

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

MONDAY,  
APRIL 26, 2010

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairman
WILLIAM W. KEATING	Vice Chairman
KONRAD SCHLATER	Commissioner
MICHAEL TURNBULL	FAIA, Commissioner (OAC)
PETER MAY	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
DONNA HANOUSEK,	Zoning Specialist
JAMISON WEINBAUM	

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OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN  
JOEL LAWSON  
JENNIFER STEINGASSER

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.  
MARY NAGELHOUT, ESQ.

This transcript constitutes the minutes from the Regular Public Meeting held on April 26, 2010.

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

2 6:43 p.m.

3 CHAIRMAN HOOD: Okay. We're ready  
4 to get started. This meeting will please come  
5 to order. Good evening, ladies and gentlemen.

6 This is the April 26, 2010 Public  
7 Meeting.

8 My name is Anthony Hood. Joined  
9 by Vice Chairman Keating, Commissioners May,  
10 Schlater, and Turnbull. We're also joined by  
11 the Office of Zoning staff, also Attorney  
12 General and the Office of Planning. And I  
13 would ask that they would introduce themselves  
14 before they speak at the appropriate time.

15 Copies of today's meeting agenda  
16 are available to you and are located in the  
17 bin near the door.

18 We do not take any public  
19 testimony at our meetings unless the  
20 Commission requests someone to come forward.

21 Please be advised that these  
22 proceedings are being recorded by a Court

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1 Reporter and it's also webcast live.  
2 Accordingly, we must ask you to refrain from  
3 any disruptive noises or actions in the  
4 hearing room. Please turn off all beepers and  
5 cell phones.

6 Does the staff have any  
7 preliminary matters?

8 MS. SCHELLIN: Sharon Schellin,  
9 Secretary to the Zoning Commission with the  
10 Office of Zoning.

11 No, sir. Staff has nothing. No  
12 preliminary matters.

13 CHAIRMAN HOOD: I have just one  
14 preliminary matter and I would ask that  
15 Director Weinbaum speak after me. Today is  
16 bittersweet. A good friend, a good colleague,  
17 I think tonight is his last meeting from what  
18 I've been informed. He's done a yeoman's job.

19 He came right into the Commission,  
20 dove right in, got right on board. Was asking  
21 questions, and I was really impressed after  
22 being here 12 years, was asking questions that

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1 I used to be scared to ask when I was here for  
2 the first six months. You know, I was told  
3 not to say nothing for the first six months by  
4 one of my former colleagues. But I will tell  
5 you, Bill Keating has been a yeoman of a  
6 colleague. He's a great guy.

7 And one thing out of all this, I  
8 will tell you that Bill Keating and Anthony  
9 Hood's friendship will continue long after the  
10 Zoning Commission. And so I want to wish him  
11 well in his future endeavors. I think he  
12 brought a lot to the city, a lot to the zoning  
13 process and he will be remembered.

14 And I will just open it up and  
15 Director Weinbaum, if you wanted to add  
16 something to that?

17 DIRECTOR WEINBAUM: Yes. Thank  
18 you, Chairman Hood.

19 Commissioner Keating has been a  
20 huge supporter of our office, the Office of  
21 Zoning. He's been a true friend to the  
22 District. He's really made a tremendous

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1 contribution and it is a sad day for us  
2 because we really did enjoy working with him.

3 And we wish him well in any endeavor he goes  
4 on to. So, thank you.

5 CHAIRMAN HOOD: Okay. And we'll  
6 give the honoree of this moment a chance to  
7 say something, any of my colleagues want to  
8 echo anything or do we want to leave it at  
9 that?

10 Okay. Commissioner?

11 VICE CHAIRMAN KEATING: Well thank  
12 you for those kind words. It's been a  
13 pleasure to serve on the Zoning Commission.  
14 I've enjoyed my time here, it's certainly  
15 flown by. And it's bittersweet for me as well  
16 to leave. I truly enjoy the hearings. I  
17 truly enjoy the work that we've done on the  
18 Commission and the time I've spent with the  
19 Commissioners, along with the office. And the  
20 support from all the other folks and I'm going  
21 to miss it.

22 It's tough for me to leave

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1 something I do enjoy but the time has come  
2 that I must move on. But, you know, I will  
3 stay in touch and again.

4 Again, thank you to everyone for  
5 your support, friendship, kindness, I really  
6 do appreciate it.

7 CHAIRMAN HOOD: Okay. Thank you  
8 very much, Vice Chairman.

9 With that I would ask everyone,  
10 let's stand to give him a round of applause  
11 and thank him for his service.

12 Okay. Enough with the mushy  
13 stuff, let's get on with business.

14 Did we do preliminary matters? I  
15 had a preliminary. Okay.

16 You know what I'd really like to  
17 do, and I should have mentioned this prior, I  
18 would like to take B under Final Action last.

19 And when I say "last," that's after Hearing  
20 Action and after we finish the one item under  
21 the Final Action. Does anyone have an issue  
22 with us taking that last?

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1 MS. HANOUSEK: So if I understand  
2 correctly we're going to go to Hearing Action  
3 first, then we'll take Final Action last?

4 CHAIRMAN HOOD: No. We're going  
5 to go with what we have on the agenda --

6 MS. HANOUSEK: Okay.

7 CHAIRMAN HOOD: -- and we'll take  
8 Final Action, O Street Roadside first.

9 MS. HANOUSEK: Okay.

10 CHAIRMAN HOOD: We're going to  
11 skip over B, George Washington University.

12 MS. HANOUSEK: Okay. Got you.

13 CHAIRMAN HOOD: Mr. Barber wants  
14 to stay with us a little longer.

15 MS. HANOUSEK: Okay.

16 CHAIRMAN HOOD: And then we'll go  
17 down to Hearing Actions.

18 MS. HANOUSEK: I thought so.

19 CHAIRMAN HOOD: We're going to go  
20 to Hearing Action, then we're going to come  
21 right back. It shouldn't take us that long to  
22 get back to it.

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1 MS. HANOUSEK: Okay.

2 CHAIRMAN HOOD: But I think for  
3 the sake of efficiency.

4 Mr. Bergstein, is that okay? I  
5 see you pulling the mic forward.

6 MR. BERGSTEIN: Oh, no. I was  
7 just pulling the mic forward. That's fine.  
8 You will know when I have to talk.

9 CHAIRMAN HOOD: All right. Let's  
10 move on with Final Action. The first Final  
11 Action A, again B we'll come back to later,  
12 Zoning Commission Case Number 07-26A, O Street  
13 Roadside, LLC - Two-year Time Extension of a  
14 Previously Approved PUD at Square 398. Ms.  
15 Schellin?

16 MS. SCHELLIN: Yes, sir. This is,  
17 as you said, a request for a two-year time  
18 extension of a previously approved PUD.

19 I did want to make one correction,  
20 in the Applicant's submission on page one, the  
21 time periods. The building permit would be  
22 filed no later than July 18, 2012 and not

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1 2010. And then construction would be started  
2 no later than July 18, 2013 and not 2011. So  
3 just with those two corrections.

4 CHAIRMAN HOOD: Thank you, Ms.  
5 Schellin.

6 Commissioners, we have a  
7 submission from the Applicant, dated March  
8 12<sup>th</sup>. And in correspondence to the time  
9 extension and the correction with the dates as  
10 noted by Ms. Schellin, let me open up any  
11 discussion. Any discussion on two-year time  
12 extension for Roadside?

13 I think Commissioner Schlater will  
14 be rescuing himself. Okay.

15 All right. And if you look at  
16 what the submission is, I think they  
17 definitely meet the test that we have as far  
18 as good cause, financing, litigation, and on  
19 and on and on.

20 So I think that the record is  
21 sufficient and I would move that we approve  
22 the timing extension with the dates as so

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1 noted by Ms. Schellin on Zoning Commission  
2 Case Number 07-26A and ask for a second.

