

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1108th MEETING SESSION (14th of 2000)

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MONDAY
DECEMBER 11, 2000

+ + + + +

The regular meeting of the District of Columbia
Zoning Commission convened at 1:30 p.m. in the Office of Zoning
Hearing Room at 441 4th Street, Northwest, Washington, D.C.,
Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS 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 P. Bastida, Secretary, ZC

OTHER AGENCY STAFF PRESENT:

Andrew Altman, Director, Office of Planning
Steve Cochran, Office of Planning
Ellen McCarthy, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Marie Sansone, Esq.

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Preliminary Matters 3

Presentation by Ellen McCarthy, Office of
Planning 10, 21

Presentation by Andrew, Director, Office of
Planning 22

Commission Questions 11, 25

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

1
2 CHAIRPERSON HOOD: Good afternoon, ladies and
3 gentlemen. This is the 1108th Session of the D.C. Zoning
4 Commission, Monday, December 11th at 1:34 p.m. Joining me for
5 this meeting are Commissioners Mitten who serves as Vice-Chair,
6 Commissioner Holman, Commissioner Parsons and Commissioner
7 Franklin. Mr. Bastida, I believe we have no preliminary matters?

8 SECRETARY BASTIDA: Mr. Chairman, we have a
9 preliminary matter.

10 CHAIRPERSON HOOD: Okay. We now have a preliminary
11 matter. Mr. Bastida.

12 SECRETARY BASTIDA: We need to add to the agenda
13 either as a hearing action or as a final action the two cases
14 related to Woodies which are Cases 99-3Z and 00-18T which are the
15 text amendments referred to in Mr. Glasgow's letter requesting the
16 PUD or in the alternative those text amendments.

17 CHAIRPERSON HOOD: All right. Mr. Bastida, you're
18 asking us to add 00-28T?

19 SECRETARY BASTIDA: Yes. 18T as in Tom.

20 CHAIRPERSON HOOD: 18T. Okay.

21 SECRETARY BASTIDA: Yes. And 99-3Z.

22 CHAIRPERSON HOOD: And we're going to add that to the
23 hearing action. Let's actually move Item A down and make that A
24 and B.

25 SECRETARY BASTIDA: Okay.

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CHAIRPERSON HOOD: Okay?

SECRETARY BASTIDA: At your pleasure, Mr. Chairman.

CHAIRPERSON HOOD: Okay. Colleagues, if that's okay, we'll just do that general consensus and move forward. All right.

Thank you. Mr. Bastida, anything else, preliminary matters?

SECRETARY BASTIDA: No, Mr. Chairman, and I am sorry about the mistake.

CHAIRPERSON HOOD: You don't make any mistakes, Mr. Bastida.

Anyway, next on our agenda is the Action of Minutes. Mr. Bastida.

SECRETARY BASTIDA: Yes. Mr. Chairman, you in front of you the minutes for different meetings of the Commission of November 13, November 16, November 27 and the Staff requests your approval on those minutes.

CHAIRPERSON HOOD: Okay. Colleagues, if we can move in the order of the way it is written on the agenda. Let's take the Public Meeting minutes of November 13th. Commissioner Mitten.

VICE CHAIRPERSON MITTEN: I move approval of the minutes as presented.

COMMISSIONER HOLMAN: Second.

CHAIRPERSON HOOD: Somebody move to second. All those in favor by usual sign of voting.

COMMISSIONERS: Aye.

CHAIRPERSON HOOD: Any opposition? So ordered.

1 SECRETARY BASTIDA: Thank you, Mr. Chairman. Now, for
2 the November 16th meeting.

3 CHAIRPERSON HOOD: Okay. Colleagues, we had a special
4 Public Meeting draft of November 16. What is your pleasure?

5 VICE CHAIRPERSON MITTEN: He didn't record the vote
6 from the --

7 CHAIRPERSON HOOD: Oh, I'm sorry. Mr. Bastida, you
8 didn't record the vote from the last set of minutes.

9 SECRETARY BASTIDA: Oh, I'm sorry, Mr. Chairman. The
10 vote was 5 to 0, Ms. Mitten moved and Mr. Holman seconded, the
11 rest of the Commissioners voting in the affirmative.

12 CHAIRPERSON HOOD: Thank you, Mr. Bastida. The only
13 thing I have on B and it's just a matter of typos. I see I was
14 demoted from Chairman to Vice Chair and also I believe normally
15 under Number 4-A Mr. Franklin made the motion so I believe
16 procedurally his name should be first and mine should be last
17 since I seconded if we could make those notations.

18 SECRETARY BASTIDA: I'm sorry, Mr. Chairman, you're
19 talking about the November 20th agenda?

20 CHAIRPERSON HOOD: Oh, I'm sorry. I moved on --

21 COMMISSIONER PARSONS: It's November 16th. There was
22 no -- you need to change the date.

23 CHAIRPERSON HOOD: Yes. You have November 20th here,
24 but actually it's the November 16th meeting.

25 SECRETARY BASTIDA: Right. It should be November

1 16th. Right.

2 CHAIRPERSON HOOD: It's the draft minutes that says
3 November 20th which should say November 16th.

4 SECRETARY BASTIDA: Yes.

5 CHAIRPERSON HOOD: Then again if you turn to page 2.

6 SECRETARY BASTIDA: Yes.

7 CHAIRPERSON HOOD: It's just grammatical errors where
8 you demoted me to Vice-Chair which I have no problems with, but
9 also where we have Item 4 where it has Commissioner Franklin, it
10 was seconded by me. Normally procedurally we show the
11 Commissioner's name who made the motion first and since I seconded
12 it my name would be second.

13 VICE CHAIRPERSON MITTEN: Mr. Chair, I had an addition
14 to the minutes which is at that meeting we also dealt with the
15 request from Mr. Gell about emergency rule making regarding one of
16 the proposed EEFs.

