

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING  
1150th MEETING SESSION (8<sup>th</sup> of 2003)

+ + + + +

THURSDAY  
JULY 31, 2003

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened at 1:30 p.m. in the Office of Zoning Hearing Room, Suite 220-S, 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     |
| JOHN G. PARSONS | Commissioner     |

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## COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, Zoning  
Commission  
Sharon Schellin, Zoning Specialist

## OTHER AGENCY STAFF PRESENT:

Maxine Brown-Roberts, Office of Planning  
Steven Cochran, Office of Planning  
Arthur Jackson, Office of Planning  
Joel Lawson, Office of Planning  
Ellen McCarthy, Deputy Director, Office of  
Planning  
David McGhettigan, Office of Planning  
Stephen Mordfin, Office of Planning  
Jennifer Steingasser, Office of Planning

## D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esquire  
Corey Buffo, Esquire  
Sherry Glazer, Esquire  
Mary Nagelhout, Esquire

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

Time: 1:40 p.m.

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is the monthly meeting, the last day of the month, of the Zoning Commission for July. This is July 31, 2003, and my name is Carol Mitten, and joining me this afternoon are Vice Chairman Anthony Hood and Commissioners Peter May, John Parsons, and James Hannaham.

The agenda for our meeting this afternoon is available in the wall bin near the door, which you can take a copy and follow along. I would just remind folks that we do not take public comment at these meetings unless the Commission invites someone forward. So you can keep your seats throughout, but I would ask you to turn off all beepers and cellphones so we don't disrupt the meeting.

Mr. Bastida, are there any preliminary matters before we start?

MR. BASTIDA: The staff has no preliminary matters at this time.

CHAIRPERSON MITTEN: Thank you, Mr. Bastida. I just want to make a few adjustments to the agenda. We are adding under Action on Minutes

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1 the approval of our minutes from May 12, 2003, as  
2 well as the indicated June 9th minutes. And under  
3 Final Action we are just going to change the order  
4 of two cases. The last two cases will be reversed.

5 So Bennett Beauty School will go first, and then  
6 the petition from 3-F to amend the Section  
7 3202.5(a) will be the last case.

8 So we will move now to Action on the  
9 Minutes. I believe everyone has a draft copy of  
10 the minutes from the May 12, 2003, Public Meeting.

11 I think, with the provision that we would be able  
12 to make changes for editorial comments as opposed  
13 to substantive comments, I would move approval of  
14 the May 12th meeting minutes.

15 COMMISSIONER MAY: Second.

16 CHAIRPERSON MITTEN: Any further  
17 discussion? All those in favor, please say Aye.

18 Those opposed, please say No.

19 MS. SCHELLIN: Staff would report the  
20 vote five to zero to approve the meeting minutes  
21 from May 12, 2003, Commissioner Mitten moving,  
22 Commission May seconding, Commissioners Parsons,  
23 Hannaham and Hood in favor.

24 CHAIRPERSON MITTEN: Thank you. Now we  
25 have the minutes of the June 9, 2003, meeting of

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1 the Commission.

2 VICE CHAIRPERSON HOOD: Madam Chair, I  
3 would move approval of June 9th minutes with any  
4 necessary corrections.

5 CHAIRPERSON MITTEN: Second. Any  
6 discussion? All those in favor, please say Aye.

7 Those opposed, please say No.

8 Ms. Schellin?

9 MS. SCHELLIN: Staff would record the  
10 vote five to zero to zero to approve the meeting  
11 minutes from the June 9, 2003, Public Meeting,  
12 Commissioner Hood moving, Commissioner Mitten  
13 seconding, Commissioners May, Hannaham and Parsons  
14 in favor.

15 CHAIRPERSON MITTEN: Thank you. Now we  
16 will have the from the Office of Planning, and I am  
17 very much looking forward to what a sludge digester  
18 is.

19 MS. McCARTHY: And wait until you see  
20 what a sludge digester looks like, because you will  
21 find it even more interesting.

22 Madam Chair, members of the Commission,  
23 this is our status report. You've got such a  
24 lengthy agenda, and there is nothing special that I  
25 need to note. So maybe I will just pass it out and

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1 ask if you have any questions. Otherwise, I would  
2 be happy to take them now or, if you want to  
3 discuss it further at the end of the meeting, that  
4 would be fine, too.

5 CHAIRPERSON MITTEN: I just have one  
6 question that I have been thinking about, which is  
7 when do you anticipate that the campus plan text  
8 amendments will be brought to the Commission,  
9 because that has been -- It's been a while since we  
10 had our roundtable and we set all that in motion,  
11 and I feel that we've lost some momentum on that.  
12 I would like to get re-energized, if we could.

13 MS. MCCARTHY: Right. We had  
14 originally been -- We had held off pending the  
15 resolution of some of the litigation, and then it  
16 became clear that some of the issues that we wanted  
17 to address were issues important for either current  
18 or future litigation.

19 So we would like to go forward with  
20 that, but we wanted to have a round of outreach to  
21 the universities and to the communities surrounding  
22 those universities first. So I guess we would say  
23 probably fall, you know, October, November,  
24 something like that. We do want to move forward  
25 with it.

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1 CHAIRPERSON MITTEN: Okay, good. Are  
2 there any other questions for the Office of  
3 Planning? All right. Then we will move  
4 to the Consent Calendar item, which is Case Number  
5 03-25. There is a request from the Office of  
6 Zoning to amend Section 3045, which relates to the  
7 cost of maps, zoning maps, available in this  
8 office.

9 So, Mr. Bastida, would you like to give  
10 us a quick summary of that?

11 MR. BASTIDA: Yes. We are producing a  
12 new electronic map in which the cost is much  
13 higher, and we had in our hearing in front of the  
14 Counsel. They provided us with some money that we  
15 need to recoup in order to fulfill our commitment  
16 to the Corporation Counsel.

17 So the Office have determined that the  
18 new maps in black and white would be \$10 for the  
19 set and \$60 for the color set, and we are  
20 requesting for the Commission to approve that, and  
21 we will publish this as a proposal to get comment  
22 from the public regarding those charges. Thank  
23 you.

24 CHAIRPERSON MITTEN: Okay, thank you.  
25 I just want to be clear. You mentioned about an

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1 electronic map, but this is a hard copy, hard paper  
2 copy of the map. True?

3 MR. BASTIDA: Correct. This is a hard  
4 copy of the electronic map.

5 CHAIRPERSON MITTEN: All right.

6 MR. BASTIDA: Thank you for the  
7 correction.

8 MR. BASTIDA: Thank you, Mr. Bastida.  
9 Any questions for Mr. Bastida about this? Then I  
10 would move approval of the amendment to Section  
11 3045 for the cost of the map, the black and white  
12 map at \$10 and the color copy of the map at \$60.

13 VICE CHAIRPERSON HOOD: Second.

14 CHAIRPERSON MITTEN: Any further  
15 discussion? All those in favor, please say Aye.

16 Those opposed, please say No.

17 Ms. Schellin?

18 MS. SCHELLIN: Yes. Staff would record  
19 the vote five to zero to zero to approve Zoning  
20 Commission Case Number 03-25, Commissioner Mitten  
21 moving, Commissioner Hood seconding, Commissioners  
22 Parsons, Hannaham and May in favor.

23 CHAIRPERSON MITTEN: All right. Just  
24 so we are clear, because this was a rulemaking it  
25 will be advertised for 30 days with a comment

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1 period, and then we will take final action at a  
2 future meeting.

3 Next under Hearing Action, the first  
4 case is Case Number 03-19/03-03/03-05, which would  
5 be a modification to Zoning Commission Case Number  
6 02-05, which is the New East Capital PUD, the first  
7 stage PUD on which, I believe, we have had the  
8 hearing and the order is final in 02-05.

9 The second stage component of that, I  
10 believe, has been set down for Public Hearing, but  
11 the hearing has not taken place. So part of the  
12 request is that this modification would be heard  
13 simultaneously with the second stage. So I will  
14 turn to Office of Planning to correct me if I have  
15 misstated anything and to give us a quick rundown  
16 of the proposed modification.

17 MS. MCCARTHY: I don't believe you  
18 misstated anything, Madam Chair, but the individual  
19 machinations are pretty complex. So I am not  
20 making any guarantees myself.

21 Essentially, this application is about  
22 a fairly small modification to the Planned Unit  
23 Development because of some changes in Department  
24 of Housing and Urban Development's interpretation  
25 to fund or not fund. The Housing Authority has had

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1 to change its development program and to retain the  
2 high-rise apartment building that it had originally  
3 planned to demolish and to rehab that.

4 The Office of Planning is actually  
5 pleased with that direction, because that apartment  
6 building is located very close to the Metro  
7 station, and we had always felt that what was being  
8 proposed in the original PUD could have more  
9 profitably focused some higher density in the  
10 immediate vicinity of the Metro station. So we are  
11 supporting this change in the PUD.

12 CHAIRPERSON MITTEN: Thank you. I just  
13 noticed something in looking at this, and I would  
14 ask you to turn to the two -- There is a zoning map  
15 and then there is a Sandborn plat that is attached  
16 behind that in the submission from Arnold & Porter.

17 The request as it relates to Lot 52 is  
18 that it be rezoned from R-5-D to C-2-B, and as it  
19 relates to Lot 53, which is the more westerly lot  
20 which is the little leg that comes down -- that is  
21 a request to be rezoned from R-5-A to C-2-B. But  
22 if you look at the zoning map, it looks like they  
23 should both be R-5-D as their existing zone, unless  
24 Lot 53 is actually someplace else. Do you see  
25 that?

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1 MS. McCARTHY: I see what you are  
2 talking about.

3 CHAIRPERSON MITTEN: So if we could  
4 just get that clarified before this gets  
5 advertised, that would be helpful.

6 MS. McCARTHY: Right. We would be  
7 happy to do that and to communicate that to the  
8 Office of Zoning staff so it can be advertised  
9 correctly.

10 CHAIRPERSON MITTEN: Okay. Mr. Hood?

11 VICE CHAIRPERSON HOOD: Madam Chair, I  
12 want to make sure I understand exactly what is  
13 going on here.

14 The first stage -- This is a  
15 modification to the first stage, which will be  
16 heard prior to us dealing with the second stage or  
17 the same night or whatever the case may be.

18 CHAIRPERSON MITTEN: Yes.

19 VICE CHAIRPERSON HOOD: But we will  
20 hear this modification first or simultaneously or  
21 it doesn't really matter?

22 CHAIRPERSON MITTEN: Well -- Go ahead.

23 MS. McCARTHY: As I understand it, it  
24 just matters in that the stage 2 is required by the  
25 regulations to be consistent with the stage 1. So

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1 we would want to first modify what is included in  
2 the boundaries of stage 1 before we go to stage 2.

3 VICE CHAIRPERSON HOOD: Do we have a  
4 projected date when we are going to hear the second  
5 stage?

6 CHAIRPERSON MITTEN: It's not on our  
7 schedule yet. Mr. Bastida?

8 MR. BASTIDA: No, Madam Chair. I was  
9 waiting for you to set this down, so in that way I  
10 can set up said date, the hearing date, to have it  
11 consecutively on the same evening.

12 CHAIRPERSON MITTEN: Okay.

13 VICE CHAIRPERSON HOOD: Thank you.

14 CHAIRPERSON MITTEN: Any other  
15 questions? Mr. May?

16 COMMISSIONER MAY: This is more of an  
17 observation. At first reading of this, you know,  
18 it seemed like a relatively minor modification, but  
19 then it says sort of, oh, and by the way, it's  
20 because we are retaining this existing building and  
21 not building the proposed multi-unit, multi-family  
22 housing building.

23 I, frankly, regard that as a very  
24 significant change from the building that was  
25 planned. I understand the reason why it would be

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1 necessary or desirable, and I understand the  
2 complications. But I wouldn't want to miscast this  
3 change. The fact that they are retaining an  
4 existing building which is not exactly the most  
5 treasured property in the area from an aesthetic  
6 point of view --

7 MS. McCARTHY: Retaining, but  
8 substantially upgrading.

9 COMMISSIONER MAY: And the proof is in  
10 what we see about the substantial upgrades. I just  
11 want to make sure that you all appreciate that this  
12 is a very significant change.

13 I also think, from an urban point of  
14 view, that there are some issues that the new  
15 building attempted to address with that particular  
16 corner that I'm sure will be addressed when we  
17 actually have the hearing. I guess what I am  
18 saying is that, from an architectural point of view  
19 and from an urban planning point of view, I do  
20 think this is a pretty significant change.

21 From a zoning point of view, I think it  
22 is relatively minor and serves the overall purpose  
23 of the PUD, I think, very well, and I am eager to  
24 look at it in detail.

25 MS. McCARTHY: Was there a particular

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1 feature that you were talking about that was --

2 COMMISSIONER MAY: No. I just think --  
3 I mean, the existing building as it is, there's  
4 just an awful lot of work involved in making that  
5 work. So I just hope that it's done very well,  
6 because with the planned new development we, of  
7 course, go far beyond just simply what number of  
8 zoning is attached to it.

9 MS. MCCARTHY: No, it's definitely  
10 true, and we are concerned -- We are happy that  
11 that building has retail on the ground floor. We  
12 want to make sure that that retail is coordinated  
13 with the retail which is supposed to occur across  
14 the street as well, and we are -- Yes, we are very  
15 concerned. We would not want anything that closely  
16 resembles the building as it is now. I can assure  
17 you of that.

18 COMMISSIONER MAY: Okay, thank you very  
19 much.

20 COMMISSIONER PARSONS: Can I follow up  
21 on that? The words in the memo, whatever it is,  
22 says the applicant proposes to reconstruct the  
23 facade. What does that mean? Does that mean  
24 demolition of the facade and starting all over  
25 again?

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1 MS. McCARTHY: Why don't I -- We have  
2 received drawings from the applicant that I thought  
3 you had as well, but Mr. McGhettigan just informed  
4 me that he hasn't. So you may feel a little more  
5 at rest when you see what is being proposed, which  
6 is a substantial change over what is -- over the  
7 lovely building that is there now.

8 COMMISSIONER PARSONS: I have to make a  
9 comment, that it looks like an office building.  
10 But we'll get to that when the hearing comes. It  
11 just doesn't say residential to me.

12 All right. Now we understand. It's  
13 not what is there now.

14 MS. McCARTHY: I'm sorry. There  
15 actually are --

16 CHAIRPERSON MITTEN: That actually is  
17 an office building.

18 MS. McCARTHY: I didn't realize. We  
19 have enough copies for all of the Commissioners.

20 CHAIRPERSON MITTEN: I'm not sure. I  
21 might be cracking wise now.

22 MR. MCGHETTIGAN: Sorry for the  
23 lateness. The Metro was delayed.

24 The first exhibit is just a picture of  
25 the existing, and you can see the retail on the

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1 bottom existing structures. Then I spliced the  
2 site plan into the overall development so you could  
3 see it in context of the whole plan on the second  
4 page.

5 The third page is their current sketch  
6 site plan of it. They are going to put some two-  
7 story structures along the East Capital frontage.  
8 They are envisioning there could be retail or  
9 live/work or office, professional offices, some low  
10 scale commercial development, and there might be  
11 some -- a restaurant or something fronting on a  
12 plaza in the ground floor of one of the buildings.

13 They are looking into that. They are also looking  
14 into relocating the daycare center into this area.

15  
16 The corner of East Capital, they are  
17 looking at some sort of plaza or some public  
18 feature there.

19 The last page is a rendering of it  
20 showing the new townhouses or they call them  
21 townhouses, but the low structures are going to be  
22 right on the street with access to the street in  
23 front of the building where currently is a parking  
24 lot.

25 CHAIRPERSON MITTEN: And Mr.

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1 McGhettigan, did I understand you to say that in  
2 those townhouses they might be retail, they might  
3 be office, they might be residential?

4 MR. MCGHETTIGAN: Yes. They don't have  
5 any program yet for it, but they would like the  
6 flexibility to make them sort of live/work or  
7 office, professional offices or something like  
8 that.

9 CHAIRPERSON MITTEN: Well, I was going  
10 to ask about the status of the commercial component  
11 that was not in -- was carved out of the first  
12 stage, which is just on the north side of East  
13 Capital Street from here, and ask first what is the  
14 status of that?