3 COMMISSIONER TURNBULL: Second.

4 CHAIRMAN HOOD: Moved and properly  
5 seconded. Any further discussion?

6 No further discussion.

7 All those in favor?

8 ALL: Aye.

9 CHAIRMAN HOOD: Not hearing any  
10 opposition, Ms. Schellin, would you record the  
11 vote?

12 MS. SCHELLIN: Yes, sir. Staff  
13 records the vote 4-0-1 to approve Final Action  
14 of Zoning Commission Case Number 07-26A.  
15 Commissioner Hood moving, Commissioner  
16 Turnbull seconding, Commissioners Keating and  
17 May in support, Commissioner Schlater not  
18 participating.

19 CHAIRMAN HOOD: Okay. Let's jump  
20 to Hearing Action. Zoning Commission Case  
21 Number 10-07, Office of Planning - Text  
22 Amendment to Allow Additional Flexibility for

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1 Eating and Drinking Establishments within the  
2 ARTS Overlay District.

3 First, emergency action and  
4 immediate publication of proposed notice.

5 Second, set down authorization of  
6 immediate advertisements with a 30 day notice  
7 period. And those two motions are subject to  
8 discussion.

9 So let me go to Mr. Lawson.

10 MR. LAWSON: Yes.

11 CHAIRMAN HOOD: Mr. Lawson?

12 MR. LAWSON: Yes. Thank you, Mr.  
13 Chair.

14 For the record my name's Joel  
15 Lawson with the Office of Planning.

16 OP is proposing text amendments to  
17 the ARTS Overlay. Our amendments, proposed  
18 amendments, would increase the current limit  
19 on the amount of street frontage that can be  
20 devoted to eating and drinking establishments  
21 from 25 to 50 percent.

22 OP is also proposing additional

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1 changes from the current overly wide method of  
2 measurement to a blockface-by-blockface method  
3 to clarify that this limit applies only to  
4 ground floor frontage. To exempt the entry  
5 space required for the eating and drinking  
6 establishments not located on the ground level  
7 and to require that any additional eating and  
8 drinking establishment proposal, once the 50  
9 percent limit on the block is achieved, would  
10 require variance approval rather than special  
11 exception approval permitted for other  
12 provisions of the ARTS Overlay.

13 OP, as the Chair stated, is  
14 recommending that the Zoning Commission set  
15 down this case for a Public Hearing, take  
16 Emergency Action on those amendments,  
17 authorize the issuance of a Notice of Proposed  
18 Rulemaking, allow the immediate publication of  
19 the Public Hearing Notice and authorize a 30  
20 day Public Hearing Notice instead of the  
21 regular 45 days.

22 In the alternative, however, to

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1 the Emergency Action noted above, OP would  
2 recommend that Emergency Action only be taken  
3 on the percentage limit and only to increase  
4 the limit from 25 to 30 percent. And to  
5 separately sit down for a hearing the increase  
6 to 50 percent to the other recommended text  
7 amendments.

8 The ARTS Overlay was first  
9 established in 1989 and the eating drinking  
10 establishment limitation was added in 1992.  
11 The current limit in the ARTS Overlay applies  
12 only to properties fronting onto 14<sup>th</sup> Street  
13 and U Street Northwest. It limits eating and  
14 drinking establishments to 25 percent of the  
15 entire 11,000 square feet of frontage on those  
16 two streets.

17 U and 14<sup>th</sup> Street have recently  
18 experienced an exciting renaissance. Popular  
19 new businesses attract residents and visitors  
20 to the Shaw neighborhood. New in-filled  
21 buildings and once vacant store fronts are  
22 being filled by various kinds of retail uses,

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1 including many new eating, drinking, and  
2 entertainment businesses.

3 A recent neighborhood ANC report  
4 concluded that the 25 percent eating and  
5 drinking establishment limit had been reached  
6 and recommended that it be increased to up to  
7 50 percent.

8 In response, the Zoning  
9 Administrator undertook its own detailed study  
10 with a very recent conclusion that the Overlay  
11 had indeed reached the 25 percent limit.  
12 Effectively, no new establishment could be  
13 allowed by right but would have to seek  
14 special exception approval from the BZA.

15 The proposed text amendments as  
16 proposed by OP, as I said, it would increase  
17 the percentage of frontage that can be  
18 occupied by eating and drinking establishments  
19 along U and 14<sup>th</sup> Street to 50 percent. And  
20 clarify that this limit applies only to ground  
21 floor frontages as opposed to second or below  
22 grade frontage and exempt the entire space

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1 required for eating and drinking  
2 establishments not located -- I'm sorry. I  
3 mean exempt entry space required for those  
4 establishments from the limit.

5 OP's also proposing to change the  
6 Overlay wide method of measurement to a  
7 blockface-by-blockface method. Currently the  
8 measurement is for the total frontage of all  
9 Squares along both 14<sup>th</sup> and U Street. This  
10 can create difficulties in administering the  
11 regulation and would lead to inequities where  
12 restaurants could be located.

13 Measuring on a block-by-block  
14 basis would better ensure that each block has  
15 the potential for a variety of uses and that  
16 no part of 14<sup>th</sup> or U Street is prevented from  
17 having restaurants. OP estimates that four of  
18 the 33 blockfaces that this would apply to,  
19 appear to be currently above the proposed 50  
20 percent limit. Any existing restaurant on  
21 those blocks would be grandfathered but any  
22 expansion or new one would require BZA

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1 approval.

2 In addition, to add additional  
3 clarity, OP is proposing that a table listing  
4 all of the block frontages be added to the  
5 regulations themselves. This table could be  
6 further clarified by adding a column noting  
7 the corresponding permitted amount of eating  
8 or drinking establishment frontage on that  
9 block.

10 The final recommended text  
11 amendment would stipulate that once the 50  
12 percent limit on the block is achieved, any  
13 additional eating or drinking establishment  
14 proposal would require variance approval  
15 rather than the special exception approval  
16 permitted for other provisions of the ARTS  
17 Overlay. While the OP has some concerns with  
18 this provision because of the standards of a  
19 variance test, it was made clear that this is  
20 critical to the neighborhood and its  
21 implications warrant discussion at a Public  
22 Hearing.

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1           OP believes that in response to  
2 the requests of the community and in support  
3 of the Comprehensive Plan, these text  
4 amendments would further the intentions of the  
5 ARTS Overlay and warrant consideration at a  
6 Public Hearing. The proposed text amendments  
7 would facilitate the renaissance of these two  
8 streets and alleviate some neighborhood  
9 concerns without jeopardizing the basic intent  
10 of the ARTS Overlay.

11           OP is also recommending that this  
12 case be set down on an emergency basis and  
13 that the Commission authorize issuance of the  
14 Notice of Proposed Rulemaking, immediate  
15 publication of the Public Hearing Notice and a  
16 30 day Public Hearing Notice instead of 45  
17 days.

18           OP believes that emergency option  
19 is warranted due to the impact that the  
20 uncertainty regarding this issue is having on  
21 specific new businesses in the area, as well  
22 as the overall impact on this large area.

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1 Some existing restaurant proposals are  
2 currently in process.

3 The owners of the impacted  
4 businesses have advised that they did not know  
5 of or understand the limit or that it was near  
6 to being reached. They based their business  
7 plan, budget and timing on the expectation  
8 that eating and drinking establishments are  
9 permitted by right in this zone so they could  
10 expeditiously obtain building permits and  
11 occupancy permits accordingly.

12 Small local businesses, including  
13 small restaurants, tend to operate at or near  
14 margins. The unexpected and not-budgeted  
15 costs associated with a BZA application,  
16 including the filing fee, the time and cost of  
17 preparing the application, legal fees and  
18 potential loss revenue while paying rent if  
19 the opening is delayed, could be unnecessarily  
20 devastating. This may not seem like a huge  
21 amount and the potential delays may not seem  
22 that long but to a type of business like a new

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1 restaurant that did not take these costs or  
2 delays into account in their business plan,  
3 this evidently can be critical.

