

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION

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REGULAR MEETING  
1145th MEETING SESSION (3rd of 2003)

\* \* \* \* \*

Monday

March 10, 2003

\* \* \* \* \*

The Regular Meeting of the District of Columbia Zoning Commission convened at 1:30 p.m. in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
JAMES H. HANNAHAM	Commissioner
PETER G. MAY	Commissioner
JOHN G. PARSONS	Commissioner

ZONING COMMISSION STAFF PRESENT:

ALBERTO BASTIDA	Secretary
SHARON SANCHEZ	Office of Zoning

OFFICE OF PLANNING STAFF PRESENT:

ELLEN MCCARTHY	Deputy Director
STEVEN COCHRAN	Office of Planning
STEPHEN MORDFIN	Office of Planning
JENNIFER STEINGASSER	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

ALAN BERGSTEIN, ESQ.  
COREY BUFFO, ESQ.

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

1:43 p.m.

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the Zoning Commission of the District of Columbia for Monday, March 10, 2003. My name is Carol Mitten, and joining me this afternoon is Vice Chairman Anthony Hood and Commissioners Peter May, James Hannaham and John Parsons.

Our meeting agenda is available to you on the table near the door, and I would just remind folks to shut off all beepers and cell phones, so that you don't disturb the meeting, and I would also remind folks that we do not take public testimony unless invited by the Commission to come forward.

So, Mr. Bastida, do we have any preliminary matters?

SECRETARY BASTIDA: No, Madam Chairman, the staff has no preliminary matters. Thank you.

CHAIRPERSON MITTEN: Thank you. And we have the meeting minutes that we had a few weeks ago, and we were sort of running out of time in our February meeting, so I would just take up the minutes of our November 18, 2002 meeting and ask if there are any additions or corrections?

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1 I have a few editorial changes that I'll  
2 submit to staff, but I don't have anything  
3 substantive, and I would move approval of the  
4 November 18, 2002 minutes.

5 VICE CHAIR HOOD: Second.

6 CHAIRPERSON MITTEN: Any discussion? All  
7 those in favor, please, say aye. Aye.

8 VICE CHAIR HOOD: Aye.

9 COMMISSIONER HANNAHAM: Aye.

10 COMMISSIONER MAY: Aye.

11 COMMISSIONER PARSONS: Aye.

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

14 Ms. Sanchez?

15 MS. SANCHEZ: The staff would record the  
16 vote 5 to 0 to 0, Commissioner Mitten moving,  
17 Commissioner Hood seconding and Commissioners  
18 Hannaham, May and Parsons in favor of the November  
19 18, 2002 minutes.

20 CHAIRPERSON MITTEN: All right. We have  
21 the December 9, 2002 meeting minutes before us. I  
22 believe under, and, Mr. May, you can correct me if  
23 I'm wrong, proposed action on page 2, I believe that  
24 your vote was an absentee vote to approve on  
25 recreation centers?

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1 COMMISSIONER MAY: I believe that's  
2 correct, but since we didn't get them sent out, I  
3 couldn't find my copy of the last one, so if you  
4 don't mind sharing with me again?

5 CHAIRPERSON MITTEN: Oh.

6 COMMISSIONER MAY: I had reviewed it  
7 before and I don't think I had a problem with it.  
8 No, actually, I'm sorry, I was there.

9 CHAIRPERSON MITTEN: You were? You were  
10 there?

11 COMMISSIONER MAY: Yes.

12 CHAIRPERSON MITTEN: Okay. My mistake.  
13 All right. I have a few editorial changes, but other  
14 than that nothing.

15 Mr. Hood?

16 VICE CHAIR HOOD: With that I'll move  
17 approval of the December 9th minutes with the  
18 necessary corrections.

19 CHAIRPERSON MITTEN: Is there a second?

20 COMMISSIONER PARSONS: Second.

21 CHAIRPERSON MITTEN: We have a motion to  
22 approve the December 9, 2002 meeting minutes. All  
23 those in favor, please, say aye.

24 COMMISSIONER PARSONS: Aye.

25 COMMISSIONER MAY: Aye.

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1 VICE CHAIR HOOD: Aye.

2 COMMISSIONER HANNAHAM: Aye.

3 CHAIRPERSON MITTEN: Aye. Those opposed,  
4 please, say no.

5 Ms. Sanchez?

6 MS. SANCHEZ: Yes, the staff would record  
7 the vote to approve the December 9, 2002 minutes 5 to  
8 0 to 0, Commissioner Hood moving, Commissioner  
9 Parsons seconding, Commissioners Hannaham, May and  
10 Mitten in favor.

11 CHAIRPERSON MITTEN: Thank you. Now, we  
12 have the meeting minutes from January 13, 2003. I  
13 just have some clarifying editorial amendments, but  
14 nothing substantive.

15 COMMISSIONER HANNAHAM: Madam Chairman, I  
16 don't believe I was present January 13th.

17 CHAIRPERSON MITTEN: Okay. And that's  
18 what's indicated.

19 COMMISSIONER HANNAHAM: Okay.

20 CHAIRPERSON MITTEN: So I guess we won't  
21 have you voting on this one.

22 COMMISSIONER HANNAHAM: Okay.

23 CHAIRPERSON MITTEN: Thank you. Okay.  
24 Thank you. Anyone, additions or corrections?

25 Mr. Hood?

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1 VICE CHAIR HOOD: I'll just move the  
2 January 13th minutes with the necessary corrections.

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

5 VICE CHAIR HOOD: Aye.

6 COMMISSIONER PARSONS: Aye.

7 COMMISSIONER MAY: Aye.

8 CHAIRPERSON MITTEN: Aye. Those opposed,  
9 please, say no.

10 Ms. Sanchez?

11 MS. SANCHEZ: Yes, the staff would record  
12 the vote 4 to 0 to 1, Commissioner Hood moving,  
13 Commissioner Mitten seconding, Commissioners May and  
14 Parsons in favor and Commissioner Hannaham not  
15 voting, having not participated.

16 CHAIRPERSON MITTEN: Thank you. Now,  
17 we'll move to the monthly status report from the  
18 Office of Planning. Ms. McCarthy, hello.

19 MS. MCCARTHY: Hello, good afternoon,  
20 Madam Chair and members of the Commission. We have  
21 two cases that are before you set down today. One on  
22 libraries and one on modification to the historic  
23 building use for Office Space in Residential Zones  
24 Provision Section 217.

25 The only case we've got coming up

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1 definitively before you that we anticipate bringing  
2 for set down at the next meeting is the Meridian Hill  
3 PUD at the Belmont. We are still in negotiations  
4 with the applicants for the U.S. Department of  
5 Transportation Headquarters and don't have a  
6 definitive date, at this point in time, for when that  
7 will be coming to you with a set down report.

8 I did want to update the item below that,  
9 the Southwest Waterfront at Main Avenue, map  
10 amendment. We just heard this morning that because  
11 that plan is about to be released, but is going to go  
12 to the City Council for adoption probably some time  
13 this summer, then we mostly likely are not looking at  
14 a set down report for that until early fall, so we  
15 will correct that in the next issue of the status  
16 report.

17 Other than that, it's pretty self-  
18 explanatory. I just wanted to highlight on the third  
19 to the last page under ongoing cases, that the  
20 inclusionary housing text amendment, the inclusionary  
21 Zoning Task Force is drawing to the end of its time  
22 and we've gotten a lot of input on various  
23 provisions. We expect to come back to them with a  
24 final report in the next week or so, and then to take  
25 those recommendations out to D.C. Building Industry

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1 Association and Committee of 100 and other groups,  
2 and then to have something ready to submit to the  
3 board probably in early summer of 2003.

4 CHAIRPERSON MITTEN: I would just ask  
5 before you bring something forward by way of a text  
6 amendment, we had promised when we did our first  
7 round table on inclusionary zoning that we would have  
8 another.

9 MS. MCCARTHY: Okay.

10 CHAIRPERSON MITTEN: Because I think  
11 there was some concern that all the interested  
12 parties didn't have a chance to weigh in at the first  
13 round table, and I just want to make sure that we  
14 don't get ahead of ourselves and have anyone feeling  
15 like they have been left out.

16 MS. MCCARTHY: Okay. So at the point in  
17 time in which we have it in sort of final draft form,  
18 would you like us to come back to the Commission and  
19 you can schedule a round table on it?

20 CHAIRPERSON MITTEN: Well, actually, I  
21 think what I need to do is be a little bit more  
22 diligent with staff about setting up the round table.  
23 So we'll move forward on that. I would just ask  
24 that you not bring anything to us until after the  
25 round table.

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1 MS. MCCARTHY: Sure. No problem.

2 CHAIRPERSON MITTEN: Thank you.

3 MS. MCCARTHY: Okay.

4 CHAIRPERSON MITTEN: Any questions for  
5 Ms. McCarthy? Thank you.

6 All right. Then the first case under  
7 hearing action is Zoning Commission Case 03-09, which  
8 Ms. McCarthy just mentioned, and I would ask the  
9 Office of Planning to give us a summary of the  
10 proposal to expand Section 217.

11 MS. STEINGASSER: This is Jennifer  
12 Steingasser with the Office of Planning. Section 217  
13 currently allows the use of historically designated  
14 residential buildings and residential zones with an  
15 area that leaves 10,000 square feet to be used by  
16 nonprofit organizations subject to special exception  
17 approval by the BZA.

18 The Office of Planning is proposing that  
19 this section be expanded to include school buildings  
20 in their land, and that they be also eligible for use  
21 by District of Columbia Government agencies. It is  
22 our feeling that the impact of a District of Columbia  
23 Government agency would be similar to the nonprofit  
24 organization, and that by including schools in this  
25 category, it encourages the preservation and reuse of

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1 these schools in residential neighborhoods and allows  
2 for community redevelopment of these sites.

3 We have also proposed a new section  
4 217.7, which is intended to require that any  
5 additional special exception criteria that may be  
6 applicable to a particular use, such as a day care or  
7 an elderly care facility, would require that the  
8 applicant meet both the special exception criteria of  
9 217 and any other relevant special exception  
10 criteria.

11 We're currently working with the Office  
12 of Corporation Council to refine the language as  
13 presented to you, and that will be what we put in our  
14 advertisement. The Office of Planning believes that  
15 the proposal is consistent with many issues in the  
16 comprehensive plan, including the 10 major themes of  
17 the comprehensive plan. Chapter 1 of Stabilizing and  
18 Improving the District's neighborhood, the public  
19 facilities goals, the location of public facilities  
20 into residential neighborhood and the general  
21 policies for the protection and enhancement of  
22 historic preservations.

23 The proposal is consistent with Section  
24 805, which calls for specific policies and  
25 protections for the enhancement of historic

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1 properties, which states that every effort should be  
2 made to provide for the continued appropriate use of  
3 historic properties, and reasonable intensification  
4 of the original use is no longer feasible,  
5 appropriate, adapted uses consistent with applicable  
6 land use regulations should be encouraged.

7 We believe this proposal is consistent  
8 with those elements and recommend it be set down at  
9 public hearing.

10 CHAIRPERSON MITTEN: Thank you. Any  
11 questions for Ms. Steingasser?

12 COMMISSIONER MAY: I have one question,  
13 and that is to what extent, in considering this  
14 change, have you already discussed it with the public  
15 school system and their plans for future use of their  
16 building stock?

17 MS. STEINGASSER: Most of these schools  
18 that we've seen so far are surplus schools that are  
19 already in the process of being disposed of. So what  
20 we're trying to do is encourage their reuse. The  
21 Office of Aging has talked to us about a particular  
22 use of a school building that's being disposed of.

23 COMMISSIONER MAY: Okay. One reason I  
24 ask this is that I'm aware from the development of  
25 the facilities master plan for the public schools,

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1 that one of the routes by which some schools,  
2 individual school buildings would be, in effect,  
3 downsized is to take portions of the existing school  
4 buildings, and I don't know whether they are historic  
5 buildings or not, it's, you know, by circumstance,  
6 but to reuse them for other purposes, and I'm not  
7 sure how well this helps or hinders that process, but  
8 I do feel it is important for you to have substantive  
9 discussions with the DCPS on that.

10 MS. STEINGASSER: We'll make specific  
11 contact with them.

12 COMMISSIONER MAY: Okay. Great.

13 MS. STEINGASSER: Regarding these  
14 decisions.

15 COMMISSIONER MAY: Thanks.

16 CHAIRPERSON MITTEN: Anyone else? All  
17 right. We have a recommendation from the Office of  
18 Planning to set down language that would expand  
19 Section 217 to include historic public school  
20 buildings and to allow for their use by District  
21 Government agencies, and I would so move.

22 COMMISSIONER PARSONS: Second.

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

25 COMMISSIONER PARSONS: Aye.

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1 VICE CHAIR HOOD: Aye.

2 COMMISSIONER MAY: Aye.

3 COMMISSIONER HANNAHAM: Aye.

4 CHAIRPERSON MITTEN: Aye. Those opposed,  
5 please, say no.

6 Ms. Sanchez?

7 MS. SANCHEZ: The staff would record the  
8 vote 5 to 0 to 0 to set down case 03-09, Commissioner  
9 Mitten moving, Commissioner Parsons seconding,  
10 Commissioner Hannaham, Hood and May in favor.

11 CHAIRPERSON MITTEN: Thank you. And now  
12 Zoning Commission Case 03-10, which addresses public  
13 libraries as a Matter-of-Right in various zones.

14 Ms. McCarthy?

15 MS. MCCARTHY: Thank you, Madam Chair.  
16 This is Mr. Mordfin's case, but let me begin going  
17 through it. Oh, he's coming. But basically, the  
18 libraries that have been constructed already in the  
19 District were constructed in that period of time in  
20 which D.C. Government Buildings did not require  
21 zoning, and now there are plans a foot to renovate or  
22 in some cases reconstruct a substantial number of  
23 those libraries, a very large number of which are in  
24 residential zones.

25 Right now, libraries are a Matter-of-

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1 Right in commercial zones, but not in residential  
2 zones, so the Office of Planning was introducing a  
3 text amendment that would establish library use as a  
4 Matter-of-Right in those zones, and let me pass it  
5 over to Mr. Mordfin for some additional details.

6 MR. MORDFIN: Good afternoon.

7 CHAIRPERSON MITTEN: Good afternoon.

8 MR. MORDFIN: Chair and members of the  
9 Commission. My name is Stephen Mordfin with the  
10 Office of Planning, and this is the set down for text  
11 amendment to permit the public libraries within the  
12 zoning regulations, and this text amendment is to add  
13 the use of public libraries to the zoning regulations  
14 as use permitted as a Matter-of-Right within the  
15 residential, special purpose, mixed use, commercial,  
16 industrial and waterfront districts, and it has been  
17 filed by the District of Columbia Public Library.

18 Currently, the zoning regulation permits  
19 the use of library within the mixed use, commercial,  
20 industrial and waterfront districts, but not within  
21 residential or special purpose districts.

22 Approximately, 45 percent of the cities public  
23 libraries are located wholly within residential  
24 districts with others split zone between commercial  
25 and residential districts. As a result, the city

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1 cannot rebuild any of its libraries that are located  
2 within residential districts as it is not use  
3 permitted.

4 The new use public libraries proposed as  
5 a separate use from the existing library use, so as  
6 to differentiate it from private libraries, and the  
7 use of public libraries proposes use permitted as a  
8 Matter-of-Right within all districts that permit  
9 residential uses as libraries are considered to be a  
10 positive amenity to any residential neighborhood.

11 It is also proposed as use permitted as a  
12 Matter-of-Right within districts that do not permit  
13 new residential construction, such as industrial  
14 districts, as industrial districts are often mapped  
15 across the street from a residential neighborhood and  
16 may provide an appropriate location for a new  
17 facility some time in the future. The District of  
18 Columbia Public Library has created three library  
19 definitions for the three types of libraries that it  
20 operates throughout the city for inclusion within the  
21 zoning regulations.

