

## GOVERNMENT

## THE DISTRICT OF COLUMBIA

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## ZONING COMMISSION

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## REGULAR MEETING

+ + + + +

MONDAY

APRIL 9, 2007

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

## ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY 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
ESTHER BUSHMAN	General Counsel

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OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER  
JOEL LAWSON  
STEVE COCHRAN  
TRAVIS PARKER

The transcript constitutes the minutes  
from the Regular meeting held on April 9,  
2007.

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

6:38 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, March 9th, 2007. My name is Carol  
Mitten and joining me this evening are Vice  
Chairman Anthony Hood and Commissioners Mike  
Turnbull, John Parsons and Greg Jeffries.

Copies of our meeting agenda are  
available to you and they are in the wall bin  
by the door.

I'd just like to remind folks that  
we don't take any public testimony at our  
meetings unless someone has specifically  
requested to come forward.

I'd like to advise you that the  
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 and we also ask you

1 to turn off your beepers and cell phones.

2 Mrs. Schellin, any preliminary  
3 matters before we proceed?

4 MRS. SCHELLIN: No, ma'am.

5 CHAIRPERSON MITTEN: Thank you.

6 And I don't think tonight we have  
7 any changes to our agenda. There's one  
8 addition under correspondence, but we'll just  
9 pick that up when we get there.

10 So, let's begin with the status  
11 report from the Office of Planning. Ms.  
12 Steingasser.

13 MS. STEINGASSER: Good evening,  
14 Madam, Chair, Commissioners.

15 The Status Report is before you.  
16 One item that I'd like to bring up with you  
17 that's not on the Status Report itself is the  
18 comprehensive rewrite of the Zoning  
19 Regulations.

20 The Office of Planning has started  
21 to look at that as part of the next phase of  
22 the Comprehensive Plan implementation. And

1 we'd like to start scheduling some general  
2 roundtables in front of the Zoning Commission  
3 to just get some uncontrolled early public  
4 feedback on the things that the community  
5 thinks work and don't work, need improvement,  
6 need removal.

7           After that, we'd then like to come  
8 back with some work sessions and layout a more  
9 detailed and structured program plan for  
10 rewriting those.

11           I just wanted to bring that to the  
12 Commission's attention and get any feedback  
13 you may have on how to begin that roundtable  
14 session.

15           CHAIRPERSON MITTEN: That sounds  
16 like a good way to proceed to me.

17           Anyone else have any?

18           COMMISSIONER PARSONS: In a  
19 roundtable, we're going to end up with a lot  
20 of people come in with site-specific changes  
21 that need to be made or could we limit it to  
22 programmatic kind of --

1 MS. STEINGASSER: We could limit  
2 it to programmatic. It's not a map amendment  
3 process right now. We expect to spend two to  
4 three years after looking at the text of the  
5 zoning regs. And that's what we would focus  
6 on. It would be similar to what we did for  
7 the antenna regulations and we had a series of  
8 evenings where people just come in with their  
9 particular concerns about what worked and  
10 didn't work.

11 We're not looking for, you know,  
12 we want our lot downzoned or upzoned. We're  
13 not looking for that level of Comp Plan  
14 consistency zonings. We're looking at actual  
15 rewrite of the zoning regs, the text itself.

16 COMMISSIONER PARSONS: Well, could  
17 we put out a notice that these are the items  
18 that we --

19 MS. STEINGASSER: Oh, yes.

20 COMMISSIONER PARSONS: -- that we  
21 want to discuss rather than --

22 MS. STEINGASSER: I think we can

1 sculpt the way we draft the public notice of  
2 the roundtables can make it very clear --

3 COMMISSIONER PARSONS: Okay.

4 MS. STEINGASSER: -- what it is  
5 we're looking at at this point.

6 COMMISSIONER PARSONS: Good.

7 MS. STEINGASSER: We will be  
8 coming back with some map amendments both  
9 during the process and after the process to  
10 continue with the consistency separately.

11 CHAIRPERSON MITTEN: Anyone else  
12 have comments? Or any questions on the Status  
13 Report?

14 CHAIRPERSON MITTEN: Okay. Thank  
15 you very much.

16 Rather than move immediately to  
17 the Consent Calendar item, what I'd like to do  
18 is take up the first item under Hearing Action  
19 because the Consent Calendar item arises  
20 because of the request in Zoning Commission  
21 Case No. 07-08. So, let's have that  
22 discussion first and then that may guide us as

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1 to how to proceed on the Consent Calendar  
2 item.

3 Mr. Lawson.

4 MR. LAWSON: Thank you, Madam  
5 Chair, Members of the Commission. My name is  
6 Joel Lawson. I'm with the D.C. Office of  
7 Planning.

8 OP has recommended a series of  
9 text amendment changes to permit temporary  
10 surface parking lots in proximity to the  
11 ballpark.

12 The intent is to meet the short-  
13 term need for parking for ballpark events.  
14 It's anticipated that over the long term, any  
15 additional parking needed would be available  
16 and planned in under construction projects,  
17 much as the way the parking around the Verizon  
18 Center works where people who are attending  
19 the Verizon Center use existing parking in  
20 existing office buildings surrounding the  
21 center itself.

22 The proposed text amendment would

1 only apply to specific named squares and those  
2 are listed in the OP Report.

3 All of the proposed locations for  
4 the temporary parking are within easy and  
5 convenient walking distance of the ballpark.  
6 By spreading out the locations to some extent  
7 the traffic impacts on anyone immediate area  
8 can be lessened.

9 The text amendment would also  
10 limit the use to a maximum period of five  
11 years. The text amendment states that when  
12 not in use for the ballpark event parking  
13 purposes, the parking lots could be used for  
14 other parking purposes. And it establishes a  
15 matter of right maximum number of 3,775  
16 parking spaces.

17 This number is derived from the  
18 D.C. major league baseball park transportation  
19 management plan which was prepared by the D.C.  
20 Sport and Entertainment Commission as part of  
21 the Zoning Commission review of the ballpark  
22 design which was Case 06-22.

1           Beyond this number BZA approval  
2           for any additional spaces on the specified  
3           lots would be required.

4           We don't actually anticipate that  
5           that number is going to be reached. That  
6           number 3,375. It's assumed that some of the  
7           sites actually may not end up being available  
8           for the full five years or at all or may not  
9           accommodate the number of spaces that are  
10          anticipated.

11          The Nationals have indicated to us  
12          that the actual total number of spaces on the  
13          specific lots would probably be somewhere n  
14          the neighborhood of 1,200 to 2,500 in total.  
15          Although it is important to retain all of the  
16          square to maintain the flexibility that's  
17          needed in terms of where these spaces could be  
18          provided.

19          Since the OP set down report we've  
20          continued to work with the Office of the  
21          Attorney General to refine the language and  
22          that refined language is being distributed to

1 the Zoning Commission members.

2 The intent of the text has not  
3 changed. But OP is satisfied that the format  
4 and the language are clearer and better  
5 defined than what was included in our original  
6 report.

7 In particular, Section 2110 has  
8 been significantly refined.

9 OP anticipates some additional  
10 refinement prior to the hearing. And we can  
11 get into that a little bit later on if you'd  
12 like.

13 In particular, it's been noted to  
14 us that the regulation pertaining to  
15 restricting the use of the parking spaces for  
16 ballpark use three hours prior to the game may  
17 not in all circumstances be entirely feasible  
18 or advantageous to the District. So, we may  
19 want to take a look at massaging that three-  
20 hour limit just a little bit.

21 In addition to recommending this  
22 text amendment be set down, OP is also

1 recommending this action on an emergency basis  
2 so that the text amendment can be effective  
3 immediately upon setdown.

4 Over time as the area develops,  
5 there will be more shared parking  
6 opportunities within new developments and  
7 improvements to the area will make the use of  
8 Metro, biking, walking or even water ferries  
9 possible or more tenable. And so we feel that  
10 over time there will be more options for  
11 parking or for options which don't include  
12 the use of the private automobile. And, of  
13 course, OP strongly encourages the use of mass  
14 transit and we have consistently encouraged  
15 the Nationals to provide meaningful incentives  
16 for the use of mass transit and other  
17 alternatives to the private automobile.

18 It is anticipated, however, in  
19 traffic studies that there will be a short  
20 term shortage of parking available to patrons.  
21 This could lead to illegal parking in the  
22 surrounding area and could have an impact on

1 the short term success of this important  
2 District facility.

3 This proposals therefore would  
4 help to address the short-term need for an  
5 interim parking solution. Emergency action is  
6 needed to insure that there is adequate time  
7 to complete sighting negotiations, any  
8 environmental remediation necessary and  
9 construction time prior to development of the  
10 sites as parking. This need to be prior to  
11 winter so that they are available for opening  
12 day in 2008 when the stadium will open.

13 Normally surface parking lots are  
14 not constructed during winter months and  
15 actually we've seen lately how winterish  
16 weather can extend all the way up to opening  
17 day here in D.C. Although the winter  
18 construction is possible, it is more difficult  
19 and it's more costly and this is especially a  
20 problem for temporary parking spaces such as  
21 these which are only anticipated to exist for  
22 a maximum of five years.

1           Emergency action allows time for  
2 the owners of the Nationals to finalize the  
3 sighting for the surface parking lots and in  
4 doing so, finalize the traffic operations and  
5 parking plan, the TOPP, prior to the April  
6 20th, 2007, deadline as per the agreement  
7 between the Nationals and DDOT and in  
8 accordance with earlier Zoning Commission  
9 approvals for the ballpark site.

10           Finally, the emergency action  
11 provides for certainty regarding the location  
12 of possible parking spaces and this will allow  
13 more comprehensive cross referencing of ticket  
14 holders driving to the stadium from different  
15 parts of the region with a parking that is  
16 both easily and conveniently accessed by them,  
17 thereby hopefully reducing traffic impacts  
18 through D.C. neighborhoods.

19           In summary, normally OP is not  
20 supportive of surface parking lots and would  
21 not support surface parking on these squares  
22 as a permanent solution to address currently

1 perceived parking needs. However, in this  
2 case, the temporary use of underutilized land  
3 for ballpark-related parking is in the public  
4 interest and will alleviate over the short  
5 term the situation that could otherwise  
6 negatively impact the neighborhood and the  
7 success of this facility.

8 OP recommends that the Zoning  
9 Commission set this down for public hearing  
10 and take emergency action.

11 Thank you. That's our testimony  
12 and we're available for questions.

13 CHAIRPERSON MITTEN: Thank you,  
14 Mr. Lawson.

15 Questions or comments for Mr.  
16 Lawson?

17 Mr. Turnbull?

18 COMMISSIONER TURNBULL: Thank you,  
19 Madam Chair.

20 Mr. Lawson, I wonder if you could  
21 just clarify.

22 On the squares that have been

1 identified and the lots associated on those  
2 squares, I'm assuming that it's a first come,  
3 first serve basis, that whoever sees the  
4 opportunity that their lots are available for  
5 that period of time are going to come and get  
6 it.

7 If so many squares are already  
8 done and you finish up and you get that magic  
9 number, are you saying that other lots then  
10 would go to the BZA for that or is it just  
11 those lots that wanted more on the squares  
12 already have them?

13 MR. LAWSON: It would just be the  
14 lots that are named in this text that would be  
15 allowed to go for BZA approval for additional  
16 spaces. To some extent it would be a first  
17 come, first serve basis, although we  
18 anticipate that the Nationals are already  
19 working closely with the owners of the private  
20 property on these squares to get the  
21 agreements necessary to put parking on some or  
22 all of those lots. So, it will be a

1 coordinated effort. It won't necessarily be  
2 the first owner out of the box gets all the  
3 parking, there's none left for anybody else.

4 But if that number of 3,775 is  
5 reached, that would not allow parking to go on  
6 other squares that aren't named in this text  
7 amendment. But if there is a square that's  
8 developed for parking that is named in here,  
9 they would be able to go to the BZA for  
10 approval of additional parking spaces on those  
11 sites. And as part of the review, would be  
12 the impacts of those parking spaces on the  
13 surrounding area.

14 COMMISSIONER TURNBULL: I  
15 understand. I guess I just to clarify though.

16 There is something like 13 square  
17 identified and let's say seven squares satisfy  
18 the amount of parking. Six square then don't  
19 have it. Is it only the seven squares that  
20 have the parking go to the BZA or is it the  
21 other squares can also go then?

22 MR. LAWSON: I see what you're

1 saying. The seven squares -- the original  
2 seven squares would, of course, be by right.  
3 But it would be on all 13 of those squares  
4 that if additional parking was being proposed,  
5 it would be possible to go to the BZA to get  
6 approval to do so on all of the squares that  
7 are listed in the text amendment.

8 COMMISSIONER TURNBULL: Okay.  
9 Thank you.

10 VICE CHAIRMAN HOOD: Madam Chair.  
11 Mr. Lawson, I was -- help me understand this.

12 I was under the impression that  
13 anything that dealt around the ballpark was  
14 supposed to be in front of the Commission.  
15 Not that I'm trying to get the Commission any  
16 additional work, but I was just under that  
17 impression. And I see here now we're talking  
18 about the Board of Zoning Adjustment. What  
19 triggered that change? Or why are we doing  
20 it? Because it's a special exception or what?

21 MR. LAWSON: Well, not only  
22 special exception uses like this do go to the

1 Board of Zoning Adjustment. We thought that  
2 it was consistent with the kind of general  
3 District practice. So, that would be the main  
4 reason.

5 VICE CHAIRMAN HOOD: Okay. So,  
6 okay. I'll leave it at that.

7 Thank you.

8 CHAIRPERSON MITTEN: Anyone else?  
9 Mr. Parsons.

10 COMMISSIONER PARSONS: Mr. Lawson,  
11 I'm looking at 2110.1C which says. Any  
12 parking lot authorized under this section may  
13 be used for parking on a general basis when  
14 there are no events at the ballpark. Agree?

15 MR. LAWSON: Sorry, which number  
16 were you on?

17 COMMISSIONER PARSONS: 2110.1C.

18 MR. LAWSON: I think the newest  
19 version has that as a D, Mr. Parsons.

20 COMMISSIONER PARSONS: I'm sorry?

21 MR. LAWSON: The version that's  
22 been distributed and I thought everyone has,

1 that provision in terms of general parking is  
2 in 2110.1D.

3 COMMISSIONER PARSONS: Well,  
4 whatever it is, because the version I've got  
5 is C.

6 MR. LAWSON: Sure.

7 COMMISSIONER PARSONS: Does this  
8 mean we could park Metro buses, trash trucks,  
9 Hertz rental cars, other what I'll call  
10 obnoxious uses. is it restricted to commercial  
11 parking?

12 CHAIRPERSON MITTEN: The intent  
13 was certain to restrict it to commercial  
14 parking and if the Commission wanted us to  
15 come up with language that would clarify that,  
16 we could.

