

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL MEETING

+ + + + +

THURSDAY
NOVEMBER 16, 2000

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The Regular Meeting of the District of Columbia Zoning Commission convened at 6:45 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Chairperson
CAROL J. MITTEN	Vice Chairperson
HERBERT M. FRANKLIN	Commissioner
KWASI HOLMAN	Commissioner
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Alberto Bastida,	Secretary, ZC
Gerald Forsburg,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Andrew Altman,	Director, Office of Planning
Ellen McCarthy,	Office of Planning
Jennifer Steingasser,	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Marie Sansone, Esq.

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I N D E X

Preliminary Matters4
Adoption of Criteria for 00-28T4

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

7:00 p.m.

CHAIRPERSON HOOD: Good evening, ladies and gentlemen. I want to apologize that we are going to have to do a special meeting for those who are here for the transfer of the rulemaking on the campus plan, if you could indulge us for about 20 minutes I would really appreciate it.

We ll need about 20 minutes to deal with the special meeting that we need to have now, if that s okay with everyone.

This is a special monthly meeting of the D.C. Zoning Commission for November 16th at 7:00.

Colleagues, we are dealing with the adoption of the criteria for 00-28T.

Mr. Bastida, do we have any preliminary matters?

SECRETARY BASTIDA: The staff has no preliminary matters.

CHAIRPERSON HOOD: Okay, colleagues, we have it in front of us. I will ask that if this moves forward that we leave it up to the staff and corporation counsel for legalness and sufficiency of this document.

At this time, colleagues, are there any concerns, or any comments, or any discussion?

VICE-CHAIRPERSON MITTEN: I had one addition, same addition, but in two different places, that I think would just

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1 clarify what we are trying to say.

2 Under 741.8, where at the end it says, ...
3 occupies no more than 20 percent of the FAR, I think we should
4 add of the building in which it is located, and then the same
5 would be true of 741.9 at the end, ... shall not occupy the
6 ground floor level, and then add of the building in which it is
7 located.

8 MR. BERGSTEIN: Mr. Chairman, I wonder if I could
9 just explain one thing about the document before you continue with
10 your discussion. The intent here was to vindicate the changes
11 from the original emergency rulemaking that you were looking at
12 Monday, and the portion of the document that describes the special
13 exception criteria, which is stated as Section 745, although it is
14 only indicated for the C-3 zone I only wrote it once, but in the
15 final document it would the same criteria, and exact same
16 language, would apply for C-4, C-M and M.

17 So, the fact that only C-3 is listed here does not
18 mean that special exceptions for that particular type of EEF won't
19 be available in those other zones, but I wanted to set out the
20 language only once so you can have an idea of what the language
21 is, with the idea that we would be following the earlier actual
22 emergency that you adopted in applying the special exceptions in
23 the other zones as well.

24 And, the only issue that's left out of this
25 document that you may want to consider is that because this would

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1 establish, in fact, you have established the EEF use, there s no
2 specific parking requirement called out, and that would mean that
3 EEFs would be subject to the other uses general parking
4 requirement. Unless you care to actually establish specific
5 parking requirements for that, that would be under it would come
6 under the other scheduled parking requirements.

7 There is, as you know, a special exception relief
8 for this parking requirement, but it will be a relief from the
9 category of other in the parking schedule.

10 CHAIRPERSON HOOD: Mr. Bergstein, would it be
11 advisable for us to leave it as it is and come up on the other
12 parking schedule?

13 MR. BERGSTEIN: I think that s really truly your
14 call. It s a matter of and I don t know if the Office of
15 Planning has any thoughts on this, but there s no legal issue
16 there, except that the default, if there s a use and there s no
17 category that it falls under, it would fall under other. So,
18 unless you care to change it to something else, then that s what
19 it would be.

20 CHAIRPERSON HOOD: Okay, colleagues, any comments on
21 that?

22 If not

23 COMMISSIONER FRANKLIN: Mr. Chairman, I have a
24 question about 741.9, as long as we are there. Is it intended to
25 mean that an EEF shall not occupy any portion of the ground floor

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1 level?

2 VICE-CHAIRPERSON MITTEN: I think that s only the
3 matter of rights category, so that if it s a matter of right it
4 can t occupy any of the ground floor, and if they do then they
5 come into the special exceptions, and then there s a big review.

6 COMMISSIONER FRANKLIN: The answer is yes on the
7 matter of rights, it may not occupy any portion of the ground
8 floor level.

9 VICE-CHAIRPERSON MITTEN: Yes.

10 COMMISSIONER FRANKLIN: Okay.

11 If that s the intent, I would suggest we say that,
12 rather than just simply shall not occupy the ground floor.

13 CHAIRPERSON HOOD: Mr. Franklin, could you repeat
14 that, please?

15 COMMISSIONER FRANKLIN: I would just recommend, Mr.
16 Chairman, that the words any portion of appear after the word
17 occupy in 741.9.

18 CHAIRPERSON HOOD: Staff, are you making note of
19 that, and Office of Planning also? Okay. And, Corp Counsel?
20 Okay.

21 Any other discussion? Any other comments?

22 COMMISSIONER FRANKLIN: I have another question of
23 the staff, with respect to 745.2 on the special exception
24 standards. When the words preclude revitalization efforts is
25 used what does that mean? Does it mean that it would preclude

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1 activity that is underway, that it would preclude a future plan?
2 What efforts are we talking about here?

3 If, for example, the Office of Planning says, well,
4 we are in the process of taking a look at, you know, a given area,
5 and we are considering whether we want to change the zoning,
6 which, of course, would take a while to accomplish, but nothing
7 has been proposed, nothing has been done, is that a revitalization
8 effort?

9 MS. STEINGASSER: No, sir, Mr. Franklin, I don't
10 believe it is. The revitalization efforts are more in the areas
11 that have been identified for revitalization, and the way that we
12 saw these possibly precluding these efforts would be if they were
13 designed in such a way that they prohibited the pedestrian
14 movement, or that they built a fortress-like street level that
15 somehow interfered with the sidewalk or the extension of roadways.
16 It could be either through design or less so through operational
17 activities, though, through the concentration element they could
18 also have an impact if they were, say, all six of them were on the
19 same side of one block, then we might feel that that drew an
20 adverse impact in such a way that it impeded revitalization of
21 that area.

22 COMMISSIONER FRANKLIN: Well, are you saying that
23 what your intent is to say is, preclude future revitalization of
24 the area or the neighborhood?

25 MS. STEINGASSER: That could if that better

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1 defines it, that would be acceptable.

2 COMMISSIONER FRANKLIN: Which seems to, you know,
3 give it a much longer time horizon, and that s your intent?

4 MS. STEINGASSER: Yes, sir.

5 VICE-CHAIRPERSON MITTEN: Are we amending that then?

6 COMMISSIONER FRANKLIN: Well, then I would recommend
7 that that is the intent, that we say preclude future
8 revitalization of the neighborhood.

9 Now, carrying on with that same sentence, a
10 vibrant street scape refers to design issues?

11 MS. STEINGASSER: Yes.

12 COMMISSIONER FRANKLIN: I m trying to distinguish it
13 from the next clause or phrase which says, ... deplete street
14 life.

15 MS. STEINGASSER: Again, yes, the potential for a
16 vibrant street scape would again address design elements on the
17 street level, the sidewalks, you know, whether they could add
18 things such as pedestrian arcades, landscaping, depleting street
19 life would again be something that could be adversely achieved I
20 mean, conversely achieved through high security, closing alleys
21 that are used by other areas, other buildings in the area, that
22 kind of thing.

23 COMMISSIONER FRANKLIN: Okay.

24 Well, I guess we ll live with that.

25 Going on to A in 745.3, ...the absence of retail

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1 uses, we often see proposed developments where there are plans
2 for retail uses, but there are no signed leases, nothing is
3 materializing. Should we be saying in the absence of planned
4 retail uses?

