank you very much. The Woodies building, we all know, is
15 an extremely significant building to the City and to the redevelopment of the downtown corridor,
16 and right now what we have is a big building that is zoned retail with residential as a matter of
17 right, and the question that you have is two ways that this building could start. It starts from the
18 bottom up, meaning retail from the ground floor on up, and it starts from the top down meaning
19 residential base from the top down. And then there is what they call a bellie card in between, it
20 is all those floors that are in between.

21 When Woodies was opened, Woodies had four floors of back office, their
22 advertising department, their buying office, and their executive office. It is going to be
23 impossible to get residential on the Woodies floor plate the way it is right now, and I will take
24 you through that for a second.

25 The building is 200 by 200 by 200 by 200. The average apartment when
26 you walk in the front door is 25 feet in length, so from where I am standing right now --
27 probably, right where that desk is right there to the end of that wall, either you walk to the right,

1 there is a bedroom, or you walk to the left, there is a kitchenette and there is a livingroom right
2 in the center. So that means that there is a hundred feet in the middle of the building that would
3 have to come out to put light.

4 So what I am proposing to do is create four stories of living space on top of
5 the roof the Woodies building because it has 12 FAR, and then the center of the building,
6 although I would like to get as much vertical retail as I possibly can, I do not know how much I
7 can get. So for me to bring a lender on line because it is a big project, they are going to want to
8 know that the building has the flexibility to do multipurpose, meaning residential, retail, and
9 office space; and, until we can clear that up, the project would, you know, unfortunately would
10 just have to wait because of that zoning issue. No lender is going to commit without them
11 knowing what they could put in the building.

12 So, that is what I am here to address this evening. That how important it is
13 to move this along just so that we can get a clear picture of what could be done with the
14 building. I think I have addressed everybody's needs, meaning the retail -- bringing the retail
15 core back to Downtown, and doing a residential in the Woodies building and somewhere in
16 between I want the right to put office as there was before.

17 Thank you very much for your time.

18 CHAIRPERSON KRESS: Thank you. Questions?

19 COMMISSIONER CLARENS: Yes. Can you give us an idea, a rough idea,
20 of percentages of use that you foresee for a financial package to be acceptable of the total
21 square footage of the building?

22 MR. JEMAL: Yes I can. The building will have approximately 600,000
23 gross square feet. The building will have 200,000 gross square feet allocated to residential.
24 The building will have --

25 COMMISSIONER CLARENS: Six hundred square feet, no. Six hundred
26 thousand.

27 MR. JEMAL: Right.

1 COMMISSIONER CLARENS: Six hundred thousand square feet of total --

2 MR. JEMAL: Total gross area.

3 COMMISSIONER CLARENS: Two hundred -- and that would be including
4 the four floors that you are planning to add.

5 MR. JEMAL: Correct.

6 COMMISSIONER CLARENS: And that is the 12 FAR.

7 MR. JEMAL: Yes it is.

8 COMMISSIONER CLARENS: And 200,000 will be residential.

9 MR. JEMAL: Yes.

10 COMMISSIONER CLARENS: A full third.

11 MR. JEMAL: It will be between 120 and 140 units.

12 CHAIRPERSON KRESS: And you do not have a commitment to the retail,
13 or you do?

14 MR. JEMAL: I am working with some retailers at the present time, some
15 national retailers at the present time. But I am designating the lower level, which is
16 approximately 70,000 feet, the first floor which is approximately 50,000 feet, and the second
17 floor which is approximately 50,000 feet exclusively for retail use.

18 COMMISSIONER CLARENS: So it is about a hundred --

19 MR. JEMAL: One hundred and seventy.

20 CHAIRPERSON KRESS: One hundred and seventy.

21 COMMISSIONER CLARENS: One hundred and seventy thousand square
22 feet of --

23 MR. JEMAL: Retail.

24 COMMISSIONER CLARENS: Of retail and that is retail/service --

25 MR. JEMAL: Correct.

26 COMMISSIONER CLARENS: -- /arts, whatever it is.

27 MR. JEMAL: Correct.

1 COMMISSIONER CLARENS: And then the balance, which is
2 approximately 230,000 square feet will be office.

3 MR. JEMAL: Correct. Or retail. I do not know how high I can go with the
4 retail. Right now I do not think it is written, it never was eight or nine stories of retail. I just do
5 not know how right now how vertical we can go with the retail. I do not know if we can get a
6 retailer on the fifth floor, sixth floor, seventh floor, eighth floor. I just do not know if the feasibility
7 is there. However, in order to start this project and to get a lender on board because it is in
8 excess of a \$60 million renovation, they are going to want to know because when they
9 underwrite something like this, they look at it as if they are going to own it.

10 COMMISSIONER CLARENS: And the reason why you cannot lower the
11 residential is because you have the entire core of the building becomes a blind area that you
12 cannot put residential in there. So you create a donut on top of a building so you can have a
13 courtyard and the dimensions of that courtyard are? Of that central area in with the residential
14 is --

15 MR. JEMAL: Well this would approximately be about 200,000. This is four
16 stories, approximately 200,000 feet. And our next part of this is going to be a lot better than
17 this, because what I ended up here was that I ended up taking this courtyard out and moving
18 these over here to give everybody a back yard and a front yard and lights on both sides. And
19 that is how you handle that center core a lot better.

20 CHAIRPERSON KRESS: So it is private space rather than public space.

21 MR. JEMAL: Exactly, and everybody has light on the front, light on the
22 back, and light in the back. And so I would just move this over.

23 COMMISSIONER CLARENS: Oh, you create a core of residential in the
24 middle and then kind of a ring of green space and then another ring of residential.

25 MR. JEMAL: That is correct. These are set backs off of the eighth floor
26 because of the cornice and the historic significance of this.

27 COMMISSIONER CLARENS: And how do you access -- don't you need

1 some -- how do you, well okay. We are not doing a --

2 MR. JEMAL: We will have an elevator going up to the rooftop. What you
3 are going to have is you are going to have a --

4 CHAIRPERSON KRESS: And they are obviously going to have to be a
5 HPRB.

6 MR. JEMAL: -- urban downtown up on that roof with some great views. It is
7 going to be great residential.

8 CHAIRPERSON KRESS: And you are obviously going to HPRB.

9 MR. JEMAL: Yes, next week.

10 CHAIRPERSON KRESS: Next week. Could I ask you one of the -- if you
11 do not mind if I could just follow on what you were saying for a second Commissioner Clarens.
12 One of the things when we first heard this was the community very loudly saying we do not
13 want office. What has happened in your communications with the community since you have
14 gotten the building. I know that they wanted residential and that you are adding the residential.
15 I was just wondering if you could perhaps update us.

16 MR. JEMAL: Well, I tried to give everybody what they wanted. There is a
17 middle part of this building that is going to be a question mark that I do not have an answer to
18 today. And it is going to be extremely important to clear that up because it is a big block of
19 space sitting on Metro Center, and any lender that is going to get involved in a \$60 million
20 project is going to want to know that they have the economy they need to to come in and put
21 office in there. And I think that basically what that building now did is it handled all three
22 phases. It handled the retail, it handles the office, and it handles residential. I think it will be a
23 great asset to the community and the City and I think it should be a joint partnership with
24 everybody and that is why I wanted the residential, the office and the retail.

25 COMMISSIONER CLARENS: And with such a deep floor plate, how are
26 the offices going to work?

27 MR. JEMAL: They are not the easiest. They are going to be a big center

1 core and windows around the entire perimeter. It is a deep floor plate. There is no question
2 about that.

3 COMMISSIONER CLARENS: So the rentability even for office space of the
4 center of the building continues to be a problem.

5 MR. JEMAL: It is not the most desirable because certainly you do not have
6 windows in the center of the building. But that is what it was. That is what it is and that is what
7 we are working with. We cannot change that.

8 COMMISSIONER CLARENS: Okay, I do not have any further questions.

9 MR. JEMAL: Thank you for your time.

10 CHAIRPERSON KRESS: Just a second. Commissioner Franklin.

11 COMMISSIONER FRANKLIN: Are you the fee owner right now.

12 MR. JEMAL: Yes I am.

13 COMMISSIONER FRANKLIN: You are not the contract purchaser, you are
14 the owner.

15 MR. JEMAL: I am the owner. We closed on it February or Tuesday, March
16 25th.

17 COMMISSIONER FRANKLIN: Okay. Thank you.

18 MR. JEMAL: Thank you.

19 CHAIRPERSON KRESS: Commissioner Hood, did you have any
20 questions?

21 COMMISSIONER HOOD: No, I do not have any questions.

22 CHAIRPERSON KRESS: That is all the questions we have. Thank you so
23 much.

24 MR. JEMAL: Thank you.

25 CHAIRPERSON KRESS: For coming to testify this evening.

26 COMMISSIONER FRANKLIN: Excuse me, one further question.

27 CHAIRPERSON KRESS: Sure, go ahead.

1 COMMISSIONER FRANKLIN: If you do not mind. If it turns out that office
2 is problematic in that middle layer so to speak, what alternatives are there?

3 MR. JEMAL: If office becomes problematic on the middle layer, whatever
4 comes along that would mean we may try to get more retail up there if it is possible.

5 COMMISSIONER FRANKLIN: But you are saying that residential does not
6 work there.

7 MR. JEMAL: It does not work because you are taking out the whole center
8 gut of the building.

9 COMMISSIONER FRANKLIN: Yes. Okay.

10 MR. JEMAL: But that is the building. That is what the building is.

11 COMMISSIONER FRANKLIN: It is a challenge.

12 MR. JEMAL: It is a challenge. Thank you.

13 CHAIRPERSON KRESS: Thank you. Anyone else who wishes to testify in
14 support? Please come forward. Mr. Glasgow.

15 MR. GLASGOW: I have copies of my testimony. My name is Norman M.
16 Glasgow, Jr. of the law firm of Wilkes, Artis, Hedrick & Lane. I will just summarize my testimony
17 and hit some of the high points.

