

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING  
1126th MEETING SESSION (1st of 2002)

+ + + + +

MONDAY  
JANUARY 14, 2002

+ + + + +

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.,  
Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
JAMES HANNAHAM	Commissioner
PETER G. MAY	Commissioner
	(Architect of the
Capital)	
JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

Jerrily R. Kress, Director  
Alberto P. Bastida, Secretary, ZC  
Sharon Sanchez, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Andrew Altman, Director, Office of Planning  
Steven Cochran, Office of Planning  
Ellen McCarthy, Deputy Director,  
Office of Planning  
Jennifer Steingasser, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.  
Marie Sansone, Esq.

I-N-D-E-X

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

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(1:33 p.m.)

1  
2 CHAIRPERSON MITTEN: Good afternoon, ladies and  
3 gentlemen. This is the regular public meeting of the Zoning  
4 Commission of the District of Columbia for Monday, January 14,  
5 2002. My name is Carol Mitten. Joining me this afternoon are  
6 Vice Chairman Anthony Hood and Commissioners Peter May, John  
7 Parsons and James Hannaham.

8 There's just one change I'd like to make on the  
9 agenda and that is the designation under Hearing Action, letter  
10 B, Zoning Commission Case No. 00-04 is now being numbered Case  
11 No. 02-01, just for clarification.

12 Mr. Bastida, do we have any preliminary matters  
13 this afternoon?

14 SECRETARY BASTIDA: Madam Chairman, no, the staff  
15 has no preliminary matters.

16 CHAIRPERSON MITTEN: Thank you. Then we'll move  
17 to the minutes, Mr. Bastida.

18 SECRETARY BASTIDA: The staff requests the  
19 approval of minutes for November 19th and September 17th,  
20 December 10th minutes were not complete in the package and I  
21 would request that we postpone that until the February meeting.

22 CHAIRPERSON MITTEN: Thank you. We have  
23 -- let's take these separately. We have the minutes for our  
24 regular meeting on Monday, November 19, 2001.

25 I have some editorial changes that I'll give to

1 staff, but I did want to make a substantive change under  
2 Proposed Action on page 4, letter B. It said "by consensus, the  
3 Commission deferred this matter until February 2002 to allow  
4 more time to review the OP Report." It was actually to allow it  
5 to consider the Buzzard Point rezoning simultaneously with two  
6 requests for PUD extensions, those being Florida Rock and  
7 Capital Point.

8 And then a few other editorial changes, but I'll  
9 just hand those in to staff. And with that, I'd move approval  
10 of the November 19th minutes.

11 COMMISSIONER PARSONS: Second.

12 VICE CHAIRPERSON HOOD: Madam Chair, discussion?

13 CHAIRPERSON MITTEN: Yes.

14 VICE CHAIRPERSON HOOD: Also, I would like to add  
15 that there should be a notation made on the other business as  
16 opposed to the meeting as was expressed between the LSDBs and  
17 the DOES and there's no mention of it in these minutes.

18 CHAIRPERSON MITTEN: Will you take note of that,  
19 Mr. Bastida?

20 SECRETARY BASTIDA: Yes, I have taken note of it  
21 already.

22 CHAIRPERSON MITTEN: Thank you.

23 SECRETARY BASTIDA: That meeting has been  
24 scheduled for January 30th.

25 CHAIRPERSON MITTEN: Thank you. Any other

1 discussion on the November 19th minutes?

2 All those in favor, please say aye.

3 (Ayes.)

4 Those opposed, please say no.

5 Mr. Bastida?

6 SECRETARY BASTIDA: The staff will record the  
7 vote of 5 to 0 to approve with the amendments. Ms. Mitten  
8 moving and Mr. Parsons, seconding and Mr. Hood, Mr. Hannaham,  
9 Mr. May voting in the affirmative.

10 Thank you.

11 CHAIRPERSON MITTEN: Thank you. Now we have the  
12 minutes of our Special Public Meeting of December 17th.

13 VICE CHAIRPERSON HOOD: Madam Chair, I would move  
14 approval of our December 17th Special Meeting Minutes.

15 CHAIRPERSON MITTEN: Second. Is there any  
16 discussion?

17 All those in favor, please say aye.

18 (Ayes.)

19 Those opposed, please say no.

20 Mr. Bastida?

21 SECRETARY BASTIDA: The staff will record the  
22 vote 5 to 0. Mr. Hood moving and Ms. Mitten seconding. Mr.  
23 Peter May, Mr. Parsons and Mr. Hannaham voting in the  
24 affirmative.

25 CHAIRPERSON MITTEN: You know, I think, Mr.

1 Bastida, we're going to have to call the attention of  
2 Commissioners May and Parsons to the fact that they were not in  
3 attendance at that meeting and modify the vote.

4 SECRETARY BASTIDA: Okay.

5 CHAIRPERSON MITTEN: They're not listed as being  
6 present.

7 (Pause.)

8 Mr. Bergstein, are you going to help us out here?

9 MR. BERGSTEIN: I think the consensus is they  
10 should not, if they did not participate in the meeting.

11 CHAIRPERSON MITTEN: All right.

12 SECRETARY BASTIDA: The staff will record the  
13 vote 3 to 0. Mr. Hood moving, Ms. Mitten voting in the  
14 affirmative. Mr. Parsons voting in the affirmative. Mr. Hood  
15 moving, Ms. Mitten seconding, and voting in the affirmative and  
16 Mr. Parsons voting in the affirmative also.

17 CHAIRPERSON MITTEN: Mr. Hannaham voting in the  
18 affirmative.

19 SECRETARY BASTIDA: Hannaham? Okay, I'm sorry.

20 CHAIRPERSON MITTEN: Mr. Parsons and Mr. May not  
21 voting not having participated in the meeting.

22 SECRETARY BASTIDA: Thank you.

23 CHAIRPERSON MITTEN: Thank you, Mr. Bastida. Now  
24 we'll move to the report, the status report by the Office of  
25 Planning and before we do that, I'd like to congratulate the

1 Office of Planning on having filed all of their reports for this  
2 meeting session in a timely manner.

3 DEP. DIR. MCCARTHY: It was a better New Year's  
4 Resolution than losing weight.

5 (Laughter.)

6 Thank you, Madam Chair. Let me just briefly hit  
7 some of the main issues of the status report. Gateway Square  
8 and Unified Call Center both are the reports you were referring  
9 to and they're before you today. National Academy of Science's  
10 PUD modification, although the Office of Planning submitted an  
11 initial recommendation about that, the Applicant has a great  
12 deal more information that they are finalizing and so they  
13 deferred until February and we will be submitting a supplemental  
14 report when we get the additional information on that PUD  
15 modification.

16 Under cases pending, there's a slight typo with  
17 regard to the address, where it says 1700 K Street, PUD  
18 extension, that's the 2nd and K Street, N.E. PUD that was  
19 submitted as a PUD extension, but then we noticed that there had  
20 been substantial changes in the application, so we've gotten  
21 back to the Applicant and they are trying to decide whether to  
22 do that as a PUD modification or to go back to the original PUD  
23 and simply ask for an extension of that, so we're still in the  
24 process of talking to them about that.

25 The next three are all with regard to Southeast

1 Waterfront and we've all agreed that we would deal with those in  
2 February.

3 With regard to antennas, the Office of Planning  
4 has done a draft of some text language in association with the  
5 Task Force and it is before the Office of Corporation Counsel to  
6 iron out some legal wrinkles and we expect to get the report out  
7 to the Task Force this week so we are still anticipating a  
8 February set down for the antenna regulations unless the Task  
9 Force has some unforeseen issues, but we think what has been  
10 drafted is pretty consistent with the input that we've received  
11 from the Task Force up until this point.

12 And lastly, I just wanted to skip to the TDRs for  
13 Historic Churches and Synagogues which is a zoning consistency  
14 case. There had been a comprehensive plan amendment with regard  
15 to that. We've completed an initial assessment of what that  
16 would mean for the general supply of TDRs and the value of those  
17 TDRs and it's fairly problematic. So what we would like to  
18 recommend to the Commission is that we convene the churches,  
19 developers, community groups, those that would be affected by  
20 the implementation of that comprehensive plan, give them the  
21 report showing them what the numbers are in terms of what the  
22 potential supply could be and have a round table before the  
23 Commission to discuss some of those issues and get some feedback  
24 from those various affected stakeholders to sort of give some  
25 good input for determining the next step.

1 CHAIRPERSON MITTEN: Thank you and I think that's  
2 an appropriate way to proceed because we are bound to attempt to  
3 achieve consistency with the Comprehensive Plan, but given that  
4 it's not as straight forward as might have been thought in the  
5 beginning, but knowing that there is concern by the City Council  
6 about the issue, I think it's a good way to proceed.

7 Could you also put us in the picture on what's  
8 happening with the campus plan regulations?

9 DEP. DIR. MCCARTHY: We had a staff person who  
10 was doing a national review of other cities and their experience  
11 with campus plans. That person was an intern and has completed  
12 some of the research we're working and has left and so we are  
13 working to pick up and try to finalize that research and we're  
14 looking at what the logical next steps would be since we don't  
15 have the entire -- an entire revision to the campus plan regs.  
16 We're looking at whether there are some pieces of that that we  
17 could break off and move forward.

18 CHAIRPERSON MITTEN: Thank you. Any questions  
19 for the Office of Planning?

20 Thank you, Ms. McCarthy.

21 We'll move to Hearing Action. The first case  
22 under Hearing Action is Zoning Commission case No. 01-36C which  
23 is the Unified Communications Center at St. Elizabeth's.

24 Ms. Steingasser?

25 MS. STEINGASSER: Yes ma'am. I'm Jennifer

1 Steingasser for the Office of Planning. The Office of Planning  
2 recommendations that this application be set down for public  
3 hearing. The application is submitted by the Office of the  
4 Chief Technology Office, also referred to as OCTO. OCTO is the  
5 coordinating and lead agency for the city's Unified  
6 Communications Center which we refer to as the UCC site. The  
7 UCC site is proposed to be located at the northern end of the  
8 eastern campus of St. Elizabeth's in Ward 8. It's an  
9 interagency project that includes both the 911 and 311  
10 facilities for the Police Department, the Fire and Emergency  
11 Management Association, Agency, excuse me. It will also have  
12 the Mayor's call taking 7271000 and the Mayor's Command Center  
13 will be there as well as some administrative offices for the  
14 Emergency Management Agency. There will be an accessory daycare  
15 facility as well as cafeteria facility. There will be some  
16 landscape improvements and some historic preservation efforts  
17 made as part of the project to the site itself.

18 The project is part of the Mayor's Government  
19 Center Initiative which locals government facilities in various  
20 neighborhoods to bring the facilities closer into the  
21 neighborhood. The facility itself will be about 144,000 square  
22 foot building. It will be up to three stories with the  
23 accessory daycare and an ancillary building. It will be one  
24 central secure facility for the critical telecommunications  
25 facility of the site.

1           The proposal is for C-2-B base zoning with the  
2 planned unit development. We went through the proposal and the  
3 elements of the comprehensive plan and felt that the proposal  
4 did comply with the many elements of the comprehensive plan,  
5 including stabilizing and improving District neighborhoods,  
6 respecting and improving the physical character of the District,  
7 preserving the historic character of the District and promoting  
8 enhanced public safety. And with regards to that, which is  
9 Section 110, it specifically states that the District Government  
10 much continue to improve responsiveness, both to public requests  
11 for emergency, police, fire and medical assistance and to other  
12 emergency situations. Moreover, the District must engage in  
13 appropriate planning and capital projects that reduce the  
14 likelihood or severity of such emergencies in the future. This  
15 particular Communications Center addresses that specifically.

16           The application is also compliance with Chapter 6  
17 of the Comprehensive Plan Public Facilities which includes  
18 Public Facility Goal to provide adequate and efficient public  
19 facilities, increase cost effectiveness in public facilities,  
20 location of public facilities, to provide optimum service and  
21 support land use transportation and economic and social  
22 development within the neighborhoods. The Ward 8 plans also  
23 calls for the environmental sensitive treatment of fly ash which  
24 is deposited on the site. This project also works to reach that  
25 goal through preservation of some of the fly ash sites through

1 parking coverage.

2 The public benefits and amenities proposed on the  
3 site are also sufficient and we feel meet the intent of Chapter  
4 20 before the zoning regs. They include restoration, in-field  
5 development and revitalization of the campus, a contribution to  
6 fund the overall planning effort of the east campus of St.  
7 Elizabeth's, landscape improvements along MLK Boulevard and  
8 historic preservation plan that will include at a minimum  
9 relocation of two of the cottages. Environmental elements  
10 including containment of the fly ash as we discussed and an  
11 on-site bioretention pond. The building itself will also be  
12 energy efficient and highly secure.

13 We felt that this proposal worked within the  
14 confines of the intent of the planned unit development and the  
15 comprehensive plan and we recommend set down.

16 CHAIRPERSON MITTEN: Thank you, Ms. Steingasser.

17 Any questions for the Office of Planning? Mr.  
18 Parsons?

19 COMMISSIONER PARSONS: I wanted to refer to the  
20 second to the last page of your report which is a map and it's  
21 probably the only map in the submission that helps with this.

22 It is the Suitland Parkway that I'm concerned  
23 about and as you can see on this map, the visibility of this  
24 site, potentially from inbound traffic and outbound traffic is  
25 something that I'm concerned about. So if, by the time we get

1 to hearing we could have a little analysis of what this may or  
2 may not look like and hopefully may not look like from the  
3 parkway, I'd appreciate it. My goal is to make sure that the  
4 parkway is not intruded upon by any structures, if we can do it.

5 It looks as though the layout is that way, but the tower at one  
6 end seems as though it might poke its head up here. Possibly  
7 there's a way to mitigate that through landscaping, tree  
8 planting and that kind of thing, but time will tell. Otherwise,  
9 I think it's a good project.

10 CHAIRPERSON MITTEN: Any other questions for the  
11 Office of Planning?

12 Mr. May?

13 COMMISSIONER MAY: This is a question that I get  
14 asked more often than I get to ask it, so this has to go with  
15 the fact that this is supposed to be a unified center and  
16 represents significant consolidation of otherwise far-flung  
17 facilities.

18 Is that strategy of unifying all of these  
19 functions in one location still valid or is that undergoing some  
20 further review in light of recent events and I'm not necessarily  
21 asking for an answer right now, but it's something that I'd be  
22 curious, because I'd hate to see us go through all of the -- see  
23 anyone go through all the work involved in a project like this  
24 only to find that a distributed network of facilities is  
25 actually more desirable from a security point of view.

1 MS. STEINGASSER: I'll ask the Applicant to  
2 address that. There is a steering committee of the various  
3 departments involved and since September these issues have all  
4 come up and I believe they're still moving forward with the  
5 assumption that it is.

6 COMMISSIONER MAY: Thank you.

7 DEP. DIR. MCCARTHY: I just had a couple of  
8 questions. We have a survey plat in the materials that we were  
9 given and it seems to designate this as Lot 1. Has this, in  
10 fact, been subdivided?

11 MS. STEINGASSER: Yes ma'am, it has.

12 DEP. DIR. MCCARTHY: Okay, then I guess I'd just  
13 ask that we start referring to it by its new lot number so we  
14 don't confuse anyone that we're actually -- that this includes  
15 the entirety of Lot 132.