17 CHAIRPERSON HOOD: Good, good.

18 VICE CHAIRPERSON MITTEN: We denied their request for
19 an emergency.

20 CHAIRPERSON HOOD: Right. There should be some
21 notation of that action in these minutes.

22 SECRETARY BASTIDA: Thank you, Mr. Chairman. I will
23 make such a change, correction.

24 CHAIRPERSON HOOD: Okay. Yes. Maybe it was intended
25 to be on page 3, but anyway, colleagues, what is your pleasure? I

1 have asked whoever makes the motion would include the necessary
2 corrections on this.

3 COMMISSIONER HOLMAN: So moved with the necessary
4 corrections.

5 COMMISSIONER FRANKLIN: Second.

6 CHAIRPERSON HOOD: Moved and properly seconded. All
7 those in favor by usual sign of voting.

8 COMMISSIONERS: Aye.

9 CHAIRPERSON HOOD: Any opposition? So ordered.
10 Staff, would you record the vote?

11 SECRETARY BASTIDA: Yes, Mr. Chairman. The Staff
12 would record the vote 5 to 0, Mr. Holman moving, Mr. Franklin
13 seconded and the rest of the Commissioners voting in the
14 affirmative. Thank you.

15 CHAIRPERSON HOOD: Okay. Thank you. Next,
16 colleagues, we also have again our Special Public Meeting Minutes
17 for November 27th.

18 VICE CHAIRPERSON MITTEN: Mr. Chair, there's just a
19 typographical error under Number 1 where it should say November
20 27th instead of November 20th.

21 CHAIRPERSON HOOD: Okay. Any other changes? If not,
22 I will accept a motion.

23 VICE CHAIRPERSON MITTEN: So moved.

24 COMMISSIONER FRANKLIN: Second.

25 CHAIRPERSON HOOD: Moved and properly seconded. All

1 those in favor?

2 COMMISSIONERS: Aye.

3 CHAIRPERSON HOOD: Any opposition? So ordered.
4 Staff, would you record the vote?

5 SECRETARY BASTIDA: Yes. The Staff would record 5 to
6 0, Ms. Mitten moving and I couldn't quite catch who seconded it.

7 CHAIRPERSON HOOD: Mr. Franklin.

8 SECRETARY BASTIDA: Mr. Franklin seconded it, the rest
9 of the Commissioners voting in the affirmative. Thank you.

10 CHAIRPERSON HOOD: Okay. Thank you. Moving right
11 along with our agenda, I'm going to ask the Office of Planning to
12 give us a Status Report and if it's the wish of the Commission we
13 would probably rather have the Commission ask the questions, but
14 if you can give us a brief report and we'll ask questions. Thank
15 you, Ms. McCarthy.

16 MS. MCCARTHY: Okay. Thank you, Mr. Chair. That
17 would be fine and I just should note that because there were a
18 number of cases on here that were very far in the future they were
19 cases that we knew from discussions with applicants were going to
20 be coming up but they hadn't been filed yet we thought that added
21 a lot of extraneous detail that wasn't really important. So we
22 attempted to shorten this and simplify it so it would be more
23 useful and meaningful to the Commission. However, apparently in
24 that process the American University Campus Plan and the Antenna
25 Case were inadvertently left off. So we will definitely put them

1 back again. I know the Antenna Case is scheduled for a hearing I
2 believe in February and the American University Campus Plan Case
3 in February as well.

4 COMMISSIONER FRANKLIN: Mr. Chairman, I have a
5 question about the Antenna matter.

6 CHAIRPERSON HOOD: Sure.

7 COMMISSIONER FRANKLIN: And perhaps the Office of
8 Planning can enlighten me. I know that that's pending in Federal
9 District Court, but I have the impression that the District has
10 been taking the position that the District Court has no
11 jurisdiction and this is primarily an administrative matter and am
12 I correct in assuming that there has been an appeal
13 administratively of the permit that was granted for that tower
14 whose construction has been halted? Do you happen to know?

15 MS. MCCARTHY: Right. There was an appeal. There
16 was an administrative appeal to the BZA that was filed by the
17 Tenley Citizen's Organization, but that's where I have to turn to
18 -- is Ms. Kress here, because that was originally to be heard in
19 December I believe and it's been postponed and I believe my
20 understanding was that that was tabled while the court case was
21 going on. Oh, Alan, you're here.

22 MR. BERGSTEIN: Yes, I'm here. Is there a question
23 I can answer about the Tower case, what's on the table?

24 COMMISSIONER FRANKLIN: I just was curious as to what
25 the status of this was apart from the proceedings in the Federal

1 District Court.

2 MR. BERGSTEIN: I believe that the applicant,
3 American Tower, has filed an appeal with the Board of Appeals and
4 Review with respect to that part of the recision order that dealt
5 with other than zoning issues. I do not know if they filed an
6 appeal with the BZA with respect to that part of the order that
7 dealt with the side yard setback which was the sole zoning issue.

8 They did? Oh, Ms. Sansone said that they did so I believe those
9 two administrative appeals have been filed.

10 COMMISSIONER FRANKLIN: In your judgment is there any
11 way in which this matter could ultimately come before us?

12 MR. BERGSTEIN: Come before the Zoning Commission?

13 COMMISSIONER FRANKLIN: Yes.

14 MR. BERGSTEIN: No, not as a matter of an appeal or
15 as a special exception which would be the only two adjudications
16 that would relate to zoning.

17 COMMISSIONER FRANKLIN: Okay. Thank you.

18 CHAIRPERSON HOOD: Any other questions of the Office
19 of Planning?

20 VICE CHAIRPERSON MITTEN: Mr. Chair, I just want to
21 highlight something that I want to make sure doesn't get
22 overlooked which is we had a text amendment case that we had taken
23 up on an emergency basis regarding police and fire facilities and
24 at the time we handled it as an emergency, but we pledged to look
25 at making permanent changes to the legislation to accommodate

1 those facilities and I just want to make sure we don't lose track
2 of that.

3 SECRETARY BASTIDA: Mr. Chairman, could I address
4 that?

5 CHAIRPERSON HOOD: Yes.

6 SECRETARY BASTIDA: Ms. Mitten, I have been in contact
7 with the applicant every month reminding the applicant of the
8 information that they are supposed to provide to us and to the
9 Office of Planning regarding that matter and so far the applicant
10 has failed to provide such information.

