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CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE
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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR, SOCIAL SERVICES,
AND THE INTERNATIONAL COMMUNITY

OF THE

COMMITTEE ON
THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST AND SECOND SESSIONS

ON

H.R. 8995 and H.R. 9310

TO AUTHORIZE THE CARNEGIE ENDOWMENT FOR INTER-
NATIONAL PEACE TO USE CERTAIN REAL ESTATE IN
THE DISTRICT OF COLUMBIA AS THE ENDOWMENT'S
WASHINGTON OFFICES

NOVEMBER 7, 1973, AND MAY 16, 1974

Serial No. 93-17

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CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

WEDNESDAY, NOVEMBER 7, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR, SOCIAL SERVICES,
AND THE INTERNATIONAL COMMUNITY
OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m. in room 1310 Longworth House Office Building, Hon. Romano L. Mazzoli presiding.

Present: Representatives Mazzoli, Fraser, Rangel, and Stark.

Also present: Joseph D. Kirschten, professional staff member; John Hogan, minority counsel; Dorothy E. Quarker, chief of staff; and Karen Fleischer, research assistant.

Mr. MAZZOLI. The hearing will come to order.

This is a hearing on identical bills H.R. 8995 and H.R. 9310 relating to the property located at 2929 Massachusetts Avenue NW. and the bills would authorize the Carnegie Endowment for International Peace to use certain parcels of real estate in the District of Columbia as the Endowment's Washington office.

[The bill referred to and the District government's report to the chairman are as follows:]

[H.R. 8995, 93d Cong., 1st sess. by Mr. Fraser on June 26, 1973]

[H.R. 9310, 93d Cong., by Mr. Nelsen on July 16, 1973]

IDENTICAL BILLS To authorize the Carnegie Endowment for International Peace to use certain real estate in the District of Columbia as the Endowment's Washington offices

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Carnegie Endowment for International Peace, founded in Washington in 1910 and now a New York corporation, is authorized to use the real estate described as lot numbered 808 in square 2198, situated in the city of Washington, District of Columbia, as the Endowment's Washington offices.

WASHINGTON, D.C., September 4, 1973.

HON. CHARLES C. DIGGS, JR.,
Chairman, Committee on the District of Columbia, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Government of the District of Columbia has for report H.R. 8995 and H.R. 9310, two identical bills "To authorize the Carnegie Endowment for International Peace to use certain real estate in the District of Columbia as the Endowment's Washington offices."

The bills would provide that the Carnegie Endowment for International Peace, founded in 1910 and now a New York corporation, is authorized to use for its Washington offices the property located in square 2198 (lot 808) in the District of Columbia.

The subject property is located at 2929 Massachusetts Avenue, Northwest, and is zoned R-1-B, a zoning classification which permits, as a matter of right, one-family detached residential development. In such a district only residential uses are permitted, with the exception of certain limited compatible uses, such as for schools and churches. However, there is provision in law whereby one who wishes to make a different use of property other than for that for which it is zoned may seek to have the zoning map of the District of Columbia amended.

The Carnegie Endowment for International Peace has not sought such an amendment to the zoning map; rather, it seeks this result through legislation from Congress. The District Government is aware of the fact that the area in question along Massachusetts Avenue is now predominantly utilized for institutional use. We recognize that this particular type of land use may be less objectional to area residents than would conventional commercial use in such a residential zone. However, the District cannot ignore the fact that H.R. 8995 is an attempt to impose spot zoning in this area in such a way as to deprive the citizens of the affected neighborhood the opportunity to voice their opposition or to demonstrate the harmful effects, if any, by the change in zoning in their neighborhood.

The District Government is not unaware of the problems which confront those who contemplate a challenge to a zoning determination. It is because of our awareness of these problems that the District Government transmitted a draft bill to Congress on April 16, 1973, which proposed remedial amendments that would insure that the necessary ongoing work in zoning can be conducted expeditiously and efficiently. As I have noted in my letter of transmittal, "The inability of the zoning bodies to respond has resulted in problems that go well beyond the cases which are before the two bodies [the Zoning Commission and the Board of Zoning Adjustment] . . .". The draft bill was introduced by request on April 19, 1973, as H.R. 7217, but no further action has been taken by Congress.

Accordingly, the District Government would urge the Committee to give prompt consideration to H.R. 7217 so that persons and organizations such as the Carnegie Endowment for International Peace can obtain relief promptly within the appropriate zoning processes.

For the above reasons the District Government would oppose enactment of H.R. 8995 and H.R. 9310.

Sincerely yours,

WALTER E. WASHINGTON,
Mayor-Commissioner.

Mr. MAZZOLI. Since the sponsor of this legislation is present, I will defer from the gentleman from Minnesota, if he wishes to make an opening statement. But before doing that, I would like to say that the subcommittee has endeavored to make contact with all parties who have an interest in this legislation. The gentleman from Minnesota is aware of the reservations that I personally have about this legislation, notwithstanding that I am certainly anxious to hear the situation as best I can and the gentleman from Minnesota might care to make an opening statement.

Mr. FRASER. Mr. Chairman, I appreciate the chairman scheduling the hearing this morning. I only want to say that I think the hearing itself will disclose the facts with respect to this application and it is consistent with the procedure that was used to secure authorized use for the Society for International Law, also located on Massachusetts Avenue.

It's a question of dealing with this, until we get the full city charter and home rule established, by trying to make an adjustment here.

Mr. MAZZOLI. I thank the gentleman.

I would like to call for the purposes of getting our hearing off, the panel, which would be constituted by Mr. Ben W. Gilbert, Director, Office of Planning and Management; Mr. Louis Robbins, Principal

Assistant to the District of Columbia Corporation Council; and Mr. George H. F. Oberlander, Director of Long Range Planning and Regional Affairs, National Capital Planning Commission.

If these gentlemen are in the room, come forward and arrange yourselves around the table. I would also state that I may not be able to stay as long as I wish today because I have, as so often happens, a conflicting meeting, another committee assignment, which is starting the topic on the title 1 allocation, elementary and secondary education. I might not have an opportunity to hear all of your testimony but I will read the record and develop what can be developed.

If you have any statements, maybe you could start us off and see if that would help.

STATEMENTS OF BEN W. GILBERT, OFFICE OF PLANNING AND MANAGEMENT; LOUIS ROBBINS, PRINCIPAL ASSISTANT TO DISTRICT OF COLUMBIA CORPORATION COUNSEL; AND GEORGE H. F. OBERLANDER, DIRECTOR OF LONG RANGE PLANNING AND REGIONAL AFFAIRS, NATIONAL CAPITAL PLANNING COMMISSION

Mr. GILBERT. I do not have a formal statement, but if I may, I would like to make some informal comments explaining the city's position which was developed in the letter from Mayor Washington to Chairman Diggs, and as you pointed out, I have with me Mr. Louis Robbins, Assistant to the Director of the District of Columbia Corporation Council, who is available to answer the technical, many technical and legal questions, which always seem to come up when zoning matters are considered.

ZONING PROBLEM

Mr. Chairman, the property in question is located at 2929 Massachusetts Avenue NW. and is zoned for single family residential use as a matter of right. There is a provision within our zoning regulations for certain limited compatible uses for such uses as the school and churches. The problem that is posed by the Carnegie application is that of one of either changing the zoning map or securing a variance from the Board of Zoning Adjustment for special purpose zoning.

Now, it was our notion that at the time that Mayor Washington's reply was sent forward that probably the profitable way to deal with this problem would be to address the zoning and make suitable changes in the zoning.

In examining the proposed use, we as planners, do not find this a problem for us. The problem really is the specific language of the zoning regulations that the area in question has already been devoted to similar uses. And in a rather long stretch of Massachusetts Avenue, there are only two locations where residents occupy the area. The rest are occupied by such uses as the Brazil and Bolivian Embassies, the Chanceries of Iran, Great Britain, New Zealand, Brazil, Denmark and the Union of South Africa, and so forth. And this is the area, as you know, between the Mosque on the other side of Waterside Drive and 2551 Massachusetts Avenue, and the Papal Delegation of Norway, at

34th and Massachusetts Avenue, and this building in question has been unused since 1966 and we are told it's deteriorating and from the standpoint of the city government, it's desirable that this question be resolved.

However, it's our very strong feeling that the first effort ought to be to initiate the changes through our zoning process. I think that we do not understand completely why requested zoning changes were not initiated by the prospective owners of this piece of property. Their preference, apparently, is going through the congressional route and we can conceive of situations where the Congress might see fit to legislate on matters of this sort. But we would deplore it as spot zoning and that we think that before the Congress should address the question of rezoning this area by legislative action that the zoning process should be tested. So fortunately, we cannot give any assurances as to how the zoning process would operate until the case is presented to the appropriate zoning authorities and we have heard from the community and from the zoning experts and the Zoning Commission or the Board of Zoning Adjustments and there are those two alternative ways of proceeding, and had a chance to consider the matter and make a judgment.

There is no one other than the appropriate zoning quasi-judicial agency that has the power to make this decision. In other words, any comment that I would make as an official of the District government would be a judgmental—qualified judgmental comment and apparently the Carnegie people, in an effort to find out where the District government stood on this question, did try to get professional judgments from staff members. They were led to believe that they did not have the capability of going through the zoning process. I think it's unfortunate that that occurred, because that was the opinion of the staff member who expressed it. That does not necessarily prevail and that certainly was his judgment that he did not have the authority to manipulate and make a decision of that kind. That is why, I guess, as a result of that Carnegie people were discouraged from filing an application. Really, the appropriate procedure would have been to file an application and there was ample time when the issue was first raised to have found a way to get proper consideration.

Of course, as a matter of historic record, I must acknowledge at the time, that the zoning processes of the District of Columbia were heavily adverse with court decisions and involving the procedures, technically administrative procedures act and other questions.

As a result of that heavy impacting of the zoning process, I think it was not reasonable back in 1971, early 1972 to say it would be quicker through the Congress than the zoning process. That is no longer true. The zoning boards are coming much nearer being at a current posture, with extraordinary efforts having been made to do this and I would be prepared as a director of planning and management to appear before the appropriate zoning body and support the proposed change in the use of this property and also I would be prepared to use the resources of my office to speed up the processes that must be used to go forward with this application.

Mr. FRASER. Mr. Gilbert, if I could summarize, and I am sorry for having to bounce back and forth to the phone, I know it's disconcerting to you. I had to.

If I may summarize, you are not objecting to the merits of the case, if you will, the merits of the use of this property and Carnegie Endowment from transferring the property from Seafarers, as much as you are to the process by which this would take place.

Mr. GILBERT. That is correct.

Mr. MAZZOLI. And you have even stated a moment ago that you would appear in behalf of this zoning variance, were the procedures to be followed going through the standard District of Columbia zoning variation procedures. Is that correct?

Mr. GILBERT. That is correct, Mr. Chairman, with a qualification of course, that I cannot speak for either of the two quasi-judicial bodies one of which has to pass on the application.

Mr. MAZZOLI. Granted.

Mr. GILBERT. There are some members of the other body which might have a different feeling about the merits of the application.

Mr. MAZZOLI. Let me ask you this question, from reading the material that has been submitted to us, the problem appears to be one of time and they say they must act on this by December if this contract is to be completed. What would be the time sequence if the applications were made through the established District of Columbia government and a matter of time is of the essence here, to handle this as expeditiously, and pursuit here, would you expect it to be a 1-month period or so?

Mr. GILBERT. I would like to ask Mr. Robbins to answer that question.

PROCEDURAL QUESTION

Mr. ROBBINS. Mr. Chairman, if an application were made to the Board of Zoning Adjustments for a use variance, it probably could be acted on in December. However, in all candor, I would have to say that under the most recent case which is *Palmer v. Board of Zoning Adjustments*, that came down from our District of Columbia Court of Appeals in 1972, which was a first full exposition of the use variance law in the District of Columbia, that I am not certain that the Carnegie Endowment could meet the rather stringent structures in this particular case. And if I were being asked legal advice, either where I sit today or were I back in private practice, that my best legal advice would be to go for a change in zoning that could not possibly be done in December, because we would have to have not only the application, but we have a nonwaiver since it's in the zoning statute as opposed to our own regulations, at least a 30-day public notice.

There is just no way it could be done. I would say at this time, the earliest possible time for a hearing would probably be—I would say by the end of December, you could probably have a hearing and have a decision in January.

Mr. MAZZOLI. Let me ask you, you say the stringent requirements on use variance which you think the endowment might not be able to satisfy. Then you mention about your professional advice would be to seek a zoning change. Do you think they would qualify for a zoning change?

Mr. ROBBINS. Yes; I do.

Mr. MAZZOLI. That could take place in the first quarter of next year.

Mr. ROBBINS. Without any doubt, within the next—first quarter, that would be no problem. Again, this would be with the same caveat

that Mr. Gilbert addressed himself to, that neither of us can speak for a majority of the Zoning Commission.

In order to have a zoning change, you would have to have the affirmative votes of a majority, which would be three members, sir.

Mr. MAZZOLI. I see. Thank you.

The gentleman from Minnesota.

Mr. FRASER. If I understood what you said, it was through informal conversations that the Carnegie people were advised to seek this legislation.

Mr. GILBERT. I really don't have a complete record of everything that happened.

Mr. FRASER. In general.

Mr. GILBERT. That was as I understand it, a product of their conversations. I don't know that we specifically—I am quite sure that we did not advise them to go the legislative way, because there is a little long tradition in the government, in city government, in opposition to dealing with spot zoning and problem through the legislative route.

LEGISLATIVE ROUTE

Mr. FRASER. Well, but in the informal basis, as I understand it, they were told that probably the best way to proceed was to go the legislative route. I am not talking about the formal position of the city now, which I understand. But informally, I understand that they were advised to seek legislative remedies?

Mr. GILBERT. In effect, Mr. Fraser, I think it was reasonable for them to come to that conclusion.

Mr. FRASER. Right, and at the time that those conversations took place, as I understand it, there was a big backup.

Mr. GILBERT. That is correct.

Mr. FRASER. In the whole zoning process, so they presented a bill, they thought that was the most feasible way to go, based on conversations that they had about the alternative options of proceeding.

Mr. GILBERT. I think that is correct, sir, and I think it's unfortunate that they didn't at the same time file an application because it would have been resolved by this time, had that course been followed.

Mr. FRASER. I don't understand the role of the city. I gather the city would like to have them there. The city was aware of their interest and yet the only thing the city was apparently suggesting was the legislative route. You apparently never suggested they file a formal application. Are you interested in having them there or not?

Mr. GILBERT. We are interested in having them there, and I would be prepared to assist them in the filing of a formal application that I think, given the—

Mr. FRASER. When was the first time that this—is this now the first formal suggestion that you have made to them that they should proceed this way?

Mr. GILBERT. This is the first occasion that this problem has come to my attention and that is rather, the first time was when we addressed the question of assisting the Mayor in replying to Congressman Diggs' request for an opinion on the legislation and in that transmission from Mayor Washington, it was his suggestion that the zoning process be used and we used the occasion to point out that our

zoning process had been very severely impacted and we sought relief from the Congress about the impacted condition of the zoning process.

Now, we think we are in much better shape now than we were a few months ago. Of course it could again get clogged, but right now, we think we can find a way to get a reasonable, speedy resolution of the problem.

ZONING CASES

Mr. FRASER. On that problem, on that question, are there presently, a number of pending zoning applications and zoning cases?

Mr. ROBBINS. Yes, Mr. Fraser.

Mr. FRASER. What are they typically running, in length, from the time the application is filed to the disposition?

Mr. ROBBINS. That is very difficult to say because they come in, I am trying to think, I am sorry I am not prepared to answer this. It's just a straight change in zoning that is apparently noncontroversial on its face, as I understand it, the Carnegie Foundation has represented and I have absolutely no reason to take it other than its face, that there is no citizen opposition to this.

This is not a complicated case, such as a planned use development that has to go through so many planning stages before it is right for a hearing and I would say right now on a straight one, it would probably be if there was not an expedite on it, and there are cases where there is good cause shown, this is in the other administrative judicial process, if good cause is shown, one can expedite. It's not first in, first out.

I would say we have had cases 3 to 4 months and if it is on an expedited basis, and there would be absolutely no problem with this matter being resolved well within the confines of the first quarter, as the chairman asked.

Mr. FRASER. A normal application for what is an uncomplicated zoning change, they are not given special treatment, would they be completed within 3 to 4 months?

Mr. ROBBINS. That is correct, because we have other hearings scheduled and if it was not on an expedited basis, the Zoning Commission cannot set down a special hearing for it.

Mr. FRASER. Well, does the citizen or the corporation have a right to expedite an application?

Mr. ROBBINS. A right that anyone would have. All they would have to do is make a showing to the Zoning Commission, that there was a meritorious reason for expedition.

Mr. FRASER. It's a discretionary thing, rather than a right in any legal sense.

Mr. ROBBINS. No.

Mr. FRASER. It's up to them to decide whether they will take the time and trouble to try to expedite it.

Mr. ROBBINS. I think it would be the same way when you request the court to put a case on the calendar, if you can demonstrate good cause, you can generally get it advanced, sir. That is the way we have treated them and we have had cases in the past year, where there has been a showing such as an option on a piece of property running out and that sort of thing, real practical reasons.

Mr. MAZZOLI. Since I am going to have to leave shortly, I would like to perhaps ask Mr. Oberlander a question and I think I will yield for the counsel for the minority for the statement on behalf of the ranking member of the committee and then to the gentleman from New York and the gentleman from California.

Mr. RANGEL. I thought the members would have preference over the counsel. I am new here but I just thought——

Mr. MAZZOLI. I thought this was a——

Mr. RANGEL. Pete and I will have to get together on these things.

Mr. MAZZOLI. I appreciate the gentleman's calling my attention to a greivous error on the protocol on the part of the chairman, and I will retrench and try to get rid of my blush and generally shape up.

Mr. Oberlander, do you fear, as a professional planner of any concern, with establishment of a precedent here?

Mr. OBERLANDER. In the statement——

Mr. MAZZOLI. You have a statement.

PRECEDENTS

Mr. OBERLANDER. In the present department of special regulation for such a particular use, we have no problem with the use itself in this particular location and we say on the second page of the statement, if I can just quickly summarize it—in view of the variety of institutional and chancery uses in this area, the use of 2929 Massachusetts Avenue, as an office for the Carnegie Endowment for Internal Peace would not be incompatible.

However, all other office uses were established in compliance with the zoning regulations in effect at the time such uses commenced. To permit this use by legislation would constitute a departure from the orderly regulation of land uses and their intensity embodied in the Zoning and Enabling Statute in the Zoning Regulations adopted thereunder.

Accordingly, we believe that the question of the use of this property for the Carnegie Endowment should be determined by an application for rezoning rather than by a special purpose legislation.

Mr. MAZZOLI. Do you think there is any chance beyond the fact that the precedent is not particularly incongruous with the general feeling on this, that this might open the door to any kind of least desirable use, assuming that the Carnegie's use would be totally appropriate.

Mr. OBERLANDER. For this particular property?

Mr. MAZZOLI. Yes.

Mr. OBERLANDER. No.

Mr. MAZZOLI. Or property anywhere. There are similar types of buildings in this area.

What I am saying, you are not required by the precedent, less dignified use for the next precedent or maybe for a lesser use, but you are worried about the precedent that this kind of a solution to the property.

Mr. OBERLANDER. That is correct. We attached a map if you would like to refer to it, showing a number of embassies and chanceries in this area that if from the point of being conformance, Carnegie would be in conformance.

Mr. FRASER. I have no further questions and the gentleman from New York, maybe you can continue.

Mr. RANGEL. Thank you, Mr. Chairman.

When did your department first determine that the foundation was misled, unintentionally by representatives of the District?

Mr. GILBERT. I would have some difficulty, Mr. Rangel, in pinpointing the exact date.

Mr. RANGEL. I don't mean the exact date.

Mr. GILBERT. The exact time, it was in the period of the consideration of the legislation, when we were asked to review the proposed legislation, when we were asked to review the proposed legislation submitted by Mr. Fraser and Mr. Nelson, two identical bills.

In looking it over we, to be very candid, I was not terribly pleased with the kind of information that was forthcoming from our offices at an earlier time, but I think it was a desire on the part of officials to be helpful and it was one of those cases where somebody was trying to be a little too helpful.

Mr. RANGEL. Well, that was my point. When did you first consider the legislation?

Mr. GILBERT. Well, the day that Mayor Washington made the transmission to Chairman Diggs, which was early in September, so I would assume around that time.

Mr. RANGEL. Did you contact the foundation in order to explain to them what your real and true legal opinion was in connection with the route they were taking.

Mr. GILBERT. There apparently had been extensive contact between the attorney and the various officials of the city government some of whom were directly responsible for zoning, some were not, and the city government had tried to convey to the foundation, the notion that, one, we like their proposal and, two, we thought the zoning process should be used.

Now, there was one exchange with one official, the Director of Economic Development, in which his comments were construed as suggesting this course, go through legislation.

Mr. RANGEL. But what I am trying to determine is when did the foundation find out for the first time that the District was suggesting a new method in order to occupy the building?

Mr. GILBERT. I really am not in a position to answer that, Mr. Congressman. I think we started preparing the reply to the chairman of the District Committee on the presumption that they were aware of the position of the District.

We later learned that they were led to believe otherwise.

Mr. RANGEL. And you have no reason to contradict that?

Mr. GILBERT. No, I did not.

Mr. RANGEL. Well, there is no one here from the Zoning Commission this morning.

Mr. GILBERT. Well, my office provides staff support to the Zoning Commission and to the extent that we can, we are trying to present the situation to the Zoning Commission, would be confronted with.

The Zoning Commission as such, is a body with some legal and some judicial functions and normally it would be preferable to protect the integrity of their process, that they not be in a position to

answer specific questions on the merits of this case, and I am prepared to answer. In staff terms, their processes and procedures.

Mr. RANGEL. What bothers me is that if you gentlemen knew that the foundation had a contract that expires at the end of the year, and if in fact, you believe it's good for the District and community and good for the parties concerned, that they gain occupancy of the building.

What we are concerned about is expediting the case with some degree of accuracy that they will be able to occupy the building within the contractual time that they have to work with. No one here can say that.

Mr. GILBERT. I don't know how flexible their time constraints are.

Mr. RANGEL. That is my point. When they discussed this with your office did they not tell you about a contract they had which expired on December 31?

Mr. GILBERT. Well, it was our hope that in the period of August and early September when our position was going forward, there was still time, at that point, for them to have applied to the Zoning Commission and they saw fit not to do so.

But that is—I mean that is their privilege and we don't really share that situation with them. But I think there probably has been too much communication of a noncommunication kind. I think that is—I am not really very pleased with the way this case was handled. If we had to do it over, it would be done over in an entirely different way.

Mr. RANGEL. You mean as it relates to the District staff?

Mr. GILBERT. Well, I think that, for instance, the subordinate official, who in fact gave him the guidance they took, would have been better advised to be less helpful and if he had been less helpful I think that would have prompted them to seek legal counsel or advice from higher officials of the city government and I think if they had been addressed in the context of the city action that I think that the city action would have been forthcoming.

Mr. RANGEL. That wasn't done, and the fact is that a citizen has a right to rely on someone who holds themselves out to be representatives of government.

I think now what we are talking about is the equity that is involved in the matter, assuming that both sides mismanaged the questions. If no one here can indicate with any degree of accuracy that as a result of the relying on the District of Columbia representations that the foundation will not be failing in their contractual obligations with the lessor or the seller, then of course, this is something that this committee would have to consider since it appears that it really doesn't do violation to any concepts that you have in connection with the type of activities that would be taking place in this particular area.

Mr. GILBERT. I think if this action could be completely insulated from the thousands and thousands of other actions, that people would like us to take in this zoning area, in the city of Washington, I would agree with your point completely.