15 MR. MCGHETTIGAN: They are working  
16 diligently to get a grocery store deal in there.  
17 They have been working with the Mayor to find --  
18 and Deputy Mayor -- a price to get a grocery store  
19 in there.

20 MS. MCCARTHY: There was a grocery  
21 store which was tentatively signed to anchor that,  
22 and it has pulled out. So they need to find  
23 another anchor tenant.

24 MR. MCGHETTIGAN: And once they find  
25 that tenant, then they can finalize the design of

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1 the shopping center.

2 CHAIRPERSON MITTEN: I guess what I  
3 would recommend is that this -- Having these  
4 townhouses with English basements and then  
5 suggesting that those would be perhaps used for  
6 retail -- that doesn't make sense. This may  
7 actually be a better location -- I mean, I don't  
8 know if it's actually possible to attract the  
9 critical mass of retail that they need at this  
10 location, and they need to decide at some point  
11 whether that is possible and, if not, then this is  
12 an opportunity to do something on the right side of  
13 East Capital Street where the Metro is, and this  
14 could be reconfigured to be maybe not as elaborate  
15 as the shopping center would have been on the north  
16 side, but much more workable retail in a smaller  
17 quantity.

18 So let's not design this, thinking we  
19 are going to get a shopping center and then not get  
20 the shopping center, and then this is designed  
21 wrong.

22 MS. McCARTHY: No, and that's exactly  
23 what I meant by coordinating it at the kind of  
24 retail that we were envisioning would be here,  
25 things like a bank or an insurance office,

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1 insurance agent where you are getting services,  
2 basically a service retail, so that it wasn't  
3 competing with the goods and food retail across the  
4 street.

5 We have certainly communicated to the  
6 Housing Authority the need to firm up the  
7 commitment on the commercial project across the  
8 street.

9 CHAIRPERSON MITTEN: Okay. Mr. May?

10 COMMISSIONER MAY: Building sort of, I  
11 think, on both what Mr. Parsons said and the  
12 Chairman's comments on this, I thought it was  
13 really ironic looking at this lovely rendering of  
14 the proposed new building, and we have these  
15 towering office buildings which are actually  
16 apartments, and then we have these lovely  
17 townhouses in front that are actually businesses.

18 I just think that there is a lot of --  
19 I'm glad we have seen this, because if we had seen  
20 this first with the prehearing package, I would be  
21 greatly concerned about the direction that they  
22 have taken so far, and seeing this now and getting  
23 this preview, I would have to say again -- I mean,  
24 for reasons that the Chairman stated and the  
25 reasons that Commissioner Parsons stated, I think

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1 that there is a lot of work to be done to make  
2 these buildings work as part of it.

3 I think it is definitely possible. I  
4 think there is great potential for it. In fact, I  
5 think it opens the door to doing, frankly, a more  
6 significant modification at first stage that may  
7 greatly enhance the project, if the focus of this  
8 is opened up just a little bit and incorporates  
9 what is going on across the street and looks more  
10 carefully at what reasonable use there might be of  
11 commercial on this portion of the PUD.

12 COMMISSIONER PARSONS: I would strongly  
13 urge an alternative be designed, be brought to us  
14 for the hearing. As they say, I only speak for  
15 myself, but if there is any urgency to this  
16 project, I can see delay in designing with vision,  
17 if I push hard enough.

18 VICE CHAIRPERSON HOOD: Madam Chair, I  
19 would just align myself with the comments of my  
20 colleagues, so we won't wait until we get to that  
21 point and then we have to come down and come back  
22 again. So I just align myself with everything that  
23 has been said previously.

24 CHAIRPERSON MITTEN: Thank you.

25 COMMISSIONER MAY: I don't know how

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1 helpful this is, but I remember hearing at some  
2 point that it is very desirable on major commuter  
3 routes to have supermarkets on the outgoing lane,  
4 and I don't know if it is possible to shift that  
5 use to the other side of the street, but it seems  
6 to me that that would make it more attractive for a  
7 grocery chain to be on the eastbound lane of East  
8 Capital Street. That may not be a factor at all,  
9 but I just thought I would throw that into the mix.

10 CHAIRPERSON MITTEN: Mr. Hannaham?

11 COMMISSIONER HANNAHAM: I also agree  
12 with my colleagues on this. I would just like to  
13 mention one more thing, although it is not directly  
14 related. When we first considered this  
15 project, we had considerable discussion on the fact  
16 that this is our Capital Gateway, and there was a  
17 lot of talk and give and take and promises, I  
18 believe, by the architect that they were going to  
19 do something very significant.

20 I just wondered whether OP is aware of  
21 how things are progressing with regard to that  
22 idea. That's the whole PUD as an entryway to the  
23 city, a very dramatic entryway, by the way.

24 MS. MCCARTHY: Well, I think it is safe  
25 to say that is one of the reasons that the Office

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1 of Planning has been very concerned about the  
2 design of the commercial area, in particular,  
3 because that was where we thought there was the  
4 opportunity to make a real design statement and  
5 frame the gateway, especially when this was just  
6 going to be a lower rise or mid-rise entity.

7 Now that this is a high-rise building  
8 and when we, hopefully, have the shopping center  
9 across the street, it's a good opportunity to work  
10 with those two together and really frame the  
11 entrance to the city along East Capital Street.

12 Believe me, we are completely in sync  
13 with what the Commission is saying about the  
14 importance of improving the quality of the design  
15 here. It was why we had noted in our  
16 recommendation that we recommended setdown, but  
17 that we would continue to work with the Housing  
18 Authority on architecture and landscape plans and  
19 improving the look here.

20 COMMISSIONER HANNAHAM: The whole  
21 shebang. Okay, thank you very much. Thank you,  
22 Madam Chair.

23 VICE CHAIRPERSON HOOD: Madam Chair, if  
24 I may ask, do we know as of this point, Ms.  
25 McCarthy, if all those homes that were going to be

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1 acquired have been acquired?

2 MS. McCARTHY: I don't know. I see the  
3 applicant's counsel is here, but --

4 VICE CHAIRPERSON HOOD: I just was  
5 wondering if we knew already.

6 MS. McCARTHY: No.

7 VICE CHAIRPERSON HOOD: Thank you.

8 CHAIRPERSON MITTEN: Anymore questions?

9 All right. We have a recommendation from the  
10 Office of Planning to set down this case for --  
11 this modification for Public Hearing at the same  
12 time as the second stage of the PUD applications.  
13 I would so move. Come on now, guys.

14 COMMISSIONER HANNAHAM: Second.

15 CHAIRPERSON MITTEN: Thank you. Any  
16 further discussion? All those in favor, please say  
17 Aye.

18 Those opposed, please say No.

19 Ms. Schellin.

20 MS. SCHELLIN: Okay. The staff would  
21 record the vote five to zero to zero to set down  
22 case Number 03-19, Commissioner Mitten moving,  
23 Commissioner Hannaham seconding, Commissioners  
24 Hood, May and Parsons in favor.

25 CHAIRPERSON MITTEN: Thank you. The

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1 second case for hearing action is Case Number 03-  
2 24, which is a proposed PUD and related map  
3 amendment for 2126 Wyoming Avenue, which is the  
4 former Field School. I will turn to the Office of  
5 Planning for presentation of that.

6 MR. MORDFIN: Good afternoon, Madam  
7 Chair and members of the Commission. My name is  
8 Stephen Mordfin with the Office of Planning, and  
9 this is for setdown for a Planned Unit Development  
10 at 2126 Wyoming Avenue, N.W.

11 This Planned Unit Development is for  
12 the conversion of a former school building into two  
13 dwelling units, the renovation of a carriage house  
14 into a four-car garage, and the construction of a  
15 three-story, four-unit condominium apartment  
16 building.

17 The former school is to be converted  
18 into two residential units for a total of six  
19 residential units on site. The carriage house will  
20 become four parking spaces, and a four-parking  
21 space pad will also be provided, for a total of  
22 eight spaces on site.

23 The subject property is located within  
24 the R-3 zoning district and adjacent to the R-5-D  
25 zoning district to the east and the south. The

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1 rezoning of the subject property to the R-5-D  
2 zoning district as a part of this PUD application  
3 is to permit multi-family dwelling units, which are  
4 not permitted within the R-3.

5 The Office of Planning recommends  
6 setdown of the proposed Planned Unit Development  
7 and map amendment to assign the R-5-D zoning  
8 district to 2126 Wyoming Avenue, N.W.

9 That concludes the presentation from  
10 the Office of Planning.

11 CHAIRPERSON MITTEN: Thank you. Any  
12 questions or comment? Mr. May, go ahead.

13 COMMISSIONER MAY: I have comments, but  
14 I'm still catching up. I'm sorry. If somebody  
15 else wants to go.

16 CHAIRPERSON MITTEN: Okay, I'll start.  
17 The first is: As I mentioned in a case that we  
18 will vote on later today, St. Luke's, catching this  
19 a little earlier in the process, it says one of the  
20 proffered amenities is that the applicant is  
21 committing to establish a fund of \$90,000 to do  
22 various public space improvements, and that those  
23 funds would be totally expended by January 1, 2005.

24 I would like, if it is possible, that  
25 we have specific projects identified and that the

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1 Certificate of Occupancy could be tied to the  
2 completion of those projects, rather than having  
3 these loose ends. This is not entirely open-ended,  
4 but I'd rather have the date for expenditure of the  
5 funds tied to something related to the zoning order  
6 or the construction of the project.

7 I would also say that I understand that  
8 the conversion of this property from institutional  
9 use to residential use is very desirable by the  
10 neighborhood, but I guess I'm a little leery --  
11 Overall, I think that we may need to work a little  
12 harder on the amenity and public benefit package  
13 and, specifically as it relates to this, the zoning  
14 ordinance and, I am going to suggest, maybe the  
15 Zoning Commission, is neutral as to the  
16 desirability of a residential use versus  
17 institutional use, and I don't know that it is  
18 appropriate for us to be counting as an amenity the  
19 fact that an institutional use is being  
20 discontinued.

21 During the hearing, we can certainly  
22 hear comments about that, but that is my reaction  
23 at this point in time.

24 Mr. May, are you caught up?

25 COMMISSIONER MAY: Yes. It's a very

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1 good point. I hadn't considered that, but I was  
2 similarly troubled by it, because there is an  
3 assumption that institutional use in certain zones  
4 are an allowed, if not matter of right use, allowed  
5 by special exception. So I think you are right.  
6 Neutrality is the position that -- Well, we can  
7 debate it further, but I think it's a point worth  
8 discussing.

9 I just had one relatively -- Well, I  
10 had two comments. One is that I am glad that this  
11 particular case is coming to us in this form and  
12 that it is not simply being done as a variance case  
13 of some sort before the BZA, because I think it has  
14 enough to it and enough complication to it that we  
15 need to weigh in on this fashion.

16 Being that this is a PUD application, I  
17 am hoping that we will see more information on the  
18 materials being used and samples. That's normally  
19 a requirement. Sometime it makes it by the time we  
20 have the hearing, and sometimes it doesn't, but I  
21 would be very interested in seeing samples of the  
22 materials that will be used in this circumstance,  
23 because this is a residential application, and  
24 sensitivity to the materials, I think, is much more  
25 important on a building of this scale than it would

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1 be on, say, an office building.

2           Actually, I have a third comment. Why  
3 is there a cellar for -- Why is the first unit in  
4 the cellar on that one unit in the new building?  
5 You don't need to answer that right now. It seems  
6 to me that that is -- you're taking the first floor  
7 unit, and it's three-quarters below grade, and I'm  
8 not sure why. I don't see a reason in the zoning  
9 for that. Again, I don't need an answer on that,  
10 but it's just a question I have.

11           CHAIRPERSON MITTEN: Anyone else? Mr.  
12 Parsons?

13           COMMISSIONER PARSONS: I can't recall  
14 how it is that we have the authority, I guess, in  
15 our regulations to accept this as a PUD at 16,000  
16 square feet. Seems to me, we dropped it down to --  
17 The standard is two acres, I believe, and we said  
18 we would waive that and go down to one acre. Do we  
19 have the discretion to go down to 500 feet?

20           CHAIRPERSON MITTEN: No.

21           COMMISSIONER PARSONS: I can't recall.

22  
23           CHAIRPERSON MITTEN: Well, the way that  
24 we have done this in the past and the way that we  
25 did the Albemarle townhouses, if you will recall

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1 that case, is we apply the standard to the zone  
2 district that is being requested as the PUD related  
3 map amendment.

4 So in this case -- and this, I believe,  
5 is in large part why they are asking for R-5-D,  
6 because they are not asking for height and density  
7 related to R-5-D -- it's merely to get to the  
8 threshold of 15,000 for the PUD, because they can't  
9 get there with a lower R rating.

10 So we apply the standard to the zone  
11 that's being requested, not the existing zone.  
12 That's what we have done in the past.

13 COMMISSIONER PARSONS: Thank you.

14 CHAIRPERSON MITTEN: Anyone else? All  
15 right. We have a recommendation from the Office of  
16 Planning that Case No. 03-24 be set down for Public  
17 Hearing, and I would so move.

18 COMMISSIONER MAY: Second.

19 CHAIRPERSON MITTEN: Any further  
20 discussion? All those in favor, please say Aye.

21 Those opposed, please say No.

22 Ms. Schellin?

23 MS. SCHELLIN: Staff would record the  
24 vote five to zero to zero to approve for setdown  
25 Case Number 03-24, Commissioner Mitten moving,

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1 Commissioner May seconding, Commissioners Hannaham,  
2 Hood and Parsons in favor.

3 Just to confirm, both of the hearing  
4 actions are contested cases?

5 CHAIRPERSON MITTEN: Yes.

6 MS. SCHELLIN: Thank you.

7 CHAIRPERSON MITTEN: Thank you. Now we  
8 will move to Proposed Action, and we have a number  
9 of items under Proposed Action.

10 The first is Zoning Commission Case  
11 Number 98-02M/97-12M/94-17C/91-19M/89-19C. It has  
12 a long history, and this relates to the development  
13 of the air rights over the Center Leg Freeway.

14 Just so everyone is on the same page,  
15 we had a -- This was a modification request that  
16 never was fully decided by the Commission, and we  
17 had a status hearing to determine what the next  
18 steps would be. We asked for some additional  
19 submissions from the applicant. The applicant  
20 withdrew their request for a modification.

21 What is before us now is basically the  
22 extension request. We have a submission from the  
23 applicant and responses from the parties as to the  
24 burden of proof for the extension request.

25 Is there anything else, Mr. Bastida?

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1 MR. BASTIDA: Yes, Madam Chairman. I  
2 have a preliminary matter regarding this case.

3 On July 30, yesterday, the firm of  
4 Hunton & Williams sent in additional information  
5 that was not foreseen by the Commission. Now the  
6 applicant requested an opening on the record to  
7 allow this information to come in. So I would like  
8 to see what is the pleasure of the Commission  
9 regarding the acceptance of this further  
10 information or if I should send it back to the  
11 applicant.

12 CHAIRPERSON MITTEN: Okay. I just want  
13 to be clear on what you just said. Did they or did  
14 they not request that the record be reopened?

15 MR. BASTIDA: They did not request the  
16 record is open, nor it was contemplated such an  
17 answer the Commission action at the status hearing.

18 CHAIRPERSON MITTEN: Right. We didn't  
19 have a provision for them to respond to the  
20 responses?

21 MR. BASTIDA: That is correct, Madam  
22 Chairman.

23 CHAIRPERSON MITTEN: Okay. So if they  
24 didn't request to reopen the record, then I think -  
25 - Would it be fair to say that they did not attempt

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1 to show what the good cause should be to reopen the  
2 record?

3 MR. BASTIDA: That is correct, Madam  
4 Chairman.

5 CHAIRPERSON MITTEN: Okay. Is there  
6 anyone on the Commission who would like to reopen  
7 the record to receive this additional submission?  
8 Okay. Then we will deal with the submissions that  
9 we have before us.

10 COMMISSIONER PARSONS: Madam Chairman,  
11 as a preliminary matter, I did not participate in  
12 the hearing, but I have read the transcript and am  
13 prepared to proceed.

14 CHAIRPERSON MITTEN: Great. Thank you.  
15 Would anyone like to go first or shall I? Okay.

16 We have some very detailed submissions  
17 from the parties in this case, particularly the  
18 representative for Georgetown University, and  
19 there's several -- Well, there's basically two  
20 things that the applicant would have to do, once  
21 the application was properly made, which I think we  
22 determined that it was at some point in the past.

