

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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MONDAY

OCTOBER 18, 1999

+ + + + +

REGULAR MEETING

1092nd MEETING SESSION (11th OF 1999)

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The Zoning Commission met in Hearing Room 220 South  
at 441 Fourth Street, N.W., Washington, D.C., Angel F. Clarens,  
Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANGEL F. CLARENS	Chairperson
HERBERT M. FRANKLIN	Commissioner
ANTHONY HOOD	Commissioner
JOHN F. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Alberto Bastida, Secretary,	ZC
Stefanie D. Brown,	Office of Zoning
Vincent C. Erondou,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Steven Cochran,	Office of Planning
Dave Colby,	Office of Planning

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

(1:48 p.m.)

CHAIRPERSON CLARENS: Good afternoon ladies and gentlemen. This is the October 18th meeting of the Zoning Commission of the District of Columbia.

Joining me today are Mr. Parsons, Mr. Hood and Mr. Franklin. Mr. Bastida, would you please guide us through the agenda.

MR. BASTIDA: I would be glad to do that, Mr. Chairman. The preliminary matters, when we prepared the agenda we didn't have a preliminary matter but we have received a letter from Wilkes Artis Hedrick & Lane, that I have provided you, basically requesting to stop the process of considering the Solar Building until they have provided new plans and met with the community.

And they are requesting that you do not consider it today, in today's meeting, which is the only final action listed on the agenda.

CHAIRPERSON CLARENS: That's correct, and I was surprised to see this as a final action. I thought that this was before the Commission on our last meeting and that we could not reach a, given the composition of the Commission at the present time, we could not reach a decision on that case then, and having that the composition of the Commission has not changed since that time and I don't see any major reason why any of the Commissioners

1 would change their mind on the issue, I was surprised to see it on  
2 the agenda.

3 And I don't have any problem unless I hear  
4 something else from the Commissioners, to remove it from the  
5 agenda. I don't see why it should be here. I mean we discussed  
6 the issue that with new Commissioners coming on, the Commissioners  
7 would have an opportunity to review the record and act on the  
8 case.

9 So I don't, whatever we have to do, whether we can  
10 accept the letter from Wilkes Artis or whether we, on our own  
11 volition remove the issue from our agenda, that's something that  
12 we can -- if anybody has a comment I would appreciate it.

13 COMMISSIONER FRANKLIN: I agree.

14 COMMISSIONER PARSONS: Agree.

15 MR. BASTIDA: So the Commission is agreeing that  
16 you're going to withhold any further consideration until the new  
17 submission is provided to the Commission. Is that the intent?

18 Because otherwise --

19 CHAIRPERSON CLARENS: I thought this had been  
20 decided our last meeting and that this was not going to come back  
21 until the new Commissioners had had a chance to review the record  
22 and be able to act on this case.

23 MR. BASTIDA: Yes, Mr. Chairman, but I cannot put a  
24 case on limbo. I have to keep on -- even if it is not resolved --  
25 I have to keep on listing it as a final action.

1 CHAIRPERSON CLARENS: Okay. Is the letter from Mr.  
2 Quinn asking for a specific time frame in which to postpone the  
3 case?

4 MR. BASTIDA: No, it does not.

5 CHAIRPERSON CLARENS: Does the Commission have any  
6 suggestion as to how long we should postpone the case? In fact  
7 that we don't have any suggestions from --

8 COMMISSIONER HOOD: Mr. Chairman, one thing, and  
9 I'm glad to see that the dialogue between the applicant and the  
10 community has taken place, I would be in favor of seeing what that  
11 outcome would be -- whether it be two months or how much time they  
12 need.

13 MR. BASTIDA: I believe that more than two months  
14 would be required because the holidays are coming up, they have to  
15 provide new plans, they will have to meet with the community.  
16 There will be negotiations, hopefully, between the two sides and  
17 then a decision would be made. And then they would have to  
18 request the opening of the record and perhaps it might require  
19 further hearing to providing to the record the new plans.

20 COMMISSIONER HOOD: Well I just said two months to  
21 start the discussion.

22 CHAIRPERSON CLARENS: Okay. Well unless you're  
23 telling me that we need to find a date certain by which we're  
24 going to have to bring this up again before the Commission, I  
25 would say that we simply postpone action on this case until

1 further notice.

2 COMMISSIONER PARSONS: That s the appropriate  
3 response. That s what they essentially ask for in the letter.

4 CHAIRPERSON CLARENS: Okay. That s it. Any other  
5 preliminary matters?

6 MR. BASTIDA: No, Mr. Chairman. That s it.

7 CHAIRPERSON CLARENS: Okay.

8 MR. BASTIDA: The second item on the agenda is  
9 Action on the Minutes. Actually it should be Minutes of May 10,  
10 1999. I did find a mistake on page 5, the bottom line, it should  
11 say May 20, 1999, not June 14.

12 CHAIRPERSON CLARENS: Any other comments on the  
13 Minutes? Do I hear a motion first for adoption of the Minutes?

14 COMMISSIONER HOOD: I make a motion that we adopt  
15 May 1999 minutes.

16 COMMISSIONER FRANKLIN: Second.

17 CHAIRPERSON CLARENS: Discussion? Yes, Mr.  
18 Parsons.

19 COMMISSIONER PARSONS: I m struggling with this  
20 Eighth Street, that s item D. You recall I didn t hear this case,  
21 nor did Mr. Franklin, so what we need to do is to change the fact  
22 that I was approving their proxy. I wasn t. It s John Parsons  
23 and Herb Franklin not voting, not having participated.

24 CHAIRPERSON CLARENS: Thank you, Mr. Parsons.

25 MR. BASTIDA: Any further correction?

1 COMMISSIONER FRANKLIN: I believe, frankly, that I  
2 read the record in that case.

3 COMMISSIONER PARSONS: Well both of us did, Herb,  
4 and then we voted last month. This is May 10.

5 COMMISSIONER FRANKLIN: Oh that s right. You re  
6 right, you re right. This is prior to that. Thank you.

7 CHAIRPERSON CLARENS: You voted to do final action.

8 COMMISSIONER FRANKLIN: Right.

9 CHAIRPERSON CLARENS: Okay. Nothing else? All in  
10 favor of adopting the Minutes signify by saying aye.

11 (CHORUS OF AYES.)