Mr. RANGEL. This is our last shot outside of home rule. [Laughter.]

Mr. RANGEL. Thank you.

Mr. MAZZOLI. Mr. Stark.

Mr. STARK. Yes, Mr. Chairman, I have a few questions.

DISTRICT'S POSITION

I have some real problems, in that as I read this and if any of the gentlemen at the witness table could correct me, that the city or the District is opposing the legislation on the basis that it's the wrong way to approach zoning. But that secretly they really want the foundation to get located there and I would be just curious as to whether the city has got any strong opposition to, say, 609 in the military construction bill which extends the Rivers amendment in the most high-handed and arrogant manner, it gives the military the right to circumvent everybody and build Bolling and Anacostia into another fortress for all time.

Now, what I want to know, are you guys secretly opposing, are you openly opposing it and secretly applauding the military or are you openly opposing the military, Bolling and Anacostia. And are you really, underneath it all, going to fight to do what is best for the District in that instance?

I have another problem, I have also been fighting the Federal Home Loan Bank Board to keep them off, what, 17th and G, hoping they will go into the redevelopment. I want to know are you guys openly supporting me and secretly undermining me? I want to get the agendas out here this morning so I can get the District of Columbia, and hopefully those of us who spend some time on the Planning Commission and the citizens, because hopefully we will give you home rule. But if there is anything left for you to plan by the time home rule gets together, I am questioning.

But seriously, going back, I would be perfectly willing to be branded as somebody who is willing to help the cause of peace and pull a Nixon-like subterfuge and be lawless because I think that the Carnegie mission or the Carnegie Endowment is worth winking at the law. But if that is going to start any kind of precedent or precedents, which makes it more difficult to battle the Defense Department, who I think are lousing up the District, or to insist that we get more people considering going into the redevelopment area.

Fanny Mae came to us the other day and asked if we would give them an exemption, so they could move outside of the District and I said definitely not. I battled like hell with the Banking Committee to keep that. I just hate to see any more holes in an already shakey dike. I think you guys have to take us off the spot. You can't put us in a position where we can be criticized later for saying, well, the District waffling on this. So I want to—I probably abstain in voting because I just feel very much in the middle on it, and I don't like to be in that position. I still want your comments on 609, if I can, how tough you are going to fight on Bolling and Anacostia and how tough you are going to fight to get some of these Federal buildings in the redevelopment area.

Mr. GILBERT. I would be glad to respond, Mr. Stark.

An old newspaper friend of mine once said that a secret was something that he didn't know and that in terms of your reference to what is our secret position, I don't think we have one.

I don't think we have a secret position on any of the three issues that you presented and your presenting the three problems helps to put the issue we are addressing today in context, because it is clear where we are. We would like the Carnegie Endowment to be on Massachusetts Avenue. There is no quibble about that at all, we would like to get access to Bolling and Anacostia. We feel very frustrated about the process that we are confronted with, which are beyond the jurisdiction of this committee.

Mr. STARK. If the gentleman will excuse me, they may not be if we can dream up some creative legislation. One would be by blocking their streets and sewers. You have to be aggressive here, the military uses dirty tricks all the time. You know, they have got the CIA and we still have got the National Planning Council at least, so don't give up all hope.

Mr. GILBERT. We are not giving up, but we have been taught the hard way in the District of Columbia that we must work within the process that the Congress provides us and we are delighted that the congressional processes are being expressed through the home rule bill, but that does not give access to a piece of property such as Bolling and Anacostia, which may or may not be in the District of Columbia, depending on how the home rule conference comes out. We hope it is in the District of Columbia or the city of Washington, if you prefer, when the conference is finished and we have so communicated that view on behalf of the city to the conferees.

On the other question of the bank building, it would be the preference of the city government, that it be on the east side rather than the west side of 16th Street access. When it comes to locating the building, we were disappointed in the Planning Commission's action, which OK'd the location on the west side of the building.

Now, the home rule bill, in that connection, does provide for a division of responsibility between the city government and the Federal Government, in terms of planning and we would continue to press vigorously for the city's position on issues of that kind. But the question on the integrity of our zoning processes and I don't want to overdraw the issues, the control of the wink is a congressional control. We are not doing any winking, we are looking at the issues and we would like to find a way to get the Carnegie Endowment on Massachusetts Avenue without doing great damage to our zoning process.

Mr. OBERLANDER. Mr. Chairman, the Planning Commission, since you have sat in on the Commission's and I am really representing it as a staff member, but I think there are really different issues involved between the Bolling and Anacostia and the Home Loan Bank Board location, and this particular bill which deals with a use in a zone which is really not permitted. The other two instances are very, very critically important but they are really directly comparable.

PRESENT CASE

The principals that are involved here from the zoning standpoint, this is R1-A zoning, which is one-family homes and from the planning respect, special legislation to permit a nonconforming use of, let's say, is really the wrong way to go about permitting such a use, which along

Massachusetts Avenue, is quite compatible. We suggest the way to approach this particular issue is through a rezoning of a strip of Massachusetts Avenue to permit this kind of use and other similar uses which in a property along Massachusetts Avenue, they are quite appropriate and do not cause the city any real problem.

Mr. STARK. Thank you, I have no further questions.

PRECEDENTS

Mr. FRASER. Maybe to pursue this a little, how did the other uses which are not one-family come into existence along Massachusetts Avenue?

Mr. OBERLANDER. Precisely through the Chancery Act, or there is an application for a use variance pending across the street right now on the south side of Massachusetts Avenue.

Mr. ROBBINS. If I could answer that, Mr. Fraser, under our present Zoning Act, and our regulations, embassies are permitted as a matter of right in an R-1A district. Chanceries were permitted prior to the Chancery Act, or the, as more properly known, the Fulbright Act, which says that the first area that they can be in is in—well, the exact zoning category, R-5C, which is high density residential, but it cannot be in a low density residential.

A number of the existing chanceries were there prior to the passage of the Fulbright Act and then certain areas, offgoing, up to where Brazil is—the Brazilian chancery is—these were done through planned development of that nature. There, then are a number of so-called nonconforming uses that were permitted prior but it's like—say, that the Carnegie endowment building is a single family home in this day and age it is one of the stately mansions that was built earlier on Massachusetts Avenue. It's not what one would consider the usual single family detached homesite.

Mr. FRASER. Let me ask you this, you have suggested that one is to be prudent in terms of the way the law may be applied. You should go for a rezoning rather than a use variance, but consecutively, as I understand it, the spot rezoning is objectionable whether it is done by a planning commission or whether it is done by a piece of legislation.

Is that likely to be an issue if they apply for spot rezoning? If I were sitting on the zoning agency, I would be inclined to take the position, well, this is proper for the area, and we ought to deal with it not as a parcel at a time but we ought to deal with that whole area or strip.

Mr. ROBBINS. I would agree.

Mr. FRASER. What is going to happen, would this application for rezoning become tangled with others, in an effort to rerationalize the zoning of the area.

Mr. GILBERT. If I may respond to that, Mr. Fraser. We would use the resources of our office to try to avoid that. I think you have identified a general problem.

Mr. FRASER. You are raising a question of procedure by the use of the special law here, that is what we are talking about. You are faced with the same kind of procedural objection with on-the-spot zoning by the planning or zoning agencies.

Mr. GILBERT. Our planners who have looked at it, I am pleased that the friends of the Planning Commission came to the same conclusion, they feel that when we look at this whole stretch of Massachusetts Avenue, you come to a conclusion that if this is not an incompatible use and looking at it in terms of 29th to 34th Streets, a five-block stretch, that you could reasonably come to the conclusion that this is not spot zoning, but they were carrying out the prevailing zoning in that area.

We would need to do some spade work to support that, we could defend that position with the Zoning Commission.

Mr. ROBBINS. If I might further answer that, sir. In this R-1A district, if these were all what we think of as single family detached houses, yes, this would be spot zoning and it might very well fall of challenge in the court. However, the mere fact that it would be a different zone next to the R-1A does not make it spot zoning so long as it's comparable with it and at the same time not to get it tangled up, it would be my legal advice to the Commission, which is one of my duties that I seem to be spending more time on than anything else right now, is that to go ahead and deal with this specific problem because of the exigencies and the urgency and at the same time, with the cooperation of Mr. Gilbert's office, and Mr. Oberlander's office, to come up with a package for that entire area, with R-1A rather than Congress.

But I do not think you would have to tie the two of them together. That would certainly take more time.

Mr. FRASER. What you are suggesting is there is a need to rationalize the zoning for that area?

Mr. ROBBINS. Absolutely.

Mr. FRASER. And as long as that seems indicated, earlier action by the spot rezoning would in effect be support of a first step to enable this use to go forward. You would contemplate rationalizing the area?

Mr. ROBBINS. Yes, sir.

Mr. FRASER. Then could you put this bill in the same category since there is a need to rationalize the area and you would be moving in a nonconforming use, then this bill might be considered to be a short-term measure to enable them to go forward?

ZONING

Mr. ROBBINS. You could almost rationalize it. I think it's a word I get from planners, but sometimes it puzzles me but I will use it any way. Conceptually we are against it, the Congress zoning the city, either entirely or in one particular area.

Now, we recognize that this seven blocks down at 2223 Massachusetts Avenue, that the Congress in 1959 did exactly the same thing for the American Society for International Law. I believe that was the organization. It did pass a law to permit this. Our position is stated, I think, in President Eisenhower's veto message in July of 1953, which was grantedly quite a different situation. It dealt with the gasoline station that was located where the park now is at Wisconsin and Massachusetts Avenue, but the President's veto to the message, which I will be happy to submit, does state the local zoning processes should be utilized and the Congress should not be zoning the city.

Mr. FRASER. Let me say I agree with that general position.

But after being informed that the city officials sent Carnegie up to get this legislation, I wasn't going to argue.

Mr. STARK. Would the gentleman yield?

Mr. FRASER. Yes.

Mr. STARK. I understand that there is a purchase contract that is going to expire the first of the year.

Mr. OBERLANDER. I don't know the particulars of that, Mr. Stark.

Mr. STARK. To the best of your knowledge, or to the best knowledge of the witnesses, is that—does that put a time urgency on this?

Mr. OBERLANDER. That is what we have been informed.

Mr. ROBBINS. I would say this, Mr. Stark, before you came in, I don't believe you were here, when the chairman asked for a time frame, and we told them that there were two possible avenues. The one that could be done most correctly is subject to perily. That is a use variance. We don't believe this would meet the—

Mr. STARK. OK, what I am trying to—

Mr. ROBBINS. To the provisions, and we cannot rezone this before the end of the year.

Mr. STARK. What I am trying to get at is, is it absolutely impossible or has it been explored as to the willingness of the union, who I now understand owns the property, to extend the contract. Because it would seem to me if both the Members of Congress and the members of the Planning Commission and the Zoning Board thought it would be in the best interest of all parties for that contract to be extended, thereby taking the time pressure off. If I owned property in the District of Columbia which I hoped to sell at some point and I was asked by the Planning Commission and the Zoning Board, and the Members of Congress, I might think very positively toward extending a contract in the interest of harmony and then allowing the process that you would prefer and everybody would prefer, I don't know, would 3 to 6 months make all the difference in the world. I was wondering if any of you gentlemen, if that is a realistic thought, that this could be extended say, for 6 months, and then the process that everybody would prefer which is to go through the Zoning Board.

Mr. ROBBINS. If that could be done, sir, we would certainly much prefer that and as I represented to the chairman, that this zoning process could certainly be accomplished within the first quarter of calendar year 1974.

Mr. FRASER. Mr. Hughes is here from Carnegie, we will talk to him. Do you want to make a statement?

Mr. HOGAN. Could I ask a couple of questions, Mr. Chairman?

ZONING VARIANCE

Let me ask a couple of questions of Mr. Robbins. Prior to common case, it's your best judgment the Carnegie Endowment could have filed an application for a variance, is that correct?

Mr. ROBBINS. Use variances were given out by the Board of Zoning Adjustment in far less meritorious cases. I would agree with you.

Mr. HOGAN. What is the case now that you believe that restricts them successfully from filing an application.

Mr. OBERLANDER. The problem goes down seven on the list really, to two very unique cases that they cited, New Jersey cases, that were

cited and the zoning is curious and you come up with some seven criteria that have to be met. In the mere fact that this is not the best economic use is not one of them. In fact that is just not within the meaning.

Generally speaking, the use variances generally go to the topographical features, generally they go to the lot size and also as the court said, if it's a resident, if it's an area variance that you are really asking for, but not because of the particular thing, you really should have a change in zoning and this is a problem that is up and down this area in Massachusetts Avenue.

Mr. HOGAN. Now, of all the properties in this particular area, how many would you say are occupied as a result of zoning changes as opposed to zoning variances?

Mr. ROBBINS. I don't think any of them are occupied to my knowledge, as by zoning variances. And now we have one zoning variance seven blocks down which was granted by the Congress and the other nonconforming uses under the present act are chanceries which were permitted there prior to the Fulbright Act.

Mr. HOGAN. So that there is a variance currently pending across the street?

Mr. OBERLANDER. A rezoning.

Mr. HOGAN. Not a variance?

Mr. OBERLANDER. Not a variance.

Mr. HOGAN. Now, how long has that been pending, approximately, if you could tell us?

Mr. OBERLANDER. I don't know.

Mr. HOGAN. Do you know, Mr. Robbins?

Mr. ROBBINS. No, I don't.

Mr. OBERLANDER. This Embassy Chancery building, they are requesting a change in zoning and it's also a planned unit development, 10 acres of land is involved.

Mr. ROBBINS. I believe the Zoning Commission has issued its proposed order under the APA, now we are waiting for any objections and exceptions to its proposed order. But that is—now, that will not change the zoning. That is the first phase of the planned unit development. That is to be granted by the zoning. The Zoning Commission has already voted to grant it as the first step. The changing zoning of PUD does not come into effect until after final approval, after the second hearing.

Mr. HOGAN. What is the zoning variance that the Congress approved nearby?

Mr. ROBBINS. Well, they permitted a similar use in the same R-1A district by their action and they use this specific property. That was the American Society of International Law, the change that we were speaking about.

Mr. HOGAN. And that is really what they are asking for here, they are not asking for a zoning change, not spot zoning as such, in this particular bill, or really a use change or a zoning variance.

Mr. ROBBINS. They are asking—yes, sir, this would be the same as if the BZA were to grant them a use variance.

Mr. HOGAN. Let me ask Mr. Oberlander, the National Capital Planning Commission does not normally comment on zoning variances, do they?

Mr. OBERLANDER. Only when referred to us by the Zoning Commission or the Board of Zoning Adjustment.

Mr. HOGAN. And as far as this goes they do not comment on the zoning variances?

Mr. OBERLANDER. As a variance, no, but on a planned unit development or the large scale changes, we do.

Mr. ROBBINS. Except for one thing, a member of the Planning Commission staff sits as one of the five members of the Board of Zoning Adjustments which grants the use variance.

Mr. HOGAN. I understand that, but there he is an independent, is he not?

Mr. OBERLANDER. Yes.

Mr. HOGAN. He is not reflecting the views of the Commission necessarily. He is reflecting his independent views.

Mr. OBERLANDER. Correct.

Mr. HOGAN. The Board of Zoning Adjustment—and he is not to be controlled by the use of the planners or the Commission itself.

Mr. OBERLANDER. As his particular supervisor, which I happen to be, I have no control over that.

Mr. HOGAN. Isn't this a relatively narrow exception here that we are talking about?

It's a use variance, in effect, is it not?

Mr. OBERLANDER. Yes, that is exactly why this isn't from a precedent point of view, a desirable thing to do. That is why we say, a rezoning of a larger area to avoid spot zoning, this would be a much more reputable way to handle it.

Mr. HOGAN. Then going back to Mr. Fraser's questions, you know, who is to decide this, are you going to sit down and have the Council do this or the Zoning Commission do this and rezone the entire area or is the application going to be treated on its own merits?

You can't say that you are not members of the Commission, you can urge the Commission to go one way or the other and no one can really say what the Planning Commission will do on there.

Mr. OBERLANDER. That is quite right.

Mr. HOGAN. If they want to be arbitrary in how they treat this application, presumably they can do it one way or another, notwithstanding any urging on the part of the District of Columbia, notwithstanding any argument that the applicant might make.

It seems to have been treated inadequately, in that they were led to believe that the District government favored their application to the Congress for a variance and when this got to the Congress there seemed to be a reversal.

Mr. ROBBINS. If I could address myself for the purposes of my remarks, to forget for a moment the unfortunate advice that they were given, I might add at the time they were, Mr. Gilbert's office and mine for that matter, did not have the same input with the zoning.

COURT DECISIONS

Mr. HOGAN. Let me interrupt, what is the date of the decision in the *Palmer* case?

Mr. ROBBINS. 1972, I believe it's in the spring, but I am not certain.

Mr. HOGAN. If I understand correctly, he received this advice in 1971. Had they applied in 1971 for a zoning variance, there is every likelihood that they would have received it.

Mr. ROBBINS. Yes, sir. Especially in light of the fact that the representations made that there was not citizen opposition to it. Therefore, it would probably not have gone to court.

Mr. HOGAN. Now, according to your testimony, the intervening decision of the court of appeals has, in a sense, foreclosed them from taking what would have been, by and large, the most expeditious resolution of this problem.

Mr. ROBBINS. That is correct.

Mr. HOGAN. Excuse me, go ahead.

Mr. ROBBINS. Mr. Hogan, what you were saying is, under the zoning system, that the Congress established for the District of Columbia which is similar for zoning throughout the country, is that a legislature ordinarily does not accept, let's say, in Montgomery County Council passes on the zoning, where you have a separate zoning body other than the legislature, the zoning Commission may act. There may very well have been a decision although I am not recently aware of any decisions by our Zoning Commission which were wrong and arbitrary. But if the recourse from that to the legislature, to have it act as a zoning commission in certain specified instances, I think that is the heart of the question.

Mr. HOGAN. As I understand it, the use here is not incompatible with the area, as it now exists.

Mr. OBERLANDER. In our opinion.

Mr. HOGAN. And the citizen organization is one of the largest, certainly one of the largest active organizations in this area, has no opposition to this as a matter of fact.

By and large, they seem to favor it and the application of the Congress is more in terms of a use application which is an intervening event now to foreclose them for using—what would be wrong with the Congress responding legislatively to what, perhaps is the most inequitable future thing, preventing them from using and getting a use exception, and then tell them to go ahead and file an application for a zoning change in that area and let the process of the local government handle that matter, independently of the use variance.

Mr. OBERLAND. From the planning perspective—

Mr. HOGAN. Let me make clear here now that based on the earlier standards, as I understand them, you will be speaking at the National Capital Planning Commission. You would not be addressing this issue normally if this Board of Zoning were sitting up here responding to this.

Now, there might be a member of the National Capital Planning Commission sitting up here expressing his independent judgment. The National Capital Planning Commission would not be taking a position on this matter for the Board of Zoning Adjustments, which I submit, on the basis of the legislation that we have here not, it is how they are sitting.

Mr. OBERLAND. Sometimes the Board of Zoning does refer items to the National Capital Planning Commission for formal review.

Mr. HOGAN. I understand that.

Mr. OBERLANDER. We are only addressing special legislation for such issues which—as this, which would be strictly a zoning or use variation and the process involved in this particular case. It happens to be a compatible use. If the Congress enacted such legislation, it would set the precedent for another one of these use variances somewhere else which may not be compatible. That is the whole essence of our staff position.

Mr. HOGAN. I have no further questions. Could I reserve the right to insert Mr. Nelson's statement in the record.

Mr. FRASER. Without objection, it is so ordered.

Mr. HOGAN. I would like to confer with him on it.

Mr. FRASER. OK, Mr. Rangel, any further questions.

Mr. RANGEL. No, Mr. Chairman.

Mr. FRASER. Thank you very much, you have been very helpful and we appreciate your testimony here.

Mr. FRASER. Next we have Mr. Thomas L. Hughes, president, Carnegie Endowment for International Peace.

STATEMENT OF THOMAS L. HUGHES, PRESIDENT, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

Mr. HUGHES. Thank you very much, Mr. Chairman.

Let me begin by saying how much the endowment appreciates the very cooperative atmosphere displayed by the members or representatives of the District of Columbia government. I noted several statements they have made with special interests and depending on the outcome of the hearing and following activities that we might anticipate therefrom, I look forward to working with Mr. Gilbert, because this morning was the first time that I really heard his position or have been in touch with him because there now seems to be general agreement on the merits of this question.

I won't take the time of the committee to reverse these except very briefly because I wouldn't want these arguments to be incorporated by reference without any actual reference unless they are involved in the hearing.

Generally speaking, we are attracted to this building because we think it's ideal from the point of the kinds of activities we conduct. We think those activities are consistent with the best use of the property and with the neighborhood attitudes, both the nature of our organization, the suitability of our work, the comparabilities of the size and scope of activities we conduct, the availability of ample parking, our intention to preserve the property in its present state, no neon lights, and so forth, and actually we will improve and enhance the property for years to come and rescue it from its current deteriorating condition.

All of these are factors which have commended the building to us and I think it's fair to say our possible occupancy of the building for the citizens organizations who have a financial interest in that area, I believe the statements have been filed with the committee and if I may, in the testimony this morning, to that effect, from the citizen's organization will be forthcoming.

PROCEDURAL PROBLEM

Having said that, let me turn to the procedural problem, simply because I think what has been said, the committee might be in some confusion as to whether we have been in any sense competent in seeking legislation, rather than pursuing the administrative route. As I say, enough at the least, and I won't say everything that could be said on our side. We proceeded over with complete good faith and completely openhanded and above board manner with the District officials.

The problem basically has been complicated by putting together a buyer and a seller on a contract to purchase which had to have a timetable put to it and that has meant that we had to approach the District government from the beginning for frank and honest explanations of what our reasonable chances were for affirmative action, what our chances for affirmative action would be in the District of Columbia. When we first discovered the property in the summer of 1971, we made our own inspection of it and got in touch with Seafarers. We immediately sought to make contact at several different levels of the District government to find out what their attitude was with regard to the leadership level and at the zoning commission level and at the staff level. I, myself, had several contacts with people in the District of Columbia government and I will go into those in great detail a little later.

We were represented by the law firm of Shelton Mazen and they made their own independent inquiries of the staff and the zoning commission and the board of zoning adjustment. Two or three items emerged during this whole initial conversation in 1971. First Seafarers were the owners and we were only hypothetical in perspective buyers, and therefore, what it came down to in the legal terms, that the provisions of the property or the zoning of the property could be used for certain things and this provision gave us pause. I guess in between the lines, it was indicated that if Seafarers were themselves seeking a change in the zoning they actually would be unsuccessful if they were going to use it for their own purposes.

Now, it was suggested that we would have a much better chance for a change but by no means a certain one. In fact, the regular and repeated evaluation of our chances at every level, staff, officials, and political in the District was that the uncertainties and delays and possible unknown appeals, possible court action from unknown sources would in fact lead any reasonable and prudent man to think very carefully about making this purchase.

CHRONOLOGY OF EFFORTS

We were warned that we would not get favorable acceptance. In September 1971 we talked to Arthur Hatton, Chief of Staff, of the Board of Zoning Appeals and he stressed that at best it would be a long and cumbersome proceeding with a totally unpredictable outcome.

Mr. Hatton—he is a capable, career, long-time, public servant in this field in the District and we went to him first. What we wanted to achieve, we were told, would be very hard put to do this except by legislation and we came and talked to the staff of the House District Committee at that time.

Before doing this, I touched base with the then chairman of the city council in the District of Columbia and he advised us to get in touch immediately with the Director of the Department of Economic Development, Julian Dugas.

