

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

MONDAY

SEPTEMBER 11, 2006

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 7:00 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
GREGORY JEFFRIES	Commissioner
JOHN PARSONS	Commissioner (NPS)
MICHAEL G. TURNBULL	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
DONNA HANOUSEK	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
JENNIFER STEINGASSER
STEVE COCHRAN
TRAVIS PARKER
KAREN THOMAS
ARTHUR JACKSON
MAXINE BROWN-ROBERTS
MATT JESICK

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ELLEN McCARTHY

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ARTHUR BERGSTEIN, ESQ.

The transcript constitutes the minutes
from the Regular Meeting held on September 11, 2006.

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

7:00 p.m.

CHAIRPERSON MITTEN: Good evening ladies and gentlemen. This is a Public Meeting of the Zoning Commission of the District of Columbia for Monday, September 11, 2006. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Michael Turnbull, John Parsons and Greg Jeffries. I apologize for the late start tonight.

Copies of tonight's meeting agenda are available to you and they are in the wall bin by the door. I would like to remind folks that we don't take any public testimony at our meetings, unless the Commission decides to specifically invite someone forward. So, please, keep that in mind.

I would also like to advise you that this proceeding is being recorded by the Court Reporter and is also being webcast live, so we ask you to refrain from making any disruptive noises in the hearing room while we are conducting the meeting. And I would also ask you to turn off all beepers and cell phones for the same reason.

All right. Mrs. Schellin, did you have any preliminary matters before?

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1 MS. SCHELLIN: I think you have one
2 though.

3 CHAIRPERSON MITTEN: Okay. That's great.
4 I do want to announce a couple of changes to the
5 agenda. First is, the second item under Hearing
6 Action, Case No. 02-50A, the Commission would like to
7 convert that item to a consent calendar item as a
8 minor modification and we would be requested to set it
9 down for a public hearing. But the nature of the
10 modification request is such that we think it's more
11 appropriately dealt with as a minor modification.

12 And we would like to take that up as a
13 consent calendar item at a Special Public Meeting that
14 we will have on Monday, September 25th, at 5:30, and
15 staff will work with the applicant to help facilitate
16 that and I think they would be willing to do so in
17 terms of being a little bit more efficient about
18 handling that case. So notices will have to go out.
19 Mrs. Schellin will work with the applicant there. So
20 that item will not be taken up tonight.

21 And then another item that will not be
22 taken up tonight will be the fourth item under
23 Proposed Action, which is Case No. 05-23. There, some
24 additional time has been requested to work through
25 some issues. We would also like to put that on the

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1 agenda for the Special Public Meeting that I just
2 announced, which will be the 25th of September at
3 5:30. And there will probably be about four items on
4 the agenda, so it might not be first up. So we won't
5 take up that case either this evening.

6 I think, other than that, I don't have any
7 more changes to announce. But as we move to start, I
8 would ask if the Office of Planning would be willing
9 to just answer any questions that the Commissioners
10 might have on their status report this evening?

11 MS. STEINGASSER: Yes, we would be happy
12 to.

13 CHAIRPERSON MITTEN: Okay. Does anybody
14 have any questions on the status report? I haven't
15 had a chance to look through here fully, but where are
16 we with the case related to the parking requirements
17 for historic buildings, that text amendment?

18 MS. SCHELLIN: That's actually going to be
19 scheduled for a hearing. I believe that's Case No.
20 06-33. I think that was set down already. Is that
21 right, Jennifer?

22 MS. STEINGASSER: Yes, it was set down.

23 CHAIRPERSON MITTEN: Oh, that's all right.
24 Okay.

25 MS. STEINGASSER: In July.

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1 CHAIRPERSON MITTEN: Okay. That's great.
2 So we're just waiting for the prehearing statement?

3 MS. SCHELLIN: Actually, I worked on
4 today's hearing schedule for November 27th.

5 CHAIRPERSON MITTEN: Okay. Great. That's
6 something I would like to handle as soon as possible.
7 Anyone else have any questions?

8 COMMISSIONER JEFFRIES: Where have we
9 scheduled the Final Action for the charter schools?
10 Has that been scheduled?

11 MS. SCHELLIN: That's going to go on the
12 Special Public Meeting on September 25th.

13 COMMISSIONER JEFFRIES: That's the 25th?

14 MS. SCHELLIN: Yes.

15 COMMISSIONER JEFFRIES: Okay. Great.
16 Thank you.

17 CHAIRPERSON MITTEN: Anyone else have any
18 questions? Okay. Then we're ready to move to the
19 first item under Hearing Action, which is Zoning
20 Commission Case No. 06-32 and Mr. Hood will handle
21 this one, because I intend to recuse myself, because
22 I have a conflict. So I'll let Mr. Hood handle that
23 and I'll be back for the next case.

24 VICE CHAIR HOOD: Okay. Thank you, Madam
25 Chair. The first item up for Hearing Action is Zoning

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1 Commission Case No. 06-32, and I think that's with
2 Office of Planning, Mr. Jackson, oh, Mr. Cochran?
3 Somebody from the Office of Planning.

4 MR. COCHRAN: Yes, for the record, that
5 somebody would be Mr. Steve Cochran from Office of
6 Planning. Thank you, Mr. -- Vice Chair. The
7 application is looking at Square 766, which is in
8 southeast Washington, near southeast Washington near
9 the Southeast Federal Center and the South Capitol
10 Freeway. I think the most expeditious way to go about
11 this would be if you could turn to attachment 1 in
12 your report. It's the first of the maps attached to
13 the report.

14 The applicant has requested that the
15 current C-3-C Zoning be retained, but that Square 766
16 be included in the Capitol South TDR Receiving Zone.
17 The applicant believes that the square's physical
18 context has changed significantly since this square
19 was last considered as possibly being included in the
20 Capitol South Receiving Zone. This was in 1998.

21 At that time, the Zoning Commission felt
22 that it was inappropriate to include this square as
23 well as two other squares in that receiving zone,
24 because of the implications that the greater height
25 and bulk that being in a TDR Receiving Zone would have

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1 for nearby development. That nearby development being
2 primarily the then existing Capper Carrollsburg public
3 housing.

4 The applicant believes that the new
5 development that has taken place since 1998 in and
6 near southeast, especially the changes to Arthur
7 Capper, make the scale changes that would be enabled
8 by TDR Receiving Zone to be more appropriate now than
9 it would have been in 1998.

10 OP feels that indeed there have been
11 changes in development there, but we note that the
12 scale changes that the applicant feels are happening
13 at Arthur Capper aren't actually happening if you look
14 at your map on the two squares closest to the
15 applicant's site, Square 797 and 798. 797 would
16 remain at under 50 feet, it's probably 45 feet,
17 because they will be row house developments. Square
18 798 will go up to a total of 65 feet, not, you know,
19 the 130 feet.

20 The other important difference is that
21 Square 767, 768 and 769 in that shaded area that you
22 see off to the left of those squares is going to be
23 the very prominent Canal Blocks Park, the center of
24 recreation and open space for the entire near
25 southeast area. The applicant's site is at the

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1 northern end of this, so whatever is developed on that
2 site will certainly have an important influence on the
3 feel of the Canal Blocks Park.

4 We also note that in addition to being
5 there a change in physical context, there is a changed
6 policy context. The park is part of that changed
7 policy context. The Zoning Commission has been
8 exercising greater review over design in this area.
9 They reviewed the Capper Carrollsburg development as
10 a Planned Unit Development. The Capitol Gateway
11 Overlay includes Zoning Commission review for
12 developments. There have been several other PUDs
13 there.

14 Then finally, there are actually potential
15 implications for inclusionary zoning applicability to
16 Square 766 if, and when, the Zoning Commission decides
17 to include TDR Receiving -- exclude, excuse me, to
18 exclude TDR Receiving Zones from IZ requirements and
19 they will be considering that on Phase 2 of the IZ
20 hearings.

21 In short, OP believes that while the
22 applicant does deserve a hearing, the applicant has
23 made a case for why there should be consideration of
24 including Square 766 within the Capitol South
25 Receiving Zone and OP believes that the applicant

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1 should be given an opportunity to make its case. OP
2 has already told the applicant that we do not believe
3 that we would recommend that Square 766 be included in
4 the TDR Receiving Zone, should you decide to hear the
5 case, and that, in fact, the height and FAR increases
6 that the inclusion in the TDR Receiving Zone would
7 imply would be better considered within the context of
8 Planned Unit Development.

9 This is a sensitive site that deserves
10 designer review. Designer review would not be enabled
11 by inclusion in the TDR Receiving Zone. That
12 concludes our report.

13 VICE CHAIR HOOD: Thank you, Mr. Cochran.
14 Let me make sure I understand. You said that if it's
15 set down for a hearing, you, Office of Planning, may
16 not be in favor of what's being presented in front of
17 us today. Do I understand that correctly?

18 MR. COCHRAN: That's correct. Everything
19 that we know now, we don't think that this should be
20 in the TDR Receiving Zone, but we also don't think --
21 we know darn well that Office of Planning is not the
22 final judge.

23 VICE CHAIR HOOD: Right.

24 MR. COCHRAN: Of whether this is or isn't
25 appropriate for inclusion in the TDR Receiving Zone.

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1 We think that you, the Zoning Commission, should be
2 given the opportunity to hear the applicant's
3 arguments, but we have already analyzed this and feel
4 that we have enough information to say what our
5 position will be if you decide to set it down. We're
6 not presuming any position on the part of the ANCs or
7 anyone else. We're just telling you what OP's
8 position is going to be.

9 VICE CHAIR HOOD: Okay. All right.

10 COMMISSIONER JEFFRIES: I'm sorry, Mr.
11 Chair. I think it's not -- I don't think it's a may.
12 I think it is a will from what I gather. They will
13 not support this.

14 VICE CHAIR HOOD: But they support the --

15 MR. COCHRAN: That's correct.

16 VICE CHAIR HOOD: Hearing them flesh out
17 some of the issues --

18 MR. COCHRAN: That's absolutely correct.

19 VICE CHAIR HOOD: Okay. I can understand.
20 Commissioners, any other questions for Mr. Cochran?
21 Thank you, Mr. Cochran. Mr. Parsons?

22 COMMISSIONER PARSONS: I don't have any
23 questions. I will just tell you right out I totally
24 agree with Mr. Cochran and the Office of Planning and
25 I'm wondering what the wisdom is in conducting a

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1 hearing process. Given our schedule, it will probably
2 be next spring sometime by the way things are going.
3 The applicant is sitting there waiting for a debate
4 that I just want to let you know where I'm coming from
5 at the beginning. I just don't see much merit in it.

6 VICE CHAIR HOOD: Okay. Anyone else would
7 be in tune with the Office of Planning and
8 Commissioner Parsons?

9 COMMISSIONER TURNBULL: I would.

10 VICE CHAIR HOOD: Also?

11 COMMISSIONER TURNBULL: I'm in total
12 agreement. I think Mr. Cochran's explanation was very
13 clear. He was very succinct and I think it hits all
14 the issues that address that piece of property and I
15 would agree with Mr. Parsons.

16 VICE CHAIR HOOD: You don't think -- okay.

17 COMMISSIONER JEFFRIES: Well, I guess, you
18 know, while I agree that Mr. Cochran, you know, made
19 a very convincing argument, he also, I thought, you
20 know, put enough gray matter into his discussion and
21 clearly stated that there had been a number of changes
22 in the area and there was some additional height that
23 had been realized and that, you know, it does merit a
24 set down. So I would be in favor of granting a set
25 down to this applicant.

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1 But clearly, if the applicant is in
2 earshot, should understand that they have a fairly
3 tall order. I know that I'm a little uncomfortable
4 with a decision that was made just eight years ago in
5 terms of somehow revisiting something of that
6 magnitude, but I am certainly willing to listen to any
7 compelling arguments that the applicant might make.

8 VICE CHAIR HOOD: I would too agree. I
9 think everybody under normal circumstances should have
10 an opportunity to come present their case. And I also
11 would think that we would flesh out and it would be an
12 educational process, at least for this Commissioner.
13 But the problem is the way I see it now, I see us
14 going 2-2 for set down. And I was wondering if
15 anybody wanted to reconsider their position?

16 COMMISSIONER TURNBULL: I'm not opposed to
17 agreeing to the set down.

18 VICE CHAIR HOOD: Okay.

19 COMMISSIONER TURNBULL: But I guess my
20 feeling would make it very clear to the applicant that
21 I am presently opposed to any kind of changes to the
22 situation that currently exists.

23 VICE CHAIR HOOD: Okay. Now, maybe I'm
24 misunder -- Mr. Parsons, were you in disagreement with
25 setting down?

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1 COMMISSIONER PARSONS: Absolutely.

2 VICE CHAIR HOOD: Okay.

3 COMMISSIONER PARSONS: I don't think
4 that's fair to anyone.

5 VICE CHAIR HOOD: Okay. Okay.

6 COMMISSIONER PARSONS: I really don't. I
7 mean, they ought to get on with another proposal and
8 not count on this one.

9 VICE CHAIR HOOD: Okay.

10 COMMISSIONER PARSONS: But let's have a
11 motion and you know how I'll be voting.

12 VICE CHAIR HOOD: All right. Well, what
13 I will do at this time is obtain a motion if anybody
14 wants to make one. Anybody wants to make a motion?

15 COMMISSIONER JEFFRIES: Yes, yes, I would
16 like to make a motion to set down Case No. 06-32. It
17 is a proposed text amendment to include Square 766,
18 Lots 808, 809, 812, 813, 823 and 824 to be in the TDR
19 Receiving area.

20 COMMISSIONER TURNBULL: Second.

21 VICE CHAIR HOOD: Okay. It has been moved
22 and seconded. All those in favor, everybody use the
23 sign, aye? Aye.

24 COMMISSIONER JEFFRIES: Aye.

25 COMMISSIONER TURNBULL: Aye.

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1 VICE CHAIR HOOD: Any opposition?

2 COMMISSIONER PARSONS: No.

3 VICE CHAIR HOOD: Staff would you record
4 the vote?

5 MS. SCHELLIN: Staff would record the vote
6 3-1-1 to set down Zoning Commission Case No. 06-32.
7 Commissioner Jeffries moving, Commissioner Turnbull
8 seconded, Commissioner Hood in favor, Commissioner
9 Parsons opposed, Commissioner Mitten not voting having
10 recused herself.

11 CHAIRPERSON MITTEN: Thank you, Mr. Hood.
12 The next case under Hearing Action is Zoning
13 Commission Case No. 04-24A, which is the second page
14 PUD application for the project at the Rhode Island
15 Avenue Metro Station. Mr. Jackson?

16 MR. JACKSON: Good evening, Madam Chair
17 and Members of the Zoning Commission. My name is
18 Arthur Jackson. I'm a development use specialist with
19 the District of Columbia Office of Planning. I will
20 present a brief summary of the Office of Planning's
21 preliminary report on this application.

22 Mid-City Urban LLC and A & R Development
23 Corporation, the applicants, request Zoning Commission
24 review and approval of a Planned Unit Development, 2nd
25 stage. The Commission approved the 1st stage PUD

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1 order with conditions in September 2005. Submitted
2 plans indicate the applicant now proposes to redevelop
3 the existing parking lot next to the Washington
4 Metropolitan Area Transit Authority, Rhode Island
5 Metrorail Station, with two four story buildings with,
6 approximately, 70,000 square feet of retail uses and
7 322,000 square feet of residential uses.

8 The project would provide 274 rental
9 apartments with from one to three bedrooms. The total
10 floor area ratio of the retail and residential
11 components, again based on the submitted plans, will
12 be 1.06 with a maximum height of both buildings being,
13 approximately, 60 feet and measured from Rhode Island
14 Avenue.

15 According to the statement, 20 percent or
16 54 apartment units would be affordable to households
17 earning up to 50 percent of the area median income for
18 20 years. In terms of parking resources, 274 parking
19 spaces will be provided for the residential uses or
20 one per unit and 168 parking spaces will be provided
21 for retail uses, including 120 spaces that will be
22 shared with WMATA commuters.

23 The two above ground parking garages would
24 increase the overall parking ratio to 1.52 while the
25 overall parking resources on-site would total 531

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1 spaces. Note that this total does not include 214
2 WMATA Kiss-n-Ride parking spaces and the separate
3 garage. The garage is a separate lot.

4 The approved Map Amendment changed this
5 property from Industrial Zone District to a Community
6 Business District Zone District or C-2-B and the scale
7 of development continues to be consistent with the
8 current zone district.

9 After reviewing this application, the
10 staff finds that the submission generally includes the
11 information required under the Zoning Regulations,
12 provides the principal information required in the 1st
13 stage order and was filed in a timely manner. OP
14 also, the Office of Planning, notified the applicant
15 about information that must be filed prior to a public
16 hearing.

17 Based on these findings, the Office of
18 Planning recommends the project be scheduled for a
19 public hearing. This concludes the summary of the
20 preliminary Office of Planning report on this
21 application and the staff remains available for
22 questions.