17 COMMISSIONER PARSONS: I would  
18 hope so because there's lots of parking needs  
19 around that don't belong here.

20 Thank you.

21 CHAIRPERSON MITTEN: Mr. Lawson,  
22 could you address the fact that -- first let

1 me say that, you know, we've had a number of  
2 cases where we had one in particular recently  
3 where the Commission was consistently  
4 criticized over taking emergency action in the  
5 case because it was felt that the scope was  
6 narrow as opposed to broad and that typically  
7 we take action on an emergency basis for  
8 issues that are city-wide. And that we take  
9 actions on an emergency basis that tends to be  
10 conservative. So, it's restrictive. The  
11 emergency action is restrictive rather than  
12 permissive so that while we consider  
13 something, we don't have something that's  
14 built that we haven't fully considered where  
15 this is the opposite permissive kind of  
16 emergency.

17 So, could you address those two  
18 issues for the Commission?

19 MR. LAWSON: I guess the first  
20 part of the question first. We do feel that  
21 this has a District-wide -- sorry, District-  
22 wide impact in that it's dealing with the

1 success of a major District facility, the  
2 ballpark. And it's dealing with a short term  
3 need that's being associated with the ballpark  
4 in its ability to function normally and to  
5 function as well as possible within the  
6 neighborhood in which it sits.

7 So, we think that it addresses  
8 that. In fact, in some ways this is similar  
9 to a couple of other recent cases by the  
10 Zoning Commission where we looked at parking  
11 lots associated with uses that are currently  
12 on the ballpark site and sites adjacent to the  
13 ballpark and allowing those sites to relocate.

14 Because this is being done on  
15 temporary basis that gives us, anyway, the  
16 Office of Planning, some comfort in this whole  
17 kind of process that these are temporary  
18 parking spaces not intended in any way to be  
19 seen as being permanent parking spaces, that  
20 they allow all of us, the nationals in the  
21 District to come up with more permanent  
22 solutions and for the District to grow -- the

1 development around the ballpark to grow up, I  
2 guess, to provide the kind of parking spaces  
3 that, as I said, are currently the oval around  
4 Verizon Center. So, it can start to function  
5 the same way and we can start to share the  
6 parking spaces rather than have specific  
7 surface parking spaces.

8 So, I'm not sure if I've addressed  
9 your entire question. But we do see that this  
10 has a District-wide implication. It will  
11 affect traffic patterns for the entire  
12 District. It affects the agreement, the  
13 transportation, the traffic operations plan  
14 between DDOT and the Nationals, which is in  
15 the District's interest to have moved forward.  
16 So, we definitely see that kind of broader  
17 benefit to the District as a whole.

18 CHAIRPERSON MITTEN: Thank you.

19 Well, I think there's an  
20 alternative way to perceive which would make  
21 me more comfortable rather than taking  
22 emergency action today. And that would be to

1 have an expedited hearing date and limit the  
2 period of advertisement to 30 days as opposed  
3 to 45 days, which is what we've done before.  
4 And then after we have a hearing, should be  
5 decide that we're satisfied, we could take  
6 emergency action at the conclusion of this  
7 hearing so that it wouldn't delay -- it  
8 wouldn't unduly delay the ability to commence  
9 construction on these parking lots.

10 But there's a number of things  
11 that make me uncomfortable.

12 One is that some of the sites that  
13 have been selected are those that, to me,  
14 should be targeted for immediate complimentary  
15 development and I don't mean parking. I mean  
16 complimentary permanent development to be  
17 associated with the ballpark.

18 And I'd also like there to be some  
19 consideration given to easing the regulations,  
20 the size requirements for the parking layout,  
21 not unlike what has been proposed for the  
22 historic buildings or to think about things

1 like requiring valet parking during the games  
2 so that we maximize the number of spaces on  
3 the sites that we, I'll use the term  
4 "sacrifice" for surface parking. Figure out  
5 how to cram as many spaces on there for this  
6 purpose so that we don't involve as many  
7 sites. We would involve as few sites as  
8 possible.

9 And I'd like to explore all that  
10 before we just allow this to start sprawling  
11 out unnecessarily.

12 So, comments on that idea?

13 COMMISSIONER JEFFRIES: I would  
14 agree.

15 One of the things that struck me  
16 about this is that when you look at the last  
17 page here and you see the P's, you know, I  
18 just -- I don't have a good grasp as to  
19 exactly what we're doing here. It's fairly  
20 sizeable. And I just, you know, I just wanted  
21 to get just a tad bit more information so I'm  
22 just clear about exactly what does it mean to

1 put all these sort of temporary parking spaces  
2 and all of these particular places. I just  
3 need to get a better handle on that.

4 And then also it's the storm water  
5 management piece that I'm also concerned  
6 about. All these surfaces. I know that the  
7 Office of Planning had talked about the  
8 Commission had looked at some more porous  
9 materials, but I just think there's maybe a  
10 few more things that we need to look at here  
11 before we just let the flood gates open.

12 So, that's where I'm at.

13 CHAIRPERSON MITTEN: Anyone else?

14 VICE CHAIRMAN HOOD: I would agree  
15 with your commend, Madam Chair. But what  
16 makes me nervous when you say cram. We want  
17 to make sure this is viable and useable,  
18 because I know when I go over to the park, I  
19 want to make sure that I'm able to access  
20 also.

21 But let me just say this.

22 CHAIRPERSON MITTEN: And maybe I

1 just want to clarify. That's during use  
2 during a ball game, not all the time.

3 VICE CHAIRMAN HOOD: And that's  
4 what I mean.

5 CHAIRPERSON MITTEN: Okay.

6 VICE CHAIRMAN HOOD: During a ball  
7 game.

8 CHAIRPERSON MITTEN: Okay. Yes.  
9 I'm not worried about -- I'm sure you'll be  
10 parking in the special parking space.

11 VICE CHAIRMAN HOOD: The other  
12 thing is, you made me lose my point when you  
13 say you're not worried about it.

14 CHAIRPERSON MITTEN: I'm sorry. I  
15 apologize.

16 VICE CHAIRMAN HOOD: Forget what I  
17 was going to -- she made me forget when she  
18 said -- that's all right. Come back to me and  
19 maybe I'll remember. I forgot.

20 COMMISSIONER JEFFRIES: I mean,  
21 I'm clear, that you know, you know, the whole  
22 point of this is that we're trying to take

1 care of the surrounding neighborhoods, not  
2 having people come into the ballpark, you  
3 know, park illegally and so forth.

4 I just, you know, I mean a five-  
5 year period, all these flat surfaces, I just  
6 think we need to take a minute. So, I'm just  
7 -- I'm really just not in favor of this  
8 emergency.

9 And I really think we need to be  
10 careful about attaching the word "emergency"  
11 on so much that comes through us here. That,  
12 you know, I'm not certain that I find this  
13 sort of a District-wide text here. And I see  
14 it as a ballpark text.

15 And I think it's important. I  
16 think, you know, but I just want to slow down  
17 a second here. And I would agree with you,  
18 Madam Chair, in terms of how to go forward.

19 VICE CHAIRMAN HOOD: Madam Chair,  
20 I know what my point was.

21 We're talking about 30 days. I  
22 feel comfortable. I think this Commission had

1 a thorough lesson when we dealt with the  
2 asphalt plans how to get the sites here in the  
3 city. So, I just don't want to see us  
4 infringe on that because the lesson that we  
5 were given is that, I think, certain types of  
6 times of the year has to go further. And if  
7 it gets to a certain point where it has to put  
8 down asphalt, then apparently that batch is  
9 bad. So, we don't want to run into that risk.  
10 And I think 30 days for us to look at this, I  
11 think, is okay. I would be willing.

12 Another thing is, I'm not sure.  
13 But I notice my colleagues always have a color  
14 copy of these things and I always have black  
15 and white. I'd didn't say nothing that last  
16 month.

17 CHAIRPERSON MITTEN: Mine is  
18 colored.

19 VICE CHAIRMAN HOOD: Colored.  
20 Okay.

21 COMMISSIONER PARSONS: It's just  
22 the Chair that gets the color. It's every

1 other one. Oh, I got black and white too.

2 CHAIRPERSON MITTEN: Okay.

3 COMMISSIONER PARSONS: We're only  
4 just sharing the color copies.

5 CHAIRPERSON MITTEN: All right.

6 So, then I would move that we set  
7 down Case No. 07-08 with a limited period of  
8 30 days for advertisement and schedule that as  
9 quickly as the Commission's calendar will  
10 allow and ask --

11 COMMISSIONER TURNBULL: Second.

12 CHAIRPERSON MITTEN: Thank you,  
13 Mr. Turnbull.

14 Any further discussion?

15 All those in favor, please say  
16 aye.

17 (AYES)

18 CHAIRPERSON MITTEN: Those  
19 opposed, please say no.

20 Mrs. Schellin.

21 SECRETARY SCHELLIN: The staff  
22 would record the vote five to zero to zero to

1 set down Zoning Commission Case No. 07-08.

2 Commissioner Mitten moving,  
3 Commissioner Turnbull seconding, Commissioners  
4 Hood, Jeffries and Parsons in favor. And this  
5 is being set down as a rule-making case with  
6 a limited 30-day advertisement period.

7 CHAIRPERSON MITTEN: Yes. Thank  
8 you.

9 Now, given that the Consent  
10 Calendar item is related to that, I would just  
11 ask Mrs. Schellin, just in the event that we  
12 would want to take action at the end of the  
13 hearing, if you would advertise the Consent  
14 Calendar item as a -- basically advertise a  
15 Special Public Meeting at the conclusion of  
16 the hearing, with the Consent Calendar item on  
17 it.

18 I will just offer one comment on  
19 the Consent Calendar item which is that the  
20 inclusion of the entirety of Square 882  
21 troubles me. So, perhaps by the time we get  
22 there, the Office of Planning can have a

1 response.

2 But this is described in the order  
3 for the Capper/Carrollsborg project which is  
4 that the office buildings on the southern half  
5 of Square 882. There were two. They were  
6 intended to help subsidize the economics of  
7 the balance of the project. And now we're  
8 being told that the overall market conditions  
9 are such that everything is moving more  
10 slowly. And given that there is a cooperative  
11 relationship between -- because there are  
12 District entities involved on both sides, I  
13 don't know that it would be strictly market  
14 forces that would dictate the redevelopment of  
15 the southern side of Square 882 for the two  
16 office buildings. And I don't want there to  
17 be any impediment to -- given that market  
18 conditions overall are not as robust as they  
19 were for residential. I don't want there to  
20 be any impediment to capturing that office  
21 subsidy to move the overall development  
22 forward.

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1           So, when we take that up again, if  
2           you could address that issue, it might ease my  
3           mind on that subject.

4                       CHAIRPERSON           MITTEN:

5           Okay. Next then, under Hearing Action  
6           is Zoning Commission Case No. 07-09. And this  
7           is a request related to the DD Overlay and the  
8           site for the Convention Center Hotel.

9                       MR. COCHRAN: Good evening, Madam  
10          Chair.

11                      For the record, my name is Steven  
12          Cochran.

13                      The Office of Planning recommends  
14          the Commission set down the proposed text  
15          amendments to Section 1706.13 and 1706.23B of  
16          the Zoning Regulations to modify the  
17          administrative procedures for residential use  
18          requirements within the DD overlay.

19                      The amendments proposed would  
20          eliminate the requirements that either a  
21          certificate of occupancy be issued or an  
22          escrow account be established for the resident

1 uses that are required by Chapter 17 prior to  
2 the issuance of certificates of occupancy for  
3 non-residential space, for Square 374, Lot  
4 848, Square 369 or Square 370, Lots 40, 62, 65  
5 through 67, 801 through 805, 858, 859, 842,  
6 840, 849 and 878 only.

7 This relates to a land swap that  
8 is being worked out between the District and  
9 the Gould properties.

10 As you know, the downtown  
11 development district in many parts of it  
12 requires residential uses be built.

13 The Gould company has proposed to  
14 build only residential on the land that they  
15 would wind up controlling if this land lock  
16 goes through, land on the old convention  
17 center site.

18 In return for getting control of  
19 that land, they would be giving up control of  
20 some land for the proposed new convention  
21 center hotel.

22 There would still, however, be

1 residential requirements on this. The partner  
2 in all this would be the District of Columbia  
3 Government. The land that would remain would  
4 be controlled by the District and there would  
5 be certain residential requirements, not just  
6 with respect to the DD, but also with respect  
7 to the overall plan for the development of the  
8 old convention center site.

9           It's felt that given that it's the  
10 District that would be responsible for the  
11 construction of the residential uses, that in  
12 essence the District can trust the District to  
13 meet its own requirements. And so there's not  
14 the requirement that the District either post  
15 money in escrow or rather than money be posted  
16 in escrow in advance. And so, therefore, we  
17 recommend these amendments.

18           I would like to note, however,  
19 that there's the need to substitute the Board  
20 for and in a couple of areas.

21           It should read: Except for a non-  
22 residential development on Square 374, Lot

1 848, Square 369 or Square 370. That's for the  
2 amendment to sub-section 1706.13. And for the  
3 amendment to sub-section 1706.23G, a similar  
4 change should be made. Square 369 and Square  
5 370 should change to Square 369 or Square 370.

6 There may well be large buildings  
7 on these lots but we certainly don't  
8 anticipate them to have to cover three  
9 different squares, which would have been the  
10 requirement if we had said and.

11 CHAIRPERSON MITTEN: Okay.  
12 Questions or comments for Mr. Cochran?

13 Anyone has questions or comments?

14 All right. Then, I would move  
15 that we set down the text amendment in Case  
16 No. 07-09 and ask for a second?

17 COMMISSIONER PARSONS: Second.

18 CHAIRPERSON MITTEN: Thank you,  
19 Mr. Parsons.

20 Any discussion?

21 All those in favor, please say  
22 aye.

1 (AYES)

2 CHAIRPERSON MITTEN: Those  
3 opposed, please say no.

4 Mrs. Schellin.

5 SECRETARY SCHELLIN: Yes.

6 The staff would record the vote  
7 five to zero to zero to set down Zoning  
8 Commission No. 07-09.

9 Commissioner Mitten moving,  
10 Commissioner Parsons seconding, Commissioners  
11 Hood, Jeffries and Turnbull in favor.

12 This too is a set down as a rule-  
13 making case.

14 CHAIRPERSON MITTEN: Thank you.

15 The next case I'm going to ask Mr.  
16 Hood to take over. This is a project that I  
17 was involved in when I worked at OPM and  
18 although I don't work there anymore, I don't  
19 feel that I'm unbiased as to the outcome.

20 So, Mr. Hood, if you would.

21 VICE CHAIRMAN HOOD: So, you have  
22 some biases? Participate or --

1 CHAIRPERSON MITTEN: I'm not going  
2 to participate.

3 VICE CHAIRMAN HOOD: Okay.  
4 Anyway, thank you, Madam Chair.

5 Zoning Commission Case No. 07-02,  
6 Columbia Heights Ventures Parcel 26, LLC -  
7 Consolidated PUD and Related Map Amendment at  
8 14444 Irving Street, NW.