In September of 1971 I had discussions with Mr. Dugas and with his assistant, Mr. Warren Stewart. They, too, were very enthusiastic about the Carnegie Endowment having access to the building. They noted that the land uses had changed and thought it would be a desirable feature to achieve. They said they would check it further, again, with the appropriate authorities in the District of Columbia government and let us know of our chances, through administrative procedures.

I asked Mr. Dugas at the time whether there were any other people in the District of Columbia that we should see and talk to about this problem. He said to leave it to him for the time being for investigation and further advice.

There was an exchange of correspondence between myself and Mr. Dugas and I have submitted this to the committee staff; the correspondence was in September and October 1971.

In that correspondence, he said that he had reviewed the case of the Endowment, the use of the building, and Mr. Dugas confirmed in writing his interest in having the Carnegie Endowment come into the District of Columbia and his own favorable disposition toward inquiring to see what could be done.

We then also touched base with the Senate and House staffs to see what the prospects would be for legislation in case we were brought to legislation; we did this because this had been suggested in all of our conversations in the District government and we were told if we decided to take that route, consideration would be given.

We then, on a precautionary basis, had to get preliminary advice from the Internal Revenue Service, because we are a tax-exempt organization and our status prohibited us from lobbying on Capitol Hill and we went through an extensive procedure on a contingent basis, to enable us to appear on behalf of this legislation in our own behalf. And in March, 1972, I rechecked with Mr. Dugas, who told me his original feeling stood that the complexities, delays and predicted administrative action were such that if we had to have time parameters in the contracts which he clearly understood we had to have, legislation was clearly the cleanest and most simple and most final unappealable route to take.

With that advice in hand, the Carnegie Endowment appointed a real estate committee to look all over Washington to see if there were alternatives. This committee consisted of former Secretary Henry Fowler, Howard Peterson from Philadelphia, and Otto Nelson. They reviewed alternatives and recommended strongly we proceed in our efforts to buy this building with the zoning contingency favorably handed.

So we authorized negotiations with Seafarers.

Over the winter of 1972 and 1973 a complicated negotiation with Seafarers occurred. This was an intense round of negotiations and this was complicated because Seafarers was not sure if they wanted to sell the building and finally they became convinced they would sell it to

us and a good deal of patience was involved. It was a long, drawn out affair. Again there were repeated bases touched and the District government and elsewhere. We continued to get nothing but discouragement from the District government authorities during that period.

DISTRICT'S POSITION

Then on April 16 of this year, the District government seemed to reaffirm in writing its understanding of the serious obstacles to a satisfactory administrative solution of the zoning problem.

The committee will be aware of the April 16, 1973, letter from Mayor Washington, accompanied by a draft bill to the House of Representatives and in that letter the Mayor described precisely the kind of problems which the officials of the District government told us about in our repeated conversations with them.

The Mayor's letter refers to the fact that the Board of Zoning Adjustments have critical problems. This is April of this year. They would repeat in that letter, "The inability of the zoning bodies to respond, has resulted in problems that go well beyond the cases which are before the two bodies." They refer to a similar backlog of cases for some considerable period. Again, this is April 1973. The Mayor's letter says "as a consequence applicants for variances have been delayed for many months in obtaining relief. Great economic hardship has resulted from these delays."

This is from the Mayor's letter. So apart from the feeling that any of the warnings which we have been given in 1971 and April 1972, we were fading away and the District procedures suddenly had become more expeditious. We and our people were in effect, told publicly by the letter endorsing the zoning legislation last April that the problem was serious, complicated, and there were great economic hardships which had resulted from these delays. We took that as a public reaffirmation of precisely the category of the problem which had been recited to us from time to time by people in the office and the zoning staff.

Three weeks after the Mayor sent that letter we signed a contract with Seafarers and bearing in mind this reaffirmation by the District government of the administrative handicaps that we specified in the agreement with the people from Seafarers, that the contract would run until the 12th business day following the end of the session of Congress. The time parameters that were described were deliberately chosen as a reasonable sample by the seller and buyer and they were hinged to congressional action this year.

Immediately following the signing of this contract to purchase, which was contingent upon satisfaction of the zoning laws, I again personally saw Mr. Dugas. I reminded him of our earlier conversations, and we had other contacts with the staff and himself and based on the best advice we were able to receive from the District government, we concluded the chances were very poor for administrative relief and therefore we were opting for legislation. He indicated that he understood why we made that decision. I told him that we were seeking bipartisan introduction of the bill on the Hill and we were lobbying actually for passing. We wanted to reaffirm our understanding with him in the District government so there was no possible em-

barrassment or misunderstanding with the District government because we did not want a misrepresentation of the city's position.

Because of the home rule context, we would not expect official District support for legislative over administrative action. But because he and others had indicated to us that legislation was our only practical recourse, we were proceeding that way. We therefore would expect the acquiescence of the District government. This was not in support, but also not in opposition. We discussed the formula which was to follow, the District's position would be, in fact, that under all of the circumstances, the District government could not of course be expected to endorse legislative as opposed to administrative action.

It was under these special circumstances we understood that they would have no objection to the legislation. It's my understanding and I think that was clear that this formulation was quite acceptable to Mr. Dugas and I would solely inform the sponsors of the legislation on Capitol Hill.

Mr. Dugas told me personally that, I support the steps you are taking. We are all favorable to what you are doing and wish you every success. I asked him if there was anyone else in the District government that I should keep in touch with. Again, this was in the summer of this year and he said, you should keep in touch with Mrs. Judy Rogers as you move forward. I reported this conversation to Mrs. Rogers who took extensive notes on the entire background of the issue, 1971 to 1973.

Shortly after the conversations with Mr. Dugas, the bills went in June. In July we touched base with Mrs. Rogers' office and told her that the anticipated acquiescence of the District government was key. We touched base with all of the citizen's association, most of who disclaimed interest or they gave us private support. The Cleveland Park Association claimed a judicial interest. Their representatives had inspected the property and were prepared to endorse the proposed legislation and I believe the representatives are here from that association.

In July and August of this year, we refrained from pressing legislation even though our time was running short because of the Home Rule Bill. This was largely on the advice of the staffs of the House of Representatives, the District Committee, and in deference to the home rule bill, as I just said.

To our great astonishment, on September 4, Mayor Washington unexpectedly opposed the enactment of the legislation and recommended attention be given the rezoning that the District proposed. The Mayor's letter in September does acknowledge the fact that the area in question along Massachusetts Avenue is now predominantly utilized for institutional use. It recognizes that this particular type of land use may be less objectionable to area residents than would conventional commercial use. It generally states the conclusions and judgments which the District has made to reaffirm this morning by Mr. Gilbert and others. We registered our dismay at the reversal of the city's position and sought explanation and we again touched base with most of the people that we had contacted in the District previously. This time we got the following general position. It was embarrassing for us. We agree with everything you stated and understood from our prior conversations. You know you have our individual support and in the middle of the home rule legislation for consistency's

sake we really felt we could not or an element of the city government felt they could not finally take a hands-off position on the legislation.

We expressed our dismay and this seemed to be contrary to the undersanding we had reached. On the other hand, each of the city officials said basically the opposition would not go beyond the former letter from the Mayor, and they continued to give us their best wishes and they said if the legislation is passed, the city would be the beneficiary and if we could convince the committee that the city was wrong, everybody would be better off.

This is an accurate summary of my conversation with Julian Dugas on September 10. This reflects conversations that we had with the District government herein Washington. They said they would testify to the same points in general about the city's reaction. With these informal assurances of support but formal opposition, we proceeded and had asked for hearings because we found our own time was running out.

From our point of view, we had no reason to think that we could renegotiate or extend the contract with the Seafarers. I have just recently received, quite unsolicited, a letter from the lawyer of the Seafarers in New York. The lawyer basically asked for advice on the status of the legislation at this point and they are telling us that their own mortgage runs out in January and it will have to be readvanced and that failing to get relief from Congress or elsewhere before that time, the Seafarers intends to post the property on the market generally.

I honestly feel that with the awareness that went into the lengthy negotiations, in putting this contract together, the negotiations, I do not think it would be fair to the Seafarers to ask for an extension of this contract. I don't think that would be anymore fair that we would want to ask them to do that. I can't say possibly that it would be ruled out. I do have an acute feeling for the amount of effort and energy and time spent by all parties over the last 3 years. I think that we would have to conclude on the basis of the conversations we had all of which, as I say, have negatively resulted rather than the very hopeful and positive. I guess this was opened for us this morning by the testimony from the District representatives and with all that in the background, we need more than we currently have in the way of assurances and the positive action that we were going to go ahead and try to negotiate a short-term extension with the Seafarers Union. They have informed us that the contract will lapse in December and that they will put the building on the market generally in January. I don't want to say more about the procedures that we followed, except to say in addition to the officers of Carnegie Endowment have been checking from time to time with people in the District government and Mr. Charles Duncan, our former Commissioner, made private inquiries of both the Mayor and Mr. Dugas last month to make sure there were no new aspects that we didn't understand and reported that our own understanding of the situation was accurate.

The former chairman of the board of Carnegie endowment, Art Seymour, was personally in touch with other officials and he received the same kind of assurances. I do want to leave you with the feeling that the endowment on their part and the Seafarers has been com-

pletely honest, above board, and dealt with everyone above board throughout all of the time with the officials concerned.

We simply must face the frustrating possibility that after 3 years of specific effort and inquiry and conversations that the building we prefer to occupy still seems to be out of reach the main fact simply escapes us because we can't bring that matter on.

I was very much concerned, while I appreciate many of the favorable comments which the District representatives made, I do want to say a word in response to the suggestions that what is really needed is a rezoning of the whole strip along Massachusetts Avenue, for the endowment and similar uses, as I believe Mr. Oberlander said, and obviously from our point of view all along, we have tried to keep this in the framework of a minimum disturbance and precise small bill.

CHANCERY ZONING

The last thing in the world we want to get involved with is the chancery rezoning on Massachusetts Avenue, because the Congress has already been through this and Senator Fulbright and other Members feel strongly about the future of chanceries along this very area. I fail to see how it would be possible for the District to rezone the straight along Massachusetts Avenue, because it is smack in the middle of what everybody knows is a terribly controversial issue and Congress has already been involved in one fight in this area and we want to stay away from the embassy-chancery question like the plague and we wouldn't welcome any supposed thought of us joining those issues.

We have heard on every hand that they should be separated. We have, in fact, talked to Senator Fulbright about that problem and was assured that this building was distinct and could be kept very separate from this long time interest in the future of the area.

As far as chanceries are concerned, and I think that we could convince him we could make a plausible case. I am sure that case would not be adverse to our interest if the whole matter had to be introduced to a zoning matter, not to speak of the inevitable further delays and he intermittent aspects of that kind of proceeding.

In conclusion, Mr. Chairman, from our point of view we feel that there are some equities that are running or should run in our direction. We would like to bring the matter to a speedy and expeditious conclusion. We think we have dealt in good faith with all parties concerned on the best available advice we could receive inside the District of Columbia government. There is no assurance, I repeat, no assurance that we would get that type of relief of any sort of a variety. I am encouraged by the remarks of the District people this morning. They are in a position to give us the kind of assurances that we need and I think that several of the suggestions that they have offered fight both extended controversy and enlarge the scope of the nature of the proceeding well beyond the ability of the Seafarers, the overtime in conjunction with new and extraneous issues.

TAXES

Let me make one final point which I made in my original summation. I think one reason the citizen committees and others are favoring this legislation is that the Carnegie Endowment will pay taxes. We do

intend to pay taxes in the District of Columbia. We have always paid taxes in all District buildings which we have held in this city before, one was at Lafayette Square in 1950 and so that is also not an issue in not seeking tax advantages simply because we are a tax-exempt organization.

Mr. FRASER. Thank you very much.

Let me pursue that last point. You are saying it is your intention to pay an equivalent amount of tax that would be assessed?

Mr. HUGHES. Yes; I think Seafarers is paying something like \$6,500 and we expect to pay more than that.

Mr. FRASER. What assurances would there be that that would be a continuing policy?

Mr. HUGHES. We would be perfectly willing to sign a statement to that effect. As I say, we have paid them for 40 years in the District of Columbia even though our status is a nonprofit organization, exempt from paying taxes.

Mr. FRASER. Is there a zoning classification that would be available to permit the uses that you have in mind which would confine the uses adequately? I am interested in the point you made which was not developed this morning. If there would be a rezoning of this and the Seafarers might decide to stay there and use it as an international union, I gather the citizen's groups would raise different issues from the point of view in the area.

Mr. HUGHES. I don't want to overstate. I think one could distinguish between the Seafarers as a labor union and a tax-exempt foundation which are educational, charitable institutions, but clearly we fall in the category of the latter, where if I were a 5-C3 educational foundation, under the Internal Revenue Service Code and that in the District of Columbia means you need SP zoning. This is the kind of zoning that is already a matter of right, say below Dupont Circle or where other organizations are at present. We have other rented space there. So presumably what Mr. Oberlander had in mind at the minimum would be a reclassification for SP zoning all along that top of Massachusetts Avenue, which would be unpredictable, it would bring in unpredictable kinds of possibilities, burdens of which we certainly don't want to carry.

Mr. FRASER. Mr. Rangel?

Mr. RANGEL. Mr. Hughes, how long have you been with the Foundation?

Mr. HUGHES. I became President in January, 1971.

Mr. RANGEL. But you are—or have been associated with the foundation before that time?

Mr. HUGHES. No; I was an assistant Secretary of State in the Kennedy and Johnson administrations and the first year of Nixon's administration. Then I was Minister of London after that and became president of the Carnegie Endowment.

Mr. RANGEL. Do you have any blacks or other minorities on your Board?

Mr. HUGHES. Yes, on the Board, several of our permanent officers are blacks. We have conducted a training for young black Africans over the last 10 years and we are having a reunion this week of 50 of them, many of whom are young black African Ambassadors, they

are at the U.N. and elsewhere. We have blacks on our staff, one is on the program director level and on all other levels here and in New York.

Mr. RANGEL. But none on the Board?

Mr. HUGHES. None on the Board.

Mr. RANGEL. Thank you, I have no further questions.

PRECEDENTS

Mr. FRASER. To your knowledge, Mr. Hughes, the question was raised in the hearings to the present nature of this procedure, at least with respect to this kind of a bill. The last one that I am aware of was 14 years ago and that was the Society for International Law. Were you aware of other instances where this has been done?

Mr. HUGHES. No, I am not. In fact the 14 years between the two suggests that there would not be a precedent, it would not be used very actively by others.

Mr. FRASER. If the precedent is confined to the circumstances and the uses to the type of neighborhood, what the city officials want used to take place, it would seem to me the precedent is a very modest one.

Mr. HUGHES. I share that viewpoint as you know and we are particularly pleased that the citizens do have jurisdiction, that they have taken an interest in it, they have recommended passage of the legislation.

On the point that you mentioned about use, let me reaffirm, I guess it's obvious by now, the bill which it is modeled after, the American Society of International Law covers this use only, so were we ever to sell the property it would be sold under that existing zoning requirement. From that point of view, obviously to stay at that spot rather than having a new spot or so forth.

Mr. FRASER. Mr. Hogan.

Mr. HOGAN. Just one if I may, Mr. Chairman.

I notice in your statement, in the appendix there are some notes. You indicated that in your discussion with the District officials that a variance was pointed out to you at the time. This was 1971. The variances at that time was indicated to be a very difficult thing to get except by legislation. There was testimony earlier this morning that had you filed an application for a zoning grant, there is every likelihood that it would have been approved. I gather this is in direct conflict.

Mr. HUGHES. I think it is in direct conflict.

Mr. HOGAN. That is the advice you got.

Mr. HUGHES. This information was given to me by Mr. Hatton himself and we went over the possibilities of using the private school notion which was if we were a private school by right, we could currently acquire the property and since some of our activities relate to research, studies and some use of students, we could have gotten into that. It was originally something that seemed to us that might be—maybe we could hang our hat on it but then Mr. Hatton was told the fact that we also publish a magazine and this was a variation from the use once granted and it looked as though, from his point

of view, when we put all complex ties together, the Seafarers would remain. We have—at this time we did not have a contract and we were seeking only use while probably what would happen in the District, as was precisely held out this morning, as the desirable thing to have, which is a desire, is a much larger and more general zoning relief for the whole area.

Mr. Hatton knew we wanted to avoid that and we clearly wanted to avoid that. We didn't want to become hostages to the whole rezoning of the Massachusetts Avenue area and the consequences. That plus the fact that we were trying to refrain from using it as such, and we would have abided by existing rezoning on resale, and we convinced him, under the circumstances that we ought to consider going to the Hill and seeking legislation. It's true that he can't—I can't say that he recommended this but each of these conversations that we had with the District officials, they said in effect that:

If we were in your position, the simplest, cleanest, most final way to get action on this kind of thing would be legislation and everything we learned later on leading up to the introduction seemed to reaffirm those judgments including the Mayor's submission of his own zoning laws.

Mr. HOGAN. As I understand the position of the District, it is that you are foreclosed totally now from going before the BZA, your only option now is to go before the Zoning Commission.

Mr. HUGHES. That is what I understood.

Mr. HOGAN. I assume your counsel who is here, I gather, agreed or agrees with that?

Mr. HUGHES. We don't have counsel here this morning, but from every previous conversation I have had, I think that is the reasonable conclusion and that also means more in determination and more delay and that is less assurance than the variances.

Mr. HOGAN. Now, the Council or Commission itself has authority to initiate areas of rezoning and presumably during this entire period from 1971 on, they could have initiated an area rezoning, rezoned the entire area, had they desired to do so on their own initiative?

Mr. HUGHES. No question about it. No contact was made by us or to us from the District, developing these initiatives.

Mr. HOGAN. Do you have any indication that they are about to do this on their own initiative?

Mr. HUGHES. No, sir.

Mr. HOGAN. You don't think they are going to do this on their own initiative?

Mr. HUGHES. I have no indication.

Mr. HOGAN. I gather their position, even today, is that they are going to rely on spot zoning through the Zoning Commission. The fact—in fact, to take care of it all.

Mr. HUGHES. I worry about the opposition that what is really relief for us, would that be relief for others as well, which I don't think so.

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. FRASER. I think that is all the questions, Mr. Hughes. Thank you very much. We appreciate your appearance here.

I think our last witness is Mr. Homer McConnell, chairman, Zoning Committee of the Cleveland Park Citizens' Association.

STATEMENT OF HOMER McCONNELL, CHAIRMAN, ZONING COMMITTEE OF THE CLEVELAND PARK CITIZENS' ASSOCIATION

Mr. McCONNELL. Mr. Chairman, if you should be running a little late, I could do a little editing here and give the gentlemen my paper, repeating, like what is in the bill.

Mr. FRASER. Fine, if you want to, we can agree to put your entire statement in the record and you may summarize the pertinent parts.

Mr. McCONNELL. There are only a couple of pages.

Mr. FRASER. We will put it in the record and you can read or give us whatever parts you think are important.

Mr. McCONNELL. All right.

On behalf of the Cleveland Citizens' Association, we appreciate the opportunity to testify in favor of H.R. 8995. The property is within the boundaries of our citizens' association which extends from the bed of Rock Creek beginning at Massachusetts Avenue to 34th Street and then north to Albermarle Street NW. and all the properties lying between those streets and the bed of Rock Creek are within our jurisdiction.

As a citizens' association, we have no legal rights in it. I notice here your subcommittee, will, no doubt, hear considerable comments regarding the propriety of legislation when the normal procedure would be to utilize the Board of Zoning Appeals and the NCPC for passing on this petition. Now, we believe these arguments have great merit and we ourselves regularly subscribe to them. Nevertheless, in this individual situation with the unique circumstances surrounding this case, we find great merit in the consideration of this petition by the Congress.

We also agree that such consideration by Congress should not be considered as a precedent in other cases and that the uniqueness of this action should be stressed in congressional legislation.

That has been brought out all the way through as you gentlemen have discussed it. We would like to place in the record, a copy of the letter which I wrote to Congressman Diggs on October 31.

Mr. FRASER. Without objection, we will insert it in the record.

[The letter follows:]

CLEVELAND PARK CITIZENS' ASSOCIATION,
WASHINGTON, D.C., October 31, 1973.

HON. CHARLES C. DIGGS, JR.,
*Chairman, District of Columbia Committee,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: We understand that early hearings have been scheduled on H.R. 8995 (Mr. Fraser) and H.R. 9310 (Mr. Nelsen), two identical bills authorizing the Carnegie Endowment for International Peace to use the real estate at 2929 Massachusetts Avenue, N.W., for its Washington offices.

This building and the enclosed grounds lie within the jurisdictional area of interest of the Cleveland Park Citizens Association. I am personally familiar with the property and have recently inspected the building, as has Mr. Homer McConnell, Chairman of the Zoning Committee of the Citizens Association. We have considered the following factors in connection with the proposed legislation:

(1) The area in question along Massachusetts Avenue is now largely devoted to institutional use, despite its being zoned for residential use.

(2) For the past 6 years, the property has been unoccupied by its present owners, the Seafarers' Union, except for minimum maintenance.

(3) The Carnegie Endowment for International Peace, whose services and educational programs are all related to the international community, would be a uniquely suitable organization for the area.

(4) The modest scale of the Endowment's operations is appropriate for the premises and parking space is available.

(5) The Endowment intends to restore and preserve the property, retaining its current character and original appearance.

(6) The Endowment intends to pay taxes on the property.

(7) "Spot zoning" is not involved since only use of the property is authorized; should the Endowment later wish to sell the building, the sale will be subject to whatever zoning restrictions then apply.

(8) After three years' discussion and negotiation, the proposed legislation appears to be the only satisfactory way to meet the reasonable timing requirements confronting seller and buyer.

For these reasons we are convinced that the contemplated use of the property by the Carnegie Endowment is appropriate and compatible with neighborhood interests. Therefore we recommend expeditious and favorable action on the proposed legislation.

If desired, I would be happy to testify to this effect in public hearings.

Sincerely,

STEPHEN A. KOCZAK, *President,*
Cleveland Park Citizens Association.

Mr. McCONNELL. Right, for the past 6 years, and I just want to mention some of these points, for the past 6 years the property has been unoccupied by its present owners, the Seafarers Union, except for minimum maintenance. It is sort of shocking the way the building has been kept up. It is a very beautiful mansion built by some family originally. It is beginning to run down and I notice these gentlemen, although they opposed this, they were perfectly in favor of having this occupied and having the building kept up.

PARKING

No mention was made of parking there. There is parking there for seven automobiles outside, a big garage under the house which I would think would be more than adequate for their normal business that they do. I thought that we have—we have not mentioned in here that they intend to pay taxes. It may be in lieu of taxes, however you have to proceed on that legally.

The point on spot zoning, spot zoning is not involved since only use of the property is authorized, should the endowment later wish to sell the building, the sale will be subject to whatever zoning restrictions that apply. I think that is very important and also it seems to us after 3 years of discussions and negotiations, the proposed legislation appears to be the only satisfactory way to meet the reasonable timing requirements confronting seller and buyer.

COMPATIBLE USE

For these reasons we are convinced that the contemplated use of the property by Carnegie Endowment is appropriate and compatible with neighborhood interests. Therefore, we recommend expeditious and favorable action on the proposed legislation. If desired, I would be happy to testify to this effect in public hearings.

Mr. Koczak could not be here because of another hearing; where he works, there was a committee meeting where he works and he was required to be there and I would think that is about it.

Mr. FRASER. Thank you very much, Mr. McConnell.

CITIZENS' ASSOCIATIONS

Let me ask whether there are other citizen's associations in the community in this general area who might also claim jurisdiction?

Mr. McCONNELL. There would be two associations, and I don't know the names off hand, across Massachusetts Avenue, that is covered by some citizen's association and it happens to be right at a point of land so, to the west of us and proceeding up Massachusetts Avenue we would have another one. Mr. Hughes, did you contact those organizations?