23 CHAIRPERSON MITTEN: Thank you, Mr.
24 Jackson. Questions for Mr. Jackson or comments on the
25 application?

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1 COMMISSIONER JEFFRIES: Well, I'll start
2 it.

3 CHAIRPERSON MITTEN: Mr. Jeffries? Thank
4 you, Mr. Jeffries.

5 COMMISSIONER JEFFRIES: Well, here we are
6 back at Rhode Island Avenue Metrorail. I am still not
7 comfortable with the differentiation between the
8 pedestrian thoroughfares and the vehicular
9 thoroughfares. It might be just how these things are
10 being illustrated, but I'm just not -- I don't have my
11 arms around exactly how one traverses through this
12 complex. And I know that the applicant has tried
13 diligently to pull it together, but it is still -- I'm
14 still not fully following how this all works.

15 Now, I understand that there is
16 definitely, you know, a ring that goes around, like a
17 Beltway around this thing and that certain vehicles
18 can move between the Main Street, but it is something
19 that is just a little confusing to me. It just
20 doesn't seem to be the proper differentiation. And
21 again, it might be just how it is being illustrated.

22 Maybe if I could get some different types
23 of, you know, illustration in terms of how this is
24 working out, because it doesn't seem to be a very
25 friendly place to walk. You know, just, you know,

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1 some elderly person is trying to walk through there
2 and there is trucks, you know, I'm not really fully
3 getting it. So that's my one comment. That's one
4 comment.

5 And then in terms of the architecture,
6 this Main Street with this vinyl siding just seems to
7 be somewhat of a non-starter. I clearly understand
8 the, you know, cost considerations, but I'm just
9 concerned about the wear and tear over time in terms
10 of how that is going to look, in terms of trying to
11 create this sort of town, you know, center concept,
12 that's a little problematic for me.

13 And then the other piece is that distance,
14 it seems to be a fairly long wall and there didn't
15 seem to be enough relief, like there should be a break
16 somewhere. It just seems to go on and on. So those
17 are just general observations on my part. And I think
18 it would be very helpful if we could look at this
19 entire development in some perspective or bird'seye
20 view or something, so that we can really get a sense
21 of exactly what this looks like. Particularly, if you
22 are driving up Rhode Island Avenue on your way to
23 Hyattsville, I don't know how many people do that, but
24 I think it would be very helpful.

25 So it's something that's just sort of, I

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1 don't know, disjointed. And then the parking is
2 another issue. It still feels like it's over-parked
3 to me being right next to a Metro Station. At some
4 point, you know, this Commission is going to have to,
5 you know, draw the line on just, you know, what
6 parking looks like being right adjacent to a Metro
7 Station, you know, because we are deluding the whole
8 notion of what a transit-oriented development should
9 be. So I'm sorry, I had a lot to say there.

10 CHAIRPERSON MITTEN: Thank you,
11 Commissioner Jeffries. I just want to piggyback on
12 most of what you said. In addition to the
13 observations that you made about this being a pretty
14 pedestrian unfriendly place and I know it's a
15 challenge and I have walked, you know, from the Metro
16 to the big bucks stores up there, so that alone is
17 tough. And then it's not going to ever be a pleasant
18 walk, I don't think, unless something is done.

19 Even if we can manage what goes on in this
20 development, it's not going to be a pleasant walk up
21 that hill. It's just stark and bare and, you know,
22 unfriendly. But the vehicular traffic is confusing to
23 me about how all this is going to work together and I
24 didn't have the benefit of participating in the 1st
25 stage case, so there may be things that were explained

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1 in some fashion that was satisfactory at the time.

2 But when I look at C8, for instance, and
3 the traffic circulation schemes, I see the truck
4 traffic will come in off of Rhode Island Avenue and go
5 through that break along the north side of the Main
6 Street and go back to the loading docks and then come
7 out the same way. And then I look at the taxi
8 traffic, which will do the -- they won't come out the
9 same way, but it will go in the same way to make the
10 loop around the retail on the north side of Main
11 Street.

12 And then we have the retail and
13 residential traffic that will be using that same spot
14 to get to the garage and to come out of the garage.
15 So that's an awful lot happening in the same area and
16 I don't fully understand that and it doesn't strike me
17 that it's going to work particularly well, but I
18 remain, you know, willing to be educated on it.

19 As to the materials that you noted, I
20 agree with you about your observation about how the
21 facades are long and unbroken and there is not a lot
22 of relief and, you know, frankly, when we get these
23 elevations that are not in color in cases like this,
24 it's very difficult to give productive comments,
25 because I don't have full appreciation for it. But

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1 just so that I can be as educated as possible right
2 now, what is cultured stone?

3 COMMISSIONER TURNBULL: It's an imitation
4 stone. It's either stone, it's either like a concrete
5 material made to look like stone. In other words,
6 it's an artificially generated material that would
7 look like stone.

8 CHAIRPERSON MITTEN: Okay. And is it --

9 COMMISSIONER TURNBULL: It's not really
10 stone. It's either -- it's something with either
11 concrete or some other hard material, hardened
12 material in it that would make it look like stone.

13 CHAIRPERSON MITTEN: Okay. Maybe you can
14 comment on that as a material to use when you comment.

15 COMMISSIONER TURNBULL: Sure.

16 CHAIRPERSON MITTEN: The vinyl siding and
17 the hearty panel, I mean, we have been through that on
18 some cases and, you know, I'm just not sure that
19 that's what we want to do when we're trying to create
20 a town center, as you said, and there is stucco that's
21 listed and I don't know where the stucco is going to
22 be, because we don't have full elevations that show
23 where the materials are going to be used. So I don't
24 know. I'm put off by the lack of quality of the
25 materials and the lack of relief in the facades and I

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1 agree completely with your observation that this site
2 is over-parked. At least as it relates to the amount
3 of parking that will be assigned for residential.

4 I would also be interested in knowing how
5 much -- since the traffic for the buses, which is also
6 shown on C8, the bus traffic goes up and down Main
7 Street, it looks like. No, the bus traffic goes down
8 Main Street, so it goes west on Main Street and loops
9 around. But I would be interested in knowing how many
10 buses are we talking about? Because I know there is
11 a lot of buses that come and pick up at the Metro
12 Station, so, you know, on a per hour basis, I would be
13 interested in knowing that at the peak times.

14 I don't know if, Mr. Jackson, if you know
15 the answer to this. This may have been -- I don't
16 know if this would have been dealt with in the 1st
17 stage, but there is no information on the treatment of
18 the plaza that's interior to Building 2, that's not
19 listed anywhere. I don't know. Do you know anything
20 about that?

21 MR. JACKSON: Okay. Which --

22 CHAIRPERSON MITTEN: Would it help you if
23 I --

24 MR. JACKSON: What was the plan?

25 CHAIRPERSON MITTEN: Let me find it.

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1 MR. JACKSON: Are you talking about sheet
2 L1, 101?

3 CHAIRPERSON MITTEN: Which one do you
4 think it is? Which sheet?

5 MR. JACKSON: I was asked -- oh, yes, 104.
6 Is that the one you were referencing?

7 CHAIRPERSON MITTEN: We don't know. I
8 don't think that's the one. Just give me a second.

9 MR. JACKSON: Is that one?

10 CHAIRPERSON MITTEN: I'll have to find it
11 when someone else is asking questions. I apologize
12 about that. The other thing and I don't know if you
13 even talked about this in the 1st stage case, but I
14 know that -- I mean, you just commented on the
15 logistics with all the vehicles, but it strikes me
16 that to have all of these vehicles cutting through the
17 block on Main Street, on the north side of Main
18 Street, it seems like you would want to very much
19 control Main Street.

20 And you can control all of this. I mean,
21 you know, it's a big site and I know it has got a lot
22 of grade issues, but I just don't understand why you
23 would, we're trying to create this retail street and
24 when we do that downtown, we don't like curb cuts and
25 all these pedestrian conflicts, why would we -- what's

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1 the necessity to locate that garage entry and then
2 these others, the access to the loading and all of
3 that right in the middle of Main Street? I really
4 need to be convinced about that too.

5 There is some discussion about using
6 controls on the surface parking that would exist, so
7 not the structured parking, but the surface parking to
8 ensure short term use. I would be interested in
9 knowing what that is. And then a more minor question
10 is the community businesses that they are proffering
11 to reserve 10 percent of the space for, I'm just
12 curious what they plan to do about, you know, they are
13 saying that those folks would pay market rate, even
14 though under normal circumstances their credit rating
15 might not qualify them to occupy that space. But what
16 if the community businesses can't pay the going rate,
17 because sometimes that's really more of the issue.

18 So what would they propose as the
19 alternative in that case? Those are my comments.
20 Anyone else? Mr. Turnbull?

21 COMMISSIONER TURNBULL: I would just have
22 a couple of comments. And one of them is maybe I'm
23 just -- maybe I'm not sure what I'm reading or maybe
24 it's totally right. It starts off on page 8 of their
25 report, of the applicant's report. It talked about

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1 how because of market constraints, the two story homes
2 with the incubator space, I guess, were being
3 eliminated at ground level. They talk about the Rhode
4 Island underpass.

5 And as they go on, they talk about the --
6 it says "However, the developers remain committed to
7 their initial decision to dedicate 10 percent of the
8 retail space to community businesses." But then it
9 says "at full market rents and market lease terms."
10 Is that -- so they are paying the full burden of the
11 rent as anyone else, but they are just making it
12 available to them.

13 CHAIRPERSON MITTEN: And that's what I was
14 just asking about. Like what if they can't pay, if
15 you can't fill that space.

16 COMMISSIONER TURNBULL: Yes, and if that
17 is the case, I mean, have we done anything before? I
18 mean, is there an incentive or something to help local
19 businesses be able to -- I'm just concerned. I have
20 bid enough -- I'm thinking of tailors and shoe
21 repair. I mean, places that rents are going to go up
22 like this, but their businesses basically go up at a
23 level a lot less than that, because they just can't
24 charge those kinds of -- and somehow there's --
25 somehow somebody like that needs to be protected a bit

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1 or something. And I don't know if that's something we
2 can put.

3 COMMISSIONER JEFFRIES: Yes, I mean,
4 normally, when the developer or when someone who is
5 putting forth a set aside for community businesses,
6 the assumption generally is that it's going to be for
7 below market rent.

8 COMMISSIONER TURNBULL: Yes.

9 COMMISSIONER JEFFRIES: Understanding sort
10 of the types of sales that is going to occur. So, you
11 know, I mean, I guess we have to wait to see if that's
12 going to be some type of -- if that's a proffer here,
13 that's part of this PUD application.

14 COMMISSIONER TURNBULL: Okay.

15 COMMISSIONER JEFFRIES: But clearly, I
16 mean, you know, that's happening all over the
17 District.

18 COMMISSIONER TURNBULL: Right.

19 COMMISSIONER JEFFRIES: I mean, you know,
20 in places and a number of large developments where it
21 will have to be some set aside for some of this ground
22 floor retail for some of the local businesses that
23 simply cannot afford, you know, \$40 per square foot.

24 COMMISSIONER TURNBULL: Right.

25 COMMISSIONER JEFFRIES: Triple net.

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1 CHAIRPERSON MITTEN: I think there is a
2 couple of issues that we're hitting on that are
3 problematic about the proffer. One is what is a
4 community business?

5 COMMISSIONER JEFFRIES: Yes.

6 CHAIRPERSON MITTEN: And then, you know,
7 the whole issue of the rent if they can't pay it.

8 COMMISSIONER TURNBULL: I guess the other
9 thing is getting -- going on to the architectural
10 issues that you had started to raise before. I guess
11 I'm concerned, too, that the monumental stretch of the
12 building, the unbrokenness of it is a little bit
13 pressed a bit places and there are some areas where
14 when it breaks down, and I'm looking at, let me get to
15 the sheets, I was looking at either A2.2 or the
16 following .4, and that's when you run into the garage.
17 You suddenly have a building and then you have this
18 big broken -- you have this stretch where you have
19 what would appear to be just a bare exposed concrete
20 garage.

21 Although, on A2.4, there is some kind of
22 a garage entrance that has some kind of a screening
23 material over it, at least, that does something to it,
24 but the other ones are fairly bare and to me that's
25 kind of -- again, you've got an unbroken and then you

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1 have this other feature, which somehow just doesn't
2 add much to the character of the whole structure.

3 So I think that is something that I think
4 we need to have better delineated and somehow the
5 treatment should be fully better on that end. You
6 know, you had mentioned the hearty plank, which is in
7 one way an upgrade to just vinyl, but I mean if you
8 were going to do that, why didn't you do the hearty
9 plank with the siding? I mean, but again it's just
10 the vinyl is obviously less expensive and there is
11 cost concerns, but I think the overall criticism is
12 that it's such a monotonous elevation at points that
13 it's just very overbearing and I think it's something
14 that the applicant needs to address.

15 And I think the other things you had all
16 picked up and I won't repeat those. So but those are
17 my major concerns.

18 CHAIRPERSON MITTEN: Thank you,
19 Commissioner Turnbull. I did find the drawing that
20 shows the plaza that I was asking about. It's A1.4.
21 If you look under where it says Building 2 and then
22 you see in the middle it says plaza. Do you know
23 anything about what that's going to look like?

24 MR. JACKSON: No, I don't.

25 CHAIRPERSON MITTEN: Okay. That's another

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1 thing for the list. Anyone else? Mr. Parsons?

2 COMMISSIONER PARSONS: With all of the
3 comments made, which I agree with, how could this
4 possibly be ready for a hearing? I mean, don't we
5 need some response to some of these things that they
6 are willing to consider them before we go forward?
7 It's very seldom I suggest a model, but this project,
8 and I don't mean a polished architectural model, as
9 much as I mean understanding the grade changes and so
10 forth and the size of these buildings in relationship
11 to their site, seems like something that would be very
12 valuable to us.

13 But I just -- setting this down and then
14 putting the burden on the staff to try to negotiate
15 out what we have been saying just seems wrong. Is
16 there some way we could postpone this for a period of
17 time?

18 CHAIRPERSON MITTEN: I think that's fine.
19 I mean, we certainly can.

20 COMMISSIONER PARSONS: Yes.

21 CHAIRPERSON MITTEN: And I think your idea
22 about having a model and then in combination with
23 color renderings and then also if we could have some
24 better -- I know it's complicated and, you know, there
25 is only so many ways you can show how traffic moves,

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1 but it's very difficult to weave all this together.
2 It's hard to follow it. Mr. Hood?

3 VICE CHAIR HOOD: Madam Chair, I know you
4 said you didn't participate in the 1st stage, and I
5 would agree with all of my colleagues' comments. And
6 I think my colleagues who participated know my concern
7 of the traffic pattern in the 1st stage, what I
8 thought was going to be cured in the 2nd stage and, as
9 far as I'm concerned, it's the same thing. As you
10 alluded to, Madam Chair, it's like it's all running
11 together.

12 I don't know whether it is because we
13 don't have color or it looks just like it did to me in
14 the 1st stage. And I think if the applicant goes back
15 and looks at the transcript, I said in stage two that
16 I would be really looking at this traffic pattern.
17 This circulation pattern, as far as I'm concerned, is
18 not going to work. I would hope they would go back
19 and revisit how they have the buses coming in and the
20 taxi cabs coming in, the loading trucks coming in and
21 all, because for this site it's not going to work.

22 And that's what I said in the 1st stage
23 and I don't see any improvements to the 2nd stage. So
24 to contradict what I did in the other case, I would
25 not be in favor of setting this case down.

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1 CHAIRPERSON MITTEN: Well, I don't hear
2 anyone advocating for a denial, just a postponement to
3 get more information in the record, so that we can
4 flesh some of these things out before we have a
5 hearing. And if I'm misreading anyone on that,
6 please, let me know.

7 VICE CHAIR HOOD: No, you're not
8 misreading.

9 CHAIRPERSON MITTEN: Okay.

10 VICE CHAIR HOOD: I just wanted the
11 applicant to know how serious I am as to that point,
12 because I think we're seeing the same thing, at least
13 from my standpoint.

14 CHAIRPERSON MITTEN: The other thing that
15 I meant to mention and I don't know -- I thought we
16 had handled this in another case in a, you know, good
17 way. If you look at that elevation again, those
18 condenser grills are just kind of like all of these.
19 You know, they are just -- it's just one more thing
20 that's not working for me. So I don't know. I don't
21 know how that can be managed a little bit differently
22 on the facade, but if something could be done, I think
23 that would be helpful.

24 So is there anything, since the Office of
25 Planning is perhaps the best communicator of our

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1 issues, that we said that the Office of Planning
2 doesn't understand that we can clarify before we set
3 this off?

4 MR. JACKSON: Well, one question would be,
5 of course, time table. When could they come back?
6 And then the other question would be is there a -- we
7 talked to them about -- also about the issue of
8 circulation and alluded to some possibility of there
9 is some programs that allow you to animate a site, so
10 you can see how traffic moves. Of course, that would
11 be unusual for a set down in that normally we would
12 give you the information and you comment on it.