9 Mr. Cochran, is that you?

10 COMMISSIONER JEFFRIES: Excuse me,  
11 before you get going, Mr. Chair, I will not be  
12 participating in this case as well. I'm  
13 currently temporarily doing some consulting  
14 work for the LLC so --

15 VICE CHAIRMAN HOOD: Okay. Thank  
16 you.

17 Mr. Cochran.

18 MR. COCHRAN: Okay. Remaining  
19 chairs of the Zoning Commission.

20 My name again is Steven Cochran.

21 And the Applicants for this case  
22 wish to gain approval to build 69 condominium

1 units and what is referred to as a 104 room  
2 single occupancy dormitory building on a site  
3 near the intersection of 14th Street and  
4 Irving Street, NW. It's just to the west of  
5 the Donatelli and Kline Development that's  
6 going up on the southwest corner of 14th and  
7 Irving. The Columbia Heights Metro stop is  
8 right there at the corner of 14th and Irving  
9 Streets.

10 To accomplish this development,  
11 the Applicant requests the following of the  
12 Zoning Commission.

13 A PUD-related map amendment to C3A  
14 for a site that's now split-zoned both C3A and  
15 R5B and relief from the Zoning Regulation  
16 requirements for several things. Rear yard  
17 depth, width for five open courts, the size of  
18 one closed court, a load berth size for the  
19 condominium building, loading platform size  
20 for the condominium building, delivery space  
21 for the SRO dormitory building, relief from  
22 the requirements for a single enclosure of

1 roof structures and relief from residential  
2 recreation space requirements. Obviously,  
3 this is being requested pending the issuance  
4 of the order on the residential recreation  
5 space requirements.

6 OP recommends that the application  
7 be set down for public hearing. The proposal  
8 is consistent with the goals and objectives of  
9 the Comprehensive Plan. It would redevelop an  
10 underutilized property near a Metro station  
11 with a mix of uses.

12 The development will provide both  
13 market rate housing and will further the  
14 provision of needed housing for the homeless.

15 Residents will have access to mass  
16 transit and neighborhood-serving retail.

17 In addition to the increased FAR  
18 and height gain through the PUD process, the  
19 Applicant is also seeking relief from the  
20 other zoning standards that I mentioned. OP  
21 will work with the Applicant to assure that  
22 the additional information needs and

1 clarifications that are noted in the various  
2 sections of our report are provided in a  
3 timely manner, particularly with respect to  
4 the following.

5           Connections -- further explanation  
6 of the connections that enable the structures  
7 to qualify as one building. The financial  
8 arrangements governing the Applicant's  
9 dedication of land and the provision of  
10 architectural services for the single-room  
11 occupancy building, which we also feel  
12 qualifies as a CBRF. And finally, it will be  
13 important to have a discussion of how the  
14 provision of the land and services relate to  
15 the intention of the recently passed  
16 inclusionary zoning regulations.

17           OP will also work with the  
18 community and the Applicant to address any  
19 community issues and to insure that the  
20 benefits package is commensurate with the  
21 requested flexibility should you set it down.

22           That concludes our report. I'd be

1 happy to answer any questions.

2 VICE CHAIRMAN HOOD: Okay. Those  
3 of us remaining, any questions for Mr.  
4 Cochran?

5 Mr. Turnbull.

6 COMMISSIONER TURNBULL: Thank you,  
7 Mr. Chairman.

8 Mr. Cochran, you've noted a lot of  
9 things that you wanted to clarify with the  
10 Applicant. But there's some very confusing,  
11 the whole loading dock service area is a very  
12 touchy thing. I mean, it's very difficult to  
13 be able to service the SRO up in front. And  
14 that they're looking to off load from the  
15 street, I guess, too.

16 But the other thing that is  
17 troubling with me is the parking.

18 Do I understand that you get to  
19 the parking through this planned Highland Park  
20 Building? How do you get to the parking  
21 garage?

22 MR. COCHRAN: Actually, the

1 Applicant for this project is also Donatelli  
2 but just under a different name.

3 The parking garages will be  
4 connected. They will be entered through a  
5 common entrance off of the alley to the south  
6 of the project.

7 COMMISSIONER TURNBULL: So, is  
8 this project falling on the tails of the other  
9 one?

10 MR. COCHRAN: Yes. It is. The  
11 other one is almost finished.

12 COMMISSIONER TURNBULL: So, there  
13 will be an opening going from the one to the  
14 other?

15 MR. COCHRAN: Correct.

16 COMMISSIONER TURNBULL: What about  
17 -- is there any sustainable item? Sustainable  
18 design features on the condos or I didn't  
19 really see any green roof or anything that  
20 really detailed what was happening?

21 MR. COCHRAN: We have asked for  
22 additional information on that.

1                   COMMISSIONER TURNBULL:   Okay.   I  
2   guess, you know, one of the things, we've been  
3   kind of spoiled by a few presentations that  
4   have either aerial views or photographs that  
5   actually show this site a little bit better.  
6   I mean, other than the only aerial view we saw  
7   was in our report.   The Applicant really  
8   didn't really show us anything that really  
9   show the context of how this thing is fitting  
10   in.   And I would like if you could ask them to  
11   give us something a little bit more contextual  
12   to the street and the alley and the patters of  
13   what's happening there.   It's a little bit --  
14   it's a little difficult to see on some of  
15   these things on some of the black and white  
16   drawings.

17                   MR. COCHRAN:   Certainly.   I'll do  
18   that.

19                   COMMISSIONER TURNBULL:   And if we  
20   could get some renderings of color that would  
21   show the materials and what they're looking to  
22   actually --

1 MR. COCHRAN: Oh, of course. I'm  
2 sure they'll --

3 COMMISSIONER TURNBULL: -- doing  
4 that?

5 Okay. Thank you.

6 VICE CHAIRMAN HOOD: Any other  
7 questions?

8 Mr. Parsons?

9 COMMISSIONER PARSONS: This looks  
10 like a real good project from a design  
11 standpoint and the benefits and so forth.

12 I agree with Mr. Turnbull that I  
13 can't wait to see better renderings and  
14 contextual stuff.

15 I'm concerned about the term SRO  
16 because it doesn't exist. And the fact that  
17 you repeated in your report as though it means  
18 something. I mean, this is a CBRF, don't you  
19 agree?

20 MR. COCHRAN: Yes, sir.

21 COMMISSIONER PARSONS: In our  
22 terms. So, I just caution against the term of

1 -- introducing a new term by - -

2 MR. COCHRAN: That's why I was  
3 going to combine the two terms in --

4 COMMISSIONER PARSONS: SRO slash?

5 MR. COCHRAN: Yes.

6 COMMISSIONER PARSONS: I'm looking  
7 to get rid of the slash.

8 MR. COCHRAN: Okay.

9 COMMISSIONER PARSONS: Thank you.

10 VICE CHAIRMAN HOOD: Mr. Cochran  
11 I, too, had the same concern, but I'll take it  
12 a little step further.

13 In this PUD it appears as though  
14 -- I don't know if they spell it out as an  
15 amenity. I was going to call it, the CBRF  
16 part of it. And I guess my issue is if that  
17 does not happen for the sake of discussion now  
18 the CBRF does not happen, I understand from  
19 the submittals that there are a certain amount  
20 of trails that exist now. And I'm not sure  
21 how that will be a benefit to the  
22 neighborhood. But if that building does not

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1 go forward, then what happens? And I guess  
2 that's kind of where I am if we get to the  
3 hearing portion.

4 MR. COCHRAN: Sir, there would be  
5 the obvious physical impact. I agree with Mr.  
6 Parsons that this is a very well designed  
7 building. In fact, I think it could well be  
8 one of the best buildings of the last few  
9 years if it gets built as it appears to be.

10 But it won't -- the design won't  
11 be as good if all three parts of basically  
12 tripartite structure don't get built. So,  
13 that's one impact if the CBRF were not built.

14 However, with respect to the  
15 community amenities package, the Applicant has  
16 been very careful to say that they're not  
17 proffering the CBRF as their community  
18 benefit. That's something the District will  
19 build and we've asked them to provide more  
20 information about how that's being worked n  
21 the District budget.

22 What the Applicant is proffering

1 is the dedication of the land and the  
2 provision of the legal fees, the design fees,  
3 etcetera, to get the CBRF to the point of  
4 being able to be built to the zoning approval,  
5 etcetera.

6 So, they were very careful to make  
7 that distinction. We've asked for more  
8 information about the financial arrangements,  
9 so that we can feel more comfortable that what  
10 they're actually proffering in terms of the  
11 dedication of the land, etcetera, actually  
12 constitutes a benefit commensurate with the  
13 relief being requested.

14 VICE CHAIRMAN HOOD: Okay. Thank  
15 you, Mr. Cochran.

16 Any other questions of Mr.  
17 Cochran?

18 Colleagues, with that, I will move  
19 that we set down Zoning Commission Case No.  
20 07-02 and ask for a second.

21 COMMISSIONER PARSONS: Second.

22 VICE CHAIRMAN HOOD: It's moved

1 and seconded.

2 All those in favor?

3 (AYES)

4 VICE CHAIRMAN HOOD: Any  
5 opposition?

6 Staff, would you record the vote?

7 Thank you, Mr. Cochran.

8 SECRETARY SCHELLIN: Yes. The  
9 staff would record the vote three to zero to  
10 two to set down Zoning Commission Case No. 07-  
11 02.

12 Commissioner Hood moving,  
13 Commissioner Parsons seconding, Commissioner  
14 Turnbull in favor, Commissioners Jeffries and  
15 Mitten not voting, having recused themselves.

16 And this just to state on the  
17 record will be a contested case.

18 CHAIRPERSON MITTEN: Thank you,  
19 Mrs. Schellin and thank you, Mr. Hood.

20 CHAIRPERSON MITTEN: Next under  
21 hearing action is Case No. 07-07 and this is  
22 the Broadcast Center Partners, PUD.

1 Mr. Parker.

2 MR. PARKER: Good evening, Madam  
3 Chairman, Members of the Commission.

4 My name is Travis Parker with the  
5 Office of Planning.

6 The PUD before you in this  
7 application is a request for a mixed use of  
8 building totalling 90 feet and a little over  
9 300,000 square feet. A good portion of that  
10 will be office decided to the Radio 1  
11 headquarters which will be brought back into  
12 the District as part of this application.

13 Office would total about 100,000  
14 square feet of the project. About double that  
15 will be a residential component on the north  
16 side of the project. And to step back, this  
17 is a site located on top of the Howard  
18 University Shaw Metro Station on 7th Street,  
19 between S and T.

20 The total project weighs in at  
21 about 6.3 FAR of which 2.5 will be  
22 nonresidential FAR.

1           As noted in my report, the project  
2           is now on a C2B lot. The C2B PUD standards  
3           allow up to a 2.0 for nonresidential. So,  
4           either the Commission will have to waive that  
5           standard or in the alternative, OP has  
6           recommended a map amendment, a PUD-related map  
7           amendment to C2C, which would accommodate that  
8           change without allowing additional FAR height  
9           above the 90 or 6.3.

10           In addition to FAR and height  
11           relief, the application seeks relief for roof  
12           structures, for lot occupancy and for loading.

13           The amenities being offered by the  
14           project include affordable housing which will  
15           total about 25 percent of the project, 10 or  
16           that at 31 to 50 percent of AMI. Five of that  
17           at 51 to 80 and 10 percent at 81 to 120 of  
18           AMI.

19           The project is also including  
20           green building elements. They have worked  
21           significantly with the Office of Planning and  
22           HPRB on their site design which is considered

1 an amenity.

2 They are offering approximately  
3 600,000 in neighborhood contributions, 250 for  
4 neighborhood scholarships and 350 for a  
5 community fund for neighborhood improvements.  
6 And, in addition, they're offering first  
7 source agreement in LSDBE.

8 The Applicant has worked closely  
9 with the Office of Planning as well to insure  
10 that the application is consistent with the  
11 comp plan, with the Duke plan and with the  
12 convention center strategic area plan. And we  
13 feel that they have met those goals and  
14 reached consistency with all three of those  
15 plans.

16 Prior to public hearing we would  
17 recommend more detailed descriptions and firm  
18 commitments on the green building and the  
19 contributions. The contributions should be  
20 obviously more firmed up and tangible benefits  
21 as well as the green building design exactly  
22 what elements are being offered.

1                   But with those two clarifications,  
2 we recommend that the application be set down  
3 for public hearing.

4                   CHAIRPERSON MITTEN:     Thank you,  
5 Mr. Parker.

6                   Questions or comments?

7                   Mr. Jeffries.

8                   COMMISSIONER JEFFRIES:       Madam  
9 Chair, I'm not going to --

10                  CHAIRPERSON MITTEN:     Okay.

11                  COMMISSIONER JEFFRIES:     -- be  
12 participating in this one. This is not my  
13 night.

14                  CHAIRPERSON MITTEN:     Okay.

15                  Anyone else, questions or comments  
16 for Mr. Parker?

17                  COMMISSIONER TURNBULL:    Madam  
18 Chair.

19                  CHAIRPERSON MITTEN:     Mr. Turnbull.

20                  COMMISSIONER TURNBULL:    Thank you.

21                  Mr. Parker, this is a very unique  
22 mix. This is a building that with the

1 existing buildings being contained into it.  
2 It's kind of fascinating that they're doing  
3 that. I think that it's going to work.

4 And I share your -- you talked  
5 about the LEED design and I was quickly trying  
6 to scan the new plans. And, I guess, what I  
7 hope is that when we get the plans for the  
8 hearing that the roof design will be better  
9 laid out because now in these plans I see more  
10 units being placed on the roof and so there's  
11 going to be less green. So, I'm hoping you  
12 can work with them and try to encourage as  
13 much as we can get on that.

14 MR. PARKER: Yes. To your first  
15 point, the Applicant has worked very closely  
16 with HPRB and a lot of the amenity in terms of  
17 site design has been incorporating the  
18 existing historic buildings into this lot. I  
19 know that wasn't a part of the original  
20 thought process. And they've come a very long  
21 way to save these historic buildings and  
22 incorporate them into the design.

1                   And to the second part,  
2 absolutely, I'll be working with the Applicant  
3 to have some more clarification on green  
4 building elements prior to the hearing.

5                   COMMISSIONER TURNBULL: No. I  
6 think that this is an excellent example where  
7 the new building is morphing out of the  
8 existing ones. I think that's a very big  
9 plus. I think that's really nice.

10                   I guess the only other things is  
11 as I'm looking at it. Everything is coming  
12 into the alley.

13                   MR. PARKER: Correct.

14                   COMMISSIONER TURNBULL: The  
15 loading and I would hope that we could get  
16 some turning diagrams or some analysis of  
17 trucks to make sure we can get a level of  
18 comfort that the alleys can handle everything  
19 in there?

20                   MR. PARKER: Absolutely.

21                   COMMISSIONER TURNBULL: And then  
22 you're going to be working with them on the

1 amenity -- refining the amenity package?

2 Okay.

3 Those are my questions.

4 CHAIRPERSON MITTEN: Anyone else?

5 Mr. Parsons?

6 COMMISSIONER PARSONS: Well, like  
7 the last case, the elevations in the drawings  
8 seem very intriguing. I think this is a good  
9 project that I can't wait to see more.