Mr. HUGHES. I believe we did and the staff has their names.

Mr. FIRSCHTER. We invited a total of five organizations.

Mr. FRASER. I wonder perhaps if we could put those in the record at this point. A list of the citizens groups who were contacted and given an opportunity to appear. I think there are five of them in total.

Mr. HOGAN. Right. We have a letter from one citizens' group but that has not been inserted. You might want to insert that.

Mr. FRASER. From the Wisconsin Avenue corridor, as I understand it, their letter, they don't seem to have any problem with this particular property.

Mr. HOGAN. As I understand it Cleveland Park is a member of that broader group.

Mr. McCONNELL. Of the Federation of Citizens' Associations. We belong to both, the civic association, we are active in both.

Mr. HOGAN. They were deferring to the Cleveland Park.

Mr. McCONNELL. This is a local, the federation covers the whole city's citizens' groups, you see, from Georgetown and other parts. But we also belong to the Federation of Civic Associations.

Mr. FRASER. In summary, all of the possible citizens' groups have been notified, you received no objection from any of them. Primarily you are supporting the application?

Mr. McCONNELL. Usually what happens, Mr. Fraser, is that if there is a real problem we get together. You know, this is a unit problem and, you know, you can appreciate it, we have no complaints from either of those at all.

Mr. FRASER. Well, we will insert the names of the citizens' associations and the letter at this point.

[The Citizens' Organizations afforded an opportunity to testify at today's hearings that follow are inserted below:]

1. Metropolitan Washington Planning and Housing Association.
2. Cleveland Park Citizens' Association.
3. Cathedral Heights-Cleveland Park Citizens' Association.
4. Georgetown Citizens' Association.
5. Glover Park Citizens' Association.
6. Barlieth Citizens' Association.
7. Committee of 100.
8. Wisconsin Avenue Corridor Committee.

[The letter from the Wisconsin Avenue Corridor Committee follows:]

WISCONSIN AVENUE CORRIDOR COMMITTEE,
Washington, D.C., November 7, 1973.

Hon. ROMANE L. MAZZOLI,
House of Representatives,
Washington, D.C.

DEAR MR. MAZZOLI: I wish to acknowledge receipt of your letter, dated Nov. 2, 1973, inviting the Wisconsin Avenue Corridor Committee (WACC) to testify at a hearing, Nov. 7, on H.R. 8995, a bill to authorize the Carnegie Endowment for International Peace (CEIP) to use certain real estate in the District of Columbia. This letter and a copy of H.R. 8995 were only received as of 12 noon on Nov. 6. In the next few hours I spent considerable effort in obtaining and studying the backlog of data on this case.

I wish to call your attention to the following items in the "background notes on procedures used" in this case prepared by Mr. Thomas L. Hughes, president of CEIP:

July 3, 1973, CEIP acknowledges contact with a number of Citizen Organizations in the area. Six of the eight organizations contacted are member associations of WACC;

Oct. 31, 1973, Cleveland Park Citizens Association addresses a letter to Chairman Diggs in support of H.R. 8995. This letter lists 8 important factors which led to their making this endorsement, among which is the statement that "spot zoning" is not involved since only use of the property is authorized;

Oct. 18, 1971, June 11 and Sept. 10, 1973, Mr. Julian Dugas, Director of the Department of Economic Development, had extensive conversations with Mr. Hughes advising and encouraging CEIP in their endeavor and pointed out that the Mayor's letter of Sept. 4, 1973 opposing the enactment of H.R. 8995 originated because of the "home rule issue" pending. Mr. Dugas then advised CEIP to work to defeat the city's position explaining that in so doing CEIP would be promoting the city's own interest.

Due to the extensive interaction here between CEIP and both District Officials and area citizens and the peculiarity of certain D.C. Zoning regulations along with the very brief notice on the upcoming hearing it is impossible for WACC to testify at this moment.

We would appreciate seeing substantial changes in the present zoning process which would guarantee adequate citizen participation and also create procedures for handling of special situations, of which the present case (CEIP) is but one of many. We do not consider H.R. 7217, introduced on April 19, 1973, to be a proper approach to the solution of these problems. We look forward to testifying and making constructive suggestions when the Committee considers such legislation.

Sincerely yours,

JOHN P. BARRY, *Chairman.*

Mr. FRASER. Mr. Rangel.

Mr. RANGEL. No questions, Mr. Chairman. Thank you for coming.

Mr. FRASER. Mr. Hogan.

Mr. HOGAN. I have just one question.

What would you do, or what would your association do if you are in a position to say if the Zoning Commission were to take upon itself to rezone this entire area?

Mr. McCONNELL. I think that we would have to really consider that quite a bit because I will tell you why, Congressman, when you get to the back of these homes and houses abutting at the rear, it might be completely residential. If they are, I would have to look into that. If they saw that whole thing going essentially commercial zoning, they are going to rise up in holy wrath. I have been through some of these cases and it's much more complicated than to get one variance in this one place.

So I would certainly take exception to some of the gentlemen here this mornning that—they say they could put this through in 3 or 4 months. Our experience is that it has been much longer, a year. There is a big one dragging on right now involving four chanceries on Rock Creek. That have been going on for 3 years and the people are not giving up.

Mr. HOGAN. Just one further question.

Based on your experience and I assume you have had some considerable amount of zoning experience, you have worked with it.

Mr. McCONNELL. Through the Association.

Mr. HOGAN. Yes; based on your experience there, would you view this relatively narrow use exemption that might be passed here in the Congress as more or less of a precedent than as a spot zoning exception by the Zoning Commission itself? Were it to grant a spot zoning exception through a hearing and procedure that gets itself initiated through application?

Mr. McCONNELL. That is a very difficult question. I will try to be as honest as I can. I don't think either one would set a very great precedent. But to say one more than the other would be pretty difficult. In fact your 13 or 14 years, it looks to me like you haven't set a great precedent. Spot zoning doesn't set much of a precedent.

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. FRASER. Thank you very much, Mr. McConnell. We appreciate your appearance here this morning.

Mr. HOGAN. May I ask one further question of Mr. Hughes.

Mr. HUGHES, what is the gross operating cost or budget for the foundation, if you happen to know?

Mr. HUGHES. The gross assets of the foundation are \$50 million and the bills and expenditures each year is somewhere around \$1.5 million.

Mr. HOGAN. Is that \$1.5 million spent between the two locations?

Mr. HUGHES. At the present time, yes, but if we have an office in Washington, it would be between Washington, New York, and Geneva.

Mr. HOGAN. What would it be here in the District of Columbia, do you think?

Mr. HUGHES. I would think one-third of our people would be here at least.

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. FRASER. Your summary notes will be included in the record.

[The material referred to follows:]

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, PURCHASE OF 2929 MASSACHUSETTS AVENUE FROM SEAFARERS' INTERNATIONAL UNION

BACKGROUND NOTES ON PROCEDURES, 1971-73, THOMAS L. HUGHES, PRESIDENT, CEIP.

1971: Summer.—Property discovered and inspections made.

Preliminary inquiries of staff of the zoning board by Charles Glover, lawyer, Wilmer, Cutler, and Pickering. Zoning R1B—restricted to residences, embassies, government parks, some chanceries, (military missions, churches, mosque, apartment house, and "other private school".)

Latter provision gave us pause. Since we had an in-house research capacity, library, students who were working with us for credit at their home institutions, seminars, occasional conferences, visiting research scholars, we inquired for informal guidance as to whether we could qualify as a matter of right under current exceptions as "other private school". We noted that the Harvard Hellenic Center on Whitehaven street, one block away, apparently qualified under this category although it too awarded no degrees. However, it was considered an integral part of larger Harvard University, and we were not related to an educational degree-granting institution.

We were advised that there was almost no chance that we would qualify as such, even though we were a tax-exempt educational institution. In any case, we were told, many months would lapse before a decision could be made.

As a prospective buyer only, with no legal standing to raise the issue, we were also informed we were in a dubious position to raise the issue. Our interests were hypothetical.

We also discovered that the only neighborhood opposition to the Brazilian Chancery across the street had come from Mellon interests represented by our lawyers; no objection by them in our case.

We were also informed that the Zoning Commission was always interested in onward disposal rights, and that usually there was no way to restrict resale rights to anyone else in the same zoning category (SP in our case). By contrast, legislation could limit disposal to existing zoning restrictions, providing only for use by the single purchaser—in this sense legislation could be more restrictive in controlling future use.

1971: September 3.—TLH saw Arthur Hatton, chief of staff, Board of Zoning Appeals. Thorough review of CEIP problem, alternatives, reasons for choice of 2929 Massachusetts. He stressed that at best it would be a long and cumbersome proceeding with totally unpredictable outcome. Difference in zoning problem facing Seafarers and CEIP was mentioned. What might be possible for us might not be possible for them. Yet hard to distinguish categories of groups and organizations. A variance pinpointed to CEIP use without ongoing disposal rights was hard to frame except via legislation. He thought perhaps a private bill on the Hill was indicated.

1971: September 3.—TLH saw Gilbert Hahn, Jr., then City Council Chairman. Reviewed the history of the CEIP in Washington, Lafayette Square, desire to reopen in Washington. He agreed unlikely private purchase of 2929 Massachusetts; institutional use in area now. Chancery across street. Fact that CEIP would pay taxes and preserve property in current external state should be just what the residents want.

TLH conversation with Julian R. Dugas, Director, Dept. of Economic Development, DC, and H. Warren Stewart. Mr. Dugas was enthusiastic about CEIP building in Washington. Stewart said that land uses were certainly changing along Massachusetts Avenue. Both men agreed unlikely private family would buy house in that area at that price, and that CEIP intention of preserving property would accomplish the very purposes of the zoning law.

Dugas said he would make inquiries, and I should write him a letter detailing the problem. TLH stressed that CEIP was amenable to any suggestions the city might have on how to proceed. That was why I had come to him—for advice. We thought we had a procedural problem. Sellers could not tie up the property awaiting indefinitely for zoning action.

September 22.—TLH wrote Dugas:

"The Seafarers' building at 2929 Massachusetts is the only one we have been able to find in Washington which suits our purposes. The Carnegie Endowment's Board of Trustees sincerely feels that our presence in the building would improve and even enhance the property in a manner entirely suitable to current uses in the neighborhood."

"Nevertheless, I understand from Mr. Arthur Hatton of the zoning staff, that our ownership and use of 2929 Massachusetts Avenue for office purposes would require a zoning adjustment or variance, and very possibly a more fundamental change than that. I take it that this could be a difficult and time-consuming matter in any event, with the outcome by no means certain. I will be grateful for any advice and counsel you may have for us."

October 18.—Dugas wrote TLH:

"As you know from our earlier discussion, I feel it would be an assert to the District of Columbia if your Organization were located here; therefore, I have

asked Mr. Stewart, who attended our meeting and is very knowledgeable in this field, to research the feasibility of using the building you have in mind at 2929 Massachusetts Avenue. I shall advise you of our findings in the matter."

1971.—CEIP commission two engineering surveys of the building. September.

October 26.—TLH contacted Ray Murdock, lawyer for Seafarers. Legislation seemed cleanest way around difficulty. Contract to purchase with zoning contingency clause. The Union could probably not get zoning relief for itself, but CEIP should be able to do so.

November.—TLH checked with Hayden Garber, then counsel to DC Committee, House of Reps. He is very cooperative and encouraging. ASIL legislation precedent in point. Use bill would not change the zoning map.

TLH touched base with Senators who might be interested—Fulbright because of foreign relations aspect; Stevenson, Mathias, and Eagleton, on District Committee. Encouraging.

1972.—CEIP attempted to get donation which was handicapped because of uncertainties of purchase with zoning cloud.

Further research on problem and alternatives.

Contingency exploration of ability of CEIP to lobby for zoning legislation as not violative of the Tax Reform Act of 1969 governing tax-exempt foundations. Legal advice that lobbying would be authorized by IRS if necessary to achieve the zoning relief.

March.—Dugas tells TLH that his original feeling stands—that legislation is probably the only certain route for CEIP to take.

May–November.—CEIP Real Estate Committee investigated real estate possibilities for CEIP in Washington and concluded that 2929 Massachusetts was "clearly the most appropriate property currently available for purchase." (Otto H. Nelson, chm; Henry H. Fowler, Marion R. Fremont-Smith, and Howard C. Petersen.)

November 20.—CEIP trustees agreed to authorize negotiation with Seafarers' to purchase property, contingent upon surmounting the zoning restriction "by legislation for which there are precedents."

1972–3.—Negotiations between David Cole, CEIP trustee, and Paul Hall, President of Seafarers' on terms and conditions of a contract to purchase.

1973: April 16.—Letter from Mayor Washington to the Speaker of the House of Representatives submitting a draft bill to improve the zoning process in the District of Columbia. The Mayor's letter in part describes the kind of problems confront by CEIP on timing:

"Reasonable adjustments to existing institutions are in order to insure that the necessary on going work in zoning is conducted expeditiously and with efficiency and competence. The functioning of the Zoning Commission and the Board of Zoning Adjustment is a critical problem * * *. The inability of the zoning bodies to respond has resulted in problems that go well beyond the cases which are before the two bodies. Relief for the zoning bodies should not wait until all the complex issues are resolved. * * *" (p. 2)

"The bill would (enhance) the capacity of the organizations involved to deal with their workloads." (p. 2)

"In the 'Report of the Commission on the Organization of the Government of the District of Columbia', the Commission observed that the Board of Zoning Adjustment has been operating with a considerable backlog of cases for some period. As a consequence applicants for variances have been delayed many months in obtaining relief. Great economic hardship has resulted from these delays." (p. 5)

(The bill authorizes the BZA to operate in two panels. ZC may appoint alternates to serve on ZC, hearing examiner, increased compensation for members of BZA.) (See Annex II.)

May 10.—Agreement signed between CEIP and Seafarers' for purchase of property contingent upon satisfactory zoning authority to use the property by "the twelfth business day following the end of the current session of the U.S. Congress."

June 11.—TLH saw Dugas. Reminded him of earlier conversations, contacts with staff and himself. Told him contract had now been signed good until end of legislative session. CEIP and Seafarers about to seek introduction of legislation on bi-partisan basis on Hill, and to lobby actively for passage. Wanted to reaffirm our understanding with the District Government so that where would be no pos-

sible embarrassment anywhere, and no misrepresentation of the City's position. Because of the home rule context, we would not expect official District support for legislative over administrative action. But because he and others had indicated to us that legislation was our only practical recourse, we were proceeding that way. We would expect the same position on our legislation as had been taken in 1959 on the ASIL bill: "no objection."

Dugas repeated to TLH: "You know that I personally support the steps you are taking. I am favorable to what you are doing and wish you every success. Keep in touch with Mrs. Judy Rogers as you move forward."

TLH reported this conversation to Mrs. Rogers who took extensive notes on entire background of the issue 1971-3.

Mid-June.—TLH contact with staffs DC Committees, Senate and House of Representatives.

June 26.—H.R. 8995 introduced by Congressman Fraser.

H.R. 9310 introduced by Congressman Ancher Nelsen.

(Both bills modeled after identical bill passed for the American Society of International Law in 1959. Public Law 86-208, 36 USC 341-352.)

July 3.—TLH called Judy Rogers as per instructions from Dugas. Told her legislation was in. Sent prepared rationale to her as being used on Hill in support of legislation, including anticipated acquiescence of the District government. Informed her that the following Citizen's Organizations had been contacted: Glover Park, Cleveland Park, Cathedral Heights, Massachusetts Avenue, Kalorama, Georgetown. Of these only Cleveland Park Citizens Association claimed a jurisdictional interest. Their representatives had inspected the property and were prepared to endorse the proposed legislation.

TLH also talked to Citizens for City Living, Inc., sec. Mrs. Donald Black.

July-August.—On advice of staff, District of Columbia Committee, House of Representatives, refrained from pressing legislation in deference to Home Rule bill.

September 4.—Mayor Washington unexpectedly opposes enactment of H.R. 8995 and H.R. 9310 in letter to Chairman Diggs (Annex III.)

Letter opposes legislative in preference to administrative action. Letter acknowledges "the fact that the area in question along Massachusetts Avenue is now predominantly utilized for institutional use." Letter also "recognizes that this particular type of land use may be less objectional to area residents than would conventional commercial use." Letter admits "problems which confront those who contemplate a challenge to a zoning determination," but recommends action on H.R. 7217, the general bill to expedite zoning processes, rather than H.R. 8995 or H.R. 9310.

September 10.—C. William Maynes, CEIP secretary, talked to Judy Rogers following TLH conversation with her September 7. CEIP registered strong dismay at reversal of city's position and sought explanation. Mrs. Rogers said she had always understood city's position would be qualified endorsement, but that in midst of Home Rule debate city departments had all felt they had to take a consistent position on administrative v. legislative action.

Mrs. Rogers suggested that during hearings, however, the following points could be brought out: The home rule legislation itself would not affect this case one way or the other. Meanwhile CEIP contract time continues to run. The city's letter overlooks actual use of the street. The city is not really opposed to the CEIP bills, only formally opposed. Neighborhood groups favor.

September 11.—Mrs. Rogers also indicated that it was very unlikely that the House would act on the legislation which the city desired, H.R. 7217.

September 10.—CWM conversation with Julian Dugas. "As TLH knows I personally approve of the CEIP effort. This is not the city's position, because bigger issues are now involved. We got caught up in the home rule issue." Dugas volunteered that the city letter claimed CEIP had not tried administrative remedies, although "as you know and as I told TLH three years ago, using the normal administrative route would have been unsuccessful."

Dugas said: "Your best effort now should be to convince the Congress that the city's position is wrong under the circumstances. If you defeat the city, it will be in the city's own interests. You will get no more opposition from us than this formal letter from the mayor. I hope you understand that from a political point of view the mayor can't change his position. Everyone understands that the CEIP has acted in good faith throughout."

September 14.—TLH (by CWM) letter to Chairman Diggs responding to the Mayor's letter and asking for early hearings. (Annex IV.) The CEIP letter

stressed that the CEIP had sought legislation only after receiving informal assurances from District officials that it was acting in a proper manner following precedent, and that District officials remained informally in favor of the legislation despite the city's formal position.

The CEIP letter also enclosed an 11-point rationale for the legislation. *September 19.*—Whitney North Seymour, New York lawyer and former chairman of the board of trustees of the CEIP, telephoned Julian Dugas to review the situation. Dugas reassured Seymour that beyond the formal letter the city was not going to do anything else which would place an obstacle in the path of the Endowment's securing the necessary legislation. Dugas acknowledged that he had originally encouraged Tom Hughes to take the course he did, and that he, Dugas, therefore felt badly that "consistency" (on home rule) had forced the city to take the position finally adopted.

Seymour stressed to Dugas that there was great urgency for the Endowment in securing the necessary legislation because of the time period in the Endowment's contract with the Seafarers. Dugas said he recognized this factor and repeated again that he would do nothing apart from the formal letter to block legislation favoring the Endowment. Dugas said he remained a strong supporter of the Endowment's acquisition of permanent offices in the District of Columbia, and he would certainly do everything he "properly" could to assist. His position had not changed.

October 8.—DC lawyer and former Commissioner, Charles Duncan, contacted Julian Dugas and Mayor Washington and reaffirmed the above as an accurate understanding of the city's actual position. (Charles T. Duncan; Epstein, Friedman, Duncan & Medalie; 872-0404.)

October 10.—Duncan reported his findings to TLH as follows: Both Mayor Washington and Mr. Dugas confirmed that the city's attitude toward the legislation was one of formal opposition and informal support. There would be no opposition beyond the letter which had been sent. Both wished the CEIP well in its effort to obtain the property.

October 9.—Counsel for the Seafarers' wrote to counsel for the Endowment as follows:

"As you know, the present mortgage on the subject premises is due in January 1974. In the event this matter cannot close because of the zoning regulations then, of course, our client will have to make appropriate arrangements for refinancing or extension of the mortgage and placing the property upon the market for sale. I am sure you recognize that the foregoing will require more planning and time. By reason thereof, I would appreciate your advice relative to the above inquiry on the status of this matter at your earliest convenience." (See Annex VI.)

October 31.—Cleveland Park Citizens Association writes formal letter to Chairman Diggs endorsing legislation. (Annex VII.)

November 7.—Subcommittee hearings scheduled.

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE,
New York, N.Y., September 14, 1973.

Hon. CHARLES C. DIGGS, Jr.,
Chairman, District of Columbia Committee, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: We have learned that the District of Columbia has replied to your request for comments on H.R. 8995 and H.R. 9310, two individual bills "to authorize the Carnegie Endowment for International Peace to use certain real estate in the District of Columbia as the Endowment's Washington offices." With the District's reply now submitted, the Endowment respectfully requests early hearings on this legislation. The principal reason for our request is that the contract between the Endowment and the International Union of Seafarers (AFL-CIO) for this property becomes invalid on December 31, 1973 if official permission for the Endowment's use of the property as office space has not been obtained by that time. On the basis of informal consultations with appropriate Senate offices and with the staff of the Senate District of Columbia Committee, the Endowment anticipates no difficulty in Senate approval of action on this legislation by the House of Representatives.

I

Because the District has expressed last minute opposition to the legislation introduced for the Endowment, I would like to make three major points in reply. All of these points are discussed in greater detail in the second section of this letter.

First, the Endowment decided to seek legislation regarding the use for office space of the property on Massachusetts Avenue only after consulting with District officials and receiving informal assurances from them that the Endowment was acting in a proper manner.

Second, in seeking appropriate legislation, the Endowment followed a pattern set in the case of the Washington offices of the American Society of International Law, which requested appropriate legislation through the Congress, legislation in which the District acquiesced.

Third, following recent conversations with District officials, we realize that considerations relating to current Congressional consideration of home rule seem to have led the District ultimately to adopt a position of opposition to H.R. 8995 and H.R. 9310, despite the earlier consultations. Our conversations confirm, however, that District officials remain in favor of the Endowment's purchase and use of the property in question.

II

I would like to comment in more detail on certain sections of the District's reply.

The District's reply, while in opposition to the two bills, does acknowledge that under current arrangements any organization such as the Carnegie Endowment for International Peace which contemplates changes in land use requirements confronts "problems". In fact, in two years of conversations with District officials dating back to September 1971, this same consideration of the uncertainties of existing administrative procedures was brought to our attention; and District officials informally stated that in view of the time deadline which would be contained in the contract for the property which the Endowment wished to purchase, attempting to secure the necessary decision administratively probably would prove unsuccessful. Acting on the basis of these informal conversations, on September 22, 1971, I informed the District's Department of Economic Development by letter, a copy of which is attached, that the Endowment planned to explore the possibility of Congressional action and wished to inform the District, in order that the Endowment could be certain that it was proceeding in the proper manner.

The Endowment subsequently learned that in a similar real estate case involving the Washington offices of the American Society of International Law, the District had taken a position of acquiescence to passage of the necessary legislation by the Congress. The Endowment therefore informed the District officials that, unless there were reasons which made it likely that the District would be unable to take the same position with regard to the Endowment's legislation which the District had taken with regard to legislation affecting the American Society of International Law, the Endowment intended to seek appropriate legislation for itself. Accordingly, H.R. 8995 and H.R. 9310 were introduced on June 26, 1973.

Because of this history of close consultation with District officials, the Endowment was initially surprised and disturbed about the District's comments on H.R. 8995 and H.R. 9310. From subsequent conversations, however, it is apparent that considerations related to current Congressional consideration of home rule legislation persuaded city officials, when ultimately asked to comment on H.R. 8995 and H.R. 9310, to rule against endorsement of these two bills. This position notwithstanding, District officials have made it clear informally that, as before, they are still not opposed to the Endowment's purchase and use of the property in question. For reasons related to the current status of home rule legislation, they apparently do not feel they can now acquiesce in the procedure originally discussed. At the same time they recognize that because of both the time clause in the Endowment's contract and the nature of existing administrative procedures, the Endowment probably had no effective alternative but to follow the course it has finally selected.