4 While this is not the fault of the  
5 Zoning, OP is requesting that the Zoning  
6 Commission address this situation through  
7 taking emergency action. Without emergency  
8 action these in process businesses could fail  
9 before they even open, resulting in continued  
10 vacant store retail street front spaces while  
11 the Comp Plan encourages new in-fill retail  
12 along corridors such as these.

13 In addition, the issue has, for  
14 whatever reason, created a sense of confusion  
15 and turmoil amongst small business owners and  
16 patrons and is rapidly evolving for the better  
17 neighborhood and actually in the city as a  
18 whole. There truly is a sense of urgency  
19 which seems to be impacting the economic and  
20 retail communities citywide. And retail  
21 brokers have advised us that this is feeding  
22 into a perception that D.C. in general and

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1 zoning in specific are unfriendly to retail  
2 all over the city. This could have serious  
3 local and citywide implications for our  
4 efforts to attract new retail to serve the  
5 residents of the city, destabilizing retail  
6 investment in tough economic times.

7 Alternatively, as I noted before,  
8 if the Zoning Commission's not comfortable  
9 with taking Emergency Action for all of the  
10 recommended changes, the Commission could take  
11 Emergency Action only to increase the limit  
12 from 25 to 30 percent. OP has calculated that  
13 this would safely accommodate the eating and  
14 drinking establishments that are already in  
15 process but would provide a more definitive  
16 limit and would not change other aspects of  
17 the recommendation prior to public review and  
18 comment at a Public Hearing.

19 Additionally, by authorizing a 30  
20 day Public Hearing Notice, the proposed text  
21 can have the earliest possible Public Hearing  
22 in June. This would allow the Zoning

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1 Commission the option of taking Proposed  
2 Action also in June, referring it to NCPC for  
3 their July meeting and taking Final Action  
4 before the August break.

5 Finally, a couple of corrections  
6 are required to the text prior to  
7 notification. In a table proposed by OP, we  
8 discovered a couple of small errors that I  
9 want to bring to your attention so we can  
10 change those in any notification:

11 The frontage on the Square 206 is  
12 estimated at 299.8 feet, not 239.8 feet as  
13 noted in the OP report, that was a typo, and;

14 The frontage for Square 239 is 200  
15 feet, not 400 feet as noted in the report as  
16 half the block is actually not within the ARTS  
17 Overlay at all. However, all of these  
18 measurements will be confirmed prior to the  
19 hearing.

20 OIG is also noted a wording change  
21 that they recommend. This is a change to  
22 Section 19 of 6.1 to clarify the replacement

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1 wording. The wording that was in the report  
2 at the end of the Section noted that the Board  
3 must find the criteria A through D are  
4 applicable to the relief sought. OIG's  
5 revision would be to advertise the following  
6 wording instead, and the full wording would  
7 be: That the Board of Zoning Adjustment may  
8 grant exceptions under Section 3104 from any  
9 of the requirements or limits of the ARTS  
10 District other than Section 1901.6, based upon  
11 the following criteria to the extent such  
12 criteria are relevant to the relief sought.

13 And that concludes my testimony.

14 And OP is available for questions. Thank  
15 you.

16 CHAIRMAN HOOD: Thank you very  
17 much, Mr. Lawson. Let me just open it up.

18 Commissioners, we have a number of  
19 requests here. One of them is whether if we  
20 don't decide to set it down for emergency,  
21 that we just deal with the range factor from  
22 25 to 30 percent which may alleviate an issue

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1 that's out there that's pending.

2 MR. LAWSON: That's correct.

3 CHAIRMAN HOOD: Before I go to  
4 far, let me open it up for discussion.  
5 Commissioners, any discussion?

6 COMMISSIONER SCHLATER: Sure. Mr.  
7 Chairman?

8 CHAIRMAN HOOD: Okay. Mr.  
9 Schlater?

10 COMMISSIONER SCHLATER: I just  
11 want to say that -- where should I start? On  
12 the Emergency Action, I think one thing we  
13 need to focus in on is clearly whether we  
14 should be adopting all of these changes on an  
15 emergency basis or whether we should do  
16 something on an interim basis. And I'm  
17 certainly supportive of doing something on an  
18 interim basis.

19 I think it's important,  
20 particularly in a bad economy such as this,  
21 where people do want to make investments in  
22 vacant storefronts and apparently have been

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1 surprised by the application of this rule and  
2 the information that we've reached the limit.

3 I'm certainly supportive of doing  
4 something to alleviate that problem while the  
5 Zoning Commission considers the text that's  
6 before us. I don't know whether the exact  
7 wording here that you're asking to be set down  
8 on, whether it's 50 percent or it's 40 percent  
9 or whether it's 30 percent, I just don't -- I  
10 think you really do need a Public Hearing.  
11 You need a full Public Hearing so that local  
12 residents can come out and speak to the actual  
13 text that's being proposed.

14 Clearly there's been a tremendous  
15 amount of work that's already been done by the  
16 Uptown ARTS Overlay Review Committee. I think  
17 it makes it easier, for me at least, to  
18 support an interim increase in this cap when  
19 you know that all this work has already been  
20 done. You've got a lot of the interest groups  
21 within that area who've come together and  
22 apparently formed a consensus. That's amazing

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1 and should be commended for the work and time  
2 they put into that.

3 So I guess just to start it off, I  
4 don't want to speak necessarily to the text  
5 itself, but the emergency itself. I think it  
6 is important that we take a stopgap, interim  
7 measure here so that the restaurants that are  
8 in the planning stages now can move forward.

9 CHAIRMAN HOOD: Okay. Thank you  
10 very much, Commissioner Schlater.

11 Anybody else?

12 Commissioner Turnbull?

13 COMMISSIONER TURNBULL: Thank you,  
14 Mr. Chair.

15 I would agree with Commissioner  
16 Schlater. I just wanted to clarify whether  
17 it's you're allowing for 30 percent, that's 30  
18 percent of each blockface or the question is  
19 are these in blocks that are already beyond  
20 25? So I don't know how you would phrase that  
21 then.

22 MR. LAWSON: If I may, Mr. Chair?

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1 Pardon me, Mr. Chair.

2 The OP recommendation would be 30  
3 percent and not changing any of the other  
4 regulations so it would remain on an area wide  
5 basis.

6 COMMISSIONER TURNBULL: On the  
7 whole street basically?

8 MR. LAWSON: That's correct.

9 COMMISSIONER TURNBULL: Okay.

10 MR. LAWSON: As the final text  
11 amendment, we'd recommend it go to a block-by-  
12 block basis.

13 COMMISSIONER TURNBULL: Okay. So  
14 we'd just do it basically changing the wording  
15 for the existing regulation on it. Okay.

16 CHAIRMAN HOOD: And that would be  
17 the only thing -- well, let me see.

18 Commissioner May?

19 COMMISSIONER MAY: I think I'm in  
20 general agreement. I have to find I'm not  
21 usually very sympathetic to the notion that  
22 the regulations were not well understood out

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1 front. I mean, I think that there's an  
2 obligation on the part of anybody who's going  
3 to invest to actually understand what the laws  
4 are that effect them, and this is one of them.

5 I mean I guess in some areas where we have  
6 this sort of 25 percent limit, it's a well  
7 known fact. And maybe it wasn't as well known  
8 here, but I still see that there's an  
9 obligation on the part of anybody who would be  
10 investing to, you know, look it up and ask  
11 some questions.

12 But, you know, we are where we are  
13 right now and I certainly don't want to be  
14 putting the breaks on getting some vacant  
15 storefronts filled.

