

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

MONDAY

APRIL 27, 2009

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	CHAIRPERSON
GREGORY JEFFERIES	VICE-CHAIR
WILLIAM WARREN KEATING	COMMISSIONER
PETER MAY	COMMISSIONER (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN	SECRETARY
ESTHER BUSHMAN	GENERAL COUNSEL

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OFFICE OF THE ATTORNEY GENERAL STAFF PRESENT:

ALAN BERGSTEIN, ESQ.
JACOB RITTING, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
MATT JESICK
ARTHUR JACKSON
KAREN THOMAS
STEVE COCHRAN

The transcript constitutes the minutes from the Public Meeting held on April 27, 2009.

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

2 6:38 p.m.

3 CHAIRPERSON HOOD: Okay, we're
4 going to go ahead and get started. This
5 second regular public meeting of the DC Zoning
6 Commission for Monday, April 27th. My name is
7 Anthony Hood. Joining me are Vice Chairman
8 Jeffries, Commissioner Keating and
9 Commissioner May. We're joined by the Office
10 of Zoning Staff, the Office of Attorney
11 General to my -- Office of Attorney General
12 all to my left. Office of Planning to my
13 right.

14 We do not take any public testimony
15 at these hearings unless otherwise asked to do
16 so and we ask you to refrain from any
17 disruptive noises in our proceedings. Ms.
18 Schellin, do we have any preliminary matters?

19 MS. SCHELLIN: No, sir, other than
20 I believe we were going to readjust the
21 schedule or the agenda.

22 CHAIRPERSON HOOD: Okay. Thank

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1 you, Ms. Schellin. We're going to realign our
2 agenda for this evening. I'm going to --
3 we're going to take preliminary matters first,
4 hearing action second, final action third,
5 proposed action fourth and under final action,
6 we're going to do B first, C second and A
7 third. If that's not confusing, just bear
8 with us, we will get through us.

9 Okay, anything else, Ms. Schellin?

10 MS. SCHELLIN: No, sir.

11 CHAIRPERSON HOOD: Okay. Okay,
12 under hearing actions, we want to go to Zoning
13 Commission Case Number 08-24, that's the Abdo
14 Development, LLC and the President & Trustees
15 of The Catholic University - Consolidated PUD
16 and related map amendment @ Squares 3654-3657
17 and 3831. I believe that's going to be Mr.
18 Jesick.

19 MR. JESICK: Thank you, Mr.
20 Chairman and members of the Commission. My
21 name is Matt Jesick. The Applicant in this
22 case has submitted the consolidated PUD, a

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1 related map amendment and proposed amendment
2 to the Catholic University Campus Plan. The
3 Office of Planning recommends that the PUD and
4 related map amendment be set down for a public
5 hearing and that the campus plan amendment
6 application be heard at the same time.

7 The proposed project is located on
8 property owned by Catholic University on the
9 west side of the Brookland Metro Station,
10 immediate adjacent to the station and south of
11 Michigan Avenue. The property is known today
12 as the South Campus and most of the land is
13 vacant and the few dormitories that remain are
14 scheduled to be phased out over the next few
15 years.

16 The project would consist of five
17 mixed- use buildings, an arts flex space
18 building and about 45 row houses. Eight
19 percent of the total residential space would
20 be reserved for affordable units. The tallest
21 mixed-use would be 70 feet tall with wood
22 frame construction on a concrete base and the

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1 row houses would have a maximum height of
2 about 40 feet. The total FAR of the project
3 would be 2.37.

4 The mixed-use buildings would all
5 have frontage on Monroe Street. Two of the
6 buildings would frame a new pedestrian
7 extension of 8th Street. The row houses would
8 be between two new extensions of Kearney &
9 Lawrence Streets and the application also
10 includes public plazas and architectural
11 features at prominent points or entryways into
12 the neighborhood.

13 In order to build as proposed, the
14 Applicant has submitted, again, a PUD related
15 map amendment and the details of all the
16 proposed zoning changes can be found in
17 Attachment 1 of the OP report. The Campus
18 Plan Amendment would also be required to
19 remove the subject properties from the
20 existing Catholic University Campus Plan but
21 this is an action that has been anticipated
22 over several years in various iterations of

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1 the Campus Plan.

2 Now, moving onto the Comprehensive
3 Plan, the application is not inconsistent with
4 the guiding principles of the plan and these
5 include things like in-field development,
6 transit-oriented development, provision of
7 affordable housing, et cetera, and the
8 application is also consistent with specific
9 policies in various elements of the
10 comprehensive plan.

11 And these are, again, detailed in
12 the OP report. The proposal is also subject
13 to the newly adopted Brookland-CUA Metro
14 Station small area plan. Like any small area
15 plan, the Brookland plan supplements, refines,
16 provides more information to the comprehensive
17 plan. And the application is not inconsistent
18 with the Brookland Plan, though the Office of
19 Planning has asked the Applicant for
20 additional view studies and a retail study to
21 be sure that the intent of the plan is met.

22 The plan also supports other

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1 aspects of the proposal such as extension of
2 the street grid, the mix of uses, improvements
3 to intersection alignments, et cetera. In
4 terms of amenities, the application would
5 provide a number of amenities including
6 affordable housing, affordable artist work
7 space, environmental design, transportation
8 construction, among other things, and OP feels
9 that the proposed amenities are sufficient for
10 set-down. The Office of Planning will
11 continue to work with the Applicant on the
12 issues raised in our report but again, we
13 recommend that the PUD and map amendment be
14 set down for a public hearing and that the
15 campus plan amendment be heard at the same
16 time.

17 I know this has been a very brief
18 overview of a rather complex application but I
19 thought I'd leave more time for you to ask any
20 questions. Thank you.

21 CHAIRPERSON HOOD: Thank you very
22 much, Mr. Jesick. Who would like to start

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1 off? Anyone have any questions? Mr. -- Vice
2 Chairman Jeffries.

3 VICE-CHAIRPERSON JEFFRIES: Just a
4 quick question on the affordable housing and
5 the affordable artists' workspace; is the
6 Applicant's intent here, is between both of
7 these to sort of address for the affordable
8 housing that would typically be part of the
9 mandatory inclusionary zoning? I mean, this
10 is a stick construction (phonetic), right, so
11 we would be looking at a 10 percent normally?

12 MR. JESICK: I spoke about that
13 with our housing expert in the Office of
14 Planning and he said that in this case, it
15 would actually be eight percent. I can get
16 more details on that for you.

17 VICE-CHAIRPERSON JEFFRIES: Who did
18 you speak to?

19 MR. JESICK: Art Rodgers in our
20 office.

21 VICE-CHAIRPERSON JEFFRIES: And he
22 said in this case it would be -- because it's

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1 podium (phonetic) plus stick? I mean, what --

2 MR. JESICK: I'd have to look into
3 the details of what that --

4 VICE-CHAIRPERSON JEFFRIES: I mean,
5 you know, given that we're looking at
6 affordable artists' work space, I mean, I'm
7 not necessarily saying -- I mean, the
8 combination of both, you know, might be
9 sufficient. I don't know, but I'm just sort
10 of asking the question.

11 MR. JESICK: I know the intent was
12 to provide the affordable housing as required
13 and then the affordable artists' space would
14 be separate from that.

15 VICE-CHAIRPERSON JEFFRIES: Okay.

16 MR. JESICK: But I'll get more
17 information on that for you.

18 VICE-CHAIRPERSON JEFFRIES: Okay,
19 thank you.

20 CHAIRPERSON HOOD: Any other
21 questions? Commissioner May.

22 COMMISSIONER MAY: I don't know if

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1 I have any question, I have comments.

2 CHAIRPERSON HOOD: Okay.

3 COMMISSIONER MAY: Well, maybe this
4 is sort of a question. I mean, the design of
5 the buildings is clearly trying to capture a
6 certain style that's evocative of I guess
7 European architecture. I mean, is that -- I
8 don't recall that much about the neighborhood.

9 It's more of an ecclesiastical style than old
10 Europe. Where is this coming from?

11 MR. JESICK: I mean, that's a
12 question was can pose to the Applicant. I
13 don't know that they have any particular
14 inspiration or not. We can certainly have
15 them address that before he public hearing.

16 COMMISSIONER MAY: Yeah, I think
17 that would be helpful. I mean, some of it is
18 -- some of the buildings, it's certainly a bit
19 more understandable. I mean, the warehousing
20 kind of fee that comes from those -- the two
21 parallel buildings and certainly the building
22 that is up along the tract. It's -- it is

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1 sort of an odd combination of things in
2 certain ways and given that there's on the one
3 hand, close to the tracks, you have these
4 attempts to be a little bit more -- a little
5 more modern, a little different in the artist
6 flex space, whatever you want to call it, and
7 trying to get more interesting and different
8 there. I would just encourage that maybe it
9 doesn't need to be so overtly historic in its
10 look. I don't know if that resonates with
11 anyone else on the Commission but I think --
12 it just seems a little odd.

13 Otherwise, I mean, there are some
14 really good moves, I think, in the overall
15 massing of buildings and the planning and some
16 of the features, the plazas, and so on. So it
17 will be interesting when it comes time for the
18 hearing and I'm hoping that we will see the
19 development of the buildings become a bit more
20 refined and maybe a little bit more modern, a
21 little bit -- a little bit more fun in certain
22 areas, because there are some elements that --

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1 it's not jumping off the page yet.

2 Oh, and I did have a comment about
3 the row house block. The layout of the block
4 is actually fairly normal by Washington
5 standards in terms of the density of townhouse
6 units and yet, somehow, a lot of the units
7 wind up with the garage underneath the first
8 floor. And I don't know if that's necessary
9 from a density point of view, but it seems to
10 me that a block would be laid out in such a
11 way that more of the houses actually had some
12 rear yard space which I value greatly.

13 I'm not a big fan of the townhouses
14 that are stacked on top of the garages, as I'm
15 sure the Office of Planning is well aware.
16 It's also -- some of the other moves are a
17 little bit odd with the -- you know, you have
18 one row of townhouses that's broken into three
19 parts and the middle part is set back from the
20 street. And that just almost never happens in
21 Washington. It's always continuous. I mean,
22 it may be different types of elevations. They

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1 may try to make it look like they've been
2 built in different segments, but sort of
3 stepping back a section of it is really
4 unusual.

5 I would also encourage the team to
6 look at what happens at the corners because we
7 have -- you know, there are four corners on
8 the site, plus there are the different alley
9 entrances and there are triangular lots and
10 there are things like that and there is almost
11 no acknowledgment of the unique circumstance
12 that occurs when you get to the end of a row
13 and you're on a corner lot and you've got a
14 triangular lot or an unusual shaped lot but
15 the plans are all the same.

16 That's it, thanks.

17 CHAIRPERSON HOOD: Okay. The only
18 thing I would ask is before the -- well,
19 apparently this parcel is going to be set
20 down, so before the hearing that I would just
21 ask that I understand the rationale of the
22 different Blocks A, B, C. What drove you to

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1 put in place certain things in certain areas
2 as it pertains to the access to Michigan and
3 Monroe and et cetera. So I'd just like to
4 walk through the site. I see in the
5 renderings we have here, I understand what I
6 see, but I'd just like to get a relationship
7 of what that whole site is -- what's taking
8 place and what led you to put a dormitory here
9 and a retail here and all that.

10 So I basically, will save that for
11 that. Any other questions?

12 VICE-CHAIRPERSON JEFFRIES: And I
13 would concur with some of Commissioner May's
14 comments about the architecture. I think
15 Block C is somewhat successful, but there is
16 some -- there is a different quality about
17 some of the architecture, particularly that
18 tower.

19 You know, it's one of these
20 situations where you see, you know, amassing
21 of a fairly large development and there's a
22 wonderful opportunity to do some different and

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1 interesting things and you know, when you see
2 sort of a regurgitation of other things, it
3 just seems like a missed opportunity. I don't
4 find the architecture problematic, it's just
5 that it just seems -- I mean, sometimes I feel
6 like I'm looking at Old Montreal or something.

7 I don't know. It just -- I don't know, you
8 know, really what's the derivative of what's
9 being proposed. So -- but I do think there
10 are some nice parts of this and I like the
11 varying uses and the heights.

