

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1220th MEETING SESSION (22ND OF 2006)

+ + + + +

MONDAY
DECEMBER 11, 2006

+ + + + +

The Regular Meeting of the
District of Columbia Zoning Commission
convened in Room 220 South, 441 Fourth
Street, N.W., Washington, D.C., 20001,
pursuant to notice, at 6:30 p.m., Carol J.
Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Acting Secretary
DONNA HANOUSEK	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
KAREN THOMAS
TRAVIS PARKER
JOEL LAWSON
STEPHEN MORDFIN
STEVEN COCHRAN
ART RODGERS
JENNIFER STEINGASSER

D.C. OFFICE OF THE ATTORNEY GENERAL:

ALAN BERGSTEIN, ESQ.
JACOB RITTING, ESQ.

This transcript constitutes the minutes from the Regular Meeting held on December 11, 2006.

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

2 6:53 p.m.

3 CHAIRMAN MITTEN: (presiding)

4 Good evening, ladies and gentlemen.

5 This is a public meeting of the
6 Zoning Commission of the District of Columbia
7 for Monday, December 11th, 2006.

8 My name is Carol Mitten, and
9 joining me this evening are Vice Chairman
10 Anthony Hood and Commissioners Mike Turnbull,
11 John Parsons, and Greg Jeffries.

12 I just have one change to the
13 agenda. That is the item under "Final
14 Action," which is Case No. 02-19. The Forest
15 Hills Tree and Slope Overlay is being put on
16 our January agenda.

17 Mrs. Schellin, what is the date of
18 that? Is it the 11th?

19 MS. SCHELLIN: Eighth.

20 CHAIRMAN MITTEN: Oh, the 8th,
21 okay, January 8th. So that will be added to
22 our rather long agenda in January. So that is

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1 the only change that I have.

2 Mrs. Schellin, are there any
3 preliminary matters before we get going?

4 MS. SCHELLIN: No.

5 CHAIRMAN MITTEN: Okay, thank you.

6 I just would like to remind
7 everybody, before we get started, that we are
8 being recorded and webcast live. So I would
9 ask you to turn off your beepers and cell
10 phones, so that it doesn't disturb the
11 meeting, and just remind folks that we don't
12 have any public testimony at our meetings
13 unless the Commission specifically requests an
14 individual to come forward.

15 So, with that, I'll turn to the
16 Office of Planning for their status report.

17 MS. STEINGASSER: Madam Chair,
18 Commissioners, you have the report before you.

19 The one new issue that has been
20 brought to the Office of Planning that we will
21 be bringing before you is historic district
22 courts and yards at the bottom of page 1 or

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1 midway of page 1. That has come to us from
2 the Capitol Hill Restoration Society. They
3 have asked us to look at another R-4 rowhouse
4 issue that triggers a lot of variances and a
5 lot occupancy conflicts. When the courts are
6 nonconforming, people tend to fill them in
7 changing the character.

8 Other than that, everything has
9 been filed, and we are available for
10 questions.

11 CHAIRMAN MITTEN: Thank you.

12 Any questions for the Office of
13 Planning on the status report?

14 (No response.)

15 Any questions?

16 (No response.)

17 Okay, then we are going to move
18 on.

19 Under "Hearing Action," the first
20 case is Case No. 06-47. This is a text
21 amendment to the R-4 zone that has sort of
22 bubbled up through some BZA cases. We are

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1 happy to see this promptly this evening.

2 Ms. Thomas?

3 MS. THOMAS: Right. Yes, good
4 evening, Madam Chair, members of the
5 Commission.

6 OP is proposing text amendments to
7 the zoning regulations, including Sections
8 330.5, 401.3, and 403.2, with the inclusion of
9 new text, Section 401.11, to clarify the
10 expansion requirements for existing apartments
11 in the R-4 district and to limit the lot
12 occupancy upon conversion of row dwellings to
13 apartment uses in the R-4 district.

14 I would like to make a correction
15 to our submission. In line 3, under
16 "Recommendation," after "1958," it should
17 read, "could not be expanded" and delete
18 "even."

19 In line 1 of the second paragraph,
20 I would delete the first four words, "this
21 recommendation is consistent with." That
22 would be five words, actually. After

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1 "attached," I will delete "which."

2 On the third-to-last line of that
3 same second paragraph, I would put, "OP
4 contends that this criteria should also be
5 applicable."

6 There was a recent decision which
7 concluded that a lot area requirement applied
8 to converted but not existent apartment
9 houses, which would indicate that compliance
10 with the 900-square-foot limitation would only
11 be required when a building is first converted
12 to an apartment house, but not to any later
13 renovations of that same structure.

14 We believe that this is clearly
15 contrary to the intent of the R-4 regulations
16 and contend that the criteria, the 900-square-
17 foot-per-lot area criteria should also be
18 applicable to the expansion of structures
19 subsequent to their conversion to prevent
20 excessive density and bulk inappropriate for
21 the matter of density R-4 district.

22 We looked at preliminary data,

1 including lot area in the R-4 district, and
2 the data indicates that there are still a
3 number of properties with the potential for
4 conversion within this zone throughout the
5 district, specifically, those lots 2700 square
6 foot or greater in area.

7 We wanted to include a 900-square-
8 foot criteria to apartments as well, so that
9 future redevelopment initiatives respect the
10 density and character of the zone. In
11 particular, when vacant or abandoned
12 structures are rehabed, the criteria should be
13 applied.

14 We believe this recommendation is
15 supported by the objectives of the Comp Plan
16 and it speaks to the intent of the R-4
17 regulations.

18 So new text, Section 411.11,
19 simply states that an apartment house in an
20 R-4 district pre- or post-1958 may not be
21 renovated or expanded so as to increase the
22 number of dwelling units unless there is 900

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1 square foot of lot area for each unit, both
2 existing and new.

3 Further, Section 403.2 would state
4 that existing buildings that can be converted
5 could do so up to 60 percent of lot occupancy
6 or remain within the existing lot occupancy,
7 whichever is greater at the date of
8 conversion.

9 The proposed text is not intended
10 to inhibit the current uses of residential
11 properties in the R-4 district, but, rather,
12 to address the potential adverse impact for
13 the density and character of the zoned
14 district.

15 Thank you.

16 CHAIRMAN MITTEN: Thank you, Ms.

17 Thomas.

18 Any questions for Ms. Thomas?

19 Anybody have any questions?

20 (No response.)

21 All I would ask, if you haven't
22 done so already, is that this would be

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1 circulated to the Zoning Administrator.
2 Because the case that I was on at the BZA that
3 kind of gave rise to this, he had made an
4 interpretation that was consistent with the
5 direction that we're going. So I just want to
6 make sure that he doesn't have anything that
7 would be germane to add to the text that is
8 being proposed.

9 But I appreciate your bringing
10 this forward quickly because it was an
11 interesting day at the BZA for me.

12 Okay, well, we have a
13 recommendation from the Office of Planning to
14 set down Case No. 06-47, and I would so move.

15 COMMISSIONER TURNBULL: Second.

16 CHAIRMAN MITTEN: Any discussion?

17 (No response.)

18 All those in favor please say aye.

19 (Chorus of ayes.)

20 Those opposed please say no.

21 (No response.)

22 Mrs. Schellin?

1 MS. SCHELLIN: Staff will record
2 the vote 5 to 0 to 0 to set down Zoning
3 Commission No. 06-47, Commissioner Mitten
4 moving, Commissioner Turnbull seconding,
5 Commissioners Hood, Jeffries, and Parsons in
6 favor.

7 Just to confirm, this is the
8 rulemaking case.

9 CHAIRMAN MITTEN: Yes, it is.
10 Thank you.

11 Next up is Case No. 06-48, and
12 this is another request from the Office of
13 Planning. This is to create the Georgia
14 Avenue Commercial Overlay District.

15 Mr. Mordfin?

16 MR. MORDFIN: Good evening. I'm
17 Stephen Mordfin with the Office of Planning.

18 The purpose of this overlay
19 district is to implement the goals and
20 objectives of the Comprehensive Plan and the
21 recently-adopted Georgia Avenue Petworth Metro
22 Station Area and Corridor Plan adopted by the

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1 City Council this past July.

2 This overlay will allow existing
3 businesses and buildings to remain while
4 encouraging new desirable uses and the
5 addition of new buildings on underutilized or
6 vacant properties. The boundaries of the
7 overlay are all commercially-zoned properties
8 along Georgia Avenue from Kenyon Street on the
9 south to Varnum Street on the north, with the
10 Georgia Avenue Petworth Metro Station in the
11 center. It only includes commercially-zoned
12 properties; no residentially-zoned properties
13 are included.

14 The central portion of the
15 overlay, or approximately one-quarter mile
16 north and south of the Metro Station between
17 Park Road and Shepherd Street, is zoned C-3-A.
18 The remainder of the overlay is zoned C-2-A.

19 One of the objectives of the
20 overlay is to encourage mixed use development
21 near the Metro Station or the portion within
22 the C-3-A zoned district by maximizing the

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1 opportunities of being located within close
2 proximity to a Metro Station, but not to
3 rezone the entire quarter. The existing
4 underlying zoning districts will remain.

5 One of the changes called for in
6 the Georgia Avenue Plan is an improvement to
7 the types and number of commercial uses
8 available to the community. To accomplish
9 this, an increase in the number of residences
10 along the Corridor is proposed to increase the
11 demand for retail services, leading to an
12 improved commercial district.

13 The overlay also includes a list
14 of prohibited uses. The prohibited uses are
15 those that are more mobile than pedestrian-
16 oriented and, therefore, do not contribute
17 toward the creation of a pedestrian-friendly
18 environment.

19 Prohibited uses include carwashes,
20 auto repair garages, gas stations, liquor
21 stores, pawn shops, surface parking lots as
22 the main use, and any use that includes a

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1 drive-through.

2 Development of properties
3 consisting of 12,000 square feet or more or
4 building additions on properties consisting of
5 12,000 square feet or more are proposed to be
6 permitted by special exception. As the larger
7 properties within the quarter, this will allow
8 for Office of Planning and public review of
9 the larger development projects to ensure
10 conformance with the design standards
11 contained within the overlay.

12 The overlay also includes a
13 proposal to reduce the minimum size of a PUD
14 from 15,000 square feet to 10,000 square feet.
15 Reducing the minimum area required will make
16 it easier to assemble the minimum required
17 amount of land while encouraging the
18 development of PUDs, which can be used to
19 create high-quality mixed-used developments.

20 Any additional floor area acquired
21 through the PUD process is recommended to be
22 dedicated for residential use, in an effort to

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1 increase the number of residences along the
2 corridor.