10 I'm worried about the roof plan  
11 like Mr. Turnbull and what it does is to place  
12 the air conditioning units -- I'm trying to  
13 find it now. Air conditioning units on the  
14 roof as I grasp it for the individual  
15 residential units.

16 Is that what's going on there?  
17 I'm looking at A21 -- 213. And they take an  
18 enormous amount of space.

19 MR. PARKER: Is that in the  
20 original filing or in the supplemental?

21 COMMISSIONER PARSONS: It's in the  
22 supplemental. What I'm fearful of is, you

1 know, we'll come back and say, well, gee.  
2 That's what it takes and --

3 MR. PARKER: We haven't had that  
4 discussion with the Applicant yet but I'm  
5 happy to do that and we'll try and get some  
6 more information.

7 COMMISSIONER PARSONS: I don't  
8 know if these could be clustered more  
9 efficiently or not. But to get a -- one  
10 section of the roof says gravel or grass.  
11 That's halfway to green, I guess.

12 Anyway, I wanted to just comment  
13 on Mr. Turnbull's point.

14 Thank you.

15 CHAIRPERSON MITTEN: Mr. Parker,  
16 do you happen to know will they need to have  
17 antennas on the roof because of their radio  
18 operation?

19 MR. PARKER: That hasn't been  
20 addressed yet, but I will find out prior to  
21 hearing.

22 CHAIRPERSON MITTEN: I don't know

1       how all these things work, but it seems like  
2       something they might have.

3                   MR. PARKER:     Satellite dishes,  
4       etcetera.

5                   CHAIRPERSON MITTEN:    Yes.

6                   I appreciate the focus that you're  
7       trying to bring to the amenities and  
8       specifically, you know, this CDI fund that's  
9       described in Exhibit D is just one of those,  
10      you know, give this bucket of money to the  
11      community and, you know, they'll use it for  
12      some good stuff. And, you know, I just really  
13      want to get away from that. So, if you can  
14      get that focused, that would be good.

15                  And I can't help but comment on  
16      the fact that the MOU in Exhibit D which  
17      purports to buying Radio I. Radio I is not  
18      signatory on the agreement so I thought that  
19      was interesting.

20                  Not that's it's really here nor  
21      there for us, but I know also and maybe the  
22      new set of plans will help with this. But the

1 Metro Plaza seemed pretty stark and I don't  
2 know if there is something that could be done  
3 with different kind of paving or some  
4 landscaping, but it looks awfully plain. And  
5 so if anything can be done to enhance that, I  
6 would appreciate it.

7 And then you noted, Mr. Parker, in  
8 the setdown report and the deals with it in  
9 part on page 12, they talk about the fact that  
10 the Commission has the discretion to permit an  
11 additional five percent which in this case is  
12 the 1.3 FAR to the density and then they're  
13 asking for that. And then they're asking us  
14 to increase the commercial allotment from 2.0  
15 to 2.5. And I'm glad that you're -- that you  
16 have proposed the alternative map amendment to  
17 deal with that.

18 But then they proceed to explain  
19 why they need the additional commercial  
20 density and don't say anything about meeting  
21 the standard for the additional five percent.  
22 So, we need to have that addressed also.

1           And I have been told that the  
2 Applicant agrees with your recommendation to  
3 advertise the PUD-related map amendment to  
4 RC2C and the alternative, which we would need  
5 their cooperation to do that.

6           Any other comments or questions?

7           Then I would move that we set Case  
8 No. 07-07 down for a hearing and advertise a  
9 PUD-related map amendment to RC2C in the  
10 alternative.

11           COMMISSIONER TURNBULL: Second.

12           CHAIRPERSON MITTEN: Any further  
13 discussion?

14           CHAIRPERSON MITTEN: All those in  
15 favor, please say aye.

16           (AYES)

17           CHAIRPERSON MITTEN: Those  
18 opposed, please say no.

19           Mrs. Schellin.

20           SECRETARY SCHELLIN: The staff  
21 would record the vote four to zero to one to  
22 set down Zoning Commission Case No. 07-07.

1                   Commissioner       Mitten       moving,  
2       Commissioner Turnbull seconding, Commissioners  
3       Hood and Parsons in favor.   And Commissioner  
4       Jeffries not voting, having recused himself  
5       and this too is set down as a contested case.

6                   CHAIRPERSON MITTEN:   Yes.   Thank  
7       you.

8                   Okay.       Now   we're   ready   for  
9       Proposed Action and the first case under  
10      Proposed Action is Case No. 06-33.

11                  And we had gotten some additional  
12      submissions on this and I think some of them  
13      we need to reopen the record for.   So, I would  
14      move that we reopen the record to receive all  
15      of the additional submissions that we received  
16      in Case No. 06-33.

17                  COMMISSIONER PARSONS:   Second.

18                  CHAIRPERSON       MITTEN:            Any  
19      discussion?

20                  All those in favor, please say  
21      aye.

22                  (AYES)

1 CHAIRPERSON MITTEN: Those  
2 opposed, please say no.

3 Mrs. Schellin.

4 SECRETARY SCHELLIN: Yes. The  
5 staff would record the vote five to zero to  
6 zero to reopen the record in Zoning Commission  
7 Case 06-33 to accept all additional filings.

8 Commissioner Mitten moving,  
9 Commissioner Parsons seconding, Commissioners  
10 Hood, Jeffries and Turnbull in favor.

11 CHAIRPERSON MITTEN: Thank you.

12 Now, we have for our own  
13 consumption a memo from the Office of the  
14 Attorney General regarding the, I guess, the  
15 status of the Office of Planning's  
16 recommendations to us as well as comments on  
17 the legal sufficiency of some of the  
18 alternatives that have been proposed.

19 And just to deal with the  
20 alternatives first, the alternative that would  
21 give the Zoning Administrator a great deal of  
22 discretion in making the decision about

1 parking for the historic buildings exceeds the  
2 power that the Zoning Administrator really  
3 should have. And so we've been advised by the  
4 OAG that that's not a legally sufficient  
5 alternative.

6 And then the second is something  
7 that we need to decide about which is whether  
8 or not the exemption for any parking  
9 requirement would extend to the entire lot of  
10 just the resource and any additions thereto.

11 I did want to ask a couple of  
12 questions of the Office of Planning though.  
13 Because the first one, this relates to a  
14 matter that came up in another case. And what  
15 would now be numbered 2120.3 where it says  
16 that the -- and this is nothing new. But the  
17 requirement -- the exemption would be from any  
18 requirement to provide parking in excess of  
19 that which existed.

20 So, do you have any suggestions on  
21 how that could be determined because in one  
22 case which is very much on my mind, it's

1 always clear about the amount of parking that  
2 exists.

3 Do you have any suggestions about  
4 how to calculate that?

5 MR. PARKER: Well, this is -- I  
6 think this is slightly different than what  
7 you're talking about. I think the wording  
8 here has to do with the actual amount that  
9 exists.

10 CHAIRPERSON MITTEN: Right. And  
11 how does one determine how much parking  
12 exists, for instance, in a case where the  
13 parking isn't striped?

14 MR. PARKER: Oh, I see. I see.

15 That isn't addressed by these  
16 proposed changes. That's at the discretion of  
17 the Zoning Administrator as of now.

18 I think that's a larger issue than  
19 just necessarily historic buildings, but  
20 something would -- certainly could use some  
21 more clarification.

22 MR. BERGSTEIN: Although if I may

1 crime in. It would be the burden of the  
2 person seeking the exemption demonstrate what  
3 the amount of parking was that existed as of  
4 the date that either the building was  
5 landmarked or historic district was created,  
6 not the Zoning Administrator.

7 CHAIRPERSON MITTEN: I understand,  
8 but sometimes there's a difference of opinion.

9 MR. BERGSTEIN: I don't see where  
10 that should be the case, might have said not  
11 legally. But this would be an Applicant to --  
12 is trying to demonstrate that a matter of  
13 right use may have less the amount of parking  
14 that's otherwise required. So, I don't know  
15 why it would not be that Applicant that would  
16 have the burden to demonstrate to the Zoning  
17 Administrator's satisfaction that both the  
18 exemption should apply and what the benchmark  
19 figure should have been.

20 CHAIRPERSON MITTEN: Okay. The  
21 other question is in 2120.5, what would now be  
22 2120.5.

1           It says in the third sentence,  
2 durable materials that are all-weather and  
3 impervious shall be used. And we had, you  
4 know, in another case we tried to relieve the  
5 requirement for requiring impervious surfaces.

6           MR. PARKER: That actually refers  
7 to just the striping itself. The striping  
8 must be impervious.

9           CHAIRPERSON MITTEN: Oh. Oh,  
10 okay.

11          MR. PARKER: Durable stripes.

12          CHAIRPERSON MITTEN: That's a good  
13 thing. Okay. We just need to clarify that.

14          COMMISSIONER PARSONS: You know,  
15 think about that. So, if you had a pervious  
16 pavement, you go tot apply something that's  
17 absolutely impervious to the top of it to  
18 stripe it?

19          MR. PARKER: That's an interesting  
20 question. I mean, this is pulled from the  
21 existing language now and wasn't changed with  
22 the past text amendment because, like it said,

1 it just refers to the striping itself.

2 But, I don't actually know if  
3 there are tests for the pervious nature of  
4 paint or whatever is used to stripe parking  
5 lots.

6 COMMISSIONER PARSONS: We'd  
7 certainly hate to get into a situation where  
8 they had to come in with special pavement  
9 underneath the stripes to make sure it's  
10 impervious. We don't need that, do we?

11 MR. PARKER: That's true.

12 COMMISSIONER PARSONS: Special  
13 machinery.

14 MR. PARKER: I'm sure we could  
15 take out the word impervious and just use  
16 durable materials that are all-weather shall  
17 be used.

18 COMMISSIONER PARSONS: Yes. That  
19 sounds better to me.

20 CHAIRPERSON MITTEN: Let's do  
21 that.

22 Okay. So, that third sentence now

1 reads durable materials that are all-weather  
2 shall be used.

3 I also wanted to, again because of  
4 some recent experiences, add -- well, first I  
5 did want to clarify.

6 Do we have all of the sections,  
7 the sub-sections in 2120.6 because in the  
8 changes it now starts with (c), little (c).  
9 Should that start with (a) or are we missing  
10 (a) and (b)?

11 MR. BERGSTEIN: No. That's a  
12 renumbering issue. Should start with (a).

13 CHAIRPERSON MITTEN: Okay. Then  
14 one point that I'd like to add to that section  
15 is that the relief granted shall be in  
16 proportion to the difficulty created. I don't  
17 know how to say it, but one of the things that  
18 sometimes gets lost at the BZA is  
19 proportionality of relief.

20 So, sometimes just because they  
21 can't provide all the parking that's required,  
22 somebody doesn't need a full exemption,

1 wouldn't need a full exemption under those.  
2 They might just need partial relief. So, I'd  
3 like to capture the notion of proportionality.  
4 And I'm sure that the Office of the Attorney  
5 General can draft something suitable.

6 MR. BERGSTEIN: Couldn't we just  
7 say something like the relief shall be no  
8 greater than the extent necessary to remove  
9 the practical difficulty found or something  
10 like that?

11 CHAIRPERSON MITTEN: That sounds  
12 great.

13 MR. BERGSTEIN: Okay.

14 CHAIRPERSON MITTEN: Anyone else?  
15 Comments?

16 VICE CHAIRMAN HOOD: Just take a  
17 moment, Madam Chair.

18 CHAIRPERSON MITTEN: Well, on  
19 anything related to the language that -- the  
20 proposed language as it's presented in the OAG  
21 memo related -- the OAG memo dated April 3rd?

22 VICE CHAIRMAN HOOD: Well, maybe I

1 have a question then.

2 CHAIRPERSON MITTEN: Sure.

3 VICE CHAIRMAN HOOD: Because one  
4 thing I found very disturbing and maybe it's  
5 in here and I just cannot identify. Maybe  
6 it's hidden.

7 But in the Office of Planning's  
8 memorandum dated March 2nd, 2007, where it  
9 says proposed changes and it says requirements  
10 of exemption. I don't see it exactly spelled  
11 out in the text, but it mentions about -- let  
12 me see. To historic resources it's too  
13 complicated to codify and should be left to  
14 the discretion of some combination of historic  
15 preservation, Office of Planning and the  
16 Zoning Administrator.

17 Now, I think we're trying to make  
18 things predictable but I'm just trying to  
19 figure out how that's going to work. I didn't  
20 see in the language. Maybe it was omitted for  
21 a particular reason. Maybe it was meant to be  
22 left out. But I think that's a number of

1 steps and maybe all this works together.  
2 Maybe I'm just not familiar with it. But that  
3 kind of concerned me when I looked that you  
4 had to deal with three different people. I'm  
5 sure they all work in harmony and that's not  
6 an issue. But is that addressed here or was  
7 that left out purposely?

8 CHAIRPERSON MITTEN: That was the  
9 first alternative proposal which is that with  
10 input from these other agencies, that the  
11 Zoning Administrator would have the authority  
12 to exercise his discretion to determine --  
13 that he or she would have to give great weight  
14 to the Office of Planning and -- yes. That's  
15 in alternative proposal number 1 in their  
16 March 12th memo to the Commission.

17 So, I think your point is well  
18 taken which is that that would be problematic  
19 and that's why -- in part, why I think the  
20 Office of Planning hasn't advocated for it and  
21 then Mr. Bergstein in his memo advised us that  
22 that amount of discretion is not legally

1       afforded to the Zoning Administrator.

2                   VICE CHAIRMAN HOOD:   Okay.   Good.  
3       Okay.   Thank you.

4                   CHAIRPERSON MITTEN:   Anyone else?  
5       Comments?   Questions?   Okay.

6                   Then I move approval of the text  
7       as presented in the OAG memo of April 3rd in  
8       Case No. 06-33 with the modification to the  
9       third sentence in 2120.5 and with an  
10      additional letter will become (e) in Section  
11      2120.6 addressing the issue of proportionality  
12      as Mr. Bergstein had -- that kind of language  
13      that he had described in response to my  
14      request and ask for a second.

15                   COMMISSIONER TURNBULL:   Second.

16                   CHAIRPERSON MITTEN:   Thank you,  
17      Mr. Turnbull.

18                   Any further discussion?

19                   Then all those in favor, please  
20      say aye.

21                   (AYES)

22                   CHAIRPERSON MITTEN:   Those opposed

1 please say no.

2 Mrs. Schellin.

3 SECRETARY SCHELLIN: Staff would  
4 record the vote five to zero to zero to  
5 approve proposed action in Zoning Commission  
6 Case No. 06-33 as discussed.

7 Commissioner Mitten moving,  
8 Commissioner Turnbull seconding, Commissioners  
9 Hood, Jeffries and Parsons in favor.

10 CHAIRPERSON MITTEN: Thank you.

11 Okay. The next case under  
12 Proposed Action is Case No. 05-38 and this is  
13 the Marina View Towers PUD.

14 And just to give a little summary,  
15 this was a request for a PUD-related map  
16 amendment from R5D to C3C and the additional  
17 -- the zoning change was really to allow for  
18 the mix of uses and the height. The density  
19 is within the PUD guidelines for R5D.

