GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1139TH MEETING SESSION (14TH OF 2002)

Monday
October 28, 2002

The Regular Meeting of the District of Columbia Zoning Commission convened at 1:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
HERBERT M. FRANKLIN	Commissioner
JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

ALBERTO P. BASTIDA, Secretary
SHARON SANCHEZ, Office of Zoning

OTHER AGENCY STAFF PRESENT:

ELLEN McCARTHY, Deputy Director, Office of Planning
ARTHUR JACKSON, Office of Planning
KAREN THOMAS, Office of Planning
JOEL LAWSON, Office of Planning
JENNIFER STEINGASSER, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL

ALAN BERGSTEIN, Esq.

I-N-D-E-X

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

1:39 p.m.

WHEREUPON,

CHAIRPERSON MITTEN: Please come to order. Good afternoon, this is the regular monthly meeting for the Zoning Commission of the District of Columbia for Monday, October 28, 2002.

My name is Carol Mitten and joining me this afternoon are Vice Chairman Anthony Hood and Commissioner Herb Franklin and John Parsons.

We have a few modifications to our agenda first off. The first item that we are moving and this is to accommodate Mr. Franklin who is joining us for a single case today. We're going to take, first on the agenda we're going to move the one item under final action, which is letter A, Zoning Commission Case No. 96-3/89-1, the Capitol Gateway - Buzzard Point case.

We'll move that up to the first item on the agenda following preliminary matters and then next, the item H, under hearing action, the map amendment for building bridges. We just received the applicant's submission this morning and that will be postponed for consideration for hearing action until our November meeting, which is November 18.

So with that, I'll ask Mr. Bastida, are

there any other preliminary matters?

SECRETARY BASTIDA: No, madam chairman, thank you.

CHAIRPERSON MITTEN: Thank you. So let's turn then, under final action to the Capitol Gateway case. Does everyone have a copy of the proposed rule making that was advertised? Yes? Mr. Bastida, did you want to say anything about this or just have us launch into it?

SECRETARY BASTIDA: The staff would like you to make comments on the proposed rule making, based on the proposed rule making and that way the staff would be able to reflect your deliberations and your action, if you take any action. Thank you, madam chairman.

CHAIRPERSON MITTEN: All right. There were three basic items under this. One was whether or not hotels would count as the residential use for the CR zoned property in the Capitol Gateway overlay.

Another involved basically the opportunity for applicants to, if they had in addition to design review that was required for the waterfront zones or along M Street and they needed additional relief from the Board of Zoning Adjustment, that could all be handled by the Zoning Commission.

And then finally, the National Capitol Planning Commission had requested that they be a referral agency under the design review for the waterfront zone. So that summarizes what we have before us. Mr. Franklin?

COMMISSIONER FRANKLIN: Well, madam chair, I have just a preliminary matter for the record. I'm here today under a special written delegation of the Architect of the Capitol to enable me to vote on matters in which I sat previously and this matter, as you know, has been pending since 1996 and I can assure my colleagues that this is the last matter in which I will have to participate. So I have told some of my colleagues that I'm in the category of forgotten, but not gone.

(Laughter.)

CHAIRPERSON MITTEN: Well, we dragged it out as long as we could so that we could continue to see you, so we'll be sorry that this is the end of the line. Is there any discussion on the proposed rule making?

COMMISSIONER FRANKLIN: Madam chair, I have a few comments.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER FRANKLIN: As Michelangelo

said, one of the toughest challenges of any artist is to know when the artwork is finished and this has been on so long I approach commenting on it with a great deal of diffidence.

Two comments. One is, we discussed, as I recall, the language in 1603.3a at some length and I remember in that discussion that I had some difficultly with the language that said that the building restructure shall be set back by no less than 75 feet from the river unless the Commission finds that such setback renders development infeasible.

I don’t know really what infeasible means in that context and I can foresee hours of testimony on whether you’re talking about financial infeasibility, physical infeasibility or what have you and since there’s kind of a special exception approach to these developments, what I’d like to suggest is that language be changed slightly to say that unless the Commission, in its discretion, waives the 75 foot requirement and then goes into the 50 foot minimum.

It seems to me that if you don’t have the Commission reserving its discretion to waive that, you’re going to get endless argument as to what renders development and it should say, the development, development infeasible. So I just throw

that out as something to consider.

COMMISSIONER PARSONS: Could you read how your’s would read, your version would read?

COMMISSIONER FRANKLIN: Well, I would just say, unless the Commission, in its discretion, waives such requirement, in which case the setback shall be no less than 50 feet from the bulkhead.

COMMISSIONER PARSONS: I’m not sure how that would give future commissions any guidance.

COMMISSIONER FRANKLIN: Well, I don’t think they get much guidance from the existing language.

COMMISSIONER PARSONS: Well, I thought you were going to go to physical or––.

COMMISSIONER FRANKLIN: I don’t know what infeasible means. If you can explain what it means––.

COMMISSIONER PARSONS: No, I was trying to get rid of that word, but give the Commission some guidance there.

COMMISSIONER FRANKLIN: Well, I did get rid of it.

COMMISSIONER PARSONS: What?

COMMISSIONER FRANKLIN: I did get rid of it.

COMMISSIONER PARSONS: Yes, you did.

CHAIRPERSON MITTEN: I think the point of

it was that infeasibility, that’s a pretty tough standard and that we did not want the setback to be less than 75 feet, except under the most severe of circumstances and to have it say that, unless the Commission, in its discretion, waives this requirement, that’s even more loose in my mind.

COMMISSIONER FRANKLIN: Well, madam chair, if somebody says a 75 foot setback is going to make my project infeasible, what are you going to ask them to prove to you?

CHAIRPERSON MITTEN: My feeling would be that if something is–-. If someone were to say something is physically infeasible, that leads you to economically infeasible because it can’t be accomplished or it can only be accomplished with a significant expenditure of funds. So I would look to an explanation about why complying with the setback requirement would make a project economically infeasible, which would mean that it would not–-, somebody wouldn’t be able to make a fair return on the project.

A fair return on a project that would otherwise comply with zoning on the site, not necessarily a project that they envision, but that the site was basically rendered unusable because of the

setback. That's what I would look for, very high standard.

COMMISSIONER FRANKLIN: Well, what would make for a fair as distinguished from an unfair return?

CHAIRPERSON MITTEN: It's market based, so they'd have to–-. In addition to whatever the project was that they were proposing, they'd have to show that basically the site wasn't developable. It's not unlike a variance. It's really setting up a variance standard.

COMMISSIONER PARSONS: But shouldn't we go there, shouldn't it have to do with lot? If your lot is 75 feet deep, you probably can't set it back that far. It's a physical lot configuration.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: Rather than, oh, gee, I don't want to build a bulkhead, it's going to cost me six million dollars and therefore, I can't do this.

CHAIRPERSON MITTEN: Right. So you're saying that instead of saying the development, it should be lot focused, is that what you're saying?

COMMISSIONER PARSONS: Yes, that's what I mean. It's a physical thing rather than an economic

thing.

CHAIRPERSON MITTEN: That’s good.

COMMISSIONER FRANKLIN: I’ll be content with any guidance that is more specific than the language here.

CHAIRPERSON MITTEN: Okay, so I think the direction that we’re moving in is that the Commission finds that such setback renders the lot something.

COMMISSIONER PARSONS: That the configuration of the lot–-.

COMMISSIONER FRANKLIN: Or do you want to just say, creates undue hardship, which is kind of a variance standard.

CHAIRPERSON MITTEN: Such setback creates undue hardship for the owner of the lot?

COMMISSIONER FRANKLIN: Yes.

CHAIRPERSON MITTEN: If we could say undue economic hardship.

COMMISSIONER FRANKLIN: That’s fine.

CHAIRPERSON MITTEN: Now let me ask Mr. Bergstein, do we have to advertise this again to change this?

MR. BERGSTEIN: No.

CHAIRPERSON MITTEN: Okay, it’s sufficiently within the bounds of what’s been

advertised. Such setback creates an undue economic hardship for the owner of the lot and in no case less than 50 feet. Is that where we are?

COMMISSIONER FRANKLIN: That would be acceptable to me.

COMMISSIONER PARSONS: But shouldn't it make heed that it's because of the configuration of the lot, undue economic hardships––.

CHAIRPERSON MITTEN: It finds that the setback creates an undue economic hardship. It would have to be that the cause is the setback so the solution is to ease the setback.

COMMISSIONER PARSONS: All right.

CHAIRPERSON MITTEN: All right. Any other? Did you have anything else, Mr. Franklin?

COMMISSIONER FRANKLIN: Not on that point.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER FRANKLIN: The other comment, if you go to 1601.3, I think there's a typo. It says for the purpose of accommodating bonus density as authorized by 1601.1, which doesn't authorize bonus density, but denies it under certain circumstances.

I'm sorry that I could not attend the hearing regarding the limitation on bonus density for hotel rooms and I did read the transcript however and

I was persuaded that in the situation we find ourselves, I would be disinclined to put that limitation on at least for a period of time because I don’t think–-.

Well, let me put it this way, I think we would be very happy if we discovered that there was a great deal of hotel development in an area that has, for whatever reason, resisted development for so long a period of time. So I think the idea of chilling hotel use, at least for an early period of time, is undesirable.

Now I understand from the transcript and from my previous discussions that there is some concern that this would tend to promote use to the exclusion to other more strictly residential uses, but I think that’s a risk that’s worth taking in the early years of development.

There are two approaches that I think of that might give some comfort to those people who have that concern. One, of course, was suggested by Ms. Prince in her testimony, that the Commission could always come back and revisit the regulation if it was determined there was too much hotel use.

Another way of doing that might be to have that restriction kick in at a later period, which I

think has some benefit in incentivizing hotels in an early period. So what I thought was if the Commission wants to live with the restriction, it might say that restriction will come into play only after a date, I chose January 1, 2008 as a date, which is kind of five years after the regulation would presumably go into effect and let's live with it under those circumstances. I don't think there's going to be a rash of development in this particular area of town.

So that's one thought or the other thought would be to allow the bonus density for only 50 percent of the hotel rooms, rather than 100 percent. In other words, there are ways of sort of meeting that concern without outright denying that bonus density. I'd like to just suggest the Commission might consider.

CHAIRPERSON MITTEN: I just want to be clear on what you're suggesting. One is the revisiting the idea of whether or not the bonus density would be available for hotels and then are you in your notion of having sort of a delayed implementation of the more strict interpretation that would also include whether or not hotels could occupy the residential component of the CR zone, are you including both of those aspects in what you're

suggesting?

COMMISSIONER FRANKLIN: Well, there are various options. One option, which Ms. Prince had suggested, was to allow the bonus density that would normally accrue under definitions that now exist. The reason that there was an additional hearing, you may recall, was because that bonus density would be earned under the definition of residential uses that exist now.

CHAIRPERSON MITTEN: Right.

COMMISSIONER FRANKLIN: So the Commission drafted something to prevent that. Now if that new material was taken away then hotels would qualify for bonus density without any limitation.

If those who are concerned about that are to be accorded some consideration, I'm suggesting that restriction, but the change in the definition, etcetera, could kick in after a certain period of time, which would mean that hotel would qualify for let's say a five year period and one could see then whether in fact there's been a rash of hotel development, which I suspect is not going to occur.

Or one could entertain some limitation like only 50 percent of the hotel rooms would be eligible, but my own inclination would be to put the

restrict–-. I understand the reason for the restriction and I think my suggestion would be to have a delay in its application.

COMMISSIONER PARSONS: Well, I am not comforted by that. The concern I have, of course, is what we've seen as result of the Navy Yard and its 7000 employees will now be increased with an all commercial Department of Transportation moving to the Southeast Federal Center and what I'm concerned about is that this CR zone will become a hotel haven for those who are visiting these two facilities, two federal facilities.

It's a repeat of what happened in the west end, that is the hotels were more lucrative and desirable. I think the difference between the west end and here will be a lower grade of hotel, one that federal employees and others would be able to afford rather than the Four Seasons, so I don't think it's worth the risk and I can't imagine jumping in at a period to say, well, gee, this isn't working, so we're going to stop doing this and then you would have numerous applicants coming forward, gee, I just cut a deal with Holiday Inn and another one with Days Inn and this is going to be an upgrade to a Hyatt.

I think I would rather error on the side

of seeing that the residential isn't coming then to say, well, gee, hotels are welcome for five years or eight years or whatever. So I appreciate your effort to bring me around, but it isn't working.

COMMISSIONER FRANKLIN: I'm shocked.

(Laughter.)

CHAIRPERSON MITTEN: I'm going to weigh in with Mr. Parsons, which is I think the ultimate goal of these mixed used zones for the Capitol Gateway area and we have to keep the ultimate goal in mind, is to create a neighborhood and it's very important and the west end is the poster child for what can go wrong.

The critical mass of residential use was lost and I think it's important that we protect the residential use and not allow it to be displaced. I think there's adequate opportunity for hotels, first of all, to count towards the commercial component in this CR zone and there's also, we left the residential component of the W zones available for hotel use and I think that those will be the more desirable locations for siting the kinds of hotels that we want down there, as opposed to making available the less, probably less expensive because they won't have water views, less expensive sites and then getting the kind of hotel development that Mr. Parsons described.

So I would be in favor of keeping the language as it has been proposed in this rule making and not allowing that to count as the residential component in CR and also not creating a bonus for hotel.

COMMISSIONER FRANKLIN: I will withdraw my suggestions.

CHAIRPERSON MITTEN: I did want to follow up on the point that you made about 1601.3, which is I think we could, the section citation, I think we could just say, as authorized by section 1601 and then it's more inclusive that way.

COMMISSIONER FRANKLIN: Yes, I think it's probably just one of those things that happened when a new provision got inserted, madam chair, and if you want to be more specific, you could just change 1601.1 to .2.

CHAIRPERSON MITTEN: Okay, well, let's do that then.

COMMISSIONER FRANKLIN: Because they didn't renumber after the insertion.

CHAIRPERSON MITTEN: All right. Any further discussion? Mr. Hood.

VICE CHAIRPERSON HOOD: Madam chair, I also will be going along with you, madam chair, and Mr.

Parsons. At first, I can tell you that I was favoring the hotels along with Mr. Franklin, but through some more research of my own and hearing the horror stories that are going on elsewhere in the city, I think the direction and the language that's proposed will move us in the right direction. Thank you.

CHAIRPERSON MITTEN: Thank you. Then I would move approval of the map amendment and the proposed rule making as advertised, with the exception of the editorial change to 1601.3 and the change to 1603.3, such that it now reads, unless the Commission finds that such setback creates an undue economic hardship for the owner of the lot and in no case less than 50 feet from the bulkhead. Is there a second?

COMMISSIONER PARSONS: Second.

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

(Chorus of ayes.)

CHAIRPERSON MITTEN: Those opposed, please say no.

(No response.)

CHAIRPERSON MITTEN: Ms. Sanchez, would you record the vote?

MS. SANCHEZ: Yes, staff would record the

vote 4 - 0 - 2.

CHAIRPERSON MITTEN: I don’t think we have that many.

MS. SANCHEZ: Okay, 4 - 0 - 1.

CHAIRPERSON MITTEN: Yes.

MS. SANCHEZ: Ms. Mitten moving, Mr. Parsons seconding, Commissions Hannaham and Franklin in favor of the proposed rule making as advertised, except for the modifications made by Ms. Mitten, and Mr. Hannaham, not present, not voting.

CHAIRPERSON MITTEN: I think you mentioned Mr. Hannaham and Mr. Franklin together. I think you meant to say Mr. Franklin and Mr. Hood.

MS. SANCHEZ: Yes, I’m sorry.

CHAIRPERSON MITTEN: All right.

VICE CHAIRPERSON HOOD: She can leave it, madam chair, as Hannaham. He can get credit for that one.

CHAIRPERSON MITTEN: All right, so this is a fond farewell to Mr. Franklin.

COMMISSIONER FRANKLIN: It’s been a pleasure.

CHAIRPERSON MITTEN: Thank you very much. All right, now we’re back on track with the order of the agenda. Let’s just quickly go through. We have

minutes to approve. We have the minutes of our public meeting of September 9, 2002. Mr. Bastida.

SECRETARY BASTIDA: Madam chairman, the staff requests an action on the draft minutes. Thank you.

CHAIRPERSON MITTEN: All right. I have a number of editorial things, but I also wanted to mention that on page–-, I just want to check my memory with the other Commissioners, page 3, item E.

It shows that we set down Case No. 02/36. Actually what we did was make a request of OP to explore this further and it's on our agenda for set down today, so I've made some amendments that would show for number two, rather than what's written there, the Commission deferred action of this item to its October meeting pending recommendations from OP regarding the potential scope of the overlay and then three would be deleted under item E.

And then another substantive change is on the Capitol Hill overlay district, page 6, last item at the bottom. I believe Mr. Parsons voted on that case and did not abstain, but perhaps Mr. Parsons could. No, Mr. Parsons did not abstain, he did not hear the case. I'm on page 6 on the Capitol Hill overlay district, at the bottom.

COMMISSIONER PARSONS: I made a mistake at the time.

CHAIRPERSON MITTEN: Oh, I'm sorry.

COMMISSIONER PARSONS: And I meant to abstain, so the minutes reflect that.

CHAIRPERSON MITTEN: Oh, okay. Okay, my mistake. Okay, anything else that's substantive? We can turn our editorial changes into staff. Mr. Hood?

VICE CHAIRPERSON HOOD: Madam chair, I move approval of September minutes with the necessary changes.

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

(Chorus of ayes.)

CHAIRPERSON MITTEN: Those opposed, please say no.

(No response.)

CHAIRPERSON MITTEN: Ms. Sanchez.

MS. SANCHEZ: Yes, staff would record the vote 4 - 0 - 1. We have an absentee ballot from Mr. May. The motion to approve the minutes was made by Commissioner Hood, seconded by Commissioner Mitten and approved by Commissioners Parsons, Hood and May, by absentee ballot. Commissioner Hannaham, not present, not voting.

CHAIRPERSON MITTEN: Thank you. Next we'll have the monthly report from the Office of Planning, status report.

MS. McCARTHY: Thank you, madam chair, and members of the Commission. As you can see in the report before you, there are a number of items. I think there are eight proposed for set down today, so we'll be going to them. I'll skip through those and there are two supplemental reports also for consideration today.

Just a couple of things that I wanted to flag. In the interest of time, I wouldn't go through everything. One is that you had asked us to do further recommendations on the recreation and community center use text amendment and that is being prepared and will be submitted in advance of your November 18 meeting and that's at the top of page 2.

And then on page 3, under cases outstanding, there are a number of cases which will be coming to you for set down in the next few months. The Department of Mental Health, Mental Health Hospital at St. Elizabeth's we expect next month and the rezoning of certain areas in Tacoma Park that were called for in the rezoning in the small area plan that was just adopted by the council will be coming in

December.

The Southeast Federal Center, sometime December, January.

The planned unit development for the U.S. Department of Transportation Headquarters, that was down there for January 2003, which had been an earlier time, but in meetings that we have had recently with the Department of Transportation, we find out that they're not planning on even submitting their application until December.