16 I do have a technical question  
17 having to do with the wording in the proposal  
18 under 1901.6 paragraph A. And this is where  
19 it says "No portion of an eating or drinking  
20 establishments located on the ground floor is  
21 permitted to occupy more than 50 percent of  
22 the linear frontage of each individual

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1 blockface, not including public streets or  
2 alleys along 14<sup>th</sup> or U Street."

3 Not including public streets or  
4 alleys? I'm not sure what that -- I can  
5 understand excluding an alley from that  
6 calculation, but a public street? I mean,  
7 doesn't that mean that it's a different  
8 blockface?

9 MR. LAWSON: We just wanted to  
10 make sure that it was really clear that --  
11 actually some blocks actually do have streets  
12 running through them. And in fact there are a  
13 number of streets on 14<sup>th</sup> -- I'm sorry a  
14 number of blocks on 14<sup>th</sup>, there are a number  
15 of squares that are bisected by minor streets.

16 So we just wanted to make sure it was really  
17 clear in the regulations themselves so that  
18 the Zoning Administrator knows exactly how  
19 they're intended to be administered.

20 COMMISSIONER MAY: Okay. So, but  
21 that doesn't make it clearer because are you  
22 suggesting that the area that be measured for

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1 a 50 percent would be the distance, it would  
2 be the blockface from T Street to U Street but  
3 if it's interrupted by another street, it  
4 wouldn't count or it's between T and that  
5 other street and then between the other street  
6 and U? That's two different calculations.

7 MR. LAWSON: No, I totally  
8 understand your concern. And certainly we  
9 kind of struggled with this one as well,  
10 should it be based on -- basically we were  
11 taking it as being a square. So Square 206,  
12 Square, you know, 299, whatever it would be.  
13 Sometimes those Squares are bisected by  
14 streets. And it could be that to simply call  
15 them out as -- to change the wording, to  
16 simply call them out as Squares as opposed to  
17 blockfaces might be clearer. But we went on a  
18 square-by-square basis. That's ---

19 COMMISSIONER MAY: Okay. And I  
20 think it's more than just an understanding of  
21 how you calculate it. I think we need to  
22 understand which one is going to really work.

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1       Because you wind up with -- I mean, I don't  
2       know what the sizes of the blockfaces are and  
3       whether it makes sense to be counting 50  
4       percent of a relatively narrow blockface.  
5       Maybe, you know, I don't know. We just need  
6       to think through what that does mathematically  
7       to each of those effected blocks.

8               If we were to adopt the proposal  
9       and not the alternative, do we know for a fact  
10       that the handful of businesses that are in the  
11       process of getting permits or wherever they  
12       are, will they actually be permitted to  
13       proceed under the new 50 percent rule?

14              MR. LAWSON:       Yes.       By our  
15       calculations and by what we received by the  
16       Zoning Administrator if you adopted everything  
17       as Emergency Action, they would be within the  
18       50 percent.

19              I better step back.    They would  
20       either be within the 50 percent limit for that  
21       block. There's one instance of a second story  
22       restaurant, which is on a block which is

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1 already over 50 percent, but it's, as I said,  
2 it's on the second floor so it wouldn't count  
3 but its entrance way would. So taking  
4 Emergency Action on all of the text amendments  
5 would exempt that entrance way from the  
6 restaurant frontage, so it would covered by  
7 that aspect of the change.

8 So yes, the short answer is yes,  
9 they would all be covered. The ones that we  
10 know of, they would all be covered.

11 COMMISSIONER MAY: Okay. Thanks.

12 CHAIRMAN HOOD: Okay. Mr. Lawson,  
13 you may have clarified Mr. May's, now I've  
14 gotten confused. Your last statement when you  
15 were doing your report, I thought that if we  
16 had changed it from 25 to 30, that would take  
17 care of those establishments?

18 MR. LAWSON: Yes in the  
19 alternative for the Emergency Action, that  
20 would also take care of them. So you would  
21 take care of them either by taking Emergency  
22 Action on the full range, if you wish to do

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1 that. You would also address their issues by  
2 just taking Emergency Action on increasing the  
3 percentage from 25 to 30 percent. Either  
4 method would address their issues.

5 CHAIRMAN HOOD: Okay.

6 Commissioners, any other questions?

7 Any other questions?

8 I think I would associate myself  
9 with the comments of Commissioner Schlater.  
10 And, I believe, I want to make sure, I'm going  
11 to rephrase kind of what I heard you say, is  
12 that you would be supportive of doing the  
13 emergency but on the incremental basis from 25  
14 to 30, as opposed to the whole gamut. And  
15 wait for the hearing so you all can flesh out  
16 the whole proposal. Okay.

17 All right. Is everybody in  
18 agreeance with that, Mr. Turnbull, Mr. May,  
19 Mr. Keating?

20 Commissioner Schlater?

21 COMMISSIONER SCHLATER: So on the  
22 emergency, I think I'm square on that. On the

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1 actually proposal of the text that we're  
2 setting down, I do have a question about what  
3 got into the text amendment. So I read this  
4 Uptown ARTS Overlay Review Committee report  
5 and it says, "40 or 50 percent should be the  
6 new cap," you guys came in with 50 percent as  
7 the cap.

8 Why did you go to the high end of  
9 the spectrum? Because just from my  
10 perspective you're talking about potentially  
11 ifto from 25 percent to 50 percent, my simple  
12 math yields you'll have twice as many  
13 restaurants on the strip. And it seems like  
14 there's already some parking and traffic and  
15 noise issues along that corridor if you go out  
16 on a Wednesday, Thursday or, you know, weekend  
17 night. So I'm just wondering why 50 percent?

18 MR. LAWSON: When we read the  
19 whole report I saw the same thing, that  
20 recommended 40 to 50 percent. Other parts of  
21 the report refer more specifically to 50  
22 percent. We also took a look at the existing

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1 regulations and realized that although the  
2 ARTS Overlay is certainly different from most  
3 of the other Overlays which limit restaurant  
4 use, is the only other ones are basically the  
5 neighborhood commercial ones and they have a  
6 limit of either 25 or 50 percent. So we  
7 thought it was appropriate to use numbers that  
8 are already in the Zoning Regulations for now.

9 We also thought that it was appropriate to go  
10 with the higher number knowing that the Zoning  
11 Commission could debate this as part of its  
12 review. But to put out a set number, a  
13 specified number, so that people knew what was  
14 being debated and had a number that they could  
15 kind of debate from.

16 COMMISSIONER SCHLATER: The other  
17 question is about retail restrictions overall.

18 I mean, I think you made the argument that's  
19 being made within this report about all the  
20 retail restrictions around the city. If  
21 you're limiting the amount of bars and  
22 restaurants on a particular strip, you are

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1 probably limiting the number of bars and  
2 restaurants that are going to open in the  
3 District would be my guess. Does OP still  
4 support the concept of these bar and  
5 restaurant restrictions around the city?

6 MS. STEINGASSER: We support the  
7 neighborhood's concerns about having a mix of  
8 uses in their neighborhoods and we don't  
9 really have a finalized position as to whether  
10 this is the most effective tool. It certainly  
11 stymied development in some areas of  
12 restaurants and bars. And it's resulted in  
13 vacant retail space because of the investment  
14 that restaurants cause that landlords don't  
15 like to let go of.

16 But we do support the underlying  
17 premise that the neighborhoods are trying to  
18 get it by achieving these. We are looking at  
19 this issue through the ZRR and looking at  
20 alternate ways to perhaps achieve the same  
21 type of restrictions.

22 COMMISSIONER SCHLATER: I just

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1 wonder if these restrictions create, you know,  
2 winners and losers among property owners. So  
3 if you're doing it on a block-by-block basis,  
4 once you've hit that 50 percent cap on a  
5 particular block, the other property owners  
6 are sort of out of luck and they have to go  
7 hunting for alternate retail, which may or may  
8 not be able to support rent.