23 That is to show that there has been no  
24 change in the material facts on which the Zoning  
25 Commission relied in the original approval of the

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1 Planned Unit Development, and then that there is  
2 good cause as to why the PUD should be extended.  
3 Both of those need to be shown, not one or the  
4 other.

5 I find that the opponents in this case  
6 have been very persuasive about how the material  
7 facts have changed, including the submission by the  
8 Office of Planning; whereas, the applicant spent  
9 very little time in their submission focusing on  
10 the change in material facts.

11 The only comment that really even  
12 addresses it is on page 5 of the cover letter,  
13 which just says, if you review the orders -- "A  
14 review of the two Zoning Commission orders related  
15 to the PUD attached as Exhibit A revealed no change  
16 in any material fact relied upon by the Commission  
17 in reaching its decision in this case. The site  
18 where the mixed use project will be built continues  
19 to stand as a blight on the neighborhood and  
20 undeveloped." That's basically the extent of their  
21 effort at addressing the changes in material fact.

22 I think, if anything, that point is  
23 just that the site itself remains undeveloped. I  
24 mean, there is a substantial amount of development  
25 that is taking place in the area. It's been well

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1 documented by the Office of Planning and others.

2 I think the focus -- There are a number  
3 of places where we can focus our attention in the  
4 original order to show what the situation was at  
5 the time and, based on the submissions from the  
6 Office of Planning and others, how the area has  
7 changed. Most of these were noted.

8 I would just -- I will call a few of  
9 them out and focus on a few: Finding of Fact  
10 Number 16, which discusses the area surrounding the  
11 PUD site; the Finding of Fact Number 17, which goes  
12 further and describes the area, including stating  
13 that the remainder of a block to the south  
14 generally consists of boarded-up two-story and  
15 three-story row houses. Finding of Fact  
16 Number 18, interestingly, focuses on the  
17 surrounding zoning, and I would just remind the  
18 Commission that this was approved in 1990, which  
19 predates the approval of the downtown development  
20 district overlay, and now part of the abutting  
21 property is within that overlay, and we have seen  
22 the fruits of the housing requirements within that  
23 overlay along with some of the financial incentives  
24 that have been provided by the City. So even the  
25 area immediately surrounding has been rezoned in

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1 part.

2 Finding of Fact Number 22 talks about  
3 the focus of downtown east as primarily an office  
4 and hotel area. I think that is clearly no longer  
5 the case. It is also a vibrant residential area.

6 There is comment about the surrounding  
7 area in Finding of Fact Number 31. In Letter B,  
8 also in F, the Office of Planning was focusing on  
9 the connection and knitting the streets together.  
10 There was concern about the vistas even being  
11 impaired at that point in time. So, clearly, there  
12 was a focus there, but it was more on site lines,  
13 and that was a point of contention by the  
14 university. So there wasn't the provision to have  
15 the streets actually be connected.

16 Finding of Fact Number 33: DFR was  
17 commenting that this project would assist in the  
18 development of the eastern portion of the downtown  
19 area. I think this was viewed as a catalyst, and  
20 the catalyst now has been, you know, all of this  
21 residential development and additional commercial  
22 development. I don't think this site plays the  
23 same role as it did originally.

24 Also, there was a comment in Finding of  
25 Fact Number 60 about the balance of uses. I think

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1 the balance of uses that would be desirable on this  
2 site now has changed.

3 So those are the areas that I focused  
4 on in terms of what was in the original order and  
5 what has been articulated as the change in the  
6 material facts.

7 I focused last on good cause, because I  
8 didn't find that they had met the burden on the  
9 first standard. That was clear, and I didn't think  
10 it was necessary to debate the good cause part of  
11 the standard. But if anyone has comments about  
12 that, we can certainly address them. Anyone else?

13 COMMISSIONER PARSONS: Well, I think  
14 you have taken the right approach here in  
15 summarizing the order. The amazing thing, to me,  
16 is 13 years have passed since I voted on this, but  
17 I can assure you that what you just characterized  
18 was true, that is, especially the overwhelming  
19 change that's occurred in the downtown with the DDD  
20 that this preceded; because this was supposed to be  
21 a great -- this would go first and pull development  
22 toward it.

23 Of course, that has not occurred. So I  
24 would agree that this PUD is very stale.

25 CHAIRPERSON MITTEN: Anyone else?

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1           VICE CHAIRPERSON HOOD: I would also  
2 concur, madam Chair. In looking at the PUD and  
3 reading over the materials, at one time, I guess,  
4 13 years ago or so, the issue was going after  
5 governmental agencies. Things have changed since  
6 then. A lot of government agencies have found  
7 homes, and I don't think that the aggressiveness in  
8 trying to really find somebody suitable for the  
9 site -- So I think the PUD is long overdue, and  
10 even to the point that I believe ANCs have changed.

11           It was in 2-C, I believe, or 2-D, and I  
12 think now it's in 6-D or something like that. But  
13 I think it's time for us and the city to move on.  
14 Thank you.

15           CHAIRPERSON MITTEN: All right. Well,  
16 with the comments that I have made and that I have  
17 heard, I would move that we deny the request for an  
18 extension of the PUD for the air rights over the  
19 Center Leg Freeway.

20           VICE CHAIRPERSON HOOD: Second.

21           CHAIRPERSON MITTEN: Any further  
22 discussion? All those in favor of the denial,  
23 please say Aye.

24           Those opposed, please say No.

25           Ms. Schellin?

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1 MS. SCHELLIN: The staff would record  
2 the vote five to zero to zero to deny the request  
3 for extension of time in 98-02, Commissioner Mitten  
4 moving, Commissioner Hood seconding, Commissioners  
5 Hannaham, May and Parsons also in favor of the  
6 denial.

7 CHAIRPERSON MITTEN: Thank you, Ms.  
8 Schellin.

9 Next is Case No. 03-09. This relates  
10 to a proposed modification of Section 217, which  
11 provides for nonprofit organizations to use large  
12 historic residential buildings. This would expand  
13 that section to include public school buildings as  
14 the available buildings, historic public school  
15 buildings, and also as the users, the potential  
16 users, District government agencies.

17 We had a hearing on this, and had some  
18 comments and submissions from Mr. Crockett and the  
19 Committee of 100.

20 COMMISSIONER PARSONS: Madam Chair, as  
21 with the last case, this hearing occurred on the  
22 same evening. I was not here, but I have reviewed  
23 the record and ready to participate.

24 CHAIRPERSON MITTEN: Okay. I guess I  
25 will start.

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1 I have a concern about -- I had a  
2 concern about Section 217 before we even opened up  
3 this case, which is: When the Zoning Commission  
4 allowed use by nonprofit organizations, it didn't  
5 really define what that use could be.

6 So any use by a nonprofit has basically  
7 been accepted by the -- There is a special  
8 exception process. So BZA doesn't have any kind of  
9 guidance from us about how to constrain that use,  
10 to the extent that they are interested in  
11 constraining it.

12 Now the proposed change -- So that's  
13 217 as it exists. Then what is being proposed here  
14 is that, not only can District government agencies  
15 -- I think the target was a District government  
16 agency wanting to go into an historic school  
17 building. Now nonprofits can also be potential  
18 occupants with this broad category of whatever use  
19 by a nonprofit organization is. They can also use  
20 the historic public school buildings, some of which  
21 are very large.

22 So we had some discussion about this.  
23 We had some testimony about this as well, and I  
24 think there's an attempt that's been made by the  
25 Office of Planning, and we appreciate the

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1 additional report that they have provided, to at  
2 least as it relates to government agencies to  
3 confront what might be uses that are incompatible  
4 with the neighborhood.

5 My preference would be that, now that  
6 we are talking about 217, we should take a step  
7 back instead of moving forward with this today,  
8 that we take a step back and say let's really --  
9 let's focus on 217 as a whole, not this narrow  
10 introduction of an alternative, and see if it is  
11 really working.

12 I am thinking specifically about  
13 narrowing or clarifying or giving more guidance to  
14 the BZA about what exactly is an appropriate use by  
15 a nonprofit organization in a residential zone.

16 VICE CHAIRPERSON HOOD: I would agree,  
17 Madam Chair. While I don't have it exactly in  
18 front of me, I remember one of the concerns I had  
19 was the type of uses. I think that that has been  
20 addressed, for example, salt domes, DPW trucks  
21 being stored, and those kind of issues. I believe  
22 that now the text, if I remember correctly, has  
23 stated that that will not be a permitted use.

24 If that is the case, I will defer to  
25 your issue on the nonprofit situation and delay,

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1 and I would be in favor of waiting to get some more  
2 feedback. Thank you.

3 CHAIRPERSON MITTEN: Mr. Parsons?

4 COMMISSIONER PARSONS: Well, I am not  
5 clear where you are going yet.

6 CHAIRPERSON MITTEN: Okay.

7 COMMISSIONER PARSONS: Is it your point  
8 that we ought to essentially table this and  
9 establish a new case that deals with all 217 or  
10 just go in and fix definitions and uses? Is this  
11 case going to die?

12 CHAIRPERSON MITTEN: No. I don't  
13 necessarily want it to die. I just think that --

14 COMMISSIONER PARSONS: -- incorporate  
15 it in something else. I'm sorry.

16 CHAIRPERSON MITTEN: Right. Yes, I  
17 think it should be incorporated as part of a larger  
18 reexamination of Section 217.

19 COMMISSIONER PARSONS: Was there any  
20 sense of urgency here that stimulated this case?

21 CHAIRPERSON MITTEN: There was, but I  
22 don't know if the urgency persists. Ms.  
23 Steingasser, can you shed any light on that?

24 MS. STEINGASSER: There is a use  
25 pending that I'm not sure -- We have not heard from

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1 the user in several months. I'm not sure how  
2 urgent it is. OP can certainly adjust our time  
3 frame to accommodate their urgency. I mean, we can  
4 raise this up in priority if it is going to  
5 actually stop a project. We can raise this up in  
6 priority to get it back to the Commission as soon  
7 as possible.

8 CHAIRPERSON MITTEN: Okay. Do you need  
9 me to be anymore expansive about my concerns about  
10 the nonprofit use?

11 MS. STEINGASSER: I would just like to  
12 clarify that it is as Mr. Parsons just summarized,  
13 that it is a larger examination of all of 217, both  
14 nonprofits and government uses for both schools and  
15 private residence. Revisit the whole section and  
16 provide perhaps additional guidance to the BZA in  
17 terms of uses, limitations on uses?

18 CHAIRPERSON MITTEN: Right and, you  
19 know, this use by a nonprofit organization has been  
20 very broadly interpreted. I think people -- The  
21 idea was, oh, office, but then there is museum and  
22 there is meeting facility.

23 There's a whole variety of things that  
24 might be interrelated there, and some of those are  
25 very high traffic generators, and those are either

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1 not -- If those are contemplated, then is there any  
2 additional guidance that we should be giving to the  
3 BZA about how those should be treated in the  
4 special exception process? If they weren't  
5 anticipated, shouldn't we call out that that's not  
6 what was intended? Do we really mean anything a  
7 nonprofit wants to do?

8 MS. STEINGASSER: Okay.

9 COMMISSIONER PARSONS: Now how about  
10 Section 199, which has a definition? Do you want  
11 to look at that, too?

12 CHAIRPERSON MITTEN: Well, I suppose --  
13 Someone had mentioned drawing a distinction between  
14 being a tax exempt and being nonprofit tax exempt.  
15 I don't -- If that turns out to be a worthwhile  
16 distinction, we can reexamine it.

17 COMMISSIONER PARSONS: I just meant the  
18 overall definition. Do we have to -- Should we  
19 take a fresh look at that, too?

20 CHAIRPERSON MITTEN: Yes, we can.

21 COMMISSIONER PARSONS: Like, for  
22 instance, I don't know why the cruelty to children  
23 or animals has been sorted out here, or singled out  
24 here, as part of the definition. I don't know how  
25 stale this definition is.

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1 CHAIRPERSON MITTEN: Well, that's a  
2 good point, but just to kind of take it to an  
3 extreme, what if a nonprofit that boarded animals  
4 decided they wanted to go into an R-1 zone and have  
5 a zoo or something, you know. I mean, that kind of  
6 wasn't anticipated. So I think we need to have  
7 some control of that. I'm glad you focused on the  
8 cruelty to animals.

9 Okay, so have we given you enough  
10 direction about it? That's great. Thank you.

11 COMMISSIONER HANNAHAM: Madam Chair, I  
12 just have a question. She mentioned there is  
13 something, a project, that may be in the wind. I  
14 wonder if there is another way we can handle that  
15 as opposed to holding it up, because I see this as  
16 taking us a while for us to go back and examine  
17 everything that is in front of us.

18 I was just wondering if maybe we could  
19 consider another way. I'm not sure exactly what  
20 the specific project is. I think I know of one,  
21 but I don't know if maybe we should just hold that  
22 up until we do our analysis, because sometime our  
23 analysis may take a couple of months or maybe a  
24 year. So just threw that out on the table.

25 CHAIRPERSON MITTEN: Well, I think what

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1 Ms. Steingasser said is, you know, that they will  
2 move it up in their degree of urgency if it is a  
3 problem and, if it is holding up a project that is  
4 of great urgency, we can take it up again in  
5 September in maybe a different -- in a more limited  
6 format, if that is what we have to do to facilitate  
7 a project.

8 COMMISSIONER HANNAHAM: That's fine.

9 CHAIRPERSON MITTEN: But I'm not ready  
10 to go forward. This is very open-ended, as it is  
11 now.

12 COMMISSIONER HANNAHAM: I just wanted  
13 to hear the fact that we will have to revisit this  
14 in September. Okay.

15 CHAIRPERSON MITTEN: So we will leave  
16 it up to you, Ms. Steingasser, in terms of when you  
17 make a submission to us. If there is something  
18 that needs to be done in September, then if you  
19 could get us a submission either that addresses  
20 these concerns or narrows this sufficiently so that  
21 we are not going to be exacerbating the situation  
22 if we do pass something temporary in September and  
23 then continue to revisit it later. Thank you.

24 All right. The next case is Zoning  
25 Commission Case Number 02-30, which is the

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1 Georgetown Boathouse case.

2 COMMISSIONER PARSONS: At which time I  
3 must recuse myself.

4 CHAIRPERSON MITTEN: Thank you, Mr.  
5 Parsons. We will see you in a few minutes.

6 I just want to make clear that what we  
7 will be taking up today is proposed action on the  
8 map amendment only, the map amendment portion of  
9 the case only.

10 There's two reasons why we won't take  
11 up the special exception and variance case for  
12 final action. One is that that only gets a single  
13 vote, because it is under BZA rules, and the second  
14 is that the W-0 text is not finalized yet. So we  
15 could not apply the standard of a zone, in the  
16 event that we zone it W-0, to a property until that  
17 is final. So we are only taking up part of the  
18 whole case today.

19 So that would be the -- The map  
20 amendment portion of the case is we have a request,  
21 for the site which is currently unzoned, to be  
22 zoned either the proposed W-0 zoning or the  
23 existing W-1 zoning.

24 I did also want to call out, before we  
25 get into the substance of this, a concern that was

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1 evidenced in the Proposed Findings of Fact and  
2 Conclusions of Law from the canal -- C&O Canal  
3 Association and the -- I'm not going to get this  
4 right, but it is the folks from the Canal and the  
5 folks from the Trail, Capital Crescent Trail.

6 In Finding of Fact Number 51 it says  
7 that "The special exception and variance review  
8 criteria set forth in the draft text amendment  
9 governing the new W-0 zone have been modified since  
10 the setdown hearing and may yet be subject to  
11 further changes during the course of subsequent  
12 agency reviews prior to final adoption. As a  
13 result, members of the public or parties in  
14 opposition to case Number 02-30 have no way of  
15 determining what version of the draft text  
16 amendment will be applied by the Zoning Commission  
17 in reviewing case Number 02-30. Without additional  
18 text amendments relating to the new W-0 zone,  
19 parties in opposition to case Number 02-30 are  
20 severely hampered in their ability to meaningfully  
21 participate in that proceeding which purports to  
22 apply draft text amendments creating the W-0 zone  
23 to the proposed boathouse."

24 Mr. Bergstein, even though this might  
25 be premature to the vote on the amendment, could

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1 you address that at this point or would you rather  
2 us take the vote first?