So I think in a project of over 1.5 million square feet that is as complex as that one, it's highly unlikely that will be ready for a January set down and I would say March is probably more likely. We'll see if there's anyway that can be expedited to February, but just as a heads up to the Commission in terms of what's coming before you.

And then there are others. There's three major cases that are listed behind that, the Southwest Waterfront, Arthur Capper Hope Six and Reservation 13. All of those we know are coming, but the plans for them are being finalized, so we will expect to see them in mid to late winter in 2003, but we don't have a precise time table yet. Thank you.

CHAIRPERSON MITTEN: Thank you. Any

questions for Ms. McCarthy? Looks like we're going to stay busy for awhile. Now, hearing action. First item under hearing action is Zoning Commission Case No. 02-27, which is PUD and related map amendment at Logan Circle. Who's going to make the presentation on this one? Mr. Jackson.

MR. JACKSON: Madam chair and members of the Commission, my name is Arthur Jackson. I work at the Office of Planning and I will briefly summarize the report on the Zoning Commission case regarding the Jefferson at Logan Circle Planned Unit Development.

The subject property is located at the intersection of 13th Street and M Street, N.W. The proposal would develop a ten story apartment building with 552 units, 107 parking spaces in an underground garage and the development itself would be to an FAR of 8.0 and occupy 80 percent of the site.

The existing zoning on the site is R5E, which allows a maximum FAR of 6.0. In addition to this project being larger than the allowable FAR, it also meets the height requirement in the zoning regulations, but it exceeds the FAR of the lot occupancy limits, the allowable number of roof structures and does not meet minimum side and rear yard requirements.

To address these inconsistences, the applicant submitted subject PUD application that includes a zoning map amendment in order to bring their proposal in line with the current zoning regulations. The zoning proposal includes two options, to go to DDC2C or to CR.

While generally supportive of options that allow additional opportunities in this area, OP has concerns about both options. However, staff will continue to analyze the potential impact of the zoning solutions and the project on the land use plans in this neighborhood and we also think there are some other issues that need to be addressed before a public hearing is held.

Particularly, going back to the community to allow them to comment on the current proposal, to refine the current PUD benefits and amenities package and to work with the applicant to review the current design.

Therefore, the Office of Planning has no objection to scheduling this case for public hearing with both alternatives, as presented by the applicant, to allow the Zoning Commission and community to review the project in greater detail and we recommend that the Commission set down this case, this application

for a combined public hearing.

MS. McCARTHY: We would also note, madam chair, that we submitted along with our report, revised drawings from the applicant because they, in light of concern from the community that the project was too tall and too dense, the applicant has substantially downscaled the project and so we included the plans along with our supplemental submissions.

So what was attached to your hearing action and the original OP report has been reduced in size and we had a supplemental report that was sent over that included those supplemental drawings.

CHAIRPERSON MITTEN: Thank you.

COMMISSIONER PARSONS: Now the supplemental drawings show a reduction in height, but I didn’t see any accompanying table. Is there a reduction in FAR as well?

MR. JACKSON: Yes, the proposed FAR has gone from over 9 to 8.0.

CHAIRPERSON MITTEN: The last page of the new submission shows some of the –-. It’s not a comparison table, but it–-.

COMMISSIONER PARSONS: Oh, I thought those were the only drawings.

CHAIRPERSON MITTEN: No, the last page. Any questions for Mr. Jackson and his report? Well, I guess I'll speak first. I find this proposal to be well beyond what is acceptable as a map amendment.

The reason for either reaching out to try to pull the DDC2C zone to this site or to use CR is really about getting the density and height limitations increased and notwithstanding the fact that the proposal is primarily for a high density residential project.

In areas where the high density residential district or land use designation is mapped on the generalized land use map, we don't have a high density residential zone that exceeds 6 FAR in density and exceeds 90 feet in height and I think there's a certain amount of bulk that's contemplated in the high density residential zones and this is well beyond that level of density. So I'm disinclined to let this project go forward in it current state.

COMMISSIONER PARSONS: Let me make sure I understand. You mean that you would not move forward with a hearing?

CHAIRPERSON MITTEN: Correct.

COMMISSIONER PARSONS: I would agree. I was looking at the tabulations to make sure that the

new submission did make some significant changes and it did not. So I think, well, I don't want to be redundant, but to put a name on it, it's spot zoning, no matter how we do it and I just don't think it's worthy of a hearing at this point. I can't see how we could fix it.

CHAIRPERSON MITTEN: Well, in addition to that, I mean the concerns that the Office of Planning had noted in their report, which is the adequacy of the amenity package, particularly in light of the staggering amount of additional density that would be sought relative to what would be permitted otherwise in a high density residential zone and the concerns about the design I think just add to the problematic nature of the application.

Mr. Hood, did you want to speak to this before we ask–-.

VICE CHAIRPERSON HOOD: I would agree, madam chair, but my concern is smearing the DD just for this particular case. I can tell you that has gotten us in trouble in the past. I think we need to have more thought to it and I would agree with my colleagues that we need to not set this down yet because in the past–-, the past represents itself as we have set things down and then when we get into the

hearings we have a lot of problems, so I think we're moving in the right direction. They can refine a few things and then we'll be able to move forward with, hopefully, maybe set it down at a later date.

My concern though is what I see here in the Office of Planning's report in which they're already expressing concerns, but yet they're still asking us to set it down. I'm not sure what the rationale is, but I would rather error on the side of caution and not set it down.

CHAIRPERSON MITTEN: Did you want to put that question to the Office of Planning? We don't have to.

VICE CHAIRPERSON HOOD: I think they heard me, I don't necessarily have to give them the question. I think they heard it loud and clear because I'm looking at their report and that just lets me know that going down the line that if we start off with a problem, I just see the problem increasing.

CHAIRPERSON MITTEN: Thank you. Let's have the applicant come forward, as it the practice if the Commission indicates that they are going to deny a request from an applicant, we ask them to come forward and make a statement if they choose.

MR. FEOLA: Thank you, madam chair. For

the record, Phil Feola with Shaw Pittman and to my right is Aaron Lieber with JPI Department Developers.

I'd just like to make a couple of really quick comments. One is, I think we hear what the Commission is saying, but we believe we need a public hearing to be able to explain the reason for the density increase.

This is a site, as you know, is called for high density residential in the comprehensive plan. This project is a high density residential. We're really talking about how high the density should be and whether or not this site will ever be developed at the matter of right envelope.

We would like to present to the Commission at the public hearing evidence of the environmental degradation that's on the site. The site was formally a gas station and next door to it was a dry cleaner, so the site encompasses what had been a dry cleaning plant and a gas station. There is significant environmental degradation, which as Aaron can talk to, will mean that virtually it will not be developed.

The site is vacant. It has a boarded up building on it. It's occupied by a one story liquor store, which the community would like to see go away and we think that this project, as it gets refined

through the process and it’s already been somewhat refined through the Office of Planning and with the ANC, will go along way to solving those problems.

The ANC wants development here, at least they said they did. They didn’t want it at the original height and bulk of the original application and hence, we have since scaled it back and maybe it needs to be massaged some more, but we would like the opportunity to work towards that in the public hearing, to bring that evidence to the Commission and then, of course, if you don’t accept that evidence, that’s certainly within your prerogative.

But again, the project will result in some 300 units of housing that don’t exist, adjacent to the downtown, consistent with the comprehensive plan, in an area that the community has told us they would like to see developed and have the stuff that’s there go away.

CHAIRPERSON MITTEN: Let me ask you a question, Mr. Feola. The property’s under contract, is it not?

MR. FEOLA: It is.

CHAIRPERSON MITTEN: And I assume there’s going to be some exchange of dollars, they’re not taking it off the hands of the people that own it, are

they? They're paying for it, right?

MR. FEOLA: That is correct.

CHAIRPERSON MITTEN: So I would think that the amount of money they're willing to pay would reflect whatever the cost of cleaning up the site would be and if the cost is so severe, why would anybody pay anything for the site? Why should zoning be used to make up for that?

MR. FEOLA: I don't think zoning's being used to make up for that. Zoning is not being used to do anything, except allow a project to go forward that would otherwise not be able to go forward.

CHAIRPERSON MITTEN: Because they're committed to pay a certain amount for the site, right? That's what's driving the economics?

MR. FEOLA: Because the sellers, including, by the way, the former gas station is owned by the District of Columbia government, will not concede the price of the environmental degradation, whether it's JPI, me or some other property purchaser, if the seller doesn't want to sell, there's nothing you can do to encourage that sale.

CHAIRPERSON MITTEN: And that's not what zoning is for either, right? We're not suppose to make up for that.

MR. FEOLA: I don’t think we’re asking you to make up for that. We’re asking you to approve, if we get to a public hearing on this, a project that is otherwise in the public interest. Housing, adjacent to downtown, consistent with the comprehensive plan, with the design that this Commission controls and approves, with the amenity package that this Commission controls and approves, that we think overall will be, again, in the public interest.

CHAIRPERSON MITTEN: Thank you. Let me see if any of the other commissioners have questions.

MR. FEOLA: Can I ask Mr. Lieber if he had anything to say?

MR. LIEBER: No, I don’t have anything, thank you.

MR. FEOLA: I’m sorry.

CHAIRPERSON MITTEN: Okay. Mr. Parsons, any questions?

COMMISSIONER PARSONS: No.

CHAIRPERSON MITTEN: Thank you. I would move that we deny the request for set down of this case at this time and encourage the applicant to continue to explore what they could do within the bounds of the existing zoning category.

VICE CHAIRPERSON HOOD: Second.

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

(Chorus of ayes.)

CHAIRPERSON MITTEN: Those opposed, please say no.

(No response.)

CHAIRPERSON MITTEN: Ms. Sanchez.

MR. BERGSTEIN: Madam chair, I'm sorry, but the zoning regulations make a distinction between dismissals with prejudice and without prejudice.

CHAIRPERSON MITTEN: All right.

MR. BERGSTEIN: With prejudice would mean that they could not come back. Without prejudice means that they can and it also indicates that if you dismiss without prejudice that you should indicate what the modifications are that you would expect to see in the application that would make the project more acceptable to you.

So I just, first of all, ask you to indicate whether or not this is a dismissal with prejudice, meaning they can not come back, without prejudice means they could and then if you could indicate the modifications. That would be appreciated.

CHAIRPERSON MITTEN: Okay. It was my

intention that this was without prejudice so that they could come back and we would encourage them to come back and that I don't know what other zoning categories they might explore, but I would like them to attempt to work within the boundaries of R5E zoning with the increments that are allowed under the PUD regulations. Anyone else want to weigh in on that?

COMMISSIONER PARSONS: No, I think that's enough guidance. I think that's what we were saying.

CHAIRPERSON MITTEN: Thank you. Thank you, Mr. Bergstein.

MS. SANCHEZ: Staff would record the vote 4 - 0 - 1. We have an absentee ballot from Commissioner May opposed to setting down the case. We have Ms. Mitten making the motion, Mr. Hood seconding, Commissioners Parsons and May in favor to deny set down without prejudice under the conditions as stated by Commissioner Mitten. Mr. Hannaham, not present, not voting.

CHAIRPERSON MITTEN: Thank you. The next case is Zoning Commission Case No. 02-29, which is a map amendment for Sibley Hospital. Who's going to make that presentation from the Office of Planning, Ms. McCarthy?

MS. McCARTHY: That will be Karen Thomas.

CHAIRPERSON MITTEN: Okay.

MS. THOMAS: Good afternoon, madam chair, members of the Commission. I'm Karen Thomas and I will briefly present OP's recommendation of the proposed map amendment.

The applicant, Sibley Memorial, is requesting initial zoning for lot 803 in square 1448N. The 8.54 acre parcel of land was purchased by Sibley Memorial from the United States Government.

The land adjoins the hospital property to the north and was formerly a portion of the originally purchased lands for the Delcaria reservoir of the Washington aqueduct.

The application proposes zoning the lot to the R5A zone district, which would extend the existing zoning of the adjacent hospital property.

The new lot, 803, consists of lot 801 and tract 117E, which is a perpetual road easement reserved in a fee disposal of the overall 8.5 acre lot.

The Board of Zoning Adjustment approved a variance to allow the hospital to expand the oncology wing in Case No. 16654 on January 9, 2001. The new oncology wing encroaches into the subject land that has now been purchased. The intent of the hospital to

purchase this property was part of the BZ record and the hospital had leased the subject property to ensure their right to use the property if the purchase could not be negotiated.

The Office of Planning has preliminarily reviewed the proposed map amendment and concluded that the R5A is an appropriate designation for consideration and public hearing.

The proposed used and restrictions on the property are consistent with the R5A zoned district and with the comprehensive plan. Thank you.

CHAIRPERSON MITTEN: Thank you, Ms. Thomas. Any questions for Ms. Thomas? All right, Mr. Parsons?

COMMISSIONER PARSONS: I move we set down Case No. 02-29.

VICE CHAIRPERSON HOOD: Second.

CHAIRPERSON MITTEN: Any discussion? All those in favor of setting down Case No. 02-29, please say aye.

(Chorus of ayes.)

CHAIRPERSON MITTEN: Those opposed, please say no.

(No response.)

CHAIRPERSON MITTEN: Ms. Sanchez.

MS. SANCHEZ: Again, I have an absentee ballot from Commissioner May in favor of set down. We’ve recorded the vote 4 - 0 - 1. Commissioner Parsons moving, Commissioner Hood seconding, Commissioner Mitten in favor and Commissioner May in favor by absentee ballot. Commissioner Hannaham not present, not voting.

CHAIRPERSON MITTEN: Thank you. Now I think we’ll take the next three cases sort of as a group.

MS. McCARTHY: That’s what I was just going to propose.

CHAIRPERSON MITTEN: Okay. It’s hard not to actually. So this is Zoning Commission Case Nos. 02-30, 31 and 42. Ms. McCarthy.

MS. McCARTHY: Okay, thank you, madam chair. Joel Lawson from our staff has done all three reports and they are very closely intertwined, so I’ll have him go over the new proposed W0 zone and then the requested boathouse zoning for Georgetown University and our proposed amendments to that.

CHAIRPERSON MITTEN: Thank you. Is this going to be lengthy because I’d rather just deal with the written submissions, if we could, if it’s going to be lengthy.

MS. McCARTHY: No, the presentation is very short.

CHAIRPERSON MITTEN: Okay, thank you.

MR. LAWSON: Madam chair, members of the Commission, my name is Joel Lawson, I'm with the Office of Planning. My apologies, we seem to be having some technical difficulties, so I think we'll take your suggestion and skip the presentation, which is too bad because it was really good.

(Laughter.)

MS. McCARTHY: I can't tell you how good these presentations look over at the Office of Planning. You know, there's some poltergeist that just exists here for our particular PowerPoint presentations.

MR. LAWSON: I'll just briefly describe the proposal. Much of the District of Columbia waterfront along the Anacostia and Potomac Rivers is currently underutilized and in some cases, inaccessible.

However, the waterfront is being rediscovered through the Anacostia Waterfront Initiative and a number of site area or area and specific development proposals.

The comprehensive plan also envisions more attention to the development of the waterfront for a

variety of passive and active uses, but centered on development, which ensures the preservation and enhancement of public open space recreation opportunities for all District residents and which compliments and enhances adjacent urban development.

Existing waterfront zones permit many forms of development, including uses which neither require nor enhance the waterfront and often at densities much greater than normally envisioned for open space park areas.

In response to all of these issues and past suggestions for the establishment of open space zoning, the Office of Planning is recommending the creation of a new waterfront open space zone. The WO zone is intended to provide low density waterfront park space zone with related uses to enhance the waterfront experience.

As drafted, it would permit a desirable amount of waterfront oriented active and passive public open space recreation opportunities. It would permit by special exception more intensely developed modes of waterfront dependent and waterfront related retail, cultural and recreational opportunities to augment the waterfront experience.

It would encourage uses which activate the

water and the water's edge and minimize negative environmental, physical and visual impacts on our river areas.

Regulations pertaining to parking requirements and the size and siting of structures are also recommended, along with a clause to permit Zoning Commission review of special exceptions for proposals that are also requesting initial zoning on any site that is currently unzoned.

The zone is being drafted in concept form at this time. A detailed amendment would be supplied prior to the public hearing.

OP feels that the establishment of a waterfront open space zone is desirable and will be of great benefit as the exiting Anacostia Waterfront Initiative is implemented and other area development plans proceed forward.

The establishment of an open space park zone that provides for water enhancing uses would add to the planning toolbox for the river front areas and would facilitate a streamlined process for the review of waterfront recreation use applications.

As such, we recommend that the WO zoning district initiative be set down for public hearing in concept form at this time. Thank you.

CHAIRPERSON MITTEN: Thank you. Did you want to address the boathouse also?

MR. LAWSON: I'm sorry, would you like me to address all three?

CHAIRPERSON MITTEN: Yes.

MR. LAWSON: Okay.

CHAIRPERSON MITTEN: Did you want to change clothes or something?

MR. LAWSON: No, that's okay.

CHAIRPERSON MITTEN: Get in a different mood?

MR. LAWSON: Are you suggesting I should??

CHAIRPERSON MITTEN: No. Put on a little sailor hat or something.

MR. LAWSON: Well, that could be fun. Make sure I have the right one here. Zoning Commission Case No. 02-30 is for a Georgetown University rowing club boathouse.

Georgetown University and the National Park Service has submitted a map amendment for initial W1 zoning for a 1.09 acre parcel of Potomac river front land to permit the construction of a Georgetown University rowing club boathouse.

The subject property faces onto the Potomac River, directly to the south of Georgetown

University. To the north is the Capitol Crescent Trail and the existing Washington Canoe Club Boathouse is located directly to the east.

The subject site is designated as parks and recreation and open space on the general land use map and the proposed boathouse for the Georgetown University rowing club is considered consistent with this generalized land use map designation and also supports a number of comprehensive plans district wide and Ward 2 initiatives.

The National Park Service would exchange this site with Georgetown University for another waterfront property located to the west currently owned by the university following the establishment of zoning for the property.

The exchange agreement would restrict the use of the land to intended use, a boathouse for non-motorized vessels, for use mainly by, as I said, the university's rowing program.

The Office of Planning has, at this time, no major concerns or issues with the design of the boathouse and notes that the local ANC and the Commission of Fine Arts and the Old Georgetown Board have positively reviewed the proposal. However, we do note that a detailed landscape plan has not yet been

provided, so site impacts have not been fully evaluated at present.

The applicant has proposed that the unzoned property be zoned W1. The boathouse, as proposed, would be noncomforming for parking and lot frontage requirements and to address this the NPS and GU have also filed for an amendment to the zoning regulations text to define a boathouse and to eliminate parking and street frontage requirements for this use in all waterfront zones. That proposal will be described separately.

As stated in the report, the Office of Planning however feels that the new W0 waterfront open space zone is a more appropriate zone for this use. The W0 zone would be specifically for low intensity open space maritime waterfront uses, such as the proposed boathouse and would provide for a Zoning Commission’s simultaneous review of special exceptions for proposals when initial zoning is also being established, as is the case here.

OP recommends W0 zoning for this site and that the Zoning Commission consideration run in tandem with the consideration of the W0 waterfront open space zoning district and the two issues be set down for public hearing at the same time.