12 CHAIRPERSON CLARENS: Opposed? The Minutes are  
13 adopted.

14 MR. BASTIDA: Mr. Chairman, the staff will record  
15 the vote adopting with those, the previous changes, Mr. Hood  
16 moving and Mr. Franklin second and Mr. Parsons and Mr. Clarens  
17 voting in favor of it.

18 CHAIRPERSON CLARENS: Okay. Next item.

19 MR. BASTIDA: That s proposed action on the Walter  
20 Washington Estates, the Office of Planning. MR. COLBY:

21 Thank you. The Commission asked at the May 10 meeting for  
22 additional materials to clarify what was before them, specifically  
23 detailed landscape plan, a site plan showing where the decks would  
24 be, lighting fixture details and to show where the reconfigured  
25 pool would be, what it would be look like or where it would be.

1           The applicant has submitted those and I can, I  
2 think it s before the Commission as to whether those meet their  
3 expectations based on what they requested. I can go a little  
4 further into how this application, this modification of the  
5 previous PUD got before the Commission and I would also rely on  
6 Mr. Bastida whose case this was at the time that the Commission  
7 heard to offer any comments he would like on the materials that  
8 were submitted.

9           MR. BASTIDA: Mr. Chairman, I think that basically  
10 the applicant has complied with the requests of the Commission on  
11 the specific four items that you requested.

12           CHAIRPERSON CLARENS: That was also my sense. Any  
13 comments from the Commissioners?

14           COMMISSIONER PARSONS: Yes. I think you have  
15 before you a sheet of paper from Coffin & Coffin Landscape  
16 Architects.

17           CHAIRPERSON CLARENS: Yes, I read that.

18           COMMISSIONER PARSONS: The traditional way that  
19 plants are purchased is not in this spread of inches. In other  
20 words, a two-and-a-half inch tree is a lot less of a tree than a  
21 four-inch tree, so I would recommend we change it to three-and-a-  
22 half to four -- which is the way they re generally spec ed in the  
23 industry and then we re --

24           CHAIRPERSON CLARENS: Are you talking about the  
25 secondary, the little leaf linden?

1                   COMMISSIONER PARSONS: Oh I m sorry I should have -  
2 - the London plains on the first is three-and-a-half to four, I  
3 would recommend. And the red maple --

4                   CHAIRPERSON CLARENS: Oh you re increasing from  
5 two-and-a-half to three-and-a-half.

6                   COMMISSIONER PARSONS: Right. The red maple from  
7 two to three, that would be three to three-and-a-half, and  
8 similarly with the willow oaks, three to three-and-a-half.  
9 Otherwise we re going to get much smaller trees.

10                  CHAIRPERSON CLARENS: You re going to get the  
11 bottom of the spectrum.

12                  COMMISSIONER PARSONS: Exactly. Right. And trees  
13 like this go up in increments of 100 per half-inch so you can  
14 imagine what we re going to get. I m surprised they specified  
15 them this way because it s -- and the little leaf linden should be  
16 three-and-a-half to four as well. The others are fine. I mean  
17 the way they specified the --

18                  CHAIRPERSON CLARENS: So you re suggesting the  
19 London plain tree to go from two-and-a-half to three as a minimum?

20                  COMMISSIONER PARSONS: Three-and-a-half.

21                  CHAIRPERSON CLARENS: Three-and-a-half?

22                  COMMISSIONER PARSONS: To four. That s the way  
23 they re sold.

24                  CHAIRPERSON CLARENS: Yes, I understand that.

25                  COMMISSIONER PARSONS: Three to three-and-a-half on

1 the red maple.

2 CHAIRPERSON CLARENS: Three to three-and-a-half.

3 COMMISSIONER PARSONS: Three to three-and-a-half on  
4 the willow oaks. And the lindens three-and-a-half to four.

5 CHAIRPERSON CLARENS: Very good. Any other  
6 comments?

7 COMMISSIONER PARSONS: No. We've finally got a  
8 response.

9 CHAIRPERSON CLARENS: Mr. Franklin?

10 COMMISSIONER FRANKLIN: I'm going to defer to Mr.  
11 Parsons' judgment.

12 CHAIRPERSON CLARENS: Okay. Mr. Hood?

13 COMMISSIONER HOOD: And I will do the same.

14 CHAIRPERSON CLARENS: Okay. And on the issue of  
15 the decks I think it's fairly clear on the new plan and that's  
16 been clarified, and the lighting also. So if I hear no further  
17 discussion, all in favor or approving the modifications to 98-20M  
18 signify by saying aye.

19 (CHORUS OF AYES.)

20 CHAIRPERSON CLARENS: Opposed? The ayes have it.

21 MR. BASTIDA: Mr. Chairman, the staff will record  
22 the vote 4-to-0. Who moved the approval?

23 CHAIRPERSON CLARENS: The approval was moved by --  
24 who moved the approval?

25 MR. BASTIDA: I think it was not moved or second.

1 I think that --

2 CHAIRPERSON CLARENS: I can go back and move it and  
3 second.

4 COMMISSIONER PARSONS: I thought it was Franklin  
5 and Hood.

6 MR. BASTIDA: No, that was the previous. That was  
7 the --

8 CHAIRPERSON CLARENS: Okay. Well, it s Franklin  
9 and Hood in this one, too.

10 COMMISSIONER HOOD: Mr. Chairman, can I make a  
11 motion that we approve proposed action on 98-20, Walter Washington  
12 Estates.

13 CHAIRPERSON CLARENS: Thank you, Mr. Hood. And do  
14 I hear a second?

15 COMMISSIONER FRANKLIN: Second.

16 CHAIRPERSON CLARENS: Okay. So it being Mr. Hood  
17 and Mr. Franklin and do we need to take a vote again? I don t  
18 think so. The vote will still be 4-to-zero.

19 MR. BASTIDA: Yes, and the staff will record the  
20 vote 4-to-zero, Mr. Hood and Mr. Franklin and Mr. Hood moving it  
21 and Mr. Franklin seconding, and Parsons and Clarens voting in  
22 favor of it. Thank you, Mr. Chair.