18 I am here on behalf of Square 247 Associates, the owner of Lot 97 and
19 Square 247. That is located at the intersection of 13th and L Streets, N.W. -- the northwest
20 corner of that site. I handled the PUD on that property back in 1989 which was then modified
21 by the Zoning Commission to provide a housing component at 1312 Massachusetts Avenue,
22 the Midtown Condominiums. They were built as a part of that PUD with the 13th and L Street
23 parcel being 9.74 office.

24 We have been studying the feasibility for the past few months of potentially
25 converting that office planned unit development as an alternative for development because we
26 have a ten-year approval to an apartment building. We are looking at about a 330,000 square
27 foot apartment building, would be 11.55 FAR. We presently have a 9.74 FAR office building.

1 So we are looking at that -- we were looking at coming into the Zoning Commission to modify
2 the PUD to provide a development in the alternative, either with the office approval that we
3 already have or for an apartment building.

4 In order to do that, we need several things from the City, some of which you
5 all can help us with, others we are going to need to go to the City Council and get a couple of
6 rulings on the building code. One is that with respect to -- and this we may be able to do
7 through the legislative history in this case -- we want to make absolutely sure that we are able
8 to get the two-to-one TDRs. We are south of Massachusetts Avenue. We are within the map
9 that is attached as Appendix C to the report that was given by the Office of Planning. Square
10 247 and the subject site are located in this area. If I can approach the bench. It is located right
11 here. So it is within the designated DD housing priority areas, however because of a technicality
12 by virtue of the C-4 zoning that we had by a PUD, we wanted to make sure that that issue is
13 clarified and that we have the two-to-one TDRs.

14 So we are requesting that: one, either there will be a clarification of the
15 record that this would apply to us, or, as set forth on page 3, that within the ambit of this hearing
16 that we be able to add the language that the transferable development rights provisions of
17 Section 1706.3 shall be applicable throughout the DD and C-4 districts. That would clearly
18 cover us.

19 The second item that we want to be able to take advantage of is combined
20 lot development, and, with respect to combined lot development, we are suggesting that we be
21 able to have combined lot development in any of the housing priority areas A, B, and C.

22 I had a discussion -- I guess it was earlier today with Charlie Doctor.
23 Charlie said he was concerned about housing priority area A us being included with that, but B
24 and C he did not have any issue with and so we want to have that flexibility to be able to mix
25 within housing priority areas B and C. So that would mean that with respect to the draft of the
26 text that we have to accommodate that, we would want to submit a slightly revised text with
27 respect to Section 1706.3. I am sorry, 1706.9, so that the apartment house that is in a C-4

1 district could be combined with any lot in housing priority areas A -- I mean B and C. It would
2 be B and C. That is at the bottom of page 4 in the statement.

3 And then just hitting the remainder of the highlights of this presentation, we
4 are going to be filing in --

5 CHAIRPERSON KRESS: Would you read again what your proposal for
6 1706.9 is?

7 MR. GLASGOW: Sure. It is at the bottom of page 4, and where it says
8 "may be combined with a lot in any of the housing priority areas", I would say in the housing
9 priority areas B and C.

10 COMMISSIONER FRANKLIN: B or C or B and C?

11 MR. GLASGOW: I would say B and C because we can go either way.
12 Because we could conceivably have a combined lot development that is part in B and part in C
13 in the same project.

14 COMMISSIONER FRANKLIN: Thank you.

15 CHAIRPERSON KRESS: Thank you very much. Did you finish your
16 testimony? I interrupted you.

17 MR. GLASGOW: And I have one other point. The other point is that when -
18 - proceeding very rapidly on this type of project obviously is very important. Interest rates have
19 been moving away from us on this project. They have been going higher, the long bonds have
20 been. If you go back to last October-November, 30-year long bonds essentially got down to
21 about 4.7 for a little bit. They were under 5. Now they are very close to 6. That is a problem
22 for us, but we think what is going to be happening through the end of the year is that they will
23 level off and the rates are going to come down some. Now, maybe they will and and maybe
24 they won't, but as they are coming down, that is advantageous to us when we file our request
25 for modification and I have had some discussion with the ANC commissioners in that area and
26 my understanding is that that they are very supportive of this project. We would want to be
27 scheduled for a hearing on an expedited basis so that we could take advantage of interest rates

1 if they come back down as we hope that they will. So we would need to have some quick
2 action and then we are also going to be going to the City Council on one matter, and we are
3 going to be obtaining a ruling on building code on another.

4 CHAIRPERSON KRESS: So all three of these changes in your mind need
5 to be reoperatized or set down? MR. GLASGOW: No, I don't -- no mam. I believe that
6 certainly the first one can be done clearly within the ambit of the hearing notice that was out
7 here. That is the change that would --

8 CHAIRPERSON KRESS: 1706.2 --

9 MR. GLASGOW: -- 6.2 Yes and the C-4 districts or in the alternative that
10 we have a specific ruling that because of the map that the Office of Planning has provided, and
11 I have had some discussion with David Coby on that that there is a specific interpretation that
12 this project would be able to avail itself of the ability to have the transferable development rights
13 at the two-to-one ratio.

14 Then the other -- the combined lot development -- would probably require a
15 further hearing.

16 COMMISSIONER FRANKLIN: Why do you say that?

17 MR. GLASGOW: Well, I guess that is more out of an abundance of caution.
18 If it were me I think that we could do it within the --

19 COMMISSIONER FRANKLIN: It is reasonably related to --

20 MR. GLASGOW: That it is reasonably related. But I know that on some
21 occasions there has been a fairly strict view taken as to what is within the hearing notice and
22 what is not. I think that it supportable -- that there is an argument and it is supportable -- that it
23 can be done within the confines of this hearing. And then, of course, the last one is subject to
24 us getting our application in here before the Commission. And that concludes my statement.

25 CHAIRPERSON KRESS: Questions? Colleagues? I guess we do not
26 have any more. Thank you for coming to testify.

27 MR. GLASGOW: Thank you.

1 CHAIRPERSON KRESS: Any other persons who wish to testify in support
2 before we go to opposition? Please come forward.

3 MR. DOCTOR: Madam Chair, I just have a question. You are talking about
4 in support of the amendments that are before you, is that correct?

5 CHAIRPERSON KRESS: That is correct.

6 MR. DOCTOR: Then I do wish to testify in support. My name is Charles
7 Doctor. I am from the Downtown Housing Now Committee, Chairman. On April 5 we sent the
8 Chairman a letter concerning the DOES site on Square 491. I think that may be in your
9 package for this evening, but, just in case it is not, I have copies of the letter. We certainly are
10 for the amendment that has been proposed under the Comprehensive Plan to require that 2.0
11 FAR be on site for housing.

12 CHAIRMAN KRESS: Let me just check it.

13 MR. DOCTOR: This letter points out that there has been some movement
14 within the community. I think what is happening is that the market for Downtown residential is
15 improving tremendously, and I think that relates to what Mr. Glasgow was just up here on --
16 basically converting an office PUD to a residential apartment building. And because of that, the
17 DOES property being the premier and last-remaining property on Pennsylvania Avenue that
18 has not been redeveloped under the Pennsylvania Avenue plan, there has been some
19 sentiment even in the development community to perhaps have that entire site as residential
20 with, of course, groundfloor or lower floor retail. And I think this amendment might accomplish
21 that because what happened in regards to Square 457 when the GSA put out the bids, they did
22 not say they would not entertain office on the site. What they did is they set the housing
23 requirement that they required a 330 units so high that all the bids that came back were for
24 residential -- complete construction of residential with, of course, the arts use that were required
25 too, and there are some theater proposals in there and retail. And I think the same thing could
26 be done here and it would tremendously help the residents of the Pennsylvania corridor and the
27 neighborhood that has been established there. There is Market Square, Pennsylvania, the

1 Landsburg and now the Lexington which has just opened which were all PADC-sponsored
2 properties.

3 So, we would like you to consider this amendment. I am sure it would
4 require a separate advertising. I certainly would suggest go ahead and adopt the amendment
5 that has been proposed as part of the comprehensive plan, but since Mr. Jemal is here on an
6 emergency basis and Mr. Glasgow is here on an emergency basis, we thought it was time for
7 the housing people to also be here on an emergency basis and ask you to consider this in the
8 future but at least let us put it on the table. We will have to see how the administration views it
9 and all of that, but at least let us put it on the table and do some serious thinking. I will say this,
10 there is a housing task force that Doug Patton has organized of developers and housing
11 activists and this is one site that is being considered by that task force so that it might be very
12 timely to at least get this on the agenda by advertising it if we are going to consider all these
13 other things on a hurried basis although we may have some objections on and we will be in
14 opposition to what was suggested by Mr. Jemal; but, nonetheless, I think it would be very
15 helpful if we could have this amendment which would basically require that 4.0 FAR be on site.
16 There will have to be some changes in the Pennsylvania Avenue plan set-back requirements in
17 order to accomplish all this, but at least this gets the process going. So that is the purpose.

18 CHAIRPERSON KRESS: Thank you.

19 MR. DOCTOR: Thank you.

20 CHAIRPERSON KRESS: Questions?

21 COMMISSIONER HOOD: Yes. Mr. Doctor.

22 MR. DOCTOR: Yes.

23 COMMISSIONER HOOD: Did I understand you say that you are in
24 opposition or you will be in opposition of what Mr. Jemal is proposing.

