

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR PUBLIC MEETING
1188th MEETING SESSION (16th of 2005)

+ + + + +

THURSDAY

SEPTEMBER 15, 2005

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The Regular Public Meeting of the District of Columbia Zoning Commission convened in the Former Council Chamber, First Floor, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., 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 S. SCHELLIN Acting Secretary

OFFICE OF PLANNING STAFF PRESENT:

ELLEN MCCARTHY
MAXINE BROWN-ROBERTS
STEVEN COCHRAN
JOEL LAWSON
JENNIFER STEINGASSER

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

This transcript constitutes the minutes from the regular public meeting held on September 15, 2005.

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

Time: 6:57 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. I apologize for the delay.

Today is Thursday, September 15, 2005, and this is the public meeting of the Zoning Commission of the District of Columbia. My name is Carol Mitten, and joining me this evening are Vice Chairman Anthony Hood and Commissioners Kevin Hildebrand, John Parsons, and Greg Jeffries.

I believe that copies of the agenda are available on the table near the door, and I have a couple of changes to make before we get started.

The first item on the consent calendar, Case Number 98-21A, is being moved to the fifth item under Hearing Action.

We have a new item under Hearing Action, which will be Case Number 05-29, which is an emergency rulemaking.

Under Proposed Action, the third case, Case Number 04-18, is being deferred until our October meeting, and I think that's everything I needed to change.

Mrs. Schellin, did you have anything else before we move through the agenda?

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1 ACTING SECRETARY SCHELLIN: No, ma'am.
2 That's it.

3 CHAIRPERSON MITTEN: Thank you. So let's
4 begin with the Report by the Office of Planning, the
5 status report, if you are ready for that.

6 MS. STEINGASSER: Chair and Commissioners,
7 the status report is before you. The most important
8 thing that is not on the agenda that you may mentioned
9 is the Emergency Text Amendment that we are going to
10 be presenting during the Hearing Action for the
11 Commission's consideration.

12 Other than that, we wanted to talk briefly
13 about the industrial land use study that is going on
14 and the restrictions that it has placed on
15 applications for rezoning of industrial lands.

16 We have submitted with our status report
17 a brief bullet format set of criteria that we were
18 wondering whether the Commission would consider or at
19 least discuss with us this evening regarding several
20 of the applications and the criteria that might be
21 considered to allow some of the PUDs to at least come
22 forward for setdown, and whether this was the kind of
23 criteria the Commission would consider ahead of the
24 complete industrial land use study.

25 In brief, for the audience's benefit, the

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1 criteria set out just some rough and preliminary
2 standards, stating mostly that the project shall,
3 number one, be part of a PUD application. It shall be
4 consistent with transit oriented development, and
5 shall be within one-quarter mile of the Metro
6 entrance.

7 The project should not -- or shall not
8 result in displacement of vital or healthy industrial
9 production, distribution or repair businesses, result
10 in significant job losses, or meet with written
11 objections from more than 30 percent of the industrial
12 properties within 200 feet of the rezoning.

13 We were wondering if the Commission would
14 consider these type of criteria to allow some of the
15 applications that have been -- Some have been filed;
16 some have not been filed. Some of the developers are
17 in various states of due diligence. They have got
18 good faith money on hold with some of the properties,
19 and they are kind of feeling pressured as to how to
20 move or not move.

21 So we were hoping that the Commission
22 might discuss with us these criteria. If you are
23 comfortable with this, just -- and all it would do
24 would be allow applications to come forward for
25 setdown. It would not be any kind of subtle or tacit

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1 approval of the project itself beyond that which a
2 normal setdown would carry.

3 CHAIRPERSON MITTEN: Comments or questions
4 from the Commission? Mr. Parsons?

5 COMMISSIONER PARSONS: Well, I guess I am
6 concerned about the quarter of a mile of a Metro
7 entrance and this "consistent with the District's
8 objectives for transit oriented development."

9 How many areas are we talking about that
10 fit this criteria? I mean, you are almost targeting
11 them to say please come in and change the zoning, if
12 you are within a quarter of a mile or you meet the
13 District's objectives. These are up for grabs. We
14 really don't care that they are industrial anymore.

15 MS. STEINGASSER: Well, that is certainly
16 not the intent. The intent is -- Basically, we know
17 the five or six projects that are on hold pending the
18 completion of the study. We were looking at them and
19 finding criteria that we thought might be what would
20 be an acceptable set of criteria that the Commission
21 might consider.

22 Many of these are those that might be
23 around a Metro station where an industrial user would
24 not take full advantage of the investment in the Metro
25 station, where there would be less employment,

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1 obviously no residential. Industrial areas typically
2 have higher trucks, higher vehicles. So they wouldn't
3 be in a position to exploit the Metro to the fullest
4 extent. So that's why we picked that criteria.

5 COMMISSIONER PARSONS: Well, how many
6 sites do you think we are talking about in this
7 category?

8 MS. STEINGASSER: A number of sites.

9 COMMISSIONER PARSONS: You said four or
10 five that we can expect if we encourage this?

11 MS. MCCARTHY; Or less.

12 MS. STEINGASSER: There's four or five --
13 There's seven sites, seven properties who have
14 approached us that are in the CM zone. There's four
15 or five that are in serious negotiations either to
16 purchase or have -- Is good faith the right phrase for
17 what I'm talking about?

18 MS. MCCARTHY: A deposit.

19 MS. STEINGASSER: -- a deposit on the
20 land. Of those, I guess two have requested setdown.

21 COMMISSIONER PARSONS: So as I understand
22 your memo, if we don't agree, your study will be done
23 in early 2006. So what does that mean? Early sounds
24 like January 1st, but are we talking about a three-
25 month delay here? That's my point.

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1 MR. COCHRAN: The consultant's report will
2 be to OP sometime in January or early February of '06.
3 Presumably, that will get reviewed by OP, etcetera.
4 So let's talk March by the time the recommendations
5 might be ready, and I don't know what kind of public
6 process there will be. Ellen would have to address
7 that.

8 COMMISSIONER PARSONS: So if we were to
9 encourage this or agree with this, it appears as
10 though we would be setting these down about the same
11 time your report is completed, given our schedule.

12 MS. STEINGASSER: Actually, one of them
13 has already been filed and is with the Office of
14 Zoning. It has a case number, and it is being held.

15 The other one, I think, would like to move
16 forward, but they are hesitant to invest in the
17 application costs to file a PUD if they are not even
18 going to get a setdown for another six, eight months.

19 It's not just that it is additional delay
20 from this time forward, but since the Commission made
21 it clear that they were hesitant to move any further
22 without the industrial land use study, it's the total
23 length of time that has put some of these projects in
24 jeopardy.

25 MR. COCHRAN: We have also heard from the

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1 community on at least one of the projects, because
2 they had already started the process of meeting with
3 the ANC, seeking ANC support, etcetera, prior to
4 filing for a PUD. So there are just questions that we
5 have to be able to answer when we are asked by the ANC
6 after their votes, what is going on.

7 COMMISSIONER HILDEBRAND: It seems to me
8 that we have lost so much of our industrial lands in
9 the last few decades that to take this moment in time
10 to take a breather and really look at what our future
11 needs are going to be is so critical that I'm not sure
12 that the benefit of making exceptions at this point is
13 worth the potential cost.

14 MS. MCCARTHY: Part of what we were trying
15 to identify would be sites that, even if they were
16 industrially zoned, were not sites where you would
17 want to see an industrial use, if they are immediately
18 adjacent to a community, if they are not served by
19 roads that have sufficient capacity to have industrial
20 trucks and the kind of traffic that is generated by
21 industrial areas, and to at least provide some
22 preliminary guidance.

23 Each of these applications, when they are
24 done as PUDs, would come before you, and at that point
25 you make the decision to set it down or not. It was

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1 more could we identify some early on, given that some
2 of these are in areas where the development has gone
3 sufficiently east, say, to the area around the New
4 York Avenue Metro Station, that could we -- you know.

5 Partly, there will be a benefit served by
6 having the Commission just talk about the criteria and
7 whether they think they are legitimate criteria or
8 not, because it will let property owners or their
9 zoning attorneys that might happen to be here know
10 whether -- how the Commission is thinking about this
11 over the long term. But we recognize that in the end
12 you want to -- Before you make any final decisions,
13 you want to have a sense of how much do we have that
14 is industrial land, how much demand do we have for
15 industrial uses, and what's the match-up between
16 these.

17 MR. COCHRAN: For at least one area, we
18 have for several years been getting pretty clear
19 public direction through the investment of \$100
20 million in a Metro station that we want intense
21 development around that site, and people have taken
22 actions accordingly.

23 We think this is consistent with that
24 direction that we've had for the last five or six
25 years, and it is also a factor that hadn't been

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1 considered when the last comprehensive plan
2 generalized land use map was drawn. That factor
3 didn't exist at the New York Avenue Metro.

4 CHAIRPERSON MITTEN: So just to that
5 point, how would we reconcile-- Given that there
6 hasn't been a small area plan done for, say, the area
7 around New York Avenue Metro, how would we get past
8 our requirement to be not inconsistent with the
9 comprehensive plan and having the land use element be
10 the primary one that we must focus on, if we have an
11 area like the New York Avenue Metro station area
12 that's mapped on the generalized land use map for
13 production and technical employment?

14 MS. MCCARTHY: We are doing a plan there
15 now. We are doing a small area plan there now.

16 CHAIRPERSON MITTEN: Well, when would that
17 be done? I think, you know, all these things have to
18 come together simultaneously, and so when can we
19 expect that?

20 MR. COCHRAN: I'm told March. I just
21 heard from the person who is in charge of it. But it
22 would also be -- If you were to approach it this way,
23 it doesn't seem that it will be inconsistent with
24 other PUDs that you have considered where there may be
25 certain designations on the land use map, but the

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1 written policies in the comprehensive plan indicate
2 otherwise. Friendship Heights comes to mind.

3 CHAIRPERSON MITTEN: What does?

4 MR. COCHRAN: Friendship Heights comes to
5 mind, for the written elements designation of that
6 area being a regional center, whereas some specific
7 sites may have been indicated on the land use map as
8 not being appropriate for such an intense zoning as
9 was indicated by the written policy.

10 It would be the same kind of balancing
11 that you would need to go through for something like
12 this where you have an emphasis on transit
13 utilization, employment, etcetera, in the written
14 elements, where the map may not reflect those same
15 written elements. It is a balancing act that you have
16 to go through all the time, it seems.

17 CHAIRPERSON MITTEN: I know Mr. Hood
18 wanted to say something.

19 VICE CHAIRPERSON HOOD: Thank you, Madam
20 Chair. We have been talking about this industrial
21 study now for -- I don't want to say two years,
22 because I'm not point blank, but I guess about a year
23 and a half. I would say longer.

24 Meanwhile, while we have been talking
25 about it, we have also been rezoning. So I don't

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1 think it is fair for us now to put the brakes on. I
2 don't think this Commission has a moratorium. Maybe
3 the Office of Planning does, but I don't think this
4 Commission has said loudly that we have a moratorium
5 on anything that we are moving as far as rezoning land
6 to residential.

7 I have been bringing this issue for a year
8 and a half. Meanwhile, I don't think it's fair --
9 Meanwhile, while I've been bringing the issue up, we
10 have been continually moving along and dealing with
11 PUD applications and rezoning.

12 I don't think it's fair for those
13 applicants who have things in the pipeline at this
14 point for us to say, oh, wait a minute. Something
15 we've been trying to deal with for a year and a half,
16 now let's stop, and let's hold theirs off, and let's
17 look at -- and let's complete the study.

18 I think that we need to proceed in a
19 fashion so it's predictable. I would think that the
20 Office of Planning will continue for us to see PUDs,
21 and then when the study is complete, then we deal with
22 it accordingly. But I think people have projects in
23 the pipeline, and we need to move forward. But this
24 should have been done -- and I don't want to point
25 fingers or accuse, but to say that this Commission --

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1 or even send the implication that we have a moratorium
2 -- We do not have a moratorium, and my colleagues can
3 correct me if the Zoning Commission Commissioners said
4 we had a "moratorium."

5 I don't know of supporting or agreeing
6 with a moratorium. I think we need to move forward.
7 If people bring applications down, we vote them up or
8 down. I don't think we need to sit around and say,
9 oh, we got a moratorium. Now all of a sudden, where
10 is this study that we've been calling for about a year
11 and a half?

12 Yeah, I've been the one that's been
13 harping on it, because it's been in one certain area
14 that has not been benefitted from it. But now that
15 it's starting to take place, we are going to say hold
16 up for a second, and I don't agree with that, and I
17 have a problem with this. Unfortunately, I have not
18 had a chance to read this, because this was just put
19 on here this evening. That's my comment, Madam Chair.

20 CHAIRPERSON MITTEN: Thank you, Mr. Hood.
21 I am going to ask Mr. Bergstein to weigh in, in a
22 second. I just want to clarify, I think, how we have
23 gotten to the point that we are, which is: I think
24 there was a sentiment -- and I'm not going to even
25 attempt to quantify how broadly felt the sentiment

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1 was, because each Commissioner can speak for
2 themselves. But in fact, I think the sentiment that
3 was expressed was to try and make sure that people
4 didn't make investments in PUD applications or
5 whatever when the Commission was not yet comfortable
6 with the situation as it relates to industrial land.

7 So I think we were just trying to give
8 direction and a general sense of -- Each individual
9 Commissioner can give a sense of where they are on the
10 subject, and the Office of Planning is certainly free
11 to act in response to that as they see fit, as is the
12 public.

13 So I am going to ask Mr. Bergstein to
14 weigh in on specifically the request that is in front
15 of us right now.

16 MR. BERGSTEIN: Thank you. And I'm sorry
17 I wasn't here for the beginning of this discussion.
18 But if this is just an explanation of how OP will be
19 making its recommendations as to whether or not to set
20 a matter down, then it's purely informative, and that
21 would be fine. But if there is -- If this represents
22 a request for the Commission to adopt this, then this,
23 in my mind, is a regulation and would require notice
24 and comment.

25 There is nothing in the regulations that

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1 provides any set of circumstances in which a case
2 would not be set down. It simply says that when an
3 application is received, it goes through Office of
4 Planning. Office of Planning makes a recommendation,
5 and the Commission determines whether or not that its
6 right to be heard.