3 Design standards proposed within
4 the overlay are for new buildings only and are
5 intended to encourage common design standards
6 and pedestrian activity on the street. These
7 design standards include such things as
8 requiring a minimum amount of commercial space
9 at the sidewalk level of any proposed parking
10 garages, requiring that at least half of the
11 street-walled new buildings be windows, and
12 requiring a minimum floor to ceiling height to
13 14 feet for street-level storefronts.

14 The Office of Planning met with
15 the community on the proposed overlay on
16 November 15th and made revisions to the
17 proposal based on feedback received. Meetings
18 with the affected ANCs are scheduled for later
19 this week, and a meeting with the business
20 owners is in the process of being scheduled.

21 The Office of Planning intends to
22 continue working with the community to refine

1 the proposed overlay prior to this application
2 being brought back to the Commission for a
3 public hearing.

4 The Office of Planning recommends
5 that the Commission set down the text
6 amendment and map amendment for the Georgia
7 Avenue Commercial Overlay District as
8 described in the setdown report.

9 Thank you.

10 CHAIRMAN MITTEN: Thank you, Mr.
11 Mordfin.

12 Questions for Mr. Mordfin? Mr.
13 Hood?

14 VICE CHAIRMAN HOOD: Mr. Mordfin,
15 just curious, why didn't we take this all the
16 way up to Missouri Avenue? I know we're
17 dealing around Metro Stations, but major
18 corridors that have a heavy public transit
19 line I think also should be considered. Is
20 there any reason why we stopped at -- I forgot
21 where it is. Well, anyway, how come we didn't
22 take it to Varnum -- where did we stop, at

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1 Varnum Street?

2 MR. MORDFIN: We stopped at Varnum
3 Street.

4 VICE CHAIRMAN HOOD: Why did we
5 stop at Varnum instead of taking it all the
6 way up to Missouri?

7 MR. MORDFIN: Well, this is based
8 on the Georgia Avenue Petworth Metro Station
9 area corridor and plan, which only went up as
10 far as Decatur Street. It didn't go as far as
11 Missouri.

12 Within that plan, it recommended
13 that we create an overlay and that we center
14 it on the Metro Station, which is what we have
15 done. That is the C-3-A area. Then we've
16 also got the C-2 area. Because what we are
17 trying to do is consolidate some of the
18 commercial uses within -- create a node.

19 A second study is being proposed
20 which will go from Decatur Street north to
21 Eastern Avenue.

22 VICE CHAIRMAN HOOD: Okay.

1 MR. MORDFIN: And that will have
2 recommendations based on whatever the
3 situation is within that area.

4 VICE CHAIRMAN HOOD: What are we
5 basing that plan on, because I don't think
6 there's a Metro between Petworth and Ft.
7 Totten? What are we basing that plan on?

8 MR. MORDFIN: The Upper Georgia
9 Avenue Study?

10 VICE CHAIRMAN HOOD: Yes.

11 MR. MORDFIN: What are we basing
12 it on?

13 VICE CHAIRMAN HOOD: This one was
14 based on Petworth Metro Station.

15 MR. MORDFIN: This one was based
16 on the Petworth Metro Station, and that one is
17 just to continue, to finish up that commercial
18 corridor --

19 VICE CHAIRMAN HOOD: Okay.

20 MR. MORDFIN: -- and create
21 recommendations for how to rejuvenate parts of
22 that corridor that need rejuvenation.

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1 VICE CHAIRMAN HOOD: Okay, thank
2 you.

3 Thank you, Madam Chair.

4 CHAIRMAN MITTEN: Anyone else?
5 Mr. Turnbull?

6 COMMISSIONER TURNBULL: Mr.
7 Mordfin, I just want to clarify: Fast-food
8 restaurants can be done through special
9 exception. Is that without a drive-through?

10 MR. MORDFIN: Yes. What we have
11 recommended is that they be subject to the
12 special exception criteria contained within
13 the C-2-A, and drive-throughs are not
14 permitted within the C-2-A. So we wanted to
15 take those same criteria and apply it to the
16 C-3-A, where drive-throughs are permitted, so
17 as to not allow the drive-throughs.

18 COMMISSIONER TURNBULL: Okay,
19 thank you.

20 Thank you.

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

1 COMMISSIONER PARSONS: I'm glad
2 you've suggested a minimum for PUDs at 10,000
3 square feet instead of 7500, but why did you
4 come to the conclusion 10,000 as opposed to
5 12,000 or some other figure?

6 MR. MORDFIN: Ten thousand is a
7 round number. We thought that that would be
8 a good number to make it a little bit smaller,
9 make it a little bit easier to assemble the
10 properties. It's just a round figure that
11 seemed appropriate to use.

12 CHAIRMAN MITTEN: Can I just ask
13 one clarifying point as it relates to the
14 question, which is: The minimum is 15,000
15 with a waiver up to half to 7500. Is the
16 minimum to 10,000 with a waiver up to 5,000
17 for half or is that a strict minimum?

18 MR. MORDFIN: It's a waiver of
19 half because the PUD regulations permit the
20 Zoning Commission to reduce the area by up to
21 50 percent, subject to two criteria.

22 COMMISSIONER PARSONS: Oh, thank

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1 you. Oh, wow.

2 CHAIRMAN MITTEN: Okay.

3 COMMISSIONER PARSONS: I thought
4 we were upping the -- 5,000 square feet?

5 MS. STEINGASSER: No, if I could
6 add -- yes, if you look at the map in the OP
7 report that lays out the overlay, you can see
8 these lots are very small, very narrow lots
9 that abut immediately up against R-4 and very
10 well-established rowhouse zones.

11 So what we were trying to do is
12 not create an incentive for an over-
13 assemblage, but be able to accommodate in-fill
14 and smaller projects through the PUD
15 mechanism, but that would still recognize the
16 small scale of the street. If we left it at
17 the regular 15,000, people might be encouraged
18 to over-assemble.

19 COMMISSIONER PARSONS: Over-
20 assemble?

21 MS. STEINGASSER: Over-assemble
22 and create much larger lots than the

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1 neighborhood would accommodate.

2 Mr. Jeffries, your head is
3 shaking.

4 COMMISSIONER JEFFRIES: I don't
5 fully -- well --

6 MS. STEINGASSER: It's similar to
7 what we have done on H Street. It's not the
8 first time we've done this. The Dupont Circle
9 Overlay has a reduced minimum guideline, as
10 does the H Street, and we've done the same
11 here.

12 So it is a mechanism the
13 Commission has enacted before. It is trying
14 to recognize the difference between the PUD
15 and the special exception uses without
16 creating an incentive for the larger
17 properties to come in and buy up the smaller
18 properties, replacing the small street
19 character that could be out here. We are near
20 within a Metro Station, so it's very likely.

21 COMMISSIONER PARSONS: Well,
22 that's what a hearing is for. Thank you.

1 (Laughter.)

2 MS. STEINGASSER: Uh-hum.

3 COMMISSIONER PARSONS: I'm glad
4 you clarified that, Madam Chairman. I didn't
5 get it.

6 CHAIRMAN MITTEN: That's why I'm
7 here.

8 (Laughter.)

9 Mr. Jeffries?

10 COMMISSIONER JEFFRIES: Yes.
11 Okay, so the point of this overlay is to
12 attract development? I mean to increase
13 housing, improve commercial use, to attract
14 development?

15 MS. STEINGASSER: Uh-hum, to
16 encourage revitalization of the corridor.

17 COMMISSIONER JEFFRIES: So were
18 the developers very much involved in the
19 overall planning of this?

20 MS. STEINGASSER: Yes, they were.
21 All the property owners, all the business
22 owners were all notified, as well as the

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1 adjacent residents, as well as the ANC, of
2 course, and the community, civic --

3 COMMISSIONER JEFFRIES: And who
4 were some of the developers that were part of
5 the planning?

6 MR. MORDFIN: We had --

7 COMMISSIONER JEFFRIES: Donatelli
8 & Klein? I'm sorry --

9 MR. MORDFIN: No, they were not.
10 We met with Rob La Kritz and Josh Adler, who
11 had also come to our meeting on Georgia Avenue
12 on November 15th, and there were other
13 developers there also. I'm trying to remember
14 who was there.

15 MS. STEINGASSER: Neighborhood
16 Development, they were also there, as were
17 several brokers.

18 COMMISSIONER JEFFRIES: And in
19 terms of just the feasibility of some of the
20 things that are being set forth -- I mean
21 there's obviously some economic overlaying
22 that's on top of the overall plan in terms of

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1 talking about the types of -- the square
2 footages and the density that would be
3 required to make this a vibrant corridor.

4 MS. STEINGASSER: Uh-hum.

5 COMMISSIONER JEFFRIES: I mean
6 like Bay Area Economics? I mean was there a
7 group that really --

8 MS. STEINGASSER: There was and --

9 MR. MORDFIN: When we did the
10 plan, the Georgia Avenue plan, Bay Area
11 Economics was involved in that. They were a
12 partner in putting together that plan and
13 making the recommendations as to how we should
14 pull back the commercial areas and what we
15 should do in creating these nodes along
16 Georgia Avenue. So they were a part of
17 creating that plan.

18 This overlay is to implement a
19 part of that plan.

20 COMMISSIONER JEFFRIES: Okay.

21 MS. STEINGASSER: I believe we
22 filed copies of the plan for the Commission.

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1 MR. MORDFIN: Yes, the Commission
2 has copies.

3 COMMISSIONER JEFFRIES: Yes, and
4 I'm going to go through it.

5 MS. STEINGASSER: And all those
6 elements are in the plan.

7 COMMISSIONER JEFFRIES: Yes, yes.

8 Well, the only reason I comment is
9 that I just remember, when I was at NCRC and
10 going out to ICSC, talking to a number of the
11 retailers, there was always the concern about
12 the depth of the commercial corridor here and
13 butting up against the R-4, and the need for
14 greater assemblage and combining of lots, and
15 so forth.

16 Then, of course, you have all the
17 multiple ownership issues, and the District is
18 not going to push taking and things of that
19 sort. So it was always sort of trying to
20 figure out exactly how some of this could
21 really take off.

22 I know I'm moving beyond land use

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1 here, but I'm looking at all of the things
2 that we're putting forward, and I think they
3 are very attractive. I just wanted to just
4 make certain that there could actually be, at
5 the end of the day, you know, a commercial
6 overlay that truly is attractive for real
7 estate development.

8 If you are telling me that you
9 have had significant participation from the
10 development community and they are onboard
11 with a number of these issues -- I guess we'll
12 hear some of this during the hearing.