In the alternative, should the Zoning Commission wish to proceed with review of the W1 zoning for the site, either instead of or as an alternative to the W0 designation, OP recommends that consideration also run in tandem with the amendments to the W1 zone as described in the following application. Thank you.

CHAIRPERSON MITTEN: You want to just go right into the last one then?

MR. LAWSON: I'll try to not to be quite so repetitive since they're going in tandem here. As stated earlier, the applicant's for the Georgetown University boathouse have requested zoning regulation text amendments to facilitate the construction of a private boathouse, for the construction of private boathouses for nonprofit clubs adjacent to the waterfront by defining boathouses, adding boathouses as an as of right permitted use in the W1 zone and eliminating street frontage and parking requirements for boathouses. The intent of this application is to expedite consideration of the proposal previously described.

OP agrees that boathouses can be a highly desirable use on the waterfront and as a use, conform to objectives of both the comprehensive plan and the

Anacostia Waterfront Initiative and we currently have no concerns, as I said, with the boathouse design. However, OP does have concerns with amending general zoning regulation text to facilitate one proposed development.

As noted earlier, we recommended that the Zoning Commission consider the newly proposed W0 waterfront open space zone for the GU boathouse site. If the Commission agrees with this approach, the amendments proposed in this application would be unnecessary as the W0 zone would permit the boathouse use and address other issues in this application.

As a result, setting down this application would not be necessary. However, should the Zoning Commission wish to consider W1 zoning for this piece of property or provide for consideration of W1 zoning for the site as an alternative to W0, the Office of Planning has concerns with the applicant’s proposed text amendments as they would be applied not just to this site, but also to the entire waterfront throughout the District.

In particular, eliminating frontage and parking requirements could, in some instances, lead to adverse impacts on existing park space and existing parking.

OP has recommended alternative text amendments, including providing a slightly revised definition for boathouse, permitting the use by special exception only and establishing criteria for boathouses and establishing parking requirements and providing for BZA approval of a special exception for variances to those requirements.

In summary, because the Zoning Commission has a number of options for consideration of this application related to the Zoning Commission course of action for the separate but highly related W0 zoning initiative and the Georgetown University boathouse application, if the Zoning Commission agrees with the Office of Planning recommendation that W0 zoning is appropriate for this site, setting down this application for amendments to the W1 zone is not required.

If you wish to proceed with W1 zoning for this site, either instead of or in addition to the W0 zoning, OP recommends that the text amendments as recommended by OP set down for consideration should the Zoning–-. Sorry. The Zoning Commission could set down the applicant’s proposed amendments to waterfront zoned districts, either instead of or as an alternative to the OP recommended changes and of

course, the Zoning Commission could also proceed with W1 zoning for the Georgetown University project, but not set down any amendments to the waterfront zoning regulations.

In which case, assuming zoning is established, the applicant would then be required to apply to the BZA for approval of parking and frontage nonconformaties and I think that’s it. Thank you.

CHAIRPERSON MITTEN: I think that covered all the possible ways for us to proceed. Thank you. Let’s start with questions for Mr. Lawson on the three reports.

VICE CHAIRPERSON HOOD: Madam chair, I just wanted to ask Mr. Lawson, on the first case, 02-42, the W0 proposal, has that been looked at across the city or just two specific areas, Georgetown and Anacostia?

MR. LAWSON: The zone would be available for use throughout the District of West Vancouver. It would of course––. Oops. I’ve been saying that all day. I’m sorry. West Vancouver also has waterfront, but it wouldn’t be applicable there, the zone wouldn’t be.

The W0 zone would be applicable throughout the District of Columbia, but would, of course, be

waterfront centered, so it would be for use on properties that are adjacent to the major Anacostia or Potomac Rivers.

MS. McCARTHY: But also we had looked at two particular places where we thought that was especially relevant, which was in the area around the Southeast Federal Center and in the southwest waterfront.

VICE CHAIRPERSON HOOD: Okay.

MS. McCARTHY: And we suspected in some places in Anacostia as well, but the Anacostia Waterfront Initiative was not as far along in specific land use policies there as it was on those two parcels, so those were the two we looked at first.

VICE CHAIRPERSON HOOD: Thank you. Madam chair, also I don’t know how the Commission is going to proceed, but I would be in favor of if we set it down that we set down W0, deal with that first and then I would set the whole thing down to give people the opportunity to–-.

Even I know the Office of Planning, I think in one of their reports, recommended that we not set something down, but I would be in favor of setting everything down, but the Commission deals with the Case No. 02-42 first before we get into the other two

cases.

CHAIRPERSON MITTEN: All right.

VICE CHAIRPERSON HOOD: Thank you.

CHAIRPERSON MITTEN: Mr. Parsons, you're not participating and perhaps you want to put that on the record that you're not going to participate.

COMMISSIONER PARSONS: This Georgetown University boathouse case is an application by the National Park Service, so my purpose in sitting here–. I will recuse myself from the case. My purpose in sitting here is to retain a quorum so that the Commission can do business.

CHAIRPERSON MITTEN: Thank you, we appreciate that very much. Okay, I had a few questions on the reports and I will start with the report on the W0 zoning district. Can you explain what is different about a boathouse, marina or yacht club relative to the other uses that would be permitted either as a matter of right or special exception in W0, such that you're suggesting that the FAR maximum be increased to .75 and that the lot occupancy be increased to 50 percent. What is it about those uses?

MR. LAWSON: Our rationale for those is that we would like to not, how can I put this. Most

of the properties where these uses could be built don't exist right now. A piece of property would have to be created for a new boathouse or a new marina.

CHAIRPERSON MITTEN: Do you mean a private--, a piece of private property or do you mean it's under water right now?

MR. LAWSON: We see that most of the opportunity for these kind of uses are currently on unzoned and unsubdivided federal lands.

CHAIRPERSON MITTEN: Okay, thank you.

MR. LAWSON: We don't wish to require, I guess, an applicant to have to acquire a fairly large piece of land, which is an existing park for a marina type use, keeping the land for that type of use which is in the middle of park would be a benefit.

The use tends to be fairly intensive and tends to be very much water oriented, so we felt it was appropriate to provide for a smaller lot size. It's really meant to address the issue of lot size and whether they have to accumulate a very large lot or whether they could put this use on a relatively small lot and thereby disturb the existing park space as little as possible.

CHAIRPERSON MITTEN: All right. Just a couple of uses that you've identified. The matter of

right use, a swimming pool operated by a local community organization. I guess I'm just wondering how, given that these are going to be very close to the waterfront and would you be talking about an in ground pool?

MR. LAWSON: That's certainly what we'd be anticipating, yes. An above ground pool––. I'll just leave it at that, thanks.

CHAIRPERSON MITTEN: I guess I'm just wondering about––. I guess you can excavate, it's just prone to flooding and nobody cares if a swimming pool gets flooded or they don't care as much.

MR. LAWSON: It would be a very particular circumstance, but one which we didn't want to preclude.

CHAIRPERSON MITTEN: All right. Under special exception, a mass transit facility. I get the impression that most of these uses are pretty modest in terms of the buildings that would be built and they could be people intensive, but is there any way to narrow that because we could end up with something that is undesirable?

MR. LAWSON: I certainly wouldn't be adverse to taking that out as being a use under special exception. Again, it would require review

through the special exception process. We also have in here, towards the end, water taxi information ticket booth, which I guess we see as being the principal form of mass transit that may be possible on the waterfront and that's listed separately.

CHAIRPERSON MITTEN: All right. When you say yacht club, which is a use that you've taken some pains to define on page 3 of the attachment. Is that the same as boat club, since boat club is a term that's been used in the zoning ordinance already?

MR. LAWSON: The existing term in the zoning bylaws is not defined, so it's difficult, at least for me, to say exactly what is meant by that use. My expectation is that, yes, that's the use they anticipated.

CHAIRPERSON MITTEN: Okay. I'm just going to call this out as something that you probably want to give some more thought to. On the attachment at page 6, there's discussion about the percentage of site coverage for impervious materials and that it would not cover more than 35 percent of the lot.

To the extend that you can occupy the lot to the extent of 25 percent with a building and then you have parking requirements and then you have a limitation on impervious surface, there might need to

be some accommodation to the parking regulations, such that the parking can be accommodated on a surface that is not impervious. Do you follow me?

On the off street parking regulations, also on page 6, the boathouse requirement would be the lessor of one space for every 2000 square feet of building feet or one space for every 10 club members and I'm just wondering about the enforceability of that.

MR. LAWSON: I share your concerns quite honestly. It is a difficult one to enforce. Going through regulations which other cities, other districts throughout North America, they often do tie boathouses to number of patrons.

I could certainly contact them to find out if there are problems with enforceability and we could make adjustments accordingly.

CHAIRPERSON MITTEN: All right.

MS. McCARTHY: We should add that the one for ten seemed applicable in terms of ratio given that we know of boathouses and other facilities are frequently used for events and so it's a parking ratio similar to what's required in the zoning regulations for places of public assembly, that you have to have one space for every ten feet. It's just a little

harder to do in terms of club members.

CHAIRPERSON MITTEN: Yes.

MS. McCARTHY: And maybe that’s another alternative we should look at is relating it to the largest public assembly space in the facility, so that we’re taking that into account in addition to the number of members or number of slips or something else that would give the zoning administrator something to go by.

CHAIRPERSON MITTEN: All right. Now this kind of crosses over in the W0 zone and then into what might be the text amendment for W1, which is my experience of some of the existing boathouses is that there’s the normal day to day use of the boathouse by people who just come and workout and just do their normal thing and then there’s regattas, which is a totally different experience of intensity.

I’m wondering if you had thought about that and given what’s up for discussion is that there wouldn’t be a parking requirement, what about in the instance of a regatta?

MR. LAWSON: Well, madam chair, as you have stated, they are difficult ones to anticipate. Such things as regattas or major events that happen in a facility like this tend to happen extremely

infrequently and I believe it would probably be counter productive to tie requirements to a use that would happen infrequently.

That could mean that there would be difficulties regarding such things as parking, for one, one or two days a year. I'm not sure how else to regulate it.

CHAIRPERSON MITTEN: Well, I guess one of the things is if it comes in as a special exception that can be addressed in the special exception process, whereas if it's a matter of right then it can't be addressed, so that might be one way in arguing in favor of one approach versus another.

MS. McCARTHY: We could also look at whether there's someway to define the events such that they would require a permanent or some sort of permission from the special events task force that the city has set up that deals with protest marches and road rallies and other special events and see in doing it that way.

We could permit people to provide for remote parking and shuttle buses or other ways of getting people there without having to burden the waterfront with a lot of excess parking spaces, which is definitely one of our concerns with regards to

these waterfront uses. We don't want them surrounded by oceans of impervious surface.

CHAIRPERSON MITTEN: Right. I just had one or two. In the proposal for the text amendment to the W1 zone and this is on page 5 of your report and this is on the third block down, talking about section 3202.3.

You state your concern about the wording is too broad, that the language to be included, and except land that fronts on a public body of water and is otherwise surrounded by public parkland. I mean one of the reasons for the frontage requirement or going through a process of review is that, I would assume that one of the most important is to get access for emergency vehicles.

So in this case, we're sort of just nodding, yes, the trail's there, so this property will get access, but have you thought about, even with the narrowing of the language that you have suggested, how can we address the issue of emergency access?

MR. LAWSON: Another difficult issue. All boathouses or this type of use would require some kind of access to the site, whether it's a permanent access, like a driveway or a road or whether it's some access which can be used on an infrequent basis.

Something more like a trail, which is wide enough for emergency vehicles.

It would depend on what we would ask for to minimize impacts on the park. But the boathouse itself would require some infrequent access, so there would be access for emergency vehicles.

CHAIRPERSON MITTEN: Okay, but the language as it’s been proposed doesn’t seem to accommodate that. I mean it’s sort of understood, but is there some other process that takes place that’s going to ensure that there is access or is that something that we should be addressing? Maybe that’s more rhetorical at this point, but just something to think about.

MS. McCARTHY: We can work on addressing that in the regulation.

CHAIRPERSON MITTEN: All right. Mr. Hood, did you have any other questions?

VICE CHAIRPERSON HOOD: I think you took care of them.

CHAIRPERSON MITTEN: Okay, thanks. All right. So Mr. Hood, you had suggested that we basically set everything down and then proceed with the W0 zone–-.

VICE CHAIRPERSON HOOD: First.

CHAIRPERSON MITTEN: First.

VICE CHAIRPERSON HOOD: Right.

CHAIRPERSON MITTEN: And I think that’s a good way to proceed. We also had the submission from the applicant where the applicant doesn’t object to the W0 zone being advertised as an alternative, but they sort of want to be able to proceed along two tracks simultaneously, so that unlike maybe the high density residential retail overlay, which is having trouble staying ahead of square 37, this will move a little bit more quickly. So if you wanted to––.

VICE CHAIRPERSON HOOD: You want to do it simultaneously?

CHAIRPERSON MITTEN: I would be in favor of setting that down and the map amendment case as an alternative.

VICE CHAIRPERSON HOOD: So basically, madam chair, you’re saying we’re going to set everything down?

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: All right.

CHAIRPERSON MITTEN: And W0 and W1 as an alternative, yes.

VICE CHAIRPERSON HOOD: Okay. That’s fine. You can make the motion.

CHAIRPERSON MITTEN: Okay. Should I make

it three motions or one?

VICE CHAIRPERSON HOOD: Just make it all one and just include everything.

CHAIRPERSON MITTEN: All right. I move that we set down Zoning Commission Case No. 02-42, which is the text amendment for the creation of the waterfront open space zone in concept and that we set down Zoning Commission Case No. 02-30, which is the proposal for a map amendment. In this case it would be for either W0 or W1 for the parcel to be used for the Georgetown University boathouse. And that we set down Zoning Commission Case No. 02-31, which is the proposed text amendment to allow boathouse use in the W1 zone.

VICE CHAIRPERSON HOOD: I'll second.

CHAIRPERSON MITTEN: All right, I don't think we have anything further to discuss, so all those in favor, please say aye.

(Chorus of ayes.)

CHAIRPERSON MITTEN: No opposition. Ms. Sanchez.

MS. SANCHEZ: Yes, staff would record the vote 3 - 0 - 2. We have an absentee ballot from Commissioner May. Commissioner Mitten moving, Commissioner Hood seconding and Commissioner May in

favor. Commissioner Parsons not voting having recused himself and Commissioner Hannaham not present, not voting.

CHAIRPERSON MITTEN: Thank you and thank you, Mr. Parsons, for sitting quietly by while we discussed this.

COMMISSIONER PARSONS: Very easy job.

CHAIRPERSON MITTEN: All right. Next case is the Zoning Commission Case No. 02-36, which we had asked the Office of Planning at our meeting last month to explore whether or not we could appropriately expand the area for which the high density residential retail overlay is proposed and I had suggested that at a minimum that should be the site of the Columbia Hospital of Women.

And let me just say first to the Office of Planning that because of your report, although very timely filed and we appreciate that, had been misplaced, we haven't had the opportunity to review it, so perhaps you could just give us a summary, as you always do, but maybe with a little bit more detail of the written submission that you made.

MR. JACKSON: Yes, madam chair. Essentially, stepping back to the September meeting, the Commission was reviewing comments and responses to

the proposed high density residential retail overlay and asked the Office of Planning to pursue a more detailed explanation of a response to the comments that were made.

The Commission also noted that the one point raised about the proposed overlay regarded the amount of retail square footage that were resolved.

On the Commission’s calendar is a current application, 0027, that involves rezoning square 37, which is the southern half of square 37 and one of the options that’s being considered for that rezoning would be to rezone the property such that it would have a high density residential overlay in conjunction with R5D and R5E.

In light of the concern about establishing sufficient retail and service square footage to create a critical mass and looking ahead, the Commission was concerned that if it instituted the high density retail overlay only on the southern half of square 37 that the resulting square footage might not be sufficient.

With that consideration, the director of the staff drew a set down report for a companion application that would allow consideration of applying the high density residential overlay on square 25, the

southern half of square 25, which is zoned R5D.

Now staff noted that the current comprehensive plan does not designate this property for high density residential uses. It's listed as being on the generalized land use map as being institutional. However, I think this reflects thoughts at that time and during amendments since that the property would continue to be a hospital use.

Of course now that property is in the process of changing use and staff thinks it's appropriate now to consider whether the current use on the site should change to be similar to surrounding squares, which are generally all designated for mixed use development.

With that, the Office of Planning prepared this set down report, which recommends that the Commission set down a request for a public hearing to consider the high density residential retail overlay on square 25 on lot 806, which is the former Columbia Hospital property, which is currently zoned R5D.

We also recommend that the public hearing on this request be held concurrently with the public hearing for Zoning Case No. 0027, which would involve rezoning the southern half of square 37.

Now we have a graphic here, which a lot of

people may not be able to see, and just to orient you, this is L Street, M Street and this is the Columbia Hospital for Men property. This is square 37 and although it's not shown in it's current state, this is the Millennium Project site.

Now just on a preliminary basis and for the purpose of illustration, Office of Planning looked at this site to determine what would in essence be created if the overlay were instituted on square 37 and 25 in conjunction with other existing retail uses.

What we noted is that there is C zoning in this area. You have existing first floor retail uses here and an apartment building that at one time had a first floor retail use.

Continuing along L Street to the south, you've got retail uses that occupy the southern half of L Street and along this corridor.

If the property were rezoned at square 37 and the overlay affected these properties, then you would in essence have retail that would go the length of L Street to the Millennium Project and then you could turn right and go north.

Again, these are all preliminary thoughts on the subject, but we were attempting just to look at in general what would be the impact of this type of

overlay in the area.

Just based on our initial calculations, we estimate that the floor area that's been approved or is proposed in conjunction with the affects of the overlay, the generated floor area could be in the vicinity of 160,000 square feet.

Now again, that's very gross, but this is the type of analysis that we anticipate coming back with when you actually have the public hearing to talk about whether this zoning category should be applied to the site under scrutiny.

So in essence, I've identified our recommendation and I've also explained the background of it and that concludes my report and we're available for questions.

CHAIRPERSON MITTEN: Thank you. I just want to not lose a thought that had been expressed to us at the last meeting that square 806, right now, is a split zone, is that correct?

MS. McCARTHY: Square 25?

CHAIRPERSON MITTEN: I'm sorry, square 25, lot 806.

MS. McCARTHY: Lot 806, square 25.

CHAIRPERSON MITTEN: And I think that's what you're showing there because sort of the back

half of the hospital looks like it’s not in your shaded area.

MS. McCARTHY: It’s commercially zoned.

MR. JACKSON: It’s R5D and it’s commercially zoned up here.

CHAIRPERSON MITTEN: Okay, but lot 806––. To your understanding, is lot 806–-. Let me put it this way, if it is split zone, which I didn’t look at, but we would only be proposing this for the R5D or R5E, whatever the zoning is, portion of lot 806?

MR. JACKSON: Yes, the square itself is split zone, but the lot is R5D to my understanding. I would like to clarify one thing, that the current legislation for R5D, for the overlay, would only apply in our R5D and R5E.