13 If there is some way if that was a
14 possibility and the applicant decided to pursue
15 something that was more animated, I just wondered how
16 would that be presented to you under the current
17 format for set downs? Because it would be, obviously,
18 something that they would probably have -- their
19 engineers would probably have to do as opposed to
20 Office of Planning staff.

21 CHAIRPERSON MITTEN: I don't know about
22 you guys, but I would be willing. Given the level of
23 concern, I would be willing to let them make a short
24 presentation of that kind of a nature, because this is
25 really serious.

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1 MR. JACKSON: Okay.

2 COMMISSIONER JEFFRIES: This is a very
3 critical site. I think, you know, this is a transit-
4 oriented development. It will be a model for others.
5 I mean, I really think we need to get it right. So
6 whatever they can do --

7 MR. JACKSON: Okay.

8 COMMISSIONER JEFFRIES: -- to help us sort
9 of visualize exactly what's going on here.

10 MR. JACKSON: And in terms of any type of
11 model that they would -- if they should want to
12 present something? A model that would be something
13 that they can present at the hearing.

14 COMMISSIONER JEFFRIES: Model or
15 perspective, bird'seye view, something. They really
16 -- also, and I think that Commissioner Parsons said
17 it, because of the grade changes that we just wonder
18 if we can see this, you know, in 3d.

19 MR. JACKSON: Right. And just to clarify
20 that you want to see what the character was of all of
21 the lobby, the gathering, the plaza spaces that are
22 throughout the site?

23 CHAIRPERSON MITTEN: I'm not asking for
24 lobby. I'm not asking for interior, but exterior
25 spaces.

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1 MR. JACKSON: right.

2 CHAIRPERSON MITTEN: I would like to see
3 paving.

4 COMMISSIONER JEFFRIES: Paving patterns.

5 MR. JACKSON: Okay. All right. That's
6 good information. Thank you.

7 CHAIRPERSON MITTEN: Okay. Thank you.

8 COMMISSIONER TURNBULL: Could we also
9 maybe ask for some samples of materials?

10 MR. JACKSON: I guess.

11 CHAIRPERSON MITTEN: They will have to
12 show us that eventually. And I just think in this
13 particular case that we have a lot of concerns and the
14 more that they can give us beforehand, the better our
15 -- the more constructive our comments will be. And
16 too, I think your original question was when can they
17 come back. I guess it's when we feel that they have
18 dealt substantively enough with our concerns that they
19 will be ready to come back. Thank you. Okay.

20 Next up under Hearing Action is Zoning
21 Commission Case No. 06-29 and this is a PUD and
22 Related Map Amendment for the hotel located at 1143
23 New Hampshire Avenue.

24 MS. THOMAS: Good evening, Madam Chair and
25 Members of the Commission. I'm Karen Thomas. I'm

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1 with the Office of Planning. The Office of Planning
2 is recommending that the proposal for the property at
3 1143 New Hampshire Avenue be set down for public
4 hearing. The hotel has been a permitted use on this
5 site since 1969 and the current owner has proposed a
6 major upgrade to contemporary hotel standards going
7 from 90 feet to 100 feet with the addition of two
8 levels above the main floor and increasing the FAR
9 from 6.0 to 6.97.

10 The Comp Plan is supportive of this
11 proposal as it is located in a mixed use category
12 designed for high density residential and medium
13 density commercial. We have requested a mapping study
14 for further clarification of the impacts of the
15 additional stories in relation to abutting buildings.
16 The applicant's stated benefits are outlined in our
17 report and we are requesting an amenity package from
18 the applicant.

19 We were informed about the options
20 presented to the ANC and Western Citizens Association.
21 The applicant has committed -- is committed, rather,
22 to undertaking one of the items listed on page 5 of
23 our report. At this time, we are not able to
24 determine which of those proposed is most appropriate
25 for or whether any of the -- anyone raises the amenity

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1 package to a level consistent with the density to be
2 gained.

3 We have advised the applicant to continue
4 discussions with the neighborhood and the ANC to
5 provide further justification for the additional
6 floors in recognition of the community's concerns with
7 the PUD in general. However, at this time, we need --
8 the requested PUD is not inconsistent with the
9 Comprehensive Plan and we recommend the proposal be
10 heard at a public hearing. Thank you.

11 CHAIRPERSON MITTEN: Thank you, Ms.
12 Thomas. Questions for Ms. Thomas or comments on the
13 proposal? Mr. Turnbull?

14 COMMISSIONER TURNBULL: Yes. I want to
15 ask Ms. Thomas on the roof plan, A7.

16 MS. THOMAS: A8?

17 COMMISSIONER TURNBULL: There is a space
18 more toward the north end of the building just beyond
19 the pool. There is the pool equipment storage room,
20 stair. Then there is a room which is entitled
21 "Architectural Embellishment." That's a room. Now,
22 is that a room where you go to get embellished
23 architecturally? I'm just curious that this is an
24 occupiable space and I'm just puzzled how it is going
25 to be just called an architectural embellishment,

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1 which we have heard that term before, but this looks
2 a little bit more than just an embellishment.

3 MS. STEINGASSER: We also noticed that
4 space and have asked for additional information and
5 have alerted the applicant to previous cases where
6 this issue has been raised as one of concern.

7 COMMISSIONER TURNBULL: Okay. All right.
8 Thank you. That's a huge penthouse, too. I mean, is
9 that -- that's a monumental -- that's a rather -- it
10 takes up the whole center wing there. Is all of that
11 necessary? Is that --

12 MS. STEINGASSER: Early discussions
13 indicated that it was in order to capture all the
14 mechanicals that are up there and the fire equipment
15 and to keep it within the one enclosure required by
16 the code. It may be -- you know, we could ask the
17 architects to provide an alternative to possibly
18 smaller spaces, but there would be then multiple roof
19 structures, which would just be another type of
20 relief, but we could ask them to look at that.

21 COMMISSIONER TURNBULL: I mean, obviously,
22 this rooftop terrace area is, obviously, going to be
23 well used by visitors to the hotel. I mean, you've
24 got the pool up there. You have got this trellis that
25 they would like to put in. It's -- they have got some

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1 green scaping up there. It looks like it's going to
2 be a heavily used roof area.

3 MS. THOMAS: It is intended. I believe
4 this is part of the upgrade. One reason why they
5 wanted to put in one of the floors to have a pool,
6 because I don't think currently they do have a pool.

7 COMMISSIONER TURNBULL: Thank you.

8 CHAIRPERSON MITTEN: Commissioner
9 Jeffries?

10 COMMISSIONER JEFFRIES: So I'm on page 5
11 of your report and you start off "The main benefit
12 being offered by this project is a circulation
13 redesign to enable access to the parking garage
14 immediately after drop-off." That's a project
15 amenity?

16 MS. THOMAS: That is one of the benefits
17 they are stating. They claim this to be a benefit and
18 have listed on this and highlighted in bold is what
19 they stated as their benefits. The amenity is further
20 down. When we asked that they provide some amenity,
21 they proposed that they have where it is labeled 1, 2,
22 3, 4, 5, these were some of the amenities that they
23 are proposing to the community, but as of yet, there's
24 no response regarding that.

25 COMMISSIONER JEFFRIES: Okay. So go back

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1 to the top, the main benefits. So they are
2 affectively saying that's a public benefit?

3 MS. THOMAS: That's correct. They are
4 saying that it is going to relieve congestion that's
5 present with the present situation.

6 COMMISSIONER JEFFRIES: There has been a
7 lot of complaints and so forth about congestion in
8 this area?

9 MS. THOMAS: I can't answer that, at this
10 time, whether there has been a lot of complaints about
11 that.

12 COMMISSIONER JEFFRIES: Well, let me just
13 make a statement. They are looking for two additional
14 floors. You know, I'm just sort of questioning the,
15 obviously, amenities package. I mean, you have put
16 this on the table, but I'm just not certain about the
17 level of benefits that are being inured to the
18 District with this. You know, I think, you know,
19 obviously, this amenity package they are going to have
20 to really take a nice good look at that, because I'm
21 not certain about really the benefits that are coming.

22 I mean, if you can speak to, you know, the
23 benefits that are going to be coming beyond just an
24 improved landscaping?

25 MS. THOMAS: All right. We have asked the

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1 applicant to provide further justification as to why--

2 COMMISSIONER JEFFRIES: Okay.

3 MS. THOMAS: -- the increase in the FAR,
4 why would they have additional floors.

5 COMMISSIONER JEFFRIES: Okay. It just
6 doesn't seem to be balanced.

7 MS. THOMAS: Um-hum.

8 COMMISSIONER JEFFRIES: That's all.

9 MS. THOMAS: That's correct.

10 CHAIRPERSON MITTEN: I would agree with
11 Commissioner Jeffries and I don't know if this is a
12 point that you were trying to make, but the issue
13 about the changing the circulation pattern and the
14 hotel drop off, I know that there is some work that
15 will be done to the front of the building, but, you
16 know, it's basically changing the direction of the
17 driveway. So I don't -- that's something that I think
18 we can do fairly simply now.

19 And the green components that they are
20 offering are not -- many of them will benefit the
21 operator of the hotel, because of increased energy
22 efficiency. So not that I want to minimize that, but
23 that's not really above and beyond what somebody would
24 normally be motivated to do. And things like while I
25 think it would be great for ANC-2A to have a website,

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1 I don't think that's a big investment on their part.

2 So, you know, I think they need to step up
3 and show something substantial, which is not what (A)
4 they are showing now or (B) is being discussed. So I
5 just want to maybe strengthen what Commissioner
6 Jeffries said. I don't know if I had any other
7 comments, but does anyone else have comments while I
8 look to see in my notes? Mr. Parsons?

9 COMMISSIONER PARSONS: Well, I thank Mr.
10 Turnbull for taking the lead here on my concern, but,
11 as you know, I have been fighting with you over
12 horizontal architectural embellishments that I think
13 are illegal. They violate the Height Act. They are
14 increasing the buildings by 20 feet in this city.
15 Here now comes one that is enclosed and they will come
16 forward and say all right we won't enclose it, but
17 it's okay.

18 So I would urge that we ask the Office of
19 Planning, and I'll do this in a separate meeting, not
20 today, to come up with some regulations for this,
21 because we are just letting people do this. And at
22 the encouragement of OP, they are doing it. And I
23 have had some conversations with the staff. They
24 think this is fine. I don't mean this design, the
25 concept of increasing the heights of buildings in the

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1 city visually by 18.5 feet, whether they are
2 occupiable space or not.

3 And the position of the Planning
4 Commission, which I think we have heard and will hear
5 on this case, too, probably, is that architectural
6 embellishments are vertical in nature. They are not
7 horizontal. So we are headed on a collision course
8 and I will give the applicant a rough time on this
9 one, too, and you may join me or not. But I intend to
10 prepare a proposal of some sort for us to consider at
11 a forthcoming meeting as to how we are going to deal
12 with these instead of piecemeal the way we are doing
13 it now. Thank you.

14 CHAIRPERSON MITTEN: Just on that point,
15 Commissioner Parsons, which I think is great and, you
16 know, there is sort of two issues that we have
17 confronted. One was to do with the Height Act and the
18 other has to do with, and I think maybe what you --
19 the direction that you were moving in is working
20 towards a better definition of what -- and this would
21 also bear on the Height Act, but really what is an
22 architectural embellishment? What should be
23 considered an architectural embellishment and what
24 should be considered maybe more structural.

25 And I think, you know, we haven't talked

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1 about it in any kind of thoughtful way. We do it ad
2 hoc. So I think that would be great.

3 COMMISSIONER PARSONS: It would. Thank
4 you.

5 CHAIRPERSON MITTEN: Anyone else? Okay.
6 Well, I think with the strongly worded advice that we
7 gave the applicant about beefing up the amenities
8 package and the other comments that were made, I think
9 I'm prepared to set this case down for hearing and I
10 would move that we set down Case No. 06-29.

11 COMMISSIONER JEFFRIES: I second.

12 CHAIRPERSON MITTEN: Any discussion? All
13 those in favor, please, say aye.

14 ALL: Aye.

15 CHAIRPERSON MITTEN: Those opposed,
16 please, say no. Mrs. Schellin?

17 MS. SCHELLIN: Staff would record the vote
18 5-0-0 to set down Zoning Commission Case No. 06-29.
19 Commissioner Mitten moving, Commissioner Jeffries
20 seconded, Commissioners Hood, Parsons and Turnbull in
21 favor. And this will be set down as a contested case.

22 CHAIRPERSON MITTEN: Yes. Next is Case
23 No. 06-31 and this is a PUD and Related Map Amendment
24 for 5220 Wisconsin Avenue. Mr. Jesick?

25 MR. JESICK: Thank you, Madam Chair and

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1 Members of the Commission. My name is Matt Jesick.
2 I'm with the Office of Planning. The applicant for
3 Case 06-31 has submitted a consolidated PUD and a PUD
4 Related Map Amendment in order to develop a seven
5 story mixed use building. The project is located on
6 Wisconsin Avenue in Friendship Heights between
7 Harrison and Jennifer Streets. It is adjacent to the
8 WMATA bus garage and the Pepco substation and is near
9 the Friendship Heights Metro Station.

10 In order to develop as proposed, the
11 applicant is seeking to change the zoning from R-5-B
12 to C-2-B. The applicant is also seeking zoning relief
13 from lot occupancy, residential recreation space, rear
14 yard, loading space and roof structures. The
15 application is not inconsistent with the major themes
16 and objectives of the Comprehensive Plan and the
17 Office of Planning recommends that the case be set
18 down for a public hearing.

19 Regarding the Comprehensive Plan, the
20 development will further some of its major themes. It
21 will improve the appearance of an under-used lot on a
22 major corridor. It will contribute to the vitality of
23 the neighborhood and enhance Friendship Heights status
24 as a regional center and it will provide housing for
25 a diversity of incomes. It will also further specific

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1 objectives from various elements of the Comprehensive
2 Plan, including the Ward 3 Plan.

3 It will meet policies which call for
4 concentration of new housing in Ward 3's housing
5 opportunity areas and it will meet policies calling
6 for concentration of housing near Metro Stations and
7 near regional commercial centers. It will maximize
8 the efficiency of the transportation system and
9 provide environmental benefits by improving the water
10 quality runoff and water quantity runoff.

11 The generalized Land Use Map calls for low
12 density commercial uses in this area and the Land Use
13 Policies Map designates Friendship Heights as a
14 regional commercial center and as a housing
15 opportunity area. The proposed development is
16 consistent with these designations as it provides
17 neighborhood serving retail and enhances the regional
18 commercial center while providing housing in an area
19 designated for significant housing development.

20 Similarly, the PUD Related Map Amendment
21 is appropriate. The site is on a major avenue and
22 next to a Metro Station. It is, as I just mentioned,
23 a regional center and a housing opportunity area. And
24 the location is logical for development at a medium
25 density.

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1 Through the PUD process, as I mentioned,
2 the applicant is seeking zoning relief in a number of
3 areas. Regarding lot occupancy and rear yard relief,
4 while the building does not -- does extend to the rear
5 property line above the third floor, only the northern
6 wing of the building will reach the full height of 79
7 feet and those upper floors are well below the lot
8 occupancy threshold. Also, much of the rear of the
9 building faces the WMATA property, so impacts to
10 adjacent residential areas will be minimized.

11 The mechanical penthouse requires rooftop
12 structural relief, but the location of the elevator
13 core at that side of the building allows for a
14 cohesive consolidated and flexible retail area on the
15 ground floor. Recreation space is provided in line
16 with other recent similar applications.

17 As you know, the amenity package for a PUD
18 is based on an assessment of additional development
19 gained through the application process. In this
20 instance, the applicant is gaining 77,625 square feet
21 of floor area and 29 feet in height above the R-5-B
22 matter-of-right levels. In conjunction with this
23 increase in development potential, the applicant is
24 listing a number of amenities.

25 The amenities cited by the applicant

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1 include on-site and off-site affordable housing,
2 streetscape enhancements and improvement to the
3 adjacent Pepco property, funds for Janey Elementary
4 and the Iona Senior Services Bus and the environmental
5 benefits including LEAD certification.

6 The Office of Planning has requested
7 additional information about the amenities such as
8 what is the exact design of the green roof? What is
9 the exact design of the streetscape improvements? And
10 how will the money for the Janey School be allocated?
11 And we will continue to work with the community and
12 the applicant to finalize these details.

13 The Office of Planning will also seek to
14 refine the design of the building itself, which is
15 currently only represented in basic elevations and
16 renderings. But OP feels that the overall direction
17 of the amenity package is appropriate and the level of
18 detail is sufficient for set down and to begin
19 negotiations with the applicant.

20 Again, we recommend the case be set down
21 for a public hearing and I would be happy to take your
22 questions.

23 CHAIRPERSON MITTEN: Thank you.

24 MS. MCCARTHY: And, Madam Chair, I just
25 wanted to add to Mr. Jesick's report that the Office

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1 of Planning strongly supports the set down of this
2 project and things that it's important to call to the
3 Commission's attention in terms of giving great weight
4 to the ANC's concerns. It is important to note that
5 one of the major objections to the project has been
6 that it is denser than the existing zoning, which is
7 part of the -- having the Planned Unit Development or
8 that can be one of the areas of flexibility.