12 The envelop of this thing will be
13 quite nice. And I do like this arts walk. I
14 think that looks really good and sort of works
15 somewhat well. I like how the building
16 juxtapose there. So it will be very
17 interesting to see the materials boards and so
18 forth, to see just how all this translates
19 into you know, a real live development. And I
20 would, you know, ask the Commission to be
21 very, you know, focused on that piece and that
22 this is going to be a fairly large development

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1 in an important neighborhood in the District.

2 CHAIRPERSON HOOD: Any other
3 comments or questions? All right, with that,
4 I would move that we set down Zoning
5 Commission Case Number 08-24 and ask for a
6 second.

7 VICE-CHAIRPERSON JEFFRIES: Second.

8 CHAIRPERSON HOOD: Okay, it's been
9 moved and properly seconded. Any further
10 discussion? Further discussion, all those in
11 favor?

12 (Aye)

13 CHAIRPERSON HOOD: Not hearing any
14 opposition, Ms. Schellin, would you record the
15 vote with the proxy?

16 MS. SCHELLIN: Yes, sir, actually,
17 we do not have a proxy on this case, so staff
18 would record the vote, four to zero to one to
19 set down Zoning Commission Case Number 04-24
20 as a contested case, Commissioner Hood moving,
21 Commissioner Jeffries seconding, Commissioners
22 Keating and May in support, Commissioner

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1 Turnbull not present and not voting.

2 CHAIRPERSON HOOD: Okay, the next
3 case is Zoning Commission Case Number 09-07,
4 Kristin & Scott Franklin, map amendment @ 2269
5 Cathedral Ave. NW. Excuse me a second.

6 (Pause)

7 CHAIRPERSON HOOD: Mr. Jackson.
8 This is your case?

9 MR. JACKSON: Yes.

10 CHAIRPERSON HOOD: Okay, Mr.
11 Jackson.

12 MR. JACKSON: All right. Thank
13 you, Mr. Chairman, members of the Zoning
14 Commission. I will present a brief summary of
15 the Office of Planning's preliminary report on
16 this application. Kristin and Scott Franklin,
17 the Applicants, request that the Zoning
18 Commission establish initial zoning of R-5D on
19 a single lot located at 2269 Cathedral Avenue,
20 NW, a lot developed with a single -- one-
21 family detached dwelling.

22 This zoning action was requested on

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1 an emergency basis due to the -- because the
2 lack of zoning was not discovered until after
3 the property was purchased in March 2009,
4 during the review of a pending building permit
5 application for a dwelling addition. The
6 addition will increase the lot occupancy
7 slightly more than the 40 percent allowed as a
8 matter of right in R-4. The 2006 Competency
9 Plan, future Land Use Map designates the
10 subject residential property and the adjacent
11 national park lands for parks, recreation and
12 open space while residential properties to the
13 northwest, south and west are designated for
14 moderate density residential uses.

15 Zoning the subject property would
16 be reasonable and would further several
17 comprehensive plan policies and principles.
18 However, the proposed RF-5D would be
19 inconsistent with the moderate density
20 residential designation immediately across
21 Cathedral Avenue from the subject property.
22 Based on this information, the Office of

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1 Planning recommends that the application be
2 set down for hearing. As an alternative to
3 the proposed RF-5D, the Office of Planning
4 would suggest advertising R-4 on the subject
5 property in conjunction with a separate public
6 hearing to consider special exception approval
7 of the proposed addition to the residence, in
8 accordance with the provisions of Section 223
9 of the regulations.

10 The Office of Planning also
11 supports expedited Zoning Commission review of
12 these applications. That concludes our brief
13 summary of the Office of Planning's
14 preliminary report and we're available to
15 answer questions.

16 CHAIRPERSON HOOD: Okay, thank you.

17 Let me open it up for any questions, but you
18 know, before we do that, I think we have a
19 request, a request that the Commission waive
20 applicable filing fees. And you know, the way
21 I see it and Mr. Bergstein can help me, that
22 and I will hear from my colleagues, that this

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1 is a rulemaking and I don't believe we charge
2 for rulemakings. I see this as a rulemaking.

3 Mr. Bergstein, would you --

4 MR. BERGSTEIN: Well, it's
5 certainly up to the Commission's discretion to
6 decide whether or not this is a petition for
7 map amendment as a rulemaking or an
8 application for a map amendment as a contested
9 case. I agree with you that if this is a
10 petition for a rulemaking, there would be no
11 hearing fee, notwithstanding some things I
12 read in the regulations. In addition, it
13 would be a hearing without parties and the
14 decision ultimately could not be appealed to
15 the Court of Appeals. So that's the
16 ramifications of having a petition.

17 In terms of the 223 issue, I'd just
18 point out that application for a special
19 exception has not been filed with the Zoning
20 Commission or with the BZA, so the most that
21 one could say if you care to, is that the
22 Applicant could file an application for a 223

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1 special exception with the Zoning Commission
2 if they'd care to, but that would be --
3 although it could be heard at the same time,
4 that would be a contested case as opposed to
5 a rulemaking and they would have to submit a
6 filing fee. So the most you could say on that
7 is that you would entertain an application if
8 they want to file one, but you couldn't
9 schedule one right now because there's been no
10 application. So those are just two things.

11 CHAIRPERSON HOOD: Okay.

12 COMMISSIONER MAY: Mr. Bergstein,
13 I'm sorry, did you say you can schedule the
14 Special Exception Hearing or you cannot?

15 MR. BERGSTEIN: You cannot. A
16 special exception application requires an -- a
17 special exception proceeding requires an
18 application be made. It cannot be foisted
19 upon a private property owner.

20 COMMISSIONER MAY: Right.

21 CHAIRPERSON HOOD: So basically,
22 the only thing we have in front of us -- I

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1 know the Office of Planning as recommended
2 some additional zone, but we have R-5D. Can
3 we take -- if we wanted to advertise or wanted
4 to move forward with the alternative language,
5 with the exception of the 223, could we move
6 in that fashion?

7 MR. BERGSTEIN: You certain can.
8 You could have a public hearing notice in the
9 alternative. You could also authorize a
10 notice of proposed rulemaking at this time in
11 the alternative, which would speed things
12 along as well.

13 CHAIRPERSON HOOD: Let me open it
14 up to my colleagues. Any questions of Mr.
15 Jackson or Mr. Bergstein?

16 VICE-CHAIRPERSON JEFFRIES: Just a
17 quick question; Lot 802 is RF-5D?

18 MR. JACKSON: That is correct.

19 VICE-CHAIRPERSON JEFFRIES: But
20 there is -- there's --

21 MR. JACKSON: I'm sorry, Lot 802,
22 at least no my map is unzoned.

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1 VICE-CHAIRPERSON JEFFRIES: That's
2 unzoned as well.

3 COMMISSIONER MAY: Which map are
4 you looking at?

5 VICE-CHAIRPERSON JEFFRIES: So why
6 -- I'm looking at Exhibit 3.

7 CHAIRPERSON HOOD: The Office of
8 Planning's report.

9 MR. JACKSON: Actually, if you turn
10 back to Exhibit 1, according to our
11 information, at least our land records, Lot
12 802 is also within the area that's unzoned,
13 Exhibit 1. On the Comp Plan it's also shown
14 as green parks, recreation and open space.

15 VICE-CHAIRPERSON JEFFRIES: So
16 there's no plan for this to be residential.
17 This is -- I mean, it's a lot number, so --

18 MR. JACKSON: Right.

19 VICE-CHAIRPERSON JEFFRIES: I guess
20 what I'm trying to understand is why are we
21 not looking at this also being part of the
22 application.

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1 MR. JACKSON: We're responding to a
2 petition for that piece of property. This was
3 not initiated by the Office of Planning. This
4 was in response to a petition from a
5 particular property owner.

6 VICE-CHAIRPERSON JEFFRIES: But
7 it's not a map consistency application,
8 though, correct?

9 MR. JACKSON: Well, we're treating
10 it as such in that we've -- well, in the
11 Office of Planning's report, we acknowledge
12 that this appears to be an omission from our
13 comprehensive review and as a result of that,
14 we think it's pertinent for a house that has
15 been there and been residential as long as
16 this apparently has been residential, to be
17 brought into zoning and as such, we consider
18 it's to be a consistency that is bringing it
19 into the correct designation under --

20 VICE-CHAIRPERSON JEFFRIES: And so
21 who is the owner of Lot 802?

22 MR. JACKSON: I don't know.

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1 VICE-CHAIRPERSON JEFFRIES: Okay,
2 but that owner could eventually come through
3 and request --

4 MR. LAWSON: I believe that that
5 property is owned by -- is federal property.

6 VICE-CHAIRPERSON JEFFRIES: Oh,
7 okay.

8 CHAIRPERSON HOOD: Any other
9 questions for either Mr. Jackson or Mr.
10 Bergstein?

11 COMMISSIONER KEATING: I just was
12 wondering why you recommended the R-4 instead
13 of the R-5D.

14 MR. JACKSON: If you look at the
15 comprehensive plan, the comprehensive plan,
16 land use map that currently exists, you note
17 that although there's property that's zoned R-
18 5D, the comprehensive plan really calls for
19 the entire area to be moderate density
20 residential. In other words, the entire area
21 has a -- well, the area to the south and west
22 has a moderate residential designation.

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1 Moderate residential zoning has a range of
2 zones but the options to achieve a moderate
3 residential zone would be between R-3 and R-
4 5B.

5 The Applicants indicated that the
6 principal reason that they are applying for
7 the R-5D is so that they would be able to
8 provide an addition to their dwelling that
9 would exceed 40 percent of lot occupancy. R-
10 5D allows 75 percent lot occupancy. So while
11 that would achieve their ends, we think that
12 would be inconsistent with -- well, we think
13 that the character of the area and the -- and
14 the closest designation of moderate density,
15 seems to make it more reasonable to go for R-4
16 and then allow for a special exception in 223
17 to allow them to get the additional lot
18 occupancy, which would be three percent.

19 VICE-CHAIRPERSON JEFFRIES: You're
20 not -- I'm sorry, were you -- but we're not
21 considering the Applicant's, you know, lot
22 occupancy issue. I mean, this is a rulemaking

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1 case, correct? So we're just -- I mean, I
2 guess I'm trying to understand how I should
3 look at this.

4 MR. JACKSON: Well, I think the --

5 VICE-CHAIRPERSON JEFFRIES: I
6 shouldn't really be concerned about the
7 Applicants, in terms of what they want to
8 build here, I mean, unless they're coming
9 through a 223 or a special exception,
10 depending on what we zone this at, but in
11 terms of a rulemaking case, I mean, help me
12 out here. I guess I'm --

13 MR. LAWSON: It's a bit of an
14 unusual case in that it's establishing zoning
15 for a property that really doesn't have zoning
16 right now, but it's already developed. When
17 there's not zoning on a property, and an
18 applicant requests zoning as is, of course,
19 their right to do and in this case, it's
20 needed for the existing property, what the
21 Office of Planning normally does is we look at
22 the comprehensive plan for our direction.

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1 In this case, the comprehensive
2 plan calls it to be park space, so we can't
3 really look at the comp plan directly. So we
4 look at the comp plan somewhat more indirectly
5 and the surrounding area is all, as Mr.
6 Jackson said, moderate density residential.
7 We feel the R-4 is an appropriate zone, both
8 for the form of development on the property.
9 It certainly accommodates the existing use on
10 the property, while R-5D would also
11 accommodate that use, it would accommodate a
12 number of other uses on the property which we
13 feel is not consistent with the surrounding
14 moderate density comprehensive plan
15 designation. So that's what we're doing here.

16 We, however, do acknowledge that
17 the Applicant has this particular circumstance
18 where the property is already at its lot
19 occupancy limit and they wish to do what
20 really amounts to a fairly minor addition onto
21 the house and if there's a way that that can
22 be accommodated through the existing --

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1 through the current Zoning Commission process,
2 we feel that's an appropriate way to deal with
3 it rather than establish a zoning and then
4 make them go through a BZA process separately.