11 VICE CHAIRPERSON MITTEN: Well, just as a point of
12 clarification, when they came to us they were asking for emergency
13 legislation or emergency rule making.

14 SECRETARY BASTIDA: Correct.

15 VICE CHAIRPERSON MITTEN: So after we basically
16 handled their issue are they still considered the applicant or is
17 it now we're taking that issue up because in the context of the
18 emergency we realized that we needed to do something on a
19 permanent basis? So I just want to be sure we're not unduly
20 relying on them when we should really be acting on our own
21 initiative.

22 SECRETARY BASTIDA: Ms. Mitten, I believe that the law
23 firm that was hired by the police department is still the
24 applicant and at this point I don't believe that the Commission
25 has to rely on their own initiative to complete that case and that

1 is my judgment based on my conversations with the legal person
2 representing the police department in that case. As a matter of
3 fact, that law firm withdrew the part related to the fire
4 department and it only was to the police that affected emergency
5 legislation. I don't know if you recall that. So I believe that
6 they are still the legal representative and I will call them again
7 tomorrow to make sure that, in fact, my conversation with them
8 right after Thanksgiving I think two or three Mondays ago is still
9 valid.

10 VICE CHAIRPERSON MITTEN: Thank you.

11 SECRETARY BASTIDA: Yes.

12 CHAIRPERSON HOOD: Any other questions, colleagues, of
13 the Office of Planning? Hearing none, I think this status report
14 and the format in which we are doing it now has really, really
15 added to saving us time in our hearings. So again I want to
16 commend the Office of Planning and thank them for keeping the
17 report up.

18 Moving right along, Hearing Action. Earlier we did
19 a preliminary piece where we have some housecleaning that we need
20 to do. Normally I go to the Office of Planning, but, colleagues,
21 we have two cases in front of us in which we need to do some
22 housecleaning and one of them is Case 00-18T and
23 99-3Z. I believe we can proceed on both of them at the same time.

24 So with that.

25 COMMISSIONER FRANKLIN: Mr. Chairman, I have a motion

1 in that regard.

2 CHAIRPERSON HOOD: Okay.

3 COMMISSIONER FRANKLIN: I believe we have previously
4 agreed to set down for hearing two cases relating to the Woodies
5 property, 99-3Ziii and
6 00-18T. In one of those cases, and I'm not quite sure which one,
7 I believe we had a partial hearing. In any event I think to wipe
8 the slate clean I would like to move that we dismiss or vacate as
9 appropriate, that we reconsider the set down votes and upon
10 reconsideration decide to dismiss them or vacate them as
11 appropriate so that we start off with a clean slate regarding this
12 property.

13 CHAIRPERSON HOOD: I believe procedural-wise,
14 colleagues, first we need to have a motion to reconsider and then
15 after we reconsider it we need to then see whether we are going to
16 dismiss it or not. So with that, Mr. Franklin, I would ask maybe
17 if you could put a motion on the table.

18 COMMISSIONER FRANKLIN: I move that we reconsider our
19 previous decision to set down for a hearing two cases related to
20 Woodies, 99-3Ziii and
21 00-18T.

22 CHAIRPERSON HOOD: Okay. Thank you, Mr. Franklin.
23 Colleagues, can I get a second?

24 COMMISSIONER PARSONS: Second.

25 CHAIRPERSON HOOD: Okay. It's been moved and

1 seconded. All those in favor by usual sign of voting.

2 VICE CHAIRPERSON MITTEN: Mr. Chairman?

3 CHAIRPERSON HOOD: Hold on. There is some
4 unreadiness.

5 VICE CHAIRPERSON MITTEN: I'm sorry. I had a
6 procedural question.

7 CHAIRPERSON HOOD: Sure.

8 VICE CHAIRPERSON MITTEN: In the issue of a
9 reconsideration if someone like myself had not voted on the set
10 down originally, is it appropriate for me to participate in a vote
11 for reconsideration?

12 CHAIRPERSON HOOD: I believe so, but I will yield that
13 to Corp. Counsel. Mr. Bergstein.

14 MR. BERGSTEIN: That relates to a decision meeting
15 where you are either taking proposed or final action, but the set
16 down meeting procedures simply say that a vote to deny has to be
17 done by the full majority, majority of the full Zoning Commission
18 whereas a vote to set down just requires a full majority of the
19 members present. So that is the posture where you are still.
20 You're not taking proposed action. You placed yourself back at
21 the set down process and the question is whether or not instead of
22 setting the matter down for a hearing you're dismissing the
23 petition and because it's in that posture and not the decision
24 posture the rule about reading the record doesn't apply. In
25 essence there is no record because there has been no hearing.

1 CHAIRPERSON HOOD: Okay. Commissioner Mitten, does
2 that answer --

3 VICE CHAIRPERSON MITTEN: To me there is a two step
4 process that's going to go on now. One is we vote to reconsider
5 and if we vote to reconsider, then we vote to eliminate the set
6 down and I believe I understood you to say that I could properly
7 vote in the latter question but on the former question if I didn't
8 consider in the first place can I vote to reconsider is what I'm
9 asking.

10 MR. BERGSTEIN: Again, I believe you can because
11 the only requirement for a reading of the record of a member who
12 wasn't present applies to a decision meeting which is a decision
13 to either proposed action or final action on the actual petition
14 itself following hearing. This is more of a procedural matter.
15 It's still at conception, it's a prehearing event and, therefore,
16 I don't believe that that rule would apply.

17 VICE CHAIRPERSON MITTEN: Okay. Thank you. I'm
18 prepared to vote, Mr. Chairman.

19 SECRETARY BASTIDA: Mr. Chairman, for clarification
20 00-18T was never set down for a hearing so you will only be
21 dismissing that one.

22 CHAIRPERSON HOOD: Okay. So I shouldn't have moved
23 them together then. From what I --

24 SECRETARY BASTIDA: You can move it because Mr.
25 Franklin said dismiss -- which is appropriate.

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CHAIRPERSON HOOD: Okay. Okay.