9 But I think it is important to call to the
10 Commission's attention that the existing zoning that
11 is on the site, R-5-B, is inconsistent with the
12 Comprehensive Plan designation for the site, which
13 calls for a commercial development on the site and a
14 low density commercial, which would be precluded by
15 the existing zoning and the existing zoning which
16 carries a maximum FAR of 1.8 is below the C-2-A, which
17 would be consistent with that low density commercial
18 designation.

19 And then, of course, as Mr. Jesick notes,
20 the land use element also designates it as a housing
21 opportunity area and a regional center. So in terms
22 of the ANC's concern that it is inconsistent with the
23 Comprehensive Plan, we think that it's an incorrect
24 conclusion based on the information that is -- based
25 on the reading of the Comprehensive Plan, a full

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1 reading of the Comprehensive Plan.

2 We also note that one of the major
3 concerns of the citizens in the neighborhood is on the
4 issue of traffic and we would strongly suggest that
5 the applicant restore one of the original amenities,
6 which we had proffered and which was dropped off for
7 a lack of interest in the groups in the neighborhood,
8 and that is to fund the establishment of the
9 Transportation Management Association or TMA on the
10 District side of the line.

11 There is an entity functioning now on the
12 Montgomery County side of the line and we have seen in
13 other cities around the country very successful
14 impacts on traffic mitigation from these kinds of
15 associations, which work with employers and residents
16 and other entities, encouraging and promoting transit
17 use, ride-sharing and other alternatives to single
18 occupancy vehicles.

19 So I believe in some conversation with the
20 applicant that they would be willing to consider
21 restoring that amenity and I think it would help deal
22 with the concerns that have been raised about whether
23 or not this project could contribute to traffic
24 congestion in the vicinity.

25 CHAIRPERSON MITTEN: You just got me

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1 interested in asking why did this amenity fall to the
2 wayside?

3 MS. McCARTHY: My understanding from our
4 neighborhood planner was that when it had been raised
5 at community meetings there, some people were not --
6 did not feel that it was a serious amenity and there
7 was also some concern about who would be the recipient
8 of the funds. I think we would expect to work closely
9 with our Department of Transportation and have them be
10 the recipient or have them work with the establishment
11 of either a subsidiary -- either contract with
12 Montgomery County for services, but some way of making
13 sure that there are -- if we're going to have a
14 traffic mitigation activity on one side of the line,
15 it's very artificial to have it just stop there, since
16 there are employment sites and retail and commercial
17 and residential projects on both sides of the line.

18 So it would be -- it was -- when I served
19 on the Friendship Heights Task Force as a
20 representative of the Chevy Chase Community
21 Association, I know it was one of the goals that we
22 had set or that we wanted to achieve, but we could
23 never find sufficient support on the D.C. side in the
24 businesses there to participate. But I think that,
25 you know, if the applicant would seed that effort, I

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1 think there may be more receptivity to that now.

2 CHAIRPERSON MITTEN: It sounds
3 interesting. Something that if it could be pursued,
4 I would be real interested in that. So I would be
5 happy if you could push that back to the list.
6 Comments from the Commission or questions?

7 VICE CHAIR HOOD: Yes, Madam Chair.

8 CHAIRPERSON MITTEN: Mr. Hood?

9 VICE CHAIR HOOD: The questions that I had
10 are for Ms. McCarthy or Ms. Steingasser maybe. You
11 mentioned to the traffic consultant. I'm looking at
12 some of his level of services in that area of
13 Wisconsin and Harrison Street and other areas, other
14 streets connected, adjacent and connecting to --
15 crossing Wisconsin. And the level of services A, B
16 and C, and I'm just concerned. I don't know if -- I'm
17 not questioning his analysis, but either that or I'm
18 on Wisconsin Avenue at the wrong times.

19 And I think that's something we really
20 need to -- maybe he needs to relook at what he has
21 provided to us, because it jumped out at me, A, B and
22 C, level of service. So if we can ask the applicant
23 to get his traffic expert to revisit that.

24 And also in conjunction with what you just
25 said, you're talking about a TMA and I read here that

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1 it's A, B and C level of service. So I see some
2 contradictions. That's all I have, Madam Chair.

3 CHAIRPERSON MITTEN: Thank you, Mr. Hood.
4 Mr. Parsons?

5 COMMISSIONER PARSONS: I have difficulty
6 with this case not understanding what the future of
7 the Metro Bus Garage is. Do you have any insight into
8 that?

9 MS. MCCARTHY: We don't at this period of
10 time. Metro had asked about -- Metro recognized some
11 flaws in their process where they designate an
12 applicant or a developer which sort of implies that
13 there is approbation given to the scheme that the
14 applicant is proposing. But then because Metro
15 doesn't have land use authority, they send that
16 applicant or the successful bidder or proposer back to
17 go through the land use process and it led to a lot of
18 misunderstandings in several other sites.

19 So Metro this time asked the applicants to
20 make presentations to the community and the ANC to try
21 to gain support. I think it's safe to say there
22 wasn't support for the proposals and I think, as I
23 understand it, the -- some or all of the applicants
24 have since retreated. So there is a joint development
25 solicitation out by Metro. I can't -- I don't

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1 remember whether it is in this most recent joint
2 development solicitation.

3 And I know that Metro has been trying to--
4 Metro recognizes that it's going to take about \$30
5 million if they have to replace the bus garage on the
6 site. It's going to increase the cost of the project
7 by about \$30 million, which begins to require very
8 high densities in order to make it at all feasible to
9 pay that to Metro for the bus garage and then to
10 develop a project.

11 So Metro had been looking to see if they
12 could find alternative locations for the bus garage,
13 but, you know, they -- when talking to the Park
14 Service, they have looked at a variety of different
15 places and they just have not been able to find an
16 alternative location. So it brings them back to where
17 they are now.

18 COMMISSIONER PARSONS: Well, I guess what
19 I meant was, what is the future of the site? Not how
20 Metro is struggling through it. But I mean, is there
21 a Ward Plan? Is there a plan of this area or are we
22 dealing with this in any comprehensive way? Does the
23 Comprehensive Plan --

24 MS. MCCARTHY: Well, the Office of
25 Planning had tried to do a plan for the site, the

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1 Upper Wisconsin Avenue Corridor Study, but we agreed,
2 at request of the residents, to terminate that study.
3 So there is no applicable plan or study now other than
4 the Comprehensive Plan.

5 COMMISSIONER PARSONS: All right. So this
6 could be housing, it could be retail, it could be
7 commercial office, you have no idea, as a neighbor to
8 this project?

9 MS. MCCARTHY: That's correct.

10 COMMISSIONER PARSONS: It's whatever the
11 market --

12 MS. MCCARTHY: Well, right now, the zoning
13 is also R-5.

14 COMMISSIONER PARSONS: R-5.

15 MS. MCCARTHY: B. And there isn't -- I
16 believe there is an application that has been
17 submitted for designation of the bus garage itself as
18 a landmark, which is another development complication
19 for the site.

20 COMMISSIONER PARSONS: Well, don't you
21 find it difficult to assess this without any
22 understanding of what's going on next door?

23 MS. MCCARTHY: You know, the original
24 application was one that included both sites. That
25 was much easier to deal with, but I think when the

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1 applicant -- when the property owner recognized that
2 because of the obstacles, I have just stated, it could
3 be a long time before there was any development on the
4 bus garage site. And having -- in addition to
5 acquiring the property, they had to buy out the Buick
6 dealership that was on the site in order to get
7 control of the property. So the feeling was they
8 could not afford to wait until there was a bus garage.

9 So what they tried to do and what we tried
10 to work with them on is coming up with a design that
11 would not impede. We looked at the schemes that had
12 been submitted as potentially representative of what
13 people had thought about doing at the site and tried
14 to find something that would not be incompatible with
15 those other schemes for the bus garage site.

16 COMMISSIONER PARSONS: Thank you, I think.

17 CHAIRPERSON MITTEN: Anyone else? Mr.
18 Turnbull?

19 COMMISSIONER TURNBULL: Just following up
20 on what Mr. Parsons was talking about, I guess that's
21 what makes the site in one way very complex. It's
22 residential use surrounded by a lot of difficult
23 areas, the substation, the parking garage and that's
24 why when you see the layout of the building and how
25 you try to rate it -- relate it to a residential use,

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1 the idea of as much green space, which they have tried
2 to introduce on some of the roofs, becomes important
3 to sort of lighten up the industrial appearance of the
4 neighborhood.

5 I would like to see that explored a little
6 bit more. I would like to get some further definition
7 on the green space and on materials. This is going to
8 be an awkward site for residents trying to make it
9 appealing to people where it is until it gets to
10 change. And the developer, I mean, whether it's going
11 to be commercial or residential in the future around
12 it, so right now it's in an awkward -- I would like to
13 see a little bit more of how they are going to treat
14 this building.

15 I think the sensitivity to materials and
16 the green, trying to make this as green as we can, I
17 think, is going to be a very key factor to try and
18 make this building appealing.

19 MR. JESICK: Those two concerns are ones
20 that the Office of Planning shares. We will certainly
21 ask the applicant to further define those.

22 COMMISSIONER TURNBULL: Thank you.

23 CHAIRPERSON MITTEN: Anyone else? I would
24 just like to reiterate something that we raised in
25 talking about the Rhode Island Avenue case, which is

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1 here you have a -- it's not quite as on top of the
2 Metro as the Rhode Island Avenue case, but it's close.
3 And you have an applicant that is trying to do right
4 by the environment by committing to do LEAD
5 certification and then you have a minimum parking
6 ratio for residential units of 1.2 spaces per unit.

7 And I am just going to plead and I am
8 going to start pleading with my colleagues to join
9 with me in trying to push down the number of parking
10 spaces that are being provided in such close proximity
11 to Metro. We thought this -- we discussed this at
12 length when we did the Washington Clinic site at
13 Western Avenue and my recollection, I didn't look it
14 up, was that we were at 1.1 parking spaces per unit
15 there.

16 And the applicant was just -- they were so
17 at odds with the neighbors over there that they --
18 that was something that they felt that they could give
19 the neighbors if they wanted. I mean, we're not going
20 to get to the point where the neighbors don't ask for
21 this. We're going to have to draw the line for them
22 and hopefully in combination if there is a -- if we
23 could pursue this TMA, we can finally break through
24 and have people understand that we went that close to
25 Metro.

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1 You just don't -- not everybody is going
2 to have a car. Not everyone is going to have two
3 cars. And that we can live with less parking. So I'm
4 just going to start pleading for that and so it's
5 twice now today.

6 COMMISSIONER JEFFRIES: And I will
7 absolutely back you up on that. You know, we drive
8 around the District and we just see so much traffic.
9 I think, you know, we need places of relief. And it
10 really needs to be near these Metro Stations. And
11 clearly, I think, all developers understand that,
12 everyone understands that there is a market
13 perspective to this. I mean, you know, often times if
14 you are trying to sell a condo, you need to have a
15 parking -- if you have to have a parking space.

16 But I think once you start to get well
17 beyond 1 for 1, you know, it becomes questionable as
18 to, you know, exactly what's going on here. So that
19 actually might start to be a little bit of a segue
20 into our next case.

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

23 COMMISSIONER PARSONS: Some of the
24 drawings seem to imply or show a public alley to the
25 north and others don't. And maybe they are tipped

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1 upside down or something, but I'm worried about the
2 north facade. Is that a party wall to a building yet
3 to come or is there an alley between these two
4 properties?

5 MR. JESICK: There is no alley between the
6 properties. It abuts immediately the WMATA property
7 to the north.

8 COMMISSIONER PARSONS: So the facade shown
9 in the north elevation, and I can't find the sheet
10 now, wait a minute, All, the north elevation No. 4
11 there, these are windows to be ripped up in the
12 future?

13 MR. JESICK: Yes. The windows on the
14 north face are right on the property line.

15 COMMISSIONER PARSONS: Okay.

16 MR. JESICK: So we would need to look at
17 that elevation again with the applicant.

18 COMMISSIONER PARSONS: All right. I
19 haven't had a chance to look at the floor plans and
20 see what that does to, you know, the future when they
21 can no longer look out on that beautiful bus garage
22 parking lot. They will be looking at a blank wall
23 then. So we ought to take a look at that, I think.
24 Thank you.

25 CHAIRPERSON MITTEN: Anyone else? Okay.

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1 We have a recommendation from the Office of Planning
2 to set down Case No. 06-31 and I would so move and ask
3 for a second.

4 COMMISSIONER PARSONS: Second.

5 CHAIRPERSON MITTEN: Thank you, Mr.
6 Parsons. Any further discussion? All those in favor,
7 please, say aye.

8 ALL: Aye.

9 CHAIRPERSON MITTEN: Those opposed,
10 please, say no. Mrs. Schellin?

11 MS. SCHELLIN: Staff would record the vote
12 5-0-0 to set down Zoning Commission Case No. 06-31,
13 Commissioner Mitten moving, Commissioner Parsons
14 seconding, Commissioners Hood, Jeffries and Turnbull
15 in favor, this too being a contested case.

16 CHAIRPERSON MITTEN: Yes, thank you.
17 Okay. Next up under Proposed Action is Case No. 05-26
18 and this is the PUD and Related Map Amendment at 2950
19 Tilden Street. Okay. What I would like to do, I have
20 prepared -- I'm prepared to walk us through all of the
21 issues that have been raised, all the issues that were
22 raised in detail by the ANC.

23 But there is a threshold issue that we
24 have to confront first, I think, and it's the one that
25 we heard more about than probably anything else in the

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1 hearings, and that has to do with how we resolve the
2 issue of the generalized Land Use Map designation,
3 which is for high density residential with other
4 guidance of the Ward 3 element, including such
5 statements that, you know, higher density uses will be
6 on major thoroughfares and not on the side streets and
7 so on.

8 So the first thing I would really like to
9 hear a discussion on, and this is going to determine
10 I think in large measure whether we can go forward,
11 which is, you know, there is a Map Amendment that is
12 associated with this PUD and it's not -- it can't be
13 evaluated strictly on its own, but it indicates a
14 willingness.

15 If we are willing to go forward, it
16 indicates that we -- the way in which we would resolve
17 the conflict and give the greater weight to the land
18 use designation, the land use element of the
19 companies, the plan as we're required to do.

20 So the way I would like to start off is
21 just have that more general discussion about really
22 what it comes down to is, just to put it plainer, is
23 do you believe the community's position which is that
24 the zoning should not change and that either there's
25 another way to resolve the conflict with the

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1 generalized Land Use Map or that the generalized Land
2 Use Map was either printed incorrectly or that it was
3 -- the designation was placed where it is in error.
4 So that is what I would like to start with.

5 COMMISSIONER PARSONS: All right. I
6 believe that this Commission has made decisions of
7 this kind in the past in other circumstances where we
8 have a land use designation which shows a certain land
9 use indication, and we look at it as an achievement of
10 that goal in an average circumstance.

11 And what I mean by that is a lot of this
12 designation of high density has been met. Certainly,
13 I haven't calculated it or anything with the
14 development that has gone on so far by the same
15 developer with a Connecticut Avenue address, a
16 Connecticut Avenue entrance, exit, and I believe that
17 this small section of this land use designation need
18 not be high density to be consistent with our plan.

19 That is the intent of the plan has already
20 been met, in my view, with the existing development,
21 which then goes to the issue of the fact that the
22 front, that is, their access is off Connecticut Avenue
23 for these buildings that exist and that this site is
24 better off as existing R-2 Zoning. I wish I had had
25 the time to gather some examples, because I don't

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1 think we have gone to the averaging issue in probably
2 five or eight years and I can't remember those cases,
3 but it has been achieved elsewhere.

4 Do you understand my intent here?

5 CHAIRPERSON MITTEN: I understand your
6 intent.

7 COMMISSIONER PARSONS: Concept.

8 CHAIRPERSON MITTEN: But I'm hoping maybe
9 you will indulge a few questions on my part to
10 understand it better.

11 COMMISSIONER PARSONS: Sure.

12 CHAIRPERSON MITTEN: Since five years ago
13 I was here, but eight years ago I wasn't, and I don't
14 really have -- I know we have talked about the notion
15 of averaging and achieving that, and I wanted to just
16 maybe press you a little bit about that so that
17 perhaps you will convince me, but I'm not sure.

18 COMMISSIONER PARSONS: Give me a chance.
19 Thank you.

20 CHAIRPERSON MITTEN: I will. I would be
21 happy to give you a chance. We spent a lot of time
22 recently in some of the zoning cases that we have had
23 and we had a couple of particularly contentious down-
24 zoning cases where we have not even discussed the
25 notion of averaging.

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1 And I'm just wondering how you see this
2 condition, the circumstances here, as different from,
3 I will be specific about the cases, the MedLINK down
4 on Herman and then the Georgia Avenue down-zoning that
5 we did and I think we're taking final -- and we may
6 take Final Action.