25 MR. DOCTOR: Oh yes.

26 COMMISSIONER HOOD: Which piece of that that you are in opposition on.

27 MR. DOCTOR: We have a detailed statement and I guess we have to wait

1 until -- that is why I was asking until we are called for opposition -- but we have several things
2 that we think are out of kilt with the proposal, but I think I have to wait my turn. I know Mr.
3 Lynch is here --

4 CHAIRPERSON KRESS: Well, wait a minute. Let me just see. Is there
5 anyone else who wants to testify in support? Otherwise, we will go ahead with the opposition.
6 Mr. Lynch, do you wish to testify in support. Good evening.

7 MR. LYNCH: Good evening. Can you hear me all right?

8 CHAIRPERSON KRESS: Perfect.

9 MR. LYNCH: Great. Before I say anything, let me first salute Mr. Jemal for
10 a great public service which is pertinent to tonight's case which he has not gotten enough
11 recognition for which is he is paying taxes on the Woodies building. That building sat vacant in
12 nonpaying taxes for too long for no good purpose, so we are thrilled by the sale of that. And
13 that gets us to why we are here tonight. How did we end up all here tonight? Well, frankly it
14 started eight months ago, roughly about a year ago when it became clear that the Opera was
15 not going to go and move forth that it was a failed proposition that they were putting forth. So a
16 year ago I initiated discussions with the Opera board and with City officials about how the
17 Woodies building could move forward in a productive manner in a way that the Opera could exit
18 from that situation and the City could reap the most in terms of a living downtown entity with
19 that building as its flagship.

20 Out of those discussions with the Opera, their attorneys, City Council
21 members came an amendment which I strongly endorse as I will go on the authors, it is
22 advertised tonight, and that is that any conversion on Square 346 may include residential use.
23 So as one of the authors of that proposal, I am here to endorse it.

24 I fought for a harder amendment that it would be required on site. That was
25 the position I initially took, but after a significant amount of time, significant amount of
26 negotiations, we were able to reach a consensus with the City Counsel, with the Opera and
27 their attorneys who were looking to sell the buildings, so in that we came to a consensus and

1 agreed that we would allow it as a use but not as a required use, number one. And the other
2 great achievement that we had was also that we got achievement around a second point which
3 was that the building's nomination to the National Register of Historic Places would move
4 forward. That had been held up for years. Woodies had opposed it, the prior owners had
5 opposed it, initially the Opera opposed it, but after a significant amount of effort, they came
6 around and they agreed and the City which had been sitting on it for ten years finally moved
7 forward with that application. So we achieved two great things. One is to add a residential use
8 as a preferred use, not a requirement. Second, that the building went forward to the National
9 Register.

10 Let me point out at that time OP had no remarks about adding commercial
11 to the building. They are well aware of the discussions but the Office of Planning never raised a
12 single eyebrow or a suggestion or an iota that office should be included there. At exhaustive
13 discussions with the City Councilmembers, the chair and the others, at no time was office
14 considered or discussed as the option for that building. There was consensus about that it be
15 arts, entertainment, retail, and/or potentially residential use. So the Office of Planning at no
16 time raised that spector. It was only last week that after all that effort I heard from -- fortunately
17 through Mr. Jemal and not through the City -- that this amendment, some proposal would come
18 down perhaps to add office use.

19 So let me strongly endorse 1702.5(a) as it was presented to you. And
20 secondly, I would actually increase the amount required on the D.C. DOES site. I think that
21 would be a great service. I think it has been contemplated that perhaps those critical sites
22 would actually have the higher on site higher as we are getting at Square 457, we are about to
23 get almost all housing development through GSA, and I think the City is stepping up to do a
24 higher requirement at D.C. DOES would be very productive for a living downtown.

25 I might as well take the opportunity -- obviously it is getting put on the table
26 about further hearings regarding possible office use. As I said, under the Comp Plan
27 unanimously adopted by the City Council, extensively discussed, no office requirement was

1 included in that discussion of the Comp Plan. So you really should probably go back to the
2 couch and go through the Comp Plan amendment. However, it may be reasonable to include
3 some office as an in-fill to what is primarily a retail, entertainment, residential destination
4 building. Once I think it gets fleshed out a little clearer how much housing are we going to able
5 to achieve their in terms of public four floors or maybe even more, how much retail exactly will
6 we achieve there -- hopefully at least a minimum of three floors and potentially quite a bit more.
7 Once those are fleshed out, I think then it might be more appropriate to revisit how do we in-fill.
8 Some office administrative use had been there, but related to the retail use. Hechts had used
9 various office space there, but that was related to the retail use. As it is right now, you could
10 use it for all office or for arts use. Some office user could amend who is all arts. That may be a
11 loophole you might want to consider closing. I mean, an arts user could go in there and close it,
12 do all office use there under the current regs.

13 So what I would urge the Zoning Commission to do is adopt the proposed
14 text as is, as was clearly agreed to. The City never discussed anything other. Move forward
15 with monitoring the situation closely, work extensively with Mr. Jemal as we try and put together
16 a fabulous retail-residential development, HPRB, and then act expeditiously to allow reasonable
17 in-fill of related administrative uses that might fit the dynamic mix that I think we are going get
18 there through his vision.

19 If you should set down an alternative, I would hope you would not do more
20 than one-to-one-to-one. To that, I have included, since they Mayor is coming in with his text
21 amendment at the eleventh hour, once again failing to reach out to the community; it reminds
22 me of his UDC proposal. But, in any case, since he is coming in with his, I figure we should
23 come in with ours. So we are giving an alternative suggestion of a one-to-one-to-one roughly
24 text amendment, and, if you wanted to advertise you could, which would continue to maintain
25 the building as a primarily retail-residential development, an entertainment development.
26 Clearly, a cornerstone -- clearly the leading building in the living downtown with perhaps some
27 ancillary or fill-in office use on some additional floors if it becomes apparent that that is

1 necessary.

2 So, that is attached to my testimony, the alternative text. If you are under
3 such pressure, you have got to adopt one, pleased to advertise ours as well.

4 CHAIRPERSON KRESS: May I just ask you to begin with -- you did not talk
5 with Mr. Jemal and were not aware of. I mean, you mentioned you learned from him about this
6 potential office use directly. What transpired in that conversation. Did you speak to your issues
7 --

8 MR. LYNCH: Well, we had a chance to meet and -- I mean, we talked
9 about it came out of our -- the way it was transcribed was hopefully we were going to get four
10 floors of residential there. Hopefully that is the goal. You know, I think we are going to get to a
11 consensus that works for everyone and that hopefully a minimum of retail on the lower and the
12 first two floors and potentially more with perhaps ancillary office use and my thought was
13 perhaps three floors in between the retail and the housing. So anyway, we had a brief time to
14 discuss. We talked briefly. I have had a number of -- we have had a flurry of back and forth
15 suggested text amendments through his counsel, his very capable and outstanding counsel,
16 Mr. DePuys. But the very limited time -- I mean, the City dropped this on us last week.

17 Where was Office of Planning all through the fall last year? Why didn't they
18 come -- they knew the discussions were going on. We had extensive discussions with the
19 property owners. We had extensive discussions with -- we were trying to have extensive
20 discussions with some in the Executive Branch to discuss what amendment should go forward.
21 We had an exhaustive discussion. We finally got consensus before we were there, and so then
22 last week -- prior to this as Mr. Doctor alluded were also at the marriage of the Hess doing
23 some extensive discussions about how do we encourage residential downtown now. In those
24 contacts, they did not broach the fact that they were going to move for half of this building to be
25 office. I mean, the people who bid on this building knew what the zoning was. The zoning was
26 retail, arts or service or entertainment related. That is what the zoning was with the knowledge
27 that the Comp Plan Amendment was then there to also possibly allow housing. All the bidders

1 knew that. That was the terms that the game was being played by.

2 Last week they drop it on us. That is not a lot of time to bring consensus.
3 That is all I can tell you. So, give us a little time, maybe we can get there. I am not going to get
4 there in a week. I am not going to get there if I find out through the backdoor. It is not good-
5 faith bargaining by the Executive Branch. I would have to say that. It would be a lot more
6 helpful if they would work with us at the beginning.

7 CHAIRPERSON KRESS: All right. Thank you. Do not leave yet.
8 Colleagues, questions for Mr. Lynch?

9 COMMISSIONER CLARENS: Good evening Mr. Lynch. For what I am
10 hearing from you is that in principle, the intention is to put the Woodies building back in service.
11 You understand that the type of flexibility that Mr. Jemal is asking might be the endpoint of the
12 process.

13 MR. LYNCH: I think it is the endpoint. I am not sure it is the beginning
14 point. I think it is helpful to get a better handle on where we are going. If the text amendment is
15 advertised, I think it moves half -- well, 48 percent or roughly half the building to office use right
16 off the bat.

17 COMMISSIONER CLARENS: The amendment that Mr. Jemal is proposing,
18 not the amendment that the Office of Planning is proposing.

19 MR. LYNCH: I think the Office of Planning is recommending a text set down
20 is my understanding.

21 COMMISSIONER CLARENS: Oh, in this set down.

22 MR. LYNCH: Yes.

23 COMMISSIONER CLARENS: Now we are talking about that hearing.

24 MR. LYNCH: Right.

25 COMMISSIONER CLARENS: Okay. We not talking about the thing that is
26 in front of us. So we are talking about the --

27 MR. LYNCH: What is in front of you I heartily endorse. I would move it

1 quickly. I was the author of a significant part of it.

2 COMMISSIONER CLARENS: I understand. Okay. So, there is no problem
3 with what is in front of us. So we are really talking about the set down here.

4 MR. LYNCH: Correct. Correct. Though you may want to increase, as I
5 said, the amount of requirement on the D.C. DOES sites. An excellent opportunity for the
6 District to match what the GSA and federal government is doing in terms of contributing to a
7 living downtown.

8 COMMISSIONER CLARENS: That is a minimum of 4 FAR for residential in
9 that block.

10 MR. LYNCH: Perhaps not allow a buyout at that site. There are some
11 options you might want to ask OP to look at to how does the City stand better forward in terms
12 of moving residential. I think OP could come up with some very good suggestions for you
13 there.