22 The parking requirements proposed for  
23 public libraries are based on each of those three  
24 different types of public library facilities, and the  
25 amount of parking required is based on the type and

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1 size of any future library facility and its distance  
2 from a Metro Rail Station. It is also proposed that  
3 the BZA be empowered to approve special exceptions  
4 for the reduction of parking at public libraries,  
5 where such a request is justified due to the physical  
6 constraints of the site. And that concludes the  
7 presentation from the Office of Planning.

8 CHAIRPERSON MITTEN: Thank you, Mr.  
9 Mordfin. I had a question, and maybe this is just  
10 something to consider when you do your further  
11 analysis of this, but the full service neighborhood  
12 public library potentially has meeting rooms and  
13 gathering spaces in it. I think it says meeting  
14 rooms. I guess meetings rooms, the thing that's  
15 specifically called that, but where people could come  
16 in groups. I just would ask that you, in thinking  
17 about the parking space requirement, give that some  
18 specific thought, because it's not just the routine  
19 use of people coming and going and taking books out  
20 of the library, but perhaps larger groups and maybe  
21 there's a threshold size of a meeting room that would  
22 sort of tip the scale and require some separate  
23 parking.

24 Then, I guess, the other thing is that  
25 since there is a different requirement for the full

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1 service neighborhood public library in all other  
2 districts, I would just ask you to give some thought  
3 to, since you had mentioned that libraries, without  
4 distinguishing whether they are a public library or  
5 private library, don't have a parking requirement at  
6 all. Do we want to think about having a parking  
7 requirement for non public libraries in the zones  
8 where they are permitted? Because there would be a  
9 requirement for the full service neighborhood public  
10 library that would not apply to the non public  
11 library. Did you follow me on that one?

12 MR. MORDFIN: Yes, I did.

13 MS. STEINGASSER: Yes, we did.

14 CHAIRPERSON MITTEN: Okay. Did anyone  
15 else have questions? Mr. May?

16 COMMISSIONER MAY: Yes, I have questions.

17 At the end of the report there's a chart that lists  
18 the libraries and then the zones that they are in and  
19 how many parking spaces, and I thought that was a  
20 very interesting chart, but I was hoping, for the  
21 purposes of the hearing, that we could get some  
22 further information, because while, you know, the  
23 different branches fit into the categories that  
24 you've created, we don't really have any sense of,  
25 you know, which one is a, you know, 2,000 square foot

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1 library and which one is, you know, a 15,000 square  
2 foot library, and that does relate significantly to  
3 some of the issues that the Chairman has raised, and  
4 all of that sort of figures into it.

5 It would be useful to know, for example,  
6 if there's an auditorium in any of these, that kind  
7 of information, I think, is relevant. I also think  
8 some of them are misclassified, but that's a minor  
9 point. I think there are some kiosks in there that  
10 are listed as something other than a kiosk, unless  
11 those big blue flying saucer buildings are not the  
12 actual kiosk things, but that's what I think they  
13 are.

14 I guess the other question I would have  
15 is is there any way for the sake of -- let me back up  
16 for one second. It seems to me that if there's any  
17 contentious component to this it will be the aspect  
18 of parking, and understanding more about how parking  
19 works at the existing libraries and whether it is  
20 adequate to those that have parking, just as a way of  
21 gauging whether the parking requirements that you are  
22 writing in here are the right ones, because I don't  
23 know what the basis is for these necessarily.

24 MS. MCCARTHY: All right. One thing that  
25 we should be clear about is that the parking

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1 requirements that we are writing in are written to  
2 apply to new library construction or complete  
3 reconstruction only. We didn't want to retard the  
4 ability to improve or renovate existing structures,  
5 even if they happen to occupy most of their lot, and  
6 therefore there was no possibility to include  
7 additional parking, and we didn't want them to have  
8 to go through with a special exception if we're  
9 talking about a situation that had already been in  
10 existence for years and years.

11 COMMISSIONER MAY: Right, I agree. I  
12 mean, I understand there are some that are virtually  
13 land locked or have no space to add parking without  
14 significant detriment to the neighborhood. I'm just  
15 talking about, you know, new construction and whether  
16 the parking requirements that we're establishing here  
17 are the right ones, based on the way we know the  
18 existing libraries to be used and parked.

19 MS. MCCARTHY: Yes. So you would like us  
20 to, for the hearing, update this chart and to include  
21 square footages and whether there are auditoriums or  
22 large public assembly rooms as part of these  
23 facilities?

24 COMMISSIONER MAY: Yes, yes.

25 MS. MCCARTHY: Will do.

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1 COMMISSIONER MAY: Thanks.

2 CHAIRPERSON MITTEN: Mr. Hood?

3 VICE CHAIR HOOD: Madam Chair?

4 CHAIRPERSON MITTEN: Yes.

5 VICE CHAIR HOOD: Mr. Mordfin, I'm  
6 looking here on the set down report and in different  
7 zones you have GOV. Could you help me with that? I  
8 think I know, but I don't know exactly what GOV  
9 means.

10 MR. MORDFIN: Actually, that's the way it  
11 shows on the maps. What GOV means is it's unzoned.

12 VICE CHAIR HOOD: Oh, a Government zone,  
13 so it's unzoned.

14 MR. MORDFIN: It's unzoned.

15 VICE CHAIR HOOD: Okay. I thought that  
16 meant Government. How are we going to approach that?  
17 How is that going to be dealt with?

18 MR. MORDFIN: Well, what those libraries  
19 would have to do if something were to change and then  
20 they wanted to obtain building permits, we would  
21 first have to place them within the zoning district,  
22 whichever one might be applicable to the neighborhood  
23 that it's in.

24 VICE CHAIR HOOD: And that will require  
25 coming in front of the Commission, I believe?

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1 MR. MORDFIN: Yes.

2 VICE CHAIR HOOD: Okay. I would like to  
3 see us look at another way to handle this, because  
4 you have quite a few there. Maybe we can take care  
5 of this at the hearing. I'm not sure how it can be  
6 done, but you have a number of them down here. These  
7 libraries have been in existence. So maybe you might  
8 be able to make a proposal at the hearing. This is a  
9 suggestion, because that's quite a bit of coming back  
10 and forth.

11 Thank you, Madam Chairman.

12 CHAIRPERSON MITTEN: Thank you, Mr. Hood.  
13 Anyone else? All right. We have a recommendation  
14 from the Office of Planning to set down the text  
15 amendment to permit public libraries as a Matter-of-  
16 Right in all zones, along with the parking  
17 requirements.

18 VICE CHAIR HOOD: Madam Chair, I make a  
19 motion that we set down Zoning Commission Case 03-10.

20 COMMISSIONER PARSONS: Second.

21 CHAIRPERSON MITTEN: It's been moved and  
22 seconded to set down Zoning Commission Case 03-10.  
23 All those in favor, please, say aye.

24 VICE CHAIR HOOD: Aye.

25 COMMISSIONER PARSONS: Aye.

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1 COMMISSIONER MAY: Aye.

2 COMMISSIONER HANNAHAM: Aye.

3 CHAIRPERSON MITTEN: Aye. Those opposed,  
4 please, say no.

5 Ms. Sanchez?

6 MS. SANCHEZ: Yes, the staff would record  
7 the vote 5 to 0 to 0 to approve for set down case 03-  
8 10, Commissioner Hood moving, Commissioner Parsons  
9 seconding, Commissioners Hannaham, May and Mitten in  
10 favor. And I'll just confirm that both of these  
11 cases will be rule making.

12 CHAIRPERSON MITTEN: Yes. Thank you.  
13 All right. We're ready to move to proposed action.  
14 The first case under proposed action is Zoning  
15 Commission Case 02-46, and this is a request from the  
16 Department of Public Works to zone a site that is  
17 currently unzoned on which the Benning Road Trash  
18 Transfer Station is located in order to accommodate  
19 an expansion of the building.

20 And, Mr. Bastida, did you have something  
21 that you wanted to put on the record?

22 SECRETARY BASTIDA: The staff requested a  
23 comment from the City Council and the City Council,  
24 Mr. Rod Miller, was opposed to providing something  
25 for this afternoon, but I have not received it as

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1 yet.

2 CHAIRPERSON MITTEN: All right. Maybe  
3 I'll just expand on that, just so that the record is  
4 clear. There was some concern on the part of the  
5 Commission that the fact that the site is indicated  
6 on the generalized land use map for open space, that  
7 there was a significant conflict between that land  
8 use map designation and the request to zone the site,  
9 and we had asked for a letter of interpretation from  
10 the City Council.

11 But as I think we discussed a bit at the  
12 hearing, and perhaps we'll discuss a bit more today,  
13 the City Council had, notwithstanding the generalized  
14 land use map designation, included in the  
15 comprehensive plan text that indicated that there was  
16 support for the expansion of the Solid Waste Handling  
17 Facility that was located at 3200 Benning Road, and  
18 they have now funded that expansion. So I think that  
19 there certainly is a fair indication that the intent  
20 is that this facility should be expanded,  
21 notwithstanding the land use map designation.

22 So I just open up the floor for further  
23 discussion.

24 VICE CHAIR HOOD: Madam Chair, while I  
25 know that this is a map amendment, I really believe

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1 that this is the way that the city should move. The  
2 Trash Transfer Station in this city have been a  
3 problem over the past few years, and whatever it  
4 takes to modernize and to bring these facilities into  
5 the 21st Century, I think this Commission should move  
6 forward. So I'm prepared to make a motion to  
7 approve.

8 CHAIRPERSON MITTEN: Thank you. Is there  
9 a second to the motion?

10 COMMISSIONER MAY: Second.

11 CHAIRPERSON MITTEN: All right. Mr.  
12 Hood, let me just ask by way of amending your motion  
13 if you would accept an amendment that would provide  
14 for the zoning to expire two years after the  
15 effective date of the order? I believe this was  
16 discussed with the applicant, because this would sort  
17 of accommodate some of the concern of the Commission  
18 to just give a blanket rezoning to the site, where  
19 we're really just trying to facilitate the specific  
20 addition.

21 They had assured us that they would be  
22 able to complete the project in two years, and I  
23 would ask if you would accept that as a friendly  
24 amendment.

25 VICE CHAIR HOOD: Well, actually, Madam

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1 Chair, I did make a motion, but since we --

2 CHAIRPERSON MITTEN: Oh, I'm sorry.

3 VICE CHAIR HOOD: I will approve Zoning  
4 Commission Case 02-46, the Benning Road map  
5 amendment, and also will provide that the zoning of  
6 the subject property should expire two years after  
7 the effective date of the order.

8 CHAIRPERSON MITTEN: So do you want to  
9 second that one, Mr. May?

10 COMMISSIONER MAY: Second.

11 CHAIRPERSON MITTEN: All right. Is there  
12 any further discussion?

13 COMMISSIONER PARSONS: Yes.

14 CHAIRPERSON MITTEN: Mr. Parsons?

15 COMMISSIONER PARSONS: I hope we can  
16 reflect in this order the circumstances of the  
17 comprehensive plan. Because if, for instance, this  
18 facility was no longer needed, we certainly don't  
19 want to change the comprehensive plan to not call for  
20 its return to the Park System. So what would you  
21 expect to happen at the end of the two year period?  
22 It's now up and running. People are bringing their  
23 trash in and out. The city then would return to us  
24 for some kind of a different zoning?

25 CHAIRPERSON MITTEN: In the event that

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1 they wanted to expand the facility again?

2 COMMISSIONER PARSONS: Well, as I  
3 understand the motion, at the end of the two year  
4 period there's no zoning.

5 CHAIRPERSON MITTEN: Correct. There's no  
6 problem with them operating the facility as it  
7 without the site being zoned, but because they want  
8 to expand the facility, they have to come to us for  
9 zoning. So in the future, if they were to seek to  
10 expand the facility again, they would have to come  
11 back to us again.

12 COMMISSIONER PARSONS: Oh, I see.

13 CHAIRPERSON MITTEN: So it's a way of not  
14 giving them carte blanche to do what they want, but  
15 putting some constraints on their ability to expand.

16 COMMISSIONER PARSONS: Okay. Now, I  
17 understand it.

18 CHAIRPERSON MITTEN: But I am reminded  
19 that they had requested that their use be designated  
20 a conforming use after the expiration of the zoning.

21 COMMISSIONER PARSONS: Conforming use on  
22 unzoned land?

23 CHAIRPERSON MITTEN: Is that --

24 COMMISSIONER PARSONS: That's what I'm  
25 having trouble with.

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1 CHAIRPERSON MITTEN: Okay. I'm going to  
2 have to ask Mr. Bergstein to help me out.

3 MR. BERGSTEIN: I think that's right,  
4 because once the zoning reverts back, it would become  
5 a nonconforming use, and therefore by allowing them  
6 to be conforming, they would have the ability to at  
7 least rebuild or to expand. But now that I'm  
8 thinking about it, you're right that they would still  
9 have the same issue where if they came back for a  
10 building permit to do that enlargement or expansion,  
11 they would be told that the land is unzoned, and they  
12 could not get the building permit, because the land  
13 was unzoned. So it actually would not solve their  
14 problem if the land did revert to an unzoned status.

15 CHAIRPERSON MITTEN: The only thing that  
16 would help is if there was an act of God and the  
17 thing, you know, was demolished, they could rebuild  
18 it, right? If it was conforming? They couldn't  
19 expand it.

20 MR. BERGSTEIN: That's right. That's the  
21 difference, yes.

22 COMMISSIONER MAY: They would still need  
23 a building permit.

24 MR. BERGSTEIN: That's right. They would  
25 still need a building permit.

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1 CHAIRPERSON MITTEN: Okay.

2 MR. BERGSTEIN: You would almost have to  
3 do a text amendment to that requirement to, in  
4 essence, exempt this facility from the requirement  
5 that the land be zoned in order for them to get a  
6 building permit in order to make the conformity  
7 work. I mean, that provision was really related to,  
8 I think, the need for private development to go  
9 forward without appropriate zoning, that's why you  
10 have to have correct zoning designation for a  
11 building permit, but carried through to Government  
12 properties, it also means that the property is  
13 unzoned. They can't get a building permit even if  
14 they were conforming before, and that's actually what  
15 sort of throws this whole proceeding.

16 CHAIRPERSON MITTEN: So is there anything  
17 for us to do in this regard related to the conformity  
18 of the use or can we just proceed with Mr. Hood's  
19 motion?

20 MR. BERGSTEIN: Well, the only thing I  
21 can think of is if he were to entertain the text  
22 amendment, that I'm suggesting, that would allow, in  
23 essence, a waiver as to this particular use for the  
24 requirement that the land be zoned in order for them  
25 to get a building permit, because if you already find

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1 them to be conforming use, then they can get a  
2 building permit subject to the nature of that  
3 conforming use. But that's the only solution I can  
4 see.

5 CHAIRPERSON MITTEN: But that would be a  
6 separate proceeding, right?

7 MR. BERGSTEIN: Well, I don't know if  
8 that's true in that this was proposed as a permanent  
9 map amendment, which would not require any of this.  
10 But because you are restricting it --

11 CHAIRPERSON MITTEN: Yes.

12 MR. BERGSTEIN: -- to the two years, in  
13 essence, what you are doing is allowing for further  
14 modifications. First, the conforming, and since that  
15 was entertained at the hearing, the only way that  
16 would make that meaningful is if you also did a  
17 waiver from the requirement that the land be zoned  
18 for them to get a building permit to proceed in a  
19 manner consistent with that conforming use.

20 CHAIRPERSON MITTEN: Well, then that  
21 would sort of mute out the whole purpose of having  
22 the map amendment, right?

23 MR. BERGSTEIN: That's right.

24 COMMISSIONER PARSONS: This land was  
25 transferred. It's federal property. Transferred to

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1 the District of Columbia from the Park System to  
2 build an incinerator. Now, the use is being  
3 converted to a transfer station, and I don't have any  
4 problem with that, but I want to make sure we don't  
5 do anything that permanentizes this as an industrial  
6 site in the city.

7 CHAIRPERSON MITTEN: I agree.

8 COMMISSIONER PARSONS: So I like your two  
9 year, but, for instance, if it was destroyed to 75  
10 percent --

11 CHAIRPERSON MITTEN: Yes.

12 COMMISSIONER PARSONS: They should not be  
13 able to routinely rebuild that when there may be  
14 other alternatives, so I think if they have to return  
15 to the Zoning Commission, that would give the public  
16 debate if it's necessary. So I guess I would favor  
17 the motion as expressed.