3 MR. BERGSTEIN: No, that's fine. I'll  
4 address it. Well, first I just want to remind  
5 everybody why we have a separate proceeding here.

6 If the map amendment had been proposed  
7 as a rulemaking, it could have been combined with  
8 the proposed creation of the zone and handled  
9 concurrently, and the Commission has done that many  
10 times in the past and does not in any way affect  
11 the parties who are interested more in the map  
12 amendment than the text amendment or vice versa.  
13 But the proceedings had to be separated, because  
14 the text is a rulemaking, and the map amendment is  
15 a contested case, and different rules apply.

16 With all that said, I believe that the  
17 advertisement for the text provided ample notice to  
18 the participants in the contested case proceeding  
19 of what the fundamental issues were with respect to  
20 the W-0 zone. However, the one difference between  
21 a contested case and a rulemaking is that, even  
22 though the Commission takes two votes on each, a  
23 proposed vote on a final vote, a rulemaking does  
24 allow the public to comment on any changes that the  
25 Commission may have made at the time it took the

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1 proposed action; whereas, with a contested case,  
2 that is not necessarily true.

3 What the Commission could consider then  
4 is that, because in fact it did make some changes  
5 to the text for W-0, and particularly the setback  
6 going from 75 to 100, it might wish to consider  
7 opening the record in the contested case proceeding  
8 to allow the parties to indicate how those changes  
9 would affect their positions.

10 Then because the Commission, in any  
11 event, will consider the text amendment before the  
12 map amendment, if at the time of the final vote it  
13 made no further changes, then it could go on to  
14 consider the text amendment, because there wouldn't  
15 have been any changes that would require further  
16 comment.

17 So I still believe the Commission can  
18 proceed in that manner.

19 CHAIRPERSON MITTEN: Okay. Thank you.

20 Well, let's take up the issue of the map  
21 amendment, and we will see how that turns out, and  
22 then we will take up this issue about potentially  
23 reopening the record when we advertise the -- I  
24 guess we would have to advertise -- Help me out  
25 here.

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1 MR. BERGSTEIN: All right.

2 CHAIRPERSON MITTEN: I know we have to  
3 advertise.

4 MR. BERGSTEIN: You would only  
5 advertise the text amendment if you took action on  
6 it. The advertisement I am really referring to is  
7 W-0.

8 CHAIRPERSON MITTEN: Yes.

9 MR. BERGSTEIN: If one assumes --  
10 There's two possibilities. If you designate this  
11 W-0, then you would give the parties an opportunity  
12 after the W-0 text is published for proposed  
13 comment to give their reaction to that in terms of  
14 their position in the contested case.

15 If you designate it W-1 and you also  
16 take proposed action on the W-1 text amendments,  
17 then the same sort of scenario would apply.

18 CHAIRPERSON MITTEN: Okay, I'm with  
19 you. Thank you. Just in case I confused my  
20 colleagues, let's just take it one thing at a time,  
21 which is the proposal that we will take up right  
22 now is whether to zone the boathouse site W-0 or W-  
23 1, and this is W-0 as proposed. We have taken  
24 proposed action. It has not yet been published,  
25 and we have not taken final action, but we will

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1 take final action before this can become finalized.

2 COMMISSIONER MAY: Did you just say we  
3 have taken proposed action?

4 CHAIRPERSON MITTEN: On the W-0 text  
5 amendment. Yes. Just to remind you, we have a  
6 recommendation from the Office of Planning that the  
7 site be zoned W-0, and we have a recommendation  
8 from ANC-2E to establish W-0 zoning on the  
9 currently unzoned vacant parcel of land, and we  
10 have a lot of other submissions from various  
11 persons and organizations, both pro and con to the  
12 boathouse itself, and some of those submissions  
13 don't want us to zone the property at all, those  
14 who are in opposition. That is really not an  
15 option for the Commission, because when zoning is  
16 requested for a parcel, we are obligated to grant  
17 some zone, apply some zone to the property.

18 VICE CHAIRPERSON HOOD: Madam Chair,  
19 since you have the best memory, it seems like, of  
20 all of us, I am trying to remember. The W-0 zone -  
21 - we are trying to put that in place as a more  
22 restrictive, as closer we got to the -- the closer  
23 we got to the edge of the waterfront, I believe.

24 CHAIRPERSON MITTEN: Yes.

25 VICE CHAIRPERSON HOOD: That was the

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1 intent?

2 CHAIRPERSON MITTEN: Right.

3 VICE CHAIRPERSON HOOD: And also the  
4 intent was to have more open access?

5 CHAIRPERSON MITTEN: Yes. I think  
6 concern even by people who don't want the property  
7 to be used at all and by people who don't want the  
8 property to be zoned at all, I think, if they were  
9 confronted with the choice that we are confronted  
10 with, if they had to recommend one or the other,  
11 that even they would be recommending W-0, because  
12 it is the zone that provides the greatest  
13 protection for sensitive properties along the  
14 waterfront. It can be debated whether that is  
15 sufficient protection, but that is debate for a  
16 different day.

17 So I believe that the overwhelming  
18 sentiment would favor W-0, and I think that that is  
19 exactly why we were interested in creating the W-0  
20 zone in the first place, is to accommodate uses  
21 that are related to the water at a relatively low  
22 density, and providing those kinds of protections  
23 that are appropriate in close proximity to the  
24 waterfront.

25 So I would -- I'm very much in favor of

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1 the W-0 designation myself. Mr. Hannaham?

2 COMMISSIONER HANNAHAM: Madam Chairman,  
3 I agree. I think our whole notion in the W-0 was  
4 to provide very low density and opportunity for  
5 recreation and freedom, you know, uncluttered with  
6 all of the stuff that could happen.

7 I would strongly favor a W-0 for  
8 boathouse.

9 CHAIRPERSON MITTEN: Okay. You turned  
10 off your mike.

11 COMMISSIONER HANNAHAM: As in the draft  
12 text already.

13 CHAIRPERSON MITTEN: Okay. Anyone  
14 else?

15 COMMISSIONER MAY: I would  
16 also agree. I think I am glad you restated the  
17 essential position from the beginning, that when  
18 the applicant requests zoning we have an obligation  
19 to assign zoning to a property. We can't simply  
20 leave it unzoned in the hopes that it is never  
21 going to change, and I think that is an important  
22 thing to understand.

23 I also think that, given that we are  
24 talking about zoning with the most restrictive zone  
25 possible, I think that it is a very responsible  
thing to do at this time, and that we should move

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1 forward with it today.

2 I also say it's been a tremendously  
3 educational series of hearings, and we have learned  
4 a great deal from it. I think that it will be of  
5 great benefit as the entire waterfront faces  
6 changes over the coming years, and there may be --  
7 it will benefit the entire city.

8 CHAIRPERSON MITTEN: Thank you. Mr.  
9 Hood.

10 VICE CHAIRPERSON HOOD: I was going to  
11 make a motion, unless it needs to be something  
12 fancy.

13 CHAIRPERSON MITTEN: That would be  
14 great. No, nothing fancy.

15 VICE CHAIRPERSON HOOD: I make a motion  
16 that we make the map amendment to zone unzoned  
17 waterfront park land to W-0. Is it W-0 or W-zero?

18 CHAIRPERSON MITTEN: W-zero.

19 VICE CHAIRPERSON HOOD: W-Zero by  
20 Georgetown University National Park Service.

21 COMMISSIONER HANNAHAM: I would second  
22 that, if anybody is going to be silent on this.

23 CHAIRPERSON MITTEN: We're not going to  
24 be silent. You are just quicker than we are. All  
25 right, we have a motion and a second to approve W-

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1 Zero zoning for the Georgetown Boathouse site. Is  
2 there any further discussion?

3 All those in favor, please say Aye.

4 Those opposed, please say No.

5 Ms. Schellin?

6 MS. SCHELLIN: Yes. Staff would record  
7 the vote four to zero to one for Case Number 02-30  
8 with regard to the map amendment from unzoned to  
9 the W-Zero zone, Commissioner Hood moving,  
10 Commissioner Hannaham seconding, Commissioners May  
11 and Mitten in favor, and Commissioner Parsons  
12 recused himself, therefore not voting.

13 CHAIRPERSON MITTEN: Thank you. Okay,  
14 now bear with me on this part. This is the part  
15 that Mr. Bergstein and I were discussing earlier.

16 Now that we have decided that we want  
17 to map W-0 on this property and apply those  
18 standards, the only thing the public has available  
19 to them is the Notice of Public Hearing for a W-0,  
20 which when we took proposed action, we modified to  
21 some degree. That has not yet been advertised.

22 So the public -- this is the issue, I  
23 believe, that was being raised by the opponents.  
24 The public doesn't know what the current thinking -  
25 - what our current thinking is about W-0, what

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1 standard we will apply, and they are entitled to  
2 know that.

3           So what Mr. Bergstein was suggesting is  
4 that at this point now we could vote to reopen the  
5 record in the contested case proceeding, which is  
6 the special exception and variance proceeding for  
7 the boathouse, for the purpose of allowing the  
8 public, once they see the proposed text for the W-  
9 0, to comment on those aspects of the contested  
10 case -- again, the special exception and variance -  
11 - for those issues in the W-0 that changed between  
12 the advertisement of the Public Hearing and the  
13 proposed text. So we give them an additional  
14 opportunity, because they are disadvantaged by the  
15 fact that the proposed text for W-0 has not yet  
16 been advertised. They would have this additional  
17 opportunity for comment.

18           So if we are in favor of that, then we  
19 can set a schedule for receiving those comments,  
20 but at this point I guess I would like to know if  
21 we are in favor of that. So if someone would care  
22 to make a motion, we could discuss it.

23           VICE CHAIRPERSON HOOD: So I guess the  
24 motion is to open the record back up for the  
25 special exception --

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1 CHAIRPERSON MITTEN: And variance.

2 VICE CHAIRPERSON HOOD: -- and variance  
3 to allow the public the opportunity to comment on  
4 the notice of the W-0 zone.

5 CHAIRPERSON MITTEN: Well, to comment  
6 on the contested case.

7 VICE CHAIRPERSON HOOD: The contested  
8 case as it applies to W-0 zone.

9 CHAIRPERSON MITTEN: Right, and as it  
10 applies specifically to the change between the  
11 Notice of Public Hearing, which they do have, and  
12 the proposed text, which they will have, those  
13 aspects that have changed, like we increased the  
14 setback.

15 VICE CHAIRPERSON HOOD: That's the  
16 motion.

17 CHAIRPERSON MITTEN: Okay. Good. Good  
18 job.

19 COMMISSIONER HANNAHAM: I would second  
20 that, Madam Chair.

21 CHAIRPERSON MITTEN: Okay. Any further  
22 discussion?

23 VICE CHAIRPERSON HOOD: You might need  
24 to simply restate it.

25 CHAIRPERSON MITTEN: If you want me to,

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1 I will.

2 VICE CHAIRPERSON HOOD: If that is  
3 sufficient. I just want to make sure those  
4 listening understand where we are going. Maybe  
5 they understand. Maybe I just don't. That's fine.

6 CHAIRPERSON MITTEN: I will. The  
7 purpose -- I'll state it in plain words, which is:  
8 To the extent that anyone has been disadvantaged  
9 by not having the W-0 proposed text advertised  
10 prior to hearing the special exception and  
11 variance, this will be an additional opportunity  
12 for public comment so that we are sure that we have  
13 given ample opportunity and given everyone ample  
14 notice of what is under consideration, so that  
15 nobody will be at a disadvantage. That's the  
16 purpose of it.

17 All right, any further discussion?

18 COMMISSIONER MAY: Are we now going to  
19 move into questions of when all the deadlines for  
20 responses and what the schedule will be for  
21 advertising?

22 CHAIRPERSON MITTEN: I would just like  
23 to vote to reopen it, and then we can set the  
24 schedule immediately following.

25 COMMISSIONER MAY: Right. I just

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1 wanted to clarify that. Okay. Thank you.

2 CHAIRPERSON MITTEN: Yes. Okay, so we  
3 have a motion and a second to reopen the record for  
4 the purpose that I stated, and we will set the  
5 schedule immediately following.

6 All those in favor, please say Aye.

7 Those opposed, please say No.

8 All right, Ms. Schellin.

9 MS. SCHELLIN: Just to clarify, was  
10 that Mr. Hood who actually made the motion? You  
11 guys were kind of jointly.

12 CHAIRPERSON MITTEN: Yes.

13 MS. SCHELLIN: And then you seconded?

14 VICE CHAIRPERSON HOOD: Actually, let  
15 me just state for the record, I understood it. I  
16 just wanted to make sure the public did, seriously.

17 CHAIRPERSON MITTEN: No, that's good.

18 MS. SCHELLIN: So staff would record  
19 the vote four to zero to one, Commissioner Hood  
20 making the motion, Commissioner Mitten seconding,  
21 Commissioners May and Hannaham in favor to reopen  
22 the record in Case Number 02-30 with regard to the  
23 special exception and variance to allow the public  
24 to comment on the W-0 text as changed from the  
25 initial Public Hearing notice.

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1 CHAIRPERSON MITTEN: Yes.

2 MS. SCHELLIN: Thank you.

3 CHAIRPERSON MITTEN: Okay now, Mr.  
4 Bastida, schedule?

5 MR. BASTIDA: Okay.

6 CHAIRPERSON MITTEN: And we have to be  
7 mindful of the fact that we have not yet advertised  
8 the W-0 text.

9 MR. BASTIDA: Yes. I was going to do  
10 the scheduling phase on the time of the  
11 advertisement and not set a date for the  
12 advertisement but put a time frame from the  
13 advertisement.

14 CHAIRPERSON MITTEN: That's fine.

15 MR. BASTIDA: Okay. I was thinking of  
16 allowing two weeks and then another two weeks for  
17 response to the submissions.

18 CHAIRPERSON MITTEN: Two weeks from  
19 what?

20 MR. BASTIDA: From the day of  
21 advertisement, which is not a certain date yet,  
22 because I don't have the document that would  
23 advertise, and I will take the time to advise all  
24 the parties, in fact, of the day of the  
25 advertisement several days prior to appearing on

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1 the register.

2 VICE CHAIRPERSON HOOD: Madam Chair,  
3 can I just say --

4 CHAIRPERSON MITTEN: Yes.

5 VICE CHAIRPERSON HOOD: One thing that  
6 always bothers me is scheduling stuff in July and  
7 August and people are on vacation. I would like to  
8 see us, if it's not causing too much of a problem,  
9 kind of extend this to when everybody comes back  
10 off vacation. If you want to get something over on  
11 folks in the city, you do it in August. So I think  
12 that we should not be that example. We should be  
13 another example.

14 MR. BASTIDA: Madam Chair, I was just  
15 conferring with Corporation Counsel, and I think  
16 that I can give day certain if we go to the  
17 September time frame to do that. What I would  
18 suggest is that we have the first submission by  
19 Friday, September 12th, at 3:00 o'clock, and any  
20 response from the parties to those submissions will  
21 be on Friday, September 26th, by 3:00 o'clock. And  
22 also at that time the parties and the applicant can  
23 submit Findings and Fact and Conclusions of Law.

24 CHAIRPERSON MITTEN: To the extent that  
25 they haven't already.

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1 MR. BASTIDA: Right..

2 CHAIRPERSON MITTEN: Okay.

3 MR. BASTIDA: Or modify them in  
4 accordance to whatever they have submitted  
5 presently.

6 CHAIRPERSON MITTEN: Okay.

7 MR. BASTIDA: In that way you can take  
8 it at your next scheduled meeting, but in that way  
9 we avoid the middle of the summer and as  
10 Commissioner Hood had expressed concern about.

11 CHAIRPERSON MITTEN: Okay. But you are  
12 getting very close to advertising this. Right?

13 MR. BASTIDA: I checked with  
14 Corporation Counsel, and I believe that we could  
15 advertise it no later to appear on the register of  
16 August 29th.

17 MR. BERGSTEIN: Absolutely.

18 CHAIRPERSON MITTEN: Yes. I'm hoping  
19 that is like an outside date.

20 MR. BASTIDA: Right. That is an  
21 outside date.

22 CHAIRPERSON MITTEN: Come on, you guys.

23 MR. BASTIDA: Well, you know, I was  
24 just trying not to put the pressure to do it, but  
25 in that way we know that on that date, you see, by

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1 advertising August 29th I have to take it to the  
2 register by the 20th or 21st.