9 MS. STEINGASSER: It really has  
10 its pluses and minuses. It's a difficult  
11 concept and it's difficult for the Zoning  
12 Administrator, as well as the property owners  
13 to work through. And we've seen a lot of  
14 communities discussing it recently. Cleveland  
15 Park has had issues with it and discussed it  
16 with the Councilwoman, as well as the Office  
17 of Planning.

18 Woodly Park has had a neighborhood  
19 roundtable of their own to deal with their  
20 ANCs and they've asked OP to participate.

21 So a lot of the communities are  
22 looking at the consequences of these types of

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1 tools since they've been in place for so long  
2 and isn't producing what they're looking for.

3 COMMISSIONER SCHLATER: Do you  
4 think the Zoning Commission will be asked to  
5 review these other districts in the near  
6 future?

7 MS. STEINGASSER: I don't know how  
8 near the future may be but I wouldn't be  
9 surprised if you see one or two of them coming  
10 back to you asking for modifications.

11 MR. LAWSON: I should, just to  
12 clarify though, that OP's not proposing. OP's  
13 very much limiting our current proposal to the  
14 ARTS Overlay. We're not proposing the  
15 solution for any of the other neighborhood  
16 commercial Overlays in the District.

17 MR. BERGSTEIN: Also the  
18 Commission may remember, some of the  
19 Commission may remember, that there was an  
20 active proceeding dealing with all of these  
21 issues involving eating and drinking  
22 establishments for the commercial Overlay.

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1 And the Commission ultimately decided to defer  
2 the consideration of that and to consider the  
3 issue as part of one of the zoning tools  
4 available under the ZRR process.

5 COMMISSIONER SCHLATER: Okay. No  
6 further questions.

7 I think I'm supportive of setting  
8 down, given the current texts but I think  
9 after we hear the, you know, public testimony  
10 on the subject, I would be definitely open to  
11 lowering that number as well.

12 CHAIRMAN HOOD: One other thing I  
13 want to mention, and this goes to IZ and any  
14 establishment, the percentage and stuff that  
15 we put up. I think the Commission has always,  
16 asked the Office of Planning, if it does  
17 exactly what it's doing now, to hurry up and  
18 come back if it's stagnating business and  
19 causing problems out there.

20 And I think this shows an example,  
21 even though this one was in '89, it shows an  
22 example that the Office of Planning didn't

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1 hesitate to come back. And the same thing we  
2 ask for IZ and some other things. That's just  
3 a little history note for my colleagues that  
4 are going to continue to remember. Former  
5 Commissioners and myself have asked that that  
6 happen, and they are actually in tune to that.

7 So with that I'm going to ask for  
8 a motion?

9 COMMISSIONER SCHLATER: I'd be  
10 happy to make the motion. I guess the motion  
11 is going to be in two parts. It's going to be  
12 a motion for Emergency Action, increasing the  
13 retail cap in the ARTS Overlay District for  
14 eating and drinking establishments from 25  
15 percent to 30 percent. And the second part of  
16 the motion is to set down this case for Public  
17 Hearing. I guess we also have to authorize a  
18 30 day Public Hearing Notice instead of 45  
19 days and allow the immediate publication of  
20 the Hearing Notice.

21 CHAIRMAN HOOD: And also with the  
22 emergency on the first part, the part was

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1 setting that down, as we're dealing with that  
2 as emergency. The second part we're setting  
3 down as you noted.

4 Okay. Mr. Bergstein, you want to  
5 say something?

6 MR. BERGSTEIN: Just also there  
7 was a request to immediately publish a Notice  
8 of Proposed rulemaking, which saves about two  
9 weeks in the process.

10 COMMISSIONER SCHLATER: All right.  
11 I didn't hear that, sorry.

12 CHAIRMAN HOOD: Okay. So with  
13 that it's been moved, can I get a second?

14 COMMISSIONER MAY: Second.

15 CHAIRMAN HOOD: Moved and properly  
16 seconded. Any further discussion?

17 Are you ready for the question,  
18 all those in favor?

19 ALL: Aye.

20 CHAIRMAN HOOD: Any opposition?  
21 So ordered. Ms. Schellin, would you record  
22 the vote?

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1 MS. SCHELLIN: Yes. Staff records  
2 the vote 5-0-0 to take Emergency Action to  
3 increase the percentage from 25 to 30 percent,  
4 to set down the case as a contested case to  
5 allow the 30 day announcement period and to  
6 allow for the Notice of Proposed rulemaking to  
7 be immediately published. The vote was 5-0-0.

8 Commissioner Schlater moving, Commissioner  
9 May seconding, Commissioners Hood, Keating and  
10 Turnbull in support.

11 VICE CHAIRMAN KEATING: Ms.  
12 Schellin, I think you said contested cases  
13 would be a rulemaking.

14 MS. SCHELLIN: I'm sorry,  
15 rulemaking case.

16 CHAIRMAN HOOD: Okay. Thank you,  
17 Ms. Schellin.

18 Next under Hearing Action, Zoning  
19 Commission Case Number 10-08, Office of  
20 Planning - Text Amendment Related to the  
21 Expiration of Special Exceptions and Non-  
22 Conforming Uses, and the Effective Date of

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1 Special Exception Uses for Which a Term has  
2 Been Established.

3 Mr. Lawson?

4 MR. LAWSON: Thank you, Mr. Chair.

5 Very briefly because this one's a  
6 little bit simpler than the last one. OP's  
7 recommending that three related text  
8 amendments be collectively set down for a  
9 Public Hearing.

10 The first is to Section 2005 to  
11 reenforce the non-conforming use  
12 discontinuance provision requested. And this  
13 change is requested by the Zoning  
14 Administrator.

15 The second is to Chapter 21 to  
16 provide that all special exception terms begin  
17 on the date upon which the order became  
18 effective. This was requested by the Office  
19 of Zoning.

20 And also a third change, this one  
21 to Chapter 31 as well, to codify expiration  
22 dates for discontinued and superseded uses

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1 permitted by special exception. Also  
2 requested by the Zoning Administrator.

3 All three are somewhat  
4 administrative in nature, are intended to  
5 clarify or codify current practice and would  
6 provide greater definition and certainty to  
7 the administration of the regulations. The  
8 proposed changes would not be inconsistent  
9 with the Comp Plan.

10 With that, I hope your report is  
11 sufficiently detailed and explanatory for set  
12 down. So I'll stop here and be available for  
13 questions if you have any. If they're very  
14 detailed questions, I may have to deflect them  
15 to the Office of Zoning or the Office of the  
16 Attorney General. Thank you.

17 CHAIRMAN HOOD: Thank you very  
18 much, Mr. Lawson. The report actually, from  
19 my standpoint, is very well done but we may  
20 have some questions.

21 Commissioner Schlater?

22 COMMISSIONER SCHLATER: I sat on

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1 the BZA case for the gas station, which I  
2 think generated this proposed text amendment.

3 And I just want to make sure that it's -- I  
4 agree with the text amendment's intent and so  
5 I guess I just want to make sure that this is  
6 getting at the issue.

7 As I recall, we had a gas station  
8 that had been granted a special exception, the  
9 site then went vacant or it was certainly not  
10 used as a --

11 MR. BERGSTEIN: There actually was  
12 a superseding C of O issue for another use.

13 COMMISSIONER SCHLATER: That's  
14 right.

15 MR. BERTSTSEIN: And the Zoning  
16 Administrator decided that the issuance of a  
17 superseding C of O would have the impact of  
18 nullifying the special exception. The Board  
19 decided otherwise, and in fact the law is that  
20 unless the Zoning Regulations expressly  
21 indicate that a C of O superseding a special  
22 exception C of O, nullifies the special

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1 exception that the special exception  
2 essentially runs with the land and this --

3 COMMISSIONER SCHLATER: And that a  
4 gas station wasn't a non-conforming use,  
5 correct, because it had been granted special  
6 exception status?