7 COMMISSIONER JEFFRIES: I think Harold
8 Brooks, I think it's Harold Brooks.

9 CHAIRPERSON MITTEN: Harold Brooks, right.

10 COMMISSIONER JEFFRIES: Right.

11 CHAIRPERSON MITTEN: Those are two that
12 come immediately to mind, because we did them recently
13 and we didn't even really confront that. So I'm
14 wondering what is it about this location and this
15 circumstance that makes you want to lean on that?

16 COMMISSIONER PARSONS: Well, I find those
17 cases completely different. I mean, here is a built
18 out project that has followed the Comprehensive Plan
19 and is now trying to use that Comprehensive Plan to
20 move towards Tilden Street with the higher density
21 land use designation, and I'm suggesting that is
22 inappropriate. We haven't gotten to why, which I'm
23 frustrated by, but I'm following your lead that I
24 don't see the parallel. There is no down-zoning here.

25 CHAIRPERSON MITTEN: No. I guess what I'm

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1 focusing on is something that is more strictly
2 associated with a given parcel of land. We have a
3 land use designation. It advises us. That is what we
4 hung our hat on when we did those down-zonings.

5 COMMISSIONER PARSONS: Yes.

6 CHAIRPERSON MITTEN: And we weren't
7 looking. We didn't look beyond the parcel of land
8 that was at issue.

9 COMMISSIONER JEFFRIES: We didn't blend.

10 CHAIRPERSON MITTEN: We didn't blend,
11 right.

12 COMMISSIONER JEFFRIES: Blending.

13 CHAIRPERSON MITTEN: Yes.

14 COMMISSIONER JEFFRIES: That's what you're
15 referring to.

16 COMMISSIONER PARSONS: Yes? No, it's
17 whether the objectives of the Land Use Plan have been
18 met and, in my view, they have by -- whether I like
19 the project or not, it's there and the objective of
20 high density has been met.

21 CHAIRPERSON MITTEN: So in talking about
22 this, when you -- you're looking at something, so I
23 want to know how much of what you have in front of you
24 -- you're looking at 3883 Connecticut, is that right,
25 and that's --

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1 COMMISSIONER PARSONS: Yes.

2 CHAIRPERSON MITTEN: That's what you're
3 focusing on.

4 COMMISSIONER PARSONS: Yes, and of course
5 the development that was already on Connecticut Avenue
6 previously, yes.

7 CHAIRPERSON MITTEN: Okay.

8 COMMISSIONER PARSONS: But I sense I'm not
9 helping you, but I don't know how else to express it.

10 CHAIRPERSON MITTEN: Here is my concern,
11 and this is what has troubled me from the beginning of
12 this case, which is there is clearly conflicting
13 information in the Comprehensive Plan. And, on the
14 one hand, whatever you want to think about it, the
15 Land Use Map says what it says and it's not our -- we
16 don't have the authority to change it and we don't
17 have the authority to presume that it was a mistake.

18 So it says one thing. It says high
19 density residential. Then we have other elements,
20 other statements in the Ward 3 element that are
21 completely contrary to that.

22 COMMISSIONER PARSONS: Right.

23 CHAIRPERSON MITTEN: So that to me seems
24 like a situation where that's ripe for compromise to
25 reconcile these conflicting messages. And I guess my

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1 view is, number one, I don't think we are -- I'm not
2 sure that we have -- that it's our prerogative to
3 blend and average to the degree that you're
4 suggesting, effectively ignoring the generalized Land
5 Use Map.

6 But what the applicant did is, you know,
7 if you were just going to look at straight Map
8 Amendments and you had a high density residential
9 designation, we would either do -- what would
10 typically be appropriate would be R-5-D, 3.5 FAR or R-
11 5-E, 6 FAR. The applicant came in and asked for a PUD
12 and Related Map Amendment to R-5-C which is matter-of-
13 right 3. They are at 2.5.

14 So this proposal is really nowhere near
15 pushing the limits of high density residential. I
16 would say it's moderate to medium density residential
17 and I think that this is -- to me, the reconciliation
18 of these conflicting messages has been achieved by
19 allowing something denser than is permitted by the
20 existing zoning, but not so dense that you really are
21 pushing the limits to high density. We're not there.

22 So that is what I have been struggling
23 with and that is why I have found the sort of extreme
24 position of the community problematic, because there
25 was never any intent to try and reconcile. It always

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1 ignored the Land Use Map because it's wrong or it was
2 printed, you know, it's either -- it's an oversight of
3 some kind, and I don't believe that that's true.

4 And Office of Planning said, and I think
5 it would have been a different story perhaps if Office
6 of Planning had gotten on board and said, yes, we
7 don't know how that ever got there. That doesn't make
8 any sense at all. But that is not what we heard. So
9 I think the companies --

10 COMMISSIONER PARSONS: Well, I thought the
11 only place we heard that argument was from Mr.
12 Mendelson.

13 CHAIRPERSON MITTEN: What, that it was an
14 error?

15 COMMISSIONER PARSONS: Yes.

16 CHAIRPERSON MITTEN: He said that he wrote
17 the Ward 3 Plan and that he said it was an error. The
18 applicants -- no, not the applicants. The opponents'
19 planning expert, George Oberlander, said it was a
20 printing error or he might have characterized it other
21 ways, but I had written printing error in my notes.

22 COMMISSIONER PARSONS: You're right. I
23 had forgotten that because I --

24 CHAIRPERSON MITTEN: Let's see what our
25 colleagues have to say, Mr. Parsons. Anyone else?

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1 COMMISSIONER TURNBULL: Madam Chairman, I
2 guess my feeling is that I think that the Ward 3
3 element, even though this is in a way a compromise, I
4 think that the density that it imposes on this non-
5 arterial street is too much, that it is breaking away
6 from the idea of putting higher densities on arterial
7 streets and leaving these side streets at -- I just
8 think that the impact of even, you know, if you want
9 to call it a modest compromise, I think it's more than
10 that.

11 I think 49 units on that site is still a
12 lot. I guess I would agree with Mr. Parsons that I
13 think the intent of the Comprehensive Plan has been
14 met and that we should not do this change.

15 COMMISSIONER PARSONS: Let me understand
16 what you're saying, Madam Chair. You're saying I'm
17 right.

18 CHAIRPERSON MITTEN: Okay. I didn't hear
19 that, but if you heard that --

20 COMMISSIONER PARSONS: So I'm correct, but
21 you just aren't going to compromise as far as I am.
22 I mean, you're saying you're right, the R-5 is the
23 place to be, but that is moderate and 2.0 is in
24 concert with my argument that we're averaging. We're
25 not building high density here.

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1 CHAIRPERSON MITTEN: Okay. I will --

2 COMMISSIONER PARSONS: Okay.

3 CHAIRPERSON MITTEN: I'm with you so far,
4 yes.

5 COMMISSIONER PARSONS: So I hear what Mr.
6 Turnbull is saying, is where I want to get to the next
7 part of the conversation, is to -- so what is right?
8 I mean, we know where you are.

9 CHAIRPERSON MITTEN: Okay.

10 COMMISSIONER PARSONS: But we haven't
11 heard from the rest of us yet.

12 CHAIRPERSON MITTEN: Okay.

13 COMMISSIONER PARSONS: Right?

14 CHAIRPERSON MITTEN: And there may be
15 people who agree with me. I don't know.

16 COMMISSIONER PARSONS: I don't either. I
17 can't wait.

18 CHAIRPERSON MITTEN: Yes, me either.
19 Okay. So let's see where everybody is.

20 COMMISSIONER PARSONS: Yes.

21 CHAIRPERSON MITTEN: And then, you know --

22 COMMISSIONER PARSONS: That's fine. Okay.

23 CHAIRPERSON MITTEN: Okay. Gentlemen?

24 VICE CHAIR HOOD: Well, first of all, I
25 will say printers don't make mistakes. That's the

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1 first thing I will say. Second of all, I'm going to
2 have to associate myself. You know, I get to a point
3 and I want to go beyond that point. I'm actually at
4 the fire issue, but I know we're not talking about
5 that, but I would associate myself with Mr. Parsons.

6 I think, at some point in time, we get
7 into these high densities and we get to that build out
8 that I think that's when it's time for us to cut it
9 off, and I think -- because he said we have already
10 met that in that area, at least from what I see. But,
11 still, I have another point that I want to get to if
12 we get to that point. If that helped to kind of tell
13 you where I am.

14 CHAIRPERSON MITTEN: I know where you are.
15 Commissioner Jeffries?

16 COMMISSIONER JEFFRIES: Well, I think,
17 Madam Chair, I'm probably in your camp on this one.
18 I think, given sort of what has been set forth as it
19 relates to FAR, that this really is somewhat moderate
20 density. It has not been built out.

21 While I am very sympathetic, and this has
22 been one of the toughest cases that I have sat on
23 because, you know, one day I'm for and the next day
24 I'm against it, but while the Ward 3 element, you
25 know, seems to make sense to me that, you know,

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1 really, the high density project should really be
2 restricted to major arterials, and obviously Tilden is
3 not.

4 I really do think that the scale of this
5 project and that the FAR that has been set forth has
6 been in many ways a Herculean task by the applicant to
7 really try to appease and present compromise in a
8 community that is pretty definite as to, you know,
9 exactly what should be on the site. It's either eight
10 townhomes or nothing else.

11 So the conflict piece of it that you speak
12 about, Madam Chair, and that, you know, when you have
13 this kind of conflict it seems to breed a sense of
14 going to a sort of compromise place, I think is the
15 correct way to look at this case because, you know,
16 you can't turn your back on either aspect of the
17 Comprehensive Plan and you really need to play to
18 both.

19 And so I think the compromise piece, I
20 think, is the correct way to look at this, so I would
21 agree with you that I think that in this situation, we
22 should -- the 2.5 FAR, I think, is appropriate for
23 this site. And I have a question and maybe I'm moving
24 -- I know we were trying to sort of deal with the Map
25 Amendment versus the PUD. Are we still trying to

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1 just --

2 CHAIRPERSON MITTEN: Well, depending on
3 how the conversation goes --

4 COMMISSIONER JEFFRIES: Yes, right.

5 CHAIRPERSON MITTEN: -- talking about the
6 details is just kind of a waste of time.

7 COMMISSIONER JEFFRIES: A waste of time.

8 CHAIRPERSON MITTEN: Yes.

9 COMMISSIONER JEFFRIES: Right, right. So,
10 anyway, well, then that's where I'm at.

11 CHAIRPERSON MITTEN: Okay. So as I think
12 we have heard, there are two of us who feel the
13 compromise has been struck in terms of density and
14 there are three of you who feel that this is too much.
15 So then, Mr. Parsons, you had sort of teased with the
16 idea that you might not be completely to the other
17 extreme, which is that maintaining the existing R-2
18 Zoning wasn't the appropriate approach either, but
19 perhaps I misheard you.

20 COMMISSIONER PARSONS: Well, I wouldn't be
21 adverse to another proposal, but I don't mean taking
22 another story off of this.

23 CHAIRPERSON MITTEN: No, I understand. I
24 just think --

25 COMMISSIONER PARSONS: I mean, one of the

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1 most offensive things about this, which is a detail
2 you don't want to get into, is what they have to do to
3 face the Kuwait Embassy. As you come up out of the
4 park along Tilden Street, I mean, it just -- it's
5 irresolvable, I mean, to have these solid walls so
6 that they aren't intruding on the security needs of
7 the embassy.

8 And it's -- there's lots of little aspects
9 of this project that just don't work for me and the
10 circulation and the U-turns and so forth. But if the
11 density was brought way down to a more townhouse kind
12 of feel, whatever FAR they can get out of it, I don't
13 have a problem with that. But it's 49 units. It's
14 the traffic. It's everything we have talked about.
15 I don't think we can whittle down to make a project
16 out of it. We are the Zoning Commission.

17 CHAIRPERSON MITTEN: Right.

18 COMMISSIONER JEFFRIES: Commissioner
19 Parsons, at some point and, I mean, I know we're land
20 use. We're not dealing with economics but, you know,
21 at some point, you know, and perhaps I should ask the
22 Office of Planning this question, I mean, if this
23 applicant is not successful, I mean, what happens?

24 At some level the project is not
25 economically feasible. I mean, if you get, you know,

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1 from 49 to 10 or whatever the number is, I mean, has
2 the applicant spoke about sort of what would happen if
3 they don't prevail in this situation?

4 MR. JACKSON: No.

5 COMMISSIONER JEFFRIES: Okay. Well, I
6 mean, you know, just -- you know, I'm just sort of
7 sensitive to that. I mean, again, I know we're just
8 to look at the land use here, but it's just -- at some
9 level, you know, I don't know what the number is. I
10 mean, eight townhomes, I mean, it sounds great, but it
11 might not make sense given the price of land and
12 construction and everything else that's going on here.

13 CHAIRPERSON MITTEN: Now, I'm in the mode
14 of, okay, Mr. Parsons is saying -- I don't want to
15 tell him how to redo this, because I got lots of
16 issues, but you would be -- you're kind of giving some
17 general guidance.

18 You're willing to give some general
19 guidance about it doesn't need to be strictly eight
20 townhomes, but it needs to be -- it doesn't need to be
21 necessarily the density, the unit density associated
22 with eight townhomes is kind of what I'm hearing, but
23 it needs to be sort of the scale of that so that the
24 site is not so perhaps loaded up and it looks better
25 with the Kuwait Embassy and things like that.

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1 Am I representing your view correctly, Mr.
2 Parsons? See, here is what I'm --

3 COMMISSIONER PARSONS: Yes, but I could
4 read -- if I was the applicant, I would say, well, if
5 we shoot for 40 units we'll make it. No.

6 CHAIRPERSON MITTEN: Okay. I guess where
7 I'm leading now is we could dispatch with this like
8 right quick and I could say okay, well, you're not in
9 favor of this proposal and one of you will make a
10 motion and one of you will second, and I know how the
11 vote will turn out or as we have done in other cases,
12 we can say you know what, we're not going to take
13 action.

14 We're going to give you our best guidance
15 and then if you choose to avail yourself of the
16 opportunity to significantly amend the application, it
17 will still be alive or if you guys are in the camp of
18 more to the no, it's eight townhomes or nothing, you
19 know, I don't know where you are. I'm sensing that
20 Mr. Parsons is not of that extreme, but perhaps you
21 are and then it's not productive to prolong the
22 conversation.

23 COMMISSIONER JEFFRIES: Well, you know, I
24 would like to hear from Vice Chair Hood. I just want
25 to get a sense. If you could talk a little bit about,

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1 I mean, your issues around the density of this
2 project.

3 VICE CHAIR HOOD: Well, and I know these
4 are some of those PUD issues that we were talking
5 about and I have been going through and that is where
6 I wanted to go, because when I read this from the Fire
7 Marshall, from Tony Snead dated June 2, 2006, unless
8 this is no longer relevant, but he talks about, and I
9 quote, "This is no problem with Fire Department access
10 to the front of the building off of Tilden Street. I
11 feel that the Fire Department access to the rear is
12 not readily accessible."

13 I am not in favor, and I have said this
14 before, of making new -- of supporting any
15 construction in this city that puts people's lives in
16 danger and this is not the first time I have said it.
17 I'm sure you have been around awhile. You have heard
18 me say the exact same thing. And when I read that,
19 that gives me pause. It says, well, what else can we
20 do?

21 I'm not to the extreme, as the Chair said,
22 to eight townhomes, but we need to find out, nor am I
23 to the point of just saying we'll go down to 40, 40
24 units. But I think that there is an issue here which
25 the Fire Department, who are the experts, subject

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1 matter expects, have raised an issue that as far as
2 I'm concerned has not been addressed.

3 COMMISSIONER JEFFRIES: Well, okay. Well,
4 just -- well, I thought that the applicant's attorney
5 actually did sort of respond to that very pointedly as
6 it related to just the inaccuracies of that assertion
7 by the ANC.

8 But I guess what I'm dealing with is as it
9 relates to this case, Commissioner Hood, is that if we
10 separate this out between sort of Map Amendment issues
11 and then PUD issues, if you could get your arms around
12 some of the issues that relate to sort of PUD issues,
13 could you then sort of move as it relates to density
14 issues?

15 VICE CHAIR HOOD: Yes, I --

16 COMMISSIONER JEFFRIES: Because I guess
17 I'm not certain whether -- I'm sort of hearing that
18 you were probably more focused on the PUD piece and
19 that there are some things that could be straightened
20 out around that. You might be open to looking at what
21 Chairman Mitten has said in terms of a more moderate,
22 you know, FAR.

23 VICE CHAIR HOOD: Yes, that's basically
24 right. Another issue and, again, I'm back to the PUD,
25 forgive me, but I have to go there, and that is the

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1 traffic pattern. That was discussed. It was a lot of
2 length of discussion at the hearing on that and I just
3 think that we're creating, from the way I see it, a
4 problem and that is just kind of -- I just can't get
5 off of that. I'm stuck on that.