18 CHAIRPERSON MITTEN: Okay. Anyone else?

19 COMMISSIONER MAY: I just have a general  
20 legal question. Is there any advantage at all to  
21 consider the use of conforming use from their point  
22 of view?

23 MR. BERGSTEIN: I'm sorry, I'm not sure I  
24 understand the question.

25 COMMISSIONER MAY: We're considering the

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1 possibility of writing into this that the current use  
2 would be considered conforming. You're saying that  
3 there is no advantage to that really at all.

4 MR. BERGSTEIN: There's no advantage I  
5 see if after the zoning expires, and they seek to get  
6 a building permit, that there's nothing to prevent  
7 BRA from saying but we can't give you a building  
8 permit, because there's no zoning designation for the  
9 property.

10 The other thing I thought I might add, in  
11 terms of this discussion, is that they will also need  
12 a special exception, and a special exception could be  
13 limited by time, although I doubt they would.

14 CHAIRPERSON MITTEN: That doesn't strike  
15 me as the right approach, actually.

16 MR. BERGSTEIN: I understand. But I just  
17 thought I would mention it.

18 CHAIRPERSON MITTEN: Okay. I guess I  
19 would be hard pressed to think that they would have  
20 found their experience coming to the Zoning  
21 Commission to be so arduous that they couldn't do it  
22 again in the event that they were going to expand. I  
23 mean, this doesn't happen routinely. It's been a  
24 long time since the facility was expanded, so I'm  
25 fairly comfortable proceeding with Mr. Hood's motion

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1 as put forward. But the discussion has been  
2 interesting.

3 Anyone else? All right. We have a  
4 motion and a second to approve Zoning Commission Case  
5 02-46 with the provision that the zoning will expire  
6 two years after the effective date of the order. All  
7 those in favor, please, say aye.

8 COMMISSIONER PARSONS: Aye.

9 COMMISSIONER MAY: Aye.

10 VICE CHAIR HOOD: Aye.

11 COMMISSIONER HANNAHAM: Aye.

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

14 Ms. Sanchez?

15 MS. SANCHEZ: Yes, the staff would record  
16 the vote 5 to 0 to 0 to approve proposed action in  
17 Zoning Commission Case 02-46, Commissioner Hood  
18 moving, Commissioner May seconding, Commissioners  
19 Hannaham, Mitten and Parsons in favor.

20 CHAIRPERSON MITTEN: Thank you. Next is  
21 Zoning Commission Case 02-17, which is a planned unit  
22 development proposed for 5401 Western Avenue, and if  
23 I could, I would like to begin by asking my  
24 colleagues to indulge me, because I have some  
25 questions that I would like to ask for clarification

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1 of, based on the materials that were submitted for  
2 our review in deciding this case, and you probably  
3 need to hear with those questions are before you  
4 decide whether or not you're going to indulge me. So  
5 let me lay some of those out.

6 I think my principal concerns relate to  
7 traffic and the issues raised regarding traffic. In  
8 the Department of Transportation's memo to the Office  
9 of Zoning dated December 26, 2002, they provided  
10 transit usage data from census tracts 11 and 10.1,  
11 and they had rates of transit usage of 33.9 percent  
12 and 29.9 percent, respectively.

13 Then they provided information from  
14 several communities where they were achieving 50  
15 percent or approaching or achieving 50 percent or  
16 more of transit usage, and I have the understanding,  
17 so I'm going to assume that it's a broad  
18 understanding, but I can stand to be corrected, that  
19 people of lower income levels are more likely to use  
20 transit than those of higher income levels.

21 The communities that were used to  
22 rationalize the higher percentage of transit use that  
23 was attributed to the proposed project at 50 percent,  
24 each of those communities, and I don't have the  
25 census tract data on medium income in front of me,

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1 but just my familiarity with those areas, my feeling  
2 is that those would be lower income areas. I would  
3 like to have some comment from the Department of  
4 Transportation about whether or not these are really  
5 appropriate locations to compare to the subject in  
6 terms of making a direct comparison without  
7 adjustment, because I believe that the individuals in  
8 those communities might be just inherently more  
9 likely to use transit, because of their income  
10 levels. They also, at page --

11 VICE CHAIR HOOD: Can I ask a question,  
12 Madam Chair?

13 CHAIRPERSON MITTEN: Sure.

14 VICE CHAIR HOOD: On that?

15 CHAIRPERSON MITTEN: Sure.

16 VICE CHAIR HOOD: Well, the  
17 correspondence that we received dated December 26th,  
18 it's my understanding is what you're saying the  
19 communities they use are lower income communities?

20 CHAIRPERSON MITTEN: I don't mean low  
21 income. I mean, relatively lower than Friendship  
22 Heights.

23 VICE CHAIR HOOD: Okay. The communities  
24 that use, you say, are in the lower income than  
25 Friendship Heights?

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1 CHAIRPERSON MITTEN: Correct.

2 VICE CHAIR HOOD: The one that they used?

3 CHAIRPERSON MITTEN: Yes. My sense of  
4 those areas, without having income information in  
5 front of me for all those various census tracts is  
6 that those areas have relatively lower income levels,  
7 and I think they are, because of that, more likely to  
8 use transit. So if you make the comparison that 47.5  
9 percent of the people from Logan Circle use public  
10 transportation, therefore, 47.5 or 50 percent of the  
11 people at Friendship Heights are going to use public  
12 transportation. I'm not sure that's a fair  
13 comparison, because I think income levels impacts  
14 usage.

15 VICE CHAIR HOOD: Okay.

16 CHAIRPERSON MITTEN: They also make  
17 reference to the fact that their willingness to use  
18 50 percent as the model split is based on a transit  
19 use analysis conducted by the Metropolitan Washington  
20 Council of Governments for another residential  
21 project in Friendship Heights, and I think it might  
22 be helpful if we to have that report, so we can  
23 understand whether or not these are truly comparable  
24 projects.

25 I think it would be helpful for the

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1 Commission to have the Department of Transportation  
2 address the specific concerns raised by the opponents  
3 regarding the lower traffic volumes that they cited  
4 on page 10 of their response to the applicant's  
5 rebuttal, because those lower traffic volumes were  
6 achieved using adjusted signal timing, but we didn't  
7 have any specific response from the Department of  
8 Transportation about whether or not they endorsed  
9 those timing changes and whether or not they have  
10 studied the impact of those timing changes on the  
11 other streets that might be involved if the signal  
12 timing is changed.

13           The Department of Transportation in their  
14 January 2nd memo to us addressed the issue that was  
15 raised by the opponent regarding the average 2  
16 percent growth rate in background traffic that was  
17 used, and their response was that the 2 percent was  
18 considered acceptable. The majority of growth occurs  
19 on Wisconsin Avenue, north of Western Avenue, but  
20 this growth rate, 3.4 percent, is balanced out by the  
21 much smaller growth rates, less than 1 percent, for  
22 the four locations that were studied.

23           I guess I have to believe that this  
24 traffic modeling is sophisticated enough that you  
25 could use the appropriate level of growth on

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1 Wisconsin Avenue, which might be relatively higher,  
2 and use a relatively lower growth rate in background  
3 traffic, so that you have more realistic  
4 representation of what's actually happening.

5 Also, I would like to know whether or  
6 not, as the opponents suggested, that the 328 trips  
7 from the Chase Tower development were not included,  
8 and whether or not that would change DDOT's  
9 conclusions. I mean, I have a concern that because a  
10 lot of the traffic projections hinge on the  
11 assumption regarding 50 percent transit usage, which  
12 I think should be a goal, and I think the  
13 transportation management plan that the applicant has  
14 proposed helps towards that goal, but I think we have  
15 to have a sense of what is a realistic expectation,  
16 based on all the circumstances. So I think that's  
17 why I would like to have those questions answered.

18 I would also like to propose that, and I  
19 would like to get the feed back from the applicant on  
20 this about whether or not they would be willing as a  
21 condition of approval, if it is approved, to put in  
22 their marketing materials the things that they are  
23 doing to promote transportation usage. Like instead  
24 of just happening to have on site a Flex-Car  
25 Franchise, that they would actively promote that in

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1 their marketing materials and commit to doing that.

2 Another thing I would like to have the  
3 applicant's reaction to is, and I don't know that  
4 they intend to do otherwise, I would like to know  
5 whether they intend to decouple the parking spaces  
6 from the residential units. In other words, can  
7 someone buying a residential unit decide not to buy a  
8 parking space if they don't have a car or does  
9 everyone who is buying a residential unit have to buy  
10 a parking space because it's packaged together?

11 I do have concerns regarding the  
12 enforceability of the affordable housing program  
13 that's been proffered, and I guess I'm especially  
14 concerned because this has the potential to become a  
15 model for us, in terms of asking other applicant's  
16 who are proffering amenities, to proffer something of  
17 this type, and I think not only do we owe it to the  
18 people here, if we decide to approve this and make  
19 this a condition, that this will be enforceable here,  
20 but that it will be enforceable elsewhere, since I  
21 suspect it will be adopted as a model to use in the  
22 future.

23 I have a few other things, but that's the  
24 gist of the things that I would like us to get  
25 responses to. So before I add to it, I guess I would

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1 just ask if my fellow commissioners want to move  
2 forward or if they are willing to indulge me in  
3 getting the answers to these questions?

4 COMMISSIONER PARSONS: I presume you mean  
5 to have these responded to in writing?

6 CHAIRPERSON MITTEN: Yes.

7 COMMISSIONER PARSONS: Rather than  
8 putting the applicant to the table today?

9 CHAIRPERSON MITTEN: Right, the  
10 opposition and the ANC to also --

11 COMMISSIONER PARSONS: Okay. Well, I  
12 think they are very valid questions, and it would be  
13 worthwhile to do that.

14 CHAIRPERSON MITTEN: Mr. May?

15 COMMISSIONER MAY: Yes, I think while we  
16 certainly have received a lot of information on this  
17 case, one of the, I guess, issues with a lot of  
18 information is that it also raises a lot of  
19 questions, so we keep going and going. I would just  
20 be concerned that we don't extend this too long  
21 before making a decision.

22 CHAIRPERSON MITTEN: I agree.

23 COMMISSIONER MAY: Because I really feel  
24 like we have a lot of information. I feel like I  
25 have enough information to be able to make a decision

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1 at this point, although I'm not pressed to make one  
2 today, you know, if we can get more information to  
3 make all of us more comfortable. Frankly, that's  
4 fine with me.

5 CHAIRPERSON MITTEN: Thank you. And I'm  
6 not trying to bind this down, but I think that the  
7 opposition has raised some legitimate points,  
8 particularly, on the traffic issues. I don't find  
9 that, at least to my satisfaction, that DDOT has dug  
10 into the details to, you know, assure me, so that I  
11 know that they have considered all these things when  
12 they make their response to us. That's why I would  
13 like to put these specific questions to them.

14 So thank you, and then I would also just  
15 request that the applicant respond to the proposed  
16 condition from DDOT that deliveries to the proposed  
17 development be made during off peak day care center  
18 hours, so as not to interfere with the egress and  
19 ingress of parents dropping off parents at the  
20 center.

21 I would also like a response and they  
22 could certainly adapt the approach that the  
23 opposition has suggested, but I would like a response  
24 to this. The opposition has concerns about the  
25 accessibility of the open space that's been proffered

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1 as an amenity. And they had said in their submission  
2 as a proposed condition that the courtyard and all  
3 other open space be open to the public without  
4 restriction for the duration of the PUD, that the  
5 condominium bylaws will reflect this condition, and  
6 that no portion of Lot 805 or Lot 7 can be fenced off  
7 or otherwise designated as an outdoor play area for  
8 the exclusive use of the CCPCC or the residents of  
9 the residential building, and they wanted some sign  
10 indicating that.

11 I'm not sure that I would advocate  
12 something quite to that extreme, but I would like to  
13 know in what manner the public will know that they  
14 are invited into the open space, and that they won't  
15 be chased away by someone if they do go in. And then  
16 I would also just invite the applicants, since there  
17 have been numerous concerns raised about the  
18 construction management plan. When the amenity is  
19 proffered to us, we evaluate it as it is proffered.  
20 We cannot then change it to suit ourselves. But I  
21 would just ask them to take a look at the  
22 deficiencies, and if they wanted to change the  
23 proffered construction management plan in any way, I  
24 think that would ge all to the good.

25 Then there was another concern of the

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1 opponents about proffering to make specific  
2 improvements to Livingstone Park and putting a price  
3 tag on that versus just making an outright  
4 contribution, and whether or not the applicant would  
5 be amenable to an amenity that just involved the  
6 outright contribution of \$75,000 to the Friends of  
7 Livingstone Park.

8 Is there anyone else?

9 VICE CHAIR HOOD: Yes, Madam Chair?

10 CHAIRPERSON MITTEN: Mr. Hood?

11 VICE CHAIR HOOD: I just wanted to  
12 comment on your comments earlier. I think that would  
13 be good if you get that information from DDOT and the  
14 transportation consultants. My comment to that is  
15 good luck. That's just why we got transportation  
16 fees. But let me also ask, Madam Chair, if it  
17 already has not been done as Commissioner May has  
18 said, we have a voluminous amount of material. The  
19 ANC-3/4G, which is unusual, has raised some concerns.

20 One of them I'm particularly interested  
21 in, and I did not see it or I may have missed it, was  
22 the truck traffic. The ANC is saying that the  
23 development has assured ANC-3/4G on several occasions  
24 that construction vehicles would not use Military  
25 Road or Western Avenue. I'm not sure if that was in

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1 the order, one of the orders that I looked at, but I  
2 want to make sure that that is addressed.

3 I may also have some other things, some  
4 other issues pertaining to added traffic safety and  
5 truck traffic that I wanted to make sure was  
6 addressed for the complete record. It may already be  
7 in here, but this letter was dated January 29th, so  
8 those are some of the things I wanted to throw out  
9 there before we start our deliberations, and I would  
10 like to make sure that the applicant had a chance to  
11 deal with those issues in which the community, which  
12 ANC-3/4G has brought to our attention.

13 CHAIRPERSON MITTEN: Let me just ask Mr.  
14 Bergstein something. I just want to be clear on  
15 this, because I think we dealt with this when we did  
16 Station Place, but I just want to be sure.

17 If an applicant proffers an amenity,  
18 like a construction management plan, and let's say  
19 part of that is a truck route, you know, the route  
20 that the trucks will take, and then the trucks don't  
21 take that route, so they are basically not in  
22 compliance with the proffered construction management  
23 plan, does that become an item for enforcement by the  
24 zoning administrator?

25 MR. BERGSTEIN: Yes, there's a schedule

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1 of fines for violation of a Zoning Commission order.

2 CHAIRPERSON MITTEN: Okay. So they are  
3 proffering something to us, and then all of the items  
4 within something like a construction management plan,  
5 then become enforceable as a consequence of the  
6 order?

7 MR. BERGSTEIN: Yes.

8 CHAIRPERSON MITTEN: Okay. So to the  
9 extent that those issues are dealt with in the  
10 construction management plan, that's the manner in  
11 which it would be enforceable. In fact, it talks on  
12 page 9.

13 VICE CHAIR HOOD: Page 9.

14 CHAIRPERSON MITTEN: No, it's page 9 of  
15 the January 6th submission from the applicant, the  
16 post hearing submission, and it's tab 5.

17 VICE CHAIR HOOD: Madam Chair, if that's  
18 what I saw previously, I didn't think that was  
19 sufficient enough. Just let me look at yours.

20 CHAIRPERSON MITTEN: Okay. But I'm not  
21 trying to minimize your concerns, and they can  
22 revisit the construction management plan to the  
23 extent that they want to, and then we'll evaluate it  
24 as it is then proffered.

25 VICE CHAIR HOOD: Okay.

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1 CHAIRPERSON MITTEN: Anyone else? All  
2 right. Mr. Bastida, because we don't want to prolong  
3 this too much, can you give us some dates that would  
4 allow for responses from all the interested parties?

