

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION  
REGULAR MEETING  
1184th MEETING SESSION (12th of 2005)

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THURSDAY  
JULY 11, 2005

The Regular Meeting of the District of Columbia Zoning Commission convened at 6:34 p.m. in the Office of the Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
KEVIN HILDEBRAND	Commissioner (AOC)
GREGORY JEFFRIES	Commissioner
JOHN G. PARSONS	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN	Zoning Specialist
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OFFICE OF PLANNING STAFF PRESENT:

ELLEN McCARTHY	Deputy Director
KAREN THOMAS	
JOEL LAWSON	
STEVEN MORDFIN	
JENNIFER STEINGASSER	
ARTHUR JACKSON	
TRAVIS PARKER	

D.C. OFFICE OF THE ATTORNEY GENERAL:

ALAN BERGSTEIN, ESQ.

This transcript constitutes the minutes from the regular meeting held on July 11.

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

6:34 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public meeting of the Zoning Commission of the District of Columbia for Monday, July 11, 2005. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Kevin Hildebrand, John Parsons, and Greg Jeffries.

Our agenda is in the wall bin near the door if you would like to follow along. I don't think we have any changes to the lineup at the moment. I would just like to remind everyone that we don't take any public testimony at our meetings unless we specifically invite someone to come forward.

I would ask that you turn off all beepers and cell phones so as not to disrupt the meeting. I would just remind folks that we are being recorded by the court reporter and we are also being webcast live just for your information.

Ms. Schellin, do you have any preliminary matters?

MS. SCHELLIN: No, ma'am.

CHAIRPERSON MITTEN: All right. Since I didn't give them the change to give the monthly status

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1 report last month, please if the Office of Planning  
2 would make a presentation of their status report.

3 MS. STEINGASSER: Actually, Madam Chair,  
4 Commissioners, there is nothing in particular to draw  
5 the Commission's attention to so we are available to  
6 answer questions.

7 CHAIRPERSON MITTEN: Okay. Thank you.  
8 Can you just give me a sense on the emergency shelter  
9 use in the CM Zone Text Amendment? What are we  
10 waiting for on that?

11 MS. STEINGASSER: We are still  
12 coordinating with the different agencies on some of  
13 the questions that the Commission had asked and  
14 getting additional information on their operations.

15 CHAIRPERSON MITTEN: Okay. Is there  
16 anything that we can do to move this along because  
17 there's some things that are in limbo because of it.  
18 I mean, is there something that we can do to help you  
19 move it along? Are you getting cooperation?

20 MS. STEINGASSER: We are but we'll raise  
21 it again and try to raise its profile a little bit  
22 with the agencies.

23 CHAIRPERSON MITTEN: Okay. Thank you.  
24 Anyone have any questions on the Office of Planning  
25 status report? Okay. Then we'll move to hearing

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1 action. The first item under hearing action I'll let  
2 Mr. Hood handle because I'll be recusing myself.  
3 Thank you.

4 MR. HOOD: All right. Thank you, Madam  
5 Chair. The first item we have for hearing action is  
6 Zoning Commission Case No. 05-20. That is the Asphalt  
7 Plants Text Amendment. Office of Planning.

8 MS. THOMAS: Good evening, Mr. Chairman,  
9 members of the Commission. I'm Karen Thomas with the  
10 Office of Planning. Our set-down report is in  
11 response to a request from the Office of Property  
12 Management and DDOT to allow asphalt plants as a  
13 permitted use within industrial zoned districts.

14 Currently this use is not permitted in any  
15 zone as all existing plans predate the current zone  
16 regulations. The use is explicitly prohibited in the  
17 M zone and not permitted in the CM zone or other zoned  
18 districts. The Office of Planning is recommending set  
19 down on an emergency basis of a text amendment to  
20 permit asphalt facilities subject to special exception  
21 review within the CM and M zoned districts.

22 As an alternative to taking emergency  
23 action, we also offer the Zoning Commission an  
24 additional text amendment that would permit the  
25 asphalt plant now located at 60 P Street, SE, to

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1 relocate as a matter of right within the CM-1 portions  
2 of the D.C. Village.

3 Currently there are two legally operated  
4 plants in the District located at Buzzard Point and  
5 the Bladensburg Road area. The Buzzard Point property  
6 was rezoned from industrial to CR zoning. The  
7 potential location for the new Washington National  
8 baseball stadium, and the recently completed Capitol  
9 Gateway overlay and Buzzard Point rezoning in 2002  
10 have created enormous pressure for these uses to  
11 relocate to a more appropriately zoned industrial  
12 area.

13 District agencies are concerned about the  
14 potential loss of industrial locations for existing  
15 businesses. In addition, in order to complete  
16 construction of the new stadium consistent with the  
17 District's agreement with major league baseball, it is  
18 critical that the land now occupied by the asphalt  
19 plant become available within the next few months.

20 In order to expeditiously accommodate the  
21 relocation of that facility, OP is recommending  
22 emergency action to permit the plant's owner to  
23 immediately apply to the Board of Zoning Adjustment  
24 for special exception relief.

25 As an alternative we offer the additional

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1 text amendment to permit them to relocate within the  
2 CM-1 portions of D.C. Village. Although technically  
3 a text change, the Commission could undertake the same  
4 degree of scrutiny as the BZA when considering the  
5 appropriateness of the relocation site.

6 It may also be more efficient for the  
7 Commission to consider both the merits of permitting  
8 asphalt plants as special exception uses and in the  
9 same proceeding sanctioning the specific relocation  
10 needed rather than have the Commission do the former  
11 and the BZA the latter.

12 Due to the maintenance and construction  
13 needs for asphalt within an urban environment and the  
14 travel cost associated with asphalt, OP and DDOT  
15 believe it is in the best interest of industry to have  
16 a provision that allows asphalt facilities to operate  
17 in the District as conforming uses.

18 The proposed text amendment attempts to  
19 prevent the loss of a necessary service in the  
20 District and accommodate a potential relocation of  
21 such plant in existence prior to January 1, 2005. The  
22 existing text which permits special exception review  
23 for concrete plants in CM zoned districts would be  
24 amended to include asphalt plants since many of the  
25 negative externalities associated with concrete plants

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1 are similar.

2 OP believes that setting down a proposed  
3 text amendment to permit inclusion of asphalt plants  
4 as a use in zoning regulations will allow for proper  
5 review and public input in the consideration of any  
6 permanent text amendments regarding the issue.

7 The proposed amendment is consistent with  
8 the themes of the comprehensive plan which seeks  
9 protection of the industrial zones as a result as it  
10 continues to provide an economic and service base for  
11 the District. Local area municipalities specifically  
12 address the concrete plant, concrete and asphalt  
13 mixing and batching plants in their zoning ordinances  
14 as similar uses.

15 We recommend that the regulations specific  
16 to concrete mixing plants be applied to asphalt mixing  
17 plants and included in the recently adopted text  
18 amendment to permit its use by special exception in  
19 the District in the CM and M zones as submitted.

20 Therefore, we would move that the text be  
21 adopted on an emergency basis and be set down for  
22 public hearing without the additional language. Thank  
23 you.

24 MR. HOOD: Thank you, Ms. Thomas. Let me  
25 just ask you, you mentioned two plants. One of them,

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1 for some reason, Bladensburg Road. Can you tell me  
2 the exact location?

3 MS. THOMAS: I don't have -- I can't  
4 remember the address off hand but I did make a note of  
5 it.

6 MR. HOOD: Okay. Let me just ask this  
7 because I'm hoping my colleagues may agree to just  
8 keep this in front of us. I'm very curious of how  
9 close it is to a residential. This is just something  
10 to make a note. I'm not sure which way we're going  
11 yet but how close the proximity is to residential  
12 homes of the asphalt plant versus a concrete plant.  
13 I know this language says concrete and asphalt.

14 Anyway, Commissioners, we have in front of  
15 us a request to set down -- a request for an emergency  
16 adoption first and, in the alternative, a set down for  
17 additional text amendments to authorize the matter of  
18 right relocation of an asphalt plant located at 16 P  
19 Street, SE. I will open it up for discussion.

20 MR. PARSONS: Mr. Chairman, this  
21 Commission treats emergencies in a very careful way  
22 and we only usually deal with emergencies when there  
23 is a true city-wide emergency of some kind. I don't  
24 see that to be the case here. I also feel that there  
25 would be an efficiency in the Zoning Commission

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1 carrying forward this case and not getting into  
2 duplicative processes with the BZA. I'm prepared to  
3 move forward with this to set down the text with the  
4 additional language suggested by OP but not on an  
5 emergency basis.

6 MR. HOOD: Okay. I will concur with you.  
7 Any other comments? That's a motion and if anybody  
8 else wants to add to it and, if not, we can move  
9 forward.

10 MR. JEFFRIES: I just have a comment  
11 perhaps for the Office of Planning. It says here that  
12 it's critical that the land now occupied by the  
13 asphalt plant become available in the next few months.  
14 Do we have any sense of time line? I mean, you're  
15 talking about emergency. What is the emergency, I  
16 guess, in terms of time line?

17 MS. STEINGASSER: They need to be able to  
18 move forward on the negotiation of that land by the  
19 end of this calendar hear. The reason we are  
20 recommending an emergency for the set down is that it  
21 allows the asphalt plant to apply immediately for that  
22 special exception and get into the queue and can be  
23 heard then simultaneously with the text amendment so  
24 you can hear the text amendment first case in the  
25 evening and then the asphalt plant immediately on its

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1 heels for that location. That's the purpose of the  
2 emergency is to allow that.

3 MR. JEFFRIES: I understand the notion of  
4 an emergency set down but I guess I'm just trying to  
5 get a sense of if we went the regular route of this  
6 how much time does that take versus the emergency?  
7 What are we looking at in terms of difference?

8 MS. STEINGASSER: We're getting BZA cases  
9 now that are scheduled in December so there's a five-  
10 month additional BZA process. The text amendment  
11 process would probably be complete by November so it  
12 would be well into March before they would have the  
13 special exception in place.

14 MR. JEFFRIES: Okay.

15 MS. STEINGASSER: We're trying to condense  
16 that time frame.

17 MR. JEFFRIES: Okay, great. Thank you.

18 MS. THOMAS: Mr. Hood, I would just  
19 like -- from my notes I saw that the address of one of  
20 the asphalt plants I have is 2000 5th Street, NE and  
21 there was one, and I believe this one is closed, 1155  
22 W Street, NE, somewhere there.

23 MR. HOOD: That's what I figured. Thank  
24 you.

25 Commissioner Hildebrand.

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1 MR. HILDEBRAND: Actually a follow-up  
2 question. Sometime ago we talked about studying the  
3 industrial use of land in the city. I want to know  
4 where we are with that since this is going to impact  
5 that to a degree.

6 MS. STEINGASSER: That contract has been  
7 let and the study has begun. We expect it to be  
8 complete in about five months.

9 MR. HILDEBRAND: In about five months?

10 MS. STEINGASSER: Yes.

11 MR. HILDEBRAND: Particularly with the  
12 transition of a lot of industrial land to residential  
13 use, particularly in siting a facility like this in  
14 close proximity to something that may ultimately  
15 become a residential area instead of an industrial  
16 area would be a little bit of a concern. Five months.  
17 Is that on your calendar?

18 MS. STEINGASSER: It's not. We're not  
19 anticipating a major zoning initiative coming out of  
20 the industrial land use study. We're expecting a  
21 document that will provide guidance to the Commission  
22 as the different industrial land use -- as the  
23 projects come forward for changing those industrial  
24 lands. It will give the Commission and OP some  
25 guidance on how to move forward on those cases.

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1           There is a great deal of pressure for us  
2           to complete that study from the development community  
3           because there are several projects that would like to  
4           initiate the case before the Commission and we have  
5           been very clear the Commission won't entertain that so  
6           we're not expecting to complete that study and then  
7           have a land use initiative to rezone and then have  
8           these cases so it's going to be straightforward.

9           MR. HILDEBRAND: Thank you very much.

10          MR. BERGSTEIN: Can I just clarify  
11          something? The motion that Mr. Parsons made would not  
12          require emergency action. It would simply take the  
13          proposed text amendment and also advertise an  
14          additional provision that would have the Zoning  
15          Commission consider whether this facility that's on  
16          the ballpark site should be allowed to relocate to the  
17          location as a matter of right.

18                 It wouldn't be a separate hearing. It  
19          would simply be the same proceeding, the same text  
20          amendment process and would become final at the time  
21          when the entire text amendment would become final  
22          which I would imagine would be sometime, if all went  
23          well, around November or December.

24                 There wouldn't be a separate Zoning  
25          Commission special exception process for this

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1 p a r t i c u l a r p r o p e r t y .

2 It would just be considered as a text amendment  
3 as a matter of right use that you would consider at  
4 the same time you consider the other parts of the text  
5 amendment.

6 MR. PARSONS: Thank you, Mr. Bergstein.  
7 That's exactly what I meant, that the BZA would not be  
8 involved because it is a matter of right use.

9 MR. HOOD: Okay. Thank you. I'm going to  
10 ask Mr. Parsons to reiterate his motion but let me  
11 just say this as I stated before piggy-backing on what  
12 Mr. Hildebrand has said. When I look at these maps  
13 and us doing away with all industrial zones and I look  
14 where they all are, they are all in one ward of the  
15 city, in Ward 5, and that's where all the undesirable  
16 stuff is going to eventually be going.

17 I don't want to sit here and be part of it  
18 so I'm hoping we move forward as quickly as possible.  
19 Also maybe we need to slow up on some of this that  
20 we're doing here because when I look at this map it's  
21 very disturbing. I'm going to ask Commissioner  
22 Parsons if he could reiterate your motion.

23 MR. PARSONS: Well, I would move the case  
24 be set down for a public hearing with the additional  
25 text amendment that would permit the asphalt plant now

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1 located at 60 P Street, SE, to relocate as a matter of  
2 right within CM-1 portion of D.C. Village, west of  
3 Shepherd Parkway but without taking emergency action.

4 MR. HOOD: Okay. It's been moved. Can I  
5 get a second?

6 M R . J E F F R I E S :  
7 Second.

8 MR. HOOD: It's been moved and properly  
9 seconded. All those in favor, aye.

10 ALL: Aye.

11 MR. HOOD: Any opposition? So ordered.  
12 Staff, would you record the vote?

13 MS. SCHELLIN: Yes, the staff will record  
14 the vote four to zero to one to set down Case No. 05-  
15 20 with the additional language but without the  
16 emergency action. Commissioner Parsons moving,  
17 Commissioner Jeffries seconding, Commissioners  
18 Hildebrand and Hood in favor and Commissioner Mitten  
19 not voting having recused herself.

20 CHAIRPERSON MITTEN: Thank you. The next  
21 item under hearing action is Case No. 05-21 which is  
22 a test amendment related to dog boarding. Is that Mr.  
23 Mordfin's case?

24 PARTICIPANT: We're coming. Yes, it is.

25 CHAIRPERSON MITTEN: Okay.

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1 MR. MORDFIN: Good evening, Chair, and  
2 members of the Commission. I'm Steven Mordfin with  
3 the Office of Planning. This text amendment is to add  
4 the use of dog boarding to the zoning regulations.  
5 This use is currently not specifically permitted  
6 within any zoned district.

7 Previously permits were issued by DCRA  
8 based on the assumption that the use was similar to a  
9 pet shop or an animal clinic. However, as a result  
10 of Appeal No. 17092, which determined that the Zoning  
11 Administrator erred in making such a judgment as a  
12 result of the potential of noise and odor emanating  
13 from such facilities, the Office of Planning proposes  
14 this text amendment to add the use to the zoning  
15 regulations.

16 The Office of Planning recommends the  
17 addition of a definition to the zoning regulations to  
18 define the use and to permit the use as a special  
19 exception within the C2, C3, C4, and the industrial  
20 zoned districts. The Office of Planning also  
21 recommends a set of criteria for the BZA to review  
22 this special exception.

23 This criteria would include that the use  
24 not -- shall be located and designed to create no  
25 objectional condition to adjacent properties resulting

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1 from animal noise; that no establishment may be  
2 located on a lot that abuts a resident zone district;  
3 and that exterior yards or other such facilities for  
4 the keeping of dogs should not be permitted.

5 The proposed regulations would address all  
6 new dog boarding establishments within the city.  
7 However, the Office of Planning acknowledges that  
8 several are already in existence some with certificate  
9 of occupancy that state dog care center or dog day  
10 care center.

11 For those businesses already in existence  
12 with those certificate of occupancy, the Office of  
13 Planning recommends that they be permitted to apply  
14 for a new certificate of occupancy as an emergency  
15 measure subject to the following: that the use not  
16 abut a residence district and the external yard be  
17 fenced and dogs not kept outside between the hours of  
18 8:00 p.m. and 7:00 a.m., and no internal/external  
19 expansion be permitted without BZA approval as a  
20 special exception.

21 For those dog boarding businesses that are  
22 operating without certificates of occupancy permits as  
23 of July 11, 2005, stating dog day center or dog day  
24 care center and not abutting as residence zoned  
25 district, the Office of Planning recommends that they

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1 also be permitted to apply for a temporary certificate  
2 of occupancy on an emergency basis subject to the  
3 following:

4 That the facility applies for a special  
5 exception approval before September 2, 2005, and that  
6 the temporary certificate of occupancy shall expire  
7 upon the occurrence of one of the following whichever  
8 occurs first, the date of the written decision of the  
9 BZA denying or dismissing the application becomes  
10 final, the date an application is withdrawn, or a  
11 certain number of days after a written decision by the  
12 BZA granting the application becomes final.

13 That concludes the presentation of the  
14 Office of Planning.

15 CHAIRPERSON MITTEN: Thank you. Questions  
16 for Mr. Mordfin? Anyone have questions for Mr.  
17 Mordfin? Mr. Hildebrand.

18 MR. HILDEBRAND: What is going on in  
19 similar jurisdictions about boarding facilities in  
20 industrial zones? It just seems like there's an  
21 incompatibility of use there. I certainly wouldn't  
22 want the dog kennel next to an asphalt batch plant.  
23 What do other jurisdictions do?

24 MR. MORDFIN: Within the surrounding  
25 jurisdictions a lot of the suburban jurisdictions

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1 allow them in rural and agricultural zones and there  
2 they allow large setbacks. That is something that  
3 does not apply to the District because we don't have  
4 the land that would apply to that.

5 In Montgomery County they also permit them  
6 within commercial zoned districts, the urban zoned  
7 commercial districts, which would apply to us. There  
8 they permit them subject to some of the conditions  
9 that we have proposed here.

10 I'm trying to recall if anyone permits  
11 them within industrial zoned districts. Arlington  
12 County permits it within it's limited industrial zoned  
13 districts as a matter of right provided that it is  
14 conducted wholly within a completely enclosed  
15 building.

16 Baltimore County permit them in business  
17 and manufacturing zones either with a special  
18 exception or permitted use. It has to be located a  
19 minimum of 200 feet from the nearest property line.  
20 Then Baltimore City permits them in their industrial  
21 districts but that's similar to the situation that was  
22 going on here. They made an interpretation that would  
23 allow it there but they are waiting for something to  
24 happen with that because it's not specifically  
25 enumerated in their zoning code.

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1 CHAIRPERSON MITTEN: I have a question for  
2 you. In 721.7(b) this would be the language that  
3 would allow the existing facilities to apply for a new  
4 certificate of occupancy. You are suggesting that we  
5 allow existing external yards to remain and, yet, for  
6 a new facility it would be prohibited. I'm wondering  
7 about that.

8 MR. MORDFIN: That's correct. We are  
9 aware of at least one existing external yard that is  
10 there and we didn't want to legislate it out of  
11 existence. But because of the potential for noise  
12 from an external yard within the commercial districts,  
13 which also permit residential housing there, we didn't  
14 want to permit it within the commercial zoned  
15 districts.

16 For that reason we put in that the  
17 existing one may remain but in the future we thought  
18 that it created too much of a potential for a noise  
19 problem so we did not permit it. We recommended that  
20 it not be permitted.

21 CHAIRPERSON MITTEN: Okay. Anyone else?  
22 Mr. Parsons.

23 MR. PARSONS: So you didn't feel moved to  
24 say that the existing ones should enclose these yards  
25 to conform to the regulations?

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1 MR. MORDFIN: Correct, because if they  
2 were established with the understanding that they  
3 could do it and had obtained certificates of occupancy  
4 to do what they were doing, we didn't want to shut  
5 them down as a result of this text amendment. We  
6 wanted to permit them to continue but only those that  
7 were permitted to establish it in the first place  
8 because they were under the understanding that they  
9 could do it from DCRA.

10 MR. PARSONS: But you feel that if we  
11 required them to enclose their yard it would shut them  
12 down?

13 MR. MORDFIN: Well, the one that I know  
14 exist has an enclosed yard. It's enclosed with a  
15 fence. It doesn't have a roof but has a fence around  
16 it which is what we meant by that provision under (b)  
17 that it be enclosed with a fence.

18 MR. PARSONS: So following suit of other  
19 counties and other jurisdictions enclosing the yard  
20 with a roof on it, that is to sound proof it, you  
21 didn't feel was appropriate?

22 MR. MORDFIN: That would be putting it  
23 into a building which is what would be permitted by  
24 the other regulations. Right now the way we have it  
25 set up if you were to apply to do this assuming the

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1 Commission adopts this, then you could do it within a  
2 building and if you had the walls and the roof around  
3 it, you would be within a building and then you would  
4 just have to make sure that you conformed with the  
5 noise requirements that you weren't disturbing the  
6 adjacent properties.

7 MR. PARSONS: Thank you.

8 MS. STEINGASSER: If I could answer Mr.  
9 Parsons and add to the discussion. We did feel in the  
10 case of the one that we do know of that does have the  
11 external yard it's quite large in that it would be  
12 quite a burden on the business owner to have to  
13 enclose the yard after years of operation. It's a  
14 very large yard so we were trying to create a  
15 grandfather provision for them for that case.

16 MR. HILDEBRAND: In doing your research  
17 for this were there any registered complaints against  
18 that facility for noise concerns in the surrounding  
19 neighborhood?

20 MR. MORDFIN: None that we were aware of.

21 MR. HOOD: Let me also ask the dog  
22 grooming and the dog boarding. Do you ever find sites  
23 where both of them are being done simultaneously or  
24 does that exist?

25 MR. MORDFIN: From what I understand with

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1 the dog grooming is that it takes perhaps an hour or  
2 so to groom your dog but some people will leave the  
3 dog there for an entire day. So does that then become  
4 dog boarding is the question that has come up from the  
5 community. Is that dog boarding?

6 If you drop it there at 8:00 in the  
7 morning and pick up the dog 8:00 at night, then did  
8 you board your dog there for the day in which case it  
9 might be similar to having a dog boarding  
10 establishment if you've got a dog there for the entire  
11 day.

12 MR. HOOD: If you would just guide me  
13 through. On page 4 of your report, 4 of 8, it's not  
14 numbered but No. 4, "Exterior yards of other such  
15 facilities where the keeping of dogs shall not be  
16 permitted." What does that mean?

17 MR. MORDFIN: We're talking about that one  
18 use that has the outdoor facility now that's fenced  
19 in, that this would not permit other uses to establish  
20 such facilities.

21 MR. HOOD: So the one use would be  
22 permitted?

23 MR. MORDFIN: I'm sorry?

24 MR. HOOD: The one facility that exist now  
25 will be permitted?

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1 MR. MORDFIN: Correct.