16 MS. STEINGASSER: Okay.

17 DEP. DIR. MCCARTHY: And then as the case gets  
18 developed, if we could just get a little bit better feel for the  
19 reference on page 3 that says "OCTO is proposing to fund the  
20 planning of the remainder of the East Campus as part of the  
21 PUD's public benefits and amenities." What's the mechanism for  
22 accomplishing that?

23 MS. STEINGASSER: Okay.

24 DEP. DIR. MCCARTHY: And then finally, on the  
25 plans that we were given, unless I just overlooked it, I didn't

1 see where there was an indication of what the exterior building  
2 materials would be and that's something that is required.

3 CHAIRPERSON MITTEN: Any other questions before  
4 we move on? All right.

5 We have a request to set down Zoning Commission  
6 Case No. 01-36C. Can I get a motion to that effect?

7 VICE CHAIRPERSON HOOD: I make a motion that we  
8 set down Zoning Commission Case 01-36C.

9 COMMISSIONER MAY: Second.

10 CHAIRPERSON MITTEN: All right, we have a motion  
11 and a second to set down the request for the Unified  
12 Communications Center at St. Elizabeth's. All those in favor,  
13 please say aye.

14 (Ayes.)

15 Those opposed, please say no.

16 Mr. Bastida?

17 SECRETARY BASTIDA: Madam Chairman, the staff  
18 would record the vote 5 to 0. Mr. Hood moving and Mr. Parsons  
19 seconding; Ms. Mitten, Mr. May and Mr. Hannaham voting in the  
20 affirmative.

21 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

22 Now for this next matter, Zoning Commission Case  
23 No. 02-01, I'm going to ask Ms. Sansone from the Office of the  
24 Corporation Counsel to make that presentation.

25 MS. SANSONE: Thank you, Madam Chairman. This is

1 a proposal to amend the zoning regulations to provide a filing  
2 deadline for the filing of appeals. It was initiated by the  
3 Office of Zoning to try to help improve the administrative  
4 efficiency of the Board of Zoning Adjustment proceedings. And  
5 this particular procedural rule concerns those appeals to the  
6 Board of Zoning Adjustment where an Appellant is asserting that  
7 an administrative official, typically, the Zoning Administrator,  
8 has made an error in interpreting or implying the zoning  
9 regulations, for example, in approving building permit as  
10 complying with the zoning regulations.

11 The BZA rules do not contain a deadline for the  
12 filing of such appeals and there is no other provision in law  
13 that would establish a specific filing deadline. Currently, the  
14 rule in 3112.2 does require such appeals to be filed in a timely  
15 manner. Timeliness, the courts have stated over and over again,  
16 it is a jurisdictional requirement. If an appeal is not filed  
17 in a timely manner, the Board of Zoning Adjustment has no  
18 jurisdiction to hear the appeal. As a result, when an appeal is  
19 filed and the property owner or other parties feel, wish to  
20 oppose the appeal, they typically file motions to dismiss the  
21 appeals on the grounds that they're untimely or barred by the  
22 doctrine of laches which also concerns delay in filing the  
23 appeals. And then for the Board of Zoning Adjustment to sort  
24 that out, typically requires three hours or more to review the  
25 chronology of facts and try to determine if there's been

1 prejudice and arrive at a decision, just on a threshold  
2 procedural issue.

3 The Court of Appeals has in the past urged the  
4 Board or the Zoning Commission to adopt a specific deadline and  
5 recently in a case involving Waste Management, the court has  
6 stated that 60 days would presume to be a reasonable period of  
7 time. This would allow people to learn about the facts of the  
8 case, perhaps hire an attorney or other consultant and organize  
9 their issues and file with the Board of Zoning Adjustment.

10 So in this proposed text amendment to Section  
11 3112.2, it's an attempt to codify the Court of Appeals rulings  
12 on timeliness and it would provide that the appeals must be  
13 filed within 60 days of the date the person who is bringing the  
14 appeal had notice or knowledge of the administrative decision  
15 that they are taking issue with or when they reasonably should  
16 have had notice or knowledge of the decision, whichever one  
17 would come sooner and what that's trying to get at is there are  
18 occasions where the person bringing the appeal perhaps observes  
19 construction occurring, but they're not necessarily aware of the  
20 permit itself, so this would give them 60 days from the  
21 observation of the construction.

22 Then there is a provision that caps that period  
23 of time that it cannot -- an appeal cannot be filed any later  
24 than 10 days after the date on which the structure that's  
25 involved in the appeal is under roof. And the notion of under

1 roof is one that comes from the District's tax regulations and  
2 the proposed regulations substantially tracks the tax provision.

3 Then there is a third aspect to this rule which  
4 allows the Board to extend that 60-day deadline if the person  
5 can demonstrate there were exceptional circumstances outside of  
6 their control and that they could not have reasonably  
7 anticipated and that have caused them to file a late appeal.  
8 And then that there is no prejudice to the parties to the  
9 appeal.

10 That is the proposed rule at this time and we  
11 believe it's sufficient to set it down for hearing.

12 CHAIRPERSON MITTEN: Thank you, Ms. Sansone.

13 Any questions for Ms. Sansone on this?

14 VICE CHAIRPERSON HOOD: I just had a question.  
15 Maybe I'm not understanding, Madam Chair, about under roof. It  
16 seems to me that and the way I'm picturing under roof is when  
17 the roof structure of whatever is being built has been started  
18 being developed. I was thinking more or less and I don't know  
19 if we could look at that under roof, maybe when the foundation  
20 is put into place. I'm not sure, but I think that under roof is  
21 -- you have done a lot of work to that point, if I'm  
22 understanding what under roof means. To then come back and have  
23 a problem with it.

24 CHAIRPERSON MITTEN: Ms. Sansone, did you want to  
25 try and handle that or do you want --

1 MS. SANSONE: I can respond to it, if you -- the  
2 intent here, I believe was to, in many cases, the person  
3 bringing the appeal may have a hard time gaining access to the  
4 building plans, the permit records. They may not understand  
5 them and part of this was to address the situation where someone  
6 who is not very sophisticated has concerns that an error has  
7 been made in approving those plans.

8 VICE CHAIRPERSON HOOD: Thank you.

9 CHAIRPERSON MITTEN: Any other questions for Ms.  
10 Sansone?

11 All right, we have a request to set down Zoning  
12 Commission Case No. 02-01 for public hearing. I'll so move. Is  
13 there a second?

14 VICE CHAIRPERSON HOOD: Second.

15 CHAIRPERSON MITTEN: Okay, we have a motion and a  
16 second to set down the text changes to Section 3112.2. All  
17 those in favor, please say aye.

18 (Ayes.)

19 Those opposed, please say no.

20 Mr. Bastida?

21 SECRETARY BASTIDA: The staff will record the  
22 vote 5 to 0. Ms. Mitten, moving and Mr. Hood, seconding. Mr.  
23 May, Mr. Parsons and Mr. Hannaham are voting in the affirmative.

24 Thank you.

25 CHAIRPERSON MITTEN: Thank you. And I already

1 departed from what I had said I wanted to do under Hearing  
2 Action today which was to specify each time we set down a case,  
3 what type of case it will be. Zoning Commission Case No. 02-01  
4 will be a rule making case and Zoning Commission Case No. 01-36C  
5 is a contested case and I believe that the -- did I leave the  
6 first issue too quickly for the Office of Planning? Was there  
7 something left outstanding?

8 DIRECTOR ALTMAN: I'm sorry, the only -- thank  
9 you, Chairman. The only issues we would like to -- the  
10 Applicant would like to have that hearing set down as soon as  
11 possible in terms of the proper notice and so I'll just work  
12 with the Office of Zoning to do that because there's some  
13 construction issues and I would like to get a read on the  
14 Commission and the public's view of the project.

15 CHAIRPERSON MITTEN: I understand. And Mr.  
16 Bastida can help expedite that.

17 DIRECTOR ALTMAN: Great.

18 CHAIRPERSON MITTEN: Thank you. Lastly, under  
19 Hearing Action we have Zoning Commission Case No. 01-22TA/MA  
20 which regards Square 3584. And I'll turn to the Office of  
21 Planning for the overview of that case.

22 MR. COCHRAN: Good afternoon, Madam Chair. For  
23 the record, my name is Steven Cochran. And the Office of  
24 Planning is pleased to be able to recommend a set down for this  
25 -- a portion of this square. It has been requested -- the

1 Applicant actually asked for just Lot 809 to be set down. The  
2 Office of Planning is recommending that both Lot 809 and Lot 23  
3 be set down and that it be set down for a rezoning from M to C-  
4 3-C only. We do not want to advertise it for inclusion in the  
5 North Capitol Receiving Zone. The Applicant has actually agreed  
6 to the exclusion of this inclusion in a letter that was dated  
7 January 8th which should be on file with the Commission.

8 OP notes, and you might turn to page 2 at  
9 Attachment 2 of our report, that there are five parcels in  
10 Square 3584. There are railroad tracks that run generally  
11 north/south. Three of the parcels that are in this square  
12 either include the railroad tracks or are to the east of those  
13 tracks that comprises about 23 percent of the square. Two  
14 parcels are west of the track. That comprises about 67 percent  
15 of the square. We're recommending that the tracks be used as a  
16 logical dividing line for this setdown.

17 Let me give you just a little bit of a site  
18 context. You might want to turn to attachment 1 which is the  
19 location map of the OP report. You'll notice that if you're  
20 looking at the area that's bounded by North Capitol Street which  
21 on the west of this and then the railroad tracks which go down  
22 all the way to Union Station, you essentially have everything  
23 south of Florida Avenue now zoned C-3-C. There's a slight  
24 anomaly to this and that is the site that the Applicant has  
25 brought to our attention. The Applicant's site is actually

1 north of Florida Avenue. You'll see if you look to the west of  
2 the intersection of the North Capitol and Florida that this  
3 area, although is zoned -- the area at the intersection of North  
4 Capitol and Florida is zoned C-3-C, it is actually slightly  
5 north of the Applicant's property. Now the Applicant just sort  
6 of got -- it seems to Office of Planning -- caught within an  
7 anomalous situation. It seems much more logical to the Office  
8 of Planning that the square that is bounded by New York, Florida  
9 and the tracks more logically belongs in the C-3-C zone than it  
10 does in the M zone.

11 At the time that the Office of Planning last  
12 dealt with this square which, as you can see, is actually a  
13 triangle, there was still a desire to have some M zoning in this  
14 area. This was probably almost 10 years ago now. The office  
15 market has been moving north. Even some of the uses that are  
16 going into the M zoning north of New York Avenue are office  
17 uses.

18 C-3-C just generally seems to make a lot more sense for this  
19 site, especially given its prominent location at one of the  
20 entry points to the city, that is to say the old L'Enfant city.

21 It's one of the first things you see as you're coming down the  
22 hill from New York Avenue. We certainly did not feel that it  
23 was appropriate for an industrial use there. We recognize that  
24 there is still the need for industrial uses in this city and  
25 that there are the need for industrial uses, particularly along

1 the main line of railroads and the fiber optic lines. But this  
2 seems to go much more logically in with the office market than  
3 it does with the industrial market.

4 Now I'd be happy to elaborate on other points in  
5 the report, if you would like, but that basically gives you the  
6 overview.

7 CHAIRPERSON MITTEN: Thank you, Mr. Cochran. I  
8 think I'll just see if any of the Commissioners have any  
9 specific questions for you, since we've been able to review the  
10 report.

11 Are there any questions for the Office of  
12 Planning?

13 Mr. May?

14 COMMISSIONER MAY: Can you repeat the reasons why  
15 the -- you were recommending excluding the inclusion of the  
16 receiving zone?

17 MR. COCHRAN: Yes. If you look at the table on  
18 page 5, you'll notice that if you go into the receiving zone  
19 which is approximate developable square footage and then look  
20 down to the third box down on the left hand column, you'll  
21 notice that you'll wind up with a 67 percent increase. We're  
22 somewhat concerned that going into the receiving zone would put  
23 us into an amount of developable square footage where we're not  
24 confident that the infrastructure would allow adequate service  
25 to that much square footage. We have about 5 million square

1 feet of space either under development or that we think is going  
2 to be proposed fairly soon to the south of the Applicant's site.

3 Now admittedly, there's been a big change in the  
4 last five years. The Applicant's site is only 100 feet across  
5 from a new Metro Station that's just started construction. This  
6 was not the case when this site was last reviewed. But even  
7 with Metro there, we're concerned that 1.2 million square feet  
8 is just a lot of space.

9 We may actually be needing to look at additional  
10 road improvements, etcetera. We certainly didn't want to  
11 confuse the need for infrastructure investment with a logical  
12 approach to zoning, but we still felt that there was no need to  
13 expand the receiving zone and expand the amount of square  
14 footage in the applicant site by such a large extent.

15 DEP. DIR. MCCARTHY: In addition, Mr. May,  
16 there's a major study that the Department of Public Works has.  
17 It's just in the process of beginning of the entire New York  
18 Avenue corridor and we felt that that would provide useful  
19 feedback on the level of capacity of the infrastructure that Mr.  
20 Cochran was just referring to, so the Applicant's major concern  
21 was to have this rezoned so that they were in line for potential  
22 GSA procurements and they wanted to have the excess parking  
23 ratio that exists between M and C-3-C reduced. Since that's  
24 extremely consistent with public policy objectives, we don't  
25 want to see that much extra parking in the immediate vicinity of

1 a Metro Station either. That was very easy to agree to first  
2 and then to look to see the results of the infrastructure  
3 analysis to see whether that fairly substantial increment  
4 between the 743,000 that they'd be entitled to under the  
5 existing zoning or even the 805,000 that they'd get in switching  
6 to C-3-C, the increment between that and the 1.2 million square  
7 feet, it will give us a chance to look at infrastructure  
8 capacity before we were -- if we decide to take the next step to  
9 go to the addition of the -- the addition of this parcel and  
10 receiving zone.

11 MR. COCHRAN: The DDOT report should be finished  
12 in about 18 months.

13 DIRECTOR ALTMAN: I think importantly one of the  
14 considerations here is as Ellen McCarthy was saying is that if  
15 you look at M, under the M zone, it's about 743,000 square feet.  
16 Under the C-3-C, it's about 805,000, so we felt that that was a  
17 small enough increment that it wasn't a substantial change, but  
18 importantly, what this did do was say that it promotes the  
19 commercial development of the site as opposed to the  
20 manufacturing use on the site which, as you know, when we had  
21 the issues came up about the data centers, this would have been  
22 within that range, given the change in the development pattern  
23 in that area, particularly the ATF Building. This seemed like a  
24 logical use to support that of the Gateway site, while at the  
25 same time not putting so much development potential in that we

1 begin to create huge bottlenecks or impacts that weren't  
2 anticipated, which is what this study would help answer.

3 COMMISSIONER MAY: So in the long term, the door  
4 is still open for the possibility it may wind up becoming part  
5 of that receiving zone. The only reason I even think about it  
6 is that what seems from a map perspective to be anomalous about  
7 this little piece of M in the middle of the C-3-C, I mean all of  
8 that C-3-C is in the receiving zone and so it just seems a  
9 little funny that we wouldn't treat it the same way, but the  
10 door is still open.