5 CHAIRPERSON HOOD: Any other
6 comments or questions? Commissioner May?

7 COMMISSIONER MAY: Yeah, are we
8 clear on the idea that this is going to be set
9 down as a petition for a rulemaking and so,
10 therefore, the fee wouldn't apply? Okay.

11 CHAIRPERSON HOOD: Exactly.

12 COMMISSIONER MAY: Yeah, so that's
13 taken care of.

14 CHAIRPERSON HOOD: So we're all in
15 agreement with that?

16 COMMISSIONER MAY: Yeah.

17 CHAIRPERSON HOOD: Okay. Yeah.

18 COMMISSIONER MAY: I would just
19 suggest that -- I'm not comfortable setting
20 this down as R-5D. I would just want to move
21 ahead with R-4 and recommend that the
22 Applicant apply for a special exception. I

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1 mean, it's a pretty easy case to make, I
2 think, under Section 223 to get additional lot
3 occupancy as a special exception. And I just
4 -- I wouldn't even want to entertain the
5 thought that this would be R-5D. It seems
6 totally inappropriate for the site.

7 CHAIRPERSON HOOD: My only
8 hesitation, I think we have -- the petition
9 asks for R-5B. We would subsequently -- I'm
10 sorry, R-5D. We would subsequently be denying
11 the R-5D if we move in that fashion and aren't
12 we bringing our own petition at that point?

13 MR. BERGSTEIN: Well, no, under the
14 DC Administrative Procedure Act, any one has
15 the right to petition any DC agency to do
16 anything within its jurisdiction and the DC
17 APA then says there's nothing that means that
18 the agency actually has to do anything. It's
19 your right to ignore a petition. Your rules
20 have a much more formal process for dealing
21 with petitions but the right to petition
22 doesn't necessarily mean the right to be heard

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1 in the DC Government. It's a rulemaking.

2 So the simple act of saying, "No,
3 this is a rulemaking, R-5D is not
4 appropriate", it belongs to you at this point,
5 the rulemaking. Once you decide that you're
6 going to go forward and set down a rulemaking,
7 it's yours. It doesn't belong to any party.
8 There are no parties. And so it's your
9 decision what you want to advertise and what
10 seems best to you. There's no harm in
11 advertising in the alternative.

12 The real point comes to when you're
13 going to do proposed actions, proposed
14 rulemaking, then you're really saying, "Okay,
15 this is where we are preliminarily. We want
16 your comments". But for set-down without a
17 notice of proposed rulemaking is just saying,
18 "Here's a couple of ideas that are out there
19 that seem within the scope of what we might
20 consider. What do you all think"? That's
21 what a rulemaking hearing is.

22 But again, if at the outset you

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1 think the notion of R-5D would not make sense
2 under any circumstances, there's no adverse
3 consequence to your simply saying, "We're not
4 going to go forward with that. It's our
5 petition -- it's our proceeding now." It's
6 their petition but it's your proceeding now
7 and you could decide to do R-4 and the
8 Petitioners could decide never to show up at
9 the hearing but you still can go forward.

10 CHAIRPERSON HOOD: Okay, I think I
11 got an understanding. I actually am incline
12 to push the Commission to -- that we set it
13 down R-5D with the alternative language of R-
14 4, but let me open it up for comments. I
15 could probably -- well, I kind of understand
16 what Commissioner May is saying and I kind of
17 agree, but I think that we still want to leave
18 our options open the way I look at it.

19 VICE-CHAIRPERSON JEFFRIES: Okay,
20 this is -- Commissioner May, I just want to
21 make certain I'm clear about what your
22 argument here is. You're saying that if we

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1 set this down in R-4 and then the Applicant
2 comes back for a special exception, a 223, you
3 think it's pretty straightforward. Is that
4 what you said?

5 COMMISSIONER MAY: Yes, I believe
6 it would be pretty straightforward, but I'm
7 not trying to predict that outcome. I think
8 the basic point here, in terms of what we
9 should be setting down right here and now is,
10 is R-5D a reasonable designation for this
11 property and I don't think it is under any
12 circumstance. I think it should be R-4 and no
13 more than R-4 and we shouldn't waste anybody's
14 time thinking about anything but R-4.

15 VICE-CHAIRPERSON JEFFRIES: Well,
16 there is an R-5D that's across the way and --

17 COMMISSIONER MAY: That's true but
18 if you look at the comp plan, that's not --

19 VICE-CHAIRPERSON JEFFRIES: That's
20 really not a consistent -- well, I was more
21 focused on your comment about you know this
22 seems like it's somewhat of a slam dunk and a

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1 223 special exception. So my only argument
2 was like then why would we send this applicant
3 through this if you think that this is going
4 to be pretty -- in terms of their ability to
5 get a 223, a special exception -- I mean, is
6 that -- is your argument that have them come
7 back, do the 223. You think that pretty much
8 it will get through.

9 COMMISSIONER MAY: No, I'm not
10 arguing that that's why we should proceed with
11 R-4. I'm arguing that R-5D is completely
12 inappropriate and that R-4 is appropriate. I
13 also think, I happen to think that if they
14 were to do a 223 special exception, that
15 there's a pretty high probability of success,
16 but that's not -- I mean, that is a contested
17 case. It's another process. It can be done
18 simultaneously, as I understand it, so I just
19 think that that's the path that's most
20 consistent with the zoning regulations and the
21 map and it should be the way that we proceed.

22 I just don't see the point in

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1 wasting anybody's time thinking about R-5D
2 because I just don't think that that's an
3 appropriate zone, period. I still think
4 there's a path by which the Applicant can get
5 what they want to do. You know, exceeding a
6 40 percent lot occupancy for a single family
7 dwelling in an R-4 zone, I mean, most of the
8 criteria have to do with the potential for a
9 negative impact on adjacent neighbors and
10 there are no adjacent neighbors to --

11 VICE-CHAIRPERSON JEFFRIES: But
12 this would be, this R-4 I mean, the moment we
13 would set this down or pass it as an R-4, I
14 mean, this house would be -- this house would
15 not be compliant, wouldn't it?

16 COMMISSIONER MAY: It's non-
17 conforming now. It has no zoning at all.

18 VICE-CHAIRPERSON JEFFRIES: Okay,
19 but it would continue to be non-conforming
20 under R-4.

21 COMMISSIONER MAY: That's right,
22 but all that means is that they can't build an

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1 addition. It doesn't mean that they can't
2 live there. It doesn't mean that they can't
3 make improvements on the interior of the
4 property.

5 VICE-CHAIRPERSON JEFFRIES: Can
6 Planning comment on that, whether or not it's
7 --

8 MR. JACKSON: Well, our
9 understanding is the house is currently
10 conforming to the R-4 regulations.

11 VICE-CHAIRPERSON JEFFRIES: It is
12 conforming? The house conforms to R-4?

13 COMMISSIONER MAY: It's slightly
14 larger.

15 MR. JACKSON: Okay, so apparently
16 it does not. Okay, I think that was
17 predicated on our understanding that the
18 addition wasn't built.

19 MR. BERGSTEIN: I thought -- it was
20 my understanding that it's non-conforming as
21 to lot occupancy and since that's the case,
22 any addition would require 223.

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1 COMMISSIONER MAY: That's what I
2 read.

3 VICE-CHAIRPERSON JEFFRIES: But not
4 for an R-5D. If we -- yeah, R-5D, we're done
5 and they don't come back to see us. Right.

6 MR. BERGSTEIN: (Inaudible)

7 CHAIRPERSON HOOD: I don't think
8 you're on your mike. Your microphone is not
9 on.

10 MR. BERGSTEIN: Yes, if they're R-
11 5D, then I believe their lot occupancy would
12 be deemed conforming and they could do
13 additions as long as the addition doesn't --
14 conforms to other area requirements, but under
15 R-4 they would be non-conforming as to lot
16 occupancy and therefore any addition would
17 require a 223 approval as a special exception,
18 because it actually goes back to whether it
19 would normally require a variance any place
20 else, but the -- you could add to a non-
21 conforming structure as long as you don't
22 increase the non-conformity but there's one --

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1 one of the elements is though, if you're
2 already non-conforming as to lot occupancy,
3 any other expansion, even if it's conforming,
4 would require a variance, but under 223, that
5 type of request could be handled as a special
6 exception.

7 So that's the circumstance they're
8 in at this point. But the set-down rule, as
9 I've been told this week, doesn't apply to an
10 application or petition by a property owner
11 but this property will remain unzoned until a
12 final order that zones it, which means that
13 nothing happens on this property except some
14 interior work. They can't do anything because
15 you can't get a building permit for new
16 construction unless there's zoning and until
17 you do a final order on this case, this
18 property is unzoned.

19 VICE-CHAIRPERSON JEFFRIES: Well,
20 Mr. Lawson as explained sort of why dealing
21 with the Applicant's issues of expansion and
22 so forth as we're -- and I know they came

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1 through as a contestant case, we're not
2 looking at it as rulemaking. And now that
3 we're looking at it as rulemaking, I just -- I
4 really don't like to get into those kind of
5 discussions and really stick to, you know, the
6 viability of, you know, should this be an R-4
7 or R-5D.

8 And I'm looking -- if we set this
9 down, and I guess I'm dealing with
10 Commissioner May. If we set this down R-5D,
11 what happens?

12 COMMISSIONER MAY: Well, presumably
13 if we set it down as R-5D, we would have R-4
14 in the alternative, right?

15 VICE-CHAIRPERSON JEFFRIES: Well,
16 the Chair brought that up. We haven't voted
17 on that yet.

18 COMMISSIONER MAY: Okay, well, if
19 all we get is a motion to set it down as R-5D,
20 I would vote against it. If we set it down as
21 alternative, I would vote for it and R-4, I
22 would vote for, but I think that regardless --

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1 whatever action the Commission takes --

2 VICE-CHAIRPERSON JEFFRIES: I
3 wasn't dealing with your procedural, what you
4 do, I'm just saying what would happen to the
5 actual site? I mean, what --

6 COMMISSIONER MAY: I don't think
7 anything happens to the actual site that's any
8 different. I think what happens though, is
9 that the --

10 VICE-CHAIRPERSON JEFFRIES: The
11 impacts are greater, as you say, behind those
12 issues.

13 COMMISSIONER MAY: Wait a minute.
14 I'm not going to make the case about R-5
15 versus R-4. I mean, is that what you want me
16 to do?

17 VICE-CHAIRPERSON JEFFRIES: Yes.

18 COMMISSIONER MAY: R-5D allows 75
19 percent lot occupancy and what, 90 feet of
20 height?

21 MR. JACKSON: Yes.

22 COMMISSIONER MAY: I think that

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1 it's over-zoning that individual property. I
2 understand that it's in the historic district
3 and that there are other things that might
4 restrain the property from being simply torn
5 down and building an apartment building.

6 VICE-CHAIRPERSON JEFFRIES: And
7 you're around a forest.

8 COMMISSIONER MAY: However,
9 however, we don't control that. We control
10 the zoning map and I think that it's incumbent
11 upon us to be consistent with the
12 comprehensive plan and follow the
13 comprehensive plan and this is adjacent to a
14 moderate density zone. It's an error in the
15 comp plan, admittedly, but the most
16 approximate zone is moderate density
17 residential and R-5D is inconsistent with
18 that.

19 VICE-CHAIRPERSON JEFFRIES: Thank
20 you. Office of Planning, so you are
21 effectively telling us today -- I mean,
22 obviously, the petitioner came through with R-

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1 5D and you're like fine, but you are
2 requesting that we really -- are you making a
3 request that we set this down in R-4 or just
4 in the alternative?

5 MR. JACKSON: Our request is in the
6 alternative.

7 COMMISSIONER KEATING: R-4 in the
8 alternative or set it down as --

9 MR. JACKSON: R-4 in the
10 alternative. So it would be R-5D with R-4 in
11 the alternative.

12 VICE-CHAIRPERSON JEFFRIES: But I
13 guess I'm -- which -- what are you --

14 COMMISSIONER KEATING: Let me back
15 up. Why R-5D and then R-4 in the alternative,
16 because I'm actually with Commissioner May
17 here on this. And I'm looking at this layout
18 and I'm not sure how we get to R-5D from --
19 just from a zoning philosophy.