20 The proposal would include the  
21 renovation of two existing I.M. Pei design  
22 towers and then there would be two additional

1 towers that would be built. And the total  
2 unit count would be between 540 and 570 units  
3 that would be available for both -- well, in  
4 different buildings, of course, for sale and  
5 rental.

6 There would be ground floor retail  
7 space at 6th and M Street across from Arena  
8 Stage. The new towers would have a height of  
9 112 feet, the existing towers 90 feet and if  
10 you recall they had originally proposed higher  
11 at setdown required that those be reduced in  
12 height. The total number of vehicular parking  
13 spaces would be 573 and the total number of  
14 bicycle parking spaces would be 565.

15 The flexibility that was being  
16 requested in addition to the PUD-related map  
17 amendment was to allow multiple buildings on  
18 a single lot and some flexibility regarding  
19 the requirements for loading.

20 The amenities and benefits --  
21 among the amenities and benefits are new  
22 housing including new work force housing to

1 the extent of 11,500 square feet. There's a  
2 proffer to discount the rent and sale prices  
3 for the existing tenants. They would improve  
4 the landscaping and open spaces including the  
5 Great Lawn, the vest pocket parks and the  
6 public garden along 6th Street.

7 They would implement a  
8 transportation demand management program, have  
9 green design features and make contributions  
10 to various local institutions.

11 The ANC voted to support the  
12 proposal with conditions. The conditions that  
13 are pertinent to the Zoning Commission are  
14 related to the setback. They wanted two  
15 things. One, that the setback would be the  
16 same as the waterfront development next door.  
17 And, secondly, that it be no less than 22 feet  
18 from the curb line. And then the other issues  
19 that the ANC had raised related to DCRA  
20 enforcement issues that are beyond the purview  
21 of the Commission. And then there was  
22 opposition from various groups including the

1 Tiber Island Cooperative. They're concerned  
2 that the towers, the new towers would block  
3 their views and they actually advocated for  
4 taller buildings with a small footprint so  
5 that they could see around the buildings. And  
6 they also advocated for a setback along M  
7 Street to 22 feet.

8 Some tenants were concerned about  
9 the buy-out amenity being offered. They did  
10 not want to relocate from the units in which  
11 they currently reside. And then there were  
12 some other issues that related to matters that  
13 are within the purview of DCRA and not the  
14 Commission.

15 TENAC testified that the PUD in  
16 short -- they testified that the PUD is  
17 facilitating the loss of rent controlled  
18 apartments. And then Terry Lunch from the  
19 downtown cluster congregation suggested that  
20 the benefits and the amenities are not  
21 exemplary as they relate to the existing  
22 residents. And he raised other issues related

1 to long-term affordability.

2 Do we have anything that we need  
3 to reopen the record for?

4 SECRETARY SCHELLIN: Yes. Exhibit  
5 Number 70, which was the TENAC media --

6 CHAIRPERSON MITTEN: Okay.

7 SECRETARY SCHELLIN: -- release  
8 came in on March 20th. The record was open  
9 until March 12th for specific requests only.

10 CHAIRPERSON MITTEN: Okay. Unless  
11 someone wants to reopen the record, although  
12 I'd love to have it in the record that I'm  
13 gracious and competent, I don't think is  
14 something that's appropriately in the record  
15 given that it's closed.

16 VICE CHAIRMAN HOOD: You need to  
17 finish the sentence, Madam --

18 CHAIRPERSON MITTEN: It's not in  
19 the record. We don't have to really get into  
20 that.

21 Okay. And then we had asked -- we  
22 had asked the address a few additional

1 concerns. And they did so in a March 12th  
2 submission. So, the Commission -- and so they  
3 solidified their LEED commitment in terms of  
4 quantifying it in terms of the number of  
5 points.

6 They described the discount  
7 purchase program and a little more detail  
8 including the -- the requirement that the  
9 participants in that program would not be able  
10 to sell their units for a period of two years  
11 after the date of the certificate of occupancy  
12 was issued for their particular unit. And  
13 this was towards gauging whether or not they  
14 are really insuring long-term affordability or  
15 to what extent.

16 And then they also addressed the  
17 issue of if they didn't get the kind of  
18 participation from the current tenants in  
19 either the discounted purchase program or the  
20 subsidized rental program, they proffered that  
21 they'll increase the amount of work force  
22 housing to 16,000 square feet. That's if they

1 don't achieve at least 80 participants in  
2 those two programs.

3 They discussed in a little bit  
4 more detail the options that are available to  
5 them in terms of renovating the building and  
6 raising the rents and that's how they valued  
7 the amenity that's being proffered regarding  
8 the discounting to the existing residents.

9 They addressed the concern that we  
10 raised about whether or not they really needed  
11 all the parking spaces. They proffered a  
12 phasing plan and they have given us a lot of  
13 detail about the -- what do I want to say,  
14 design considerations that would govern the  
15 lighting program for the property. And then  
16 finally, they addressed the issue of the  
17 setback along M Street.

18 So, with that overview, open it up  
19 to Commissioner comments.

20 Mr. Parsons.

21 COMMISSIONER PARSONS: Just to let  
22 you know that I've reviewed the record in this

1 matter and ready to participate.

2 CHAIRPERSON MITTEN: Thank you.  
3 And, Mr. Jeffries, you -- not to single you  
4 out but just to clarify.

5 COMMISSIONER JEFFRIES: Well, I  
6 did not read the transcript. I read the  
7 application, but I will not participate.

8 CHAIRPERSON MITTEN: Okay. Thank  
9 you.

10 Well, I think my concerns have  
11 been addressed. The one thing that I would  
12 just like to add to the phasing plan is that,  
13 and this is just to insure that the amenities  
14 and benefits sort of track or are delivered  
15 consistently with the additional development  
16 flexibility that's being requested. Is I  
17 would add -- and you'll notice that even  
18 though they have a phasing plan, they're  
19 really just saying, we draw one permit and we  
20 have to finish in seven years. Or we have to  
21 hold final building permit within seven years.  
22 And what happens in between is really not

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1 being very well defined, even though they've  
2 suggested the way that it would proceed.

3 So, what I would like to suggest  
4 is that we add a provision that the CFO for  
5 the first new tower not be issued without  
6 substantial completion of the vest pocket  
7 parks, the concession pavilions, the amenities  
8 building, the landscaping for the Great Lawn,  
9 the tree relocation and the curb and sidewalk  
10 improvements along 6th and M Street, which is  
11 just -- it's consistent with what they said  
12 would be delivered in phase 2. It just makes  
13 it a requirement.

14 Anyone else?

15 VICE CHAIRMAN HOOD: Yes, Madam  
16 Chair.

17 CHAIRPERSON MITTEN: Mr. Hood.

18 VICE CHAIRMAN HOOD: Yes, Madam  
19 Chair. I'm sorry, I should have probably  
20 picked this up earlier. But in reviewing, I  
21 saw one of the amenities study of potential  
22 renovation of Town Center West Park. I just

1 have a problem with a study. Because what  
2 happens when we study. I mean, I don't see  
3 any potential benefit other than the study. We  
4 may study for the sake of a dollar amount, but  
5 we get nothing out of it. And then we come  
6 back 10 years and study again.

7 So, I don't know. Maybe we can  
8 ask them for final -- a relook at that if  
9 anyone else feels that way besides me.  
10 Obviously not.

11 CHAIRPERSON MITTEN: Well, just to  
12 remind everyone and I don't know. I'm not  
13 opposed to having them address that. But  
14 that's an off site -- that's an off site park  
15 that I think it's too preliminary for them to  
16 make a larger commitment at this point in  
17 time, if I recall the discussion.

18 So, they're saying well, there  
19 needs to be a study before anything can go  
20 forward and so we're going to fund this study.  
21 But your point is well taken. It might not  
22 lead anywhere, but nothing will happen for

1 that park if it's not studied first. I guess  
2 that's what they're --

3 VICE CHAIRMAN HOOD: If everyone  
4 else may agree with me. I would just like for  
5 them to do something tangible.

6 CHAIRPERSON MITTEN: Okay.

7 VICE CHAIRMAN HOOD: Because a  
8 study, leads to a study, and a study and a  
9 study and nothing ever happens. But maybe  
10 this is a jump start, I don't know. But I  
11 would just like to revisit that.

12 Sorry I didn't catch that during  
13 the hearing.

14 CHAIRPERSON MITTEN: Okay. Anyone  
15 else?

16 I would like to just specifically  
17 deal with the issue raised by the ANC.

18 One is that this project should  
19 have the same setback was Waterfront and we  
20 heard testimony from David Smith from Forest  
21 City that Waterfront would be amenable to  
22 aligning the face of their buildings to be

1 consistent with this, because I think there's  
2 a little bit of disconnect right now.

3 And then we had in the original  
4 submission starting on page 7, we had some  
5 further discussion from the Applicant about  
6 the relatively small additional setback that  
7 is being requested to 22 feet, which is really  
8 the 22 feet is really being driven by where  
9 Waterfront is. And there's, I think, ample  
10 evidence in the record why having the  
11 additional setback doesn't really accomplish  
12 much as it relates to M Street. But has a  
13 more significant impact on the balance of the  
14 project, specifically, the size or the width  
15 of the vest pocket park. So, I'm not  
16 persuaded that there's anything to be gained  
17 and there is definitely something to be lost  
18 by the additional setback to 22 feet.

19 COMMISSIONER TURNBULL: I would  
20 agree with you, Madam Chair.

21 CHAIRPERSON MITTEN: All right.  
22 Then with that, I'm going to move approval of

1 Case No. 05-38 with the addition regarding the  
2 phasing that I had read into the record and  
3 ask for a second.

4 It's lonely at times like this.  
5 It's so lonely.

6 Can I get a second or not?

7 COMMISSIONER TURNBULL: Second.

8 CHAIRPERSON MITTEN: Thank you,  
9 Mr. Turnbull.

10 COMMISSIONER PARSONS: Madam  
11 Chair, I wanted to go back to Mr. Hood's  
12 point.

13 CHAIRPERSON MITTEN: Okay.

14 VICE CHAIRMAN HOOD: He's fighting  
15 the second.

16 COMMISSIONER PARSONS: Well, I'm  
17 on page 21 of the proposed findings.

18 CHAIRPERSON MITTEN: Okay.

19 COMMISSIONER PARSONS: Border, if  
20 you will.

21 And here this study of the Town  
22 Center West Park they are committing up to

1 \$15,000. In my experience, you can't get  
2 anybody started for \$15,000.

3 Was there anything in the record  
4 that said that Wallace, Roberts and Todd is  
5 willing to do this for \$15,000? Because what  
6 are we -- what are we counting on here when  
7 they say, do you know what the cost of a train  
8 is to get down here from Philadelphia? I  
9 can't do that.

10 I mean, are we assured this is  
11 going to be done?

12 CHAIRPERSON MITTEN: I don't  
13 recall any discussion other than -

14 COMMISSIONER PARSONS: I don't  
15 either.

16 CHAIRPERSON MITTEN: -- them just  
17 -- them saying that they're -- that that's a  
18 proffer that they're making. I don't recall  
19 anymore discussion than that.

20 COMMISSIONER PARSONS: Well, I'd  
21 like to insert -- well, I guess it's not a  
22 condition, is it?

1 CHAIRPERSON MITTEN: No. It's a  
2 proffer.

3 COMMISSIONER PARSONS: I wanted to  
4 insert something at a minimum of \$15,000.  
5 It's either going to be done or it's not.

6 CHAIRPERSON MITTEN: Well, why  
7 don't we ask. Before final action, why don't  
8 we reopen the record to have the Applicant  
9 address the concerns that you and Mr. Hood are  
10 raising, which is what can we expect to get  
11 for \$15,000? Is this actually going to  
12 advance the cause?

13 VICE CHAIRMAN HOOD: Maybe ask  
14 them to maybe revisit that.

15 COMMISSIONER PARSONS: Okay.

16 VICE CHAIRMAN HOOD: I can go for  
17 that.

18 CHAIRPERSON MITTEN: Okay.

19 VICE CHAIRMAN HOOD: Thank you.

20 CHAIRPERSON MITTEN: So, we'll  
21 reopen the record for that alone.

22 Anything else?

1 All right. Then I'd ask for all  
2 those in favor, please say aye.

3 (AYE)

4 CHAIRPERSON MITTEN: those  
5 opposed, please say no.

6 Mrs. Schellin.

7 SECRETARY SCHELLIN: Yes. The  
8 staff would record the vote four to zero to  
9 one to approve proposed action in Zoning  
10 Commission Case No. 05-38 with the addition of  
11 the phasing amendment.

12 Commissioner Mitten moving,  
13 Commissioner Turnbull seconding.  
14 Commissioners Hood and Parsons in favor,  
15 Commissioner Jeffries not voting, having not  
16 participated.

17 CHAIRPERSON MITTEN: Thank you.

18 Okay. Next under Proposed Action  
19 is Case No. 06-02 and this is the PUD at 4136  
20 Georgia Avenue, for Petworth Holdings, LLC.

21 And I would just note that  
22 inasmuch as the order regarding the

1 elimination of the residential recreation  
2 space requirement has been issued, the relief  
3 for the residential recreation space is no  
4 longer needed.

5 Just to review. This case  
6 includes a PUD-related map amendment from C2A  
7 to C3A and it's the site of a former gas  
8 station. And the proposal is for 57 apartment  
9 units with ground floor retail and a total  
10 density of 4.25 FAR and a height of 75 feet.

11 There are numerous areas of  
12 flexibility that the Applicant requested. One  
13 is a 30-foot loading berth rather than the 55-  
14 foot loading berth that's required for  
15 projects in excess of 50 units, that access to  
16 the loading will be over a private alley as  
17 opposed to the requirement for access  
18 exclusively over public space.

19 There's a number of things  
20 regarding the technical things in the parking  
21 garage. The grouping of compact parking  
22 spaces beginning the grade of the driveway at

1 the end of the sidewalk rather than at the  
2 property line and that drive aisles where  
3 they're required to be 20 feet, they would be  
4 narrower in one section.

5 They need flexibility regarding  
6 the minimum widths of two courts and they  
7 would like to count parking spaces in vault  
8 space towards their minimum requirement.

9 The amenities and benefits are  
10 housing -- new housing and new affordable  
11 housing. They're proffering four units at 80  
12 percent of AMI. There's environmental  
13 benefits being proffered. A green roof, bike  
14 parking, the selection of building materials,  
15 water-conserving landscaping and so on. First  
16 source and MOU for LSDBE, participating,  
17 contributions to Petworth Rec Center, Clark  
18 Elementary School and they've increased the  
19 amount in response to the concerns of the  
20 Commission. They've increased the amount of  
21 the contribution to Clark Elementary from  
22 \$50,000 to \$75,000 and they are making a

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1 \$30,000 contribution for store front  
2 enhancements along Georgia Avenue.