11 CHAIRPERSON MITTEN: Any other questions? Mr.  
12 Parsons?

13 COMMISSIONER PARSONS: Well, you know, of all the  
14 places in the city that needs a PUD it's this one and we can't  
15 do anything about that. I'm very concerned about where we're  
16 going here. I'm still not clear. Is the gas station included  
17 in this property or not?

18 MR. COCHRAN: The gas station is not included in  
19 the Applicant's property. We are proposing that the gas station  
20 be included in the rezoning though. We've attempted to contract  
21 the Standard Oil Company of Pennsylvania. I've talked to  
22 assistants, but I've never gotten a call back from Mr. -- his  
23 name actually is Rich Merchant --

24 (Laughter.)

25 -- who is the Property Manager for Standard Oil

1 in Pennsylvania, but I have not heard back from him.

2 COMMISSIONER PARSONS: We've done a lot of work,  
3 you have done a lot of work, not you, Mr. Cochran, the Office of  
4 Planning has done a lot of work about a special place occurring  
5 here at the intersection at New York and Florida Avenue and as I  
6 guess you probably know, the ATF building has come forth with  
7 what I think is an extremely fine design and the future of this  
8 intersection seems to me to be eroding.

9 Mr. Altman, can the District of Columbia buy this  
10 gas station and condemn it? I'm very serious. What we've got  
11 here in Exhibit K -- I'm not sure the intent of it, but Exhibit  
12 K in the Applicant's for Tab K in the Applicant's case is a  
13 series of pictures of office buildings seemingly that imply a  
14 level of quality that they're willing to meet. I'm not sure  
15 what it's for, but that, to me, is not acceptable at this site.

16 It should be the most spectacular building in the gateway to  
17 this city that we can imagine. And I'm very frustrated by it,  
18 by the fact that this isn't coming to us in a holistic way.

19 I assume there's no way for design review in any  
20 forum in the city, no historic preservation, no Commission of  
21 Fine Arts, nothing.

22 MR. COCHRAN: Mr. Parsons, we're very -- I think  
23 actually empathetic with the -- with your concerns. There  
24 doesn't seem to be that -- the ability to have that kind of an  
25 approach and we were very concerned about confusing the

1 Applicant's right to come in and ask for the rezoning now with  
2 what might well be some public infrastructure and aesthetic,  
3 both desires and needs in the future. It simply did not seem  
4 appropriate to hold the Applicant back when there's really no  
5 definite public action planned for that site. There are many  
6 discussions. There may even be some more proposals that come  
7 out of the DDOT study for the New York Avenue corridor. We're  
8 certainly well aware of what the National Capitol Planning  
9 Commission has proposed, etcetera.

10 And it would also be cheaper for the public were  
11 we not to suggest the rezoning. But that did not strike us as  
12 being appropriate. We should -- we felt strongly that we should  
13 proceed with advertising this now, that the Applicant shouldn't  
14 suffer because public action hasn't moved any faster.

15 DIRECTOR ALTMAN: You've also, Commissioner  
16 Parsons, hit on the part of the deliberation that we had about  
17 this site which is that under its current zoning of  
18 manufacturing, under M, that you could also have a development  
19 there that would not be appropriate for a gateway either and  
20 there are many uses under the M current industrial zoning that  
21 you probably would not want at your gateway. So we were really  
22 struck by on the one hand what the current zoning is which  
23 clearly we felt did not seem appropriate to what our desired  
24 development would be there, which we agree, should -- would be  
25 more appropriate in the form of a PUD in terms of having the

1 specific design controls and the gateway at this particular site  
2 and that was the balancing act which is why I think we wanted  
3 to, at a minimum, limit the amount of density which got into the  
4 issue of the receiving zone, but nonetheless, led us to the  
5 conclusion of preferring commercial over the existing zone,  
6 particularly in light of the comprehensive plan designation  
7 which was for commercial.

8 COMMISSIONER PARSONS: I think I'd rather take  
9 the risk. As I understand it from your chart on 5, an office  
10 building at 743,000 odd feet can be built. That's probably what  
11 would be built as a matter of right, not some horrible  
12 manufacturing use and they've come in and asked for another  
13 500,000 square feet and I think the public ought to get  
14 something in exchange for that.

15 MR. COCHRAN: Excuse me, Mr. Parsons. If you  
16 would go down to the final row, C-3-C, you're actually looking  
17 under the Office of Planning proposal at an 8.3 percent possible  
18 square footage increase. It would be 805,000 square feet as  
19 opposed to 743,000. The Applicant had suggested that they go  
20 into the receiving zone, but both the Applicant and OP have  
21 agreed that that would be not appropriate.

22 COMMISSIONER PARSONS: Isn't the Applicant asking  
23 us to advertise that as a separate matter?

24 MR. COCHRAN: No, the Applicant -- maybe it  
25 hasn't been -- hasn't it your file yet. But we received a

1 letter that was dated January 8th that said that the Applicant  
2 agreed with the Office of Planning report and agreed to withdraw  
3 the portion of its application that asked for this site to be  
4 within the receiving zone.

5 COMMISSIONER PARSONS: I'm not persuaded and I'll  
6 vote against this.

7 CHAIRPERSON MITTEN: Any other questions for the  
8 Office of Planning?

9 All right, we have --

10 SECRETARY BASTIDA: Madam Chairman, before you go  
11 forward --

12 CHAIRPERSON MITTEN: Mr. Bastida?

13 SECRETARY BASTIDA: Just a good part of the  
14 public record of the transcript, the Applicant has provided a  
15 letter saying that they have no objection to removing the text  
16 amendment and also verbally they have communicated they have no  
17 objection to including Lot 23.

18 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

19 SECRETARY BASTIDA: Thank you.

20 CHAIRPERSON MITTEN: We have a request, a request  
21 to set down what I think will now be called Zoning Commission  
22 Case No. 01-22-M-A which would be a rezoning of Square 3584 from  
23 M to C-3-C, two lots in that square, Lot 809 and Lot 23.

24 VICE CHAIRPERSON HOOD: Madam Chair, I make a  
25 motion that we set down this case 01-22-M-A.

1 COMMISSIONER MAY: Second.

2 CHAIRPERSON MITTEN: Is there any further  
3 discussion?

4 We have a motion and a second to set down Case  
5 No. 01-22-M-A. All those in favor, please say aye.

6 (Ayes.)

7 Those opposed, please say no.

8 Mr. Bastida?

9 SECRETARY BASTIDA: The staff would record the  
10 vote in this case, that is it becomes a rule making. Mr. Hood  
11 moving and Mr. May seconding; Ms. Mitten and Mr. Hannaham and  
12 Mr. Parsons voting in the affirmative.

13 MR. BERGSTEIN: I think it would be a contested  
14 case, Mr. Bastida.

15 SECRETARY BASTIDA: 23, it becomes a map  
16 amendment and 23 was not requested by the Applicant, Lot 23.

17 MR. BERGSTEIN: I'm sorry.

18 CHAIRPERSON MITTEN: Which raises a point which  
19 is given that we don't have the owner of Lot 23 actually  
20 participating, does the Applicant then become the owner of Lot  
21 809 and the Office of Planning from a technical perspective, who  
22 is the Applicant now?

23 SECRETARY BASTIDA: The Applicant is the Office  
24 of Planning now. That's when it becomes a rule making.

25 CHAIRPERSON MITTEN: That's not what makes it a

1 rule making. What makes it a rule making is when someone makes  
2 application and they don't control or they don't own all of the  
3 lots that are included.

4 SECRETARY BASTIDA: Yes, but the inclusion of Lot  
5 23 and the approval of that becomes a rule making and then  
6 becomes the Office of Planning application.

7 CHAIRPERSON MITTEN: Okay, so then the owners of  
8 Lot 809 are handing over their burden to the Office of Planning?  
9 I don't think that's what was anticipated.

10 SECRETARY BASTIDA: I checked with the Applicant,  
11 and yes.

12 CHAIRPERSON MITTEN: Is that what you anticipate,  
13 Mr. Cochran? Are you going to make the case?

14 DEP. DIR. McCARTHY: The Office of Planning could  
15 be the Petitioner. We might also want to further confer with  
16 the Office of the Corporation Counsel before we actually  
17 advertise this to see what other options or legal wrinkles might  
18 be and have a chance to talk to the original Applicant as well  
19 and the property owner from the other lots.

20 CHAIRPERSON MITTEN: All right. I guess the only  
21 thing that would change it, I think, and Mr. Bergstein can  
22 correct me if I'm wrong is if the Applicant becomes the owner of  
23 Lot 809 and the owner of Lot 23. Then it goes back to being a  
24 contested case. Is that right?

25 MR. BERGSTEIN: Well --

1 CHAIRPERSON MITTEN: I just want to be clear if  
2 we can.

3 MR. BERGSTEIN: Well, on the rule setting you  
4 need to designate what it is at set down, although I realize it  
5 may not have been done. Perhaps you may want to set it down  
6 provisionally and indicate that in the advertisement. It's  
7 going to have to be done. But the point that Ms. Sansone and I  
8 were talking about is that whether something is a contested case  
9 or rule making has more to do with the nature of the inquiry.  
10 Are the facts adjudicatory facts or legislative facts is a  
11 concern of relatively small area and benefit a relatively small  
12 group of persons or are there larger policy considerations?  
13 Just because the area isn't all owned by the Applicant doesn't  
14 necessarily make it a rule making, so I think you can make the  
15 decision now based upon the standard of whether or not it  
16 involves legislative facts, broad policy determinations or  
17 adjudicatory facts which are relatively minor in terms of your  
18 consideration, but if you want to pause on that it can be done  
19 at the time of the advertisement. I would need some sort of  
20 confirmation. The Design Commission agrees with the designation  
21 because it's for you to designate for me or staff.

22 CHAIRPERSON MITTEN: Well, I think in light of  
23 Mr. Parsons' concerns which may be shared, but weren't enough to  
24 give any other Commissioners pause about voting to set this  
25 down, I would think it would have broad policy implications.

1 MR. BERGSTEIN: In that case you would have  
2 within your discretion to treat this as a rule making matter in  
3 which case there really isn't a Petitioner, but no one would  
4 have a burden. You would determine it on its merits based upon  
5 the testimony presented.

6 CHAIRPERSON MITTEN: Does anybody have any  
7 thoughts about that?

8 SECRETARY BASTIDA: The Office of Planning is  
9 willing to work with the Applicant of the 809 and the Applicant  
10 might be able to provide any reports and so if they would like  
11 to do that in a rule making case, so that it doesn't prohibit  
12 the original Applicant participating rather intensively in this  
13 proposal.

14 CHAIRPERSON MITTEN: Right, so let's at least  
15 provisionally say this will be treated as a rule making unless  
16 we hear a compelling reason to treat it otherwise. Is that a  
17 fair way to proceed?

18 SECRETARY BASTIDA: Yes, it appears to be so.

19 CHAIRPERSON MITTEN: Thank you.

20 SECRETARY BASTIDA: Thank you.

21 CHAIRPERSON MITTEN: Now we'll move to Proposed  
22 Action, Zoning Commission Case No. 01-09C, Station Place.

23 Mr. Bastida?

24 SECRETARY BASTIDA: The staff have provided you  
25 with all the filings that were requested and were provided after

1 the public hearing and requests the Commission to take an action  
2 on this matter. Thank you.

3 CHAIRPERSON MITTEN: Thank you. And I believe we  
4 had a submission that came in on the proper day, but after noon  
5 from the Near Northeast Citizens Against Crime and Drugs. Is  
6 that correct?

7 SECRETARY BASTIDA: That is correct. And the  
8 individual submitted and the organization requested a waiver of  
9 that time frame in order to accept the report. Also, the  
10 Applicant has put into the record a letter objecting to  
11 accepting that filing.

12 CHAIRPERSON MITTEN: I don't think I had a copy  
13 of that letter.

14 VICE CHAIRPERSON HOOD: Madam Chair, I think the  
15 issue was the deadline was at 12 o'clock and I think it came in  
16 at 4. I think that was the issue.

17 CHAIRPERSON MITTEN: Yes.

18 VICE CHAIRPERSON HOOD: I'm inclined, Madam  
19 Chair, to waive our rules.

20 CHAIRPERSON MITTEN: Did everyone else get the  
21 letter from the Applicant objecting to the waiver?

22 VICE CHAIRPERSON HOOD: No, I didn't get that.

23 CHAIRPERSON MITTEN: Mr. Bastida, we don't have  
24 the letter from the Applicant objecting to the waiver.

25 (Pause.)

1                   Thoughts by any of the Commissioners on the  
2 waiver?

3                   VICE CHAIRPERSON HOOD:    Madam Chair, I'm under  
4 the impression even if we accept it, doesn't necessarily mean we  
5 have to agree to do what's requested.  This case, as far as I'm  
6 concerned, has been a balancing act all the way through and once  
7 we get into negotiation I'm sure it will come out, but I don't  
8 see any harm in accepting it.  It doesn't mean we have to adhere  
9 to it.

10                  CHAIRPERSON MITTEN:  Even though I appreciate the  
11 Applicant's position that there was no lack of clarity about  
12 what the time frame for submissions was, I know that there is  
13 confusion on the part of the public because the typical time for  
14 submissions is the close of business on a given day and I  
15 actually think we're going to have to come up with a different  
16 approach, rather than having it be noon because we're acting  
17 apart from what is typically of probably every other government  
18 agency.  So I would agree with Mr. Hood about the waiver and  
19 then take up the request on its merits.

20                  Is there any objection to that?  Okay, so without  
21 objection, we'll waive our rules to accept the letter from the  
22 Near Northeast Citizens Against Crime and Drugs, so we might as  
23 well move directly to the issue that they raised, since we're on  
24 the subject which is they requested that we assign an additional  
25 amenity to the Applicant which is actually beyond the scope of

1 what the Zoning Commission is able to do.

2 Is there anyone who does not agree with that?

3 All right, that will take care of the issue of  
4 the Near Northeast Citizens Against Crime and Drugs.

5 There's a series of other issues that have been  
6 raised in the Station Place case which I'll go through the  
7 issues first that have been raised and that the Applicant  
8 asserts beyond the jurisdiction of the Zoning Commission and  
9 we'll deal with those and then I'll raise the issues that are  
10 within the control of the Zoning Commission and then we'll deal  
11 with -- and if there's any other issues that any of the  
12 Commissioners have to raise, and then we'll deal with the  
13 specific conditions at the end.

14 One of the largest issues in the case is  
15 -- has many aspects to it, but many of the concerns by the  
16 community are construction related. We have a construction  
17 management plan that's been proposed and certain individuals  
18 have taken issue with the truck route and the degree of  
19 enforcement of the route, whether or not the H Street ramp will  
20 be in service for construction purposes, the whole issue about  
21 indemnifying the homeowners for construction-related damages,  
22 the scope of the preconstruction survey and whether or not an  
23 arbitration panel or an arbitration system can be used to settle  
24 disputes and I'll just, with that general background, open it up  
25 for discussion by the Commission on the -- and just to round it

1 out, the Applicant's position is that these are largely beyond  
2 the scope of the Commission's authority, so I'll open it up for  
3 discussion on the construction-related issues.