20 MR. LAWSON: We had some questions
21 about that as well. However, the Applicant
22 requested R-5D, so that's where the R-5D comes

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1 from.

2 COMMISSIONER KEATING: I understand
3 that but we've taken it out of that process,
4 if I'm not mistaken, right, Mr. Bergstein?

5 MR. BERGSTEIN: Yes, so if it made
6 anyone more comfortable, you could advertise
7 it as R-4 with R-5D in the alternative. It
8 really makes no difference which one goes
9 first at this point, if that does anything for
10 you.

11 VICE-CHAIRPERSON JEFFRIES: Well,
12 I'm supportive of the Chair's statement about,
13 you know, R-5D and then R-4 in the alternative
14 and allow the Applicant to come forward and
15 make its case and then a decision is made.

16 COMMISSIONER KEATING: Could we
17 turn it around, R-4 to R-5D in the
18 alternative?

19 VICE-CHAIRPERSON JEFFRIES: I
20 thought it was R-5D and R-4.

21 COMMISSIONER KEATING: I asked if
22 we could turn it around.

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1 CHAIRPERSON HOOD: Here's what I'm
2 going to do, I'm going to make a motion. I
3 move that we set down Zoning Commission Case
4 Number 09-07 as requested by the Petitioner,
5 R-5D and we take R-4 in the alternative. I
6 don't think I can include Mr. Bergstein, 223
7 because that's not before us.

8 MR. BERGSTEIN: It's not but you
9 can -- it might be helpful if you indicated
10 whether or not you would permit the Office of
11 Zoning to process an application for a 223
12 special exception before the Zoning Commission
13 as opposed to before the Board of Zoning
14 Adjustment but that's completely up to you.
15 That's essentially what OP is asking you to
16 consider in terms of that discussion.

17 CHAIRPERSON HOOD: So I would move
18 that we set down 09-07 as requested by the
19 Petitioner, R-5D with the authority for the
20 Office of Zoning to also in the alternative
21 set R-4, the authority for Office of Zoning to
22 also petition --

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1 MR. BERGSTEIN: Well, to accept an
2 application --

3 CHAIRPERSON HOOD: -- accept an
4 application under the 223 regulations.

5 MR. BERGSTEIN: Yes.

6 CHAIRPERSON HOOD: I'd ask for a
7 second. Not hearing one, it does for lack of
8 a second. Can somebody else come up with a
9 motion?

10 COMMISSIONER MAY: I would move
11 that we set down Zoning Case 09-07 to zone the
12 property at 229 -- I'm sorry, 2269 Cathedral
13 Avenue, NW as R-4 and also recommend to the
14 Office of Zoning that they accept a special
15 exception application for consideration by the
16 Zoning Commission in conjunction with that --
17 with the Zoning case and ask for a second.

18 VICE-CHAIRPERSON JEFFRIES: Second.

19 CHAIRPERSON HOOD: Properly
20 seconded, any further discussion? All those
21 in favor say "Aye".

22 (Aye)

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1 CHAIRPERSON HOOD: Any opposition,
2 opposed? We have a proxy vote. It's been
3 moved that we set down Zoning Commission Case
4 Number 09-07. You know, the smallest agenda,
5 I'd think we'd be out of here, 09-07 under the
6 Petitioner's request of R-5D and that we also
7 in the alternative advertise R-4 with the
8 Office of Zoning accepting a special exception
9 under 223 and I'll ask for a second.

10 VICE-CHAIRPERSON JEFFRIES: Second.

11 CHAIRPERSON HOOD: It's been moved
12 and properly seconded. Any further
13 discussion? All those in favor?

14 (Aye)

15 CHAIRPERSON HOOD: Any opposition?
16 So staff, would you record the vote?

17 MS. SCHELLIN: Okay, I thought we
18 were where we started. The staff records the
19 vote four to zero to one to set down Zoning
20 Commission Case Number 09-07 as a rulemaking
21 case to advertise it as R-5D with R-4 in the
22 alternative and to allow Zoning Commission

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1 staff to accept an application if the
2 Petitioner so desires to, under Section 223.
3 Commissioner Hood moving, Commissioner
4 Jeffries seconding and Commissioners Keating
5 and May in favor. Commissioner Turnbull not
6 present and not voting.

7 CHAIRPERSON HOOD: Thank you, Ms.
8 Schellin. I think now we've moved to final
9 action. We're going to take Zoning Commission
10 Case Number 08-26. That's Georgia & Lamont LP
11 - Consolidated PUD & Related Map Amendment @
12 Square 2892. Ms. Schellin.

13 MS. SCHELLIN: We do have an
14 absentee ballot from Commissioner Turnbull on
15 this one and I believe Commissioner Jeffries
16 did not participate on this one.

17 VICE-CHAIRPERSON JEFFRIES: Your
18 beliefs are correct.

19 CHAIRPERSON HOOD: Let me get my
20 paperwork together. That other case took me
21 for a loop. Okay, we have in front of us --
22 we also have a report from NCPC on this case,

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1 08-26. We also have some submissions as a
2 proposed -- well, final actions. We also have
3 some submissions. I'm not sure who asked for
4 what but we also have a letter here from DDOT
5 and I think this is -- DDOT has received a
6 loading management plan from the Applicant.
7 The Applicant has provided some measures to
8 insure the load and delivery operations
9 perform well and I think, initially, it just
10 says, "The plan specifies the loading should
11 occur through the loading dock adjacent to the
12 proposed 20-foot wide easement.

13 Oh, okay, then it talks about
14 bicycle parking and public bicycle racks.
15 DDOT's verbal testimony on March 12th, 2009, we
16 believe there are further opportunities for
17 residential bicycle parking in the
18 underground garage. We believe the Applicant
19 may be able to secure additional parking for
20 bicycles in addition to the proposed 10-
21 bicycle parking spaces. Also, it talks about
22 public space. "DDOT strongly encouraged the

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1 Commission to require that the utilities be
2 located on the proposed site and not be
3 located in the public space. The sidewalk
4 gates that cover utilities in the public space
5 are a pedestrian hazard. This is a need to
6 insure that the pedestrian right of way is
7 safe and welcoming".

8 And also, I'm not sure what exhibit
9 this is, anyway, we have another set of
10 drawings and illustrations. I'm not sure who
11 asked for that, Commissioner May?

12 COMMISSIONER MAY: Yeah, the -- we
13 asked for a number of things in the -- when we
14 took proposed action and the Applicant
15 provided a very helpful set of drawings and a
16 checklist that described what changed in the
17 drawings and the information that was
18 provided, I think, is for the most part,
19 responsive to the comments that we had. I
20 think that the trellis at the corner of the
21 building, I think structurally it seems -- and
22 visually, it's more sensible now, although

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1 it's still too big and too prominent. But I'm
2 willing to let go at this point.

3 I would also note that the -- that
4 the Applicant did provide some additional
5 parking spaces for bicycles on the inside of
6 the building and that's worthwhile. And I
7 would also acknowledge that the Applicant
8 submitted a materials board that was
9 responsive to what we asked for. In fact,
10 maybe too responsive. I mean, normally, we
11 get a materials board that shows us the
12 materials and -- but we don't usually get the
13 masonry actually laid up with mortar and
14 everything. So it's very good and very
15 responsive and it's the strongest looking
16 materials board I've --

17 CHAIRPERSON HOOD: We'll save those
18 comments for the next one.

19 COMMISSIONER MAY: Yeah, I'm going
20 to save that for the next one.

21 CHAIRPERSON HOOD: Yeah, save them
22 for the next case.

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1 COMMISSIONER MAY: I thought that
2 was this because it's the same -- it's the
3 same pallet. Okay, sorry about that. That's
4 okay. Did we request the materials board for
5 this? We already have it. Yeah, okay, never
6 mind then. Sorry.

7 CHAIRPERSON HOOD: But everything
8 else --

9 COMMISSIONER MAY: Everything else
10 was responsive and I guess I'm okay to move
11 forward with this.

12 COMMISSIONER KEATING: No, I was
13 impressed with the responses. It was easy to
14 follow, appreciate that and I'm okay to move
15 forward.

16 CHAIRPERSON HOOD: Okay, with that,
17 and again, I do appreciate not the exhibit
18 number but the changes made to the PUD in
19 response to our questions, and DDOT's
20 comments. We appreciate this. This is a
21 jewel to work with. Right. I'll entertain a
22 motion if someone wants to make it.

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1 COMMISSIONER MAY: Can I -- there
2 was something I wanted to ask a question
3 about, which is the DDOT response made
4 reference to including an enforcement
5 provision in the order, so that the -- a --
6 the Zoning Administrator could rescind the C
7 of O if the owner of the building was not --
8 or a retail tenant was not abiding by the
9 loading regulations that were part of the
10 order. And I was wondering what OAG had to
11 say about that particular kind of language.

12 MR. BERGSTEIN: We actually revised
13 the order to indicate that that would not be
14 appropriate. The C of O regulations provide
15 for grounds for revoking a C of O and one of
16 them is not even a violation of a Zoning
17 Commission order. If there's an overarching
18 problem with non-compliance by tenants which
19 is really what you're talking about here, not
20 even the person who has issued the C of O
21 which is the owner of the building but their
22 tenant is in non-compliance, then the thing to

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1 do would be -- and this is what we wrote,
2 would be for DDOT to request DCRA to add to
3 the grounds for revoking C of Os non-
4 compliance by an owner or a tenant of a Zoning
5 Commission order, but you have no privity with
6 these tenants at all, and so we didn't think
7 it was appropriate for the Zoning Commission
8 to in effect amend the building code to add a
9 ground for revocation against the tenant when
10 even the owner isn't liable under the building
11 code for revocation under those circumstances.

12 So that's pretty much what we wrote and you
13 can find that language in -- well, double-
14 sided, on beginning on page 15 to -- actually
15 on page 16 and we highlighted it so you could
16 see what we did.

17 COMMISSIONER MAY: Okay, and the --
18 maybe my memory is faulty on this, too, but
19 this is not the first time this suggestion has
20 been made by DDOT, is it?

21 MR. BERGSTEIN: I've heard it
22 before and I've communicated either to them or

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1 indirectly to them what I thought would be the
2 better solution, because as it's been
3 explained to me, it's not -- basically, this
4 is anticipatory of non-compliance which is
5 something that if it's really across the
6 board, if tenants are not abiding by loading
7 conditions or in some case the loading
8 regulations, and the zoning regulations, the
9 problem is that the -- that DDOT doesn't
10 believe they have an in against the tenant, so
11 they're trying to create one. And the means
12 of enforcement is either a fine schedule
13 because there is a fine for violating a Zoning
14 Commission order, or where we could enforce
15 the part covenant because the conditions, and
16 I think we put the traffic bench condition, as
17 a condition of the order now because it wasn't
18 there originally.

19 So we have enforcement mechanisms
20 against the owner through both the fine
21 schedule and the PUD covenant but not against
22 the tenant. And if -- and again, because you

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1 don't have privity with the tenant, I didn't
2 think that that was a fair condition and that
3 the solution ultimately is a regulation to
4 deal with it under the C of O revocation
5 procedures or DDOT can do their own
6 enforcement if they care to.

7 COMMISSIONER MAY: Well, then I
8 would encourage that conversation with DDOT to
9 find the right course for this kind of
10 enforcement, that that go on so that we don't
11 continue to have to field this request from
12 DDOT and then have to continue to write it
13 into orders.

14 MR. BERGSTEIN: Well, hopefully,
15 they'll read the order. I can make sure that
16 they're sent the order and so that they can
17 know that you've actually ruled upon the
18 issue.

19 COMMISSIONER MAY: Right, thanks.

20 CHAIRPERSON HOOD: I think,
21 Commissioner, you were in the process of
22 making a motion, I think.

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1 COMMISSIONER MAY: You're a couple
2 of steps ahead of me.

3 CHAIRPERSON HOOD: Oh.

4 COMMISSIONER MAY: Now, I've got my
5 papers all mixed up. The -- I would move
6 approval of Zoning Case -- final approval of
7 Zoning Case 08-26 Consolidated Plan Unit
8 Development and Zoning Map Amendment, Georgia
9 & Lamont Limited Partnership, Square 2892,
10 Lots 98-903, 904, 908 and 911 and ask for a
11 second.