3 And there was no opposition to the  
4 case and the ANC was in support -- unqualified  
5 support.

6 Mr. Jeffries.

7 COMMISSIONER JEFFRIES: Yes.  
8 Well, Madam Chair, I guess I was the  
9 Commissioner who was sort of leading the  
10 charge around this whole LSDBE set aside. And  
11 what the Applicant has said here is that  
12 because of the size of the building, the  
13 amount of space that's available for retail,  
14 in general, 4,800, that it would be somewhat  
15 of a hardship.

16 I guess I can somewhat accept  
17 that, although I'm sort of curious about other  
18 examples that we've seen before the Commission  
19 here as relates to set asides. And set  
20 asides, I mean, it's just discounted rent.  
21 Yes. To that particular tenant.

22 I'm sort of curious about what the

1 square footages are in some of these buildings  
2 that we've seen that have been able to do  
3 that. However, I do think it's a good faith  
4 effort on the part of the Applicant to put  
5 forward something to help with you improving  
6 sort of the retail store fronts along Georgia  
7 Avenue.

8 I don't know what \$30,000 means.  
9 I mean, in the scheme of things, I don't know  
10 what the Office of Planning -- I mean, what's  
11 your familiarity with this program and whether  
12 that goes a long way. I see it's for three  
13 store fronts.

14 MS. HANOUSEK: We were unable to  
15 determine how far that \$30,000 would go.

16 COMMISSIONER JEFFRIES: Yes.  
17 Because I have just no sense of, you know,  
18 \$10,000 for a store front. I just -- I don't  
19 know what that gets you --

20 MS. HANOUSEK: Right.

21 COMMISSIONER JEFFRIES: -- really.

22 But --

1                   CHAIRPERSON MITTEN:    If I could  
2                   just interject.

3                   The one, I think, where they got  
4                   it from and I don't know how far it goes  
5                   either, but they are trying to mimic --

6                   COMMISSIONER JEFFRIES:   Right.

7                   CHAIRPERSON MITTEN:        --    the  
8                   program and the grants are \$10,000.

9                   COMMISSIONER JEFFRIES:        Yes.  
10                  Right. Right. No. Yes. I realize that.

11                  So, someone has figured it out,  
12                  it's just that it's not here. But anyway,  
13                  it's a reasonable gesture and I'm willing to  
14                  go forward.

15                  I        will        comment        on        this  
16                  architecture. And I think it's probably just  
17                  the rendering that the building probably looks  
18                  a little better when it's being erected. I  
19                  think it's probably something with this night  
20                  shot or something. Something looks a little  
21                  suburban about it. Didn't seem like it would  
22                  be in an urban context. It just looks like it

1 would fall somewhere in Wheaton. And so --  
2 that's probably not a good thing to say.

3 But I think it is somewhat a bit  
4 improved from what was put forth for -- it's  
5 a critical location. We've clearly, and I  
6 think, you know, in the last year, I think  
7 we've seen much better architecture coming  
8 through here. I'm quite happy to see that.

9 But, again, I'm willing to go  
10 forward with this.

11 CHAIRPERSON MITTEN: Anyone else?

12 Mr. Parsons.

13 COMMISSIONER PARSONS: I want to  
14 comment on the architecture as well because I  
15 think they went too far. At least what I was  
16 concerned about is the fortress-like nature of  
17 the turret and the punched windows at the top.  
18 These little square fortress-like windows and  
19 what I expected, frankly, is a new treatment  
20 of that. Either solid brick or reduce the  
21 height of it or something. But what they've  
22 done instead is to go and change all of the

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1 windows in the building -- well, not all of  
2 the windows in the buildings. Some of the  
3 windows in the building and then, I think,  
4 it's gotten worse.

5 I think -- I think the original  
6 sketch, that is the facades of the structure  
7 were more competible with one another than  
8 what we've got here. But I would ask Mr.  
9 Turnbull and others to comment on that. I'm  
10 just kind of sorry I brought it up.

11 I like the previous building  
12 better, but I still have problems with the  
13 turrets. Do you have that for reference?

14 COMMISSIONER TURNBULL: No. I  
15 agree with you and I think it's in -- maybe  
16 it's also that night view which differs from  
17 the daytime view. This shows all that  
18 vegetation hanging over the roof line which I  
19 don't think it's going to be there, but --

20 COMMISSIONER PARSONS: They  
21 thought you wanted a green roof.

22 COMMISSIONER TURNBULL: I think

1 you're right. I think it may have gone too  
2 far. It sort of now is kind of this jack-o-  
3 lantern lighted -- I mean, I don't want to  
4 take away from it. I mean, I think they are  
5 trying to make it more transparent.

6           you know, we talked about it being  
7 a fortress in a tower and I think they took  
8 that too far and went totally the other way.  
9 And I think they maybe need to come back and  
10 maybe lend that a bit.

11           In context, I mean, you can see  
12 that the windows are matching what they're  
13 using on the sides of the building. They are  
14 trying to keep that the same context as it  
15 goes around. But -- and maybe it's the night  
16 view. Maybe it's just the orange -- the  
17 glaring. It looks cartoonish and that doesn't  
18 read maybe what it's supposed to really meant  
19 to be. It's just too -- I think may be it's  
20 just the coloration of the rendering that we  
21 got that makes it look very harsh.

22           CHAIRPERSON MITTEN: I think one

1 of the things and it came out at the end of  
2 the hearing is that I don't think the  
3 Applicant understands how wedded they have to  
4 be to this design once we approve it. And  
5 that it's still a work in progress for them.

6 And so as we debate whether or not  
7 they've achieved what we think they should  
8 have achieved, I want you to keep one thing in  
9 mind and it may require that we send them back  
10 for another refinement which is that the area  
11 for this -- the land area included is 13,648  
12 square feet. So, this requires a waiver of  
13 the minimum area requirement and so the  
14 project has to be of exceptional merit.

15 So, you may find -- you may  
16 believe -- the Commission may believe that it  
17 achieves that with other amenities and  
18 benefits, but I would suggest that perhaps in  
19 order to in the aggregate achieve that  
20 exceptional merit standard that this design  
21 needs a little bit more refinement.

22 VICE CHAIRMAN HOOD: Madam Chair,

1 let me just say though. I think they went too  
2 far and if you recall looking at the  
3 transcript, I like when we had the daytime  
4 view of some of those fine subtle changes I  
5 think that were recommended by Mr. Parsons.

6 I would be inclined of -- I'm not  
7 sure, but I would just make a suggestion. I  
8 would be inclined of approving it as proposed  
9 and ask them to kind of go back the other way  
10 -- opposite the way that we sent -- well, I'm  
11 not going to say "we", but some of us may have  
12 sent. Because I really think that it's  
13 totally different.

14 I like what we had in front of us  
15 previously. I think this site is unique and  
16 I think that was exceptional. I've never said  
17 that in nine years I've been here. I think  
18 for that site was exceptional and I just hate  
19 that they went, first of all, to the night  
20 view. It may be just CMRK as opposed to RGB.  
21 I'm not sure. But I think we need to send  
22 them back the way that they were previously.

1                   COMMISSIONER TURNBULL:       Madam  
2           Chair, I just wanted to -- getting back to  
3           that tower.

4                   I think when that originally came,  
5           we were talking about the roof plan and we had  
6           the roof plan and there was a -- on that tower  
7           there was a table. There was a seating area.  
8           And I think we talked about it and it was  
9           going to be an open area and then I think  
10          Commissioner Parsons rightfully then point  
11          out, said but you can't see out. And that was  
12          right. We said, gee, maybe that's an  
13          opportunity to lighten it and give that view.  
14          And I think it's, again, there's a sense now  
15          that you almost want to enclose it a little  
16          bit and just bring back some of the masonry  
17          that was there in the rest of the building.

18                   But I think basically the overall  
19          design is not what we're fighting. It's just  
20          some of these -- it's a fine point here.

21                   COMMISSIONER JEFFRIES:     Well, I  
22          really do feel that it's the rendering. It's

1 the quality of the rendering. I think it's  
2 the night shot versus the day shot. I think  
3 if you're looking at the night shot it just  
4 looks very grainy. You're right, the  
5 vegetation looks, you know, quite bizarre.

6 So, you know, I really -- I'm sort  
7 of indifferent on either one of them. I think  
8 in general I think the overall plan should  
9 look very different. But, again, I'm willing  
10 to go forward to take this forward.

11 CHAIRPERSON MITTEN: Okay. Well,  
12 to try and synthesize everything that I heard,  
13 what I'll do is move approval of Case No. 06-  
14 02 and that we will reopen the record to allow  
15 a refinement of the design, which basically to  
16 the extent that the pendulum has swung. It  
17 goes back to the middle ground which is what  
18 we were looking for. And perhaps that will  
19 achieve the full support of the Commission and  
20 that perhaps it's just a function of the  
21 rendering. But that things that are not  
22 intended to be built like the greenery that's

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1 on the top and on the upper levels, if it's  
2 not going to be built then it shouldn't be  
3 shown.

4 And also we'll need the Applicant  
5 and we can reopen the record for this, we'll  
6 need the Applicant to indicate because it  
7 doesn't indicate it in the proposed order, how  
8 the units will be made affordable and how, you  
9 know, what's the length of the control period  
10 and how that will all be managed. That was  
11 not included. So, I just want to be clear on  
12 what that proffer is.

13 And then I'll ask for a second.

14 VICE CHAIRMAN HOOD: Second.

15 CHAIRPERSON MITTEN: Is there any  
16 further discussion?

17 Then I'd ask for all those in  
18 favor to please say aye.

19 (AYES)

20 CHAIRPERSON MITTEN: Those opposed  
21 please say no.

22 Mrs. Schellin.

1                   SECRETARY SCHELLIN:     The staff  
2 would record the vote five to zero to zero to  
3 approve Zoning Commission Case No. 06-02 for  
4 proposed action as discussed.

5                   Commissioner Mitten moving,  
6 Commissioner Hood seconding. Commissioners  
7 Jeffries, Parsons and Turnbull in favor.

8                   CHAIRPERSON MITTEN: Thank you.

9                   Okay. Next is Case No. 07-06 and  
10 this is the Commission's Sua Sponte review of  
11 BZA Case No. 17553.

12                   And, Mr. Jeffries, would you like  
13 to have the first word since you brought this  
14 to --

15                   COMMISSIONER JEFFRIES: Yes. I  
16 will.

17                   This is a case that I sat with the  
18 BZA perhaps two months ago. It's a variance  
19 case. In fact, the Applicant was requesting  
20 several variances.

21                   The one variance that I was quite  
22 concerned about was the height. This project

1 was located in an R4 Zone.

2 Currently, 40 or 41 feet in height  
3 and somehow the Applicant through the  
4 development program that was set forth needed  
5 to move from 40 to 41 feet to about 60 feet,  
6 59 or 60 feet.

7 And the BZA in a vote, three to  
8 two, voted to grant this variance application.  
9 I felt that the BZA had effectively rezoned  
10 this particular site. I thought it was almost  
11 flat zoning. and I did not think that it was  
12 in the purview of the jurisdiction of the BZA  
13 to take such an action.

14 And from where I set, jumped a  
15 district from an R4 to an R5B and I felt that  
16 this -- it was a case where the Applicant  
17 failed to make any of the variance hurdles  
18 which are very strict from uniqueness to  
19 practical difficulty and particular a third  
20 one in terms of the overall character of the  
21 zone plan, I think would be clearly,  
22 negatively impacted by this particular

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1 application if it were to go forward.

2 There is just something that I  
3 felt was amiss about what was decided and so  
4 I decided to bring it to the Commission to get  
5 your feedback on what was in this application.

6 CHAIRPERSON MITTEN: Thank you.

7 Well, we've all had a chance in  
8 the last couple of weeks to review the record  
9 in the case and that includes all the  
10 submissions and the transcript for the hearing  
11 and the decision meeting.

12 And one thing I just want to say  
13 and I know that Commissioner Jeffries does not  
14 disagree with this, is that everyone involved  
15 is well-intentioned because the intention is  
16 that people are trying to figure out a way to  
17 preserve affordable housing for these seven  
18 individuals that currently reside in the  
19 project. And it's a question of how that's  
20 accomplished, not whether that's a good thing  
21 to do.

22 So, I agree with you that the

1 Applicant has not met their burden of proof.  
2 And, you know, it's interesting that the  
3 exceptional condition that was being advanced  
4 was that this is a rundown building in an  
5 improving neighborhood as if that's somehow an  
6 exceptional condition.

7 The other buildings in the  
8 neighborhood, some are being expanded and  
9 others are not. But they've been renovated  
10 under whatever circumstances exist  
11 economically for them. And I think at the  
12 core of this is that we have an Applicant who,  
13 you know, is trying in good faith to address  
14 seven occupants of rent controlled apartments  
15 and they have elected not to avail themselves  
16 of the relief that's available through the  
17 rent control program. And instead they've  
18 sought a subsidy of another sort which is to  
19 expand their building.

20 And under some conditions, that  
21 might -- the case might be able to be made,  
22 but not in this case.

1           And there's a number of things  
2           that concern me. So, first, I think, you  
3           know, Commissioner Jeffries is dead on with  
4           the fact that this is a de facto rezoning of  
5           the site and is inconsistent with the zone  
6           plan.

7           Then we have as we sort of step  
8           away from it, we don't even have a guarantee  
9           of long-term affordability because IZ was  
10          being invoked throughout the case. We don't  
11          have a guarantee of long-term affordability  
12          because it just attaches to those individuals.  
13          We've been told they're elderly.

14          It's not clear how long they'll be  
15          able to stay in the project even, you know, as  
16          issues of accessibility become more acute for  
17          them and so on.

18          So, you know, there's actually no  
19          guarantee of affordability in this case. And  
20          then, you know, there were submissions into  
21          the record about the economics of this whole  
22          situation. And some of the testimony is

1 internally inconsistent that I just feel  
2 compelled to point it out.

3           They had a pro forma for what the  
4 -- they had a pro forma for the renovation of  
5 the existing units as is. The 20 units and  
6 then they had a pro forma for the expanded  
7 building for a total of 34 units. And then  
8 they talk in less detail about the cost of  
9 operating the building as is.

10           And they talk about the fact that  
11 if it were fully occupied, they would lose  
12 \$90,000 a year because it costs \$215,000 a  
13 year to operate the building. Wherein a  
14 renovated scenario with full occupancy and  
15 significantly increased real estate taxes, it  
16 only costs \$143,000 a year to operate the  
17 building. So, the credibility of the  
18 \$215,000 operating expense figure is called  
19 into question by their own figures.

20           So, I just don't think this is an  
21 appropriate mechanism to use for getting  
22 relief from rent control situation. I think

1 it's a laudable goal to preserve the  
2 affordability of the units. This is not the  
3 right approach. Otherwise, this will become  
4 the first of many cases where landlords come  
5 to the BZA and expect because they have rent  
6 control departments that they will entitled to  
7 additional density. And that's not the intent  
8 of IZ. And there's relief through other  
9 mechanisms. And so I'm completely in support  
10 of Commissioner Jeffries' concerns.