7 These criteria seem to introduce into that
8 process very objective criteria that would have to be
9 met before a property zoned industrial could be set
10 down for hearing. If that is what this represents, it
11 would have to be proffered to the Commission as a
12 petition for a text amendment and would represent, I
13 would imagine, a moratorium; but like all moratoriums,
14 there has to be a finite limit on the length of the
15 moratorium.

16 So again, I am reacting to something I
17 just saw, but I do want to caution the Commission
18 against giving -- indicating that it is giving effect
19 to this at this time. This is at most informational,
20 but it cannot be adopted as a policy of the Commission
21 without notice and comment.

22 CHAIRPERSON MITTEN: Commissioner
23 Jeffries, did you have something to say?

24 COMMISSIONER JEFFRIES: Well, if this is
25 just really for informational purposes only, I think

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1 the good news here is that -- you know, obviously,
2 there is some concern about increasing industrial
3 parcels in the District, but I think growth moves as
4 it moves, and I think that, to the extent that there
5 are certain locations where industrial parcels --
6 where there are industrial districts that are around
7 residential, those particular projects are coming
8 before the Zoning Commission.

9 Again, like in any other PUD, we get an
10 opportunity to sort of take a look at that. So I am
11 just really concerned. I mean, there are so many
12 studies that are being commissioned around town and so
13 forth, and yet I don't want those studies to slow down
14 development.

15 I mean, a lot of developers have put time
16 and cost into a lot of projects. A lot of these
17 projects are economic development engines for certain
18 neighborhoods, and I think it is well within the right
19 of a developer to come before the Commission,
20 particularly in the confines of a PUD, and for us to
21 take a look at it. And if, in that particular
22 instance, it warrants a rezoning, I think that we
23 should take a look at it.

24 So just for informational purposes only,
25 from where I sit, I think it is reasonable.

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1 CHAIRPERSON MITTEN: I guess maybe to
2 close it out, and then if any other Commissioners want
3 to say anything by way of final thoughts --

4 I guess the best thing that I can
5 recommend is that the Commissioners have made their
6 positions -- they have expressed their positions
7 tonight, and we have expressed our positions on
8 previous occasions, and applicants have to weigh that,
9 and they have to weigh what the Office of Planning is
10 willing to support or not support.

11 Any case that you bring to us for hearing
12 action, we will vote on. So that's where we are.

13 COMMISSIONER JEFFRIES: Case by case.

14 CHAIRPERSON MITTEN: That's the best I can
15 say at the moment.

16 COMMISSIONER PARSONS: Okay. Just to make
17 sure that my position isn't misunderstood, I totally
18 disagree with most of my colleagues here.

19 Every time we have -- over the past 10
20 years, that we have rezoned industrial, we keep saying
21 -- and we are being hypocritical. We are saying we
22 can't go on like this; we can't go on converting
23 industrial properties, because our legacy will be
24 there will be no industrial land in this city.

25 So every time we convert something, then

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1 its neighbor gets the anticipation that it can. So we
2 took a stand. We said let's stop. I would call it a
3 moratorium. I would disagree with Mr. Hood. The
4 message was we are not going to go on like this. We
5 are going to have an analysis of how much industrial
6 land this city needs and where it might be best placed
7 so that we can deal with these as they come. And I
8 think it is worth the delay.

9 CHAIRPERSON MITTEN: I just want to close
10 by saying I don't mean by anything that I said to
11 suggest how I will vote on any given case when it
12 comes for setdown. Just like any case that comes, you
13 know, it's judged on the merits, and what Mr. Parsons
14 said is certainly relevant to that.

15 So, Mr. Hildebrand, and then Mr.
16 Jeffries.

17 COMMISSIONER HILDEBRAND: To follow on
18 with what Mr. Parsons was saying, too, I think in this
19 particular age there are emerging needs for industrial
20 land that didn't exist before. I'm talking about
21 screening areas and transfer stations and material
22 handling places for the Federal interests that need to
23 be weighed into that land use decision; and I want to
24 make sure that those uses are captured in your study.

25 The good news is that you are moving

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1 forward with the study, and I look forward to seeing
2 the result of that.

3 COMMISSIONER JEFFRIES: I know of one site
4 in particular that is zoned industrial that is
5 surrounded by residential, and I would hate for the
6 developing of that site for someone who is looking to
7 do a development of that site, a redevelopment of that
8 site, to back off and feel that there's some sort of
9 moratorium here. I just don't think it's appropriate.

10 Again, I think the market will really
11 start to dictate the direction in which the city
12 grows, to some degree. I mean, obviously, part of job
13 as the Zoning Commission is to manage that growth, but
14 I do think that, as it relates to some of these
15 districts, I think we will get a shot on a case by
16 case basis to see exactly what is coming before us,
17 and we can make those determinations then.

18 VICE CHAIRPERSON HOOD; Madam Chair, can
19 I just add? I want to get clarification. I keep
20 hearing this word moratorium, and it makes me uneasy,
21 because I know I did not participate or any of my
22 comments in the past have said anything about a
23 moratorium. It's said about looking at the industrial
24 land use and look where it is all concentrated, and
25 now that some of those other areas now are

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1 flourishing, as my colleague, Commissioner Jeffries,
2 was alluding to, now it's time to make sure.

3 We don't need to, like I said, put the
4 brakes on. I would disagree with Mr. Parsons, since
5 he wanted to disagree with me. I will say that I
6 think we need -- As he said, case by case basis. But
7 I don't believe that this Commission has said to
8 anybody there is a moratorium. I don't think we voted
9 on it. I mean, it may have come from one or two
10 Commissioners or the implication, but nobody has
11 steadfast said that we have a moratorium, and we
12 should not send that signal.

13 CHAIRPERSON MITTEN: Okay. I think we are
14 ready to move on. Is there anything else you would
15 like to highlight from your status report?

16 MS. STEINGASSER: No, that's all.

17 CHAIRPERSON MITTEN: Okay, thank you.
18 Then on the consent calendar, we have case number 03-
19 12B/03-13B, and this relates to the height of the
20 senior building in the Capper/Carrollsborg PUD, and
21 the request is to change the height by 3 feet, 3 3/4
22 inches, and a number of reasons are included in the
23 request from the applicant.

24 Is there any discussion? Questions? Then
25 I would move approval of the minor modification

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1 request for the senior building at
2 Capper/Carrollsborg.

3 COMMISSIONER JEFFRIES: Second.

4 CHAIRPERSON MITTEN: Last chance for
5 discussion. All those in favor, please say Aye. Any
6 opposed? Mrs. Schellin?

7 ACTING SECRETARY SCHELLIN: Staff would
8 record the vote five to zero to zero to approve the
9 minor modification in Case Number 03-12B and 03-13B,
10 Commission Mitten moving, Commission Jeffries
11 seconding, Commissioners Hildebrand, Hood and Parsons
12 in favor.

13 CHAIRPERSON MITTEN: Thank you. Next we
14 have what I guess I will call a supplemental report
15 from the Office of Planning related to Case No. 04-36.
16 Mr. Lawson, are you going to make the presentation?

17 MR. LAWSON: Thank you, Madam Chair. Yes,
18 I will make this very short.

19 Madam Chair, members of the Commission, my
20 name is Joel Lawson. I am with the D.C. Office of
21 Planning.

22 At its March 14 meeting, the Zoning
23 Commission set down for a public hearing this
24 application for a new building to the rear of the
25 existing Dorchester Apartment building at 2480 16th

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1 Street, N.W. The new construction would front 17th
2 Street, N.W.

3 Subsequent to setdown it was determine
4 that the Height Act would limit the height of a new
5 building fronting onto 17th Street to 50 feet maximum,
6 as this section of 17th Street has a right-of-way
7 width of only 50 feet. The new construction, however,
8 is proposed to have a height of 58.5 feet adjacent to
9 the street, and 78 feet behind.

10 The applicant has attempted to resolve
11 this issue by revising the application to include a
12 new above-grade connection between the existing and
13 new construction. Providing an acceptable connection
14 between the buildings would render the new
15 construction an addition, and allow the height to be
16 measured from the wider 16th Street, permitting the
17 proposed height.

18 This solution appears to meet zoning
19 regulations and the Height Act requirements with
20 regard to methodology for determination of building
21 height. Exactly what constitutes an acceptable
22 connection between two structures is open to some
23 interpretation, though.

24 The previous Zoning Administrator and the
25 Board of Zoning Adjustment have accepted a simple

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1 trellis, which is what appears to be shown on the
2 applicant's revised drawings, as constituting adequate
3 communication between structures. However, concerns
4 have been raised that this solution is not adequate,
5 and that, at the very least, an enclosed connection
6 allowing people to freely move from public areas of
7 one part of the structure to public areas of the other
8 is required.

9 While the zoning regulations may require
10 clarification, OP feels that this latter
11 interpretation is reasonable. Op will continue to
12 work with the applicant to ensure the provision of an
13 acceptable connection, which would appear to be
14 possible on this site, prior to the public hearing.

15 As a result of the change to provide the
16 connection, the request for relief to allow two
17 buildings on one lot has been eliminated. However, it
18 appears that the proposed addition would not meet rear
19 yard setback requirements. Other previously requested
20 relaxation from zoning regulations would remain.

21 That concludes my testimony, and we are
22 available for questions. Thank you.

23 CHAIRPERSON MITTEN: Thank you. Are there
24 questions or comments from the Commission? Mr.
25 Hildebrand.

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1 COMMISSIONER HILDEBRAND: This actually
2 brings up a very interesting point. I was going to
3 bring an item to you tonight. Actually, I was going
4 to bring two items to you tonight for further
5 investigation, and one of them was this concept of two
6 independent structures on a single lot that were
7 connected by --

8 COMMISSIONER JEFFRIES: Excuse me.
9 Commissioner Hildebrand, can you speak closer into the
10 mike?

11 COMMISSIONER HILDEBRAND: Oh, I'm sorry.
12 I think my chair is so low that I'm actually sitting
13 on the floor down here.

14 In a BZA case recently, there was an issue
15 of a single family residence and an addition to a
16 single family residence that was, in fact, what could
17 have been considered a completely separate structure.
18 The only thing connecting them was a trellis which had
19 a 50 percent solid roof structure.

20 To me, that does not fit the definition of
21 an addition to an existing structure. I was going to
22 ask OP to investigate whether or not that language
23 needs to be strengthened and clarified in the
24 regulations, and it seems like this particular issue
25 hinges -- or this particular case hinges on the same

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1 issue.

2 CHAIRPERSON MITTEN: For us to take action
3 -- and I am going to ask Mr. Bergstein to just advise
4 me about this a little bit -- I guess we would have to
5 reconsider our original setdown, but I don't know what
6 we are setting -- If we did and we decided to set down
7 the case, what would we be setting down in its place,
8 because we don't have any revised drawings. We don't
9 even have the trellis drawing.

10 So I don't know what exactly would we be--

11 MR. BERGSTEIN: I think what you would be
12 doing is -- because the original -- As I understand
13 it, the original drawings that were presented to you
14 at sit-down show no connection whatsoever.

15 CHAIRPERSON MITTEN: Correct.

16 MR. BERGSTEIN: And now there is at least
17 a representation that there's going to be a
18 connection, and that the connection will be
19 substantial enough to meet whatever has been the
20 historic interpretation as making it constitute one
21 building so that the height would be appropriate.

22 So you would be setting down -- You would
23 be re-setting it down with the understanding that what
24 you will be having before you is not a request for
25 relief for the prohibition against two principal

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1 structures on a single record lot, which was the
2 original request before you, but now a PUD involving
3 one building, subject to a showing prior to the
4 hearing that, in fact, what has been -- that the
5 connection that has been created would allow it to
6 constitute one building. So that is what I think you
7 are doing.

8 CHAIRPERSON MITTEN: Okay. Thank you.
9 Mr. Parsons?

10 COMMISSIONER PARSONS: Madam Chair, I am
11 very troubled by this, because the notion that two
12 separate buildings connected by a trellis or other
13 device at the first floor level is becoming a single
14 building is folly. Now maybe that is the way the
15 regulations have been interpreted, but common sense
16 tells you that is not the case.

17 I just can't imagine us going forward with
18 this, endorsing this kind of interpretation, because
19 it's wrong, in my view. Where that leaves us, I don't
20 know, but I mean, we set this down, and now we need a
21 connection in order to make it work. So I guess I
22 would move that we deny the application.

23 CHAIRPERSON MITTEN: Let me just put one
24 thing into the mix, and then Commissioner Jeffries can
25 have his turn.

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1 There is still the -- We could have two
2 alternatives. One would be that they would be asking
3 for relief of having two buildings on a single lot.
4 That would be one of the -- That could be one
5 alternative.

6 Then the other alternative would be that
7 they could attempt to do what Mr. Bergstein was
8 suggesting would be what we could -- What the
9 understanding would be is that they would come back
10 and attempt to convince us that they have a
11 substantial enough connection to warrant this being
12 considered a single building, and then that way we are
13 committing to that. We are just saying, sure, show
14 us; and if you can't convince us, then we will go back
15 to the other interpretation, which would then have a
16 height implication for them, but we could sort of ask
17 them to present both.

18 COMMISSIONER JEFFRIES: And isn't that
19 typically one of the points of these setdowns? I
20 mean, we normally give some level of direction to the
21 applicant as to some of our concerns, and the hope is
22 that once they come back, those concerns will be
23 reflected in their redesign.

24 So I don't know if I would go along with
25 the whole notion of trying to deny the setdown. I

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1 think that we have basically put on record here at
2 least that there are some concerns about this trellis
3 business and the communication piece.

4 So I would, Madam Chair, go with your
5 latter statement about perhaps just putting them on
6 notice and going forward with the setdown.

7 CHAIRPERSON MITTEN: And I didn't complete
8 my thought, but I do agree with you, Mr. Parsons, that
9 just having these -- Even though it might be more of
10 a building connection than a trellis, which just blows
11 my mind that that was ever considered to be an
12 appropriate interpretation, it does bear more thought
13 in general about what is a building, what constitutes
14 a single building.

15 So it is a conversation that we need to
16 have as a separate conversation, because it has
17 implications for the zoning ordinance overall, and
18 then we have this case before us that we need to
19 address. So I don't know if Commissioner Hood or
20 Hildebrand want to say anything on the subject, but we
21 can go to a motion, if not.