12 COMMISSIONER KEATING: Second.

13 CHAIRPERSON HOOD: Okay, it's been
14 moved and properly seconded. Any further
15 discussion? All those in favor "Aye".

16 (Aye)

17 CHAIRPERSON HOOD: Hearing no
18 opposition of those who participated, Mr.
19 Schellin, could you record the vote?

20 MS. SCHELLIN: Yes, staff records
21 the vote four to zero to one to approve final
22 action, Zoning Commission Case Number 08-26.

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1 Commissioner May moving, Commissioner Keating
2 seconding. Commissioner Hood in favor,
3 Commissioner Turnbull in favor by absentee
4 ballot. Commissioner Jeffries not voting,
5 having not participated.

6 CHAIRPERSON HOOD: Okay, moving
7 right along, still under final action, Zoning
8 Commission Case Number 03-12I, 03-13I,
9 Capper/Carrollsborg Venture, LLC and the DC
10 Housing Authority PUD Time Extensions. Oh, I
11 forgot one, I'm sorry.

12 Okay, Zoning Commission Case Number
13 08-09, this is the ANC 4c Text & Map
14 Amendments to expand the 16th Street Heights
15 Overlay District. Forgive me, Ms. Schellin.

16 MS. SCHELLIN: The staff has
17 nothing further to add on this one other than
18 to ask that the Commission consider final
19 action.

20 CHAIRPERSON HOOD: Okay,
21 colleagues, we have some additional
22 submissions as we requested when we tried to

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1 deal with this previously. We have a
2 supplemental report on the 16th Street Overlay.

3 Statistics from the Office of Planning. We
4 also have a letter -- well, the letter that
5 went out to the parties involved from the
6 Office of Zoning from Ms. Sharon Schellin.

7 We also have a -- I don't know if
8 you'd call it a rebuttal but some counter-acts
9 to what was submitted to us from the law firm
10 of Holland & Knight and that's what we have.

11 Could I just ask the Office of
12 Planning if they could speak to Exhibit Number
13 68, if you don't mind. Even though we read
14 it, if you could just speak to it. Ms.
15 Thomas, is this your case? Ms. Thomas.

16 MS. THOMAS: Yes, it is.

17 CHAIRPERSON HOOD: If you could
18 just hit the highlights for us. Yeah, if you
19 could just hit the very brief highlights.

20 MS. THOMAS: Yeah, well, in this
21 case -- what we did in this report is that we
22 asked GIS to look at the land area under

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1 discussion. And we also looked at citywide --
2 the R-1B zone citywide. We came up with a
3 land area for that. We determined that the
4 percentage of non-residential uses in the R-1B
5 zone district was eight percent. We also
6 looked at what was the percentage of non-
7 residential uses in the 16th Street Heights
8 Overlay and we determined as well that the
9 percentage of non-residential uses in the
10 proposed overlay by land area was 19.1 percent
11 and that also excluded the Kingsbury Center.

12 We also looked at a number of lots
13 including Square 2711 in the Kingsbury Center
14 and without the Kingsbury Center and we looked
15 also at the number of principal buildings
16 within the Square.

17 CHAIRPERSON HOOD: Okay, thank you.

18 Any questions for Ms. Thomas? I think a case
19 has been made but I want to hear from my
20 colleagues. Commissioner May?

21 COMMISSIONER MAY: Yes, I agree. I
22 think the additional information from the

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1 Office of Planning is very helpful and makes
2 the case pretty clearly the -- and I think
3 that it's well-expressed in the order which
4 explains on which points it makes sense to
5 expand the 16th Street Heights overlay and that
6 the key issue has -- is really the extent of
7 institutional use of properties within this
8 primarily residential neighborhood zone and
9 how it really is an exceptional -- the amount
10 of institutional use is exceptional now and
11 therefore, to be responsive to the
12 comprehensive plan, it's appropriate to expand
13 the overlay.

14 CHAIRPERSON HOOD: Okay, with that,
15 we fleshed a lot of this out. We just needed
16 that additional information. I would move
17 that we approve Zoning Commission Case Number
18 08-09 and ask for a second.

19 COMMISSIONER MAY: Second.

20 CHAIRPERSON HOOD: Moved and
21 properly second. Any further discussion,
22 further discussion? All those in favor "Aye".

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1 (Aye)

2 CHAIRPERSON HOOD: Not hearing any
3 opposition from those who are here, Ms.
4 Schellin, could you record the vote?

5 MS. SCHELLIN: Yes. Staff records
6 the vote three to one to one to approval final
7 action in Zoning Commission Case Number 08-09.
8 Commissioner Hood moving, Commissioner May
9 seconding, Commissioner Jeffries in support.
10 Commissioner Turnbull denies by proxy,
11 Commission Keating, not voting having not
12 participated.

13 CHAIRPERSON HOOD: Okay, next we're
14 going to -- we're still under final action.
15 The Zoning Commission Case Number 03-12I/03-
16 13I, that th Capper/Carrollsborg Venture LLC
17 and the DC Housing Authority - PUD Time
18 Extensions. We have two scenarios going on
19 here. We have an extension of orders Nos. 03-
20 12/03-13/03/12A/03-13A to provide that the
21 first-stage application is valid until
22 December 31st, 2003 and the application for

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1 second stage approvals for the remaining
2 developments in Square 79, 767 and 768 must be
3 filed by December 31st, 2013.

4 And we have an extension of
5 condition Number -- do you know what, I think
6 what we'll do is break them up. Let's go with
7 that first bullet point. Ms. Schellin.

8 MS. SCHELLIN: This one I do have
9 an absentee ballot, actually to go ahead and
10 let you know, I have absentee ballots for both
11 of these from Commissioner Turnbull and I have
12 nothing further to add other than to ask the
13 Commission to consider a final action on each
14 of these.

15 CHAIRPERSON HOOD: Again,
16 colleagues, I did not read the second bullet
17 point on our agenda. We're looking at Exhibit
18 -- from the Applicant we have an Exhibit 24, I
19 believe it is. Yeah, Exhibit 24 and this is
20 basically generally what the extension of the
21 existing -- extension of Orders No. 03-12/03-
22 13/03-12A and 03/13A and it also includes the

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1 second stage of those squares named 739, 767
2 and 768 which will have to -- they would have
3 to file before December 31st, 2013. Let me
4 open it up for discussion. Any discussion?

5 COMMISSIONER MAY: No, I think the
6 idea of granting the extension for the overall
7 project makes sense to me in the current --

8 CHAIRPERSON HOOD: Not hearing any
9 problems, I'll just make a motion to approve
10 Zoning Commission Case -- well, this part of
11 Zoning Commission Case 03-12I/03/03-13I -- no,
12 I'm sorry, 03-12/03-13/03-12 --

13 MS. SCHELLIN: Actually, you are
14 correct, Commissioner Hood. You can -- you're
15 correct. It is still case number I but with
16 regard to the extension regarding the order
17 numbers, 12 and 13 and 12 and 13A, you were
18 correct when you started out. The case number
19 is still I for both of these, but it's the
20 first bullet with regard to extending the
21 orders, the validity of the first stage
22 application to December 31st, 2013.

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1 CHAIRPERSON HOOD: Okay, so I'll
2 just read it as I see it here on this. My
3 only issue was, if we approve 03-12A and 03-
4 13A it still comes up under the condition --

5 MS. SCHELLIN: And it's just the
6 first bullet, yeah, that first bullet.

7 CHAIRPERSON HOOD: Okay, so we're
8 only approving what we have in front of us at
9 this time.

10 MS. SCHELLIN: Right, it's the
11 first bullet.

12 CHAIRPERSON HOOD: Okay, the first
13 bullet, extension of orders of 03-12/03-13/03-
14 12A and 03-13A to provide that the first stage
15 application is valid until December 31st, 2013
16 and that the application for the second stage
17 approvals for the remaining developments in
18 Square 739, 767 and 768 must be filed by
19 December the 31st, 2013 and I ask for a second.

20 VICE-CHAIRPERSON JEFFRIES: Second.

21 CHAIRPERSON HOOD: Thank you for
22 not having me repeat that. All right, any

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1 further discussion? All those in favor,
2 "aye".

3 (Aye)

4 CHAIRPERSON HOOD: Not hearing any
5 opposition, Ms. Schellin, would you record the
6 vote?

7 MS. SCHELLIN: Yes, staff records
8 the vote four to zero to one to approve the
9 first-time extension mentioned for Case Number
10 03-12I/03-13I with regard to order number 03-
11 12 and 13 and 03-12A and 13A as related to the
12 first stage application extending it to
13 December 31, 2013 and the -- as stated under
14 bullet -- the first bullet under Final Action,
15 Item C, now. Commissioner Hood moving,
16 Commissioner Jeffries seconding, Commissioner
17 May in support, Commissioner Turnbull in
18 support by absentee ballot, Commissioner
19 Keating not voting having not participated.

20 CHAIRPERSON HOOD: Okay, next,
21 again, under the second bullet under final
22 action, extension of Condition Number 5, you

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1 know that was a major amenity at one point in
2 time of Order Number 03-12A/03-13A to provide
3 that the Applicant must file a building permit
4 application for the community center by
5 January 1, 2011 and must start construction of
6 the community center by January 1st, 2012. Ms.
7 Schellin.

8 MS. SCHELLIN: Again, I have an
9 absentee ballot from Commissioner Turnbull and
10 again, ask the Commission to consider final
11 action on this.

12 CHAIRPERSON HOOD: Okay,
13 colleagues, thank you. Colleagues, you
14 remember, we had a lot of the community ANC
15 Commissioners, in particular, who voiced a lot
16 of opposition with us moving in this fashion
17 for the community center. They thought that
18 was a main amenity. They -- the skepticism is
19 they don't believe it's going to get built
20 and, you know, we heard a lot of testimony to
21 that. Well, I have my file. I don't have it
22 right in front of me, but I do recall that and

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1 that was a major issue for that extension.
2 They didn't want to extend it. They wanted
3 built as planned, and I think that we had
4 quite a bit of -- considerable testimony. I'm
5 not sure if -- maybe one or two, maybe will
6 come down endorsing the proposal in front of
7 us, but I think most of what we had was
8 skepticism and opposition and wanted to see
9 that community center be built.

10 So with that, I'll just open it up,
11 any discussion?

12 COMMISSIONER MAY: Yes, Mr.
13 Chairman. I have to say that much of that
14 discussion about the delays and building the
15 community center really resonated with me.
16 You know, this is a PUD that goes back many,
17 many years. It goes back to my first tenure
18 on the Zoning Commission and I remember much
19 of the hearing and the difficulty that it took
20 to get all the way through the whole case with
21 all the various variables and the community
22 concerns and whatnot and it really does make

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1 sense to me that this is a very important
2 amenity as part of the PUD and there's been a
3 lot of work going on down there and there's --
4 you know, the neighborhood is basically being
5 completely reinvented and it's sad to think
6 that it's going to take that much longer to
7 get the community center built.

8 And I think that you know, prior
9 experience with these sorts of things and
10 other developments not too far away, you know,
11 these things often do get left to the very
12 last minute and I just -- I don't feel like we
13 had a really compelling case that it was
14 essential that this not be built you know, for
15 another -- effectively another four years
16 before it's completed. I would like to see it
17 done faster.

18 I mean, I could see giving them a
19 little bit more time, but I can't see letting
20 it run that far out and I think that's the one
21 issue that still remains problematic for me of
22 all the testimony that we had that was

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1 negative about the project. You know, I'm
2 comfortable about the height of the one
3 commercial building on M Street and I'm
4 comfortable about the change in the unit type,
5 the apartments, changing to apartments from
6 the townhouse model on that same block, you
7 know, in terms of the community issues, but
8 the one thing that I think, you know, really
9 struck home is this -- is this extension and
10 I'm just not ready to vote for it as it right
11 now.