5 SECRETARY BASTIDA: Yes. My concern is  
6 how much time we need to give to the DC DOT to  
7 prepare that, and that's my concern.

8 CHAIRPERSON MITTEN: Yes.

9 SECRETARY BASTIDA: Trying to establish  
10 this. Can we schedule these a little later on in the  
11 afternoon, and I could try to contact the DC DOT?

12 CHAIRPERSON MITTEN: Sure. Okay.

13 SECRETARY BASTIDA: To see if they could  
14 give me an idea?

15 CHAIRPERSON MITTEN: Okay.

16 SECRETARY BASTIDA: Thank you.

17 CHAIRPERSON MITTEN: Okay. So we'll just  
18 set that aside for him. Go ahead.

19 VICE CHAIR HOOD: Madam Chair, I just  
20 wanted to say I know what would be helpful for me as  
21 a commissioner, I have been having a lot of problems  
22 with the reports of DDOT. Maybe it's because I am  
23 not understanding and I live in this community, and I  
24 know how traffic is in certain areas, and maybe Mr.  
25 Bergstein would be able to tell us.

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1 I would be willing to go out and take a  
2 class, because obviously some of the reports that I  
3 have down here in front of me do not go along with  
4 what I actually see out here in my everyday life  
5 living here in Washington, D.C. So that has been a  
6 concern of mine, the level of service and some other  
7 issues. So maybe I am the only commissioner that  
8 needs to go out on this fact finding mission. But  
9 some of the reports that we get from DDOT and from  
10 these traffic consultants, when I am sitting in  
11 traffic sometimes, I think about them.

12 So I mean, we really might need to really  
13 consider them. I just want to make sure I understand  
14 exactly what they are doing. Maybe their figures and  
15 all that are not supposed to add up to what is  
16 actually happening. I am dealing with a real  
17 situation, and I want to make sure that I am  
18 understanding.

19 I want to keep making the comments, but I  
20 would like for maybe the Commission or myself or  
21 whoever wants to join me to go with DDOT and see  
22 exactly how their work is done and be more educated  
23 on that subject. Thank you.

24 CHAIRPERSON MITTEN: I find myself often  
25 in that same situation, that same feeling, but one

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1 thing that I will tell you, just as a general  
2 statement, is that it is not considered to be  
3 unacceptable to sit in traffic in an urban  
4 environment.

5 VICE CHAIR HOOD: I have heard that  
6 before, Madam Chair.

7 CHAIRPERSON MITTEN: It's unpleasant, but  
8 it goes with the territory evidently. Okay. So, Mr.  
9 Bastida, then we'll just come back to the timing of  
10 the submissions for 5401 Western Avenue, and then  
11 we'll move on now to final action.

12 The first case under final action is  
13 Zoning Commission case 01-22MA and this is a map  
14 amendment for two lots, lots 23 and 809 and square  
15 3584 and we have the NCPC report. We have been given  
16 the NCPC report, and we have the draft order before  
17 us. The only changes that I would make are editorial  
18 in nature.

19 COMMISSIONER PARSONS: I move approval,  
20 Madam Chair.

21 VICE CHAIR HOOD: Second.

22 CHAIRPERSON MITTEN: All right. Any  
23 discussion? All those in favor of approving Zoning  
24 Commission Case 01-22MA, please, say aye. Aye.

25 VICE CHAIR HOOD: Aye.

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1 COMMISSIONER HANNAHAM: Aye.

2 COMMISSIONER MAY: Aye.

3 COMMISSIONER PARSONS: Aye.

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

6 Ms. Sanchez?

7 MS. SANCHEZ: The staff would record the  
8 vote 5 to 0 to 0 to approve case 01-22, Commissioner  
9 Parsons moving, Commissioner Hood seconding and  
10 Commissioners Hannaham, May and Mitten in favor.

11 CHAIRPERSON MITTEN: Thank you. The next  
12 case is the George Washington University Health and  
13 Wellness Center. Oh, Mr. May, why don't you just put  
14 that on the record?

15 COMMISSIONER MAY: Yes, for the record, I  
16 have recused myself from this case, and I'll rejoin  
17 the Commission when we move on to the next lined up.

18 CHAIRPERSON MITTEN: Thank you, Mr. May.  
19 We have a letter from the applicant's counsel, and  
20 we also have the February 28, 2003 report regarding  
21 the degree of compliance with Condition 9. But  
22 first, I would like to turn to Mr. Bergstein, so that  
23 he can address the legal matter of the status of  
24 Condition 9 relative to Judge Oberdorfer's ruling.

25 MR. BERGSTEIN: Thank you. The letter

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1 from applicant's counsel focuses on the fact that the  
2 mandate has not yet been issued by the United States  
3 Court of Appeals for the District of Columbia Circuit  
4 with respect to the written decision finding that  
5 Condition 9 was not unconstitutional as it had been  
6 found by Judge Oberdorfer, and, in fact, it's my  
7 understanding that the university has filed a  
8 petition with the United States Court of Appeals  
9 requesting that the entire Court rehear the matter en  
10 banc, which would have the effect of delaying the  
11 issuance of the mandate.

12 The fact that the mandate has not been  
13 issued would be relevant if an injunction had been  
14 issued by Judge Oberdorfer, but no injunction was  
15 issued by Judge Oberdorfer. Judge Oberdorfer denied  
16 the request of the university for an injunction and  
17 denied it without prejudice. Therefore, I sought the  
18 advice of our appellate division, and they informed  
19 me that there is, at present, no legal impediment to  
20 the Zoning Commission giving full effect to Condition  
21 9.

22 Prior to the issuance of the Court of  
23 Appeal's decision, in view of the declaratory nature  
24 of Judge Oberdorfer's order, the Zoning Commission  
25 had not given effect to the order, even though there

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1 was no injunction in place. But now that there has  
2 been a decision issued, which found the condition to  
3 be constitutional, there is no, at least, legal  
4 impediment to you giving effect to Condition 9.

5 The other issue that's raised has to do  
6 with whether or not substantial compliance is the  
7 standard with respect to Condition 9. 9-E, which is  
8 the relevant provision, says "No special exceptions  
9 shall be granted whenever a semi-annual report  
10 reveals the university is not in compliance with the  
11 provisions of Condition 9, except for certain  
12 residential special exceptions." It doesn't use a  
13 substantial compliance standard, although the overall  
14 order does with respect to noncompliance.

15 So the university is suggesting the  
16 substantial compliance is the standard to be used,  
17 and you should think about whether or not, in fact,  
18 that does govern Condition 9. In other words, the  
19 requirement is 5,600 beds provided within the  
20 relevant area, and if it's 5,599, would that mean  
21 that you could not give a special exception?

22 Lastly, the other issue I would like to  
23 talk about is the contention that this is not a  
24 special exception request that's covered by Condition  
25 9. I'll leave that to your interpretation, but I'm

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1 not aware of any further processing not being  
2 considered a special exception request.

3 CHAIRPERSON MITTEN: Thank you, Mr.  
4 Bergstein. I guess I'll start with the last issue  
5 first, since I agree with you. I can't imagine what  
6 it is if it's not a -- just pardon me a second.

7 Mr. Hannaham?

8 COMMISSIONER HANNAHAM: I just want to  
9 recuse myself. I was not a participant in the review  
10 of this case.

11 CHAIRPERSON MITTEN: Okay. If you're not  
12 a participant, you don't need to leave us.

13 COMMISSIONER HANNAHAM: Okay, thank you.

14 CHAIRPERSON MITTEN: But that's fine.

15 COMMISSIONER HANNAHAM: I'll be close by.

16 CHAIRPERSON MITTEN: Okay. Okay. Thank  
17 you. So I agree with Mr. Bergstein on the issue of  
18 this being a special exception. To speak to the  
19 issue of substantial compliance, I don't even think  
20 we need to decide whether or not that's the standard  
21 in this particular case. I mean, we don't need to  
22 decide whether or not 5,599 counts versus 5,600.

23 The counts that are included in the  
24 February 28, 2003 status report, the requirement is  
25 for, and Mr. Bergstein, please, correct me if I

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1 misspeak at any point, 5,600 beds to be available  
2 either on campus or outside the Foggy Bottom/West End  
3 area. The count for the number of beds available on  
4 campus is 4,534 and the number of university supplied  
5 beds outside the Foggy Bottom/ West End area is zero.

6 So the degree to which the university is not in  
7 compliance with Condition 9 is the difference between  
8 4,534 and 5,600, and I don't think that approaches  
9 substantial compliance if, in fact, that is even the  
10 standard.

11 So I would recommend to my colleagues  
12 that we deny the request in Zoning Commission Case  
13 02-26, based on lack of compliance with the campus  
14 plan order.

15 VICE CHAIR HOOD: Madam Chairman, let me  
16 just make sure I understand that as 5,600 is?

17 CHAIRPERSON MITTEN: The requirement.

18 VICE CHAIR HOOD: The requirement, and  
19 they are at 4,534?

20 CHAIRPERSON MITTEN: Yes.

21 VICE CHAIR HOOD: I'm just really trying  
22 to see how much, the amount of compliance.

23 COMMISSIONER PARSONS: Madam Chairman,  
24 I'm trying to figure out how we can do this  
25 procedurally. Does this mean then that we're denying

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1 it with prejudice or are we denying it in such a way  
2 that they would have to come back and apply for a  
3 whole new case? Are we tabling this, in effect,  
4 until compliance is evidenced that we could make a  
5 decision on this?

6 CHAIRPERSON MITTEN: Let me ask Mr.  
7 Bergstein what our options are.

8 MR. BERGSTEIN: Well, no special  
9 exceptions shall be granted means that you need to  
10 take a vote making that finding. You can then, I  
11 guess, hold the application in abeyance, but then  
12 that doesn't allow for an appeal of that  
13 determination. So I think what you would really need  
14 to do since you're, in essence, denying the  
15 application -- I believe you're denying the  
16 application in a way they can always come back at  
17 such time as they are in compliance. But I think  
18 ultimately you want to end up with an order finding  
19 that you're not granting this, because of  
20 noncompliance as opposed to simply keeping it in  
21 abeyance.

22 I can consult the appellate division and  
23 give you further guidance on that, because I,  
24 frankly, haven't got to that level of analysis, but I  
25 would assume that there would be a denial and an

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1 order. But I think that you're not finding the  
2 application is without merit. Once they are in  
3 compliance, they could file a new application.

4 VICE CHAIR HOOD: Madam Chairman, with  
5 that I will second your motion, that explanation.

6 CHAIRPERSON MITTEN: Thank you. Is there  
7 any further discussion? Well, let's see where this  
8 is going. Then I will call for the vote. All those  
9 in favor of denying Zoning Commission Case 02-26,  
10 please, say aye.

11 VICE CHAIR HOOD: Aye.

12 COMMISSIONER PARSONS: Aye.

13 CHAIRPERSON MITTEN: Aye. Those opposed,  
14 please, say no.

15 Ms. Sanchez?

16 MS. SANCHEZ: Yes, staff would record the  
17 vote 3 to 0. Excuse me. Yes, 3 to 0 to 2 to deny  
18 Zoning Commission Case 02-26 for lack of compliance.

19 Commissioner Mitten moving, Commissioner Hood  
20 seconding, Commissioner Parsons in favor,  
21 Commissioner Hannaham not voting, having not  
22 participated in the case, and Commissioner May not  
23 voting, having recused himself.

24 CHAIRPERSON MITTEN: Thank you. All  
25 right. The next case is Zoning Commission Case 02-

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1 19, and I would like to begin by thanking all of the  
2 folks who submitted responses to the Commission  
3 during the time that the comment period was open, and  
4 the threshold question, at this point, is whether or  
5 not we're prepared to go forward.

6 We received numerous requests, as we have  
7 in the past, to give this case back to the community  
8 and we have been asked to give that serious  
9 consideration, and I would ask for comments from the  
10 Commission on that point, about whether or not you  
11 are ready to move forward and whether or not you want  
12 to return this to the community.

13 VICE CHAIR HOOD: Madam Chair, I will  
14 state, as I stated previously, I believe that this  
15 really has to advise that neighborhood. Well, I know  
16 that if we can send it back to that community with  
17 some clear direction and some help from Office of  
18 Planning, and we know among ourselves that we have  
19 done that, then if it comes back in 90 days still  
20 scattered like it is now, then we will know we made  
21 every attempt before we make a decision on this  
22 overlay.

23 But I can tell you that I truly believe  
24 that I would rather see the gap brought closer  
25 together and I stated this earlier. While some are

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1 for it, it appears to me some are against it. I  
2 don't think that it's this Commission's job to split  
3 a community, and also, you know, there are some other  
4 factors in play.

5 My concern is sometimes when we make  
6 investments in the city or in any city or any  
7 investment, you expect to get certain things out of  
8 it. I want to make sure that we're doing things  
9 fairly and make sure that this overlay actually does  
10 what it is supposed to do, and that is preserve and  
11 protect slopes and trees.

12 And I just would prefer going back to the  
13 community, as I stated earlier, that the community  
14 resolve it or not necessarily resolve it, but at  
15 least bring something closer than what we have here  
16 in front of us, because I would hate to be a part of  
17 a Commission that helps divide a community.

18 So that is why I am in it for 60 days, 90  
19 days, 120 days, but some clear guidance from this  
20 Commission to go back and work with OP and some  
21 organized groups and come back with something a  
22 little closer together. Thank you.

23 CHAIRPERSON MITTEN: If I could just ask  
24 you to clarify your position, so that I understand it  
25 completely. If we do send it back to the community

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1 and we give them some period of time to try and reach  
2 a consensus, what if they don't?

3 VICE CHAIR HOOD: Well, that's the chance  
4 we have to take, but let me just say this. At least  
5 I know within myself that I have made every attempt  
6 to get that neighborhood to bridge that gap together.

7 I think then it would be on this Commission and each  
8 of us have a vote, have one vote a piece. We can  
9 deliberate and do the best we can for the best  
10 interests that we think of for that neighborhood.

11 I don't live up there, but I really hope  
12 that the folks who made an investment up there can  
13 come together, attitudes and all that stuff aside,  
14 for the best interest of that neighborhood. Now, if  
15 they come back with a weaker version for us to deal  
16 with, then that's what they come back with, but I  
17 just think that we need to bridge that gap a little  
18 closer together up there in that area. Now, then  
19 after 90 days, 120 days or whatever the case is --

20 CHAIRPERSON MITTEN: It keeps getting  
21 longer when you talk. Keep talking.

22 VICE CHAIR HOOD: Well, because I know  
23 how it is in communities. Sometimes it takes maybe  
24 60 days to get a meeting together, but I can tell you  
25 that when it comes back, then we will know that we

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1 have done all we can do with it, and then it's time  
2 for us. We have to deal with it. But that's where I  
3 was from outset and that's where I still am, Madam  
4 Chair.

5 CHAIRPERSON MITTEN: Thank you, Mr. Hood.

6 Mr. May?

7 COMMISSIONER MAY: I would like to  
8 underscore what Mr. Hood has said and add, I guess,  
9 my own interpretation on this. I went through all of  
10 this information and some of it two or three times,  
11 trying to figure out what of the provisions that are  
12 included in this language that I think would be  
13 acceptable and beneficial to the neighborhood, and I  
14 have found in the end that very little of what's in  
15 there, I think, is appropriate, given the current  
16 state of the neighborhood, given the division within  
17 the neighborhood with regard to its potential  
18 benefits and potential costs.

19 And, you know, I think that there are a  
20 couple of different ways that we can, in effect, send  
21 this back to the neighborhood. One is to vote it  
22 down outright, at this time, and let the neighborhood  
23 come back with something that is more suitable, but I  
24 am also willing to consider alternatives that would  
25 give them one more shot at the table and see if there

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1 is some way to come to an agreement on it.

2 I don't think that what we should be  
3 doing is simply seeking consensus in the community.  
4 I don't think that's really what our task is or  
5 knowing that, you know, what we're doing is the  
6 popular decision. However, in circumstances like  
7 this when, in effect, we are so radically changing  
8 the zoning of the area and so significantly  
9 restricting what people can do on their own property,  
10 I don't think that's something that we can do without  
11 very substantial agreement within the community.