3 CHAIRPERSON MITTEN: Okay. And did I  
4 understand you to say that you would send a copy to  
5 the parties?

6 MR. BASTIDA: I can send a copy to the  
7 parties, if they so wish, or I can send -- contact  
8 them through the notice, but I think it would be  
9 clearer if I would send a notice to the parties.

10 CHAIRPERSON MITTEN: I think, if you  
11 would send the advertised proposed text for W-0  
12 along with an explanation of this opportunity and  
13 the schedule for it so that they would understand  
14 that they are having an additional opportunity for  
15 comment, since they don't have to be here today to  
16 hear what we are talking about.

17 MR. BASTIDA: Fine. I will also -- I  
18 will notify them by telephone or e-mail of it, and  
19 then I follow it up with a written notice.

20 CHAIRPERSON MITTEN: Okay. Then you  
21 could put that notice in the record, and we would  
22 all be assured that it went out.

23 MR. BASTIDA: Right.

24 CHAIRPERSON MITTEN: Great. Thank you.

25 MR. BASTIDA: Thank you, Madam

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1 Chairman.

2 CHAIRPERSON MITTEN: All right. Mr.  
3 May?

4 COMMISSIONER MAY: Are we still on the  
5 same subject or you are ready to move on?

6 CHAIRPERSON MITTEN: We are still on  
7 the subject, and I am ready to move on. But if you  
8 are not, then --

9 COMMISSIONER MAY: Well, I just had a  
10 question that related to the feedback that we are  
11 now inviting from the parties and anyone else who  
12 wants to comment on the variance and special  
13 exception requests, since we just reopened the  
14 record.

15 That is that the information that we  
16 have already received in this case is still part of  
17 the record, and we still have it, and we still have  
18 the benefit of all of that information. So if  
19 there is new information to be presented relevant  
20 to the W-0 language, we are very interested in  
21 seeing it.

22 I don't think we need to have verbatim  
23 reproductions of information that is already in the  
24 record resubmitted simply because we have a new  
25 opportunity. It also would help us focus on the

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1 real points that any party would want to make, if  
2 they do focus on changes that are a result of the  
3 W-0 language.

4 CHAIRPERSON MITTEN: Right. Your point  
5 is well taken, and I hope it is emphasized in Mr.  
6 Bastida's communication with the parties, in  
7 particular, which is we have reopened the record  
8 for a narrow purpose, not a broad purpose. So it's  
9 not like, okay, let's just come up with some more  
10 stuff that we forgot to put in the first time. It  
11 has to be focused on the difference between the  
12 Public Hearing notice for the W-0 text and any  
13 changes that are in the amendment that will be  
14 advertised sometime in August, not anything anybody  
15 can think of. So thank you for emphasizing that.

16 Now the next case, which is 02-31 is a  
17 text amendment that was proposed sort of in  
18 conjunction with the application for a W-1 map  
19 amendment as an alternative in 02-30, and it is now  
20 somewhat redundant with the proposed W-0 text.

21 So what I suggest we do with this is  
22 that we postpone action on 02-31 pending either the  
23 applicant in that case withdrawing their request  
24 for that text modification or, after we finalize W-  
25 0, we can definitively say whether this second

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1 proposed text amendment is redundant or, in fact,  
2 needs to be taken up as a separate matter.

3 So I think we can just postpone that,  
4 or not. Hold on a minute.

5 MR. BERGSTEIN: I'm sorry, Madam  
6 Chairman, but I've been sort of thinking about this  
7 issue, and I just want to phrase it to you.

8 CHAIRPERSON MITTEN: Okay.

9 MR. BERGSTEIN: At the time you took  
10 action on W-0, you included language that related  
11 to W-1 through 3, even though that language was not  
12 advertised.

13 CHAIRPERSON MITTEN: Yes.

14 MR. BERGSTEIN: You have a text  
15 amendment before you that relates to W-1 and  
16 proposes text changes. If those text changes are  
17 relevant, in essence that text amendment should  
18 have been considered at the time you took the  
19 proposed action on W-0 to the extent that at the  
20 time you took W-0 action and were going to talk  
21 about W-1 through 3, you should have either  
22 considered this text amendment or, in fact, maybe  
23 really the Commission shouldn't have gone forward  
24 with the W-1 through 3 text amendments as part of  
25 the W-0.

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1 CHAIRPERSON MITTEN: Okay.

2 MR. BERGSTEIN: So I don't know whether  
3 or not, really, because you had suggested at the  
4 end of the hearing that we readvertise those parts  
5 in W-0 which were not advertised, and that would be  
6 the specific W-1 through 3 language, or whether or  
7 not the other option here is to in essence rescind  
8 the W-1 provisions, to the extent they are in the  
9 W-0 rulemaking, and take up the merits of the W-1  
10 text now. Do you see the problem?

11 CHAIRPERSON MITTEN: I do see it, and I  
12 guess at this point, because I'm not prepared to  
13 say that everything that was in Case 02-31  
14 encompasses all of the things that we did not  
15 originally advertise in the Public Hearing notice  
16 for the W-0 text amendment. I'm not prepared to  
17 say that, and maybe you are.

18 So I still say we need to postpone it  
19 and sort that out.

20 MR. BERGSTEIN: Okay. Then so I would  
21 assume then, though, that -- this is a question.  
22 Do we advertise the W-1 language in the W-0  
23 proposed rulemaking or not? I mean, we can do  
24 that, I guess, but there really does need to be an  
25 opportunity to discuss -- That's the only thing I'm

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1 wondering about, and maybe we can table it, as you  
2 are suggesting, but as it is written now there is  
3 W-1 language.

4 I guess what you are saying is go ahead  
5 and publish it and see to the extent that it is  
6 taken care of, and then handle this text amendment  
7 at the same time W-0 goes final. Is that what you  
8 are --

9 CHAIRPERSON MITTEN: Well, I think the  
10 original concern was there were things in the W-0  
11 text case related to W-1, 2 and 3 that had not been  
12 advertised.

13 MR. BERGSTEIN: Yes.

14 CHAIRPERSON MITTEN: Those have sort of  
15 inadvertently been advertised and a hearing held,  
16 not really being conscious of the overlap in 02-31.

17 MR. BERGSTEIN: Yes.

18 CHAIRPERSON MITTEN: Okay. What I  
19 don't know at this point is, is that everything?  
20 Is everything that was in 02-31 all the additional  
21 text that we did not originally advertise for W-0?

22 So I don't know that, but if it turns out that it  
23 is, then we can just basically have a little  
24 footnote that says the hearing was -- you know, we  
25 had the hearing on a different night. This has all

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1       been heard.       But I'm not prepared to say that  
2       today.

3                   MR. BERGSTEIN:       All right.       That's  
4       fine.

5                   CHAIRPERSON MITTEN:    Okay, thank you.  
6       Now I'm sure everyone is even more confused, but at  
7       least we feel good.   Right, Mr. Bergstein?

8                   MR. BERGSTEIN:    More or less.

9                   CHAIRPERSON MITTEN:    So I think we are  
10       just going to postpone 02-31 as long as there is a  
11       consensus among the Commission about that.   Yes?  
12       Okay.

13                   The next case then is Case Number 03-  
14       10, which is the text amendment related to public  
15       libraries.   This text amendment would -- This is  
16       another one of those text amendments that arises  
17       out of the need or the change that took place  
18       actually quite some years ago now for -- Oh, yes,  
19       Mr. Parsons is now rejoining us, and I thank  
20       whoever went to get him.   I had forgotten.

21                   This would accommodate the use of  
22       public libraries, which are not already called out  
23       in the zoning ordinance.   It would define three  
24       different types of public libraries and set parking  
25       standards and so forth for them.

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1           Did Mr. Bergstein go away? Okay. Then  
2 I'm going to have to toss this one to whoever is  
3 willing to take it down there. I did have a  
4 question for Corporation Counsel, which is: We are  
5 defining these libraries in part by size. So a  
6 full service library can be up to 20,000 square  
7 feet. A community library can be up to 1500 square  
8 feet. A kiosk library can be up to 150 square  
9 feet.

10           I want to know, does that mean that, by  
11 definition, if somebody wanted to build a library  
12 of 25,000 square feet, that they would have to get  
13 a variance or is it that there is no use category  
14 for that, and they would have to come to the  
15 Commission for a text amendment?

16           MR. BUFFO: I guess in theory they  
17 could apply for a variance. It would be a  
18 difficult standard to meet. So likely they would  
19 have to come for a text amendment in the end. That  
20 would be my prediction. I see it says an average  
21 of 20,000 square feet. I think we need to --

22           CHAIRPERSON MITTEN: That's not what  
23 was advertised, and we have to discuss.

24           MR. BUFFO: Yes. That's in the  
25 revised, I guess the second supplemental report.

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1 CHAIRPERSON MITTEN: Right. Okay, I  
2 just wanted to know what the implication of doing  
3 that, of including the size in the definition, was  
4 going to be. Okay, let's start. We have  
5 -- I don't know if everyone has the Notice of  
6 Public Hearing. Then we have -- In the hearing  
7 report from the Office of Planning, there is some  
8 modification to these definitions that has been  
9 proposed.

10 So what we need to decide is do we want  
11 to accept those changes or keep the advertised  
12 language or do something else, and then -- I guess  
13 we will just start with that. All right. Oh, and  
14 then there was another aspect, which is -- and we  
15 discussed this briefly at the hearing and asked for  
16 an additional submission, which I did not find  
17 particularly helpful. So first is the change  
18 that was proposed. We had originally advertised  
19 that in each case the size would be up to some  
20 size. So for full service, up to 20,000 square  
21 feet. An alternative that was proposed by the  
22 Office of Planning was an average of 20,000 square  
23 feet, which is a difficult standard to apply,  
24 because there is nothing to average.

25 So at least as it relates to that very

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1 narrow language, I would say we need to retain the  
2 original "up to" language.

3 COMMISSIONER MAY: I would agree. It  
4 has to be -- I mean, if we are going to define the  
5 size, there has to be a definition that works, and  
6 "an average of" doesn't work. Now we could say  
7 something like "approximately," and then you have  
8 to fuss over the definition of approximately, but  
9 at least you could somehow fuss over that. I don't  
10 know how the heck you would determine what an  
11 average is.

12 VICE CHAIRPERSON HOOD: Madam Chair, I  
13 wonder if they were trying to leave some leeway  
14 here, just in case they went over the 20,000 square  
15 feet. I interpreted -- and I would agree with  
16 Commissioner May. We could say average, but then  
17 again how would you argue approximately.

18 So I guess I was trying to figure out  
19 what they were actually trying to achieve when they  
20 said average. I think they were looking for some  
21 flexibility. Now whether we give it to them or  
22 not, you know, I don't know, but I think that's  
23 what Office of Planning was looking for.

24 CHAIRPERSON MITTEN: Well, I think  
25 these sizes were selected with the sizes of

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1 libraries, with the exception of the main library,  
2 in mind and that the existing libraries fit the  
3 parameters of these. So that we are not -- They  
4 didn't pick, oh, we have libraries that are 19,500  
5 square feet, so let's pick 20. I think there's a  
6 cushion in there. This also shows the danger of  
7 including a size in the definition.

8 COMMISSIONER MAY: Well, that's what  
9 keeps coming back to me. What is the benefit that  
10 is gained by actually defining that size as opposed  
11 to limiting the definition to a description of the  
12 allowed use, because there is a very clear set of  
13 distinctions or hurdles that you clear once you go  
14 from one to the next. Are we better off just  
15 simply taking the size out entirely?

16 CHAIRPERSON MITTEN: Okay.

17 VICE CHAIRPERSON HOOD: I would agree.

18 CHAIRPERSON MITTEN: Let's do it,  
19 unless Mr. Parsons has a problem with it.

20 COMMISSIONER PARSONS: That may serve  
21 this definition well, but what happens when we get  
22 down to these next ones, the community public and  
23 the kiosk public, which if they were to get above a  
24 certain size, they might become -- well, I'll use  
25 the term obnoxious? So I am saying yes to 20,000,

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1 but I'm wondering if we want to automatically  
2 eliminate these square footages below?

3 CHAIRPERSON MITTEN: Here's the bottom  
4 line, is there is no distinction in where these  
5 uses can occur. If you go into the amendment to  
6 Section 201, they are all lumped together. So they  
7 might as well be the same thing. The sizes  
8 distinctions and these various categories, at least  
9 as we are applying them so far, with the exception  
10 of the parking, doesn't really have -- there is no  
11 difference in where those uses can occur.

12 So it's not like, oh, well, in more  
13 restrictive zones we will allow community public  
14 libraries and kiosks. Then it's only in less  
15 restrictive zones that we allow full service. It's  
16 not like that. They are all allowed in the same.

17 COMMISSIONER MAY: All the differences  
18 in the definition do is allow you to determine how  
19 much parking needs to be provided.

20 CHAIRPERSON MITTEN: Right. And that's  
21 fine. I mean, that's fine, but it doesn't turn on  
22 size.

23 COMMISSIONER PARSONS: I see what you  
24 mean. Okay.

25 CHAIRPERSON MITTEN: So I think we can

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1 safely eliminate the size. Now we also had this  
2 discussion about, well, what if -- These are all  
3 sort of geared -- These definitions are geared  
4 toward these being self-contained libraries, not  
5 like it's a library as part of a larger structure  
6 or mixed use building or something like that.

7 I just didn't find the letter from  
8 Shirley Diamond to be helpful in defining -- I'm  
9 not sure they understood exactly why we were  
10 inquiring. So in defining library use as opposed  
11 to library structure, because we seem to be  
12 defining a structure as opposed to a use -- So I  
13 took a stab at a definition that would be a little  
14 bit broader, so that it would be a definition of a  
15 use as opposed to a structure.

16 I can either ask Mr. Bastida or Ms.  
17 Schellin to make copies of this or I can just read  
18 it. It's not that long. This incorporates their  
19 definition of what a library is. So let me try one  
20 out on your, and then I'll see. If you need  
21 copies, we'll get the copies.

22 This would be the definition of full  
23 service library, full service neighborhood public  
24 library: A District of Columbia Public Library in  
25 a permanent structure, the principal function of

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1 which shall be to furnish books, other printed  
2 matter and information services to District  
3 residents. The full service library facility may  
4 include meeting rooms, staff rooms, kitchen  
5 facilities and book overflow space.

6 It actually -- After we take out the  
7 containing, the definitions are not so bad, because  
8 it's when you have the size that it made it sound  
9 like it was a freestanding structure or self-  
10 contained structure. So once you eliminate that,  
11 it sort of eliminates that impression, because if  
12 you just take out from the advertised text the  
13 original definition, it now would say "A District  
14 of Columbia Library housed in a permanent structure  
15 and including" the following.

16 So it is housed in a permanent  
17 structure, but it isn't the structure. You know,  
18 it's not exclusively. So maybe the original  
19 definitions will still work. Anybody have any  
20 thoughts about that? Mr. Hannaham?

21 COMMISSIONER HANNAHAM: I'm sort of  
22 hesitant, but may I should say this. I'm struck by  
23 the fact that this seems like such an archaic  
24 definition of library, something that could have  
25 been true in the 19th Century, basically, by

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1 definition, and we've got a digital age that's on  
2 us, you know.

3           There is no reference or seeming  
4 appreciation of the fact that libraries are on the  
5 verge of being extinct in those terms, although  
6 they have incorporated a lot of the new technology.

7           So this really is not a very progressive  
8 definition. It doesn't seem to be in tune with  
9 what's happening in the world.

10           CHAIRPERSON MITTEN: Well, I think  
11 that's because the definition that they sharing  
12 with us is from a statute that was probably passed  
13 years ago and doesn't really -- is not revised  
14 routinely.

15           COMMISSIONER HANNAHAM: But this is a  
16 beautiful opportunity for them to redefine  
17 themselves and to give themselves arguments for a  
18 more progressive future. I say all of that, and I  
19 don't really have any words to suggest that's  
20 better. It's just a thought that I thought I ought  
21 to share.

22           VICE CHAIRPERSON HOOD: Madam Chair,  
23 let me just say I agree with Mr. Hannaham,  
24 Commissioner Hannaham. But when I saw compact  
25 disk, that kind of gave me a comfort level of

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1 coming into the 21st Century.