13 MS. STEINGASSER: Yes. I don't
14 want to testify on their behalf.

15 COMMISSIONER JEFFRIES: Yes, yes.

16 MS. STEINGASSER: There are
17 elements that they don't like --

18 COMMISSIONER JEFFRIES: Okay.

19 MS. STEINGASSER: -- just like
20 there are elements that the adjoining
21 residents don't like.

22 COMMISSIONER JEFFRIES: Yes.

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1 MS. STEINGASSER: It's regulation.
2 So there's plenty for people to not like it.

3 COMMISSIONER JEFFRIES: Yes.

4 (Laughter.)

5 And I guess that's what I'm
6 saying: It seems like there is just an
7 additional layer of regulation. That just
8 sort of concerns me, but let's have the
9 hearing and just vett all this out.

10 MR. MORDFIN: Right, and we're
11 also going to meet again with the business
12 owners and the community and refine the
13 regulations more, as necessary. So we're
14 still going to work with the community to
15 further refine this and with the business
16 community to further refine this to make it
17 work better.

18 COMMISSIONER JEFFRIES: Okay,
19 thank you.

20 CHAIRMAN MITTEN: Just a couple of
21 clarifying questions for me.

22 Let me just find the citation --

1 I'm sorry -- 1328.8, and I'm actually thinking
2 about this in combination with 1328.13.
3 1328.8 speaks to commercial uses being
4 directly accessible from the sidewalk, and
5 then 1328.13 has to do with English basements.

6 The first thing I was wanting to
7 get clarified is in 1328.8. Do you mean on
8 grade?

9 MR. MORDFIN: Under 1328.8, what
10 we meant with that was that, rather than
11 having where you walk into like a mall-type
12 environment, that the streets are accessible
13 from -- I mean the stores are accessible from
14 the street rather than walking into something
15 completely separate, like a mall, and having
16 storefronts in there. So everything opens to
17 the street and enlivens the street.

18 CHAIRMAN MITTEN: Okay. Well, the
19 reason that I was thinking about this in
20 combination with 1328.13 is, first of all, I
21 think on-grade retail, I really don't
22 understand how we've gotten so much of it that

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1 isn't, other than in existing buildings. But
2 sometimes people just try and cram in that
3 extra level, and it just doesn't work.

4 So, at least for new construction,
5 I would think we would want to have the
6 entrance at least on-grade, and then the
7 English basement prohibition, depending on
8 what the grade is doing, sometimes people
9 can't help but have a portion of it that could
10 be considered an English basement.

11 So I just ask you to think about
12 those two points and see if you want to, when
13 we get to the hearing, modify that at all.

14 For the design review that is
15 required -- and I guess it applies to any
16 development where you get to the point of
17 1328.12, where conformance with the Great
18 Streets Framework Plan is required -- well,
19 first of all, since we don't know what the
20 framework plan says, it is a little abstract
21 for us.

22 But it is hard for the ZA to do

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1 this unless you are asking for -- if there's
2 discrete things, like if it's very
3 quantifiable. If it is qualitative, I think
4 that is going to be problematic. So I ask you
5 to think about that.

6 You are clearly going for
7 something in 1329.1 that is somehow different
8 from 1329.3, rather than just putting all the
9 prohibited uses into sort of a grandfathering
10 mode and having them become non-conforming.
11 I don't understand what you're going for
12 there. Why is there 1329.1?

13 MR. MORDFIN: I think what we were
14 trying to do there was to acknowledge the
15 existing liquor stores. We were trying to
16 work with the community and not look like
17 we're trying to force everything out, which is
18 not what we're trying to do, because
19 everything can become grandfathered and can
20 remain.

21 CHAIRMAN MITTEN: Right.

22 MR. MORDFIN: So I think we were

1 just trying to put it in a different light.

2 CHAIRMAN MITTEN: Well, explain --
3 I'm missing the point. Explain to me, what's
4 the distinction that you're making?

5 MS. STEINGASSER: There was a lot
6 of concern raised by the existing businesses
7 that they felt they had stuck it out through
8 some pretty tough times, and they wanted to
9 make sure that they weren't going to be forced
10 out through this overlay and the economic
11 revitalization that it was supporting.

12 So in order to give them comfort,
13 because it seemed that there was a lot of
14 communication problem understanding the non-
15 conforming regulations, we went ahead and just
16 called it out.

17 CHAIRMAN MITTEN: So is this a
18 distinction without a difference?

19 MS. STEINGASSER: Yes.

20 MR. MORDFIN: I think so.

21 MS. STEINGASSER: Yes.

22 CHAIRMAN MITTEN: Okay. The last

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1 question is, because I was remembering the H
2 Street Overlay so fondly with the discussion
3 about signs, and I noticed that in the special
4 exception section in 1330.2, it says that the
5 Board may impose other requirements pertaining
6 to a variety of things, including signs.

7 But that sort of, I think, leaves
8 it open to, if they show them the signs, then
9 they might weigh-in on the signs. If they
10 don't show them the signs, then the other
11 rules apply.

12 And I'm just wondering, if we care
13 enough to have special exception reviews,
14 shouldn't at least the signage be represented
15 and then controlled?

16 MR. MORDFIN: We hadn't included
17 the signage initially because we thought that
18 should be controlled by the Public Space
19 Committee; rather than trying to create
20 something duplicate, to control it at the same
21 time, having two processes.

22 This does come from the H Street,

1 this whole section, the 1330.2 comes from the
2 H Street Overlay District. Maybe we have to
3 decide. If we want to include signs within
4 this, then we would put the whole thing in, or
5 if we want to leave the whole thing up to the
6 Public Space Committee and make sure that they
7 have copies of the Georgia Avenue plan, that
8 would be another way to go.

9 CHAIRMAN MITTEN: Clarify one
10 thing for me. If a sign goes on the building,
11 not in public space but it's on the building,
12 does Public Space have control, or is it just
13 some regs that control?

14 MR. MORDFIN: I think that
15 anything that goes through the Building Code.

16 CHAIRMAN MITTEN: Okay, because
17 that is what I'm driving at. I don't want to
18 get into overlapping requirements.

19 MS. STEINGASSER: This is the
20 language that we ended up with on the H
21 Street.

22 CHAIRMAN MITTEN: Okay.

1 MS. STEINGASSER: That inside this
2 overlay, if you were a special exception, yes,
3 it would be necessary for you to show your
4 signage. It was not intended to allow any
5 signage in excess of what the Building Code
6 already requires.

7 CHAIRMAN MITTEN: I'll have to go
8 back and look at H Street, but I have a
9 recollection that we said some specific things
10 about signs, with certain signs that aren't
11 allowed, is my recollection. I am not saying
12 that we necessarily should go back there.

13 But this says the Board may
14 impose. It doesn't require that somebody show
15 the BZA what the signage plan is going to be.

16 So I am just saying to consider
17 whether or not we want that to be something
18 the BZA has to think about, so you have to
19 show it to them. That's all I'm saying.
20 Because it is sort of optional the way it is
21 written here. So just something to think
22 about.

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1 Okay, anybody else on followup?

2 COMMISSIONER JEFFRIES: Just one
3 more question: It might be in this plan here,
4 but I don't have a minute to check it out, but
5 in terms of the market demand for smaller
6 retail, did I not hear you trying to encourage
7 some of the smaller shops development as well
8 as some of the larger-scale?

9 MR. MORDFIN: Yes.

10 COMMISSIONER JEFFRIES: What did
11 the plan, what did it set forth in terms of
12 what that demand looks like for some of the
13 smaller retailers? And what's a small retail?
14 Retail, what do you consider a small retail?

15 MR. MORDFIN: What's the
16 definition of small retail?

17 MS. STEINGASSER: I guess we would
18 have to borrow your plan and spend some time
19 going through it.

20 COMMISSIONER JEFFRIES: Well,
21 that's all right. That's all right. Okay.

22 MS. STEINGASSER: Yes, we really

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1 didn't come equipped to go through the details
2 of the plan itself, especially the market
3 economics and the retail analysis, but we will
4 be happy to do that by the hearing.

5 COMMISSIONER JEFFRIES: Okay,
6 great. Thank you.

7 CHAIRMAN MITTEN: Okay, if there's
8 nothing else, then we have a recommendation
9 from the Office of Planning to set down Case
10 No. 06-48, and I would so move.

11 VICE CHAIRMAN HOOD: Second.

12 CHAIRMAN MITTEN: Thank you, Mr.
13 Hood.

14 Any further discussion?

15 (No response.)

16 All those in favor please say aye.

17 (Chorus of ayes.)

18 Those opposed please say no.

19 (No response.)

20 Mrs. Schellin?

21 MS. SCHELLIN: The staff will
22 record the vote 5 to 0 to 0 to set down Zoning

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1 Commission Case No. 06-48, Commissioner Mitten
2 moving, Commissioner Hood seconding,
3 Commissioners Jeffries, Parsons, and Turnbull
4 in favor.

5 This, too, is set down as a
6 rulemaking case.

7 CHAIRMAN MITTEN: Thank you.

8 Next we are moving to proposed
9 action, and the first case is one that I did
10 not hear. So I will turn the proceeding over
11 to Mr. Hood and come back when you're
12 finished.

13 VICE CHAIRMAN HOOD: (presiding)
14 Okay. Thank you, Madam Chairman. Even the
15 transcript says that you were presiding, I
16 guess they got you and I mixed up again.

17 (Laughter.)

18 Colleagues, Proposed Action,
19 Zoning Commission Case No. 06-13, 1000
20 Connecticut Avenue Associates, Consolidated
21 PUD at 1000 Connecticut Avenue, Northwest.

22 Mrs. Schellin?

1 MS. SCHELLIN: Just one issue: We
2 did have a letter submitted by the Applicant
3 on December 5th, which was after the record
4 closed.

5 VICE CHAIRMAN HOOD: Okay.
6 Because I think the way that came in as a
7 response to something that was out there and
8 the Applicant had not had previously, I think
9 what we will do, colleagues, is just move
10 forward. I'm going to do the Applicant a
11 favor. I'm going to request, we'll treat that
12 as a request that are just opening the record
13 at this time. Next time we'll just make sure
14 that we say, when the record is closed, it's
15 closed and no additional information. Unless
16 there's any other problems, we will treat this
17 as a request to re-open the record.

18 Do I have a consensus?

19 Hearing none, okay, what I have in
20 front of me, colleagues, is we have additional
21 submissions. I have the supplemental report
22 from the Office of Planning, dated December

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1 the 4th. I have some issues dealing with
2 proposed benefits and amenities. I also have
3 the Proposed Findings of Facts, and I have
4 issues about the architectural design.

5 One of the issues that came up at
6 the hearing -- and I am going to move along
7 briefly, so you can stop me -- was the FAR.
8 I think it exceeds our 11.0, and I think it
9 was 11.11. Anyone can chime in and correct
10 me.