12 And I think that if, you know, we had a  
13 very broad consensus that this was what they wanted,  
14 as has been the case, I understand, in previous tree  
15 and slope overlays, I would feel a little different.

16 But as it stands right now, I feel that there is  
17 very little in the language that is proposed that I  
18 think is acceptable and would be beneficial to the  
19 neighborhood.

20 If it were done the right way, I mean, I  
21 think that there are provisions of this that should  
22 be enacted city-wide, because if tree preservation is  
23 good in this neighborhood, why isn't it just as good  
24 in a lot of other neighborhoods where they don't have  
25 as many trees? It's a hard thing for me to accept at

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1 this moment the way it is.

2 CHAIRPERSON MITTEN: Thank you, Mr. May.

3 Mr. Parsons?

4 COMMISSIONER PARSONS: Well, I guess if I  
5 was in the community and listening to the last two  
6 speakers, I wouldn't know what to do. Let me back up  
7 a minute. In 1984, the comprehensive plan suggested  
8 to this Commission that it undertakes zoning  
9 protection to the degree that we could to protect the  
10 natural stream valley parks of the city and we did  
11 that 12 years ago.

12 That is, we established this zone for  
13 that purpose, to deal with communities we had the  
14 good tree canopy, the steep slopes and the adjacency  
15 of the parks. So in this case, we have got four  
16 parks, a community that is surrounded by those four  
17 parks, and this community brought forward to us a  
18 proposal to be included in this zone and it, at the  
19 time that it was brought to us, had an ANC approval.

20 I believe that still exists, the vote admittedly  
21 being 3 to 2, but we do have the Advisory  
22 Neighborhood Commission as a supporter in this at the  
23 time of set down.

24 So what we're in the middle of here is a  
25 group of folks who live south of Soapstone Valley in

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1 five squares that want to be exempted from this. I  
2 think that's basically it. I don't sense that the  
3 community north of Soapstone is wanting out, at this  
4 point. So I guess I would reluctantly agree with Mr.  
5 Hood, surprising as it may seem.

6 VICE CHAIR HOOD: Very surprising.

7 COMMISSIONER PARSONS: But I am not sure  
8 what instructions we're sending back. Mr. May says  
9 he doesn't think the tree and slope overlay  
10 regulation is proper, as I heard him, but it seems to  
11 me the only way we're going to have a community that  
12 comes back to us is if the community decides to  
13 eliminate some of their most valuable tree and slope  
14 areas in this area, this city, these five squares who  
15 want to be eliminated.

16 If that's what comes back to us, I don't  
17 know where we go, but that's what we're asking for, I  
18 think, is literally half of this. Well, not half of  
19 this, but almost half of this would be eliminated,  
20 and then the people who live there would say fine,  
21 and we can do what we want to do.

22 The other instruction to the community,  
23 maybe we don't give any instructions, just work it  
24 out. But the other instruction to the community is  
25 tweak it more as in drop the minimum area down to

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1 2,000 square feet for lots. I mean, keep cranking it  
2 down until people stop squawking, in other words. I  
3 mean, the current compromise is 9,500. It started at  
4 12.

5 So do we want to give them any  
6 suggestions of what we want them to look at, and then  
7 at the same time, I think we need to tell them what  
8 we're going to do in 90 days if they don't come back,  
9 because we still have this set down, essentially  
10 prohibiting people from going forward with  
11 improvements on their homes.

12 CHAIRPERSON MITTEN: Well, it doesn't  
13 prohibit them. They can come for a special  
14 exception.

15 COMMISSIONER PARSONS: Yes.

16 CHAIRPERSON MITTEN: Under the set down  
17 rule.

18 COMMISSIONER PARSONS: On the uncertainty  
19 of it.

20 CHAIRPERSON MITTEN: Right.

21 COMMISSIONER PARSONS: They are waiting,  
22 I guess.

23 CHAIRPERSON MITTEN: Yes.

24 COMMISSIONER PARSONS: Not prohibiting.

25 CHAIRPERSON MITTEN: Right.

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1 COMMISSIONER PARSONS: Waiting anxiously,  
2 so I don't know that we could be specific or just say  
3 work it out. I mean, how long have we been working  
4 on this case, six months?

5 CHAIRPERSON MITTEN: At least.

6 COMMISSIONER PARSONS: And certainly,  
7 plenty of opportunity has been there for resolution  
8 and it's not there. That's the problem, their  
9 frustration and ours, I guess. So if we simply want  
10 to say we'll give you 90 more days to work it out.  
11 Thank you for listening to me talk out loud and come  
12 to the conclusion that maybe we'll just give it back  
13 to them.

14 CHAIRPERSON MITTEN: Okay.

15 COMMISSIONER PARSONS: But I don't think  
16 any indication that we're thinking about dismissing  
17 this or if you can't work it out, we'll dismiss it or  
18 disapprove it, I certainly don't want to be on that  
19 side of this argument, because this is the exact kind  
20 of community that was contemplated in our regulations  
21 and the comprehensive plan.

22 CHAIRPERSON MITTEN: Mr. Hannaham? Thank  
23 you, Mr. Parsons.

24 COMMISSIONER HANNAHAM: Thank you, Madam  
25 Chairman. If I were to agree to turn it back to the

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1 community, I think it would be our responsibility to  
2 give some additional guidance. I think all of us  
3 have, you know, gone through this material quite  
4 extensively and we probably have notions as to what  
5 we are, you know, not happy with.

6 I think that we should share that with  
7 the community. I thought today we would have done a  
8 sort of a markup, sort of down through the draft  
9 that's before us and make our comments along the way,  
10 and I think that would have provided some general  
11 guidance. And then at the end of that period, we  
12 could determine whether we think that we have enough  
13 substance here to go forward and vote it up or down  
14 or consider the ideas that have just been expressed  
15 here to go back to the community. I mean, I could  
16 see it either way really.

17 CHAIRPERSON MITTEN: Okay.

18 COMMISSIONER HANNAHAM: It's not certain  
19 that we would get a product that would be agreeable  
20 to everybody concerned regardless as to which way you  
21 went.

22 CHAIRPERSON MITTEN: I think we're fairly  
23 assured of that. Anything else?

24 COMMISSIONER HANNAHAM: That's it for  
25 now. Thanks.

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1 CHAIRPERSON MITTEN: I didn't want to cut  
2 you off. Thank you, Mr. Hannaham. I didn't expect  
3 to be in the position of talking about this. I  
4 thought we would be in the mode of doing the markup  
5 that Mr. Hannaham suggested. Here is the concern  
6 that I have about sending it back to the community.

7 When we send things back to the community  
8 to work out, those are typically BZA cases where  
9 there are adverse impacts that need to be mitigated,  
10 and there really is a compromise process that is  
11 appropriate to be conducted in that context.

12 In this context, and there is another  
13 circumstance where it is appropriate to turn  
14 something back either to the community, the  
15 applicant, Office Planning, when we don't have enough  
16 information to make a decision, which I would put, at  
17 least for myself earlier in this meeting, 5401  
18 Western Avenue wanted some additional information.

19 We have a lot of information in the  
20 record and I don't hear anyone saying that they don't  
21 understand the tree and slope overlay. They might  
22 not think that it will be effective, and we talked  
23 about the fact that we will revisit the template. I  
24 mean, I think all of us agree the template needs  
25 work. But the thing that I am hearing that's giving

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1 us discomfort is the community doesn't agree. They  
2 don't want the same things.

3 It's not that we don't understand their  
4 motivations, we don't understand what is being  
5 proposed, and I think that's a significant  
6 difference, because if we send this back to the  
7 community for them to compromise, then we're asking  
8 them to do our job for us. We are abdicating our  
9 responsibility for decision making once we are  
10 informed to them, and I don't think that's a proper  
11 message to send to this community, and it's going to  
12 set up the expectation in other communities that when  
13 they don't agree, when there is a division, that they  
14 will have the expectation that the Zoning Commission  
15 will turn it back to them for a compromise.

16 And I just don't think that is proper  
17 under the circumstances, because I don't think we're  
18 lacking in information. I think we could make a  
19 decision. We're just uncomfortable making a  
20 decision. I am prepared to make a decision today  
21 knowing, as I have heard already in various forums,  
22 that there are going to be people who will vehemently  
23 disagree.

24 I have to say that I agree with Mr.  
25 Parsons that if the ultimate message, and I actually

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1 would like people to put something on the record  
2 related to this today, I mean, if the consensus is to  
3 send it back for 90 to work towards something, I will  
4 go along with that despite my resistance just because  
5 it's a way to move forward.

6 But what I want to know from my fellow  
7 commissioners today is at the end of that time  
8 period, if there is not a consensus, if it doesn't  
9 change on jot from where it is today, if there is a  
10 thought that we would contemplate dismissal, I want  
11 to know if that's what people have in their mind  
12 today. And I would, before you answer the question,  
13 remind you that not only does the comprehensive plan  
14 dictate that we creative a tree and slope overlay,  
15 but that we consider putting one in place in Forest  
16 Hills, and that both the ANC and the Office of  
17 Planning to whom we're required to give great weight  
18 have voted to support the Tree and Slope Overlay in  
19 Forest Hills.

20 And I also agree with Mr. Hannaham that,  
21 you know, we shouldn't turn it back to the community  
22 without some kind of substantive discussion in here  
23 today about what we expect them to come back to us  
24 with, because if the only thing we can say is make us  
25 feel better about the decision, then it's not fair to

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1 put that burden on the community.

2 VICE CHAIR HOOD: I think, Madam Chair,  
3 you are asking for something that I don't think is  
4 fair. You are asking for us to make a decision on  
5 what we are going to do regardless of how it comes  
6 back, and I don't think that's appropriate or is  
7 fair.

8 The direction that we want to send them,  
9 for example, what is it, Howard, the university  
10 somewhere, they wanted to be excluded or whoever it  
11 is, but anyway, I think the issue is we know within  
12 ourselves, we hear about Forest Hills Citizens  
13 Association and what they have done and all this, but  
14 I think to be fair we need to make sure that we know  
15 within ourselves that that issue has been resolved to  
16 the satisfaction of ourselves, not to the community,  
17 because they probably won't come to an agreement.  
18 They are not going to agree.

19 I mean, I have done community work. I  
20 know how that works. I am not sitting here raising  
21 false hopes. I am not sitting here expecting for it  
22 to come back that they have reached a consensus. I  
23 don't understand how the five of us sat up here and  
24 all of us seem to be attending different meetings,  
25 because what I heard was totally different from your

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1 last comments, Madam Chair.

2 I think that what we are asking for is to  
3 send it back to the community with some guidance. I  
4 mean, that is what I said in my first statement, and  
5 hopefully get --

6 CHAIRPERSON MITTEN: But what would that  
7 guidance be?

8 VICE CHAIR HOOD: The guidance would be,  
9 hopefully, to bridge the gap. They are so far apart,  
10 away on all the issues, whether to be included or not  
11 included. Some people don't want to be included  
12 because of the, what is it, 9,500 square feet, those  
13 issue. Tried to bridge the gap and come to some  
14 consensus in Mr. Bardine's letter, I think that's a  
15 start, ANC-3F. That's a start, but also be inclusive  
16 and make sure that we get as many people as possible.

17 Can you do it? No.

18 Everybody is not going to participate,  
19 but when we get ready to make the decisions, then we  
20 will know. I will know personally that I have done  
21 all I can to make sure that everyone had at least an  
22 opportune time to participate. Now, I would like to  
23 hear from Office of Planning if they think it's  
24 doable.

25 Office of Planning, who has been out

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1 there, they may not think it's doable. I would just  
2 like to know from OP if they think it's doable. Are  
3 we asking for something where we're just totally  
4 going in the wrong road as far as sitting in the  
5 back, because if we move with it today, Madam Chair,  
6 I would say I will be voting against it.

7 Through you, Madam Chair, to the Office  
8 of Planning?

9 CHAIRPERSON MITTEN: Certainly, weigh in  
10 here.

11 MS. MCCARTHY: As you know, the Office of  
12 Planning has been a strong supporter of negotiation  
13 and mediation as an approach to resolving disputes,  
14 but I feel like the Office of Planning has tried in  
15 this case, meeting with the various participants,  
16 trying to find some middle ground.

17 As I read those letters this weekend, you  
18 know, some people were objecting to the side yard  
19 requirements, some to the tree size requirements,  
20 some to the setback from the front requirements, some  
21 to the minimum lot size, some to which individual lot  
22 should be included.

23 I can't say that I felt in looking at the  
24 diversity of opinion like there was a place I could  
25 easily reach to and say okay, I see the outlines of

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1 some compromise here. I think we could just get  
2 everybody in the room and see if we could get them  
3 together.

4 So would we be optimistic that we could  
5 arrive at a consensus? I don't think so. Would we  
6 be willing to do that if the Commission would like us  
7 to and see if we can find something? Certainly.

8 VICE CHAIR HOOD: Well, let me ask you  
9 this, Ms. McCarthy. I am not looking for full  
10 consensus where everybody agrees. That will never  
11 happen, not just with this case, but with a whole lot  
12 of other things that go on around here. But I am  
13 just saying do you think that maybe that there are  
14 some issues, you know, pressing that maybe there is  
15 some room where the people may agree with some of  
16 those issues?

17 And again, I am going back to what the  
18 Chair said about doing our jobs. I am perfectly able  
19 to do the job at hand, but I think it just shows that  
20 we have some compassion about those folks who made an  
21 investment in that neighborhood. That's just where I  
22 am. Do you think it's a chance that some of the gap  
23 could be closed, not necessarily a consensus?

24 CHAIRPERSON MITTEN: Before you answer  
25 the question, could I just add to it, Mr. Hood? You

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1 will get your question answered. I just want to add  
2 to it.

3 VICE CHAIR HOOD: You're going to mix me  
4 up if you add something.

5 CHAIRPERSON MITTEN: I am not going to  
6 mix it up. I think what is at the core of it is the  
7 community, certain segments of the community have  
8 asked for this to be returned to them. So if in  
9 evaluating the tenor in the community, the sentiment  
10 in the community, are those people who are asking for  
11 it to be returned seeking consensus or is there some  
12 other agenda?

13 So in getting to Mr. Hood's question, you  
14 know, can there be movement? I think part of that is  
15 evaluating what is the nature of the request for  
16 returning this to the community? Is it that they  
17 have a sincere desire to compromise or is it that  
18 this is a mechanism for getting rid of the overlay,  
19 if you can answer that?

20 And, Mr. Hood, if I stepped on your  
21 question in any way --

22 VICE CHAIR HOOD: Actually, you actually  
23 phrased it better than I would. Thank you.

24 CHAIRPERSON MITTEN: Well, that's very  
25 generous of you, sir.

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1 VICE CHAIR HOOD: Thank you.

2 CHAIRPERSON MITTEN: And can you turn on  
3 your mike?

4 MS. MCCARTHY: I think it would be very  
5 hard to know what people's intentions are when they  
6 asked for that, because I think the answer to the  
7 question is there is probably a broad range even  
8 within those that are asking for it to be remanded.  
9 I believe, if memory serves us correctly, we were  
10 thinking this case was set down in April of last  
11 year.

12 CHAIRPERSON MITTEN: That's right, April  
13 19th or something like that.

14 MS. MCCARTHY: So it has been since  
15 February or March of last year or, I guess, much  
16 earlier than that was when we first met with people  
17 from the ANC who were interested and advised them  
18 about what the other tree and slope overlays do. And  
19 I was thinking ironically about what we said very  
20 strongly in that first meeting was that it was  
21 extremely important to have a real consensus of  
22 opinion behind the overlay, because that was going to  
23 be a key issue when the Commission was considering  
24 it.

25 I think that there were some issues that

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1 were raised in the submissions that dealt with things  
2 like what do you do when you are trying to get an  
3 average lot size or an average setback in the front,  
4 and you have a block that's very narrow and you may  
5 have one or two outliers, reconsider some of the  
6 issues with regard to the side yard flexibility and  
7 exactly how to do that.