2 MR. HOOD: But anything after that -- so  
3 that's grandfathered in.

4 MR. MORDFIN: That's going to be  
5 grandfathered in. Anyone else that might be out there  
6 that we don't know of that meets these criteria would  
7 also be grandfathered but any new uses that are  
8 established would not be able to have the outdoor  
9 areas.

10 MR. HOOD: What do they do outdoors?  
11 Forgive me. I probably should just ask this of  
12 somebody who has a dog but what do they do in the  
13 outdoor area?

14 MR. MORDFIN: I think they play out there.  
15 They run around and play the same as they do --

16 MR. HOOD: When I looked at this, it was  
17 like we were getting ready to say that dogs couldn't  
18 go outside. That's the way I was looking at this.

19 MR. MORDFIN: Dogs that are attending a  
20 day care center is what we're saying will go outside.

21 MR. HOOD: I don't want to ask anymore  
22 questions on that.

23 MS. STEINGASSER: To be clear,  
24 Commissioner, the dogs are walked. They are  
25 exercised. They do their business but they are walked

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1 in small groups as opposed to 30 or 40 dogs running  
2 lose. I hate to liken it to children but they do,  
3 they get rambunctious.

4 You know, one starts barking and they all  
5 start barking so to keep that under control, we are  
6 just suggesting that they not -- most of them operate  
7 quite well within an internal arrangement where they  
8 walk them in small groups.

9 If I could also follow up on the grooming  
10 issue. We are aware there are a lot of similarities  
11 between the grooming and the boarding and we fully  
12 expect when we come back for the permanent public  
13 hearing to have investigated that further. This came  
14 to us after the BZA's issue arose and the zoning  
15 administrator issue on the revocation of C of O.

16 It became apparent -- we suddenly learned  
17 that there are many businesses out there and we are  
18 trying to keep those businesses operating under the  
19 emergency but then we will be coming back with a  
20 further investigation of the grooming facilities, you  
21 know, a look at pet stores and how the different types  
22 of animal care is provided and the uses.

23 MR. HOOD: All right. Thank you.

24 MR. JEFFRIES: I'm actually very happy  
25 that you grandfathered the existing business. There

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1 are a lot of people who use doggy day care, being a  
2 person who used it in Chicago, and it was very  
3 popular. A lot of people depended on the service. I  
4 would imagine it would be very much of a hardship to  
5 require that particular owner to somehow try to  
6 enclose the space and so forth so I think that is a  
7 good alternative.

8 MR. HILDEBRAND: I'm not sure that I'm a  
9 proponent of not allowing new facilities that start up  
10 the right to at least show that they have the ability  
11 to supervise their charges adequately so that they  
12 don't become a nuisance. If one facility can do it,  
13 I don't see why others couldn't as well. I think dogs  
14 are sometimes viewed as a nuisance but I think if they  
15 are properly maintained that they don't have to be.

16 MS. STEINGASSER: I agree. We'll  
17 certainly look further into that as the Commission's  
18 request. By setting it down in the more restrictive  
19 language, it allows us to go forward and lessen the  
20 restriction at the public hearing. If we could keep  
21 it advertised as such, we could then back off at the  
22 public hearing and look at alternatives. Perhaps  
23 percentages of yards, small areas.

24 MR. HILDEBRAND: Ultimately I would like  
25 to see some flexibility there.

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1 CHAIRPERSON MITTEN: Okay, dog lovers.  
2 Should we all put on the record if we have a dog or  
3 not? Mr. Jeffries has already confessed to having a  
4 dog.

5 The way I would like to proceed if we  
6 could is to take up the proposed text for set down and  
7 then deal with the emergency after we deal with the  
8 proposed text. I would like to offer a couple of  
9 changes to the text that has been proposed by the  
10 Office of Planning starting with the definition just  
11 to clarify -- what I hope will clarify the definition.

12 Dog boarding would be defined as, "Any  
13 premises other than a veterinary hospital, pet shop,  
14 or dog grooming establishment use designated as the  
15 overnight boarding and/or recurring daily care of dogs  
16 for a fee as a commercial service establishment."  
17 Anybody have any problems with that or want me to read  
18 any -- okay.

19 The next sentence would be -- it's really  
20 just rearranging the words in a way that I think is  
21 more clear. "An establishment used exclusively for  
22 dog grooming or retail sales of pet items shall not be  
23 considered a dog boarding establishment." Okay. And  
24 then in the new section, which I think will be  
25 numbered 735 because that's the next available

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1 section.

2 No, I take it back. I don't have anything  
3 to suggest there. It's in 721.7. What I would like  
4 to suggest is rather than give just the blanket  
5 opportunity to keep the existing external yard, which  
6 I understand there may not be any known complaints but  
7 I think if because if it's worrisome enough to have an  
8 outright prohibition, and I know Mr. Hildebrand  
9 doesn't necessarily subscribe to this, I think that we  
10 should at least have some kind of special exception  
11 review of the existing external yard because there may  
12 need to be more controls than just the hours of  
13 operation and I would like the opportunity for the BZA  
14 to be able to review that.

15 Especially since these things are not  
16 exclusive to a given operator. Just because someone  
17 is operating a facility in a good way doesn't mean the  
18 next person who might buy their business or whatever  
19 would do the same.

20 I don't know exactly what language. I'm  
21 sure Mr. Bergstein can help figure something out if  
22 someone wanted to retain an existing external yard  
23 that they would have to apply for this special  
24 exception. Other than that they would be  
25 grandfathered under 721.7.

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1 MR. HOOD: Madam Chair, you're  
2 recommending taking out the hours and putting the  
3 special exception review?

4 CHAIRPERSON MITTEN: I guess it would be  
5 that any existing external yards shall be subject  
6 to -- shall require an application. I don't know  
7 exactly how to word it but basically, yes, they would  
8 be subject to the special exception review.

9 MR. HOOD: But we're taking out the hours?

10 CHAIRPERSON MITTEN: Yes, and that could  
11 be something that --

12 MR. HOOD: It could be taken up at that  
13 point.

14 CHAIRPERSON MITTEN: Yes. Right. Anyone  
15 else?

16 MR. HILDEBRAND: I would only -- I think  
17 the hours actually are fairly significant part of that  
18 because I don't think any dog should be boarded  
19 outside at night. I think that is when they could be  
20 most of a nuisance to a residential area if they are  
21 barking at night. I would hate to see that language  
22 stripped from the provision.

23 MR. BERGSTEIN: Sorry to interrupt but  
24 since it's going to be a special exception review you  
25 can sort of do it both ways and say that in the case

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1 of an external yard the Board will determine the hours  
2 of operation but in no case may the exterior yard be  
3 used after a certain period of time. That still gives  
4 the BZA the ability to set the parameters.

5 CHAIRPERSON MITTEN: Okay. So we can  
6 still have it's not only the lateness of the hour but  
7 it's the earliness of the hour. Okay, so we can  
8 capture all of that. That would be good. So this is  
9 the language that we would propose to set down is what  
10 we are considering now for a regular text amendment.  
11 With the changes to the definition and the changes to  
12 721.7 I would move approval of Case No. 05-21 for set  
13 down.

14 MR. HOOD: Second.

15 CHAIRPERSON MITTEN: Okay. Is there any  
16 further discussion? All those in favor please say  
17 aye.

18 ALL: Aye.

19 CHAIRPERSON MITTEN: None opposed.

20 Mrs. Schellin.

21 MS. SCHELLIN: The staff will record the  
22 vote five to zero to zero to set down Case No. 05-21  
23 as modified, Commissioner Mitten moving, Commissioner  
24 Hood seconding, Commissioners Hildebrand, Jeffries,  
25 and Parsons in favor.

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1 CHAIRPERSON MITTEN: Okay. And then we  
2 have the proposal for the emergency which is, as Mr.  
3 Mordfin read, and unless somebody wants me to I don't  
4 think we need to repeat it but we do need to make a  
5 decision about the number of days within the finality  
6 of a BZA decision within which they would have apply  
7 for a certificate of occupancy which I would propose  
8 would be 45.

9 MR. HOOD: And this is on the emergency?

10 CHAIRPERSON MITTEN: Yes.

11 MR. HOOD: I thought we typically did 120.

12 CHAIRPERSON MITTEN: No, the emergency  
13 would be in place for 120 days but it says that the  
14 temporary certificate of occupancy expires upon one of  
15 three things happening. If someone has gone to the  
16 BZA they have a certain amount of time to go apply for  
17 a certificate of occupancy and that's the time frame  
18 we are setting right now.

19 MR. HOOD: Okay. I gotcha.

20 CHAIRPERSON MITTEN: Okay. Anyone else?  
21 Then I would move approval of the emergency text and  
22 ask for a second. I'll admit that I'm a dog lover.

23 MR. HOOD: I was just getting ready to  
24 second. Second.

25 CHAIRPERSON MITTEN: Okay. Is there any

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1 discussion? Any discussion on the emergency? All  
2 those in favor, please say aye.

3 ALL: Aye.

4 CHAIRPERSON MITTEN: Those opposed please  
5 say no.

6 Mrs. Schellin.

7 MS. SCHELLIN: Staff will record the vote  
8 five to zero to zero to approve the emergency action  
9 in Case No. 05-21 as discussed, Commissioner Mitten  
10 moving, Commissioner Hood seconding, Commissioners  
11 Hildebrand, Jeffries, and Parsons in favor.

12 CHAIRPERSON MITTEN: Thank you.

13 Next we have Case No. 05-15 which is a PUD  
14 application at 318 I Street, NE. It looks like Mr.  
15 Jackson is up this time.

16 MR. JACKSON: Good evening, Madam  
17 Chairman, members of the Board, and the Zoning  
18 Commission. My name is Arthur Jackson, I'm the  
19 Development Review Specialist for the District of  
20 Columbia Office of Planning. I'll present a brief  
21 summary of the Office of Planning's preliminary report  
22 on this application.

23 The applicant, Broadway I Associates LLC  
24 request Zoning Commission review and approval of a  
25 consolidated planned unit development application.

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1 This project would redevelop property currently  
2 occupied by the Uptown Bakers Wholesale Bakery with a  
3 seven-story, 65-foot-tall building with 140 for-sale  
4 residential units.

5 This residential project would include  
6 approximately 160,000 square feet of gross floor area  
7 equally a floor area ratio, or FAR, of 5.65, 140  
8 parking spaces, and a below-grade garage, a paved  
9 courtyard at ground level, and a landscaped recreation  
10 area on the roof.

11 The site exceeds the 15,000 square feet  
12 required for a PUD in the current community business  
13 district, or C-2B zoned district. No zoning change is  
14 requested because the PUD approval would increase the  
15 allowable residential floor area ratio to 6.0 and the  
16 allowable height to 90 feet.

17 While PUD provisions generally accommodate  
18 the proposed building, the planned lot occupancy  
19 percentage exceeds that allowed in the zoned district  
20 under a PUD. As a result, the applicant request  
21 additional relief beyond the PUD approval to increase  
22 the allowable lot occupancy from 80 to 85 percent.

23 The generalized land use map designates  
24 the subject property for moderate density and  
25 residential land use characterized by rowhouses and

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1 garden apartments. The current C-2B zoned district is  
2 designated a moderate to medium density mixed-use  
3 zoned district.

4 The proposal also supports certain planned  
5 goals and objectives by providing new residential home  
6 ownership opportunities that are likely to stimulate  
7 similar developments providing quality building and  
8 site designs, improving the physical character of the  
9 area and providing in-fill housing at moderate and  
10 below-moderate prices.

11 With regard to the standards for PUD  
12 approval in Chapter 24 of the regulations, staff's  
13 preliminary view indicates that benefits and amenities  
14 provided by the overall project such as urban design,  
15 superior architecture, home ownership and affordable  
16 home ownership opportunities, residential use of an  
17 unutilized site, and employment and training  
18 opportunities are significantly greater than the  
19 relief being requested which is essentially to  
20 increase the allowable residential density and lot  
21 o c c u p a n c y p e r c e n t a g e .

22 Thus, this product appears to meet the minimal  
23 requirements for approval.

24 The Office of Planning concludes the PUD  
25 proposal does not appear inconsistent with the

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1 competency plan and supports more specific housing,  
2 employment, urban design, and neighborhood  
3 stabilization goals identified in the plan.

4 The staff supports the project being  
5 scheduled for public hearing while noting that more  
6 specifics are required of the affordable housing  
7 component, transportation and environmental impacts,  
8 proposed street improvements, and the need to increase  
9 the allowable lot occupancy. We acknowledge, however,  
10 that the applicant has already started to provide  
11 additional information on these issues.

12 Based on this information, the Office of  
13 Planning recommends that the Zoning Commission set  
14 this application down for public hearing. That  
15 concludes the Office of Planning's brief summary and  
16 we are available to answer questions.

17 CHAIRPERSON MITTEN: Thank you, Mr.  
18 Jackson. Questions for Mr. Jackson?

19 Mr. Jeffries.

20 MR. JEFFRIES: The one thing that I  
21 noticed in the elevation, particularly on the 4th  
22 Street elevation, was obviously just sort of the  
23 articulation of those elevations. I was hoping that,  
24 you know, as we move along in the design of this that  
25 we could have some level of delineation of the

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1 elevation to really somehow reflect some of the low  
2 scale that is across the street just so that could  
3 break it down just a little bit more.

4 It's looking a little bit monolithic and  
5 it could be perhaps that it's just the way in which  
6 the elevation appears but I recall the Children's  
7 Museum Project where the same architect I thought did  
8 a very good job of somehow bringing down the scale of  
9 the structure to give more comfort to the smaller  
10 rowhouses across the way.

11 I would really like to see a very similar  
12 treatment. Again, it might be here and this is just  
13 for a conceptual and appearance but I just wanted to  
14 make certain that is something that we see as we move  
15 along.

16 MR. JACKSON: All right. So you're  
17 talking about the difference between the height of  
18 this building and the residences to the east on 4th  
19 Street?

20 MR. JEFFRIES: 4th Street, yes. I just  
21 want to make certain there are elements in this  
22 elevation, the 4th Street elevation, that somehow  
23 mimic or are sensitive to the scale of the low-rise  
24 that is across the street so that we are not looking  
25 at a very tall monolithic dense building without the

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1 appropriate sort of breakdown.

2 Again, the same architect I thought did a  
3 very good job on the Children's Museum site in terms  
4 of really of being very sensitive to that level of  
5 scale. I'm really talking about scale at the  
6 pedestrian level for the elevation.

7 CHAIRPERSON MITTEN: I would like to pick  
8 up on that if I could. On page 15, the composite 4th  
9 Street elevation, where you can see the proposed  
10 structure next to the townhouses to the north. I  
11 don't know, is this in the historic district?

12 MR. JACKSON: No.

13 CHAIRPERSON MITTEN: No. It's not in the  
14 historic district. Does the C-2B go all the way to  
15 whatever that is, K Street or is that R-4 to the  
16 north?

17 MR. JACKSON: R-4.

18 CHAIRPERSON MITTEN: So this is as much of  
19 the C-2B frontage as exist?

20 MR. JACKSON: Yes.

21 CHAIRPERSON MITTEN: Well, okay. Then I  
22 think my concern is founded. It just looks so tall  
23 next to those really short two-story townhouses. I'm  
24 on page 15, the composite 4th Street.

25 COMMISSIONER: We didn't get that.

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1                   CHAIRPERSON MITTEN: You don't have a 15?  
2                   It's in the book. Sorry. I don't know what to  
3                   suggest but it's just very stark, the difference, and  
4                   those houses are being overwhelmed. Since there are  
5                   four -- it's not like if it wasn't in the historic  
6                   district and C-2B went all the way to K Street. Then  
7                   they would have an equal opportunity to be that high  
8                   but it just doesn't -- there's a disadvantage there,  
9                   and yet there's no acknowledgement of the townhouses  
10                  to the north.

11                  MR. JEFFRIES: So you're looking for some  
12                  similar treatment for the houses to the north?

13                  CHAIRPERSON MITTEN: I just want -- I  
14                  don't know. I want that discussed. I don't know what  
15                  to suggest.

16                  MR. JEFFRIES: I think Madam Chair is  
17                  effectively, you know, sort of echoing my sentiments,  
18                  and that is not that there is an issue with the height  
19                  of the building but it's the whole notion of how you  
20                  break down the elevation such that if you are walking  
21                  along the street that you are not feeling as if you  
22                  are experiencing this big monolithic building but a  
23                  building that is tall but has enough pieces on it that  
24                  you feel as if it somehow matches some of the existing  
25                  structures.

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1 MR. HILDEBRAND: I think critical in  
2 understanding that, too, we do need the other  
3 elevations for the project. We've been given the 4th  
4 Street and the I Street elevations but we haven't been  
5 given the facade that will be abutting the neighbors  
6 to the north or the courtyard elevations.

7 CHAIRPERSON MITTEN: There's another area  
8 of clarification where the residential recreation  
9 space is being represented as being appraised of 25,200  
10 square feet. We will need to have indicated on the  
11 plans specifically where that is being provided.

12 MR. JACKSON: I know that the bulk of it  
13 is going to be the roof landscaped area and then there  
14 are some lots but I'm sure the applicant will provide  
15 that information.

16 CHAIRPERSON MITTEN: I'm just calling it  
17 out as something we will be looking for.

18 MR. HILDEBRAND: Are we also looking at  
19 multiple roof structures here? It looks as though  
20 there are two separate townhouses.

21 MR. JACKSON: Yes.

22 MR. HILDEBRAND: I noticed also in looking  
23 at the package that there was a significant change in  
24 the parking arrangement. It didn't strike me as  
25 necessarily being an improvement. They are moving the

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1 entrance from the alley to the 4th Street front  
2 directly adjacent to the alley. Have we had any input  
3 or similar arrangements where you have two entrances  
4 to a garage directly abutting an alley like that?

5 MR. JACKSON: I indicated to the applicant  
6 that we needed a transportation study just to add to  
7 the information with regard to the traffic impact.  
8 They have given me a document that I can forward over  
9 to the Department of Transportation. If that is also  
10 an issue, I can ask them to look into it.

11 MR. HILDEBRAND: It just doesn't seem like  
12 the facades were manipulated either in a way that sort  
13 of accommodated that in a very comfortable way. The  
14 garage entrance was moved and placed on the existing  
15 proposed facade without any significant change.

16 MR. JACKSON: So are you concerned about  
17 the transportation impacts and also the impact on the  
18 facade?

19 MR. HILDEBRAND: It's just safety in  
20 general coming through the alley and having people  
21 exiting the garage at the same time.

22 CHAIRPERSON MITTEN: Anyone else?

23 MR. JEFFRIES: Given there is so much low-  
24 rise that is north of 8th Street and now with the  
25 Children's Museum site and then this site, it might be

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1 sort of useful for some sort of volumetric study,  
2 really just basic building blocks. We don't have to  
3 get into a lot of detail but just to get a sense of  
4 how this particular structure is looking alongside  
5 some of the low-scale that is really found north of H  
6 Street in general

7 MR. HILDEBRAND: In looking at the plans,  
8 too, I'm not quite sure I understood the extent of the  
9 work being proposed by the applicant. It looks as  
10 though there is a sidewalk treatment that is being  
11 installed immediately in front of their property but  
12 also then that same kind of texture includes the alley  
13 all the way back to the courtyard space. Is that  
14 something that the applicant is proffering as an  
15 improvement to the existing alley?

16 MR. JACKSON: In their report they have  
17 not indicated -- they have indicated that the  
18 improvements that they are proposing would be  
19 consistent with plans for the facades of the abutting  
20 street, although there wasn't anything specific said  
21 about the alley but I can get additional information  
22 on that. Well, anyway, we can get you more  
23 information on that.

24 CHAIRPERSON MITTEN: There's a view of the  
25 alley on page 5 of the book.

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1 MR. HILDEBRAND: I would also like a  
2 better understanding of this rear courtyard, too. I  
3 know in some of the diagrams there is truckloading and  
4 recycling listed as possibly occurring in this area as  
5 well as resident dropoff and pickup of visitors. This  
6 seems somewhat incongruous if you are going to have  
7 open containers for recycling and that kind of thing.

8 I guess I would just like a better  
9 understanding of how they are proposing to treat that  
10 material and whether or not there's going to be any  
11 enclosure parallel to the alley line in the way of a  
12 fence for security future.

13 CHAIRPERSON MITTEN: Anything else,  
14 Commissioner Hildebrand? I'm not trying to rush you.  
15 You're asking a lot of good questions.

16 MR. HILDEBRAND: Could we have an idea of  
17 where the affordable units are going to be positioned  
18 throughout the facility, too, please?

19 MR. JACKSON: Not at this time but the  
20 general indication was that they would not be any one  
21 location. They would be throughout the building.  
22 That's one of the other questions that we forwarded to  
23 the applicant.

24 MR. HILDEBRAND: That would be a nice  
25 thing to understand.

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1 CHAIRPERSON MITTEN: Anyone else?

2 MR. PARSONS: I want to make sure that we  
3 better understand what's happening on the roof. As  
4 described, it's a green roof. It's green in the plan  
5 but I think we need some more detail on that. Also  
6 the facade treatment, the yellow and the beige, it's  
7 not clear to me what that is whether it's brick, which  
8 seems to be the traditional material in the  
9 neighborhood is what's proposed. It's hard to tell  
10 from the elevations.

11 MR. HILDEBRAND: And I may have made an  
12 assumption, too, that was brick. In looking at the  
13 earlier set of elevations the brick coursing lines  
14 were actually shown in the book that didn't get  
15 transferred to the updated elevations. I don't know  
16 if that was just a drafting error that a set of lines  
17 got turned off on the computer program or if there was  
18 some intent there.

19 MR. PARSONS: That's exactly why I brought  
20 it up. It seemed to get a little fuzzier with the new  
21 stuff, the new exhibits.

22 MR. JACKSON: The applicant did indicate  
23 that would be masonry but, again, we get more  
24 specifics for the final.

25 CHAIRPERSON MITTEN: Anyone else? All

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1 right. We have a recommendation from the Office of  
2 Planning to set down Case No. 05-15 for public hearing  
3 and I would so move.

4 MR. JEFFRIES: Second.

5 CHAIRPERSON MITTEN: Is there any further  
6 discussion? All those in favor please say aye.

7 ALL: Aye.

8 CHAIRPERSON MITTEN: All those opposed  
9 please say no.

10 Mrs. Schellin.

11 MS. SCHELLIN: The staff would record the  
12 vote as five to zero to zero to set down Case No. 05-  
13 15, Commissioner Mitten moving, Commission Jeffries  
14 seconding, Commissioners Hildebrand, Hood, and Parsons  
15 in favor.

16 CHAIRPERSON MITTEN: Thank you.

17 Next is Case No. 05-18 which is a PUD at  
18 1020 Monroe Street, NW.

19 Mr. Parker.

20 MR. PARKER: Good evening, Madam Chairman,  
21 member of the Commission. I'm Travis Parker with the  
22 Office of Planning. The application before you is one  
23 of Hope 7, Incorporated for planning and development  
24 on a C-2A parcel.

25 The application is to add to an existing

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1 four-story building an additional two stories creating  
2 27 residential units, 5,700 square feet of ground  
3 floor retail, and three new parking spaces. The  
4 project would commit that one-third of the units, or  
5 nine units, would be for low to moderate income  
6 residents.