12 VICE-CHAIRPERSON JEFFRIES: Well,
13 Mr. Chair, I am very much ready to vote for
14 it. I thought that the Applicant provided
15 somewhat compelling testimony for the reasons
16 for why they were unable to get this community
17 center built and while I respect Commissioner
18 May's, you know, opinion, particularly in that
19 the got started with this, but the world is a
20 very different place now and you know, I think
21 that this is a very important catalytic
22 project. It does a lot of different things

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1 for the community. It's just not about a
2 community center and I think we need to look
3 at this project, you know, comprehensively as
4 a whole and really allow it to go forward and
5 allow the developer to have some flexibility
6 in terms of getting things done here in the
7 midst of a pretty tumultuous economic
8 environment.

9 I think part of the testimony was
10 that, you know, they were having difficulty
11 with bond financing, raising the capital for
12 this thing and it's not four years. I see
13 three years --

14 COMMISSIONER MAY: That's to start
15 construction.

16 VICE-CHAIRPERSON JEFFRIES: Yeah,
17 but start construction it's less than -- it's
18 less than three years. I mean, completing it,
19 yes, will be four but, you know, that's part
20 of what they are offering here. So I am
21 prepared to move forward on this particular
22 condition.

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1 CHAIRPERSON HOOD: Commissioner
2 May?

3 COMMISSIONER MAY: Yeah, I just
4 wanted to say in response, I understand that
5 there's a need for some extension but I also -
6 - and I understand the circumstances of why.
7 But I think that the Commission is in a
8 position to make this a higher priority for
9 the developer there and I think that, you
10 know, with all the other circumstances that
11 they're dealing with, if -- you know, if we
12 said now that they have you know, nine months
13 to file for a building permit as opposed to a
14 year and nine months, I think that they would
15 make that happen.

16 VICE-CHAIRPERSON JEFFRIES: I hear
17 you but, you know, the Zoning Commission
18 acting as -- I'm not comfortable, you know,
19 with our powers being used for something like
20 this as related to, you know, given the
21 condition of the economic market as it is, I
22 really want to allow the Applicant, the

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1 developer, the flexibility to get again, a
2 very large scale project done and allow for
3 some room to get this thing done
4 appropriately. And I know there was a certain
5 order that was set up, but I think we need to
6 be flexible and I don't want the Zoning
7 Commission -- I just don't think we should use
8 our powers to be punitive or to, you know, be
9 an enforcer of some sort here. I think we
10 listen to the arguments and we respond
11 accordingly. And so I just -- you know, I'm
12 just in a different place than you and I'm not
13 so compelled.

14 CHAIRPERSON HOOD: I would actually
15 agree. I know this is going to sound
16 ludicrous but then again, when have I not. I
17 actually agree with both of you, it's just how
18 do we get there. As Commissioner May had
19 mentioned, there was a very compelling
20 argument when we first heard this case last
21 year that was really a selling point with the
22 community and to me that was the selling

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1 point, the main thrust, at least it sold me as
2 a commissioner at that time.

3 But then as you stated, things have
4 changed. So you know, I guess, again, as
5 we're always confronted with when we're in
6 front of the council or whoever, when you're
7 at your confirmation hearing, how do you
8 strike that balance? And Commissioner May,
9 let me go back to you. You -- the issue is
10 just the amount of time. If we maybe cut some
11 of those months off --

12 COMMISSIONER MAY: Well, the --

13 CHAIRPERSON HOOD: Let me just --
14 let me see where I'm going here. Let me see
15 my way.

16 COMMISSIONER MAY: Uh-huh. The
17 original order had provided for a building
18 permit must be filed no later than September
19 18th, of 2008. So obviously, there needs to be
20 some kind of an extension. And I wouldn't
21 object to it being, you know, them having a
22 year from that ate or even a, you know, a

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1 full, you know, a -- you know, give them nine
2 months from now, something like that to be
3 able to file for a building permit.

4 VICE-CHAIRPERSON JEFFRIES: Wait a
5 minute.

6 COMMISSIONER MAY: And a year later
7 for the construction.

8 CHAIRPERSON HOOD: The original was
9 September of 2008. Was that the date that
10 they were asking for, Ms. Schellin? I think
11 they were asking --

12 COMMISSIONER MAY: They were asking
13 for --

14 CHAIRPERSON HOOD: That original
15 date, was it from that original date?

16 COMMISSIONER MAY: They asked for
17 January of 2010, no, 2011, excuse me.

18 CHAIRPERSON HOOD: So they, in
19 essence are asking for a little less than
20 three years.

21 COMMISSIONER MAY: To start.

22 CHAIRPERSON HOOD: To start

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1 construction.

2 COMMISSIONER MAY: To file for a
3 permit.

4 CHAIRPERSON HOOD: To file for a
5 permit, okay. So --

6 VICE-CHAIRPERSON JEFFRIES: Well,
7 no, to file for a permit, no, that says
8 January 1, 2011. That's year and seven
9 months. Look, I don't feel comfortable at all
10 as a Zoning Commissioner, wearing a Zoning
11 Commissioner hat up here, you know, making
12 development decisions like this, deciding on
13 how many months. I just don't think that we
14 should get into that business. I think it's a
15 slippery slope.

16 I mean, I think we judge -- you
17 know, the Applicants, they're the developers.

18 This is the kind of work that they do. They
19 put it before us. If we don't agree with it,
20 we vote it up or down but I don't want to get
21 into tinkering. That's just not our job.

22 CHAIRPERSON HOOD: Well, you know,

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1 Vice Chair, this is where you and I are going
2 to part. We have, in instances, have
3 applicants come in and ask us for three years
4 and have given them a year. We've done that
5 many time here in at least the 12 years I've
6 been down here. And what I'm just basically
7 trying to do is get the three of us -- do we
8 have a proxy? Maybe I don't need the three of
9 us, but what I'm trying to do is get the three
10 of us as we're up here having a dialogue, to
11 try to come with some unanimity between the
12 three of us who are here having this
13 discussion and I'm just trying to see if
14 there's a happy medium the way you might go
15 along with.

16 VICE-CHAIRPERSON JEFFRIES: Mr.
17 Chair, this might be a time when you're going
18 to have to pick a side.

19 COMMISSIONER MAY: There's nothing
20 to --

21 CHAIRPERSON HOOD: I stand along a
22 lot.

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1 COMMISSIONER MAY: It is possible
2 that we could approve an extension to January
3 1 of 2010 and if they're not going to make it,
4 they can come back and ask again.

5 VICE-CHAIRPERSON JEFFRIES: Why
6 would we -- that causes --

7 COMMISSIONER MAY: They're not --
8 what's the incentive for them to put this --
9 make this a higher priority? You know, the
10 community has asked us to speak for them.

11 VICE-CHAIRPERSON JEFFRIES: And you
12 say that it is not a priority for these people
13 simply because they've stated -- I mean, why
14 can't you assume that it could be a priority.

15 It's just that they're looking at, you know,
16 the realization of the financial markets. I
17 mean, how are we going to raise the money to
18 build this? I mean, this is not --

19 COMMISSIONER MAY: I understand
20 that and I appreciate that. That's why we're
21 giving them room to --

22 VICE-CHAIRPERSON JEFFRIES: They're

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1 not doing something arbitrary.

2 COMMISSIONER MAY: -- finish the
3 whole project.

4 VICE-CHAIRPERSON JEFFRIES: I just
5 --

6 CHAIRPERSON HOOD: Here's why I
7 think I will have to make the decision. Where
8 I am is basically trying to find -- not giving
9 them the time they ask for, trying to find a
10 little more time, and I would kind of go along
11 with Commissioner May, not knowing -- and I
12 don't want to call for the vote not knowing
13 exactly where Mr. Turnbull is, because I think
14 this is a very worthwhile project.

15 To me, again, the community center
16 was a big piece for the folks that live in
17 that area.

18 VICE-CHAIRPERSON JEFFRIES: It's
19 romanticism, you're living back in another
20 time.

21 COMMISSIONER MAY: That time was
22 not two years ago.

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1 VICE-CHAIRPERSON JEFFRIES: But
2 that is wonderful and I really -- no, no, and
3 I understand but that's not where we are now,
4 and I -- you know, we can romanticize sort of
5 about how things were. I mean, all the
6 developers in this city and across the country
7 made a lot of projections. They didn't pan
8 out and now we're going to sit up there and be
9 enforcer. I just don't think it's
10 appropriate.

11 COMMISSIONER MAY: But the project
12 was not originally approved during this time
13 of real estate euphoria. I mean, this
14 predated a lot of the real boom in the cycle.
15 I mean, a lot of the planning for this
16 happened before that. It was starting to come
17 up, but it wasn't starting to come up
18 everywhere across the city at that point. And
19 so, it was not the same -- I mean, I don't
20 think that they imagined when they first
21 planned the project that they would be selling
22 the townhouses for the amount of money they

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1 wound up asking for them.

2 VICE-CHAIRPERSON JEFFRIES: Across
3 the city.

4 COMMISSIONER MAY: Yeah, but it's
5 still --

6 VICE-CHAIRPERSON JEFFRIES: And we
7 consistently when developers have come before
8 the Zoning Commission, we have consistently
9 listened to their questions, their issues
10 around hardship, financial hardship, and we
11 have granted. And now, all of a sudden we're
12 going to --

13 CHAIRPERSON HOOD: It hasn't always
14 --

15 VICE-CHAIRPERSON JEFFRIES: Let me
16 finish, Mr. Chair. Now, we have a HOPE VI
17 Project, of all things, and we're going to,
18 you know, put more strict time lines. I -- it
19 just does not seem consistent to me. But
20 again, you know, make a motion.

21 CHAIRPERSON HOOD: No, we're not
22 going to make a motion yet and I'm going to

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1 rule that out of order until we finish having
2 the discussion. One of the things that one
3 time on this Commission early on, I would say
4 -- I would Mr. Turnbull's predecessor, there
5 was an avenue taking up about always extending
6 PUDs and that was Herb Franklin and we weren't
7 extending -- that was the first when I started
8 learning about extension of PUDs and I know
9 you're saying romanticism and so on --

10 VICE-CHAIRPERSON JEFFRIES: We just
11 extended one, but go on.

12 CHAIRPERSON HOOD: But I'm just
13 tell you, so you're saying it's always
14 happening. That hasn't always been happening.

15 That was one time the way this Commission was
16 moving because we thought all they was doing
17 was tying up land and just tying up PUDs. So
18 this Commission was denying extensions.

19 So what I'm trying to get here from
20 the two of us, well, three of us, including
21 myself, is to see if we can come to a happy
22 medium, because you're right, this is a HOPE

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1 VI. We're not trying to hold a HOPE VI
2 hostage, at least I'm not. But I also have -
3 - there's a concern that we've heard loud and
4 clear from the community who are well aware
5 that this is a HOPE VI, so you know, I think
6 if we were to knock off a year, I don't see
7 where that's doing any harm.

8 And here's the thing, this
9 Applicant wants to come back -- you saw what
10 they brought us to begin with. Nothing
11 against Mr. Freeman. I think he did an
12 excellent job. I think he did an excellent
13 job, but it was -- it came in so many pieces,
14 so many dribbles. So I would suggest that we
15 try to find a happy medium with the time,
16 because I think the community spoke and
17 they're the ones who want to live in that
18 community.

19 I'll be in Ward 5. You'll be in
20 Ward 6 and he'll be in Ward 1. So that's the
21 way I look at that. So, do you have a
22 recommendation?

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1 COMMISSIONER MAY: I was -- I would
2 suggest that if we just grant an extension
3 through January of 2010 rather than 2011.
4 That takes a year off their schedules. You
5 know, they'd originally walked in the door
6 asking for about two years. This takes it
7 down to a year and that's for filing a permit
8 and then starting construction would be
9 January of 2012.

10 CHAIRPERSON HOOD: So January of
11 2010 would be for the filing of the permit.

12 COMMISSIONER MAY: Yeah, I'm sorry,
13 and construction would be January of 2011.

14 CHAIRPERSON HOOD: 2011, so
15 basically what we're doing, we're shaving off
16 a year off of each process.

17 COMMISSIONER MAY: Right. That's
18 what I would recommend.

19 COMMISSIONER JEFFRIES: I'm just
20 not -- again, you know where I stand. I'm not
21 supportive of that.

22 COMMISSIONER MAY: Mr. Chairman,

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1 since it's not clear that we're going to wind
2 up going in a single direction on this one,
3 perhaps we could ask the Applicant what they
4 could do to reduce the time frame and then we
5 could take it up at our next meeting.