23 CHAIRPERSON CLARENS: Okay. Next item on the  
24 agenda, item 4.

25 MR. BASTIDA: Those are hearing actions is the

1 Office of Planning.

2 CHAIRPERSON CLARENS: Mr. Colby?

3 MR. COLBY: Thank you. Steve Cochran will give the  
4 report.

5 MR. COCHRAN: We are looking again this month at  
6 the application of Ft. Lincoln and Premium Distributors, looking  
7 for a set down for the development of a beer distribution facility  
8 at Ft. Lincoln New Town. Excuse the voice but everybody in town  
9 seems to have allergies.

10 I would mention that I think there was a  
11 considerable amount of wisdom in the Commission's postponing  
12 consideration of this the last time because we've learned a lot  
13 more and our report has changed fairly significantly since the  
14 last time. Some of the opinions you may have read in-between the  
15 lines have changed significantly and we are very comfortable  
16 recommending this for a set down.

17 We had the opportunity to learn considerably more  
18 about the changes to the Ft. Lincoln urban renewal plan, some of  
19 the environmental conditions out there, particularly with respect  
20 to the soils, and I believe all of us -- including the applicant --  
21 - learned a number of things about the law regarding whether the  
22 facility could actually locate outside of D.C. or not, which it  
23 can, those jobs could easily be lost.

24 For any number of reasons, including consistency  
25 with a comprehensive plan, consistency with the Ft. Lincoln

1 amended plan, the urban renewal plan, and for the retention of and  
2 possible growth of jobs in D.C., we recommend that this be set  
3 down for a hearing, and I d be happy to go into more details if  
4 you desire.

5 CHAIRPERSON CLARENS: Commissioners?

6 COMMISSIONER HOOD: I had one question. In my  
7 reading I was a little unsure, are they asking for us to do a  
8 rezoning or are they asking for a PUD from R5 to CM1 and once the,  
9 say if the PUD didn t go through, then they would go back to the  
10 original R5. Am I correct?

11 MR. COCHRAN: They re asking for consolidated PUD  
12 and rezoning, yes, I believe.

13 COMMISSIONER HOOD: So they re asking for both?

14 MR. COCHRAN: I think David is going to correct me  
15 on something.

16 MR. BASTIDA: Your assumption is correct. If the  
17 PUD is not approved there is no action, there would not be  
18 rezoning.

19 CHAIRPERSON CLARENS: The rezoning would be part of  
20 the PUD.

21 MR. BASTIDA: The rezoning is -- related to the  
22 PUD.

23 COMMISSIONER HOOD: That s all. I wanted to make  
24 sure, right.

25 MR. BASTIDA: Mr. Chairman, sorry to interrupt but

1 maybe you want to waive your rule to accept the report into the  
2 record because the Office of Planning didn't request such an item.

3 CHAIRPERSON CLARENS: The rules are waived.

4 MR. BASTIDA: Thank you.

5 COMMISSIONER FRANKLIN: I have a question for Mr.  
6 Cochran. What besides the retention of jobs in the District  
7 commends this to the Office of Planning? Let's say what from a  
8 land use standpoint?

9 MR. COCHRAN: For one thing we understand the  
10 history of the development of the new town better. I think in  
11 writing the report I had the disadvantage of being a native and  
12 was working off of some of the understanding of what Ft. Lincoln  
13 New Town was originally going to be under the Johnson  
14 Administration.

15 Since then a lot of market factors have come into  
16 play. There have been a number of changes to the Ft. Lincoln  
17 Urban Renewal Plan and this site has been designated in their plan  
18 since at least, I believe, 1994 as a site for warehouse-like  
19 commercial manufacturing type employment. That, plus the  
20 consistency with the comprehensive plan, made me understand that  
21 my own conception had been incorrect.

22 The next thing is the environmental considerations.  
23 We had been discussing the possibility of housing being a more  
24 suitable use for the site because it would allow more percolation  
25 of -- in fact, the clay in this area is such that the last thing

1 you want is percolation.

2 It turns into, well let s just say the houses would  
3 slide down the hill, so actually getting a pad and getting paving  
4 on the site stabilizes the soils much better. You ll note in  
5 there that we re recommending that they consider the building of  
6 the retention pond as permanent just because of some, if there are  
7 any bureaucratic problems with the hook up with Prince George s  
8 County.

9 And then the other thing is that there had been a  
10 switch in the urban renewal plan on where the retail center was  
11 going to be and where the housing was going to be.

12 So essentially, we just had some inaccurate  
13 information and I also brought with it an old conception of what  
14 the New Town plan was. I think that that was part of the problem  
15 in trying to get it on the agenda very quickly and all of us have  
16 worked to get much more accurate information since then. So we  
17 really are very comfortable this time with the set down.

18 COMMISSIONER FRANKLIN: Thank you very much, Mr.  
19 Cochran.

20 CHAIRPERSON CLARENS: Mr. Parsons?

21 COMMISSIONER PARSONS: Mr. Chairman, I m going to  
22 ask you to refer to this photograph that s in the package, and  
23 share with you the concerns I want to make sure are addressed.  
24 You ll see the proposed site outlined in red and then the possible  
25 lab or hotel to its right or south east. You also see a road

1 that s generally going -- a dirt road that s generally going  
2 around both of those sites.

3 And if you look to the right you ll see woods there  
4 or vegetation. And then there s some brown patches within that  
5 woods. These used to be wetlands, managed by the National Park  
6 Service, until the construction occurred to create this road  
7 connection to New York Avenue where no storm water retention was  
8 used. And the resultant filling of the wetlands by this plastic  
9 soil damaged the wetlands significantly.

10 So when I read in the report on page 9, the  
11 penultimate paragraph there, it says, the applicant will construct  
12 a temporary storm water retention pond to accommodate the outfall  
13 until the District provides a permanent connection into the main  
14 line at the District/Maryland border. I m going to be very  
15 obnoxious about this as we come to hearing, if this is really not  
16 resolved in a permanent way and I know you ve referred this to DPW  
17 but them coming forward with no report or we didn t have time or  
18 that kind of thing, I really urge you go really press them for a  
19 resolution of how they re going to get the water from this site to  
20 the Anacostia River, and not run it to the edge of the property  
21 and further damage the wetlands.