SECRETARY BASTIDA: But that's just trying to clarify Ms. Mitten's point.

CHAIRPERSON HOOD: Okay. Let me ask, colleagues, any other discussion? It's been moved and properly seconded. All those in favor by usual sign of voting.

COMMISSIONERS: Aye.

CHAIRPERSON HOOD: Any opposition? So ordered. Staff, would you record the vote?

SECRETARY BASTIDA: Yes. The Staff would record the vote 5 to 0, Mr. Franklin moving and Mr. Parsons seconding and the remaining Commissioners voted in the affirmative so the vote is 5 to 0 --

CHAIRPERSON HOOD: Okay. Colleagues, we have agreed to reconsider these two cases for set down, 99-32Ziii and 00-18T. How would we like to proceed? Commissioner Franklin?

COMMISSIONER FRANKLIN: I move that these two set down decisions be vacated or dismissed as appropriate.

COMMISSIONER PARSONS: I second.

CHAIRPERSON HOOD: It's been moved and seconded. All those in favor by usual sign of voting.

COMMISSIONERS: Aye.

CHAIRPERSON HOOD: Any opposition? So ordered. Staff, would you record the vote?

SECRETARY BASTIDA: Yes. Mr. Chairman, the Staff

1 would record that the vote 5 to 0 to vacate or dismiss as is
2 appropriate, Mr. Franklin moving and Mr. Parsons seconded, the
3 rest of the Commissioners voting in the affirmative. Thank you.

4 CHAIRPERSON HOOD: Okay. Next, colleagues, we have on
5 the Hearing Action which is now labeled C Zoning Commission Case
6 No. 00-33C, the Woodies PUD and related Map Amendment or Text
7 Amendments in the Alternative. I will now turn to the Office of
8 Planning.

9 MS. MCCARTHY: Mr. Chairman and members of the
10 Commission, the Office of Planning is very pleased to recommend
11 set down for the proposed application on Square 346. This planned
12 unit development has basically three major aspects. The applicant
13 is proposing on Square 377 which is the south side of the 900
14 block of F Street to construct 88,000 square feet of housing on
15 that parcel. They are proposing on Square 517 to do a minimum of
16 12,000 units of housing over and above the 123,000 which are
17 required on that site and as much as 150,000 square feet of
18 housing in addition to the 123,000 square feet that are required
19 on the site and most importantly in the below grade level, the
20 ground floor and the first floor above grade the applicant is
21 proposing to make a major retail commitment to that site. The
22 city is in negotiation with a major retail tenant and with the
23 owner of the building and the negotiations are virtually finalized
24 or very close to being finalized so we are very optimistic about
25 achieving a major retail presence on those lower three floors.

1 We find that this application is not only entirely
2 consistent with what the comprehensive plan envisioned for that
3 site and what the zone plan envisioned for that site but more than
4 meets what would have been the housing requirement on the site had
5 it been zoned DDC-3C in a housing priority area which it was not
6 and the possibility of bringing back a major retail tenant into
7 the Woodies building in terms of generating approximately 1600
8 jobs, about \$4.3 million in sales tax revenue and bringing life to
9 that section of downtown is a very exciting prospect. It looks
10 already that even the discussions that are taking place now with
11 regard to a major retailer on that site have generated interest in
12 sites in the immediate vicinity for retail presence on F Street in
13 space that's been vacant for quite a long time.

14 In exchange for these commitments of the major
15 retail presence, the housing on Square 377 and Square 517, the
16 applicant then would be looking to fill the remaining space in the
17 building with general office use and I think those are the major
18 outlines of the deal and the Office of Planning recommends this
19 application for set down.

20 DIRECTOR ALTMAN: Thank you. I would just briefly
21 comment because I think that since the last time the Commission
22 saw the various cases that were dismissed and vacated we have been
23 working since that time. We tried to outline this a bit in our
24 report with the property owner. Doug Jemal is here. We've done a
25 lot of work as you know. We've had task forces that met and put a

1 lot of effort in because this is such an important site to the
2 city. It's really a tremendous opportunity that's now before us.

3
4 The Mayor released the Downtown Action Plan about a
5 month ago. One of the key actions was obviously bringing Woodies
6 back as a major retail presence and also bringing downtown housing
7 and I think that this is extraordinary because while there is no
8 housing requirement it was a housing option. In other words, it
9 was preferred, it was allowed, but it wasn't required, but that
10 this amenity package and what is being brought forward today meets
11 all of the downtown objectives of retail, of housing, of
12 preservation, and puts together a package that really allows the
13 city in many areas of our downtown to move forward which is why
14 we're so supportive in that the work over the past year has really
15 paid off, the work that we have brought to the Commission and had
16 hoped. I think this exceeded our expectations when we started on
17 this path a year ago with you. So it's in that light that we
18 bring this to you today.

19 CHAIRPERSON HOOD: Thank you, Ms. McCarthy and Mr.
20 Altman. One of the things that I do want to digress on just a
21 little bit we were supposed to have an overview of the Downtown
22 Action Plan. Let's stop now and let's maybe coordinate that so
23 maybe we can do it in January at our next monthly meeting, Mr.
24 Bastida.

25 SECRETARY BASTIDA: Yes, Mr. Chairman.

1 CHAIRPERSON HOOD: We need the Office of Planning, the
2 Director of the Office of Planning, Mr. Altman, to give us an
3 overview of the Downtown Action Plan.

4 DIRECTOR ALTMAN: Yes. I would be happy to do
5 that. We were going to do that last month, but the agenda was
6 running full that the --

7 CHAIRPERSON HOOD: I think one of my colleagues was
8 unable to make it so we need to proceed with that as soon as
9 possible preferably the January meeting. I believe our scheduled
10 allowed January. I don't know about February and March.

11 SECRETARY BASTIDA: I think that you are correct, Mr.
12 Chairman. I think that it would be preferable to have it on the
13 January agenda which is the 8th of January.

14 CHAIRPERSON HOOD: Okay.

15 SECRETARY BASTIDA: That way the Office of Planning is
16 aware of the date for that briefing.

17 CHAIRPERSON HOOD: Okay. That sounds good.
18 Colleagues, first we need to waive our rules for the -- the
19 Planning Report. General consensus?