6 CHAIRPERSON MITTEN: I mean, I guess what
7 Commissioner Jeffries is trying to elicit from you is,
8 okay, is there -- we understand that and I think it's
9 a concern that we all have and perhaps we would talk
10 about it in some detail if this was going to go
11 forward, but is there some level of density beyond
12 eight townhomes that you would be comfortable with in
13 light of your concerns about traffic?

14 VICE CHAIR HOOD: I would. Yes, I would.
15 I would be inclined to hear a proposal and see
16 something that kind of fits and works. Yes, I would
17 be, but I am not actually because I'm not an
18 architect.

19 CHAIRPERSON MITTEN: Right.

20 VICE CHAIR HOOD: I'm not a planner. I'm
21 an expert though. But, anyway, I would like to see a
22 plan. As Commissioner Parsons said, I can't -- I
23 don't think we can -- I can sit here and we can
24 deliberate a plan for this.

25 CHAIRPERSON MITTEN: And I'm not

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1 suggesting that we do that. I am just suggesting, I'm
2 trying to sort out should we take a vote that I know
3 how will turn out or should we keep the conversation
4 open to see what the applicant -- you know, if the
5 applicant wants to respond in some way after listening
6 to the deliberation? That is really what I'm trying
7 to sort out.

8 VICE CHAIR HOOD: Madam Chair, just
9 another matter.

10 COMMISSIONER JEFFRIES: Madam Chair, I
11 guess I'm not certain that Vice Chair -- I think we
12 should continue talking. That's where I'm at.

13 CHAIRPERSON MITTEN: Right now?

14 COMMISSIONER JEFFRIES: Yes.

15 CHAIRPERSON MITTEN: Okay. You guys keep
16 going.

17 VICE CHAIR HOOD: I think that -- Madam
18 Chair, I heard you mention two other cases and I
19 wasn't going to really get into that, but -- and, you
20 know, you and I have been up here beside each other
21 and worked collegially and I'm not trying to be non-
22 collegial.

23 CHAIRPERSON MITTEN: Yes, we have. Yes,
24 we have, Commissioner Hood.

25 VICE CHAIR HOOD: But when it didn't go

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1 that way, it was fine to take the vote in one of those
2 cases when I was not on the prevailing side so, I
3 mean --

4 CHAIRPERSON MITTEN: And I am not trying
5 to prevent you from making a motion and getting a
6 second and being done with it.

7 VICE CHAIR HOOD: I understand where you
8 are going. You are trying to get a consensus and I
9 will sit here and see what happens, but I am probably
10 not the Commissioner to push to that point.

11 COMMISSIONER JEFFRIES: Okay. But, I
12 mean, Vice Chair Hood --

13 VICE CHAIR HOOD: You're not upset with
14 me, are you?

15 CHAIRPERSON MITTEN: Me?

16 VICE CHAIR HOOD: Yes.

17 CHAIRPERSON MITTEN: Not at all.

18 VICE CHAIR HOOD: That's good. Good.

19 COMMISSIONER JEFFRIES: So, Vice Chair
20 Hood, so do you have -- you clearly have an issue with
21 49 units and the 2., what, 5 FAR. You have a problem
22 with that. You think that is just way too much for
23 this site.

24 VICE CHAIR HOOD: Again, going back to the
25 PUD part of it --

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1 COMMISSIONER JEFFRIES: I don't want you
2 to go back to the PUD part of it. I want you just to
3 deal just with the 2.5 FAR and the 49 units. That is
4 just too big for you and that's too dense.

5 VICE CHAIR HOOD: With the 2.5 and the 49
6 units, what it encompasses and the impacts, yes, I do.

7 COMMISSIONER JEFFRIES: It's too big?
8 Okay. Now --

9 VICE CHAIR HOOD: You want me to go sit
10 down there?

11 COMMISSIONER JEFFRIES: No, no, no, no.
12 Touche. So but clearly, I mean, at eight units, eight
13 unit townhome development, you could definitely go
14 more for that and you can look at maybe 30, 40 units
15 or something of that sort?

16 COMMISSIONER PARSONS: No.

17 COMMISSIONER JEFFRIES: Because you think
18 that would relieve?

19 VICE CHAIR HOOD: I don't know if my --

20 COMMISSIONER JEFFRIES: I'm talking to
21 Vice Chair Hood.

22 COMMISSIONER PARSONS: I know you are.

23 COMMISSIONER JEFFRIES: Yes.

24 COMMISSIONER PARSONS: How did we knock
25 off --

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1 COMMISSIONER JEFFRIES: Let me finish.
2 Can I -- I would really like to finish my, you know --

3 COMMISSIONER PARSONS: Excuse me.

4 COMMISSIONER JEFFRIES: Yes.

5 VICE CHAIR HOOD: That's kind of rough.

6 COMMISSIONER JEFFRIES: So anyway --

7 CHAIRPERSON MITTEN: I don't think payback
8 is really the driving element.

9 COMMISSIONER JEFFRIES: I mean, the long
10 and the short, I think that, you know, the applicant,
11 you know, has put a tremendous amount of time and has
12 in many cases -- I think has negotiated in good faith.
13 I think there's some places that the applicant has
14 fallen short and my issue -- and, you know, I have
15 some issues around the PUD piece of it, too.

16 I don't think that this property is
17 contextual. I think it really does -- it does not
18 really fit in the neighborhood as it looks. But I do
19 think that, you know, again what Madam Chair has put
20 forward in terms of the 2.5, I don't -- I think that
21 is somewhat acceptable.

22 And I'm just -- my question to you is that
23 if we could clear up some of the PUD items that are
24 problematic, could you then get your arms around a
25 2.5?

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1 VICE CHAIR HOOD: Again, and I'm going to
2 have to stick with this, because I'm not an expert in
3 that field, I would need to see a project. I don't
4 think we could deliberate. I really don't know.

5 COMMISSIONER JEFFRIES: Okay.

6 CHAIRPERSON MITTEN: Mr. Turnbull, you got
7 anything that you want to say?

8 COMMISSIONER TURNBULL: Well, I think
9 we're playing some games with numbers and trying to
10 get down to -- my feeling is that this development is
11 wrong for this site. It's inappropriate because of
12 what it does. From the Land Use Plan of where this
13 piece of land is, I just think it doesn't work.

14 You asked about how far could you go down.
15 I don't know if I want to get into any game. I don't
16 know if that's for us to get in and develop a number.
17 I think --

18 CHAIRPERSON MITTEN: And I'm not -- I'm
19 actually -- I don't want you to think I'm seeking a
20 number. What I am trying to help the Commission come
21 to is, and I'm going to -- I didn't want to invoke
22 this case, but I'm going to, the Albemarle Townhouses
23 which some people invoked in this case as the way that
24 they want us to go, but that was -- the issues in that
25 case were completely different because we didn't --

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1 there is no guidance from the Land Use Map there.

2 But notwithstanding that, what happened
3 was we weren't comfortable with the proposal that we
4 had before us and Mr. Parsons took the lead and I'm
5 just giving you credit for that, that's all, that time
6 and you suggested what could work. And we didn't vote
7 a denial that night after deciding we didn't want to
8 support what was in front of us.

9 So there is either you can just say we're
10 denying this and go away or, and this is what I'm
11 trying to figure out or we're not in favor of this,
12 but we're open to something. We're not seeking the
13 status quo. We're open to something besides the
14 status quo. They can say, well, too bad, we're not
15 interested in anything but our proposal and we could
16 find that out and move ahead that way.

17 But I basically want to know, do you want
18 to leave the door open or do you want to close it?
19 That's all.

20 COMMISSIONER PARSONS: Sure. Well, Madam
21 Chairman, based on the discussion, I think we're so
22 far apart that I move we disapprove this application.

23 VICE CHAIR HOOD: I'll second.

24 CHAIRPERSON MITTEN: Okay. Any further
25 discussion?

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1 COMMISSIONER JEFFRIES: You know,
2 Commissioner Turnbull, I just wanted to say, I mean,
3 I don't think that, you know, we're playing games
4 here. I think -- you know, I think the feeling is,
5 you know, trying to send some direction to the
6 applicant as to perhaps what could be amenable. I
7 mean, that's all. I mean, we do that all the time up
8 here.

9 I mean, we're always sending messages and
10 things of that sort, so that the applicant could
11 perhaps shift and put forward something that could be
12 acceptable. So I think that was the process, and so
13 I don't want you to think that, you know -- and in
14 terms of a number, we weren't looking for an exact
15 number.

16 But just from -- since I have been here,
17 it seems that the community is at eight and then the
18 applicant is at 49 and there is never any discussions
19 of anything in between. It's just pretty firm. And
20 so that's all I was trying to get to.

21 COMMISSIONER TURNBULL: Again, I can
22 appreciate that. I just think that there comes a
23 point where the issues dealing with this, with a piece
24 of land where it is and what you're trying to do to
25 it, I don't know how much you can massage that.

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1 I don't know how far you can take that and
2 get that to come up with something different. 20
3 townhomes? I think at some point, like Mr. Parsons
4 has just said that, you know, I mean, we're so far
5 apart, Maybe we just have to come to terms with it.

6 COMMISSIONER PARSONS: What I meant about
7 being so far apart is I see two of my colleagues
8 willing to stay at 2.5 and I don't have any patience
9 for that. So the only way I know how to deal with it
10 is send the message that it's too much and we're not
11 here to negotiate. if you bring us back something
12 that looks different at 2 or 2.5, that it's okay.
13 It's just not fair to anybody.

14 CHAIRPERSON MITTEN: And I appreciate that
15 and it wasn't my intent to -- you know, I know when
16 I'm not going to prevail. I mean, you know, I have
17 been there before. I have stood alone and, you know,
18 I'm grateful for Commissioner Jeffries being with me
19 tonight. I wasn't meaning that we would pursue that.

20 I was meaning that we would pursue
21 something that the three of you that are, you know,
22 genuinely and strongly opposed would be comfortable
23 with, not that I would continue to try and, you know,
24 wrestle your opinion in my direction. But, you know,
25 I'm happy to pursue it the way that it seems we will

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1 and vote as you know I will. So is there any further
2 discussion?

3 COMMISSIONER PARSONS: No.

4 CHAIRPERSON MITTEN: Then all those in
5 favor of the motion to deny this application, please,
6 say aye.

7 VICE CHAIR HOOD: Aye.

8 COMMISSIONER PARSONS: Aye.

9 COMMISSIONER TURNBULL: Aye.

10 CHAIRPERSON MITTEN: And all those
11 opposed, please, say no.

12 COMMISSIONER JEFFRIES: No.

13 CHAIRPERSON MITTEN: No. Mrs. Schellin?

14 MS. SCHELLIN: The staff records the vote
15 3-2-0 to deny Zoning Commission Case No. 05-26,
16 Commissioner Parsons moving, Commissioner Hood
17 seconding, Commissioner Turnbull in favor of denial.
18 Commissioners Jeffries and Mitten opposed.

19 CHAIRPERSON MITTEN: Thank you. The next
20 case is Case No. 05-21A and this is the text amendment
21 for Animal Grooming. And I'm going to begin by asking
22 Mr. Mordfin maybe for a quick overview since we have
23 had a couple of supplemental reports from the Office
24 of Planning.

25 And we appreciate them, because I think

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1 they were responsive to the issues that were raised at
2 the hearing, but maybe you can just kind of tie it all
3 together for us since we have seen some new things
4 since our hearing.

5 MR. MORDFIN: Okay. Thank you. I am
6 Stephen Mordfin with the Office of Planning. And
7 since the last report, one additional definition has
8 been added and that is for a veterinary boarding
9 hospital.

10 And what that is is that's a veterinary
11 hospital that utilizes 50 percent or more of its floor
12 area for the boarding of small animals, and that would
13 be a special exception use. Veterinary hospitals that
14 board less than 50 percent or don't do any boarding at
15 all would continue to be permitted as a matter-of-
16 right.

17 The Office of Planning also recommends
18 that animal shelters be permitted as a matter-of-right
19 within Industrial Zones, are not a special exception
20 use subject to specific conditions, and also that
21 outdoor runs and external yards be permitted for the
22 exercise of animals subject to a list of conditions
23 that include that the outdoor run or yard be located
24 a minimum of 200 feet from a Residential Zone or from
25 residential use, that no animals are permitted outside

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1 between the hours of 8:00 p.m. and 8:00 a.m., that the
2 outdoor area is enclosed by walls and/or fencing and
3 that no more than three hour, excuse me, three animals
4 are permitted within any exterior yard or run at any
5 time.

6 However, within Commercial Districts the
7 animal shelters are proposed to be a special exception
8 use. But, again, the outdoor areas are permitted as
9 long as they are a minimum of 200 feet from a
10 residential use or a Residential Zone District. Thank
11 you.

12 CHAIRPERSON MITTEN: Thank you. I am glad
13 that you decided to go with the veterinary boarding
14 hospital notion, because the way that it had been in
15 one of the iterations where it was 50 percent -- I
16 mean, I know that is what is driving it, but the way
17 that it had been organized wasn't working for me, so
18 this is a lot better, I think.

19 Anyone have any questions for Mr. Mordfin
20 or comments on the proposed changes? I believe this
21 accommodates the concerns that we heard from the
22 specialty veterinarian and the Humane Society on the
23 animal shelter issues, right?

24 MR. MORDFIN: Yes, it does.

25 CHAIRPERSON MITTEN: Okay.

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1 COMMISSIONER PARSONS: Well, I had thought
2 the veterinary spokesman, it was really one individual
3 I guess, was urging us to not require a special
4 exception for their activities or am I wrong?

5 CHAIRPERSON MITTEN: That is what he said,
6 and I think where we are is that veterinary hospitals
7 that are strictly veterinary hospitals are permitted
8 as matter-of-right.

9 It is ones that include boarding as
10 another line of business that would have to -- that
11 they would have to come for a special exception. So
12 for the kind of business that they said that they
13 wanted to start, which would be an emergency
14 veterinary hospital and specialty --

15 COMMISSIONER PARSONS: All right.

16 CHAIRPERSON MITTEN: -- clinics or
17 whatever you call it for the animals.

18 COMMISSIONER PARSONS: Now, the other
19 question I wanted to ask, and I believe I wasn't
20 paying attention, but where is animal boarding
21 defined, in the Building Code? It's not in the Zoning
22 Regulations, right?

23 MR. BERGSTEIN: They are actually -- that
24 is not regulated. That is one of the interesting
25 things we found in a BZA case. The DCRA --

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1 COMMISSIONER PARSONS: Could you speak
2 into the microphone a little closer?

3 MR. BERGSTEIN: Sure, I'm sorry. DCRA
4 regulates what they call animal facilities which
5 includes veterinary hospitals. Public Health and DCRA
6 regulate pet shops. There is no regulatory scheme for
7 kennels, which is the issue that arose during a BZA
8 case that sort of started this thing.

9 So, in fact, there is an interesting gap
10 in the regulatory scheme in the District of Columbia
11 for kennels or boarding facilities. It's just not
12 there. In fact, I checked again this week to make
13 sure I haven't gotten that wrong, but that is what the
14 regulations, Title 15 and Title 22, say.

15 CHAIRPERSON MITTEN: And I'm sorry, just
16 let me clarify one more thing. When we did the pet
17 grooming or the animal grooming, didn't we define
18 animal boarding in that case, because we're not doing
19 it here and I thought we had defined it.

20 MR. MORDFIN: We had defined animal
21 boarding in a text amendment, that was Case No. 05-21.
22 We defined animal boarding in that case.

23 CHAIRPERSON MITTEN: Oh, that's right.
24 This is about -- yes, this is grooming. That was
25 boarding. Yes.

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1 COMMISSIONER PARSONS: Well, I didn't
2 participate in that case, so that's --

3 CHAIRPERSON MITTEN: Oh, okay. Okay.

4 COMMISSIONER PARSONS: That's all I have.

5 CHAIRPERSON MITTEN: It's hard to keep
6 track of it all.

7 COMMISSIONER PARSONS: Yes, it is.

8 CHAIRPERSON MITTEN: But I don't think
9 there is anything that we haven't done and when we're
10 done with this, I think we have covered all the
11 animals.

12 COMMISSIONER JEFFRIES: Just wait.

13 CHAIRPERSON MITTEN: Okay. Are there
14 any --

15 COMMISSIONER PARSONS: I have an ant farm.
16 I'm kidding. I'm kidding.

17 VICE CHAIR HOOD: It's not permitted, Mr.
18 Parsons.

19 COMMISSIONER PARSONS: Okay.

20 CHAIRPERSON MITTEN: Okay. Are there any
21 other questions?

22 VICE CHAIR HOOD: Madam Chair?

23 CHAIRPERSON MITTEN: Um-hum?

24 VICE CHAIR HOOD: The way it exists now is
25 veterinary hospitals are already a matter-of-right as

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1 they exist.