11 Any problems with that? 11.55?

12 MR. BERGSTEIN: It was 11.55, Mr.
13 Hood.

14 VICE CHAIRMAN HOOD: Okay, thank
15 you, 11.55. I don't know where I got "1-1."
16 Okay, but 11.55 is the additional above the
17 11.0, which we can actually grant. They are
18 asking for 11.55.

19 Any problems with that? Any
20 issues?

21 (No response.)

22 Okay, moving right along, now this

1 architectural issue, the Applicant has, I
2 think, heard the responses and the concerns,
3 especially dealing with that corner. I know
4 some of my colleagues raised issues with that
5 corner piece.

6 So I will open it up for
7 discussion to see if the Applicant has
8 resolved some of your issues.

9 What I did, I just looked at A-31
10 and what was given to us at the hearing and
11 what was submitted later.

12 If they meet your needs, you don't
13 have to say anything, and I'll move right on.

14 COMMISSIONER TURNBULL: Mr.
15 Chairman?

16 VICE CHAIRMAN HOOD: Mr. Turnbull?

17 COMMISSIONER TURNBULL: I think
18 the architect has gone back and, obviously,
19 heard some of our comments on this. I think
20 it's obviously still a difficult situation
21 trying to get these two facades with this
22 champford edge.

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1 I have a feeling it's an awkward
2 meeting to be able to do this, but this
3 solution has gone a long way from what the
4 other solution was. I think it's tweaking it
5 a bit. I think you could struggle with this
6 thing for a long time and at some point I
7 don't know how far you want to go with this
8 before you start changing everything.

9 At this point in time, I'm willing
10 to acquiesce and let this change go the way it
11 is.

12 VICE CHAIRMAN HOOD: Okay. Any
13 other comments? Mr. Parsons?

14 COMMISSIONER PARSONS: Well, I
15 think the idea that has evolved here is to
16 give the entrance a two-story presence, which
17 I think helps. Then they're floating this
18 facade, if you will, between the two others by
19 framing it with a recessed column of glass, if
20 you will.

21 I'm looking at all three
22 iterations that we have had before us, and I

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1 think this one has more strength and more
2 presence. So I'm okay with it.

3 COMMISSIONER JEFFRIES: You're
4 done?

5 COMMISSIONER PARSONS: Yes, I'm
6 done.

7 COMMISSIONER JEFFRIES: Okay. I,
8 too, like this sort of vertical -- I don't
9 know quite what to call it -- void that
10 creates this long vertical element that allows
11 the champford to sort of float a bit.

12 I do agree with the Office of
13 Planning that I think experiencing this as a
14 pedestrian, as a driver, or whatever, it's not
15 going to have the same impact that it looks
16 like when you put it in sort of a site plan.

17 I mean I understand the angle that
18 they're trying to create to really address the
19 L'Enfant plan. I don't think it will be
20 experienced as such. So I agree with the
21 Office of Planning.

22 But I do find that the design has

1 improved. I'm, too, willing to go forward on
2 this one.

3 VICE CHAIRMAN HOOD: Okay. I was
4 looking in the Proposed Findings, and I don't
5 see where the Applicant is still talking about
6 superior architecture. I don't know if that's
7 been withdrawn or not, but, anyway, again, we
8 had issues with the corner facade, the K
9 Street storefront, some issues that Applicant
10 responded to us on: storefront design, K
11 Street corners.

12 I will tell you, one of my issues
13 in looking through the Order -- and I'm not
14 sure; I don't recall seeing this in any other
15 orders, and maybe Mr. Bergstein can help me --
16 when we get into our decision, we start giving
17 A, B, C, D, and E. I think it talks about to
18 vary the cornices.

19 So what we will be doing, if it is
20 approved, I think, as stated, we will be
21 giving the Applicant kind of a flexibility.
22 Is that normally what we approve? I have

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1 never seen it worded like that, to vary.

2 MR. BERGSTEIN: I guess what we
3 could do is look at another PUD order that we
4 have, which I would have to find, to compare
5 it to the template.

6 I don't recall, off the top of my
7 head, whether or not that is word for word the
8 same. There usually is something that talks
9 about allowing some flexibility in order to
10 meet D.C. Building Code, which is the standard
11 that this has.

12 But I can or we can all look at
13 the Stewart PUD or the West and see what
14 language is there and see how they are varying
15 from it.

16 This is a proposed action. So
17 what I could do is provide for you a final, a
18 comparative of what they are proposing against
19 the standard PUD language. That might be more
20 efficient.

21 VICE CHAIRMAN HOOD: Okay. Thank
22 you.

1 The other issue I think was the
2 housing linkage. If you notice in the Office
3 of Planning's report, and I think we have
4 established this already, there is a certain
5 amount which is required when you are doing
6 commercial development. I think the Applicant
7 is including all of it, even what is required
8 and above and beyond. I'm not sure. If
9 anyone can help me, I think we had resolved
10 that.

11 I would be inclined to go with
12 what's above and beyond. I think what I'm
13 seeing, the dollar value is \$172,038 as
14 opposed to the \$841,700, which is inclusive of
15 all, as opposed to that, what is above and
16 beyond.

17 Are we in agreement on that?

18 MR. BERGSTEIN: That is the issue,
19 whether or not to view the entire contribution
20 of \$841,700 as a public benefit or just the
21 \$172,000, which is the amount that would be
22 attributable to the extra approximately 3,000

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1 square feet of construction that is above and
2 beyond the amount that is required under the
3 housing linkage regulations.

4 VICE CHAIRMAN HOOD: Okay.

5 MR. BERGSTEIN: So we need to know
6 from you if that is the position that you are
7 taking in terms of expressing the public
8 benefits and amenities.

9 VICE CHAIRMAN HOOD: Well,
10 colleagues, I am inclined of using the
11 \$122,000, which is above and beyond. Okay,
12 all right.

13 The other issue, I believe, was
14 the late certification. I'm not sure who
15 pushed that. But, anyway, they have proposed
16 something.

17 Mr. Turnbull?

18 COMMISSIONER TURNBULL: I think
19 the Applicant is not actually pushing for late
20 certification. But I guess what I am troubled
21 by is that there's no threshold guideline that
22 they're going to as to what type of level or

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1 what -- I think we ought to clarify that.

2 I think we ought to be looking for
3 a -- obviously, if we're not looking
4 certification, we ought to be going to a
5 threshold level of the guidelines that the
6 Applicant is looking to achieve. Right now,
7 there's nothing really in the language that
8 sort of binds or sets a level to at least the
9 threshold that they're designing for. I think
10 we ought to include some type of language that
11 at least covers that.

12 VICE CHAIRMAN HOOD: Okay. Can we
13 do that, Mr. Bergstein, between now and final,
14 if the Applicant will --

15 MR. BERGSTEIN: Well, I think what
16 you're asking the Applicant to do is to submit
17 information that would indicate exactly what
18 lead specifications they intend to comply with
19 or to indicate what level of lead
20 certification -- gold, silver, bronze -- that
21 they intend to comply with.

22 There's a statement here that they

1 are going to comply with several things among
2 others. But if this is being offered as a
3 public benefit, I think you need to know
4 exactly what lead type of criteria that they
5 intend to comply with and perhaps what point
6 total or lead standard they intend to meet.

7 Although they are not going to get
8 the certification, they would at least produce
9 at the time of building permit application, as
10 you would do for lead certification, the
11 amount of lead points that their plans
12 reflect. So I think that is what you are
13 suggesting.

14 VICE CHAIRMAN HOOD: Okay.

15 MR. BERGSTEIN: They provide the
16 specificity so that you could quantify what
17 this lead-like criteria would represent, and
18 you would have to set a date for them to do
19 that.

20 COMMISSIONER TURNBULL: I would
21 agree with counsel. I like that.

22 VICE CHAIRMAN HOOD: Okay. I'm

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1 definitely not going to restate all that.

2 Ms. Schellin, if we can work on a
3 date? Let me do this: We can take proposed
4 action, am I correct?

5 MR. BERGSTEIN: Yes, sir. This
6 would just be a submittal that you would like
7 to see before you take final action.

8 VICE CHAIRMAN HOOD: Final action,
9 okay.

10 Ms. Schellin is going to be
11 working on a date.

12 Did I miss any issues, colleagues?

13 (No response.)

14 Are we ready to move forward on
15 proposed action or do you want to send them
16 back to work on the design some more? Okay.

17 Okay, if we've gotten all the
18 issues worked out, I will move that we approve
19 proposed action for Zoning Commission Case No.
20 06-13 and ask for a second.

21 COMMISSIONER JEFFRIES: Second.

22 VICE CHAIRMAN HOOD: It's been

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1 moved and properly seconded.

2 All those in favor.

3 (Chorus of ayes.)

4 Any opposition?

5 (No response.)

6 So ordered.

7 Staff, would you record the vote
8 and give us the date?

9 MS. SCHELLIN: Yes. Staff will
10 record the vote 4 to 0 to 1 to approve
11 proposed action in Zoning Commission Case No.
12 06-13, Commissioner Hood moving, Commissioner
13 Jeffries seconding, Commissioners Parsons and
14 Turnbull in favor, Commissioner Mitten not
15 voting, having not participated.

16 And this will not be able to come
17 up until February for final action. So we can
18 give the Applicant until January 12th.

19 VICE CHAIRMAN HOOD: So we don't
20 need to worry about no responses? This is it?

21 MS. SCHELLIN: This is it.

22 VICE CHAIRMAN HOOD: Okay, thank

1 you.

2 Thank you, Madam Chairman, I mean
3 our Chairperson.

4 CHAIRMAN MITTEN: (presiding)
5 Okay, the next item under Proposed Action is
6 Case No. 04-33A, and this is the mapping
7 exercise for inclusionary zoning.

8 Just to remind my colleagues what
9 is before us, what has been recommended in
10 terms of mapping is that we map zones R-3
11 through R-5-D as part of the inclusionary
12 zoning, C-1 through C-3-C, CRSP, W-1 through
13 W-3, and that the following areas be excluded:
14 the Downtown Development District Overlay,
15 receiving zones that are currently existing,
16 TDR receiving zones that are currently
17 existing, the W-2 zoned portions of the
18 Georgetown Historic District, the R-3 zoned
19 portions of the Anacostia Historic District,
20 and the C-2-A portion of the Naval Observatory
21 Precinct District. I think also included in
22 that, if it isn't otherwise included, is the

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1 Southeast Federal Center.

2 So just as we had two hearings on
3 the areas that are non-historic and then the
4 areas that are in historic districts, I
5 thought maybe, for ease of discussion, we
6 could talk about the areas to be included,
7 first the non-historic and then the historic.