14 COMMISSIONER CLARENS: And with all your experience, you believe
15 that perhaps between now and the time that we do hold a hearing on this issue of the office use
16 at the Woodies building that you would have come to some sort of an agreement and
17 understanding.

18 MR. LYNCH: We will do our very best. I don't know, we have already been
19 at this building. I was here when it was four years ago. I begged the Zoning Commission to
20 allow residential use as an option then. For whatever reasons in your haste, the Zoning
21 Commission, however, except for the exemplary vote by Howard Croft, did not do that. We
22 could have saved ourselves this hearing four years ago but there was such haste -- three years
23 ago there was such haste. I will do my very best to get there, but I am not sure you want to
24 advertise or set down an advertisement that is quite as advanced in terms of office use on the
25 site as what was proposed for set back. That is why I gave you alternative language.

26 And I promise we will work in good faith with the Executive Branch if the
27 Executive Branch will take a vow to work in good faith with us. I have to tell you I left some very

1 angry messages with the Executive Branch when, thank goodness, Mr. Jemal reached out and
2 said this is what OP is sending down. So if the Executive Branch will swear as well, I will do
3 likewise.

4 COMMISSIONER CLARENS: Very good. Thank you.

5 CHAIRPERSON KRESS: Any other questions?

6 COMMISSIONER FRANKLIN: We seem to be seggling into the subject of
7 the other hearing. Are we going to hear from Mr. Lynch again at that point.

8 MR. LYNCH: I figured you have heard enough.

9 CHAIRPERSON KRESS: I think that we might as well go ahead so we are
10 not popping up and down as Mr. Doctor did.

11 COMMISSIONER FRANKLIN: Let me try to understand your position here.
12 You think that Mr. Jemal should probe his financing opportunities and then come back and
13 finding out what the usual narrow-minded lenders attitude is, sit down with you and work out
14 something that has a certain amount of office in this building.

15 MR. LYNCH: Well hopefully there could be a process with community input
16 -- a broader process with community input that looks: it is such a signature building, it is such a
17 critical building. There is only one Metro Center in the region. It is such a critical building. We
18 have been through the building zoning previously extensively, and the Zoning Commission
19 adopted retail and/or arts related use. I mean, there was an extensive prolonged hearing and
20 that is what we came down as the best long-term plan.

21 The City Council went throught he same last fall and we have come down
22 with the suggestion its arts and/or retail and/or housing. I would hesitate to move this quickly to
23 change all of that history to half office use.

24 COMMISSIONER FRANKLIN: Well, what are you suggesting such a text
25 amendment with respect to office use would say? Are you saying basically we ought to nothing
26 until certain ideas fall into place between Mr. Jemal, you, and the lenders?

27 MR. LYNCH: Well, I think it is possible that perhaps the BZA could

1 undertake the case and have more specifics on what -- it may actually be more of a BZA case,
2 the specifics of this particular site if there needs to be a variance from the regulations you have
3 adopted.

4 COMMISSIONER FRANKLIN: So, what I am hearing from you is you would
5 oppose a text amendment that allowed any office use.

6 MR. LYNCH: At this point, I feel it somewhat premature. If in your wisdom
7 you want to schedule such a hearing, certainly, and that gives us time to look at it and really go
8 through it and figure out what is feasible and we will get a better handle on just what HPRB may
9 approve in terms of housing and/or just what is achievable in terms of retail. It is a difficult
10 market.

11 COMMISSIONER FRANKLIN: It does not seem to me -- well, let me recast
12 the question. I am trying to really get to the bottom of your rationale here. Is it your view that it
13 would be a wrong-headed public policy to permit any office use whatever in this building?

14 MR. LYNCH: If I was supposed to speak from a process viewpoint, which I
15 guess I should since this is a planning body, process wise, yes I guess I would say it is wrong to
16 set down office use given the extensive comprehensive plan discussions around this building
17 and prior Zoning Commission action. I do not think it is appropriate at this venture to move an
18 office use without first going back to revisit the comprehensive plan given that discussion. To
19 talk from a planning perspective, I would say rationally if I had to go to my planning routes, that
20 is what I would say.

21 COMMISSIONER FRANKLIN: Well, what would say on a substantive
22 basis, not a procedural basis.

23 MR. LYNCH: I think it would be reasonable to schedule for a little farther
24 down the road, sometime either late summer, early fall, or ask OP to revisit it, come back to
25 you, be prepared once we have been able to -- the owner and the market is fleshed out, what
26 can happen there. I would monitor the situation closely with OP and I am certain OP certainly
27 has that capability and if at that point some modification is required, I think the Zoning

1 Commission could act with some alacrity at that time.

2 COMMISSIONER FRANKLIN: I am a little uncomfortable frankly with
3 addressing public policy considerations in the context of the dynamic of a given financing
4 package that may end up one way or the other. It seems to me that we have to decide whether
5 there is a sound public policy reason for not permitting office use at all in this building or if there
6 is a sound public policy reason to permit it, whether there ought to be some limitation on what,
7 from a standpoint of public policy, would be a maximum amount for whatever reason.

8 What I think you are telling us you want to happen is that we should not
9 signal in any way that we would entertain any office use whatever in this building so that when
10 Mr. Jemal seeks financing, the lenders know that there is a risk, that no office use will be
11 permitted at all, and he is the one who is taking the risk here and you are comfortable that he
12 should go forward and see what he can do under that scenario.

13 MR. LYNCH: You asked me from a planning process, and you are asking
14 for an orderly long-term view. The building has been extensively reviewed by the Council, by
15 the Zoning Commission previously and advertised for this hearing and the eleventh hour
16 coming in with a suggestion of an office, that is difficult.

17 I have somewhat of a sense of dejavu. It was three years ago that it was
18 with haste and alacrity and boom we changed what had been an advertised text for the
19 Woodies building to allow it be all arts instead of 50 percent arts. We acted in much the same
20 way and went from what was going to be a 50 percent could be arts to 100 percent possible
21 use of arts. The Zoning Commission acted with a lot of alacrity to help facilitate the Opera at
22 the eleventh hour. That deal fell through. I hate to sort of repeat moving with haste. I think we
23 can help Mr. Jemal get there. Part of the help was getting it on the National Trust so there is
24 tax credits. Part of it is the Tiff financing that we were able to get in place a year ago through
25 the City Council to help retail financing. Part of the help is adding residential as a potential use.
26 There has been a number of steps taken in the past year to really make this feasible with public
27 assistance.

1 COMMISSIONER FRANKLIN: How much time do you want to entertain for
2 this process to go forward before there is some resolution? Six months? Eight months?

3 MR. LYNCH: I would see there should not be any more need for more than
4 six months. Within six months, clearly this building needs to go within the next six months.
5 There needs to be a plan to come forward within six months in making this building go, clearly.
6 So I do not think it should go much longer than six months and potentially less. It should be
7 potentially within four months.

8 COMMISSIONER FRANKLIN: Okay, thank you.

9 CHAIRPERSON KRESS: Commissioner Clarens?

10 COMMISSIONER CLARENS: What I am hearing now is perhaps a little
11 more interesting is about how appropriate -- how do we initiate this? The purpose of this
12 hearing is to deal with a consistency issue of the regulations vis-a-vis the Comp Plan and to
13 make the regulations consistent. But now we have something else that is being thrown in which
14 is really out of the scope of this hearing completely and it is appropriately recognized as that but
15 now it is the issue of a set-down meeting for a future hearing dealing with something that is
16 really not initiated by the Comp Plan at all. Rather, it is initiated from the owner of the property,
17 and this comes down to us from the Office of Planning as an initiative of the Office of Planning
18 obviously on behalf of this new possibly very sound new vision for this building as a potential
19 way of making it happen. But, it is definitely we are going to create -- and the point I am trying
20 to make is that maybe -- I am not sure about the authority of this Commission, I mean, if we are
21 going to be consistent with the Comp Plan, then obviously allowing office use would create an
22 inconsistency with the Comp Plan, and it seems to me that procedurally you are absolutely
23 correct. We need to go back to the Comp Plan which seems to be a very cumbersome way of
24 doing things or the project come back to us in the form of either a PUD or to the BZA as a
25 variance from the use prohibitions. And the variance process is not very clear because, well I
26 imagine that BZA would have perhaps that authority. I do not know if it would to give a use to a
27 building that is specifically in the regulations is given only particular uses. So the question is

1 not only to you but also to Mr. Colby and to anybody else that can help me understand this a
2 little bit more.

3 MR. LYNCH: I think actually your two suggested courses of actions are
4 actually the more appropriate ones from the planning process. There is no Comp Plan basis for
5 adding offices. The Executive Branch could come in -- the Mayor could come in and come in
6 with a number. At any time he can introduce Comp Plan revisions. The Mayor could introduce
7 to the Council tomorrow a number actually of worthwhile comprehensive plan improvements,
8 and the Council could act over the summer months and that could be done. If not that way, the
9 other appropriate way, I believe, would be through the BZA. I think those two are actually the
10 correct ways to move forward.

11 COMMISSIONER CLARENS: And the BZA would have authority to change
12 the use.

13 MR. LYNCH: I think you would have to go back to the BZA anyway in this
14 instance because of the historic building, the amount of FAR that is there. I think there will have
15 to be a BZA hearing related to this if you are going to add housing to the top floors, I think there
16 is going to have to be a BZA hearing actually because of a historic district.

17 COMMISSIONER CLARENS: What I heard was that the 12 FAR is a
18 matter of right.

19 MR. LYNCH: I am not sure what the historic with a landmark building,
20 historic landmark building. I could be correct. It is a very technical point, but I think there may
21 have to be a BZA review.