22 COMMISSIONER HILDEBRAND: Well, I just --
23 To answer some of what Mr. Jeffries had said, I think
24 we legitimately just made a mistake in the initial
25 setdown. It was something we didn't catch. Of

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1 course, we are not perfect people. We sometimes miss
2 things.

3 I don't think that relieves the applicant
4 of the responsibility of redressing that mistake, but
5 I would be amenable to moving forward, if they can
6 create a substantial connection between the two
7 buildings now. We haven't defined what that is, but
8 it can't just be a minimal corridor connection between
9 two separate buildings.

10 CHAIRPERSON MITTEN: Okay.

11 COMMISSIONER PARSONS: What do you mean?
12 Two or three stories high?

13 COMMISSIONER HILDEBRAND: I don't want to
14 sit here and define it. I think it's something that
15 the entire Commission has to deal with.

16 CHAIRPERSON MITTEN: Let me make a motion
17 and see if we can move forward. Then if anyone wants
18 to give any additional direction about what they would
19 be supportive of, then that would be great.

20 VICE CHAIRPERSON HOOD: Madam Chair, can
21 I just add?

22 CHAIRPERSON MITTEN: Sure.

23 VICE CHAIRPERSON HOOD: I think Mr.
24 Parsons put a motion on the table. I know it wasn't
25 seconded, but that wasn't an opportunity to have a

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1 second. So he may want to withdraw his motion.

2 COMMISSIONER PARSONS: Oh, if it is not
3 seconded, that's the result.

4 VICE CHAIRPERSON HOOD: Well, there never
5 was a chance to be seconded, I think.

6 COMMISSIONER PARSONS: There was a
7 pregnant pause.

8 CHAIRPERSON MITTEN: Okay. See now, you
9 had to make him relive all that.

10 VICE CHAIRPERSON HOOD: That was the
11 intention.

12 CHAIRPERSON MITTEN: Okay. Well, then I
13 would move that we would reconsider our original
14 setdown of Case No. 04-36, and instead set down two
15 alternatives, one of which would be that the applicant
16 would attempt to create a single building by a
17 substantial connection between the existing apartment
18 house and the new building that the Commission would
19 find would constitute a single building, and in the
20 alternative that they would seek relief to having two
21 buildings on a single record lot, and they would
22 adjust the height of the new building accordingly.

23 COMMISSIONER PARSONS: I would support
24 that, if you said that the connection was above grade.

25 CHAIRPERSON MITTEN: Yes, definitely.

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1 Absolutely.

2 COMMISSIONER PARSONS: Because we will
3 have somebody coming in with a below-grade connection
4 and trying to claim it is a building.

5 CHAIRPERSON MITTEN: No, I agree with you
6 completely on that. Okay, so that's a second then
7 from Mr. Parsons?

8 COMMISSIONER PARSONS: How could it be me?

9 CHAIRPERSON MITTEN: I thought you said
10 you would support it.

11 COMMISSIONER JEFFRIES: I'll second.

12 CHAIRPERSON MITTEN: Okay, thank you. Any
13 further discussion? It's a long motion, and I am not
14 going to repeat it. So all those in favor, please say
15 Aye. Mrs. Schellin?

16 ACTING SECRETARY SCHELLIN: Staff would
17 record the vote five to zero to zero to re-setdown
18 Case No. 04-36, Commissioner Mitten moving,
19 Commissioner Jeffries seconding, Commissioners
20 Hildebrand, Hood and Parsons in favor.

21 CHAIRPERSON MITTEN: Thank you. Next is
22 Case No. 03-12A and 03-13A, which is the second stage
23 PUD and modification of the Capper Carrollsburg PUD.
24 Mr. Cochran is going to make that presentation.

25 MR. COCHRAN: Good evening, members of the

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1 Commission. For the record, my name is Steven
2 Cochran, Office of Planning.

3 Last year the Commission approved the
4 setting down a 33-acre preliminary PUD for the Capper
5 Carrollsburg Hope 6 project in Southeast Washington --
6 on the map over here, the PUD as a whole comprises all
7 of the colored areas -- and a consolidated PUD for a
8 six-square subset of the preliminary PUD, which is
9 shown on the map in this sort of rose colored inverted
10 T. The developer of the project is now asking for a
11 modification of some requirements of both the
12 preliminary and the consolidated PUDs, as well as
13 approval of a second stage PUD for a three-square area
14 of the preliminary PUD. That second stage approval is
15 the area shown in green.

16 You have already dealt with the minor
17 modifications to the height of the senior building in
18 senior building in the consolidated PUD. I am going
19 to quickly review what is on the table tonight.

20 The requested modifications applicable to
21 both the consolidated and the preliminary PUDs
22 include: The relocation of the proposed Third Place
23 and changing its ownership status from private to
24 public -- Third Place is right here in Square 798 and
25 799. It doesn't exist now. It was proposed to be a

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1 private street. It is now proposed to become a public
2 street;

3 Increasing the approved residential density from
4 2.21 to 2.34 -- that's part of condition 7. That
5 still is under the allowable density, but it is more
6 than you had approved previously.

7 CHAIRPERSON MITTEN: Mr. Cochran, can I
8 just interrupt you for one second? Because we are not
9 on television, we are being a little more informal,
10 and because we are warm. So anybody that would like
11 to take off their jacket that hasn't already and get
12 yourself comfortable, please do, including Mr.
13 Cochran.

14 MR. COCHRAN: Absolutely.

15 CHAIRPERSON MITTEN: And Mr. Lawson.

16 MR. COCHRAN: Well, in the spirit of
17 adaptation to the heat, I could simply omit this
18 report and stand on the record.

19 CHAIRPERSON MITTEN: No, we like your
20 reports, because they are very pithy. Right?

21 MR. COCHRAN: I'm honored, Madam Chair.

22 Increasing the approved density, as I've
23 said, from 2.1 to 2.34; reducing the approved PUD
24 residential parking requirement for the townhouse
25 structures in some of the squares from 2.1 to 1.38,

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1 which is again still over what the zoning requires.
2 That was part of your condition Number 11.

3 To OP, the modifications appear to be
4 consistent with the comprehensive plan and with the
5 intent of the PUD that you approved last year.

6 The second stage PUD is the first of what
7 will undoubtedly be multiply phased second stages. It
8 comprises just under three acres, and it is shown in
9 green on the map, and it will include 91 residential
10 units with a mix of incomes, as well as a community
11 center.

12 To build the second stage, the applicant
13 is requesting an increase in density for the community
14 center, which is over here in Square 881-N, and that
15 is part of condition 8-H.

16 They are also asking for permission to
17 provide less than a one-to-one setback for the
18 center's roof structure, an extension on the timing
19 for the filing of a building permit for the community
20 center, condition number 20 -- that timing deadline
21 has already passed -- the relocation of the proposed
22 Third Place that I referred to earlier, but in this
23 case it is Square 799 as opposed to 798, and a
24 reduction in the PUD required parking spaces, part of
25 Condition 11.

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1 Again, the overall design and the program,
2 as well as the requested modifications, appear to be
3 consistent with the comprehensive plan and with the
4 intent of the PUD that you approved preliminarily last
5 year.

6 There are several letters about which OP
7 has questions, and these are noted on page 10 of our
8 preliminary report.

9 With the exception of the design
10 refinements to one facade of the community center, our
11 questions are primarily technical. The information
12 needed does not need to hinder any consideration of a
13 setdown. In fact, OP strongly supports this project,
14 and recommends that the proposed second stage PUD as
15 well as the requested modifications to the preliminary
16 consolidated PUDs be scheduled for a public hearing at
17 the Commission's earliest convenience.

18 I would be happy to answer any questions.

19 CHAIRPERSON MITTEN: Thank you, Mr.
20 Cochran. Any questions for Mr. Cochran? Mr. Hood.

21 VICE CHAIRPERSON HOOD: Mr. Cochran, I'm
22 trying to remember. There was an issue about houses
23 being, I guess -- I don't know what the terminology
24 is, but houses being taken.

25 MR. COCHRAN: That's right.

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1 VICE CHAIRPERSON HOOD: That was done
2 during the first stage. Right?

3 MR. COCHRAN: It was part of the
4 preliminary PUD, and your instructions were to the
5 applicant to maintain as many of the privately owned
6 houses as possible. The applicant has done that. As
7 a result, they have -- That is one of the reasons they
8 have had to move the proposed Third Place slightly to
9 the east.

10 They have also, in order to retain those
11 houses, needed to reduce the -- compromise some of the
12 dimensions on some of the lots for the townhouse-like
13 structures. It has also led to -- That, plus a couple
14 of other factors, have led to an increase, a slight
15 increase, in their proposed residential density.

16 All of those are in sequence a response to
17 your directive to retain the privately owned parcels.

18 VICE CHAIRPERSON HOOD; Now all of them
19 were not able to be obtained -- be saved. Right?
20 Some of them had to be taken?

21 MR. COCHRAN: I am not sure about that.
22 If you are asking that question, you may know.

23 VICE CHAIRPERSON HOOD: Right. I was just
24 wondering -- because I think there was some mention of
25 making accommodations, the way they may be able to

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1 move back into some of the new homes.

2 MR. COCHRAN: There are -- Let me see. I
3 have in my report that there are, I believe, two or
4 three parcels for which they have filed takings
5 proceedings, but the vast majority of the private
6 property has been retained. I can flip through my
7 report to give you the exact.

8 VICE CHAIRPERSON HOOD: Thank you.

9 CHAIRPERSON MITTEN: Just on that point,
10 I didn't see it, and I don't know exactly technically
11 how it would be done, but the parcels -- We had
12 included -- I remember there was a lot of discussion
13 about including parcels that the applicant didn't own
14 yet, and we had said that, as long as they indicated
15 that they intended to exercise their power of eminent
16 domain and they would in essence control the parcels,
17 we included them within the PUD area that we initially
18 considered. I am wondering if they have now formally
19 -- the houses or the parcels that are not going to be
20 acquired, if they have been formally removed from the
21 PUD.

22 MR. COCHRAN: The applicant has initiated
23 condemnation proceedings for Square 800, Lots 818, 819
24 and 820. With respect to whether the calculations
25 have removed the privately owned parcels that had

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1 formerly been considered part of the PUD, I believe
2 that the answer is yes and, hence, the density of what
3 remains has gone up somewhat.

4 CHAIRPERSON MITTEN: I was asking a little
5 bit different question. You know, we say what does
6 the PUD affect? It affects Lots X, Y and Q in Square
7 ABC, and now we have lots that were in the original
8 application that are no longer -- they are no longer
9 intended to be taken by eminent domain. They are no
10 longer intended to be acquired.

11 So I am asking, have they been formally
12 removed from the PUD? It's technical. It doesn't
13 have to do with calculations and stuff.

14 MR. COCHRAN: I don't know the answer to
15 that as far as the record would go. I believe that
16 they have done it with respect to the density. I
17 don't know whether the procedures have been taken to
18 actually amend the application, change the map,
19 etcetera.

20 CHAIRPERSON MITTEN: Okay. That, seems to
21 me, something that needs to be done and maybe would
22 just kind of tie that up.

23 I appreciate the additional submissions
24 that you are asking for, and there's one additional
25 thing that I would like to see discussed, which is --

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1 You know, we are talking about a reduction in parking
2 spaces, and when we -- in the order on page 13, and
3 this is in the delineation of public benefits and
4 amenities under Letter D, Transportation Features. It
5 starts off by saying, "The proposed PUD project meets
6 or exceeds the off-street parking and loading
7 requirements." Then it goes on to describe that.

8 So to the extent that that amenity is
9 being reduced, I think there needs to be a discussion
10 about whether or not the balance has been upset. I am
11 not suggesting that it has. I just think we need to
12 address that. That's all I have. Mr. Hildebrand?

13 COMMISSIONER HILDEBRAND: One of the
14 things -- Not being part of the original setdown of
15 the preliminary PUD, there's a big learning curve
16 here, and it took me a while to sort of get into the
17 meat of this. But I still was not able to coordinate
18 parking with the building plans that were submitted.

19 I know there is a statement that you are
20 providing 1.38 spaces per unit, but there are many
21 plans that have no garages associated with them. So
22 if there could be some way to clarify where these
23 parking spaces actually are, I think that would be
24 very beneficial to me.

25 CHAIRPERSON MITTEN: I believe that was

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1 one of the questions that OP was asking for.

2 COMMISSIONER HILDEBRAND: And in looking
3 at the elevations, I think it would be very helpful to
4 see where we are having these stark material
5 contrasts. I think the brick elevations are pretty
6 much the street front, and then you are transitioning
7 to a siding for the rear elevations.

8 MR. COCHRAN: That is correct.

9 COMMISSIONER HILDEBRAND: If we could
10 perhaps have some perspective sketches of what that
11 streetscape looks like at the portals where you have
12 alley connections or corners where you would see both
13 materials in tandem, that would be helpful.

14 CHAIRPERSON MITTEN: Would that be just
15 from the public way or would that also be from --

16 COMMISSIONER HILDEBRAND: I think you will
17 find it will present itself at several different
18 points, and there may be one or two spots that would
19 be particularly interesting to highlight.

20 CHAIRPERSON MITTEN: Anyone else? Mr.
21 Jeffries?

22 COMMISSIONER JEFFRIES: Yes. I would
23 agree with Commissioner Hildebrand. It takes a minute
24 to get through this, a steep learning curve, a lot to
25 cover.

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1 The only comment I had is: Is it possible
2 -- I wonder, is it too much to request some sort of
3 volumetric study of this overall campus? I'm just
4 interested to understand volumetrically how that M
5 Street is looking, as well as Canal Park and then the
6 relationship to Capitol Hill at the north, just shadow
7 diagrams, something to just take the full campus into
8 effect. So if you could have the applicant provide
9 something like that.

10 There is no need to again have a lot of
11 delineation in terms of windows and treatment of
12 facades or anything, but just really volumetric.

13 CHAIRPERSON MITTEN: Anyone else? All
14 right. We have a recommendation from the Office of
15 Planning to set down the second stage PUD and
16 modification for the Capper Carrollsburg PUD, and I
17 would so move.