4 Commissioner May?

5 COMMISSIONER MAY: Well, in this case, given the  
6 existing zoning and what can be built as a matter of right,  
7 there's a certain amount of the impact of construction that is  
8 inevitable and I think the extent to which the Applicant has  
9 offered as part of the package to take certain steps, to lessen  
10 the impact on the neighborhood, we should adopt those, but I  
11 don't see that we're in a position to impose anything more  
12 stringent in the way of construction management controls,  
13 parking routes and what not. There are other vehicles for  
14 controlling that activity and making sure that the impact on the  
15 neighborhood is kept to a manageable level.

16 CHAIRPERSON MITTEN: Thank you. Just to  
17 piggyback on that, I think what is typically of concern to the  
18 Commission is what will ultimate be the use of the site and that  
19 is broadly, the specific use of the property and also how big  
20 will the building be and so forth and there are, as Mr. May  
21 said, there are other agencies that have jurisdiction over truck  
22 routes, for instance. That would be DPW and things related to  
23 construction would be within the purview of DCRA. And it's not  
24 the place, even though often because there's a forum, the  
25 community would like the Zoning Commission to weigh in and we

1 certainly share their concerns about potential damage to their  
2 homes and the ease with which they can get any kind of disputes  
3 resolved, but it would be inappropriate for us to attempt to  
4 overreach our jurisdiction and when there, in fact, are agencies  
5 that have jurisdiction over these matters.

6 Mr. Hood?

7 VICE CHAIRPERSON HOOD: Madam Chair, I would just  
8 deviate and disagree to a form, for example, in the order, No.  
9 14, where it's mentioned 2nd Street, west side of 3rd Street. I  
10 think what citizens are looking for is a little safety net and  
11 whether that comes up under this jurisdiction or this Commission  
12 or not, I kind of try to balance that. But I believe that to  
13 say that they're just going to do something on the west side of  
14 3rd Street, to me, doesn't make sense. What about the east side  
15 of 3rd Street? If it's pertaining to truck traffic, it's going  
16 down that same street and the west side is going to be just as  
17 affected as the east side. And back to the issue of how this  
18 was presented to us, and what was done under a matter of right  
19 and things -- it wasn't given to us under the jurisdiction of a  
20 matter of right. It came to us as a PUD and I think that's how  
21 we should handle it. I'm not saying being any more constraint,  
22 put any more constraints on the Applicant, but I am saying I  
23 think it's this Commission's duty to make sure that we put  
24 things in place, not going over our jurisdiction that will  
25 protect those home owners that live in the neighborhood. I

1 think that's all they're asking for. And my prime example is  
2 this 2nd Street. If I'm understanding correctly, which I  
3 believe I am because I read it a number of times this weekend,  
4 the west side of 3rd Street, why not include the east side? I  
5 don't understand why that's being left out. And I think that  
6 the Applicant who has obviously made some adjustments to their  
7 whole application, I think would be in agreement with it because  
8 I think they would not want to see those residents' homes being  
9 torn up and torn down because that is a serious issue. And even  
10 if they did it by a matter of right, I would hope that the  
11 Applicant would still profit. Now whether it's out of our  
12 jurisdiction or out of our place, but I don't know. I think we  
13 should try to put as much as we can in place to protect those  
14 homes and those folks who live around there.

15 COMMISSIONER PARSONS: As I understand it,  
16 they're taking an entire block, that's why it's done the way  
17 it's described. It's between 2nd and 3rd, it's this block, so  
18 that's why it's the west side. It's those structures within  
19 that block. And I don't recall any trucks being proposed to be  
20 using 3rd Street. You do?

21 VICE CHAIRPERSON HOOD: I believe reading that  
22 they're going to go up 2nd Street, I think it's north on 2nd.  
23 They're going to make a right on -- what's that next street?  
24 They're going to make a right, I believe, at that next street,  
25 and I'm not sure what alphabet it is, then they're going to make

1 a left on 3rd to go to Florida Avenue. Now I will stand to be  
2 corrected.

3 CHAIRPERSON MITTEN: Let's all turn to page 25 of  
4 the Applicant's proposed order, No. 115.

5 And it talks about the traffic traveling to the site and the  
6 traffic leaving the site. This is under other construction  
7 management issues. And from my reading of this, it looks like  
8 the only truck travel on 3rd Street that's included as part of  
9 the construction management plan is between M Street and Florida  
10 Avenue. So within the scope of the pre-construction survey, it  
11 doesn't even extend that far north and I think that the real  
12 concern about the survey is those impacts, what the Applicant is  
13 attempting to address is the concern of the community members  
14 who are worried that there will be construction-related  
15 vibration or the changing of the water table when they de-water  
16 the site will somehow destabilize their homes. And I think  
17 that's why in terms of adding to the scope of the survey area,  
18 they went to the west side of 3rd Street because that's closer  
19 to the site than the east side of 3rd Street, but I think the  
20 Applicant's position is this is already farther than would be  
21 required under normal circumstances.

22 VICE CHAIRPERSON HOOD: Having experienced issues  
23 like that, I guess I'm a little more sympathetic to it, while it  
24 may not be in the purview of this body, but when you start  
25 seeing your walls crack and you start feeling your house shake,

1 it makes a difference and I put this in the same position as  
2 Metro. When Metro came and said to us, and I'm talking,  
3 digressing a little bit, they went through and did a plan and  
4 they made sure that they had something in place to protect the  
5 residents in that particular area in which they were building.  
6 And I don't see why we can't follow suit.

7 I don't have all the answers of how to get it  
8 done, but I just have a problem with this body, at least not  
9 discussing like we're doing now and showing some type of  
10 interest because it's a difference when you're there and your  
11 house is shaking as opposed to sitting down here.

12 CHAIRPERSON MITTEN: And I'm very sympathetic to  
13 that and I guess one of the things if there is any -- I don't  
14 know that there's this misconception out there, but I wouldn't  
15 want there to be a misconception that anyone who has a  
16 legitimate claim against the developer as this construction  
17 proceeds, whether they're in the survey area or not, should seek  
18 some kind of relief from whatever means are necessary. We're  
19 not -- it's not within our purview, the Zoning Commission's  
20 purview to grant that relief, but if there's damage and they can  
21 document it, which is why the Applicant is making available the  
22 kind of a survey that will be done that a homeowner can do on  
23 their own, they can do a pre-construction survey on their own to  
24 establish the base condition. So everybody has an equal shot at  
25 being protected, I think.

1 Any other thoughts on the  
2 construction-related issues?

3 VICE CHAIRPERSON HOOD: I would be interested in  
4 hearing what you have to say.

5 COMMISSIONER PARSONS: I wasn't going to revisit  
6 your point.

7 VICE CHAIRPERSON HOOD: I'm going to stay on that  
8 point. I would just hope and I don't know if this is -- if I'm  
9 legally -- if I can legally ask for this, that before we do  
10 final, that we try to find some kind of way to mitigate that.  
11 That's all I'm asking for. I'm not saying that that's going to  
12 decide whether I'm going to vote up or down, but I just think  
13 that we need to do a little more to do. And I guess, I will  
14 leave that back on the Applicant saying that they think they  
15 should, then fine. If they don't, then we'll see. Thank you.

16 CHAIRPERSON MITTEN: Just so, for clarity for  
17 moving forward today, you're not proposing any specific change  
18 as it relates to construction-related issues today?

19 VICE CHAIRPERSON HOOD: Not today. I'm just  
20 concerned, again, and I understand the west side being closer to  
21 the project. I'm just concerned of going north on 2nd Street,  
22 right on M Street and make a left on 3rd Street. I just have a  
23 problem with that truck traffic that's going to be on 3rd  
24 Street. I know for a fact that that infrastructure down there  
25 will not hold what's going on and I don't know what happened

1 with the other projects that were developed down there and what  
2 the truck traffic was. It may have come up at the hearing, but  
3 I do not remember. But I think in this case, if we can do all  
4 the efforts to protect those residents' homes and if the  
5 Applicant would try to help us with that, and I'm more or less  
6 asking for a good-faith effort, while it may not be binding and  
7 cannot ask for it legally, I'm still going to ask for it.  
8 Because we need to do all we can do to protect those residents  
9 down there and their homes.

10 CHAIRPERSON MITTEN: Thank you, Mr. Hood. Mr.  
11 Parsons?

12 COMMISSIONER PARSONS: Well, I was just going to  
13 agree with your earlier assessment on this that these  
14 construction management issues as they're phrased here in the  
15 Applicant's proposed order are essentially an amenity that's  
16 been offered by them and I concur with them that we are not in  
17 the building business, to concur with you. That's all. I was  
18 just going to reinforce what you said.

19 CHAIRPERSON MITTEN: Thank you. Mr. Hannaham?

20 COMMISSIONER HANNAHAM: I'm not sure we can --  
21 there's a lot of stuff to cover, but I do remember one of the  
22 consultants of the Applicant, I think it was an environmental  
23 consultant, indicated certain kinds of measures that they were  
24 willing to take or had committed to take in trying to help  
25 people overcome their concerns about damage that would be due to

1 the construction itself. They were primarily related to the  
2 environmental impacts, I think. I remember that they were  
3 willing to extend the range of services beyond the two blocks  
4 200 feet.

5 CHAIRPERSON MITTEN: Yes. They've extended --

6 COMMISSIONER HANNAHAM: I didn't see that here in  
7 the -- anything related to that in this section of the proposed  
8 rule making, the commitment.

9 CHAIRPERSON MITTEN: Right. On page 46, under  
10 condition 14. It doesn't talk about what they had originally  
11 proposed and what they're now proposing but the survey area  
12 that's outlined in condition 14 --

13 COMMISSIONER HANNAHAM: Page 46?

14 CHAIRPERSON MITTEN: Yes, this is near the end.  
15 This is one of the conditions.

16 COMMISSIONER HANNAHAM: There's too much stuff.

17 CHAIRPERSON MITTEN: We'll help you, guide you  
18 through it. That is the expanded area.

19 COMMISSIONER HANNAHAM: Okay. So this actually a  
20 commitment to do this?

21 CHAIRPERSON MITTEN: Yes.

22 COMMISSIONER HANNAHAM: To do a preconstruction  
23 survey?

24 CHAIRPERSON MITTEN: Yes.

25 COMMISSIONER HANNAHAM: And that survey would

1 extend as far east as 3rd Street, Northeast?

2 CHAIRPERSON MITTEN: yes.

3 COMMISSIONER HANNAHAM: And as far north as H  
4 Street, as far south as G Street.

5 CHAIRPERSON MITTEN: Right, it goes to H Street  
6 with the --

7 COMMISSIONER HANNAHAM: And all the residential  
8 properties in that area. I think that's a positive step,  
9 really, to alleviate those kinds of concerns and I do share  
10 those concerns with other Commissioners, as expressed. I'm not  
11 really -- I'm trying to get a feel as to where our limit is as a  
12 Commission, a Zoning Commission and I'm beginning to feel the  
13 edges, it's fuzzy.

14 CHAIRPERSON MITTEN: I think Mr. Parsons' point  
15 is a good one. It shows the distinction between what we can  
16 impose to alleviate an adverse condition that results from the  
17 PUD, distinctly from the PUD as opposed to you have to compare  
18 what kind of construction impacts would there be from a matter  
19 of right project versus what kind of construction impacts would  
20 there be from the PUD and if the PUD somehow exacerbates those,  
21 then we could actually impose a condition to alleviate an  
22 adverse situation.

23 In this case because matter of right and what's  
24 being requested are so similar in terms of what the construction  
25 impacts would be, the willingness of the Applicant to do this

1 pre-construction survey is construed as an amenity. It goes  
2 beyond what we could make them do to offset an adverse  
3 condition. It's part of the balancing between the relief that  
4 they seek and the benefits that they're providing.

5 COMMISSIONER HANNAHAM: Right. I can appreciate  
6 that as a positive response to these kinds of concerns. Thank  
7 you.

8 VICE CHAIRPERSON HOOD: Madam Chair, I just want  
9 you to know that I really just have a problem. I disagree with  
10 your rationale on that, but I'm prepared to move forward. I  
11 just want you to know for the record, I disagree with that  
12 analogy.

13 CHAIRPERSON MITTEN: So we don't mislead Mr.  
14 Hannaham, would you like to recast it?

15 VICE CHAIRPERSON HOOD: I again will say that  
16 they have come down as a PUD and we keep going back to this  
17 matter of right issue and maybe I'm just naive or something, but  
18 -- I'm not naive, I take that back.

19 (Laughter.)

20 I am not naive. But I will just say that they  
21 have applied for a PUD and that's how we need to treat it. And  
22 I think they have made some good gestures, but again to say  
23 well, they could have done this by a matter of right, yes, they  
24 could have, but they didn't. They came down in the PUD. That's  
25 where I'm coming from. I'm not trying to put any more on them

1 because I think there are some things here that are very --  
2 things that can be worked with. I'm just asking them to fine  
3 tune, the way I understand this, actually in their submission,  
4 what I read, how they're proceeding with the traffic and I'm  
5 just having a problem understanding the east and west side of  
6 3rd Street. They're going to go north on 2nd Street -- not to  
7 rehash this, Madam Chair, north on 2nd Street, make a right on  
8 to M Street. They're going to make their next turn to the  
9 intersection of M and 2nd, adjacent to the Trash Transfer  
10 Station on 2nd Street, construction traffic will approach on the  
11 site of 2nd Street traveling south from the intersection of 2nd  
12 and M. This comes out of their submission. So all I'm saying  
13 is if I'm understanding correctly, they're omitting the east  
14 side of 3rd Street and I have a problem with that, because the  
15 street is all the same, but anyway, I'm not going to belabor  
16 that, Madam Chair.

17 CHAIRPERSON MITTEN: Okay, and I want to clarify  
18 something, Mr. Hood, because I don't want you or anyone else to  
19 misunderstand what I said. When I say matter of right in this  
20 case, I'm talking about without the PUD, without the rezoning,  
21 they could build a building that has the same degree of  
22 excavation as this building. So all the concerns about the  
23 removing of the dirt and the dewatering are no different. I  
24 just want to say that because it might have applicability in  
25 another case.

1 VICE CHAIRPERSON HOOD: Okay, I understand.

2 CHAIRPERSON MITTEN: Okay. I'm not arguing with  
3 you.

4 Okay --

5 COMMISSIONER MAY: Madam Chair?

6 CHAIRPERSON MITTEN: Yes, Mr. May?

7 COMMISSIONER MAY: I don't want to just keep  
8 going on this, I wanted to clarify for Mr. Hannaham that  
9 residents in the area or the Stanton Park Neighborhood  
10 Association, I believe, had actually requested that the area of  
11 survey go past 3rd Street to include that block between the 3rd  
12 and 4th and in response, presumably, what the Applicant has  
13 offered is to do the entirety of the block between 2nd and 3rd  
14 as opposed to kind of going halfway down it or 150 feet in.

15 In summary, they're offering to go basically 400  
16 feet out from the site in this  
17 pre-construction survey, less than the community wanted, more  
18 than they were originally offering. So they've upped it a  
19 little bit, but not quite as much as people would like and as  
20 much as Commissioner Hood would like in terms of going across  
21 3rd Street there and addressing the houses that are across the  
22 way there.