22 CHAIRPERSON KRESS: Historic does not throw it into BZA.

23 COMMISSIONER CLARENS: No, historic does not throw it into BZA.

24 CHAIRPERSON KRESS: It would have to be either FAR or set backs or --

25 MR. LYNCH: I think it is because of the FAR. If you are going to add floors,
26 additional floors on the top but --

27 COMMISSIONER CLARENS: Or 80 or the fact that it might not be -- I do

1 not know. I am guessing it might not be a conforming view or conforming building and that will
2 then throw it into BZA because we are doing an addition. You are doing an addition to a
3 nonconforming structure then that kicks it into BZA automatically.

4 CHAIRPERSON KRESS: That could kick it in --

5 MR. LYNCH: There are several buildings downtown I think are subject to it.
6 I think potentially Mather, Woodies, it may have been the Riggs Bank building may have had
7 that situation, but I have not had time to go through it all.

8 CHAIRPERSON KRESS: I mean, there are definitely buildings that have
9 had additions to the top that have not required any BZA hearing. I am just trying to clarify, I am
10 not saying yes/no, good/bad.

11 COMMISSIONER CLARENS: And those ways better than a PUD process.

12 MR. LYNCH: On this particular site, I think so, but I am just talking from a
13 planning technical community input perspective which I think would be appropriate. I think
14 planning would be arguing that.

15 COMMISSIONER CLARENS: In your opinion the Zoning Commission
16 would be acting incorrectly to undertake -- this is what you are testifying -- to undertake the
17 rezoning of this site to include office.

18 MR. LYNCH: Pushed to a corner, if I had to speak based on Comp. Plan, I
19 would say yes.

20 CHAIRPERSON KRESS: Could I follow with where you came today?
21 Would you be totally unhappy if what you have proposed here was advertised in the
22 alternative?

23 MR. LYNCH: No. I would not be unhappy.

24 CHAIRPERSON KRESS: Thank you.

25 COMMISSIONER FRANKLIN: Colleagues, when we make reference in this
26 context to something called the "Comp Plan," we are not talking about anything that is
27 recognized professionally as a planning process, we are talking about a political process. The

1 Council can tomorrow change the "Comp Plan" by changing the words to whatever it chooses
2 to, and I persist in this naive belief that zoning is supposed to be in accordance with a
3 comprehensive plan and a comprehensive plan is supposed to be comprehensive based on
4 comp planning, and there is no planning going on here and the process that you refer to, which
5 I recognize has occurred, is not a planning process, it is a political process and there is nothing
6 really that you have to in that political process explain as rationally based. That is the
7 difference between legislative facts and other facts. So, I do not think that our hands are
8 particularly tied if we have a public policy foundation for what we propose to do. I am not sure
9 what that is frankly, but the fact that it is inconsistent with something that is labeled politically a
10 comp plan is not in my judgment something that binds us because comp plans do not address
11 parcel-by-parcel uses. They address broader issues and there is clearly office use in the
12 central employment area. And you actually have stated that as a substantive matter you are
13 not opposed to some office use on this site. I think you want to basically be able to negotiate
14 something, and I understand that posture. It is not a labor management -- you are not a
15 certified bargaining agent but I understand the desire to make it --

16 MR. LYNCH: What offices are allowed. The retail user could come in with
17 their related like Woodies had "X" office administrative related to their retail sales in there. An
18 arts user National Endowment of the Arts could come in take the whole building. I think that is
19 permitted under the regulations. There were already offices allowed. The question is --

20 COMMISSIONER FRANKLIN: There seems to be an ideological problem.

21 MR. LYNCH: To what sort of use.

22 COMMISSIONER FRANKLIN: Yes. You would oppose the National
23 Endowment for the Arts?

24 MR. LYNCH: I would not like it but it certainly is allowed.

25 COMMISSIONER FRANKLIN: Well, that is -- you have never been shy
26 before about telling us what you think the case ought to be even though certain regulations are
27 phrased in a certain way. I am just curious as to if the National Endowment for the Arts could

1 come into this building as an arts-related use and everything that they occupy, you know, walks
2 like an office, talks like an office, you know, it is an office.

3 MR. LYNCH: That is a loophole you may want to close then.

4 CHAIRPERSON KRESS: Okay, any other further questions for Mr. Lynch.

5 COMMISSIONER CLARENS: No, only to say that it was very helpful
6 Commissioner Franklin. I appreciate your comments.

7 CHAIRPERSON KRESS: Thank you very much for coming to testify this
8 evening. Have we finished completing testimony in favor of --

9 COMMISSIONER CLARENS: Of the amendment.

10 CHAIRPERSON KRESS: -- of the amendments currently proposed, and
11 then we will go to opposition. I see several hands, but are you in favor of --

12 MR. LA LENA: Yes.

13 CHAIRPERSON KRESS: Are you also in favor?

14 MS. NEUHAUS: I speak to -- yes.

15 CHAIRPERSON KRESS: She had her hand raised way before you did, so
16 if that is all right, I will accept her testimony before yours. Please do not talk until you get to the
17 mike and identify yourself.

18 MS. NEUHAUS: Sure.

19 CHAIRPERSON KRESS: That is not for me, that is for him.

20 MS. NEUHAUS: Hi, I am JoAnn Neuhaus and I am the secretary/treasurer
21 of the Pennsylvania Corridor Neighborhood Association. Prior to that I worked at the
22 Pennsylvania Avenue Development Corporation, and before speaking on the DOES site issue, I
23 would just like to say that I personally consider the National Endowment for the Arts a
24 government use and not an arts use. They are basically an office tenant, and they are
25 government office tenant. So I will just -- Terry used that as an example of an arts use and I
26 would argue with him that it really is not. You picked a bad example I think. But on DOES, I
27 happen -- I am not really prepared with a written statement because I only found out about this

1 when I came here tonight. But the Penn Quarter Neighborhood Association has submitted a
2 letter when the amendment to include the DOES site as in the portion of the DD zoning
3 regulations that require some residential use on the site. The Pennsylvania Quarter
4 Neighborhood Association has taken the position in the past, and it continues to support the
5 position that a mix of uses that include housing on government-owned sites is something that
6 should be encouraged.

7 When I read the actual language that is quoted here on page 4, which says
8 “With regard to the disposition of the District’s Department of Employment Services building site
9 on Square 491, require that the entire residential zoning requirement for this site shall be
10 satisfied on site.” It does not say what that requirement is, so it seems to me that it gives you a
11 bit of leeway to increase it, in fact, from 2.0 to some other number, and I do not think the Penn
12 Quarter Neighborhood Association would be opposed to that all.

13 I note because I was the staff person at PADC who negotiated with
14 Chairman Clark’s staff person the amendments to the Comp Plan at the time the MCI Center
15 was proposed and there was alternative language given and we went through a lot of
16 negotiations and the goal there was to make up as much as possible the lost housing that
17 would have been built on the MCI site had the arena, which was what it was called then, not
18 been built. So, increasing the FAR from 2.0 to some other number, and I certainly do not have
19 a number here, would not be -- we would look at it favorably. We would not look at it askance,
20 and I just wanted to let you know that the neighborhood association would support that. And
21 that is all I have to say.

22 CHAIRPERSON KRESS: Thank you. Any questions? Thank you.

23 MR. LA LENA: Good evening.

24 CHAIRPERSON KRESS: Good evening.

25 MR. LA LENA: I do not likewise have any written testimony because I only
26 learned about this hearing at about 2:00 o’clock this afternoon.

27 My name is Peter La Lena, and I am a member of the Downtown Housing

1 Now Committee. I also live downtown at the Pennsylvania Condominium, and the Downtown
2 Housing Now Committee is going to be presenting you with what I euphemistically refer to as
3 schizophrenic testimony; or, if you prefer, two members are going to play good cop and bad
4 cop, and I have been elected to be the good cop at this hearing.

5 Specifically, I want you to know that the Downtown Housing Now Committee
6 is in favor of amending Subsection 1702.5(a); and, for the record, I would just like to read that
7 amendment to you and let you know that we whole-heartedly support it.

8 Specifically, the amendment should read: "The entirety of the gross floor
9 area may be converted as a matter of right to any combination of preferred retail service and
10 arts-related uses as listed in Sections 1710 and 1711 of this chapter provided" -- and here is the
11 amendment -- "that any conversion on Square 346 may also include residential use as defined
12 in this chapter." And we whole-heartedly support Mr. Jemal's desire to put housing in at the
13 Woodward & Lothrop building.

14 However, what does have us a bit concerned is the fact that all of a sudden,
15 as you have heard, the introduction of office use is coming clear out of the blue; and, I am
16 embarrassed to say being naturally paranoid, I am suddenly concerned about something
17 happening to the plans for residential use in the Woodward & Lothrop building.

18 So while the Downtown Housing Now Committee would whole-heartedly
19 support Mr. Jemal putting housing in the building, I would like to assure everyone for purposes
20 of the record that we will whole-heartedly and enthusiastically oppose any attempt to do away
21 or reduce housing uses in Square 346, and that is all I have to say. Thank you.

22 CHAIRPERSON KRESS: Thank you. Questions?

23 COMMISSIONER CLARENS: But the amended text, all it does is identify
24 as residential as a possible --

25 MR. LA LENA: I am sorry, I could barely hear.

26 COMMISSIONER CLARENS: The amended text identifies residential as a
27 possible use on the site.

1 MR. LA LENA: That is correct.

2 COMMISSIONER CLARENS: And it does not say how much of the FAR.
3 It does not say anything. It is basically identified as residential, and your position is -- the
4 position of your organization is that you would oppose anything that would eliminate residential.