CHAIRPERSON MITTEN: Yes. Okay. All right. Any questions for Mr. Jackson?

VICE CHAIRPERSON HOOD: Yes, Mr. Jackson, are–-. Madam chair, this is Case No. 02-36, correct?

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: We have here an ANC letter I guess that was submitted this morning and in the letter, Mr. Jackson, it states, we support the property owner’s request through counsel to postpone a set down of this case for a public hearing at this

time. Are you aware of that?

MR. JACKSON: I was notified that the ANC was submitting such a letter, yes.

VICE CHAIRPERSON HOOD: Well, but I'm saying in their letter they're saying they support the request that the counsel–-. We support the property owner's request through counsel to postpone set down of the case for public hearing at this time.

MR. JACKSON: My understanding was that the legal representation for the hospital, the current owners of the hospital had submitted a letter to the chair requesting that this be delayed.

CHAIRPERSON MITTEN: Do we have that letter, Mr. Bastida?

SECRETARY BASTIDA: I believe it was handed out. Did Elaine hand it out to you?

CHAIRPERSON MITTEN: No.

SECRETARY BASTIDA: Okay, let me check on it.

VICE CHAIRPERSON HOOD: While he's doing that, Mr. Jackson, they also are saying they have not had the change, have not seen the OP's final report. Unfortunately, this was a mix up and I didn't see it either, but is this your final report?

MR. JACKSON: On square 25, yes, it is.

MS. McCARTHY: What we weren’t sure of was whether there was a full understanding that this was simply the set down report and that there would be much opportunity between the time of setting it down and the time of the public hearing to discuss appropriate densities, where the retail might go.

We have a meeting set up with the developer for that site latter on this week and expect to have more detailed discussion at that point about what their ability was to work around this zoning.

We developed the entire idea of this overlay based on conversations with that ANC and their expressed desire to have more neighborhood serving retail, but not to open the door for additional hotels and apartment buildings, which is why we had kept the high density residential zoning that prohibits office buildings or hotels, but unlike current high density residential zoning that permits no neighborhood serving retail, to put the overlay in place so that neighborhood serving retail could be permitted at the ground floor.

VICE CHAIRPERSON HOOD: Okay.

CHAIRPERSON MITTEN: Let’s do this if we could, since I don’t know when Mr. Bastida will come back. Why don’t we just set aside the discussion on

this case, take up Waterside Mall and comeback to this, so we don't keep everyone waiting. Is that alright?

Let's move to Zoning Commission Case No. 02-38, which is the PUD for Waterside Mall.

MS. McCARTHY: Madam chair, Mr. Jackson is also the person for that report and let me just add before he begins that there was, in the considerable processing of paper that it took to get set down reports over to the Commission, unfortunately an earlier version of the report had been submitted to you which had expressed one of the concerns of the Office of Planning with the Waterside Mall PUD as being related to the retention of the existing tenants.

The reason that was revised in a later version of the report was because we looked at it further and determined that really wasn't an appropriate zoning issue. That was something that the owner of the property had to work out with his tenants, so we took that out of our final version and unfortunately, we just got the wrong version submitted to the Commission.

But we would like to formally indicate to the Commission that's not a zoning purview issue and

we've concerned ourselves, since this is a two stage PUD, with what's the appropriate scale density bulk massing of the project and that we expect that the owner will take care of those issues later. Mr. Jackson.

MR. JACKSON: Madam chair. This is our staff report on it, which is in essence a preliminary report on the Zoning Commission Case 02-38, proposed first stage planned unit development and zoning map amendment for the redevelopment of Waterside Mall.

The project has appeared before the Commission before for filing an amendment to allow it to consider it for zoning purposes as one lot, so the Commission is familiar with the site.

The Kemper Company and Forest City, Incorporated have entered into an agreement with the ground lessee to form a joint venture that will renovate and expand the mall.

The existing building, two lots form a mall size that equals 2.14 FAR, which is below the maximum allowed for commercial uses and for residential uses in this C3B district as a matter of right.

As such, the proposal presented by the applicant will not increase the allowable FAR and in

fact will be under the allowable FAR that’s currently needed on the site. However, the proposal will exceed the height requirements of the current zoning and as such, although two portions of the property have been grandfathered, that is the existing towers that are 130 feet tall, the existing buildings will exceed the allowable height limit in a C3B.

As such, the applicant has proposed, after working with the Office of Planning, to submit a PUD, including a map amendment, that would rezone most of the property to C3C.

The applicant anticipates that this project would involve as many as nine phases, including some renovation of existing buildings. Staff considered a housing proponent to be important to the project and as such, has negotiated with the applicant to include housing in early stages of the development.

In your staff report, the Office of Planning outlines what the current negotiations resulted in, but the Office of Planning will still work with the applicant to address a number of issues particularly having to do with refining the PUD benefits package and working on the urban design characteristics of this development.

The applicant prepared a traffic study that looks at the overall impact of this development and surrounding street network and the D.C. Office of Transportation is undertaking a study to focus on the issue of reopening 4th Street right of way and related neighborhood impacts.

These issues will be addressed outside the PUD process, but we will be reporting on results as part of our report and therefore, we recommend that the Zoning Commission set down this request for a public hearing for a first stage PUD and we will provide additional information on the results of related studies at the public hearing. That would conclude my report and we are available for questions.

CHAIRPERSON MITTEN: Thank you. Any questions for Mr. Jackson?

VICE CHAIRPERSON HOOD: I have a question. I'm really concerned about the height. I believe you said the east and west tower, that's what's been called grandfathered in?

MR. JACKSON: Yes.

VICE CHAIRPERSON HOOD: So I guess the rest of the construction is going to go up to 130 feet?

MR. JACKSON: No, the proposed construction would be from 79 to 112 feet in height.

VICE CHAIRPERSON HOOD: 112, okay.

MR. JACKSON: And just for the sake of context, we have an illustration here that shows the proposed 4th Street extension physically dividing the building, although it hasn't at this time. It shows the grid, the squares where the mall is located and surrounding development.

MS. McCARTHY: Right. Basically, what the applicant is proposing is that the–-. These are the two 130 foot towers now. The applicant is proposing that at the four corners they look at concentrating the higher height, the greater height there, the 112 feet. The rest of the buildings would be the 79 feet. They would be the lower buildings.

VICE CHAIRPERSON HOOD: And let me just ask and forgive me if it was in here. Have you had any concerns from the community on the height, even at 112 on the outer limits?

MR. JACKSON: Yes, the community has expressed some concerns about the bulk of the overall development, but we wanted to continue negotiating with the community and facilitating the negotiations within the community and the applicant to address their concerns on how that height could be accommodated or some of the heights could be

accommodated through the urban design.

VICE CHAIRPERSON HOOD: I can tell you that from knowing that area, I see a problem. I don’t see this as being user friendly and compatible to the surrounding areas, R5D, which one of them is right across the parking lot, Town Center Management and some other areas.

I just don’t see this as being user friendly and hopefully, if it is set down and I’m just putting them on notice that if it is set down that when it comes back to the Commission that it’s more user friendly than what I see here.

I see some problems and I don’t want to create any problems, but I see some problems that the community may have and I don’t see this, the way it’s in front of us today, as being user friendly to the surrounding residential pieces that are basically right across the street.

MS. McCARTHY: Mr. Hood, I don’t know if it was in your packet, but we received a fax this morning from, which I believe is probably why Mr. Westbrook is standing up. We received a fax from ANC 2D indicating that they had taken action at their most recent meeting to recommend denial and delay.

CHAIRPERSON MITTEN: That’s probably

another piece of paper that didn't make it into our laps.

VICE CHAIRPERSON HOOD: That's why I like to be very well prepared when I come up here. Thank you.

CHAIRPERSON MITTEN: All right.

MS. McCARTHY: But I should add that we are very sensitive to the importance of how this building meets the other buildings around and how it would contribute to a lively street scape along M Street and contribute to the overall quality of Southwest Waterfront Plan, so that certainly is something we plan to work closely with the applicant on.

VICE CHAIRPERSON HOOD: Madam chair, is it possible that we could get a copy of that?

CHAIRPERSON MITTEN: Yes, we'll get it before we take action. We're getting it now.

VICE CHAIRPERSON HOOD: Thank you.

CHAIRPERSON MITTEN: A couple things that I'd just like to piggy back on what Mr. Hood was saying.

One thing I would like us to just keep in mind when we talk about the density of the project is not withstanding the fact that this can be considered a single lot for zoning purposes.

If you take out, as it’s done on page 4 of the set of drawings that we have, if you take out the roadway and you used the effective area, it’s still below the maximum density, but the density is–-. It’s more dense than you would think based on using the portion of the site that you’re going to use for public throughway and depending on how wide that is, that could have a greater impact.

I would just encourage you to use the effective area in thinking about the density and then I’m concerned about the sort of the contrived nature of rezoning the four corners of the site–-.

MR. JACKSON: Madam chairman?

CHAIRPERSON MITTEN: Yes.

MR. JACKSON: Just a point of clarification.

CHAIRPERSON MITTEN: And I know that was a suggestion of the Office of Planning or so it says in your report.

MR. JACKSON: Because of the increase in height, the rezoning would be over the entire site.

CHAIRPERSON MITTEN: I’m sorry, what we have in front of us shows the four corners only. I’m sorry, did you mention that in your summary?

MR. JACKSON: Well, not specifically, it’s

in the report. What has happened is that the height of the smaller buildings still exceeds the 70 foot limit. It's going to 79 feet instead of 70, thereby it exceeds the allowable height within the zoning, C3B.

CHAIRPERSON MITTEN: Right, which is why I thought the focus was on the four corners.

MR. JACKSON: Well, no, in essence it will be the entire site because of the existing buildings that will result--. The proposed buildings that result from the extension of the road will be 79 feet tall and the buildings at the corners will be 112 feet tall.

MS. McCARTHY: The applicant had originally planned to make all of the other construction 70 feet. They recently changed construction modes and that required the additional height up to 79.

There original plan was to go, as a matter of right, for everything in the PUD except for those things that required the additional height flexibility, but when they discovered that they would need additional height flexibility throughout all of this intermediate section and not just on the towers, then the PUD application applies to the entire site.

CHAIRPERSON MITTEN: All right. Let me

just make a couple of other comments and then we'll take a moment to read the letter from ANC 2D.

The portions of the site as shown on the plan on page 12 where you have the 112 foot buildings at the four corners, that's still what's being proposed, right?

MS. McCARTHY: Yes.

CHAIRPERSON MITTEN: Okay. Particularly as it relates to the northern part of the site and I'm just not recalling the site well enough at the moment to remember exactly how this narrow right of way on the north side, it's where K Street would be, but it's a private road now. That's pretty narrow and I know there's a park across the street, but that's a pretty abrupt transition to go from 112 feet basically to a park with a narrow right of way intervening.

So I'd ask you at least on the northern portion of the site to give that some serious consideration about whether 112 feet makes sense.

And then the other thing that I'd ask you to think about some more is the--. Well, I think this has already been, let's see. The maximum height for properties that will front the 4th Street extension, that's also 112 feet, but only in certain places, is that right?

MS. McCARTHY: Right.

MR. JACKSON: 79 feet along most of the core.

CHAIRPERSON MITTEN: Okay. I was going to suggest that you make that as wide as possible there because of that height. It says 90 foot minimum at the moment, but to make that as wide as possible so that it doesn't feel cavernous there and maybe with those lower structures, those 79 foot structures, it won't be too bad, but I just ask you to give that some serious thought.

Any other questions for OP and just let's take a moment to read the submission from the ANC.

I think, as in many cases, the community always wants more time in cases where they have problems to attempt to negotiate with the applicant and I mean our schedule is going to be at least three months out now to schedule a public hearing and I think, you know, if we get the sense when the hearing is scheduled that there's still work to be done, we can take it up at that time about whether we proceed with the hearing, but I would be in favor of setting this case down today.

VICE CHAIRPERSON HOOD: I also would agree with you, madam chair, but then again, this is the

first stage I believe.

CHAIRPERSON MITTEN: And therefore?

VICE CHAIRPERSON HOOD: Therefore, I think we have–-. Well, unfortunately, my experience with first stages is more than I would like. I think there will be plenty of time for the community to be able to weigh in, especially since we're in the first stage of this piece.

CHAIRPERSON MITTEN: Thank you.

COMMISSIONER PARSONS: I agree and I find it curious that they've asked us to deny this request to go to a C3C, but they give no reason.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: Or rationale if you will, so I agree it will probably be February or March before we get to this. It will be plenty of time.

CHAIRPERSON MITTEN: All right. So I would move that we set down Case No. 02-38, which is the PUD for Waterside Mall.

VICE CHAIRPERSON HOOD: Second.

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

(Chorus of ayes.)

CHAIRPERSON MITTEN: Those opposed, please say no.

(No response.)

CHAIRPERSON MITTEN: Ms. Sanchez.

MS. SANCHEZ: Staff will record the vote 4 - 0 - 1 in Case No. 02-38. Commissioner Mitten making the motion, Commissioner Hood seconding and Commissioner Parsons and Commissioner May in favor of the motion. Commissioner May voting by absentee ballot and Commissioner Hannaham not voting, not present.

CHAIRPERSON MITTEN: Thank you.

MS. SANCHEZ: And also, I'd just like to go back and say that was a contested case or confirm rather.

CHAIRPERSON MITTEN: Yes.

MS. SANCHEZ: And 02-36, 31, 30 and 42 are rule making cases.

CHAIRPERSON MITTEN: I can say yes on 36, but all those Georgetown and Waterfront ones I don't know. Mr. Bergstein?

MR. BERGSTEIN: Well, the text amendment and the proposed W0 would be text amendments.

CHAIRPERSON MITTEN: Would be rule makings.

MR. BERGSTEIN: I'm sorry, rule makings, thank you. The map amendment proposed by Georgetown and the National Park Service would normally be a

contested case. The one thing staff and I were wondering is whether or not since sort of the predominant mode of those three proceedings would be rule makings, whether the map amendment sought by the private parties should also be considered a rule making for the ease of having a hearing together.

Otherwise, it would normally be a contested case. So I don’t know, it depends how you’re going to schedule these hearings really because you would have to have two separate rules of procedures depending on how you were going to combine them all.

CHAIRPERSON MITTEN: All right. Well, I agree with you completely about the text amendment. I guess if the most efficient thing is to treat the other two cases as a rule making case, does anyone have any objection to that? Those certainly prove to be more expeditious than contested cases. Was that everything then?

MS. SANCHEZ: Just the other two cases, 02-27 and 02-29 are both contested cases, confirm that?

CHAIRPERSON MITTEN: Yes, yes. Now we’ve finally got the letter from the property owner in Case No. 02-36, so we’ll take a moment to read that. All right, have we had a chance to read the letter from

the property owner for Columbia Hospital?

They are requesting and everyone else seems to be on board that we delay the set down in this case. My concern is that if they were an applicant, that would be one thing, but this case was generated by concern on the part of the Zoning Commission for making sure that as we consider, not that we will map it, but as we consider mapping the high density residential retail overlay that we have the critical mass that's necessary.

Mr. Jackson's analysis suggests that these two blocks, in conjunction with the commercial uses around, would be sufficient to create that critical mass, so I would be reluctant to postpone it because if the property owner said that by November, said they weren't interested, I don't know that I would, that I at that point would say I didn't want to set it down, so I think I would be interested in moving forward.

Anyone else want to share their thoughts? All right, then I'll move that we set down Zoning Commission Case No. 02-36. Is there a second?

VICE CHAIRPERSON HOOD: Before I respond, I'm just trying to finish reading the letter.

COMMISSIONER PARSONS: All right, I'll second it.

CHAIRPERSON MITTEN: Thank you for that enthusiastic second.

VICE CHAIRPERSON HOOD: Madam chair, if you wouldn’t mind, I have a question.

COMMISSIONER PARSONS: I don’t know what we’re going to do about paper that arrives the day of hearing, I mean of a meeting. We can’t go on like this.

CHAIRPERSON MITTEN: I agree and I would just note that this was clocked in on the 25th of October.

COMMISSIONER PARSONS: Well, whatever, I don’t know what we’re going to do because we’re wasting valuable time by sitting up here reading various opinions.

CHAIRPERSON MITTEN: I agree. I agree wholeheartedly. Mr. Hood, you had a question.

VICE CHAIRPERSON HOOD: I was actually going to ask you to explain your rationale again. After reading the letter, now I can understand it, if you didn’t mind, a short version.

CHAIRPERSON MITTEN: Okay. The short version is if we delay the set down because as represented by the applicant’s attorney, the owner is considering the best ways to develop the property. If

they decide, well, we'd just as soon you didn't map it on our property, what are we going to do then given that, you know, it seems to make sense that at least as we consider mapping the overlay that there be the critical mass of property under consideration, then are we going to say, oh well, if you don't want it mapped on your property then we won't do it. That's in effect what you're saying if you delay.

VICE CHAIRPERSON HOOD: Okay. Since it's been moved and seconded, I will go along with that. But I can tell you that there's been so many problems over there on the west end. This may not be the appropriate time to say it, but every time we make a decision, myself personally, I feel I really want to make sure that if I make a decision on it, that area over there, with all the concerns to be heard over the years since I've been on the Commission, there's been a problem over there.

I just want to make sure that if we make an error, let's do it on the side of caution, but I would like for us to proceed with caution. There's always an issue over there.

I do want to get into the hearing eventually so I can be better educated on what's actually going on with this whole deal of square 37.

CHAIRPERSON MITTEN: If I could say, erroring on the side of caution is setting down the case.

VICE CHAIRPERSON HOOD: It hasn't been in the past. I'm ready to vote.

CHAIRPERSON MITTEN: It doesn't mean that people won't disagree with the decision, but erroring on the side of caution is setting it down. Clearly, not everyone's in favor of us doing that, but all it takes is three up here and we're good to go.

So I'll call for the vote. All those in favor of setting down Zoning Commission Case No. 02-36, please say aye.

(Chorus of ayes.)

CHAIRPERSON MITTEN: Those opposed?

(No response.)

CHAIRPERSON MITTEN: Ms. Sanchez.

MS. SANCHEZ: Staff would record the vote 3 - 0 - 2 to set down Case No. 02-36. Commissioner Mitten moving, Commissioner Parsons seconding, Commissioner Hood in favor. Commissioners May and Hannaham not present, not voting.

CHAIRPERSON MITTEN: Thank you. I think we've wrestled the hearing actions to the ground now and we've deferred the last on, as I said at the

beginning, building bridges, until our November 18 meeting.

Now, we'll move to proposed action. The first case under proposed action is Zoning Commission Case No. 02-06. These are the regulations in chapter 13 that relate to the measurements for eating and drinking establishments in the neighborhood commercial overlay.

I understand that Mr. Kelly, who is the new zoning administrator, is here today and I'd invite you to the table if you wanted to come forward or if you just wanted to listen to the discussion, but we're very interested in having your input into some of the issues that concern us. You need to turn on your mic and identify yourself for the record please.

MR. KELLY: My name is Bob Kelly. I'm the zoning administrator for DCRA.