I would also like to comment on paragraph four of the District's reply which states that the legislation proposed is "an attempt to impose spot zoning in this area in such a way as to deprive the citizens of the affected neighborhood of the opportunity to voice their opposition or to demonstrate the harmful affects, if any, by the change in zoning in their neighborhood." First, I do not believe it is technically correct to state that the proposed legislation would change the zoning of the property in question. The legislation has been carefully drawn so as to affect only the use provisions of this property. In the event the Endowment were ever to sell the property, the sale would be subject once again to existing zoning regulations. Secondly, as the District's reply quite correctly notes elsewhere, " * * * the area in question along Massachusetts Avenue is now predominantly utilized for institutional use." Finally, in the past two years the Endowment has made contact with local citizens' associations in the area and no opposition is in existence. Although private opposition is possible—and hearings would provide an opportunity for such opposition to be expressed—none has been identified.

For the Committee's further information, I am attaching a document of the rationale for the legislation. I very much hope that early action on this legislation may be taken.

Sincerely,

THOMAS L. HUGHES,
President.
CHARLES W. MAYNES,
Assistant to the President.

Enclosure.

RATIONALE FOR LEGISLATION

1. The bill would authorize the Carnegie Endowment for International Peace to use the real estate at 2929 Massachusetts Avenue, N.W., Washington, D.C., for its Washington offices.
2. The Endowment, one of America's oldest foundations, was founded in Washington in 1910 and now has offices in New York and Geneva, Switzerland, as well. It has net assets of approximately \$50 million. Its educational activities consist of research, analysis, publishing, conferences, and other forms of dialogue both in the United States and abroad on issues of foreign policy and international affairs. (More detailed material on its activities and its board of trustees is readily available.)
3. The Endowment has contracted to purchase the property in question from its current owners, the International Union of Seafarers (AFL-CIO), contingent upon satisfactory relief prior to December 31, 1973, from its RIA residential zoning restriction. (Actual uses in the area up Massachusetts Avenue from the Seafarers' building are the Brazilian and Bolivian Embassies, the Chancery of Iran, the South African Embassy Scientific Mission, and the British Embassy and Chancery. The Brazilian Chancery is directly across the street. Between the Mosque at 2551 Massachusetts Avenue and the Embassy of Norway at 34th and Massachusetts, only two buildings facing on Massachusetts are now being used as private residences.)
4. The building has been unused since 1966 and is deteriorating. The Endowment intends to preserve the property in its present dignified state, improving and enhancing it in a manner entirely suitable to the current character of the neighborhood.
5. Contact has been made with local citizens associations, and no opposition is in evidence. While private opposition from the neighborhood is possible, none has yet been identified.
6. Although the Endowment is a tax-exempt private operating foundation, it would expect to pay property taxes in the District of Columbia as it has done previously on buildings which it owned in Washington.
7. These plans, however, require administrative or legislative approval of a zoning adjustment or variance. This variance would affect the use of the property only and would not represent "spot zoning" or a permanent change in the zoning map. If the Endowment were to sell the property, under the proposed legislation the sale would be subject to existing zoning restrictions.

8. Lengthy conversations since 1971 with appropriate District of Columbia authorities have convinced the Endowment and the Seafarers Union that the administrative process introduces unacceptable delays and uncertainties involving indeterminate elements of unreliability which would prevent the assured transfer of the property in 1973 as called for in the contract to purchase. Indeed, the District's own comments on this legislation acknowledge that there are "problems" in seeking the necessary decision administratively.

9. The Endowment did not decide to make use of the legislative process until it had received assurances from the District of Columbia officials that the Endowment was acting in a proper manner. The bill itself is modeled on one passed unanimously by the Congress for the American Society of International Law in 1959. The District acquiesced in the passage of that legislation. (Public Law 86-208, 36 USC 341-352.)

10. Because of the close consultations the Endowment has had with the District on this issue, the Endowment was surprised when the District, asked for its formal view on this legislation, decided to announce its opposition. Subsequent conversations with District officials suggest that the District's unexpected decision was related to the current status of home rule legislation before the Congress.

11. In these conversations, placing these special legislative considerations aside, District officials have indicated that they recognize that in view of the time factor in the Endowment's contract and given the unlikelihood that existing administrative procedures can be streamlined in the near future, the Endowment probably had no effective choice but to select the route it did.

Mr. FRASER. You might note for the record that the Committee of 100 expects to submit written testimony which we will incorporate in the record when it is received.

I believe that completes the hearing on this matter and the subcommittee will stand adjourned.

[The statement of Stephen A. Koczak and letter to Congressman Diggs; and submission of the Carnegie Endowment for International Peace follows:]

STATEMENT OF STEPHEN A. KOCZAK, PRESIDENT, CLEVELAND PARK CITIZENS ASSOCIATION

On behalf of the Cleveland Park Citizens Association, we appreciate the opportunity to testify in favor of H.R. 8995, a Bill "to authorize the Carnegie Endowment for International Peace to use certain real estate in the District of Columbia as the Endowment's Washington offices."

The property which is the subject of this legislation is located at 2929 Massachusetts Avenue, N.W. separated from Rock Creek Park by a roadway. It is within the boundaries of our Citizens Association which extends from the bed of Rock Creek beginning at Massachusetts Avenue to 34th Street and thence north to Albemarle Street, N.W. All the properties lying between those streets and the bed of Rock Creek are within our jurisdiction.

Your Subcommittee will, no doubt, hear considerable comment regarding the propriety of legislation when the normal procedure would be to utilize the Board of Zoning Appeals and the National Capitol Planning Commission as forums for passing on this petition. We believe these arguments have great merit and we ourselves regularly subscribe to them. Nevertheless, in this individual situation with the unique circumstances surrounding this case, we find great merit in the consideration of this petition by the Congress. We also agree that such consideration by Congress should not be considered as a precedent in other cases and that the uniqueness of this action should be stressed in Congressional legislation.

We should like to place into the record a copy of the letter which I wrote to Congressman Charles C. Diggs on October 31, 1973, with copies sent to Congressmen Romano L. Mazzoli, Donald M. Fraser and Ancher Nelsen. That letter states fully the considerations which led us to endorse H.R. 8995. A copy of that letter is attached.

[Whereupon, at 12 p.m. the hearing adjourned.]

[Subsequently, the following letter was received for the record:]

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE,
Washington, D.C., November 21, 1973.

Re H.R. 8995 and H.R. 9310.

Representative CHARLES C. DIGGS, Jr.,

*Chairman, Committee on the District of Columbia, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.*

DEAR CHAIRMAN DIGGS: I am writing in partial compliance with your request of last week, made via Dorothy Quarker, the Committee's Chief of Staff, for further information regarding the attitude of the District of Columbia authorities toward zoning relief permitting the Carnegie Endowment to use the premises at 2929 Massachusetts Avenue, N.W.

Following the Mazzoli Subcommittee hearing on November 7, immediate and intensive conversations were held between the city's witnesses from the hearing on the one side, and legal counsel for the Endowment and myself, personally, on the other. It quickly became clear, and was accepted on all sides, that, contrary to indications made in the hearing itself, no administrative relief for the Endowment's problem currently exists. We do not qualify for relief by applying for a zoning variance in this case, and the option of a larger scale rezoning of frontage along Massachusetts Avenue as advocated by the Planning Commission witness would be obviously impossible of practical achievement. This conclusion confirms the advice which the Endowment has had from informal conversations with other city officials ever since 1971.

Consequently, the city authorities have now moved on their own motion to amend the zoning regulations (see attached notice from this morning's *Washington Post*). What is proposed is an open-ended, two-tiered procedure involving two potential sets of public hearings, one before the Zoning Commission and, contingent on approval there, a second before the BZA. All this entails two preliminary waiting periods and unpredictable opposition which, while not otherwise opposing the specific Carnegie proposal, might well oppose the far broader terms of the overall amendment.

While we applaud the city's belated move toward the possibility of administrative relief, all of the long standing problems of uncertainty and delay are still present, with absolutely no assurance of an ultimately satisfactory result. Since the city authorities cannot properly give such assurances when the variables of two public hearings are involved, we have been told that no official communication of assurances can be given by the city authorities to you, as Ms. Quarker requested on your behalf.

The Board of Trustees of the Carnegie Endowment, meeting in New York on Monday of this week, November 19, asked me to express its deep gratitude to you, and Congressmen Mazzoli, Fraser and Nelsen for the steps your committee has already taken to obtain timely legislative relief for us, and to urge once more that every effort be made to obtain passage of H.R. 8995 by both the House and Senate before this session of Congress adjourns.

Sincerely,

THOMAS L. HUGHES, *President.*

[From the Washington Post, Wednesday, November 21, 1973]

OFFICIAL NOTICE

DISTRICT OF COLUMBIA ZONING COMMISSION—Notice of public hearing. Time and place: 10:00 A.M., FRIDAY, DECEMBER 21, 1973, Room 500, District Building, 14th and E Streets NW. For the purpose of considering the following: Case No. 73-32 (special exception for NON-PROFIT ORGANIZATION use of residential buildings). Proposed amendment to the text of the Zoning Regulations of the District of Columbia, pursuant to the Zoning Act (Act of June 20, 1938, 52 Stat. 797, as amended, Section 5-413, et. seq. of D.C. Code, 1967 ed.). This case has been initiated by the Zoning Commission. The public hearing on this case will be conducted in accordance with the provisions of Part III of the Rules of Practice and Procedure Before the Zoning Commission of the District of Columbia (18 D.C. Register 891, Supp. No. 3, July 6, 1972).

There is a clear need in the District of Columbia for the maintenance and continued use of buildings originally constructed for residential purposes that can no longer be utilized for their original intent. Continued residential use may be uneconomical due to the size of the building, and its physical condition. The maintenance of such buildings can insure the maintenance of the characteristics of the neighborhood in which the building is located. The proposed text amendment would allow only **NONPROFIT ORGANIZATIONS** to use the buildings as offices, providing that certain requirements are met to the satisfaction of the Board of Zoning Adjustment. **INSTRUCTIONS FOR TEXT CHANGES:** (New subsection to be numbered 3101.414, with reference added to the chart of special exceptions in Subsection 8207.2 of the zoning regulations and appropriate reference made to appendix B—summary of use regulations of the zoning regulations). 3101.414. The use of existing residential buildings and the land on which they are located by a **NONPROFIT ORGANIZATION** for the purposes of such **NONPROFIT ORGANIZATION** if (i) the use of such buildings for residential purposes is no longer economically feasible or practicable, or (ii) such buildings have not been used for residential purposes for at least five years, or (iii) such buildings are of significance because of urban design, architectural or historical aspects; under terms and conditions hereinafter set forth: (a) in the immediate vicinity of such buildings there are buildings used for other than one-family dwelling purposes. (b) Such use by a **NONPROFIT ORGANIZATION** will not adversely affect the use of neighboring properties; (c) The amount and arrangement of parking spaces are adequate and so located as to minimize traffic impact on the adjacent neighborhood; (d) Any additions to such buildings or any major modifications to the exterior of buildings shall require the prior approval of the Board; and (e) No goods, chattels, wares, or merchandise are commercially created, exchanged, or sold therein, except for the sale of publications materials or other items related to the purposes of such **NONPROFIT ORGANIZATION**. Written statements, in lieu of personal appearance or oral presentation may be submitted for inclusion in the record. Please include the number of the particular case. Information should be forwarded to the Executive Secretary to the Zoning Commission, Office of the Zoning Commission, Room 11, District Building, 14th and E Streets NW, Washington, D.C. 20004. **WALTER E. WASHINGTON, JOHN A. NEVIUS, STERLING TUCKER, RICHARD L. STANTON and GEORGE M. WHITE**, Zoning Commission of the District of Columbia. By: **MARTIN KLAUBER**, Executive Secretary.

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

THURSDAY, MAY 16, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR, SOCIAL SERVICES,
AND THE INTERNATIONAL COMMUNITY
OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 1310, Longworth House Office Building, Hon. Romano L. Mazzoli presiding.

Present: Representatives Mazzoli and Fraser.

Also present: Leonard Hilder, minority staff; Ralph Ulmer, minority staff; J. D. Kirschten, subcommittee staff consultant; and Karen Fleischer, subcommittee staff.

Mr. MAZZOLI. The hearings will come to order.

I have a short preliminary statement.

This subcommittee this morning is reopening the hearings into identical bills H.R. 8995 and 9310, both bills to permit the Carnegie Endowment for International Peace to establish offices in property which is presently zoned in the District of Columbia for residential uses.

[For language of the bills, see p. 1.]

Mr. MAZZOLI. The subcommittee held hearings on this legislation last November, November 7, of 1973, and subsequently deferred action while the Carnegie Endowment pursued its objective through local administrative channels.

The hearings are being resumed today in response to a letter from Mayor-Commissioner Washington dated March 29, 1974, which states that the District government has withdrawn its previously pressed objection to the enactment of this legislation. In his letter Mayor-Commissioner Washington suggests that the action taken by the District Board of Zoning Adjustment to deny the Carnegie Endowment request should be disregarded by the Congress because that procedure was based on procedural ground.

We have invited Mayor-Commissioner Washington to be represented here today to further explain what I must consider unusual, and parenthetically, untimely, in view of the referendum acceptance of home rule, suggestion that the Congress reverse a locally made decision.

[The letter follows:]

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
March 29, 1974.

Hon. CHARLES C. DIGGS, Jr.,
Chairman, Committee on the District of Columbia, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed is a report on the status of the application of the Carnegie Endowment for International Peace to use the premises at 2929 Massachusetts Avenue, N.W.

The report indicates that application was turned down by the Board of Zoning Adjustment by a 3 to 2 vote with the deciding vote cast on procedural grounds.

In view of this unique situation, the District Government will no longer object to Congressional action on HR 8995 and HR 9310.

Sincerely,

WALTER E. WASHINGTON,
Mayor-Commissioner.

Enclosure.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
EXECUTIVE OFFICE,
March 27, 1974.

To: Mayor Washington.

From: Ben W. Gilbert, Director, Office of Planning and Management.

Subject: Status Report of BZA Application 11590 (Application of Carnegie Endowment for International Peace at 2929 Massachusetts Avenue NW.)

This report describes the status of the application of the Carnegie Endowment for International Peace to obtain the right to use 2929 Massachusetts Avenue, N.W. as its Washington offices under local zoning procedures.

By letters dated September 4, 1973 and December 17, 1973 the District Government reported on HR 8995 and HR 9310 to the House of Representatives and Senate, respectively. Our report opposed enactment of the legislation on the grounds that the administrative procedures available through the District's zoning process should be pursued when issues of local land use are presented and the Carnegie Endowment had not formally applied for such relief.

On December 21, 1973 the D.C. Zoning Commission held a hearing on a proposed amendment to the D.C. Zoning regulations which would permit the Carnegie Endowment, and other non-profit organizations, to file applications for special exceptions with the Board of Zoning Adjustment in appropriate cases. Subsequently, the Carnegie Endowment applied for a special exception in accordance with the regulation. Hearings were held on February 13, 1974 when the BZA took the application under advisement.

The Board of Zoning Adjustment met again on February 21, 1974 when it voted 3-1-0, to defer action on the application to allow time to consider the full record and citizen comments. On February 26, 1974, the Board of Zoning Adjustment voted 2-2 on the application. Since three affirmative votes are required for the BZA to act, no decision was reached at that session. On March 20, 1974, the BZA completed its voting on the application. The record showed 2 votes for the application and 3 votes against it. The deciding vote was cast on procedural grounds.

Under local rule, the Carnegie Endowment cannot file another application for a period of one year. It is also likely that the amendment to the zoning regulations adopted by the Zoning Commission may be challenged in the Courts.

In providing an opportunity to the Carnegie Endowment to apply to the Board of Zoning Adjustment for a special exception, we were sensitive to the special circumstances in the case which included the fact that the property in question had been vacant for a period of six years. We had hoped that the process which was developed would resolve the issues so that the property could be occupied in a suitable fashion in accord with good zoning practice and the needs of the neighborhood. Unfortunately, this did not happen.

While the District Government does not favor Congressional action on specific local zoning matters, given the unique circumstances of the Carnegie Endowment case that the deciding BZA vote was cast on procedural grounds, there is no objection to Congressional action on this matter at this time.

Mr. MAZZOLI. In reviewing the transcript of the hearing held by the Board of Zoning Adjustments and the findings of fact—and I have read the transcript from cover to cover, and read the findings and summaries—and I concur in the findings—the subcommittee staff found reason to question whether this decision was in fact decided on purely procedural ground.

Speaking strictly for myself, I would like to ask witnesses representing the District government, among other things, Mr. Gilbert and Mr. Robbins, perhaps, to clarify some questions. Does the legislation in effect constitute spot zoning, and if so, is there a sufficient overriding federal interest involved which would justify congressional action to oppose a zoning variance?

Also, is there reason to believe that the apparently orderly decision-making process of the BZA somehow resulted in arbitrary and capricious decision which would want, in fact require, overturning.

And finally, does the withdrawal of the District government objections mean that the city actually endorses the plan rather than just simply fails to oppose it?

In closing, I am not posing these questions today to throw further monkey wrenches into the plan, because the matter of the endowments objective has been up and down the primrose path. But I think I am asking today, and I hope we can get some answers to them, the very questions which would be asked and which would have to be solidly answered on the floor if this legislation were to have any chance of passing.

So at this point I would defer to Congressman Fraser, my colleague on the subcommittee, and also one of the sponsors of the bills, for any statement he might make.

And in the event counsel would have anything from Congressman Nelsen by way of a statement, we would certainly receive that.

Mr. FRASER. I have none, Mr. Chairman.

Mr. MAZZOLI. Then I presume that Congressman Nelsen does have a statement?

Mr. HILDER. He does have a statement. Mr. Hogan will present it.

Mr. MAZZOLI. Perhaps, then, Mr. Gilbert and Mr. Robbins, you would come forward.

Will you identify yourselves for the record.

STATEMENT OF BEN W. GILBERT, DIRECTOR, OFFICE OF PLANNING AND MANAGEMENT; ACCOMPANIED BY LOUIS P. ROBBINS, PRINCIPAL ASSISTANT, CORPORATION COUNSEL, AND COUNSEL FOR THE ZONING COMMISSION

Mr. GILBERT. Mr. Chairman, I am Ben W. Gilbert, Director of Planning and Management for the District of Columbia government.

The office I head provides administrative support to the zoning processes of the city government.

I think it is worth pointing out, however, that the zoning actions of the city government are carried out through two independent entities, the Zoning Commission and the Board of Zoning Adjustment.

The actions of both of those entities figured in the proceeding that we are discussing today, that as far as the city government, the executive branch of the city government is concerned, our function is to provide the acquired staff support to these entities, which was what we tried to do.

Now, there were several questions that you asked leading up to the final question, whether the District was endorsing the project or just withdrawing its objections. I think it is fair to say that what the Mayor was doing was withdrawing his objection rather than endorsing the project, because he has not reviewed the project on its merits.

He did participate in the Zoning Commission proceeding as the Chairman of the Zoning Commission which changed the zoning regulations. That change was made as a result of our examination of the situation that was addressed by the legislation. And we decided on a staff basis that our zoning regulations contained some obsolete language. And we decided to perfect the language in the zoning regulations. And the Mayor participated in the approval of those regulations. However, he has not participated in any way in the examination of the specific question which went to the Board of Zoning Adjustment as to whether the proposed occupancy of the premises at 2929 Massachusetts Avenue was an appropriate use of those premises.

Mr. MAZZOLI. Mr. Robbins?

Mr. ROBBINS. Two things: One, I have given to Mr. Kirschten a small package consisting of the official order of the Board of Zoning Adjustment; the findings of fact, conclusions and law, and two separate opinions of the Board of Zoning Adjustment, dated May 10; a voting sheet from the executive session, month of March, dated March 20, 1974, which was written in hand by member Cummings and says, reasons to be entered in the minutes of case No. 11593, which is the case in question. And it was on the basis of this that the Mayor's letter was sent forward, because this was at the time—we knew there was a time press, and I believe we had been asked to respond to advise the committee as soon as official action had been taken.

Now, the reasons set forth by the fifth member have been elaborated on in this separate opinion.

And further, the third document is the Zoning Commission order changing the regulations.

DISTRICT POSITION

When Mr. Gilbert and I were last before this subcommittee on this exact same question, we requested that we be allowed to look into the zoning process of the District as to whether Carnegie might or might not fit into that.

We discovered that eleemosynary and philanthropic institutions were allowed, but the definition of this was only for asylums. And after the staff looked through this entire thing we felt, and the staff felt, and the Zoning Commission unanimously felt, that the regulation proposed was a good one, and it would serve a purpose through the city, not just for the Carnegie.

The dissenting opinions—well, when the Mayor sent the letter forward, Mr. Chairman, it seemed that the votes were two to two, but that when the fifth vote came in, there could be no action by the BSA, it is held in limbo.

There must be three votes to either grant or turn down an application. And at that time it appeared to us that the deciding vote only went procedurally, and that was the basis. Having read the full transcript, or rather the full order, it is still my legal belief that the third vote is still based on procedure, and the only question of substance comes in as to whether it is a good regulation or not, but did not address the specifics in this case as the findings of fact.

SEPARATE CUMMINGS OPINION

I would have to say, though, in all candor, that it is apparent that the third member, who made up the majority to turn it down, I think you could say sub silentio has adopted the findings of fact and conclusions of law which goes to the specifics of the case.

Mr. MAZZOLI. Are you referring to Ms. Cummings?

Mr. ROBBINS. That is correct, Mr. Chairman, because as I see her separate opinion, she finds it invalid for two reasons. One is procedural infirmities. It is the legal opinion of our office that these are not sufficient to invalidate the order.

The second is that it was in the nature of a private bill, and therefore invalid. And we do not believe—it is also our legal opinion that that is not correct, that this is citywide in application. The fact that it was brought to the attention of the Zoning Commission by the circumstances of Carnegie is much the same as if anyone else were to make an application for a chance in the zoning regulation that would be to their benefit. The fact that it works to their benefit does not make it a private bill unless it is specifically isolated, and certainly not in the nature of a private bill, so to speak, in the Congress.

And the third attack on it, as I read it, seems to be again the invalidity of the regulation, because the regulation—not the specific facts in this case, but the regulation in this case is an unwarranted and invalid intrusion, and would discriminate against canceries—again a legal reason attacking the validity of the order, and not going to the specifics of the case. And the other two members, Messrs. Harps and Scrivener, found that on the specific facts in this case that it did not meet the criteria of the special exception as set forth in the Zoning Commission regulation.

This was drafted in exactly the same way as other special exception we view legally as being basically a compatible use if certain criteria are met in each specific instance that will not cause an unwarranted intrusion into the residential neighborhood.

There are a number of these. The private school, for instance, is one in which certain criteria have to be met in your residential district.

I think that about covers it.

Mr. MAZZOLI. Is it your opinion, Mr. Robbins, that the third decision—and you sort of looked at Mrs. Cummings as the tie-breaker—is still on procedural ground?

Let me then ask you the question: On page 5 of your exhibit, which is part of the BZA proceedings, findings of fact, in one long paragraph from the top about roughly to the middle of the page Mrs. Cummings goes on to what I consider to be certainly in my mind a vote on the merits of the application, and she has underlined words, "that office building and office uses have or are likely to have an adverse effect on all residentially zoned areas." (See pp. 72, 73 hereof.)