7 The project is on 11th and Monroe Street,  
8 NW. The lot is approximately 12,000 square feet in  
9 size. The zoning relief requested as part of this  
10 planned unit development is FAR from 2.5 to 2.8 and  
11 height from 50 feet to 64 feet. The comprehensive  
12 plan designates this area as moderate density  
13 residential which is characterized by rowhouses and  
14 garden apartments.

15 While it does not call for commercial  
16 development on the site, the property and the adjacent  
17 commercial area are zoned C-2A and the proposed  
18 development would be predominately residential and not  
19 inconsistent with the comprehensive plan

20 Moreover, this site is about four blocks  
21 from Columbia Heights development opportunity area and  
22 the same distance from the Georgia Avenue, New  
23 Hampshire development opportunity area which shows the  
24 need for development and residential growth in this  
25 area.

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1           Several sections of the comprehensive plan  
2 offer further support. The Ward 1 plan and the land  
3 use of the comprehensive plan both support added  
4 residential growth in this neighborhood and this  
5 project would serve to further that need.

6           OP believes that the project is not  
7 inconsistent with the comprehensive plan. It does  
8 offer the amenity of additional housing in an area  
9 that is underdeveloped as well as affordable housing  
10 at a rate higher than is usually offered. We  
11 recommend that the plan be set down for public  
12 hearing.

13           CHAIRPERSON MITTEN: Thank you. Questions  
14 for Mr. Parker? Okay. I'll start. Not unlike some  
15 of the questions in the previous case, I think we need  
16 to know more about the green roof that is being  
17 proffered and what is the square foot area of the roof  
18 that is involved.

19           MR. PARKER: All right.

20           CHAIRPERSON MITTEN: I think we need to  
21 know more about the affordability level and the  
22 location of the units in the building and the term for  
23 which it's being offered.

24           MR. PARKER: Okay.

25           CHAIRPERSON MITTEN: The amenity related

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1 to the office space for the ANC is a little bit  
2 abstract which I think it's something like low rent or  
3 affordable office space for the ANC. That can be in  
4 the eye of the beholder so I think we are going to  
5 have to nail that down better.

6 There's a discussion in the application  
7 regarding their intention to lease only to local non-  
8 chain businesses. I think we are going to need to  
9 understand if that is a proffer is that just what  
10 their intent is?

11 MR. PARKER: Okay.

12 CHAIRPERSON MITTEN: And then I don't  
13 really understand what is going on in the upper level.  
14 A couple of things. One is I understand what an  
15 exercise room is but we have taken a lot of testimony  
16 in cases about when we relieve properties of their  
17 residential recreation space requirements in part, one  
18 of the things that we hear is that people don't want  
19 exercise rooms in their apartment buildings. I  
20 question whether or not that is actually recommended  
21 as something that should be included. Then I have  
22 absolutely no idea what a club room is if you know  
23 what is intended.

24 MR. PARKER: Just from my meetings with  
25 the applicant, the exercise room obviously would have

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1 exercise equipment. The club room was intended, I  
2 think, for use of both the residents and the ANC who  
3 would have office space as meeting room, party room,  
4 a room that you could check out and use for various  
5 functions. I think the intent of the applicant in  
6 both cases for both rooms, and the terraces as well,  
7 was to meet that residential recreation space need.

8 CHAIRPERSON MITTEN: I think, you know,  
9 given that we have been showing some degree of  
10 flexibility and we are considering a text amendment  
11 related to the residential recreation space  
12 requirement and they seem to be on the same page about  
13 promoting housing, I think the upper floor would be  
14 much better used as housing than a club room which  
15 strikes me as something that would be sporadically  
16 used.

17 And then the exercise room because of the  
18 testimony we've heard over and over again I question  
19 whether that would be fully utilized as well. It's  
20 awfully expensive to build another floor up there if  
21 it's not going to be fully utilized. I guess I would  
22 just like to ask for further consideration of that.  
23 Anyone else?

24 MR. JEFFRIES: I would agree with Madam  
25 Chair. I normally would acquiesce to the developer to

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1 understand the target in terms of potential buyers.  
2 They would be best positioned to know exactly the  
3 kinds of amenities that they would need to provide in  
4 terms of having a successful development. It does  
5 seem a little odd but I do think it would be very  
6 interesting for the applicant to really speak on sort  
7 of the logic or rationale behind that.

8 CHAIRPERSON MITTEN: Just to follow up on  
9 that, at the end of their statement they do say this  
10 is their flagship project. We had a recent incident  
11 where we had a developer who was not experienced in a  
12 particular area, in that case it happened to be  
13 retail, that was making some missteps and so if this  
14 is a developer who is a new developer, I think they  
15 might benefit from some of what we've been hearing.

16 Rather than have them make an error in  
17 what they are proposing to build, perhaps you could  
18 share some of that information that we've received and  
19 just help educate them for whatever that would be  
20 worth.

21 MR. JEFFRIES: You know, for like hotel  
22 development operators or flags always tell you that,  
23 you know, you've got to have a pool. No one uses the  
24 pool but they just need to know that it's there which  
25 means that it doesn't necessarily have to be in the

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1 most optimal location within the hotel.

2 It's just that they need to know it's  
3 there. I just think it's really critical that even if  
4 you feel the need to have something, a club house or  
5 club room or something of that nature, you know,  
6 there's different ways in which to provide that  
7 amenity.

8 Again, I don't want to second guess the  
9 applicant. I have no sense of how many years of  
10 experience and so forth but it would be interesting to  
11 see sort of a different look at how you would  
12 configure the development program here a bit.

13 CHAIRPERSON MITTEN: Mr. Hildebrand.

14 MR. HILDEBRAND: Yeah, I think it's a very  
15 interesting discussion and I think it's very  
16 enlightening. I would also like to say, though, if we  
17 do continue to have rooftop access which is currently  
18 available to all the occupants in this new residential  
19 facility, that that aspect be maintained. I would  
20 hate to see a rooftop become a private penthouse that  
21 only one tenant has the opportunity to experience.  
22 Rooftop areas can be really a vibrant part of a  
23 residential building.

24 I didn't understand the significance of  
25 the term mezzanine, though. Why are they referring to

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1 this floor as a mezzanine? Is there something I'm  
2 missing?

3 MR. PARKER: No. To be honest, I don't  
4 know why that term is used either.

5 MR. HILDEBRAND: I generally think of a  
6 mezzanine as a second story or second level of a  
7 single story that is open to the floor below and that  
8 doesn't seem to be what this is.

9 MR. PARKER: No. I think that is a  
10 definition in the zoning code that has to do with an  
11 area within a floor rather than on top.

12 MR. HILDEBRAND: I didn't know if there  
13 was some height limitation on the stories that I was  
14 missing that they were --

15 MR. PARKER: Not that I'm aware of.

16 MR. HILDEBRAND: Okay. And, also, a  
17 better understanding of the materials of this new  
18 addition. It's very clear that the original structure  
19 is brick with limestone coining and cornice work but  
20 this new store front that is being proposed I would  
21 like to have more information on what that is made of  
22 as well as the two-story addition.

23 MR. PARKER: All right.

24 CHAIRPERSON MITTEN: I had another  
25 question, too, which is either you can look on the

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1 proposed west elevation or you can look on the color  
2 version that is right in front of it. If you look at  
3 the center section -- I'm looking at the top floor.  
4 I see where the center section is, those three double  
5 windows.

6 That's the club room and the exercise room  
7 on the mezzanine-level floor plan. But then at either  
8 end there's this glass -- on the right-hand side it's  
9 like all glass and then on the left-hand side it's  
10 like half glass and half wall. When I look on the  
11 mezzanine-level plan I can't tell what that is. Oh,  
12 it's that?

13 MR. HILDEBRAND: Yeah, I think that's  
14 interior space that connects the elevator to the  
15 exercise room.

16 CHAIRPERSON MITTEN: Oh, okay.

17 MR. HILDEBRAND: That is something else  
18 that is just a little misleading with the elevations  
19 is that the elevator override, which would be  
20 associated with bringing elevator access to the roof  
21 level, is not showing up in the elevations. It would  
22 be nice to get that blocked out on the drawing.

23 MR. JEFFRIES: I -- Commissioner  
24 Hildebrand, are you finished?

25 MR. HILDEBRAND: Yes. I'm sorry.

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1 MR. JEFFRIES: I have another question  
2 about the retail space. This whole notion of sort of  
3 the mixed-use development, you know, it just seems to  
4 be housing above, retail below but it doesn't always  
5 work. Sometimes we just need housing, you know,  
6 because there's lot of retail, particularly in this  
7 area of 14th Street. There's really going to be a  
8 need for a number of rooftops to really service all  
9 the retail that is planned.

10 I know that the applicant is looking at  
11 very local retailers and so forth but you might want  
12 to look and give thought about some flexibility of the  
13 ground floor and perhaps the possibility that it  
14 cannot really work for retail space.

15 If the applicant has a number of retailers  
16 standing in line, I mean, that's fine but they might  
17 need to get some level of clarification on sort of the  
18 contingency plan for that ground floor. Also, we need  
19 to make certain that we are comfortable about the  
20 floor to ceiling. Do we know that? Did I see that  
21 anywhere?

22 CHAIRPERSON MITTEN: I don't think so.

23 MR. JEFFRIES: This will really work as  
24 ground floor retail and it would be acceptable to  
25 retailers and not necessarily chain retailers but just

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1 anyone who is looking to have their own business. I  
2 would hope that the applicant just further develops  
3 this whole notion of ground-floor retail. Again, it  
4 could be housing.

5 CHAIRPERSON MITTEN: Well, just to that  
6 point, again, we have information in the record of  
7 another case. We don't have to ask them to go out and  
8 do a market study or anything. They can learn from  
9 other cases that have been in front of us about what  
10 works and what doesn't work so I think that's a great  
11 idea.

12 Anyone else? Mr. Hildebrand.

13 MR. HILDEBRAND: Yeah. Just to look at  
14 the architecture a little bit further, in  
15 understanding the materials they're proposing, I think  
16 we also need to look to make sure that they are  
17 picking up on the architectural cues that the existing  
18 building is giving them. In certain cases they are  
19 and in other cases they're not.

20 The cornice treatment at the top of the  
21 fifth floor seems very weak compared to what they're  
22 doing in the center section on the 6th floor. I think  
23 if they could develop that a little bit further to  
24 make a better relationship between the new addition  
25 and the older structure.

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1 CHAIRPERSON MITTEN: Anyone else? Okay.  
2 We have a recommendation from the Office of Planning  
3 to set down Case No. 05-18 for public hearing. I  
4 would so move.

5 MR. JEFFRIES: Second.

6 CHAIRPERSON MITTEN: Thank you. Is there  
7 any further discussion? All those in favor please say  
8 aye.

9 ALL: Aye.

10 CHAIRPERSON MITTEN: Mrs. Schellin.

11 MS. SCHELLIN: The staff would record the  
12 vote five to zero to zero to set down Case No. 05-18,  
13 Commissioner Mitten moving, Commissioner Jeffries  
14 seconding, Commissioners Hildebrand, Hood, and Parsons  
15 in favor.

16 CHAIRPERSON MITTEN: Thank you.

17 Next up is proposed action and first is  
18 Case No. 04-27 which is the H Street Overlay Text &  
19 Map Amendments.

20 Mrs. Schellin, is there anything else that  
21 we need to know before we proceed?

22 MS. SCHELLIN: No, ma'am. Just that the  
23 commissioners have been furnished with copies of  
24 everything that's been received on the record.

25 CHAIRPERSON MITTEN: Thank you. This was

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1 a very good hearing, I thought, that we had because we  
2 got a lot of good constructive suggestions. Does  
3 everyone have a copy of the hearing notice because  
4 we'll have to work off of what was published. Does  
5 everybody have a copy of the hearing -- of what was  
6 advertised? Oh, Mr. Jeffries didn't participate in  
7 this. Do you have it or do we need to get copies?

8 Okay. I think the way that might be  
9 easiest to proceed is I'll start with the supplemental  
10 report from the Office of Planning and then we can go  
11 through some of the other reports that we received  
12 with suggestions from the ANC and different  
13 individuals in order to discuss different proposed  
14 changes to what was advertised if that is okay with  
15 everybody, even though we might be jumping back and  
16 forth between sections of the ordinance.

17 The first clarification that was offered  
18 in response to our concerns following the hearing is  
19 a language change to 1325.1.1 regarding the role of  
20 the BZA relative to HPRB. It's on page 2 of the June  
21 30th supplemental report from OP.

22 MR. PARSONS: No objection.

23 CHAIRPERSON MITTEN: Everybody okay with  
24 that? Okay. Then there was a suggestion from the two  
25 ANCs to remove the special exception in 1320.4(e).

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1 This is related to existing gas stations, expansion of  
2 a gasoline station existing on or before -- basically  
3 we would just delete (e). Anybody have any problems  
4 with deleting (e)? Okay.

5 A lot of discussion about automobile  
6 accessory sales, either to put them on the list of  
7 special exception or prohibited uses. This turns on  
8 the fact that there's an existing automobile accessory  
9 sales facility.

10 There's some negative impacts on the  
11 community associated with that. I think the feeling  
12 on the part of the residents is that more of that  
13 would not be good. Even though it's not a land use  
14 problem per se, it has spillover effects with sort of  
15 spontaneous car repair places just appearing on the  
16 street.

17 OP's position is that is not a permitted  
18 use, designated use for ground floor anyway so that's  
19 not an issue that any change is going to impact. Does  
20 anybody feel strongly about adding the language  
21 recommended by the ANC versus the OP's approach that  
22 everything is taken care of already by the existing  
23 language?

24 MR. PARSONS: I agree with the Office of  
25 Planning. It seems like there's a police problem in

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1 the community or enforcement problem rather than a  
2 zoning problem.

3 CHAIRPERSON MITTEN: Right. It won't  
4 impact the existing facility and further facilities  
5 wouldn't be permitted anyway. I agree unless someone  
6 feels strongly. Mr. Hood.

7 MR. HOOD: I would agree, Madam Chair.

8 CHAIRPERSON MITTEN: Okay. Then the next  
9 thing was that there was a concern that the fast food  
10 establishments aren't going to be required to meet the  
11 standards of 733 and 734. I think Office of Planning  
12 again has dealt with the fact that they do, in fact,  
13 have to meet those standards. I don't think there's  
14 an issue there unless someone wants to raise it.

15 The next item is about adding an  
16 affordable housing component to the plan. This was  
17 something that I give the ANC a lot of credit for  
18 being pretty aggressive about. We have a lot of  
19 communities that aren't so welcoming of two things.  
20 One is affordable housing, and the second thing is  
21 additional density to support affordable housing which  
22 is what they were saying.

23 Even if you had to give an extra half a  
24 point of FAR in order to support affordable housing,  
25 now is the time to do it. Frankly, I'm inclined to

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1 endorse their proposal. We do have the inclusionary  
2 zoning hearing later this month and our approach is  
3 going to be to create the tool to give us inclusionary  
4 zoning and then decide later where to map it.

5 We have already learned that we have lost  
6 opportunities because our processes take a long time  
7 and it took a long time to get inclusionary zoning in  
8 front of us. I guess I would just consider it  
9 unfortunate if we lost an opportunity along H Street  
10 while we work through the inclusionary zoning  
11 provisions.

12 Whatever we would put in place we could  
13 remove once we put inclusionary zoning in place if we  
14 wanted to map it here. I just feel pretty strongly  
15 that this market is going to take off and I would like  
16 to be more ahead of it than behind it.

17 MR. PARSONS: I agree.

18 CHAIRPERSON MITTEN: What do you other  
19 folks feel since it takes more than two to pass  
20 something?

21 MR. HILDEBRAND: Had you thought about how  
22 -- where you would roll that into the overlay?

23 CHAIRPERSON MITTEN: Well, I think we do  
24 need to add, like we've been discussing, with  
25 inclusionary zoning we need to add some kind of offset

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1 to it. What was proposed by the ANC -- these are the  
2 notes from the joint meeting that the two ANCs had.  
3 It says, "Provide an additional -- oh, it wasn't .5,  
4 it was 1 FAR.

5 "Provide an additional 1 FAR above and  
6 beyond underlying zone for residential uses only by  
7 special exception. A variation on this would be to  
8 provide the additional FARs as a matter of right with  
9 the provision that a minimum of 10 percent of the  
10 units representing a cross-section of all types of  
11 units offered be made affordable to tenants making 80  
12 percent or less of the area median income and that  
13 mechanisms are in place to ensure the units remain  
14 affordable at 80 percent AMI for a minimum of 20  
15 years."

16 MR. HILDEBRAND: I guess my question would  
17 be since that wasn't advertised as part of the text  
18 language, could we add it at this point?

19 CHAIRPERSON MITTEN: Good point.

20 MR. BERGSTEIN: Was this ANC report filed  
21 before the hearing itself?

22 CHAIRPERSON MITTEN: I don't have my file  
23 organized well enough.

24 MR. BERGSTEIN: The rule usually is that  
25 if an issue is raised on or before the hearing, then

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1 the persons who would have interest would have an  
2 opportunity then to respond to it. That is not the  
3 case if it was filed afterwards. I would feel a lot  
4 more comfortable if the report was filed before the  
5 hearing and then it would have been available to the  
6 public and anyone who had a concern about it could  
7 address it. That is sort of where I am.

8 Then the question that you would have to  
9 fill in the blank is the mechanism for ensuring  
10 affordability. As you probably remember from the  
11 inclusionary text amendment, that's one of the more  
12 complex issues: what's the control period; what  
13 happens after the control period; what amount, if any,  
14 additional above-market proceeds can be kept by the  
15 owner of the affordable unit.

16 It's a pretty complex subject matter. If  
17 we were going to try to put this as a proposed text  
18 amendment, we would need some significant guidance  
19 from you on that. My understanding is that this would  
20 be discretionary, though. Am I correct? There would  
21 not be a requirement as in the case of the  
22 inclusionary text amendment that affordable housing be  
23 provided.

24 Then there is a bonus density offset but  
25 this would be sort of the reverse of that. It would

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1 be sort of an incentive based program where if a  
2 property owner wanted to take advantage of the extra  
3 FAR, then that would be available to them if they did  
4 provide affordable housing.

5 If that's proposed, I have less of a  
6 problem with that being advertised because it's not  
7 really a burden that is being placed on the property  
8 owners. It's wholly volitional and it's just  
9 basically an add-on. Again, that control mechanism is  
10 a little bit difficult to work out.

11 CHAIRPERSON MITTEN: Everything that you  
12 said is completely accurate, although I'm not sure  
13 that the ANC was suggesting that it be optional.  
14 Given that we rejected the optional provision when we  
15 set down the inclusionary zoning, I'm not sure that is  
16 something that we would necessarily want to endorse.

17 I think what I would like to do since I  
18 just wasn't as prepared as I should have been to push  
19 this forward is I would like to have a special public  
20 meeting sometime before the end of the month that we  
21 could just tag on ahead of one of our hearings and  
22 I'll make a specific proposal.

23 Then the Commission can decide if they  
24 want to set that down or not because we would have to  
25 have a hearing anyway and we'll just go from there.

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1 Because, Mr. Bergstein, you're right, there's a lot of  
2 complexity to this.

3 MR. PARSONS: Well, I'm losing enthusiasm  
4 for this.

5 CHAIRPERSON MITTEN: I'm sorry. But we  
6 would have to have another hearing anyway.

7 MR. PARSONS: Yes. But if you're going  
8 towards the side of inclusionary, I think we as a  
9 Commission are not prepared to deal with that on a  
10 broad range so --

11 CHAIRPERSON MITTEN: You mean mandatory?

12 MR. PARSONS: Yes. If this is an optional  
13 proposal, you point out that we have just gone the  
14 other way on the larger issue. I'm not sure. I mean,  
15 I agreed with you initially but now I'm thinking this  
16 through and delaying the future of H Street for some  
17 theoretical discussion of affordable housing I'm not  
18 sure.

19 CHAIRPERSON MITTEN: No, I'm not  
20 suggesting that we delay anything. I'm suggesting  
21 that --

22 MR. PARSONS: You would have to have  
23 another hearing.

24 CHAIRPERSON MITTEN: On that issue. This  
25 all can go ahead. We just wouldn't hold anything up

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1 on the overlay. This could just be an add-on to it if  
2 we decide we want to sit down some additional  
3 language. I'm not talking about hold anything up.

4 MR. PARSONS: So you'd take action  
5 tonight.

6 CHAIRPERSON MITTEN: Right.

7 MR. PARSONS: On this.

8 CHAIRPERSON MITTEN: Right.

9 MR. PARSONS: And hold a special meeting  
10 later on the issue of housing.

11 CHAIRPERSON MITTEN: On the -- we would  
12 have a special public meeting to consider language  
13 that we could potentially set down to include some  
14 kind of affordable housing component within the  
15 overlay. This could all just keep on moving on the  
16 same track that it is.

17 MR. PARSONS: Okay.

18 CHAIRPERSON MITTEN: I'm not suggesting  
19 that we hold anything up.

20 MR. PARSONS: All right. Thank you.

21 CHAIRPERSON MITTEN: Okay. I will take  
22 the responsibility of coming up with something unless  
23 anyone wants to help me.

24 MR. PARSONS: Oh, no. Go right ahead.

25 CHAIRPERSON MITTEN: Thanks, team. Okay.

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1 The next item in the Office of Planning report is the  
2 issue about parking. There was a proposal that the  
3 parking should be limited to the rear half of the  
4 lots. OP's response is that currently there's a  
5 section of the ordinance that says that, "Required  
6 parking spaces should not be located in the area  
7 between a building line and a lot line abutting a  
8 street."

9 I don't know if this is exactly the same  
10 provision but there is a provision that says required  
11 parking can't be in the front yard. The one  
12 distinction, though, is required. You could still put  
13 parking in the front that is not required. I would be  
14 inclined to adopt the language proposed by the ANC  
15 because then it gets to that issue. Anybody have any  
16 heartburn or care to endorse that or speak against it?

17 MR. HILDEBRAND: Would this have any  
18 impact on that one shopping area that expressed  
19 concern about the viability of their shopping area  
20 without the parking along H Street?

21 CHAIRPERSON MITTEN: It doesn't change  
22 anything.

23 MR. HILDEBRAND: Only the change.

24 CHAIRPERSON MITTEN: Yeah. I mean, they  
25 have a larger concern which we can get to which

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1 requires that you build to the building line and they  
2 were worried that by chance their shopping center  
3 should be destroyed that they wouldn't be able to  
4 build it back the way it was.

5 This would actually reinforce their fear  
6 but if we're trying to accomplish something in terms  
7 of making shopping -- pushing it out to the sidewalk,  
8 then this reinforces that. Unless someone wants to  
9 propose that we respond to their concern about  
10 building to the lot line, then I would just say this  
11 reinforces that.

12 MR. HILDEBRAND: But they would still be  
13 allowed to do normal upkeep and renovation and  
14 accommodate new tenants within the existing structure  
15 as long as they didn't do structural modifications  
16 under these provisions.

17 CHAIRPERSON MITTEN: Right.

18 MR. PARSONS: I agree with the Office of  
19 Planning.

20 CHAIRPERSON MITTEN: You agree with the  
21 Office of Planning that no change would be necessary?

22 MR. PARSONS: Right.

23 CHAIRPERSON MITTEN: Okay. Mr.  
24 Hildebrand, where are you on this particular subject?

25 MR. HILDEBRAND: Your only change would be

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1 to eliminate the word "required?"