20 No problems. Okay. We'll move forward. Any question? Any
21 comments? The applicant has asked us to set this down for a
22 hearing, but do we have any questions or comments?

23 COMMISSIONER FRANKLIN: I just have a question that it
24 may be that it can be answered later and it may be excessively
25 technical for our present purposes, but perhaps the Office of

1 Planning could comment. The associated residential development on
2 Squares 377 and 517 I take it these would be conceptually
3 amenities to the PUD which would affect the Woodies site itself or
4 are we talking about a PUD that extends over three squares?

5 MS. MCCARTHY: We were conceiving of them as
6 amenities to this planned unit development.

7 COMMISSIONER FRANKLIN: Okay. Thank you.

8 CHAIRPERSON HOOD: Colleagues, any other questions?

9 COMMISSIONER PARSONS: Well, I'd just like to
10 compliment and congratulate the Office of Planning and the Jemal
11 Organization for a year well spent. I'm not conducting a hearing
12 nor am I offering an opinion on the case, but this is very
13 exciting. So I would move that we set this down for a hearing,
14 Mr. Chairman.

15 COMMISSIONER HOLMAN: Second.

16 CHAIRPERSON HOOD: It has been moved
17 and --

18 COMMISSIONER PARSONS: And it's the PUD aspect of
19 this that I'm moving not the text case which was proposed in the
20 alternative.

21 CHAIRPERSON HOOD: Okay.

22 COMMISSIONER PARSONS: Do we need to deal with both
23 of these separately?

24 CHAIRPERSON HOOD: I believe we need to make sure that
25 we're clear because I do see an alternative. I was going to ask

1 for discussion before we adopted, but the concern I believe that I
2 know I have is amendment in the alternative. I think, colleagues,
3 from what I'm hearing, Commissioner Parsons is that your motion is
4 just to set down just a PUD part and not the text amendments.

5 COMMISSIONER PARSONS: Correct.

6 CHAIRPERSON HOOD: Colleagues, do we have any concern,
7 any questions?

8 SECRETARY BASTIDA: Mr. Chairman, it would be nice if
9 a motion addresses the alternative as being dismissed or held for
10 consideration later on or whatever.

11 CHAIRPERSON HOOD: Okay. I will ask Mr. Parsons to
12 take that motion off the table and restate it to incorporate the
13 whole piece of what actually we're doing as far as the
14 alternative.

15 COMMISSIONER PARSONS: I move that we set down the PUD
16 proposal and I guess dismiss in the alternative the text amendment
17 alternative that was proposed.

18 CHAIRPERSON HOOD: Okay. It's moved. Can I get a
19 second?

20 COMMISSIONER HOLMAN: Second.

21 CHAIRPERSON HOOD: Okay. It's moved and a second.
22 All those in favor by the usual sign of voting?

23 COMMISSIONERS: Aye.

24 CHAIRPERSON HOOD: Any opposition? So ordered.
25 Staff, would you record the vote?

1 SECRETARY BASTIDA: Yes. The Staff would record the
2 vote 5 to 0, Mr. Parsons moving and Mr. Holman seconded it, all
3 the rest of the Commissioners voting in the affirmative. Thank
4 you.

5 CHAIRPERSON HOOD: Okay. There is no proposed action.
6 Our final action is Zoning Commission Case No. 96-7C, the
7 Kennedy-Warren. Mr. Bastida.

8 SECRETARY BASTIDA: The proposed draft of the order of
9 the Kennedy-Warren addressing all of Ms. Newmark's comments is in
10 front of you for your disposition.

11 CHAIRPERSON HOOD: Okay. There were a few things
12 cited. One or two remarks were specifically regarding me,
13 Commissioner Hood, and I just want to say that Commissioner Hood
14 was well aware of his authority, well aware of the charge that was
15 in front of us that was remanded from the court and made the
16 decision not by information provided but solely on the record
17 which Commissioner Hood read. So with that I will open it up for
18 discussion.

19 SECRETARY BASTIDA: Mr. Chairman, you want to clarify
20 that you read the record in its entirety. Correct?

21 CHAIRPERSON HOOD: Right. If you want to say
22 entirety, I read the record.

23 SECRETARY BASTIDA: Yes.

24 CHAIRPERSON HOOD: And I'm sure it's in its entirety,
25 but I just wanted to put that into the record.

1 SECRETARY BASTIDA: Yes. Thank you, Mr. Chairman.

2 CHAIRPERSON HOOD: Also, let me just ask the existence
3 of the Blagden Alley and the what is it, Logan Circle Community
4 Group?

5 VICE CHAIRPERSON MITTEN: That's a different case.

6 SECRETARY BASTIDA: That's a different case, Mr.
7 Chairman. That's the following case.

8 CHAIRPERSON HOOD: Different case. Oh, I'm sorry.

9 SECRETARY BASTIDA: I would like you to move this
10 fast, but not that fast.

11 CHAIRPERSON HOOD: I'm sorry. I've moved on to the
12 next case. Okay. I guess I do have to have participation from my
13 colleagues. Okay. Colleagues, we are again on the Kennedy-Warren
14 Case. Any comments?

15 VICE CHAIRPERSON MITTEN: Mr. Chair, I won't be
16 tedious about this. I just want to reiterate the point that I had
17 made in our previous discussion on this and this relates to in the
18 Conclusions of Law section. It relates to Number 7 which deals
19 with the requirement that in accordance with the Ward 3 plan that
20 development adjacent to parks that are designated landmarks be low
21 density and then following that Number 8 which says, "Read in its
22 entirety the purpose of Section 1407.3(c) is to protect parks from
23 potential harm to their environment and aesthetics" and it goes on
24 to just basically repeat the items that are included in Section
25 1407.3(c).