23 They do -- I believe I recall and I don't know  
24 whether this is in the order or not, but I believe there was  
25 mention of a self-survey guidance, if you will, from the

1 Applicant that people in the area can do to do their own  
2 checklist and then if things wind up changing, then they can  
3 bring that -- they'll have a more scientific basis, I guess, for  
4 raising the issue with the developer.

5 CHAIRPERSON MITTEN: That's condition 15.

6 COMMISSIONER MAY: Oh, it is, okay.

7 CHAIRPERSON MITTEN: All right, let me just try  
8 and handle a couple of these other issues quickly. There were  
9 concerns raised by the community that an environmental impact  
10 statement needed to be performed or needed to be prepared, that  
11 environmental monitoring needed to take place, and that a  
12 Section 106 review needed to take place and again, each of those  
13 issues is outside the jurisdiction of the Zoning Commission and  
14 if any of the Commissioners have any concerns on that, otherwise  
15 we can move forward. I did not want to ignore those issues, but  
16 I did want to express that they're not issues for the Zoning  
17 Commission to concern itself with.

18 Now other issues. Let's begin with the other big  
19 concern which was the setback of the building, building 1 and  
20 building 3 along 2nd Street. I'll just open it up for comments  
21 and concerns by the Commissioners.

22 Mr. May?

23 COMMISSIONER MAY: I'll start. Having read  
24 through all of the arguments now on both sides and the concerns  
25 that were raised by the Applicant, I have to say that I am not

1 entirely persuaded by the Applicant's arguments that the setback  
2 could not be increased. I think that there are some good points  
3 that were made by the response of the parties about the nature  
4 of the arguments, about cutting it back and I still have  
5 concerns about the inconsistency of the SEC's attitude towards  
6 the security of the building. All that having been said, these  
7 things are much more easily addressed at the beginning of the  
8 process than at this stage. And I don't -- well, I believe that  
9 the building could have been set back and could still have met  
10 SEC's requirements all the way around and probably have been a  
11 safer building. We're down this course and right now I don't  
12 see a lot of good reason why we should be dictating that the  
13 building should be setback further. In its essence, what's  
14 being requested here is not far from what they would have been  
15 able to do as a matter of right and certainly in terms of  
16 setback, it's no different.

17 CHAIRPERSON MITTEN: I think you raise two  
18 important issues. One is the -- what we're faced with is and  
19 this goes into some other issues that were raised by the  
20 community, which is we're trying to reconcile the -- we're  
21 trying to reconcile different components of the Comprehensive  
22 Plan, because we're given some parameters to work in and I think  
23 the general distress with the building is its size and that is  
24 dictated largely by the land use designation. And as we have  
25 experienced in other cases, ward plans don't take precedence

1 over the land use designation. The land use designation is the  
2 most important aspect of the Comprehensive Plan, so we're left  
3 with the medium high density commercial and production and  
4 technical employment designation and there's only a few zoning  
5 categories that are appropriate for that. None of them is going  
6 to achieve a significantly smaller building. So we have a big  
7 building to start with.

8 And then the notion that you mentioned that we're  
9 very far down this road in terms of designing the building for a  
10 specific occupant and I think I can be fairly confident in  
11 saying that no one is interested in derailing that. I mean we  
12 heard a lot of support for the project in its -- having the SEC  
13 there and so on and what's unfortunate is that the Applicant  
14 didn't avail themselves of the fact that the PUD process is a  
15 two-step process. And I would want to urge the Office of  
16 Planning in the future, to the extent that we have a number of  
17 PUDs that were approved in advance of identifying a tenant and  
18 this is one that's unique in that the tenant has been identified  
19 and then the PUD comes forward, but a lot of these issues could  
20 have been resolved in a first stage application and then sort of  
21 set the groundwork for the design as Mr. May mentioned. I agree  
22 with him. I think that if it had been dictated in the beginning  
23 that there would be a setback which would have been desirable  
24 from safety perspective and which, in fact, was outlined in some  
25 of their design parameters for the solicitation, I think we

1 could have had it both ways and now unfortunately, we can't have  
2 it both ways. We can't do that. And I think that the power of  
3 the Commission is not so significant that we can reject this  
4 design because it's clearly one that  
5 -- is it the best? No. Is it acceptable? Yeah, it is, it's  
6 acceptable, but it's not the most desirable and it's unfortunate  
7 that the two-step process wasn't used.

8                   Anyone else on the issue of the setback? Mr.  
9 Parsons?

10                   COMMISSIONER PARSONS: I was never persuaded the  
11 setback was a good idea and I remember when the -- I'm sure you  
12 all remember, when the case first came to us, before the  
13 Commission of Fine Arts had dealt with it, that it was  
14 atrocious. I couldn't wait to vote against it. And I think  
15 what the Fine Arts Commission did is come up with the right  
16 solution, a series of smaller buildings separated by courtyards  
17 at different exposures to the street, if you will, setbacks. So  
18 we won't have the feeling of one building here.

19                   I would like to completely discount the  
20 Applicant's statements on page 2 of their -- and I don't want to  
21 read them, I don't want to call your attention to them to read  
22 them. They're saying they're going to lose all these offices  
23 and so forth. It's ridiculous to me and the citizens picked up  
24 on that. It would be moving those walls back, but not losing  
25 all these offices. I find their other arguments much more

1 persuasive, that is in filling of the courtyard, ignoring Fine  
2 Arts' response to this design and I'm persuaded that we ought to  
3 proceed as presented to us.

4 CHAIRPERSON MITTEN: Thank you. Anyone else on  
5 the setback?

6 COMMISSIONER MAY: I feel the need, one more  
7 time, to express my bewilderment that this is a lot that could  
8 have been developed with what has very recently become the most  
9 precious commodity in developing Government buildings in  
10 Washington which is setback and I just don't understand it.  
11 It's not our job to design the building, so --

12 CHAIRPERSON MITTEN: I'm sympathetic with that  
13 myself. All right, let's move -- unless anyone has any other  
14 large concerns about design and so forth, let's move to the  
15 individual conditions and additions or modifications to the  
16 conditions. And I have a series of them and then if there's any  
17 others you all can chime in.

18 The first would be to add a condition that  
19 reflects the DPW request that the cost of any modification to  
20 the Massachusetts Avenue 1st Street signal light be borne by the  
21 Applicant which I think is actually in the proposed order, but  
22 didn't make its way into a condition. Page 11, No. 45 in  
23 reiterating the substance of the DPW report, the first item  
24 there, the DPW requested as a condition relates to that signal  
25 light. So I would propose an additional condition. All right.

1 SECRETARY BASTIDA: Madam Chairman, that is  
2 condition 25.

3 CHAIRPERSON MITTEN: Oh, it is? Good. Thanks.  
4 I'm with Mr. Hannaham, there's a lot to read.

5 Okay, we had added on another case to the DOES  
6 and LBOC agreements something about monitoring reports which I  
7 think are included here as well, but the -- do we have that? Is  
8 that included here?

9 MR. BERGSTEIN: Madam Chair, I think the  
10 applicable provisions are 20 and -- conditions are 20 and 21.  
11 In this case they would have the information made available to  
12 the Community Advisory Committee, I believe.

13 CHAIRPERSON MITTEN: Right. I think what we had  
14 been looking for, we wanted to start to include a status report  
15 that would be provided to the Zoning Commission.

16 MR. BERGSTEIN: That's correct. In the Nehemiah  
17 Homes PUD, the condition was that at the completion of the  
18 project, the Applicant would provide a report with respect to  
19 the degree of success in reaching the goals envisioned by the  
20 Memorandum of Agreements and that report would be given to the  
21 Office of Zoning.

22 CHAIRPERSON MITTEN: Right, I'd like to include a  
23 condition or add that to Condition 20 and Condition 21 and also  
24 that those reports would be -- I believe, did you also say  
25 completion of construction or something like that?

1 MR. BERGSTEIN: At the completion of the project  
2 construction.

3 CHAIRPERSON MITTEN: Okay, I think I'd like it  
4 after each building is completed.

5 MR. BERGSTEIN: A separate report for each  
6 building.

7 CHAIRPERSON MITTEN: Right, if they're  
8 constructed separately.

9 Now I'm going to doubt myself about what is not  
10 there, but I don't recall seeing the condition to the  
11 Transportation Management Plan that the Applicant had included  
12 on page 19 of their  
13 post-hearing submission that related to -- this would be the  
14 last paragraph page 19, in an effort to ensure the goals of the  
15 TMP are achieved through these various elements, Louis Dreyfuss  
16 agreements to evaluate the TMP two years after the SEC occupies  
17 building 1 and thereafter every two years and that the  
18 information would then be submitted to the Department of Public  
19 Works. I think we need to incorporate that and also ask that  
20 that information be submitted to the Zoning Commission as well.

21 COMMISSIONER PARSONS: So you would add that to  
22 11, subset -- when you say they will follow the construction  
23 management plan?

24 CHAIRPERSON MITTEN: This relates to the  
25 Transportation Management Plan.

1 COMMISSIONER PARSONS: I'm sorry.

2 CHAIRPERSON MITTEN: Okay, I don't remember which  
3 condition relates to the Transportation Management Plan, but if  
4 that could be included. I also wanted to propose in an effort  
5 to alleviate some of the concern, if not all of the concern of  
6 the community, related to the shuttle buses is that while not  
7 prohibiting the shuttle buses, we limit the size to the current  
8 size that the SEC is using which would be 16-passenger vans.  
9 That way they would be assured that larger vehicles wouldn't  
10 then be using this shuttle bus route.

11 VICE CHAIRPERSON HOOD: Madam Chair, can I also  
12 echo something else or a concern I had in my notes about the  
13 shuttle bus service and it may already be here, but I wanted to  
14 make sure it doesn't block traffic and that when they're sitting  
15 there waiting, I guess, in their schedule, that the vans do not  
16 idle.

17 CHAIRPERSON MITTEN: That's -- how about if we  
18 modify it -- well, the idling that they won't idle in excess of  
19 the time that's otherwise prescribed or otherwise permitted by  
20 D.C. law.

21 VICE CHAIRPERSON HOOD: Sounds fine.

22 CHAIRPERSON MITTEN: Okay.

23 VICE CHAIRPERSON HOOD: Madam Chair, let me just  
24 say I believe there is a District law, if not, Environmental  
25 Protection Agency has a regulation on that, so either one, if

1 for some reason District law gets lost some time.

2 COMMISSIONER MAY: There's very definitely a  
3 District law and I've forgotten what the duration is and every  
4 one is subject to it.

5 CHAIRPERSON MITTEN: Right, and it may change  
6 from time to time so if we make abstract reference, then  
7 whatever the law is should work.

8 Based on experience with another case I would  
9 also like to add a condition. I believe it's actually the  
10 manner in which minor modifications are supposed to be handled,  
11 but just so there's no lack of clarity, add a condition that  
12 would preclude the Applicant from seeking approval for exterior  
13 modifications from the Commission of Fine Arts that are  
14 initiated by the Applicant as opposed in response to concerns by  
15 the Commission of Fine Arts and that would have the effect of  
16 circumventing the Applicant's responsibility to seek a PUD  
17 modification.

18 And then finally, there is condition 30 is one  
19 that I would like to modify. This relates to the timing of  
20 delivery of the -- not delivery, but at least initiating the  
21 construction of the various buildings and the way that condition  
22 30 has been proposed it would basically allow the Applicant to  
23 begin construction on building 1 and then indefinitely tie up  
24 the balance of the property with the PUD and there would be no  
25 opportunity to respond to changing economic conditions or just

1 changing conditions that we would typically consider in  
2 considering -- when we take up a proposal for extending a PUD  
3 order and while I'm open to the possibility that a different  
4 schedule than what I'm going to propose might be feasible, we  
5 don't have anything in the record and the other case that was a  
6 phased PUD that we were able to make reference to had all of the  
7 buildings under the  
8 two-year provision, so as a modification to condition 30, I  
9 would just include all of the buildings. Application must be  
10 filed for a building permit for buildings 1, 2 and 3, as  
11 specified, and construction shall begin with the same schedule.

12 And then to the extent that the Applicant, before we take final  
13 action, wants to propose a modification, I'm not interested in  
14 an open ended condition like this, but in light of the fact that  
15 I don't have anything different, I don't have anything in the  
16 record to base an alternative. That's why I'm proposing a  
17 relatively restricted condition, No. 30.

18 Does anybody have any thoughts about that?

19 COMMISSIONER PARSONS: Well, I agree. We can't  
20 have this parking lot here for 20 years. That's not the case.  
21 So I can't think of anything other than what you're suggesting  
22 to accomplish that. That would cause the developer owner to  
23 come back every two years and explain what's going on in their  
24 effort to make this happen.

25 So I would concur, I guess. I would concur with

1 that.

2 CHAIRPERSON MITTEN: Okay, any other comments by  
3 the Commission or is that -- the modification would be  
4 acceptable?

5 Mr. May?

6 COMMISSIONER MAY: I concur as well.

7 CHAIRPERSON MITTEN: Okay. I'm seeing a lot of  
8 nodding heads.

9 All right, those are the modifications and  
10 additions to the conditions that I would propose and are there  
11 any other additions or modifications or exclusions?

12 VICE CHAIRPERSON HOOD: Madam Chair, I don't want  
13 to rehash a dead horse, but No. 14, since the Commission is  
14 nodding heads, I was wondering if we all wanted to incorporate  
15 both sides of 3rd Street.

16 CHAIRPERSON MITTEN: I don't want to. And let me  
17 say it's not that I don't want to --

18 VICE CHAIRPERSON HOOD: Okay --

19 CHAIRPERSON MITTEN: It's that I don't think we  
20 can. I don't think that's within our jurisdiction which is a  
21 difference.

22 VICE CHAIRPERSON HOOD: Okay.

23 COMMISSIONER PARSONS: And we don't have any  
24 cause to. They won't be using this section of 3rd Street for  
25 truck traffic at all.

1 VICE CHAIRPERSON HOOD: Okay, I'll leave that.

2 COMMISSIONER PARSONS: It's farther up. It's way  
3 up at the north end at Florida that they would be using a  
4 portion of 3rd Street.

5 VICE CHAIRPERSON HOOD: Okay. Also, Madam Chair,  
6 I don't know if we said anything about the National Historic  
7 Preservation Act. There was mention, I just want to make sure  
8 we kind of address some of the things that were given to us.

9 I do know, I believe that is not within our  
10 jurisdiction. I don't know if we need Mr. Bergstein to comment  
11 on that or not, but I just want to put that out there for the  
12 record and I want to say something good about the Applicant.  
13 I'm very satisfied with the LBOC and the DOES. I think they  
14 have made an attempt in the order far more than what I've seen  
15 in the past and I think they should be commended, especially  
16 providing the jobs and everything up front. So I'm very pleased  
17 with what I see thus far dealing with that.

18 I did have -- can you come back to me, Madam  
19 Chair?

20 CHAIRPERSON MITTEN: Certainly. Anybody else,  
21 because I forgot one of mine which is, and I don't know exactly  
22 how to phrase this because I don't know that this has been done  
23 before, but I know that Mr. Bergstein will help us out, but  
24 given that there are so many of the responses and this goes back  
25 to the original comment that Mr. May made about the setback is

1 given that there were so many of the comments made about the  
2 design that are hinged on the SEC's requirements, I would like  
3 there to be a condition and I don't think the Applicant will  
4 have any concerns about this, that there would be a condition  
5 that the building 1 of the project will be occupied by the SEC  
6 for the initial term of its lease which I think is 10 years. So  
7 that in the event that the SEC goes away, then building 1 is --  
8 the design of building 1 should be revisited.