6 CHAIRPERSON HOOD: Let's see if we
7 could be a little more flexible. Here's the
8 thing, I don't want to ask what my colleague
9 who is not here, I don't want to ask that and
10 add more problems. So that's why I'm trying
11 to see if we can have a happy medium. I don't
12 know if my colleague who is not here will vote
13 in favor or support. I'm not going to ask
14 that question until we get ready to vote.

15 COMMISSIONER JEFFRIES: I'm just
16 not -- again, you know where I stand. I'm not
17 supportive of that.

18 COMMISSIONER MAY: Mr. Chairman,
19 since it's not clear that we're going to wind
20 up going in a single direction on this one,
21 perhaps we could ask the Applicant what they
22 could do to reduce the time frame and then we

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1 could take it up at our next meeting.

2 COMMISSIONER JEFFRIES: I think
3 Commissioner May makes a good point. I mean,
4 I don't know about -- I don't know if we could
5 have -- if the Applicant is here, I just would
6 feel more comfortable about the Applicant, you
7 know, making a statement about what they can
8 do versus Zoning Commissioners making those
9 determinations. I mean, clearly, they can
10 come back, but --

11 CHAIRPERSON HOOD: Mr. Freeman,
12 you've heard -- I'm going to ask you to come
13 to the table. You are the Applicant. We're
14 calling you up. Typically, we don't do this
15 but if we don't call you up now, we may be
16 here until tomorrow. So you've heard the
17 discussion, Mr. Freeman. You heard the
18 concern from the Vice Chair, from Commissioner
19 May and myself and we're trying to just
20 balance it. You heard the proposal that's
21 already been out there. I'm sure -- I know
22 what you're going to tell me but I want to

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1 hear it from you.

2 MR. FREEMAN: For the record, I'm
3 Kyrus Freeman with the law firm of Holland and
4 Knight on behalf of the Applicant. To my
5 immediate right is David Cortiella from the DC
6 Housing Authority. Assuming the Commission is
7 going towards January 1st, 2010, practically
8 that would mean we would have to file the
9 building permit application within the next
10 five, six months and I'm not sure -- David can
11 speak a little bit more about the financing
12 issues, but I'm not sure if we could do that
13 and we'd be hear again, perhaps, in November.

14 COMMISSIONER MAY: Why do you say
15 it would be five or six -- oh, because it's --
16 you'd just have to apply before the
17 expiration.

18 MR. FREEMAN: We'd have to have an
19 order come out. Assuming you vote today --

20 COMMISSIONER MAY: OH, you didn't
21 file -- you didn't have an order that came out
22 before September 18th of 2008.

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1 MR. FREEMAN: That order is
2 expired. You'd have to have an order to file
3 a building permit to construct a community
4 center. Assuming you vote tonight --

5 COMMISSIONER MAY: Right, and you'd
6 have to wait for the order and then you'd have
7 to --

8 MR. FREEMAN: We have to wait for
9 the order to come out.

10 CHAIRPERSON HOOD: So we need to
11 add more time.

12 MR. FREEMAN: Just practically
13 speaking from a time perspective and David
14 could talk a little bit more -- Mr. Cortiella
15 can talk a little bit more about the finance
16 issues.

17 CHAIRPERSON HOOD: Okay.

18 COMMISSIONER MAY: I'm not sure
19 we're looking for more testimony on --

20 COMMISSIONER JEFFRIES: You don't
21 have to do that, because we've done that.

22 CHAIRPERSON HOOD: We're just

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1 trying to get the time frame.

2 COMMISSIONER JEFFRIES: I think the
3 Applicant should really spend time speaking
4 similar to what you just did in terms of the
5 difficulty, I mean, timing-wise, I mean of
6 what, you know, my colleagues are discussing
7 in terms a potential time line.

8 CHAIRPERSON HOOD: Hold on, before
9 you speak, can we add six months to that?

10 (Pause)

11 CHAIRPERSON HOOD: Mr. Freeman, if
12 we add six months to our proposal, or not our
13 -- is it our proposal? I don't know whose
14 proposal it is, but if we add six months to
15 the time frame we set, I'm sure that's helpful
16 but is that -- I don't want to ask you is it
17 doable. I really don't want to ask you that.
18 Is it helpful though?

19 MR. FREEMAN: When we filed our
20 application we thought January 1st, 2011 was
21 the most realistic time frame within which we
22 could file our building permit application.

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1 Anything short of that, it's possible but if
2 not, we'd be here again, asking for another
3 extension. I think we projected out January
4 1st, 2011 as the most realistic time frame
5 given the constraints upon the Housing
6 Authority. If you shorten it by six months,
7 we'll certainly take any approval we can get,
8 but reality is we might have to come back
9 again for another extension and the process
10 would start again.

11 CHAIRPERSON HOOD: Okay, we're
12 going to add six months to what our proposal
13 is and I'm going to look at Commissioner May
14 and I'm hoping that we all can agree. Okay,
15 thank you both.

16 COMMISSIONER JEFFRIES: Excuse me,
17 wait, before -- before -- six months, I mean,
18 you're saying that you'll likely be coming
19 back here or -- I mean, because what it
20 sounded to me you said is that you already set
21 a time that you thought was reasonable. Now,
22 that we're carving off, we're taking off six

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1 months from what you propose, how -- I mean,
2 what's the hardship to you?

3 MR. FREEMAN: The first expense for
4 applying for a building permit is actually
5 money, to prepare the drawings, file for the
6 building permit application, so I understand
7 from the Housing Authority that they don't
8 have pre-development funds. So that's less
9 time within which to try to put those funds
10 together. Again, we thought January 2011 was
11 reasonable. Anything short of that, we'll
12 work towards meeting that goal, but I guess
13 six months is June of 2010.

14 COMMISSIONER JEFFRIES: July 1.

15 MR. FREEMAN: July.

16 COMMISSIONER JEFFRIES: July 1,
17 2010.

18 MR. FREEMAN: 2010. We can --

19 COMMISSIONER JEFFRIES: Okay,
20 you're not offering a very robust kind of --
21 so if that's the case, then we're fine. I
22 mean, you know, if it were robust in terms of

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1 no, it's not going to work because X, Y, Z,
2 but it seems that you're going to try to work
3 this out.

4 MR. FREEMAN: It may not work if we
5 don't have the money, which has been our case
6 with respect to why we need the extension to
7 January 1st, 2011.

8 COMMISSIONER JEFFRIES: The first -
9 -

10 MR. FREEMAN: So if something
11 happens and we got the money today, we would
12 try to file a building permit application
13 tomorrow but the reality of the situation is,
14 we don't have the money now. We don't know
15 whether or not the money would be here in July
16 of 2010 and if it's not -- if it is, we'll
17 file the application. If it's not, we'll have
18 to ask for another extension.

19 COMMISSIONER MAY: I can live with
20 that.

21 CHAIRPERSON HOOD: All right, I
22 hope those of us who will be around July of

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1 2010, will remember we had this conversation.

2 Commissioner May?

3 COMMISSIONER MAY: Yes, I would
4 move approval of an extension of Condition
5 Number 5 of Order 03-12A and 03-13A to provide
6 that the Applicant must file a building permit
7 application for the community center by July
8 1, 2010 and must start construction of the
9 community center by July 1, 2011 and ask for a
10 second.

11 CHAIRPERSON HOOD: Okay, I'll
12 second it.

13 It's been moved and properly seconded. Any
14 further discussions?

15 COMMISSIONER JEFFRIES: Obviously,
16 you know, the further discussion is again, you
17 know, I'm very hopeful that with this extra
18 incentive that's being conveyed onto the
19 Applicant from the Zoning Commission, I'm
20 hopeful that they can get the project through.

21 I just -- looking at the time lines that they
22 have and looking at the market as it is, it

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1 seems reasonable to me, but, you know, I'm
2 prepared to go forward with what's been
3 proposed.

4 CHAIRPERSON HOOD: Okay. All
5 right, well, it's been moved and properly
6 seconded. Any further discussion? All those
7 in favor, aye.

8 (Aye)

9 CHAIRPERSON HOOD: Hearing no
10 opposition from those who are here and also
11 the proxy, which I've been trying to figure
12 out -- I don't know can the proxy be included
13 now?

14 MS. SCHELLIN: Yes, it can.

15 CHAIRPERSON HOOD: Okay.

16 MS. SCHELLIN: Staff records the
17 vote four to zero to one to approve the time
18 extension to July 1, 2010 and construction to
19 being by July 1, 2011 in Zoning Commission
20 Case Number 03-12I/03-13I, Commissioner Hood
21 moving, Commissioner -- I'm sorry,
22 Commissioner May moving, Commissioner Hood

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1 seconding, Commissioner Jeffries in support,
2 Commissioner Turnbull in support by absentee
3 ballot, Commissioner Keating not voting having
4 not participated. Just so you know,
5 Commissioner Turnbull voted to support with
6 conditions as the Commission sets.

7 CHAIRPERSON HOOD: Oh, okay.
8 That's what I was going to ask. Okay, thank
9 you very much. Okay, thank you, colleagues.
10 Let's move now to proposed action, Zoning
11 Commission Case Number 03-12G/03 -- 03-12G/03-
12 13G, Capper/Carrollsborg Venture LLC and DCHA
13 Second Stage PUD and PUD modification @
14 Squares 769 and 882. Ms. Schellin.

15 MS. SCHELLIN: Yes, sir. We do
16 have a request from the Navy and the Marines
17 to re-open the record for the Commission to
18 consider and also a response from the
19 Applicant if you do choose to do so, their
20 response to that request.

21 CHAIRPERSON HOOD: Okay, we have
22 not -- we have a response to re-open the

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1 record and we have a response to the response
2 to re-open the record.

3 MS. SCHELLIN: A request to re-open
4 the record at Exhibit 94, right.

5 CHAIRPERSON HOOD: Okay, what I
6 would suggest is that we re-open the record in
7 light of any opposition, that we just re-open
8 the record and accept the information, the
9 response from Marine Corps, I mean, the Marine
10 Barracks.

11 MS. SCHELLIN: From the Navy and
12 the Marines, right.

13 CHAIRPERSON HOOD: From the Navy
14 and the Marines. Okay. Any opposition to
15 doing that? Commissioner May?

16 COMMISSIONER MAY: No, sir.

17 CHAIRPERSON HOOD: Okay, so we will
18 re-open the record.

19 MS. SCHELLIN: Okay, just by
20 consensus?

21 CHAIRPERSON HOOD: Just -- right.

22 MS. SCHELLIN: Okay. And then are

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1 you going to also re-open the record to accept
2 the Applicant's response to that request?

3 CHAIRPERSON HOOD: Yeah, we're a
4 fair group. I think we can re-open the record
5 also to the Applicant's response to the
6 request to re-open the record.

7 MS. SCHELLIN: Okay, or rather
8 their opposition to that requests, and then
9 they also filed -- since you did re-open the
10 record to accept the Navy and the Marine's
11 request, they also then filed a booklet in
12 response which I know you have not seen yet
13 but and you won't have time to read that yet
14 but they did file a booklet. Yes.

15 CHAIRPERSON HOOD: Anyway, what
16 we'll do is let's see how far we get. I think
17 that there are some responses that we can get
18 before -- we couldn't when this was done --
19 before final action. I would hope that we
20 could -- well, let me not say that because I
21 don't know how things move around here, but
22 before we go to some responses, and once we

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1 get to looking at what the issues are from the
2 Marine Corps and others, and the Navy, then we
3 can respond and also from the Applicant, who
4 responded to the request, which is Exhibit 99,
5 I believe. Okay.

6 COMMISSIONER MAY: Mr. Chairman,
7 can we take a minute just to at least read the
8 letters?

9 CHAIRPERSON HOOD: Okay, yeah,
10 let's take a minute and read the letters and
11 peruse the booklet.

12 (Pause)

13 COMMISSIONER MAY: Mr. Chairman, if
14 we would take proposed action on this tonight,
15 it would still be referred to NCPC for their
16 review, would it not?