1 But I just wanted to remind my colleagues that read
2 in its entirety Section 1407.3(c) includes a few more words and I
3 think those words are meaningful and what those words are it says,
4 "The development adjacent to parks which are designated landmarks
5 must be low density and shall be further restricted where
6 advisable to protect unstable soils eliminate runoff potential"
7 and so on. I think that the low density requirement exists on
8 its own and there are further restrictions that relate to these
9 environmental issues that may be imposed as relevant and the fact
10 that as I had mentioned in our previous discussion that there is
11 no recognition in the density of this project given to the low
12 density requirement in the Ward 3 plan that I think there are
13 still aspects of the order that I don't agree with and I'll be
14 voting against it.

15 But I just wanted to take one last attempt at
16 explaining my position.

17 CHAIRPERSON HOOD: So noted. Any other comments,
18 colleagues? Again this is in front of us for final action.

19 COMMISSIONER PARSONS: Well, as I understand Ms.
20 Mitten has suggested we make a change in conclusion number 7.
21 That was your proposal.

22 VICE CHAIRPERSON MITTEN: Well, I guess --

23 COMMISSIONER PARSONS: Just to reflect that it's --

24
25 VICE CHAIRPERSON MITTEN: My proposal is really that

1 Number 8 is incorrect. I don't know that I have an actual
2 proposal, but I guess what I'm saying is that Number 8 is
3 incorrect because read in its entirety, that's not what I believe
4 Section 1407.3(c) says and then the implication of it is captured
5 in Number 15 which says, "The Commission concludes that the
6 application of the low density provision in Section 1407.3(c) is
7 limited by the provisions of the comprehensive plan that give
8 greater weight to the land use element." I don't disagree with
9 that, "encourage high density development in the Connecticut
10 Avenue corridor and encourage increased residential development
11 near Metro stations and further by the ameliorative measures
12 required by the guidelines, conditions and standards."

13 I think the point is that it seems to say we don't
14 have to give any weight to the low density requirement and I don't
15 believe that's true. We definitely are required to give greater
16 weight to the land use element that designates this high density,
17 but we gave absolutely no weight to the low density requirement.

18 COMMISSIONER FRANKLIN: Well, I respectfully disagree
19 with my colleague on that point because I think at least I for one
20 gave some weight to what the meaning of that low density provision
21 might be and I concluded that it could only be read in the context
22 of the protection of the landmark character of these parks because
23 that provision seems to me to be very irrelevant to the site that
24 is under consideration in this case and I think it's not correct
25 that we gave no consideration to that element. We just simply

1 regarded it as not sufficiently weighty when compared to the
2 comprehensive plan as a whole and the particular nature of the
3 site that was under consideration.

4 Having said that, Mr. Chairman, I'd like to move
5 that we adopt the final order that is before us, but I would like
6 to in so making that motion indicate that I believe that the
7 various procedural and other arguments that have been presented to
8 us by counsel for the opponents have been considered and found to
9 be without merit. We did not, in my judgment, make a mistake in
10 regard to requesting the Office of Corporation Counsel to assist
11 us in various matters including providing a draft of a proposed
12 order that would reflect our deliberations and the corporation
13 counsel has not inappropriately participated in this particular
14 decision.

15 Ms. Newmark also suggested my colleague, Ms.
16 Mitten, should express her views and dissenting opinion which, of
17 course, she is free to do although that is not the normal
18 procedure of the Commission and all the other particular
19 objections that she has made have been I think duly considered and
20 found to be without merit.

21 So I just wanted to, not only in terms of
22 procedural but substantive arguments, make that plain at least in
23 terms of my consideration of this case. So again I repeat my
24 motion to approve the final order that is before us.

25 CHAIRPERSON HOOD: Okay. Colleagues, we have a motion

1 on the table. Can I get a second?

2 COMMISSIONER PARSONS: I'll second that.

3 CHAIRPERSON HOOD: It has been moved and seconded. All those
4 in favor by usual sign of voting.

5 COMMISSIONERS FRANKLIN, HOLMAN AND PARSONS: Aye.

6 CHAIRPERSON HOOD: Any opposition?

7 VICE CHAIRPERSON MITTEN: Aye.

8 CHAIRPERSON HOOD: So ordered. Staff, would you
9 record the vote?

10 SECRETARY BASTIDA: Mr. Chairman, the Staff would
11 record the vote 4 to 1, Mr. Franklin moving the adoption, Mr.
12 Parsons seconded, Mr. Holman and Mr. Hood voting in the
13 affirmative, Ms. Mitten voting in the negative.

14 CHAIRPERSON HOOD: Okay. Thank you. Colleagues,
15 we're now down to the Consent Calendar, the case that I was on
16 about five minutes ago. Okay, Mr. Bastida.

17 SECRETARY BASTIDA: Yes. Mr. Chairman, I think that
18 the applicant has failed to provide all the notices as they are
19 appropriate to two other parties on the proceedings which is the
20 Logan Circle Community Association and Blagden Allen Neighborhood
21 Association. I think that the Commission might be best served
22 requesting the applicant to do so and provide that for the record.

23 Is there any other information that the Commissioners would like
24 to have on the record?

25 CHAIRPERSON HOOD: Okay. So, Mr. Bastida, if you

1 could just repeat what you just asked for. Are you asking for
2 Blagden Alley and Logan --

3 SECRETARY BASTIDA: Circle.

4 CHAIRPERSON HOOD: Is it the Logan Circle Community
5 Group or Logan Circle Citizen's Association?

6 SECRETARY BASTIDA: No. The official title from the
7 order is the Logan Circle Community Association. That is the
8 title as is written on the Zoning Commission order for the
9 original case.

10 CHAIRPERSON HOOD: Okay. The Logan Circle Community
11 Association.

12 SECRETARY BASTIDA: Correct.

13 COMMISSIONER FRANKLIN: And, of course, if the
14 organization had become renamed or had succeeded to another
15 organization that would also be considered an entity to whom
16 service would have to be made.

17 CHAIRPERSON HOOD: Okay. That's one request.
18 Colleagues, any other?

19 VICE CHAIRPERSON MITTEN: Mr. Chair, I have two
20 requests. One is we have a letter dated December 5th from the
21 applicant's attorney that has a chart and it shows the approved
22 hotel and the proposed office amenity in a chart and it shows the
23 contribution, the cost of the amenity and I would like that chart
24 to be expanded to include the approved office PUD.