9 COMMISSIONER HANNAHAM: Where do you think SEC  
10 will go?

11 CHAIRPERSON MITTEN: I don't think they're going  
12 to go anywhere else. I think they might have if we don't  
13 approve this, but as a condition of approval, I would say that  
14 building 1 needs to have the SEC in it because everything that's  
15 been presented to us about why the design needs to be this way  
16 is hinged on the SEC.

17 COMMISSIONER HANNAHAM: I agree.

18 CHAIRPERSON MITTEN: All right. Anybody else?  
19 Mr. Hood, did you find --

20 VICE CHAIRPERSON HOOD: Yes, Madam Chair, I just  
21 wanted to ask, while I know the Advisory Committee, this set up  
22 will include two ANC members, the description of the jobs that's  
23 going to be needed is going to the Advisory Committee as offered  
24 by the Applicant. Also, I would just ask that they also send it  
25 to the ANC Office. I know that it's going to -- two ANC

1 Commissioners are going to be there, but you know how community  
2 groups sometimes are.

3 CHAIRPERSON MITTEN: Yes.

4 VICE CHAIRPERSON HOOD: The information may not  
5 get back and that would really help facilitate that and again  
6 I'll say it again, that I really appreciate what I see here as  
7 far as the DOES and LBOC.

8 Thank you.

9 CHAIRPERSON MITTEN: Thank you. So that would be  
10 a modification to condition -- well, I guess two of the  
11 conditions, No. 20 and 21, that the information is disseminated  
12 not only to the Advisory Committee, but the ANCs. Okay.

13 Anybody else? All right. Well, we have Zoning  
14 Commission Case No. 01-09C before us. We've introduced some  
15 additional conditions. We've modified a few. And I think the  
16 record will reflect our consensus on those points. And I would  
17 move approval of the application with the modified conditions.

18 COMMISSIONER MAY: Second.

19 CHAIRPERSON MITTEN: Any other discussion? Okay,  
20 we have a motion and a second to approve the PUD for Station  
21 Place. All those in favor, please say aye.

22 (Ayes.)

23 Those opposed, please say no.

24 Mr. Bastida?

25 SECRETARY BASTIDA: The staff will record the

1 vote 5 to 0. Mr. Hood moving and Mr. May seconding; Ms. Mitten,  
2 Mr. Parsons and Mr. Hannaham voting in the affirmative.

3 CHAIRPERSON MITTEN: Thank you.

4 MR. BERGSTEIN: Madam Chair, do you want to  
5 specify a time, if the Applicant wants to put in a revised  
6 finding of facts to comport with the decisions you made here  
7 today? Do you want to specify a period of time by which that  
8 should be filed to the Office of Zoning?

9 CHAIRPERSON MITTEN: That's a good idea because  
10 the parties would have an opportunity to weigh in on that. Do  
11 you think we can get something -- can we put a schedule together  
12 that would get this on the agenda for final action on the March  
13 meeting?

14 SECRETARY BASTIDA: I believe so. Can I consult  
15 while you proceed on the other cases? Can I consult and then  
16 come back with you?

17 CHAIRPERSON MITTEN: Yes.

18 SECRETARY BASTIDA: Thank you.

19 VICE CHAIRPERSON HOOD: Madam Chair, before Mr.  
20 Bastida moves, could he repeat the vote, the last -- Station  
21 Place?

22 SECRETARY BASTIDA: It was 5 to 0. Mr. Hood  
23 moving --

24 CHAIRPERSON MITTEN: No, it was me.

25 VICE CHAIRPERSON HOOD: Again, Madam Chair, I

1 know we look very much alike.

2 (Laughter.)

3 VICE CHAIRPERSON HOOD: Madam Chair, I thought I  
4 seconded, but I could have been in concert with Mr. May.

5 CHAIRPERSON MITTEN: It's Mitten and Hannaham.

6 SECRETARY BASTIDA: I guess I am color blind.  
7 Thank you.

8 CHAIRPERSON MITTEN: That's good to hear  
9 actually. Okay, let's move to final action now.

10 Mr. Bastida, first one, Zoning Commission Case  
11 No. 01-07C.

12 SECRETARY BASTIDA: The staff has provided you  
13 with all the information regarding this matter and also the  
14 staff would like to put on the record that the National Capital  
15 Planning Commission on January 4th by Executive Director Action  
16 determined that they will -- that the proposal will not  
17 adversely affect the federal establishment or other federal  
18 interests or be consistent with the comprehensive plan for the  
19 National Capital. With that, the staff requests an action by  
20 the Commission.

21 CHAIRPERSON MITTEN: Thank you, Mr. Bastida. Now  
22 we have a proposed order which I think we're all going to be  
23 submitting some editorial changes on, but I would ask if anyone  
24 had any substantive changes that they would like to make to the  
25 proposed order for the 1730 K Street PUD.

1 VICE CHAIRPERSON HOOD: Madam Chair, I would just  
2 on page 19 of 21, No. 8, where we have semi-annual, annually.

3 CHAIRPERSON MITTEN: Yes.

4 VICE CHAIRPERSON HOOD: If we can just change  
5 that also to project completion.

6 CHAIRPERSON MITTEN: Okay.

7 VICE CHAIRPERSON HOOD: I think that's the only  
8 place that needs to be added, I'm not sure.

9 CHAIRPERSON MITTEN: I think there was one  
10 reference to the both reports and because this makes reference  
11 to the LBOC and the first source agreement, No. 8.

12 VICE CHAIRPERSON HOOD: Okay, if we could just  
13 make sure it's in both places, and again, I commend what I see  
14 here as far as the LBOC and DOES. It's like we're moving in a  
15 forward motion on this. Thank you.

16 CHAIRPERSON MITTEN: Thank you. Anybody else  
17 with any substantive changes? I have a few things. Let me just  
18 look through here quickly.

19 (Pause.)

20 All right, on the same page as Mr. Hood's  
21 reference on page 19, under 3, the landscaping and improvements  
22 to public space, we need to add at the end "and subject to  
23 approval by the Public Space Committee."

24 I don't know how to address this next issue, but  
25 we don't have the units identified for the Trenton Park housing

1 linkage, so that it's going to be impossible to determine if the  
2 units have been rehabilitated if we don't know which ones they  
3 are. How do we accept a submission at this point, Mr.  
4 Bergstein, to identify those?

5 MR. BERGSTEIN: I don't know how to do it except  
6 for you to reopen the record in terms of the specific units.  
7 It's my understanding that the C of O is actually given for the  
8 structure in which the units are contained as opposed to the  
9 individual units. Is it that you want both? You want to know -  
10 - in other words, you want first the individual units which are  
11 to be rehabilitated delineated and do you want that in the  
12 findings of facts? I don't believe that was in the record  
13 unless the Applicant can direct the staff.

14 CHAIRPERSON MITTEN: I don't know and this may be  
15 in the record and I just don't remember, when it says Trenton  
16 Park apartment complex, that implies to me multiple buildings,  
17 so it doesn't really -- we don't specify number of dwelling  
18 units. We specify square footage, so the building is the thing  
19 we need to have identified.

20 COMMISSIONER PARSONS: I'm not sure -- what's  
21 wrong with just square feet?

22 CHAIRPERSON MITTEN: Well --

23 COMMISSIONER PARSONS: We don't care how many  
24 units and what units.

25 CHAIRPERSON MITTEN: Well, if somebody goes to

1 say well, have they delivered on their commitment? Have the  
2 units actually been rehabilitated and somebody goes, they drive  
3 over to Trenton Park and they say show me the units and then  
4 nobody knows which ones to show them or no one knows which  
5 building to show them.

6 MR. BERGSTEIN: Madam Chair, what I've heard and  
7 I have no reason to doubt it, is that the identification of the  
8 units was part of the record testimony.

9 CHAIRPERSON MITTEN: Okay.

10 MR. BERGSTEIN: And so what we can do since it's  
11 your desire to do it, is to supplement the finding of facts to  
12 identify those particular units and indicate that that was part  
13 of the record testimony.

14 CHAIRPERSON MITTEN: Okay, so we don't need to  
15 hold off the vote in order to accomplish that, do we?

16 MR. BERGSTEIN: I mean whatever is correct, no.

17 CHAIRPERSON MITTEN: Okay. And then also in the  
18 same paragraph dealing with the housing linkage about midpoint  
19 through, it says "if after the further consideration of the PUD  
20 housing linkage policy by the Office of the Deputy Mayor for  
21 Planning and Economic Development, the Zoning Commission  
22 determines" and so on, the housing linkage policy as it relates  
23 to the Zoning Commission is the Zoning Commission's policy, so I  
24 would just say if after the further consideration of the PUD  
25 housing linkage policy by the Zoning Commission, it determines

1 and then go on from there and then at the end the last sentence  
2 in that same paragraph, "any difference between the amount paid  
3 by the Applicants and any reduced amount determined under the  
4 housing linkage policy may be refunded" because we don't have --  
5 that should be the agreement that the Applicant has with  
6 Jubilee. We can't mandate that.

7 And at the end of condition 9D, this is  
8 consistent with the amendment that I made to the earlier case.  
9 At the end, I would propose that only those exterior changes  
10 initiated by BLRA will be permitted within the context of this  
11 element of design flexibility, so that again, we want to make  
12 sure if minor modifications are being made the Applicants are  
13 coming back to the Zoning Commission.

14 Anything else on the proposed order for 1700 K  
15 Street?

16 This order is before us for approval. Can I get  
17 a motion to that effect?

18 COMMISSIONER PARSONS: So moved.

19 VICE CHAIRPERSON HOOD: Second.

20 CHAIRPERSON MITTEN: We have a motion and a  
21 second to approve the order for the PUD at 1700-1730 K Street  
22 and the accompanying request for public space utilization. All  
23 those in favor, please say aye.

24 (Ayes.)

25 Those opposed, please say no.

1 Mr. Bastida?

2 SECRETARY BASTIDA: The staff will record the  
3 vote 5 to 0. Mr. Parsons moving it, Mr. Hood seconding it. Ms.  
4 Mitten, Mr. May and Mr. Hannaham, voting in the affirmative.

5 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

6 Let's move now to Zoning Commission Case No. 01-  
7 2CP/16533.

8 Mr. Bastida?

9 SECRETARY BASTIDA: The staff has provided you  
10 all the information regarding this project and requests an  
11 action by the Commission.

12 CHAIRPERSON MITTEN: Because we have four of  
13 these in front of us in case anybody is unfamiliar with this  
14 particular proposal, this is the dormitory for Square 57 which  
15 is the Affinity Housing for G.W.

16 VICE CHAIRPERSON HOOD: What was the case number  
17 again, Madam Chair?

18 CHAIRPERSON MITTEN: It's 20.

19 VICE CHAIRPERSON HOOD: 20.

20 CHAIRPERSON MITTEN: 20CP. Again, in each of  
21 these cases, we have a request from ANC-2A and I think the  
22 request only relates to the letter itself that came in  
23 requesting the late filing of the letter, that they wouldn't be  
24 submitting proposed findings of fact and conclusions of law  
25 which came in after the deadline. We had a request and it

1 relates to each case, but I don't see that there's any problem  
2 with waiving the filing, the letter is not -- it's informative,  
3 but doesn't change the substance of their previous submission.

4 VICE CHAIRPERSON HOOD: I would agree, Madam  
5 Chair.

6 CHAIRPERSON MITTEN: Any objection to waiving the  
7 rules for -- in each case?

8 (Pause.)

9 Perhaps I'll just -- I just want to call out the  
10 main concern that the ANC having amended their previous  
11 resolution. What they're asking for and this relates to each  
12 case and I won't repeat it four times, but what they're asking  
13 for by way of condition is that the University will present its  
14 overall plan and proposed timeline for housing of students to  
15 meet the required housing for full-time, undergraduate students,  
16 as well as its academic facilities plans within its current  
17 campus boundary as mandated by the current GWU campus plan 2000  
18 to 2010. I think we dealt with this as a -- when we had the  
19 hearings which is while we're very sympathetic with the ANC's  
20 desire to know what the long-term plan is by the University, at  
21 the time that the University made application in each of these  
22 cases, their requirement was not established by the case had  
23 been remanded to the Board of Zoning Adjustment. So they can't  
24 very well be held to present, held to a requirement to present a  
25 plan to meet a requirement that they don't know what it is and I

1 think that's the reason why we determined at the time that it  
2 was not appropriate and in fact, wasn't within the purview of  
3 the Zoning Commission, given that the requirement hadn't been  
4 established that we could hold up the proceeding or condition  
5 the proceeding on GW having that plan before us.

6 Is there any disagreement on that point? All  
7 right, any concerns about the dormitory on Square 57?

8 VICE CHAIRPERSON HOOD: Madam Chair, are we going  
9 to look at the findings and conclusions of law?

10 CHAIRPERSON MITTEN: Sure, if you have something.

11 VICE CHAIRPERSON HOOD: I was just curious on  
12 page 2. No, I'm sorry. It extends to page 3. It's at the top.

13 It's talking about monotrane something and I don't know -- give  
14 me one second. I need to read it right quick again.

15 CHAIRPERSON MITTEN: Okay.

16 (Pause.)

17 VICE CHAIRPERSON HOOD: It's mentioning some of  
18 the issues in which I've heard from folks who live in the  
19 neighborhood about providing one bed on campus or outside the  
20 Foggy Bottom area. It's either or. It's not within the area  
21 and I was just wondering when we heard the case, did they  
22 mention who was monitoring this or is this being monitored? I  
23 couldn't remember and I thought that if it was being monitored,  
24 it just should say it in here how they were dealing with that.

25 CHAIRPERSON MITTEN: Well, just to be -- just to

1 respond explicitly to what this says, the remand order wasn't --  
2 hadn't been approved at the time of the hearing, so I don't  
3 know, maybe we need to change the reference to this. This was  
4 done after -- this order was voted on and issued after -- well,  
5 I shouldn't say after the hearing because I don't know exactly  
6 the date, but it was certainly after the application had been  
7 made and I don't know that the remand order is in the record. I  
8 mean I can answer the question, but I don't know that it's in  
9 the record.

10 VICE CHAIRPERSON HOOD: Okay, I still think the  
11 attempt from what I see here is good. I just wanted to make  
12 sure it was actually happening, so I wont belabor it, at least  
13 intent is there.

14 CHAIRPERSON MITTEN: Right.

15 VICE CHAIRPERSON HOOD: I'm confused a bit. I  
16 don't know if it was this case or another case, but some  
17 reference to traffic and maybe we can do this at a later time.  
18 I think that the traffic should specify the level of service D  
19 or the level of service E, not just say there are some temporary  
20 congestion. I forgot exactly how it was phrased, but I think we  
21 should go to the actual level of service to which the traffic  
22 expert has testified to and I think that should be included in  
23 the order.

24 CHAIRPERSON MITTEN: Okay, maybe just to help you  
25 out, it starts on page 7 and condition number 15 and I think the

1 part that you're most concerned with is about a third of the way  
2 down, page 8, focusing on the intersection of Virginia Avenue  
3 and 23rd Street?