17 CHAIRPERSON HOOD: Correct. I
18 think, yeah, yeah, it will, right, Ms.
19 Schellin? Yeah, it would go to NCPC.

20 COMMISSIONER MAY: Okay.

21 CHAIRPERSON HOOD: I think in his
22 letter he's saying -- one of them is saying

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1 irreversible issues with the height which --

2 COMMISSIONER MAY: Yeah, you know,
3 given the amount of information that was
4 presented by Holland & Knight, I think that
5 it's worth it to take some time to consider
6 that, but I think that since we do take two
7 votes on this, we have the opportunity to
8 reconsider any position we take tonight before
9 we take final action. And at that point,
10 we'll have the benefit of having -- there
11 having been a federal review by NCPC as well.

12 CHAIRPERSON HOOD: Okay.

13 COMMISSIONER MAY: Do we know
14 whether the -- I haven't read this, obviously,
15 fully but this contains some response to the
16 actual content. It's not just a refutation of
17 the -- or a request not to re-open the record,
18 right? There's more --

19 COMMISSIONER JEFFRIES: No, it's
20 more.

21 COMMISSIONER MAY: And do we
22 believe that it's substantive and complete?

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1 Okay.

2 COMMISSIONER JEFFRIES: It seems
3 quite substantive to me.

4 COMMISSIONER MAY: I'm just -- the
5 only question is whether we need to leave the
6 record open for any further feedback from the
7 Applicant in this case.

8 MS. SCHELLIN: It's pretty
9 complete, I think.

10 COMMISSIONER JEFFRIES: Yeah, the
11 Marine Corps might want to respond to the
12 response, but --

13 COMMISSIONER MAY: Well, you know,
14 the Marine Corps can make their case at NCPC
15 as well.

16 COMMISSIONER JEFFRIES: Yeah,
17 right, right.

18 CHAIRPERSON HOOD: Well, why don't
19 we just do that and let's proceed with every
20 issue except for this one and we'll deal with
21 this once NCPC has their review and we'll deal
22 with some things at final, I think. That

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1 would be the best way for us to move --

2 COMMISSIONER MAY: Okay, but we
3 would take proposed action tonight on this,
4 acknowledging this and then opening the door
5 for reconsideration at final. Is that right?

6 CHAIRPERSON HOOD: Yeah, we can
7 always do that.

8 COMMISSIONER MAY: Right.

9 CHAIRPERSON HOOD: Okay, let's open
10 it up -- you know, I meant to mention ANC 6B
11 and there was another ANC, 6B and 6D who also
12 mentioned -- commented on this case, that was
13 Exhibit 93 and Exhibit 100 and basically they
14 all outlined the three -- the decrease in open
15 space, delay in construction of the operation
16 of the community center which we dealt with,
17 the height of the office building at 600 M
18 Street and both issues are in Square 882,
19 which is the north and one is the south. And
20 also I'm trying to remember what 6D said, "The
21 Commission voted six, zero to one to support
22 the letter sent to you, to the Zoning

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1 Commission by Commissioner Siegel and
2 Commissioner McBee responding to the
3 submission by the Applicant and questions
4 raised by the Commission about the application
5 for" -- okay, I think we dealt with that.

6 I may have put that in my wrong
7 pile. "The ANC is skeptical about both the
8 success of the program for potential returnees
9 to the project and the availability for
10 parking spaces for home health aides. We are
11 particularly concerned about the delay in the
12 construction of the community center." So I
13 think these -- both of these ANC letters are
14 germane to the whole project, obviously,
15 regardless of how we deal with it. I think
16 they responded to different issues.

17 Also we had something from DDOT and
18 I'm just trying to make sure it's in the right
19 case because I got it all mixed up here
20 together.

21 COMMISSIONER JEFFRIES: It was a
22 crazy case.

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1 CHAIRPERSON HOOD: It says, "In
2 addition, Applicant have also agreed with the
3 residential building in the northern portion
4 of Square 769, both buildings in Square 882,
5 will each have a property management company
6 or other persons on site to coordinate freight
7 delivery, trash, and building related
8 operations and that the contact information
9 for these people will be provided for the
10 building occupants". And that is Exhibit 91.

11 "DDOT agrees with Applicant's restrictions
12 and believes that they should be stipulated in
13 the Zoning Commission order".

14 Okay, so let me open it up. Any
15 other comments that we have -- any other
16 comments?

17 COMMISSIONER MAY: Mr. Chairman,
18 I'm disappointed that in the -- in what was
19 submitted for final -- or rather for after the
20 hearing, did not include any attempt to
21 address the concerns that we had or at least I
22 had about the placement of the ADA accessible

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1 units in relation to the loading area. I
2 mean, as far as I know, all that was not
3 addressed in what I've seen. So I mean, and
4 my concern had to do with the fact that we had
5 these accessible units that were accessible
6 from the alley.

7 CHAIRPERSON HOOD: If it was
8 addressed maybe someone could mention to Ms.
9 Schellin where we can find it, because I -- I
10 think the Applicant's standing was addressed.

11 MS. SCHELLIN: I'm being told that
12 the loading was moved to the east side.

13 COMMISSIONER MAY: Do we have an
14 exhibit number?

15 MS. SCHELLIN: Tab C of the plans,
16 Sheet 3.14.

17 COMMISSIONER MAY: What was the
18 date on the drawing?

19 MS. SCHELLIN: The plans were filed
20 April 6th.

21 COMMISSIONER MAY: So it's the
22 March 19th set?

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1 MS. SCHELLIN: The filing was April
2 6th. It's actually dated April 6th, too.

3 COMMISSIONER MAY: I'm not sure why
4 I didn't see this.

5 CHAIRPERSON HOOD: Do you know what
6 I think we can do once we locate it, let me
7 just ask you this, Commissioner May, can we
8 deal with this before final because I don't
9 know, did you --

10 COMMISSIONER MAY: If you'll give
11 me just five minutes, I'll flip through the
12 pages that are here and see what --

13 CHAIRPERSON HOOD: See if the rest
14 of us got it. Okay. And that's what I was
15 say, we can -- because that's only one vote,
16 even though you brought the issue up. I don't
17 know what happened.

18 (Pause)

19 CHAIRPERSON HOOD: Just bear with
20 us a moment.

21 COMMISSIONER JEFFRIES: How are you
22 doing, Commissioner May?

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1 COMMISSIONER MAY: Almost through.

2 COMMISSIONER JEFFRIES: Okay. I
3 got a babysitter that I have to relieve. So
4 I'm just --

5 COMMISSIONER MAY: No, I've
6 reviewed Square 882 and it looks like all of
7 the concerns that had are pretty much
8 addressed. I can't say that everything is
9 perfect but it's -- you know, the -- when do I
10 ever say that, right? The loading dock was --
11 or the loading was moved to the other end of
12 the building and away from those accessible
13 units to access the other elevator and
14 actually the connection, I think, is better to
15 the elevator and that works out better.

16 The other changes to the facade, a
17 number of the changes that --

18 COMMISSIONER JEFFRIES: What are
19 the changes to the facade?

20 COMMISSIONER MAY: There were some
21 really slight simplification of the end
22 elevations at the --

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1 COMMISSIONER JEFFRIES: Oh, I
2 remember that. Yeah, I remember. That was a
3 good --

4 COMMISSIONER MAY: Too many colors
5 and things weren't lining up very well, and
6 then there were the sort of -- the false
7 balconies that were, partial height windows.
8 There was the top floor. There were a bunch
9 of those sort of very vertical windows south
10 facing. Those got bigger and got joined with
11 the rest of the facade. So all those fixes
12 were made.

13 I'm just doing a quick check on
14 Square 769. I don't think there was -- there
15 was not a lot to change there, not a lot at
16 all.

17 CHAIRPERSON HOOD: Okay, are you
18 all straight? Okay, any other comments?
19 Okay, with that, I would approve Zoning
20 Commission Case 03-12G/03-13G/03-12G/03-13G,
21 Capper/Carrollsborg Venture LLC & DCHA 2nd
22 Stage PUD and PUD modifications of Square 769

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1 and 882 and ask for a second.

2 COMMISSIONER JEFFRIES: Second.

3 CHAIRPERSON HOOD: Moved and
4 properly seconded. Further discussion?

5 COMMISSIONER MAY: Mr. Chairman, I
6 did want to acknowledge properly the best
7 built sample board I've ever seen and credit
8 the right project for it. So I do appreciate
9 the effort that went into that and in
10 presenting that in that circumstances. The
11 materials look pretty good. It's always much
12 more helpful to have this at the time of the
13 hearing than at the decision making. You're
14 dealing with a lot at decision making, so --

15 COMMISSIONER JEFFRIES: Make sure
16 we get that for the Abdo case for certain.

17 COMMISSIONER MAY: Yes. We really
18 need that for the -- all right, thank you.

19 MS. SCHELLIN: Commissioner Hood,
20 before you call for the vote, I just want to -
21 - you said G both times. Were you actually
22 combining both G and H? Is that what you

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1 meant to do? Were you combining the two
2 cases?

3 CHAIRPERSON HOOD: I wasn't but --

4 MS. SCHELLIN: Oh, okay, you said
5 12 and 13G twice so I --

6 CHAIRPERSON HOOD: Oh, I did.

7 MS. SCHELLIN: -- so I wasn't sure
8 if you were trying to combine. Were you
9 trying to just do the one case first?

10 CHAIRPERSON HOOD: I really should
11 have tried -- no, actually, just A.

12 MS. SCHELLIN: Just A, okay, I just
13 wanted to make sure.

14 CHAIRPERSON HOOD: Okay, all those
15 in favor, aye?

16 (Aye)

17 CHAIRPERSON HOOD: Hearing no
18 opposition from those of us who are here, Ms.
19 Schellin, could you record the vote?

20 MS. SCHELLIN: Yes, staff would
21 record the vote three to zero to two to
22 approve proposed action in Zoning Commission

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1 Case Number 03-12G/03-13G, Commissioner Hood
2 moving, Commissioner Jeffries seconding,
3 Commissioner May in support. Commissioner
4 Keating not present -- excuse me, Commissioner
5 Keating not voting having not participated.
6 Commissioner Turnbull not present and not
7 voting.

8 CHAIRPERSON HOOD: The last --
9 well, Zoning Commission Case Number 03-12H/03-
10 13H, Capper/Carrollsborg Venture LLC & DCHA-
11 PUD Modifications of Square 739, 767, 768 and
12 S825. Ms. Schellin?

13 MS. SCHELLIN: The staff has
14 nothing further to add to this one, just
15 asking the Commission consider proposed
16 action.

17 CHAIRPERSON HOOD: Okay, any
18 comments on this particular one? Guess not.
19 Okay, I would move approval and ask for a -- I
20 move approval of Zoning Commission Case 03-
21 12H/03-13H, at Squares -- PUD modification of
22 Square 739, 767, 768 and S825 and ask for a

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1 second.

2 COMMISSIONER JEFFRIES: Second.

3 CHAIRPERSON HOOD: Moved and
4 properly seconded. Further discussion? All
5 those in favor aye.

6 (Aye)

7 CHAIRPERSON HOOD: Not hearing any
8 opposition, Ms. Schellin, would you record the
9 vote?

10 MS. SCHELLIN: The staff records
11 the vote three to zero to two to approve
12 proposed action Zoning Commission Case Number
13 03-12H/03-13H. Commissioner Hood moving,
14 Commissioner Jeffries seconding and
15 Commissioner May in support. Commissioner
16 Keating not voting having not participated.
17 Commissioner Turnbull not present, not voting.

18 CHAIRPERSON HOOD: Okay, does the
19 Office of Planning have anything for the
20 Commission tonight?

21 MR. LAWSON: We do not, Mr. Chair,
22 thank you.

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1 CHAIRPERSON HOOD: Ms. Schellin, do
2 we have anything else?

3 MS. SCHELLIN: No, sir.

4 CHAIRPERSON HOOD: Okay, with that,
5 this second meeting of the month is
6 adjourned. Thank you.

7 (Whereupon, at 8:36 p.m., the
8 above-entitled matter concluded.)

9

10

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