As I look at the six criteria that were set up for the Zoning Commission order for the new regulation, which the Carnegie Endowment seeks to come under, No. 3 of those 6, qualifications, deals with the use of neighboring properties, and that they will not be adversely affected. I don't want to tilt with you on the legal aspects here, and whose judgment is correct, but I think it is certainly open to some question as to whether, since she in that particular citation underlined, as apparently she did, or asked that it be underlined, it should not be some aspect of the meritorious consideration of the case beyond the jurisdictional problems or the procedural problems.

Mr. ROBBINS. Might I respond to that?

I read it as saying that despite the fact that the Zoning Commission has predetermined, by making this type of a use a special exception, has predetermined compatibility if the criteria are met. I read this as saying that it can never be met. She is not addressing this specific case, as I read it, Mr. Chairman, she is saying that despite the fact that the Zoning Commission has found compatibility and then has left it to the Board of Zoning Adjustment in individual cases to determine whether those criteria are met, I read this separate opinion as stating that that condition can never be met, and that this is really an invalid regulation.

Mr. MAZZOLI. Obviously you are a skilled lawyer, and so that is good judgment on your part.

I think, by the very fact of your underlying individual uses and adverse effects, that perhaps the legal niceties and the words of art may not have been there, but that many people reading that would share my judgment, which would be that she is going to the merits of the case.

But anyway, you have answered the question, in your judgment it is a procedural matter.

Let me ask you, then, do you think that given the fact that it is a procedural feeling on her part, that she has cast her vote on the basis of procedural failures, Mr. Robbins, and that the BZA judgment therefore is arbitrary and capricious?

Mr. ROBBINS. I have some problems with that, Mr. Chairman. If I might go back for some further comment on the other, I would agree that your reading of it is quite reasonable. One of the reasons that I disagree with it is the tag line, or, the mayor would say, the bottom line. Otherwise, this legislation would be tantamount to invidious discrimination against foreign governments, but that she is saying that if you allow this type of use to come in, and you were to permit in any area, as I read it, in any residential area, other than our 5C or our 5D, any offices to come in, that it would be discrimination against foreign governments because their chanceries, by virtue of the Fulbright Act, are not allowed to come in. So as I read this, this entire

separate opinion is attacking the wisdom of the zoning commission in promulgating this regulation, in addition to which the separate opinion finds procedural defects with which we do not agree.

With regard to the other question, I think it would be fair to say, though, that despite the reasons that were written, which were of course the basis of the mayor's letter to the committee, that I think it would be fair to say, at the risk of repeating myself, that at the very least, sub silentio, the separate opinion could say that since she has gone along with the other two members as she went, she would have adopted the filing. And certainly if Mrs. Cummings were to be consistent—and I assume that she would be—that she would find in this individual case that this was an intrusion. What she has said, though, as I read it, is that she would find it an intrusion in all cases, because she does not believe that is a valid regulation.

So that is where I have my problem, Mr. Chairman, without trying to dodge your question.

Mr. FRASER. The chairman asked whether the decision was arbitrary and capricious.

Mr. ROBBINS. My personal legal opinion is that Ms. Cummings' separate dissent was arbitrary and capricious, the decision itself on the two-to-two vote. This was the board. The Board of Zoning Adjustment is a quasi-adjudicatory body, and they were to make findings of fact and conclusions of law. They heard the evidence and they found in this specific case under the findings of fact that it would represent an intrusion, that it was not compatible with the existing residential uses. This was based on the testimony, if my memory serves me right, of Mrs. Buring, and I forget the other neighbor, who lived close by on Benton Place. If it went solely on this identifying opinion, I would say unqualifiedly I believe that it would be arbitrary and capricious. And I do not believe it is the function of the Board of Zoning Adjustment to declare regulations of the zoning commission invalid, inappropriate, or unwise, or that they will not permit them under any circumstances. However, the findings of fact and conclusions of law are not wasted on that, apparently. They set forth reasons that I believe would be sustainable.

Mr. FRASER. And those findings received three votes, is that right?

Mr. ROBBINS. As I say, apparently.

Mr. FRASER. Even though the reasons for the third vote—

Mr. GILBERT. I think there is one point of information that may provide a little clarification, I am not sure that it does. But there was a substantial time delay in Ms. Cummings' filing for vote. And she had available to her during this period the draft document to which she appended her separate opinion. So she does not say anything there that suggests that she has endorsed and embraced the rest of the document. But it was available to her, and she hasn't said anything to suggest that she does not embrace it, either.

Mr. ROBBINS. I would think, if I might interrupt there, Congressman Fraser, that this is much like some of those Supreme Court decisions that we lawyers have a difficult time with, where five members of the Court rule to reverse, and there are four separate opinions. Now, the vote of the Court is 5 to 4 to reverse. The reasons, though, get sometimes scattered, and it is difficult to cite it as a precedent for

that reason. And I would suggest that that is what we have here, specifically because on the date that the fifth vote was cast there was specifically a handwritten statement of reasons for her vote, and specifically written to be included in the minutes. And at that time all that was necessary, of course, was for her to vote up or down. Instead she set out her reasons, and in her reasons for her vote, she did not address any of the particular circumstances of this case, but only went to one, the validity, and two, whether she liked the regulation itself.

MR. MAZZOLI. Mr. Robbins, could I ask you this question? In view of the fact that there were listed some 19 findings of fact, and then they had the conclusions of law thereafter, if there had been no separate opinions whatsoever, just simply those findings of fact, and those conclusions of law, signed by the requisite number of members, would you feel that this would then be a matter which could be reversed on the basis of its being arbitrary and capricious?

MR. ROBBINS. No, sir.

MR. MAZZOLI. Then the fact that these people, Mr. Scrivener, the chairman, and Mrs. Cummings, the Member, went beyond that to take in terms of whether or not this had been properly promulgated and what have you, doesn't mean that they have in any way derogated and in any way cast any doubt upon the validity of the 19 findings of fact, and on that paragraph labeled "Conclusions of Law."

I believe if I were a member on the Floor seeing this bill come through, and finding the city apparently not taking the position that they are not endorsing this bill, they are simply expressing a lack of opposition to this legislation, and I found this as part of the record, 19 findings of fact, and a paragraph called "Conclusions of Law," and one decision which at least sub silentio and by inference might deal with the merits, I would have a very difficult time saying that we ought to as a Congress spot zone, because that is what in my judgment it would be, unless there is overriding Federal interest.

Now, this may or may not be a fair question. Do you perceive in any of this any overriding Federal interest, anything that would warrant Congress reversing and overturning a validly entered local judgment which you have said or feel would not be considered arbitrary and capricious? If that is not a fair question, let me know.

MR. ROBBINS. With all due respect, Mr. Chairman, I believe that is a question that should be perhaps answered by Carnegie, and also as to the interest, as you put it, the Federal interest in having the headquarters of the Carnegie Endowment in the District of Columbia, as opposed to the question of: Should it be in the interest of the District of Columbia? And that is why we have recognized the travail—I think that is the only fair word that Carnegie has had—in seeking this. And as a result of all of the things that have come out, it is the city's position that without endorsing it, the city does withdraw its objection to the bill.

MR. MAZZOLI. Mr. Gilbert, do you have anything to add to that at all?

MR. GILBERT. I think that Mr. Robbins' statement on the legal questions pretty well cover the ground. We have, if it would be of value to

the committee, a chronology which we prepared for our files, which you might like to have.

Mr. MAZZOLI. If we don't have it it can certainly be made a part of the record.

Without objection, there will be made part of the record all the material that Mr. Robbins has served on the committee.

[The material follows:]

Government of the District of Columbia, Zoning Commission

ZONING COMMISSION No. 83, CASE No. 73-32, JANUARY 26, 1974

Whereas, it is in the public interest to provide for the continued use and maintenance of large residential buildings within historic sites and districts, and it is in the public interest to maintain and preserve large residential buildings of historical and architectural significance which are not within historic sites and districts; and

Whereas, there are instances where continued use as residences of such large buildings is no longer assured, leading to their delapidation and destruction; and

Whereas, application of current Zoning Regulations will not accomplish the purposes set out above; and

Whereas, buildings of such nature have gross floor areas in excess of 10,000 square feet;

And whereas, the use of such buildings for nonprofit organizations is an appropriate means of providing for the preservation of such buildings, thereby promoting the public health and general welfare;

Now therefore, it is hereby ordered that the District of Columbia Zoning Regulations be amended, as follows:

3101.415 The use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of such nonprofit organization if (1) such buildings are listed in the District of Columbia's Inventory of Historic Sites contained in the comprehensive statewide historic preservation survey and plan prepared pursuant to Sec. 101(a) of Public Law 89-665 approved October 15, 1966 (16 U.S. 470a-470m), or are located within a district, site, area, or place listed on the District of Columbia's Inventory of Historic Sites; and (2) the gross floor area of the building in question [not including other buildings on the lot] is 10,000 square feet or greater; provided further that:

A. Such use by a nonprofit organization will not adversely affect the use of neighboring properties;

B. The amount and arrangement of parking spaces are adequate and so located as to minimize traffic impact on the adjacent neighborhood;

C. No goods, chattels, wares or merchandise are commercially created, exchanged, or sold therein, except for the sale of publications, materials, or other items related to the purposes of such nonprofit organization.

D. Any additions to such building or any major modifications to the exterior of the building or to the site shall require the prior approval of the Board. The Board shall refer such proposed additions and/or modifications to the State Historic Preservation Officer, who, acting with the advice of the District of Columbia Professional Review Committee for nominations to the National Register of Historic Places shall provide the Board with a report to determine possible detrimental consequences which the proposed addition and/or modification may have on the architectural or historical significance of the building or site or district in which the building is located.

WALTER E. WASHINGTON.
JOHN A. NEVIUS.
STERLING TUCKER.
GEORGE M. WHITE.
RICHARD L. STANTON.

Attest:

MARTIN KLAUBER,
Executive Secretary, Zoning Commission.

MAY 15, 1974.

Memorandum to: The Files.

Subject: Chronology of request of Carnegie Endowment for International Peace to use premises at 2929 Massachusetts Avenue NW., and related issues.

June 26, 1973.—Congressman Fraser introduced H.R. 8995 a bill to permit the Carnegie Endowment to use the property at 2929 Massachusetts Avenue NW. at its Washington office.

September 4, 1973.—Mayor Washington in a report to Chairman Diggs of the House District Committee suggested that enactment of H.R. 8995 be deferred since it would in effect "impose spot zoning" without giving affected citizens an opportunity to express any opposition that might exist.

November 7, 1973.—The House District Committee, Subcommittee on Labor, Social Services and the International Community, held hearings on H.R. 8995 and H.R. 9310 an identical companion bill introduced by Congressman Nelsen. In testimony, the District asked that an opportunity be provided to permit the zoning processes of the District of Columbia to function before any legislative action is taken.

November 19, 1973.—The Zoning Commission authorized a public hearing on a text amendment which set forth the conditions under which nonprofit organizations could use residential properties for office purposes.

December 17, 1973.—Mayor Washington wrote to Chairman Eagleton, of the Senate District Committee, calling attention to the fact that the Zoning Commission had scheduled a public hearing on December 21, on a proposal that would make it possible to address the issues raised by the Carnegie Endowment. In that report Mayor Washington stated:

"If, after hearing, the proposed amendment is adopted, the Carnegie Endowment will be able to apply to the Board of Zoning Adjustment for a special exception to utilize 2929 Massachusetts Avenue NW. as its Washington offices. If the Zoning Commission does not adopt the necessary amendment to the Zoning Regulations, then the city will not object to the enactment of the bills."

December 21, 1973.—The Zoning Commission held a public hearing on the proposed special exception text amendment. Some citizen spokesmen appeared in opposition to the proposed text amendment and to the procedures that were followed.

January 25, 1974.—Following the hearing, and after considering public comments and testimony, the Zoning Commission adopted a special exception text amendment (Order No. 83). This order was formally promulgated on January 26, 1974, and was advertised in the D.C. Register and the Washington Star-News on January 28, 1974.

January 29, 1974.—Board of Zoning Adjustment Application No. 11593 was filed by the Carnegie Endowment for a special exception under the new text amendment.

February 13, 1974.—The Board of Zoning Adjustment considered Application No. 11593 at public hearing. There was citizen testimony in support of and against the proposed application. Some of the objections were substantive, while others were primarily procedural.

February 26, 1974.—The Board of Zoning Adjustment voted 2 to 2 on the application. The record was left open for the vote of the remaining member. For a decision, there must be 3 votes for or against.

March 20, 1974.—The fifth member voted to deny Carnegie's application. Said member filed an explanatory note listing technical and procedural grounds as the basis for this negative vote.

March 27, 1974.—In a report to the Mayor, the Office of Planning and Management summarized the status of the Carnegie application. That report stated:

"While the District Government does not favor Congressional action on specific local zoning matters, given the unique circumstances of the Carnegie Endowment case that the deciding Board of Zoning vote was cast on procedural grounds, there is no objection to Congressional action on this matter at this time."

March 29, 1974.—Mayor Washington transmitted the Office of Planning and Management report to Chairmen Diggs and Eagleton and stated:

"The report indicates that the application was turned down by the Board of Zoning Adjustment by a 3 to 2 vote with the deciding vote cast on procedural

grounds. In view of this unique situation, the District Government will no longer object to Congressional action on H.R. 8995 and H.R. 9310."

April 9, 1974.—Formal order of Board of Zoning Adjustment in Application No. 11593 in preparation.

May 10, 1974.—Order issued in Application No. 11593.

APPLICANT'S RIGHTS TO REVIEW OR APPEAL

Mr. MAZZOLI. Mr. Robbins, let me ask you this: This is probably for the record, not for my particular guidance. Would you be able to recite very quickly what would be any further opportunities that the Carnegie would have with respect to the BZA judgment?

Mr. ROBBINS. Legally, as a matter of right, they may request the Board of Zoning Adjustment to reconsider. They may also file a suit in court, in the District of Columbia Court of Appeals.

Third, they may request the Zoning Commission to exercise its sua sponte powers to review the decision of the Board of Zoning Adjustment.

The orders of the Board of Zoning Adjustment do not become final until 10 days after their final order. And during that period of time the Zoning Commission may issue a stay, and then review the matter. And following its review it may send it back for the new hearing, it may affirm, it may modify, or take such other action as it may deem necessary.

Mr. MAZZOLI. Are they timely now for the request to the Zoning Commission to review?

Mr. ROBBINS. They are.

The final date of the order, as shown on your copy, Mr. Chairman, is May 10. That 10-day period will not run until the close of business on Monday.

Mr. MAZZOLI. For reconsideration from the BZA, is that at the sufferance of the BZA Chairman or the membership, or is it a matter of right that they have?

Mr. ROBBINS. They have a matter of right to request it. However, I believe that the rules specify that they must show some things in the way of new evidence, or some fact that was overlooked, or challenge something that is in the order itself.

Mr. MAZZOLI. Mr. Hogan, do you have any questions of the witnesses?

Mr. HOGAN. I might just pursue the counsel's perception of where the decision rests.

It is your position, as I understand it, that the decision is somewhat ambiguous, in that two went to the merits and one went on procedural ground, is that it?

Mr. ROBBINS. That is what it appears to be, Mr. Hogan, although I would say, as I stated before you came in—I do not know how much of that you heard—that the fifth vote, the tie breaker, was cast to deny. However, specific reasons were given. I might add parenthetically—and I address this to the chairman—that in the separate decision of Mr. Scrivener, he not only dealt with the chancery thing, he specifically dealt with this neighborhood and these neighbors, as he went to the merits of this particular case, not whether this type of use should ever be permitted. And as I read the dissent, the separate

opinion of the fifth member, I read it as saying that this should never be permitted, meaning that no one would ever be, in her view, entitled to take advantage of this special exception.

Mr. HOGAN. So what we have, then, there are two of the members subscribing to the findings of fact and conclusions of law, is that right?

Mr. ROBBINS. I would say that since the fifth member joined in the dissent, that implicitly at least she is subscribing to the denial?

Mr. HOGAN. But she is doing so basically on procedural grounds?

Mr. ROBBINS. On procedural grounds. And the only substantive ground is that the regulation itself—let me strike that. It appears to me that she has found the regulation to be invalid for three reasons: One, procedural; two, it is a special bill, in the nature of a special bill, and three, that it is a bad regulation in any event, and if enforced, it would work a discrimination against chanceries.

Mr. HOGAN. The regulation is now in litigation, is it not?

Mr. ROBBINS. No, it is not, sir.

Mr. HOGAN. No one has filed an appeal in court or anything?

Mr. ROBBINS. No, no one has seen fit to challenge the regulation as such. There was every intimation at the BSA hearing that had the GSA granted it, that the regulation as well as the BZA decision would be challenged. But there has been no challenge lodged against the regulation, except those that were mentioned during the administrative proceeding before the Board of Zoning Adjustment, as well as the hearing of the Zoning Commission.

Mr. HOGAN. The May 10 is the deadline, then, for filing any appeal?

Mr. ROBBINS. No, the actual deadline for filing an appeal in court would be May 25, unless—

Mr. HOGAN. Ten days after—

Mr. ROBBINS. Under the District of Columbia Court of Appeals rules, an appeal to it from an administrative action has to be within 15 days.

Mr. HOGAN. After the administrative order becomes final?

Mr. ROBBINS. Right. But in that 15 days there is a 10-day period within which the Zoning Commission has the authority to take action on it.

DISTRICT'S POSITION

Mr. HOGAN. And as I understand it, the District is not suggesting that the committee take action or not take action, they are just saying that it would impose—

Mr. ROBBINS. The District's position at this moment right now is that it is withdrawing its objections previously lodged with the committee to this bill, or these bills, to be correct.

Mr. HOGAN. The problem that I would have now is that the posture of the application is somewhat different than it was in December, because, No. 1, at that point in time I think the special merits of the Carnegie Endowment were much more persuasive than perhaps now when they have gone through an administrative procedure based on a regulation which the District has passed, and they are in a somewhat different posture now than obviously they were in December. I think

that in December, based on the special circumstances, in that they were foreclosed from going before the BZA to file an application, by reason of—I think they argued that their reliance on statements made to them by officials of the District Government, and the intervening decision, I have forgotten what it was——

Mr. ROBBINS. The *Palmer* case——

Mr. HOGAN [continuing]. The *Palmer* case—that they fell more in the category of a one-time, one-exception circumstance. And by reason of their now applying under a new regulation which was passed, and the case having been heard on its merits, and the regulation having been attacked at least by one member of the BZA as being invalid, and the other two findings that based on the merits that they denied the case, the circumstances are substantially different now than they were in December, do you not agree?

Mr. ROBBINS. If the regulation is valid, which is of course our position, I would agree. If the regulation is invalid, as one member of BZA has stated rather forcefully—although as I repeat, I disagree with that equally forcefully—then they were in the same position, because as I believe I stated when we were here, I think in November, that there was no category under which this particular use could be accomplished in that zoning district, that we would either need a regulation of the type that the Zoning Commission adopted, or you would have to have a change in zone.

Now, it was the considered opinion of the staff, as well as the Zoning Commission, that a change in zone on Massachusetts Avenue—and the first zone that would permit this type of use, SP—Special Purpose—would be inappropriate for this part of Massachusetts Avenue.

Mr. HOGAN. But following on, then, from your reasoning, if the committee were to proceed, they would have to proceed on either one of two assumptions, No. 1, that the regulation is invalid, which would indicate that the circumstances had not changed, or No. 2, they would have to proceed on the basis that they disagree with the finding on the merits of the Board of Zoning Adjustment, which puts the committee and Congress in an awkward position vis-a-vis the position they were in in December.

Mr. ROBBINS. The only thing I could say to that is that I would certainly agree—and I would hate to see this committee or the Congress acting, if you will, as a court of appeals from local administrative actions. I think that the only other way that the committee could act is if on a fair review of this record it was denied on the basis of one member of the Board feeling that it was an invalid regulation. Of course we will not know——

Mr. HOGAN. It is your personal opinion, I gather—excuse me for interrupting you—it is your considered opinion, official opinion, I gather, as a representative of the Corporation Counsel's Office, that that regulation is valid?

Mr. ROBBINS. That is correct.

Mr. HOGAN. So that again getting back to the options left now to the Congress, they either proceed on the assumption that the regulation is invalid, which is troublesome, or they proceed on the assumption that they are going to override the judgment of the BZA on the merits, wouldn't you agree?

Mr. ROBBINS. Yes. And this situation, I think, Mr. Hogan, is rather awkward at best. But I would say that there is enough here to indicate that there is an ambiguity, and I think it would be a reasonable position to make that the administrative adjudicatory hearing on the merits was readily decided by the tie breaker who found this to be an invalid regulation, irrespective of whether in fact at some later date, after a court proceeding, either in this case or in some future case which may arise, that validity is either upheld or turned down.

Mr. MAZZOLI. Congressman Fraser.

Mr. FRASER. You referred to a delay between the time of the initial vote and the filing of this fifth vote. How long a delay was that?

Mr. ROBBINS. It was a delay of approximately, I believe, February 6 to March 20.

Mr. GILBERT. That is correct.

Mr. FRASER. But that was the only vote that was delayed?

Mr. ROBBINS. That is correct.

Mr. FRASER. Do you know why it was delayed?

Mr. GILBERT. I think I can answer that. There were several mitigating circumstances, including the illness of Miss Cummings during that period. But I talked to her several times in an effort to expedite the matter so that we could close the record in the case. And she said she had certain additional research to do, and that she finally completed her research, which I think is reflected in the handwritten opinion that she has submitted, and then filed her vote on March 20.

Mr. ROBBINS. I would like to correct one thing, I believe, that Mr. Gilbert stated earlier. I do not believe that at the time that she cast this vote that she had before her findings of fact and conclusions of law in a written form. And so therefore she expressed her reasons for denying the vote. That is the way I understand the record, Mr. Chairman.

SEPARATE CUMMINGS OPINION

Mr. MAZZOLI. Let me just suggest to you these few thoughts, Mr. Robbins. I read the transcript last night. And Ms. Cummings was there at the time of the hearings, and was probably its most active participant, questioner, and commentator. So that she was there during all the time that all the evidence was elicited upon which the BZA then made its 19 findings of fact and its conclusions of law, and upon which Mr. Scrivener made his separate opinion, and upon which she then later wrote her opinion, so that is not as if she had nothing before her. She operated in a vacuum. She was the most active participant. So that if your statement is in effect that she was deprived of the knowledge of the basis upon which this case was held against the endowment, I think that probably ought to be corrected, because she was very much—

Mr. ROBBINS. Absolutely. I did not by any means mean to imply that, Mr. Chairman.

Let me state it clearly. On the March 20 date that Ms. Cummings filed her vote with her rather explicit statement of reasons, she did not have before her in written form to my knowledge the findings of fact and conclusions of law.

Mr. MAZZOLI. Did Mr. Scrivener at that time, at the time he wrote this separate opinion, have it before him?

Mr. ROBBINS. Yes. To my knowledge Mr. Scrivener had for approval the findings of fact and conclusions of law which were drafted, I believe, pursuant to his suggestions. And at the time he approved it it is my understanding that that is the time that he wrote this separate opinion.

Mr. MAZZOLI. Are you saying at all, Mr. Robbins, that Ms. Cummings, by her act of filing a separate opinion at a time separated from the time when the hearings were completed, that she in any way has disavowed the 19 findings of fact which do go to the merits?

Mr. ROBBINS. No, she has not. But I would say, Mr. Chairman, that by dint of her specific reasons for turning down the vote, which she explicitly wrote out in her own hand, which is part of the package I submitted to the committee, she stated her reasons for turning it down. And those reasons, I suggest to the committee, did not go to the merits of the case, but rather went to the merits of the regulation. And that is the reason—I cannot speak for the District government on this, but I certainly would not advise withdrawing the objection had the case been otherwise.