CHAIRPERSON MITTEN: Thank you. Let me just pull this case up. I see that we have a report from the Office of Planning that I believe was filed just a few days ago, so is there any objection to accepting the filing, late filing of the planning supplemental report on the neighborhood commercial overlay district?

All right. So among the issues that we're

concerned about, Mr. Kelly, that we'd be interested in having your input on is the issue of having a placeholder. One of the things that I understand from the supplemental report by the Office of Planning is that certificates of occupancy don't expire, so we're not using–-.

I think the intent would be not to use certificates of occupancy as the placeholder for the eating or drinking establishment use, but rather that we would have a provision that would be built into the regulations that sort of puts a time limit on the amount of time that space can be unoccupied by an eating or drinking establishment to free it up for use by someone else.

Now the question that we've been struggling with is given that at times there is a great deal of investment that takes place before you get to applying for the certificate of occupancy. So if you're going for the last 40 feet of frontage before the cap is met that knocks you into special exception, but then another property down the street is doing the same thing and there's been a significant investments in terms of time, in terms of marketing, in terms of perhaps physical adaptation of the space prior to seeking the certificate of occupancy, how can

we accommodate, how can we make sure that only person is counting on having that space?

That’s the part that we’ve been struggling with, so I don’t know if you had any thoughts on that today, but what we need to do is be able to revise the text so that there’s a mechanism in the regulation, not in your practice, but in the regulation that sets up what the practice will be and it’s fair to everyone.

MR. KELLY: That’s an issue that we haven’t even addressed or even looked at, so I wouldn’t be prepared to respond to that.

CHAIRPERSON MITTEN: Okay.

MR. KELLY: As an enforcement aspect on a similar issue is depending upon what measurements are used, if we’re in excess of the 25 percent allowable restaurant usage, it would help to have clarification. Does that mean we withhold applications until it gets below the 25 percent or?

CHAIRPERSON MITTEN: The way it’s written now is that would kick the applicant from a buy right use into a special exception process. So it wouldn’t be that they wouldn’t be able move forward, it’s just a more onerous process that they have to go through.

MR. KELLY: I understand.

CHAIRPERSON MITTEN: If there are any other issues as you read the proposed regulations that you would want us to address to cause you less problems and to make the process more predictable in terms of the actual measurement of the space.

For instance, last time at our meeting, we tried to at least address which uses we thought should be counted versus those that shouldn't be counted to at least perhaps allow you to get an accurate measurement now.

It still doesn't deal with the certificate of occupancy problem, but what we want is a predictable process so everybody knows where they stand and it's fair and people don't make a significant investment and then basically have the rug pulled out from under them and have to go into a special exception process.

MR. KELLY: Right. I think what the Office of Planning has prepared and I'm sure with input and we've been aware of this, it defines the uses which were not defined in the past.

CHAIRPERSON MITTEN: Yes.

MR. KELLY: So the measurements that were taken in July of last year or June of last year would change significantly using this list.

CHAIRPERSON MITTEN: Yes.

MR. KELLY: I think this would be a great tool for administrating the overlay. It would be very beneficial for us and would support.

CHAIRPERSON MITTEN: Another thing that we're struggling with, given that we can't exactly through the regulations, order the zoning administrator to do things. We can only say that certain conditions must be met prior to the issuance of a certificate of occupancy and so one.

How can we best make sure that list is kept up to date, again for the sake of predictability? Any thoughts that you would have about that would be helpful as well.

MR. KELLY: Well, I think the list that I've read here encompasses most that I'm aware of, albeit there's new businesses like the Big Box that just appeared that might not fit in this description.

So those types of things we can't predict what somebody's going to come up with as the next new Starbucks or whatever the retail operation would be, but I think that most things are going to fit inside this definition.

CHAIRPERSON MITTEN: I think I didn't convey what I was driving at well enough, which is,

that measurement in the section that the overlay applies to is maintaining, okay, at a given point in time, here's the situation, we're at 25 percent, we're at 21 percent, whatever, and here's all the spaces that are occupying space as an eating and drinking establishment.

Okay, that list will change, that list of eating or drinking establishments, not the type, but the actual occupants and the frontages will change over time and so it's a question of how can that be maintained so that applicants know at any given point in time where the overlay stands relative to the maximum, so any guidance you can give us there.

MR. KELLY: Well, right now we have a database. It's just on an Excel spreadsheet, so if that or something similar to that needed to be the starting point or the database that we're going to use from this date forward, that would be beneficial for us because then we would have something that we could look at.

If your proposal is to build at this site, we can tell you, yes, it would fall within or you go down this path instead. I'm not even sure this list that I have is official.

CHAIRPERSON MITTEN: Right. Is that Excel

spreadsheet list being updated every time a new certificate of occupancy is applied for or how often does it get updated?

MR. KELLY: Every time a new certificate of occupancy is issued?

CHAIRPERSON MITTEN: Okay. Any questions or any concerns?

COMMISSIONER PARSONS: No, I think you covered it well, but we're trying to get something that's one, enforceable and two, is fair because what we've heard is it takes hundreds of thousands of dollars to get to the point of a C of O and if the door is closed two hours before as another applicant got there and it just doesn't make sense.

So the idea of a moveable sign, computer activated by your office, as a tote board of how many percent is not something we ought to regulate.

MR. KELLY: I would defer that to the Office of Planning. And not to make light, but I mean that's something that is a little bit of a moving target, but with the database that we have today, with this list, the measurements, the percentages are going to change.

So if this is something that the Commission decides to use, I think it would be a great

tool for our office and would welcome it.

CHAIRPERSON MITTEN: All right

COMMISSIONER PARSONS: So the idea is that Mr. Kelly will work with the Office of Planning to get us some more comprehensive reports back?

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: Of language?

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: Good.

CHAIRPERSON MITTEN: If you could do that by the–-. Jennifer has this like don’t do that to me look on her face. Realistically, Ms. Steingasser, when could we expect to take this up again and really move forward on it? Would you say December?

MS. STEINGASSER: I would defer to the zoning administrator. We’re available. I think we have a more lenient schedule to our day than DCRA does, but we’re available, I would say no later than December.

CHAIRPERSON MITTEN: Okay, if you could get us something for November we would love it, but if December is it, we’d like to have everything so that when we take it up again we can move forward and put something in place. So appreciate you very much coming down and spending some time with us today.

MS. McCARTHY: And just so we're perfectly clear, what you want us to focus, the definitions appear to be reasonable, what you really want us to most focus on is just the issue of enforcement and in particular it sounds like the monitoring of what goes out of business because what comes into business can be tracked through the Cs of Os, but it's what might no longer be there that makes it difficult to maintain the status?

CHAIRPERSON MITTEN: Well, not only that, but let's just say the overlay is at 21 percent and there's 30 or 40 feet of frontage left and two applicants are moving along, marketing their property, signing leases, putting in fit up and everything and they each go and say on the same day, we're here for the space, matter of right. How can we deal with that particular problem.

MR. KELLY: Madam chair, that's a large problem because with a certificate of occupancy, I'm not aware when we've ever been noticed when someone has closed their business.

CHAIRPERSON MITTEN: Right and we're going to be dealing with that through–-.

MR. KELLY: We may not know.

CHAIRPERSON MITTEN: Yes, you're right.

Good point. Are you guys picking that up? Okay.

MR. KELLY: And we've talked a little bit about that.

CHAIRPERSON MITTEN: Okay, so lots of things to think about. Okay, thank you. All right. Let's move then to Zoning Commission Case No. 01-33TA, which is the high density residential retail overlay.

Now, it's important to get the first case that we were just talking about, chapter 13, sorted out because there are elements of it in this case, so hopefully we'll reach some resolution on all of that more or less simultaneously.

We have a wonderful report from the Office of Planning to help guide this discussion. This is a supplemental report the Commission had requested and I understand Mr. Jackson is the author, so thank you very much.

Mr. Bastida, did you have anything to say by way of introduction?

SECRETARY BASTIDA: No, madam chairman.

CHAIRPERSON MITTEN: All right.

SECRETARY BASTIDA: Thank you.

CHAIRPERSON MITTEN: Thank you. What I'd like to do is to use the exhibits in the Office of Planning's supplemental report to guide the

discussion.

Now where we are is that there were a number of proposals in this overlay that were conveyed in the Office of Planning hearing report, but had not been set down for public hearing, so what we're trying to do at this point is revise the text that we would like to have advertised and then have an additional hearing on the more complete text.

So we have an exhibit no. 4. We have the final proposal from the Office of Planning regarding the language that they are recommending that we set down for the second hearing. So let's use that as our guide and then perhaps you'd want to also have exhibit no. 2, which is what they had recommended in their hearing report, side by side, and then we can just take this section by section and just not to get bogged down too much, but we'll try and move through here with some haste. So let me ask, are there any concerns in 1310.1, 2 or 3?

I think there may just be a typographical error in 1310.3 because it starts out, the provisions of sections 1310.3 through 14 and I think it should be 4 through 14. 1310.3 deals with the minimum lot area. I think there was a very compelling case made for the 7,000 square foot size.

And I would just ask everyone to keep in mind too that this the sort of generic overlay. This is not mapping it any specific location, so if as we contemplated mapping it, we found something unique about the sites in the area that caused us to rethink that, we could, in the process of mapping it.

All right, how about 1310.4?

COMMISSIONER PARSONS: I just wanted to go back to point 2 because this is the first point at which the term, neighborhood - service commercial, appears and I think we should put a definition of what uses truly are permissible here.

Later on there’s a section that is proposed, that is number 4 that you just brought up, I’m sorry, which says certain things will not occur, will not be allowed.

But then we go back to C1 and other lists in the regulations to find what will be allowed. A frozen food locker comes to mind as one of the items that’s in that list and somehow that just doesn’t seem to fit here in my mind.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: So I would like to see how we could produce a list that says, all right, this is what we consider to be neighborhood - service

commercial and of course, I don’t have enough lists in front of me to do that today.

CHAIRPERSON MITTEN: Okay, so rather than make reference to 1302.2, which causes you to backtrack not only to 1302.2, but then to go back to the C1 zone and find out what all those things say, you want to have, look, this is the list of uses that we want, not this is a short list of things we don’t want and go look up the rest?

COMMISSIONER PARSONS: Yes, I would hope so.

CHAIRPERSON MITTEN: Okay, I think that’s good.

COMMISSIONER PARSONS: And then I have no argument with 1310.4 as a start on what shouldn’t be allowed, but I think there’s some others that are maybe not as offensive or large or cause traffic problems because nobody comes to a frozen food locker anymore.

CHAIRPERSON MITTEN: True.

COMMISSIONER PARSONS: I don’t think.

CHAIRPERSON MITTEN: There must be someplace, but not downtown certainly. I think that’s good, so 1310.4 would then be rewritten to have a rather lengthy list of uses that we’re seeking to

promote.

All right, 1310.5. This has to deal with the minimums that are required. Any concerns there?

COMMISSIONER PARSONS: No.

CHAIRPERSON MITTEN: All right. We have 1310.6 and again, this is our enforcement problem in terms of enforcing––. Even though this isn't frontage, it's 50 percent of the total required commercial FAR and we need to have the same mechanisms that we were discussing with Mr. Kelly a moment ago so that will have to be folded in at some point, the enforcement of 50 percent maximum on restaurants, banking and financial service.

We probably need to give some thought to whether or not we're talking exclusively about a restaurant or whether if it's intended to be more inclusive, like eating or drinking establishments.

1310.7. I think 1310.7 has been rewritten from what was originally proposed by the Office of Planning and I think it needs just a bit more work.

This has to do with the amount of bonus that's available and I think what we want to suggest or what I'm going to suggest is that we pick up some of the language of the old 1310.6.

So it would go like this, projects shall

be eligible for residential floor area bonus of .5 square feet for every square foot of floor area designated retail and service uses up to a bonus of .5 FAR.

COMMISSIONER PARSONS: Good. That makes if very clear.

CHAIRPERSON MITTEN: Okay. Because we don’t want to give a .5 FAR–-. Well, I guess it would have to meet the minimum anyway, but that way we’ll get a little bit more for the bonus.

Okay, 1310.8, 9, 10, anybody have any concerns?

COMMISSIONER PARSONS: Yes, 10.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: Concerned about this direction to BZA and others about buildings that contain facing windows and a new wall shall be at a distance sufficient to provide light and air and I don’t know if–-. This is in rear yards of course, but I don’t understand how anybody would determine a sufficient distance, so the rear yard is currently 12 feet?

CHAIRPERSON MITTEN: I believe the absolute minimum is 12 feet in one zone and 15 feet in the other.

COMMISSIONER PARSONS: Because certainly it’s not 12 inches and it’s probably not two feet, so why shouldn’t we give them more guidance than that?

CHAIRPERSON MITTEN: I think that’s wise.

COMMISSIONER PARSONS: Should we do 12 feet?

CHAIRPERSON MITTEN: Well, let’s at least advertise 12 and see what kind of feedback that we get.

COMMISSIONER PARSONS: All right, good.

CHAIRPERSON MITTEN: So it would be 1310.10(1) would say, the extended wall should be separated from other buildings that contain facing windows a distance sufficient to provide latent air and in no case less than 12 feet.

COMMISSIONER PARSONS: Good.

CHAIRPERSON MITTEN: And to protect the privacy of building occupants. Okay, 1310.11, 12, 13.

COMMISSIONER PARSONS: 13, I was trying to figure a way to express this in a different way because as it stands, it’s amusing to me. The intent is for people to use alleys to gain access to required parking, but when you read this it sounds as though you’ll provide access, you can’t provide access to parking, but you need to provide the parking and I

don’t know how to tweak it.

I was over here on our little table that explains why and it makes sense with the reasons for changes.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: But that isn’t our tradition, to put reasons for what we put in regulations in the regulations.

CHAIRPERSON MITTEN: I would argue that’s the reason why it’s not written to encourage the use of alleys, but it’s written to discourage the use of driveways from the abutting roadways because it puts the emphasis on what is bad instead of what is good because that’s what zoning is very good at, saying what’s bad.

Do you have something specific to suggest?

COMMISSIONER PARSONS: All right, I’ll be bad.

CHAIRPERSON MITTEN: Okay, I wanted to suggest on 1310.13 that, first of all, that it say HDRR is the first thing. HRCC, is that a new one that you’re going to bring to us sometime because we’re not ready for anymore of these really long ones. That would be the first thing.

The second thing is I would add either

among A, B or C or I don't know where it would most probably be, but in 1310.13, that the ground floor, which is where we want the retail, that it has to be at grade, so that we don't get people making undesirable areas for retail use to serve other purposes and I think that might be it.

COMMISSIONER PARSONS: I'd like to thank the Office of Planning, as you said, for an excellent report, but for these other maps showing potential mapping situations in the future.

VICE CHAIRPERSON HOOD: Madam chair, 1310.14(h), community house.

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: I know we haven't been putting definitions. I would hate to see someone get that confused with CBRFs and everything else. I would like to see maybe in parenthesis, erected or built simultaneously, added to (h).

CHAIRPERSON MITTEN: But what is a community house? Is that a defined term?

VICE CHAIRPERSON HOOD: Yes, it's defined. I looked it up just a minute ago. It's erected or built simultaneously.

CHAIRPERSON MITTEN: With another use?

VICE CHAIRPERSON HOOD: Yes. Well, let me

see, let me go back to my definition here. A group of three one family dwellings, each on a separate lot, erected simultaneously as a group with each of the outer dwellings having a side yard.

But if I'm looking at these regulations and I see community house, I'm going to think CBRF, even though I know we have omitted it.

CHAIRPERSON MITTEN: Well, I guess there's a certain amount of faith that we have to have in the users of the ordinance that when they see community house, they're going to do just what you did and go to section 199.1 and look up the definition.

VICE CHAIRPERSON HOOD: Okay.

CHAIRPERSON MITTEN: I mean I don't know how else to clarify it.

VICE CHAIRPERSON HOOD: What I'm asking is just that we put that language there in parenthesis.

CHAIRPERSON MITTEN: And what is it that you wanted?

VICE CHAIRPERSON HOOD: I just wanted to say, erected simultaneously.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: And that would clearly divulge anything that was CBRFs or people who are creating their own definition of community house.

CHAIRPERSON MITTEN: Okay. All right. Okay, any other changes you want to make to–-. Now we were focused on exhibit no. 4, which is the final amendment proposal by the Office of Planning.

For the changes that we more or less agreed to, I'm going to put this to a vote because this is what's going to be advertised for the next public hearing on the high density residential retail overlay and hopefully then we'll be able to put something in play. Anyone else?

All right, then I would move that we revise the rule making proposal for Case No. 01-33TA to be consistent with the discussion that we just had, with the amendments that we just proposed and set it down for public hearing.

COMMISSIONER PARSONS: Second.

CHAIRPERSON MITTEN: Okay, any further discussion? All those in favor, please say aye.

(Chorus of ayes.)

CHAIRPERSON MITTEN: Those opposed, please say no.

(No response.)

CHAIRPERSON MITTEN: Ms. Sanchez.

MS. SANCHEZ: Staff record the vote 3 - 0 - 2. Commissioner Mitten moving, Commissioner Parsons,

I believe, got in the second, Commissioner hood in favor. Commissioners Hannaham and May not present, not voting. To approve Case 01-33 to revise the rule making to be consistent with the discussion today.

CHAIRPERSON MITTEN: Thank you. All right, Zoning Commission Case No. 902-19, Forest Hills tree and slope overlay is next. Mr. Bastida?

SECRETARY BASTIDA: The staff has provided the commissioners with all the information on the record and request an action on deciding. Thank you.

CHAIRPERSON MITTEN: Thank you and, Mr. Bastida, just so that we have the correct hearing notice in front of us. Can you get the copy, I believe there was a revised hearing notice in this case.

SECRETARY BASTIDA: Let me go and print it.

CHAIRPERSON MITTEN: Thank you. I think we could all use a break, but the court reporter has given us a good reason because he’s having a little technical difficulty, so we’ll take a, what do you need, five, ten? Ten minute recess.

(Whereupon, the foregoing matter went off the record at 4:00 p.m. and went back on the record at 4:17 p.m.)

CHAIRPERSON MITTEN: Come to order please.

All right, we're at Zoning Commission Case No. 02-12, which is the Forest Hills tree and slope overlay under proposed action. Mr. Bastida.

SECRETARY BASTIDA: Madam chairman, the staff has provided the commissioners with all the information received into the package and requests an action on this matter. I believe there is an item that either was filed late and it needs to be either waived or rejected.

CHAIRPERSON MITTEN: Yes.

SECRETARY BASTIDA: Thank you.

CHAIRPERSON MITTEN: Thank you. The late filing, it's the last page in the packet of additional submissions that we received and it's from Karen Forheit. It's dated October 8 and I would recommend that the commission not reopen the record to accept this filing in as much as it's a response to the Office of Planning report and given that this is not a contested case, there's not the opportunity for individuals, given that there are no parties, to respond to submissions of other groups.

And secondly, there will be a comment period following any proposed action that we would take on this rule making, so there will be the opportunity for the additional input during the

comment period and we would welcome it at that time.

What I would like to do is maybe make a few opening comments and then we can go into what I would suggest the best way to proceed would be a section by section discussion of the proposed overlay.