2 CHAIRPERSON MITTEN: You mean as  
3 opposed to eight-track tapes?

4 VICE CHAIRPERSON HOOD: When I saw  
5 compact disk. But I agree with his statement, and  
6 maybe this is the time, whether this is approved or  
7 whatever the case is, for libraries to look back at  
8 reevaluating or coming up with something more  
9 modern age. But I don't have any problems with  
10 what is in front of us.

11 CHAIRPERSON MITTEN: Okay.

12 COMMISSIONER MAY: I think I need to  
13 clarify this, maybe just for my own understanding.

14 But we are essentially defining library in the way  
15 that they told us in grammar school you can't  
16 define anything, to use the word you are defining  
17 in the definition.

18 So we are calling a library a library.

19 To me, that means that there is an assumption that  
20 everybody knows what a library is and all we are  
21 talking about are what uses are really not basic  
22 library or everyone's image of what a library is in  
23 terms of books and everything else. It's only  
24 other stuff that goes with it that we are defining  
25 and limiting, because everybody knows what a

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1 library is.

2 Well, now everybody today knows -- has  
3 a different picture of a library as compared to 100  
4 years ago, and I would hope that, you know, the  
5 definition of library would be contemporaneous  
6 through the future and, since it is not something  
7 that we defined in the regulations without using  
8 the library in it, then we would have to fall back  
9 on a dictionary definition, if that ever became an  
10 issue.

11 So it's really just, you know, basic  
12 library plus what other stuff, and what we are  
13 defining here is just the other stuff. Now is that  
14 a correct characterization in other people's view?

15 I mean, do you agree that that is really what we  
16 are talking about? And so we don't have to get  
17 into the business of what really is a library.

18 CHAIRPERSON MITTEN: I think so. I  
19 think that's right.

20 Okay. Well, let me just also say that  
21 the Office of Planning in their March 20th report  
22 had added onto the end of the advertised  
23 definitions in each case. So in the case of the  
24 full service neighborhood public library, they had  
25 added the sentence, "There is a wide array of

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1 selection and quantity of book titles, books on  
2 tape, and compact disks as suited for in depth  
3 research and staff by seven to ten full-time-  
4 equivalent employees."

5 I don't know that we need to go that  
6 far in the definition, but that was not part of the  
7 advertised definition, if we want to add that.

8 In the case of the community public  
9 library, the additional sentence that was not  
10 advertised is "There is a small selection of books  
11 that include a large ratio of paperbacks, and it is  
12 not suitable for more than basic research, and  
13 staff by two full-time-equivalent employees."

14 Then the kiosk, the additional sentence  
15 was: "It is not suited for more than basic  
16 research, and is staffed by one full-time-  
17 equivalent employee."

18 I think that is actually probably  
19 asking for trouble more than anything in the event  
20 that there would be more than the number of full-  
21 time-equivalent employees because of some  
22 circumstance. I don't know that that is really  
23 going to -- that that helps the definition.

24 COMMISSIONER MAY: Yes. The point of  
25 going into that much detail about what a library

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1 is, is it really necessary so that we can define  
2 what the parking is going to be?

3 CHAIRPERSON MITTEN: Right.

4 COMMISSIONER MAY: I think you really -  
5 - I mean, I think it's okay to say a library is a  
6 library plus we recognize that, you know, when it's  
7 a full service neighborhood public library, it can  
8 also have meeting rooms, staff workrooms, kitchen  
9 facilities, book overflow space.

10 CHAIRPERSON MITTEN: Right.

11 COMMISSIONER MAY: And if it's these  
12 other definitions, it has a small staff area or it  
13 has no space for activities -- I mean, we are  
14 really defining what else goes with library.

15 CHAIRPERSON MITTEN: Yes, and I think  
16 the impact of the number of employees or whatever -  
17 - The place where we recognize that is going to be  
18 in the parking. So if we have an adequate amount  
19 of parking included to accommodate employees, then  
20 we should have accomplished the task without  
21 specifying what we think the number is.

22 COMMISSIONER MAY: That's right.

23 CHAIRPERSON MITTEN: So I would suggest  
24 that we maintain definitions that we advertise with  
25 the exception of eliminating references to size and

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1 not add this additional language from the March  
2 20th OP report. Is there anyone else who has a  
3 different view? Mr. Hannaham?

4 COMMISSIONER HANNAHAM: Looking it up -  
5 - I'm just going back to where you were before with  
6 the kiosk, and the last sentence says "and it's not  
7 suited for more than basic research." Do we really  
8 want to say basic research? I mean, they don't  
9 really mean basic research in the sense that people  
10 use basic research, do they? They are talking  
11 about exploratory or initial discovery or  
12 something, you know.

13 CHAIRPERSON MITTEN: Right.

14 COMMISSIONER HANNAHAM: Because basic  
15 research really means a whole lot more, maybe not  
16 in this context, but most people see it as far more  
17 sophisticated.

18 CHAIRPERSON MITTEN: Well, I'm  
19 advocating that we delete that language anyway,  
20 because it doesn't add anything to the definition.

21 COMMISSIONER HANNAHAM: I still think  
22 all of this looks pretty sad, you know. It looks  
23 pretty sad in terms of an opportunity for the  
24 library to really redefine itself.

25 CHAIRPERSON MITTEN: Yes.

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1                   COMMISSIONER HANNAHAM:     Can we help  
2 them in some way?  Could we have this reviewed and  
3 ask them to come back and give us another look?

4                   CHAIRPERSON MITTEN:       Well, this is  
5 proposed action.  So we certainly could.

6                   COMMISSIONER HANNAHAM:     Ask them to  
7 take a look at this in light of where we are now in  
8 the 21st Century, and where would they like to be,  
9 say, in 2150, you know.  Set it as a sort of a  
10 defining, progressive kind of definition of what  
11 they might be, of setting goals for themselves  
12 rather than just being a staid house, you know,  
13 with some books stacked up and musty image of the  
14 whole library.

15                   I haven't been in a library in the  
16 sense of these old traditional ways now in like 15-  
17 20 years.  I can't remember the last time I was in  
18 a library, and that has not stopped me from doing  
19 an enormous amount of research through the Internet  
20 and web connections, et cetera.  And I think this  
21 is what most kids are doing, what teachers are  
22 doing, not only in communities but in colleges and  
23 universities as well.

24                   So I really think this is a beautiful  
25 opportunity to let them start thinking.  Give us

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1 something back -- Give us back something that  
2 really reflects the way we are and where we would  
3 like to be.

4 CHAIRPERSON MITTEN: Okay. If I could  
5 as the Office of Planning then to just inquire as  
6 to whether or not the public libraries would like  
7 to weigh in with a more progressive definition of  
8 library that we could perhaps incorporate into the  
9 final action, we would be interested in that.

10 COMMISSIONER HANNAHAM: I think they  
11 are changing the old card catalogs. In most cases,  
12 they gone. They are history. Most people are  
13 sitting with a keyboard and a little monitor, doing  
14 their research.

15 CHAIRPERSON MITTEN: Right.  
16 Absolutely. COMMISSIONER HANNAHAM:  
17 That's not a library, I mean, in the sense of --  
18 It's the way they are saying here now.

19 CHAIRPERSON MITTEN: Right.

20 COMMISSIONER HANNAHAM: I mean, then we  
21 recognize that fact, and I think they really ought  
22 to in some way address that reality.

23 CHAIRPERSON MITTEN: Good.

24 COMMISSIONER MAY: Can I add to that?  
25 I prey on the notion that a library ought to be

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1 defined in more modern terms, but I really wonder  
2 what the benefit is to our regulatory purpose here  
3 by expanding the definition in that way. Does it  
4 do anything in helping us strictly in terms of  
5 zoning?

6           Again, I go back to my original  
7 statement or one of my earlier statements, that a  
8 library is a library, and we don't have to worry  
9 about what a library is.

10           What we really have to do is worry  
11 about the stuff that goes with the library that a  
12 neighborhood might find objectionable, because from  
13 the neighborhood's point of view, whether it  
14 contains books or computer terminals or, you know,  
15 holographic work stations or anything else is  
16 really not that big a consideration from a zoning  
17 point of view.

18           It's a question of at what point does  
19 that use, either in itself become objectionable, or  
20 invite other objectionable conditions to the  
21 neighborhood. That's really where, I think, we  
22 should be focused rather than doing a lot of extra  
23 work to simply make sure that our definition is  
24 more suitable for today's image of a library. Not  
25 that that in itself isn't worthwhile. I just don't

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1 know that it adds much value to our purpose here.

2 COMMISSIONER HANNAHAM: I agree. I  
3 agree with what you say, and I just saw it as an  
4 opportunity to get out of our zoning jacket and do  
5 a little bit more than just, you know, interpret  
6 the world through the eyes of zoning regulations  
7 when we have an opportunity.

8 CHAIRPERSON MITTEN: Well, we'll see  
9 what kind of feedback --

10 COMMISSIONER HANNAHAM: Just asking a  
11 question.

12 CHAIRPERSON MITTEN: Well, we'll see  
13 what they come back with, and we will see if it's  
14 appropriate to incorporate into our definition when  
15 we take final action.

16 VICE CHAIRPERSON HOOD: Madam Chair, we  
17 decided to take out that additional language in  
18 each one of the definitions?

19 CHAIRPERSON MITTEN: So far we have. I  
20 mean, we are going to take a vote at the end, and I  
21 will sort of remind everyone of what we decided  
22 along the way. But so far we have a consensus to  
23 take that out.

24 VICE CHAIRPERSON HOOD: We have a -- I  
25 don't know if that's what I heard form Commissioner

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1 May. I don't know.

2 COMMISSIONER MAY; I'm sorry. If what  
3 we are theoretically moving ahead with today is the  
4 language as it was originally advertised but  
5 striking the square foot information.

6 CHAIRPERSON MITTEN: That's where we  
7 are right now.

8 COMMISSIONER MAY: Okay. That I'm very  
9 much in favor of.

10 CHAIRPERSON MITTEN: Okay.

11 COMMISSIONER MAY: I guess I just don't  
12 see any reason to do anything more than that is  
13 what it comes down to.

14 VICE CHAIRPERSON HOOD: So he's not on  
15 board with what you were saying about striking --

16 CHAIRPERSON MITTEN: No, the last part  
17 is not included in the original language.

18 VICE CHAIRPERSON HOOD; Oh, the  
19 original. Okay. Got ya.

20 CHAIRPERSON MITTEN: Okay. That's the  
21 definitions. Then the other area where there were  
22 some differences in the hearing report from OP were  
23 a couple of things.

24 One is in the parking. So this would  
25 be on page 3 of the hearing notice and page 4 of

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1 the OP report. The parking requirement, just as a  
2 for instance, for full service neighborhood public  
3 library would be for libraries constructed after,  
4 you know, the effective date, and in excess of  
5 2,000 square feet of floor area, one space for each  
6 additional 1,000 square feet of gross floor area  
7 was advertised.

8 The Office of Planning was suggesting  
9 that that be changed to patron use area, which is a  
10 completely undefined term. I know what they are  
11 driving at, but we would have to define that, and  
12 then that doesn't address the issue that you might  
13 actually have more employees if you had a larger  
14 building, even if it wasn't for patrons.

15 So I think I would be advocating for  
16 the retention of the original gross floor area  
17 language myself.

18 COMMISSIONER PARSONS: I agree. It's  
19 easily defined. If there is some issue with -- You  
20 know, the gross floor area of a given library may  
21 be 20,000, but the patron use area may be 10,000  
22 and, therefore, we are trying to make sure that we  
23 only have -- I mean that we have the right  
24 proportion, then I would suggest that we look at  
25 the proportion, you know, how many thousands of

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1 square feet of gross area requires an additional  
2 parking space, because there's probably a fairly  
3 consistent proportion between patron use area,  
4 whatever that is, and gross floor area.

5 CHAIRPERSON MITTEN: Okay.

6 COMMISSIONER PARSONS: Because gross  
7 floor area is just easy to define.

8 CHAIRPERSON MITTEN: Right. So is  
9 there anyone who would be advocating for patron use  
10 as opposed to gross floor area? Okay.

11 Then another suggestion that was made  
12 was to add at the end of each of the designated  
13 parking requirements, "If located within one-half  
14 mile of a Metrorail station, the parking  
15 requirements may be reduced by 50 percent." Very  
16 sensible, as far as I'm concerned.

17 VICE CHAIRPERSON HOOD: I would agree,  
18 Madam Chair. I think that is reasonable. I would  
19 like to see that stay in there.

20 CHAIRPERSON MITTEN: Okay.

21 COMMISSIONER MAY: I agree.

22 COMMISSIONER HANNAHAM; I agree.

23 CHAIRPERSON MITTEN: Okay. Then in our  
24 Public Hearing notice -- I think this was just an  
25 oversight, but i just want to make sure that we get

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1 it in -- there was a final -- Oh, actually -- Oh, I  
2 guess it was -- Oh, this was accommodated. I'm  
3 sorry. This was accommodated through a proposed  
4 section 2104.2 rather than having it in the chart  
5 for the number of spaces required. So we did have  
6 that in there. IT was just in a separate  
7 subsection. So that's fine.

8 The language said, "The Board of Zoning  
9 Adjustment" -- Oh, I see. The difference was the  
10 proposed language was that the Board of Zoning  
11 Adjustment would reduce the number of spaces, and  
12 the Office of Planning proposal was that that would  
13 just be a -- That wouldn't require BZA approval.

14 I think, in light of the fact that -- I  
15 mean, take a 10,000 square foot -- Take a 20,000  
16 square foot, which would be the maximum size of a  
17 full service neighborhood public library, and the  
18 parking requirement would be 18 spaces, and you are  
19 talking about having probably 7 to 10 full-time-  
20 equivalent employees, and then you're talking about  
21 having space for patrons. If you are within the  
22 half-mile of a Metrorail, would you want to reduce  
23 the number of spaces to nine in that circumstance,  
24 without having any review by BZA?

25 VICE CHAIRPERSON HOOD: Madam Chair, I

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1 think you raise a good issue. It's always good to  
2 have review and also input. So I would not want to  
3 see us doing anything that would cut out citizens  
4 or the public's input.

5 CHAIRPERSON MITTEN: Okay. So is the  
6 consensus to retain the advertised 2104.2, which  
7 would allow the BZA to reduce the number of spaces?

8  
9 COMMISSIONER MAY; I don't know. I  
10 think that that number of parking spaces for a  
11 20,000 square foot library, and having nine and  
12 being within a half-mile of Metro, I think, is  
13 probably pretty safe. Although I certainly  
14 agree that public input is very helpful, I think  
15 that is it simply just adding something else to the  
16 BZA's plate where it really isn't that critical,  
17 because it is defined well enough and has the right  
18 constraints?

19 I mean, if the consensus -- If others  
20 agreed, I think I would be quite comfortable  
21 leaving it without requiring the special exception  
22 approval.

23 CHAIRPERSON MITTEN: Anybody else? I  
24 don't feel strongly about it, one way or the other,  
25 although lightening the load for the BZA is

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1 certainly a worthwhile cause. Mr. Hannaham?

2 COMMISSIONER HANNAHAM: I was looking  
3 at this in a slightly different way. Within radius  
4 of -- Within a certain, say, half-mile radius of a  
5 Metro station is fine, but we're talking about  
6 local libraries, right? Most folks are walking  
7 distance. Right?

8 CHAIRPERSON MITTEN: Yes.

9 COMMISSIONER HANNAHAM: And they also  
10 have bus transportation available as well, you  
11 know. I was just thinking, maybe Metrorail isn't  
12 really a key in a neighborhood library with  
13 transporting people except the staff might live out  
14 of the area, but people in the neighborhood will  
15 just walk, you know. I don't even know if it  
16 really is of any consequence, really.

17 CHAIRPERSON MITTEN: So would you be in  
18 favor of just allowing the reduction without any  
19 kind of BZA approval?

20 COMMISSIONER HANNAHAM: Yes, I think I  
21 would. Yes.

22 CHAIRPERSON MITTEN: Okay. Mr.  
23 Parsons, do you want to get in on this?

24 COMMISSIONER PARSONS: I guess the  
25 intent here is special events, things that would

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1 attract people by Metro, because Mr. Hannaham is  
2 right. If you lived five blocks from the library,  
3 you wouldn't take the Metro to get there.

4 CHAIRPERSON MITTEN: Right.

5 COMMISSIONER PARSONS: So it's only for  
6 special activities and employees that this is  
7 intended for. I don't see any reason to bother the  
8 BZA with it.