5 MR. LA LENA: That is correct.

6 COMMISSIONER CLARENS: But not necessarily that would replace some
7 of the other uses if residential was present.

8 MR. LA LENA: I am not going to comment on the other uses. I am only
9 going to comment on the housing. As I say, the bad cop has yet to come, and you may find the
10 answer to your question with his testimony, but we are really concerned about the fact that
11 since there has already been one deviance, if you will, introduced into the situation that was not
12 considered before, that should office use suddenly be allowed all of a sudden, housing or
13 residential use is going to suddenly disappear, and we are very much opposed to that. We
14 want everyone to know that we endorse and support residential use in that building.

15 COMMISSIONER CLARENS: So you would oppose something that would
16 basically introduce office as one of the possible uses unless it specifies that it should be in
17 some sort of a proportion or medium amounts --

18 MR. LA LENA: More than likely. More than likely.

19 COMMISSIONER CLARENS: I see.

20 CHAIRPERSON KRESS: But as written and as you read it, you do support
21 the amendment that you read to us which is as it was written and as it was advertised for this
22 meeting today.

23 MR. LA LENA: Yes.

24 COMMISSIONER CLARENS: Very good.

25 MR. LA LENA: Okay.

26 COMMISSIONER CLARENS: All right, thank you.

27 MR. LA LENA: Thank you.

1 CHAIRPERSON KRESS: Yes, don't forget your identification slips for the
2 reporter. That will help keep our records straight.

3 Anyone else who wishes to testify in support, otherwise we will move to
4 those who wish to testify in opposition. Okay. Mr. Doctor, would you like to resume your
5 testimony, the part that is in opposition.

6 MR. DOCTOR: All right. I have prepared -- my prepared testimony is a little
7 bit lengthy, and I will try to summarize it.

8 At this point I think that one of the statements I heard from Mr. Jemal was
9 that there was office in this building before, not by right of zoning. There may have been offices
10 for Woodies, but there was no outside commercial office as such, and I think that as far as the
11 issue goes about the lenders who really do not make the policy that you make and that the
12 Council and the Mayor make. I think the economic underpinnings of saying that the lenders
13 won't finance this building unless there is some office is completely incorrect. In fact, the
14 bidding which was very competitive on this property demonstrates that that is incorrect. Charles
15 E. Smith Residential Real Estate Investment Trust, a nationally recognized apartment owner
16 and developer listed in the New York Stock Exchange, made an offer that would result in 302
17 residential units in the Woodies building. In fact, their offer was higher and better than that of
18 Mr. Jemal by 1½ million dollars. Their offer was \$30 million. They would settle in 30 days.
19 They gave a deposit of \$3 million. Mr. Jemal only gave a deposit of \$2 million. They had,
20 however, one contingency which Mr. Jemal did not have. They requested a 45-day study
21 period, however, they had a side letter explaining that the only reason for this contingency was
22 that Smith Real Estate Investment Trust was a published corporation and had to have an official
23 study period before they could go forward.

24 In addition to that there was another offer on the building that was higher. It
25 was of the Herb Miller organization, Western Development, for \$30 million. However,
26 admittedly that particular offer had a lot more contingencies.

27 In addition to that, I know from personal knowledge that there were other

1 residential developers who must have recognized that they needed financing too just like Smith
2 did who made offers on this building. They were not as high as either Mr. Jemal's or the Smith,
3 but I think the Smith offer is extremely telling as to what the true economic situation is. As I said
4 earlier, we have a sign here today from what Mr. Glasgow is proposing in connection with 13th
5 and L that the market is changing. I do not know if you are familiar, but there have been
6 hearings before the Historic Preservation and Review Board where the United Mineworkers
7 wants to change its building at 15th and H (I guess it is) or "I" and have one residential tower
8 there and one office tower. It is a historic preservation situation so that there is a ferment here
9 where I know the in the past the developers have always come down here and talked about the
10 lenders and the financial situation and everything else. That is changing, and, therefore, let us
11 let public policy do its job and not do this strictly on an economic consideration.

12 Now the thing as my colleague Mr. La Lena indicated, we are worried about
13 the housing component in Mr. Jemal's proposal. He proposes to put the housing on the top of
14 the existing Woodies structures and basically create four floors, nine through twelve, which
15 ideally he says could support in his submission 130,000 to 150,000 square feet of housing. I do
16 not know how we settling when he testifies before you he gets to 200,000 square feet. I think
17 the written submission that comes from OP says 130 to 150.

18 However, the problem with that, and the problem with granting him
19 immediate emergency action here on the zoning, is that there is no assurance that he will get
20 the necessary permits to build on top of the building. There is obviously a Historic Preservation
21 Review Board problem, and, although we certainly hope that he will get that and we would
22 support him in front of the Historic Preservation Review Board, it is still going to take five to six
23 months to obtain an approval, and Mr. Jemal has to this date -- as far as we understand -- not
24 even retained an architect, and you cannot go in front of the Historic Preservation Review
25 Board without architectural plans. I mean, sure, at this point we are all talking concepts, but
26 what he is asking you to do is not conceptual is to start taking action to change the zoning code
27 of the District of Columbia to permit him to put office there. If he does not get the Historic

1 Preservation Review Board to go along, where is the office. Where is the housing in this
2 building.

3 In addition to that, there was discussion of the question of the variance that
4 is needed from the Board of Zoning Adjustment. As I understand it, this building only as a 6.0
5 FAR right now. It is true that under the nonconforming doctrine that is in the code somewhere,
6 this building, the Mather building, and the Riggs Bank building because they are historic have
7 been exempted. However, if you go on top of the nonconforming use that exists today, you
8 need a variance from the BZA. So, again, he has got to go with plans, architectural plans, not
9 conceptual plans to the BZA to get the approval for the variance.

10 We think that the expedited timetable that Mr. Jemal offers you puts the cart
11 before the horse. Until one can be relatively sure that the HPRB will approve him and that the
12 BZA will approve, the zoning on this property should not be changed because it is perfectly
13 possible as is shown by the bidding already that a residential developer can come into this and
14 do all residential with the retail that is supposed to be there.

15 Accordingly, we suggest that you either delay until September or October
16 taking action on his request for any expedited consideration; or, in the alternative, that you not
17 schedule the hearing on his proposal until some time in November and December. Obviously,
18 whatever you do, if you are going to advertise whenever you are going to advertise, we would
19 certainly ask that you put in our alternative proposal. The one-for-one I call it.

20 The whole issue of the comprehensive plan has already been gone into. It
21 seems to me that it would be much more appropriate for the Mayor to go to the Council -- and
22 this is a political issue. Nobody up to this point has talked about office on this parcel. The
23 Comp Plan has on many occasions now been amended in order to take care of the Woodies
24 property so that this particular square because of its significance to the City, its location, its
25 crown jewel, so to say of the City on top of the Metro Center, has been the subject of Comp
26 Plan amendments, and I do not know why this Commission should go out way in front here.
27 The Mayor should have the courage of his convictions, which as Mr. Lynch indicated we just

1 heard about, that he wants to go ahead and do this, he should present it politically and let us
2 see if the Council is going to be for it if he thinks it is that important. I think he is forgetting the
3 whole message of how the bidding is occurring and what is happening in the marketplace in the
4 District of Columbia today. He has not done his homework again, and, in addition to that, we do
5 not even have a director of the Office of Planning right now, and the Office of Planning is
6 supporting this expedited action. I do not know who is minding the store. Has anybody thought
7 through the consequence of going full speed ahead of the entire planning process and the
8 procedures of the HPRB. And how is the Board of Zoning adjustment process going to be
9 short-circuited without architectural plans. I mean, this is not -- you don't normally act on
10 concepts, you act on plans, and everybody does in this process and I think we ought to stick
11 with the process. I am not saying eventually if things can be worked out that we might not all
12 agree, but the cart is going before the horse when you do zoning before you do the rest of the
13 planning process. Thank you very much.

14 CHAIRPERSON KRESS: You are welcome. Any further questions of Mr.
15 Doctor? Mr. Franklin.

16 COMMISSIONER FRANKLIN: Hello, I am just a little bit confused with this
17 good cop/bad cop business. Were you just addressing us in terms of not wishing to have any
18 amendment of 1702.5(a)? Is that what your point was?

19 MR. DOCTOR: No. My point insofar as the amendment that is part of the
20 Comp Plan that the Council passed, we are all for that. That is my good cop hat. The bad cop
21 is just saying it is a little too early to do what is being proposed by Mr. Jemal.

22 CHAIRPERSON KRESS: For this set down. For this set down.

23 MR. DOCTOR: For this set down. It should not be set down at this point.

24 COMMISSIONER CLARENS: It is not some more about what is in front of
25 us but the set down.

26 COMMISSIONER FRANKLIN: The set down. Well I think we have kind of
27 merged it.

1 COMMISSIONER HOOD: We have merged both, right.

2 COMMISSIONER FRANKLIN: Now, I am kind of curious why you and your
3 colleague are not before us and others in saying that 1702.5(a) should require residentialness.

4 MR. DOCTOR: I think that --

5 COMMISSIONER FRANKLIN: There seems to be a great fear that if you
6 have office use, it is going to be at the expense of residential. We can certainly --

7 MR. DOCTOR: I think in the best of all possible worlds, however, the
8 1702.4(a) is written in a permissive manner and allowing certain types of uses and those are
9 the uses and we are not trying to upset that. That basically is what the Council has said. They
10 have not used the word office anywhere, and we are saying let us do that because that is
11 noncontroversial.

12 CHAIRPERSON KRESS: In your standing by what I heard from Mr. Lynch
13 was a very significant negotiation that went on that there was some --

14 MR. DOCTOR: Yes, Mr. Lynch and I met with the Office Society.

15 CHAIRPERSON KRESS: -- recognition by many parties --

16 MR. DOCTOR: That's right.

17 CHAIRPERSON KRESS: -- that this was the way it was going, not that you
18 would not prefer the demand but that you are standing by --

19 MR. DOCTOR: That's right --

20 CHAIRPERSON KRESS: what the negotiations were that --

21 MR. DOCTOR: That is exactly it.

22 CHAIRPERSON KRESS: -- happened before if I heard correctly.

23 MR. DOCTOR: That is exactly it.

24 COMMISSIONER FRANKLIN: I mentioned this because I am very
25 committed to getting a living downtown, to get more housing downtown and on site, not off site,
26 and I do not see why we do not permit residential on just about any parcel.