11 Anyone else?

12 COMMISSIONER PARSONS: I would  
13 concur. I don't need to add anything.

14 CHAIRPERSON MITTEN: Okay. I  
15 think we have a general consensus that --  
16 because of the procedures that we use on a sua  
17 sponte, we don't bring this to a vote. But I  
18 think the general consensus would be that we  
19 reverse the BZA and if that's the general  
20 consensus without taking a vote, then we give  
21 the Applicant an opportunity to respond.

22 Is that the general consensus?

1 Okay. we have nodding heads. That's a  
2 general consensus.

3 So, Mrs. Schellin, what would be  
4 the schedule then for responses from the  
5 Applicant?

6 SECRETARY SCHELLIN: Four weeks  
7 would be May 7th, 3:00 p.m.

8 CHAIRPERSON MITTEN: Okay.

9 SECRETARY SCHELLIN: And that  
10 would -- I believe the only party in this was  
11 the ANC so they would also be allowed to  
12 respond if they choose to.

13 CHAIRPERSON MITTEN: Okay. And I  
14 would just in the interest of having a  
15 meaningful response from the Applicant, we had  
16 a letter and asking us to take this up as soon  
17 as possible. But we want the case addressed on  
18 its merits and not on the fact that some of  
19 the people have vacated and that the project  
20 is moving forward because the Applicant has  
21 chosen to move ahead at their own risk. And  
22 that would not be persuasive to the

1 Commission.

2 So, to the extent that there would  
3 be -- that would be part of the submission,  
4 it's not necessary.

5 Anyone else? Any comments?

6 Okay.

7 Thank you, Commissioner Jeffries.

8 Now we're ready to move to final  
9 action and the first case under final action  
10 is Case No. 03-30A. And this is a request for  
11 a time extension in the PUD that we had in  
12 Square 643 and if you'll remember this was a  
13 historic church in southwest. And the  
14 proposal was for an apartment project and the  
15 sanctuary of the church would be preserved as  
16 an office space for a nonprofit. And the  
17 Applicant is requesting the time extension  
18 because they've had difficulty attracting a  
19 tenant to the nonprofit office space. And  
20 they need that to go forward contemporaneously  
21 with the residential portion of the project  
22 and the thing that's made it difficult to

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1 attract the tenant is the uncertainty  
2 surrounding the Randall School development.  
3 And that deal closed last year -- late last  
4 year.

5 So, that's the basis for asking  
6 for the extension and this would be a three-  
7 hear extension which would be that they would  
8 have an additional two years to file for a  
9 building permit and another year to begin  
10 construction.

11 So, is there any --

12 VICE CHAIRMAN HOOD: Madam Chair,  
13 I would move approval of the time extension as  
14 requested in Zoning Commission Case No. 03-  
15 30A.

16 CHAIRPERSON MITTEN: Thank you.  
17 Is there a second? I'll second.

18 Any discussion?

19 COMMISSIONER PARSONS: Madam  
20 Chair, I'm sure Ms. Steingasser can help.

21 The Randall School site is still  
22 federally owned. Is there somebody planning

1 the PUD or something to bring before us for  
2 the Randall School, even though it's not owned  
3 by the District of Columbia?

4 MS. STEINGASSER: I don't think  
5 the Randall School site itself is federally  
6 owned. I think the rec center immediately to  
7 its east is the federal land?

8 COMMISSIONER PARSONS: No. I'm  
9 pretty sure it's all federally owned. It's  
10 part of the conveyance in the land transfer to  
11 the District of Columbia.

12 MS. STEINGASSER: Oh, maybe it's--  
13 I can double check on that but there's most  
14 definitely a PUD. The city has entered an  
15 agreement with the Corcoran School and there's  
16 most definitely a PUD coming before the Zoning  
17 Commission.

18 COMMISSIONER PARSONS: We'd better  
19 check that so we don't shoot each other in the  
20 foot.

21 MS. STEINGASSER: Okay.  
22 Definitely.

1 COMMISSIONER PARSONS: All right.

2 CHAIRPERSON MITTEN: Any other  
3 comments or questions? All right.

4 Then all those in favor, please  
5 aye.

6 (AYE)

7 CHAIRPERSON MITTEN: Those opposed  
8 please say no.

9 Mrs. Schellin.

10 SECRETARY SCHELLIN: Staff would  
11 record the vote five to zero to zero to  
12 approve the three-year time extension in  
13 Zoning Commission Case No. 03-30A.

14 Commissioner Hood moving,  
15 Commissioner Mitten seconding. Commissioners  
16 Jeffries, Parsons and Turnbull in favor.

17 CHAIRPERSON MITTEN: Thank you.

18 The next is Case No. 06-41. And  
19 this, if you'll remember is a proposal from  
20 Camden Development for an apartment building  
21 at 1325 S. Capitol Street and it was before us  
22 for reviewing the Capitol Gateway Overlay.

1 And so we didn't take proposed action because  
2 we're using BZA rules in that case. So, we  
3 have not deliberated on this before.

4 But there really is kind of  
5 threshold issue that I wanted to talk about  
6 first before we get into the balance of it.  
7 And we've had some additional submissions.

8 Do we have to reopen the record  
9 for anything on this?

10 SECRETARY SCHELLIN: No. Nothing  
11 on this one.

12 CHAIRPERSON MITTEN: Okay. And  
13 that is that the Applicant is requesting --  
14 they are requesting an FAR of 6.55 and the  
15 matter of right density in the C2C zone  
16 district is 6.0. So, in effect, they're  
17 asking for a density variance and that is in  
18 direct furtherance of affordable housing which  
19 bears a strong resemblance to the sua sponte  
20 case that we just took up.

21 And they're sort of invoking IZ,  
22 although IZ doesn't -- is not in effect yet.

1 And the Office of Planning in advancing the  
2 variance argument has suggested that this is  
3 unique because the Office of Planning  
4 encouraged them to provide -- the Office of  
5 Planning encouraged the provide affordable  
6 housing sort of in the spirit of IZ but the  
7 regulations haven't caught up with this  
8 proposal yet.

9 So, the reason to me it's a  
10 threshold issue is because we basically -- the  
11 sentiments that were expressed in the sua  
12 sponte case I'm just concerned about using a  
13 variance mechanism for a brand new project to  
14 provide the density for the affordable housing  
15 and sort of in advance of IZ and then this is  
16 not a perfect rendering of IZ either.

17 So, can I just get some feedback  
18 about this?

19 COMMISSIONER JEFFRIES: Yes. I  
20 think it's very important that we be  
21 consistent here. You know, these are not  
22 PUDs. The variance test is pure and --

1 CHAIRPERSON MITTEN: Yes.

2 COMMISSIONER JEFFRIES: -- and we  
3 need to make it predictable and very clear.

4 CHAIRPERSON MITTEN: Right.

5 COMMISSIONER JEFFRIES: And I  
6 think that as much as I think we would like to  
7 have affordable housing here, I think it would  
8 be a wonderful thing. You know, at some  
9 point, you know, we really need to really be  
10 very consistent about how we review these  
11 cases.

12 So, I think that, you know, from  
13 where I sit, I would like to not go the route  
14 of, you know, if they've not met the variance  
15 test here, I'm not willing to move forward.

16 CHAIRPERSON MITTEN: Okay.

17 COMMISSIONER PARSONS: I agree.

18 CHAIRPERSON MITTEN: Thank you.  
19 Anyone else want to weigh in before I put my  
20 oar in the water?

21 Well, you know, it's funny that  
22 you should say it's not a PUD because, I mean,

1 clearly it's not. But in a lot of these cases  
2 where we're finding where people are coming  
3 for a design review, they're acting like a  
4 PUD. And in this case they were acting like  
5 a PUD --

6 COMMISSIONER JEFFRIES: Right.

7 CHAIRPERSON MITTEN: -- in some of  
8 the things that they were suggesting they  
9 would do. It's almost like a proffer, even  
10 though it wasn't directly related.

11 So, I think there's three ways to  
12 go in that particular case that would make us  
13 more comfortable.

14 One, would be for them to wait for  
15 IZ to be implemented and I've been advised  
16 that IZ could be implemented by the end of  
17 this calendar year or fiscal year, I'm not  
18 sure which.

19 Mr. Bergstein.

20 MR. BERGSTEIN: I think  
21 realistically by the time we get the  
22 regulations by the end of the calendar year.

1                   CHAIRPERSON MITTEN:    End of the  
2                   calendar year.

3                   Another which is to me not optimal  
4                   would be to have them modify their proposal so  
5                   that it doesn't require the variance and then  
6                   it wouldn't probably require the height  
7                   variance either -- the density variance and  
8                   then the height variance.

9                   And then the third which would be  
10                  similar to another sua sponte case that we  
11                  took up on 14th Street would be to convert  
12                  this to a Planned Unit Development.   And I  
13                  think that they'd have a very easy time of it  
14                  as a Planned Unit Development in that we could  
15                  do an expedited hearing, although they'd have  
16                  to make application.   But I think we could do  
17                  the 30-day review instead of the 45 day and so  
18                  on.

19                  And what would be required would  
20                  be for a PUD-related map amendment to C3C.   I  
21                  wouldn't want to see more density and I  
22                  wouldn't want to see more height.   But they

1 would need that in order to get under the PUD  
2 guidelines the density and the height because  
3 you can't get it under the C2C PUD.

4 I think that would be the cleanest  
5 and it would -- I don't know that it would  
6 even need any additional proffers because they  
7 have, you know, they have a strong case for,  
8 you know, environmental amenities and just the  
9 overall proposal regarding affordable housing  
10 and so on.

11 So, I'd like to encourage that and  
12 if we got a request for a special public  
13 meeting we could even set that down at a  
14 special public meeting. So, just keep that in  
15 mind if a request comes in to piggy back that  
16 on.

17 COMMISSIONER JEFFRIES: I think  
18 that's a very good solution. I think that  
19 covers all the bases. I mean, if we can  
20 really expedite the process, I think then  
21 we're doing our part.

22 CHAIRPERSON MITTEN: Yes. And I

1 think you're right.

2 First of all, consistency is  
3 important but also, you know, the variance  
4 standard is very high and it shouldn't be  
5 abused to advance a good cause because there's  
6 other mechanisms that are available and those  
7 mechanisms should be used when they're  
8 appropriate.

9 Okay. So, okay. We'll just defer  
10 and let the Applicant decide how they want to  
11 proceed there.

12 I've been advised by Mr. Bergstein  
13 that we don't even have to -- if the Applicant  
14 were to set down their proposal, were to  
15 proffer to the Commission, that the proposal  
16 would remain the same but for a PUD-related  
17 map amendment to C3C, that we could waive the  
18 setdown exercise entirely and that we could  
19 authorize Mrs. Schellin to advertise the case  
20 for 30 days and then just proceed directly to  
21 a hearing.

22 So, if it's the consensus of the

1 Commission that as long as the proposal itself  
2 does not change but then we're to include a  
3 PUD-related map amendment to C3C, that we  
4 would authorize her to advertise that for 30  
5 days and schedule a hearing.

6 COMMISSIONER JEFFRIES: With the  
7 affordable housing?

8 CHAIRPERSON MITTEN: With  
9 everything the same except -- everything the  
10 same except for a PUD-related map amendment.  
11 Okay. I have a consensus to do that.

12 Okay. Great. All right.

13 Next for final action is Case No.  
14 06-25. And this is Text and Map Amendments to  
15 the CG Overlay Boundaries. But there's no  
16 additional information since we took proposed  
17 action and this is just some, you know, more  
18 or less minor adjustments to the CG Overlay.

19 And I would move approval.

20 COMMISSIONER PARSONS: Second.

21 CHAIRPERSON MITTEN: Thank you,  
22 Mr. Parsons.

1 Any discussion?

2 All those in favor, please say  
3 aye.

4 (AYES)

5 CHAIRPERSON MITTEN: Those opposed  
6 please say no.

7 Mrs. Schellin.

8 SECRETARY SCHELLIN: Yes. The  
9 staff would record the vote five to zero to  
10 zero to approve final action in Zoning  
11 Commission Case No. 06-25.

12 Commissioner Mitten moving,  
13 Commissioner Parsons seconding. Commissioners  
14 Hood, Jeffries and Turnbull in favor.

15 CHAIRPERSON MITTEN: Thank you.

16 Next is Case. No. 06-08. And this  
17 is the PUD at Fort Lincoln for -- I forget  
18 what that particular project is called. But  
19 I guess it's called Gateway Village, LLC.

20 And we did ask for an additional  
21 submission. We reopened the record to take in  
22 the additional submission from the Applicant

1 to address some concerns that we had about  
2 what precisely the proffer was regarding  
3 landscaping and the road reimprovements as  
4 well as the concern about the stormwater  
5 management.

6 And I'd ask if anyone has  
7 lingering concern.

8 Mr. Parsons.

9 COMMISSIONER PARSONS: I'm  
10 satisfied with the stormwater management which  
11 is what I was focusing on.

12 CHAIRPERSON MITTEN: Okay.

13 COMMISSIONER PARSONS: That is  
14 Condition Number 8.

15 CHAIRPERSON MITTEN: Yes. And  
16 we've also included in the request is that  
17 they not be required to produce the MOU to --  
18 with the Department of Small and Local  
19 Business Development or whatever. I can't  
20 remember what the new name is. But to use  
21 LSDBEs that they not be required to provide  
22 that until they go for a building permit.

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1                   VICE CHAIRMAN HOOD: Madam Chair,  
2 with that, with the amendments or corrections  
3 they'd noted with the additions, I would  
4 approve Zoning Commission Case No. 06-08.

5                   CHAIRPERSON MITTEN: Thank you,  
6 Mr. Hood. Is there a second?

7                   COMMISSIONER PARSONS: Second.

8                   CHAIRPERSON MITTEN: Thank you,  
9 Mr. Parsons.

10                   Any further discussion?

11                   COMMISSIONER JEFFRIES: I am not  
12 participating.

13                   CHAIRPERSON MITTEN: And we're  
14 taking note that Mr. Jeffries has not  
15 participated in this case.

16                   If there's no further discussion  
17 then all those in favor please say aye.

18                   (AYE)

19                   CHAIRPERSON MITTEN: Those opposed  
20 please say no.

21                   SECRETARY SCHELLIN: Staff would  
22 record the vote four to zero to one to approve

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1 final action in Zoning Commission Case 06-08.

2 Commissioner Hood moving,  
3 Commissioner Parsons seconding. Commissioners  
4 Mitten and Turnbull in favor. Commissioner  
5 Jeffries not voting, having not participated.

6 CHAIRPERSON MITTEN: Yes.

7 The next case is one in which I  
8 did not participate and it's Case No. 06-24.

9 And Mr. Hood will manage the  
10 discussion in this case. Level 2.

11 VICE CHAIRMAN HOOD: Level 2.

12 Okay.

13 Zoning Commission Case No. 06-24.

14 That's the Level 2 Development, LLC,  
15 consolidated PUD at 2400 14th Street, NW.

16 Mrs. Schellin.

17 SECRETARY SCHELLIN: Yes. We  
18 received a letter today from Holland and  
19 Knight on behalf of the Applicant. We'll need  
20 to reopen the record to accept it.