18 COMMISSIONER JEFFRIES: Second.

19 CHAIRPERSON MITTEN: Any discussion? All
20 those in favor, please say Aye. Any opposed? Mrs.
21 Schellin?

22 ACTING SECRETARY SCHELLIN: Staff would
23 record the vote five to zero to zero to approve
24 setdown in Case No. 03-12A and 03-13A, Commission
25 Mitten moving, Commission Jeffries seconding,

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1 Commissioners Hildebrand, Hood and Parsons in favor.

2 CHAIRPERSON MITTEN: Thank you. Next is
3 Case No. 05-22. This is the Level 2 Development. It
4 is a PUD proposal at 2301-2315 14th Street, N.W. Mr.
5 Lawson is up.

6 MR. LAWSON: Thank you, Madam Chair. I
7 will try to keep my comments pithy as well.

8 Consolidated PUD application 05-22 would
9 permit the construction of a new nine-story, 90 foot
10 high apartment building with ground floor retail and
11 underground parking.

12 The site is about 32,000 square feet in
13 area and is located within Square 2868 on 14th
14 Avenue, N.W., between Belmont Street to the north and
15 Florida Avenue to the south.

16 The property is zoned C-2-B. The
17 remainder of the square is zoned R-5-B. 14th Street
18 to the south is zoned R-C-3A and R-C-R, higher density
19 zones.

20 The applicant has requested relief from
21 roof structure, wall height and residential recreation
22 space zoning regulations.

23 The project would not be inconsistent with
24 the comprehensive plan, generalized land use map
25 designation of medium density residential for the

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1 site, and with further comprehensive plan and SNAP
2 plan goals for this area related to housing, land use,
3 economic development, and streetscape improvement.

4 The applicant's proposed amenity package
5 is considered by OP to be acceptable for setdown,
6 constituting mainly the provision of affordable
7 housing units on site, as well as a substantial
8 contribution toward the provision of affordable
9 housing within a block of the site.

10 The amenity package also includes
11 contributions to local community groups, the removal
12 of the Comcast satellite dishes, and streetscape
13 character improvements. The provision of retail on
14 the ground floor along 14th Street is also considered
15 a community benefit.

16 Some additional detail regarding these
17 amenity items and the building design is required
18 prior to the public hearing. The applicant has
19 already approached OP to discuss these details, and OP
20 believes that the detailed information should not
21 delay setting this application down for a hearing.

22 The application includes letters of
23 preliminary support from the local ANC, the Meridian
24 Hill Neighborhood Association, and Council Member Jim
25 Graham. The project is generally consistent with the

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1 goals and objectives outlined for the area in the
2 comprehensive plan and with zoning for the area.

3 As such, the Office of Planning recommends
4 that this application be set down for a public
5 hearing. This concludes my testimony, and we are
6 again available for questions. Thank you.

7 CHAIRPERSON MITTEN: Thank you, Mr.
8 Lawson. Any questions, comments? Mr. Hildebrand.

9 COMMISSIONER HILDEBRAND: Actually, I did
10 have a question. I was concerned about one aspect in
11 particular, and it goes back to a statement you made
12 in the Dorchester Tower summary. That is, according
13 to the Height Act on streets that are less --
14 residential streets that are less than 60 feet wide,
15 the height of buildings are limited to the width of
16 the street.

17 In the case of this building, they are
18 using Belmont as the measuring facade, and would that
19 then limit the height of the building on that facade
20 to 50 feet, according to then the zoning definition
21 that, based upon the facade that you choose to be the
22 front, you are limited to the maximum width that is
23 defined by the width of the street?

24 MR. LAWSON: It actually would not.
25 Evidently, there is a long case history of allowing

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1 height for Height Act to be measured from -- when you
2 are dealing with a corner lot or a through-lot, such
3 as this one, allowing Height Act to be measured from
4 one street and allowing height for zoning regulations
5 purposes to be measured from another street.

6 In this case, height for zoning regulation
7 purposes would be measured from Belmont Avenue, which
8 would be what we would expect. It's the higher of the
9 elevations of the property. But it is only 50 feet
10 wide. You are correct in that. 14th Street, however,
11 is 90 feet wide, and as such would allow a building of
12 a considerably greater height than a building measured
13 off of Belmont Avenue. It would allow a building of
14 110 feet essentially.

15 That is why the applicant has chosen, for
16 the purposes of the Height Act, to measure height from
17 14th Street. This is consistent with past practice
18 and consistent with the wording of both -- my
19 understanding, consistent with the wording of both the
20 Height Act and the zoning regulations.

21 COMMISSIONER HILDEBRAND: What I'm looking
22 at is the definition of height of building where it
23 says that, if a building fronts on more than one
24 street, you can use -- to determine the maximum height
25 of the building, you can choose a street, but the

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1 basis of the height of the building shall be
2 determined by the width of the street selected as the
3 front of the building.

4 It seems to me, the applicant is choosing
5 Belmont as the front of the building as the measuring
6 point, and then you would use Belmont as the width
7 restriction for the building height, which is
8 significantly lower than 90 feet.

9 MR. LAWSON: We may want to get some
10 comments from OAG on this, but I don't believe that
11 the zoning regulations or the Height Act specifically
12 define what is considered the front. I understand
13 what you are saying, and it is the object of some
14 confusion and, like many things, perhaps some
15 clarification is needed.

16 It is possible for a building to have more
17 than one front, I guess, and in this case, certainly,
18 the frontage again that they are choosing to measure
19 height for the Height Act is 14th Street, which is the
20 wider street.

21 MR. BERGSTEIN: If I could also just chime
22 in: Mr. Lawson didn't know this, but after we talked
23 this afternoon I had a conversation with the
24 applicant, and was provided with an opinion from our
25 office that said that -- and it seems to be the case,

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1 that at least for the Height Act, you use the street
2 that you are fronting on to determine the maximum
3 height of your building.

4 So this building fronts on 14th Street,
5 and that allows a maximum height of 110 feet.
6 However, there is a separate section in the Height Act
7 that tells you how to measure height and where to
8 measure height, which is a completely different
9 section.

10 So you can measure your compliance with
11 the 110 foot height from a street that would, if you
12 had used that to determine your maximum height, not
13 allowed you that. So in the opinion that the
14 Corporation Counsel issued, if the building was on
15 14th and H Street, it could not, if it used H Street,
16 reach the height of 110 feet.

17 It used 14th Street to determine that it
18 could reach 110 feet, but it measured its height from
19 H Street, because that was the street with the higher
20 elevation; and under Section 7 of the Height Act, you
21 use the street with the highest elevation to determine
22 your actual compliance with the height that is
23 determined by the width of the street that is your
24 front.

25 That is my understanding of what is

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1 happening here, that for Height Act purposes they will
2 be measuring their height from Belmont Street, but the
3 determination that they can go up to 110 feet is based
4 upon the front of 14th Street.

5 COMMISSIONER HILDEBRAND: Well, 90 feet in
6 this case, not 110.

7 MR. LAWSON: Yes, I'm sorry.

8 COMMISSIONER HILDEBRAND: I'd just like to
9 look into that a little further, if we could, just to
10 make sure that we are all in agreement on that as we
11 go forward.

12 CHAIRPERSON MITTEN: Just on that point,
13 I think you are raising an interesting technical
14 point. But the other point that I would like to have
15 some more development of by the applicant would be the
16 relationship -- If the technical interpretation is
17 correct, what is the relationship of this building at
18 90 feet to the balance of Belmont Street or -- I
19 understand probably a similar interpretation could be
20 made to the site to the north, which I don't even know
21 what that is developed with right now, but then the
22 sites to the east -- how are they going to relate to
23 each other? I think we would want to have a
24 discussion about that. Mr. Parsons?

25 COMMISSIONER PARSONS: Mr. Lawson, this

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1 is a detail, but it is something that is confusing me.
2 It's on Sheet A-08 and A-09 in the booklet that we
3 received, and there is a dashed line across the top of
4 the project which is unlabeled. I think it is trying
5 to show a matter of right penthouse, but I'm not sure.
6 It seems to be tapered either end of the building, and
7 I just don't want to be surprised by that later:
8 Well, you saw it at setdown. Well, I did, but I don't
9 know what it is.

10 MR. LAWSON: I just want to be clear. You
11 are looking at the elevations of the building and the
12 grade at the top?

13 COMMISSIONER PARSONS: A-08, A-09, dashed
14 line across the top, tapered line on either end. The
15 same thing exists on the alley elevation.

16 MR. LAWSON: The dashed line represents
17 the maximum penthouse height that they are proposing
18 as part of their application. You see it a little bit
19 better, I guess, on A-09 than on A-08. The dashed
20 line represents the topmost line that is also shown on
21 A-08.

22 I believe that the dashed line shows the
23 maximum height that would be possible, because -- and
24 I can clarify this, certainly, prior to the public
25 hearing -- because much of their penthouse height is

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1 actually slightly less than the maximum permitted of
2 18.5 feet.

3 COMMISSIONER PARSONS: Right. I'm sure we
4 are reading the same thing. The building is not
5 proposed to go to this height or to taper down at the
6 ends.

7 MR. LAWSON: Right.

8 COMMISSIONER PARSONS: Thank you.

9 CHAIRPERSON MITTEN: Anyone else? I just
10 had a couple of questions, and you called this out in
11 your report on page 6, which is that you are asking
12 the applicant to provide clarification about the
13 removal of the satellite dishes. I would be curious
14 to know, are they taking the ugly satellite dishes and
15 putting them someplace else to be ugly someplace else?

16 MR. LAWSON: My understanding is that most
17 of the dishes are actually now redundant. They can be
18 removed and replaced with other -- with fiber optic
19 cables and things like that. I do believe that there
20 will be some dish structures remaining on the roof of
21 this structure, of the residential structure, and that
22 is one of the things that we need to have entirely
23 clarified before the public hearing.

24 In addition, there is an equipment room
25 related to the satellite dishes which would remain,

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1 just kind of adjacent to the site. The applicant is
2 proposing to provide a screen. The equipment room is
3 kind of facing Florida Avenue to the south. So the
4 applicant is proposing to provide a screen, a visual
5 screen, I guess, to screen off that equipment room
6 from public view.

7 CHAIRPERSON MITTEN: Well, we definitely
8 want to see any antennas that are going to be on this,
9 unless they want to go to the BZA after they visit us.

10 Then you also ask for more detail on the
11 million dollar contribution. We are going to need a
12 lot of clarity on that, because it is a transaction --
13 it sounds like it is a transaction that is pending,
14 and what would happen if the transaction were derailed
15 and all of that?

16 Then I would just like to suggest, as we
17 have to other applicants, that we tend not to favor
18 just contributions for undefined projects, because we
19 would like to see completion of projects. So rather
20 than have these four contributions made to what are
21 worthy organizations, we would rather have them tied
22 to a specific project or task, so that we could know
23 when we had achieved completion.

24 Then the last thing is I am going to want
25 to understand better -- and I'm looking at S-03 right

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1 now -- how these loading areas work, because it looks
2 like it requires trucks to be backing up into the
3 alley in order to jockey their way into these various
4 loading areas, and also it looks -- I can't tell if
5 the alley is just -- if all of the loading areas are
6 immediately adjacent to the alley or if they are
7 somehow stacked there.

8 Then it also appeared that there was maybe
9 an overhang at part of it, and so part of it was under
10 cover, and we don't know what the clearances are
11 there. So just more elaboration about the loading
12 area. Anyone else?

13 COMMISSIONER HILDEBRAND: Actually, yes.
14 Can you clarify for me -- The 15 foot portion of the
15 alley, is that going to remain two-way circulation or
16 are they proposing limiting it to one way?

17 MR. LAWSON: They are actually proposing
18 to widen a portion of the alley from 15 feet to -- my
19 memory is 20 feet.

20 COMMISSIONER HILDEBRAND: But the portion
21 that is adjacent to the existing building to remain
22 will stay 15 feet.

23 MR. LAWSON: I've heard nothing -- Sorry.
24 A portion of the alley would be increased to 20 feet,
25 and I've heard nothing from the applicant that they

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1 are requesting that the alley be one-way or two-way.
2 Again, I can clarify that and make sure I have that
3 information for the public hearing.

4 COMMISSIONER HILDEBRAND: The other thing:
5 On the elevations there is an architectural
6 embellishment that includes a very large terra cotta
7 tile or brick parapet wall that extends a full story
8 above the roof as part of the sort of northern end of
9 14th Street. I'd like to have a little bit more
10 detail on how that is working, particularly with the
11 Belmont elevation where it doesn't appear, and if
12 there are going to be any rooftop equipment that will
13 be on this roofscape that's visible or is it all going
14 to be concealed within the penthouse walls?

15 You had a question about whether or not
16 the penthouses over the residential areas were
17 actually occupiable space or mechanical space, and
18 that ties in with that question, as we would certainly
19 hate to see mechanical equipment shifted to the roof
20 of the penthouse at this point, and if there are any
21 railings for the roof edge that aren't currently being
22 shown.

23 CHAIRPERSON MITTEN: Anyone else? All
24 right, we have a recommendation from the Office of
25 Planning to set down Case No. 05-22, and I would so

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1 move.

2 COMMISSIONER JEFFRIES: Second.

3 CHAIRPERSON MITTEN: It is our night,
4 Commissioner Jeffries. Thank you very much for
5 helping with this.

6 All those in favor, please say Aye. Mrs.
7 Schellin, I believe we have none opposed.

8 ACTING SECRETARY SCHELLIN: Yes. Staff
9 would record the vote five to zero to zero to approve
10 setdown in case number 05-22, Commission Mitten
11 moving, Commissioner Jeffries seconding, Commissioners
12 Hildebrand, Hood and parsons in favor.

13 CHAIRPERSON MITTEN: Thank you. Next is
14 Case No. 05-19, which is the PUD proposal by the
15 Neighborhood Development Co. LLC at 4100 Georgia
16 Avenue, N.W. Ms. Brown-Roberts.

17 MS. BROWN-ROBERTS: Good evening, Madam
18 Chairman and members of the Commission. I am Maxine
19 Brown-Roberts from the Office of Planning.