2 MR. MORDFIN: That's correct.

3 CHAIRPERSON MITTEN: Yes.

4 MR. MORDFIN: They will continue as
5 permitted as matter-of-right in Commercial and
6 Industrial Zone Districts.

7 COMMISSIONER JEFFRIES: As long as they
8 are not boarding.

9 MR. MORDFIN: As long as they are not
10 boarding small animals, occupying 50 percent or more
11 of their floor area.

12 VICE CHAIR HOOD: Okay. I guess we can't
13 change that. Okay.

14 CHAIRPERSON MITTEN: We're here to change
15 whatever.

16 VICE CHAIR HOOD: But just to be clear,
17 dog boarding --

18 CHAIRPERSON MITTEN: I mean, what is --

19 VICE CHAIR HOOD: It's already like that,
20 right? It's already a matter-of-right in the
21 regulations?

22 CHAIRPERSON MITTEN: Correct.

23 MR. MORDFIN: Veterinary hospitals.

24 CHAIRPERSON MITTEN: A veterinary
25 hospital.

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1 VICE CHAIR HOOD: Right, okay.

2 MR. MORDFIN: Yes.

3 CHAIRPERSON MITTEN: And what we heard at
4 the hearing was that any controls on a basic
5 veterinary hospital in terms of getting special
6 exception would be very problematic in terms of tying
7 up a property while they got -- and there is only one
8 emergency veterinary hospital in the city, and so
9 there was a concern that there is a greater need for
10 emergency care than is currently being met and we
11 would be creating an obstacle --

12 COMMISSIONER JEFFRIES: Yes.

13 CHAIRPERSON MITTEN: -- for further
14 emergency care.

15 VICE CHAIR HOOD: Okay. But that's --

16 COMMISSIONER JEFFRIES: All these people
17 moving into the District with their pets.

18 VICE CHAIR HOOD: Right.

19 COMMISSIONER JEFFRIES: They need
20 services. You don't want to have them go out to
21 Maryland.

22 VICE CHAIR HOOD: No, but that's totally
23 different than the animal shelter.

24 CHAIRPERSON MITTEN: Yes, it is different.

25 VICE CHAIR HOOD: Okay. I just wanted a

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1 distinction. Thank you.

2 CHAIRPERSON MITTEN: Anyone else? All
3 right. Then I would move approval of Case No. 05-21A
4 consistent with the revised second supplemental report
5 from the Office of Planning.

6 COMMISSIONER JEFFRIES: Second.

7 CHAIRPERSON MITTEN: Any further
8 discussion? All those in favor, please, say aye.

9 ALL: Aye.

10 CHAIRPERSON MITTEN: Those opposed,
11 please, say no. Mrs. Schellin?

12 MS. SCHELLIN: Staff would record the vote
13 5-0-0 to approve Zoning Commission Case No. 05-21A,
14 Commissioner Mitten moving, Commissioner Hood
15 seconding, Commissioners Jeffries, Parsons and
16 Turnbull in favor.

17 CHAIRPERSON MITTEN: Okay. Thank you.
18 Next is Case No. 06-01 and this is the PUD and Related
19 Map Amendment of Steuart H Street, LLC and this, if
20 you will recall, includes the grocery store and 200
21 plus residential units at 3rd and H, N.E. We had the
22 ANC in favor in this case and we also had -- we heard
23 from some folks in opposition, mostly those in close
24 proximity to the site.

25 And I just wanted to remind us that

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1 notwithstanding the ANC's support, they did request in
2 their letter to us that we take the following concerns
3 under consideration. One is that the building -- the
4 height of the proposed building in proximity to the
5 two story row houses, the position of the loading dock
6 relative to residential properties, truck and other
7 traffic concerns relative to 3rd Street, store hours
8 and noise level.

9 So in making that request of us, I think
10 they were trying to acknowledge certain constituents'
11 concerns, but overall they are in support of the
12 project. So I'm putting it up for discussion. Mr.
13 Turnbull?

14 COMMISSIONER TURNBULL: I was just looking
15 at the Office of Planning's supplemental report and if
16 I am understanding it, they are still concerned about
17 the shadows or you have some concern about at least
18 part of it?

19 CHAIRPERSON MITTEN: Are you asking them?

20 COMMISSIONER TURNBULL: Yes.

21 MR. PARKER: Only insofar as the shadows
22 from that middle residential wing. The majority of
23 the shadows are similar to what you would get from a
24 matter-of-right scheme.

25 COMMISSIONER TURNBULL: Right. But you

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1 were concerned about at least a part of it, that they
2 need to study that a little bit more.

3 MR. PARKER: Well, we have a shadow study.
4 I don't know how much more there is to study. We have
5 always been concerned, I think, about the effects of
6 that middle wing on the existing residential homes in
7 the square.

8 COMMISSIONER TURNBULL: Okay. Thanks.

9 CHAIRPERSON MITTEN: Well, maybe just to
10 pick up that thread, that is an area of concern that
11 I have and that I continue to have. And just for my
12 colleagues' benefit, for in case anyone doesn't
13 remember, that is the portion of the site that
14 requires a rezoning from C-2-A to C-2-B, which is what
15 is necessary in order to achieve the height.

16 And I think, you know, there was some
17 difference of opinion perhaps on or maybe I have a
18 difference of opinion about why that little pocket was
19 retained as C-2-A but, you know, that little area is
20 surrounded on two sides by townhomes and I think those
21 -- you know, there is a concern that I have that, you
22 know, they are going to be significantly impacted.

23 So I would be more comfortable. You know,
24 the matter-of-right height in C-2-A is 50 feet. With
25 a PUD it's 65 feet in C-2-A just for -- and I'm just

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1 saying this as a point of reference to give some
2 guidance to the conversation. The overall height of
3 that wing is 90 feet and there is a setback at 63 feet
4 4 inches. So I would say, you know, at a minimum I
5 would want -- I think that wing needs to come down two
6 floors and I don't know if more would be better but,
7 you know, it's just too much. It feels too imposing
8 on those townhouses.

9 And while on the subject, while I'm just
10 speaking about my concerns, I did want to add on
11 another point that I'm very concerned about the
12 adequacy of the parking spaces for the grocery store.
13 And I say that as a frequent patron of the grocery
14 store, the Whole Foods on P Street, and I'm not
15 probably going to be able to put my hand on it right
16 now but --

17 VICE CHAIR HOOD: Oh, here it is.

18 CHAIRPERSON MITTEN: Thank you. Oh, the
19 applicant provided us with some information, parking
20 ratios, for other grocery stores, you know, recently
21 built or planned grocery stores in the city and the
22 ratio is number of parking spaces per 1,000 square
23 feet. And we're at or this proposal is at 2.27 which
24 is the -- I guess there is a guideline in some
25 professional transportation manual for an urban

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1 grocery store, week days.

2 And, yet, every other store in the city
3 that is used as a benchmark exceeds that, and I would
4 say significantly exceeds that, and the store that I
5 referenced, which I have seen it many times where
6 notwithstanding the number of parking spaces there,
7 people can't get in or, you know, the parking is
8 backed up. That has the highest ratio.

9 So I'm very concerned about the number of
10 spaces that has been allocated. And I know that it
11 would be a logistical problem, but I think there is
12 probably enough parking in the whole facility, but I
13 think the balance hasn't been struck between the
14 residential units and the units for the -- or the
15 number of spaces for the grocery store.

16 So that is something I think needs to be
17 revisited, because I just can't bring myself to vote
18 in favor of something that I think is just going to
19 cause chaos and people are going to want to come to
20 this store.

21 I mean, it will be a very large store.
22 They will be able to do all their shopping there.
23 They are going to attract a lot of people, and I
24 suspect because people are going to be doing all their
25 shopping there that even people that live on the Hill

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1 will be driving because they have to get those bags of
2 groceries home.

3 And then the final thing, and I'm just
4 saying this because I learned a little bit in the
5 previous case about animal grooming, about acoustic
6 masonry, is I would ask that the applicant, in
7 addition to some of the other things that they have
8 done in terms of restricting use of the loading, the
9 residential loading facility, is that they would face
10 the area of the residential loading dock along the
11 first floor with acoustical masonry now that I know
12 there is such a thing just to help. You know, whoever
13 owns that townhouse that is immediately adjacent is
14 going to have a rough time of it.

15 So, Mr. Turnbull, did you have some
16 comments? You have your light on.

17 COMMISSIONER TURNBULL: Oh, sorry. No, I
18 didn't realize I had it on. No, I agree with your
19 comments.

20 COMMISSIONER PARSONS: Could I go back to
21 your first point?

22 CHAIRPERSON MITTEN: Certainly.

23 COMMISSIONER PARSONS: So I'm sure I
24 understand. One of these wings, you spoke about
25 reducing the height of a wing. One of these wings is

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1 already at 60 feet.

2 CHAIRPERSON MITTEN: I don't think so.

3 COMMISSIONER PARSONS: Yes, I think so,
4 unless I'm misreading the drawing. This one here
5 which is closest to the townhouses we're looking at is
6 at 60 feet. The other one is at 90, as I grasp it
7 here.

8 CHAIRPERSON MITTEN: Well, then let's ask.

9 COMMISSIONER PARSONS: You can see it in
10 that elevation, you see?

11 CHAIRPERSON MITTEN: Maybe I was looking
12 at -- well, let's ask Mr. Parker.

13 COMMISSIONER PARSONS: The one closest to
14 the townhouses is at 60.

15 CHAIRPERSON MITTEN: Okay. Is that right?

16 MR. PARKER: The wing on H Street to the
17 east does go down to 70 feet, I believe is the number,
18 and that is to step down because the properties
19 further east on H Street are lower in scale.

20 COMMISSIONER PARSONS: Could you look at
21 Sheet A? Have you got A-15?

22 MR. PARKER: I don't have it in front of
23 me right now, I'm sorry.

24 COMMISSIONER PARSONS: Well, I will loan
25 you mine.

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1 CHAIRPERSON MITTEN: Here is why I thought
2 it was taller, is because if you look on A-07 of the
3 drawings, it shows that that wing goes up, you know,
4 the 7th and 8th floor, just the same height as those
5 other -- as the other wing on 3rd Street. So that is
6 why I thought that it was just as high.

7 COMMISSIONER PARSONS: So I guess what
8 that is is a step back at 60.

9 COMMISSIONER TURNBULL: Yes. I think if
10 you look on A-11, they actually are moving. I think
11 what you're seeing is this one there. I think that is
12 what you saw is the lower height.

13 COMMISSIONER PARSONS: Oh.

14 COMMISSIONER TURNBULL: And then it's
15 stepped just like a balcony.

16 MR. PARKER: Yes. The applicant did make
17 the gesture of stepping that center wing back from the
18 north and from the east.

19 CHAIRPERSON MITTEN: Right.

20 COMMISSIONER PARSONS: So --

21 MR. PARKER: At the --

22 COMMISSIONER PARSONS: You think here is
23 the same? See, that's what faked me out.

24 MR. PARKER: Yes.

25 COMMISSIONER PARSONS: Is the rear

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1 elevation, do you think that is a notch back, too?
2 That is a balcony then.

3 MR. PARKER: Could be, yes.

4 COMMISSIONER PARSONS: Ah.

5 MR. PARKER: Yes, I think that's a
6 balcony.

7 COMMISSIONER PARSONS: All right. So you
8 mean both wings?

9 CHAIRPERSON MITTEN: No, I just mean the
10 center one. I'm focused on the center one not both of
11 them.

12 COMMISSIONER PARSONS: All right. I
13 understand and I support that, and I support
14 everything else you said about parking.

15 CHAIRPERSON MITTEN: Thanks. Nice change
16 from the previous case.

17 COMMISSIONER PARSONS: Yes, well, you
18 know, as the night goes on.

19 COMMISSIONER JEFFRIES: A question for the
20 Office of Planning. So this situation with parking,
21 what have your conversations been with the applicant
22 around, you know, how this parking will be addressed,
23 will address the retail or the grocery store? I mean,
24 are they feeling that this is sufficient?

25 MR. PARKER: Yes, our parking

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1 conversations have been limited. They intend to meet
2 the zoning requirements for both the retail and the
3 residential. In fact, I think they mean to exceed the
4 residential zoning requirements.

5 COMMISSIONER JEFFRIES: Well, no, well,
6 yes, the question is about the retail.

7 MR. PARKER: As far as the retail, right.

8 COMMISSIONER JEFFRIES: Because I go to
9 the Whole Foods at P Street, as well, and it -- I
10 mean, just if you go in the middle of the day, 2:00,
11 you can get parking, but that's just pretty much about
12 it.

13 MR. PARKER: And if you'll recall, I think
14 providing parking for the grocery store was one of the
15 reasons that there is a limited affordable housing
16 amenity --

17 COMMISSIONER JEFFRIES: Right.

18 MR. PARKER: -- in this project because
19 that parking is subsidized by the developer.

20 COMMISSIONER JEFFRIES: Right.

21 MR. PARKER: I mean, the --

22 COMMISSIONER JEFFRIES: Right.

23 MR. PARKER: -- grocery store doesn't pay
24 for underground parking.

25 COMMISSIONER JEFFRIES: It's really a

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1 little unfortunate, because I like the project. Not
2 that my colleagues don't, but just wow.

3 CHAIRPERSON MITTEN: I mean, I think, you
4 know, it's a difficult position that we're in because,
5 you know, DDOT hasn't raised the alarm and I'm not
6 sure DDOT saw the information about -- because it was
7 a recent addition to the record about, you know, the
8 other locations. But I know how badly the people on
9 Capitol Hill crave a grocery store.

10 Now, they are going to have two to go to
11 pretty soon, but this -- I just feel very strongly
12 that they are going to be overwhelmed with cars and it
13 will be our fault that we didn't take all the
14 information that we have into account and, you know,
15 require something different.

16 And, I mean, at a minimum what I would
17 like to do, if my colleagues agree, is -- and I don't
18 know where everybody else is on the issue of the
19 center wing, but at a minimum I would like to say, you
20 know, go back and convince me or convince us that this
21 is an adequate number of parking spaces.

22 In light of the fact of our experience at
23 P Street, what is different about that? Why do so
24 many people go to P Street and they won't come here or
25 have DDOT evaluate it and, you know, just convince us

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1 that if, in fact, this is correct.

2 COMMISSIONER JEFFRIES: Yes, because just
3 anecdotally, I mean, you know, you think about the
4 location of 14th and P, I mean, you know, a lot of
5 people in that area who are on foot, you know,
6 pedestrian. They are walking and still, you know, the
7 parking is such. So just, you know, I think it's the
8 correct thing.

9 I mean, you know, if they can really set
10 forth a discussion around why they think that 2.27 per
11 1,000 square foot of parking is sufficient in this
12 location for this store, you know, I mean, meaning
13 that if there is some, you know, customer of sorts
14 that is going to be using -- you know, walking to this
15 store more than, you know, let's say the typical
16 customer that goes to Whole Foods and they are using
17 a vehicle, I mean, they are going to have to sort of
18 make those comparisons. I think that would be
19 helpful.

20 VICE CHAIR HOOD: I would just say, Madam
21 Chair, I would agree with your comments and sending
22 this back and, hopefully, they can come down
23 especially with the wing and cutting it down. Now,
24 what is it, two floors or --

25 CHAIRPERSON MITTEN: Well, that is just my

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1 suggestion. I don't know.

2 VICE CHAIR HOOD: Okay. I would like to
3 associate myself with your comments this time.

4 CHAIRPERSON MITTEN: Anyone else? So I
5 think -- you know, I don't think that there is --
6 these are not drastic things that need to be handled,
7 but I would just ask the applicant to take another
8 shot at these couple of issues that I articulated and
9 we can bring this back in October if they can address
10 them quickly.

11 Do you think, Mr. Parker, that you could
12 help us get a response from DDOT and have them -- you
13 know, and not just -- you know, a substantive response
14 from DDOT?

15 MR. PARKER: I will do my best.

16 CHAIRPERSON MITTEN: Thank you. Okay. If
17 we're comfortable with -- so now, the next series of
18 things for us to do are Final Action, and did you want
19 to move, at this point?

20 VICE CHAIR HOOD: Madam Chair, I would
21 suggest that we move final -- I would like to move
22 Final Action in block and I think -- I'm not sure if
23 you participated on Zoning Commission Case No. 05-43,
24 but I would like to move all that in block and if any
25 Commissioners have any questions or comments, then we

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1 can do it at that time.

2 CHAIRPERSON MITTEN: If you wouldn't mind
3 removing -- if I could ask you to amend your motion to
4 remove Case No. 05-43 just because I didn't
5 participate on it, and then I will vote on the block
6 and then --

7 VICE CHAIR HOOD: Okay.

8 CHAIRPERSON MITTEN: -- we can take that
9 up separately.

10 VICE CHAIR HOOD: I will do that. I would
11 like to move all the Final Action with the exception
12 of Zoning Commission Case No. 05-43.