5 MS. McCARTHY: Well, I think that s the reason why
6 we had added the second part which was, ... designed to
7 accommodate retail uses in the future, we wanted to be sure that
8 these were not designed in such a fashion that it was impossible
9 to accommodate retail uses.

10 So, in other words, if they are knock-out panels
11 for store windows, or if the facility is designed so that it can
12 be further segregated on the first floor so that the equipment use
13 can be behind a retail use that would be at the street frontage,
14 then we felt that would qualify.

15 COMMISSIONER FRANKLIN: So, if it s designed, but no
16 retail uses appear, that s okay.

17 MS. McCARTHY: Given the transition nature of the
18 zone in which so many of these are located, we found it hard to
19 draft the regulation in any other fashion.

20 COMMISSIONER FRANKLIN: How about if we said the
21 absence of design capable of accommodating retail uses?

22 MS. McCARTHY: Okay.

23 COMMISSIONER FRANKLIN: which is, I guess,
24 essentially, sums up the whole sentence, does it not?

25 MS. McCARTHY: It does.

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1 COMMISSIONER FRANKLIN: Okay, the absence of design
2 capable of accommodating retail uses. I mean, what I m saying, I
3 guess, is that it will be strange for us to have a proposal where
4 retail uses are all signed up.

5 MS. McCARTHY: Right, but I guess the reason that we
6 had phrased it like that is so that if there were one, which was
7 located in an area that the Commission was an area that had
8 sufficient density of activity, that retail demand existed that
9 could be accommodated, or that there was a sufficient that one
10 could land a retail tenant, they might weigh that in determining
11 whether the lack of retail constitute an adverse impact.

12 COMMISSIONER FRANKLIN: I don t know if I quite
13 followed what you said, Ms. McCarthy.

14 Does someone, to qualify for the special exception,
15 have to have a retail tenant or tenants in hand?

16 MR. ALTMAN: Mr. Franklin, one thing I should point
17 out

18 MS. McCARTHY: No.

19 COMMISSIONER FRANKLIN: The answer is no.

20 MR. ALTMAN: the answer is no.

21 COMMISSIONER FRANKLIN: I think what you are trying
22 to get to is to say, the absence of retail uses or design capable
23 of accommodating future retail uses. I think what you are saying
24 is, you don t have to, obviously, have a lease signed in hand,
25 many of these areas can t support retail, but to have the ability

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1 in five years, I think that s really the heart of what we are
2 getting at. If that retail today, that would obviously be
3 preferred by everyone, but we don t want to make it so exclusive
4 because that s not practical.

5 MS. MCCARTHY: Right, these are conditions or
6 qualities for looking at it as a special exception, so it s not
7 that any one of these the absence of this would require a
8 variance, it s these are a set of criteria that depending on how
9 many of them apply could be interpreted by the Commission as
10 constituting adverse impact.

11 COMMISSIONER FRANKLIN: Okay.

12 MS. MCCARTHY: But, no one provision is going to
13 knock anybody out of the box.

14 COMMISSIONER FRANKLIN: Okay.

15 Well, I accept Mr. Altman s suggestion, if my
16 colleagues will, of just saying the absence of retail uses or a
17 design capable of accommodating such uses, or something to that
18 effect.

19 In D, ... the elimination of proposed pedestrian
20 or vehicular routes, proposed by whom?

21 MS. STEINGASSER: What we were looking at there were
22 established trail ways, sidewalks, things that are elements of the
23 transportation plan.

24 COMMISSIONER FRANKLIN: The transportation plan of
25 the District of Columbia?

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1 MS. STEINGASSER: Of the District of Columbia, yes,
2 sir.

3 COMMISSIONER FRANKLIN: Is that part of the comp
4 plan?

5 MS. STEINGASSER: I do not believe it s been adopted
6 as part of that comp plan, no sir.

7 COMMISSIONER FRANKLIN: But, it has been adopted?
8 There is

9 MS. MCCARTHY: I think it s adopted in the 20-year
10 plan by the Public Works Department, and it s going to be proposed
11 by the Office of Planning in the next set of comp plan amendments.

12 MR. ALTMAN: The intent there was that there are a
13 series of there are, right now the Department of Public Works is
14 working on a trail system, and both bicycle and pedestrian access,
15 so what we wanted to do is to make sure you have the ability to
16 look at that, and there are a number of trails that have been
17 proposed that are in some of the areas that we re looking at. So,
18 again, this would just be another factor to take into
19 consideration when we are evaluating it.

20 COMMISSIONER FRANKLIN: But, we re talking about
21 some kind of officially proposed plan.

22 MR. ALTMAN: Right.

23 COMMISSIONER FRANKLIN: Can you put the word
24 officially before the word proposed ?

25 MR. ALTMAN: Yes.

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1 MS. McCARTHY: Sure.

2 COMMISSIONER FRANKLIN: Okay.

3 In E, sorry to be so picky about this but I think
4 that we should be as clear as we possibly can in an emergency
5 situation of this sort, as well as a pertinent situation, The
6 inability of the EEF to be adapted to future permitted uses,
7 future permitted uses, future uses now permitted?

8 MR. BERGSTEIN: That s my language, it s meant to
9 say that to accommodate those uses to accommodate future uses,
10 and I wanted to say permitted just to make it clear that

11 COMMISSIONER FRANKLIN: Well, I think what you
12 intended there was to be adapted in the future for permitted uses.

13 MR. BERGSTEIN: That s fine.

14 COMMISSIONER FRANKLIN: Okay.

15 I will yield to my colleagues, because that s as
16 far as I got in my quick review of the draft.

17 COMMISSIONER HOLMAN: Mr. Chairman, if I could just
18 pick up on that point.

19 So, is the purpose of E to say, because one of the
20 things I do recall from the earlier discussion was the fact that
21 there had to be pretty significant and fairly permanent
22 alterations to the structure in order for it to function as an
23 EEF, so would that be perceived to be a negative criterion in
24 judging whether to approve one of these facilities?

25 MS. STEINGASSER: No, sir, it would not. We

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1 understand that the building has very unique and very specific
2 architectural requirements. What we are looking for is that they
3 not be so rigid that in 20 years the building can't be used for
4 anything else. Buildings are pretty flexible, most of the designs
5 we've seen so far have adaptability designed into them, into their
6 shells and systems.

7 COMMISSIONER HOLMAN: Give me I'm just trying to
8 understand what this is meant to describe give me an example of
9 something that's not easily adaptable. Are we talking about the
10 materials, are we talking about

11 MS. STEINGASSER: It would be materials, it would be
12 design, it would be a fallout bunker, something that had that
13 appearance with no windows, no passenger elevators, no restrooms,
14 those kind of facilities that would absolutely preclude it from
15 being reused as anything else at a future date.

16 But, like I said, most of the ones we've all the
17 ones that we have seen have actually moved towards accommodating
18 either reuse or people office type uses in the current design.

19 COMMISSIONER HOLMAN: Okay.

20 Continuing on, and just having quickly reviewed
21 this, I'm just trying to see, do you feel that now that you've
22 made these changes to the regulations you are capturing more of
23 the universe of the users out there that you are likely to see in
24 the near future, and you've because I'm just looking at this
25 letter that we have before us from 33 Patterson Street, N.E., and

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1 I just wanted to see how that fit in or didn't fit into this
2 scheme.

3 MS. McCARTHY: Maybe you could rephrase the
4 question, Mr. Holman.

5 COMMISSIONER HOLMAN: I was looking at the letter
6 that we had received from 33 Patterson Street, N.E., and I was
7 trying to see how that squared or didn't square with the
8 regulations. And, the larger question was whether you feel that
9 the regulations, as they are currently designed, address most of
10 the needs of the uses that you've identified so far.

11 MS. McCARTHY: I'd say that the regs, as they've
12 been revised this time, did eliminate what had been, I think,
13 inadvertently in the last version, an absolutely prohibition
14 against ground floor locations of EEFs, and that I believe under
15 the criteria that we are talking about the proposed facility would
16 be able to qualify as a special exception.