20 The Neighborhood Development Company has
21 applied for a consolidated PUD and related map
22 amendment to rezone the site from C-2-A to the C-3-A
23 District to accommodate a 78 unit apartment building
24 with ground floor retail and below grade parking. The
25 residences will be one- and two-bedroom units, and

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1 will be affordable to low income residents.

2 The project is designed to conform to the
3 permitted height and FAR for the requested C-3-A
4 District. The applicant has requested flexibility
5 from the parking, residential recreational space, roof
6 structure, and court width requirements.

7 Regarding the parking, the applicant is
8 reducing the required 66 spaces to 36 spaces, and
9 states that the reduction is required to maintain the
10 affordability of the units. The applicant believes
11 that the reduction would not be detrimental to the
12 community because of the property's proximity to the
13 Georgia Avenue-Petworth Metro station.

14 The Office of Planning is concerned with
15 the requested reduction, and that further efforts
16 should be made to provide more parking. The Office of
17 Planning recommends that the applicant conduct a
18 traffic study that includes a parking study.

19 The application meets the standards for
20 evaluation as a PUD. Regarding the public benefits
21 that will be generated by this proposal, OP believes
22 that the benefits of the low income housing will
23 compensate for the additional FAR and height that is
24 requested, and will continue to work with the
25 applicant to improve the architecture and the proposed

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1 materials.

2 The applicant has committed to exploring
3 the possibility of improving the energy efficiency of
4 the building through the creation of green roof. Op
5 believes that the proposed development will be of
6 special value to the community, because it serves to
7 instigate further economic development in the area and
8 serve low income residents.

9 The proposed development is consistent
10 with the comprehensive plan and is designated on the
11 generalized land use map for moderate density
12 residential and low density commercial. The mixed use
13 category also includes areas proposed for significant
14 land use changes.

15 The Office of Planning supports the
16 proposal to provide affordable housing for low income
17 residents, and recommends that the Zoning Commission
18 set down the application for public hearing.

19 Further, the application should provide a
20 detailed roof plan, detailed landscape plan, traffic
21 and parking study, and address the loading
22 requirements.

23 Thank you, Madam Chairman, and I am
24 available for questions.

25 CHAIRPERSON MITTEN: Thank you, Ms. Brown-

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1 Roberts. Questions, comments? Mr. Parsons.

2 COMMISSIONER PARSONS: Well, I'm very
3 concerned about the insertion of C-3-A into the middle
4 of a C-2-A zone. Is there something guiding us that
5 the C-2-A zone, which extends two or three blocks in
6 either direction, should be converted to C-3-A or is
7 this what I would call spot zoning?

8 MS. BROWN-ROBERTS: Recently, a planning
9 study was done on the Georgia Avenue-Petworth Metro
10 station area corridor plan, and that recommended some
11 additional intensity in those areas. It did not
12 specify the zoning -- a zoning change, but I think the
13 recommendations that came forward was to increase some
14 of the intensity in those areas.

15 COMMISSIONER PARSONS: So would it be your
16 recommendation to convert this entire area of C-2-A to
17 C-3-A so that it would be compatible with the proposal
18 we have here tonight?

19 MS. BROWN-ROBERTS: As I said, the plan
20 didn't make specific recommendation for that, but I
21 think that is something that we could take a look, a
22 closer look at.

23 CHAIRPERSON MITTEN: Can I just ask, has
24 this been -- Is this a small area plan or this is just
25 a study?

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1 MS. BROWN-ROBERTS: It is a small area
2 plan. It hasn't been adopted by the City Council as
3 yet, but they are proposing to do so in the fall.

4 CHAIRPERSON MITTEN: What's the last thing
5 you said?

6 MS. BROWN-ROBERTS: It is going to the
7 City Council in the fall.

8 CHAIRPERSON MITTEN: In the fall? Okay.
9 I didn't want to interrupt. I just wanted to find out
10 what we are dealing with.

11 COMMISSIONER PARSONS: Well, I'm looking
12 at the map attached to your report, which shows what
13 I'm talking about. I mean, to me, it is the classic
14 example of spot zoning. Help me here.

15 MS. MCCARTHY: I think there was pretty
16 clear guidance in the Georgia Avenue plan for the fact
17 that, because the whole length of Georgia Avenue is C-
18 2-A except for some C-3-A pockets around the Metro
19 stations, that it's been difficult to get enough
20 critical mass of retail going and enough critical mass
21 of residential on the Avenue to make retail work.

22 So there is a lot of redundant retail.
23 There is a lot of vacant retail. There is a lot of
24 really substandard stuff. So the thrust of the small
25 area plan was let's take the areas around the Metro

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1 stations, really focus on enhancing them by increasing
2 the density in the vicinity of the Metro, and then
3 discouraging retail in the C-2-A areas that are in
4 between the Metro stations.

5 So I think -- I don't find it spot zoning.
6 Probably, if we waited another -- a year or so for the
7 new comprehensive plan to be adopted, which we
8 anticipate incorporating all of the small area plans,
9 that we would just go for zoning consistency action
10 and rezone that area. But in this case, because we've
11 got a project -- a really exemplary project in terms
12 of providing low and moderate income housing in an
13 area that's losing low and moderate income housing to
14 gentrification at really quite an alarming rate, that
15 it is worth moving forward with this project.

16 C-3-A is not a zoning that is atypical
17 along Georgia Avenue. It exists just a few blocks
18 from there. It just doesn't happen -- It hasn't been
19 extended this far at this point in time.

20 COMMISSIONER PARSONS: So it is your
21 prediction then that, within a year or so, we will
22 have a case that will call for rezoning this area from
23 Shepard Street to Varnum. As shown, C-2-A here would
24 be C-3-A?

25 MS. MCCARTHY; Not necessarily on both

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1 sides of the street, and not necessarily for the
2 entire length, but something close to that, yes.

3 COMMISSIONER PARSONS: Thank you.

4 CHAIRPERSON MITTEN: I just want to pick
5 up on what Mr. Parsons was talking about, which is
6 because the small area plan hasn't gone to the Council
7 yet, hasn't been approved by the Council yet, and we
8 are dealing with the existing comp plan and the
9 guidance from the generalized land use map, you know,
10 even though the overall density is not different, if
11 you look at the amount -- and this is supposed to be
12 low density commercial and moderate density
13 residential, talking about almost four FAR of
14 residential, which is not moderate density
15 residential, according to the way our categories fall.
16 That would be between R-5-D and R-5-E, which is really
17 medium to high.

18 So I'm just wondering -- I'm wondering a
19 couple of things. One is: We have to be not
20 inconsistent with the existing comprehensive plan or
21 whatever is in place, and we are sort of -- These
22 things are coming a little bit early relative to
23 actions that -- I mean, the Council -- You know, you
24 guys make recommendations, and I'm sure they often
25 take your recommendations without changing them. But

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1 it is the Council's prerogative to approve these
2 things.

3 So if we are approving things taking on
4 faith that the Council is going to adopt a given small
5 area plan, I'm a little bit afraid of that.

6 MS. McCARTHY: I think I can understand
7 that, although not only has the plan been completed;
8 we have held what the regs call the Mayor's Public
9 Hearing. So we've done -- and I believe it actually
10 has been introduced or, if not, is on the legislative
11 calendar to -- or the legislative package, the
12 administration's legislative package, to be
13 introduced. But I believe that, if you look at the
14 comp plan guidance with regard to -- There is a
15 specific provision that calls for using zoning and
16 other incentives to accomplish low and moderate income
17 housing; and if you look at the guidance around
18 focusing development along major corridors and
19 focusing development in the vicinity of Metro
20 stations, I think the policy language of the
21 comprehensive plan gives us some additional guidance
22 that helps supplement the land use element sufficient
23 that I think we could feel comfortable recommending
24 setdown for this project.

25 CHAIRPERSON MITTEN: Can you explain to me

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1 -- The word affordable is used liberally throughout
2 the application and your report, but there is nothing
3 that says what that means. Based on what I read, it
4 just means that this will be less expensive than what
5 is downtown.

6 MS. BROWN-ROBERTS: They are talking - The
7 applicant stated that they were talking about 60
8 percent of AMI.

9 CHAIRPERSON MITTEN: But there is nothing
10 in the application that says how they are going to
11 ensure that or that they are going to ensure that.

12 MS. BROWN-ROBERTS: I think a lot of the
13 funding is coming from the Housing Department that has
14 some specifics. So I could get that, the specifics of
15 that.

16 CHAIRPERSON MITTEN: Given that that is a
17 big part of this application, we need to know what
18 exactly they are proposing, and that is not clear at
19 all.

20 MS. McCARTHY: Our recommendation was
21 based on that understanding, but certainly the
22 Commission as part of its action in setting it down,
23 if you want to set it down, could make clear that it
24 is on that same understanding that the Commission is
25 setting it down, and they expect to see that

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1 commitment made at the public hearing.

2 CHAIRPERSON MITTEN: Okay. I'm hoping
3 that maybe some of my colleagues might weigh in on
4 this, because I'm not the architectural expert on the
5 Commission, by any means. But among my concerns --
6 and I voiced one -- is that there's a lot missing from
7 the application, and you guys made note of the fact
8 that there's additional things that need to be
9 submitted.

10 We have certain things that have been
11 submitted without dimensions. So we don't know if
12 they are seeking all the relief that is required,
13 because we have things that are not dimensioned.

14 Then I have just a general concern about
15 the appearance of the building, which I find to be
16 rather unattractive. There's a lot of different
17 materials being used. There's a configuration that I
18 frankly don't understand about where the core is
19 located, which then seems to dictate how the exterior
20 is treated, and I just wish there could be
21 significantly more work done on that before we set it
22 down.

23 COMMISSIONER HILDEBRAND: Madam Chair, I
24 wish I could support you, but unfortunately, my
25 package relative to this submission didn't reach me

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1 until five o'clock this afternoon, and I have not had
2 a chance to look at this. I won't be participating in
3 any decision that's made today.

4 CHAIRPERSON MITTEN: Okay.

5 COMMISSIONER JEFFRIES: And let me add
6 that the same holds true for myself. I didn't receive
7 a packet. So I won't be participating myself.

8 CHAIRPERSON MITTEN: Okay.

9 VICE CHAIRPERSON HOOD: I also did not
10 receive it. It may be at home now, but I did not
11 receive it. I still have a question.

12 MS. STEINGASSER: Madam Chair, could I
13 offer: With the regularity of hearings that we have
14 coming up in the next month that perhaps we defer
15 actin on this case. Let us get back with the
16 applicant in the next week, and bring you back at
17 least to address what we have heard so far this
18 evening, give you a chance to familiarize yourself
19 with the application, and that way we don't have to
20 take any kind of negative action.

21 CHAIRPERSON MITTEN: No, and I wouldn't
22 suggest that. I would suggest, you know, what you are
23 suggesting.

24 COMMISSIONER PARSONS: And I think you say
25 this, because procedurally we are incapable.

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1 COMMISSIONER JEFFRIES: I actually thought
2 so. I don't know if they have the numbers here, but
3 whatever.

4 COMMISSIONER PARSONS: But I agree with
5 you, Madam Chair, that it is difficult to find the
6 entry to the building. It is -- For such a small
7 building, multiple materials are disconcerting. I'm
8 not sure that -- The colors, you know, are very
9 interesting, but I'm concerned about the vertical
10 metal siding specifically.

11 CHAIRPERSON MITTEN: Okay. So I think we
12 have given some direction. Mr. Hood?

13 VICE CHAIRPERSON HOOD: Madam Chair, I
14 just wanted to ask a question. Hearing the discussion
15 and looking to the Office of Planning report, Ms.
16 Brown-Roberts -- and maybe Ms. McCarthy and Ms.
17 Steingasser can weigh in on this -- But I see where
18 you are saying you are concerned about the lack of
19 parking spaces.

20 What I've heard in other cases, that lack
21 of parking or reduction of parking spaces didn't
22 matter, because you are on the public transit line.
23 You have the Metro. You are near the Metrorail. So
24 that was not an issue. But now here I see that we now
25 have a concern.

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1 Basically, when we have development around
2 Metro stations, we are trying to do away with parking
3 spaces. So now here we are trying to add them. So I
4 don't know if you can answer tonight. You may be able
5 to, Ms. McCarthy or Ms. Steingasser. But we probably
6 have a case coming up later in the night on that same
7 issue where there was a reduction in parking spaces,
8 and it was okay, but in this case it seems to be a
9 problem. I don't understand that, because we got a
10 Metro station. We are on the public transit line.

11 Just help me. Educate me on how to
12 quantify that when I'm looking at cases.

13 MS. McCARTHY: Well, Maxine can correct me
14 if I'm wrong, but I think that it was both the
15 magnitude of the reduction below what the requirements
16 would be and the combination that it was with a retail
17 use, a drugstore, that generates a fair amount of
18 traffic, and that those two combined --

19 MS. BROWN-ROBERTS: That's correct. In
20 addition to that, the Metro station is about four
21 blocks down. So that gave us some pause also.

22 VICE CHAIRPERSON HOOD: One of the causes
23 is Metro is about four blocks away. Okay. Maybe when
24 we set it down, we can look into that. Thank you.

25 CHAIRPERSON MITTEN: Actually, I'm glad

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1 that Mr. Hood brought this up, because it reminded me
2 of something, which is you just mentioned the
3 drugstore. There was this little pharmacy kiosk
4 that's shown at the back, but I don't recall any
5 mention made of the drugstore. So how does the
6 drugstore fit into the whole thing?

7 MS. BROWN-ROBERTS: The retail area, it is
8 not definite. They don't have a contract at this
9 time. So, yes, that's a drugstore. It's going there.
10 But I think one of the first things I saw was the
11 little kiosk, and they said, well, more than likely it
12 is going to be a drugstore, but it's not 100 percent
13 certain that it's going to be that.

14 CHAIRPERSON MITTEN: Okay. Thank you. So
15 we will just defer this until we have a more fleshed-
16 out application.

17 All right. Then next is Case No. 98-21A,
18 and this was the request for a minor modification in
19 the PUD, the Tenley Hill PUD, which we have decided to
20 take up under Hearing Action.

21 I don't know if there is anybody from the
22 Office of Planning that is prepared to say anything
23 about that. That's fine.