One of the things that I found in going through the overlay that––. Well, clearly there are some provisions that were lifted right out of the, I think it’s been called the template overlay, TSP and then there’s other provisions that have been created specifically for the Forest Hills tree and slope overlay and some of the provisions that have been lifted from the template I find to be problematic, but that’s almost a different case because I think we have to address those issues and I’m going to try not to bog down the discussion with references to those or discussions about those.

I might make references to them, but I would like us at some future point, I don’t know if the other commissioners found this in their scrutiny of this case that there are some aspects of the template for the TSP that we need to revisit.

COMMISSIONER PARSONS: Well, is it your concern that the overlay, which I guess has been in place for ten years.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: That each time that we try to apply that, the circumstances for a particular community are unique and we start to tweak it or are you concerned more about some of the basic tenants and provisions of the regulation?

CHAIRPERSON MITTEN: I'm concerned about some of the basic provisions of the overlay and their enforceability and while I guess I took from the first part of your question to me that you would want to discourage a reexamination of the overlay templates each time we apply.

But given that this is my first tree and slope overlay and I had some concerns over the provisions of it, I would at least like those to be addressed at some point by the Office of Planning because it's not clear to me that some of these things are enforceable.

COMMISSIONER PARSONS: Oh, so what–-.

CHAIRPERSON MITTEN: I can give you an example.

COMMISSIONER PARSONS: What you're suggesting is that we take a look at the ten year practice–-. I mean have Office of Planning go to the communities, ask them how it is living under these

circumstances and whether it works and whether they can measure caliper inches and all of the provisions of it to see if there's something that we should do to change it.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: And promptly revisit CBRFs after. I shouldn't make that analogy.

CHAIRPERSON MITTEN: That's probably not a good analogy.

COMMISSIONER PARSONS: But it's the same kind of thing.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: It's a new idea, it's in practice, is it working.

CHAIRPERSON MITTEN: Yes, right.

COMMISSIONER PARSONS: That's fair, that's fair. I would support that.

CHAIRPERSON MITTEN: I would like to make some specific suggestions of things that I would like the Office of Planning to consider, but I'll try not to do that today. I'll try to stay focused on what's before us using the template that we have.

So with that, what I'd like to do–-.

VICE CHAIRPERSON HOOD: Madam chair?

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: I'm sitting here thinking about where we're going to be proceeding. We're talking about events looking at the whole tree and slope, but today we're getting ready to move forward and make some actions or whatever we're going to do today.

I see a redundancy. We're going to move forward in one capacity for this particular overlay, Forest Hills, then we're going to turn around and look at the whole, as you call it, template. I just see a problem because we're getting ready to put something in place along with the template and then we're going to turn around a couple of months later and change the template. I think we're hustling backwards.

CHAIRPERSON MITTEN: I understand your concern and I guess I should say that I want to examine the template, not necessarily change it so that it's fundamentally different. I want to make sure that we're getting the results that we think that we're getting and if we can adjust the template to make things more predictable for people, easier to enforce, that's all to the good of the purpose of the overlay.

VICE CHAIRPERSON HOOD: Okay. I don't know if this is the time for me say how I think we should

proceed or maybe I should wait until we get into it. Let me just see how we move along first.

CHAIRPERSON MITTEN: All right. What I'd like to do is we have the hearing notice in front of us and not unlike what we just did with the high density residential retail overlay, although to a different purpose, I'd like to go through and see if we can agree on some or all of the provisions that have been proposed and that have been given public hearing and move towards proposed action today.

And if it turns out that, you know, based on whatever Mr. Hood might raise or whatever that we can't, but that's the direction that I'd like to go in at least at this point.

VICE CHAIRPERSON HOOD: Can I say this though, madam chair, let me throw this out here right now. The way that I would like to see us proceed is to use the template, as you call it, for just generic tree and slope provisions.

Send the rest of the things that apply to Forest Hills back to them for 60 days and I know that some said they were involved, some people said they didn't get involved, some people said they had opportunity, some people say they didn't.

I see a 50/50 split. If we send it back

out, hopefully the Office of Planning or someone can help facilitate that community coming together, send it back to them and then we'll know what was done.

Whether it was done or not, we will know that a 60 day time period went by where we gave them the opportunity to come back with something. We're hoping that they can get some type of consensus, as opposed to us sitting here telling the folks in that neighborhood how to proceed.

If my colleagues don't buy that, then I'm ready to proceed, but I wanted to throw that on the table.

COMMISSIONER PARSONS: Well, I hope I misunderstand because I can't buy it. Are you saying that we stop at this point and turn it over to the community for 60 days?

VICE CHAIRPERSON HOOD: No, I'm saying what we do is we set down a very minuscule piece, which is the template, and we can go on the regulations and see what the Commission has done in the past on the tree and slope overlays and then we can come back, put that out there, let's go ahead and move forward that piece and everything that specifically applies to Forest Hills, we send that back hopefully with the Office of Planning and let them facilitate or whoever or maybe

the community can get themselves somebody who can facilitate and bring us something back within 60 days on how they have come to some kind of agreement.

If not, I mean not fully, but at least closer than where they are now because I see a 50/50 split.

COMMISSIONER PARSONS: Well, I don’t. I see 650 to 700 lots individually owned here and I see 30 people making noise. I really disagree with your assessment of 50/50 and in my judgment, when 650 landowners come forward with an ANC supporting them to do something to protect their community, we ought to respond to that and not say, well, gee, 30 people came in and said they weren’t involved, the process was lousy, but they have no suggestions on how to fix it. Trust us, bring it back to us and we’ll fix it.

I’ve got no patience for that. We listened to it for three nights and that’s what I heard. I may have heard something different than you did, but they are articulate and organized as is the whole community, but I don’t believe that we should respond to the community that brought this forward by saying, gee, you’ve got a problem, why don’t you fix it, because I don’t think it’s going to get fixed any faster than it has so far.

The only reason I say that is because the opponents brought forward nothing in a constructive way.

VICE CHAIRPERSON HOOD: That's debatable, Commissioner Parsons. But I'll say this, when I approached this, I approached this not discrediting anybody, I approached this that I didn't believe anybody.

(Laughter.)

VICE CHAIRPERSON HOOD: That's the way I approached it.

COMMISSIONER PARSONS: Maybe I should take that approach.

VICE CHAIRPERSON HOOD: Yes, I approached it that I didn't believe anybody. So again, I go back to my request that we do as the chairperson said, the generic piece of the TSP, send what applies back to Forest Hills. Let Forest Hills tailor or whatever they need to do as a community together.

Because first of all, I don't live over there, so basically I would have to hear from them, like we've heard. But again, I go back to my first statement, I didn't believe anybody, so now we give them 60 days to go back and come back with something. Whether they agree on it or not, we will know as a

Commission that we have given them an opportunity to go back and try to come to some type of census. Even if they don't agree all the way, at least closer to where they are no.

And again, yes, Commissioner Parsons, some of us--. You and I sat in the same hearing, but apparently we heard different things and that's normal. I have no problems with that.

COMMISSIONER PARSONS: That's fair.

CHAIRPERSON MITTEN: Let me just suggest something. First, I think that keeping the tree and slope overlay in front of the Commission is appropriate because the comprehensive plan directs us to address the issue of a tree and slope overlay for Forest Hills, so it's appropriately in front of us.

While I'm somewhat sympathetic to Mr. Hood's concern, we certainly have heard from the community, so the idea that they haven't had ample opportunity to weigh in, I believe several trees have been killed in terms of putting paper into the record, so we're a little counterproductive there.

So we have lots of input and I guess I wouldn't want this community and I wouldn't want other communities to think that the Zoning Commission is sort of relying on them to work out their own problems

alone. It's in part, when something is ready and we have a public hearing, if it's appropriately in front of us and I think this is, then we have to decide, with all of the input that these, as Mr. Parsons said, very articulate people have provided to us.

Now if you'd like to give some extra time, what we can do, given that when we have a proposed rule making, we have an advertisement period and it's typically 30 days. We can extend that and we can encourage the community to continue to talk and to continue to give us feedback through that comment period and then we take final action, we would have the benefit of their continued interaction in the neighborhood and also their continued input to the Commission.

VICE CHAIRPERSON HOOD: I appreciate that madam chair, but again, I would ask my colleagues to join me in the way that I'd like to proceed. I guess I don't really have any support, so I guess we better just go ahead and get started. Thank you.

CHAIRPERSON MITTEN: All right. The purposes, I don't know if we have a lot to say about the purposes. The meat of it starts in 1517, the general provisions.

The first section is 1517.1, which deals

with the zones over which the overlay district will be mapped and so what's proposed is that the zones that are included as has been advertised, R1A, R1B, R2 and R5D.

We had discussion about whether––. I believe at the end of the day, we've had a number of supplemental reports, but I believe at the end of the day the Office of Planning was recommending applying the overlay to R1A zoning only.

COMMISSIONER PARSONS: Their October 7th report says that they now recommend, I think this is their final report, that the entire proposed overlay district as proposed by the applicant be included in the tree and slope overlay.

CHAIRPERSON MITTEN: Oh, okay.

COMMISSIONER PARSONS: So they're taking the position now and I know there were other reports. We go with what was advertised and I would concur with that. Their rationale is to make sure that there's a single contiguous area and not saw toothed or to maintain the integrity of the overlay.

CHAIRPERSON MITTEN: Right. Let me just say a couple things. One is and this goes all the way back to the set down that I voiced a concern that R5D, given the lot occupancy limitations, you will

fundamentally change that zone so that I don't even know if you can achieve the high density residential–. I don't know that you can achieve high density residential in the R5D zone that's mapped and dictated by the land use map as well. I think you're undercutting the whole purpose of that zone if you include R5D in particular.

I understand what the Office of Planning is recommending, but I just think that is so fundamentally a change that it's really too onerous, it goes beyond what would be considered not inconsistent with the comprehensive plan.

COMMISSIONER PARSONS: Could we ask them about that?

CHAIRPERSON MITTEN: Ms. McCarthy?

COMMISSIONER PARSONS: Did you mean to include R5D?

MS. McCARTHY: There were some pieces of land in R5D, as well as in the R2, where there were fairly steep slopes and in some instances, mature trees and so we were looking to extend the protections of the overlay to that, not the minimum lot size, but the protections of cutting down trees to even R5D and R2.

COMMISSIONER PARSONS: The R5D is

restricted to–-, am I echoing?

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: New machine. Is restricted to Tilden Street as I see it. That is the zoning is along Tilden Street.

CHAIRPERSON MITTEN: I think in terms of if the goal is to have a single contiguous area, I don't think you undermine the single contiguous area by excluding the R5D.

I understand there are steep slopes and I understand there are mature trees and there are mature trees outside of this area also. I guess my concern is that if you start customizing the overlay too much to a say, oh well, we'll treat the R5D and we'll treat the R2 this way, it becomes extremely problematic to enforce.

What are you thinking now, Mr. Parsons, about R5D and, Mr. Hood, about R5D?

COMMISSIONER PARSONS: I'm looking at the map.

VICE CHAIRPERSON HOOD: I'm sorry, madam chair, what was the question that you asked?

CHAIRPERSON MITTEN: I'm trying to go through this in a systematic way and the first area that we need to discuss is what underlying zone will

this overlay be applied to and R5D is one that is problematic for me because I think it changes the zone–-, I think it changes what you can accomplish in the zone.

Now it’s been suggested by the Office of Planning that only the tree removal limitations and the steep slope aspects of this would apply, not any of the other controls of the tree and slope overlay.

And then the question is, whether or not the slope controls are going to survive our discussion and what’s going to survive our discussion, so maybe we should come back to it at the end.

VICE CHAIRPERSON HOOD: Yes, let’s come back to it.

CHAIRPERSON MITTEN: We’ll come back to it. So then the first section is the ground coverage restrictions, which is section 1518 and I’ll just say if we take this–-. 1518.1 deals with building coverage restrictions and then we have 1518.2, which is the impervious surface coverage restrictions and each of those sections is taken from the template and when we’re dealing with something from the template I’ll just remind the Commission.

We had conflicting information from the proponents and the opponents because each side was

arguing for their particular perspective. One was to maintain the 30 percent that's permitted in the underlying R1A and R1B versus the, I'm sorry. The 40 percent matter of right that's permitted in R1A and R1B versus the 30 percent that would be imposed by the TSP overlay.

Each side was arguing that the character of the neighborhood would be preserved by putting their provision in place, so it's hard to say what's true on that point and the main argument in opposition was that many of the existing homes already exceed the 30 percent lot coverage so imposing that on new construction would in fact produce a different sort of character.

Although the reason for having a lower building coverage restriction is that it provides a better environment for trees and helps to control water runoff.

VICE CHAIRPERSON HOOD: Madam chair, you stated that this is already in the original, I guess we can call it a template?

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: So I would be in favor of leaving it as it is.

COMMISSIONER PARSONS: I would too.

CHAIRPERSON MITTEN: I concur with that. I don’t think there was a compelling case made for not keeping that aspect of the template in place.

The next is section 1518.2, which again is an existing provision of the template, which deals with impervious surface coverage. We don’t have impervious surface requirements or restrictions in any other category other than tree and slope overlays.

The limitation that’s proposed is 50 percent limitation and this is language from the template, the way the provision is written is that the impervious surface restriction is not intended to preclude an enlargement of a principal building that already exists, so it’s focused on new construction.

So then the question is, if you’re not trying to preclude–-. This is one of the aspects of the underlying template that troubles me. If you’re trying to focus on new construction and you’re not trying to preclude enlargement of existing principal buildings, then what message do you send if you allow someone to increase their impervious surface coverage to 50 percent and then expand their house to 30 percent.

So in effect, for someone who has an existing structure could exceed the minimum impervious

surface coverage. That's one of the things that I don't agree with the template about or I'm confused about.

But for the purpose of what was advertised and the way the template's written, it applies to new construction only or it certainly is targeted to new construction.

COMMISSIONER PARSONS: Not in the case of the 30 percent, but in the case of the impervious surface?

CHAIRPERSON MITTEN: Yes. And I can summarize some of the pro and cons. What was argued in favor of it is that promotes water quality and controls runoff, provides better environment for tree growth and the Office of Planning is in support of this.

The opposition suggests that this would limit the ability of property owners to be able to customize their lots to fit their needs or changing market conditions in order to pave for driveways or tennis courts and so on or to add swimming pools and other amenities to their dwellings and then they raised the issue of why new homes are being treated differently, which is a question that I agree with.

COMMISSIONER PARSONS: But rather than

changing this to apply to new–-.

CHAIRPERSON MITTEN: Right, I can live with the template for the time being. I think there's a lot to be said for having impervious surface coverage restrictions and I actually think we should probably incorporate into some underlying zones and not exclusively in a TSP overlay, but that's for another day.

COMMISSIONER PARSONS: Okay.

CHAIRPERSON MITTEN: Are you in favor of 1518.2 as it was advertised, Mr. Hood?

VICE CHAIRPERSON HOOD: I'll just say this, madam chair, if it's already in the TSP, in the template, I'm going to be in favor of leaving it as it is.

CHAIRPERSON MITTEN: All right. Okay, next we have the limitations on tree removal and this is also an existing provision of the template. This is 1519.1.

Clearly this is meant to protect existing large trees and the overall tree canopy and the Office of Planning supports this. In opposition, there was concerned raised that there was no differentiation by lot size, tree species, whether the lot is vacant or improved and the impact on development feasibility.

There was a question raised regarding the fairness of or the propriety of using the building restriction line as a point of reference. I agree with that, but it's from the template and I'd like that be examined also.

Circumferences change over time, so the issue of when does one measure one's trees and how long is that good for. The fact that's difficult to administer and enforce, which perhaps if we look at the template overall, we can get some feedback from the Office of Planning about the ability to enforce this in existing tree and slope overlays and there's no definition of total circumference inches in 1519.1(e).

And there was also the concern raised that this would potentially provide some kind perverse incentive for people to cut down smaller trees before they could get big enough to come under the controls of 1519.1.

COMMISSIONER PARSONS: But in summary, you're saying, leave it the way it is.

CHAIRPERSON MITTEN: I guess I'm saying a couple things. One is, I think it needs to be examined, but I just think the enforceability of this needs to be examined by the Office of Planning as a

matter of concern for the template. I think we do need to examine the issue of what does total circumference inches mean in (e).

I think the point is that it says, the total circumference inches of all trees to be removed or cut down, that’s clear what that is, on a lot shall not exceed 25 percent of the total circumference inches. So it’s what are you counting when you count the total for the lot, are you counting only those trees that you would be measuring anyway or would that be any tree over 12 inches or is that every tree. It’s not clear.

COMMISSIONER PARSONS: I understood to be every tree over 12 inches or 38 inches in circumference.

CHAIRPERSON MITTEN: Let’s say that then.

COMMISSIONER PARSONS: This is not set out for the vandal who’s going to go out and cut trees down. This for somebody coming forward with a proposal. So they measure all the trees on the lot and then they say I’m going to take down so many and it can’t exceed 25 percent.

CHAIRPERSON MITTEN: 25 percent of those that they measured?

COMMISSIONER PARSONS: Right.

CHAIRPERSON MITTEN: Which is all the trees or only the ones that have limitations applied to them.

COMMISSIONER PARSONS: Well, my understanding–-, this is ten years ago, so beware.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: The trees that you measure.

CHAIRPERSON MITTEN: The trees that you measure?

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: So the ones that would be over 12 inches?

COMMISSIONER PARSONS: That’s what I think it to be, yes.

CHAIRPERSON MITTEN: So what I think you’re suggesting is for now we’ll just have to go with the understanding of what it is.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: And we’ll deal with that when we take a pass at the template, is that correct?

COMMISSIONER PARSONS: I think that’s good.

CHAIRPERSON MITTEN: Mr. Hood, any thoughts on that or are you in favor of the template? I think

you said you were in favor of the template.

VICE CHAIRPERSON HOOD: Yes, I'm in favor.

CHAIRPERSON MITTEN: I'm sorry. I just want to make you feel included.

VICE CHAIRPERSON HOOD: Thank you. I don't feel included, but thank you.

CHAIRPERSON MITTEN: Okay, the next provision is 1519.2. This is a departure from the template, this is new and this has to do with the minimum lot size. Now it's not completely new because this was addressed in the Chain Bridge University Terrace tree and slope overlay.

The proposal was that the minimum lot size be increased to 12,000 square feet. The matter of right minimum in R1A is 7,500 and the matter of right minimum in R1B is 5,000.

COMMISSIONER PARSONS: I think the Office of Planning came up with a compromise, again, in their October 7th memo to drop down to 9,500 square feet, which is closer to the median lot size, which they report 9,415 and they also report, of course, remind us that the Chain Bridge overlay is 9,500 square feet, so there would be consistency there.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: So I would agree

with the Office of Planning on dropping that down to 9,500.

VICE CHAIRPERSON HOOD: I too, madam chair, would agree with the Office of Planning recommendation.

CHAIRPERSON MITTEN: I'm just going to plant a seed in your minds, which is, when we come back to which zones will be included, that when we think about this, we're sort of focused on R1A and R1B, but then we're talking about including R2 and R5D in the overlay. I would support the 9,500 square feet minimum lot size as well.