2 CHAIRPERSON MITTEN: No. The Office of  
3 Planning is responding by saying this is a nonissue  
4 because of an existing section that prohibits required  
5 parking in a front yard. What I'm saying is you can  
6 meet your parking requirements some place else and  
7 still put parking in the front. It would just not be  
8 part of the required. There is no prohibition on  
9 putting not required parking in the front yard. You  
10 just can't count it towards your minimum.

11 MR. HILDEBRAND: I think the concept of  
12 having parking of any kind beyond what's existing in  
13 the front abutting H Street is contrary to the purpose  
14 of the overlay.

15 MR. PARSONS: But any new development has  
16 to be built to the property line.

17 MR. HILDEBRAND: Yes.

18 MR. PARSONS: Anything new would not have  
19 this circumstance.

20 CHAIRPERSON MITTEN: Just so --

21 MR. PARSONS: 1324.

22 CHAIRPERSON MITTEN: 1324.2. Just to be  
23 100 percent clear about it, it says, "New buildings  
24 shall be designed and built so that not less than 75  
25 percent of the street wall." It would still be

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1 possible. It would be weird looking.

2 MR. PARSONS: To park two cars in front of  
3 the building.

4 CHAIRPERSON MITTEN: Well, it depends on  
5 how big it is.

6 MR. PARSONS: Driving across the sidewalk  
7 maybe.

8 CHAIRPERSON MITTEN: Okay. Mr. Parsons is  
9 for keeping it the way it is. Mr. Hildebrand, where  
10 are you now?

11 MR. HILDEBRAND: I guess my feeling is  
12 that it would be unlikely that someone would choose to  
13 put parking in front of it. I certainly have no  
14 problem with precluding it from happening.

15 CHAIRPERSON MITTEN: Okay.

16 MR. BERGSTEIN: Can I jump in because  
17 there seems to be a mis-cite in the OP report or I'm  
18 reading something wrong. 2116.5 doesn't provide that  
19 and the requirement for where parking can be is 2116.2  
20 which doesn't talk about required parking. It talks  
21 about parking spaces maybe located in one of the  
22 following and it's within a rear yard or a side yard  
23 and excluded from that is the front.

24 That is how I have always interpreted that  
25 provision, that you can't put parking, any parking

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1 because when the parking provisions don't use the word  
2 required, it refers to both accessory and required  
3 parking. I had always thought it was 2116.2 that  
4 prevented required parking in the front yard. 2116.5  
5 is what provides that special exception provision for  
6 when you want to locate parking offsite.

7 CHAIRPERSON MITTEN: Okay.

8 MR. PARKER: The correct cite is 2116.4.

9 CHAIRPERSON MITTEN: 2116.4.

10 MR. BERGSTEIN: That's true, but I also  
11 think 2116.2 also prevents front parking because it  
12 limits -- it refers to all parking spaces and I  
13 thought that was a provision. It only allows for  
14 parking within a rear yard or side yard.

15 CHAIRPERSON MITTEN: I thought there was  
16 a specific citation about front yards. I thought  
17 there was a specific paragraph.

18 MR. BERGSTEIN: The area that comprises  
19 the area between the building line and the lot line is  
20 commonly referred to as public parking and it's a bad  
21 misnomer but I don't know if that's what that  
22 provision was trying to address. I'm not aware of the  
23 front yard provision. Using the term front yard  
24 doesn't appear in the zoning regulations except I  
25 think in the tree and slope overlay there's a

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1 provision about front-yard setback.

2 CHAIRPERSON MITTEN: Okay. I will get off  
3 that horse. I'm not longer proposing any change  
4 related to that.

5 Okay, sign guidelines. We have a  
6 proposal.

7 MR. HOOD: So, Madam Chair, you're going  
8 along with Mr. Parsons also?

9 CHAIRPERSON MITTEN: Yes.

10 MR. HOOD: Okay, good.

11 CHAIRPERSON MITTEN: But I'm going to look  
12 tonight about that front yard thing, I can tell you  
13 that.

14 MR. PARSONS: All right.

15 CHAIRPERSON MITTEN: How do these things  
16 get in my head? They got there somehow.

17 Okay. The sign guidelines are being  
18 proposed are on page 4 of the supplemental report. We  
19 have 1324.1.4 and then a 1325.1.6.

20 MR. PARSONS: I'm the villain here. I was  
21 asking OP to consider design guidelines for signs.

22 CHAIRPERSON MITTEN: Um-hum.

23 MR. PARSONS: They make a pretty  
24 persuasive argument that is not a good idea so I'm  
25 going to withdraw my aggressive behavior on that

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1 matter. However, regarding the 1324.14, I think we  
2 should preclude roof signs, not discourage them as is  
3 stated in 1325.1. I just think they are hopefully a  
4 thing of the past and I can't imagine any roof sign in  
5 this District enhancing this District.

6 CHAIRPERSON MITTEN: Okay.

7 MR. PARSONS: I would say roof signs are  
8 precluded, not shall not be erected above the height  
9 limit established by the zone district.

10 CHAIRPERSON MITTEN: Okay. So, just in  
11 general, are you interested in including 1324.14 with  
12 a modification?

13 MR. PARSONS: Yes. I'm sorry.

14 CHAIRPERSON MITTEN: Okay. So then we are  
15 just going to modify, "Roof signs shall be precluded."  
16 (c) will be modified to say, "Roof signs shall be  
17 precluded." Yes?

18 MR. PARSONS: Yes.

19 CHAIRPERSON MITTEN: Okay.

20 MR. HOOD: I'm going to go slow on this.  
21 What are we doing again on (c)?

22 CHAIRPERSON MITTEN: We're adding the  
23 language on page 4 of the OP supplemental report that  
24 is 1324.4 but we are going to modify (c) to say, "Roof  
25 signs shall be precluded," or "Shall not be

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1 permitted," or something like that.

2 MR. HOOD: Okay.

3 CHAIRPERSON MITTEN: Okay? Is everybody  
4 okay with that? I'm going to try to vote on all of  
5 this so if we have to call something out. Okay. Then  
6 we have 1325.1.6.

7 MR. PARSONS: So we would have to delete  
8 the 4th sentence in the 5th line.

9 CHAIRPERSON MITTEN: Okay.

10 MR. PARSONS: Not delete the sentence but  
11 take out the part about located above the rooftop.

12 CHAIRPERSON MITTEN: So it will read,  
13 "Signage that affects more than 20 percent of the  
14 display windows is discouraged."

15 MR. PARSONS: Correct.

16 CHAIRPERSON MITTEN: Discouraged by what?

17 MR. PARSONS: A slap on the wrist.

18 CHAIRPERSON MITTEN: That's worked out  
19 really well.

20 MR. PARSONS: It was very effective in the  
21 past. Well, maybe --

22 CHAIRPERSON MITTEN: How about, "Shall not  
23 be permitted?"

24 MR. PARSONS: Because then you've go to  
25 like box signs and neon products. "Signs should not

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1 be overly obtrusive." Very subjective statements.  
2 Maybe we should ask the Office of Planning what they  
3 meant by this because these are really encouragement  
4 guidelines.

5 MR. PARKER: This section is located under  
6 the BZA special exception guidelines. These are  
7 suggestions for the BZA to consider while they are  
8 looking at special exceptions rather than hard and  
9 fast requirements.

10 MR. PARSONS: Yes. Okay.

11 CHAIRPERSON MITTEN: Okay. So with the  
12 one edit we are satisfied with the advisory language.

13 MR. PARSONS: Satisfied.

14 CHAIRPERSON MITTEN: Okay. Now the  
15 discussion is about we heard testimony about the --  
16 well, we heard a lot of testimony about the  
17 nonresidential density provisions and the way they  
18 affect different sections of the overlay. In the  
19 housing section it is limited to .5 unless they are  
20 preserving an existing facade. Then you move up into  
21 the retail subdistrict.

22 I think in the retail subdistrict, if I'm  
23 not mistaken, it's whatever is the existing in the  
24 zone. Then when we get into the arts we are back to  
25 limitation to 1 FAR for nonresidential uses and then

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1 you get an extra .5 FAR if you preserve an existing  
2 facade.

3 The Office of Planning is recommending for  
4 the housing subdistrict that the incentive for  
5 preserving an existing facade be increased. That's  
6 one thing. We heard from some of the folks in the  
7 corridor that we should maintain the existing  
8 nonresidential density limitations of the underlying  
9 zones because there is, in fact, more capacity for  
10 retail here.

11 We have to address the issue of square --  
12 I lost track of what the square number is, the square  
13 where the Harris Teater is proposed.

14 MR. PARSONS: 776.

15 CHAIRPERSON MITTEN: 776, yeah. So that  
16 was another one where there was a concern about the  
17 limitation on the FAR there. There is kind of a lot  
18 of issues swirling around. One of the things I did  
19 want to clarify with Mr. Parker, on page 5 you're  
20 talking through this issue and you're talking about  
21 the fact that projects of any size will go to BZA for  
22 review. Since the overlay is supposed to be flexible,  
23 I think you were suggesting that if it made sense,  
24 that those nonresidential density limitations could be  
25 exceeded. is that what you're suggesting?

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1 MR. PARKER: That's correct. Any  
2 provisions of this section of the proposed text  
3 amendment are variable by the Board of Zoning  
4 Adjustment as part of that special exception. They  
5 have the authority to change any of those during the  
6 course of that special exception.

7 CHAIRPERSON MITTEN: Show me where -- I  
8 went back and I was trying to identify the --

9 MR. PARKER: If you look at 1325.1.

10 CHAIRPERSON MITTEN: Okay.

11 MR. PARKER: "Exceptions from the  
12 requirements of the overlay district shall only be  
13 permitted if granted by the BZA after public hearing  
14 based on the following criteria." Subject to these  
15 criteria, they may offer exceptions to any of the  
16 requirements of this overlay including the  
17 nonresidential FAR.

18 CHAIRPERSON MITTEN: Okay.

19 MR. PARKER: So these projects that will  
20 be going to the Board anyway for special exception  
21 because they are over \$6,000 square feet will have the  
22 option to ask for greater nonresidential density.

23 CHAIRPERSON MITTEN: Okay. Do you have a  
24 response specifically about square 776 and the  
25 potential to have a grocery store there? Is that

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1 something --

2 MR. PARKER: That would be the same.

3 CHAIRPERSON MITTEN: So that's the same  
4 thing.

5 MR. PARKER: If the site is over 6,000  
6 square feet, it's going to be --

7 CHAIRPERSON MITTEN: It's going to go up  
8 to the BZA anyway. Okay.

9 MR. PARKER: It won't be adding any time  
10 or money to the process.

11 CHAIRPERSON MITTEN: Okay. That's  
12 helpful. Okay. In that case then I would just  
13 propose that we adopt the recommendation that OP makes  
14 at the end of that section where we increase the bonus  
15 density in 1321.3 to 1 FAR. It would say, "New  
16 construction that preserves an existing facade  
17 constructed before 1958 is permitted to use an  
18 additional 1 FAR for up to a maximum non-residential  
19 FAR 1.5.

20 MR. HOOD: Let me back up, Madam Chair.  
21 Why don't we just say 1.5 because we want to make sure  
22 it's predictable. I mean, I'm not trying to satisfy  
23 any particular applicant that may come down but, I  
24 mean, it seems like the subject matter has already  
25 said that in order to accomplish a grocery store,

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1 whether it's Harris Teater, Safeway, Giant, or  
2 whoever, that the 1.5 FAR is suitable for that square.

3 I just think we are always talking about  
4 being predictable. We plan 1.0 and we automatically  
5 know it's going to the BZA so we might as well cut to  
6 the chase.

7 CHAIRPERSON MITTEN: Okay. We can get to  
8 that. Do you endorse the change, though, to 1321.3 as  
9 it relates to everything else?

10 MR. HOOD: I thought we were talking about  
11 that. That's what I thought we were talking about.

12 CHAIRPERSON MITTEN: Okay. It's a subset  
13 of the discussion. We'll get to square 7 --

14 MR. HOOD: I haven't done subsets in a  
15 long time.

16 CHAIRPERSON MITTEN: Okay. Do you agree  
17 with the proposal forgetting square 776 to increase  
18 the FAR that basically provides an incentive to  
19 preserve an existing facade?

20 MR. HOOD: Are we talking about 1321.3?

21 CHAIRPERSON MITTEN: Yes.

22 MR. HOOD: Okay. 1 FAR?

23 CHAIRPERSON MITTEN: Yeah, up to 1.5  
24 because the base is .5.

25 MR. HOOD: Okay. I can go with that.

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1 Right.

2 CHAIRPERSON MITTEN: Now, that doesn't get  
3 to the issue that you just raised which is you want to  
4 say specifically that there's one thing that the  
5 people if they build a grocery store in square 776  
6 don't have to worry about is getting special exception  
7 approval related to density from the BZA.

8 MR. HOOD: I think the record already --  
9 at least the submittals. We've already had testimony  
10 and I think it reflects that it will take 1.5 FAR to  
11 accomplish that. If we already know that on the  
12 onset, why are we going to sit here and do -- I mean,  
13 I don't know. Why don't we do 1.0 or something less  
14 and just send them through the extra step. I think we  
15 should be predictable and we already know -- the  
16 evidence already proves it so we should just move  
17 forward already.

18 MR. HILDEBRAND: Just to clarify, too,  
19 there is no existing facade on that site to save so  
20 they wouldn't be getting the additional bonus density.  
21 They would have to go through the BZA process to get  
22 that anyway. As you said, being greater than 6,000  
23 square feet they would have to do that in any case.

24 CHAIRPERSON MITTEN: I understand what Mr.  
25 Hood is saying which is we know they are going to have

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1 to go to the BZA but to eliminate one element of  
2 uncertainty for them would be to say, "You don't have  
3 to worry about the density. Here is the density." I  
4 mean, I would be fine with that. I don't know what  
5 the rest of you guys think.

6 MR. PARSONS: So in reference to the 1.0,  
7 is that what he's proposing?

8 CHAIRPERSON MITTEN: No. Basically --

9 MR. PARSONS: Go directly to 1.5?

10 CHAIRPERSON MITTEN: Basically we would  
11 add a 1321.4 that would deal specifically -- this is  
12 what I would suggest anyway, Mr. Hood -- that would  
13 deal specifically with square 776.

14 MR. PARSONS: Oh. And it would say?

15 CHAIRPERSON MITTEN: I would want to say,  
16 "In the event that a grocery store is constructed on  
17 square 776 that the site be permitted a maximum  
18 nonresidential FAR of 1.5."

19 MR. HILDEBRAND: Would it be possible just  
20 to say that the grocery store use gets that FAR so  
21 that it's not site specific but if the grocery store  
22 goes in this area it gets that particular FAR? I  
23 understand the desire not to allow that FAR if for  
24 some reason the grocery store doesn't go on that site  
25 and another use goes there.

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1 CHAIRPERSON MITTEN: It doesn't apply  
2 equally because the reason it's problematic in the  
3 housing overlay is because you have a combination of  
4 the big site in the place where you are trying to  
5 squeeze the nonresidential FAR the most.

6 If it were in the retail section it  
7 wouldn't be a problem because it's already permitted  
8 by the underlying zoning. Then it could arguably  
9 apply in the arts but I don't know that there's any  
10 opportunity for it. I guess I understand what you're  
11 saying.

12 I would be willing to add the flexibility  
13 if it was within the housing subdistrict, although I  
14 still think it's just going to be on square 776. What  
15 do you guys want? I mean, I don't feel strongly one  
16 way or the other. You want it to be more flexible?  
17 With grocery stores then you get into how big does it  
18 have to be to qualify and all that stuff.

19 I think if we narrow it down we know we  
20 are going to get a big grocery, or potentially get a  
21 big grocery store on square 776 and we should just  
22 focus there is what I would suggest. So is everybody  
23 comfortable with adding this 1321.4 that says  
24 something about a grocery store on square 776 and  
25 hopefully will read the transcript as to what I said

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1 a minute ago?

2 MR. PARSONS: We all agree with that.

3 CHAIRPERSON MITTEN: Okay.

4 MR. PARSONS: We allow the Attorney  
5 General to read the transcript.

6 CHAIRPERSON MITTEN: Okay. I think that's  
7 it for what came out of the Office of Planning.

8 MR. PARSONS: Yes, it is.

9 CHAIRPERSON MITTEN: I think there were  
10 one or two issues left from the ANC recommendations.  
11 We talked about gas stations. We talked about  
12 automobile accessory sales. Oh, here's one. I went  
13 back and when I was looking through the language that  
14 got advertised, one of the things that the ANC called  
15 out was that they supported language that the Office  
16 of Planning had included in their March memo to us,  
17 March 28th memo to us, related to check-cashing  
18 establishments.

19 Then when I went back to cross-reference  
20 that with what was advertised, there are a couple of  
21 uses that are missing so I'm in 1322.2. There's a  
22 couple of things that are in Office of Planning's  
23 report that were not advertised and a couple of things  
24 that were advertised that were taken out so I'm going  
25 to call those out.

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1 Auction House was in Office of Planning's  
2 report as a preferred use but it's not in what was  
3 advertised. I don't know how you feel about auction  
4 house as a preferred use but I wanted you to know it  
5 wasn't there.

6 The other thing that wasn't there is bank  
7 or financial institution which is where then in parens  
8 "excluding check-cashing services." That's where that  
9 was captured so that's not in anymore. We would have  
10 to at a minimum add bank or financial institution  
11 excluding check-cashing services in order to capture  
12 that.

13 Then the things that were in OP's report  
14 in March and then not later and this is, again, in  
15 1322.2, were candy store and computer store as  
16 preferred uses. I take it back. Okay. Computer  
17 store is there. Oh, candy store is there, too. What  
18 was I looking at? Okay. Well, anyway, bank is not  
19 there. That's the most important thing.

20 MR. PARSONS: We need a bank.

21 CHAIRPERSON MITTEN: And auction house  
22 isn't there.

23 MR. PARSONS: Maybe we could ask the  
24 Office of Planning is that a typo or done  
25 intentionally, auction house.

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1                   CHAIRPERSON MITTEN:     Did you exclude  
2 auction house for some reason?

3                   MR. PARKER:   Not intentionally, and I'll  
4 check to see, unless it is already in the list of  
5 preferred uses earlier in chapter 13 and was taken out  
6 so as not to be repetitive.

7                   CHAIRPERSON MITTEN:   Oh, I see.   That's  
8 probably what it is.  There's candy store and computer  
9 store earlier.

10                  MR. PARKER:   Permitted uses within the C-1  
11 district are automatically on this list so I need to  
12 check that as well.

13                  CHAIRPERSON MITTEN:   Okay.  What we are  
14 going to do at this point is we are going to add  
15 banking or financial institution excluding check-  
16 cashing services to the list in 1322.2.

17                  MR. PARSONS:   All right.

18                  CHAIRPERSON MITTEN:   Okay.  The ANC also  
19 thought that the language in 1320.3(b)(11) keeping in  
20 mind that this is -- these are preferred -- these are  
21 uses that would be permitted in the HSR subdistrict.  
22 11 is other similar personal consumer service  
23 establishment or use and their concern was that was  
24 overly broad and that might be a way to slip in things  
25 that were unintended.  Okay.  So what do you think

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1 about the concern of the ANC?

2 MR. PARSONS: Well, isn't this drawn from  
3 other regulations that we have? I mean, it's not a  
4 new idea, is it?

5 CHAIRPERSON MITTEN: I think they are  
6 similar.

7 MR. PARSONS: You don't have to look but  
8 it's not original thought here that we're citing  
9 something on H Street that couldn't occur elsewhere in  
10 the city.

11 CHAIRPERSON MITTEN: I guess if we found  
12 that there was something that was being permitted that  
13 seemed to be unintended we could clean it up at that  
14 point. Anyone feel strongly about that?

15 MR. PARSONS: No.

16 CHAIRPERSON MITTEN: Okay. Mr. Hildebrand  
17 reminded me I missed one thing at the end of the  
18 Office of Planning's report so I'm going to skip back  
19 to that a second. 1325.1.5, they had suggested that  
20 we change the word "size" which is at the end of the  
21 first line to "massing" which I think makes sense. If  
22 there is no objection, we'll incorporate that change.

23 MR. PARSONS: That's fine.

24 CHAIRPERSON MITTEN: Okay. And then the  
25 other thing that the ANC had proposed was C-2 zoning

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1 for the -- there's a parking lot behind the commercial  
2 building, I think, in the 600 block of I Street and  
3 it's zoned R-4.

4 The Office of Planning had dealt with this  
5 in one of their reports and their feeling was when  
6 this site gets redeveloped it will be a PUD and it's  
7 in the context of that PUD that a rezoning could take  
8 place which I think makes sense and it helps to  
9 encourage the applicant to come in with a PUD. I  
10 think that we should leave that one alone.

11 Let me just look quickly. There were a  
12 few other suggestions that I think might be helpful,  
13 at least in terms of providing guidance to the BZA.  
14 1320.02(c), there's a couple of ones in the purpose.  
15 In (c) it would be the section between 7th and 12th,  
16 a neighborhood-serving retail shopping district to put  
17 the focus on who the retail is supposed to be for  
18 which I think is a helpful suggestion. Okay?

19 COMMISSIONER: Okay.

20 CHAIRPERSON MITTEN: (d) says, "Establish  
21 design guidelines for new and rehabilitated buildings  
22 that are consistent with the historic character and  
23 scale of the overlay district," which just provides  
24 the context. Any problems about that?

25 COMMISSIONER: Good addition.

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1 CHAIRPERSON MITTEN: Okay. In the section  
2 on fast food, 1320.4, there was a proposal that we  
3 limit the amount of street frontage that can be used  
4 for fast food restaurants so that we would add a  
5 section 4. "This use shall occupy no more than 25  
6 percent of the linear street frontage within the HS  
7 overlay as measured along the lots that face  
8 designated roadways."

9 This is kind of the issue that we have  
10 with the eating and drinking establishments in the  
11 neighborhood commercial overlays which is measuring if  
12 people have valid certificates of occupancy but the  
13 store is vacant so how do you count it and all of  
14 that.

15 I understand the desire to limit the  
16 number of fast food restaurants, believe me, but at  
17 the moment it's problematic because I don't think  
18 we've struck on the right way to measure these things  
19 yet. We could go back and amend that at some point  
20 after we sort out the mechanism in the neighborhood  
21 commercial overlays. What do you guys think?

22 MR. BERGSTEIN: Can I point out one  
23 difference? In the neighborhood commercial overlay  
24 the 25 percent changes it from matter of right to  
25 special exception. This would change it from special

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1 exception to basically something that would require a  
2 use variance because this is part of the special  
3 exception provision.

4 CHAIRPERSON MITTEN: Okay. Good point.  
5 What we could do is add -- could we add something that  
6 sort of made the BZA be somewhat conscious of the  
7 number of fast food establishments and whether it was  
8 reaching a saturation point or something like that?

9 MR. BERGSTEIN: I guess you could use the  
10 phrase "adversely affect the character of the  
11 neighborhood."

12 CHAIRPERSON MITTEN: >From an over-  
13 concentration?

14 MR. BERGSTEIN: Within a block or within  
15 the overlay subarea. I just wanted to know what would  
16 be the area the BZA would look to to determine the  
17 over-saturation.

18 CHAIRPERSON MITTEN: I guess I would say  
19 within the District.

20 MR. BERGSTEIN: I understand the proposal.  
21 You can decide what you want to do with it now.

22 CHAIRPERSON MITTEN: Okay. What do you  
23 guys think about that, that we would give the BZA some  
24 guidance that they should address whether or not  
25 there's an over-concentration of fast food restaurants

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1 that would change the character or change the  
2 objectives of the overlay?