24 The issue here is it's about a garage door
25 on Wisconsin Avenue, and in the request the garage

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1 door, as it was approved by the Commission, was an
2 opaque glass door, which has proven problematic, and
3 the applicant was seeking to -- Well, actually, they
4 have changed the garage door, and now they are seeking
5 retroactive approval of an aluminum grill door, and
6 the Commission was uncomfortable taking that up on the
7 Consent Calendar. So now it is under Hearing Action.

8 I would just ask if there are any comments
9 from any of the Commissioners before we move ahead.
10 Mr. Parsons?

11 COMMISSIONER PARSONS: Well, I certainly
12 think this is not a minor modification, and it is
13 worthy of a hearing. I am somewhat confused by this
14 whole story of how we got to this point, where the
15 condensers were apparently on the roof when we
16 approved the project, and now we are in a garage,
17 which I can't believe that that's a technique that
18 anybody would use to heat their garage.

19 I think we ought to examine not only the
20 details of this garage door, but what has happened on
21 the roof of the building that does not allow what wa
22 originally proposed, conceived, approved by us. So,
23 to me, it's a top and bottom kind of evaluation of
24 this project.

25 CHAIRPERSON MITTEN: All right. So then

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1 just to be clear, the issue would be not just the
2 material of the garage door but the location of the
3 condensers and any other modifications that might have
4 been made since the Zoning Commission's original
5 approval?

6 COMMISSIONER PARSONS: Especially with
7 regard to the roof. That's only my personal
8 observation, but something is wrong up on that roof.
9 That's something -- I just don't want to get into it,
10 but I'd like to look at the roof and what did we
11 approve and what's up there, and what necessitated
12 this change. Is there some blame on the National Park
13 Service that had something to do with that? I just
14 think we ought to really understand what happened
15 here.

16 CHAIRPERSON MITTEN: Okay.

17 COMMISSIONER PARSONS: And I can't imagine
18 that the solution of these condensers in the garage is
19 a sustainable solution to heating and ventilating of
20 this building. It just seems like a stopgap solution.

21 CHAIRPERSON MITTEN: I think, just to be
22 clear, the condensers are air conditioning condensers
23 for the units, and they generate heat in the garage,
24 which is why --

25 COMMISSIONER PARSONS: That's what I mean.

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1 I mean, who would do such a thing, to heat their
2 garage and then need to ventilate it with enormous
3 fans and garage doors like that. Something went very
4 wrong here, and I hope we can help fix it.

5 CHAIRPERSON MITTEN: Okay. Then I would
6 move approval of setting down the requested
7 modification and related issues in Case No. 98-21A.

8 COMMISSIONER PARSONS; Second. I had to
9 jump in there. We can't have a pattern like this.

10 CHAIRPERSON MITTEN: Thank you. Is there
11 any further discussion?

12 COMMISSIONER HILDEBRAND: Yes. The other
13 thing I would like to mention, too, is the impact on
14 Wisconsin Avenue at night.

15 COMMISSIONER PARSONS: Oh, yes.

16 COMMISSIONER HILDEBRAND: The view into
17 this garage now is a striking contrast to what was
18 proposed. So I think the applicant really needs to
19 focus on that change that's occurred as part of the
20 hearing.

21 CHAIRPERSON MITTEN: Thank you. Anyone
22 else? All those in favor, please say Aye. Any
23 opposed? Mrs. Schellin.

24 ACTING SECRETARY SCHELLIN: Staff would
25 record the vote five to zero to zero to set down Case

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1 No. 98-21A for the modification requested,
2 Commissioner Mitten moving, Commissioner Parsons
3 seconding, Commissioners Hildebrand, Hood and Jeffries
4 in favor.

5 CHAIRPERSON MITTEN: Thank you. Last
6 under Hearing Action is Case No. 05-29, and this is an
7 emergency rulemaking and setdown of permanent rule
8 authorizing a temporary increase of enrollment to
9 accommodate students displaced due to the effects of
10 Hurricane Katrina.

11 MR. COCHRAN; Thank you, Madam Chair. My
12 name is Steven Cochran.

13 The Washington, D.C., area and the
14 District in particular have welcomed many students who
15 were displaced, many children who were displaced by
16 the effects of Hurricane Katrina, and now these
17 children need a place to go to school.

18 There have been private schools in
19 Washington, D.C. who would like to be able to take
20 these children in, but these schools are subject to
21 certain enrollment caps.

22 As a result of this, the Association of
23 Independent Schools of Greater Washington has
24 requested, and OP recommends, that the Commission
25 adopt emergency rulemaking that allows schools which

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1 are subject to enrollment limits to enroll students
2 displaced by Hurricane Katrina.

3 The number of students at a school would
4 be the lesser of 20 students or 10 percent of the
5 enrollment cap. The provisions would become effective
6 immediately upon adoption and would expire on July 1,
7 2006.

8 Because emergency rulemakings expire after
9 120 days of adoption, OP asks the Commission to
10 authorize immediate publications of the hearing notice
11 to ensure that the Commission has the opportunity to
12 make the rule more permanent or, in this case, permit
13 it until the sunset date of July 1, 2006, so that
14 there is no lapse in the ability of the schools to
15 enroll these students.

16 CHAIRPERSON MITTEN: Thank you. Any
17 questions for Mr. Cochran? Mr. Hood?

18 VICE CHAIRPERSON HOOD: Yes. Mr. Cochran,
19 I'm just curious. We are targeting the victims of the
20 hurricane. Let me just ask, are they waiving their
21 fees -- the private schools?

22 MR. COCHRAN: Many of them are. I can't
23 speak for all of them.

24 VICE CHAIRPERSON HOOD: So they are going
25 to waive their fees, because most of them don't have

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1 a whole bunch of money, and I'm sure some of these
2 private schools -- I'm being serious, because they are
3 asking us to waive the rule, and I want to make sure
4 that the people who need the benefit will benefit.

5 MS. STEINGASSER: Yes, sir, Mr. Hood, all
6 the correspondence that we got on this case, there
7 were either great reductions in the fee structure or
8 they were being waived completely.

9 VICE CHAIRPERSON HOOD: Thank you.

10 CHAIRPERSON MITTEN: All right. So let's
11 take up the emergency first, and then we will vote on
12 the setdown. So I would move approval of the
13 emergency rulemaking that would add 206.4 and 206.5 as
14 presented by the Office of Planning.

15 CHAIRPERSON HOOD: Second.

16 CHAIRPERSON MITTEN: Any further
17 discussion?

18 COMMISSIONER JEFFRIES: Just a question.
19 July 1, 2006 -- I mean, are we comfortable that that's
20 sufficient time?

21 MR. COCHRAN: If you are asking me, yes.
22 I'm certainly comfortable that it's sufficient time to
23 see whether there might need to be an extension, but
24 at least this way there is a date certain. It could
25 always be extended by the Commission after additional

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1 action, but that also allows for this to take place
2 after the end of one school year and before the
3 beginning of another school year.

4 COMMISSIONER JEFFRIES: Because, I mean,
5 you know, quite frankly -- I mean some of these people
6 clearly might be displaced for quite a while. It may
7 be a year and a half or so.

8 MS. STEINGASSER: And if I could also
9 clarify, the intent is to accommodate the first school
10 year on an emergency basis. If the children become
11 enrolled on a permanent basis, then they would need to
12 count against the enrollment cap after that, if they
13 become a full time student from year to year. It
14 would just be that first school year that would be
15 waived.

16 COMMISSIONER JEFFRIES: And you handle
17 that through attrition or reduced enrollment for the
18 incoming year or the next class?

19 MS. STEINGASSER: Yes.

20 CHAIRPERSON MITTEN: Anything else? All
21 those in favor, please say Aye. Mrs. Schellin, we
22 have none opposed.

23 ACTING SECRETARY SCHELLIN: Staff would
24 record the vote five to zero to zero to approve the
25 emergency rulemaking in Case No. 05-29, Commissioner

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1 Mitten moving, Commissioner Hood seconding,
2 Commissioners Hildebrand, Jeffries and Parsons in
3 favor.

4 CHAIRPERSON MITTEN: I just realized that
5 I probably didn't need to move the 206.5 on the
6 emergency, since it will -- It's not relevant, but
7 pardon me for doing that. But now I will move 206.4
8 and 206.5 to set down to take the permanent action so
9 that we can deal with the expiration of the emergency
10 and not have a lapse.

11 MR. BERGSTEIN: And to authorize immediate
12 publication without the 20-day wait.

13 CHAIRPERSON MITTEN: And to authorize
14 immediate publication without the 20-day wait,
15 according to our rules. Was that second, Mr. Hood?

16 VICE CHAIRPERSON HOOD: Second.

17 CHAIRPERSON MITTEN: All right, thank you.
18 Any discussion on that? All those in favor, please
19 say Aye. Mrs. Schellin, we have none opposed.

20 ACTING SECRETARY SCHELLIN: Staff would
21 record the vote five to zero to zero to set down Case
22 No. 05-29, Commissioner Mitten moving, Commissioner
23 Hood seconding, Commissioners Hildebrand, Jeffries and
24 Parsons in favor.

25 CHAIRPERSON MITTEN: Thank you. Now we

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1 will move to Proposed Action, and the first item is
2 one on which I will be recusing myself, since it
3 relates to government uses, and Mr. Hood will handle
4 it.

5 VICE CHAIRPERSON HOOD: Okay.
6 Commissioners, we have in front of the Zoning
7 Commission Case No. 03-09. That's the government use
8 in historic buildings, which is new proposed
9 regulation 222. Mrs. Schellin?

10 ACTING SECRETARY SCHELLIN: Staff has no
11 other information.

12 VICE CHAIRPERSON HOOD: We have the
13 proposed text amendment to Section 222 in front of us.
14 I think that the hearing fleshed out a lot of issues,
15 especially dealing with a residential neighborhood
16 involving with the Department of Public Works,
17 Department of Motor Vehicles and the Department of
18 Corrections, and I guess, if you look at the proposed
19 text, I don't think we need to go through each and
20 every line unless there is something that stands out.
21 If not, I will ask for a motion.

22 COMMISSIONER HILDEBRAND: Actually, Mr.
23 Vice Chair, the only thing I would request
24 modification on is 222.2 where it says "the use of the
25 property shall not tend to adversely affect the

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1 character or use of the neighboring properties."

2 I would just like to strike "tend to" from
3 that, and say simply "shall not adversely affect."

4 VICE CHAIRPERSON HOOD: So you are
5 proposing to say "the use of the property shall not
6 adversely affect the character or use of the
7 neighboring properties"?

8 COMMISSIONER HILDEBRAND: Right. I think
9 "tend to" is somewhat arbitrary.

10 COMMISSIONER PARSONS: Yes, I agree.

11 VICE CHAIRPERSON HOOD: Any problems with
12 that modification, Mr. Bergstein? Legally, I know a
13 lot of times we have a lot of negatives in proposed
14 language.

15 MR. BERGSTEIN: That language is verbatim
16 from the special exception standard. That's all. It
17 is from 3104, what it actually says from the general
18 exception standard.

19 VICE CHAIRPERSON HOOD: So we are staying
20 consistent if we leave it in?

21 MR. BERGSTEIN: If you strike it out, it
22 means something tougher going on than the normal
23 special exception.

24 COMMISSIONER HILDEBRAND: Okay. I say, be
25 tough.

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1 VICE CHAIRPERSON HOOD: Everybody want to
2 be tough?

3 COMMISSIONER HILDEBRAND: There is no need
4 making it stronger than the other language, but when
5 I read through this, it seemed like it was a little
6 bit weak.

7 VICE CHAIRPERSON HOOD: Okay. So we will
8 keep it as it has been proposed?

9 COMMISSIONER PARSONS: I guess we'd
10 better.

11 VICE CHAIRPERSON HOOD: Right. Anything
12 else? If not, I ask for a motion.

13 COMMISSIONER PARSONS: Move we approve it
14 as written.

15 VICE CHAIRPERSON HOOD: Second. Properly
16 moved and properly seconded, all those in favor?

17 COMMISSIONER PARSONS: Reluctantly.

18 VICE CHAIRPERSON HOOD: Any opposition?
19 So ordered. Mrs. Schellin, would you record the vote?

20 ACTING SECRETARY SCHELLIN: Yes. Staff
21 would record the vote four to zero to one to approve
22 Case No. 03-09 for proposed action, Commissioner
23 Parsons moving, Commissioner Hood seconding,
24 Commissioner Hildebrand and Jeffries in favor,
25 Commissioner Mitten not voting, having recused

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1 herself.

2 CHAIRPERSON MITTEN: Thank you, Mr. Hood.

3 The next case for proposed action is Case
4 No. 05-02, which is everyone's favorite, Residential
5 Recreation Space.

6 So we received an additional submission
7 from Lindsley Williams that was very thorough, and we
8 have a supplement report from the Office of Planning,
9 and I will let Mr. Parsons --

10 COMMISSIONER PARSONS: Madam Chairman, I
11 recall this residential recreation space case many,
12 many years ago, and it was in a time where the kind of
13 amenities that are now taken for granted in apartment
14 complexes were hard to find, and the purpose of the
15 Commission was to influence that, insist upon it.

16 I think that time has past, and I find Mr.
17 Williams' arguments to abandon this very persuasive as
18 an obsolete and somewhat burdensome provision in our
19 regulations. So that's where I'm coming from tonight,
20 is to say let the marketplace take care of this
21 particular need in our city.

22 CHAIRPERSON MITTEN: Others?

23 VICE CHAIRPERSON HOOD: Madam Chair, I
24 would find myself in agreement with Commissioner
25 Parsons, and I think Mr. Williams has done an

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1 excellent job of laying out the issues for us and,
2 like I said, let the market drive it. Thank you.

3 CHAIRPERSON MITTEN: Mr. Jeffries?

4 COMMISSIONER JEFFRIES: Yes. I, too,
5 agree with Commissioner Parsons. I do believe that it
6 is somewhat obsolete and really not reflective of
7 current market conditions and so forth, and I, too,
8 would like to see it removed altogether.

9 CHAIRPERSON MITTEN: Mr. Hildebrand?

10 COMMISSIONER HILDEBRAND: The only thing
11 I would like to say is that I don't disagree that the
12 regulation needs to be revisited, but my concern is
13 that, if we eliminate it altogether, development
14 throughout the entire city will not rise to the same
15 level of market driven amenity space that might exist
16 in the central corridor area. I just caution us to
17 move carefully on that, in that regard.