17 COMMISSIONER HOLMAN: Okay.

18 MS. McCARTHY: Or, it could be able to qualify, I
19 guess. Our concern was that a proposal as submitted by Mr. Gale
20 was a fairly awkward way to making zoning policy, and that we had
21 no idea whether there are other buildings that fit into this
22 criteria and what the circumstances may be with regard to them.

23 And, the whole idea behind the interim regs was
24 that each use would be a special exception. It would be reviewed
25 individually, so that the Commission could determine in that

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1 instance whether or not there was an adverse impact.

2 COMMISSIONER HOLMAN: So, in other words, you are
3 saying you haven't really been able you are saying it's a rather
4 inelegant way of achieving the same kind of review that you could
5 achieve by looking at the project as a special exception, and that
6 you don't necessarily object to the project per se, but to this
7 regulatory approach, or am I missing something?

8 MS. MCCARTHY: No, I think that's correct, that, you
9 know, there have been a number of people with individual projects
10 who would have preferred that we redraft the regulations so each
11 of their individual projects could be left out. And, we felt it
12 was better to try to design a set of criteria that focused on what
13 it was we were trying to achieve, and not try to particularly,
14 because we are looking for this to just be temporary regulations
15 until we put permanent regulations in place, so we thought it was
16 better than rather than trying to accommodate each individual
17 building and possibly end up impairing the effectiveness of the
18 regulations that we put into place, and grandfathering in
19 buildings we would have just as soon not grandfathered, that it
20 was better to draw the special exception criteria broadly and to
21 apply it on a case-by-case basis.

22 COMMISSIONER HOLMAN: But, as to the first part of
23 the question, do you think that the regulations, as they are
24 currently designed, will allow this type of industry and this type
25 of facility to continue to grow in the District under the

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1 guidelines that have been established?

2 MS. McCARTHY: At this point in time, without having
3 been able to be out and personally inspect that, or hear a
4 detailed presentation on it, I don't see a reason why this
5 wouldn't this facility and others like it wouldn't be able to be
6 accommodated under the special exception regulations, you know,
7 but they have to be applied in each individual instance based on
8 what the street life is like around there, what kind of
9 concentration is being proposed, what the situation is with each
10 individual building.

11 COMMISSIONER HOLMAN: Okay, because I guess what I'm
12 thinking of, and now I'm moving up the page to D, when we are
13 talking about the transportation plan and all that kind of
14 information, a lot of that is not, to my knowledge, it's certainly
15 not something that a lot of people are aware of in terms of the
16 type of plan, the transportation plan you are talking about, and
17 what those requirements are. So, I just want to make sure that
18 when we put the regulations into place that the public and the
19 Commission and everyone else are aware of, you know, the types of
20 restrictions and proposals that we are talking about, so that
21 people will understand how we are going to be regulating this
22 going forward.

23 MR. BERGSTEIN: Mr. Chairman, the one thing I would
24 say is that the big change, I think, from the first regulations is
25 to clarify that none of these things are conditions, are things

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1 that will, by virtue of them not being satisfied, preclude an
2 applicant from receiving a special exception. There are factors
3 to be considered and weighed, but not one of them, if the
4 applicant can't meet its burden of proof, would result in a
5 disapproval of the application. The idea is to give the
6 Commission a point of analysis with respect to the application,
7 but not to place any specific requirement that because it could
8 not be met would actually preclude the Commission from granting
9 the application.

10 COMMISSIONER HOLMAN: Yes, and I certainly
11 understand that point. I just believe that when we put
12 regulations in place, the public should be on notice as to what
13 the requirements are that we're referring to, that's all I'm
14 saying.

15 That's all, Mr. Chairman.

16 CHAIRPERSON HOOD: Okay, colleagues, any other
17 discussion?

18 MS. MCCARTHY: Mr. Hood, could I just mention one
19 additional thing that was an e-mail that apparently had an errant
20 path to the Office of Zoning and has been retrieved, which was, we
21 discussed a few minutes ago the parking standards, and I believe
22 Mr. Bastida has passed that out to you now, because we wanted to
23 be sure, since there is no parking standard that's established for
24 this use, we did provide in the regs that you have before you
25 already the ability to provide relaxation from those requirements,

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1 but we wanted to establish that the requirements would not be the
2 one for 600 square feet, that is, basically, the other
3 classification in the zoning regulations, and so that what you
4 have before you suggests that we amend Chapter 21, Section 2101.1,
5 off street parking requirements, for those facilities that would
6 be in C-3, C-4, C-5 and C-M, to say that if the building is in
7 excess of 2000 square feet one space for each additional 1800
8 square feet of gross floor area would be required, which is,
9 essentially, the office requirement, which goes along with our
10 desire to make these easily convertible into offices if the
11 project is not successful, and that in the M zone the requirement
12 would be one space for each 3000 square feet of gross floor area,
13 which is the existing standard for warehouses. We tried to cover
14 those instances in which, if you are building from the ground up
15 you design in to office parking standards so that your building
16 can be converted into office if the technology changes or
17 whatever, and that if you are converting an existing warehouse the
18 parking requirement be no more than what the parking requirement
19 would be for that as a warehouse use.

20 CHAIRPERSON HOOD: Okay.

21 MS. MCCARTHY: And, I guess the last thing I should
22 also mention is that something that we expect to put in the final
23 regulations, or in our proposed permanent regulations, would be
24 explicitly stating that these projects which are grand fathered
25 under the interim reg or, which would be permitted as special

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1 exceptions under the interim regulations, will be grand fathered
2 in under the permanent regulations. So, if we have a project,
3 such as at least one that we know of that is proposing a two-phase
4 design, they not fear that they don t want to start phase one
5 because they know that phase two will come under an entirely
6 different set of regulations. So, that will be, as I said, in the
7 proposed permanent regulations, but I just wanted to let you know
8 that now so that if that s a concern, and I know it was a concern
9 by some of the applicants, that we assure them that that s
10 something that we ve considered and will be taking care of in the
11 permanent regulations.

12 CHAIRPERSON HOOD: Okay, thank you, Ms. McCarthy.

13 Colleagues, any further discussion or comments?

14 COMMISSIONER FRANKLIN: Yes, Mr. Chairman.

15 CHAIRPERSON HOOD: Commissioner Franklin.

16 COMMISSIONER FRANKLIN: I m sorry, in 745.4, I have
17 two observations. One is that the way it is written somebody who
18 has not been privy to these hearings might wonder being
19 approximate to an existing or proposed metro station is good or
20 bad. So, I would like to suggest that since the intent that it s
21 a negative, that I think that should be clarified and I have a
22 suggestion for doing so.

23 But, beyond that, if it is a negative, it seems to
24 me inconsistent with the parking reduction possibilities in
25 2110.2E, which tells us that we can reduce the parking requirement

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1 if the site is proximate to public transportation, particularly,
2 metro rail stations.

3 Either they are supposed to be near metro rail
4 stations or they are not. It seems to me if our intent is that
5 they not be near metro rail stations, then I would not suggest
6 otherwise in terms of the reduction of otherwise required parking.

7 So, to clarify, going back to my first point on
8 745.4, where it says these factors, by which is meant, I
9 believe, the factors in the preceding section, which can go either
10 way by the way, you can conclude on one factor that it s not there
11 or that it is, that it would be clarifying to say, in place of the
12 word these, the words potentially adverse factors of 745.3, if
13 the staff is following what I m suggesting.

14 And then, we can revisit the metro aspect when we
15 get to the parking discussion.

16 The next phrase says it s a negative if they are on
17 all these factors are these adverse factors are to be given
18 greater weight if this site is on a pedestrian corridor. I
19 think that that s surplusage. We ve got a special exception
20 standard dealing with the disruption of existing or officially
21 proposed pedestrian routes, what does I think it s potentially
22 confusing to say all of these are to be given greater weight from
23 adverse standpoints and calling that one out, when it s just one
24 of the special exception criteria.

25 So, I would suggest the deletion of the phrase, or

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1 on a pedestrian corridor. I don't know what the staff response
2 would be to that.