22 MR. COCHRAN: We ll certainly be doing that. It s  
23 my understanding that, well it s my very light understanding that  
24 it may not be completely within DPW s power. I believe that the  
25 problem lies more with Prince George s County and their timing on

1 the hookup. That s why we re suggesting that if this cannot be  
2 resolved that a more permanent type of storm water facility be  
3 constructed.

4 COMMISSIONER PARSONS: Well then I would ask if it s  
5 been located yet where the temporary storm water retention pond is  
6 to be located on the site.

7 MR. COCHRAN: I m sorry I don t think that either  
8 the Office of Planning or the applicant has had the opportunity to  
9 discuss that and we will certainly be doing this during the time  
10 between, if you set it down, the set down and the final report.

11 COMMISSIONER PARSONS: Because on the drawing  
12 enclosed there s a little flag with a label on it saying future  
13 storm water management facility. That s not on the photograph  
14 but on the exhibits to follow that fold out. Or the site plan  
15 I ll call it. Landscape Legend I guess. It s in the right of way  
16 of Eastern Avenue, which is public space and is forested and I m  
17 concerned that, you know, the trees will be removed to create a  
18 storm water retention basin. So are you going to be pushing for  
19 storm water retention on the site.

20 MR. COCHRAN: I understand your concern and I ll  
21 pay particular attention to it in the next report.

22 COMMISSIONER PARSONS: Thank you.

23 CHAIRPERSON CLARENS: In addition to that, Mr.  
24 Cochran, there is another very important issue which you define in  
25 your report and which I think is critical to resolve before this

1 issue comes before the Commission, and that s the old notion of  
2 traffic. It s identified in the report as a possible source of  
3 adverse impact, that the whole issue of where it is, this is  
4 obviously a distribution facility so it is clearly that its main  
5 function, trucks coming in and out, that s its main function.

6 And therefore how, just looking at the material  
7 that is in front of us, the access to the site which could be off  
8 of New York Avenue, that whole issue of traffic, and I don t want  
9 to get into the detail, but obviously we have approved some  
10 housing and if Ft. Lincoln is to a great degree a residential  
11 community at this point, the introduction of these kinds of  
12 facilities I can understand the logic of putting them in there but  
13 we need to have a thoroughly thought out traffic pattern that  
14 minimizes or, in fact, produces no adverse impact to the  
15 residential areas any more than it would in any other part of the  
16 city.

17 MR. COCHRAN: Right. If you look at Attachment I  
18 you can see the streets that the applicant has agreed to  
19 essentially not drive on and, frankly, fine the drivers if they go  
20 on there. I would be surprised if the applicant were able to  
21 resolve all of the problems having to do with the lack of direct  
22 ingress and egress to New York Avenue. I believe it would cost  
23 considerably more to solve that problem than it would for the  
24 applicant to build the facility and its profits over several  
25 years. That is a DPW issue and I hope that in their review they

1 will begin to realize that if this area is to become more of a  
2 mixed use area with more manufacturing, that that kind of  
3 interchange issue will have to be resolved.

4 CHAIRPERSON CLARENS: But you understand that the  
5 land use needs to be tied to accessibility. You cannot divorce  
6 the two, you know, whether the Council has designated this land  
7 for the use that is being contemplated, there needs to be a logic  
8 as to its access without disturbing other areas of the city, other  
9 areas of the town within the city.

10 MR. COCHRAN: Absolutely, sir.

11 CHAIRPERSON CLARENS: Okay. And then the last  
12 question on it is more to the Commissioners is is this a case that  
13 you want to consolidate as requested, or is this case that we want  
14 to split into a two-stage application? And this is a question,  
15 it is not a suggestion.

16 COMMISSIONER HOOD: I guess I ll answer that with a  
17 question. Do we normally wait until the hearing is started and  
18 then we see whether or not at that point in time whether we can  
19 make it a one-stage or two-stage or do we need to decide it before  
20 we set it down?

21 CHAIRPERSON CLARENS: Mr. Bastida?

22 MR. BASTIDA: It s at your pleasure. You can  
23 always explain it when you do the hearing, you decide that the  
24 information is not complete and accordingly you can split it in  
25 two phases or you could do it now.

1 CHAIRPERSON CLARENS: Mr. Parsons, any suggestions?

2 COMMISSIONER PARSONS: Well I don t think it s  
3 really complicated enough for a two-stage but I can assure you if  
4 the storm water isn t taken care of I m going to recommend a two  
5 stage.

6 CHAIRPERSON CLARENS: And I hope the traffic also.

7 COMMISSIONER PARSONS: Of course.

8 CHAIRPERSON CLARENS: Yes, okay.

9 MR. BASTIDA: I have a further question, if the  
10 Commission were to decide to set this down, it seems like there is  
11 a series of problems that the applicant has to work with the  
12 Office of Planning and with the Department of Public Works so what  
13 period of time the applicant will need prior to filing of the pre-  
14 hearing statement because that will set the stage for the hearing  
15 date.

16 CHAIRPERSON CLARENS: Well, let s go a step at a  
17 time. First, let s see if we re ready to set a down for a hearing  
18 and then we can talk about the timing of the setting down. And I  
19 think that you re asking the question obviously not of us but of  
20 the Office of Planning to see if they have any idea of the time  
21 frame in which we re working.

22 MR. BASTIDA: Yes, that is correct because the  
23 Commission has put a lot of emphasis in several aspects that seems  
24 that they are be happy looking at it in a preliminary fashion that  
25 requires that when the Commission, when the preliminary, the pre-

1 hearing statement is filed is all that solved. And that would  
2 require some considerable amount of time.