I think there were compelling reasons on both sides for the positions and I think that 9,500 is a good sort of middle ground and we can also inquire as to–-, I don't think we had a good discussion about how that's working in the Chain Bridge overlay district, so maybe we can get some comments on that in the comment period.

So 1519.2 would be modified to read, the minimum lot size for homes within the Forest Hills tree and slope protection overlay district shall be 9,500 square feet for lots subdivided after the effective date of this provision.

Okay, the next section, 1519.3, this deals

with the front yard set back. This again is focused on new construction. This would not affect additions.

In general, the idea would be that the front yard set back would be greater than or equal to the average set back of other buildings on the block and in both cases, the pro and the con--. No, I'm sorry, let me just start over.

On the pro side, the emphasis was on creating a more uniform appearance in the neighborhood, it was not focused on trees and I would argue that this is one of those provisions that's more appropriately considered not in a tree and slope overlay, but in some other kind of development control provision that I think would address some of the other issues that are perhaps of concern to the neighbors here, but I don't think this is appropriately in a tree and slope overlay and I don't think that the proponents have made a compelling case that it should be and the Office of Planning supports deletion of that as well.

COMMISSIONER PARSONS: All right.

CHAIRPERSON MITTEN: All right, so 1519.3 will be deleted. The side yard provision, which is 1519.4. We've been kind of back and forth on this issue.

I believe I miss spoke about the Office of Planning's position on that. Did I misspeak?

MS. McCARTHY: Yes, madam chair, we did not recommend deletion of that provision.

CHAIRPERSON MITTEN: Okay, anybody want to change their mind?

COMMISSIONER PARSONS: Yes, I'm afraid I was distracted.

CHAIRPERSON MITTEN: I apologize that I mislead you.

COMMISSIONER PARSONS: What again is your rationale for doing this, other than this is a new idea? This is not in the template?

CHAIRPERSON MITTEN: What's my rationale for?

COMMISSIONER PARSONS: For deleting 1519.3.

CHAIRPERSON MITTEN: My rationale is that the case that was made for keeping it in is strictly about addressing the uniform appearance of the neighborhood. There was really nothing that was put forward about what relationship this set back had to trees and I would suggest that in fact it doesn't.

It may be a desirable provision, but not in a tree and slope overlay.

COMMISSIONER PARSONS: Well, I don't know

where else you would–-. Well, that’s not this case. A number of exhibits were shown where buildings were being built out way out in front of the other set back lines that had been established traditionally when the subdivision was first created.

Your point is that you didn’t see any trees in the front yard or that wasn’t the rationale or trees–-. To me, if the set back’s there, then trees will be planted in the set back, therefore there will be trees in the front yard even if there aren’t now. I’m not sure I understand what you mean.

CHAIRPERSON MITTEN: Let me take the other situation, which is, let’s say there are trees in the front yard.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: The limitations on cutting trees will protect those trees, that’s point number one. Point number two is, what you just expressed is that if you have the set back then maybe people will plant trees.

If they build their house more forward, there’s a limitation on how much of the lot that they can cover, so they’ll just plant the trees in the backyard instead of the front yard. I don’t see what you’re accomplishing tree wise with the front yard set

back.

COMMISSIONER PARSONS: Of existing trees, I would agree with you, yes. But there's a consistency in the neighborhood of set back and just because a house doesn't happen to have trees on the lot or it could have trees on the lot, like probably when the subdivision was built, there weren't any trees in site. I shouldn't speculate on that.

I'm trying to understand why you think it shouldn't be, have a consistent set back in the neighborhood, why is that a bad idea?

CHAIRPERSON MITTEN: I'm not saying that it's a bad idea. I'm saying this is a tree and slope overlay. There's probably a lot of other things that could be addressed, but if it's not specifically related to the purposes of the overlay and let me just say what the template is intended to do.

What tree and slope overlays are intended to do are to regulate the alteration or disturbance of terrain, to regulate the destruction of trees and to regulate the ground coverage of buildings and impervious surfaces and I don't know what the front yard set back has to do with those purposes.

Mr. Hood, did you want to weigh in on this?

CHAIRPERSON MITTEN: I would agree with you, madam chair, but if this is an opportune time to go back to what I asked earlier.

(Laughter.)

VICE CHAIRPERSON HOOD: I would really like to do that, but I know I don’t have the support so.

COMMISSIONER PARSONS: We’re half way there.

VICE CHAIRPERSON HOOD: Going back to my first suggestion?

COMMISSIONER PARSONS: Yes.

VICE CHAIRPERSON HOOD: Oh, okay, let’s keep going then.

CHAIRPERSON MITTEN: We’ll vote on the front yard set back as a separate item then, okay. If we don’t reach consensus on what’s in and what’s out, then we’ll vote on it separately at the end.

COMMISSIONER PARSONS: Okay, thank you.

CHAIRPERSON MITTEN: All right, side yards. We’ve been back and forth about the side yards and the original proposal was for and this is a new section, this is not in the template.

The original proposal that was advertised is that there would be a 16 foot side yard. Then that was modified and the matter of right is eight feet.

Then that was modified in a couple of different permutations and there have been sliding scales with the maximum of 32 feet, I think, was the last proposal by the ANC and the Forest Hill's folks and then 24 feet was what was proposed by OP in terms of an accumulative side yard.

And I would remind everyone that this applies to new construction only. That's what was advertised is that it would apply to new construction only, but it was addressed by the folks in opposition about the propriety of it applying to new construction only and what effect would it have on additions.

COMMISSIONER PARSONS: So you're asking us to decide between the sliding scale of 32, sliding scale of 24 and the advertised at 16?

CHAIRPERSON MITTEN: Right or the matter of right.

COMMISSIONER PARSONS: Which is eight.

CHAIRPERSON MITTEN: Which is eight.

VICE CHAIRPERSON HOOD: I would be more inclined, I believe, to go with the sliding scale. Each lot I believe is different and I think that's where we're going to--. I don't know if we can just specify the 16 foot side yard.

COMMISSIONER PARSONS: I agree.

VICE CHAIRPERSON HOOD: Let me ask a question. Unfortunately, with all this paper up here, I can't find the Office of Planning report.

CHAIRPERSON MITTEN: Did you want to ask them a question.

VICE CHAIRPERSON HOOD: If it's okay.

COMMISSIONER PARSONS: Sure.

CHAIRPERSON MITTEN: Oh, sure.

VICE CHAIRPERSON HOOD: Actually, I can ask anybody, we should know. Which one did you all support, did you all support one or another, sliding scale?

MS. McCARTHY: Right, we supported the sliding scale because we felt that it gave people greater flexibility in siting houses and maintaining trees in the side yards, but keeping the same minimum of eight feet, so that the people had no less protection than they had now in terms of privacy.

VICE CHAIRPERSON HOOD: Okay, thank you.

COMMISSIONER PARSONS: And the sliding scale was 24 or 32?

CHAIRPERSON MITTEN: Their cumulative was 24, I believe, which is less than the proponents had suggested on the sliding scale.

COMMISSIONER PARSONS: Which they were at

32.

CHAIRPERSON MITTEN: Correct.

COMMISSIONER PARSONS: Which could mean a 16, theoretically, just flexible.

CHAIRPERSON MITTEN: So I guess there’s a couple questions. One is, what do you like? Mr. Hood, do you like the sliding scale with the aggregate of 24 feet and a minimum of 8 feet required on either side, but the aggregate has to be a minimum of 24, which is what the Office of Planning is suggesting? So there’s that aspect of it.

I think even though this is a new aspect of the tree and slope, there was a more compelling reason for this than the front yard set back in my mind, but I wonder about the applicability to new construction only.

Why should someone who’s building a new house have these restrictions and somebody who’s going to do an addition is in a different situation.

COMMISSIONER PARSONS: I must be very honest. I did not realize that this did apply to only new residential structures until the last hearing when it was brought to our attention. I don’t know if the original announcement didn’t say this, I don’t know, it just took me by surprise.

CHAIRPERSON MITTEN: I'm not sure that at the time that we set it down that we understood. I'm not sure I understood, so I'll just say we, that building something new didn't encompass everything, additions and totally new.

COMMISSIONER PARSONS: Right, yes, that's new.

CHAIRPERSON MITTEN: I think that what we've been advised would be the interpretation of 1519.4 is that as written, it would not apply to additions and if we wanted it to apply, we would have to put in some language more like the introductory language of 1519.1, which is, construction of a building, an accessory building or an addition to a building, something more inclusive.

COMMISSIONER PARSONS: All we'd have to do is take out the word new because when you read–-. Maybe I was reading that initially and didn't pay attention. 15191.1, as you just referenced, it's quite clear. It's a building, accessory building, addition to a building, creation of any impervious surface.

CHAIRPERSON MITTEN: Let me just add one thing to it, which is, if we just remove the word new, it still says residential buildings and so if somebody

builds a school, it’s different. If somebody builds a church, it’s different. Anything else that somebody could build in a residential zone, it wouldn’t apply.

COMMISSIONER PARSONS: Right.

CHAIRPERSON MITTEN: So we might want to say, for all buildings, if you want it to be really inclusive.

COMMISSIONER PARSONS: All right.

CHAIRPERSON MITTEN: Is that what you want?

COMMISSIONER PARSONS: I think so.

CHAIRPERSON MITTEN: Mr. Hood?

VICE CHAIRPERSON HOOD: That’s fine with me.

CHAIRPERSON MITTEN: 1519.4 will be modified to say, the side yard requirement for buildings within such districts and then it will read whatever the language is that would incorporate the recommendation from the Office of Planning for 24 feet aggregate minimum with either side yard having a minimum of 8 feet.

COMMISSIONER PARSONS: Okay.

VICE CHAIRPERSON HOOD: Clarification, madam chair. We could either go 32 feet or 24 feet. Would 32 give it a more flexibility?

CHAIRPERSON MITTEN: No, less.

VICE CHAIRPERSON HOOD: Less, okay, 24.

COMMISSIONER PARSONS: I'll compromise at 24. My proposal for 48 I didn't even bring forward.

(Laughter.)

CHAIRPERSON MITTEN: Thank you. Yes, that would be a tough one. Okay, slope controls, 1519.5. Okay, this is a new section.

SECRETARY BASTIDA: Madam chairman?

CHAIRPERSON MITTEN: Yes.

SECRETARY BASTIDA: If I may. I believe that the word building will not encompass accessory building or an addition to a building as the DCRA will interpret it because of the applications for construction are usually called, construction or a new construction or an addition.

CHAIRPERSON MITTEN: What is not clear about the side yard requirement for buildings, what's not clear about that?

SECRETARY BASTIDA: Because a building is not an addition as is interpreted by DCRA and if you want to include additions, I believe you need to spell it out.

COMMISSIONER PARSONS: The way it's done in 1519.1.

SECRETARY BASTIDA: Correct.

CHAIRPERSON MITTEN: Okay, then that's what we'll do. So the language in 1519.4 will have to include some more inclusive language to the effect of, construction of a building, an accessory building or an addition to a building.

COMMISSIONER PARSONS: All right.

CHAIRPERSON MITTEN: All right, slope controls. Okay, the original proposal and this was what was advertised was for no construction within 20 feet of steep slopes and steep slopes are defined as, those greater than 25 percent, and the current proposal is to use best practices.

The presence of steep slopes alone would not trigger any kind of zoning review, but if the steep slopes were present for a property that was being considered as a part of a larger special exception then there's a whole series of submittals that are required.

The proponents suggested that the slope controls would help prevent soil erosion, maintain water quality and maintain existing terrain and the Office of Planning supports the best practices alternative.

The opponents suggest that 25 percent slopes are not unusual and that construction on steep

slopes can actually reduce erosion. If erosion control is a necessary objective, why not apply it city wide. And they remind us that the slope restrictions were rejected for the Wesley Heights overlay and they suggest that this be treated as a building code issue rather than as a zoning code issue.

VICE CHAIRPERSON HOOD: Madam chair, do we know if it’s already treated as a building code issue? If it is, I would be in favor of letting–-.

CHAIRPERSON MITTEN: There are erosion control requirements in the building code. I don’t know that they’re on par with what has been suggested here, but it is dealt with in the building code review.

COMMISSIONER PARSONS: This is a tree and slope overlay and I can not recall and maybe this goes to your point of shouldn’t we revisit this, but to eliminate it–-. I can not remember why we did it in Wesley Heights, I really can’t. I just can’t understand why we would have, but maybe we weren’t focusing on it.

CHAIRPERSON MITTEN: Let me say one thing, which is and, Mr. Hood, since you have the ordinance open, you can correct me if I’m wrong, but there is

nothing, I don’t believe there is anything in the template for the tree and slope overlay, the “tree and slope overlay” that addresses slopes, so that’s why this is a new section.

You could argue that the template is flawed because it doesn’t address slopes, but it’s not in here.

VICE CHAIRPERSON HOOD: Give me a minute, madam chair, I’m going to do my best to prove you wrong.

CHAIRPERSON MITTEN: Just for the fun of it?

VICE CHAIRPERSON HOOD: Yes.

CHAIRPERSON MITTEN: Okay. Well then have a good time. I think there’s a couple things. One is, why are you going to address steep slopes one way in a special exception process when you’re not going to address it as a matter of course because the way you would get into the special exception doesn’t have anything to do with the slopes per se. It has to do with other things.

And then I think there is a potential for redundancy, which is perhaps where Mr. Hood was going, which is, you know, if it’s already being addressed as a building code issue, is the BZA, is it their area of

expertise to address handling steep slopes when it’s being handled as a building code issue. I am inclined to agree with Mr. Hood.

COMMISSIONER PARSONS: Well, the steepest slopes are adjacent to parks and that’s what this whole tree and slope overlay was about and I haven’t referred to the template and I hope Mr. Hood can find something because I can’t–-.

CHAIRPERSON MITTEN: There isn’t anything.

COMMISSIONER PARSONS: There isn’t anything?

CHAIRPERSON MITTEN: No.

COMMISSIONER PARSONS: I’m at a loss and to say it’s a building code issue, it has nothing to do with subdivision. I mean what we’re looking for is a board review of impacts on steep slopes, that’s what I’m looking for, a conscience public debate about these.

VICE CHAIRPERSON HOOD: The Wesley Heights overlay district, when you did that, do they have steep slopes in Wesley Heights?

COMMISSIONER PARSONS: Not facing the parks, no. As a matter of fact, I don’t think any of Wesley Heights faces the parks.

CHAIRPERSON MITTEN: Let me ask you this,

Mr. Parsons, which is and this is an issue that was raised by the opponents. If there's an objective to control erosion, wherever it is and maybe we could just add in parenthesis, especially adjacent to parks, why are we trying to piecemeal it this way through a tree and slope overlay? Why aren't we addressing it in a city wide kind of––. Why don't we have a special section called slope protection or erosion control?

COMMISSIONER PARSONS: Well, we should, we should, but that's––.

CHAIRPERSON MITTEN: Which would then not only be triggered in the special exception process, it would be triggered––. I think there has to be some kind of fairness aspect to it and a balance aspect to it.

I think the idea was to have somebody come in, if they're coming in for a special exception anyway, it's like, well, you've got to go to BZA anyway, you might as well address it, but if you're coming in for a special exception that's not related to the steep slopes, why do you have to have an elaborate submission.

COMMISSIONER PARSONS: Let's go back to the Office of Planning's proposal called best practices. Where is that?

CHAIRPERSON MITTEN: Let’s see.

COMMISSIONER PARSONS: I’ve got an entire pile in front of me and I can’t find it.

CHAIRPERSON MITTEN: Can I look in your pile because most of my file is in the back?

COMMISSIONER PARSONS: Well, yes, you can, but I’ve got another pile over here. See, I’ve got another pile here.

CHAIRPERSON MITTEN: Office of Planning, if you could put your hand the outline of the best practices to help us out, just to get more people flipping through their papers, we’d appreciate it.

COMMISSIONER PARSONS: Well, I’ve got a report here of June 17, which may be what you’re looking for. It says, the applicant has submitted an alternative option that would require developers to identify steep slopes or erodible slopes to guarantee use of best practices and OP agrees, but they don’t contain that in their report, rather they–-.

CHAIRPERSON MITTEN: Right that was a–-.

COMMISSIONER PARSONS: So it’s in the Forest Hills later submission.

CHAIRPERSON MITTEN: Right, I think I might be getting warm here. I have the language, but I don’t know if they articulated what the best practices

would be, but here's the language that was proposed, to the extent that any person seeks permission for building or terrain alteration on a lot with a slope steeper than 25 percent or with "highly erodible soil", as defined by the Natural Resources Conservation Service of the U.S. Department of Agriculture, that person shall supply to the zoning administrator in the Department of Consumer and Regulatory Affairs professional certification that the plans for alteration and/or construction will follow best geo technical structural engineering and arboreal practices.

But then there was a–-. The additional submissions comes under the special exception provision, so that's a separate item. That's the nature of the best practices proposal. It requires a certification for any property that would be constructed on a steep slope and the additional submissions are in a separate section.

VICE CHAIRPERSON HOOD: Madam chair, let me ask, Commissioner Parsons, do we know, during your tenure, has there ever been a slope restriction placed on a property in the city that you know of, because Wesley Heights, the Commission threw it out. Is there a restriction?

COMMISSIONER PARSONS: Well, they didn't throw it out. It didn't exist in the parent regulation.

VICE CHAIRPERSON HOOD: You didn't place one, I guess that's what my point is.

COMMISSIONER PARSONS: That's right.

VICE CHAIRPERSON HOOD: And I want to know where is there one.

COMMISSIONER PARSONS: Because it was tree protections essentially, that was the trouble in Wesley Heights. Somebody came in and clear cut three lots.

Well to move this thing along, I will agree to go with this alternative that I think is very weak, but with the right to change my mind.

CHAIRPERSON MITTEN: Would you reiterate what it is you think you're agreeing to?

COMMISSIONER PARSONS: This thing you just read.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: This self certification that I'll be okay and I won't drive a bulldozer on the slope.

CHAIRPERSON MITTEN: So what that's going to do is that's going to require anybody who's

building on a lot with a steep slope has to make a certification.

COMMISSIONER PARSONS: Correct.

CHAIRPERSON MITTEN: Okay. Mr. Hood?

VICE CHAIRPERSON HOOD: That’s the same thing as going for a building permit, we’re on the same page.

CHAIRPERSON MITTEN: I think there’s a slight difference of opinion, which is best practices is not always necessarily the same as meeting the minimum requirements. I think it’s a higher standard.

VICE CHAIRPERSON HOOD: Okay, I’d go along with that.

CHAIRPERSON MITTEN: So the best practices alternative is prevailing at this point. So that would be the section that I just read from the proponent’s proposal would be the one that we agree about adopting.

Then we have 1520, which are the guidelines and required submissions for special exceptions. Now that’s where there was another proposal by, in that same package, for some relatively elaborate additional submissions that would be a letter E. We have A, B, C, D were advertised. Letter E, it’s pretty elaborate, so I’ll just pass it over to

you to remind you what that is. It's all this.