Mr. MAZZOLI. Let me ask you this. If Mr. Scrivener and Ms. Cummings had filed no separate opinion, but had simply signed their John Hancock at some pointed time to some piece of paper which listed 19 findings of fact in a paragraph called conclusion of law, 3 and 2 vote, what would you have counseled your client, the District of Columbia?

Mr. ROBBINS. I would have counseled them that this decision be clearly decided on the merits. But I suggest that we have something different. And even with her concurring opinion, if she had voted no on the date that she put her John Hancock on the voting list, she stated her reasons for the denial, none of which went to the merits of this particular case, but only went to the merits of the regulation—

Mr. MAZZOLI. But at no point did she disavow any of what was there. And she was the only participant, if my memory serves me correctly, that was there for the whole 6 or 8 hours of that hearing which took place on that application, because she became chairman at some point during the proceedings.

Mr. ROBBINS. If you read the transcript, sir, I was only there for a brief time, strictly on the procedural questions.

Mr. MAZZOLI. She was there a great deal of the time, and she was the chief participant, and she was chairman after Mr. Scrivener left.

Mr. Robbins, who writes the conclusions of law and who writes the findings of facts?

BOARD PROCEDURE

Mr. ROBBINS. As I understand the process, sometime, a week or so after the record is closed, and transcripts are available, the Board meets in executive session. And they discuss the matter, and they reach a vote. They discuss their reasons for it. And then they direct staff to prepare findings of fact and conclusions of law and an order. And these are then put in draft form and are circulated to all participating members, who then make their specific comments, either OK'ing it, either recommending changes, or suggesting a different slant, a different approach, and maybe making specific findings—it is after they

meet collegiately, and then they instruct staff to prepare findings and conclusions in accordance with that collegiate decision and discussion.

Mr. MAZZOLI. So that in effect the findings of fact and the conclusions of law are sort of a ministerial function which follow after the collegiate decision has been reached by the BZA members, is that basically the situation?

Mr. ROBBINS. Yes. Because essentially at these meetings they discuss the reasons, and in these reasons are necessarily—

Mr. MAZZOLI. And you say Ms. Cummings did not take part in most of those collegiate discussions or meetings?

Mr. GILBERT. I think I can clarify that, Mr. Chairman. Because of Ms. Cummings' illness, which happened to coincide with two of the attempts of the BZA to have this full dress discussion, and because of some doubt that lingered until March 20 as to whether she was going to come down, this process did not really go forward in its ministerial form until after March 20. In other words, the staff of the BSA pretty well knew how Mr. Scrivener felt and Mr. Harps and the other two members felt, but the only guidance they received on how Ms. Cummings felt was her March 20 handwritten report.

And then on the basis of that, they prepared a draft document and then circulated it.

Mr. MAZZOLI. Circulated that direct document to Ms. Cummings?

Mr. GILBERT. And it was circulated to Ms. Cummings, but it was subsequent to March 20.

Mr. MAZZOLI. Did she sign that?

Mr. GILBERT. She did not sign it until such time as she had filed her second separate opinion.

Mr. MAZZOLI. But she did file a finding of fact and conclusions of law which had been circulated?

Mr. ROBBINS. No; the process works a little differently. She will OK it and her vote is recorded. And then the executive for the BZA states what the vote was, why the order, and he attests to it. There is not actually—it is much the same way as a court opinion.

Mr. MAZZOLI. But just for those of us who have not practiced for a long time, let me say that somehow, some way she gave her assertion or her affirmative understanding, her concurrence in this series of 19 findings of fact and the paragraph called conclusions of law, at some point, some way, she evidenced her agreement. And she also wanted to go beyond that, she filed her separate views, but at some point in this procedure, even though this time because of illness and difficulty, it was a little bit distorted from the usual.

Mr. GILBERT. I would like to make this comment, Mr. Chairman, that she had ample opportunity, had she chosen to exercise it, to indicate any dissent—that is, in the second round, not the first round—with the findings of fact and conclusions of law. And she had an opportunity that she exercised in other cases.

Mr. MAZZOLI. But she did not in this case. And she knew the procedure as to filing dissent and disagreement with the findings of fact.

Mr. ROBBINS. Yes; and I would suggest at this time, Mr. Chairman, that we would find an entirely different situation before us if we did not have the handwritten document of March 20, in which case it

would be clear in my view that the fifth member would have gone along with this and then stated additional reasons. But having participated in the hearing as I believe the chairman noted, more fully than any other member, and then to list at the time the fifth vote was cast, to list with great specificity and detail her exact reasons for denying it, I do believe casts a different light on it. And I believe that that is the reason that the Mayor in his letter March 29 to the committee withdrew the objection of the District government.

SEPARATE SCRIVENER OPINION

Mr. HOGAN. But doesn't she really incorporate by reference the separate opinion of Mr. Scrivener? (See p. 73 hereof.)

Mr. ROBBINS. That of course also is subsequent to the Mayor's letter, and per force subsequent to her own reasons for denying written on March 20. That is where the problem is. I think, Mr. Hogan, that we can say that when a decision is made, and judges write concurring decisions, they join in the decision itself, but then they give their reasons.

Now, Mr. Scrivener, in his reasons not only goes into the chancery question, but he specifically speaks of the intrusion of this particular building into this particular neighborhood. Now, when you read the separate opinion of member Cummings, in conjunction with the specific and highly detailed handwritten reasons for the vote on March 20, I think you get a different picture. And I think that obviously at this point she would subscribe to those.

But I think there is another cloud on this, that this was really done on procedural grounds. And I think reading the March 20, which was what the Mayor had in front of him, was the best evidence, not only at that time, but I believe the best evidence at this time, as to the reasons for that vote, whether she at a later date subscribed to the findings of fact and conclusions of law adopted by the other two members.

Mr. FRASER. When did the findings become available?

Mr. ROBBINS. April 9, I believe.

Mr. GILBERT. The chronology—

Mr. FRASER. I do not mean available internally, I mean available publicly.

Mr. ROBBINS. On the 10th of May.

Mr. HOGAN. By that time she had filed her separate opinion.

Mr. ROBBINS. Yes; in fact, it is my understanding that she requested that it not go out until she had, because on the chronology, which is the last document that I submitted to the committee, the next to the last item states, April 9, 1974, "Formal order of Board of Zoning Adjustment and application 11593 in preparation."

Mr. FRASER. I am a little struck by the fact—I do not know if this is our problem or what—that these findings were not even available at the time this hearing was scheduled; is that right?

Mr. ROBBINS. That is correct.

Mr. FRASER. We should have gotten them 6 days ago.

Mr. ROBBINS. When he spoke to a member of the staff, which was just shortly before I went on a brief leave, I found out that under

normal policy these had been circulated on May 1, and should be available and in final form by May 11 under their normal working policy. And I had spoken to the chairman and asked him if such would be the case in this particular instance. And he stated yes. So at the time that I spoke to the staff when these hearings were set, it was my understanding that this document would be ready at that time, Mr. Fraser.

Mr. FRASER. I notice that she gives as one of the reasons she does not like this regulation that it increases the tax load on the city, ostensibly because these are nontaxable entities. Is that a valid consideration?

Mr. ROBBINS. No, sir, and, in fact, I think in addition that she overlooked the fact in this case it is my understanding that Carnegie has recommended that they would not seek a tax exemption for this property, if I am correct on that.

Mr. FRASER. I think that is right. But of course she is dealing with the general concept here.

Mr. ROBBINS. That again, Congressman, reinforces that she is dealing with the entire concept and not in specific cases coming before the BZA supposedly on the merits, which is what has given us problems.

Mr. FRASER. I would have assumed, though, that generally consideration of whether an entity is taxable or not is not a proper consideration in determining the going rate.

Mr. ROBBINS. That is my understanding of the law, Mr. Congressman.

Mr. HOGAN. The fact that her early reasoning goes to the validity of the regulation does not in any way vitiate the other points of her decision. I can think, for instance, of the Supreme Court having a case that has come all the way up to it, to the Supreme Court, as they have in certain instances, and the Court would say, we just do not have jurisdiction in this case, and that would be all there would be to it, and they could say, on its face it is an invalid regulation, if it was an ICC case.

Mr. ROBBINS. That is correct.

Mr. HOGAN. And they would not reach the merits. If I read her opinion correctly, she has said here, No. 1, this is an invalid regulation. But then she goes further, and if I read this correctly—and it could be interpreted in perhaps a different way—she incorporates by reference the rationale and the reasoning in the chairman's findings, or separate opinion, and his separate opinion in effect makes reference back to the findings of fact and the conclusions of law.

Mr. ROBBINS. With all due respect, Mr. Hogan, I think that is a little tortured reasoning of this. And also it is my 100 percent legal opinion—which is something lawyers do not like generally to give—that the BZA has absolutely no authority to declare a regulation, an act promulgated by the Zoning Commission, to be invalid, which is another thing that gave us problems in this particular case.

Mr. MAZZOLI. Let me just say at this point, Mr. Robbins, I am not going to debate with you whether or not Mr. Hogan's line of reasoning is tortured or not tortured, but I am inclined to think that that is exactly the kind of reasoning that the people on the floor, if this

bill gets that far, are going to have, the fact that she is on the record, and she mentions the chairman—and we do not challenge Mr. Scrivener's judgment, or the 19 findings of fact, which go to the merits of the proposal and not just to procedure—there is enough here to give anybody on the floor, if he wishes to hang his or her hat on the judgment that we ought not to overturn a locally decided matter, particularly in zoning, where there is any evidence that this action was taken in other than an arbitrary and capricious fashion. And I think clearly, if we had not had a hearing that lasted for 6 hours, during which Ms. Cummings herself was the only person who stayed the full time—if we did not have 19 findings of fact and conclusions of law, and a very important looking document here with all kinds of signatures on it—then we say, this is just an action taken in somebody's back pocket. But we do have all of that.

And I would only say that your position is that the District just is not opposing it. And I understand that. You do not support it. I think the failure of the District to support it, for whatever reason, is going to make it very difficult to have this thing receive a tremendous amount of support, because this is the Congress overriding a local properly constituted Commission which is fulfilling its mandate as it best perceives its role, and we are to overturn that judgment. That is basically simply the crystalized question. And we only do that where there is no other avenue of relief. And I think it has been evidenced today that there is another avenue of review. It was stated here Monday that you could have an attempt to override this, or you could have a reaction of this judgment. This has not yet been done.

And I think further you have the question of, should you philosophically override a local decision, unless there are completely clear and absolutely unassailable, unresolvable reasons in behalf of such a judgment.

Mr. HOGAN. Is it your position, Mr. Robbins, I assume there were arguments made, and I have read the record before the BZA, but I assume there were arguments made before the BZA that the regulation was invalid.

Mr. ROBBINS. That is correct.

Mr. HOGAN. Is it your position, then, that notwithstanding the arguments made by those who oppose this particular application, that it is your position that the BZA is not in a position to reach a determination since that regulation was promulgated by the Commission and not by the BZA, they are not in a position to hold that regulation invalid?

Mr. ROBBINS. That is correct. They are a subsidiary body in many ways. Even their own regulations, their procedural regulations, have to be passed by the Zoning Commission. The statute specifically provides that the Zoning Commission may provide for an appeal to it. And they are not—and we have had difficulties with this in the past at times, on straightening this out—they are not a completely independent agency in that sense. This will be much like—I am trying to conjure up in my mind something analogous—maybe like an administrative agency in the first instance saying that an act of the Congress was unconstitutional.

Mr. HOGAN. Let's take a clear case. Let's assume that it is a hearing examiner, and he is trying this case, you know, before the FCC, and the FCC issues a regulation. Is it your position that the hearing examiner would not be able to reach a conclusion that the FCC had not followed its own procedures in issuing and promulgating the regulation, and that therefore he would never be able to reach a determination that the regulation—that perhaps on an argument made to him as a hearing examiner he could not find that the regulation itself was not valid for some reason.

Mr. ROBBINS. I would have to really look at the statute. It was my experience when I was in private practice, which with relatively few exceptions was in legal administrative law, and that when you went before one of these bodies, you reserved your right by making that challenge to it. This is true whether you were dealing with a regulation that had been promulgated by the City Counsel, or if you were dealing with a statute that you felt was unconstitutional as applied to you. You protected yourself there. But this was something for the court or for the body itself to promulgate, to rule on. I can see nothing wrong with their making a suggestion. But to rule on a case on the basis that they found that this regulation was invalid I believe was inappropriate.

Mr. HOGAN. Notwithstanding the fact that that particular basis was urged upon them, and notwithstanding the fact that they would have to go into the question of whether or not the procedures had been followed in this particular case?

Mr. ROBBINS. That is correct, that is my position. They are charged under the law, as I read it—and I am speaking right now of the Zoning Enabling Act—with carrying out their functions in accordance with the act and regulations promulgated by the Zoning Commission.

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. MAZZOLI. I would like only to make one little comment here, and quote from what Ms. Cummings said at the hearings, the BZA hearings. She says here on page 277 of the transcript:

Ms. CUMMINGS. Because that is one of the facts the Board must find before we grant relief to Carnegie, we must find that the use by them will not adversely affect the use of neighboring property, that is why I ask you that question.

So I think it is quite clear to me that Ms. Cummings had throughout the time of the hearing—this is just one of many statements she made that I read where she is talking to the merits of the application. Now, if you bring to bear on this, if you will, tortured reasoning, or something, we can say that her separate opinion denying the Carnegie Endowment the relief that it sought does not in fact state specifically enough that you believe, and other eminent lawyers would believe, that she goes to the merits, clearly her whole tenor of the meeting went to the merits of the application. I would only mention that. It would be very difficult, it seems to me, as one member, to overcome the challenge that other members on the floor would have to this saying that here again is a meritorious decision reached by a properly constituted board, and we are overturning it, why are you overturning it, why do you ask that it be overturned? And we have talked about the Federal interest. And apparently that is tenuous.

Thank you very much, Mr. Gilbert and Mr. Robbins.

Mr. Hughes, please.

Before Mr. Hughes gets started, we have had several organizations and groups that have asked to file statements, and unless there is objection, we will make those a part of the record. Those have to do with the matter before us. Some groups have asked to testify, but we have asked that they submit their statements.

Mr. Hughes, you have been here all morning taking notes, so you have some idea of the problems that we are facing here and the enormity of the questions. So maybe you should just address us in the way you wish to do so. We do have some limitation on time.

STATEMENT OF THOMAS L. HUGHES, PRESIDENT, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

Mr. HUGHES. I appreciate that limitation, Mr. Chairman. And thank you for the opportunity of reviewing the whole matter from the viewpoint of the Carnegie Endowment.

Let me begin, if I may, by just making a few general comments relevant to things that have been said this morning.

The chairman mentioned the perhaps untimely suggestion from the mayor that the matter be reopened on Capitol Hill. And we are as aware as anyone else of the home rule context in which this whole matter has unfortunately had to come to the fore. And I want to assure everyone that the Carnegie Endowment, both as an institution and its trustees and its staff, is alert to the home rule problem and is as sympathetic to home rule as anybody else. And we in our capacity as citizens in fact, have been active in the campaign for home rule, and it has been embarrassing to everyone to raise this question in that context.

Second, I would simply like to say that from our point of view we know an enormous amount of time has been spent on this whole matter, both on the Hill and in the District. And we appreciate the time that has been spent by officials in both places.

We have nothing but goodwill for everybody who has been involved in this long and tortuous and frustrating prospect which has been going on off and on now for 3 years. Had we been told at the beginning that there was no way we could achieve the result we wanted we would have desisted at the outset. It is very clear that the world is not going to come to an end if the Carnegie Endowment cannot get into this building on Massachusetts Avenue. But it is because we have been told that at every turning point in the process, both by District officials, and we are being given encouragement on Capitol Hill, that there would be some way to achieve relief because of the merits of our case, and therefore we have been in the rather awkward position of cheerfully following the best advice we could get from the District government officials in 1971 to come to Capitol Hill and the advice as a result of hearings on Capitol Hill is to come to the District.

Our own energy and resources have been expended to a far greater degree than we had contemplated at the beginning of this process. And we don't look forward to continuing the process for any considerable period of time. We have had to go to great difficulty to extend the contract we now have, which runs out on May 24.

Third, let me say that I find myself in somewhat uneasy position with what seemed to me, with all respect, to be new tests, and rather unexpected tests, which apparently we must now meet before the con-

gressional committee. I had not as of November, when we were told to go back and try once more to get District action, contemplated that if we ever returned to Capitol Hill we would have to meet the burden of proving that the District action had been arbitrary or capricious, or that, with all respect, we would have to prove that there was an overriding Federal interest for the passage of this bill. It is clear at the outset that there is not an overriding Federal interest for the enactment of this legislation. We did not contemplate that at the beginning, we never have, and do not today, so that I am a bit uneasy in reappearing here in what looks to be an appellate proceeding from the District BZA hearing, which is not the status which I thought we had, or the status which I thought the bills contemplated.

As a result of the accumulated process of hearings in the District and hearings on the Hill, we have in the process attracted opposition which was not there before. We do not think that we, ourselves, have attracted that opposition. We think that the process which the District government went through in adopting a new zoning regulations attracted that opposition.

You will note that last November when the citizens association petitions were circulated, I think with the exception of the Sheraton-Kalorama one by mistake, but all others, including Capitol Hill, and Georgetown and Cleveland Park, they all deferred to the Cleveland Park Citizens Association, which throughout this whole proceeding has and continues now to support our application. They are the citizens association which has jurisdiction over the building we want to obtain.

There is one other point I think should be brought out which has not yet been brought out this morning, that because of the intervention of citizens associations outside the area, complaining not so much about the merits of the particular Carnegie proposal as about the validity of the total Commission regulation, it became abundantly clear in the BZA hearing that we would face a court suit willy-nilly, along with the District of Columbia government as the innocent bystander in this whole proposition, if we had won in the BZA hearing. And that meant that regardless of any innocence or participation on our part, whatever mistakes were made, if mistakes were made, were made by the District of Columbia government authorities and the procedures they used or failed to use in the adoption of their own zoning commission regulation, we were left in effect in the hapless position of having to defend the District government against the errors which it had committed and in which we had no participation whatever. And the outlook of a favorable result in a BZA hearing would be that we would be taken to the court along with the District of Columbia government. That introduced a whole new problem for us, both in terms of the extension of our contract, and certainly the equities of the situation, which we think have been mounting.

If it is impossible to receive relief for us on this situation, we will subside, and we will do that very quickly. We think that the equities, after 3 years of expenditure of effort and time on this issue, do move increasingly in our direction. This is a point which another Congressman, Congressman Rangel, made in the hearings here, and that Congressman Nelsen has made repeatedly. And we think that in that

sense our posture now in coming back to you involves even greater equities than we have had before, because of the rather surprising turn of events in the Board of Zoning Adjustments, and this strange deciding opinion.

One other point with reference to something that was said earlier this morning, and that was the chairman's question of Mr. Gilbert about the Mayor's position, and the response that the Mayor had not endorsed the legislation, and had not reached the merits on the question, but had merely withdrawn his objections. In a sense this is a return to the posture which we thought was the desirable position a year ago. We had never expected District government support. We had never asked the District officials for support. Beginning in 1971 we said:

What we hope you will do is acquiesce and give us a statement of no opposition, because that is the formula you used when a similar bill to benefit the American Society of International Law was passed on Capitol Hill some years ago. The formula then, as of now, it was not the District of Columbia support, but acquiescence, and a statement of no opposition.

That is the basis on which we talked to the District government officials in 1971 and in 1972. And in that sense the Mayor's new letter withdrawing opposition simply returns us to that kind of status quo position from the District. But I would want to point out, without belaboring the matter, that we had before this committee in the November hearings repeated statements, that is to say, on the order of half a dozen or a dozen, from three District officials at the staff level, including Mr. Gilbert, Mr. Robbins and Mr. Overlander from the Planning Commission, that did go to the merits.

Mr. Gilbert, you will note, in the hearings before this committee last November, said that "we would like the endowment on Massachusetts Avenue, there is no quibble about that at all." Mr. Overlander said, "We have no problem with the use itself, it happens to be a compatible use."

When the chairman was asked whether this would open the door to less desirable uses, he said no. This has been the position taken by the chairman of the zoning committee of the Cleveland Park Citizens Association throughout the whole affair.

TAXES

I would like to note also, for the record, Mr. Chairman, that the Carnegie board of trustees met over the weekend, and reviewed the situation regarding the building, and expressed its gratitude to the committee for its reconsideration of the whole matter, and in the process hoped to clear up one other aspect of this question, which has haunted us a bit. And as you noted earlier, it plays a part in Ms. Cummings' decision. And that is the question of taxation.

The endowment has officially adopted a resolution on behalf of all of the board of trustees of the endowment that goes to this question of tax payments, reaffirming the commitments which I have made in testimony here, and for the District, that we are quite prepared to pay taxes or make payment in lieu of taxes, however the District government wishes, on the building if we get it. And this tax payment

would continue our practice of paying real estate taxes on buildings in Washington which we have previously owned from 1911 to 1950.

Let me direct the committee's attention also to the fact that in the process of the District's consideration of this question in December, January, and February, a good deal of additional new support came to the general proposition of preserving buildings of architectural interest and validity in historic and architectural interest, because that was the route which the District government chose to take.

There is now on the record, as there was not when we had this hearing in November, strong support from the Joint Committee on Landmarks, which itself extended the Massachusetts Avenue historic district from 17th Street to Observatory Circle last November 27, and the repeated statement in December at the Zoning Commission hearings by the Zoning Advisory Council and others interested in the retention and restoration of residential buildings of historic or architectural merit, and that proposition in general. And this building in particular, which we would intend to restore and retain, adds to the quality of the neighborhood, and would also offset the introduction of office use which otherwise might be a pertinent point. In other words, the question was specifically raised and met by District officials in contemplating the new action on the extension of the Massachusetts Avenue historic district, that uses which involve the restoration, retention, maintenance and esthetic control and improvement of existing buildings that are vacant are an important addition to the esthetics of community and neighborhood life, which is an offsetting factor that might not otherwise be there.

That was articulated explicitly in the hearings before the Zoning Commission, and proposed by the Zoning Advisory Council, and was the subject of a good deal of editorial comment and approval in January. The committee will have before it, or I would be glad to submit it if they do not have it, the January 1, Washington Post editorial, which is a lengthy editorial devoted to this whole proposition. And basically it makes the point that if this and other large houses like it are going to be preserved, they are going to have to be worthy of preservation, and according to the arguments in favor put forward by the Washington Post, the Carnegie would seem to be ideal. They pointed out that we would keep the buildings intact, we require no troublesome parking and we pay taxes, and if we sold the place, we would sell to a buyer that would conform to the zoning regulations.

They made the point in the Washington Post that the alternative for this property at Massachusetts Avenue is a vacant lot.

One of the things that struck us in reading the BZA finding of facts, if I could refer to them, is the complete absence of any reference to the fact that this building has been vacant for 7 years, it is dark at night, it has none of the attributes of a neighborhood property, it has none of the amenities of a residence. And for the findings of fact to talk about diminishing the stable residential character, or leaving the building dark at night, or impairing the residential character of the building, which the findings of fact do repeatedly, flies completely in the face of the facts that for 7 years this building has been vacant, unused, and not part of a residential area, and has none of these amenities, is dark at night, and presents the security problem which

the neighbors suggest might be there if we were to buy it, and simply ignores the facts involving this particular building.

The District, in moving as it did to try to save these old buildings on the grounds of being worthy of historic and architectural preservation, where we would qualify, had that very much in mind. We do not know what the nature of this property is. But we do know what the recent past has been. And for 7 years one can hardly look at that piece of property as part of the ambience of a residential neighborhood, which is a finding of fact by the two- or three-person majority of the BZA.