7 MR. BERGSTEIN: Well, yes. That  
8 basically, that once the BZA had granted the  
9 special exception for that property and did  
10 not set an expiration date for the special  
11 exception, that that special exception remains  
12 available to any future owner of the land, not  
13 withstanding the fact that there was an  
14 intervening Certificate of Occupancy issued.

15 COMMISSIONER SCHLATER: So which  
16 text specifically addresses that situation?

17 MR. BERGSTEIN: It's the provision  
18 on page three of the report under proposed new  
19 Section 3132.1C. So that if a special  
20 exception use is established, the use will  
21 only expire if a Certificate of Occupancy for  
22 a different use is issued.

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1           So if that had been in place,  
2 there would be no doubt that since a  
3 Certificate of Occupancy for a different use  
4 was issued, the Certificate of Occupancy --  
5 I'm sorry, the special exception for the  
6 gasoline station use would've expired.

7           COMMISSIONER SCHLATER: Is there  
8 any circumstance where a Certificate of  
9 Occupancy would just lapse for administrative  
10 reasons and then that would cause a problem  
11 here?

12           MR. BERGSTEIN: Well a Certificate  
13 of Occupancy that's issued expires if the use  
14 is not established within, I think it's three  
15 months. But to go into the issue of, and this  
16 was discussed as this was drafted, finding out  
17 where a Certificate of Occupancy has been  
18 issued is easy to determine. Meaning, whether  
19 or not the use was actually established under  
20 that C of O historically would probably be  
21 almost impossible to determine. So the choice  
22 was, was to take the event of the issuance of

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1 the C of O rather than the vesting of the C of  
2 O through the establishment of the use.

3 So I guess the issue is that  
4 there's not going to be problem  
5 administratively because of use of the word  
6 "issue" here. Once a C of O is issued, the  
7 special exception, I think it's an existing  
8 special exception simply lapses and that's why  
9 we focused on the word "issue" and not  
10 vesting.

11 COMMISSIONER SCHLATER: And what  
12 would it mean that the special exception use  
13 is discontinued for a period of three years?  
14 So let's take the case of the gas station.

15 MR. BERGSTEIN: Well this is  
16 exactly word-for-word what's in the non-  
17 conforming regulation. So we do have BZA case  
18 law that talks about what discontinuance means  
19 and in fact, part of the purposes of this  
20 other amendment is to clarify that if the gas  
21 station use had ceased for any period of three  
22 years. And that meant, you know, there is no

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1 visible activity going on within the  
2 establishment, you know, the gas pumps were  
3 disconnected, no prices were shown, etc.

4 If the Zoning Administrator  
5 concluded that the gas station had  
6 discontinued for a three year period, if  
7 someone came and requested a Certificate of  
8 Occupancy, an ownership change Certificate of  
9 Occupancy for the gasoline station use, the  
10 Zoning Administrator could say, "No. I  
11 determined that this use has been discontinued  
12 and a special exception has expired."

13 COMMISSIONER SCHLATER: Very good.

14 Okay. I think that addresses my questions.  
15 I'm certainly in support of setting this down.

16 CHAIRMAN HOOD: Any other  
17 questions?

18 Commissioner May?

19 COMMISSIONER MAY: Yes. What  
20 about a variance for use? We don't address  
21 variances for the use. I mean wouldn't you  
22 want the same -- well first of all, do any

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1 variances exist that would run afoul to this  
2 ordinarily? I mean in other words, could we  
3 have the same situation that we had at the gas  
4 station occur with a use variance?

5 MR. BERGSTEIN: You could but a  
6 use variance is based upon a constitutional  
7 standard where there's been a finding that  
8 with respect to a particular piece of property  
9 that none of the matter-of-right uses within  
10 that zoned district can be utilized.

11 And the reason a variance  
12 provision exists is to prevent a taking of the  
13 use of property. If you have a piece of  
14 property and the Zoning Regulations say you  
15 can only do these uses and none of those uses  
16 can actually be used on that site, to strictly  
17 comply with the Zoning Regulations would have  
18 the effect of taking any economic use of that  
19 property away.

20 So that it would be -- it's a  
21 completely different scenario than for a  
22 special exception. So that if a use variance

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1 expires -- well I'll tell you, if a use  
2 variance expires for more than three years,  
3 that person should have the absolute right to  
4 resume it. If somehow somebody got a  
5 Certificate of Occupancy for a different  
6 conforming use that's permitted, it would  
7 rebut the actual finding by the BZA that no  
8 other use could be done, but it raises more  
9 complex questions than special exception.

10 COMMISSIONER MAY: Okay. So I  
11 guess it's not come up at the BZA either, so  
12 maybe we don't have to worry about it anyway.

13 MR. BERGSTEIN: It's only come up  
14 once in this particular appeal and only in the  
15 context of the special exception.

16 COMMISSIONER MAY: Okay. Then I  
17 won't worry about it then.

18 That's it for me. Thanks.

19 CHAIRMAN HOOD: Any other  
20 questions?

21 Okay. Somebody like to make the  
22 motion, obtain a motion to set it down?

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1                   Somebody?

2                   COMMISSIONER TURNBULL: Mr. Chair,  
3 I'd like to make a motion to set down Zoning  
4 Commission Case 10-08 to proposed zoning text  
5 amendments related to the expiration of  
6 special exceptions, non-conforming uses, and  
7 the effective date of special exception uses  
8 for which a term has been established. And  
9 ask for a second?

10                  CHAIRMAN HOOD: Okay. I'll second  
11 that. Thank you, Mr. Turnbull.

12                  It's moved and properly seconded.  
13 Any further discussion?

14                  Are you ready for the question,  
15 all those in favor?

16                  ALL: Aye.

17                  CHAIRMAN HOOD: Not hearing any  
18 opposition, Ms. Schellin, would you record the  
19 vote?

20                  MS. SCHELLIN: Yes. Staff would  
21 record the vote 5-0-0 to set down Zoning  
22 Commission Case Number 10-08 as a rulemaking

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1 case. Commissioner Turnbull making the  
2 motion, Commissioner Hood seconding,  
3 Commissioners Keating, May and Schlater in  
4 support.

5 CHAIRMAN HOOD: Okay. I think  
6 that's it.

7 Let me ask this first though: Do  
8 we have a status report? Okay. Good.

9 All right. Let's go right back to  
10 Final Action. I want to thank all those who  
11 were here for the George Washington University  
12 case for your patience and we appreciate you  
13 allowing us to do that.

14 Let's go to Zoning Commission Case  
15 Number 09-19, George Washington University,  
16 Mt. Vernon Campus Plan and Further Process at  
17 2100 Foxhall Road. Ms. Schellin?

18 MS. SCHELLIN: Yes, sir. Staff  
19 has two items to bring to the Commission's  
20 attention. There are two exhibits that we  
21 received after the record closed, Exhibits 37  
22 and 39. I would ask the Commission to advise

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1 whether they would like to see these exhibits.

2 The first exhibit is a letter from  
3 the Applicant, that is Exhibit 37, that is a  
4 point of clarification regarding the  
5 orientation of the A1 Building.

6 And then Exhibit 39 is a response  
7 from the party in opposition, Falls, which  
8 responds to that letter.

9 And I'd like to know whether the  
10 Commission would like to see those exhibits?

11 CHAIRMAN HOOD: Let me ask you, is  
12 that something that we asked for? I think we  
13 got what we asked for.

14 MS. SCHELLIN: No, the record was  
15 closed.

16 CHAIRMAN HOOD: Okay. The record  
17 was closed.

18 Commissioners, I don't know if we  
19 need anything additional, but I'll open it up  
20 to see if anybody wants to accept that.