4 VICE CHAIRPERSON HOOD: Right.

5 CHAIRPERSON MITTEN: During the a.m. peak hours,  
6 as that intersection is projected to continue to operate at a  
7 failing level of service and so on, talks about the morning  
8 congestion and you're asking that included in that be a specific  
9 reference to the level of service?

10 VICE CHAIRPERSON HOOD: The level of service. I  
11 believe it was D.

12 CHAIRPERSON MITTEN: Okay.

13 VICE CHAIRPERSON HOOD: I believe. That can be  
14 corrected, I guess, by staff.

15 CHAIRPERSON MITTEN: Okay, anybody else? Okay,  
16 the application for Zoning Commission Case No. 01-20CP is before  
17 us for approval.

18 VICE CHAIRPERSON HOOD: I move approval.

19 COMMISSIONER HANNAHAM: Second.

20 CHAIRPERSON MITTEN: Okay, there was a second by  
21 Mr. Hannaham. All those in favor, please say aye.

22 (Ayes.)

23 Those opposed, please say no.

24 Mr. Bastida?

25 SECRETARY BASTIDA: The staff will record the

1 vote 5 to 0. Mr. Hood moving and Mr. Hannaham seconding. Ms.  
2 Mitten, Mr. May and Mr. Parsons voting in the affirmative.

3 CHAIRPERSON MITTEN: Thank you. Now I just want  
4 for clarification, in case anyone is confused, typically for a  
5 Zoning Commission cases we have proposed action and then take  
6 final action as subsequent session but because we're using BZA  
7 rules for these, for the processing cases, that's why we're  
8 taking final action on the first vote.

9 The second G.W. case is Case No. 01-21CP.

10 Mr. Bastida?

11 SECRETARY BASTIDA: Madam Chair, the staff has  
12 provided you with the remaining of the file and requests an  
13 action on this matter.

14 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.  
15 This is the case, this is the dormitory on Square 43. It's a  
16 700 -- proposed 700-bed dormitory and what I'd like to begin  
17 with here is we had an issue that came up near the end of the  
18 hearing regarding the closed court that was designed, that was  
19 included in the design that didn't meet the requirements of the  
20 zoning ordinance and we have a submission from the architect,  
21 Barry Goldfarb, that as near as I can or as clearly as I can  
22 tell from reading it doesn't dispute that the closed court does  
23 not meet the zoning requirements and the departure from that  
24 would constitute a variance and I just want to be -- I want to  
25 begin by asking the other Members of the Zoning Commission if

1 they concur that, in fact, a variance would be required for the  
2 design as it is from the closed court requirements. Is there a  
3 consensus about that?

4 COMMISSIONER PARSONS: I agree, but we could  
5 somehow accommodate it through this particular case, right?  
6 That would require re-advertising, hearing and so forth.

7 CHAIRPERSON MITTEN: Yes.

8 COMMISSIONER PARSONS: We wouldn't have to  
9 restructure a new case to take care of this deficiency, if you  
10 will.

11 CHAIRPERSON MITTEN: I believe that's correct.  
12 And the fact is that we could actually proceed on it if we felt  
13 that the Applicant had met their burden of proof as it related  
14 to the variance, but so far, they have not attempted to meet  
15 their burden of proof, so if I were asked about the variance, I  
16 would not be in favor of granting it at this point because  
17 there's been no showing to address the test for a variance.

18 So what I'd like to do is ask the Applicant's  
19 representative to come forward and there's a few ways that you  
20 can proceed.

21 MR. MOORE: Madam Chair, Jerry Moore, Charles  
22 Barber, for the Applicant. This closed court issue arose after  
23 the case was filed. As you know, we have been in consultation  
24 with the Commission on Fine Arts and the closed court issue  
25 arose in conjunction with the Fine Arts Commission review of the

1 hinge on the southeast portion of the building. When we  
2 redesigned that hinge on the southeast portion of the building  
3 to comport with the recommendation of the staff of the  
4 Commission on Fine Arts it created that closed court there which  
5 we later determined did not meet the requirements of the zoning  
6 regulations. We can and we would ask the Commission to leave  
7 the record open for us, for the Applicant to file evidence that  
8 we do, in fact, meet the variance requirements of practical  
9 difficulty. This is an area of variance and then I believe the  
10 Commission would be in a position with the response of all the  
11 parties in the case, to decide this case finally without either  
12 our going to hearing or without opening a new case.

13 CHAIRPERSON MITTEN: Well, a couple things. One  
14 is you said you were going to address the practical difficulty,  
15 but don't forget, there's three prongs, just so you hit all of  
16 them. And then we do have -- we do have the issue of the  
17 parties have to be allowed to participate in this and so I'm  
18 going to turn to Mr. Bergstein and see in what manner we need to  
19 proceed in order to be as expedient as possible in handling this  
20 and yet not step on the rights of any of the parties.

21 MR. BERGSTEIN: I think the first issue you need  
22 to consider is whether or not you need to advertise this relief.

23 The relief advertised was for a special exception  
24 and for further processing. Variance relief is different. It  
25 has a harder standard. I don't know how it could affect a

1 different class of persons than the relief that was requested,  
2 but the rules do require that the notice indicate the relief  
3 that is requested. The notice that was disseminated did not.

4 CHAIRPERSON MITTEN: Okay.

5 MR. BERGSTEIN: I think the conservative legal  
6 thing to do would be to re-advertise the case which, of course,  
7 would build in a 45-day court day of notice period and posting  
8 period, etcetera.

9 I'm sure Mr. Moore may have a different view of  
10 that and I'd be glad to hear that, but the conservative thing to  
11 do would be to re-advertise the case and consolidate it with  
12 this proceeding. I'm not suggesting new application, but I am  
13 suggesting that the Zoning Commission needs to advertize this  
14 relief.

15 CHAIRPERSON MITTEN: And maybe just also to  
16 clarify that you need to request it, because you haven't made  
17 application for a variance yet.

18 MR. MOORE: Madam Chairperson, it brings a  
19 problem here because the Zoning Commission has departed from the  
20 old rules of the BZA and that requires either a lawyer's  
21 certification of the relief that's necessary or a letter from  
22 the Zoning Administrator. What universities are in a position  
23 of doing, are now in a position of doing, is bringing  
24 applications to the Zoning Commission and you either figure out  
25 all of the zoning aspects of the case yourself or you take the

1 case at risk. Or if the case is changed by the Commission on  
2 Fine Arts at the recommendation of the Commission on Fine Arts  
3 or another agency of government, in that case changes in the  
4 middle of the stream, then you've got to go back and start all  
5 over again.

6 CHAIRPERSON MITTEN: Okay.

7 MR. MOORE: The Commission needs to look to see  
8 what a proper process is so as to keep other universities who  
9 find themselves in this position out of this position.

10 CHAIRPERSON MITTEN: Let me just -- I appreciate  
11 that nobody wants the dormitories to go forward more than we do,  
12 but I don't want you to suggest that if you leave it up to us to  
13 scrutinize your application for whatever zoning relief you might  
14 have overlooked and then that initiates another process, that  
15 we're somehow thwarting --

16 MR. MOORE: Not what I'm suggesting.

17 CHAIRPERSON MITTEN: Okay.

18 MR. MOORE: I'm suggesting that perhaps the  
19 Zoning Commission may want to consider on university-related  
20 cases, taking the building that is before it and enveloping the  
21 entire -- all the aspects of that building into that special  
22 exception process.

23 CHAIRPERSON MITTEN: Okay.

24 MR. MOORE: I would note that the FAR issues  
25 don't come into play here. If there's a variance from an FAR

1 needed, if there's a variance from lot occupancy needed, they  
2 don't come into play here. And it could be that the Commission  
3 does have the authority within itself to consider all aspects of  
4 that building of a university building in a further processing  
5 case in the same vein as a special exception and not a variance.

6 CHAIRPERSON MITTEN: I hear what you're saying  
7 and I reflect back to a similar situation on a PUD that we had  
8 and in the PUD regulations -- now what you're saying may be  
9 something for the future that we can't do now because we didn't  
10 anticipate it, but in the PUD regulations, issues like this  
11 could be resolved without meeting a variance test because they  
12 were specifically anticipated for the PUD process. I don't know  
13 if, Mr. Bergstein, you've heard the exchange. What Mr. Moore is  
14 suggesting that in the future, if not now, we could consider  
15 this as part of the special exception without having the  
16 separate test for a variance. Am I hearing you right?

17 MR. MOORE: That's correct.

18 CHAIRPERSON MITTEN: But I don't know if we're at  
19 that point with the regulation yet.

20 MR. BERGSTEIN: I'd agree with you on that. I  
21 would take a rule making and it was done in PUDs because of the  
22 specific nature of the PUD and that, in essence, were  
23 particularly unique and special project that the need to seek  
24 special exception leave would not just be required, but that the  
25 standards would even be applicable and in a rule making the

1 Zoning Commission would have to consider where that same sort of  
2 relief, wherein in essence, where ordinarily the University  
3 would require a variance, the less stringent special exception  
4 standards would apply because it was the University applying,  
5 would be something, in essence, what's being requested in the  
6 rule making. That's something that would strong enough, of  
7 course, to be considered in a rule making.

8 CHAIRPERSON MITTEN: Okay. So at a minimum --

9 SECRETARY BASTIDA: Madam chairman?

10 CHAIRPERSON MITTEN: Yes sir.

11 SECRETARY BASTIDA: I think that the only  
12 solution would be the proposal would be narrowed down  
13 specifically to this issue, to eliminate any other extraneous  
14 information coming into the record. But we'll have to go with  
15 the 45 days. Traditionally, the responsibility to determine the  
16 area of relief has to fall with either the Zoning Administrator  
17 or with the Applicant.

18 CHAIRPERSON MITTEN: Okay.

19 MR. BARBER: Madam Chair?

20 CHAIRPERSON MITTEN: Yes.

21 MR. BARBER: Could I just have 30 seconds?

22 CHAIRPERSON MITTEN: Certainly.

23 (Pause.)

24 MR. MOORE: Madam Chair, I'm requested of my  
25 client to ask the Commission to act today on the special

1 exception that is before the Board, realizing that it is the  
2 Commission's view that complete relief is not yet obtainable  
3 because there is a variance out there that still needs to be  
4 addressed.

5 CHAIRPERSON MITTEN: All right.

6 MR. MOORE: I think we've met our obligations and  
7 burden of proof with respect to the special exception and now if  
8 it is the opinion of the Zoning Administrator and it's the  
9 opinion of the Commission that further relief is necessary, then  
10 I would ask the Commission to move forward on the special  
11 exception and receive a request from the University with respect  
12 to any additional relief that may be necessary in the future.

13 CHAIRPERSON MITTEN: Okay, that's fair and that  
14 would allow you to at least go forward on digging around.

15 MR. MOORE: Right. Also, Madam Chair, it would  
16 allow us to eliminate the variance, if it is possible to do that  
17 in the context of the University's needs and in the opinion of  
18 the Commission on Fine Arts.

19 COMMISSIONER PARSONS: Madam Chair, I move  
20 approval of the special exception.

21 CHAIRPERSON MITTEN: Okay. Is there a second?

22 VICE CHAIRPERSON HOOD: I'll second. I just want  
23 to also add the same thing I did to the first one. I think we  
24 need to have level of service and specify which one. That's the  
25 only modification I have, Madam Chair, and it's actually on page

1 15.

2 CHAIRPERSON MITTEN: Thank you. And I guess I  
3 would just want to tell the Applicant that the intention would  
4 be that we would outline in the order that we believe this is  
5 incomplete relief and we anticipate that the Applicant will be  
6 making an additional request for variance relief, given the  
7 design that's before us.

8 Any other discussion?

9 COMMISSIONER MAY: This probably isn't relevant  
10 to the order specifically, but some of the other submissions  
11 that we've got, should we make any specific attempt to address  
12 some of the questions that were raised by, in particularly Dr.  
13 Cruiser whose attorney was suggesting that some future action  
14 may be necessary for his property and the propriety of that  
15 suggestion.

16 CHAIRPERSON MITTEN: If you have something that  
17 you want to put on the record in that regard, please feel free.

18 COMMISSIONER MAY: It seems to me it's worth it  
19 for us to go on the record saying that what has been requested  
20 of us by Dr. Cruiser is not something that we're in a position  
21 to act on at this time and if there is a building that becomes -  
22 - I mean it's obvious, looking at the pictures of what the  
23 Applicant intends to build that it dramatically changes the  
24 nature of that site and that not predicting what room there is  
25 for future action on that simply is not something we can address

1 today.

2 CHAIRPERSON MITTEN: Yes, I would agree with  
3 that. I think that this application is being determined on its  
4 own merits and not in response to what another adjacent property  
5 owner may or may not do.

6 COMMISSIONER MAY: Right.

7 CHAIRPERSON MITTEN: Thank you.

8 SECRETARY BASTIDA: Madam Chairman, the staff  
9 would like a clarification. If we perceive correctly what Mr.  
10 May is saying is that it's going outside the boundaries and the  
11 requests submitted by the Applicant so it's outside the limits  
12 of the hearing and of the site, accordingly, I don't know if we  
13 can go into it.

14 CHAIRPERSON MITTEN: I think we're done with it  
15 now. We're done. Okay? We've dispatched with -- we're not  
16 going to have any more discussion on it. Okay? Thanks.

17 Any further discussions? All those in favor,  
18 please say aye.

19 (Ayes.)

20 Those opposed, please say no.

21 Mr. Bastida?

22 SECRETARY BASTIDA: The staff will record the  
23 vote 5 to 0. Mr. Parsons moving and Mr. Hood seconding; Ms.  
24 Mitten, Mr. May and Mr. Hannaham voting in the affirmative.

25 CHAIRPERSON MITTEN: Thank you.

1 MR. MOORE: Thank you, Madam Chair.

2 VICE CHAIRPERSON HOOD: Madam Chair, I just  
3 wanted to say on these cases, I don't want anybody to think  
4 we're sitting here personally from my standpoint just sitting  
5 here rubber stamping. I think that the University is making --  
6 I haven't seen the order in which the BZA has a remand or  
7 whatever they're doing with it now, but I'm saying this  
8 especially those from the community. We understand the concerns  
9 that have taken place down there, but I sincerely hope as  
10 someone who has reviewed the material, I see the University from  
11 what I have in front of me, making an attempt to try to address  
12 the concerns. While people who live down there may not feel  
13 that way, I think that they still need to keep working together  
14 and not just close the door on each other and get mad and keep  
15 that friction going. I just wanted to add that to the record  
16 because I think they're making an attempt, but we are cognizant  
17 and I toiled with this over the weekend, you cannot stop a  
18 University from buying property and doing certain things to a  
19 certain point. That's going on all over the country. It's  
20 going on in Mississippi, Jackson State is doing the exact same  
21 thing. They have the exact same concerns down there, but I  
22 think in this case, the cases we have in front of us, GW is  
23 making a good attempt to try to relieve some of the tension and  
24 the efforts that are going on outside of the boundaries in that  
25 area.