8 I think, in general, a substantial
9 amount of the opposition was just residual
10 opposition to the text that put the
11 inclusionary zoning in place at first and it
12 wasn't necessarily specific to different
13 locations.

14 But, in general -- and this is,
15 again, the non-historic -- the opposition that
16 I heard revolved around two main things. One
17 was that areas were not capable of bearing the
18 additional density that is offered in terms of
19 the bonus.

20 Then the other was that -- and
21 this came from a certain individual in Ward 8
22 -- had to do with whether or not we should be

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1 mapping this in areas that are already
2 struggling to attract market-rate housing.

3 So, for my contribution to the
4 conversation, I thought that the discussion
5 about attracting market-rate housing to
6 certain areas is certainly of concern, but
7 what we have seen is that, even in Ward 8,
8 which was the area that was being targeted for
9 the discussion, that we're seeing dramatic
10 increases in the cost of new housing. We are
11 trying to preserve long-term affordability.
12 I'm afraid that if we don't put IZ in place in
13 those areas now, that we will sort of miss our
14 opportunity. It certainly doesn't concentrate
15 low-income in any way. It just provides over
16 the long-term that it will be geographically-
17 dispersed.

18 Then the other aspect of it is
19 certain areas can't accommodate additional
20 density. We heard from the folks on Wisconsin
21 Avenue, in particular.

22 I thought the Office of Planning

1 did a very good job showing how there wouldn't
2 be any significant visual impacts in terms of
3 having buildings that are out of scale or
4 having any significant loss of green space by
5 increasing the lot occupancy in certain areas.

6 I think one of the things that we
7 have found over time and listening to a lot of
8 applicants in zoning cases is that,
9 particularly for the lower-income people --
10 and that is really who we are trying to
11 accommodate through the bonus -- they use
12 public transportation. So I don't know that
13 we are really exacerbating the use of public
14 streets to the degree that we heard from the
15 folks on Wisconsin Avenue.

16 So, for my part as it relates to
17 the non-historic areas, I think with the
18 exclusions that are suggested -- and I might
19 modify just one -- I'm in favor of mapping it
20 as it's been proposed by the Office of
21 Planning for the non-historic areas.

22 Anyone else? Mr. Parsons?

1 COMMISSIONER PARSONS: I would
2 agree, but I do want to spend a few minutes
3 talking about the issue that Ms. Hargrove
4 brought to our attention, which is something
5 I'm still on a guilt trip over, if you will,
6 having been on the Commission, some say, too
7 long, where we created new zones in the R-5
8 category, R-5-D and -E, and did not go to the
9 issue of what damage we were doing, which she
10 evidenced the new exhibits for these two-story
11 additions that are occurring in the R-5 zone.

12 I really want to ask the Office of
13 Planning to evaluate what we could do. Her
14 proposal -- and it's not a new one -- is to
15 create an R-4 and R-4-A to sandwich in between
16 R-5 and -4. I think she made very persuasive
17 testimony that we can't go on like this, as
18 she has shown in these exhibits what I'm sure
19 you all agree with are, I say, obscenities in
20 the landscape of rowhouses in this city.

21 So I don't mean this case to cure
22 that one, that problem.

1 CHAIRMAN MITTEN: Okay.

2 COMMISSIONER PARSONS: I think we
3 really need to ask the Office of Planning to
4 deal with that issue.

5 CHAIRMAN MITTEN: Just so I'm
6 clear, and I think this is what you're saying,
7 is she brought to our attention a problem that
8 is not being caused, and will not be caused,
9 by inclusionary zoning, but it's separate and
10 apart, and you are asking the Office of
11 Planning to take that up as a separate matter?

12 COMMISSIONER PARSONS: Yes.

13 CHAIRMAN MITTEN: I agree with
14 that.

15 COMMISSIONER PARSONS: These are
16 not 10 units --

17 CHAIRMAN MITTEN: Right, right.

18 COMMISSIONER PARSONS: -- being
19 constructed on a street. These are two units
20 being added at the top. But I just thought it
21 was worth mentioning.

22 CHAIRMAN MITTEN: Good. I agree.

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1 I mean there is, clearly, a problem there.

2 Anyone else on the non-historic
3 area? Commissioner Turnbull? No? Sorry.
4 You moved forward.

5 Okay, I'm going to think we have
6 consensus if you guys don't say anything. All
7 right. That's fine.

8 COMMISSIONER PARSONS: Wait a
9 minute. I'm going to say something.

10 CHAIRMAN MITTEN: The one thing
11 that I did want to just make sure we talk a
12 little bit about is, as it is proposed by the
13 Office of Planning, that we would exempt
14 existing TDR receiving zones from the IZ
15 regulations. So I'm just wondering how we
16 would feel about that going forward in that
17 the notion -- and maybe it's possible that we
18 would just confront that as we move through
19 additional mapping of TDR receiving zones, to
20 the extent that we would do that.

21 But the purpose of mapping a TDR
22 receiving zone is to find a home for TDRs, and

1 we would be working at somewhat cross-purposes
2 if we put the IZ in place there, because we
3 would be, basically, making -- we would be
4 blocking a site's ability to absorb TDRs.

5 I don't know if you have thoughts
6 about that. I mean, as I said, we could deal
7 with that later and just include, as they have
8 recommended, receiving zones that are defined
9 on the effective date of the regulations, if
10 we want to.

11 I didn't know if anybody had any
12 thoughts about that now.

13 (No response.)

14 Okay, I'm going to take that as a
15 sign you don't have any thoughts about that
16 now.

17 I also would just remind folks
18 that at some point in the discussion Mr. Hood
19 had asked the Office of Planning to consider
20 whether or not the R-2 zone was appropriate to
21 include. I think in a supplemental report to
22 us they said they will explore that further in

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1 another proposal. So just so we don't lose
2 that, the Office of Planning will bring that
3 to us in another case.

4 Okay, so the next matter, then, is
5 the issue of the historic districts and
6 mapping IZ in the historic districts. The
7 nature of the concerns that were raised in the
8 historic districts are, one, the ability of
9 the historic district -- the compatibility of
10 the additional density in the historic
11 districts and whether that would be
12 appropriate and then, second, what in some
13 cases would be viewed as rather onerous
14 requirements to go, to the extent that the
15 additional density wasn't available, that an
16 applicant would have to go to the Historic
17 Preservation Review Board and then go to the
18 BZA to make their case.

19 Given the relatively small number
20 of units that are anticipated to come out of
21 the historic districts, is the burden worth,
22 is the cost worth the benefit that would be

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1 received by the District?

2 So those are the general -- there
3 were some other specific concerns. There was
4 one applicant in Takoma Park who was concerned
5 that they had spent a lot of time working on
6 a proposal, and they didn't want to have to go
7 back to the BZA or start over. I just wanted
8 to note that in the regulations a new
9 development becomes subject to the chapter,
10 assuming that the chapter applies in the first
11 place, upon the filing of an application for
12 a building permit. That particular applicant
13 had already filed for a building permit. So
14 that wasn't going to impact them specifically.

15 So I also should say, for the
16 record, that I was not physically present at
17 the hearing on the historic districts, but I
18 did read the record and read the transcript.

19 I just say all that by way of
20 introduction for this portion of the
21 conversation.

22 Mr. Jeffries?

1 COMMISSIONER JEFFRIES: And, Madam
2 Chair, I did not participate in the discussion
3 around the now historic districts, but I did
4 not read the record.

5 CHAIRMAN MITTEN: Oh, okay.

6 COMMISSIONER JEFFRIES: So I
7 won't --

8 CHAIRMAN MITTEN: We'll break the
9 vote into two.

10 COMMISSIONER JEFFRIES: Yes, yes,
11 absolutely.

12 CHAIRMAN MITTEN: Okay.

13 COMMISSIONER JEFFRIES: So I won't
14 be voting on that.

15 But I was present for the historic
16 districts. So were you about to ask if we
17 have any questions?

18 CHAIRMAN MITTEN: Yes, if you
19 would like to share your thoughts about that.

20 COMMISSIONER JEFFRIES: Well,
21 first of all, I'm appreciative of the Office
22 of Planning's report. I remember asking a

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1 question about best practices for IZ and
2 historic districts, and they brought up
3 Cambridge.

4 Then, just trying to get my arms
5 around sort of exactly what do we think we are
6 going to be producing in terms of affordable
7 units in historic districts, and they said
8 anywhere from 15 to 40, but more likely closer
9 to 15.

10 I think, when I look at it from a
11 practical point of view, it does look like a
12 lot of work to fetch a few of these affordable
13 units in historic districts, but I think,
14 symbolically, it just sends the absolute to me
15 wrong message to sort of cherry-pick sort of
16 where this IZ is going to be mapped. I am
17 very much concerned that we will see places
18 like Shaw, Columbia Heights with the bulk of
19 so much of the affordability and other places,
20 Dupont Circle, other places, Capitol Hill, not
21 having it.

22 I just simply was not compelled by

1 a number of the arguments that were being made
2 by those who were very much opposed to its
3 being in the historic districts. I think that
4 the District owes it to itself to try to get
5 as many affordable units as possible.

6 While, obviously, I was opposed to
7 the text, and still continue to be opposed to
8 the text, I do think that, if the text is
9 going to become the law of the land, that it
10 should be applied as equally as possible
11 throughout the District. I would be very
12 opposed to anything that looks as if we are
13 bifurcating or treating the District in silos.

14 Obviously, we will have the BZA
15 that will be able to look at various cases,
16 that if can achieve the bonus density, and so
17 forth, I mean that's fine. But I just think,
18 from a symbolic point of view, I think it
19 would be very difficult for me to carve out
20 the historic districts as part of the IZ. So
21 I will be voting in favor of IZ being in the
22 historic districts.

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1 CHAIRMAN MITTEN: Thank you, Mr.
2 Jeffries.

3 Others? Mr. Parsons?

4 COMMISSIONER PARSONS: Well, I beg
5 to disagree with my colleague. I think
6 historic districts are not the place to do
7 this.

8 I think the Office of Planning
9 report has shown us that it is not likely to
10 produce significant units. To me, what we are
11 doing is we are passing the buck, if you will,
12 to HPRB and the BZA to struggle with trying to
13 accommodate this need in a place that it can't
14 be done.

15 Certainly nobody is going to come
16 in and try to demolish historic rowhouses to
17 accomplish this goal. I don't mean passing
18 that kind of a buck onto the other panels.

19 But what we're saying, I mean the
20 basic premise here is to create affordable
21 units. We are adopting it in a place that
22 can't do that or places that can't accommodate

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1 it. So it looks good if you do apply it, but
2 it is not reality. It is implying something
3 is going to happen in this area where it
4 really isn't.