21 If not, we will return those  
22 letters.

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1 MS. SCHELLIN: Yes, sir. Staff  
2 will return both of them.

3 CHAIRMAN HOOD: Okay. Let me  
4 start off by who is Goldstein and Storus?

5 MS. HANOUSEK: That was the group  
6 that was formerly with Pillsbury. They have  
7 now moved.

8 CHAIRMAN HOOD: Did they switch in  
9 the middle of the case?

10 MS. HANOUSEK: They did.

11 CHAIRMAN HOOD: Okay. All right.

12 MS. HANOUSEK: It's the same  
13 people, different firm.

14 COMMISSIONER MAY: Did all of  
15 Pillsbury go?

16 MS. HANOUSEK: Yes, they did. The  
17 whole group.

18 CHAIRMAN HOOD: We get very  
19 confused easily.

20 Okay. Well anyway, let's go with  
21 -- one of the things that I wanted to kind of  
22 look at is we had a submission and I think

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1 that some things we asked for and I'm going to  
2 ask my colleagues to help me remember what we  
3 asked for and what didn't ask for and what's  
4 going on.

5 But anyway, one of the things I  
6 wanted us to kind of pattern after was Exhibit  
7 Number 30 and this was from the Office of  
8 Planning. I think we asked them to show us a  
9 comparison of where they're differed with the  
10 proposed conditions from the Office of  
11 Planning and the University's proposed  
12 conditions. I think we've been advised that  
13 there's been a number of -- bridging a gap  
14 since, I guess this was April 8<sup>th</sup> submission  
15 was given to us. But I'll ask my colleagues,  
16 let's look at Exhibit Number 30.

17 Number one, University special  
18 events conditions, I think we have an  
19 agreement of a condition which says, "In the  
20 absence of exceptional circumstances such as  
21 inclement weather and scheduling conflicts,"  
22 and then it goes on the University, "avoids

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1 scheduling performances." I like that better  
2 as opposed to what we saw here so we don't  
3 need a further delayment, unless someone else  
4 has something they want to add to that. So  
5 that's number one.

6 Two and three, I believe are no  
7 problem. The Applicant has agreed to the  
8 Office of Planning conditions two and three.

9 And four, I think is now is a mute  
10 issue, it's no longer up for discussion. I  
11 think that's been taken off the table.

12 Now, let me get it in front of me.  
13 Let's go to the party and opposition. No,  
14 I'm sorry. Let me start with the ANC first.  
15 I will tell you Commissioners, I looked at the  
16 ANC's submission and I'll open it up for  
17 discussion.

18 On page two and it says, "ANC 3D  
19 feels that an interim review of the student  
20 and FTE by the ANC 3D and ZC is reasonable and  
21 will allow the neighborhood to assess whether  
22 the initial dramatic increase in activity to

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1 which the ANC 3D is agreeing, it's having a  
2 detrimental impact on the surrounding  
3 community. If there are problems with the  
4 neighborhood, they can be corrected. It is a  
5 most reasonable request that the University  
6 stay in touch in this way with the Government  
7 bodies that are reasonable to the citizens."

8 When I looked at this and I went  
9 back through the record, I don't see any  
10 evidence of where -- no harm, no foul. Where  
11 there's not going to be a major issue. I  
12 understand the ANC's concern because what they  
13 have is an addition of 200 different students.

14 And I understand the impact but I don't know  
15 if the record is full enough for us to impose  
16 that cap.

17 And I know previously  
18 for\*(7:33:42) there were issues about imposing  
19 caps. But I want to open it up and hear from  
20 my other colleagues and see if anyone feels  
21 that we should move in a direction which the  
22 ANC is proposing. While I understand the

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1 concern, I just don't know if the record is  
2 complete for us to do that.

3 Any comments? If not, does  
4 everybody agree with what I said?

5 Silence is golden.

6 Commissioner May, did you want to  
7 say something?

8 COMMISSIONER MAY: I'm just not  
9 sure what to say. I mean I don't think we saw  
10 compelling evidence that we need to force  
11 another step in the process. It all seems to  
12 be fairly modestly well planned. So it's hard  
13 to -- I mean I understand the concern about  
14 moving cautiously and that's why at least  
15 there is a -- it's going to happen in a phased  
16 manner.

17 But I kind of agree with you that  
18 there wasn't a lot of direct evidence to  
19 suggest that needed to, you know, impose some  
20 sort of a check-in point or that the  
21 percentages should be limited. But I'm  
22 certainly willing to be convinced otherwise.

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1 CHAIRMAN HOOD: Okay. Anyone  
2 else?

3 COMMISSIONER TURNBULL: I think,  
4 Mr. Chair, we talked about that at the  
5 hearing. There was some issues that came up  
6 and I think we -- one of the solutions with  
7 the phased in approach seemed to be a easier  
8 way of getting to reach what GW was looking as  
9 a cap, but to do it in this phased-in manner.  
10 I think it made perfect sense.

11 CHAIRMAN HOOD: Okay. All right.  
12 I think that was basically the major issue  
13 with ANC 3D, unless I stand to be corrected.  
14 I was looking at their submission for April  
15 the 15<sup>th</sup>.

16 But now let's move to the Foxhall  
17 on W Street Coalition, I will tell you that  
18 I'm not sure if we asked for them or Falls.  
19 Falls asked for something and we didn't get  
20 because I will tell you that my recommendation  
21 to the Commission tonight was going to be that  
22 we wait and let the \*(7:36:03) give those

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1 views. And I'm not sure exactly where I saw  
2 it, but I don't know if those views were  
3 submitted. I saw some views but I don't know  
4 if those were the views. I think we asked for  
5 those views if I'm not mistaken.

6 COMMISSIONER SCHLATER: Mr.  
7 Chairman?

8 CHAIRMAN HOOD: Okay.  
9 Commissioner Schlater, help me out.

10 COMMISSIONER SCHLATER: I think in  
11 Exhibit 3 of the Applicant's submission -- I  
12 mean, Exhibit C of the Applicant's submission,  
13 couple pages in, you see what look like  
14 photographs of what the A1 Building would look  
15 like at this intersection. You can't see much  
16 because it's blocked by a lot of trees and  
17 foliage but I would assume that's the point  
18 that they were trying to get across.

19 CHAIRMAN HOOD: And if I'm not  
20 mistaken, I think in Falls -- let me pull it  
21 out in front of me so I don't misquote  
22 anybody. I think Falls had mentioned that and

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1 I think they wanted a view without the  
2 foliage, I think that was it. I guess  
3 because, you know, at certain times of the  
4 year all that's not going to be there. And  
5 what do you see at that time of year and how  
6 much time of year do you see that? I don't  
7 know. Does that give anyone any heartburn?  
8 Because we only get one bite of this apple.

9 COMMISSIONER MAY: I was just  
10 going to comment.

11 CHAIRMAN HOOD: It'll give some  
12 people in here some heartburn but --

13 COMMISSIONER MAY: No. I don't  
14 have any heartburn about what we see in the  
15 views. I mean I think that the most  
16 compelling piece of information that we  
17 received are the site sections that show us  
18 the relative heights of the building compared  
19 to the neighbors across the street. And  
20 clearly what's being proposed now is better  
21 than what was previously approved.

22 I will compliment the intrepid

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1 photographer who managed to stand on ladder in  
2 the middle of the intersection with all those  
3 cars there in order to take this picture. But  
4 I actually think it was the Google maps then  
5 that managed to take that picture. And I  
6 think it would have been more realistic to  
7 actually take it from ground level and get a  
8 real shot but I'll accept it for what it's  
9 worth. As I said, I think the most compelling  
10 thing is the site section.