Along those same lines, let me mention another point which comes out simply by reference in the findings of fact. And that is the adverse effect on property values. The Chairman has mentioned that he has read the transcript. I think he will recall, then, that the comparative prices mentioned in the total testimony indicate quite thoroughly that we will be paying a price in investing an amount of money in this property that would take it to a value of about \$11½ million. And how that kind of investment is going to reduce property values in the neighborhood, including on the adjoining property, has never been something that is apparent to us. It seems to us that the opposite of that conclusion is obvious, and stands uncontradicted in the record.

I point out that the findings of the Board of Zoning Adjustment seem to say quite clearly that we satisfy all of the requirements under the new regulation except the one of possible adverse use to neighboring residences.

I point out there that the only neighboring residence that was represented at the hearing was that of Mrs. Buring, who is in the rear of this property. And the private owner next door who has one of the two last remaining private residences for a five-block area on Massachusetts Avenue did not oppose the Endowment's purchase of this building, and did not testify against us.

The facts in the decision of the BZA are written as though what we are concerned about is the square of residential property. And as the Chairman will remember from reading the transcript, the whole effort, the District was to look quite specifically at the swatch of property along Massachusetts Avenue, the first building facing Massachusetts Avenue, and not the squares behind them, the whole effort of the rezoning of the Massachusetts Avenue Historic District from 17th Street to Observatory Circle was to concentrate precisely on the houses that front on Massachusetts Avenue, of which this is one. So that the emphasis of the Zoning Commission regulation was on rezoning a swatch along Massachusetts Avenue, not the square behind it, or abutting the property that constitutes the rest of the square.

In brief, and to conclude, Mr. Chairman, we think that on the merits of this case, if it is possible to obtain action at last, after this lengthy period of time, the equities on behalf of the Endowment involved in this building remain strong. Our contract is running out. We think that the testimony that has previously been given before this committee suggests that the precedent, if any, is very narrow indeed. The last time such a proposal was brought before the committee and acted upon was several years ago. And we think that if in fact any validity is to be given to the new Zoning Commission regulation, it is hard to

imagine possible applicants that would fit what that new regulation has in mind to a greater degree than the endowment in terms of our scale, suitability, size, lack of adverse impacts on the neighborhood, and actual contribution to the neighborhood by the restoration of a dilapidated building. We think we are in a strong position on this matter, and we hope therefore that the committee will see fit to rule favorably.

Mr. MAZZOLI. Mr. Hughes, I appreciate what you have said, and let me express, I am sure, the fact that all of us are anything but happy over the tortured path that this bill has taken, and the efforts that you have made by going through the channels downtown. But I do not know really that the question is whether or not the Carnegie Endowment fits within the guidelines or within the regulation for the zoning change; I think really the more precise question, and the one that is facing me, and members of the committee, is to what extent can we go on the floor and endeavor to reverse what appears to be, at least substantially, a decision on the merits of the application before the Zoning Adjustment Board, not so much whether you fit into it, but whether or not the Congress ought to overturn what a legally constituted body has adjudged to be the facts. And that is the difficulty I personally face.

Now, as you know, I faced that last November when we had our regional hearings. I had some problems with that concept from the very beginning. And I think our difficulties are just magnified now because of the passage in the interim of the Home Rule bill, which at least philosophically says, let the local jurisdiction do it where they can, and where they are operating within their grant of authority. And I think that is the problem.

I do not doubt that Carnegie Endowment would be a good neighbor out there, and I am sure under your guidance that it would fulfill its pledges, and it would add to the property values. The property, I guess, is worth—I think it was testified something like \$700,000, and you put another 7 or 8 into improvement. So that obviously it would be an upgrading of the property. But I think we were facing that question and how it can be resolved I do not know. I had hoped that we could resolve it in part today. We have this bill up now as a markup. But as you can tell, we do not have a quorum for a markup. And so unless there are questions otherwise, I guess our only choice now is to adjourn and then to have a markup at some point when we can get a quorum.

Mr. Fraser?

Mr. FRASER. No, Mr. Chairman. I think the problem is put very well. These findings came out so late that this is the first opportunity I have had to examine them. Despite the ambiguity of Ms. Cummings' position, the Board apparently voted to accept them during the proceeding. I do not have any question. But my only impression, having been very familiar with the area, is that Carnegie's use of the property would help assure that the building was maintained. It is very much a chancery, embassy area. But this subcommittee will have to address that position.

Mr. MAZZOLI. Mr. Hogan.

Mr. HOGAN. Thank you, Mr. Chairman.

I must just explain on the record that the Republican members have a conflict this morning, there is a Republican conference going on right now, and that explains their absence.

One of the bills here is Mr. Nelsen's bill. And I think he set forth his position on the matter in issue when this matter came up in November. And I think at that time he was hopeful that the District government could see their way to take the position that they have taken now, because he felt that this special circumstance that existed then made this a very, very narrow exception. Unfortunately, the actions and some of the other things that have happened in the intervening time have changed the circumstances somewhat, and I have not had a chance to read this opinion either until just now to know what the basis of it is.

I do think it would be a very difficult problem to establish that Ms. Cummings' decision is arbitrary and capricious, notwithstanding what the corporation counsel just said. So the problems confronting the committee are very troublesome. But I do wish to convey to Mr. Hughes the regrets of Mr. Nelsen that he was unable to be here this morning.

Mr. MAZZOLI. In that connection, counsel, I understand that Mr. Nelsen had a statement that he would have made and may we insert that in the record, we can do this, or if he wishes to extend his remarks, he may do so. The record will stay open for the reception of additional evidence from interested parties.

And again I would like to convey our concern as a committee, and mine as a person, to you, Mr. Hughes, because of the forthrightness of your position, and the fact that you have always done the things that you have been led to believe were the things necessary to be done to seek the relief for the Endowment. And so the committee now is facing the question.

But we will have to adjourn today, and we will reconvene in an effort to mark up the bill, and to try to get some final judgments on it. And we appreciate—

Mr. HOGAN. Mr. Chairman, I would, I think, commend the Endowment for acting on the resolution which they have here, indicating that they are certainly willing to pay the taxes on this property. And I certainly think that Mr. Fraser's observation was absolutely correct as to Ms. Cummings' statement having to do with the position of the collection of taxes on that. I think that that probably is not a very valid reason for making a determination, but certainly the Endowment is to be congratulated on taking the action they have.

Mr. MAZZOLI. Without objection, counsel, we do have a copy of the resolution, and we would like to make it and some associate papers a part of the record, dealing with the agreement on the part of the foundation to pay taxes.

[The resolution together with other documents submitted by the Carnegie Endowment follow:]

RESOLUTION

The trustees of the Carnegie Endowment for International Peace hereby reaffirm the Endowment's commitment to pay real estate taxes or the equivalent for the premises at 2929 Massachusetts Avenue, N.W., Washington, D.C., in the event that the Congress passes H.R. 8995, H.R. 9310, or other appropriate legisla-

tion authorizing the Endowment to use these premises for its offices. This action is consistent with the repeated oral and written statements of the Endowment's authorized representatives in hearings before and in communication with the Subcommittee on Labor, Social Services, and the International Community, of the District of Columbia Committee of the House of Representatives, as well as before the Board of Zoning Adjustments of the District of Columbia. The payment of such taxes would continue the Endowment's practice for buildings previously owned in Washington from 1911-1950.

MILTON KATZ, *Chairman.*

Attachment.

LIST OF TRUSTEES,¹ CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

Charles W. Bailey II, Editor—Minneapolis Tribune.
 Harding F. Bancroft, Vice Chairman—The New York Times.
 Thomas W. Braden, Columnist—Los Angeles Times Syndicate.
 Alfred Brittain III, President—Bankers Trust Co.
 Anthony J. A. Bryan, President—Cameron Iron Works (Texas).
 John Chancellor—NBC News Correspondent.
 Hedley Donovan, Editor-in-Chief—Time, Inc.
 John W. Douglas, Partner—Covington & Burling.
 Henry H. Fowler, Partner—Goldman, Sachs & Co.
 Marion R. Fremont-Smith, Partner—Choate, Hall & Stewart.
 Ernest A. Gross, Partner—Curtis, Mallet-Prevost, Colt & Mosle.
 Lawrence R. Hafstad, Vice President of General Motors (Retired).
 Rafael Hernandez-Colon, Governor of Puerto Rico.
 William A. Hewitt, Chairman—Deere & Co. (Illinois).
 Thomas L. Hughes, President—Carnegie Endowment for International Peace.
 Joseph E. Johnson, President Emeritus—Carnegie Endowment for International Peace.
 Milton Katz, Director—International Legal Studies, Harvard Law School.
 George C. Lodge, Professor—Harvard University Graduate School of Business Administration.
 Barbara W. Newell, President—Wellesley College.
 Ellmore C. Patterson, Chairman of the Board—Morgan Guaranty Trust Co. of New York.
 Howard C. Petersen, Chairman of the Board—The Fidelity Bank of Philadelphia.
 Wesley W. Posvar, Chancellor—University of Pittsburgh.
 Norman F. Ramsey, President—Universities Research Association, Inc.
 Donald B. Straus, President—Research Institute of the American Arbitration Association.

BEFORE THE BOARD OF ZONING ADJUSTMENT, DISTRICT OF COLUMBIA

Application No. 1593 of Seafarers Washington Building Corporation pursuant to Section 8207.2 of the Zoning Regulations for permission to use the premises located at 2929 Massachusetts Avenue NW., in the R-1-A District, Lot 808, Square 2198 as a nonprofit office building as provided by Section 3101.415 of the Zoning Regulations.

Hearing Date: February 13, 1974.

Executive Session: February 26, 1974.

FINDINGS OF FACT

1. The applicant requests permission to operate a nonprofit office in the R-1-A District by converting a single-family detached residence containing 16,000 square feet into office space for the use of the Carnegie Endowment for International Peace which is a nonprofit organization.

¹ Affiliations listed for purposes of identification only.

2. A report submitted to the record by Mr. James G. Banks, State Historic Preservation Officer for the District of Columbia, indicates that the residential building identified as 2929 Massachusetts Avenue NW., is located within the Massachusetts Avenue Historic District, which is listed on the District of Columbia inventory of historic sites.

3. Dr. Thomas L. Hughes, President of the Carnegie Endowment, testified at Public Hearing that eight off-street parking spaces, shielded from public view will be available on the site. This is approximately the number of parking places that would be required under comparable circumstances under the parking formula in the Zoning Regulations.

4. Section 3101.415 of the Regulations, subsection (B) requires that the amount and arrangement of parking spaces be adequate and so located as to minimize traffic impact on the adjacent neighborhood.

5. The Board finds that no goods, chattels, waiver or merchandise would be commercially created, exchanged, or sold therein, except for the sale of publications, materials or other items related to the purposes of such nonprofit organization.

6. The Board takes notice of the fact that the subject square, No. 2193, is zoned R-1-A, for single-family detached residential use, the most restrictive category of residential zoning.

7. Square 2198 is improved by five other structures, all of which were designed as single-family detached residences.

8. The property abutting 2929 Massachusetts Avenue is improved by and occupied as a single-family detached residence.

9. The owner and resident of the abutting single-family detached residence at the rear of the subject site, Mrs. Edward B. Burling, Sr., 2900 Benton Place, appeared in person to oppose this special exception. Mrs. Burling testified that her residence has been in the Burling family since the 1920's. She testified that the conversion of the subject property from a residence to an office will adversely affect the use of neighboring properties in that 2929 Massachusetts Avenue NW. will not have as an office the amenities of a residence, and will be dark at night, and thus, will impair the residential character and feeling of the neighborhood. She testified that granting of this special exception would adversely affect property values.

10. Mrs. Vincent R. Murphy, who has owned and lived in the property at 2933 Benton Place NW., across the street from Mrs. Burling, since 1938, testified that she opposes the conversion of 2929 Massachusetts Avenue from single-family residential to office use. She reported sales of residences in the neighborhood for sums of approximately \$300,000 and stated that the construction of a residence only a block and a half away had been completed very recently by Lawrence Brandt for \$850,000. She considers that granting of this special exception would adversely affect these property values and the use of neighboring properties.

11. There was testimony on behalf of Sheridan-Kalorama Neighborhood Council that 2929 Massachusetts Avenue is the closest neighboring improved property across Rock Creek on Massachusetts Avenue to the formal boundary of the Sheridan-Kalorama Neighborhood Council. This neighborhood is bounded by Rock Creek Park, Connecticut Avenue, Florida Avenue and 22nd Street.

12. The subject site is just across the Charles Carroll Glover Bridge over Rock Creek from this Sheridan-Kalorama neighborhood.

13. As a result of the conversion of single-family residences to nonresidential uses the Sheridan-Kalorama neighborhood has been saturated with institutional school uses, as found by this Board in Case No. 11184 concerning the property at 2200 S Street NW. and saturated with more than its fair share of chanceries and other office uses which are immune to compliance with municipal regulations as found by this Board in Case No. 7160 concerning property on Phelps Place NW.

14. The proposed conversion of this residence to office use will diminish the stable residential character of this square through the absence of residential

occupancy after working hours, leaving the building dark at night, which will impair the residential "feeling" and amenability, as well as the actual security, of the neighboring properties, and this adverse effect will extend to the Sheridan-Kalorama neighborhood.

15. The Board considers significant the fact that the existing or proposed chancery offices across from the subject site on Massachusetts Avenue, Iran, Brazil and Italy, all have or will have on the same ground with them the embassy residence of the ambassador and his family—a conforming R-1-A use. The fact that the ambassador is personally present on the site tends to lessen the adverse effect of chancery offices on the use of neighboring single-family residential property in this area. The Board notes that there is no residential use proposed in connection with the requested conversion of 2929 Massachusetts Avenue to the office of this non-profit organization, and considers that this fact would tend to aggravate the adverse effect of this conversion on the use of neighboring properties.

16. The conversion of 2929 Massachusetts Avenue from single-family residential use to office use can be expected to lead to substantially more automobiles being parked in and around the structure in order to provide transportation for employees working in the building than would be generated by a single-family living at the same location as well as substantially more callers, leading to increased traffic congestion and parking problems.

17. The Carnegie Endowment proposes to use the subject premises as offices for research, seminars, writing and the publication of its scholarly journal. Once a year the Endowment would hold a reception for the diplomatic corps at the site, plus seminars the Endowment expects to spend approximately \$800,000 for improvements to the property.

18. Witnesses or counsel representing the Capitol Hill Restoration Society, Citizens Association of Georgetown, Dupont Circle Citizens Association and the Sheridan-Kalorama Neighborhood Council opposed the special exception and were admitted as intervening parties in the case. All supported and adopted the motion to dismiss of the Capitol Hill Restoration Society, which alleged that the Section of the Regulations under which applicant filed was not promulgated as required by law.

19. Mr. Homer J. McConnell of 2737 Woodley Place NW., stated that the Cleveland Park Citizens Association supported the applicant's request.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Board is of the opinion that above application must be denied. The Board is of the opinion that the applicant has complied with all of the requirements of this newly created special exception except condition (A), which specified that such a nonprofit organization will not adversely affect the use of neighboring properties. The Board further concludes, pursuant to Section 8207.2 of the Regulations, that the applicant's request is not in harmony with the general purpose and intent of the Zoning Regulations and maps and will tend to adversely effect the use of neighboring property.

SEPARATE OPINION OF LILLA BURT CUMMINGS, ESQ.

The apparent and alleged (at the Public Hearing) infirmities of the Order, and its promulgation, (including failure to publish notice timely in the D.C. Register as required under the D.C.A.P.A. and the *Junghans* case; the failure to publish under the correct Regulation Section (No. 3101.415); and the failure to include language in the attempted promulgated Regulation in the special exception table following 8207.2 of the Regulations), result in a lack of jurisdiction in the Board of Zoning Adjustment, and I therefore vote to "deny" on the grounds that there is no validly promulgated Regulation (the cited errors invalidate the Order so that this Board has no jurisdiction, said jurisdiction only capable of being predicated upon and flowing from a validly enacted Regulation): and on the additional ground that the attempted promulgation of the instant Regulation (which is, in fact, a private bill), would have the effect,

were it otherwise valid, of throwing open vast areas of the city (prime residential areas) to assault from business, something abhorrent to the citizenry, the individual homeowner and taxpayer who should be left unassaulted to enjoy the residential tranquility of his neighborhood, free from invasion by business use (the major distinction between profit and nonprofit business use being that the latter worsens the tax load on the rest of the homeowners and further depletes the city's tax base), in harmony and conformance with the zone plan and maps; and finally, in agreement with the Chairman, on the grounds that the Congress, in enacting the Chancery Act of October 13, 1964, excluded from this neighborhood all chanceries and office buildings of foreign governments and in so doing expressed a clear Congressional intent and policy, which intent and policy is wholly compatible with and in accord with those governing Statutes and Regulations by which this Board is bound, that office buildings and office uses have or are likely to have an adverse effect on all residentially zoned areas (except R-5-C and R-5-D); otherwise, this legislation would be tantamount to invidious discrimination against foreign governments.

SEPARATE OPINION OF SAMUEL SCRIVENER, JR.

The property involved in this appeal is zoned for single-family use, and all of the objectives, restrictions and safeguards applicable to that zoning attached to it. The adjacent and neighboring single-family home owners strongly object to the intrusion of an office use into their neighborhood and the majority members of the Board believe that their views should be given considerable weight as they represent the entire neighborhood other than foreign embassies.

The Congress of the United States, in enacting the Chancery Act of October 13, 1964, excluded from this neighborhood all chanceries and office buildings of foreign government, and it is the view of the majority members of the Board that this legislation expressed a Congressional intent and policy that office buildings have an adverse effect on all residentially zoned areas except those zoned for medium and high-density apartment house use; otherwise the legislation would appear to be invidious discrimination against foreign governmental use.

We are not impressed by the argument that the price asked by the present owner excludes the possibility of single-family use, as this, like other economic questions, is not properly to be considered by this Board in cases not brought under the variance statute. The house and grounds are not unduly large for the neighborhood. In fact, the record shows that a larger single-family home is now under construction within a block of this property. There is nothing in the record to show that at a reasonable price the property cannot be sold for use within the existing zoning, including the residence of an ambassador, which would be fitting to the neighborhood.

Once permitted, an office use cannot be effectively controlled and we see no reason to impose on this neighborhood the usual office use attributes of employees going and coming, the view and noise of office use through open windows the coming and going of visitors and their automobiles, the holding of seminars and meetings, and all of the usual concomitants of office use.

We therefore hold that the proposed use would have an adverse effect on the neighborhood and deny the application.

ORDERED

That the above application be "denied."

Vote: 3-2 (Mr. McIntosh and Mr. Hatton dissenting).

By order of the D.C. Board of Zoning Adjustment.

Attested by:

JAMES E. MILLER,
Secretary to the Board.

Final date of order: May 10, 1974.

[The letter referred to follows:]

THE CITIZENS ASSOCIATION OF GEORGETOWN,
Washington, D.C., May 16, 1974.

HOUSE DISTRICT COMMITTEE,
Longworth Building,
Washington, D.C.

DEAR SIRs: The Citizens Association of Georgetown respectfully requests the opportunity of placing a short statement in the record of your May 15, 1974, hearing regarding a possible bill to permit the Carnegie Endowment for International Peace to use 2929 Massachusetts Ave., NW. (a building in a Historic District) for their offices.

Yours sincerely,

EVA ROBERTSON HINTON,
Vice-President and Chairman for Zoning and Planning.

SHERIDAN-KALORAMA NEIGHBORHOOD COUNCIL,
Washington, D.C., May 15, 1974.

Re H.R. 8995, H.R. 9310, to authorize the Carnegie Endowment for International Peace to use certain real estate in the District of Columbia as the Endowment's Washington offices.

HON. ROMANO L. MAZZOLI,
Chairman, Subcommittee on House District Committee,
Longworth Building, Washington, D.C.

DEAR CONGRESSMAN MAZZOLI: The Sheridan-Kalorama Neighborhood Council opposes this legislation. The Council, which has represented home owners and residents of the neighborhood around the Mosque for more than 25 years, had no notice of, and no opportunity to testify at, the November 17, 1973, hearing on this legislation. This Council, and the citizens it represents, are interested parties opposing this legislation. The subject property is located directly across the Massachusetts Avenue bridge over Rock Creek from the Sheridan-Kalorama neighborhood.

If this special legislation is passed it would open the floodgates for the more than 2000 nonprofit organizations domiciled in the District of Columbia to obtain cheap office space in strictly residential districts. In this manner nonprofit groups could obtain office space at about one dollar per square foot as compared to six to eight dollars per square foot annual rental in the commercial areas of the city. This is a tremendous incentive for nonprofit institutions to force such legislation on the taxpaying citizens of the District of Columbia.

The conversion of the subject property from a single-family residence to an office building would also have substantially all the harmful effects of the conversion of a residence to a chancery office. The deleterious effect of the conversion of residences to chancery offices became so apparent in 1964 that Congress forbade future conversions in single-family residential zones. Most of the Sheridan-Kalorama neighborhood, like the subject property, is zoned for single-family homes. Every other structure on the same square with the subject property is occupied as a single-family residence. Congress should refuse to convert this residence to office use for the same reasons that led to the enactment of the Chancery Act of 1964.

Directly relevant to your Subcommittee's consideration is the fact that a public hearing was held before the Board of Zoning Adjustment of the District of Columbia on February 13, 1974, application No. 11593, for a special exception to convert this residence to an office building. On this occasion the neighboring residents and this neighborhood Council did have notice of the public hearing. Evidence was heard in favor of and in opposition to the application. The Board denied the request in its order issued May 10, 1974.

It would not be fitting for Congress to permit itself to be used as a vehicle for "spot zoning" of this piece of land, in derogation of the rights of the citizens who participated in the Board of Zoning Adjustment proceeding in opposition to the application, and in discrimination against the interests of foreign governments, barred from such special treatment by the 1964 Chancery Act. Such "spot zoning" by Congress would be particularly inappropriate at this time because of the District electorate's overwhelming endorsement of home rule.

In considering this proposed legislation this Council invites to the Committee's consideration the following explicit Findings of Fact in the attached May 10, 1974, order of the Board of Zoning Adjustment denying the request:

"14. The proposed conversion of this residence to office use will diminish the stable residential character of this square through the absence of residential occupancy after working hours, leaving the building dark at night, which will impair the residential 'feeling' and amenability, as well as the actual security, of the neighboring properties, and this adverse effect will extend to the Sheridan-Kalorama neighborhood.

"15. The Board considers significant the fact that the existing or proposed chancery offices across from the subject site on Massachusetts Avenue, Iran, Brazil and Italy, all have or will have on the same ground with them the embassy residence of the ambassador and his family—a conforming R-1-A use. The fact that the ambassador is personally present on the site tends to lessen the adverse effect of chancery offices on the use of neighboring single-family residential property in this area. The Board notes that there is no residential use proposed in connection with the requested conversion of 2929 Massachusetts Avenue to the office of this nonprofit organization, and considers that this fact would tend to aggravate the adverse effect of this conversion on the use of neighboring properties.

"16. The conversion of 2929 Massachusetts Avenue from single-family residential use to office use can be expected to lead to substantially more automobiles being parked in and around the structure in order to provide transportation for employees working in the building than would be generated by a single-family living at the same location as well as substantially more callers, leading to increased traffic congestion and parking problems."

A representative of the Sheridan-Kalorama Neighborhood Council will be present at the Thursday, May 16th, hearing of the Subcommittee to present testimony in opposition to the legislation, if the Subcommittee will permit oral testimony at that time.

Very truly yours,

WILLIAM H. G. FITZGERALD,
President.

Mr. MAZZOLI. Unless there are further questions, the subcommittee stands adjourned.

[Whereupon, at 11:35 a.m., the subcommittee adjourned subject to call of the Chair.]