3 COMMISSIONER PARSONS: Before the staff responds,
4 could you summarize what you just said, please?

5 COMMISSIONER FRANKLIN: I've said two things. One
6 is, with respect to the proximity to metro stations, the language
7 should be clarified to indicate that the proximity to a proposed
8 metro station is an adverse or a negative factor.

9 COMMISSIONER PARSONS: So, you don't have specific
10 language for that one?

11 COMMISSIONER FRANKLIN: I did, I said instead of the
12 word these factors, it should say potentially adverse factors of
13 745.3, because some of those factors may be adverse, may not be.

14 COMMISSIONER PARSONS: But, it's still phrased in
15 the positive in some fashion, so give greater weight

16 COMMISSIONER FRANKLIN: I agree with you, but I
17 would suggest that the staff just take a look at that to make it
18 clear that proximity to a metro station is a negative.

19 COMMISSIONER PARSONS: Correct, right.

20 COMMISSIONER FRANKLIN: And then, secondly, I don't
21 think it needs to call out or on a pedestrian corridor, because
22 the pedestrian issue is treated in D.

23 COMMISSIONER PARSONS: Right.

24 COMMISSIONER FRANKLIN: Does the staff have any
25 heartburn with that?

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1 MR. BERGSTEIN: The difference between D and the
2 reason that pedestrian corridor is called out in .4 is, the intent
3 of putting pedestrian corridor is to indicate what, in essence,
4 would be indicia of the greater likelihood of economic
5 development.

6 The idea is that, for example, in A, if there is an
7 absence of if the design cannot accommodate retail, that would
8 be more relevant and the adverse impact of that should be given
9 greater weight, where there is a greater likelihood that retail
10 would become a real eventuality that the economic that the
11 location of facilities located in a place where there would be a
12 higher likelihood that the absence of that design would inhibit
13 the revitalization of the area, which is the initial, broader
14 criteria that you are looking at.

15 So, the purpose of pedestrian corridor was to call
16 out another characteristic that would indicate the greater
17 likelihood of economic development. The actual D has to do with
18 where within the particular area there s an actual physical
19 disruption of pedestrian flow, as opposed to an indication of a
20 characteristic of the potential for economic development.

21 So, it wasn t intended to be duplicitous, and we
22 can try to clarify that, but it would just limit the specific call
23 out of economic development of potential areas to those that are
24 in proximity to metro stations, as opposed to those which also
25 happen to be located along pedestrian corridors.

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1 COMMISSIONER FRANKLIN: Does that mean existing
2 pedestrian corridors?

3 MR. BERGSTEIN: That is the way that I interpreted
4 it, yes, that if it s located originally, there was an example
5 of New York Avenue and I think it was North Capitol Street as an
6 example of existing pedestrian corridors, but in this case it is
7 intended to be existing pedestrian corridors, not those areas that
8 have the potential to become one. I don t know if Planning agrees
9 with me on that.

10 COMMISSIONER FRANKLIN: I don t want to be picky,
11 but does pedestrian corridor mean a pathway that maybe one or two
12 people use per day, but it s a corridor, or are you talking about
13 the volume of pedestrian usage?

14 MR. BERGSTEIN: Based upon the example, I thought
15 that the phrase meant thoroughfares in the city that have existing
16 large-scale pedestrian use, not any particular street that might
17 have one or two pedestrians on it, but where the amount of
18 existing pedestrian flow is such that the area is right for
19 greater economic development.

20 COMMISSIONER FRANKLIN: So then, to carry out your
21 intent, the language might say, or on a corridor having
22 substantial pedestrian use.

23 MR. BERGSTEIN: I agree that that would be an
24 improvement.

25 COMMISSIONER FRANKLIN: Okay.

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1 CHAIRPERSON HOOD: Let me just interrupt. I thought
2 that this would have only taken us about 20 minutes, it s
3 obviously taken us a little longer, and I understand the concerns.
4 We do need to deal with this EEF situation cautiously.

5 Colleagues, I want to get a kind of feel for where
6 we are. If we need to have further discussion then we will, but I
7 want to be fair to what we advertised tonight at 7:00, which was
8 the transfer of the hearing on the transfer of the campus plans,
9 we have people who may have other things to do this evening, so I
10 want to kind of get a feel from my colleagues about how much more
11 time we think we are going to need, because if that s the case in
12 all fairness what we may need to do, and I don t like to be
13 jumbled up and mixed up, but is to adjourn this meeting, go into
14 the hearing, and then come back, in all fairness to this hearing.
15 So, I d like to get kind of a feel for where we are, Commissioner
16 Franklin.

17 COMMISSIONER FRANKLIN: I can take a hint.

18 CHAIRPERSON HOOD: I only said that because your mic
19 was on.

20 COMMISSIONER FRANKLIN: I don t have very much more,
21 Mr. Chairman.

22 CHAIRPERSON HOOD: Would you say you have about five
23 I m not trying to limit you, I just want to make sure that we
24 get all those in, because

25 COMMISSIONER FRANKLIN: Five minutes depending on

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1 how much time the staff takes in responding.

2 CHAIRPERSON HOOD: Okay.

3 Commissioner Parsons?

4 COMMISSIONER PARSONS: I have a couple of points as
5 well, but I hope we get to fix this that we are in the middle of
6 right now, before we postpone discussion.

7 CHAIRPERSON HOOD: Why don t we because I want to
8 be fair to those who came up, believe me, it s not easy, we
9 started off wrong to begin with, but I want to be fair to those
10 who came for the hearing. Why don t we finish that issue that we
11 are on, let s go into the hearing.

12 COMMISSIONER PARSONS: Well, I have a specific
13 suggestion to add the word negative after greater, because at
14 least two of us completely misread this until it was further
15 explained, to not give anybody the impression that it s a better
16 project if it s near metro.

17 CHAIRPERSON HOOD: Right, and I don t really want to
18 see us rush through this, because I think we need to handle it
19 cautiously, so if we can just deal with this last issue we have on
20 the table.

21 COMMISSIONER FRANKLIN: Well, what I d like to
22 suggest, Mr. Chairman, and if we can clarify some of these things
23 we ll be spending a lot less time in special exception hearings
24 listening to lawyers argue over the meaning of things.

25 CHAIRPERSON HOOD: I agree, I agree, so can we come

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1 to a consensus that we kind of adjourn this and come back to this?

2 We will probably be able to get through the hearing a little
3 faster than this, the way things look, so is that okay,
4 colleagues?

5 Okay. With that, we re going to come back to
6 Docket Criteria Case No. 00-28T as soon as we finish our regularly
7 scheduled hearing for tonight.

8 This meeting is adjourned.

9 (Whereupon, the Zoning Commission meeting went off
10 the record at 7:42 p.m., in order to hold a public hearing on Case
11 No. 99-09.)

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1 (Whereupon, the Zoning Commission reconvened its
2 meeting at 9:05 p.m.)

3 CHAIRPERSON HOOD: We are ready to reconvene our
4 regular special meeting. It seems as though we ve lost a lot of
5 our audience.

6 Is everyone who needs to be here here, the Office
7 of Planning, Corp counsel?

8 COMMISSIONER FRANKLIN: Yes.

9 CHAIRPERSON HOOD: Okay.

10 We are going to go back into our first public
11 meeting on Zoning Commission Case 00-28, I m going to go back to
12 Mr. Franklin. I know it was an hour or so ago, but if we can
13 remember where we were, where we left off.

14 COMMISSIONER FRANKLIN: Thank you, Mr. Chairman.

15 I don t know that we had any resolution of my
16 suggestion to omit the clause or on a pedestrian corridor, from
17 745.4, and I under Mr. Bergstein s view, but I didn t I guess I
18 still don t agree with it.

19 I think that 745.4 ought to just focus on the metro
20 station situation, because I think the pedestrian corridor
21 situation is dealt with otherwise and tends to confuse the
22 situation.