1 Thank you, Madam Chair.

2 CHAIRPERSON MITTEN: Thank you, Mr. Hood. I  
3 think we all agree with that.

4 And I believe Mr. Parsons has to leave us now,  
5 but he will leave his proxies with us. Thank you.

6 (Pause.)

7 We'll now move to Zoning Commission Case No. 01-  
8 23CP which is the enclosures of the balconies at Smith Hall.

9 Mr. Bastida?

10 SECRETARY BASTIDA: The staff has provided you  
11 the information regarding this project and would request an  
12 action by the Commission.

13 CHAIRPERSON MITTEN: Thank you. All right, we've  
14 been provided with proposed findings of fact and conclusions of  
15 law by the Applicant and a few additional submissions. Are  
16 there any concerns related to the enclosures of the balconies?

17 VICE CHAIRPERSON HOOD: I have none, Madam Chair.

18 CHAIRPERSON MITTEN: Would you like to make  
19 a motion for approval?

20 COMMISSIONER MAY: I move we approve Zoning Case  
21 No. 01-23CP, the additions to Smith Hall.

22 CHAIRPERSON MITTEN: Second. Any discussion? We  
23 have a motion and a second to approve Zoning Commission Case No.  
24 01-23CP. All those in favor, please say aye.

25 (Ayes.)

1 Those opposed, please say no.

2 Mr. Bastida?

3 SECRETARY BASTIDA: The staff will record the  
4 vote 5 to 0. Mr. May moving and Ms. Mitten seconding; Mr.  
5 Hannaham and Mr. Hood voting in the affirmative. Did Mr.  
6 Parsons leave a proxy?

7 CHAIRPERSON MITTEN: I thought he was going to  
8 leave it with you. No. Okay.

9 SECRETARY BASTIDA: Then the vote will be  
10 recorded 4 to 0.

11 CHAIRPERSON MITTEN: Unless he wrote me a note.  
12 I don't think he wrote me a note. Okay, thank you.

13 We'll move to the last case under Final Action  
14 which is Zoning Commission Case No. 01-25CP which is the  
15 addition to Funger Hall.

16 Mr. Bastida?

17 SECRETARY BASTIDA: The staff has provided you  
18 with the rest of the file and requests an action on this matter.

19 CHAIRPERSON MITTEN: The only thing that I'd like  
20 to add by way of the findings of fact which is referenced in the  
21 reference later in the conditions is the location of the  
22 emergency generator. I'd like to have it also referenced in  
23 condition 7, or finding of fact number 17 where just the issues  
24 related to the roof structures are being outlined there and just  
25 to add reference to the emergency generator.

1 Anything else? Then I would move approval of  
2 Zoning Commission Case No. 01-25CP.

3 COMMISSIONER HANNAHAM: Second.

4 CHAIRPERSON MITTEN: We have a motion and a  
5 second to approve the further processing application for the  
6 addition to Fungler Hall.

7 All those in favor, please say aye.

8 (Ayes.)

9 Those opposed, please say no.

10 Mr. Bastida?

11 SECRETARY BASTIDA: The staff would record the  
12 vote 4 to 0. Ms. Mitten moving and Mr. Hannaham seconding; Mr.  
13 May and Mr. Hood voting in the affirmative with Mr. Parsons has  
14 left the meeting and has not left an absentee ballot.

15 CHAIRPERSON MITTEN: Thank you. The only thing  
16 left on our agenda that requires our attention, Mr. Bastida, is  
17 the report --

18 VICE CHAIRPERSON HOOD: Madam Chair, before we  
19 get to the report, I would like to ask Mr. Bastida for the  
20 record to give us an update on the meeting and also I have a  
21 question pertaining to the meeting to the Office of Planning.

22 I'm sorry, the meeting pertaining to the LSBDS  
23 and the DOES. If you will let us know who has been contacted  
24 and also what the status is of those who are going to attend.  
25 And also, Madam Chair, I think we need to do a follow up letter,

1 in writing, to everyone who has been contacted to come to the  
2 meeting.

3 SECRETARY BASTIDA: Everybody but the Office of  
4 Planning has been contacted. The meeting has been scheduled for  
5 Wednesday, January 30 at 2 p.m. and it has been, the two offices  
6 involve Mr. Catanias and Mr. --

7 VICE CHAIRPERSON HOOD: Mr. Orange.

8 SECRETARY BASTIDA: Right. And I am intending to  
9 follow up. I got confirmation from everybody. By Friday, I  
10 intend to issue a memo, a reminder later on this week and I also  
11 wanted to contact the Office of Planning prior to sending that  
12 memo out.

13 VICE CHAIRPERSON HOOD: Okay, I'm a little shaken  
14 that the Office of Planning was not involved with the process  
15 because I thought that the Office of Planning were the people  
16 who dealt with the DOES and I specifically know, Madam Chair, if  
17 we would check the transcript, that I asked that the Office of  
18 Planning be included because they're the ones who sit at the  
19 table with the Applicants and a lot of people up front. So I'm  
20 kind of taken back that they haven't even been contacted, but  
21 anyway, be it as it may or nevertheless, we still need to move  
22 forward because my concern is I want to make sure that the  
23 necessary parties and those involved that come to this meeting  
24 come prepared with the issues, at least to be able to present  
25 what their respective offices are doing, dealing with the LSDBs

1 and the DOES pertaining to zoning and how they are functioning.

2 Because the main argument, Applicants and developer are saying  
3 that it's not happening.

4 Also, Madam Chair, with that letter that Mr.  
5 Bastida is so graciously going to send out, I think we also need  
6 to send an agenda and also just make sure that everyone comes  
7 prepared so it won't be a senseless meeting.

8 CHAIRPERSON MITTEN: I agree with that. Mr.  
9 Bastida, you have the agenda that we had drafted?

10 SECRETARY BASTIDA: That is correct, Madam Chair.

11 CHAIRPERSON MITTEN: Okay, and then maybe just to  
12 make sure that the sufficient amount of substance is in the  
13 memo, maybe we could, you could run that by Mr. Hood and I  
14 before you send it out.

15 SECRETARY BASTIDA: Sure.

16 CHAIRPERSON MITTEN: Thank you.

17 I think -- did you have something else, Mr. Bastida? Mr. Hood  
18 interjected about the meeting we're going to have and I didn't  
19 know if there was something else that you had --

20 SECRETARY BASTIDA: Just a reminder schedule and  
21 that's self-explanatory. I believe that the Director would like  
22 to make a report that is not on the agenda and I would request  
23 that you give her some time in order to do that report.

24 CHAIRPERSON MITTEN: Thank you. Ms. Kress,  
25 welcome.

1                   DIRECTOR KRESS: Thank you. I'm glad to be here  
2 and as you know, I have been luckily able to follow what has  
3 been happening today via our new streaming that we have within  
4 our office. That's very helpful and for those of you who  
5 haven't seen it, be sure to stop by my office and take a look.

6                   Quickly, what I wanted to report on is -- has to  
7 do with Round 1 and Round 2 of the Neighborhood Cluster Database  
8 that's being put together. Very quickly, for over a year  
9 several agencies leading six neighborhood initiatives have been  
10 working closely with the neighborhoods to identify how best to  
11 resolve the long-standing problems and improve the quality of  
12 life and neighborhoods in the city. The Administration compiled  
13 a database of strategic actions derived at the neighborhood  
14 level that are being used to guide the development of agency  
15 budgets.

16                   The Office of Zoning has been asked to identify  
17 with specific items that were specifically noted as being under  
18 our control in which we were the lead or a support agency. I  
19 did send to you both our responses to Round 1 and Round 2.  
20 There are many types of issues being dealt with, having to do  
21 with our organization, the kinds of services we perform,  
22 technical aspects of how we accomplish things, outreach,  
23 etcetera. We have answered all of the questions and I hope  
24 you've had a chance to take a look at them.

25                   However, there came down to be eight which we

1 felt we needed the Zoning Commission to take action on and these  
2 items have to do with items that require a report or review of  
3 report and a possible set down recommendation from the Office of  
4 Planning to the Zoning Commission. The community, as you are  
5 aware, doesn't understand how the process works and so part of  
6 our responses and I think OP has been doing the same thing is to  
7 help educate in responding to each of these and agreeing to what  
8 we are obligating ourselves to do and when is also to clear,  
9 clean up the process understanding, hopefully in some of the  
10 community's mind.

11 The seven items that actually one in Round 1 and  
12 the seven in Round 2, OP is listed on all of those as well and  
13 basically has said in their responses that they are going to be  
14 undertaking some studies and reviewing these issues, so this is  
15 not something that we're answering alone without some thought  
16 and some discussion and I thank Ellen for taking the time to go  
17 over these few with me right now.

18 I would like to ask that these one item from  
19 Round 1 and the seven items from Round 2, I have listed on the  
20 handout be referred by letter to Office of Planning for study.

21 CHAIRPERSON MITTEN: Let me ask you a question  
22 first, because I just want to be clear on the significance of  
23 the columns. For instance, on the very first item from Round 1,  
24 it says Ward 2, as it relates to reviewing the consistency of  
25 the regs with the Comp. Plan, does that mean that the referral

1 would be exclusive or that the request is exclusive to Ward 2 or  
2 is that just where it originated?

3 DIRECTOR KRESS: This is where it originated and  
4 you can see that sometimes there's more than one ward. I don't  
5 think that the Office of Planning nor would we write it that  
6 way, would take that to only mean Ward 2 issues. I think that  
7 is the fully comprehensive plan consistency.

8 CHAIRPERSON MITTEN: Okay.

9 DIRECTOR KRESS: And there -- the one that came  
10 through on all the wards was the request for tougher off-street  
11 parking requirements for churches. Interestingly enough, all  
12 wards mentioned that.

13 There's actually, and I've forgotten what the  
14 total number was, these are numbered through 2948 suggestions or  
15 comments that were to be followed up on, but there were quite a  
16 few and there were very few that were actually mentioned by all  
17 wards and that affected us. There were many that were mentioned  
18 by all wards that affected other parts of the government. These  
19 were the ones that came to OP and OZ.

20 CHAIRPERSON MITTEN: So maybe if you heard the  
21 earlier discussion about the TDRs for historic houses of  
22 worship, maybe we should have a roundtable on TDRs and off  
23 street parking requirements.

24 (Laughter.)

25 A little give, a little take. Okay. Any other

1 questions for Mrs. Kress? So you're looking for a vote to make  
2 -- a formal vote to make a referral of these items to the Office  
3 of Planning?

4 DIRECTOR KRESS: Yes, Madam Chair.

5 VICE CHAIRPERSON HOOD: Madam Chair, with that, I  
6 make a motion that we send Round 1 and Round 2 from the Office  
7 of Zoning, submitted to the Office of Planning for referral.

8 COMMISSIONER HANNAHAM: Second.

9 CHAIRPERSON MITTEN: Okay, we have a motion and a  
10 second to make the Round 1 and Round 2 neighborhood cluster  
11 referrals to the Office of Planning. Any further discussion?

12 All those in favor, please say aye.

13 (Ayes.)

14 Those opposed, please say no.

15 Mr. Bastida?

16 DIRECTOR KRESS: Madam Chair, could I bring up  
17 one more item while you're still hearing from the Director? If  
18 it's possible today after this meeting or we need to set up  
19 another meeting very quickly with the Office of Planning,  
20 Corporation Counsel and the Zoning Commission regarding federal  
21 property as it is used by the District and District as expansion  
22 on that property and as private sector or a housing group  
23 acquires it, and whether it has to go through a map amendment  
24 and all those cases. There has been, right now, as you know,  
25 St. E's is going through the formal map amendment. We had

1 referred some months ago a concept to Office of Planning for  
2 using underlying zoning in certain instances or creating some  
3 zoning. This has now become quite critical in that we have some  
4 14, 20 perhaps recreation centers on federal land that are  
5 asking for additions which requires, according to the laws that  
6 were passed in the early 1990s that those be subject, those  
7 District facilities be subject to zoning and if we consider that  
8 land as right now federally owned, there's an erasure through it  
9 that says basically it's unzoned and so I would just ask that  
10 either if you would schedule either today after this meeting or  
11 another time when all of us can meet to discuss this because we  
12 now have several sitting here asking for certification and we  
13 are not clear how to proceed or how to advise them on whether  
14 they should come to you all for a map amendment.

15 CHAIRPERSON MITTEN: I was just looking at our  
16 hearing schedule to see if maybe we can set something up to  
17 precede one of the hearings coming up, perhaps on Thursday, the  
18 24th, we could all meet at 5:30 before we continue with the IMF  
19 hearing. I don't know how that suits the Commission. Any  
20 thoughts from the Commissioners about having a meeting at 5:30  
21 on the 24th? That would precede our continuation of the IMF  
22 hearing. That's our target then. This is what we're offering,  
23 if you can set this up, would be 5:30 on the 24th since we'll  
24 all be.

25 DIRECTOR KRESS: Is Corporation Counsel still

1 here? I can't see.

2 SECRETARY BASTIDA: It is.

3 DIRECTOR KRESS: Is that all right them? Ellen  
4 is checking her schedule.

5 SECRETARY BASTIDA: Corporation Counsel has no  
6 problems, or no objections to meeting --

7 CHAIRPERSON MITTEN: You mean about scheduling  
8 that meeting?

9 (Laughter.)

10 That was awfully inclusive. So I think that's  
11 going to be sufficient.

12 DIRECTOR KRESS: Ellen said that was all right  
13 with Office of Planning.

14 CHAIRPERSON MITTEN: Okay. And shall we meet  
15 here?

16 DIRECTOR KRESS: In our conference room?

17 CHAIRPERSON MITTEN: Yes.

18 DIRECTOR KRESS: Yes.

19 CHAIRPERSON MITTEN: Okay, what we did not do is  
20 have -- is that all, Ms. Kress?

21 DIRECTOR KRESS: Yes, thank you.

22 CHAIRPERSON MITTEN: Mr. Bastida, I need you to  
23 record the vote from that last vote that we took, please.

24 SECRETARY BASTIDA: The staff will record the  
25 vote regarding sending the Round 1 and Round 2 descriptions of

1 items to the Office of Planning and in a vote 4 to 0, Mr. Hood  
2 moving and Mr. Hannaham seconding and Ms. Mitten and Mr. May  
3 voting in the affirmative. Mr. Parsons not present, not voting.

4 CHAIRPERSON MITTEN: Thank you.

5 VICE CHAIRPERSON HOOD: Madam Chair, before we  
6 adjourn the meeting, we don't often have the opportunity to have  
7 our Director, Ms. Kress, here. I just wanted to let her know  
8 that I think our staff, Mr. Bastida and his staff, are doing a  
9 good job keeping us prepared and I think they are doing an  
10 excellent job and I just wanted to put that on there for the  
11 record and also I wanted to say I think Ms. Kress is doing an  
12 excellent job. Whatever group hired her, I think they were  
13 geniuses. So with that, thank you, Madam Chair.

14 CHAIRPERSON MITTEN: Thank you, Mr. Hood. Next  
15 time maybe we'll do that when we have a crowd.

16 VICE CHAIRPERSON HOOD: I did it that time so it  
17 would be on the record.

18 (Laughter.)

19 CHAIRPERSON MITTEN: Okay, we have no more  
20 business before us and I declare this public meeting adjourned.

21 (Whereupon, at 4:05 p.m., the meeting was  
22 concluded.)

23

24

25