8           So I think there are probably some of  
9 those issues that we could make some progress on, but  
10 I think fundamentally, as I read the submissions, it  
11 seems like the key difference of opinion is over  
12 whether or not there should be any regulation that  
13 impacts people's ability to decide how to deal with  
14 their property or at least that's a fundamental core  
15 of focus, and that one I don't see us being able to  
16 do anything about, but, you know, maybe that's where  
17 you get back to the Commission at some point, as they  
18 have done in the other tree and slope overlays, makes  
19 a decision about how they want to go on that  
20 particular issue and go on.

21           But I think an answer to your question,  
22 are there some areas of progress? Yes, I think there  
23 are some. I am not sure that those are the key areas  
24 of difference, but I think there are some that we  
25 could work on.

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1                   VICE CHAIR HOOD: Well, hearing that from  
2 the Office of Planning, I would be reluctant to move  
3 forward on it, but if the majority, it seems like  
4 it's three, that want to, we might as well go ahead  
5 and work it up. I just think that we haven't given  
6 that last chance.

7                   But let me just say this while I have the  
8 mike. This Commission has done something in the  
9 past. Since last April, there is another case that  
10 has been out here for two and a half, three years.  
11 We didn't have a problem with that lingering on, and  
12 while it's a totally different case, I just want to  
13 make sure that we know we take our time with things,  
14 and obviously I don't see why we can't take just as  
15 much time with this as we did with the other case  
16 that we had previously.

17                   But if we want to mark it up, from what I  
18 have heard from the Office of Planning, it goes back  
19 to Mr. Parson's point, you know. I hate to admit  
20 that I am agreeing with what he was saying, is that  
21 if it's just going to wait 90 days, then we might as  
22 well just mark it up today and deal with it, because  
23 I don't want to come back in 90 days and everybody is  
24 saying well, here we are in the same situation.

25                   CHAIRPERSON MITTEN: Mr. May?

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1           COMMISSIONER MAY: Well, if the consensus  
2 is to address this today, I am perfectly comfortable  
3 doing that. The difficulty I have is that I want to  
4 be able to vote for tree and slope provision of some  
5 sort, and I am doubtful that we could mark this up in  
6 such a way that I could vote for it today.

7           I am also, frankly, not very optimistic  
8 that in 90 days, the issues that I have with the  
9 provisions the way they are written are going to be  
10 addressed in such a way that I could vote for it  
11 then.

12           CHAIRPERSON MITTEN: May I?

13           COMMISSIONER MAY: Anything is possible,  
14 but I am not terrifically optimistic. I have to say  
15 that the biggest issue, you know, side yards and even  
16 the, you know, average setback requirements, I don't  
17 think that those are the heart of the disagreement.  
18 I think that there is some, you know, general  
19 refinement that may be necessary in those areas, and  
20 I would have no difficulty crafting some compromise  
21 or accepting some language as it is in those types of  
22 areas.

23           I think that the real issue here has to  
24 do with the limits on what trees can be cut and how  
25 that should be addressed, and I guess one of the

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1 fundamental flaws I have with the current language,  
2 and this is true of the existing tree and slope  
3 overlay language in the zoning regulations, is that  
4 there is no provision for planting new trees as an  
5 alternative, and that is something that I saw as a  
6 key ingredient in some of the regulations that we saw  
7 from other cities.

8           They had those provisions in there, and  
9 it relies too much on or we are with these  
10 regulations relying too much either on the BZA or on  
11 code enforcement or on basically neighbors, you know,  
12 sneaking out in the middle of the night, measuring  
13 the circumference of trees that have been cut down.

14           I mean, that's not the sort of  
15 environment that we want to create. We want to have  
16 a mechanism that is, to the greatest extent possible,  
17 manageable by the people who live there, and so that  
18 if they need to take a tree down for some reason or  
19 another, even if it is healthy, that there is some  
20 mechanism for them to do it and there is some way to  
21 make up for the loss of canopy.

22           Now, I know that a new tree is not  
23 equivalent to an old tree when it comes to, you know,  
24 the contribution to the canopy, but, you know, a  
25 great number of the trees that are planted there

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1 right now were planted subsequent to other houses  
2 being built or expanded and those are relatively new  
3 trees and you need new trees, as well as old trees  
4 and that's what makes it survive in the long run.

5 I think that what we want to do is create  
6 an environment where we have a self rejuvenating  
7 forest, if you will, around the homes in that area,  
8 and I do think that's just as important in other  
9 areas as it is here, but I don't think that's what  
10 we're getting in these regulations, and that's why I  
11 have such difficulty with it, and that is my preamble  
12 to any further markup of the task, if you will.

13 CHAIRPERSON MITTEN: Let me just ask you,  
14 what you articulated just now is that your  
15 fundamental problem is with the template, and we have  
16 agreed, because just as we have done with some of the  
17 other overlays that we have without getting down on  
18 which ones, when we find that we are having a problem  
19 with the template, we revisit that, and we have  
20 agreed to do that. And we agreed that we would not  
21 change the template provisions as it applied to the  
22 Forest Hills Tree and Slope Overlays as part of this  
23 exercise. That is what we agreed when we started  
24 deliberating.

25 So I guess what I need to ask just so I

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1 understand your position is can you live with that  
2 construct, which is that we leave the template  
3 provisions alone and in very short order take them up  
4 or you say look, I just can't vote for that if we  
5 don't deal with the template provisions, because if  
6 that is what it takes, if we need to take the  
7 template up now, then that is what we should do if  
8 you can't wait six months to do it. We are just  
9 trying to break this into two pieces.

10 COMMISSIONER MAY: Well, I recall the  
11 discussion relating to the template and, I mean, one  
12 of the things that we could come back with instead of  
13 putting it back out to the community for 60 or 90  
14 days is put it back out to the Office of Planning or  
15 whoever would work to develop a revised template.

16 And if we could actually see where that  
17 might head and get some sense, even what the, you  
18 know, Commission thinks in terms of the right  
19 direction, then I would be much more comfortable  
20 approving something like this, knowing that there  
21 will be another vehicle for addressing this in the  
22 long term, another way to sort of solve the  
23 fundamental problems I have with this right now.

24 CHAIRPERSON MITTEN: Okay. I would like  
25 to make a suggestion just as this conversation goes

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1 on as one alternative approach that we could take,  
2 and, Mr. Bergstein, correct me if I say anything that  
3 is incorrect.

4 If we were to do what you just suggested  
5 and as we are all going to do, we are going to  
6 provide the Office of Planning as part of what we  
7 thought was going to be a later exercise about the  
8 template, give them some input about what our  
9 concerns are, as well as all the issues that have  
10 been raised in the context of this case, we could ask  
11 them, okay, we want to move the template discussion  
12 up as part of this.

13 In the meantime, not unlike what we did  
14 with the proposed action is we could, instead of  
15 taking final action, could we, Mr. Bergstein, in  
16 essence, based on the input that we got through the  
17 comment period, in essence, do another proposed  
18 action to the extent that we wanted to make some  
19 accommodations for the things that we heard? Because  
20 there certainly are things that I would be amenable  
21 to that I think will actually ease some of the  
22 restrictions, that I think there is even consensus  
23 about, and then publish that again, so that is  
24 becomes the new set down and we don't lose that, but  
25 we don't take a final action and we have an

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1 opportunity to take up the template early, as opposed  
2 to six months from now.

3 So we make progress on the specific  
4 provisions of the Forest Hills Tree and Slope Overlay  
5 and move the template up, so that at the end of the  
6 day when we take final action, it will be everything  
7 that we want it to be, template and the specifics for  
8 this neighborhood?

9 COMMISSIONER MAY: I would be very happy  
10 with that sort of an approach so long as it can be  
11 affected in some timely fashion. I would hate to  
12 make the whole thing drag out for another six months  
13 as a result of that.

14 CHAIRPERSON MITTEN: Okay.

15 COMMISSIONER MAY: Up or down.

16 CHAIRPERSON MITTEN: Mr. Parsons?

17 COMMISSIONER PARSONS: I would be very  
18 displeased with that.

19 CHAIRPERSON MITTEN: Okay.

20 COMMISSIONER PARSONS: This Commission  
21 spent an equal amount of time establishing a tree and  
22 slope overlay that has existed for 12 years, has been  
23 placed on two communities, no complaints, no people  
24 living in these communities coming forward saying  
25 this is wrong. So we now have one commissioner who

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1 doesn't like it, and we are either going to vote on  
2 that and get by it or I just cannot believe that the  
3 five of us are going to say yes, let's stop. There  
4 is something wrong with this, because we really don't  
5 know what's wrong with it.

6           The only thing that Mr. May has  
7 identified is that this tree and slope does not  
8 provide for replacing trees if they are cut down.  
9 Well, certainly the BZA would impose that in the  
10 course of a proceeding on a specific case. So I  
11 really am troubled by opening this up again without a  
12 formal vote of the Commission, which has nothing to  
13 do with today's issue before us. So I am very  
14 troubled by the dialogue we just had.

15           VICE CHAIR HOOD: Madam Chair, I thought  
16 that when we first started looking at this, because  
17 everything kind of pointed back towards what was  
18 previously done with the overlays, template so to  
19 speak, that that was going to happen, and I can tell  
20 you that if we deal with this, I agree with  
21 Commissioner May, so, Mr. Parsons, you can say two  
22 commissioners.

23           I thought you were talking about the ANC  
24 commissioner first, but I assume you are talking  
25 about us. I thought that that was an agreement that

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1 we were going to deal with, the template, but I think  
2 if we deal with Forest Hills first, I will use the  
3 terminology as hustling backwards.

4 I think we are putting the cart before  
5 the horse. I think we need to deal with the source,  
6 and that's the template as we have named it. I like  
7 your suggestion, Madam Chair, and if it calls for a  
8 vote of the Commission, we need to do that. Let me  
9 just ask a question about the ANC-3F's piece, and it  
10 was referred that they took another vote and they  
11 were in support, 6 to 1, but as I read the  
12 resolution, I read something different.

13 Maybe I stand to be corrected. I just  
14 need some clarification on it exactly, because it  
15 seems as though the commissioners in the single  
16 member district area who have, I think, it was 96  
17 percent of the homeowners in that proposed overlay  
18 were the ones who opposed it, and that gives me  
19 further pause and caution, because guess what? If my  
20 constituents and I am not included, then I don't have  
21 any problems in voting for something.

22 But if I am included, and the people who  
23 are most affected and the ones who are going to be  
24 affected are the ones who are backing away from it,  
25 then I know we have to give the ANC great weight by

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1 law, but we also want to make sure we're fair to the  
2 folks who this is going to be about.

3 I can always vote on something that I am  
4 not affected to, because it doesn't bother me, but as  
5 I am reading this and going through this voluminous  
6 material, I see different things that are actually  
7 confusing me, because I see where in the resolution  
8 it says that two commissioners, I believe, who have  
9 the majority of the residence who will be in this  
10 overlay are opposed to it, but I stand to be  
11 corrected, reassess the way I am reading that.

12 COMMISSIONER PARSONS: Where do you read  
13 that? I'm sorry.

14 CHAIRPERSON MITTEN: Well, first of all,  
15 say the date of what you are reading, Mr. Hood.

16 VICE CHAIR HOOD: I guess I am reading  
17 old material, but it won't be the first time.  
18 February 11, 2003, and I am comparing that with  
19 something that I have here. The last date is October  
20 2, 2002, and that is from Watkins.

21 COMMISSIONER PARSONS: All right. I  
22 think --

23 VICE CHAIR HOOD: Forcing of neighbors  
24 for responsible preservation.

25 COMMISSIONER PARSONS: But isn't it the

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1 case that the ANC membership has changed over that  
2 period of time?

3 VICE CHAIR HOOD: They had a  
4 redistricting. They did a redistricting and that  
5 went into effect when? Maybe that had something to  
6 do with it. I am not sure.

7 CHAIRPERSON MITTEN: I think I can  
8 clarify this for you. The original vote of the ANC  
9 was to support to the tree and slope overlay. Prior  
10 to this, our taking proposed action and the comment  
11 period, there were two commissioners who were opposed  
12 to the overlay, and I believe that those two  
13 commissioners, single member districts, comprised all  
14 or most of the area that was proposed to be included  
15 in the tree and slope overlay.

16 VICE CHAIR HOOD: Right, right.

17 CHAIRPERSON MITTEN: Okay. And then now,  
18 there has been an election at the ANC. One of the  
19 fellows who voted in opposition did not run. The  
20 other fellow who voted in opposition ran and was  
21 reelected. Now, this February 11, 2003 piece from  
22 the ANC-3F, the resolution was adopted six to one and  
23 there are two aspects to it.

24 One is that they voted in favor of the  
25 amendments that are proposed that are attached, and

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1 then that it's recommended that we adopt the amended  
2 overlay. So that's what is the latest thing before  
3 us, but that's the background.

4 VICE CHAIR HOOD: Yes, and that's what I  
5 was wondering. So actually what the ANC Commission  
6 approved, and it goes back to a comment that Mr.  
7 Parsons made, was that they voted in support. They  
8 didn't vote in support of what we have out in front.  
9 They voted in support of their recommendations  
10 included without preservation.

11 CHAIRPERSON MITTEN: Yes.

12 COMMISSIONER PARSONS: Oh, yes, sure.

13 CHAIRPERSON MITTEN: Okay.

14 VICE CHAIR HOOD: It wasn't clear. I  
15 came over as though they voted with what we had out  
16 there, and from looking at this letter from Mr.  
17 Bardine, the secretary, they have a wealth of  
18 changes.

19 COMMISSIONER PARSONS: I'm sorry. All I  
20 meant to imply is that when they brought it to us,  
21 they were in favor of it. Even though it was 3 to 2,  
22 the ANC had voted. That's what I meant.

23 CHAIRPERSON MITTEN: Let me --

24 COMMISSIONER MAY: The last vote was 6 to  
25 1, I think, but --

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1 CHAIRPERSON MITTEN: He is talking about  
2 the --

3 COMMISSIONER PARSONS: That's this year.

4 COMMISSIONER MAY: Right.

5 COMMISSIONER PARSONS: That's this year.  
6 I was talking about last year.

7 COMMISSIONER MAY: Right.

8 VICE CHAIR HOOD: But again, it brings me  
9 pause when I look at this map that was given to us,  
10 and I know it's probably old now, and I see that most  
11 of the people it affected were two commissioners  
12 involved with tree and slope overlay. If I am over  
13 here at 3F06, according to this map, I have no  
14 problems with my constituents all voting, you know,  
15 because I am not the one who is being affected, and  
16 that is just where I am with that.

17 CHAIRPERSON MITTEN: But not withstanding  
18 that we are required to give the ANC great weight.

19 VICE CHAIR HOOD: I'm giving them great  
20 weight, and I will be able to do what the ANC's new  
21 law says, is tell them why I had an issue with that,  
22 but I understand. The ANC, great weight, the Office  
23 of Planning, great weight, I am well aware of that,  
24 well aware. Anyway, that was my comment. Thank you.

25 CHAIRPERSON MITTEN: I did want to make a

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1 comment, Mr. Parsons, and I don't think that I have  
2 ever expressed otherwise, I have problems with the  
3 template, too, and I am sorry that upsets you.

4 COMMISSIONER MAY: Three commissioners  
5 now?

6 CHAIRPERSON MITTEN: Yes, and, I mean, I  
7 am committed to revisiting the template regardless of  
8 what happens in Forest Hills.

9 COMMISSIONER PARSONS: Well, of course,  
10 what I am hoping, I agreed to revisit the template,  
11 that you will be persuaded when it's finally  
12 explained to you, because there has been no  
13 explanation of it to you.

14 CHAIRPERSON MITTEN: This is true.

15 COMMISSIONER PARSONS: Hey, these guys  
16 kind of knew what they were doing when then did this  
17 and it works.

18 CHAIRPERSON MITTEN: We will have to  
19 reserve judgment there.

20 COMMISSIONER PARSONS: So I just meant  
21 the impression to the community from the dialogue  
22 that was going on is boy, this thing is really  
23 screwed up.