25 I would also like some explanation of the fact that

1 it looks like, based on its \$600,000 contribution for the market
2 rate, that for 25 units that the contribution is at the rate of
3 \$24,000 per unit where the subsidy for affordable housing is at
4 the rate of \$9600 per unit which seems strange. That seems
5 unusual that you would have a larger subsidy for market rate
6 housing so some explanation of that would be helpful to me and
7 then the condition I think that we would be modifying is in the
8 original PUD. It's on page 13. It's Number 17.

9 The delivery of the amenity for the housing was in
10 phases and the first phase would release the top three floors of
11 the project and then the balance would release the rest of the
12 project and to the extent that the applicant would like to
13 maintain some sort of gradual release I think they need to put
14 that in writing so that we can evaluate it. Otherwise I think the
15 tradition is that full delivery of the amenity is required before
16 the certificates of occupancy would be issued.

17 CHAIRPERSON HOOD: Any other comments, colleagues,
18 before we proceed?

19 COMMISSIONER FRANKLIN: Well, Mr. Chairman, I just
20 want to register that I am somewhat unpersuaded at the moment that
21 the housing amenity associated with this PUD should take place at
22 such a large distance from the site itself and I know we have a
23 representation from the ANC with respect to its preferences in
24 regard to these housing amenities, but I would like to suggest
25 that the housing market has undergone such a transformation in the

1 District and in this area so I am advised that it is not clear to
2 me that affordable housing should not be provided within the ANC
3 2F area instead of being dispersed to distant locations throughout
4 the city. So at such time as we take this matter up I would
5 certainly like to hear more on that issue.

6 CHAIRPERSON HOOD: Okay. So noted. Any other
7 comments, colleagues? With that I believe that the information
8 that we are requesting is substantial so I will ask that we
9 postpone this until our January regular monthly meeting so that we
10 can give the applicant who is in the audience, the counsel, to
11 give them time to prepare to respond to our comments and that at
12 that time I believe that we can proceed. If that is the wishes of
13 my colleagues, then do you think we can do that by general
14 consensus?

15 COMMISSIONERS: Okay.

16 CHAIRPERSON HOOD: Okay. Thank you.

17 DIRECTOR ALTMAN: Chairman Hood?

18 CHAIRPERSON HOOD: Yes.

19 DIRECTOR ALTMAN: I just wanted to also let the
20 Commission know that the Office of Planning will also prepare a
21 report that will follow up on these issues with the applicant and
22 for that Commission meeting.

23 CHAIRPERSON HOOD: Okay. Good. Thank you, Mr.
24 Altman. With that we have no Legislative Report, no Litigation,
25 Correspondence. All was received and was case related. Report of

1 the Secretary, Mr. Bastida.

2 SECRETARY BASTIDA: Yes, Mr. Chairman. You have a
3 copy of the Reminder Schedule through the beginning of March which
4 makes a very busy period for the Zoning Commission and I just
5 wanted you to be aware of the innumerable amount of meetings you
6 have scheduled.

7 CHAIRPERSON HOOD: Okay. Thank you, Mr. Bastida, for
8 that report. Next, other business. The Zoning Commission's
9 requested attendance at upcoming BZA Meetings and Hearings.
10 Colleagues, I'm going to ask that we put our schedules out. I
11 think we're okay up until January 2nd.

12 SECRETARY BASTIDA: 2nd.

13 CHAIRPERSON HOOD: Okay. I believe Mr. Parsons is
14 going to take January the 2nd. So we're okay beyond January the
15 2nd. We need to start with January the 9th.

16 SECRETARY BASTIDA: Yes, Mr. Chairman.

17 CHAIRPERSON HOOD: Mr. Parsons?

18 VICE CHAIRPERSON MITTEN: Well, I'd be happy to take
19 that day because a case that I'm on has been continued to that
20 afternoon so that would be as convenient for me as for anyone.

21 CHAIRPERSON HOOD: Okay. So Commissioner Mitten will
22 take the 16th.

23 VICE CHAIRPERSON MITTEN: No, the 9th.

24 CHAIRPERSON HOOD: I'm sorry. The 9th.

25 SECRETARY BASTIDA: And the 16th?

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CHAIRPERSON HOOD: No.

VICE CHAIRPERSON MITTEN: He's jumping ahead again.

CHAIRPERSON HOOD: I'm jumping ahead. always got to think ahead, I guess. What is that, the 16th? Well, I guess unless somebody else wants the 16th, I will take it. Does anybody else want --

SECRETARY BASTIDA: You have the Potter appeal that day, Mr. Chairman.

CHAIRPERSON HOOD: The Potter appeal?

SECRETARY BASTIDA: The Potter appeal that is --

CHAIRPERSON HOOD: Who's on that case?

SECRETARY BASTIDA: That it was a continuation.

CHAIRPERSON HOOD: Right. I'm sure that we have a representative from the Zoning Commission on the Potter appeal.

VICE CHAIRPERSON MITTEN: It's not me.

SECRETARY BASTIDA: It was Mr. Holman.

CHAIRPERSON HOOD: Mr. Holman?

COMMISSIONER HOLMAN: You can put me down tentatively.

CHAIRPERSON HOOD: Okay. For the Potter case. Okay. Well, let's do this. Let's put Mr. Holman down tentatively for the afternoon and I will take the morning. Or, Mr. Holman, did you want the whole day? Well, all of it is going to be --

COMMISSIONER HOLMAN: You can put me down for the whole day at this time.

1 CHAIRPERSON HOOD: Okay. And let me just say if Mr.
2 Holman is unable to do the 16th I will step in. The 23rd.

3 COMMISSIONER FRANKLIN: Mr. Chairman, who sat on the
4 Burke School or has that not been heard at all?

5 CHAIRPERSON HOOD: It's saying continued from I guess
6 --

7 SECRETARY BASTIDA: It hasn't been heard.

8 CHAIRPERSON HOOD: It hasn't been heard. VICE

9 CHAIRPERSON MITTEN: Did anybody prep that?

10 MS. SANSONE: Commissioner Mitten, the hearing has
11 not been started in that case.

12 CHAIRPERSON HOOD: It hasn't been started. Okay.

13 VICE CHAIRPERSON MITTEN: But I guess what I was
14 asking is if anybody -- it wasn't in anybody's package that they
15 read already.