9 CHAIRPERSON MITTEN: Okay.

10 COMMISSIONER HANNAHAM: Well, a lot of  
11 folks who use libraries are meetings, you know,  
12 ANCs and others, community organizations. I'm  
13 pretty sure that they just -- and the people who  
14 attend these meetings, they are all within walking  
15 distance. They are really neighborhood service  
16 resources.

17 VICE CHAIRPERSON HOOD: Could I just  
18 say, Madam Chair --

19 COMMISSIONER HANNAHAM: Of course,  
20 there are regional libraries, too, which sort of  
21 cover a larger area. You could make the  
22 distinction there. For regional libraries, maybe  
23 this could apply, because Metro might be a factor,  
24 but for the local public library, I really don't  
25 see this as a big deal.

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1           COMMISSIONER PARSONS: Well, we already  
2 agreed, this does not apply to the main library.

3           CHAIRPERSON MITTEN: Well, I wanted to  
4 talk about that.

5           COMMISSIONER PARSONS: Because we don't  
6 even have them defined here.

7           CHAIRPERSON MITTEN: That's right,  
8 although by removing the size restriction, you  
9 know, someone could -- if they wanted to build the  
10 main library and they looked in the ordinance after  
11 we are done and they said, well, looks like it must  
12 be a full service neighborhood public library  
13 because I don't have a definition of anything else.

14           What I was going to suggest is that,  
15 since this is a rulemaking case, I can bring in  
16 some extraneous -- I don't have to confine myself  
17 exclusively to the record.

18           A question was put to me at my  
19 confirmation hearing about what my feeling was  
20 about this provision where NCPC does the review of  
21 District buildings within the Central Employment  
22 Area, and it made me start thinking about whether  
23 or not we should at least plan for the day that may  
24 come soon or may come late where that review is  
25 changed and it becomes Zoning Commission review or

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1 something like that.

2 COMMISSIONER PARSONS: We seem to be  
3 straying somewhat.

4 CHAIRPERSON MITTEN: We don't have to  
5 do that today, but I thought it might be something  
6 that we could think about.

7 VICE CHAIRPERSON HOOD: You know, Madam  
8 Chair, at your confirmation hearing I also heard  
9 that. Talked to some old-timers around here, and  
10 they assured me that would never happen.

11 CHAIRPERSON MITTEN: I see. Anybody we  
12 know?

13 VICE CHAIRPERSON HOOD: Actually, they  
14 were. Former Council member late John Wilson  
15 informed me that would never happen.

16 CHAIRPERSON MITTEN: I see, okay.  
17 Okay, well, that's just food for thought for the  
18 future.

19 VICE CHAIRPERSON HOOD: Madam Chair,  
20 let me go back to this issue about parking space  
21 and not going in front of the BZA and public input.  
22 I mean, that's fine, too, but I just want to make  
23 sure that we know that, if it's that clean-cut,  
24 then it shouldn't take the BZA no more than a  
25 minute.

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1           We also, on the other hand, are not  
2 cutting out public comment. That's just kind of  
3 where I am. And also, a statement made, if it's  
4 five blocks away that people won't drive to the  
5 library. But in the real world, what's really  
6 happening is they could be down the street, and  
7 they still drive to the library.

8           So I mean, you know, we want to be real  
9 up here when we make these decisions. I think, on  
10 the real side of the issue is what we are getting  
11 ready to create? While my colleagues feel  
12 comfortable, I'm not going to sit here and belabor  
13 and go back and forth with it. I can go either  
14 way, but I just want to make sure that we're not  
15 opening up a problem.

16           COMMISSIONER PARSONS: Don't go either  
17 way. You just convinced me to go the other way.

18           VICE CHAIRPERSON HOOD: Well, since I  
19 did, let me go that way, the way I was going.

20           COMMISSIONER PARSONS: I think he's  
21 right.

22           CHAIRPERSON MITTEN: Okay.

23           COMMISSIONER MAY: That we need to have  
24 BZA?

25           COMMISSIONER PARSONS: Yes.

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1           VICE CHAIRPERSON HOOD: I didn't say we  
2 need to have BZA. I just said we need to have  
3 public input. Don't tell them I said that.

4           COMMISSIONER MAY: Okay, I'll make one  
5 last pitch for not BZA. I recognize the fact that  
6 people are going to use their car. They are going  
7 to drive, particularly if we're talking about  
8 evening use, because where people walk changes  
9 dramatically once it gets dark.

10           So I think that is valid. However, it  
11 is really a question of whether, you know, the  
12 standards we are setting really are sufficient. I  
13 think about the neighborhood public libraries that  
14 I know and how much parking is really necessary and  
15 the proximity to Metro and things like that, and I  
16 think that, you know, we can strike the right  
17 balance in the regulations and allow for that  
18 reduction.

19           Not that we are really going to be  
20 necessarily getting that many more people coming by  
21 Metro. I think we will get some. I don't think  
22 it's none. I think we will get some, particularly  
23 since there are some neighborhoods that don't have  
24 that, and it's really great to be able to get to  
25 one of these neighborhoods on top of a Metro. But

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1 you know, having a big old parking lot, you know,  
2 District government owned, right next to the Metro  
3 is not necessarily a good thing either. I mean,  
4 that can be a problem.

5 So I think that it would be best if we  
6 could strike the right balance right now and make  
7 it fairly automatic rather than having to go  
8 through BZA for it.

9 I think that, when it comes to parking  
10 and the BZA, I can't imagine that anything would  
11 happen quickly. It's going to be -- If it becomes  
12 an issue for discussion, it will become an issue  
13 for a lengthy discussion, because parking is the  
14 most important thing in the world.

15 CHAIRPERSON MITTEN: True, in some  
16 neighborhoods. Okay. So where are we then?

17 VICE CHAIRPERSON HOOD: Madam Chair,  
18 that's my point. In some neighborhoods. So the  
19 issue varies. It may be clean-cut in one area but  
20 not clean-cut in other areas. So again, I just  
21 have a problem with us anytime closing off public  
22 comment, even though some things are set up now to  
23 where it is cut off. Like I said, I'll leave it  
24 alone.

25 COMMISSIONER PARSONS: I remain with

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1 Mr. Hood on this one.

2 VICE CHAIRPERSON HOOD: I'm going to  
3 stick with my guns then.

4 CHAIRPERSON MITTEN: Mr. May, where are  
5 you?

6 COMMISSIONER MAY: I'm inclined to  
7 stick with no BZA approval, but I also don't feel  
8 very strongly.

9 CHAIRPERSON MITTEN: Okay, Mr.  
10 Hannaham, where are you?

11 COMMISSIONER HANNAHAM: I'm neutral. I  
12 really don't have a position. I'm on the fence.

13 CHAIRPERSON MITTEN: Okay. I think  
14 that we can leave in our proposed section 2104.2  
15 and, if it becomes before BZA, they can dispatch  
16 with it quickly. There might be worthy discussion  
17 that takes place there.

18 COMMISSIONER MAY: I'm happy then to go  
19 along with that.

20 CHAIRPERSON MITTEN: Okay. Any other  
21 issues? I didn't see any other aside from the  
22 issue of the main library, which we can talk about  
23 another day.

24 COMMISSIONER PARSONS: Move approval as  
25 we have amended it this afternoon.

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1 CHAIRPERSON MITTEN: Okay. We have a  
2 motion.

3 VICE CHAIRPERSON HOOD; Second.

4 CHAIRPERSON MITTEN: And a second. I  
5 will just review quickly what we reached consensus  
6 about, which is to retain the definitions of the  
7 Public Hearing notice without reference to size, to  
8 retain the parking requirements in the Public  
9 Hearing notice as they were worded there with  
10 reference to gross floor area as opposed to patron  
11 use area, and to retain the advertised Section  
12 2104.2 which requires BZA approval for reduction of  
13 parking within one-half mile radius of a Metrorail  
14 station.

15 Is there any further discussion? All  
16 those in favor, please say Aye.

17 Those opposed, please say No.

18 Ms. Schellin?

19 MS. SCHELLIN: Yes. Staff would record  
20 the vote five to zero to zero, Commissioner Parsons  
21 moving, Commissioner Hood seconding, Commissioners  
22 Hannaham, May and Mitten in favor to approve case  
23 Number 13-10 with modifications as discussed.

24 CHAIRPERSON MITTEN: Thank you. The  
25 last item under Proposed Action is Case Number 02-

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1 50, which is St. Luke's Condominium. This is a PUD  
2 and related map amendment that would change the  
3 zoning of the site at Wisconsin and Calvert from  
4 Naval Overlay Precinct District R-1-B to Naval  
5 Overlay Precinct District R-5-B and would provide  
6 for a 44-unit condominium project oriented toward  
7 the corner of Wisconsin and Calvert. If you  
8 will recall, there was support from the directly  
9 affected ANC. Adjacent ANC, which is ANC-3B, had  
10 some concerns that -- We had their resolution in  
11 the record at the time of the hearing, and they had  
12 been suggesting some provisions for short term  
13 parking, in particular, that the applicant  
14 attempted to address, and DDOT did not endorse the  
15 lay-by alternative, and DDOT gave us the advice  
16 that they thought that loading area would be  
17 sufficient for accommodating the kind of short term  
18 parking that concerned ANC-3B.

19 I can -- If anybody would like to  
20 review any of this, but there's a few things that  
21 were proffered that we don't have in the record.  
22 So we will need to get copies, and I would have  
23 preferred that we get the copies prior to the  
24 closing of the record, but we can make that -- We  
25 can reopen the record for the narrow purpose of

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1 providing signed copies of the memorandum of  
2 understanding with the local business opportunity  
3 commission, for the LSDBEs that they proffered, and  
4 the signed first source agreement with DOES, which  
5 they also proffered which I don't believe we have a  
6 signed copy in the record.

7 Let me just review quickly what the  
8 plan is, what they proffered, and then we can have  
9 a discussion, if there are any concerns.

10 It would be for 44 residential units,  
11 and there would be parking for the residential  
12 project at two spaces per residential unit, plus 16  
13 spaces for visitors and staff. The density would  
14 not exceed 99,141 square feet, which includes the  
15 density devoted to the church, for a total of 1.27  
16 FAR. The height would not exceed 40 feet. Lot  
17 occupancy would not exceed 36 percent.

18 They proffered that they would -- They  
19 proffered a construction management plan, which has  
20 been called the Development and Construction  
21 Agreement, that they would landscape and maintain  
22 the traffic island at Wisconsin, Calvert and 37th,  
23 that they would provide a minimum roof area of  
24 5,000 square feet for a green roof.

25 They would make a contribution of

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1 \$150,000 to the Housing Production Trust Fund, that  
2 they would make a contribution of \$100,000 to the  
3 Massachusetts Avenue Heights Citizens Association,  
4 \$50,000 of which would go to Guy Mason Rec Center  
5 for improvements, and then the balance would be for  
6 designated neighborhood improvements.

7           They would -- A contribution of \$50,000  
8 would be directed by ANC-3B, \$25,000 for  
9 streetscape improvements and \$25,000 for grants to  
10 neighborhood organizations. All HVAC units will be  
11 in the below grade garage and not on the exterior  
12 of the building, and then various -- all the design  
13 provisions that are represented by the plans and  
14 the landscaping plan and the roof plan that we  
15 received into the record.

16           So that's the broad overview, and I ask  
17 for any concerns, questions. Mr. May?

18           COMMISSIONER MAY: Okay. Let me state,  
19 first of all, that regrettably I was unable to  
20 attend the hearing in this matter, but I have read  
21 the record, and I am prepared to address the case  
22 today, although given the range of questions that I  
23 initially had and the information that I got from  
24 that hearing, I am not -- I don't feel like I have  
25 a full command of the questions and issues that

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1 this project raises. But it is very clear from the  
2 record that there is substantial support for this  
3 application from the ANCs, from OP, from the  
4 neighborhood, and it seems that the applicant has  
5 done a commendable job of building consensus around  
6 this project.

7 I still think that there are a handful  
8 of issues that I -- while I don't feel entirely  
9 comfortable with them, given the overall  
10 circumstance and, again, given the consensus of  
11 support, I can push those concerns, I think, to the  
12 side, at least for the moment.

13 I am still stuck on one issue, which is  
14 the measurement of the height of the building, not  
15 so much that the height itself is objectionable or  
16 that it doesn't meet the intent of the overlay in  
17 terms of how tall the building actually is, but I  
18 still don't understand how this building could be  
19 measured as a 40-foot building.

20 Mr. Parsons handed me a site section  
21 just now, which may well be in my package and I  
22 missed it, but it makes me even more concerned,  
23 because it looks like the height is measured as the  
24 average grade over the entire site; whereas, as I  
25 read the regulation, it is supposed to be the --

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1 you start -- your base elevation is the height of  
2 the curb opposite.

3 Now maybe I am misinterpreting that,  
4 but it seems to me that there's -- I would just  
5 like to have somebody explain it to me, because I  
6 just haven't gotten it yet. Maybe someone could  
7 help me. Can OP help me?

8 CHAIRPERSON MITTEN: Well, I can help  
9 you, I think.

10 COMMISSIONER MAY: Oh, okay. good.

11 CHAIRPERSON MITTEN: Although I'd be  
12 happy for them to help you, too. If you go to  
13 1534.2(b), it says you measure from the curb  
14 opposite, but then it says -- In (b) it says the  
15 curb elevation opposite the middle of the front of  
16 the building shall be determined as the average  
17 elevation of the lot from its front line to its  
18 rear lot line.

19 So even though you think, oh, well, I  
20 know what the elevation of the curb should be, but  
21 that's not how they tell you to measure it in this  
22 overlay district. Right or wrong, that's what --

23 COMMISSIONER MAY: It's saying that --  
24 The regulation says measure it from the opposite  
25 curb.

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1 CHAIRPERSON MITTEN: Yes.

2 COMMISSIONER MAY: The height of the  
3 opposite curb, but the height of the opposite curb  
4 shall be determined by measuring the lot that you  
5 are on?

6 CHAIRPERSON MITTEN: Yes. Average  
7 elevation of the lot from its front -- I'll show  
8 you. It's easier -- Well, you got it?

9 COMMISSIONER MAY: No, I read it. I  
10 have it here.

11 CHAIRPERSON MITTEN: Yes, that's what  
12 it says.

13 COMMISSIONER MAY: So this is -- Mr.  
14 Parsons?

15 CHAIRPERSON MITTEN: Yes, you can  
16 blame him.

17 COMMISSIONER MAY: Do you remember  
18 this?

19 COMMISSIONER PARSONS: Unfortunately, I  
20 do, but not the specifics.

21 COMMISSIONER MAY: And again, I'm not -  
22 - It's illogical.

23 COMMISSIONER PARSONS: It appears to  
24 be, yes.

25 CHAIRPERSON MITTEN: Yo need to turn

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1 your mike on.

2 COMMISSIONER PARSONS: Well, I don't  
3 want to be recorded. It appears to be illogical,  
4 and I can't explain it.

5 COMMISSIONER MAY: Okay. Well, that  
6 doesn't help me here. I mean, maybe I'm the only  
7 person who is concerned about this. I just think  
8 that, when it comes to things like building height,  
9 if we are going to accept something like this where  
10 it isn't very clear or the basis, frankly, seems to  
11 be based on some inadvertent confusion of the  
12 language in the overlay, we ought to be very  
13 explicit about it and, if there is some sort of  
14 relief involved here that we ought to be quite  
15 explicit about it.

16 CHAIRPERSON MITTEN: Let me just  
17 respond a little bit. One is: I think that,  
18 notwithstanding that it might be illogical, I think  
19 it is clear how you measure height in the Naval  
20 Observatory Precinct District. Whether we agree  
21 with it or not, I think it is clear.

22 COMMISSIONER MAY: See, it wasn't clear  
23 to me. I thought you were talking about the lot  
24 across the street.

25 CHAIRPERSON MITTEN: Oh, okay. Okay,

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1 it was clear to me. Maybe it's not clear to  
2 everybody. So there is room for debate about  
3 whether it's clear.