3 MR. PARSONS: Well, unless you got  
4 specific what value is that? I mean, it gets into the  
5 argument you just cited. What is the tipping point,  
6 four in a block, three in a block, two in a block?

7 CHAIRPERSON MITTEN: I guess it at least  
8 gives the BZA the discretion if they felt -- right now  
9 as long as you meet these requirements and meet other  
10 special exception criteria that are more general, then  
11 they couldn't deny it if there was a perception of  
12 over concentration. Yet, if the community came in and  
13 made those arguments, unless they --

14 MR. PARSONS: I understand but I think you  
15 should look at the rest of these. You got to be 25  
16 feet from here. You got to have a 12-inch thick wall.  
17 You've got to be six-feet high. Then you've got to  
18 make sure it's in keeping with the neighborhood or not  
19 resulting in a concentration. You almost have to say  
20 not more than 25 percent of the retail on a given  
21 block or area will --

22 CHAIRPERSON MITTEN: And leave it to the  
23 BZA to figure out how to measure it?

24 MR. PARSONS: Yeah. I mean, is it cruel  
25 punishment?

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1 CHAIRPERSON MITTEN: No, it's fine. Okay.  
2 Then are you comfortable with this language that I had  
3 read earlier? "This use shall occupy no more than 25  
4 percent of the linear street frontage within the HS  
5 overlay district as measured along the lots that face  
6 designated roadways." Someone will have to do the  
7 measurement presented to the BZA. There will be a  
8 debate about what is the accurate way to measure it  
9 and then the BZA can decide.

10 MR. PARSONS: That's where I would go.

11 CHAIRPERSON MITTEN: Okay. I'm cool.

12 MR. PARSONS: It's not a general  
13 subjective statement.

14 CHAIRPERSON MITTEN: Okay. There was a  
15 proposal to amend 1325.1.2 to say -- this is, again,  
16 the special exception criteria and the proposed  
17 language would read, "Provide for -- this is No. 2 --  
18 "Provide for safe and efficient pedestrian movement by  
19 locating and designing vehicular access and egress so  
20 as to minimize conflict with principle pedestrian ways  
21 and so on which I kind of like because it puts the  
22 focus where it should be which is we're trying to  
23 encourage pedestrian movement. Okay? That was it for  
24 that one. We dealt with Harris Teater. I think  
25 that's all I have. Anybody else have anything?

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1 Oh, I did have one more. Sorry. 1325.2.  
2 I think we asked about this at the hearing, Mr.  
3 Parker, and I don't remember what was said. 1325.2 at  
4 the end says, "Consistent with the design intent of  
5 the design requirements of Section 1324 and the design  
6 guidelines of the H Street NE Strategic Development  
7 Plan." Now, how are we going -- every time there's a  
8 case are we going to say, "And here is the H Street NE  
9 Strategic Development Plan," or what?

10 MR. PARKER: I suppose it would be the  
11 responsibility of the Office of Planning to examine  
12 the development plan when there are special exceptions  
13 before the Board and incorporate that in our report as  
14 to whether anything in that plan is applicable.

15 CHAIRPERSON MITTEN: Do you think -- I  
16 mean, was -- you can tell me whether or not the intent  
17 of 1324 was to capture the design guidelines. I mean,  
18 what else is there that wasn't captured in 1324?

19 MS. McCARTHY: There is a very large group  
20 of additional guidelines that talk about material uses  
21 and things that we are uncomfortable codifying but  
22 that gave clear direction as to the character that was  
23 intended to be achieved through the plan. We saw  
24 ourselves using it similar to the way we use the  
25 comprehensive plan when the PUD comes forward but we

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1 go through and we reference the design sections and  
2 talk about how it's furthering this, that, or the  
3 other. The plan is available on the Office of  
4 Planning's website. It's a published document so we  
5 don't see it being difficult to get access to.

6 CHAIRPERSON MITTEN: Okay. Here's just  
7 the one thing. Using the comprehensive plan as a  
8 reference point, I don't know what's in the design  
9 guidelines but sometimes it's hard to -- sometimes  
10 there's different competing things and what not so we  
11 say consistent so is there going to be -- it's the  
12 reason that we say not inconsistent with the  
13 comprehensive plan.

14 Sometimes you can't reconcile everything  
15 and I can't anticipate what the discussion would be  
16 about but I could anticipate that someone would say,  
17 "See this provision right here? This is not  
18 consistent so you can't go forward or how could you  
19 draw this conclusion?" I just wonder how we can just  
20 soften that a little bit.

21 MS. McCARTHY: Maybe we could say  
22 generally not inconsistent which is often times a  
23 conclusion we use with the comp. plan sections when  
24 we're balancing the overall objectives and goals for  
25 the comp. plan with the project.

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1 CHAIRPERSON MITTEN: I would like to say,  
2 "Consistent with the design intent of the design  
3 requirements and generally (something) with the design  
4 guidelines of the H Street NE Strategic Development  
5 Plan." Compatible with? What do you think about  
6 that?

7 MS. MCCARTHY: Yeah, compatible.

8 CHAIRPERSON MITTEN: Okay. That's it.  
9 Anyone else? Okay. Then with all of those many  
10 changes that I think are clear in the record but  
11 perhaps are not clear to us all at the moment, for  
12 which we had consensus, I would move approval of Case  
13 No. 04-27.

14 MR. PARSONS: Second.

15 CHAIRPERSON MITTEN: Okay. Any further  
16 discussion? All those in favor please say aye.

17 ALL: Aye.

18 CHAIRPERSON MITTEN: Mrs. Schellin, we  
19 have none opposed and Mr. Jeffries is not  
20 participating.

21 MS. SCHELLIN: The staff would record the  
22 vote as four to zero to one to approve Case No. 04-27  
23 as modified for proposed action, Commissioner Mitten  
24 moving, Commission Parsons seconding, Commissioners  
25 Hildebrand, Hood in favor. Commissioner Jeffries not

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1 having participated and not voting.

2 CHAIRPERSON MITTEN: Thank you.

3 Okay. The next is Case No. 05-01. This  
4 is our adult day care text amendment case. Anything  
5 we need to know before we move forward, Mrs. Schellin?

6 MS. SCHELLIN: No, ma'am.

7 CHAIRPERSON MITTEN: Okay. We have a  
8 supplemental report from the Office of Planning that  
9 was very helpful and I did have a question for -- Ms.  
10 Thomas, are you on this case? Is this yours?

11 MS. THOMAS: Yes.

12 CHAIRPERSON MITTEN: Okay. The  
13 recommendation was to include three new definitions,  
14 adult day treatment facility, mental disorder, and  
15 mental retardation. Is that right?

16 MS. THOMAS: That's correct.

17 CHAIRPERSON MITTEN: Okay. What I didn't  
18 quite understand is in the definition of adult day  
19 treatment facility the term "developmental disability"  
20 is used and "mental retardation" is not used but we  
21 don't define developmental disability but we do define  
22 mental retardation which I'm not quite sure why.

23 MS. THOMAS: Okay. You're saying  
24 developmental or physical disability.

25 CHAIRPERSON MITTEN: Say again? I'm

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1       sorry.

2                   MS. THOMAS: I'm just trying to -- are you  
3 saying that we should --

4                   MR. BERGSTEIN: That may have been me. I  
5 assisted the Office of Planning with drafting this and  
6 the original definition they used from the regulation  
7 included a reference to mental retardation and, you're  
8 right, it's not in the definition that was ultimately  
9 drafted. I'm trying to think back as to why that  
10 reference was there. But you're right, the term isn't  
11 used in the definition but the term "developmental  
12 disability" is and that probably should be defined.

13                   CHAIRPERSON MITTEN: Okay. Can we just  
14 sort of switch up a little bit and say the three  
15 definitions that are being proposed would be adult day  
16 treatment facility, mental disorder, both on page 3 of  
17 the supplemental report, and then on page 2 we would  
18 then have developmental disability as the third  
19 definition as defined on page 2.

20                   MS. THOMAS: Okay.

21                   CHAIRPERSON MITTEN: That's the first  
22 thing. The second thing is I would like to know in  
23 making the current proposals for what would be --  
24 there are certain zones that are being excluded now  
25 from these adult development centers being permitted

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1 and those are basically the R zones and the C-1. My  
2 concern is that -- these facilities need not be large.  
3 I mean, they may be. They have to be at least six  
4 people but they don't need to be 100 people.

5 By excluding them -- and I'm not  
6 advocating, I'm just asking if you considered this.  
7 By excluding them from the residential zones, even  
8 some of the high density residential zones, you are  
9 kind of forcing them into higher density zones.

10 I think typically they are probably a  
11 stand-alone facility although maybe not and it just  
12 strikes me that you are forcing them into zones where  
13 it might be harder for them to locate because they  
14 can't be a stand-alone facility because the densities  
15 are too high. And then to try and locate in a  
16 structure that is an office building or something like  
17 that, I don't know if you gave some thought to that.

18 MS. THOMAS: Some of them are in office  
19 buildings or medical buildings. I did look at that.  
20 That's why when you look at a C of O they listed them  
21 as office space.

22 CHAIRPERSON MITTEN: Okay. So that  
23 doesn't strike you as being problematic?

24 MS. THOMAS: No. I don't think it's  
25 problematic.

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1 CHAIRPERSON MITTEN: Okay.

2 MS. THOMAS: Most of them, as I said, were  
3 within the C-2A zones. They could have gone into R  
4 zones but the majority were C-2A zones.

5 CHAIRPERSON MITTEN: Okay. Thanks.  
6 That's helpful.

7 MR. PARSONS: I would concur they don't  
8 belong in residential zones having been sitting on the  
9 Board for this one case. It's in C-2A at the moment.  
10 I think this is a very creative solution to a hearing  
11 that came to a pretty poor conclusion. We gave no  
12 guidance of any kind and I think you have come up with  
13 the right answer so I appreciate it as the guy who  
14 started this mess.

15 CHAIRPERSON MITTEN: No, it was -- even  
16 though you might be characterizing it that way, it was  
17 a very worthwhile subject to take up. I mean, these  
18 are things that often get overlooked and we have to  
19 address them.

20 MR. HOOD: Maybe I'm missing something and  
21 I want to make sure I understand. I looked at the  
22 table on top of whatever page this is. Anyway, the  
23 table on page 5. Thank you. I think what I heard  
24 from the commissioners at the hearing was the issue of  
25 notice. I don't think we still are accomplishing that

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1 because in some districts it is a matter of right  
2 which does not serve anybody any notice. Are we  
3 really accomplishing what we heard from the community?  
4 I don't think we are. We may be accomplishing --

5 MR. PARSONS: It's not permitted in  
6 residential zones.

7 MR. HOOD: Right, but some areas, some  
8 wards in the city, CM-1, and I don't know what the  
9 Zoning Commissioners were thinking about back then,  
10 but right across the street to a residential area.  
11 You figure R-5 so basically they are still affected  
12 and I think it should be some type of input or way to  
13 have input, especially for those particular areas and  
14 I don't know if we are accomplishment that here by  
15 making it a matter of right because you have some CM-  
16 1s right across from an R-5. While it may not be  
17 permitted in an R-5, but right across the street it is  
18 permitted. We're talking within 50 feet or so.

19 CHAIRPERSON MITTEN: What's the perceived  
20 negative impact?

21 MR. HOOD: The perceived negative impact?

22 CHAIRPERSON MITTEN: Yeah. You're saying  
23 you want the people to have some input presumably  
24 because there's potential negative impact.

25 MR. HOOD: Well, you know, again, I know

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1 we have these definitions of adult treatment  
2 facilities and I don't want to go to that whole CDRF  
3 issue but sometime when we talk about counseling, for  
4 what?

5 CHAIRPERSON MITTEN: I think that's kind  
6 of the beauty of the definition that we have. Let's  
7 see. If you read the definition of adult day  
8 treatment facility and then you talk about either the  
9 developmental disability, which you can read what that  
10 includes, and adults with mental disorders.

11 Okay. Then you look at mental disorders  
12 and I think, just to be frank about it, I think what  
13 people are not welcoming of is people who are in drug  
14 counseling or former drug users which is specifically  
15 excluded from mental disorder. I think these other  
16 folks are highly supervised.

17 MR. HOOD: So do you think -- I want to  
18 make sure. Do you think that definition is tight  
19 enough so someone can't come in and argue? I'm not  
20 trying -- everybody needs help. I'm just making sure  
21 that the community gets noticed. That's my issue. We  
22 need to co-exist. Everybody needs to fit in the city.

23 What I heard loud and clear from those  
24 commissioners was that proper notice in mental  
25 disorders. Someone may come down and argue that this

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1 person or group of people may have a mental disorder  
2 and be allowed somewhere as a matter of right and be  
3 treated for other things which are some of the  
4 concerns that we heard, as you mentioned drug  
5 treatment.

6 While I think we are moving in the right  
7 direction, I just would like for us to try to find a  
8 way. Unfortunately, I don't have the answer tonight  
9 but the final way where we can get some notice.

10 MR. PARSONS: I thought in here it says,  
11 "Other than past or current drug use or addiction."

12 MR. HOOD: Where are you reading from,  
13 sir?

14 MR. PARSONS: What a mental disorder is on  
15 page 3. You can't come in and say, "Well, the Zoning  
16 Commission really didn't mean that." It's pretty  
17 clear to me.

18 MR. JEFFRIES: Wait. Vice Chair Hood, I  
19 just want to make certain I'm clear about what your  
20 concern is. You're saying that because you can have  
21 a CM district that is right across from a residential  
22 district, if someone could construct an adult day  
23 treatment facility there, it still has impact on those  
24 people who live right across the street and they  
25 should be given -- because that would then what is

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1 being proposed is a matter of right and they would not  
2 have any say as to that development?

3 MR. HOOD: Not just say but not even  
4 notice. You would be able to set up shop at night and  
5 be perfectly within the guidelines. That's just my  
6 point. They do exist, R-5, CM-1.

7 MR. JEFFRIES: I know of a place right on  
8 13th Street actually.

9 MR. HOOD: I think we're moving in the  
10 direction but I just remember this hearing. Not  
11 because all the Ward 5 commissioners came down but I  
12 just remember the hearing because that actually is  
13 part of the problem and I'm seeing that you're  
14 recognizing that in Ward 1 so I'm hoping the Chair  
15 will come up with a solution.

16 CHAIRPERSON MITTEN: You're on your own on  
17 this one, Mr. Hood. You know, unless we are going to  
18 identify adverse impacts that, you know, if you give  
19 them -- if you allow -- the only way people get  
20 noticed is if there is going to be a proceeding so the  
21 only way to do it is that it would be by special  
22 exception. Then we are going to have to identify  
23 adverse impacts that the BZA is going to have the  
24 control for. That's why I was asking you what are  
25 those adverse impacts.

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1 MR. HOOD: Again, let me just say this,  
2 but there is another -- I understand what Mr. Parsons  
3 is saying how clear it is here but we also thought it  
4 was clear on another case. We talked about temporary  
5 correctional facility. We thought that was clear but  
6 it wasn't. Then that turned out to be a full-blown,  
7 I guess, case that lasted a year and a half or so.

8 I don't even know if it went away yet but,  
9 still, that's why I'm looking at this definition. I  
10 understand it says other past or current drug use or  
11 addiction. I understand that, but somebody will come  
12 down and argue and it's just, you know, I'm concerned  
13 about the notice issue.

14 CHAIRPERSON MITTEN: How about this? Is  
15 it drug use? Is it drug counseling and stuff that  
16 you're specifically concerned about or is it something  
17 else?

18 MR. HOOD: No, it's basically that. The  
19 thrust of it is notice. That's what I'm looking at.  
20 I'm trying to figure out how to give notice.

21 CHAIRPERSON MITTEN: Here's the thing.  
22 Notice isn't worth anything if you don't have a forum  
23 to raise an issue.

24 MR. HOOD: Right. So as a matter of right  
25 in the CM-1 zone, like I said, this mental disorder,

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1 other than past or current drug use, mental health  
2 services and therapeutic, I mean, that's so broad.  
3 it's very broad even though it says other than past or  
4 current drug use. When you read on in the definition,  
5 it talks about intensive full range or mental health  
6 services and therapeutic instruction in the  
7 environment. I mean, that's open ended.

8 CHAIRPERSON MITTEN: That's just one --  
9 that's addressing a mental disorder which is one of  
10 the reasons why the person could be in the adult day  
11 treatment facility. Then you go up into the adult day  
12 treatment facility definition and you look at the kind  
13 of stuff they are going to be doing there, counseling,  
14 education, training, health, social services.

15 MR. HOOD: Social services. Social  
16 services.

17 CHAIRPERSON MITTEN: If you would like to,  
18 we could say specifically excluding drug counseling or  
19 addiction counseling or something like that. We could  
20 reinforce it yet again there.

21 MR. HOOD: I don't know. So I guess Mr.  
22 Parsons is saying it's already reinforced. We just  
23 use mental disorder. It's already reinforced there.  
24 Anyway we can make this a special exception? Again,  
25 it creates a forum where we can deal with those

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1 adverse impacts. If you talk about social services,  
2 social services encompasses a whole lot.

3 CHAIRPERSON MITTEN: Okay. If we made it  
4 a generic special exception and we didn't have any  
5 kind of -- we didn't give any specific guidance to the  
6 BZA, then the only thing they would be evaluating is  
7 whether the special exceptions would be in harmony  
8 with the general purpose and intent of the zoning  
9 regulations and will not tend to affect adversely the  
10 use of neighboring property.

11 MR. HOOD: And those are the things that  
12 we'll look at.

13 CHAIRPERSON MITTEN: But what you're going  
14 to have is you are going to have people going, "I  
15 don't want those kind of people on my block."

16 MR. HOOD: You have that now.

17 CHAIRPERSON MITTEN: But typically we  
18 would say that the adverse impact is a result of  
19 traffic or exterior use of the property, too many  
20 individuals on the property. I mean, on the one hand,  
21 I don't see how they could deny it and, on the other  
22 hand, you are inviting a lot of consternation.

23 MR. HOOD: You're not going to invite a  
24 whole lot, Madam Chair, because, as we noticed  
25 previously, those CM-1 zones in which I'm basically

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1 referring are all in one portion of the city so we're  
2 not going to have a whole lot. We're just going to  
3 have a certain group of people from a certain ward or  
4 two wards that are going to come down and have a  
5 problem. Some people will be exempt from that problem  
6 from the onset.

7 CHAIRPERSON MITTEN: Okay. Let's see.  
8 I'm just trying to move this along now. Mr. Hood  
9 would have us carve out CM-1 and have it be a special  
10 exception in CM-1. Is that right?

11 MR. HOOD: Not just CM-1. Okay, it's not  
12 permitted in C-1. C-2 through C-5 I would like to see  
13 a special exception. CM -- well, I wouldn't even  
14 recommend it be a matter of right in the M zone. I  
15 mean, what kind of zone are we doing as was stated  
16 earlier. They are people, too, and we are putting  
17 them right next to undesirables. M is the most highly  
18 -- anything basically can go into M I believe except  
19 for residential. Am I correct?

20 CHAIRPERSON MITTEN: There are some uses  
21 that are specifically prohibited like an asphalt  
22 plant.

23 MR. HOOD: Yeah. We've got to strike a  
24 balance here. I would like to see a special exception  
25 in the C-2 to C-5 and also CM. I don't even know why

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1 M is even on here but since it is, a special exception  
2 in those two areas also.

3 CHAIRPERSON MITTEN: And then a matter of  
4 right in water front except W-0 and W-1?

5 MR. HOOD: You probably won't see that  
6 there. You know what? We should make it all a matter  
7 of right -- I'm sorry, a special exception. That's  
8 what's wrong now. We should make it all a special  
9 exception.

10 CHAIRPERSON MITTEN: Okay. I want to --

11 MR. PARSONS: Can we vote on this?

12 CHAIRPERSON MITTEN: Yeah, I'm trying to  
13 get there.

14 MR. PARSONS: Just this.

15 CHAIRPERSON MITTEN: Yes. Okay. So we're  
16 voting on Table No. 1. We are just voting on Table  
17 No. 1, page 5, about where these uses are going to be  
18 permitted. Mr. Hood, your motion would be that rather  
19 than have matter of right in the right-hand column,  
20 wherever it says matter of right it should say special  
21 exception.

22 MR. HOOD: Yeah, wherever it says matter  
23 of right it should say special exception.

24 CHAIRPERSON MITTEN: Okay.

25 MR. HOOD: So moved.

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1 CHAIRPERSON MITTEN: Okay. Is there a  
2 second for Mr. Hood's motion?

3 MR. HOOD: Well, it's not the first time  
4 I didn't get a second.

5 CHAIRPERSON MITTEN: Okay. Me either so  
6 I feel for you.

7 MR. PARSONS: We've all been there.

8 MR. HOOD: I've been there more than once.

9 CHAIRPERSON MITTEN: Now, we're back to  
10 the recommendation from the Office of Planning which  
11 includes basically Table 1 in the right-hand column.  
12 It includes the definition changes on page 7 to what  
13 will now be the child and elderly development center;  
14 the inclusion of adult day treatment facility; the  
15 definition of adult day treatment facility; the  
16 inclusion of developmental -- actually, this  
17 definition that's on page 7 is different. Oh, no.  
18 Well, somewhat different, developmental or physical  
19 disability.

20 So we'll have a definition of  
21 developmental disability and we'll have a definition  
22 of mental disorder, amend section 205.3, insert adult  
23 day treatment facilities into various chapters as  
24 shown in letter (c), page 7, have a new subsection in  
25 CR zone 601.2(d), amend chapter 7, 701.2, and add to

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1 this schedule of parking requirements adult day  
2 treatment facilities.

3 MR. PARSONS: Second.

4 CHAIRPERSON MITTEN: Okay. Any further  
5 discussion?

6 MR. HOOD: Can I give you a friendly  
7 amendment, Madam Chair?

8 CHAIRPERSON MITTEN: I'll consider it.

9 MR. HOOD: Can we also just look at just  
10 one zoned district, or two, CM-1 and M, that we make  
11 that a special exception?

12 CHAIRPERSON MITTEN: I don't want to make  
13 you walk the plank, Mr. Hood, but --

14 MR. PARSONS: I won't accept that as a  
15 friendly amendment.

16 CHAIRPERSON MITTEN: I won't accept it.  
17 Sorry.

18 MR. HOOD: How about Commissioner  
19 Hildebrand?

20 MR. HILDEBRAND: I actually would have  
21 supported that amendment.

22 CHAIRPERSON MITTEN: Okay. Mr. Hood moved  
23 the amendment.

24 MR. HILDEBRAND: Second.

25 MR. HOOD: I asked you to add that to --

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1 CHAIRPERSON MITTEN: You asked me to  
2 accept it as a friendly amendment and I declined. I  
3 asked you to --

4 MR. HOOD: But you had a motion. A motion  
5 within a motion?

6 CHAIRPERSON MITTEN: You are moving to  
7 amend the motion so now that becomes what we vote on.  
8 You made a motion, Mr. Hildebrand seconded the motion  
9 to amend the motion.

10 MR. HOOD: Amend special exceptions.

11 CHAIRPERSON MITTEN: Okay. So now we are  
12 going to -- tell me what it is again. I was too busy  
13 ignoring you.

14 MR. HOOD: I move that we amend. I move  
15 that we amend the zoned district CM-1 and M as being  
16 a special exception as opposed to a matter of right.  
17 That district only -- those two districts, CM-1 and M.