3 CHAIRPERSON CLARENS: Okay. So what is the  
4 pleasure of the Commission as to setting this case for hearing?

5 COMMISSIONER HOOD: Mr. Chairman, I make a motion  
6 that we set down 99-5C for a set down hearing.

7 COMMISSIONER FRANKLIN: Second.

8 CHAIRPERSON CLARENS: Being properly moved on  
9 second. Anything further discussion? All in favor of setting down  
10 99-5C for a hearing to a date for which we ll be discussing  
11 immediately after this. All in favor signify by saying aye.

12 (CHORUS OF AYES.)

13 Oppose? Okay. So we re setting down, so now Office  
14 of Planning --

15 MR. BASTIDA: Mr. Chairman, may I record it for the  
16 record?

17 CHAIRPERSON CLARENS: Yes, sure.

18 MR. BASTIDA: The vote is Mr. Hood moved and Mr.  
19 Franklin second and the vote was 4-to-0 to set it down for a  
20 hearing. Thank you.

21 CHAIRPERSON CLARENS: Okay. And then time frame of  
22 the planning. Any comments?

23 MR. COCHRAN: I believe that the usual time frame  
24 is what, two months from now?

25 CHAIRPERSON CLARENS: Mr. Bastida, Office of

1 Planning is asking what is the normal time frame that we would  
2 hear this.

3 MR. BASTIDA: Well there is no such thing as a  
4 normal time frame. It depends what the Office of Planning  
5 determined that it will take to negotiate with the applicant  
6 because we want to have a solid pre-hearing statement and not  
7 amendments after amendments to the pre-hearing statement  
8 throughout the process. And then the Commission comes in out of  
9 the cold into a hearing into which it hasn't been able to  
10 ascertain exactly what has been proposed.

11 COMMISSIONER FRANKLIN: Mr. Chairman, it seems to  
12 me the thing to do is just to have it set down at the earliest  
13 practicable time. And then back to the staff to decide.

14 MR. BASTIDA: Okay. We can work with the Office of  
15 Planning to ascertain what would be the most expeditious time to  
16 set it down for a hearing. Thank you.

17 CHAIRPERSON CLARENS: Okay. I think that that's  
18 the way we'll go.

19 Okay. Item B. Office of Planning?

20 MR. BASTIDA: Yes, that's the Office of Planning  
21 and the Office of Planning probably will like to request a waiver  
22 of the rule to accept the report into the record.

23 MR. COCHRAN: Yes, we would.

24 CHAIRPERSON CLARENS: Okay. So granted. 901 New  
25 York Avenue.

1 MR. COCHRAN: Okay. This is an application for a  
2 modification of an existing PUD at 901 New York Avenue. Let me  
3 get my notes. Okay. We re recommending that this be set down for  
4 a hearing.

5 There s a long history to this, this PUD, it goes  
6 back to about 1988 I believe. Since then the comprehensive plan  
7 has changed, the applicant in fact could be coming in, actually we  
8 could be just coming in to request a map amendment to make it C-4  
9 and then they could develop as a matter of right.

10 As it is, they re agreeing to go along with a  
11 continuation and modification of their PUD which gives everyone  
12 considerably more opportunity to review what they re proposing.  
13 And we have had the opportunity to review. We ve had extensive  
14 meetings with the applicant.

15 Our comments are in the report, there are a couple  
16 of corrections to those. Since the time that the report was  
17 written we ve met again with the applicant and the tower that we  
18 referred to as maybe being slightly less high has been changed in  
19 design.

20 That s the tower at the corner of 10th and K. And  
21 we also understand that the \$1.5 million dollars is not to be  
22 considered a subsidy for housing. In fact, they hope to recoup  
23 that in building new housing. So I just wanted to correct those  
24 for the record, and that would be within ANC 2F that housing.

25 And, again, I d be happy to go into more details if

1 you so desire.

2 MR. BASTIDA: Could I clarify something for the  
3 record? The Office of Planning might request that the site would  
4 be rezoned to C-4, it doesn't mean that the Commission necessarily  
5 will grant it.

6 COMMISSIONER FRANKLIN: Mr. Chairman, I move that  
7 this be set down.

8 COMMISSIONER PARSONS: Second.

9 CHAIRPERSON CLARENS: Very good. Being properly  
10 moved and second, any discussion?

11 The only comment that I have which I notice in  
12 reviewing the drawings is that, am I correct in understanding the  
13 that Commission recently approved or is moving for approval of a  
14 hotel on 10th Street to the east of this site? To the --

15 MR. COCHRAN: Yes, to the west of this site. Yes.  
16 That's correct.

17 CHAIRPERSON CLARENS: West? That is correct. And  
18 I also notice that the service entrance of this new building is  
19 directly opposite to the main entrance of the hotel.

20 MR. COCHRAN: You're correct.

21 CHAIRPERSON CLARENS: That's the kind of thing that  
22 I, that's the kind of thing that I was referring to when I  
23 mentioned at the Round Table for the Council that Ms. Cropp  
24 presided over a couple of months ago. And my comment is that the  
25 Office of Planning needs to look at these things -- and I'm sure

1 you do -- but we need to look at these things so that, you know,  
2 obviously it is the applicants , I don t know whose responsibility  
3 it is but it seems to me that if we re creating a hotel in the  
4 city as part of a PUD, the main entrance faces a side street or a  
5 north-south street and now we re coming in with another project  
6 and we re placing the service entrance directly across the main  
7 entrance, as far as the urban fabric of the city seems that there  
8 is a problem there. I don t know if it s a problem for the  
9 applicant or for the other applicant, obviously it s not so much a  
10 problem for this applicant but it might be a problem for the other  
11 hotel to have trucks and services, etc. directly in front of it.

12 But it is ultimately a problem for this city from  
13 an urban point of view that we have a major entrance to a hotel.  
14 So I hope that we can look into that and see what can happen.

15 MR. COCHRAN: Yes, in fact the applicant has moved  
16 the base about 18 or 20 feet to the south since then. I didn t  
17 realize it would be important to mention that.

18 But if you have to choose in a three-sided building  
19 there among New York Avenue, K Street and 10th Street, the Office  
20 was actually pleased that the modification to the PUD took the  
21 loading off of K Street and we certainly wouldn t want to see it  
22 on New York Avenue. I understand the difficulty, but of those  
23 three streets we felt that 10th was the least special, and so  
24 there is that difficulty.