4 I think the reason for it -- and maybe  
5 this will help Mr. Parsons; I don't know -- is that  
6 many of the lots in the area where this was mapped  
7 have significant changes in elevation, the lots  
8 themselves, because if you think about the east  
9 side of Wisconsin Avenue and how that slopes away  
10 from Wisconsin Avenue, and then as you go up  
11 further north of Calvert, then you're starting to  
12 go in an upgrade, that there's -- I think there was  
13 perhaps -- and I don't know if this is helping, Mr.  
14 Parsons, but just measuring from the curb, as we  
15 often do, was going to disadvantage people whose  
16 sites slope significantly. COMMISSIONER

17 PARSONS: That was absolutely the intent. I mean,  
18 the concern was that, if you measured from  
19 Wisconsin Avenue, by the time you got to the Naval  
20 Observatory, you could have 140-foot high building  
21 overlooking the Naval Observatory. But I can't  
22 explain why we go to the opposite curb to catch the  
23 measurement.

24 Just take Wisconsin Avenue, for  
25 instance. I mean, the opposite curb is the same

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1 height as the one on the other side of the street.

2 So that's why I'm unable to explain that. But the  
3 whole thrust of the case was based on a proposal  
4 that would have resulted in what I just described.

5 CHAIRPERSON MITTEN: Well, I think what  
6 you are describing is what they were trying to  
7 prevent as an adverse thing, and then in this case,  
8 because the site slopes up, it has the opposite  
9 effect.

10 COMMISSIONER MAY: Exactly.

11 CHAIRPERSON MITTEN: It's poorly  
12 worded. I mean, they should never have been making  
13 reference to the curb opposite the middle of the  
14 front of the building, because it doesn't have  
15 anything to do with the curb.

16 COMMISSIONER MAY: And, Mr. Parsons,  
17 that is your take on it, too, that it really did  
18 not or should not have -- I mean, it was all about  
19 the lot itself. It really didn't have anything to  
20 do or should not have had anything to do with the  
21 opposite curb? I mean, the opposite curb standard  
22 is something that, you know, is laced into other  
23 building height definitions.

24 I'm beginning to think now, I  
25 understand it, actually, considering it, because

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1 the standard for measuring building height except  
2 for a 40-foot building is always the height of the  
3 curb opposite.

4 CHAIRPERSON MITTEN: Right.

5 COMMISSIONER MAY: And the logic of  
6 this is that, rather than defining a new standard  
7 by which you measure, they basically came up with  
8 this perverse definition of how you measure the  
9 height.

10 CHAIRPERSON MITTEN: Yes. Perverse.

11 COMMISSIONER PARSONS; If he likes it,  
12 I like it.

13 COMMISSIONER MAY: I mean, it took me a  
14 while to get here, but now -- I mean, knowing how  
15 zoning and the Zoning Commission works, I can see  
16 form a regulatory point of view -- From a  
17 regulatory point of view, it made sense to sort of  
18 --

19 CHAIRPERSON MITTEN: Yes.

20 COMMISSIONER MAY: -- define the  
21 opposite curb in this very odd way.

22 CHAIRPERSON MITTEN: Yes.

23 COMMISSIONER MAY: All right. Now I  
24 have peace with this. Thank you very much.

25 Well, I'll register the other concerns

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1 that I have, and I will continue to mull this,  
2 regardless of whatever action we decide to take  
3 today. I think that many of the questions that I  
4 had and that were posed during the hearing in my  
5 absence went to some of these questions.

6 Specifically, I was concerned about the  
7 density, loading the density on this site. Now I  
8 understand with a PUD that is what we -- one of the  
9 areas of flexibility that we are looking for, that  
10 we try to put the density in the right place.

11 I guess my concern is that it seemed  
12 like in the end we wind up with one of those -- We  
13 wind up with what is, in effect, a building that  
14 would otherwise be thoroughly nonconforming, and it  
15 just seemed that we were pushing that ability to  
16 shift a bit too far.

17 Again, you know, this is done in the  
18 context -- or understood in the context of all of  
19 the reasons why this is a good project and why the  
20 neighborhood and the church and everyone benefits  
21 from it. But I will register my concern about  
22 that.

23 The other thing that I -- The other  
24 aspect of this project that I would register some  
25 concern about, and this again is, I think, a fairly

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1 minor consideration in light of the support that  
2 the project has -- I think that this building,  
3 designed the way it is and detailed the way it is,  
4 is going to look significantly out of place,  
5 because the precedents that it's drawn upon are  
6 from a completely different part of the city.

7           Even when looking at those precedents,  
8 the way the precedents are interpreted on the  
9 public face of the building is, I think, awkward in  
10 many ways. So I think that the building could be a  
11 very handsome building, and in the end may well be  
12 a very handsome building in its final rendering,  
13 but I also think that it strikes me as being an  
14 example where an expressed desire for a very  
15 detailed architecture and an architecture that is  
16 very much like the most elegant residences in the  
17 city -- Certainly, those were the precedents that  
18 were provided, are some of Washington's best  
19 addresses, if you will -- that that precedent in  
20 this circumstance and applied in this manner, I  
21 think, could wind up look, number one, out of place  
22 for the neighborhood, but also applied in such a  
23 way as if it were simply kind of a wallpaper  
24 dressing of a building that doesn't quite fit.

25           I mean, I look at the precedents for

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1 this, and I look at the image that the building  
2 tries to project, and I see, you know, soaring  
3 rooms, high ceilings, and elegant interior spaces  
4 and the true *piano nobile* that they speak of --  
5 they spoke of in the hearing, and yet the building  
6 is not that in so many other ways.

7 So it strikes me as being somewhat  
8 awkward. That being the case, it still may wind up  
9 looking like a very handsome building, but i just  
10 want to register my own unease about the building,  
11 the way it is, and again, given the significant  
12 support for it, I don't have enough of an objection  
13 to this that I would want to say that we shouldn't  
14 move forward or at least make a decision on it  
15 today, here and now.

16 CHAIRPERSON MITTEN: Thank you, Mr.  
17 May. And as you know, when we are presented with a  
18 list of public benefits and amenities, each of us  
19 weighs them differently. So perhaps you will  
20 weighing the urban design and architecture public  
21 benefit not as heavily as others.

22 CHAIRPERSON MITTEN: Exactly. Thank  
23 you for clarifying that.

24 CHAIRPERSON MITTEN: We do have a  
25 signed copy? Okay, we do have a signed copy of the

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1 DOES agreement, but how about the other? No?  
2 Okay, so we will have the record. Depending on how  
3 we proceed, I will request that we reopen the  
4 record to accept that signed copy.

5 So are there any other comments,  
6 questions, concerns? All right, then I would move  
7 approval of case Number 02-50 for St. Luke's  
8 Condominiums.

9 COMMISSIONER HANNAHAM: Second.

10 CHAIRPERSON MITTEN: Any further  
11 discussion? All those in favor, please say Aye.

12 COMMISSIONER MAY: Hold it. You moved  
13 too quickly.

14 CHAIRPERSON MITTEN: I'm sorry. I'm  
15 sorry, Mr. May. I really am.

16 COMMISSIONER MAY: Further discussion.  
17 That's okay. I guess just to explain how I will  
18 vote.

19 CHAIRPERSON MITTEN: Okay.

20 COMMISSIONER MAY: I would say that, in  
21 light of the overall considerations that go into  
22 this Planned Unit Development, and since it is a  
23 Planned Unit Development, the benefits in my view  
24 are outweighing the concerns and questions that I  
25 have at this moment.

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1 I will continue to study this to see  
2 whether, in fact, it's a final action that makes  
3 sense, but I am ready to support it as it stands.

4 CHAIRPERSON MITTEN: Great. Thank you,  
5 and I apologize for moving too quickly.

6 COMMISSIONER MAY: That's okay. I need  
7 to speak faster.

8 CHAIRPERSON MITTEN: Okay. All those  
9 in favor, please say Aye.

10 Those opposed, please say No.

11 Ms. Schellin.

12 MS. SCHELLIN: Yes. Staff would record  
13 the vote five to zero to zero to approve Case  
14 Number 02-50. The motion was made by Commissioner  
15 Mitten, seconded by Commissioner Hannaham, and  
16 Commissioners Hood, May and Parsons in favor.

17 CHAIRPERSON MITTEN: We are just going  
18 to take -- before we move to final action, which I  
19 assure you, will move quickly, we are just going to  
20 take a three-minute break, and we'll be right back.

21 (Whereupon, the foregoing matter went  
22 off the record at 4:03 p.m. and went back on the  
23 record at 4:07 p.m.)

24 CHAIRPERSON MITTEN: We are back on the  
25 record now. We are ready to move to Final Action.

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COMMISSIONER PARSONS: Madam Chairman,  
I need to recuse myself on the first case, 02-41.

CHAIRPERSON MITTEN: Okay. Thank you.  
The first case is Building Bridges Across the  
River, which we have the report from NCPC where  
they did not find any adverse -- anything adverse  
to the Federal interest, and we have a proposed  
order that would zone the property from Unzoned to  
S-P-1.

Any questions or concerns? Mr. Hood.

VICE CHAIRPERSON HOOD: Madam Chair, I  
move approval of Zoning Commission Case Number 02-  
41 from Unzoned to S-P-1.

COMMISSIONER MAY: Second.

CHAIRPERSON MITTEN: Thank you. Any  
further discussion or any discussion? Okay. We  
have a motion and a second to approve Case Number  
02-41.

All those in favor, please say Aye.

Those opposed, please say No.

Ms. Schellin.

MS. SCHELLIN: Staff would record the  
vote -- Mr. Hannaham, I'm sorry, I didn't hear you.

COMMISSIONER HANNAHAM: I'm sorry. I

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1 just came in. I know where you are, and I vote  
2 Aye.

3 MS. SCHELLIN: Aye? Okay. I'm sorry,  
4 I didn't see. So staff would record the vote four  
5 to zero to one, Commissioner Hood moving,  
6 Commissioner May seconding, Commissioners Hannaham  
7 and Mitten in favor, and Commissioner Parsons not  
8 voting, having recused himself.

9 CHAIRPERSON MITTEN: Thank you. Now  
10 Mr. Parsons is back with us.

11 Next is Zoning Commission Case Number  
12 02-33. This is a map amendment in the Fort Lincoln  
13 Urban Renewal Area for a -- It was a map amendment  
14 from a variety of zones, C-3-C, S-P-2 and R-5-D to  
15 C-2-B.

16 The report form NCPC reflects a concern  
17 that some of the Zoning Commissioners shared, which  
18 is that they recommend that the development of the  
19 site be administered as a Planned Unit Development.

20 So we are aware of that. We have already  
21 discussed that at length. So I don't think we have  
22 to have further discussion of it, but I would take  
23 note that they shared the view of -- I think they  
24 share the view of all of us, I guess, the degree to  
25 which we wanted to attempt to impose that on the

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1 applicant where some of us differed.

2 So I would move approval of Zoning  
3 Commission Order 02-33.

4 VICE CHAIRPERSON HOOD: Second.

5 CHAIRPERSON MITTEN: Is there any  
6 discussion?

7 VICE CHAIRPERSON HOOD: Madam Chair, we  
8 also have a letter, or was the letter provided to  
9 us from Mr. Carter previously? I'm not sure.

10 CHAIRPERSON MITTEN: No, I believe  
11 that's come in since during the comment period.

12 VICE CHAIRPERSON HOOD: Okay. I'm  
13 trying to figure out. He mentions where he thanks  
14 us for having the confidence in them in moving  
15 forward as signified in the letter, and that is  
16 provided for the record.

17 In other words, he's saying he  
18 appreciates the confidence that we have given them  
19 to move forward with this project, and I just  
20 thought that was very noteworthy.

21 CHAIRPERSON MITTEN: Thank you, Mr.  
22 Hood. Any further discussion?

23 All those in favor, please say Aye.

24 Those opposed, please say No.

25 Ms. Schellin, would you record the

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1 vote?

2 MS. SCHELLIN: Yes. Staff would record  
3 the vote three to two to zero, Commissioner Mitten  
4 moving, Commissioner Hood seconding, Commissioner  
5 Hannaham in favor, and Commissioners May and  
6 Parsons against approving Case Number 02-33 Final  
7 Action.

8 CHAIRPERSON MITTEN: Okay, thank you.

9 Next case is Waterfront, which is case  
10 Number 02-38, and we have the order in front of us,  
11 and I think we need to reserve the opportunity to  
12 make editorial changes to the order, as we  
13 typically do, but the two areas -- I just point out  
14 for my colleagues the two areas where there have  
15 been significant changes from the proposed order  
16 that we saw are in Condition Number 6 which relates  
17 to the timing of the phases, and 7 relates to the  
18 outside limit for providing the residential use,  
19 and the balance of the order, I think, is primarily  
20 the same as we've seen in the past.

21 Any questions, concerns, motions?

22 COMMISSIONER PARSONS: I would move we  
23 approve this Final Order as amended in this recent  
24 correspondence from MR. Bergstein.

25 CHAIRPERSON MITTEN: Which I think is

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1 reflected in the draft order that we have in front  
2 of us.

3 COMMISSIONER PARSONS: Yes, I believe  
4 it is.

5 CHAIRPERSON MITTEN: Okay. Second.  
6 Any discussion?

7 All those in favor, please say Aye.

8 Those opposed, please say No.

9 Ms. Schellin.

10 MS. SCHELLIN: Yes. Staff would record  
11 the vote five to zero to zero to approve final  
12 action in Case Number 02-38 with the modifications  
13 mentioned, Commissioner Parsons moving,  
14 Commissioner Mitten seconding, and Commissioners  
15 Hannaham, Hood and May in favor.

16 CHAIRPERSON MITTEN: Thank you. Then I  
17 reversed the order of these two cases. So the next  
18 case is going to be 03-15, which is the Bennett  
19 Beauty School case. We also have the NCPC report  
20 on that where they determined that there was no  
21 adverse effect to the Federal interest.

22 The proposal in that case is to rezone  
23 the property at 700 Monroe Street, N.E. from R-4 to  
24 C-1. I would move approval of that application.

25 VICE CHAIRPERSON HOOD: Second.

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1 CHAIRPERSON MITTEN: Any discussion?

2 All those in favor, please say Aye.

3 Those opposed, please say No.

4 Ms. Schellin.

5 MS. SCHELLIN: Yes. Staff would record  
6 the vote five to zero to zero, Commissioner Mitten  
7 moving, Commissioner Hood seconding, Commissioners  
8 Hannaham, May and Parsons in favor to approve Case  
9 Number 03-15 Final Action.

10 CHAIRPERSON MITTEN: Thank you. The  
11 lat case that we have under Final Action is a  
12 petition from ANC-3F to amend Section 3202.5(a),  
13 which has a tortuous history, as has been outlined  
14 in their submission. We had approved this as a  
15 consent calendar item -- We took proposed action as  
16 a consent calendar item, I think, if I am  
17 remembering correctly, and now we need to take  
18 final action today.

19 COMMISSIONER MAY: Madam Chair, I would  
20 like to note for the record that I was not present  
21 at the special meeting when this was considered as  
22 a consent calendar item, and I have not had the  
23 opportunity to familiarize myself with the record.

24 So I will not be participating in this case.

25 CHAIRPERSON MITTEN: Thank you, Mr.

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1 May. Are there any questions,  
2 concerns, motions? Okay, then I will make a motion  
3 that we approve Zoning Commission Case Number 03-14  
4 to amend 3202.5(a) to convey the meaning that was  
5 intended originally. Is there a second?

6 VICE CHAIRPERSON HOOD: I will second.

7 CHAIRPERSON MITTEN: Any discussion?

8 All those in favor, please say Aye.

9 Those opposed, please say No.

10 Ms. Schellin.

11 MS. SCHELLIN: Staff would record the  
12 vote four to zero to one, Commissioner Mitten  
13 moving, Commissioner Hood seconding, Commissioners  
14 Hannaham and Parsons in favor, Commissioner May not  
15 voting, having not participated. This is to  
16 approve Case Number 03-14, Final Action.

17 CHAIRPERSON MITTEN: Thank you. There  
18 are no other items on our agenda. We have a number  
19 of new cases filed that I will just ask folks if  
20 they are interested in those. They can note those  
21 on the written agenda, and ask Mr. Bastida if there  
22 is any further business for the Commission today.

23 MR. BASTIDA: Staff has no further  
24 business for the Commission today, Madam Chairman.

25 CHAIRPERSON MITTEN: Thank you, Mr.

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1 Bastida. This meeting is adjourned.

2 (Whereupon, the foregoing matter went  
3 off the record at 4:17 p.m.)  
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**NEAL R. GROSS**

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