18 CHAIRPERSON MITTEN: I just want to be  
19 clear. We do have CM-2 and CM-3 so do you want the CM  
20 zones and the M zones?

21 MR. HOOD: Yeah, let's do 1, 2, and 3.

22 CHAIRPERSON MITTEN: Okay, only for  
23 special exceptions. Mr. Hildebrand, you seconded that  
24 motion.

25 MR. HILDEBRAND: Yes.

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1 CHAIRPERSON MITTEN: This is on the  
2 amendment.

3 MR. HILDEBRAND: On the amendment.

4 CHAIRPERSON MITTEN: Is there discussion  
5 on the amendment which would have a carve out as a  
6 special exception for CM-1, 2, 3, and M?

7 MR. JEFFRIES: CM-1, 2, 3, and M. That's  
8 what we're talking about as the amendment.

9 CHAIRPERSON MITTEN: Right.

10 MR. JEFFRIES: Okay.

11 CHAIRPERSON MITTEN: So now we're voting  
12 on the amendment only. All those in favor please say  
13 aye.

14 COMMISSIONERS: Aye.

15 CHAIRPERSON MITTEN: Those opposed please  
16 say no. No.

17 Mrs. Schellin.

18 MS. SCHELLIN: The staff would record the  
19 vote as three to two to zero to amend adding the CM  
20 and M districts as special exception, Commissioner  
21 Hood moving, Commission Hildebrand seconding,  
22 Commissioner Jeffries in favor, and Commissioners  
23 Mitten and Parsons opposed.

24 CHAIRPERSON MITTEN: Okay. So now what's  
25 before us is an amended motion which includes the

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1 special exception. Everything is the same except the  
2 Table 1 on page 5 has a special exception for the  
3 industrial zones. Okay? Any further discussion. All  
4 those in favor please say aye.

5 ALL: Aye.

6 CHAIRPERSON MITTEN: I believe we have  
7 none opposed this time, Mrs. Schellin.

8 MS. SCHELLIN: The staff will record the  
9 vote five to zero to zero to approve Case No. 05-01 as  
10 discussed, Commissioner Mitten moving, Commissioner  
11 Parsons seconding, Commissioners Hildebrand and Hood  
12 and Jeffries in favor.

13 CHAIRPERSON MITTEN: Okay. Thanks. You  
14 guys want to keep going or do you want a little break?

15 MR. PARSONS: No, let's go. Let's get out  
16 of here.

17 MR. HOOD: Let's go home.

18 CHAIRPERSON MITTEN: Next is Case No. 04-  
19 37. This is A&R Development, Eastgate Senior  
20 Residences.

21 Mrs. Schellin, do we have everything we  
22 need?

23 MS. SCHELLIN: Yes, you do.

24 CHAIRPERSON MITTEN: Okay. I'm sure  
25 everyone remembers this one. I'll just remind you

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1 that basically in this planned unit development it  
2 would be exclusively senior housing for low-income  
3 people that the property in question would be rezoned  
4 from R-5A to R-5B and the only other relief being  
5 requested is that the loading birth not be 55 feet  
6 deep but 33 feet deep.

7 What is being offered is, as I said, low  
8 income housing for elderly residents. There is quite  
9 a bit of open space around the property, around the  
10 building that is receiving some special landscaping  
11 treatment. There are a number of services that are  
12 being provided on site so that the seniors don't have  
13 to travel.

14 A first source agreement and MOU with the  
15 Minority Business Opportunity Commission has been  
16 proffered and that is kind of a summary of that  
17 proposal. We have received some supplemental filings  
18 from the applicant as well.

19 MR. HOOD: I'll make a motion. I make a  
20 motion that we approve Zoning Commission Case No. 04-  
21 37, A --

22 CHAIRPERSON MITTEN: Second.

23 MR. HOOD: Okay, A&R Development Eastgate  
24 Senior Residences.

25 CHAIRPERSON MITTEN: Second. Any

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1 discussion?

2 MR. HILDEBRAND: Madam Chair, I do have a  
3 couple of things.

4 CHAIRPERSON MITTEN: Okay.

5 MR. HILDEBRAND: I noted some  
6 discrepancies between the revised elevations that were  
7 proffered in this submission and the material sample  
8 board --

9 CHAIRPERSON MITTEN: Oh, yes.

10 MR. HILDEBRAND: -- that was identified.  
11 Of particular concern is that some elements of precast  
12 concrete that are noted to terminate the brick portion  
13 of the wall as it transitions into the vinyl have been  
14 called out on the proposed sample board as EIFS, the  
15 stuccoed styrofoam treatment. I don't believe that is  
16 comparable quality of material to what was shown on  
17 the elevations. I would like to get some  
18 clarification from the applicant about what actually  
19 is being proposed.

20 MR. PARSONS: I don't think we need  
21 clarification here. This styrofoam is not going to  
22 cut it.

23 MR. HILDEBRAND: I agree. I don't think  
24 it's appropriate.

25 MR. PARSONS: They said cast stone. Let's

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1 do that.

2 MR. HILDEBRAND: The drawing I'm looking  
3 at at the moment is A-2.1 and on the left-hand side  
4 you'll see there's a band that is identified as G.

5 CHAIRPERSON MITTEN: Yes.

6 MR. HILDEBRAND: If you look at the  
7 precast concrete cap, I think that is an appropriate  
8 termination of material as that transition.

9 CHAIRPERSON MITTEN: I just have to  
10 congratulate you on a very careful reading of these  
11 plans that you would catch that.

12 MR. PARSONS: I'm really impressed.

13 CHAIRPERSON MITTEN: Yes. I'm in awe of  
14 you.

15 MR. HILDEBRAND: It's just that I got  
16 these new glasses.

17 MR. JEFFRIES: Carol, you're equally that  
18 way on the voting regs.

19 CHAIRPERSON MITTEN: I'm going to find  
20 that front yard thing, too, by the way.

21 MR. JEFFRIES: It takes me all night.  
22 Commissioner Hildebrand, the styrofoam, where again is  
23 that?

24 MR. HILDEBRAND: That's actually on a  
25 separate sheet. It's under Tab D.

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1 MR. JEFFRIES: And they are saying it's  
2 precast concrete

3 MR. HILDEBRAND: On the drawings.

4 CHAIRPERSON MITTEN: Open up Tab D.B

5 MR. HILDEBRAND: There are numerous little  
6 inconsistencies. This sample material also calls for  
7 all of the siding to be vinyl siding. If you look at  
8 the same drawing there's a material designation that  
9 is cementitious horizontal siding. I'm assuming it's  
10 something like hardy plank. I guess my question is  
11 are they at a point of consistency that we can give  
12 this to the Zoning Administrative and say, "This is  
13 what you can build."

14 CHAIRPERSON MITTEN: I guess the only  
15 other alternative would be to have them submit a  
16 sample board with the materials that are depicted on  
17 A2.1 and I guess we need to decide if we want to hold  
18 off until we get it.

19 MR. HILDEBRAND: I would be willing to  
20 move forward as long as there was an understanding  
21 that the EIFS needs to be the precast concrete.

22 MR. JEFFRIES: I don't want to slow this  
23 down for these issues.

24 MS. SCHELLIN: I'm sorry. The applicant  
25 is indicating that they are in agreement to that.

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1 CHAIRPERSON MITTEN: Okay. So we'll just  
2 call out in the order that the material is shown on  
3 A2.1 will govern not the materials on the sample  
4 board.

5 MR. HILDEBRAND: That would be fine.

6 MR. PARSONS: I'm not clear. Is it just  
7 the EIFS are we objecting to vinyl as well?

8 CHAIRPERSON MITTEN: I don't think it's a  
9 wholesale objection. Is it?

10 MR. HILDEBRAND: No.

11 MR. PARSONS: It's just we want the EIFS  
12 replaced with precast.

13 MR. HILDEBRAND: Exactly.

14 CHAIRPERSON MITTEN: So we are --

15 MR. JEFFRIES: Also the siding. I thought  
16 we were going to --

17 CHAIRPERSON MITTEN: What about the  
18 cementitious horizontal siding?

19 MR. HILDEBRAND: For consistency sake I  
20 would use the vinyl throughout and not make a change.

21 CHAIRPERSON MITTEN: Okay. So it's just  
22 the precast concrete cap shown on 2.1. Okay. Thank  
23 you for that clarification.

24 Any further discussion? All those in  
25 favor please say aye.

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1 ALL: Aye.

2 CHAIRPERSON MITTEN: Mrs. Schellin, none  
3 opposed.

4 MS. SCHELLIN: Staff will record the vote  
5 five to zero to zero to approve the proposed action  
6 as discussed in Case No. 04-37, Commissioner Hood  
7 moving, Commissioner Mitten seconding, Commissioners  
8 Hildebrand, Jeffries, and Parsons in favor.

9 CHAIRPERSON MITTEN: Thank you. Now, the  
10 next three cases Mr. Hood will be chairing because I  
11 didn't participate in 04-24 and the other two I'm not  
12 participating for other reasons.

13 Mr. Hood, you have the floor.

14 MR. HOOD: Thank you, Madam Chair. We  
15 have a Zoning Commission Case. No. 04-24 which is the  
16 Mid-City Urban LLC, et al., Rhode Island Avenue PUD.

17 Ms. Schellin.

18 MS. SCHELLIN: The commissioners have been  
19 provided with all additional filings in the record.

20 MR. HOOD: Commissioners, I'll stop at the  
21 onset. I'm not ready to move forward on this. The  
22 concern that I have, which I know has been touched on  
23 in the final submittals about the parking garage which  
24 I disagree. While I know it's not part of the PUD,  
25 I'm talking about the Metro parking garage, there's

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1 still an impact that is going to happen on that site  
2 when you're going from 300 and some odd spaces down to  
3 200.

4 I think that is a concern and it was not  
5 addressed. Also the traffic pattern we have some  
6 views. I don't know if you call them metric study  
7 views or whatever you call them. I'm not sure,  
8 Commissioner Jeffries, but I think you may have asked  
9 for it.

10 MR. JEFFRIES: Yes, I did.

11 MR. HOOD: But I know that from my  
12 perspective it still did not answer my question about  
13 the traffic pattern. It looks like there is one lane  
14 in and one lane out and that's the circle of motion  
15 around the site, the retail site which is being  
16 proposed. Let me open it up and hear what any of my  
17 colleagues have to say.

18 MR. PARSONS: You want to postpone this  
19 until you get a diagram on circulation? I do recall  
20 you asking for that.

21 MR. HOOD: Yeah, I had asked for it. Also  
22 I still have concern. My thought was to ask for at  
23 least two lanes as opposed to one. I don't know if  
24 it's doable but at least look into it. I don't see  
25 where it's even been addressed.

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1 MR. PARSONS: Their argument was, and I'm  
2 not saying I bought it, that the 200 cars coming in  
3 and out on an hourly basis wouldn't be enough to worry  
4 about but, you're right, they didn't do anything to  
5 assist in that. It was just the testimony of the  
6 expert.

7 MR. HOOD: Right. There's nothing here  
8 for me.

9 MR. PARSONS: Compared it to her parking  
10 garage, as I remember it, where she goes to work every  
11 day.

12 MR. HOOD: Exactly.

13 MR. PARSONS: Not that that's not good  
14 testimony but that was the limit of it.

15 MR. HOOD: Right. Also it gives -- I  
16 think we're talking about development around the Metro  
17 stations and I think this is more of what we are going  
18 to see to come. I think this also gives us a chance  
19 to have a full commission. There's just four of us  
20 participating and this may give our Chair a chance to  
21 weigh in. I would like to hear some of her views  
22 also.

23 MR. PARSONS: This is a reading assignment  
24 as well.

25 MR. HOOD: Yes.

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1 CHAIRPERSON MITTEN: You're so good to me.

2 MR. HOOD: She's being punished now.  
3 Unless you guys are ready to proceed tonight. Other  
4 than that, if we proceed tonight, I'll be voting  
5 against it because obviously the applicant didn't take  
6 me serious enough to provide what I asked for. Let me  
7 open it up. I'll hear some more comments. I think we  
8 can do this in a special meeting.

9 CHAIRPERSON MITTEN: I think we have the  
10 capacity to have a special meeting later this month.

11 MR. HOOD: Right. I think we have two  
12 more meetings this month.

13 MS. SCHELLIN: We do have a special public  
14 meeting scheduled for the 25th but we have only  
15 allowed 30 minutes and I think it's a pretty full  
16 agenda already. The other option would be we have a  
17 second night scheduled for the inclusionary zoning of  
18 the 28th if that would be a possibility to add both  
19 04-27, the additional hearing that you wanted to  
20 consider, and also this case, 04-24 for the 28th at  
21 6:00.

22 MR. HOOD: Okay. If we have a concurrence  
23 on that, Mr. Hildebrand and Jeffries and Parsons.

24 MR. JEFFRIES: Vice Chair, I just want to  
25 try to get some level. I mean, sometimes we have

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1 applicants who don't answer our question but perhaps  
2 the Commission is able to answer its own question.  
3 I'm wondering if there is the possibility that we  
4 might be able to talk about this just a little bit.

5 I am concerned about our schedule the rest  
6 of the month. I do find this to be a terribly  
7 difficult site in which to configure. I mean, there  
8 are so many different encumbrances on it I'm a little  
9 sympathetic as to what they are trying to accomplish.  
10 I have in the past asked for things that people have  
11 not responded to but, I mean, if you are just not  
12 convinced that there's not much of anything that they  
13 can do to sort of address your concern --

14 MR. HOOD: I guess, Mr. Jeffries, to help  
15 you along where I am, we're talking about going from  
16 300 -- I forget the exact number -- 300 and some odd  
17 parking spaces for Metro and we're going down to 200  
18 so someone needs to be able to explain to me where the  
19 rest of those cars are going. That was one thing.

20 Also the circulation if you remember, and  
21 I think Mr. Parsons probably recollects a lot better  
22 than I did, but the way they are going from one lane  
23 in there and one lane out. It's just like a circle.  
24 I think having frequented that site and utilized it,  
25 I don't think that's going to work.

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1           MR. JEFFRIES: So as it relates to the  
2 drop in parking, I mean, you are going to go from 300  
3 to 200 and your question is what's going to happen.  
4 Obviously there are going to be a number of people who  
5 will be deterred from driving there. I mean, they  
6 will have to find other modes of transportation.

7           I mean, you know, again we got into that  
8 whole discussion about what does it mean to have a  
9 transfer of development and do we even bother with a  
10 transfer of development if we are really going to  
11 pretty much tell the public that it's still fine to  
12 continue driving, driving, driving into the District  
13 and to transfer of developments.

14           I don't think they did a very good job and  
15 I think you're right to be a little concerned that  
16 they have not addressed it. I'm not certain what  
17 their response will be that will give you some level  
18 of comfort. I guess my concern is that you might be  
19 voting against this in two weeks or a month or  
20 whatever. Unless I'm missing something, I just don't  
21 know how they are going to fix this for you.

22           MR. HOOD: Obviously they didn't either  
23 because they didn't provide anything. You must  
24 know --

25           MR. JEFFRIES: No, I don't know.

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1 MR. HOOD: I mean, maybe there's something  
2 I'm missing here. Maybe you see something in the  
3 record that I don't see.

4 MR. JEFFRIES: Well, in order to sort of  
5 pick up all the parking spaces that you're concerned  
6 about, if they are going to look at some off-site  
7 locations, I mean, perhaps they could have put that  
8 forward.

9 MR. HOOD: I think they did and that's  
10 just it. That's another thing now that you bring it  
11 up. They talk about some kind of way of working out  
12 where the residential and the retail parking lot and  
13 accommodating that. If you remember the testimony,  
14 she did mention that.

15 MR. JEFFRIES: Yeah.

16 MR. HOOD: What we have right here now,  
17 it's not there. Then you're talking about this whole  
18 transfer of development I agree with you, but there  
19 are some Metro stations that require something  
20 different. This is not Tenleytown. This is a little  
21 different. Most people who come to Rhode Island  
22 Avenue drive and they come from Maryland.

23 My concern is -- I'm not going into this  
24 jurisdiction thing. My concern is the residents who  
25 you would like to see walk and those who live just far

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1 enough to drive we are cutting down spaces.

2 What's going to wind up happening is  
3 people are going to overflow if there is nothing set  
4 up for that residential -- I mean, for that retail and  
5 that residential parking garage in which she says she  
6 will provide, then it's going to be an overflow in the  
7 community and that's my concern. We are going from  
8 300 and some odd, more than 300, down to 200.

9 MR. JEFFRIES: And what my hope is is that  
10 this development will start to deter people from  
11 driving. Some people, you're right, will drive and  
12 they will reek havoc on the surrounding neighborhood  
13 but, you know, my hope, and I think we really need to  
14 stay focused and this is something we can continue to  
15 talk about but it's my hope that these kind of  
16 developments do deter a certain percentage of people  
17 from driving in and perhaps using buses and things of  
18 that sort to get here rather than driving when they  
19 realize it will put additional minutes on their  
20 morning commute.

21 I hear what you're saying. I'm just,  
22 again, concerned that this might not ever really be  
23 the plan for you, particularly given your personal  
24 experience around here, but I don't know. Commissioner  
25 Hildebrand?

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1                   MR. HOOD: You say it's not the plan for  
2 me. I don't vote on plans for me. I vote on plans  
3 for the best interest of the city and I don't think  
4 that she provided me anything, at least from what I  
5 asked, and especially looking at the retail and the  
6 residential component, the garage, and how they are  
7 going to work that out.

8                   I think if I had something like that in  
9 the record but I don't think the record is complete.  
10 If I had that in the record, then I would feel  
11 confident. Naturally I would like to see that type of  
12 development right there but there are two burning  
13 issues and those were the two. It's not in the  
14 record. It's not complete as far as I'm concerned.

15                  MR. JEFFRIES: Okay.

16                  MR. HOOD: Anyone else?

17                  MR. HILDEBRAND: Actually, I would like to  
18 have a chance to see the record again for the last  
19 site plan. My understanding was that there was a by-  
20 pass lane so that you could actually go in two  
21 directions on the road that loops to the parking  
22 garage, that you didn't have to go through the retail  
23 main street --

24                  MR. JEFFRIES: The main street, right.

25                  MR. HILDEBRAND: -- in order to do the

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1 Kiss and Ride or to get to the parking garage. If I'm  
2 misremembering that, then I would like to see it again  
3 on the record because the street is wide enough that  
4 it could have perhaps two lanes or it could be two  
5 lanes out.

6 I'm missing that one piece in my own  
7 recollection. I can certainly see that there would be  
8 a conflict if everyone who is going to the Kiss and  
9 Ride and you are anxious to drop someone off at the  
10 Metro, you could be going down that commercial strip  
11 with a fair amount of anxiety and not be as careful as  
12 you would need to be in that kind of environment.

13 MR. HOOD: Right.

14 MR. HILDEBRAND: I would like to know for  
15 sure that you could circumvent that process if you had  
16 to.

17 MR. HOOD: So all that being said,  
18 Commissioners, hopefully we can postpone this until --  
19 I don't know if that's even going to give the  
20 applicant a chance --

21 MS. SCHELLIN: Actually, the applicant has  
22 indicated that they can file things. I had initially  
23 asked them if they could file it by the 21st but we  
24 really need to make that the 20th and they are  
25 indicating yes, they can provide it. We can just

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1 allow the ANC to respond up until the day of the  
2 special public meeting. We'll just make sure we get  
3 that to you if they file anything else. The meeting  
4 would be the 28th, the last hearing night that we  
5 have.

6 MR. HOOD: Are we pretty sure that we are  
7 going to have that second meeting on inclusionary  
8 zoning? Are we pretty sure about that?

9 MS. SCHELLIN: We've got almost 40 people  
10 already signed up to testify so I think we will.

11 MR. HOOD: Okay. Is everybody in  
12 agreement with that?

13 MR. PARSONS: Yes.

14 MR. HOOD: All right. So we'll postpone  
15 that, Mr. Schellin. I didn't actually know the  
16 applicant was in here. They obviously heard the  
17 concern. Also we'll ask that the Chair to redirect  
18 and I'll turn this over to her.

19 MS. SCHELLIN: Yes. We'll provide her  
20 with a copy of the transcript.

21 MR. HOOD: Okay. Thank you. Let's move  
22 right along with our agenda. Zoning Commission Case  
23 No. 05-08, the Capitol Gateway Overlay - Text  
24 Amendment. Ms. Schellin.

25 MS. SCHELLIN: Again, the Commission

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1 members have been provided with all documents and we  
2 ask that proposed action be taken.

3 MR. HOOD: Okay. We had a few changes in  
4 the proposed -- in what was advertised. I go through  
5 it a little differently than our Chair. I'm going to  
6 go right through it unless you guys want to stop me.

7 I'm looking in the back of the Office of  
8 Planning report dated June 30, 2005, which is where  
9 the changes were and what was advertised I'm looking  
10 in, I believe, March 4, 2005. We can cross-reference  
11 from there as soon as I find it, 1600 and now we went  
12 from 1600.2.

13 The purpose of the Capitol Gateway Overlay  
14 District are to provide for development of square 702  
15 through 706. I'm not going to read through each and  
16 every one of these. I'm just going down where the  
17 changes were unless you have something other than --  
18 something you want to look back on or revisit.

19 A1606.5 was amended to clarify the height  
20 calculation. I believe this was probably done in red  
21 at one time but it's the lighter color. That's on  
22 page 106. If you have your --

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1 MR. PARSONS: I think that's an excellent  
2 solution to this. Thank you, Mr. Lawson.

3 MR. HOOD: He's smiling. If you look in  
4 the Office of Planning's report 1606.5 we'll see if  
5 you have comments. Okay. I'll just go right on  
6 through and I'm just going where the changes were  
7 unless somebody has something else.

8 MR. HILDEBRAND: I may want to come back  
9 and revisit that one in just a moment. I'm looking  
10 for a particular reference. Please go forward.

11 MR. HOOD: Okay. Page 2 of 6, 1606.14,  
12 there was a wording clarification only. I don't think  
13 we need to revisit that. It was just a clarification.  
14 Some of this is renumbered so I'm looking to see what  
15 it was the last time.

16 1606.14 where there was just a word  
17 clarification "in accordance with the FAR and  
18 provision." Stop me anytime because I'm going to move  
19 right through this. Three of 6, another minor wording  
20 correction to what was proposed. Let me back up to  
21 1606.15.

22 MR. PARSONS: Here the Office of Planning  
23 has reduced the relief to 50 percent but disagrees  
24 with us.

25 MR. HOOD: What did we say? Yeah, they

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1 reduced it to 50 percent and, "To limit the amount of  
2 relief permitted by the Commission. OP does not  
3 recommend the 50 percent provision."

4 MR. JEFFRIES: Can you, Mr. Lawson,  
5 refresh me on this item?

6 MR. LAWSON: I'll try. The purpose of  
7 this item is to essentially require a certain amount  
8 of retail to be provided on the site and that would be  
9 20 percent of the perimeter of the entire building.  
10 There was some discussion at the last meeting that --  
11 oh, sorry.

12 That's the purpose of the previous  
13 provision. This provision is to provide for Zoning  
14 Commission relief from that requirement if it's  
15 necessary to consider such relief. That relief would  
16 be considered against the guidelines that we would be  
17 establishing for the baseball area.