23 But, let me move on, unless the Chairman would like
24 to poll the Commission to see how they feel about that.

25 CHAIRPERSON HOOD: I m sorry, Mr. Franklin.

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1 COMMISSIONER FRANKLIN: I just didn't know whether
2 to move on or if you wanted to poll the Commission on whether the
3 clause on a pedestrian corridor should remain in 745.4. My own
4 feeling is that the subject matter of that should be the proximity
5 of the metro station, and it should not be confused with another
6 consideration that I think is fully addressed elsewhere.

7 COMMISSIONER HOLMAN: Mr. Chairman, I just wanted to
8 chime in on that, because I think what we are looking at is what
9 the city would hope to be the pedestrian corridors going forward,
10 but having been in that area the areas that have broad sidewalks
11 are not always the pedestrian corridors. I see, for example, a
12 lot more individuals walking up and down, say, 1st Street, N.E.,
13 than I do North, not so much North Capitol, but certainly New York
14 Avenue.

15 So, it's a little tricky, it's not as obvious as it
16 would appear. I mean, it may evolve into that, but, you know,
17 that's a little problematic, but I don't I started not to say
18 anything because I don't have a ready solution, but it is a
19 problem.

20 COMMISSIONER PARSONS: As I understood the
21 explanation, it became clear to me that there's a difference, Mr.
22 Franklin, between the pedestrian route, indeed, which is, I'll get
23 specific, the Metropolitan Branch Trail going out along an
24 industrial zone, and a pedestrian corridor, which was just
25 described by Mr. Holman, such as a narrow section of a street that

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1 we want to encourage pedestrian use on. And, I think there is a
2 difference between the two. And, I would urge for its retention.

3 COMMISSIONER FRANKLIN: Well, I do recall now that
4 my memory is flooding back, Mr. Bergstein did accept my
5 description of that language as more appropriately a corridor
6 having substantial pedestrian use.

7 MR. BERGSTEIN: Yes, and I noted that change.

8 COMMISSIONER FRANKLIN: Okay.

9 Then I won't press the point, and I just want to
10 move on, if that's okay.

11 COMMISSIONER PARSONS: Well, could we go back to my
12 proposal to insert the word negative or something of that nature
13 after the word greater, shall give greater negative weight to
14 these factors?

15 COMMISSIONER FRANKLIN: That's

16 COMMISSIONER PARSONS: Maybe that's

17 COMMISSIONER FRANKLIN: that's an alternative,
18 fine. I had tried to do the same thing with other language, but
19 that's just as good, as far as I'm concerned.

20 COMMISSIONER PARSONS: Well, remind me if you would,
21 what was your language?

22 COMMISSIONER FRANKLIN: I would strike

23 COMMISSIONER PARSONS: I think we have an obligation
24 to resolve this tonight, rather than pass it back and then have to
25 get it back.

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1 COMMISSIONER FRANKLIN: Yes, okay.

2 Well, I had suggested that the word these come
3 out, and in lieu thereof the words potentially adverse factors of
4 745.3.

5 VICE-CHAIRPERSON MITTEN: I think you could have Mr.
6 Franklin s change and Mr. Parson s change, and then there s
7 absolutely no question. It doesn t seem to be overly redundant.

8 COMMISSIONER FRANKLIN: Yes, that s fine.

9 CHAIRPERSON HOOD: I m just having a problem, and
10 we re saying greater negative weight?

11 COMMISSIONER FRANKLIN: Yes, to

12 COMMISSIONER PARSONS: To the adverse effects of
13 those factors.

14 COMMISSIONER FRANKLIN: That s fine.

15 CHAIRPERSON HOOD: Oh, okay.

16 COMMISSIONER FRANKLIN: Okay.

17 CHAIRPERSON HOOD: Yeah, I don t have any problems
18 with that now.

19 COMMISSIONER HOLMAN: I m positive we disposed the
20 negative.

21 CHAIRPERSON HOOD: One of the Commissioners has
22 asked that we move the agenda.

23 Commissioner Franklin?

24 COMMISSIONER FRANKLIN: Yes, now getting to the
25 parking situation, and I know there s been some need for speed in

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1 drafting this, I had earlier noted that in the relaxation of
2 otherwise required parking you look at 2110.2E, which is on the
3 last page of the draft, and it speaks in positive terms about the
4 proximity to public transportation as one basis for relaxing
5 parking requirements, when in the previous section we have just
6 discussed it s quite plain that the proximity to metro rail
7 stations is a real big negative. So, I just wonder how we sort
8 that out.

9 VICE-CHAIRPERSON MITTEN: Could I just make a
10 comment about that, which is, I think the idea is that it is
11 pedestrian intensive near a metro, and so those negative
12 influences, which we ll look more heavily at if a property is
13 close to metro, are those that are oriented towards protecting the
14 pedestrian experience, where, on the other hand, if you are close
15 to metro and it s less likely that there will be heavy vehicular
16 demand for parking, then that s an area where we can be more
17 lenient because the metro has, you know, another effect in that
18 case.

19 So, I

20 COMMISSIONER FRANKLIN: So you don t see the
21 incompatibility then?

22 VICE-CHAIRPERSON MITTEN: I don t think they are
23 incompatible.

24 COMMISSIONER FRANKLIN: Thank you, thank you. I ll
25 accept that.

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1 CHAIRPERSON HOOD: Are we leaving E as it is?

2 COMMISSIONER FRANKLIN: I would then leave E alone.

3 CHAIRPERSON HOOD: Okay.

4 COMMISSIONER FRANKLIN: Because of the persuasive
5 comments of my colleague, and the lateness of the hour.

6 VICE-CHAIRPERSON MITTEN: In that order, right?

7 COMMISSIONER FRANKLIN: On a similar note, when you
8 look at C, the amount of traffic congestion existing or which the
9 EEF can reasonably be expected to create in the neighborhood,
10 here again, unless I m totally misunderstanding the situation, one
11 of the reasons for our concern about EEFs is that they are dead,
12 or deadening, and I suspect that they are not going to create
13 traffic congestion.

14 MR. BERGSTEIN: Mr. Franklin, I wonder if I just
15 could, so you understand where this language came from, what I did
16 was to take there are several sections that follow the parking
17 requirements that create special exceptions from those
18 requirements, so what I did was simply to take the existing
19 standards and use them here.

20 COMMISSIONER FRANKLIN: Oh, I see.

21 MR. BERGSTEIN: So, this is not new language from
22 me, this is the standards that exist throughout Chapter 21 in
23 several sections, where someone is requesting parking relief, and
24 I think the idea is to figure out the other both what other
25 instances might reduce the amount of parking, and then conversely

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1 what it is about the structure that would require that amount of
2 parking. And, I understand what you are saying, but just so you
3 know that this wasn't something that I tailored for this use, but
4 I tried to use an existing standard where other special exceptions
5 for parking relief were granted.

6 COMMISSIONER FRANKLIN: Well, thank you, Mr.
7 Bergstein. The question, I guess, is, do you think on
8 reconsideration it's appropriate to be incorporated here?

9 MR. BERGSTEIN: I can see your point exactly, that
10 if we have traffic congestion it means that EEF is doing far
11 better than we would have thought it would do. So, if you don't
12 think that it even would be plausible that EEF would have this
13 effect, then I can understand why you'd want in this particular
14 instance to eliminate the factor.

15 COMMISSIONER FRANKLIN: Colleagues, how do we feel
16 about that?

17 COMMISSIONER HOLMAN: I think it's kind of logically
18 inconsistent.

19 COMMISSIONER FRANKLIN: That's all I had, Mr.
20 Chairman, except for one minor tinker on 3130.1, having to do
21 with, I guess, totaling the time limit. I would suggest, because
22 I thought I saw it in an earlier draft, something like it, that
23 the word complete be put before the word plans.

24 CHAIRPERSON HOOD: The complete plans?

25 COMMISSIONER FRANKLIN: Yes.

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1 CHAIRPERSON HOOD: Okay, we are looking at 3130.1.