25 COMMISSIONER FRANKLIN: Well Mr. Cochran, I think

1 the Chairman s point is an interesting one and I would hope that  
2 with the hearing we could get the Office of Planning to give us a  
3 second view of that and show us, combine the two.

4 MR. COCHRAN: Right. I appreciate your bringing  
5 that to our attention and I m sure the applicants, being as  
6 cooperative as they are, would be happy to provide some visuals to  
7 show what the truck docks might look like as you exit the hotel.

8 CHAIRPERSON CLARENS: The issue of adverse impact  
9 on something that we re approving, you know, immediately --

10 MR. COCHRAN: Thank you for bringing that to our  
11 attention.

12 CHAIRPERSON CLARENS: I don t have any other, I  
13 don t have any questions, any other issue.

14 COMMISSIONER HOOD: Mr. Chairman and not  
15 necessarily pertaining to this particular application, but I  
16 believe a couple of months ago I brought up the issue about PUDs  
17 and minor modifications and modifications.

18 I think at some point in time this Commission needs  
19 to have some structure so when those modifications come -- because  
20 I m going to be frankly honest -- the last one that I voted on  
21 with hesitation as far as I was concerned was not a minor  
22 modification. But I think that, I don t know whether we need to  
23 petition ourselves or how that works with the Office of Planning  
24 but we need to come in with some type of structure where we know  
25 when a modification is a modification as opposed to a new PUD.

1 MR. BASTIDA: Mr. Hood, if I may address that.  
2 Your point is well taken and there are two ways to look at it. A  
3 modification, the applicant has the advantage that the existing  
4 PUD remains operable. If he goes with a new PUD he, in fact,  
5 forfeits the previous PUD.

6 The difference of the process is almost nil because  
7 the Commission goes through the same process and the hearing  
8 process and input from the applicant and the community to obtain  
9 that. The only advantage is that the filing fee is much smaller  
10 but the hearing fee is the same one.

11 So that bring you some comfort level, it might not,  
12 but I wanted just to clarify that for the record and for your  
13 understanding.

14 COMMISSIONER HOOD: While I appreciate that, Mr.  
15 Bastida, that still doesn't answer my question or my concern. My  
16 concern is that modifications, we need to have some type of  
17 structure. I can't say if we're going to pinpoint it and I think  
18 I brought this up at the last hearing and I'm going to keep  
19 bringing it up until I feel satisfied and comfortable and I think  
20 it would be suitable for the applicants and for the citizens of  
21 this city because when you say a minor modification and you change  
22 everything, then you know we need to look at our regs. I don't  
23 know if we need to do a rule making or what, but I'm open for  
24 suggestions.

25 CHAIRPERSON CLARENS: Okay, well hopefully that

1 will happen starting next month.

2 COMMISSIONER PARSONS: Well so Mr. Hood doesn't  
3 think he's alone on this, the danger is that this Commission's  
4 going to start making up the rules. We'll get one that has been  
5 staffed out for six or seven months and we're going to decide it's  
6 not a modification.

7 And I think that what you're saying is we shouldn't  
8 be put in a box, I think you're saying well, gosh, you know, all  
9 the developers are going to leave the city if you treat them this  
10 way. But I think it's predictable that the next modification that  
11 comes forward that changes the use, the two of us are going to  
12 have a problem with that. And that's exactly what that did. As  
13 nice a change in use as it was, it still sets a precedent that  
14 could go the other way.

15 CHAIRPERSON CLARENS: You're referring to the  
16 hotel.

17 COMMISSIONER PARSONS: That's right. When the PUD  
18 comes in which was to be a hotel and now is an office building and  
19 we say no, we'll become the public enemy.

20 COMMISSIONER HOOD: Mr. Chair, if I may add, I do  
21 think that we need to move expeditiously on this. We've been  
22 accused in the past of not moving fast but we also have to be  
23 cautionary and also make sure we do what's right and accurate for  
24 the city. So I would like for us to see this move forward. I  
25 mentioned this once before, we have not done anything. Maybe it's

1 another action, Mr. Bastida, whoever, that I need to do but I  
2 think we need to get this in motion.

3 Thank you.

4 CHAIRPERSON CLARENS: Well maybe we need to get,  
5 why what would be then the appropriate procedure? Office of  
6 Planning would look into what kind of amendment to the text would  
7 be required to clarify the nature of modifications.

8 COMMISSIONER PARSONS: A definition of the word  
9 modification.

10 CHAIRPERSON CLARENS: A definition of the word  
11 modification so that it is more clear and predictable as the word  
12 has been used so maybe we can move at least not now but move under  
13 perhaps -- I don't know -- under other business, we could move to  
14 ask the Office of Planning to do a preliminary study of the issue  
15 of modifications and how the Commission should address  
16 modifications and at which point in litigation becomes a new PUD  
17 application.

18 MR. BASTIDA: Yes. And one of the issues is really  
19 that the developers, the problem is as I stated before, is that  
20 when they apply for a new PUD in fact they are forfeiting the  
21 previous approved one, so that should be part of the story, how  
22 that can be handled -- and if it's worthwhile to handle it.

23 CHAIRPERSON CLARENS: Very good. Okay. Well we'll  
24 take that up under other business at the end of the agenda and  
25 let's add it to the agenda to have a short little discussion about

1 that with the Office of Planning and then move on that issue.

2 MR. BASTIDA: Yes, okay. I was going to state how  
3 they the staff recorded a vote. Mr. Franklin to move and Mr.  
4 Parsons second and the vote was 4-to-0 to set it down for a  
5 hearing on 901 New York Avenue.

6 CHAIRPERSON CLARENS: Okay. I don't recall the  
7 vote but that's okay. I thought that we were discussing, I  
8 thought that --

9 COMMISSIONER HOOD: You didn't call the question.

10 CHAIRPERSON CLARENS: I didn't call the question.

11 MR. BASTIDA: Oh you didn't call the question? I'm  
12 sorry. My mistake.

13 COMMISSIONER FRANKLIN: Well at least we moved and  
14 seconded it.

15 CHAIRPERSON CLARENS: We moved and seconded that,  
16 okay.

17 MR. BASTIDA: Now I am the one who is ahead of the  
18 game.

19 CHAIRPERSON CLARENS: Now we're going to vote on  
20 it. So all in favor signify by saying aye.

21 (CHORUS OF AYES.)