18 There was some discussion at the last  
19 meeting that maybe there should be a cap on the amount  
20 of relief that would be possible through this  
21 provision. As it was originally proposed 20 percent  
22 would be required and any change from that amount  
23 would require review through the special exception  
24 process.

25 The cap of 50 percent would mean that

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1 there would be a minimum of 10 percent of the  
2 perimeter of the building required to be retail. Any  
3 amount in excess of that I presume would require a  
4 variance as opposed to a special exception process.

5 OP doesn't feel this is necessary simply  
6 because even a reduction of 1 percent of what requires  
7 review against the guidelines and would require the  
8 applicant to show that there is good reason for  
9 approving that diminishment of the retail requirement.  
10 That's why we aren't recommending that this change go  
11 forward. Thank you.

12 MR. HOOD: I guess the question is do we  
13 feel strong enough to keep it at what we had and I  
14 think it was, what, 60 percent?

15 MR. LAWSON: Fifty percent, I believe.

16 MR. PARSONS: Which is 10 percent of the  
17 perimeter of the building. You see, the way it was  
18 written previously, if I was designing the stadium, I  
19 would say, well, we don't have to worry about that.  
20 We'll have relief granted. All we have to do is write  
21 them a letter and say it's necessary for the economic  
22 vitality of the ballpark. They will need to do  
23 retail.

24 MR. LAWSON: Actually, I would differ with  
25 that slightly --

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1 MR. PARSONS: Please.

2 MR. LAWSON: -- just in that it is  
3 necessary for the economic viability but if consistent  
4 with the purposes of the overlay and the provisions of  
5 the guidelines we are putting forward. So if they  
6 can't show that it's consistent with the guidelines  
7 which relate to streetscape character and neighborhood  
8 character and issues such as that which from OP's  
9 standpoint is our primary consideration, then the  
10 relief, at least, shouldn't be granted.

11 MR. JEFFRIES: I actually concur with  
12 Office of Planning on this. I'm sorry but I must have  
13 been asleep at the switch last time but, I mean, if  
14 the intent is to just make certain that there is a  
15 focus on as much retail as possible without somehow  
16 impacting upon the ballpark -- that's what it's called  
17 now. Is it called ballpark?

18 MR. PARSONS: Yes.

19 MR. JEFFRIES: I wouldn't want to put a  
20 cap on that level of relief.

21 MR. HILDEBRAND: I think one of the intent  
22 is to ensure that we have an active, vibrant  
23 streetscape when the ballpark isn't functioning as a  
24 ballpark.

25 MR. JEFFRIES: Right.

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1 MR. HILDEBRAND: We're not playing  
2 baseball all year long.

3 MR. JEFFRIES: Right.

4 MR. HILDEBRAND: And we want to make sure  
5 that we don't have an entire block deadzone with no  
6 vibrant activity. If you granted 100 percent relief  
7 on your retail requirement, you would have nothing.

8 MR. JEFFRIES: But they are still going to  
9 have to come through. I mean, they are still going to  
10 have to @@ if they are looking for any level of  
11 relief, I mean, they are still going to have to come  
12 through a special exception. Correct?

13 MR. HOOD: Well, yeah.

14 MR. PARSONS: I'm most concerned with  
15 South Capitol Street and if we could somehow say it's  
16 going to be mandatory on South Capitol Street, I would  
17 agree with you all but I don't think there should be  
18 an option here or any relief to have this section of  
19 South Capitol Street be unretailed or even give  
20 somebody the thought that they could even come in here  
21 and ask. We can't have this two@block stretch of  
22 South Capitol Street dead. We just can't. That's  
23 where I'm coming from, not the other three sides.

24 MR. JEFFRIES: But, first of all, we don't  
25 quite know the design of this stadium. Well, we don't

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1 know the design of the stadium but they are still  
2 going to have to come through in any event. I mean,  
3 from what I understand. I mean, if someone is coming  
4 through with a design that has no level of detail, I  
5 mean, we still have --

6 MR. PARSONS: The right to say okay and we  
7 shouldn't. We shouldn't give ourselves that kind of  
8 flexibility.

9 MR. HOOD: Okay. Mr. Parsons says we  
10 should not allow that type of relief. What do you  
11 say, Mr. Hildebrand? I agree with you, Mr. Jeffries  
12 and Office of Planning.

13 MR. HILDEBRAND: Actually I would agree  
14 with Mr. Parsons. I believe that the importance of  
15 retail can't be underestimated in this area. We are  
16 developing the Anacostia waterfront initiative. We  
17 are going to be inviting people down into this part of  
18 the city and to have a vibrant environment around the  
19 ballpark is important.

20 MR. JEFFRIES: Okay. Then there is some  
21 missing link here. I certainly do not want it  
22 recorded that I am in favor of less retail. I am a  
23 strong proponent of retail. It's just from what my  
24 understanding of what the Office of Planning has  
25 proposed is that it allows for greater flexibility.

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1           Let's take a look at what comes through.  
2           I don't get a sense -- I just don't want it recorded  
3           that we are saying that we are giving sort of a  
4           greenlight for developers to not put any level of  
5           retail, particularly on South Capitol, I would agree  
6           with you. I just don't see the need to put this cap  
7           on here.

8           MR. HOOD: Okay. Let's do this. It looks  
9           like we're split on it. Because of the hour can we  
10          come back to that? Let's move through the ones that  
11          may be a little easier. I think somebody may give.

12          MR. PARSONS: No.

13          MR. HILDEBRAND: Can I make one that is  
14          going to be harder?

15          MR. HOOD: I was just trying to keep it in  
16          the order in which it's laid out here.

17          MR. HILDEBRAND: When we come back to it,  
18          I want to come back to the height issue then.

19          MR. HOOD: You want to go back to --

20          MR. HILDEBRAND: After you finish yours.

21          MR. HOOD: I'm just going to where we made  
22          the changes other than what was advertised. 1606.17,  
23          minor word correction. "No private driveway may be  
24          constructed or used from South Capitol Street to any  
25          parking or loading areas in adjacent to any building

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1 or structure constructed after the effective date of  
2 this section." That was a minor word correction. Any  
3 problems with that?

4 Moving right on, 1606.19, just a word  
5 clarification. Do we see where that is? Do I need to  
6 read it? Okay. I won't.

7 MR. JEFFRIES: 1606.19?

8 MR. HOOD: 19, right. Let's go to page 4  
9 of 6. Again, under 1606.19 we're looking at H. It  
10 has been changed to H, minor word change for  
11 clarification, "Reviews and analysis which  
12 assesses..." Then it continues to read 1606.19(i).

13 Move to 1606.20, reworded for clarity.  
14 "Signage of the exterior building are internal to the  
15 ballpark structure but visible from the outside  
16 including the scoreboard shall not have such intensity  
17 or brilliance as to cause glare or impair the vision  
18 of any driver or otherwise interfere with the driver's  
19 operation of a motor vehicle..."

20 I'll continue to read on, "...adversely  
21 impact on owner's enjoyment of residential property  
22 located in proximity to the ballpark or impact the  
23 character or integrity of the ballpark site." Then we  
24 come down to 1606.20, "Help achieve the objectives of  
25 the Capitol Gateway Overlay District as set forth in

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1 1600.2." That's moved from 1606.19. We have a  
2 deletion. "Address views from ballpark towards the  
3 Anacostia River and the Capitol dome. Consider  
4 deleting." Are we all right so far?

5 MR. HILDEBRAND: I'm not concerned about  
6 how the patrons of the ballpark view the Capitol dome.  
7 I'm more concerned about the impact of the overall  
8 stadium on the skyline.

9 MR. PARSONS: I would be curious, though.  
10 I agree with you but where did the concept of consider  
11 deleting this come from, Mr. Lawson?

12 MR. LAWSON: The concept of deleting it  
13 came certainly from many, many comments we received  
14 from the neighborhood. They were very concerned that  
15 in designing -- they continue, I think, to be very  
16 concerned that the design of the ballpark will be  
17 centered more on the experience of the baseball fan  
18 than on the impact of the stadium to the neighborhood.  
19 They are concerned that a guideline such as this would  
20 be used to superimpose itself @@ would superimpose  
21 itself over other guidelines. That certainly wasn't  
22 the intent.

23 MR. PARSONS: I remember now.

24 MR. LAWSON: We tried to address that  
25 through a number of means but I agree that is not the

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1 principal purpose of this particular text amendment  
2 and I'm quite sure that the designers of the baseball  
3 stadium will do their own analysis of what the views  
4 from the stadium will be.

5 MR. BERGSTEIN: Mr. Parsons, I also had  
6 legal concerns over that text.

7 MR. PARSONS: Okay. Fine. Thank you.

8 MR. HOOD: Okay. Next I'm on page @@ did  
9 I skip over anything? No. I'm on page 5 of 6,  
10 1606.19 dealing with the sign utilization. That's  
11 been moved to 1606.19. We've been through that. Now  
12 1606.24. This is a new section to allow the  
13 opportunity for the Zoning Commission preliminary  
14 comments prior to the hearing.

15 I think when a design is permitted, it  
16 will give us a chance if we have any concerns to weigh  
17 in prior to the hearing so the applicant will not come  
18 in and we give them the concerns and then they will  
19 come in and address them prior. I think that will be  
20 handled at that point in time.

21 MR. PARSONS: Well, I don't get this. I  
22 was talking about a two@step PUD and that obviously  
23 didn't go anywhere. Here as I grasp it, we get a look  
24 at it but the applicant doesn't get a chance to make  
25 a presentation. There's no public exchange, no public

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1 comment. It's kind of a sneak preview, almost a  
2 closed door situation where only we are commenting on  
3 a design. I don't get it. It doesn't even sound  
4 legal to me.

5 MR. HOOD: I think it's open to the  
6 public, Mr. Parsons. The way I perceive it is that  
7 it's open to the public. The design review team or  
8 whomever will come in and make a presentation. Not  
9 just to us but people being ordinances so when we get  
10 to that hearing process, then everyone will be  
11 educated on what is being proposed. I believe that's  
12 the way, Mr. Bergstein --

13 MR. BERGSTEIN: Actually, I did draft  
14 this, Mr. Parsons. The problem was at first this  
15 began with the notion of doing some sort of concept  
16 review. But then as I read the Administrative  
17 Procedures Act I became very uncomfortable with any  
18 sort of proceeding that wasn't on the record within  
19 this second stage proceeding that we're going to have,  
20 this design review proceeding.

21 Anything that was going to happen had to  
22 begin after the filing of the actual application.  
23 What I tried to do was to, in essence, because we  
24 really couldn't do a conceptual review @@ you can't  
25 have any preliminary determinations made before the

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1 record begins -- was to build in, in essence, a set-  
2 down hearing at your discretion.

3 This proceeding is not going to have a  
4 set@down hearing unless OP certifies that there is a  
5 discrepancy between the rulemaking and the plans that  
6 have been submitted. What I tried to do is what often  
7 happens in a set-down hearing which is without public  
8 participation and that is to afford the Commission  
9 opportunity if it sees something it doesn't like to be  
10 able to set the applicant straight before the hearing.

11 I think that is about as much as you can  
12 do within the confines of the contested case hearing.  
13 I can't see doing conceptual approval outside the  
14 record and this would be the earliest point that it  
15 could be done once the application is submitted. The  
16 only other option is to not do anything and your first  
17 response would be when the hearing begins.

18 MR. PARSONS: So the idea of a two@stage  
19 PUD, was that discussed with the staff at all? Would  
20 it be too time consuming?

21 MR. BERGSTEIN: In essence, this text  
22 amendment, if you think about it, is kind of the first  
23 stage of the PUD where you are setting the outer  
24 perimeters of bulk and FAR and height. What you're  
25 going to get in this application is really what I

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1 think you would expect to get in the second stage PUD  
2 where they take the parameters that you're  
3 sanctioning here and then coming up with a concrete  
4 design.

5 MR. PARSONS: You know, you're right. I  
6 hadn't thought about it that way. You're absolutely  
7 right. Okay.

8 MR. HOOD: You have a confidence level,  
9 Mr. Parsons?

10 MR. PARSONS: I do.

11 MR. HOOD: Okay.

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1 MR. PARSONS: I just never thought about  
2 it that way.

3 MR. HOOD: Anybody else? And 3011.1 is  
4 unchanged. Now, let's go back to that difficult one  
5 or the one prior to that. Mr. Hildebrand.

6 MR. HILDEBRAND: If I could just bring  
7 this up. In reading through the analysis by OP, I was  
8 struck by a discrepancy.

9 MR. HOOD: Let us know where you are.

10 MR. HILDEBRAND: I'm particularly now  
11 looking at the 1606.5 which is the ballpark's height.  
12 They are suggesting that the height of the stadium be  
13 allowed to go up to the height act limit of 130 feet.  
14 What I was struck by is earlier in their report where  
15 they are talking about comparable ballpark sites and  
16 bulk in specific, they say that the average height of  
17 a ballpark is 113 feet measured from the field, which  
18 is typically 20 feet below street level, to the top of  
19 the backrow of seats rather than the roof or canopy.

20 If you were to measure from that top row  
21 of seats down to the street level, the average stadium  
22 is 93 feet tall. If you had a 10-foot space between  
23 the seat and the canopy, you would still be at 103  
24 feet which is significantly below 130 feet.

25 Even the tallest stadium that they noted

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1 was, I believe, 131 feet from the top of the seat down  
2 to the ballpark floor which would have netted you  
3 about 110 feet of height from the street.

4 My point is I believe that an appropriate  
5 height for the stadium should be set at 110 feet which  
6 is the PUD height limit for nonresidential  
7 construction in this zone. It seems to fit within the  
8 bulk and massing of all of the stadiums that were  
9 identified by OP.

10 I do not see why we should jump  
11 immediately to 130 feet at this point. I think it  
12 would be prudent for the Commission to set 110 feet as  
13 the limit and then allow them some flexibility should  
14 they need to for documented need go higher.

15 MR. JEFFRIES: See, we clearly have a  
16 problem here because I just wholeheartedly disagree  
17 with that. Your comment on 1606.5 I actually tie it  
18 right to 1606.15. It's this whole notion of sort of  
19 handcuffing the design of the stadium before we even  
20 see it. I'm just very concerned about putting too  
21 many restrictions on top of a stadium that has not  
22 been fully designed yet. I would just --

23 MR. HILDEBRAND: Give me a moment to check  
24 the regulation.

25 MR. JEFFRIES: I understand but also the

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1 zoning regulations can also give a level of  
2 flexibility as it relates to how we are using land  
3 here and I'm just concerned. I don't have a problem  
4 with 130 feet and I don't think necessarily that the  
5 stadium will be 130 feet but I don't know that but I  
6 would like to see sort of what is put before us so  
7 that we can make some level of commentary at that  
8 point.

9 But I don't want to cut someone's knees  
10 off before I actually see what they have to present to  
11 us. That is the philosophical concern I have as it  
12 relates to putting too much specificity on the  
13 envelope in terms of what this baseball stadium looks  
14 like.

15 As it relates to retail, I am a strong  
16 proponent of retail like many of us on this Commission  
17 but we are trying to put a baseball stadium here and  
18 that really needs to lead the charge. Of course, the  
19 owners of the baseball stadium will want a successful  
20 baseball stadium and will want the amenities, whether  
21 it's retail or whatever, to make certain that they  
22 have a successful stadium.

23 They are not going to do something that  
24 will in some way harm the viability of the stadium.  
25 But I'm just very concerned about putting an overlay

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1 that effectively handcuffs a design for the stadium.

2 MR. HILDEBRAND: I'm not sure how you can  
3 categorize it as handcuffs, though, when OP has  
4 themselves documented that all of the successful  
5 stadiums which have been built are below that height  
6 limit.

7 MR. JEFFRIES: Well, I don't think the  
8 Office of Planning as at all documented the success of  
9 these stadiums. I mean, was there a statement from  
10 the Office of Planning about the success of these  
11 stadiums?

12 MR. LAWSON: I'm not sure of the question  
13 but we certainly weren't commenting on the success of  
14 the stadiums. Many of them are relatively new.

15 MR. JEFFRIES: They are just stadiums.

16 MR. LAWSON: They certainly do vary in  
17 height. We weren't able to get the height from any of  
18 the stadiums which is unfortunate and we can certainly  
19 work on getting additional information prior to you  
20 reviewing an actual design if you wish, but from our  
21 table they vary from 100 to 112 feet.

22 Then when you take into account how they  
23 do their measurements, my estimate, and it's only an  
24 estimate, is likely that that height would vary  
25 probably. The way we define height, the heights would

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1 be somewhat or slightly higher than that. There is  
2 some variety. For example, some of the stadiums that  
3 aren't on this list are considerably higher than this  
4 and other ones are probably lower than this. I just  
5 don't know.

6 MR. JEFFRIES: And from what I understand,  
7 your comparison here, you were not making any  
8 correlation between height of stadium and the  
9 viability of the stadium. I mean, we don't know @@ I  
10 mean, some of these owners could, in fact, want  
11 additional height. That information has not been  
12 presented here.

13 MR. HILDEBRAND: My only point is that the  
14 underlying zoning for nonresidential under a PUD is  
15 110 feet and I have not been persuaded that it  
16 warrants elevating it immediately to 130 feet without  
17 more substantial proof.

18 MR. JEFFRIES: I think that proof will  
19 come when they put a ballpark design in front of us.  
20 I personally just 110 -- I mean, actually, we can do  
21 130 in the District of Columbia. It's not as if this  
22 will be the only place in which there could be 130-  
23 foot edifice here. I really do think the stadium @@  
24 we should not just overlay sort of undue burden on the  
25 design of the stadium just yet.

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1 I think we really need to see sort of what  
2 happens. Unless I am missing something from the  
3 Office of Planning, we will have an opportunity to  
4 comment on the height of what we see. Just because we  
5 are allowing the possibility of 130 feet doesn't mean  
6 that we're going to sign off on 130 feet. Am I  
7 correct here?

8 MR. HOOD: You are absolutely correct.  
9 Let me cut it off at this point. Let me ask Mr.  
10 Parsons to weigh in. Did you want to weigh in on the  
11 height?

12 MR. PARSONS: I do. I do. Mr. Lawson,  
13 we've got 112, 118, 131, 93, 102, 100. Those are the  
14 only ones you were able to obtain. Do you think these  
15 included the score board, the roof over, all of the  
16 things that are contained in our definition?

17 MR. LAWSON: This is just a guess on my  
18 part because most of this analysis was provided to me  
19 by the Sports and Entertainment Commission so I'm not  
20 sure of the exact way that -- I believe they obtained  
21 this information from the ball teams themselves. My  
22 understanding is it was measured from the field to the  
23 top of the seat so if the sign extended above that  
24 amount, then that wouldn't be included in the height  
25 limit.

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1 MR. PARSONS: That's my suspicion. We're  
2 including things in our height limit that aren't  
3 included in my classic Philadelphia where the  
4 scoreboard is 300 feet high so you can see it from the  
5 interstate. I certainly know that the office  
6 buildings along South Capitol Street, for instance,  
7 are probably going to come in at 130 so I'm  
8 comfortable with 130 even though I know the lights are  
9 going to annoy me but maybe we can find some new way  
10 to light stadiums.

11 I'm with Mr. Jeffries on this even  
12 though I don't think it will reach that high. I mean,  
13 you're building to waste money if you are going over  
14 the heights of these structures but as long as we  
15 don't vary on the signage. I'm not reading it but you  
16 know.

17 MR. HOOD: I gotcha.

18 MR. PARSONS: The shelter and sunscreens  
19 and whatever you have there.

20 MR. HILDEBRAND: Does that include the  
21 light standards?

22 MR. PARSONS: No.

23 MR. HILDEBRAND: The light standards would  
24 be allowed to go above.

25 MR. PARSONS: Oh, yeah. Afraid so. They

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1           apparently have to.  However, they don't in South  
2           Louis.

3                         MR. HOOD:  Okay.  So let's move this on.  
4           I'm also in agreement with Mr. Jeffries and Mr.  
5           Hildebrand.

6                         MR. HILDEBRAND:  Darn.

7                         MR. HOOD:  I'm on the losing side tonight  
8           myself.

9                         MR. HILDEBRAND:  Well, that's okay.

10                        MR. HOOD:  Once or twice.

11                        MR. HILDEBRAND:  I had to tell you the way  
12           I felt.  That's the way I felt from reading the  
13           report.

14                        MR. HOOD:  Okay.  Do we need to go back or  
15           was that the one?

16                        PARTICIPANT:  The 50 percent.

17                        MR. HOOD:  Oh, yeah.  I knew there was  
18           something that was still hanging out there somewhere.  
19           Let's go back to 1606.15.

20                        MR. JEFFRIES:  To me, again, it's really  
21           the same argument.  I mean, it would be very different  
22           if this was our last bite of the apple and that we  
23           would not have any opportunity to weigh in.  But I  
24           really just would like to see what this ballpark looks  
25           like.

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1 I just really feel that really needs to  
2 take the lead. Again, everyone here is a proponent of  
3 retail. We want to see very active lively streets and  
4 activity and so forth. Obviously Office of Planning  
5 has always been a strong proponent of that. I just  
6 don't think it's going to be possible for this group  
7 to come in that will not somehow put forward a very  
8 lively, particularly South Capitol. Again, I just  
9 don't want to overburden with the guidelines at this  
10 point and that's just where I'm at.

11 MR. HOOD: Okay.

12 MR. PARSONS: I don't have a lot of  
13 experience with ballparks. Maybe you guys go to  
14 ballparks. I don't see what would motivate this  
15 stadium to provide on-grade retail as part of their  
16 economic package beyond what's in Baltimore, a team  
17 souvenir store, and come in and say, "That's all we  
18 can do."

19 It's the tradeoff for being on South  
20 Capitol Street for me. I would rather go the other  
21 way and say, "You must put the retail on South Capitol  
22 Street," and not give them relief at the get-go that  
23 they will waive it.

24 MR. JEFFRIES: Commissioner Parsons, what  
25 if in making that statement if we said to the owners,

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1 "You have to put retail along South Capitol," what  
2 impact perhaps could that have on the viability of the  
3 ballpark? Do we know that?

4 MR. PARSONS: No.

5 MR. JEFFRIES: I think we really -- I  
6 don't want to get into the business of pretending as  
7 if we really do understand. I just want to leave it  
8 open and let the proposal come before it and then we  
9 can really start to really address some of these  
10 issues and understand that perhaps we could only get  
11 50 percent, maybe a quarter, maybe 100 percent. I  
12 would like to see what they put in front of us. I  
13 mean, that's --

14 MR. HOOD: Mr. Lawson -- Mr. Parsons, did  
15 you want to respond back to that? I need  
16 clarification myself on this. What was proposed says  
17 -- where am I? "The Zoning Commission may grant  
18 relief from any or all of the requirements of 1606.13  
19 if necessary for economic viability of the ballpark if  
20 consistent with the..." On and on. What we have here  
21 now is the amended language that says, "The Zoning  
22 Commission may grant relief." It's not really holding  
23 us to it. It's just saying it's a possibility.

24 MR. LAWSON: Right. You would certainly  
25 not be required to grant this relief and, in fact, the

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1 opposite. They would have to prove that the relief  
2 would be, like I said, even if it's 1 percent they  
3 would have to prove the relief is warranted and in the  
4 best interest of the District to do so.

5 MR. HOOD: So we are giving them a little  
6 wiggle room. They might not need it but it's giving  
7 them some wiggle room.

8 MR. LAWSON: It's giving them the  
9 flexibility to prove to you that an alternative to the  
10 20 percent required is preferable from a District  
11 standpoint.