2 COMMISSIONER FRANKLIN: Right.

3 CHAIRPERSON HOOD: The third line, the complete
4 plans, okay.

5 Let me ask this, is somebody getting all this

6 MR. BERGSTEIN: I have it.

7 CHAIRPERSON HOOD: Oh, okay.

8 MR. BERGSTEIN: And, by the way, 3130.1 is existing
9 language that you now use, so you may want to consider that a
10 permanent change as well, because that the only thing added
11 there from the existing language in the regulations was in line
12 two, where it says, ... or one year for electronic equipment
13 facilities, otherwise this is the language that actually exists
14 in your regulations. So, if you believe that the word complete
15 should be put in, then that may be a more permanent change you may
16 want to consider.

17 CHAIRPERSON HOOD: Mr.

18 COMMISSIONER FRANKLIN: I don t know to what extent
19 that s a problem, Mr. Bergstein, whether people file incomplete
20 plans for the purpose of totaling. Do they?

21 MR. BERGSTEIN: I think it s an excellent
22 improvement.

23 COMMISSIONER FRANKLIN: Okay.

24 SECRETARY BASTIDA: Yes, they do, Mr. Franklin.

25 COMMISSIONER FRANKLIN: Okay, I m not surprised.

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1 CHAIRPERSON HOOD: Okay, thank you. Thank you,
2 Commissioner Franklin.

3 Colleagues, any other comments? Mr. Parsons.

4 COMMISSIONER PARSONS: I ve got a couple.

5 I m having trouble with this last sheet that was
6 passed out, this C-3, C-4, C-5, C-M. As I understand the intent
7 of this it s to build a parking garage below grade and a potential
8 office building in the future, is that correct, Ms. McCarthy?

9 MS. MCCARTHY: There are two instances in which it
10 applies. One would be if you have an existing building, an
11 existing warehouse building, most likely in the M Zone, but there
12 are some of them in C-M or C-3-C, the notion was to impose no
13 greater standard than would be imposed in office, and the
14 flexibility language then gives you for the existing warehouse,
15 but for new construction in those zones, in the C-3, C-4, C-5,
16 and, in particular, I guess, with NOMA we are talking about C-3,
17 and the waterfront area as well, then that we impose a standard
18 that would permit it to be converted to an office building without
19 the lack of parking being a drag on being able to do that.

20 And, what we have learned from talking to those
21 providers that are proposing new construction is that they can
22 live with that requirement because of their extensive needs for
23 storing fuel, and equipment, parts, and other related things which
24 could be stored in those parking spaces if the parking spaces are
25 created, but they don t have to be used as parking spaces, it s

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1 just that a space there will be there in the building and will be
2 available for parking if it were not being used as an EEF.

3 COMMISSIONER PARSONS: All right, but a typical C-4,
4 C-5 building in the city goes down four stories or more with
5 parking, right? Is that what we are talking about here? New
6 construction in these zones would require a standard parking
7 garage for a potential office building to meet the FAR of the
8 building below grade.

9 MS. MCCARTHY: The standards that we are using here
10 are the standards that the zoning regulations use for parking.

11 COMMISSIONER PARSONS: Right, and they would store
12 fuel and other things in those spaces, is that what you are
13 saying?

14 MS. MCCARTHY: That was the discussion we had with
15 one of the applicants that came in to see us, that they felt the
16 requirement to have the parking sufficient to be able to be
17 converted to an office building wasn't a problem, that, in fact,
18 their partner was an office building developer and was highly
19 conscious of the fact that this may need to be converted at some
20 point in the future.

21 COMMISSIONER PARSONS: All right.

22 Now, how does that relate to the Zoning
23 Commission's authority then in this regulation to reduce or
24 eliminate the parking?

25 MS. MCCARTHY: There was a concern that if we did

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1 not articulate a standard a much higher standard would be applied,
2 which is the standard that applies to other in the zoning regs
3 when you don t have a named use. So, we thought starting from a
4 leveler playing field, that is a set of requirements that weren t
5 as high as the other standard, would set a context, and then the
6 Board was free to relax the parking standards as part of the
7 special exception.

8 COMMISSIONER PARSONS: But, you don t feel, from the
9 limited knowledge you have now, that this new regulation that s
10 here on the last sheet, which I guess is A for lack of a better
11 title, that everybody would be coming in referring to 2110.2
12 saying I need relief from this parking regulation?

13 MS. McCARTHY: Well, in fact, when the special
14 exceptions were filed, the five that have been filed, the Office
15 of Zoning instructed them to apply for a zoning variance in
16 addition to the special exception a variance to reduce their
17 parking, in addition to the special exception, because of their
18 concern that these structures may not meet the parking
19 requirements.

20 So, they ve already filed for that, and it s been
21 noticed. What we were attempting to do in here, and maybe Mr.
22 Bergstein wants to address this more fully because it was
23 something we did in discussion or as a result of discussions with
24 the Office of Corp Counsel, was to provide for that to be able to
25 be done as a special exception so you didn t have to deal with

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1 exceptional I m sorry, practical difficulty and exceptional
2 circumstances, and it could be just considered as part of us
3 granting the overall special exception. So, it s been advertised
4 for variance relief, but it could now, if you pass these
5 regulations, be granted a special exception relief.

6 COMMISSIONER PARSONS: Well, I m hoping that your
7 idea of building these parking garages is something that we can
8 prevail on, because it s a very good idea.

9 The only other question I had is, and, again, I
10 don t think I ll ever miss another meeting of the Zoning
11 Commission, because October has caused me so much pain I can t
12 stand it. There must be something very obnoxious about these
13 facilities that I don t understand, that would result in
14 endangerment to pedestrians, which is in 245.2. What would
15 endanger pedestrian or vehicular movement? Is this a standard in
16 other zoning regulations we have? I mean, what is more dangerous
17 here than an office building?

18 MS. MCCARTHY: Alan, was that your wording or our s?

19 MR. BERGSTEIN: Well, it was, and my problem was
20 that and I think we talked about this that when you write out
21 factors you need to state the factors consistently, either
22 affirmatively or negatively. And, for special exceptions the
23 standards are often stated, in fact, they are stated in the
24 negative, you know, will not have objectional conditions, will not
25 cause will not result in noise or traffic, so it s stated in the

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1 negative.

2 The original factors were stated in the positive,
3 will foster safe pedestrian use, et cetera. So, I reversed it and
4 placed it in the negative, will not endanger.

5 If that seems too great or too strict a standard,
6 it s just important that when we list these factors the factors
7 are stated, in essence, in a negative, to state it as the adverse
8 effect. So, in order for me to reverse safe, I used the word
9 unsafe or endangered.

10 COMMISSIONER PARSONS: No problem, I m just trying
11 to get to the question, what is unsafe about these facilities? I
12 mean, what even moves us to talk about safety or endangerment of
13 pedestrians?

14 MS. MCCARTHY: I think the idea was, especially in
15 the state that we find the tech district at this point in time,
16 that because there s not a lot of pedestrian traffic to begin
17 with, the sense of without eyes on the street there s not going to
18 be a feeling of safety on the part of pedestrians anyway. And so,
19 the notion and, eyes on the street, people on the street tend to
20 make an area safer anyway, because you are discouraged from crimes
21 of opportunity because you know that there are people around who
22 might see you committing them.

23 COMMISSIONER FRANKLIN: The Jane Jacobs.

24 COMMISSIONER PARSONS: It s very logical. I thought
25 that there was some electromagnetic consideration or some parking

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1 of hazardous wastes on the sidewalk or something.

2 MS. MCCARTHY: Right, we are not talking about
3 killer fiber facilities, no.

4 COMMISSIONER PARSONS: Okay, now I got it, okay.

5 MS. MCCARTHY: So, I mean, other potential words
6 could be inhibit or impede, inhibit or discourage.

7 COMMISSIONER PARSONS: Yes, but that s not your
8 point. Your point is, perceived safety due to lack of activity,
9 right, and that s a much different point than the one I picked up,
10 was, you know, something about the facility itself inherently is
11 unsafe or would endanger pedestrians if they even walked near it.