22 Opposed? The ayes have it. So it will be  
23 scheduled at the earliest convenience by the staff.

24 MR. BASTIDA: That is correct. Mr. Chairman, and  
25 just to restate, it was moved by Mr. Franklin and Mr. Parsons

1 seconded it and the vote was 4-to-0 to set down for a hearing.

2 CHAIRPERSON CLARENS: Okay. Item 5, final action.

3 That case has been postponed until further notice so we will deal  
4 with that when the time comes.

5 Office of Planning Monthly Comprehensive Plan  
6 Status Report. Office of Planning?

7 MR. COLBY: Thank you, Mr. Chairman. You have our  
8 status report. Once again, the changes from last month are  
9 relatively minor. We note that the hearing scheduled on the DD  
10 Housing/Woodies text amendments have been continued to November 4  
11 and, at the same time, we note that the two other housing related  
12 amendments that have been set down are also scheduled for the same  
13 evening on November 4.

14 The other changes, the other changes of any  
15 significance, are that a child development center as the  
16 Commission took final rule making at its September meeting on that  
17 case which had been around for a while.

18 Similarly, on the Eighth Street Overlay the  
19 Commission took final action at the September meeting. And those  
20 are essentially the changes that we report in our status report.

21 CHAIRPERSON CLARENS: Very good. Any comments on  
22 the status report of the Office of Planning? Mr. Franklin?

23 COMMISSIONER FRANKLIN: No.

24 CHAIRPERSON CLARENS: Mr. Parsons?

25 COMMISSIONER PARSONS: No.

1 MR. BASTIDA: May I ask for a clarification?  
2 David, 99-3-C-2, you refer to the 2N? I think that on the 3 you  
3 have it on the 99-3-C-1 and DOS and the L Street is 99-3-C-2 not  
4 1.

5 MR. COLBY: So even though they re to be heard on  
6 the same night they re still separate cases?

7 MR. BASTIDA: The Commission has split the cases  
8 and unless they reinstate it as one, I cannot really name it this  
9 way. And actually it would create quite a confusion now to try to  
10 reincorporate the two, but it s the pleasure of the Commission. I  
11 will do whatever the Commission wants done.

12 COMMISSIONER FRANKLIN: Well they re all related in  
13 one way are they not?

14 MR. BASTIDA: They were originally one case but  
15 then there was a split and they now, because of the change on the  
16 hearing date, they have coincided again to be heard in the same  
17 date. If you want both of them condensed on the 99-3-C-1, I ll be  
18 glad to do that, but I just wanted to point that out.

19 CHAIRPERSON CLARENS: Well if they ve been  
20 separated, keep them separated. You can act on it, you can hear  
21 the information and act on it individually.

22 MR. BASTIDA: That is correct.

23 CHAIRPERSON CLARENS: Which gives you the ability  
24 if some issue needs further development or further study in one of  
25 the areas, that can be done without having to split the cases

1 again and then the Commission can move on the other one. Just in  
2 the event that happens, it gives more flexibility and there s  
3 nothing to be gained by consolidating them.

4 MR. BASTIDA: That is correct, Mr. Chairman.

5 COMMISSIONER FRANKLIN: I think that one should be  
6 aware of the fact that there may be people who wish to testify in  
7 all three cases and whoever is chairing the hearing should avoid  
8 repetition because general comments, for example, on the need for  
9 housing downtown are applicable to all of them and there s no need  
10 for us to go through that in each case.

11 CHAIRPERSON CLARENS: So we can consolidate the  
12 hearing for the three cases and hear the testimony for all three  
13 cases simultaneously, but the cases would remain separate so the  
14 action of the Commission can be taken on each of the cases based  
15 on the testimony that we ll hear as a consolidated hearing. That  
16 sounds like a plan?

17 MR. BASTIDA: That sounds like a good plan. It can  
18 be done that way. Actually, my interpretation was when you  
19 decided to have it on evening then to me you were consolidating  
20 the hearing into one even though you had the two cases. So that  
21 was my assumption.

22 CHAIRPERSON CLARENS: Okay, so then we ll move in  
23 that direction.

24 Legislative report, there s no litigation, there s  
25 no correspondence.

1 MR. BASTIDA: Yes, Mr. Chairman, there is a  
2 correspondence. The Office received a request on a time extension  
3 of Prevocational School which was referred to the Office of  
4 Planning. The Office of Planning provided its report that I think  
5 it requires a waiver of the rules also and is in front of you for  
6 a decision and the staff is requesting to see if you feel  
7 comfortable to making a decision on this case.

8 CHAIRPERSON CLARENS: This is the New Jersey and H?

9 MR. BASTIDA: Correct.

10 CHAIRPERSON CLARENS: PUD?

11 MR. BASTIDA: That is correct.

12 COMMISSIONER FRANKLIN: This is a request for an  
13 extension for five years.

14 MR. BASTIDA: That is correct.

15 CHAIRPERSON CLARENS: That is correct.

16 And there s no real, at least in what I read and  
17 the Office of Planning my helpers here, but there was no reason,  
18 no clear reason for the request for five years. The Commission  
19 usually grants two year extensions and there was nothing in the  
20 letter nor in your, nor in the Office of Planning s report that  
21 tied, that connected anything to five years. Apparently, the  
22 whole DOT situation should be resolved by the year 2000.

23 MR. COLBY: The applicant, I believe the  
24 applicant s report stated -- and we make very minor reference to  
25 it on the second page -- that the applicant alludes to the

1 strength of the amenity package as being, I think they said the  
2 strongest amenity package that s ever been before the Commission.

3 I didn t want to get into what was the strongest  
4 package or not so I didn t get into judging that. But we ve noted  
5 that notwithstanding that that might be the case, the Commission  
6 has granted longer than two years in the past where amenities have  
7 been provided up front and basically the applicant has committed,  
8 has made a commitment of that nature and is, I won t say rewarded,  
9 but where it made sense to the Commission to grant five or in one  
10 case ten years.