5 The other thing is all historic
6 districts are tuned differently. Like our
7 overlay districts, they all have different
8 aspects, different historicity, different
9 configurations. To have a blanket over the
10 top of them that says inclusionary zoning
11 could occur here, I think is a real mistake.
12 So I'll be voting against this aspect of it.

13 CHAIRMAN MITTEN: Anyone else?
14 Commissioner Turnbull?

15 COMMISSIONER TURNBULL: Yes, Madam
16 Chair.

17 I struggle and I agree with Mr.
18 Jeffries, I think, with sending that it should
19 not be exclusionary, that it needs to -- but
20 I do see Mr. Parsons' point.

21 I know we struggled with this in
22 the hearings, about how much area is really

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1 available to be able to do this, and that you
2 do need over 10 units to be able to do this.
3 I guess it is just one of those things we are
4 going to haggle with.

5 I mean I'm not sure how much is
6 really out there. I think Mr. Parsons has
7 made a good point that we can actually do, but
8 at the same time there's this conundrum that
9 you want to say that no area should be
10 excluded from this.

11 So I am sort of torn between how
12 we do that balancing. Is there any other
13 language we should add? I'm not sure.

14 CHAIRMAN MITTEN: Mr. Hood?

15 VICE CHAIRMAN HOOD: I will be
16 voting, Madam Chair, and I will tell you,
17 along with my other colleagues, I mean both
18 points are very valid, but I would have to
19 lean more towards Commissioner Jeffries'
20 point. I believe we need to include, and not
21 exclude, historic areas, the rationale being
22 we can always revisit this.

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1 I would have to admit I've sat up
2 here and disagreed with my friend Mr. Parsons,
3 and I ride past a particular site now. Every
4 time I think about it, I think about Mr.
5 Parsons. Oh, man, he was right.

6 (Laughter.)

7 But, in this case, I'm willing to
8 go out again against my good friend Mr.
9 Parsons and, hopefully, afford the opportunity
10 to the residents of the city, and let's see
11 what happens.

12 We can always revisit this. That
13 was said when we first did IZ. I go back to
14 the Montgomery County issue. They revisited
15 24 of 25 -- every time I mention it, it goes
16 up, but it's like 24, 25 times.

17 But I will be voting in favor of
18 including historic districts.

19 CHAIRMAN MITTEN: Thank you.

20 When I was reading the record and
21 thinking about the issues that have been
22 raised, I understand what Mr. Parsons is

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1 saying. It is unfortunate that, to a much
2 greater degree in historic districts, there
3 will be people visiting the BZA.

4 So I thought about that in terms
5 of, if you remember the original proposal that
6 some people were advocating in establishing IZ
7 in the first place, was that all renovation
8 projects that would include 10 units, all of
9 them, regardless of whether or not there was
10 any additional density being developed, they
11 were all being included. People were
12 advocating that they all be included, and we
13 said, well, we want to make sure, we want to
14 take a shot at making sure that you can get
15 your additional density.

16 So we said that in a renovation
17 project that you have to increase the size, I
18 think it's increase the size of the building
19 area by 50 percent or more. So as that
20 relates to historic districts -- and I don't
21 know if this suggestion will be enough to get
22 Mr. Parsons over here -- I mean my general

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1 sentiment is that we should map it in historic
2 districts, but I'm trying to be sensitive to
3 some of the things that I heard: that if we
4 increased the minimum that is outlined in
5 2602.1(c)(3) for new additions, that if we
6 increased that minimum -- because then you
7 know, just as we tried to capture for any
8 renovation project, we need to know that we
9 are working with enough mass that somebody
10 could take advantage of the bonus.

11 Well, in an historic district, it
12 is more of a struggle. So perhaps it
13 shouldn't be 50 percent; it should be 75
14 percent or some other number, so that you know
15 that there's enough mass engaged in the
16 project that you stand a chance of getting the
17 bonus and incorporating that.

18 So I just offer that as a possible
19 solution.

20 COMMISSIONER PARSONS: I'm glad
21 you brought this up because my problem with
22 this, as I read this provision 2.1(b), you

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1 could come in in an historic district or any
2 other district and say, "I'm going to build
3 two units here on top of this rowhouse, and
4 I'm going to build eight somewhere else," and
5 do what Ms. Hargrove was showing us. I don't
6 know why you would do that, but it seems as
7 though you could.

8 So if you are suggesting that you
9 had to build a minimum of 15 units in an
10 historic district in one location, I might
11 agree with you because I think then we are
12 showing that we really don't mean it here.
13 But you shouldn't be able to buy your way out,
14 do damage in an historic district, and go buy
15 something somewhere else. That is my fear, is
16 Mr. Hargrove's nightmare will come true.

17 I don't know why anybody would do
18 that, but it seems like a loophole here that
19 could cause havoc, that I can buy my way into
20 another community, but I'm going to build two
21 or four here.

22 CHAIRMAN MITTEN: Uh-hum.

1 COMMISSIONER PARSONS: So if we
2 could fix that, that is what I'm after.

3 CHAIRMAN MITTEN: Okay.

4 COMMISSIONER PARSONS: You know,
5 you've got this beautiful row of facades, and
6 suddenly somebody's put a two-story addition
7 on to achieve this worthy goal and bought
8 themselves out somewhere else.

9 COMMISSIONER JEFFRIES: But you're
10 looking at this sort of historic sort of
11 rowhouse developments. I thought that the
12 Office of Planning really put forward a number
13 of larger-scale developments that are in
14 historic districts and where they would be
15 looking to get a number of affordable units.

16 I mean it sounds, again, that you
17 are merging two different things in a way. I
18 guess I'm not following in terms of what you
19 point out there.

20 COMMISSIONER PARSONS: On Capitol
21 Hill, they say there are three sites available
22 to build 10 units. What I'm saying is there

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1 are many more sites than that if you go in and
2 build two or three units and buy the rest in
3 Northeast somewhere or wherever you're going
4 to do it.

5 COMMISSIONER JEFFRIES: I
6 understand the buying. I guess I don't
7 understand what that means.

8 CHAIRMAN MITTEN: Let me take a
9 shot at this. Let me take a shot at this, and
10 then maybe Mr. Bergstein can get in on this as
11 well.

12 It is not a developer's option to
13 comply with offsite units. It's you make a
14 trip to the BZA to make your case about why
15 you can't comply with the onsite requirement,
16 and then they grant you permission to do it
17 offsite. It is not your option.

18 So to even be in front of the BZA,
19 you have to be doing a project of 10 units or
20 more because that kicks in IZ in the first
21 place.

22 So it's not that you can say, oh,

1 guess what, I'm going to do, as you said, two
2 here and eight there, and count all that as an
3 inclusionary zoning project, and give me the
4 density in the first site where there's only
5 going to be two units.

6 Mr. Bergstein, correct me if I am
7 wrong, but that is not possible under the way
8 the --

9 MR. BERGSTEIN: I agree with you.
10 2604.1 says, "inclusionary development subject
11 to the provisions of this chapter...may
12 construct up to 20 percent more gross floor
13 area."

14 So the only developments that can
15 take advantage of the extra density are
16 developments which are subject to provision,
17 which means a development, however you might
18 want to define it. I suppose it could be a
19 series of row dwellings together that could
20 equal 10 units.

21 But then if they are existing row
22 dwellings, it would only come into the purview

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1 of the chapter if then they added 50 percent
2 more gross floor area to those row dwellings,
3 and they could do so as a matter of right,
4 because density wouldn't kick in at that
5 point.

6 And you're right that, even if you
7 were able to account, if you needed to account
8 for it offsite, it has to be within the same
9 Census tract. Unless that development is also
10 subject to inclusionary zoning, that
11 development does not get the bonus density.
12 It is just a place that you are putting an
13 inclusionary unit.

14 So under these provisions, I don't
15 think you can cherry-pick. You can't say I'm
16 going to have 10 inclusionary units in five
17 row dwellings, and that gives me 20 percent
18 bonus density across the neighborhood. It's
19 got to be a development as we would define a
20 development, which would mean either a multi-
21 dwelling apartment building or a series of row
22 dwellings or single-family dwellings that are

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1 owned by the same individual and would be seen
2 as a development.

3 So that is why I don't think that
4 that could happen, but I would be happy to
5 clarify it, if I could.

6 COMMISSIONER TURNBULL: So you
7 don't see a split development, as Mr. Parsons
8 was saying, as part of a development, where
9 you have three units and six units here, but
10 it is part of a development?

11 MR. BERGSTEIN: They would have
12 to, as part of the building permit plans,
13 somehow -- I guess I should look at what the
14 development is, but I think it has to be --
15 there was something, I thought, that talked
16 about what would be considered a development.
17 I guess it is not there. I thought there was
18 something -- well, there's something that
19 talked about, I thought -- no, I don't think
20 it's there.

21 But a development would have to
22 meet the normal understanding of development,

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1 and a development, I think under Mr. Parsons
2 theory, you would have to convince the Zoning
3 Administrator that you happen to own 8, 10, 12
4 buildings within the District of Columbia and
5 you are calling that a development. By virtue
6 of that, you are subject to the IZ
7 requirements. Then you would have to sort of
8 split the bonus across them all. I don't
9 think that falls within my understanding or I
10 think the Zoning Administrator's understanding
11 of what a development is.

12 If necessary, I think there may be
13 another round of text amendments that we could
14 clarify more precisely what a development is
15 in terms of geographic consistency or range.
16 But I wouldn't think that your scenario could
17 happen.

18 COMMISSIONER TURNBULL:
19 Impossible?

20 COMMISSIONER JEFFRIES: I would
21 like to ask the Office of Planning if they
22 could comment on that. I mean, if there is

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1 language, if there is ambiguity, if there is
2 confusion, although I didn't think so, but if
3 there is something there that is not quite
4 clear, I mean we can address that.

5 But would you care to comment, Mr.
6 Rodgers?

7 MR. RODGERS: Sure. I think even
8 if there were 10 lots that were contiguous,
9 were already subdivided, they were all on
10 separate lots, even if they were owned by the
11 same owner, it would not trigger IZ unless the
12 owner decided to aggregate them into one lot
13 and have a 10-unit trigger.

14 CHAIRMAN MITTEN: Please, before
15 you say that too emphatically, reread
16 2602.1(c)(2), that particular point.

17 COMMISSIONER JEFFRIES: 2601?

18 CHAIRMAN MITTEN: No, sorry,
19 2602.1(c)(2), the "new one-family dwellings,
20 row dwellings, or flats constructed
21 concurrently or in phases on contiguous lots
22 or lots divided by an alley if such lots were

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1 under common ownership at the time of
2 construction."