24 CHAIRPERSON MITTEN: Yes.

25 COMMISSIONER PARSONS: It just doesn't

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1 work. Yes, we need to revisit it and retool it and  
2 then we'll get back to Forest Hills and tell them how  
3 good it is now, and they might like it better and I  
4 don't think that will be the conclusion. And what  
5 signal does that send to other communities in the  
6 city that I am aware of? Palisades is going to make  
7 a petition to us to be included in this.

8 So things are going on that that kind of  
9 a signal is not helpful. People want to be in this  
10 area, under this overlay zone, and it's just the  
11 wrong signal. It's as though this Commission doesn't  
12 care about trees and that is a headline. That's not  
13 what people read in the story, but I just can't  
14 believe what's going on here today.

15 CHAIRPERSON MITTEN: Mr. Parsons, I think  
16 that what I have expressed or what I have attempted  
17 to express as it relates to the template is as I read  
18 it and as I read the comments from people in the  
19 community, that there are problems with the template  
20 and the template can be improved, I believe, and as  
21 with all proposals to the Commission, there is a  
22 hearing process that goes on, and whatever our  
23 initial impressions may be, the hearing process is  
24 about gaining information and becoming educated.

25 And it may be the case that it will be

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1 just as you say, that we will all become educated and  
2 we will embrace the template and not want to change  
3 anything, but we haven't done that. We haven't gone  
4 through that process yet. So I think the message  
5 that we're sending right now is that we have concerns  
6 about the template.

7 We don't know how that's all going to be  
8 resolved, but we want it to be resolved. We want to  
9 have either confidence in the template as it exists  
10 or we want to change the template.

11 COMMISSIONER PARSONS: Okay. There is a  
12 difference between we have problems with the template  
13 than we want to revisit it and see if it's working.  
14 That's two different things.

15 CHAIRPERSON MITTEN: Okay.

16 COMMISSIONER PARSONS: And that is where  
17 I thought we were, we would go back to the  
18 communities that were living under these, we ought to  
19 call them regulations rather than a template, so  
20 we're not misunderstood.

21 CHAIRPERSON MITTEN: Yes.

22 COMMISSIONER PARSONS: And have the  
23 Office of Planning go and talk to those communities  
24 and see if there is another approach that needs to be  
25 taken.

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1 CHAIRPERSON MITTEN: Okay.

2 COMMISSIONER PARSONS: As opposed to boy,  
3 we really got problems with this thing and we're  
4 going to fix it.

5 CHAIRPERSON MITTEN: All right

6 COMMISSIONER PARSONS: Which I disagree  
7 with, but I am willing to revisit a 12 year-old  
8 regulation to see if it's working.

9 CHAIRPERSON MITTEN: Then I think you are  
10 as open-minded as we are.

11 COMMISSIONER PARSONS: Would you like to  
12 hear more on this issue?

13 VICE CHAIR HOOD: I don't think we were  
14 talking about going to those existing overlays. I  
15 don't think that's what we're talking about.

16 CHAIRPERSON MITTEN: Well, that would be  
17 the reason. I mean, if the template needs to be  
18 changed though, then, I mean, you would --

19 VICE CHAIR HOOD: No, but I am saying he  
20 is saying go back. So you are saying we would need  
21 to go back to those neighborhoods and --

22 COMMISSIONER PARSONS: Well, certainly,  
23 they have got an overlay.

24 CHAIRPERSON MITTEN: If you change  
25 something --

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1 COMMISSIONER PARSONS: If they ask for it  
2 and we grant it, then on their properties for eight  
3 to 10 years, how is it working, folks?

4 CHAIRPERSON MITTEN: Okay.

5 VICE CHAIR HOOD: Well, maybe I am not up  
6 on what I'm thinking. I am thinking something. I  
7 thought that would be an act we would look at. There  
8 is some generic --

9 CHAIRPERSON MITTEN: I am just going to  
10 ask that we keep the chatter down in the audience,  
11 please.

12 VICE CHAIR HOOD: I'm sorry, they are  
13 helping. Are there some generic regulations? I  
14 mean, we keep talking about the template. When I  
15 look at the template, I am looking at something  
16 that's gone and supposed to go by, and then I go  
17 ahead into each area, and then I put the plug in when  
18 I need the plug in for that specific area.

19 CHAIRPERSON MITTEN: Right.

20 VICE CHAIR HOOD: So that's kind of where  
21 I was. The template that applies in one neighborhood  
22 may not apply. I mean, the specifics from the  
23 template may apply in one neighborhood, may not apply  
24 to another one.

25 COMMISSIONER PARSONS: Right.

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1 CHAIRPERSON MITTEN: Right.

2 VICE CHAIR HOOD: So that's where I am.

3 COMMISSIONER PARSONS: But they are all  
4 measuring trees the same way. They are all  
5 computing. It's lot size and those kinds of  
6 specifics that are changed.

7 VICE CHAIR HOOD: Right, I understand  
8 that.

9 COMMISSIONER PARSONS: It's not the  
10 mechanics of it, as I recall.

11 VICE CHAIR HOOD: But why are we not  
12 dealing with it from this point on, and this is an  
13 overlay that's in front of us? Why don't we deal  
14 with it from this point on, because things change?  
15 If it's working in Wesley Heights or in other places,  
16 leave it alone.

17 CHAIRPERSON MITTEN: Okay.

18 VICE CHAIR HOOD: They obviously haven't  
19 had any problems from what I am hearing.

20 COMMISSIONER PARSONS: Well, as I  
21 understand Mr. May, he has basic problems with the  
22 concepts that are in the way this is measured and  
23 mechanized, and what about trees and lack of  
24 replacement? Why can't people cut down trees? I am  
25 not sure I'm capturing, but I really don't want to

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1 continue this debate, because it's really annoying to  
2 send this signal to the city. Let's do it in a  
3 steadied way and not throw around personal opinions.

4 It's wrong.

5 CHAIRPERSON MITTEN: Okay. Mr. Hood, did  
6 you want to say something?

7 VICE CHAIR HOOD: Yes, I was just going  
8 to say that Mr. Parsons, since he had the opportunity  
9 to actually have more time on this Commission than  
10 the rest of us, we're not saying anything negative  
11 towards the future commissioners, I mean, the past  
12 Commission, because I worked with a number of them,  
13 and I definitely have a lot of respect for them. But  
14 I also have be informed and educated myself, so  
15 that's kind of where I am.

16 COMMISSIONER PARSONS: Well, you know, my  
17 business is hugging trees, so thank you for bearing  
18 with me.

19 CHAIRPERSON MITTEN: Okay. So here we  
20 are and we have to decide how we're going to go  
21 forward, and I had suggested that perhaps one way to  
22 go forward is we can either just ask the Office of  
23 Planning, as was suggested, to address some of our  
24 more fundamental problems, some of the other problems  
25 that have been expressed with the template or the

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1 template as it applies to Forest Hills and give some  
2 time for that.

3 And then we can either do as Mr. Hood had  
4 suggested, which is at the same time return the rest  
5 of this to the community for their additional, you  
6 know, debate and hopeful compromise. That is one  
7 approach, which would --

8 VICE CHAIR HOOD: I would like to take  
9 that off the table.

10 CHAIRPERSON MITTEN: Okay.

11 VICE CHAIR HOOD: After what I heard from  
12 the Office of Planning.

13 CHAIRPERSON MITTEN: Okay.

14 VICE CHAIR HOOD: And only what I heard  
15 from the Office of Planning, I would like to take it  
16 off the table, because they were out there with the  
17 negotiations. I wasn't. They were privy to what  
18 things were going on.

19 CHAIRPERSON MITTEN: Okay.

20 VICE CHAIR HOOD: So I will take that off  
21 the table.

22 CHAIRPERSON MITTEN: Okay. So I will  
23 begin again. We could ask the Office of Planning to  
24 take up whatever issues any of us might have with the  
25 template either for a potential change or for us to

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1 understand better how the template works and to  
2 examine those neighborhoods where the tree and slope  
3 provisions are currently in place, and understand how  
4 that is working, how effective that is, whether it's  
5 an easy process, a difficult process and so forth.

6 And then we can either leave our proposed  
7 action in place as it is or we can amend it today.  
8 Well, let me just make sure that Mr. Bergstein agrees  
9 with me. Can we amend our proposed action today and  
10 not take final action, basically just readjust what  
11 is the set down language and continue on?

12 MR. BERGSTEIN: With the intent of  
13 publishing it for another period of comment?

14 CHAIRPERSON MITTEN: Or is there that or  
15 yes, I guess so.

16 MR. BERGSTEIN: The only reason you would  
17 amend the language is to publish it again for another  
18 period of written comment.

19 CHAIRPERSON MITTEN: Okay. So maybe that  
20 is premature, at this point, if we're going to get  
21 additional input from the Office of Planning in order  
22 to perhaps make additional changes that would involve  
23 the template provisions, which we had taken off the  
24 table, at this point.

25 I take it you're recommending against

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1 that, Mr. Bergstein?

2 MR. BERGSTEIN: If your focus is going to  
3 be on the template, then there's really two things  
4 going on. You would have a proceeding to amend the  
5 template, and then you would amend this particular  
6 proceeding accordingly.

7 CHAIRPERSON MITTEN: Yes.

8 MR. BERGSTEIN: So you have two things  
9 going on.

10 CHAIRPERSON MITTEN: Okay.

11 MR. BERGSTEIN: So first, at this point,  
12 you're not setting down anything with respect to that  
13 first issue. You want to see what comes up.

14 CHAIRPERSON MITTEN: Okay.

15 MR. BERGSTEIN: So it's premature to do  
16 anything with this proceeding until you see whether  
17 or not you even are interested in setting down any  
18 amendment to the template. So at this point, if you  
19 believe it's worthwhile to see how the template  
20 evolves in terms of a possible set down, then you  
21 would do nothing today and wait to see what OP comes  
22 up with.

23 If OP comes up with an interesting  
24 amendment to the template and you think it's  
25 worthwhile setting that down, then you would also

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1 modify this proposed action consistent with that, but  
2 you will still need to have a hearing on the template  
3 issue. So, in essence, this would be held in  
4 abeyance until you're through with the template  
5 hearing.

6 CHAIRPERSON MITTEN: Okay.

7 MR. BERGSTEIN: Because it would be  
8 premature to do anything until you know if you're  
9 going to make a change to the template.

10 CHAIRPERSON MITTEN: Okay. Let me just  
11 ask you one other thing, which is as it relates to  
12 the Forest Hills Tree and Slope Overlay. No one was  
13 constrained. The public, the ANC, Office of  
14 Planning, no one was constrained from commenting on  
15 the template so far. We put a constraint on  
16 ourselves that the Commission was not going to  
17 address the template until later, but there is lots  
18 of comment.

19 So I guess I would just ask do we have to  
20 have another hearing on the template or can we just  
21 now decide okay, we're going to deal with all of the  
22 comments that we have gotten? We're not setting the  
23 template aside. It's all up for grabs in the Forest  
24 Hills Tree and Slope Overlay.

25 MR. BERGSTEIN: If you're not really

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1 going to amend the template, but the template you're  
2 talking about, I just had it before me, but it was  
3 the general provisions and it's --

4 CHAIRPERSON MITTEN: The template --

5 MR. BERGSTEIN: 1531.

6 CHAIRPERSON MITTEN: Well, the template  
7 provisions that --

8 MR. BERGSTEIN: 1511, I mean.

9 CHAIRPERSON MITTEN: -- were incorporated  
10 into the Forest Hills Tree and Slope Overlay are  
11 1518.1, 1518.2, 1519.1, the special exception  
12 provisions, 1520.1 through 1520.3. Everything else  
13 is sort of customized to the Forest Hills Tree and  
14 Slope Overlay.

15 MR. BERGSTEIN: I guess we're confused.

16 CHAIRPERSON MITTEN: What I just  
17 articulated though, it comes out of other sections.

18 MR. BERGSTEIN: All right. I mean, there  
19 is a template for the tree and slope overlay, which  
20 is 1511. That's what I thought you were referring to  
21 as the template.

22 CHAIRPERSON MITTEN: Just a second.

23 MR. BERGSTEIN: Okay.

24 CHAIRPERSON MITTEN: Yes, but that's just  
25 chitchat. That's not the real provisions. I will

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1 give you a for instance. What is proposed Section  
2 1518.1, which is the building coverage restrictions,  
3 is articulated first as 1513.1. What is already  
4 articulated and what I call the template is 1513.2.

5 MR. BERGSTEIN: Yes.

6 CHAIRPERSON MITTEN: Okay, okay. So what  
7 I am saying is because anything that is a template  
8 provision was not referred back to existing language.

9 It was rearticulated. Everything that's in the  
10 Forest Hills Tree and Slope Overlay, whether some of  
11 them are template provisions that are elsewhere in  
12 the ordinance, some of them are customized for Forest  
13 Hills.

14 We have heard testimony and we have  
15 gotten submissions into the record on all of it.  
16 That's why I am asking about whether or not we would  
17 need to have another public hearing. You need to  
18 turn on your microphone for me.

19 MR. BERGSTEIN: Not in respect to what  
20 you are going to change in Forest Hills.

21 CHAIRPERSON MITTEN: Right.

22 MR. BERGSTEIN: If you are regarding an  
23 overall change to a template --

24 CHAIRPERSON MITTEN: I got you.

25 MR. BERGSTEIN: Then everybody else has

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1 had the opportunity to comment on it.

2 CHAIRPERSON MITTEN: I am with you there.

3 I am with you there. Okay. So I guess where we  
4 are, if I can get consensus on this, is that we would  
5 give a period of time and we'll have to ask the  
6 Office of Planning the time frame, and I would also  
7 just ask that, I am not prepared to do this today,  
8 but I think we could do this informally through  
9 staff, ask the Office of Planning to revisit, do a  
10 couple of things.

11 One is go to those communities where the  
12 tree and slope overlays exist and find out how they  
13 are working, get some feedback about enforcement,  
14 about how cumbersome it is to go through the special  
15 exception process, about whether it is having the  
16 desired effect, just whatever feedback you can get us  
17 that would address any of the concerns that have been  
18 raised in this case.

19 And then with our concerns that will be  
20 communicated to you through staff, address in  
21 whatever way you see fit, whether it's making a  
22 proposed modification or explaining to us why the  
23 existing language is good and also with all the input  
24 that's in the record already about, you know,  
25 concerns about enforceability and, you know, the fact

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1 that, as Mr. May had said, you know, it's all about  
2 not doing something, and it's not about doing  
3 something positive.

4 It's about preventing someone from  
5 cutting a tree down and so forth, and then make some  
6 recommendations back to us about ways in which the  
7 provisions that we heretofore have not dealt with,  
8 which would be specifically the ones that I just  
9 ticked off as the template provisions. Make some  
10 recommendations to us, so that we could then move to  
11 a new proposed action and another period of public  
12 comment and so on. Mr. May?

13 COMMISSIONER MAY: So are we, therefore,  
14 aiming for a new proposed action that would get  
15 broader comment on the whole template issue? Is that  
16 what you are --

17 CHAIRPERSON MITTEN: The template as it  
18 relates to Forest Hills.

19 COMMISSIONER MAY: Okay.

20 CHAIRPERSON MITTEN: It's not going to  
21 have an effect on these other areas.

22 COMMISSIONER MAY: Right.

23 CHAIRPERSON MITTEN: As Mr. Bergstein  
24 said unless we decided to have a public hearing, but  
25 those are set aside.

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1 COMMISSIONER MAY: So the way the, you  
2 know, timing still needs to be worked out, but  
3 theoretically, something like, you know, 30 days.  
4 Office of Planning gives us more information. We can  
5 evaluate possible changes to the proposed action as  
6 it were.

7 CHAIRPERSON MITTEN: Yes.

8 COMMISSIONER MAY: To address some of the  
9 concerns that we have,

10 CHAIRPERSON MITTEN: Yes.

11 COMMISSIONER MAY: So in other words, we  
12 craft our own compromise, if you will, in this  
13 circumstance and then take a revised proposed action  
14 and then another vote? I mean, I vote on the final  
15 action?