COMMISSIONER PARSONS: I don't understand this, may elect. So what E seems to do is to say rather than have the board impose requirements, you can take the option of bringing into the board an elaborate plan, which is elaborate, to indicate to them how you might mitigate the impacts of your construction, hoping the board then would use that as the guidance for this, but I've never seen that in a regulation. See the way that starts?

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: That the owner may elect to do that.

CHAIRPERSON MITTEN: Right, I mean I think that goes without saying.

COMMISSIONER PARSONS: It seems to me the owner may elect to do that anyway.

CHAIRPERSON MITTEN: Right, they do whatever––.

COMMISSIONER PARSONS: To ease the uncertainty of what's going to happen in D.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: So that's kind of in a zoning guidebook, here's how you might get through the system.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: I think we ought to leave it the way it is.

CHAIRPERSON MITTEN: Okay, so you're in favor of leaving 1520.1 through 1520.3, which those are basically the guidelines for the special exceptions and the submissions.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Mr. Hood.

VICE CHAIRPERSON HOOD: I'm fine with that.

CHAIRPERSON MITTEN: All right, as advertised. Then we have 1520.4, which provides for criminal penalties for false statements on all forms and applications, which I think that's probably redundant because you're required to sign those documents as it is and I believe that there are already criminal penalties and this suggests that we can enforce that in some way and I think that's a separate issue.

We expect everyone to make honest and true statements on forms and applications. I don't think there's anything different here. I mean I'm not in favor of including criminal penalties.

COMMISSIONER PARSONS: Because you're sure it's elsewhere in the regulations?

CHAIRPERSON MITTEN: I'm not saying it's elsewhere in the regulations, I'm saying that when you make submissions to any agency on a application form, you're signing that it's a true statement.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Mr. Bergstein, is this elevating to a criminal act, a false statement where it would otherwise be a civil?

MR. BERGSTEIN: The council did that for you actually, making a false statement or response to an application of the District of Columbia is a criminal act.

CHAIRPERSON MITTEN: So this is redundant with that?

MR. BERGSTEIN: I think this just says that the forms that are submitted acknowledge that and I don't know how things work over at DCRA, but I hope that their forms do have a standard boilerplate to that effect. I have that boilerplate available if anybody wants it, but there is a boilerplate that I know is used throughout the District government that says exactly that, but it doesn't really need to be said.

COMMISSIONER PARSONS: Okay, we'll delete it.

MR. BERGSTEIN: It happens to be true, if you do make a false statement, it’s a criminal offense, white collar crime.

COMMISSIONER PARSONS: If you lie, you die.

CHAIRPERSON MITTEN: Thank you. So I would propose deleting 1520.4.

COMMISSIONER PARSONS: All right.

CHAIRPERSON MITTEN: And then the definitions in 1520.5, those are existing definitions in the first chapter of the ordinance and we don’t call out every term that’s a defined term in the tree and slope overlay and I wouldn’t suggest that we should call out a few.

These are existing definitions, they’re not new definitions, so I think that just confuses people because they’ll think that those are the only defined terms. I would propose deleting 1520.5 as being redundant.

COMMISSIONER PARSONS: You’re sure these other ones are in? You said they were?

CHAIRPERSON MITTEN: I checked.

COMMISSIONER PARSONS: Thank you, let’s delete them.

CHAIRPERSON MITTEN: Okay, so we would then delete 1520.5.

VICE CHAIRPERSON HOOD: Madam chair, let's go back to 1520.4. That is somewhere else in the ordinance?

CHAIRPERSON MITTEN: It's not in the ordinance. Mr. Bergstein said that the city council passed a law that said that criminal penalties will be assessed or whatever for making false statements on documents submitted to the District of Columbia.

VICE CHAIRPERSON HOOD: Okay. I can tell you that happens all the time. Sometimes people need to see it somewhere else to remind them.

COMMISSIONER PARSONS: Look at the front cover of the zoning regulation.

VICE CHAIRPERSON HOOD: Yes. Actually 1520.4 and 1520.5, I'm not going to make a big deal, but if I had my preference, which I don't have the votes, I would really let all that stay in there, but I'm not going to make a big deal over that.

CHAIRPERSON MITTEN: I think one of the things that would happen then is if for some reason a form didn't have that criminal penalty, somebody would think that they could appeal that to us and I don't think that's appropriate. Oh, the forms wrong, do something about. We don't control the forms. The fact is it is criminal to do that and writing it is

not going to make it any different.

VICE CHAIRPERSON HOOD: It goes on all the time down here, I can tell you.

CHAIRPERSON MITTEN: Now we're back to what is essentially the original issue that we started with, which is where we're going to map this and so this is a question 1520.6 outlines the squares to be included and those squares encompass R1A, R1B, R2 and R5D zones.

I just will say that originally, not now, but originally, Office of Planning had suggested that R2 should be out that the folks in the 3400 block of Fesingin Street, where the R2 zoning is, requested that they remain in and now the Office of Planning agrees with that.

We had a request from 80 percent of the owners in squares 2239, 2244, 2245 and 2246 have asked to be excluded.

The Jewish Primary Day School has requested that their property at 3031 Gates Road, also known as The Owls Nest, be removed and the Edmund Burke School requested removal from the overlay and I believe the Edmund Burke School is in the R5D zone.

COMMISSIONER PARSONS: The only one that I'm persuaded by is the Edmund Burke School.

Certainly just the exhibits that they presented made it clear that this overlay would not serve that property at all.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: But the other's I'm not persuaded by their arguments, including Hillwood, did you mention them?

CHAIRPERSON MITTEN: I believe they're square 2244 or one of those that I just read off. Let me just ask again about the R5D zone because if you take Edmund Burke School out, I don't know how much R5D, but there's not a whole lot left.

I think we either need to make some accommodations and not apply the building coverage restrictions and impervious surface restrictions and the minimum lot size restrictions and the side yard restrictions and only apply the slope controls and the tree removal limitations or we need to remove the remaining properties in R5D.

COMMISSIONER PARSONS: All right, I'll take R5D out.

CHAIRPERSON MITTEN: Mr. Hood?

VICE CHAIRPERSON HOOD: I would prefer that everything that we've done, we take that back and send it back to the neighborhood.

COMMISSIONER PARSONS: We're going to do that in the form of proposed action and we can take all kinds of mail on that.

VICE CHAIRPERSON HOOD: I would be interested to hear from them. Well, you know what, that's not the right way to go because the direction we went in, everybody would probably want to come out and everybody would want to go in, so I really don't know how to proceed on that. I'll be frankly honest.

Just to sit here for me and to just arbitrarily say R5D is a disservice to the city. Maybe if I had a map, if I could get a map in front of me. If I can get the map you were using, maybe I could see and I don't see why we're excluding Edmund Burke School.

CHAIRPERSON MITTEN: They described their property and there's no, I don't believe there are any mature trees on the property and they are not in a steep slope area, so they're suggesting that there's nothing to be gained by including them.

COMMISSIONER PARSONS: The R5D is along Tilden Street on either side. What I'm trying to find you is a map of how much of that is built out.

CHAIRPERSON MITTEN: I think there is some over here. Is this it?

CHAIRPERSON MITTEN: Commissioners, if I could add just about the Edmund Burke School. The reasons there had been such explicit discussion about excluding them was that they had only been included through a typographical error in the listing of squares, but they weren't mapped as being in the overlay. They were not intended to be in the overlay. That had just been an error.

CHAIRPERSON MITTEN: Thank you for reminding us of that.

VICE CHAIRPERSON HOOD: Well, in that case, Commissioner Parsons, I agree with you.

CHAIRPERSON MITTEN: On Edmund Burke?

VICE CHAIRPERSON HOOD: Edmund Burke, right.

CHAIRPERSON MITTEN: Okay, what about R5D? We've got two ways to go. We can delete R5D or we can just apply the two provisions, the slope protection and the tree removal and not encumber them with the rest.

VICE CHAIRPERSON HOOD: Madam chair, let's just go ahead and delete. I would be in favor of deleting R5D.

CHAIRPERSON MITTEN: Just so I'm sure that I heard you right, Mr. Parsons, you're in favor?

COMMISSIONER PARSONS: Yes, knowing that we'll hear from the community and maybe we'll change our mind.

CHAIRPERSON MITTEN: For the time being, you're in favor of deleting R5D?

COMMISSIONER PARSONS: Right.

CHAIRPERSON MITTEN: I know that most, if not all, of the lots that are in the R2 zone are already subdivided, but I believe that there was some language in the Chain Bridge University Terrace overlay that accommodated another class of lots that were small––. Let me just look this up.

Since the minimum lot size in R2 is already quite low relative to what's now going to be the 9,500 square foot minimum, then anyone who would do anything on any R2 lot, they're automatically nonconforming.

I just wanted to know if you wanted to make any accommodation of that. Actually, it related to the ground coverage restrictions. What they have in the Chain Bridge University Terrace is, the principal building and any accessory building on the lot shall not exceed total lot occupancy of 30 percent provided that on lots of 6,499 square feet or less, the maximum permitted lot occupancy shall be 40

percent and then it goes on from there.

So the question would be, did you want to make any accommodation on lot coverage for the smaller lots?

COMMISSIONER PARSONS: We didn't have a hearing about that.

CHAIRPERSON MITTEN: It had been suggested that––. I mean I got this proposal from––, I don't remember who made the proposal, but there––.

COMMISSIONER PARSONS: I don't know how we'd put in 40 percent and maybe go to R2 and go 30 percent. I don't know what basis we would do that on. There's no proposals, nothing in the testimony.

CHAIRPERSON MITTEN: Okay. I just want to raise it. Let me just recap where we are. There's one section we're going to vote up or down separately and that section is the front yard set back and I just want to talk about that briefly again.

As it stands, 1518.1 is in as advertised. 1518.2 is in as advertised. 1519.1 is in as advertised. 1519.2 is in, it has been modified from the 12,000 square foot minimum to 9,500 square foot minimum.

1519.4 has been modified so that it includes all new buildings, additions and accessory

buildings and has a minimum side yard requirement of 8 feet with an aggregate side yard requirement of 24 feet.

1519.5 has been modified to the best practices language of the proponents. 1520.1 through 1520.3 are in as advertised. 1520.4 is out. 1520.5 is out. And 1517.1 will be modified to exclude R5D and 1520.6 will be modified to exclude those squares or portions of squares that are zoned R5D, so I would move approval of what I just articulated.

COMMISSIONER PARSONS: Second.

CHAIRPERSON MITTEN: I was going to say, after all that I can’t get a second. Any further discussion? All those in favor, please say aye?

(Chorus of ayes.)

CHAIRPERSON MITTEN: Those opposed, please say no.

(No response.)

CHAIRPERSON MITTEN: Ms. Sanchez.

MS. SANCHEZ: Yes, the staff would record the vote 3 - 0 - 2 with regard to Zoning Commission Case No. 02-19, with regard to the proposed changes except for section 1519.3.

CHAIRPERSON MITTEN: Right.

MS. SANCHEZ: Commissioner Mitten moving,

Commissioner Parsons seconding, Commissioner Hood in favor. Commissioners Hannaham and May not present, not voting.

CHAIRPERSON MITTEN: Okay. Now we have 1519.3 and we're going to take this up separately and I'd just like to hear final thoughts on 1519.3, which is the front yard set back.

COMMISSIONER PARSONS: Well, it occurs to me, madam chairman, that we obviously don't have a proxy from our other two colleagues.

CHAIRPERSON MITTEN: Right, that's why I want to hear your final thoughts.

COMMISSIONER PARSONS: Why don't we take it out because I'm halfway to where you are. That is, this really doesn't have anything to do with trees. It has to do with preservation of this neighborhood's set backs.

CHAIRPERSON MITTEN: AS much as I like convincing you of something.

COMMISSIONER PARSONS: Now you're going the other way?

CHAIRPERSON MITTEN: We deliberate for a reason, okay. I endorse the concept, I just don't think it's appropriately here, but rather than not be able to move forward, I was going to suggest that–-.

COMMISSIONER PARSONS: I'm going the other way.

CHAIRPERSON MITTEN: Okay, well, Mr. Hood, what do you have to say? It's switching around.

VICE CHAIRPERSON HOOD: Initially, madam chair, I was in agreement with you that it didn't have anything to do with it, but I guess now we're going to leave it in for the time being.

CHAIRPERSON MITTEN: Well, there's that to be said. We can leave it in, get some more feedback.

COMMISSIONER PARSONS: All right, I'm in favor of that.

CHAIRPERSON MITTEN: So it's in for the time being.

COMMISSIONER PARSONS: Okay, good.

CHAIRPERSON MITTEN: With our concerns expressed.

COMMISSIONER PARSONS: We need a separate motion on that.

CHAIRPERSON MITTEN: Yes, would you like to make it?

COMMISSIONER PARSONS: You've got it right in front of you, please do.

CHAIRPERSON MITTEN: I would move that we keep in the language for the front yard set back,

section 1519.3 as advertised.

VICE CHAIRPERSON HOOD: Second.

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

(Chorus of ayes.)

CHAIRPERSON MITTEN: Thank you. Ms. Sanchez.

MS. SANCHEZ: Staff would record the vote 3 - 0 - 2 with regard to Zoning Commission Case 02-19 to keep in section 1519.3 as advertised. Commissioner Mitten moving, Commissioner Hood seconding, Commissioner Parsons in favor. Commissioners Hannaham and May not present, not voting.

MR. BERGSTEIN: Madam chair, for guidance, is this going to be a regular 30 day comment period or were you considering––.

CHAIRPERSON MITTEN: Thank you for reminding us about that. Mr. Hood, I'll ask you,––.

VICE CHAIRPERSON HOOD: It's kind of late now to ask me.

CHAIRPERSON MITTEN: Not at all, not at all. We had talked about giving an extended period for comments so we could give the community ample time to reconvene and have further discussions and give us the benefit of those discussions and so I'll ask you

if you'd like to suggest an extended comment period?

VICE CHAIRPERSON HOOD: I would think, madam chair, 60 days should be enough time and I hope that comment period would be organized and hopefully a lot of stuff that we've done here will get commented on and hopefully there could be more of a closerness together in the neighborhood, the folks who live there and the folks who pay taxes, whatever the case is. I'd just like to see more togetherness there.

Since we've already done what we've done, some of what I'm going to say is irrelevant, so I'll just leave it at that. Thank you.

CHAIRPERSON MITTEN: All right, so the comment period will be 60 days in this case. Thank you for the reminder.

Now we have one more case to take up, which is under final action. We have Zoning Commission Case No. 02-25, which is the modification and further processing of a campus plan for Notre Dame University at 1615 New Hampshire Avenue, N.W. Mr. Bastida, did you want to give us some introductory comments?

SECRETARY BASTIDA: The staff has provided you all the information received in the file and requests an action on this matter. Thank you.

CHAIRPERSON MITTEN: Thank you. We received extensive additional submissions on the Notre Dame case from folks in the neighborhood, as well as responses to those submissions from the applicant and I would open it up for discussion.

COMMISSIONER PARSONS: Well, I'm ready to approve this case and we have before us a proposed order, which is multiple color, which is helpful. Many of the restrictions that are or part of the decision conditions, excuse me, are things that we discussed during the hearing and I think appropriate.

The number of students and employees and no cars and encouraging ride sharing and then there's minimal parking and I'm not sure we've taken care of the concerns of the citizens who raised this concern over potential noise all night long, but that one doesn't seem to be taken care of here and I don't know whether there are any other ideas that might surface.

CHAIRPERSON MITTEN: I have a proposed condition that the applicant actually had suggested that they would not be adverse to in the hearing.

I just wanted to say that in these additional submissions and in the report of the ANC, the concerns that have been raised are largely focused on the students living in the property as opposed to

the university program per se and as the applicant pointed out and as we've struggled with before, first of all, dormitories are permitted as a matter of right in SP1 and secondly, this doesn't even meet the definition of a dormitory because dormitory has a physical configuration, it doesn't affect who lives there.

So these students could live in this quantity or in these numbers in this building, notwithstanding the campus plan. The campus plan is really about addressing the university use and I think we can put some conditions in place that will at least address because the applicant has agreed to address some of the issues related to students and some of the adverse conditions that people perceive.

Our focus in the special exception process has to be on the university program itself and there really hasn't been a lot cited that would be adverse that arises from the program itself.

I think that the concerns over parking and so forth are being addressed by the fact that the university prohibits students from bringing cars to the District.

I mean I don't know what more we can do by way of conditions. If people don't have confidence

that the conditions can be met, I would ask them to read the latest *Northwest Current* and our compliance review program is really going to help with the enforcement of conditions.

What I would propose is in addition to the conditions that are in this proposed order and I would note that one has been added that is typical for campus plans, which is number 9, no special exception application filed by the university for further processing under this plan shall be granted unless the university proves that as of the date of the application it was in compliance with conditions 1 through 8 set forth in this order.

Further, any violation of a condition of this order shall be grounds for the denial or revocation of any building permit or certificate of occupancy applied for by or issued to the university for any university building or use within the campus boundary.

I would also recommend the following conditions. An additional condition would be that the property shall be used by the university for its Semester in Washington program. They testified that was their intention.

Also that the number of faculty and staff

shall not exceed 12. That's what they said they intended as well.

And then to address the issue of noise for the community and I think it was Mr. Kellenberg that had agreed to this. He didn't say this specifically, but he suggested that they could use the front entrance later at night, that between the hours of 11:00 p.m. and 6:00 a.m., access to the building by the university and its students shall be limited to the New Hampshire Avenue entrance.

COMMISSIONER PARSONS: Oh, that's good.

CHAIRPERSON MITTEN: I would propose those additional conditions.

COMMISSIONER PARSONS: Okay.

CHAIRPERSON MITTEN: Mr. Hood?

VICE CHAIRPERSON HOOD: No, I don't have anything to add, but I will say that while there are certain things that we can deal with, dealing with the special exception process, I will say that we have noted the concerns of the neighborhood and hopefully some of that will address some of their concerns.

CHAIRPERSON MITTEN: Thank you.

COMMISSIONER PARSONS: I would move approval with the 9 conditions here, plus the three you just added, if I've got the numbers right.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: As we have amended it here today.

VICE CHAIRPERSON HOOD: Second.

CHAIRPERSON MITTEN: All right, we have a motion and a second to approve Zoning Commission Case No. 02-25. All those in favor, please say aye.

(Chorus of ayes.)

CHAIRPERSON MITTEN: Those opposed, please say no.

(No response.)

CHAIRPERSON MITTEN: Ms. Sanchez.

MS. SANCHEZ: Staff would record the vote 4 - 0 - 1. We have an absentee ballot from Commissioner May. Commissioner Parsons moving to approve case no. 02-25. Commissioner Hood seconding, Commissioners Mitten and May in favor and Commissioner Hannaham not present, not voting.

CHAIRPERSON MITTEN: Thank you. And then there’s nothing else on the schedule. We acknowledge that we have seven new cases that have been filed and four orders that have been published. Anything else before us today, Mr. Bastida.

SECRETARY BASTIDA: No, that it is, madam chairman.

CHAIRPERSON MITTEN: Thank you. I now declare this public meeting adjourned.

(Whereupon, the meeting of the District of Columbia Zoning Commission was adjourned at 5:47 p.m.)