3 That is the one thing that I
4 think --

5 MR. RODGERS: Yes, I stand
6 corrected.

7 CHAIRMAN MITTEN: Okay. We're
8 trying to help Mr. Parsons.

9 COMMISSIONER PARSONS: And I can
10 do it concurrently or in phases. I can build
11 one now and one later.

12 Well, let's go back to your idea
13 of 15.

14 CHAIRMAN MITTEN: I didn't say 15.

15 COMMISSIONER PARSONS: Oh, you
16 said 15.

17 CHAIRMAN MITTEN: No, I didn't.

18 COMMISSIONER PARSONS: What did
19 you say?

20 CHAIRMAN MITTEN: What I was
21 focusing on was (c)(3), which I was really
22 focusing on -- I wasn't focusing on (b); I was

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1 focusing on (c).

2 My more acute concern was the
3 ability to accommodate the additional density
4 when you are dealing with an historic
5 structure, that the existing structure, the
6 structure to be renovated, is historic as
7 opposed to what was more of a generic existing
8 development when we were thinking about it
9 originally.

10 COMMISSIONER PARSONS: But what
11 was your proposal?

12 CHAIRMAN MITTEN: My proposal was
13 that, rather than have the trigger be an
14 increase in gross floor area of the entire
15 development of 50 percent or more, that
16 perhaps that threshold should be higher in an
17 historic district, so that you have more of a
18 sense that there's enough new construction
19 being added that the additional density can be
20 accommodated.

21 COMMISSIONER JEFFRIES: Madam
22 Chair, give me an example. I mean, are you

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1 really referring to, let's say, if you're in
2 an historic district and there was a larger
3 development, and let's say -- I remember there
4 was one project that came before the BZA, I'll
5 say T Street Flats or something. I don't know
6 what percentage of expansion was going to be
7 there.

8 But you're saying in that
9 situation, if they were looking at -- right
10 now, what is written is that they have to be
11 able to increase it by 50 percent.

12 CHAIRMAN MITTEN: Uh-hum.

13 COMMISSIONER JEFFRIES: You're
14 saying let's do it to 75 percent, and if
15 anything is under, if their expansion is under
16 75 percent, then they would be exempt from --

17 CHAIRMAN MITTEN: For a
18 renovation.

19 COMMISSIONER JEFFRIES: But,
20 again, I keep going back to, why are we
21 putting together a text if we're not trying to
22 get affordable units? Is that going to impact

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1 on the number of affordable units you can get
2 in an historic district?

3 CHAIRMAN MITTEN: I think whatever
4 the impact might be is marginal. I mean the
5 argument was that -- okay, I don't think
6 there's any representation other than we're
7 going to get relatively few units out of the
8 historic districts. I think that is a fair
9 statement.

10 COMMISSIONER JEFFRIES:
11 Absolutely.

12 CHAIRMAN MITTEN: Okay. So then
13 it is a question of, how many trips to the BZA
14 do people have to make to get out from under
15 the onsite requirement? Is the burden we are
16 creating worth the end product?

17 And I'm just offering this.

18 COMMISSIONER JEFFRIES: I
19 understand, Madam Chair. I go back to, you
20 know, clearly, we all agree that we are not
21 going to get a large number here. I spoke
22 about the symbolic nature of this.

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1 CHAIRMAN MITTEN: Yes.

2 COMMISSIONER JEFFRIES: I think
3 one of the important aspects of this text here
4 is that we are trying to create diversity of
5 incomes throughout the District, not just in
6 certain areas. I mean that's, to me, the
7 driving force for even doing this.

8 CHAIRMAN MITTEN: Uh-hum.

9 COMMISSIONER JEFFRIES: Because so
10 much of it, to me, is -- but, anyway, I won't
11 go there.

12 So I think it is incumbent upon
13 the Office of Planning to work with the
14 development community to be as creative as
15 possible in trying to get as many affordable
16 units as it can. Because if we're not going
17 to do that, you know, why have the text?

18 CHAIRMAN MITTEN: I agree. So let
19 me just say maybe we need to just move this to
20 a vote.

21 I will withdraw my suggestion, and
22 maybe, depending on how things evolve in

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1 practice, we can revisit it in any number of
2 ways. So I will withdraw my suggestion
3 because I am perfectly happy to vote in favor
4 without it.

5 I would just ask, is there anyone
6 else who would like to say something before I
7 craft a motion or two?

8 COMMISSIONER PARSONS: Well, I
9 want to make sure -- okay, I will be voting
10 against the historic districts.

11 CHAIRMAN MITTEN: Okay.

12 COMMISSIONER PARSONS: And we'll
13 just leave it at that.

14 CHAIRMAN MITTEN: All right.

15 COMMISSIONER PARSONS: I sense
16 where we are there.

17 CHAIRMAN MITTEN: Okay.

18 COMMISSIONER PARSONS: But I want
19 to make sure -- the Office of Planning
20 recommended that we do not include C-2 in
21 Georgetown along the C&O Canal. Are we
22 persuaded by that? I don't know whether we

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1 have to go through this in detail, but --

2 CHAIRMAN MITTEN: I think I missed
3 that one. Which date, which report date is
4 that?

5 COMMISSIONER PARSONS: Well, maybe
6 the Office of Planning could tell us about the
7 two, Anacostia R-3, I think it was, and
8 Georgetown C-2.

9 CHAIRMAN MITTEN: W-2.

10 COMMISSIONER PARSONS: W-2.

11 CHAIRMAN MITTEN: Okay, I did
12 mention W-2. When you said C-2, that's what
13 was throwing me.

14 COMMISSIONER PARSONS: I'm sorry.
15 I shouldn't have done that.

16 CHAIRMAN MITTEN: Yes.

17 COMMISSIONER PARSONS: So that's
18 excluded?

19 CHAIRMAN MITTEN: W-2 zoned
20 portions of the Georgetown Historic District,
21 the R-3 zoned portions of the Anacostia
22 Historic District, and then this isn't

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1 historic, but the C-2-A of the Naval
2 Observatory Precinct District.

3 COMMISSIONER PARSONS: I'm sorry,
4 did you say that --

5 CHAIRMAN MITTEN: I did, but it's
6 okay.

7 COMMISSIONER PARSONS: I'm sorry.

8 VICE CHAIRMAN HOOD: Madam Chair,
9 where are you looking at? I forgot. I know
10 it was mentioned at the meeting.

11 CHAIRMAN MITTEN: About the W-2
12 had to do with the incremental height. Let's
13 see, there's a buffer. The W-2 is intended to
14 buffer the Canal, and it is buffering the
15 Canal from W-3, which has more height.

16 The incremental height that is
17 offered in the W-2 zone approaches the height
18 of the W-3 zone. So it is counterproductive.
19 It removes the buffer to include the W-2
20 portions of the Georgetown Historic District.

21 Then in the Anacostia Historic
22 District, the R-3 zoned portions, the lot

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1 sizes, the existing lot sizes are consistent
2 with the existing R-3 zone. They are not,
3 unlike in R-4 on Capitol Hill and other areas,
4 there is not a pervasive number of narrower
5 residential lots that would be also consistent
6 with the narrower lots that would be provided
7 in IZ.

8 COMMISSIONER JEFFRIES: Okay. So
9 for the W-2, it is just an issue that the
10 bonus density is such --

11 CHAIRMAN MITTEN: The height that
12 is required to achieve --

13 COMMISSIONER JEFFRIES: Right.

14 CHAIRMAN MITTEN: -- the bonus
15 approaches W-3, which is counterproductive to
16 the buffer.

17 COMMISSIONER JEFFRIES: Right.
18 Okay.

19 COMMISSIONER PARSONS: It goes
20 from 60 feet to 80 feet.

21 COMMISSIONER JEFFRIES: Right,
22 right, right, right.

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1 CHAIRMAN MITTEN: Maybe I'll just
2 double-check with the Office of Planning.
3 When I articulated all the exclusions when I
4 read them down, did I miss anything?

5 MR. RODGERS: With historic
6 districts, there were only two exclusions, I
7 believe.

8 CHAIRMAN MITTEN: And I just
9 repeated them, and then the Naval
10 Observatory --

11 MR. RODGERS: Right.

12 CHAIRMAN MITTEN: -- TDR receiving
13 zones, DD and the Southeast Federal Center.
14 Is that all?

15 MR. RODGERS: Yes.

16 CHAIRMAN MITTEN: Okay. So
17 without having to put the exclusions into the
18 different categories, let me just generically
19 say that I move -- this is as it relates to
20 the non-historic portions of the city that
21 are R-3 through R-5-D, C-1 through C-3-C,
22 CRSP, W-1 and W-3 with the exclusions that I

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1 said before -- I move that we approve Case No.
2 04-33A as it relates to the non-historic
3 sections of the city, and Mr. Jeffries will be
4 sitting this one out.

5 I would ask for a second if
6 somebody --

7 COMMISSIONER TURNBULL: Second.

8 CHAIRMAN MITTEN: Okay, thank you,
9 Commissioner Turnbull.

10 Is there any further discussion?

11 (No response.)

12 All those in favor please say aye.

13 (Chorus of ayes.)

14 Those opposed please say no.

15 (No response.)

16 Mrs. Schellin?

17 MS. SCHELLIN: The staff will
18 record the vote 4 to 0 to 1 to approve the
19 non-historic areas in Zoning Commission Case
20 No. 04-33A, Commissioner Mitten moving,
21 Commissioner Turnbull seconding, Commissioners
22 Hood and Parsons in favor, Commissioner

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1 Jeffries not voting, having not participated.

2 CHAIRMAN MITTEN: Okay, next then,
3 as the Case No. 04-33A relates to the historic
4 districts, I move that we approve the case and
5 apply the text to historic districts with the
6 exclusions that I read earlier.

7 COMMISSIONER TURNBULL: I'll
8 second.

9 CHAIRMAN MITTEN: Okay, any
10 further discussion?

11 (No response.)

12 All those in favor please say aye.

13 (Chorus of ayes.)

14 Those opposed please say no.

15 (A no vote.)

16 Mrs. Schellin?

17 MS. SCHELLIN: Staff will record
18 the vote 4 to 1 to 0 to approve the historic
19 areas in Zoning Commission Case No. 04-33A,
20 Commissioner Mitten moving, Commissioner Hood
21 seconding, Commissioners Turnbull and Jeffries
22 in favor, Commissioner Parsons opposed.

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1 CHAIRMAN MITTEN: Okay, thank you.

2 Next is Case No. --

3 MR. BERGSTEIN: I'm sorry, Madam
4 Chair --

5 CHAIRMAN MITTEN: Yes, sir.

6 MR. BERGSTEIN: This is advertised
7 as a map and text amendment. What I would
8 propose to do is to only amend the text of the
9 zoning regulation to take out a reference to
10 the inclusionary zoning overlay and to simply
11 add the exemptions to the list of exemptions
12 which already appear in 2602.3 and, in fact,
13 already have R-1, R-2, and C-4 in them.