16 CHAIRPERSON MITTEN: Yes.

17 COMMISSIONER MAY: But again, it's all--

18 CHAIRPERSON MITTEN: Yes, but there would  
19 be another period of public comment between the two.

20 COMMISSIONER MAY: Right.

21 CHAIRPERSON MITTEN: Yes.

22 COMMISSIONER MAY: And that's 30 days?

23 CHAIRPERSON MITTEN: It's however long we  
24 decide.

25 COMMISSIONER MAY: Okay.

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1 CHAIRPERSON MITTEN: We decided 60 for  
2 the last one.

3 COMMISSIONER MAY: For this? Okay, okay.  
4 So then theoretically, all we're doing is addressing  
5 Forest Hills?

6 CHAIRPERSON MITTEN: Correct.

7 COMMISSIONER MAY: Okay. I think that  
8 would be a fine way to proceed.

9 CHAIRPERSON MITTEN: Okay.

10 COMMISSIONER PARSONS: And would we  
11 include in that the February 11th letter from the  
12 ANC? That is giving their proposed suggestions.

13 CHAIRPERSON MITTEN: That would be when  
14 the Office of Planning returns to us with their  
15 recommendations.

16 COMMISSIONER PARSONS: That's what I  
17 meant. Could they be looking at the --

18 COMMISSIONER MAY: Right.

19 CHAIRPERSON MITTEN: Yes, although, those  
20 don't address any of the template provisions I don't  
21 think.

22 COMMISSIONER PARSONS: Yes, but when we  
23 go back out with Forest Hills --

24 CHAIRPERSON MITTEN: Yes, absolutely,  
25 yes.

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1 COMMISSIONER PARSONS: Could this be  
2 incorporated?

3 CHAIRPERSON MITTEN: Oh, okay, yes.

4 COMMISSIONER PARSONS: This system.

5 CHAIRPERSON MITTEN: Because Office of  
6 Planning hasn't responded to that.

7 COMMISSIONER PARSONS: Right.

8 CHAIRPERSON MITTEN: Yes, that would be  
9 great.

10 COMMISSIONER PARSONS: That's clumsily  
11 what I was trying to say.

12 CHAIRPERSON MITTEN: Are you --

13 COMMISSIONER PARSONS: Thank you.

14 CHAIRPERSON MITTEN: We got a lot of  
15 feedback during the comment period, including a  
16 resolution from the ANC making some recommendations,  
17 but there wasn't an opportunity, I believe, for you  
18 all to comment. So what Mr. Parsons is asking is as  
19 part of this latest exercise, can you also comment on  
20 the most recent ANC resolution and whether or not you  
21 endorse those amendments that have been proposed?  
22 And so now, I would ask the Office of Planning, A, do  
23 you understand what we want and B, how long will it  
24 take?

25 MS. MCCARTHY: You lost me a little bit

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1 when you were just talking about the template as it  
2 relates to Forest Hills.

3 CHAIRPERSON MITTEN: Okay.

4 MS. MCCARTHY: So you don't want us to  
5 address the generic provisions in the TSP, only as it  
6 applies to Forest Hills?

7 CHAIRPERSON MITTEN: Yes, but for  
8 instance, as Mr. Bergstein and I went through,  
9 Section 1518.1 as proposed is identical to 1513.1.  
10 Okay? We want to look at that, but we only want to  
11 look at it as it relates to Forest Hills. We're not  
12 proposing to do anything to the 1513.1. We are only  
13 proposing to do something to 1518.1 and so forth with  
14 each of the items that are in the Forest Hills Tree  
15 and Slope Overlay that have been picked up from  
16 existing regulation.

17 MS. MCCARTHY: Okay. Now, would that  
18 encompass things like the point that Mr. May was  
19 making of wanting a completely different orientation  
20 to the tree and slope overlay or is that something we  
21 would leave for a later evaluation of the broader  
22 overlay, the broader overlay template?

23 CHAIRPERSON MITTEN: Well, I guess to the  
24 extent that you were inclined to make a  
25 recommendation to us either in the tree removal

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1 provisions, which are also a template item, which is  
2 1519.1, I mean, let me just finish my first thought,  
3 which is either in the context of the tree removal  
4 provisions or in the context of the special exception  
5 process, which there isn't anything in the special  
6 exception that says oh, well, you know, if you  
7 proffer that, you are going to plant something to  
8 replace what you are taking down, that that would be  
9 factored in. That may be an appropriate place to put  
10 it or not.

11 But, you know, we have feedback in the  
12 record that there is a desire that this be more self  
13 administering, and I am going to make an analogy that  
14 you might think is a stretch, but since Ms.  
15 Steingasser is here, it's appropriate.

16 When we did the stealth structures for  
17 antennas is we had this process where if you do  
18 certain things within certain parameters, the zoning  
19 administrator, in consultation with you guys, has the  
20 authority to make certain decisions. It doesn't all  
21 have to go to the BZA, so that kind of thing.

22 We're just looking for your recommendations,  
23 and I don't know where it's all going to end up given  
24 everyone's propensities. We have Mr. May perhaps at  
25 one extreme and Mr. Parsons at another. So I don't

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1 know where it's all going to end up, but we're  
2 looking for your recommendations in response to sort  
3 of the totality of the record, and the template is  
4 included in that, the template items. Did I help  
5 explain?

6 MS. MCCARTHY: Right, and you're looking  
7 for me to indicate when I thought all that could  
8 happen?

9 CHAIRPERSON MITTEN: Yes.

10 MS. MCCARTHY: Okay. Our experience with  
11 getting comments back from community groups and ANCs  
12 is, you know, along the lines of what Mr. Hood was  
13 alluding to before, that it would be 45 to 60 days  
14 contacting those ANCs in the areas, which are  
15 affected by the existing tree and slope, either  
16 getting on their agenda or getting them, at least, to  
17 put it on the agenda of a meeting, discuss it and get  
18 back to us.

19 CHAIRPERSON MITTEN: Yes.

20 MS. MCCARTHY: So I think we're talking  
21 about probably June to July by the time we got the  
22 feedback back, tried to knit something together and I  
23 am not sure. You were talking about the Commission  
24 communicating your concerns via staff?

25 CHAIRPERSON MITTEN: Yes, we would give

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1 our --

2 MS. MCCARTHY: You would be able to do  
3 that sometime in the next month?

4 CHAIRPERSON MITTEN: Well, I think we  
5 could do it quicker than that.

6 MS. MCCARTHY: Okay.

7 CHAIRPERSON MITTEN: Anything you need  
8 from us to move this along, we can do.

9 MS. MCCARTHY: Okay. So I think --

10 CHAIRPERSON MITTEN: So just don't factor  
11 in any time leg for us.

12 MS. MCCARTHY: Right. Now, I suspected  
13 that your time leg would be a lot less than talking  
14 to the citizens associations and the ANCs that are in  
15 those areas, and I think, very importantly, the  
16 zoning administrator.

17 CHAIRPERSON MITTEN: Yes.

18 MS. MCCARTHY: And to try to get input  
19 from them on what they feel are the problems with  
20 enforcing the existing overlay, because we certainly  
21 know there have been problems in enforcing the  
22 existing overlay. So yes, I would think the  
23 June/July timetable is probably the earliest we could  
24 be looking at to get something that would be in  
25 sufficient form for you all to take a look at.

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1 CHAIRPERSON MITTEN: Okay. So if we said  
2 something like June 15th? We have to have a target  
3 to shoot at.

4 MS. MCCARTHY: I would say July.

5 CHAIRPERSON MITTEN: July 15th?

6 MS. MCCARTHY: I mean, as I look at the  
7 number of public hearings that are coming up.

8 CHAIRPERSON MITTEN: Yes.

9 MS. MCCARTHY: And I know what those  
10 hearing reports are going to take.

11 CHAIRPERSON MITTEN: Right.

12 MS. MCCARTHY: And the BZA cases that are  
13 still there.

14 CHAIRPERSON MITTEN: Well, it is what it  
15 is, because I think that's the only way we're going  
16 to get a consensus to move forward unless somebody  
17 wants to make another proposal. Anybody?

18 COMMISSIONER PARSONS: You mean a motion  
19 to approve?

20 CHAIRPERSON MITTEN: If you feel like  
21 doing that, you can try that.

22 COMMISSIONER PARSONS: No, no, I don't.

23 CHAIRPERSON MITTEN: Okay. Then we're  
24 looking at July 15th.

25 MS. MCCARTHY: We would be looking at the

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1 July meeting of the Commission, of getting something  
2 to you before then.

3 CHAIRPERSON MITTEN: Oh, well, that's  
4 different than July. Yes, I was saying you would get  
5 something to us by a fixed date. So you are aiming  
6 to get something to us for our July meeting, which  
7 means you will get something to us.

8 MS. MCCARTHY: By 10 days before the July  
9 meeting.

10 CHAIRPERSON MITTEN: Right, that's good.  
11 All right? So we have consensus about that?  
12 Everybody knows what we are doing? Everybody is  
13 clear? Everybody is --

14 VICE CHAIR HOOD: Madam Chair, I am not  
15 sure where we are, but July is fine.

16 CHAIRPERSON MITTEN: Okay. Mr. Bastida,  
17 did you have an update for us on 5401 Western Avenue?

18 SECRETARY BASTIDA: Yes, Madam Chairman.  
19 I contacted Ken Laden from DDOT, and he has assured  
20 me that he would be able to have comments by March  
21 24, and let me make sure that is a Monday. Yes, it's  
22 a Monday by 3:00.

23 CHAIRPERSON MITTEN: Okay.

24 SECRETARY BASTIDA: All those will be  
25 served on all the parties, which included the two

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1 ANCs and well, obviously, the applicant and I think  
2 that there are four individual parties also included  
3 on that. But it will have to be served on all the  
4 parties, and then all the parties will have until  
5 Friday, April the 4th at 3:00 to provide comments to  
6 those comments.

7 CHAIRPERSON MITTEN: Okay.

8 SECRETARY BASTIDA: And they probably  
9 will be able to perhaps consider these at your  
10 regular meeting on April the 14th.

11 CHAIRPERSON MITTEN: Okay. Thank you.  
12 Could you tell staff what your issue is and then they  
13 will express it to us if we need to.

14 SECRETARY BASTIDA: Okay.

15 CHAIRPERSON MITTEN: Thank you. All  
16 right. That will stand unless we have some reason to  
17 change it. So let's take up --

18 VICE CHAIR HOOD: Oh, I'm sorry. Hold  
19 the mike, I'm sorry.

20 CHAIRPERSON MITTEN: We still have from  
21 Florida Rock under final action, under final, final  
22 action. Okay. That is Zoning Commission Case 01-  
23 31TE and we have the final order in front of us,  
24 because I think that since it was getting late at our  
25 last meeting, I may have misspoke.

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1           So this is just to clarify and make sure  
2 that everyone's understanding is the same about our  
3 vote, and so I would ask if there are any changes  
4 that anyone would like to make to the proposed order?

5       Mr. Parsons?

6           COMMISSIONER PARSONS: Well, I was hoping  
7 that the design guidelines could somehow be  
8 incorporated, attached, made a part of this, so that  
9 people didn't have to go back and look at that as a  
10 separate document.

11          CHAIRPERSON MITTEN: Yes.

12          COMMISSIONER PARSONS: And I don't know  
13 what the mechanism is for that. We very seldom have  
14 attachments or exhibits.

15          CHAIRPERSON MITTEN: Mr. Bastida?

16          SECRETARY BASTIDA: I'm sorry, Madam  
17 Chairman.

18          CHAIRPERSON MITTEN: I am going to ask  
19 you a question now.

20          SECRETARY BASTIDA: Okay, sure.

21          CHAIRPERSON MITTEN: Okay. Mr. Parsons  
22 has asked if the design guidelines that are proposed  
23 for the Florida Rock PUD could be attached to this  
24 order. Is there any problem with that?

25          SECRETARY BASTIDA: I don't believe. I

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1 believe that it can be attached very easily.

2 CHAIRPERSON MITTEN: Thank you.

3 SECRETARY BASTIDA: As long as the  
4 Commission takes that action.

5 CHAIRPERSON MITTEN: Thank you.

6 SECRETARY BASTIDA: Thank you.

7 CHAIRPERSON MITTEN: I had one or two  
8 things that I just wanted to do. I have some  
9 editorial changes, but substantively on page 2, the  
10 last sentence in the third paragraph says "In light  
11 of those factors, the Commission voted to deny the  
12 applicant's request for a time extension of the  
13 second stage approval." Actually, I believe the  
14 first vote that we took, that's what it addresses,  
15 was we denied the time extension for the entire PUD.

16 Does anybody remember that any other way?

17 So I would have that set for a time extension of the  
18 approval of the PUD. And then there is a paragraph  
19 at the bottom of page 3. Well, the second to the  
20 last paragraph I would like to address first. The  
21 last sentence says "The process to consider the  
22 second stage PUD application will allow the  
23 Commission to take into account all relevant factors  
24 before construction can proceed."

25 And just to make sure that Mr. Parsons'

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1 concerns are adequately addressed, I wanted to add  
2 take into account all relevant factors, including  
3 proffered amenities and benefits, because I think the  
4 concern was that you were somewhat uncomfortable with  
5 the height, and we want to be sure that the amenities  
6 and benefits of whatever was in the first stage are  
7 not tied down yet.

8 COMMISSIONER PARSONS: Okay. Thank you.

9 CHAIRPERSON MITTEN: And then the last  
10 paragraph on page 3, I would like to eliminate,  
11 because I think there was some concern, and it's a  
12 concern I share, that we want to evaluate this PUD on  
13 its own merits. I don't think we want to  
14 necessarily, and I would be happy to be corrected on  
15 this, but I don't think that we want them coming to  
16 us saying one of their benefits of their PUD is that  
17 they are eliminating a use that people don't want.

18 COMMISSIONER PARSONS: You're absolutely  
19 right and we never talked about this.

20 CHAIRPERSON MITTEN: Right.

21 COMMISSIONER PARSONS: It might have been  
22 in the Office of Planning's presentation to us. Yes,  
23 I would agree. That paragraph will come back to  
24 haunt us.

25 VICE CHAIR HOOD: Madam Chair, you're

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1 speaking about the last paragraph?

2 CHAIRPERSON MITTEN: The last paragraph  
3 on page 3.

4 COMMISSIONER PARSONS: I'm curious as to  
5 how it even got in there.

6 COMMISSIONER MAY: Yes.

7 CHAIRPERSON MITTEN: Well, it all depends  
8 on who wrote it.

9 VICE CHAIR HOOD: Yes, I agree.

10 CHAIRPERSON MITTEN: Okay. All right.  
11 And then I had, as I said, a few editorial changes  
12 that I would like to make, but I will give those to  
13 staff. So with that, I would move approval of the  
14 draft order on 910-B in the Florida Rock PUD  
15 extension. Is there a second?

16 VICE CHAIR HOOD: Second.

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

19 VICE CHAIR HOOD: Aye.

20 CHAIRPERSON MITTEN: Aye.

21 COMMISSIONER HANNAHAM: Aye.

22 COMMISSIONER PARSONS: Aye.

23 COMMISSIONER MAY: Aye.

24 CHAIRPERSON MITTEN: Those opposed,  
25 please, say no.

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1 Ms. Sanchez?

2 MS. SANCHEZ: The staff would record the  
3 vote 5 to 0 to 0 to approve in case 01-31, order  
4 number 910-B. The motion was made by Commissioner  
5 Mitten, seconded by Commissioner Hood and in favor by  
6 Commissioners Hannaham, May and Parsons.

7 CHAIRPERSON MITTEN: Thank you. Mr.  
8 Bastida, is there any other business before the  
9 Commission for today?

10 SECRETARY BASTIDA: No, Madam Chairman,  
11 it's just the reminder schedule and you can look at  
12 that yourself, and that concludes all the items in  
13 the agenda for today.

14 CHAIRPERSON MITTEN: Thank you, Mr.  
15 Bastida.

16 SECRETARY BASTIDA: Thank you.

17 CHAIRPERSON MITTEN: This meeting is  
18 adjourned.

19 (The meeting was adjourned at 4:05 p.m.)  
20  
21

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