18 CHAIRPERSON MITTEN: I agree with what Mr.
19 Parsons said. I think that we had some very
20 persuasive testimony, and we have all sat on BZA cases
21 where we've just had a parade of BZA cases where
22 people have sought relief from this and sought to
23 relief to varying degrees.

24 I think that, if there is a problem -- I
25 mean, keep in mind, this only relates to mixed use

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1 zones. It doesn't relate to residential zones. So
2 there's this disparity that I don't think is
3 necessarily reflective of the resources that are made
4 available in different neighborhoods for public
5 recreation.

6 I appreciate the caution that the Office
7 of Planning was attempting to exercise before making
8 such a dramatic change, but we've just -- I think we
9 have been influenced by not only the case itself but
10 our experience on the BZA, and we do have a definite
11 sense of what is being introduced in response to
12 market desires in apartment buildings around the city.

13 I think we are ready to abandon this, but
14 I have been advised that we can't take such a vote
15 based on what was advertised. So we will have to
16 readvertise and have another hearing on that subject,
17 and perhaps we will hear things from folks who feel
18 strongly for retention of some degree of residential
19 recreation space, but we'll find out.

20 COMMISSIONER PARSONS: So I would move
21 that we set down a new case. I guess it would have to
22 be a new case.

23 MR. BERGSTEIN: You really don't. It's
24 really just -- You can do it either way, but it could
25 just be another proposal, an alternative proposal from

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1 this case to simply repeal all provisions requiring
2 residential space.

3 COMMISSIONER PARSONS: Well, that's
4 exactly what I had in mind. So moved.

5 CHAIRPERSON MITTEN: Okay. Second? Okay,
6 Mr. Hood, go ahead.

7 VICE CHAIRPERSON HOOD: I'll second it.

8 CHAIRPERSON MITTEN: Thank you. So we
9 have a motion to set down a proposal that would repeal
10 all provisions related to residential recreation space
11 requirements in the mixed use zones, and is there any
12 further discussion?

13 All those in favor, please say Aye. Mrs.
14 Schellin, we have a unanimous vote.

15 ACTING SECRETARY SCHELLIN: Staff would
16 record the vote five to zero to zero for a further
17 hearing in Case No. 05-02 as stated, Commissioner
18 Parsons moving, Commissioner Hood seconding,
19 Commissioners Hildebrand, Jeffries and Mitten in
20 favor.

21 CHAIRPERSON MITTEN: Thank you. Last case
22 for Proposed Action is Case No. 04-35, which is the
23 Salvation Army PUD. I would open it up for
24 discussion.

25 We did receive -- Before I do that, we did

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1 receive a post-hearing submission in response to
2 questions that had been raised by the Commission
3 related to a variety of things, including the sign,
4 the child care dropoff parking, the roof, the
5 streetscape, and the architectural vision for the
6 property.

7 COMMISSIONER PARSONS: Everybody jump in.

8 CHAIRPERSON MITTEN: Mr. Parsons?

9 COMMISSIONER PARSONS: Well, I've got to
10 comment on the sign, that they were responsive to at
11 least my concerns over the illuminated sign or sign of
12 that height, have converted it to another material and
13 have dropped it down into the architecture of the
14 tower. However, I just feel -- I'm just seeking
15 others' opinions -- that the architecture itself has,
16 at least in my judgment, just too many materials for
17 the size of the building.

18 That is the concrete masonry block, the
19 brick, the zinc roof and wall panels, the multi-
20 colored clerestory windows, the yellow brick that goes
21 up the road. It just seems to me that it should be
22 simplified, not the architectural design as much as
23 using less materials.

24 I didn't -- I guess it was Mr. Jeffries
25 that asked for a statement of design intent that came

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1 to us, but I didn't find a persuasive explanation for
2 the amount of materials here.

3 So I just wanted to stimulate some
4 discussion in that regard.

5 CHAIRPERSON MITTEN: Anyone else? Mr.
6 Hildebrand?

7 COMMISSIONER HILDEBRAND: I think I
8 understand some of the concern that Mr. Parsons is
9 expressing, too. It is a piece that has sort of been
10 exploded into a series of volumes, these projecting
11 panels with this inset cross that disappears into the
12 volume of the building. You have a stair tower that's
13 pulled aside in another direction, and this unique
14 roof shape that's hovering above a glass wall. It's
15 a lot of interesting ideas, but it doesn't seem like
16 it's gelled back down into a cohesive building.

17 I think that would be the one statement I
18 would make about it.

19 CHAIRPERSON MITTEN: Mr. Jeffries?

20 COMMISSIONER JEFFRIES: Well, I think
21 we've all struggled with the design of this building,
22 and I think the intent of my question in terms of just
23 design vision was to really see if the architect could
24 sort of, just through words perhaps, walk us through
25 how we got here.

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1 It's one of those instances where less is
2 more, and it seems as if the building might be just
3 over-accessorized, quite frankly. It's just trying
4 way too hard, and again I'm still having problems with
5 the building's design from the context in which it
6 sits or in which it will sit, because there will be
7 continuing design.

8 I don't want this to be really sort of
9 catalytic for future things that happen. So it just
10 makes us pause, I believe. Normally, we don't like to
11 look at ourselves as an architectural review panel up
12 here, but every now and then we sort of have to stop
13 and perhaps give a little bit more guidance to perhaps
14 looking at -- I don't want to say starting over, but
15 making some fairly substantial changes to how this
16 looks.

17 I say that with a lot of regret, given the
18 cost that's been borne by the developer in terms of
19 putting these drawings together, but I'm really
20 concerned about the precedent that it will set. So I
21 wish we could find a way to sort of get through this,
22 because it's just something that is hard to absorb.

23 CHAIRPERSON MITTEN: Mr. Hood?

24 VICE CHAIRPERSON HOOD: I would agree,
25 Madam Chair. I'm just hoping that maybe we can scale

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1 back a little bit of the design on what is being
2 proposed, because I think that this is going to be a
3 signature that's going to jump start in that area, and
4 I'm sure other buildings will come and take the
5 pattern after this particular building, not to
6 diminish or take anything away from the services, but
7 I'm just hoping that it doesn't cost a whole bunch to
8 just scale back some and be a little more
9 conservative; because I really believe that this
10 building here, like I said earlier, is going to be the
11 signature for that whole neighborhood. Thank you.

12 CHAIRPERSON MITTEN: Thank you. I want to
13 say -- and I know it's the sentiment of the Commission
14 -- that this is a very important project and that it
15 move forward, and I know that's why we have been
16 struggling with the design; because we don't want to
17 do anything to impede the delivery of the services
18 that the Salvation Army intends to provide here,
19 because they are very needed, they are diverse in
20 scope. The Salvation Army has a wonderful reputation
21 for delivering services of this type, and we know that
22 the community is very much in support of it.

23 Notwithstanding that, I think if we were
24 able to give some specific guidance to the applicant
25 about how either they could simplify to some extent,

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1 because we do have a lot going on, and I think, Mr.
2 Hildebrand, what you said, that's what I was feeling,
3 although I doubt that I could have expressed it, which
4 is it doesn't come back together.

5 There's all these pieces, but then they
6 are not unified, and I know that wasn't the intent of
7 the design. So I think, if there were a little bit
8 more work done -- and I know you made reference to
9 substantial changes, and I guess, if we could provide
10 some guidance and give the applicant and chance to do
11 something that certainly wouldn't rise to the level of
12 having another hearing, but perhaps would help the
13 Commission accept the design a little bit better and
14 feel comfortable that it will provide an appropriate
15 first step or first project that will kind of set the
16 tone for the rest of Martin Luther King in this area.

17 So I don't know if some of my colleagues
18 might have some specific suggestions.

19 COMMISSIONER JEFFRIES: A couple of
20 things. I mean, Commissioner Parsons spoke about all
21 the different materials. We might want to just drill
22 down to perhaps two to three materials for the overall
23 building.

24 We might want to have more of a uniform
25 read of windows of some sort, because they seem to

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1 just occur in so many different places. I'm just
2 wondering about the ground floor level, whether we
3 could somehow -- because I get confused looking at
4 this about the scale of the ground floor level.

5 Again, I think that Commissioner -- Vice
6 Chair Hood spoke about this being sort of catalytic.
7 I think, if we could somehow work on the ground floor
8 to do all of the kinds of very nice articulation and
9 give it texture and so forth, and leave the top of it
10 just a little less, I think I can get a lot more
11 comfortable.

12 I don't think we need to have just sort of
13 great design or anything, but I think we might want to
14 just stick to the basics.

15 What else would I say? And the cross: I
16 don't know what to say about the cross. It's just --
17 It's very literal. Again, I'm speaking with some
18 tentativeness in my voice, because again, as Madam
19 Chair said, this is an important project, and we
20 wouldn't want to slow down services and so forth.

21 Just to recap: Less materials; more
22 articulation of a traditional sort of ground floor
23 level where that's more pedestrian friendly; spending
24 more time articulating that portion of the building
25 and less on the upper portions, would be my

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1 suggestion.

2 CHAIRPERSON MITTEN: Mr. Hildebrand, did
3 you want to -- Do you concur with that? I guess I
4 look to Commissioner Jeffries and Commissioner
5 Hildebrand to a somewhat lesser extent, Mr. Parsons
6 and, even a lesser extent, Mr. Hood.

7 COMMISSIONER HILDEBRAND: I do, to an
8 extent, but I am looking for great architecture here,
9 and I think that the applicant is looking for greater
10 architecture here.

11 I guess my concern is making it gel
12 further so that it reads as a cohesive, complete
13 composition. Part of that, I think, is the cross, and
14 I'm afraid that, as it is currently depicted in the
15 drawings, it is not going to read as you may intend
16 it. I think it is going to seem as a disparate series
17 of pieces that are protruding from the building at odd
18 angles and that you won't perceive it the way you want
19 to.

20 I think that is my general read on sort of
21 the entire structure, is that you will appreciate the
22 uniqueness of different things, but you won't
23 necessarily get an appreciation for the uniqueness of
24 the whole thing.

25 COMMISSIONER JEFFRIES: One of the things

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1 that I'd like to add is that, when we were looking at
2 these illustrations and these drawings, you never
3 really experienced these buildings this way. You
4 know, you were at sort of a -- You never had a bird's
5 eye view. Right? I mean, you are only walking
6 along, and you are really looking at the building as
7 a pedestrian or, if you are driving along.

8 So in some way, looking at the building
9 the way we are, it's a little distorted, but I do
10 think that we might want to again spend some time
11 really making certain that this building -- I keep
12 going back to the ground floor level and making that
13 dance and show some animation there, might make this
14 more of a contextual building. Right now it just
15 looks very figural and sort of landed.

16 I would -- Commissioner Hildebrand, I
17 didn't mean to say that I am looking for inferior
18 architecture. I mean, we all like great architecture,
19 but I am also mindful of the fact that you've gotten
20 fairly far along.

21 So again, less materials -- for me, and
22 I'm going to put it out there, because Madam Chair has
23 sort of asked me to try to do that -- less materials,
24 more articulation at the ground floor level, and there
25 might be more uniformity around just how the windows

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1 are placed. That's the only thing that I could add.

2 CHAIRPERSON MITTEN: Anyone else? So what
3 I think would be -- I mean, I think we want to keep
4 the momentum going. So if we could get an alternative
5 submission by -- what? -- like a week before our next
6 meeting, then we could take this up again.

7 ACTING SECRETARY SCHELLIN: Our next
8 meeting is October 17. So if we could have the
9 applicant make their filing by Tuesday, the 11th,
10 three o'clock p.m.

11 CHAIRPERSON MITTEN: Okay, that would be
12 our deadline in order to get it on for --

13 ACTING SECRETARY SCHELLIN: October.
14 Otherwise, it would go into November.

15 CHAIRPERSON MITTEN: Right. So we leave
16 that to the applicant, whether or not they can
17 accommodate that date. So then we will defer our
18 action on that case until we have that additional
19 submission.

20 All right. We are ready to take Final
21 Action. The first case is 04-37, which is the
22 Eastgate Senior Residences. We have received from
23 NCPC their letter saying that there is no adverse
24 impact on any Federal interest, and then we do have an
25 order, but it hasn't yet been reviewed by OAG, but

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1 this, if you will recall, is a 100-unit apartment
2 building for senior citizens, low and moderate income.

3 MR. BERGSTEIN: Madam Chair, the only
4 thing I would comment about the order is that it
5 doesn't really set out what the zoning flexibility was
6 being granted, and it doesn't contain language that
7 balances and reconciles that against the amenities.
8 That is really the only comment I had with respect to
9 the order.

10 CHAIRPERSON MITTEN: Okay. Those aspects
11 of it, I believe, we discussed when we took proposed
12 action, and we would expect that after the OAG review,
13 it would contain those components.

14 So I would say that we are voting -- we
15 are not voting on the order per se, because that will
16 be read subsequently, but just on the merits of the
17 case. And I would move approval.

18 COMMISSIONER PARSONS: Second.

19 CHAIRPERSON MITTEN: Any discussion? All
20 those in favor, please say Aye. Mrs. Schellin, we
21 have none opposed.

22 ACTING SECRETARY SCHELLIN: Yes. Staff
23 would record the vote five to zero to zero to approve
24 for final action case No. 04-37, Commission Mitten
25 moving, Commission Parsons seconding, and

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1 Commissioners Hildebrand, Hood and Jeffries in favor.

2 CHAIRPERSON MITTEN: Thank you. The next
3 case I am recused on as well, which is Case 05-08, and
4 Mr. Hood will take over again.

5 VICE CHAIRPERSON HOOD: Okay,
6 Commissioners. We had some submissions by NCPC, but
7 I think there were some issues that were raised on a
8 comment occurred in which we may need to delay this
9 until our next meeting. So I know that may come as a
10 surprise but, hopefully, we can get some more comments
11 that we need to evaluate and weigh.

12 So at our next meeting, we will be taking
13 up Zoning Commission Case No -- hopefully, Zoning
14 Commission Case No. 04-08, Capital Gateway Overlay -
15 Text Amendment).