12 So, now I understand it, we can get on with it.

13 Thank you, Mr. Chairman.

14 CHAIRPERSON HOOD: You know, Commissioner Parsons,
15 you raise a very good issue, not exactly perceiving and looking at
16 that point, but I guess they can blow up, am I correct? I mean, I
17 don t know, so it might be a two-fold piece there.

18 But anyway, I ll take that off, but that s actually
19 where I was too, I was thinking maybe if somebody walked past
20 something may happen. I don t know.

21 Any other comments, questions?

22 COMMISSIONER HOLMAN: No, this is just a comment,
23 this is not a question. It s just and I think it has more to do
24 with the nature of these kinds of proceedings and the fact that we
25 don t do them very often, except for October apparently. There

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1 really I guess what I m frustrated by is there has been really
2 no public comment, no letters, no information that we ve received
3 from the public to substantiate or question the emergency, and
4 it s just frustrating because I still don t feel that we have all
5 the information we need. If this were permanent, I would really
6 be very concerned, but still, even as a temporary measure, I still
7 don t know that I know all the answers to all the questions that I
8 have about how this affects the industry, how it affects the city
9 as a whole, and I hope when we get to the permit that we will go
10 into that in some great detail.

11 CHAIRPERSON HOOD: Well, Commissioner Holman, I m
12 sure you have four other colleagues that are sitting to your left
13 that actually feel the same way. We haven t had any public
14 comment, but I m not sure how the Office of Planning has been
15 working, but I m sure when they asked us to first deal with this
16 issue that they have gotten a lot of comments. I believe that
17 this incorporates some of the comments that they have, am I
18 correct that they ve gotten, am I correct, Ms. McCarthy?

19 MS. MCCARTHY: That is true, and it s actually a
20 perfect segue, your comment, to this item that we ve given Mr.
21 Bastida to pass out to you, which was, I think there was some
22 misunderstanding of the message that we had given him earlier this
23 evening, which was going to precede this, which was just that we
24 wanted to tell you in advance that because we do because there
25 has been so much concern about the lack of consultation, and

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1 because we do think that is so important, we wanted to raise the
2 possibility that we may be coming to you and asking for an
3 extension, or, in fact, we thought we should come now and ask for
4 you to recognize that at your December meeting would be a good
5 time to consider an extension of the term of the emergency zoning,
6 or if you have to wait until February 12th to do that then, but in
7 our discussions, especially in the last two forums we've had, one
8 with the tech counsel and one that the Office of Planning had
9 sponsored itself, we asked the participants would they prefer that
10 we took a little more time on the regulations, had more
11 consultation with them in advance, and gave them a draft early on
12 and got their comments back, or would they rather that we try to
13 get some regulations passed as quickly as possible so we could get
14 to the end of the emergency temporary regulations. And, I think
15 the overwhelming response from the group was that they would
16 rather have more time to provide input and to review whatever we
17 had proposed.

18 So, what we passed out to you this evening was a
19 rough proposal, a timetable that we are thinking about now, and
20 which by next week we would finalize probably three regulatory
21 scenarios of slightly different approaches we could take to the
22 permanent regulations, then the weeks from November 27th to
23 December 4th we would distribute those scenarios to all of the
24 contacts that we've made so far, the names of people either that
25 have attended our forums or the people who attended the forums had

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1 suggested additional people that we should contact, we distribute
2 those, we'd convene some smaller focus group sessions, talk to
3 them about it in more detail, ask people to send us written
4 comments if they had them on those sort of, you know, not phrased
5 in detailed regulatory language, just kind of the general
6 scenarios, and then we'd review those comments and December 5th and
7 6th we'd also have the benefit of we're mapping all the fiber
8 locations in the city, I don't know whether for proprietary
9 reasons we'll be able to give that out publicly but we will have
10 that information available to help us determine where it's
11 appropriate to encourage these as matter of right uses, and where
12 it's just not practical because of the absence of local fiber, but
13 taking the public comments and taking the analysis of the fiber
14 location we'd then be able, by December 7th to 11th, to draft in
15 more detailed and specific regulatory language what the permanent
16 regulations were that we would propose, and then be able to go I
17 mean, we are actually talking about having that done by December
18 7th, send that out for a week of review and comment from the
19 industry, and then be able to submit something back to you on
20 December 12th, so that there would be then a lot of time for that
21 to be considered by you and for people to get formal written
22 comments in to the Commission even in advance of whatever public
23 hearing would then be held after that time.

24 Right now, I believe what had been scheduled was a
25 public hearing on January 29th, and I'm not sure whether this

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1 timetable, I believe this timetable would then not permit the
2 notice to be given sufficient notice to be given in time to do
3 that hearing on the 29th, which would mean it would need to be
4 postponed, as I understand it, and then would probably then the
5 regulations would not be able to go into effect by February 12th,
6 which is the end of the time of the temporary regs. So, that s
7 why we wanted to let you know, and the folks that were here from
8 the industry tonight know, that that was the kind of timetable we
9 were thinking about, so that, first of all, they would know that
10 we were talking about consultation, and secondly so that we were
11 not springing something at the last minute in terms of saying we
12 might like to look at a longer time on the temporary regs to make
13 sure we get it right.

14 SECRETARY BASTIDA: Could I add something to that?
15 The calendar of the Commission is quite full, and we might not be
16 able to hear you until March. You can always extend the emergency
17 regulation from February 12th, which it expires that day, and
18 renew if you so choose to do that, you don t have to do it in
19 advance. But, I just wanted to put that on the table. I will try
20 to see if I can move massage the calendar to put it before that
21 time, but I wanted the Office of Planning to realize the potential
22 that it will not be heard until some time in March and see if that
23 created a problem or provided them a little more time to do a more
24 thorough analysis.

25 CHAIRPERSON HOOD: Okay, I believe that issue, Mr.

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1 Bastida and Ms. McCarthy, both offices can work that out and see
2 what resolution we can come to.

3 Commissioner Holman?

4 COMMISSIONER HOLMAN: Yes, because I want to just
5 I m actually glad to hear this because I was very uncomfortable
6 with the way it was approached, and there were some large
7 unanswered questions in my mind, and this goes a lot more I
8 still don t think I have an answer, for example, about the
9 proximity issue. I m not going to beat that horse tonight, but
10 I m just saying there are a lot of things that I think we ve
11 discussed and I d like to see in the final regulations, once they
12 come forward.

13 CHAIRPERSON HOOD: Well, as I said, Commissioner
14 Holman, these temporary regulations are going to be in place until
15 February the 12th, so before we adopted the criteria I was hoping
16 that we could kind of fine tune it, as Mr. Franklin has done and
17 really trying to help us come down with some more definite
18 language. So, there s still an issue out there, I want us to try
19 to discuss it tonight.

20 COMMISSIONER HOLMAN: All right.

21 My issue doesn t go as much to the language as it
22 does to the analysis of the industry, how these regulations will
23 affect the location of these kinds of companies, how these EEFs
24 affect other technology companies, and those are issues that you
25 can t really address in regulations, you have to get testimony,

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1 and you have to, you know, get more of the input of the Office of
2 Planning and other affected industries, so there s not really a
3 good way to redraft these regulations without having that
4 information. And so, I think it s just better to wait until the
5 Office of Planning completes its analysis.

6 CHAIRPERSON HOOD: Okay.

7 COMMISSIONER FRANKLIN: Mr. Chairman, could I just
8 say one other thing? I share Commissioner Holman s unease about
9 this, and I d like to ask the Office of Planning this question. I
10 asked the question earlier, when we first were presented with this
11 issue, as to whether these EEFs could themselves spawn or
12 stimulate nearby desirable development, and I don t know that we
13 have any answer to that question. So, my at least I haven t
14 heard one my question is to the Office of Planning, if somebody
15 came in for a special exception, and was proposing to develop an
16 EEF which clearly within its own terms, its own footprint, had the
17 kind of characteristics that we are told are stereotypical of such
18 facilities, but could show that that facility would itself spawn
19 or trigger adjacent economic development and other desirable
20 developments, do these regulations accommodate that kind of
21 showing as something that would enable us to grant a special
22 exception?