16 MS. SANSONE: It's been continued several times. I
17 don't believe we've seen any substantive materials.

18 VICE CHAIRPERSON MITTEN: Okay. Thanks.

19 CHAIRPERSON HOOD: The reason I want to take the 30th
20 is because I started off on that even though it's been dealt with
21 a number of times, but I was there from the inception of that
22 case. So that would be advantageous for me I believe to be on the
23 30th.

24 COMMISSIONER PARSONS: Oh, I was going to volunteer
25 for that.

1 CHAIRPERSON HOOD: Oh. Well, I'll tell you what. I
2 don't believe it will matter even though I've heard it earlier
3 because this is now an appeal. So I guess there's an appeal and
4 an application. So I guess, Mr. Parsons, if you wanted to
5 volunteer.

6 COMMISSIONER PARSONS: You spent a couple of days
7 on this already?

8 CHAIRPERSON HOOD: I was here two times for that,
9 twice.

10 COMMISSIONER PARSONS: Have you made a decision?

11 CHAIRPERSON HOOD: We made a decision to give the City
12 Council time to do something I believe it was. I can't exactly
13 rememeber. Ms. Sansone, maybe you could help me. I know we made
14 two decisions on it.

15 MS. SANSONE: Mr. Chairman, so far the decisions
16 were only to continue it.

17 CHAIRPERSON HOOD: Okay.

18 COMMISSIONER FRANKLIN: Are we still talking about the
19 23rd at all?

20 CHAIRPERSON HOOD: Yes.

21 COMMISSIONER FRANKLIN: Because I could take the 23rd
22 although as you well know Tuesday mornings conflicts with an
23 important committee that I chair. Is there any chance that the
24 Burke School matter could be in the afternoon rather than in the
25 morning?

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CHAIRPERSON HOOD: I believe we --

COMMISSIONER FRANKLIN: Is that the only matter on
because American University is I believe moved to the Commission
is it not?

CHAIRPERSON HOOD: Right. I -- that was correct.

SECRETARY BASTIDA: Yes, it was. Excuse me, Mr.
Chairman.

CHAIRPERSON HOOD: Yes. That's fine. American
University has been moved to the Zoning Commission so the only
thing that's there is Burke School, but I believe we would have to
check with the staff of the Board of Zone and Adjustment because
from what I see here they have it down at 9:30.

MS. SANSONE: Mr. Chairman, the Burke School has
substantial community concerns in opposition at this point.

COMMISSIONER FRANKLIN: So that's an all day?

CHAIRPERSON HOOD: So that's an all day. Okay.

COMMISSIONER FRANKLIN: Well, I'll sign up for that.

VICE CHAIRPERSON MITTEN: Could I just ask a question
before we get too definitive about that? Civil infractions are
listed for that day so is it that Burke is going to take whatever
part of the day it takes or is there a limit to Burke and then
they're
going to pick up with civil infractions because then someone could
come that morning and Mr. Franklin could come in the afternoon and
do the civil infractions if that's how that day is going to play

1 out.

2 SECRETARY BASTIDA: If I may address that, I will not
3 be able to make a determination on the civil infractions until the
4 end of the day today, but really it would be more tomorrow once
5 they -- how many and how long it's going to take. The briefing
6 was supposed to be open until the closing of business today and
7 after that I could make the determination, but for the purpose of
8 an analysis I think that civil infractions might not take that
9 long.

10 CHAIRPERSON HOOD: Well, why don't we do this? Let's
11 do this. This is a quick fix. Mr. Parsons wanted to do the 30th.

12 I will keep myself available to serve the other portion on the
13 23rd that Mr. Franklin can't do and also if Mr. Holman is not
14 available for the 16th I will keep myself available to fill in for
15 those BZA scheduled meeting and hearings.

16 COMMISSIONER FRANKLIN: Well, Mr. Hood, I can inquire to see
17 whether I can be available the whole day because sometimes I can
18 change that other meeting around, but why don't we just
19 tentatively put me down and I'll put you down as a backup.

20 CHAIRPERSON HOOD: Okay.

21 COMMISSIONER FRANKLIN: Is that okay?

22 CHAIRPERSON HOOD: Okay. And we'll do the same thing
23 for Mr. Holman's, the 16th.

24 COMMISSIONER FRANKLIN: Yes.

25 CHAIRPERSON HOOD: And Mr. Parsons you have agreed to

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take the 30th.

SECRETARY BASTIDA: The 30th.

UNKNOWN PERSON: I don't want to be part of --.

CHAIRPERSON HOOD: Okay, colleagues. I guess every --
am I correct, Mr. Parsons? You didn't respond.

COMMISSIONER PARSONS: What --

CHAIRPERSON HOOD: Well, all we've done is just
continued it. So I really haven't heard anything just --

COMMISSIONER PARSONS: Oh, okay.

CHAIRPERSON HOOD: I haven't gotten into the merits.

CHAIRMAN PARSONS: Okay. Now I understand. Yes,
I'm on.

CHAIRPERSON HOOD: Okay.

SECRETARY BASTIDA: Mr. Chairman, I think that we can
pick the rest on January the 8th because we have now through
January and we can do February and March.

CHAIRPERSON HOOD: And we will know where I need to
fill in.

SECRETARY BASTIDA: Right. Yes.

CHAIRPERSON HOOD: Sounds good.

SECRETARY BASTIDA: Okay?

CHAIRPERSON HOOD: Okay. All right. Colleagues,
thank you. I believe everything else is in order. If there is no
other business for this meeting, this meeting will be adjourned.

SECRETARY BASTIDA: Thank you, Mr. Chairman.

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CHAIRPERSON HOOD: Thank you.

(Meeting adjourned at 2:27 p.m.)