27 MR. DOCTOR: You have previously asked questions that make my mouth

1 water and say amen. However, I cannot at this point step out of what the structure is, and
2 basically we are asking is that this position that you are enunciating which we think is extremely
3 sound, I am sure that many of the other lawyers in the room do not think it is sound, but leave
4 that aside. All we are saying is, let us right now not erode what is in the comprehensive plan
5 and hopefully will be adopted by you very shortly as what was advertised and let us not erode it.

6 Now, maybe if everything works out and Mr. Jemal can do all the things he
7 wants to do, I do not think we are such purists that we could not come to some accommodation.
8 But not if you give the building zoning up front. That should be the last part of the process. You
9 can set it up and that is why we say maybe by November or December. I think Mr. Jemal has
10 told me or his counsel has told me that they are going to make the architect work many long
11 hours.

12 COMMISSIONER FRANKLIN: I ask you to just put your mind to work on
13 the possibility that instead of having a TDR kind of incentive for residential use which after all
14 transfers the incentive off site, that within this structure there might be, even internally within the
15 building, a zoning regime which creates an incentive that would permit office use if a certain
16 modicum of residential use were being provided.

17 MR. DOCTOR: That is why we say one-for-one. Unfortunately, Mr. Jemal
18 does not see it that way. He sees, let me put the residential in the part that we are not sure that
19 we are going to get, and I have got the rest for office, and maybe I will give you a little bit of
20 housing and we are saying that that is not the way to do the deal. The way to do the deal is to -
21 - regardless of whether you get three floors or four floors on top for housing, if you do not get it,
22 you do one-for-one of the building for housing. That is for every square foot of housing, you do
23 a square foot of commercial office.

24 That is the proposal of our alternative, and we also tie it, unlike his proposal,
25 to the Certificate of Occupancy to make sure it has a bite. He is putting it on the building permit
26 which is a very slippery slope to play.

27 COMMISSIONER FRANKLIN: Thank you.

1 CHAIRPERSON KRESS: May I ask a question that is a little bit off, but I
2 saw you nodding your head at the testimony of Chip Glasgow on the combined lot
3 developments and except that in apartment house constructed in a C-4 district may be
4 combined with a lot in the housing priorities B and C. Are you are aware of the proposals that
5 Wilkes Artis is making and are you in basic agreement with those?

6 MR. DOCTOR: I guess I put my conceptual hat and yes is the answer.
7 However, we have to look at the language a little bit more but no question that he and I talked
8 this morning. We are delighted if the TDRs are working and the combined lot would work here
9 to get this kind of an apartment building built downtown which is more of the good signs of what
10 is about to happen. However, I think he said he was going to redraft it. We are going to have
11 to look at the whole thing. I would say within a week we could easily get a letter to you to tell
12 you that we have unqualified support.

13 CHAIRPERSON KRESS: All right, thank you.

14 MR. DOCTOR: Thank you.

15 CHAIRPERSON KRESS: Any other questions?

16 MR. DOCTOR: Thank you very much.

17 CHAIRPERSON KRESS: Thank you very much for coming to testify this
18 evening. Is there anyone else who wishes to testify in opposition.

19 MR. LYNCH: Just now for the record, I submit the task may have a
20 committee of 100 which I think is clearly opposed to the suggested set down.

21 CHAIRPERSON KRESS: Were you able to get that on the record? All
22 right, thank you. Any other testimony?

23 MR. JEMAL: May I come back up?

24 CHAIRPERSON KRESS: Sure come back.

25 MR. JEMAL: A suggestion that I had regarding what Mr. Doctor had said
26 regarding the housing for the Woodies building, I also believe in a living downtown and want to
27 do housing in the Woodies building, and I said to take -- assuming we get nothing from the

1 Historical Society regarding adding on to the rooftop of the Woodies building -- I would take two
2 floors in that building and designate it residential. I wanted to make sure that that point was
3 clear as well.

4 So, assuming we went through HPRB and they said, you know something
5 Douglas, we are not going to allow anything on top of that roof, I would take two floors in that
6 building and designate it residential. I might also add that the building right now has retail and
7 residential as a matter of right. I do not have to do any residential. I want to do residential, and
8 I believe as you do Mr. Franklin that a living downtown is extremely important, and I want to do
9 that.

10 However, I have to design an entire building and I have to leave myself the
11 versatility with office in between and as Mr. Doctor said, apparently Smith, a New York Stock
12 Exchange company, where is their architect, where is their plan, where is their 345 apartments?
13 I have not seen it.

14 COMMISSIONER FRANKLIN: That is why they wanted 45 days.

15 MR. JEMAL: It does not mean anything though. If you want something,
16 that means they have 45 days to say nay or yea. Thank you.

17 CHAIRPERSON KRESS: All right, thank you. Colleagues, what is your
18 pleasure? Do we wish to take any action on the amendments before we go to the special
19 meeting that has to do with the set down of additional?

20 COMMISSIONER CLARENS: Well, I thought we heard from Mr. Doctor that
21 they might have some comments on the modifications to the TDR amendment, and the
22 question is will we want to wait for those and then act on that. No. On the first one --

23 CHAIRPERSON KRESS: Well the first one --

24 COMMISSIONER CLARENS: The first one I think is fairly straightforward
25 and clear, right. There is no question about that.

26 CHAIRPERSON KRESS: And I think everybody wants -- I have not heard
27 anyone speak against 1702.5 --

1 COMMISSIONER CLARENS: Correct.

2 CHAIRPERSON KRESS: -- as originally drafted which just basically adds
3 that they --

4 COMMISSIONER CLARENS: Includes residential --

5 CHAIRPERSON KRESS: -- that the conversion may also include
6 residential. So, unless you all disagree with me, I have not heard anyone disagree on that one.

7 COMMISSIONER CLARENS: On the DOES site, the only thing that we
8 have heard --

9 CHAIRPERSON KRESS: Is that perhaps there is -- we should consider a
10 greater FAR of perhaps 4, but, on the other hand, I thought I heard or read testimony that was
11 perhaps at least we should get the 2 FAR plus adopted so something does not happen in the
12 meantime.

13 COMMISSIONER FRANKLIN: Have to have it on site. Pinned down.

14 CHAIRPERSON KRESS: But that there is some reason to go ahead and
15 make sure that at least the 2.0 FAR plus is tied down.

16 COMMISSIONER FRANKLIN: Madam Chair, I would be prepared to vote in
17 favor of those two provisions. I did not hear any opposition at least to 1706.22 provisionally.
18 There are some people who would like to change it from 2 to 4 but.

19 CHAIRPERSON KRESS: Are you talking about 1706.2 now?

20 COMMISSIONER FRANKLIN: Two-two.

21 COMMISSIONER CLARENS: Two-two. 1706.22.

22 COMMISSIONER FRANKLIN: The thrust of that is to make sure that
23 whatever housing is developed is on site and not transferred off site which I think is an
24 important quality.

25 CHAIRPERSON KRESS: And that does not mean that we can't later set
26 down to look at the 4 if we want. We are just doing the comprehensive plan and making sure
27 that at least we have got two for now.

1 COMMISSIONER FRANKLIN: On site, on site.

2 CHAIRPERSON KRESS: Am I correct with this Mr. Colby?

3 MR. COLBY: All the comprehensive plan -- you heard testimony that the
4 comprehensive plan says that the required FAR shall be produced on site. That required FAR
5 is in fact 2.0 according to the zoning regulations. The only requirement for an amount of
6 residential is required by zoning and that is 2.0. So to be consistent with the comprehensive
7 plan, you cannot require 4. That is not consistent, it goes beyond consistent. I guess you can
8 do it. I am not sure you can do it if you adhere strictly to the comprehensive plan. But the
9 comprehensive plan does call for the required FAR of residential to be produced on site.

10 CHAIRPERSON KRESS: Again, that is something we can discuss in the
11 special meeting, but at least by doing this we are in compliance with the comprehensive plan.

12 MR. COLBY: Yes you are.

13 CHAIRPERSON KRESS: And we have gotten this on the books so
14 something else does not happen.

15 MR. COLBY: If the requirement --

16 CHAIRPERSON KRESS: In the meantime.

17 MR. COLBY: -- exceeds 2.0 at some day then you can revisit it, certainly.

18 COMMISSIONER FRANKLIN: So that saying Madam Chair, I would be
19 prepared to --

20 CHAIRPERSON KRESS: Do we want to look at 17 or do you want to -- I
21 feel that way about the first two as well. The 1706.2 -- I wanted to get a clarification from the
22 Office of Planning. In this case, Wilkes Artis was making the point that they are actually in a
23 little C-4 but the words here say "shall be applicable throughout the DD district, Map B by
24 reference." It is in Map B. I wanted you to comment on the testimony that we heard regarding
25 1706.2.

26 MR. COLBY: Mr. Glasgow and Steve Sher met with us and I believe the
27 issue that they raised was that the building is a PUD and as such predates DD. I think that is

1 correct. And so by some technical reading, it is not eligible for TDRs.

2 The fact of the matter is, from a conceptual perspective we have gone on
3 record and said, and I think the comprehensive plan would support that, that housing in the
4 downtown and in the DD area which this is, is a spot of the PUD in the DD area should be
5 subject to incentives such as TDRs.

6 So, conceptually, I do not think it is a problem that anybody would have with
7 it. There is a detail problem which they would solve or attempt to solve with that language.