12 MR. HOOD: From my standpoint I would  
13 agree with what is here in front of us and give them  
14 that alternate view. Again, I don't design stadiums.  
15 Maybe you guys have designed a few in the past but  
16 I'll have to be honest --

17 MR. LAWSON: But we will have comments  
18 when we see one.

19 MR. HOOD: -- when I see something in  
20 front of me and sometimes it takes me a while to get  
21 onto that. I just feel uncomfortable. I would like  
22 to go with the subject matter experts, as I call them.  
23 They put together the comments from what they've heard  
24 from who I call the subject matter experts and move  
25 forward with the language I see in front of me.

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1 MR. HILDEBRAND: Clarify for me. Are you  
2 saying move forward with the language as amended by OP  
3 or the original language by OP?

4 MR. HOOD: Not the original but as amended  
5 because I think --

6 MR. HILDEBRAND: With the 50 percent  
7 maximum so that they cannot --

8 MR. HOOD: The Zoning Commission may grant  
9 relief to a maximum of 50 percent of the amount of  
10 space.

11 MR. JEFFRIES: But, Vice Chair, OP is not  
12 recommending what has been amended here. They are  
13 just really accommodating some of the concerns from  
14 the Zoning Commission from before.

15 MR. HOOD: Wait a minute. Maybe I don't  
16 understand. Where did this come from again? I  
17 thought it came from comments that you have heard out  
18 there. I know that you are not recommending the 50  
19 percent. I understand that. I'm saying where did  
20 this come from?

21 MR. LAWSON: This comment came more from  
22 the Zoning Commission itself. The Zoning Commission  
23 wished us to look at the provision of a maximum in  
24 terms of the amount of relief that could be required.

25 MR. HOOD: So we did it.

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1 MR. PARSONS: Yes.

2 MR. HOOD: Well, not we but --

3 MR. PARSONS: Some of us.

4 MR. HOOD: Some of us.

5 MR. PARSONS: There were comments that  
6 some of us don't like it.

7 MR. JEFFRIES: For example, I asked the  
8 question --

9 MR. HOOD: I don't remember doing this.

10 MR. JEFFRIES: Well, I mean, I asked the  
11 question about other ballparks and I think the Office  
12 of Planning did a wonderful job of sort of  
13 chronicalling all these ballparks and all this  
14 information I'm really very happy about. It's going  
15 to help a lot.

16 Again, I sort of missed this but, again,  
17 as I said --

18 MR. HOOD: So that takes me back because  
19 I thought this came from the subject matter experts.  
20 Mr. Jeffries, that's something you --

21 MR. JEFFRIES: Again, I tie it to -- I  
22 really do think that we should try not to put caps on  
23 what the envelope of the potential ballpark can be.  
24 I think we need to see a design of the ballpark and  
25 then let's carve from there but I don't want to start

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1 carving before we actually have a design.

2 MR. HOOD: I do remember piggy-backing on  
3 that, yeah. I would agree.

4 MR. PARSONS: Then we shouldn't pass this  
5 regulation. We shouldn't say anything about a 14-foot  
6 clear height. We shouldn't say anything about  
7 anything. We just ought to say bring it in and we'll  
8 know when we like it. I've been here too many times.  
9 The pressure on this Commission to approve this design  
10 will be incredible.

11 It will. I've been there. All of this  
12 effort has gone into this design. The first pitch by  
13 the President is already scheduled. How could you  
14 delay this for more information? I've been there.  
15 I've been there with the MCI Center. I've been there  
16 with the Convention Center.

17 It ain't pleasant and if we can send them  
18 a signal at the beginning that this is what -- that we  
19 are serious about this, they will do it and make it  
20 work. "We don't have to worry about that. We can get  
21 relief from that. Let's see how else we can save some  
22 money here."

23 MR. HOOD: So you're saying let's go with  
24 what was advertised, the original advertisement.

25 MR. PARSONS: No, I'll compromise to this

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1 one. I'm not going with what was originally  
2 advertised.

3 MR. HOOD: Maybe I'm --

4 MR. JEFFRIES: Vice Chair, I appreciate  
5 the comments of Commissioner Parsons and his  
6 experience. Those who are building these stadiums  
7 really do understand the kinds of things that are  
8 required to make certain that is a viable and  
9 successful stadium.

10 Obviously I would be more focused on the  
11 impact, a lot of the impact that the stadium will have  
12 on the surrounding community, as we would as a Zoning  
13 Commission but I'm not going to feel any level of  
14 pressure if I think that they have put forward a  
15 proposal that will be a successful ballpark. I'm not  
16 going to be just contarian.

17 I mean, if I really think that they have  
18 put forward a proposal that will work and make for a  
19 successful ballpark, that's fine. You're saying 14  
20 feet. I mean, quite frankly, to be honest with you,  
21 there's a few other areas here that I would like to  
22 scratch but I'm willing to let those go.

23 MR. BERGSTEIN: Can I maybe suggest a  
24 compromise way of looking at this? The normal  
25 standard for a special exception is preponderance of

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1 the evidence. It's in the state standard but that's  
2 what it is, 51 percent. You can have a higher  
3 standard which is clear and convincing evidence.

4 What I'm suggesting is, for example, that  
5 to the extent that relief is requested above 50  
6 percent, that has to be proved by clear and convincing  
7 evidence, not by preponderance of evidence. I don't  
8 know if that helps anybody on this but it's a much  
9 stronger signal than nothing and it would allow for  
10 greater than 50 percent relief but it would signal the  
11 degree of seriousness the Commission would view that  
12 relief.

13 They would have to prove it by clear and  
14 convincing evidence, not preponderance of evidence so  
15 that's one other way you might accomplish what you're  
16 trying to seek.

17 MR. HOOD: Mr. Bergstein, are you saying  
18 that we add that to the language?

19 MR. BERGSTEIN: What I'm saying is rather  
20 than saying that a maximum of 50 percent relief may be  
21 granted, that if more than 50 percent relief is  
22 sought, that they must prove the standard by clear and  
23 convincing evidence.

24 MR. HOOD: Okay.

25 MR. LAWSON: Commissioner Parsons, how do

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1 you feel about that?

2 MR. PARSONS: Here's the way the argument  
3 is going to go. I'm building a ballpark. "I'm the  
4 first one in the community. There's nobody who is  
5 going to come to my retail. I can't make it work. I  
6 don't want to build retail. Let the other guys who  
7 are coming in later build the retail. I can't make it  
8 work economically."

9 I would say to them, "You are going to  
10 build retail whether you can fill it or not on South  
11 Capitol Street as a holding action. At least build  
12 the space." If we have this in here, they're going to  
13 say, "Why did you pass this regulation if you're going  
14 to do that to me?" That's going to be the argument.

15 "I can't make retail work. Nobody lives  
16 here. Nobody will come except 80 days a year when I'm  
17 playing baseball." That's my fear. That's the  
18 problem with locating on South Capitol Street. I'm a  
19 pioneer and it's not going to work.

20 MR. JEFFRIES: But I have to tell you, and  
21 perhaps being a developer, I certainly don't want to  
22 have the Commission sort of dictating, you know, a  
23 programmatic situation.

24 Obviously at some level we can dictate but  
25 if the owners of the baseball stadium are saying,

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1 "Listen, to have retail along South Capitol, or to  
2 have 50 percent retail along South Capitol, is going  
3 to chew away at the stadium and will have some adverse  
4 impact on it," I don't want to be in the position to  
5 say, "I don't care. Build it anyway." I just think  
6 that's terribly punitive.

7 MR. HILDEBRAND: I don't think this is  
8 information that is coming from the developers. I  
9 think this is a clause that was inserted by the Office  
10 of Planning. Was there any statement from potential  
11 development teams that they needed some relief?

12 MR. LAWSON: They are still at the very  
13 early stages of design as far as I know so we've had  
14 no indication of whether or not any relief is even  
15 remotely contemplated. I believe they understand very  
16 clearly the importance of providing active animated  
17 streetscapes to the District.

18 I think we are all anticipating that will  
19 include retail as a heavy component of that. And, you  
20 know, I would say that I very much agree with the  
21 Commission's comments that a clear signal has to be  
22 sent to the applicant that that retail is an important  
23 part of the development program as we see it and that  
24 retail space is anticipated and that any relief from  
25 the required amount, you have to remember that the

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1 text amendment requires 20 percent.

2 MR. HOOD: Right.

3 MR. LAWSON: Which in a building this size  
4 is a fairly considerable amount. Any relief from that  
5 amount requires them to prove to you and prove to the  
6 community that relief is warranted. Again, whether  
7 that is 1 percent or 5 percent or 50 percent the  
8 standards would be the same regardless of whatever  
9 limit may be put in.

10 MR. HOOD: Okay. Where are we?

11 MR. PARSONS: Nowhere.

12 MR. HOOD: Do we have a consensus?

13 MR. PARSONS: No.

14 MR. HOOD: We have three people in the  
15 same direction? I'm with Commissioner Jeffries. I  
16 know Mr. Parsons isn't. Where are you?

17 MR. HILDEBRAND: I'm in line with Mr.  
18 Parsons at the moment.

19 MR. HOOD: At the moment. Okay. There  
20 are one of two options. We can sit here and try to  
21 negotiate among four of us or we can let time keep  
22 going until somebody gets tired.

23 MR. JEFFRIES: Ms. Steingasser, can you  
24 weigh in some in terms of OP's position here? Not  
25 that, Mr. Lawson, you didn't do an adequate job but I

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1 just want to make certain that we are all  
2 participating here.

3 MS. STEINGASSER: Thank you. I'm not sure  
4 what else I can add to the conversation. I think at  
5 a certain level I agree with all four of the  
6 commissioners and the concerns and positions that  
7 we're trying to achieve if retail is incredibly  
8 important to the 365 effect of the stadium not just  
9 the days of baseball. So if the -- we would not like  
10 to see it go down much below the 20 percent. I think  
11 it's the type of flexibility that the designer and the  
12 developer could work with if need be.

13 MR. HOOD: So you think that it is really  
14 the 50 percent. You think that even though you're not  
15 recommending it, it's workable.

16 MS. STEINGASSER: I think it could  
17 probably be workable, yes.

18 MR. JEFFRIES: Okay, Vice Chair, so given  
19 -- it still looks like we'll have another opportunity  
20 to take a look at this again being that it's a  
21 proposed action. You know, I can sign on  
22 begrudgingly, very begrudgingly, to what's been  
23 amended here.

24 MR. PARSONS: I'm not ready to compromise  
25 but I hate for some of you to be begrudgingly. Is

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1 there something we can do for a proposed and final  
2 action?

3 MS. STEINGASSER: I was just going to  
4 offer that up, that we could survey.

5 MR. PARSONS: My concern is South Capitol  
6 Street. It is. It's not this. It's inviting the  
7 argument that I can't make it work. "I talked to 16  
8 restauranters and they won't come. They may not come  
9 for five years and, therefore, I want relief." That's  
10 what I'm trying to do. If there's something we could  
11 do to craft to deal with South Capitol Street and deal  
12 with my concern, I would be willing to go the other  
13 way. I don't think we've resolved it to the way that  
14 we should.

15 MS. STEINGASSER: I agree. If the  
16 Commission moves forward with the 50 percent  
17 provision, that would be the most restrictive so  
18 between proposed and final we could survey some of the  
19 existing stadiums. The AWC is actually the principal  
20 planning arm for this particular area. We could work  
21 with them to make sure we have defined the roles of  
22 the different streets and come back with something and  
23 try to bridge this impasse a little bit. We could use  
24 that time and maybe --

25 MR. JEFFRIES: Okay. That's fine.

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1 MR. HOOD: So let me just put this out  
2 here. If the motion was to sound something like  
3 approve Zoning Commission Case No. 05-08 knowing that  
4 the Office of Planning would look at 1606.15 --

5 MR. PARSONS: We could accept without  
6 1606.15 and say we'll deal with it.

7 MR. HOOD: She said 50 percent was the  
8 most restrictive so it would still be there.

9 MR. PARSONS: Okay.

10 MR. HOOD: But the motion would include  
11 saying -- the motion would still include it knowing  
12 that before final we should see something else.

13 MR. JEFFRIES: We are going to revisit  
14 this before final.

15 MR. HOOD: That way we could get most of  
16 it approved except the one that we're stuck on.

17 MR. JEFFRIES: Right. We'll get a little  
18 smarter. That's fine.

19 MR. HOOD: Is that motion agreeable? Is  
20 that motion agreeable with everybody if I was to make  
21 that motion?

22 MR. PARSONS: I think you did and I'll  
23 second it.

24 MR. JEFFRIES: Yeah.

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

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1 seconded. Before I call for the vote, discussion. I  
2 just wanted to comment on the -- the other thing that  
3 we received from the Southwest Neighborhood Assembly.  
4 This basically talked about from my standpoint, and my  
5 colleagues can chime in if they want to, public-funded  
6 baseball stadium.

7 I don't think that's in our purview. I  
8 think we are dealing with land use and a lot of stuff  
9 that was in this should basically be addressed in  
10 another form. Anyone else have any comments on the  
11 Southwest Neighborhood Assemblies?

12 MR. JEFFRIES: What they said is outside  
13 our jurisdiction.

14 MR. HOOD: Right. Okay. I wanted to make  
15 sure that was for the record. Okay. It's been moved  
16 and has been seconded by Mr. Parsons. Right?

17 MR. PARSONS: Yes.

18 MR. HOOD: Moved and seconded. All those  
19 in favor?

20 ALL: Aye.

21 MR. HOOD: Any opposition? Staff will  
22 record the vote.

23 MS. SCHELLIN: Staff will record the vote  
24 four to zero to one to approve Zoning Commission Case  
25 No. 05-08 as discussed on the dias, Commissioner Hood

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1 moving, Commissioner Parsons seconding, Commissioners  
2 Hildebrand and Jeffries in favor, Commissioner Mitten  
3 not having participated, not voting.

4 MR. HOOD: Okay. The next Zoning  
5 Commission case is 03-09, Government Use in Historic  
6 Buildings. It's new 222. Ms. Schellin.

7 MS. SCHELLIN: Staff has nothing further  
8 to add.

9 MR. HOOD: We have proposed text amendment  
10 to Section 222. Let me ask this, Ms. Steingasser.  
11 Has this been -- this was advertised, right?

12 MS. STEINGASSER: For hearing? For  
13 proposed action?

14 MR. HOOD: Right.

15 MS. STEINGASSER: No. There's been no  
16 proposed action yet. The hearing was held and closed.

17 MR. HOOD: But, I mean, we're basically --  
18 this has really changed from what we had early on?

19 MS. STEINGASSER: It's the Section 217  
20 text but it's been rescoped as a new section focusing  
21 only on Government uses.

22 MR. HOOD: Government use only.

23 MS. STEINGASSER: There was so much  
24 concern at the public hearing and by the Commission  
25 when they considered proposed action initially about

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1 the original Section 217 separate from the context of  
2 the hearing that we decided to refocus it.

3 MR. HOOD: Mr. Bergstein, can we move  
4 forward?

5 MR. BERGSTEIN: Yes. Ms. Steingasser  
6 conferred with me before going forward with this  
7 proposal and I'm very comfortable that this is within  
8 the scope of the hearing.

9 MR. HOOD: Okay. Thank you.

10 MR. PARSONS: I move approval of this.

11 MR. HOOD: Second. Any discussion?

12 MR. HILDEBRAND: Mr. Chair, I don't  
13 believe I can participate in this case. I don't  
14 believe I heard the initial, nor have I read the  
15 transcript or file.

16 MR. HOOD: Did you hear it, Mr. Jeffries?

17 MR. JEFFRIES: No.

18 MR. HOOD: Did you hear it, Ms. Mitten?  
19 Oh, she's not here.

20 MR. PARSONS: Here we go.

21 MR. JEFFRIES: So we have to go back and  
22 read this.

23 MR. HOOD: Okay. Let's put this on --

24 MR. PARSONS: I withdraw my motion.

25 MR. HOOD: Nobody heard it. Both

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1 Commissioner Jeffries and Commissioner Hildebrand will  
2 have to read the record and hopefully we can do this  
3 sooner than later.

4 Okay. What I'm going to do since I have  
5 the chair right now, I'm going to move to the final  
6 action before we go to the clear height if the Chair  
7 doesn't mind. Zoning Commission Case No. 04-29. That  
8 is the Fire Emergency Medical Services Text Amendment.

9 Mrs. Schellin.

10 MS. SCHELLIN: Staff has nothing further.

11 MR. HOOD: I will tell you that I just  
12 wanted to comment. I'm ready to move approval but I  
13 wanted to comment also on ANC-3/4G. They wrote to us,  
14 "At our regularly scheduled public meeting Zoning  
15 Commission reconsidered the proposed text amendment  
16 allowing fire stations as a matter of right within  
17 zoned districts.

18 It is our opinion that fire stations  
19 should be allowed in R-1, R-2, and R-3 districts only  
20 if there is no other reasonable alternative to this  
21 location and not as a matter of right." I do not  
22 concur with that at all. I don't know if anybody else  
23 does but I think --

24 MR. PARSONS: I don't either but it's  
25 something that we couldn't possibly put in the

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1 regulations. How could somebody prove that there is  
2 no other reasonable alternative?

3 MR. HOOD: When I looked at it, Mr.  
4 Parsons, I said I would like for the fire -- if  
5 something was burning around me, I would like for the  
6 station to be as close as possible. That's the way I  
7 was looking at it. Maybe we need to elaborate a  
8 little more but with that I'll move approval. Unless  
9 there are any other comments I would move approval of  
10 Z.C. Case No. 04-29 and ask for a second.

11 MR. PARSONS: Second.

12 MR. HOOD: It's been moved and properly  
13 seconded. All those in favor?

14 ALL: Aye.

15 MR. HOOD: Any opposition? So ordered.  
16 Staff, will you record the vote.

17 MS. SCHELLIN: Staff will record the vote  
18 four to zero to one to approve final action in Case  
19 No. 04-29, Commissioner Hood moving, Commissioner  
20 Parsons seconding, Commissioners Hildebrand and  
21 Jeffries in favor, and Commissioner Mitten not voting  
22 having recused herself.

23 MR. HOOD: Okay. She may be coming back  
24 but, if not, let's just rearrange this right quick.  
25 Zoning Commission Case 04-16, Takoma neighborhood

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1 Commercial Overlay. We have in front of us the final  
2 order. I will say that also we have some submittals  
3 of some support letters.

4 At least most of the ones that I looked at  
5 were support letters. I think they were asking 50  
6 feet in height. Let me pull one up right quick.  
7 Okay, 50-foot limit for new buildings and proposed  
8 commercial overlay and -- what is it? -- 15-foot  
9 setback. I think we were proposing 55 feet in height  
10 and 15-foot setback. No, they were saying -- I'm  
11 sorry, it's getting late, 50 feet in height and 13  
12 feet setback. We were saying what was proposed was 55  
13 feet and 15 feet setback. Anybody have any issues  
14 with that?

15 MS. SCHELLIN: No, I think that is  
16 actually incorrect. I think they were proposing 50  
17 feet with a 15-foot setback, if I remember correctly,  
18 and then what was actually, I think, suggested was 55  
19 with 12 maybe. He may be able to clarify that.

20 MR. HOOD: Either 13 or 15. Let me look,  
21 13 feet. I want to make sure I have this right and  
22 anybody who is willing to help me that can find it  
23 quicker than I can. I'm actually looking in the order  
24 for it to make sure. "Establish a front yard setback  
25 of 13 feet on properties along..." These letters are

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1 actually not in support then.

2 MR. PARSONS: That's been the argument  
3 through the whole hearing, is 50-feet high the right  
4 height for this place or is it 55? You will recall  
5 the reason we are talking about 55 is because we are  
6 imposing the 14-foot ceiling height for retail and no  
7 other reason. I mean, no other reason that I  
8 remember. That's it, right?

9 MR. HOOD: Yeah.

10 MR. PARSONS: The only way to compromise,  
11 and I'm not proposing we do, is to drop the retail  
12 down to 10 feet or nine feet. Our studies have  
13 indicated that's not the way to be going in retail  
14 today, especially if you are going to try to lure  
15 restaurants we've come to learn. I just can't -- I  
16 haven't been able to understand through the whole  
17 proceeding why this five feet is so critical.

18 MR. HOOD: Right.

19 MR. PARSONS: If we were talking 75 versus  
20 50 or even 65, I would understand the argument a  
21 little better but it's just not there for me.

22 MR. JEFFRIES: The setbacks, too.

23 MR. HOOD: I would agree. We're talking  
24 about five feet. When I saw this I thought it was  
25 support in reading this at a glance. Okay. Anyway,

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1 this is final action on this proposal. We looked  
2 through this and we scrutinized it so obviously we are  
3 going to stick with what we have proposed. I would  
4 entertain a motion if somebody is ready to proceed.  
5 Any other discussion?

6 MR. PARSONS: I would move approval of the  
7 order as written dated 6/3/05.

8 MR. JEFFRIES: Second.

9 MR. HOOD: Okay. It's dated 6/3/05?

10 MR. PARSONS: My says OAG draft 6/3/05.

11 MR. HOOD: Oh, gotcha. Okay. It's been  
12 moved and seconded. Any discussion? All those in  
13 favor?

14 ALL: Aye.

15 MR. HOOD: Any opposition? So ordered.  
16 Staff, would you record the vote.

17 MS. SCHELLIN: Staff will record the vote  
18 four to zero to one to approve Zoning Commission Case  
19 No. 04-16 for final action, Commissioner Parsons  
20 moving, Commissioner Jeffries seconding, Commissioners  
21 Hildebrand and Hood in favor, Commissioner Mitten not  
22 voting having not participated.

23 CHAIRPERSON MITTEN: Thank you. Then the  
24 last case for final action is Case No. 04-31 which is  
25 the text amendment regarding the definition of clear

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1 height. I would move approval and final action in  
2 that case.

3 MR. HOOD: Second.

4 CHAIRPERSON MITTEN: Is there any  
5 discussion? All those in favor, please say aye.

6 ALL: Aye.

7 CHAIRPERSON MITTEN: Mrs. Schellin, there  
8 are none opposed.

9 MS. SCHELLIN: Staff will record the vote  
10 five to zero to zero to approve for final action Case  
11 No. 04-31, Commissioner Mitten moving, Commissioner  
12 Hood seconding, Commissioners Hildebrand and Jeffries  
13 and Parsons in favor.

14 CHAIRPERSON MITTEN: Thank you. Then the  
15 last item on our agenda is a piece of correspondence  
16 from the Office of the General Counsel for the U.S.  
17 Capitol Police requesting us to reopen the record and  
18 accept a letter in the case that we took up under sua  
19 sponte review. I would decline to reopen the record  
20 because the sua sponte review is an internal matter to  
21 the Zoning Commission and outside correspondence isn't  
22 proper anyway. Unless somebody would like to make a  
23 motion to the contrary?

24 MR. PARSONS: I concur.

25 CHAIRPERSON MITTEN: Okay. Mrs. Schellin,

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1 is there anything else for us?

2 MS. SCHELLIN: I take it then we should  
3 return that letter to the Capitol Police?

4 CHAIRPERSON MITTEN: Yes, please.

5 MS. SCHELLIN: Thank you. Nothing else.

6 CHAIRPERSON MITTEN: Okay. Then we're  
7 adjourned. Thank you.

8 (Whereupon, at 10:32 p.m. the hearing was  
9 adjourned.)

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