11 CHAIRMAN HOOD: \*(7:38:25) this  
12 person is a professional photographer.

13 COMMISSIONER MAY: No comment.

14 CHAIRMAN HOOD: It's an inside  
15 joke.

16 Okay. Any other comments?

17 COMMISSIONER TURNBULL: Mr. Chair,  
18 I would just agree with Commissioner May that  
19 one, pages three and four, which offer the  
20 sections, if you look at it with the original  
21 plan for what would have been Building B back  
22 in 2000, you had an elevation of the building

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1 was 330 or over 58 feet in height from the  
2 street. Where as now you're looking at a  
3 significant reduction with an elevation at 317  
4 to the top of the roof. Which is only 6 feet  
5 taller than the roof of the house across the  
6 street so I think it's a fairly low-scale and  
7 they've tried to fit it on to the context of  
8 the neighborhood. So I would agree with  
9 Commissioner May, I don't see an issue.

10 CHAIRMAN HOOD: Okay. And the  
11 last think that I have, we had a submission  
12 also from Falls about some additions to the  
13 findings of fact. And I'm not sure, maybe we  
14 can just let Mr. Bergstein and staff  
15 incorporate some of those issues into the  
16 order, unless we need to go through them. If  
17 they're germane --

18 MR. BERGSTEIN: Ms. Nagelhout  
19 indicated that based upon your disposition of  
20 the issue you've discussed, it won't actually  
21 be necessary to discuss the additional  
22 findings of fact.

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1 CHAIRMAN HOOD: Okay. All right.  
2 So let me make sure now, we have a Mr.  
3 \*(7:40:25), very well done submission to us.

4 Did anyone like to incorporate any  
5 of this, which is dated Thursday, April 15<sup>th</sup>?  
6 And this is from the party in opposition,  
7 Falls.

8 Not hearing anything, let me open  
9 it up. Anybody have anything else that we  
10 want to add or we may have missed?

11 Other than leave it for the Office  
12 of Attorney General, any technical corrects so  
13 make sure it's legally sufficient. Anything  
14 other than that?

15 Anything else?

16 COMMISSIONER MAY: I'm sorry. Mr.  
17 Chairman, with regard to the submission that  
18 was made by the Foxhall on W Street coalition  
19 with the comments on findings of fact and  
20 such, I mean were you suggesting that any of  
21 that might be incorporated into the order?

22 CHAIRMAN HOOD: Yes. And that's

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1 what I -- where I was going but I was just  
2 informed by OAG that because of opposition on  
3 -- well discussion that you and Mr. Turnbull  
4 and the rest of our body had.

5 COMMISSIONER MAY: Right.

6 CHAIRMAN HOOD: This is not  
7 germane or this would not apply to try do --  
8 because it talks about it. We don't have a  
9 problem with, what I think was Building A1.  
10 The Commission also heard, this is what  
11 they're saying it should be instituted, well  
12 what Falls is saying.

13 The Commission also heard  
14 testimony from Falls requesting the University  
15 provide two illustrations concerning the  
16 Northeast corner of the campus. Both of them  
17 Overlays, comparing the existing buildings  
18 with the proposed A1 Building and showing A  
19 top view and 2 a side view, the Commission  
20 endorsed this request to the University, which  
21 we actually did. But I don't know. Okay. I  
22 don't know.

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1           COMMISSIONER MAY: I mean, I think  
2 that there are some aspects of what was  
3 included in this mark-up that I think were --  
4 that actually do tell a more complete story of  
5 what occurred at the hearing. I mean, I'm  
6 thinking about finding of fact number 64,  
7 Falls testified rather than admitted, but  
8 testified that he had not directly  
9 participated in the University's planning  
10 process because they were relying on the W  
11 Street Alliance to represent their interest.  
12 I mean, that's what was testified.

13           CHAIRMAN HOOD: Believe it or not  
14 somebody wants to hear, can you speak up a  
15 little?

16           COMMISSIONER MAY: I hear myself  
17 perfectly over here. Anyway, the mark-up of  
18 finding of fact 64, because it does indicate,  
19 I think, accurately what occurred in the  
20 hearing, that Falls testified that they had  
21 not participated directly in the planning  
22 process because they were relying on the W

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1 Street Alliance to represent their interests.

2 I mean, that's what they said in the hearing,  
3 I have every reason to believe that that was  
4 correct.

5 CHAIRMAN HOOD: And I would agree.

6 Just like the views and that's what I was  
7 getting at. I was just seeing if anybody else  
8 wanted to push it.

9 COMMISSIONER MAY: Yes. That's  
10 fine. So long as we take those into  
11 consideration I think.

12 CHAIRMAN HOOD: And I think that's  
13 basically what I was asking for, that we look  
14 at this letter dated April 15<sup>th</sup> and see how we  
15 can incorporate some of the things that are  
16 specifically detailed the way we saw it.  
17 Because some of these things we actually ask  
18 for and make sure that we put that in the  
19 order. Okay?

20 COMMISSIONER MAY: I agree.

21 CHAIRMAN HOOD: And that was very  
22 well done by Falls.

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1 Okay. Anything else?

2 Mr. Bergstein, are we straight?

3 MR. BERGSTEIN: Yes, we are.

4 CHAIRMAN HOOD: Okay. Good.  
5 Anything else Commissioners?

6 Okay. With that I would move  
7 approval of Zoning Commission case number 09-  
8 19, as discussed and as presented and also  
9 with the addition of the comments that we  
10 discussed here tonight and ask for a second?

11 COMMISSIONER MAY: Second.

12 CHAIRMAN HOOD: Moved and properly  
13 seconded. Any further discussion?

14 Any further discussion on it?

15 All those in favor?

16 ALL: Aye.

17 CHAIRMAN HOOD: Not hearing any  
18 opposition, staff would you record the vote?

19 MS. SCHELLIN: The staff records  
20 the vote 4-0-1 to approve Final action in  
21 Zoning Commission Case Number 09-19 as  
22 discussed this evening. Commissioner Hood

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1 moving, Commissioner May seconding,  
2 Commissioners Schlater and Turnbull in  
3 support. Commissioner Keating not voting  
4 having not participated.

5 CHAIRMAN HOOD: Ms. Schellin, do  
6 we have anything else on the agenda?

7 MS. SCHELLIN: No, sir.

8 CHAIRMAN HOOD: What I would like  
9 to do and I don't know if we need to advertise  
10 it, I would move that Commissioner Schlater  
11 become the Vice Chairman of the Zoning  
12 Commission since Commissioner, Vice Chairman  
13 Keating's last night is tonight. And if  
14 that's okay with everyone, I would move that  
15 the Vice Chairman become the -- I mean  
16 Commissioner Schlater become the Vice Chairman  
17 of the Zoning Commission and ask for a second?

18 COMMISSIONER MAY: Second.

19 CHAIRMAN HOOD: It's been moved  
20 and seconded. Any further discussion?

21 All those in favor?

22 ALL: Aye.

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1 CHAIRMAN HOOD: Certainly there's  
2 no opposition. Staff would you record the  
3 vote?

4 MS. SCHELLIN: The staff records  
5 the vote at 5-0-0 to make Commissioner  
6 Schlater the Vice Chairman. Commissioner Hood  
7 moving, Commissioner May seconding,  
8 Commissioners Turnbull, Keating, and Schlater  
9 in support.

10 CHAIRMAN HOOD: And so everyone  
11 knows, and I'm going to say this for the  
12 record, that my tenure is uncertain. But I  
13 will tell you that we're going to make another  
14 motion. I will be here for the next meeting,  
15 I do know that. And I'm going to make a  
16 motion for that meeting that we'll make sure  
17 that the Commission is able to do as we did  
18 when Chairperson Mitten left. Okay.

19 All right. Anything else?

20 With that thank everyone for  
21 participation and this meeting is adjourned.

22 (Whereupon, the meeting was

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1 concluded at 7:46 p.m.)

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