8 CHAIRPERSON KRESS: In your mind, does it solve the problem. Do you
9 have any problems with adding in C-4.

10 MR. COLBY: My only problem would be whether there is some other C-4
11 property that -- I mean, I have not seen the language specifically until tonight.

12 COMMISSIONER FRANKLIN: I wonder if that problem would be solved
13 and not avoid some of the, maybe the uncertainties you have about simply adding C-4 to this
14 language.

15 CHAIRPERSON KRESS: Use the square number.

16 COMMISSIONER FRANKLIN: Well, no. It just shall be applicable to
17 property located throughout the DD district.

18 MR. COLBY: Located on Map B -- as indicated on Map B.

19 COMMISSIONER FRANKLIN: Yes, right. Okay.

20 MR. COLBY: Which was one of the alternatives.

21 COMMISSIONER FRANKLIN: I do not know whether that solves the
22 problem.

23 CHAIRPERSON KRESS: May I ask Mr. Glasgow if he feels that is the
24 answer to both.

25 COMMISSIONER FRANKLIN: Then you do not have to refer to C-4.

26 MR. GLASGOW: Not necessarily. We just to make it absolutely clear in the
27 record. Then we can do it partly in the Statement of Reasons that goes with the Order that it is

1 intended that any property whether it technically was DD or not that may be subject to a
2 planned unit development or otherwise as long as it is within the area depicted in this map that
3 was the Appendix C would be able to avail itself of those incentives such as TDRs.

4 COMMISSIONER FRANKLIN: I understand and that is why I suggested
5 that maybe the language would shall be applicable to property located throughout the DD
6 district and not necessarily have to refer to C-4.

7 MR. GLASGOW: I think that would do it.

8 CHAIRPERSON KRESS: Would that do it for you?

9 MR. GLASGOW: I would think that would do it along with the other
10 language.

11 CHAIRPERSON KRESS: One minute. Along with with what other
12 language? If we just say --

13 MR. GLASGOW: Well that would be in the Statement of Reasons just to
14 defer or elucidate that.

15 CHAIRPERSON KRESS: I was seeing that in the wording of 1706.2. You
16 are saying no.

17 MR. GLASGOW: Well, 1706.2 would be the provisions of 1706.3 shall be
18 applicable throughout the, I believe it was talking about throughout the DD area. What was the
19 language again Mr. Franklin?

20 COMMISSIONER FRANKLIN: It said the provisions of the 1706.3 shall be
21 applicable and inserting the words "to property located throughout the DD district." Then
22 dropping reference to the C-4.

23 MR. GLASGOW: C-4, right.

24 CHAIRPERSON KRESS: With the map incorporated by that.

25 CHAIRPERSON KRESS: Right, the map used incorporated for our
26 reference.

27 MR. GLASGOW: Right.

1 CHAIRPERSON KRESS: So is that comfortable. I mean, does that do -- I
2 mean, I do think we all want a living downtown. There has been some confusion about that, but
3 I do really think we all do want a living downtown, and I do not think anybody wants to fight
4 adding residential here.

5 MR. GLASGOW: Right.

6 CHAIRPERSON KRESS: I just want to make sure it is done in a way that
7 accomplishes what we are trying to accomplish.

8 MR. GLASGOW: Yes, I believe that that does it and then we will further
9 elucidate it in the Statement of Reasons, and I think we are in good shape.

10 CHAIRPERSON KRESS: And we do not really need 1706.3 then, right?

11 MR. GLASGOW: No.

12 CHAIRPERSON KRESS: Now 1706.9 is one that probably -- well, I feel it
13 would probably be better to air on the caution side and make --

14 MR. GLASGOW: Could I suggest that I think that there were a couple of
15 people with the Downtown Housing Now Committee with Mr. Doctor taking he wanted to take a
16 look at it and see. It may be possible that there are certain things that could be acted upon now
17 and others depending upon if you hold the record open for receipt -- possibly a letter on that --
18 and see whether we could straighten that out in that way.

19 CHAIRPERSON KRESS: So, for your proposal 1706.9, leave the record
20 open to receive comment on that?

21 MR. GLASGOW: Yes, and then we could see whether we could get that
22 taken care of at the next public meeting.

23 COMMISSIONER FRANKLIN: That sounds reasonable to me.

24 CHAIRPERSON KRESS: That sounds reasonable to me too. So, we will
25 not vote on anything this evening or do you want to vote on the other two?

26 COMMISSIONER HOOD: Could we vote on the other two and leave 1706 -

27 -

1 CHAIRPERSON KRESS: Or three, and leave 170 -- what we are talking
2 about doing is as opposed to vote on 1702.5(a) as presented in the Office of Planning's report
3 and actually put together, I think by Mr. Lynch originally.

4 The second thing to vote on would be the 1706.22 as written and then the
5 third would be to vote on 1706.2 rewritten to say the words as put forth by Commissioner
6 Franklin, "shall be applicable to property throughout the DD."

7 COMMISSIONER FRANKLIN: Located, property located throughout the --

8 COMMISSIONER FRANKLIN: I am sorry, property located, excuse me,
9 throughout the DD. "Map B is incorporated by reference." So we would vote on those three --

10 COMMISSIONER CLARENS: Possibly wording it shall be applicable
11 provided that the transfer of development rights provisions of Subsection 1706 --

12 CHAIRPERSON KRESS: Shall be applicable to property located throughout
13 the DD --

14 COMMISSIONER FRANKLIN: District.

15 CHAIRPERSON KRESS: District -- good point. Is it a district or an area?

16 MR. GLASGOW: As written here, it says district and in your text as well.

17 CHAIRPERSON KRESS: Yes, but that was C-4. C-4 is not an area you
18 see.

19 MR. GLASGOW: I think that what we were talking about is throughout the
20 DD area as shown as that Map B.

21 COMMISSIONER FRANKLIN: Yes, okay.

22 CHAIRPERSON KRESS: Okay. Located throughout the DD area. Map B
23 is incorporated by reference. So we would be voting on those three items with 1706.9 as
24 proposed in the statement by Mr. Glasgow as held open for additional information. Do I hear a
25 motion?

26 COMMISSIONER CLARENS: Yes, I so move. My question is that, do we
27 need to include the request for renumbering subsections with the addition of 1706.22 or is that

1 something that is administrative and the Office of Planning can do?

2 MR. COLBY: It would be done, if not by us, by Corp. Counsel in their
3 review.

4 COMMISSIONER CLARENS: So we do not need action on that?

5 Mr. COLBY: No you do not.

6 COMMISSIONER FRANKLIN: That is administerial.

7 COMMISSIONER CLARENS: Okay.

8 CHAIRPERSON KRESS: And any appropriate administerial work.

9 COMMISSIONER CLARENS: Okay.

10 COMMISSIONER HOOD: I will second. I think you made a motion Mr.
11 Clarens. I will second the motion.

12 COMMISSIONER FRANKLIN: Okay. Any further discussion? All those in
13 favor signify by say "eye". Eye. Opposed? Motion carries. Would you record the vote for us?

14 MR. ERONDU: Staff records the vote four to zero to approve. Mr. Clarens,
15 Commissioner, make a motion seconded by Commissioner Hood. Commissioner process
16 number to step up the presence. Thank you.

17 CHAIRPERSON KRESS: Thank you. Let me quickly, if that is all right, I
18 would like to close this meeting and open the special meeting.

19 COMMISSIONER FRANKLIN: This hearing.

20 CHAIRPERSON KRESS: I mean, close this hearing and open the special
21 meeting. Thank you, keep me on the straight and narrow.

22 (Whereupon, the foregoing matter went off the record at 8:52 p.m. and went
23 back on the record at 8:53 p.m.)

24 CHAIRPERSON KRESS: Taken proposed action on three, and we have
25 left one item open for comment which is the 1706.9 as proposed by the Wilkes, Artis testimony.
26 So, we are keeping the record in this case open only on 1706.9 until June -- well, we meet the
27 14th, we need it ten days ahead, June 4.

1 COMMISSIONER CLARENS: Madam Chairperson.

2 CHAIRPERSON KRESS: Yes.

3 COMMISSIONER CLARENS: I am sure it was mentioned somewhere
4 along the line but I missed it and if the 17 -- just give me a second.

5 CHAIRPERSON KRESS: 06.9

6 COMMISSIONER CLARENS: Yes, 1706.9.

7 CHAIRPERSON KRESS: Page 4.

8 COMMISSIONER CLARENS: Was not part of the Office of Planning
9 recommendations, is it an issue with advertising of this proposal and shouldn't this --

10 CHAIRPERSON KRESS: On the very conservative side -- and that was
11 pointed out to us -- it is worth advertising. There was a case made perhaps we do not need to,
12 but since I believe we are going to be advertising other things, I think your suggestion is a good
13 one. I believe we are going to --

14 COMMISSIONER CLARENS: So would you really be closing -- would you
15 be closing the hearing and closing the record and not leave it open and then deal with this issue
16 of 1706.9 as a new issue.

17 CHAIRPERSON KRESS: I agree with that. Would you change your motion
18 too, because that was in your motion.

19 COMMISSIONER CLARENS: No, it was not in my motion. My motion was
20 to approve the --

21 CHAIRPERSON KRESS: These others?

22 COMMISSIONER CLARENS: -- the other ones.

23 UNIDENTIFIED PERSON: That was not in his motion.

24 CHAIRPERSON KRESS: It was not? Okay, all right. Then we will close
25 this case. Period, as of now, and we have a bench decision on the case and it will be referred
26 to the National Capitol Planning Commission for federal impact review, and we will take final
27 action at a public meeting following receipt of NCPD comments. All right, and then after that a

1 written order will be published. I now declare this hearing closed.

2 (Whereupon, the above-entitled matter was concluded at 8:55 p.m.)