23 MS. MCCARTHY: My interpretation would be, yes,
24 because as we are weighing adverse impacts we would be weighing as
25 well what countervails against that adverse impact. If you wanted

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1 to make that explicit in the regulations, we could talk about some
2 language that would make that more explicit.

3 We share your same frustration, Mr. Franklin,
4 because that has been the major question we've asked at every one
5 of the four forums that we've held, and although it seems logical
6 that there should be able to be a direct connection, and there
7 should be able to be some specific evidence provided of that
8 connection, the response that we most typically have heard is, oh,
9 yes, other carriers want to be where those carriers are, and we're
10 looking at our own NOMA area at a major office building that's
11 located on P Street that is right across from two carrier hotels
12 and in the immediate vicinity of the Woodies warehouse, of Quest,
13 it's by XM Satellite, and that building has been unable to land
14 any tenants even though it's been marketed for a year and a half,
15 at least that I know of. So, we hear anecdotal comments that
16 .coms and others will be interested in locating there, but we
17 haven't been able to discover any specific kinds of proof, but we
18 are continuing to research that as one of our key items, and
19 certainly would hope by the time these are up for the hearing,
20 December 18th and December 20th, that any evidence like that that
21 we've been able to uncover we would bring to bear in terms of the
22 Office of Planning reports on those projects.

23 CHAIRPERSON HOOD: Okay, colleagues, before we move
24 with the temporary criteria adoption of 00-28T, we've had a letter
25

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1 MS. McCARTHY: Oh, I m sorry, Mr. Hood, could I I
2 just wanted to when you were talking about comments from the
3 industry, I forgot that I meant to mention two things that were
4 mentioned to us at the break that might be useful to you in
5 considering these temporary regulations. One was a request that
6 you might want to specifically include loading facilities under
7 the same language as parking, as something that the Commission
8 could provide flexibility on, and the second one was whether we
9 wanted to establish, either as a matter of the record or as some
10 specific language in the regulations, a recognition of the fact
11 that the conversion of existing warehouse buildings may require a
12 higher degree of flexibility than projects built from the ground
13 up. I mean, I think we have mentioned that in passing, and in the
14 hearing there was a thought that if the Commission did at least
15 explicitly get that on the record it might be useful when some of
16 those existing warehouse buildings come in for the hearing on the
17 special exception.

18 So, I m sorry, I didn t mean to interrupt you, but
19 I just wanted to pass along those two items.

20 CHAIRPERSON HOOD: Colleagues, we just heard two
21 more pieces from Ms. McCarthy, is there any particular person
22 where that I mean, place, Ms. McCarthy, where that would be
23 added to, so we can kind of see where it would fit? Parking,
24 loading docks, I believe.

25 MS. McCARTHY: Right, in the 745.5.

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1 CHAIRPERSON HOOD: So, on the second line we would
2 just say parking and

3 MS. McCARTHY: Well, actually, it s no, it would
4 be 22110.1, that the Zoning Commission may reduce or eliminate the
5 amount of required parking spaces, and you could say and
6 additional loading facilities.

7 SECRETARY BASTIDA: Mr. Chairman, we need to put
8 that on the parking on the loading and unloading chapter. That
9 would be

10 MR. BERGSTEIN: 22.

11 SECRETARY BASTIDA: 22.

12 MR. BERGSTEIN: There s a schedule of loading
13 requirements that s contained in 2201, and then 2202 contains an
14 exception to that schedule, and I have to admit I haven t read
15 this before, but it s for within the downtown urban renewal area,
16 and I believe that there s specific things that need to occur.

17 The issue would be, if you are going to give relief
18 from the requirement what is your criteria for granting the
19 relief. For parking, the criteria relate to that the relief would
20 not, in effect, cause parking pressures in the surrounding area,
21 and I really am not familiar with this regulation to know what
22 would be the criteria or whether or not you would simply add to
23 2201, not just within a downtown renewal area, but include EEFs.
24 But, I, frankly, don t know what would be the impact of that.

25 CHAIRPERSON HOOD: Okay, can we do this, colleagues,

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1 those last two comments by Ms. McCarthy, which was obviously given
2 to her, she said, during the break, can we leave that up to our
3 Corporation Counsel, our staff, Office of Planning, who will have
4 our best interests to make sure this is legally and technically
5 sufficient for us to move forward? Are there any objections to
6 that, unless we want to just come up with the language tonight.

7 Hearing no comments, Mr. Bastida, that s how we
8 will proceed.

9 SECRETARY BASTIDA: All right, sir.

10 CHAIRPERSON HOOD: Next, we had on the table, and we
11 are going to get through this, we had on the table, Ms. McCarthy,
12 at Monday s regular monthly meeting a letter from Mr. Gale asking
13 for emergency legislation. We also had asked the Office of
14 Planning to look at that. I believe the letter that s submitted
15 today is a little different, it has an addition of okay, I m
16 sorry I believe we have this is asking for a final regulation,
17 so I guess that will come at a later date, but I believe that we
18 need to deal with the emergency rulemaking they asked for. I
19 believe you said you all have addressed it, okay, on Monday. Do
20 we need to Mr. Bergstein, do we need to deal with the emergency
21 rulemaking that was asked upon us, or can we just move forward
22 because it has been addressed by the Office of Planning, I
23 believe, from what I understand.

24 MR. BERGSTEIN: Are you referring to Mr. Gale s
25 letter?

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1 CHAIRPERSON HOOD: Right.

2 MR. BERGSTEIN: Well, I actually haven't read all of
3 Mr. Gale's letter, I thought it had to do with specific mention of
4 a particular facility, and think that what Ms. McCarthy mentioned
5 was correct, that the criteria in these emergency regulations, as
6 I said, wouldn't put a stop to any particular facility, but I
7 don't know if the letter actually represents a petition for
8 rulemaking, and if it does it would be something that you would
9 have to consider as a specific agenda item, but I really don't
10 have the letter before me, but that would be a separate matter.
11 Right now, you have an agenda item that relates to this
12 rulemaking, if there was anything in the letter that would cause
13 you to want to amend or reconsider any portion of this rule I
14 think you have discussed that.

15 CHAIRPERSON HOOD: Okay.

16 MR. BERGSTEIN: And, I think the subject matter of
17 that letter is the same subject matter as this rule. So, either
18 you would, if there's anything in Mr. Gale's letter that would
19 cause you to want to make any further modifications to the rule
20 before you, I think that would be the appropriate thing that you
21 can discuss, but otherwise, the motion you have would be on this
22 particular rule.

23 CHAIRPERSON HOOD: Okay, colleagues, hearing the
24 comments of corporation counsel, we have before us in front us
25 about the criteria the temporary criteria for Zoning Commission

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1 Case 00-28T, I d like to know how we d like to proceed with the
2 necessary corrections that have been made here tonight, or
3 amendments.

4 COMMISSIONER PARSONS: You need a motion to adopt,
5 right?

6 CHAIRPERSON HOOD: Right.

7 COMMISSIONER PARSONS: So moved.

8 CHAIRPERSON HOOD: Okay, I have a motion on the
9 table, it s been moved, can I get a second?

10 VICE-CHAIRPERSON MITTEN: Second.

11 CHAIRPERSON HOOD: Moved and properly seconded, all
12 those in favor by the usual sign of voting?

13 (Ayes.)

14 CHAIRPERSON HOOD: Any opposition? So ordered.

15 Staff, would you record the vote?

16 SECRETARY BASTIDA: The staff would record the vote
17 5-0, Mr. Parsons moved it and Ms. Mitten seconded it, and the rest
18 of the Commission was voting in the affirmative.

19 CHAIRPERSON HOOD: I d like to thank everybody for
20 their patience. This special meeting is adjourned.

21 (Whereupon, the above-entitled matter was concluded
22 at 9:47 p.m.)

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