16 COMMISSIONER PARSONS: I'm sorry. You
17 mean there's some other materials that we haven't yet
18 seen?

19 VICE CHAIRPERSON HOOD: Exactly. I have
20 been told that we have some other issues that we need
21 to weigh before we move forward. So we might as well
22 just take it all up at the same time.

23 COMMISSIONER PARSONS: All right.

24 VICE CHAIRPERSON HOOD: It's very late, so
25 late that I just --

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1 CHAIRPERSON MITTEN: Are we ready to move
2 forward?

3 VICE CHAIRPERSON HOOD: Yes, we are ready
4 to move forward. Thank you.

5 CHAIRPERSON MITTEN: All right. Then the
6 next is a sort of pending issue that's left over from
7 Case No. 05-14, which is the Nonprofit Community
8 Development Corporation of Washington. That was a
9 case that, if you recall, the BZA had granted variance
10 relief. The Zoning Commission undertook a *sua sponte*
11 review, and encouraged the applicant, while we were
12 doing that, to make a PUD application, which they did,
13 and which we approved.

14 So what is left now to the Commission is
15 to sort of tie up the loose ends on the *sua sponte*
16 case over the BZA action.

17 So there are some issues raised by the
18 basis for the BZA's decision which were really kind of
19 interesting when it comes right down to it, that I
20 don't know necessarily meant that the BZA -- They
21 were, I think, justified in making their
22 interpretation. It's just that the Zoning Commission
23 had a different interpretation.

24 The two issues are whether or not sort of
25 a private agreement can rise to the level of creating

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1 the practical difficulty, and then whether or not the
2 mission of a nonprofit is appropriately considered
3 under what had arisen from a Court of Appeals case
4 that we call *Monaco*, where there was arguably a more
5 narrow interpretation about the mission of the
6 nonprofit as being very specifically related to a
7 particular location.

8 I would like to take those issues up in a
9 text amendment, which I don't know exactly what I
10 would want to propose, but I guess I will give that
11 some thought. But as it relates to what the BZA did,
12 I think I would just like to take the position that
13 the *sua sponte* review is now moot, given that we have
14 the PUD approved for that project.

15 I don't know. Mr. Bergstein, do we need
16 to vote on that?

17 MR. BERGSTEIN: I think you would still
18 want to vacate the order as moot, so it's not out
19 there. There is a BZA order out there. You need to
20 dispose of it, and so you granted the PUD. You stayed
21 the order. I think, if you are going to declare it to
22 be moot, you should deem it to be vacated. We will
23 put out an order saying that.

24 CHAIRPERSON MITTEN: Okay. Then I would
25 move that the BZA order in -- I don't know what the

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1 BZA case was -- oh, BZA Case No. 17302 be vacated as
2 moot.

3 COMMISSIONER JEFFRIES: Second.

4 CHAIRPERSON MITTEN: Any discussion? All
5 those in favor, please say Aye. Mrs. Schellin, it is
6 unanimous.

7 ACTING SECRETARY SCHELLIN: Yes. Staff
8 would record the vote five to zero to zero to vacate
9 the order in BZA Case No. 17302 as being moot,
10 Commissioner Mitten moving, Commissioner Jeffries
11 seconding, Commissioners Hildebrand, Hood and Parsons
12 in favor.

13 CHAIRPERSON MITTEN: Thank you. Next is
14 Case No. 03-30, which is the application by Square 643
15 Associates. If you remember, that is the Friendship
16 Baptist Church and the apartment addition to it on
17 First Street, S.W., and again we have a letter from
18 NCPC saying that there is no adverse impact to any
19 Federal interest, and again we don't have an order
20 that has been reviewed by the Office of the Attorney
21 General. But I think we can vote on -- Oh, sorry, I
22 didn't even go any further. Oh, I'm sorry.

23 Okay. Well, then I think we will need to
24 give ourselves some flexibility to make editorial
25 changes to the order, but I would move approval of

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1 Case No. 03-30.

2 COMMISSIONER JEFFRIES: Second.

3 CHAIRPERSON MITTEN: Any discussion? All
4 those in favor, please -- Oops, sorry. Would you turn
5 on your mike for us?

6 COMMISSIONER HILDEBRAND: Sorry about
7 that. I had marked several things in here, and I just
8 wanted to make sure that the term of affordability --
9 that is tied to the date on the order, not to the
10 occupancy of the unit. Is that correct?

11 CHAIRPERSON MITTEN: Where are you?

12 COMMISSIONER HILDEBRAND: I am on page 12
13 under Decision, Item 4(b). Is it typical that the
14 affordability period starts with the order or with the
15 occupancy of the unit?

16 CHAIRPERSON MITTEN: I don't know. Let's
17 make it what we want it, which I think, if it's a 20-
18 year affordability, then it should be from the date
19 someone occupies it.

20 COMMISSIONER HILDEBRAND: Right. That is
21 what I would think as well.

22 CHAIRPERSON MITTEN: Okay, so that would
23 be from the date of the issuance of the Certificate of
24 Occupancy. That is a very good catch. Did you have
25 anything else?

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1 COMMISSIONER HILDEBRAND: I was trying to
2 remember if we left this that it was going to be an
3 apartment that was rented or a for sale unit. Could
4 anyone else on the Commission refresh my memory on
5 that? I remember the applicant had asked for certain
6 flexibility, and I thought that we had denied that
7 flexibility.

8 CHAIRPERSON MITTEN: Well, the way that it
9 is written is that it would be a rental unit.

10 MR. BERGSTEIN: Which version are you
11 working from?

12 CHAIRPERSON MITTEN: We are on the OAG
13 order.

14 MR. LAWSON; Madam Chair, if I may, from
15 the Office of Planning, my recollection from the
16 meeting is that the Zoning Commission did not object
17 to it being a rental unit. That was the general
18 discussion.

19 COMMISSIONER HILDEBRAND: Okay. I just
20 remembered there was some issue with how it was being
21 managed.

22 MR. LAWSON: Office of Planning had raised
23 some concerns, recommending that it not be a rental
24 unit. The Zoning Commission expressed that they did
25 not have a concern with it being a rental unit, and

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1 that's why the order -- and the order reflects that.

2 COMMISSIONER HILDEBRAND: Okay.

3 COMMISSIONER JEFFRIES: I would note,
4 Commissioner Hildebrand, that I had asked the question
5 about it being an affordable condo unit, and I believe
6 there was some concern around that. I think we just
7 left it at rental.

8 COMMISSIONER HILDEBRAND: At rental?
9 Okay.

10 COMMISSIONER JEFFRIES: Yes.

11 COMMISSIONER HILDEBRAND: Then I
12 misremembered.

13 MR. BERGSTEIN: It does provide in (e)
14 that the applicant shall rent the affordable unit to
15 a household determined to be qualified by DHCD, which
16 was the other change you asked me to make. The
17 original conditions were that the applicant would
18 determine the affordability and simply certify every
19 year that the affordability requirements had been met.

20 You asked that I change that, and you also
21 see that I posed a question to you, which is what
22 happens -- I changed it so that DHCD will make the
23 determination, but one of the problems is at this
24 point, in the absence of an inclusionary zoning
25 program, DHCD does not have that responsibility unless

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1 it chooses to.

2 So I did change the language as you
3 requested, but because we are leaving it to DHCD to
4 make the certification, the question I've asked you is
5 what happens if they do not; is there a certain period
6 of time where, if DHCD does not, for example, make the
7 certification, then the applicant can do that, because
8 I can't guaranty you -- There is nothing in the law
9 that would require DHCD to do this certification.

10 CHAIRPERSON MITTEN: So can we say, in the
11 absence of such determination by DHCD, the applicant
12 may make the determination?

13 MR. BERGSTEIN: Yes. I was just wondering
14 if you wanted to put a time period of six months or
15 something, just so --

16 CHAIRPERSON MITTEN: Well, they can't sit
17 there waiting for six months with a unit that they
18 need to rent, or we shouldn't.

19 MR. BERGSTEIN: Well, then give me a
20 period of days, and I will just put it in, from the
21 time that -- In essence, what is going to happen is
22 that they are going to provide the income information
23 to DHCD with the expectation that DHCD would then
24 certify.

25 CHAIRPERSON MITTEN: I would suggest that,

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1 if upon request by the applicant, if DHCD does not
2 make the determination within 30 days. Then there is
3 also a blank in Number 6, I see.

4 MR. BERGSTEIN: That was -- What I did was
5 -- There's requirements that relate to what the
6 nonprofit, who is not a party in this case, will have
7 to do in terms of allowing access to the public and a
8 limitation on the number of employees and the hours of
9 operation.

10 Normally, in these circumstances, the
11 applicant would be the nonprofit, and their ability to
12 maintain a C of O would be through this adherence, but
13 we don't have that.

14 So what I have done instead is to require
15 that those conditions be put in a lease.

16 CHAIRPERSON MITTEN: Okay.

17 MR. BERGSTEIN: Okay. But I wanted to, in
18 essence, put the applicant or the owner of the
19 building on the hook for insurance compliance with the
20 lease. So that is why I wrote in that, in essence, if
21 any of these conditions of the lease is breached, then
22 it will be considered a violation of this order by the
23 applicant, if they don't cure it within a certain
24 number of days. That is the only thing I could come
25 up with.

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1 So I have a blank for you to fill in that
2 would be a reasonable period of time.

3 CHAIRPERSON MITTEN: Okay. I would think
4 30 days, because normally if there is a default in a
5 lease, you give them 15 days to cure it after you give
6 them notice. So 30 days seems plenty. Do you guys
7 agree? Thirty? Okay.

8 Did you have anything else, Commissioner
9 Hildebrand?

10 COMMISSIONER HILDEBRAND: No, that was it.

11 CHAIRPERSON MITTEN: Oh, we also have
12 another blank. I'm seeing all the blanks now -- 14.

13 MR. BERGSTEIN: The original condition
14 just said that they were supposed to provide an oral
15 history or to complete an oral history, and there was
16 no time to do it, and it could be before the building
17 permit or before the C of O, but if you don't say one
18 or the other, then there is absolutely no time frame.

19 CHAIRPERSON MITTEN: Okay. Then I would
20 suggest that it say prior to the issuance of the
21 Certificate of Occupancy. But I'll leave it Mr. Hood,
22 because he was the champion of this particular
23 amenity.

24 VICE CHAIRPERSON HOOD: I'm sorry. Yes,
25 that's fine.

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1 CHAIRPERSON MITTEN: Okay. Anything else?
2 That was good. Thank you.

3 Okay, so we have a motion that has been
4 seconded and is ready for our action. So let's do
5 that.

6 All those in favor, please say Aye. Mrs.
7 Schellin, we have none opposed.

8 ACTING SECRETARY SCHELLIN: Yes. Staff
9 would record the vote at five to zero to zero to
10 approve for final action Case No. 03-30, Commission
11 Mitten moving, Commissioner Jeffries seconding,
12 Commissioners Hildebrand, Hood and Parsons in favor.

13 CHAIRPERSON MITTEN: Thank you. Then last
14 but not least, we have Case No. 04-24, which is the
15 Mid-City Urban case at Rhode Island Avenue Metro,
16 which is one that I didn't sit on. So I will have to
17 ask Mr. Hood to take over for that case as well.

18 VICE CHAIRPERSON HOOD: Thank you, Madam
19 Chair. This was a first stage PUD Zoning Commission
20 Case 04-24, Mid-City Urban LLC, *et al.*, Rhode Island
21 Avenue PUD.

22 Mrs. Schellin, do you want to add
23 anything?

24 ACTING SECRETARY SCHELLIN: Staff has
25 provided a copy of OAG's order, which you should have

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1 in front of you.

2 VICE CHAIRPERSON HOOD: Thank you, Mrs.
3 Schellin. One of the things that we had submitted was
4 the District Department of Transportation in support
5 of the proposed Rhode Island Avenue Metro Plaza
6 development, including the proposed reduction in light
7 of commuter parking resources.

8 I don't believe I saw this earlier, but
9 this has been submitted July 27, 2005. We have all
10 reviewed that. This is for final action. While I
11 disagree with it wholeheartedly, I just want -- For
12 the record, I disagree with the District Department of
13 Transportation's -- but it's late, and I'm not going
14 to harp on all that. Everyone knows my issue here,
15 but this is going to be the model that remains to be
16 seen.

17 I'm not against the project. It's just
18 the transportation issues on which I have an issue.
19 I think we can come up with a better model. We are
20 adding -- We have a concern about parking spaces some
21 places. Then we are reducing parking spaces others.
22 So I just want to see how all this works. My issues
23 are on the record.

24 When I'm sitting down there in traffic,
25 and all of us are having problems, and I'll just

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1 remember that I tried. So anyway, I'm not going to be
2 voting against this project. We have final action in
3 front of us. Any other comments?

4 COMMISSIONER PARSONS: And, certainly,
5 your concerns are going to be expressed during the
6 second stage. Right?

7 VICE CHAIRPERSON HOOD: Again?

8 COMMISSIONER PARSONS; Yes.

9 VICE CHAIRPERSON HOOD: I'll probably have
10 even forgotten about it.

11 COMMISSIONER PARSONS: Unless you are not
12 here.

13 VICE CHAIRPERSON HOOD: Now that may be
14 the case. I may not be here. Okay. So I would move
15 approval of Zoning Commission Case No. 04-24, Mid-City
16 Urban LLC, Rhode Island Avenue, and ask for a second.

17 COMMISSIONER JEFFRIES: Second.

18 VICE CHAIRPERSON HOOD: It's moved and
19 properly seconded. Any further discussion? All those
20 in favor? Any opposition? So ordered. Mrs.
21 Schellin, would you record the vote?

22 ACTING SECRETARY SCHELLIN: Staff would
23 record the vote four to zero to one to approve final
24 action in Case No. 04-24, Commissioner Hood moving,
25 Commissioner Jeffries seconding, Commissioners

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1 Hildebrand and Parsons in favor, Commissioner Mitten
2 not voting, having not participated.

3 CHAIRPERSON MITTEN: Thank you, and
4 thanks, Mr. Hood, for closing it out. Anything else,
5 Mrs. Schellin?

6 ACTING SECRETARY SCHELLIN: That's it.

7 CHAIRPERSON MITTEN: Okay. Thank you, and
8 we are adjourned.

9 (Whereupon, the foregoing proceedings went
10 off the record at 9:14 p.m.)

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