11 In this case, to my mind, none of the amenities  
12 have been provided so this PUD is not in the same category as  
13 those others. And when the PUD is filled and the amenities come  
14 into play or if the amenities were being provided in advance, that  
15 might be a different story. So we couldn t recommend more than  
16 two years.

17 CHAIRPERSON CLARENS: This PUD was first approved  
18 in 1997?

19 COMMISSIONER FRANKLIN: Right.

20 CHAIRPERSON CLARENS: So it s a relatively recent  
21 PUD.

22 MR. COLBY: It is actually a PUD that was here a  
23 long time ago and lapsed for two or three years with the  
24 applicant.

25 CHAIRPERSON CLARENS: But the present order has not

1       been extended?

2                   MR. COLBY: This is the first extension.

3                   CHAIRPERSON CLARENS: This is the first extension?

4                   MR. COLBY: Yes.

5                   MR. BASTIDA: Mr. Chairman, actually there was a  
6 PUD because one of the principals was sick it expired and it was  
7 basically reinstated through a new hearing process.

8                   CHAIRPERSON CLARENS: It went through a hearing  
9 process?

10                  MR. BASTIDA: Right. But in fact it s an old PUD  
11 that went through the whole process. There was not that many  
12 changes from the one that expired.

13                  CHAIRPERSON CLARENS: Yes, but that s not the issue  
14 here.

15                  MR. BASTIDA: No, I just want to --

16                  CHAIRPERSON CLARENS: It was a hearing process.  
17 This has not been extended since 1985 or 1986 or whatever ad  
18 infinitum. It went through a major review two years ago.

19                  MR. BASTIDA: Yes. Like a new PUD.

20                  CHAIRPERSON CLARENS: Like a new PUD. Right. So it  
21 is in fact a new PUD. Very good. Okay. Well I have no  
22 objections to extending this PUD for two years.

23                  COMMISSIONER FRANKLIN: I so move, Mr. Chairman.

24                  COMMISSIONER PARSONS: Second.

25                  CHAIRPERSON CLARENS: It has been properly moved

1 and seconded, all in favor signify by saying aye.

2 (CHORUS OF AYES.)

3 Opposed? None. The ayes have it. So ordered.

4 MR. BASTIDA: The staff will record a vote of 4-to-  
5 0, Mr. Franklin moving and Mr. Parsons seconded. Thank you.

6 CHAIRPERSON CLARENS: The Reminder Schedule.

7 MR. BASTIDA: That s in front of you. It was  
8 included in the package.

9 COMMISSIONER FRANKLIN: Has there been any  
10 significant change since the last Reminder Schedule?

11 MR. BASTIDA: No, but there will be significant  
12 changes for the next one after I set down all these hearings.

13 COMMISSIONER FRANKLIN: Thank you.

14 CHAIRPERSON CLARENS: Okay. Any other issue on the  
15 Reminder Schedule?

16 COMMISSIONER HOOD: Mr. Chair, if I can take this  
17 time, I don t know what the future may hold but I d better take  
18 this time while I can. I wanted to say that it s been a pleasure  
19 working with you, I ve learned a lot in the past year and a half  
20 and you truly have been an asset to this Zoning Commission here in  
21 the District of Columbia.

22 CHAIRPERSON CLARENS: Well thank you, Mr. Hood, I  
23 appreciate your comments.

24 COMMISSIONER FRANKLIN: Hear. Hear. I second  
25 them.

1 CHAIRPERSON CLARENS: Well thank you very much.

2 COMMISSIONER PARSONS: Yes. And counting BZA how  
3 long have you been sitting here? Not sitting here -- serving  
4 here.

5 CHAIRPERSON CLARENS: I ve been with BZA, yes, I ve  
6 been sitting here since 1991, including BZA. With about maybe a  
7 year in-between BZA and the Zoning Commission.

8 MR. BASTIDA: But nobody has your long established  
9 record that you do have.

10 CHAIRPERSON CLARENS: No, no, that s something --

11 COMMISSIONER PARSONS: Nobody wants it either.

12 MR. BASTIDA: You are the grandfather of the  
13 Commission.

14 CHAIRPERSON CLARENS: Okay. Other business. We  
15 have the issue that we raised last time, which is the issue of  
16 asking the Office of Planning to look into what it would take to  
17 clarify this notion of modifications so that the Commission has  
18 clearer rules as to when -- and the community has a clearer idea  
19 as to what is it that the Commission will find as an acceptable  
20 modification, and at which point a new PUD review gets triggered.

21 COMMISSIONER HOOD: And Mr. Chairman, may I add  
22 also, I don t know if it needs to go to a hearing process but I  
23 would be interested in also hearing from, you know, the citizens  
24 of the city as well, and applicants. I don t know if we need to  
25 open it up as a hearing or what, but I think everybody should be

1 able to weigh in.

2 MR. COLBY: We also will be bringing to the  
3 Commission, and I can't tell you precisely when, a proposed or a  
4 change -- or potential change -- in the PUD regulations which the  
5 Council adopted as part of their Comprehensive Plan Amendment  
6 which speaks to a time limit on PUD extensions.

7 CHAIRPERSON CLARENS: That's very good.

8 MR. COLBY: And it could be that both issues are  
9 addressed in the same hearing and it would be more efficient that  
10 way.

11 CHAIRPERSON CLARENS: Very good. I think so. I  
12 think that. And you will be communicating to the Commission as to  
13 a time frame in which these two issues will be addressed?

14 MR. COLBY: Yes.

15 MR. BASTIDA: And David, when you do that, you are  
16 going to take into account the expiration of the standing PUD if  
17 somebody request a new PUD on an already PUD site? Correct?

18 MR. COLBY: We can explore all the permutations of  
19 that PUD modification.

20 CHAIRPERSON CLARENS: Hearing nothing else, I  
21 declare if there's nothing else on the agenda, we've concluded  
22 everything, nobody has anything else, I declare this meeting  
23 closed.

24 (Whereupon, the above-entitled matter went off the  
25 record at 2:44 p.m.)

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