13 COMMISSIONER JEFFRIES: Well --

14 CHAIRPERSON MITTEN: I will second that.
15 That doesn't mean you can't talk about them.

16 COMMISSIONER JEFFRIES: No, I just --

17 CHAIRPERSON MITTEN: Oh, did you have one?

18 COMMISSIONER JEFFRIES: No, you have never
19 done that, so it's sort of news to me.

20 PARTICIPANT: It's Monday night.

21 COMMISSIONER JEFFRIES: But what was that?

22 VICE CHAIR HOOD: On Monday nights we do
23 that.

24 CHAIRPERSON MITTEN: You mean in football
25 season.

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1 VICE CHAIR HOOD: Even though it's no rush
2 or anything, 16-13.

3 COMMISSIONER PARSONS: He's anxious to
4 hear the President who is speaking.

5 COMMISSIONER JEFFRIES: Oh, yes,
6 absolutely. That's what I'm dying -- I'm trying to
7 get through -- yes, right, decider in chief, right.

8 The only question I had is that Zoning
9 Commission Case No. 05-34 -- I mean, are you
10 effectively saying by voting in block that whatever we
11 did in terms of Proposed Action will be the same?
12 Okay. Okay. Great.

13 CHAIRPERSON MITTEN: If you would like to
14 have any of them pulled out, we can do that.

15 COMMISSIONER JEFFRIES: No, no, no, that's
16 fine.

17 CHAIRPERSON MITTEN: Okay.

18 COMMISSIONER JEFFRIES: Then we can do it,
19 yes.

20 VICE CHAIR HOOD: So I'm voting against
21 it.

22 COMMISSIONER JEFFRIES: Okay.

23 CHAIRPERSON MITTEN: Is that what you
24 mean?

25 COMMISSIONER JEFFRIES: Yes.

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1 CHAIRPERSON MITTEN: That we would be --

2 COMMISSIONER JEFFRIES: Whatever we did
3 with the Proposed Action.

4 CHAIRPERSON MITTEN: We would individually
5 be reaffirming our votes on --

6 VICE CHAIR HOOD: Exactly.

7 CHAIRPERSON MITTEN: Okay.

8 VICE CHAIR HOOD: Right.

9 COMMISSIONER JEFFRIES: Okay.

10 CHAIRPERSON MITTEN: That's fine.

11 VICE CHAIR HOOD: Especially since I know
12 what I did on one of them. Yes, you're exactly right.

13 CHAIRPERSON MITTEN: Okay.

14 COMMISSIONER PARSONS: Yes, you both voted
15 against one of them.

16 COMMISSIONER JEFFRIES: Yes, we did. I
17 just wanted to make certain that we weren't reversing
18 ourselves.

19 CHAIRPERSON MITTEN: Okay. I did want to
20 raise a couple things on Parkside. There were some
21 letters that came into the record and I frankly didn't
22 read them because the record was closed, and I'm not
23 inclined to take them into the record. So I don't --
24 and they didn't ask to have the record reopened and we
25 typically don't allow for comments on the applicant's

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1 proposed findings of fact and conclusions of law, so
2 I just wanted to dispatch with that.

3 But then on the substance of the order, I
4 am -- you know, there is an opportunity. If you
5 remember, there is an opportunity for phasing in
6 Parkside. So there's two things that I wanted to
7 suggest that we incorporate and I'm not going to give
8 specific language right now, but just notionally.

9 One is that, you know, they are going to
10 be delivering affordable units and I want to make it
11 clear that the affordable units need to be delivered
12 sort of proportionately in the phases so it's not all
13 pushed off to the end. So as the phases come along,
14 we want to see roughly proportional delivery of those
15 units.

16 And then in Condition No. 13, we need to
17 fill the blank that is there, which is that the 1st
18 stage approval is valid for a period of one year and
19 then a 2nd stage. The first 2nd stage application has
20 to be filed within that time and then it's basically
21 the blank. It says if the 2nd stage application is
22 for less than the entire development described in this
23 order, no subsequent 2nd stage application may be
24 filed after, and then there's the blank.

25 So it's trying to put a limit on how long

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1 this -- you know, if you remember how long it was
2 between the first two phases of the Parkside Townhomes
3 as they exist now and this coming forward, I think we
4 want to send the message that this shouldn't go on
5 indefinitely. And I don't know if the Office of
6 Planning has any notion of what the build out period
7 was contemplated by the applicant. None?

8 MS. McCARTHY: We do not.

9 CHAIRPERSON MITTEN: Okay. Then I'm going
10 to suggest, and if the applicant can't live with it
11 then they can request an amendment, that if the 2nd
12 stage application is applied for, application is for
13 less than the entire development described in this
14 order, no subsequent 2nd stage application may be
15 filed after a 10 year -- it's basically to get it to
16 10 years after the first. You think that's too much?

17 COMMISSIONER PARSONS: Yes.

18 CHAIRPERSON MITTEN: Too long, too short?

19 COMMISSIONER PARSONS: Too long.

20 CHAIRPERSON MITTEN: Okay, because this --
21 I mean, this is a lot of units.

22 MR. BERGSTEIN: Let me just say that,
23 unfortunately, this version doesn't show what are our
24 changes and what were the applicant's original
25 language and I'm sorry that didn't come. I just

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1 noticed that. To be fair, the applicant proposed no
2 limitation.

3 CHAIRPERSON MITTEN: Okay.

4 MR. BERGSTEIN: We had suggested this for
5 your review, because we wanted to point out to you
6 that perhaps you would want to put a limitation. I
7 would say that in Station Place, what was done there
8 was that if the first -- if it was done in phases,
9 that the 2nd stage application would also include a
10 phasing plan that you would look to then and address
11 the remainder of the 2nd stages at that time.

12 CHAIRPERSON MITTEN: Okay.

13 MR. BERGSTEIN: So I just wanted to let
14 you know that there's three ways of doing it. But in
15 fairness, the applicant basically wanted to vest as
16 long as they got a single application in.

17 CHAIRPERSON MITTEN: Okay.

18 MR. BERGSTEIN: And then we're suggesting
19 perhaps you might want to fill in the blank or at
20 least take up the issue of phasing.

21 CHAIRPERSON MITTEN: Okay.

22 MR. BERGSTEIN: Okay?

23 CHAIRPERSON MITTEN: I like the
24 alternative that you suggested, Mr. Bergstein, which
25 would be that we could say that with the first 2nd

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1 stage application, that the applicant should file a
2 phasing plan and then we can take that up at that
3 point in time. Okay. So those would be two changes
4 that I would propose to that order and then I had one
5 other.

6 In Case No. 03-03B, reference is made to
7 in the decision, No. 3, Condition No. 3, adopt the
8 corrected Zoning Map for Square 5246 that accompanies
9 this order. I didn't have that, so I'm just making a
10 note of the fact that I didn't have the map. But
11 other than that, it's just those two specific
12 amendments to the Parkside case that I would propose.
13 Anyone else? All right.

14 Then all those in favor of reaffirming the
15 vote that they cast in Proposed Action for the
16 respective cases that Mr. Hood moved, which is
17 everything except Case No. 05-43, please, say aye.

18 ALL: Aye.

19 CHAIRPERSON MITTEN: And anyone who is
20 opposed to that, please, say no. Okay. Mrs.
21 Schellin?

22 MS. SCHELLIN: Staff would record the vote
23 5-0-0 to reaffirm the Proposed Action votes taken in
24 Final Action Cases 06-18, 05-34, 06-07, 05-28 and 03-
25 03B, Commissioner Hood moving, Commissioner Mitten

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1 seconding, Commissioners Jeffries, Parsons and
2 Turnbull in favor.

3 CHAIRPERSON MITTEN: Thank you. And,
4 actually, the way we ended up adapting that motion, I
5 guess we could have done it. We could have included
6 05-43, because I would have just not cast a vote, but
7 since I messed it up, Mr. Hood, would you mind?

8 VICE CHAIR HOOD: Let's do this very
9 quickly. Okay. Thank you, Madam Chair. Next, Zoning
10 Commission Case No. 05-43, Final Action. Ms.
11 Schellin?

12 MS. SCHELLIN: Staff has nothing further.

13 VICE CHAIR HOOD: Okay. Again,
14 colleagues, you know this is pretty straightforward.
15 We have the order in front of us. We did a Bench
16 decision. Now, it's in front of us for Final Action.
17 I will move approval of Zoning Commission Case 05-43
18 and ask for a second.

19 COMMISSIONER TURNBULL: Second.

20 VICE CHAIR HOOD: It has been moved and
21 properly seconded. Discussion? Any discussion? All
22 those in favor? Aye.

23 COMMISSIONER JEFFRIES: Aye.

24 COMMISSIONER TURNBULL: Aye.

25 VICE CHAIR HOOD: Any opposition? So, the

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1 staff, would you record the vote?

2 MS. SCHELLIN: Yes. Staff would record
3 the vote 4-0-1 to approve Zoning Commission Case
4 No. --

5 COMMISSIONER PARSONS: Excuse me, I didn't
6 participate in the case, so you did get three.

7 MS. SCHELLIN: I'm sorry.

8 VICE CHAIR HOOD: It's just three.

9 MS. SCHELLIN: 3-0-2 to approve Zoning
10 Commission Case No. 05-43, Commissioner Hood moving,
11 Commissioner Turnbull seconding, Commissioner Jeffries
12 in favor. Commissioners Mitten and Parsons not
13 voting, having not participated.

14 CHAIRPERSON MITTEN: Thank you. Now, we
15 have some items of correspondence that it would be in
16 our interest to focus on for Thursday. And I guess
17 the first issue is we have a request from the Office
18 of Planning of we have -- I don't know what I would --
19 we have a piece of correspondence from the Office of
20 Planning withdrawing as the petitioner in Case No. 06-
21 19, which you will remember, colleagues, is sort of
22 the companion piece to the PUD approach that is being
23 proposed for the GW campus plan.

24 Then we have a piece of correspondence
25 from the West End Citizens Association requesting that

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1 they become the petitioner in Case No. 06-19. We have
2 a letter from the applicant in the cases that we'll
3 hear on Thursday, 06-11, 06-12 and 06-19, requesting
4 that we set the order of the hearings, order of the
5 cases for the hearing, on Thursday and that 06-19 be
6 the last. And then we have a letter from West End
7 Citizens Association opposing the change and
8 suggesting that we take up 06-19 first.

9 So I'm going to attempt, Mr. Bergstein, to
10 -- actually, I'm not going to attempt. In the
11 interest of time, I will ask you to -- since it was on
12 advice from the Office of the Attorney General that
13 the Office of Planning withdrew as the petitioner in
14 Case 06-19, can you just briefly explain to us why you
15 don't think that text amendment is any longer
16 required?

17 MR. BERGSTEIN: Actually, I really didn't
18 think it was my advice. I posed a question --

19 CHAIRPERSON MITTEN: Okay.

20 MR. BERGSTEIN: -- as to why the Text
21 Amendment was needed. If, in fact, the PUD were
22 granted, they would be -- the university would be able
23 to aggregate its FAR in a way to achieve the type of
24 densities that the Text Amendment would grant. And if
25 the university did not receive approval for its campus

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1 plan proposed PUD, then a Text Amendment would be
2 irrelevant, because it couldn't build anything.

3 And in response to that, I believe the
4 Office of Planning rethought the matter and suggested
5 -- and decided to withdraw its petition under those
6 circumstances.

7 CHAIRPERSON MITTEN: Basically that the
8 text amendment adds nothing to the --

9 MR. BERGSTEIN: It would add nothing to
10 it, that's correct.

11 CHAIRPERSON MITTEN: Okay. Thank you.
12 And that's my understanding, that it would add nothing
13 and I would ask if any of my colleagues feel that Case
14 06-19 should go forward. Does anyone feel that Case
15 No. 06-19 should go forward? I'm getting -- I will
16 just say I'm getting nos, shaking of the heads no from
17 my colleagues.

18 So given that we typically do not deny or
19 dismiss a case without hearing from the applicant or
20 the petitioner, and now that the West End Citizens
21 Association has requested to become the petitioner, I
22 need to ask who is the representative tonight for West
23 End Citizens Association. Would you take a seat at
24 the table?

25 And my question to you is based on the

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1 substance of the Text Amendment, as proposed by the
2 Office of Planning, is the West End Citizens
3 Association prepared to argue the merits of the
4 substance of the Text Amendment? Would you identify
5 yourself for the record first?

6 MS. KAHLOW: I am Barbara Kahlow. I am
7 representing the West End Citizens Association today
8 and, yes, we are willing to argue the merits.

9 CHAIRPERSON MITTEN: Okay. You --

10 MS. KAHLOW: As a proponent.

11 CHAIRPERSON MITTEN: Okay. And you have
12 heard and seen from my reaction and my colleagues'
13 reaction that we're not inclined to have that case go
14 forward. And so prior to any dismissal of the case,
15 we give the petitioner or the applicant the
16 opportunity to speak and I will give you three minutes
17 to give us your view on why we should not dismiss the
18 case.

19 MS. KAHLOW: I have a five minute version.

20 CHAIRPERSON MITTEN: I would prefer the
21 three minute version.

22 MS. KAHLOW: Okay. I will try to make it
23 shorter. My testimony, as I had written it, posed
24 various questions for your consideration. First, are
25 there changes needed in the current zoning rules for

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1 the Commission to hear the GW plan? The answer is
2 clearly yes.

3 CHAIRPERSON MITTEN: Okay. Let me just --
4 stop the clock, would you? Keep in mind, and I
5 believe that this was part of your argument for taking
6 up 06-19 first, is this is not exclusive to GW. So,
7 please, in addressing the merits of 06-19, please, do
8 it globally.

9 MS. KAHLOW: Yes.

10 CHAIRPERSON MITTEN: Okay. Go ahead.

11 MS. KAHLOW: That is what I plan to do.
12 I was trying to raise the question. To be able to do
13 what is being proposed, an Omnibus PUD, and for 20
14 years the regulations would have to require that.
15 There are no precedents for an Omnibus PUD for 20
16 years for 20 squares, and I go through the legislative
17 history for that.

18 Are there any precedents or not? I have
19 gone through every case presented by the Office of
20 Planning, every case presented by the university.
21 There is nothing that has ever -- the Commission has
22 ever done like that.

23 So then the question is if there is no
24 such thing in the PUD regulations, you would amend the
25 PUD regulations or else you would amend 210, which is

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1 the university regulations, and we think that is the
2 appropriate place to do it and we think 210 needs to
3 be amended. And the Office of Planning has a good
4 start. I have a couple of teeny perfecting amendments
5 and I think it would then accomplish everything that
6 was intended by the university.

7 And I can present them today. I can
8 present them when you actually hear the case since you
9 want me to present them. I have done a lot of work on
10 the legislative history back to 1958 for campus plans
11 and since the beginning for PUDs, and I wanted to
12 reflect what the Commission had decided in each case
13 so that you could make an informed decision.

14 CHAIRPERSON MITTEN: Did you want to take
15 the rest of your time?

16 MS. KAHLOW: Well, I could give the long
17 version or the short version. Let me explain one
18 piece of it. For PUDs, the Commission has a very long
19 set of cases on this. In 1994, you considered if
20 there should ever be, considering what you just
21 discussed today, PUDs for a long period of time. And
22 you had a text case, No. 94-15, 84-3, and you
23 published a final rule in which you said no, it should
24 not be. You should keep the old time periods because
25 it's the only thing that is fair to the community.

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1 And I quote the different things that were
2 stated and there, in fact, I was the witness that you
3 quoted, the Zoning Commission. I was then with the
4 Foggy Bottom Association. It's why the PUD mechanism
5 was inappropriate for something of a lengthy period of
6 time. And then I do the same thing for how you
7 started with the campus plans and what you said in
8 1958 and what the history has been through there, and
9 that that is the right place to be able to guide
10 discussions about campus plans.

11 It should be in the university
12 regulations, and I can go through that also in the
13 whole history. I think that it will be better,
14 instead of doing this quickly tonight, for you to hear
15 the case and for us to present the evidence.

16 CHAIRPERSON MITTEN: Thank you.

17 MS. KAHLOW: Thank you.

18 CHAIRPERSON MITTEN: Any questions for
19 Mrs. Kahlow, Ms. Kahlow? Any questions? Okay. You
20 can take your seat.

21 MS. KAHLOW: Thank you.

22 CHAIRPERSON MITTEN: I'm not persuaded
23 that Case No. 06-19 needs to go forward and I would
24 move that we dismiss Case 06-19 and ask for a second.

25 COMMISSIONER JEFFRIES: Second.

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1 CHAIRPERSON MITTEN: Any discussion? All
2 those in favor, please, say aye.

3 ALL: Aye.

4 CHAIRPERSON MITTEN: Those opposed,
5 please, say no. Mrs. Schellin?

6 MS. SCHELLIN: The staff would record the
7 vote 5-0-0 to dismiss Zoning Commission Case No. 06-
8 19, Commissioner Mitten moving, Commissioner Jeffries
9 seconding, Commissioners Hood, Parsons and Turnbull in
10 favor of dismissal.

11 CHAIRPERSON MITTEN: Thank you. And I
12 think that settles the matter on the order in which we
13 will have the hearing on Thursday. And I don't think
14 we have any other business before us tonight, and
15 we're adjourned.

16 (Whereupon, the Regular Meeting was
17 concluded at 9:33 p.m.)

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