21 The request is to -- the letter  
22 itself is requesting an expedited order which

1 would require us to get it to the D.C.  
2 Register by noon this Thursday in order to  
3 meet their request.

4 VICE CHAIRMAN HOOD: Okay.

5 Colleagues, can I just get a  
6 general consensus that we just reopen the  
7 record to accept this letter?

8 Now, I'm not sure how that's going  
9 to work. We have no control over how the  
10 orders are done. I'll leave that mainly up to  
11 staff. But I think -- this letter came to us  
12 in our submittals this evening. I don't want  
13 to read the whole letter, but the gist of it.

14 Applicant respectfully requests  
15 that the Zoning Commission issue it's written  
16 order for the case in time for the order to be  
17 published by April 20, 2007. The Applicant  
18 understands the significance of this request  
19 on considering numerous pending written  
20 orders. However, time is of the essence  
21 because of the lender of the PUD has required  
22 the Applicant to provide evidence of the

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1 under-tested PUD approval including expiration  
2 of all applicable appeals period by June 1st,  
3 2007. In the event this deadline is not met,  
4 the lender has a right to cancel financing for  
5 the project.

6 I think just through courtesy, I  
7 would just open the record. But, again, I  
8 want to state for the record it's really going  
9 to be up to staff. And, you know, I don't  
10 know what the schedule looks like. I'm sure  
11 as they've already noted in their letter,  
12 there are pending orders before this one. And  
13 I'm sure a lot of them might have the same  
14 issue.

15 So, unless my colleagues have a  
16 problem, I don't see -- I don't think we need  
17 to do a motion to reopen the record.

18 General consensus. Okay. Thank  
19 you.

20 With that, and again that's a  
21 matter that's going to be left up to staff and  
22 OAG and everyone else who has to go through

1 the movements of this work to put this  
2 together.

3 Can we leave it at that? Okay.  
4 Good.

5 Okay. Again, colleagues, we've  
6 hashed this out during our proposed and unless  
7 there's anything else, I will move approval of  
8 Zoning Commission Case No. 06-24 and ask for  
9 a second.

10 COMMISSIONER JEFFRIES: Second.

11 VICE CHAIRMAN HOOD: The moved is  
12 seconded.

13 All those in favor?

14 (AYES)

15 VICE CHAIRMAN HOOD: Any  
16 opposition?

17 So staff would you record the  
18 vote?

19 SECRETARY SCHELLIN: Yes.

20 COMMISSIONER PARSONS: I didn't  
21 participate.

22 SECRETARY SCHELLIN: Right.

1 I would record the vote three to  
2 zero to two to approve final action of Zoning  
3 Commission Case No. 06-24.

4 Commissioner Hood moving,  
5 Commissioner Jeffries seconding. Commissioner  
6 Turnbull in favor. Commissioners Mitten and  
7 Parsons not voting, having not participated.

8 CHAIRPERSON MITTEN: Thank you.

9 Thank you, Mr. Hood.

10 Next is Zoning Commission Case No.  
11 06-36.

12 And if you remember we took  
13 proposed action at the conclusion of the  
14 hearing. And this was to rezone certain sites  
15 within ANC-1A's boundary from R5B to R4.

16 And I would move approval.

17 COMMISSIONER JEFFRIES: Second.

18 CHAIRPERSON MITTEN: Thank you,  
19 Mr. Jeffries.

20 Any discussion?

21 All those in favor please say aye.

22 (AYES)

1 CHAIRPERSON MITTEN: Those opposed  
2 please say no.

3 Mrs. Schellin.

4 SECRETARY SCHELLIN: Yes. Staff  
5 would record the vote five to zero to zero to  
6 approve final action in Zoning Commission Case  
7 No. 06-36.

8 Commissioner Mitten moving,  
9 Commissioner Jeffries seconding.

10 Commissioners Hood, Parsons and  
11 Turnbull in favor.

12 CHAIRPERSON MITTEN: Thank you.

13 Next is Case No. 05-39 and this is  
14 the St. Martin's PUD.

15 And we had asked for a variety of  
16 responses -- a variety of issues to be  
17 addressed by the Applicant and we received an  
18 additional submission from them on March 26th.

19 And I'd ask, are there any  
20 lingering concerns on the part of the  
21 Commission?

22 COMMISSIONER JEFFRIES: Well, I'm

1 looking at Number 5, the use of brick in the  
2 courtyard. It says the Applicant's architect  
3 testified brick adds additional \$5 to \$8 and  
4 they're effectively saying they don't have the  
5 resources.

6 I'm sorry. I just remembered them  
7 having lots of resources when they were here.  
8 But anyway, just a comment.

9 CHAIRPERSON MITTEN: Okay.

10 Mr. Hood.

11 VICE CHAIRMAN HOOD: Madam Chair,  
12 I see they did re-look at the parking fee for  
13 the very low income residents.

14 While I'm not going to belabor, I  
15 still was unclear exactly how that's going to  
16 work. How is that enforceable? What is it  
17 that we can make sure -- to make sure that  
18 that happens? At least the way I read it,  
19 it's like open-ended. But I don't think  
20 that's a fight that I want to pursue because  
21 of all of the other things that are happening  
22 with this project.

1 Thank you.

2 CHAIRPERSON MITTEN: Thank you.

3 Anyone else?

4 All right. Then I'd move approval  
5 of Case No. 05-39.

6 VICE CHAIRMAN HOOD: Second.

7 CHAIRPERSON MITTEN: Thank you,  
8 Mr. Hood.

9 Any further discussion?

10 All those in favor please say aye.

11 (AYES)

12 CHAIRPERSON MITTEN: Those  
13 opposed, please say no.

14 Mrs. Schellin.

15 SECRETARY SCHELLIN: Staff would  
16 record the vote five to zero to zero to  
17 approve final action in Zoning Commission Case  
18 No. 05-39.

19 Commissioner Mitten moving,  
20 Commissioner Hood seconding. Commissioners  
21 Jeffries, Parsons and Turnbull in favor.

22 CHAIRPERSON MITTEN: Thank you.

1                   Lastly under final action we have  
2 Case No. 04-24A. And this is the PUD at Rhode  
3 Island Avenue Metro.

4                   SECRETARY SCHELLIN:       Chairman  
5 Mitten, if I may?

6                   Exhibit 32, the Applicant did not  
7 ask for the record to be reopened, but it will  
8 need to be reopened in order to accept their  
9 April 3rd letter which is requesting some  
10 additional flexibility.

11                  CHAIRPERSON MITTEN:   Okay. Thank  
12 you.

13                  I would move that we reopen the  
14 record to receive Exhibit Number 32.

15                  VICE CHAIRMAN HOOD:   Second.

16                  CHAIRPERSON MITTEN:   Thank you,  
17 Mr. Hood.

18                  All those in favor please say aye.

19                  (AYES)

20                  CHAIRPERSON MITTEN:   Those opposed  
21 please say no.

22                  SECRETARY SCHELLIN:   Staff would

1 record the vote five to zero to zero to reopen  
2 the record in Zoning Commission Case 04-24A to  
3 accept the Applicant's April 3rd letter.

4 Commissioner Mitten moving,  
5 Commissioner Hood seconding. Commissioners  
6 Turnbull, Jeffries and Parsons in favor.

7 CHAIRPERSON MITTEN: Thank you.

8 So, we have now two submissions  
9 from the Applicant. One March 21st and one  
10 April 3rd. And I'd ask are there any  
11 remaining concerns?

12 VICE CHAIRMAN HOOD: Madam Chair,  
13 if there are no remaining concerns, Madam  
14 Chair, I would like to move approval. It's my  
15 pleasure to move approval of Zoning Commission  
16 Case No. 04-24A.

17 COMMISSIONER TURNBULL: Second.

18 COMMISSIONER JEFFRIES: The  
19 metamorphosis.

20 CHAIRPERSON MITTEN: You deserve a  
21 lot of credit for bringing this to really --  
22 being very demanding of the Applicant.

1 COMMISSIONER JEFFRIES: He was a  
2 sapling and now he's a big old --

3 VICE CHAIRMAN HOOD: I want to  
4 thank them for being responsive.

5 CHAIRPERSON MITTEN: So, it's love  
6 all around.

7 SECRETARY SCHELLIN: Excuse me,  
8 Chairman Mitten.

9 Mr. Turnbull wasn't at the --

10 COMMISSIONER TURNBULL: I wasn't  
11 at the final --

12 SECRETARY SCHELLIN: Right. So,  
13 he has to withdraw his second.

14 COMMISSIONER JEFFRIES: I'll  
15 second.

16 CHAIRPERSON MITTEN: Okay. We got  
17 Mr. Jeffries then.

18 CHAIRPERSON MITTEN: Okay. All  
19 those in favor, please say aye.

20 (AYES)

21 CHAIRPERSON MITTEN: Those opposed  
22 please say no.

1 Mrs. Schellin.

2 SECRETARY SCHELLIN: Staff would  
3 record the vote four to zero to one to approve  
4 final action on Zoning Commission Case No. 04-  
5 24A.

6 Commissioner Hood moving,  
7 Commissioner Jeffries seconding.  
8 Commissioners Mitten and Parsons in favor.  
9 Commissioner Turnbull not voting, having not  
10 participated.

11 CHAIRPERSON MITTEN: Thank you.

12 Now, there's just one or there's  
13 two pieces of correspondence to address. I  
14 can't seem to put my hand on it, but I  
15 remember what it is.

16 The first one is some  
17 correspondence that ANC-1C had submitted to  
18 the Commission asking us to -- they were  
19 trying to appeal a decision of the Public  
20 Space Committee to the Zoning Commission. And  
21 as much fun as that might be, we don't have  
22 the authority for that. So, I just want to

1 make that clear. Although they should be able  
2 to appeal somewhere I hope.

3 And then the second is an  
4 extension of our hearing from the other night  
5 in Case No. 07-03. And, if you remember, the  
6 folks from ANC-6A requested that we take  
7 emergency action on the text amendment for --  
8 I'm sorry. Did I get the case wrong.

9 Oh, I'm sorry, I'm totally --  
10 okay. Then I'm on the other one. It's still  
11 ANC-6A. I'll get to this one in a second.

12 Let me just stick with what I  
13 started to say.

14 The request, it might not have  
15 been a piece of correspondence, but it was a  
16 request from ANC-6A to take emergency action  
17 in Case No. 07-03 regarding the text amendment  
18 to Section 401.1. And I said that we would  
19 take that up tonight.

20 And one of the things is that the  
21 origin and we talked a little about this  
22 during the hearing.

1           The origin of that case was the  
2           Appletree appeal of their building permit.  
3           And since that decision and the order is not  
4           yet written, although maybe Mr. Bergstein can  
5           give me an update on the issuance -- timing of  
6           the issuance?

7           MR. BERGSTEIN: I would imagine --  
8           well, I'll have it to the Office of Zoning  
9           this week. And then it's a matter of how long  
10          it takes the Board to review the order.

11          CHAIRPERSON MITTEN: Okay.

12          MR. BERGSTEIN: I would imagine  
13          two to three weeks.

14          CHAIRPERSON MITTEN: Okay. Thank  
15          you.

16          Since I participated in that case,  
17          I had intended to bring for sua sponte review  
18          by the Commission one of the issues in the  
19          case. And it ironically is not 401.1. But it  
20          was the third item.

21          There were three bases on which  
22          the Zoning Administrator made his decision.

1 And the third issue had related to parking.  
2 And it turned on specifically the number of  
3 existing parking spaces which is why I was  
4 asking Mr. Parker earlier about guidance for  
5 the historic -- the case regarding parking in  
6 historic structures. And the BZA disagreed  
7 with the Zoning Administrator. And I felt  
8 that the issue in the case went far beyond --  
9 for the Zoning Administrator went far beyond  
10 that particular case because then in the  
11 occasions which there will be occasions  
12 because of these exemptions for historic  
13 structures and for other reasons that the  
14 Zoning Administrator has to opine about the  
15 number of parking spaces. And I just thought  
16 that the BZA was off base there.

17 So, I will be bringing that once  
18 the order is written to the Commission and for  
19 your consideration to take up a sua sponte  
20 review of it. And when we do so, I will ask  
21 to stay the order, the effect of the BZA order  
22 which will then encompass the issues related

1 to 401.1 which would then move the need for  
2 emergency action.

3 So, I just wanted to say all that.  
4 It doesn't require any action on our part at  
5 this point.

6 And then --

7 COMMISSIONER JEFFRIES: It's a  
8 preview. Right?

9 CHAIRPERSON MITTEN: That was a  
10 preview.

11 And then the final item under  
12 correspondence is that we -- no, this is --  
13 wait a minute. I lost it again. Okay.

14 Is a request for -- this is a  
15 different request from ANC-6A for an emergency  
16 text amendment in the H Street Northeast  
17 Commercial Zone. And the -- I'm just going to  
18 read this.

19 The mechanism that our Commission,  
20 meaning their ANC, proffers to achieve its  
21 goal which is to preserve the integrity and  
22 goals of the H Street Overlay is an

1 instruction to the director of the Office of  
2 Zoning to suspend and refuse acceptance of  
3 applications for more permissive zoning for  
4 any property which is governed by the H Street  
5 Overlay.

6 It says, this emergency rule-  
7 making is justified by the immediate danger  
8 posed by the application for rezoning and a  
9 PUD in Zoning Commission Case No. 05-37.

10 So, anyway they're basically  
11 saying, don't consider these on a case-by-case  
12 basis. Just have this blanket, I guess,  
13 moratorium on accepting applications.

14 My concern is, they get to weigh  
15 in on each application as it comes in. So, I  
16 don't understand why we would instruct the  
17 director of OZ not to take anymore  
18 applications. I think the mechanism for them  
19 addressing the Commission -- addressing their  
20 concerns to the Commission is in a hearing as  
21 these cases come forward.

22 COMMISSIONER PARSONS: How do we

1 get the authority to do something?

2 CHAIRPERSON MITTEN: I don't even  
3 know. I mean, I don't even know.

4 COMMISSIONER PARSONS: It sounds  
5 illegal to me.

6 CHAIRPERSON MITTEN: See everybody  
7 thinks we can do everything.

8 COMMISSIONER PARSONS: Yes. But  
9 why would you tell people they can't exercise  
10 their property rights. Come on.

11 CHAIRPERSON MITTEN: Yes. I know.

12 COMMISSIONER PARSONS: I  
13 understand their plight, but I don't think  
14 that's the sledge hammer to use.

15 CHAIRPERSON MITTEN: Right. I  
16 think we can just address these concerns on a  
17 case-by-case basis and ANC-6A is a regular and  
18 active participant before the Zoning  
19 Commission and so we look forward to their  
20 voicing their concerns as cases come before  
21 us.

22 So, if there's nothing else for

1 the Commission tonight, I think we're ready to  
2 adjourn.

3 Thank you.

4 (Whereupon, the above matter was  
5 concluded at 8:51 p.m.)

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