14 CHAIRMAN MITTEN: Please do that.
15 Thank you.

16 Okay, the last case for proposed
17 action is Case No. 06-14, and this is the case
18 we heard the other night, Mid-Atlantic Realty
19 Partners.

20 COMMISSIONER JEFFRIES: That was
21 the other night, wasn't it?

22 CHAIRMAN MITTEN: I do want to

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1 just thank Mr. Jeffries for being so
2 persistent about increasing the amount of
3 affordable housing, and the Applicant has come
4 back to us with an alternative, which is to
5 increase the amount of commercial density in
6 exchange for a higher proffer on the
7 affordable housing.

8 I think in this case it is a
9 tradeoff well worth making. So I just really
10 appreciate you being persistent about that.

11 We also have some submissions from
12 the Applicant that relate to some of the just
13 smaller matters that we had asked about, the
14 columns, the height of the wall along New York
15 Avenue, and the sign for the hotel building.

16 I would just ask, are there any
17 lingering concerns related to those matters?
18 Does anyone have lingering concerns? Mr.
19 Parsons?

20 COMMISSIONER PARSONS: The sign is
21 significantly reduced. I think it is still
22 too large, but if that is the best we can do,

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1 that is the best we can do. I need to visit
2 the sign ordinances in a different forum --

3 CHAIRMAN MITTEN: Yes.

4 COMMISSIONER PARSONS: -- and
5 maybe testify. I just think they're too
6 large.

7 This one is now down to a
8 reasonable size. I was hoping we could have
9 something at 15 feet, 20 feet in the air, and
10 not a vertical sign, but I understand that --

11 CHAIRMAN MITTEN: Well, and you
12 did suggest that.

13 COMMISSIONER PARSONS: I
14 understand the sign ordinances of the city all
15 permit it, so I'll get out of the way.

16 CHAIRMAN MITTEN: Okay. There's
17 one thing I just need to ask the Office of
18 Planning. There was a suggestion in the DDOT
19 report about a periodic reporting mechanism
20 for the traffic management program. Then DDOT
21 submitted a specific list of things that they
22 wanted to see.

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1 The Applicant has not made
2 specific reference to that report. I don't
3 know -- do you know if the Applicant has
4 accepted DDOT's recommendation as it relates
5 to that report?

6 MR. COCHRAN: Madam Chair, first
7 off, I don't know whether you saw our report
8 of today. We discuss that on page 2.

9 CHAIRMAN MITTEN: No, I don't
10 believe I had time to digest that.

11 MR. COCHRAN: We simply summarized
12 the changes that had occurred from the earlier
13 submission to what the Applicant had presented
14 -- what was it? -- last week.

15 But if you'll look on page 2,
16 Issue No. 5, we note that the Applicant had
17 not accepted that. We also note that you, the
18 Chair, had noted that there was probably no
19 point in doing it if you weren't going to
20 establish a baseline in the first place.

21 CHAIRMAN MITTEN: Okay, this is
22 what gets a tiny bit frustrating about DDOT.

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1 So you can feel free to express this to them,
2 since they don't come back and hear what we
3 have to say.

4 But they make these suggestions,
5 and it says the Zoning Commission should
6 consider potential sanctions against
7 developers who do not fully implement
8 requirements of the zoning order. They don't
9 tell us what to do. They say, you know, tell
10 them to implement an plan, but then we don't
11 have any standard to hold the applicant to
12 other than to say, "Well, did you implement
13 the plan?" "Yes." And we don't have any
14 standard for effectiveness.

15 So we will just have to say thank
16 you for your suggestion and maybe next time
17 they can give us some better guidance. This
18 is really frustrating.

19 So thanks, Mr. Cochran.

20 MR. COCHRAN: I'll pass on both
21 your thanks and your comments.

22 CHAIRMAN MITTEN: Okay. So we

1 also, because time was short on the
2 turnaround, we had asked, rather than getting
3 a full order from the Applicant, just to have
4 everything, all the proffers, in one place.
5 The Applicant did provide us a set of proposed
6 conditions that was part of their additional
7 submission, and it includes the alternative
8 development with higher office density and a
9 higher affordable housing proffer.

10 Mr. Hood?

11 VICE CHAIRMAN HOOD: Madam Chair,
12 if you remember, I said that the proposed, I
13 thought, amenities package was weak.

14 CHAIRMAN MITTEN: Yes.

15 VICE CHAIRMAN HOOD: And I looked
16 at the submittal and I can't find it now. In
17 the response from the Applicant, it is stated
18 that this is much more than what they did in
19 a matter of right.

20 I mean, you know, it is not a
21 show-stopper for me, but if it was a matter of
22 right, then they wouldn't have been in front

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1 of us. That is the way I look at it.

2 CHAIRMAN MITTEN: Uh-hum.

3 VICE CHAIRMAN HOOD: So to make
4 that statement, I was fine with the increase
5 of the affordable units. I said okay, and I
6 agree it's not a dollar value, and I can't put
7 my hands exactly on it, because I wanted to
8 read the statement exactly how they --

9 CHAIRMAN MITTEN: I think I can
10 help you with that.

11 VICE CHAIRMAN HOOD: Which one is
12 it? Anyway, it talks about the dollar amount,
13 and I guess they were taking difference with
14 me.

15 But, anyway, the issue is they did
16 increase the affordable single units, and I'm
17 going to be moving forward, but I still say
18 it's weak.

19 CHAIRMAN MITTEN: Okay, anyone
20 else?

21 (No response.)

22 Then I would move approval of Case

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1 No. 06-14, subject to the conditions that are
2 outlined in the Applicant's proposed
3 conditions.

4 COMMISSIONER JEFFRIES: Second.

5 CHAIRMAN MITTEN: Any further
6 discussion?

7 (No response.)

8 All those in favor please say aye.

9 (Chorus of ayes.)

10 Those opposed please say no.

11 (No response.)

12 Mrs. Schellin?

13 MS. SCHELLIN: The staff will
14 record the vote 5 to 0 to 0 to approve
15 proposed action in Zoning Commission No.
16 06-14, Commissioner Mitten moving,
17 Commissioner Jeffries seconding, Commissioners
18 Hood, Turnbull, and Parsons in favor.

19 CHAIRMAN MITTEN: Thank you.

20 All right, now we have a few cases
21 for final action. The first one is Case No.
22 06-01. This is Stewart Investment over on H

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1 Street. We have a draft order from the Office
2 of the Attorney General, and we also have the
3 NCPC report that says that the proposal will
4 not affect the federal interest.

5 I would move approval of Case No.
6 06-01 in the final order.

7 COMMISSIONER JEFFRIES: Second.

8 CHAIRMAN MITTEN: Any discussion?

9 (No response.)

10 All those in favor please say aye.

11 (Chorus of ayes.)

12 Those opposed please say no.

13 (No response.)

14 Mrs. Schellin?

15 MS. SCHELLIN: Staff will report
16 it at 5 to 0 to 0 to approve final action in
17 Zoning Commission Case N. 06-01, Commissioner
18 Mitten moving, Commissioner Jeffries
19 seconding, Commissioners Hood, Parsons, and
20 Turnbull in favor.

21 CHAIRMAN MITTEN: Thank you.

22 Next we have Case No. 05-30, which

1 is the West Group Development Company and the
2 Jarvis Company at 6000 New Hampshire Avenue.
3 We have a draft order from the Office of the
4 Attorney General, and we have the NCPC report
5 that says that the proposal will not adversely
6 affect the federal interest.

7 I would move approval of the final
8 order.

9 VICE CHAIRMAN HOOD: Second.

10 CHAIRMAN MITTEN: Thank you, Mr.
11 Hood.

12 Any discussion?

13 (No response.)

14 All those in favor please say aye.

15 (Chorus of ayes.)

16 Those opposed please say no.

17 (No response.)

18 Mrs. Schellin?

19 MS. SCHELLIN: Staff will record
20 the vote 5 to 0 to 0 to approve final action
21 in Zoning Commission Case No. 05-30,
22 Commissioner Mitten moving, Commissioner Hood

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

3 CHAIRMAN MITTEN: Thank you.

4 Next we have Case No. 02-06, and
5 this is the Neighborhood Commercial Overlay
6 that we have been struggling with for some
7 time.

8 We do have a recommendation from
9 the Attorney General's Office that makes
10 eminent sense to defer final action in the
11 Neighborhood Commercial Overlay case until we
12 complete the Case No. 06-23, which has to do
13 with defining eating establishments. I think
14 that will end up being very helpful for us in
15 the 02-06 case.

16 Do I have to take a vote or just
17 consensus?

18 MR. BERGSTEIN: I think consensus
19 is enough. I just want to be able to say that
20 you did it.

21 CHAIRMAN MITTEN: Okay, that's
22 great.

1 So, unless there's any objections,
2 we will defer final action in 02-06 until we
3 finish 06-23. Any objections?

4 (No response.)

5 Okay, then the last case is
6 another case that I didn't sit on. So, Mr.
7 Hood, it's all yours.

8 VICE CHAIRMAN HOOD: (presiding)
9 Okay, Zoning Commission Case 06-17, D.C.
10 Public Schools and the George Washington
11 University's Consolidated PUD and related map
12 amendment.

13 Ms. Schellin?

14 MS. SCHELLIN: We did receive an
15 NCPC report saying that there were no adverse
16 effects to federal interests.

17 VICE CHAIRMAN HOOD: Okay, thank
18 you, Ms. Schellin.

19 We received a report. They
20 addressed a few issues about cost-sharing, and
21 I'm sure we've all read that. It's dated
22 November 29th, 2006.

1 I have no further issues with
2 that. Any other issues?

3 (No response.)

4 Okay, I will move approval of
5 Zoning Commission Case No. 06-17 and ask for
6 a second.

7 COMMISSIONER TURNBULL: Second.

8 VICE CHAIRMAN HOOD: It's moved
9 and properly seconded.

10 Any further discussion?

11 (No response.)

12 All those in favor?

13 (Chorus of ayes.)

14 Any opposition?

15 (No response.)

16 So ordered.

17 Staff, would you record the vote?

18 MS. SCHELLIN: Staff will record
19 the vote 4 to 0 to 1 to approve final action
20 in Zoning Commission Case No. 06-17,
21 Commissioner Hood moving, Commissioner
22 Turnbull seconding, Commissioners Jeffries and

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

3 CHAIRMAN MITTEN: (presiding)

4 Thank you very much.

5 I think we are finished with our
6 agenda. So I thank you all, as you pack up,
7 for your participation.

8 We're adjourned.

9 (Whereupon, at 8:26 p.m., the
10 meeting was adjourned.)

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