

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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AGENDA

REGULAR MEETING
1146th MEETING SESSION (4th of 2003)

+ + + + +

MONDAY
APRIL 14, 2003

+ + + + +

The Regular Meeting was convened in the Office of Zoning Hearing Room, 441 4th Street, NW, Suite 220, Washington, D.C. 20001, pursuant to notice at 1:30 p.m., Carol Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Commissioner
JAMES HANNAHAM	Commissioner
JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

JERRILY R. KRESS	Director
ALBERTO P. BASTIDA	Secretary, Zoning Commission
SHARON SANCHEZ	Office of Zoning

OTHER AGENCY STAFF PRESENT:

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ANDREW ALTMAN	Director, Office of Planning
MAXINE BROWN-ROBERTS	Office of Planning
STEVEN COCHRAN	Office of Planning
JOHN FONDERSMITH	Office of Planning
ARTHUR JACKSON	Office of Planning
JOEL LAWSON	Office of Planning
ELLEN MCCARTHY	Deputy Director, Office of Planning
DAVID MCGHETTIGAN	Office of Planning
JENNIFER STEINGASSER	Office of Planning
KAREN THOMAS	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

COREY BUFFO, ESQ.
LORI MONROE, ESQ.
MARY NAGELHOUT, ESQ.

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I-N-D-E-X

Preliminary Matters.....	4
Action on Minutes.....	
Special Public Meeting Minutes of February 24, 2003.....	5
Public Meeting Minutes of March 10, 2003.....	6
Status Report, Office of Planning.....	7
Hearing Actions, Office of Planning	
Z.C. Case No. 03-04 (Meridian Hill Condominium)..	10
Z.C. Case No. 03-11 (Columbia Hospital).....	16
Z.C. Case No. 03-15 (Bennett Career Institute)...	21
Z.C. Case No. 03-05 (Department of Transportation Headquarters.....	24
Proposed Action.....	
Z.C. Case No. 02-17 (5401 Western Avenue).....	52
Z.C. Case No. 03-01 (Takoma).....	102
Z.C. Case No. 02-35 (Building Heights.....	104
Z.C. Case No. 02-34 (Optical Transmission Nodes).....	116
Z.C. Case No. 02-44 (Retail Arcades.....	124
Final Action.....	
Z.C. Case No. 02-51 (1616 Rhode Island Avenue, NW, Time Extension).....	136
Z.C. Case No. 03-08/99-02M (1000 K Street, Time Extension).....	138
Z.C. Case No. 00-04 (Minor Modifications to Zoning Regs.....	140
Z.C. Case No. 02-32 (Georgetown Performing Art Center	141

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

1:36 P.M.

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the Zoning Commission of the District of Columbia. Today is Monday, April 14th, 2003.

My name is Carol Mitten and joining me this afternoon our Vice Chairman Anthony Hood and Commissioners John Parsons and James Hannaham. Commissioner May will not be joining us this afternoon, but he has sent several absentee votes.

The agenda for this afternoon is available in the plastic holder by the door where you came in. And I would just remind folks that are present that we do not take any testimony from the public at our meetings unless you're invited to come forward by the Commission.

A few adjustments to make to the agenda before we begin.

First, under Hearing Action, the Zoning Commission Case Number 03-05 which is the Department of Transportation PUD, we're just going to move that to be the fourth item under Hearing Action since that may take us a few more minutes than the others.

Under Proposed Action, Item B, Zoning

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Commission Case No. 02-32, Georgetown Performing Arts Center, that is appropriately under Final Action and that will be the fourth case under Final Action. That=s a further processing under the BZA rules and we do not have two steps to our approval process there.

And then the item under the Consent Calendar, Zoning Commission Case No. 03-14 will be postponed. We will take that up at our special public meeting which we have scheduled for April 28th at 5:00 p.m. in the hearing room.

All right. Mr. Bastida, did you have any other preliminary matters?

SECRETARY BASTIDA: No, Madam Chairman.

CHAIRPERSON MITTEN: Thank you.

Then we=ll move to action on the minutes.

We have minutes from our Special Public Meeting of February 24th, 2003.

Any corrections?

VICE CHAIRPERSON HOOD: I make a motion that we approve the minutes of February 24th with any necessary corrections.

COMMISSIONER PARSONS: Second.

CHAIRPERSON MITTEN: All right. Any discussion?

All those in favor please say aye.

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(Ayes)

CHAIRPERSON MITTEN: And I would add Mr. May to the chorus of ayes through an absentee vote.

Any opposed? Mr. Bastida or Ms. Sanchez, I'm sorry.

MS. SANCHEZ: Yes. Staff would record the vote five to zero to zero to approve the public meeting minutes of February 24, 2003, Commissioner Hood moving, Commissioner Parsons seconding, Commissioners Mitten and Hannaham in favor and Commissioner May in favor by absentee ballot.

CHAIRPERSON MITTEN: Thank you. Now, we have the minutes of our March 10th, 2003, public meeting.

VICE CHAIRPERSON HOOD: Madam Chair, on page 4 of these particular minutes, C.1, I don't remember us sending that case back to the neighborhood as it is stated here.

CHAIRPERSON MITTEN: I agree with you. I think that's correct. So, are you proposing that item number 1 under C on page 4 be eliminated?

VICE CHAIRPERSON HOOD: I think it should be. I think the question was asked. Maybe that's more in line with what I remember.

CHAIRPERSON MITTEN: I agree.

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I would also include, there was a fourth item under Final Action that day, which was the Florida Rock time extension. And on page 3 under Proposed Action, the first case, 02-46, that was approved for a period of two years.

And with those corrections, I would move approval of the March 10th public meeting minutes.

VICE CHAIRPERSON HOOD: Second.

CHAIRPERSON MITTEN: Any further discussion?

All those in favor please say aye.

(Ayes)

CHAIRPERSON MITTEN: Mr. May says aye.

Those opposed please say no.

Ms. Sanchez.

MS. SANCHEZ: Yes. Staff would record the vote five to zero to zero to approve the public meeting minutes of March 10, 2003. Commissioner Mitten moving, Commissioners Hood second, Commissioners Hannaham and Parsons in favor and Commissioner May in favor by absentee ballot.

CHAIRPERSON MITTEN: Thank you.

Now we'll move to the status report from the Office of Planning.

MS. STEINGASSER: Madam Chair and

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Commissioners, the staff report for April is in front of you at the dias. We have four set downs coming today: Meridian Hill at Belmont; the USDOT project; the Bennett Career Institute which was referred from the BZA for consistency action, and; the Columbia Hospital proposed map amendment or preferred planned unit development. Arthur Capper, Hope 6, will be before you next month and was recently filed. That=s the current status of the OP. Nothing new has changed beyond that.

CHAIRPERSON MITTEN: Okay. So, we=re looking forward to one set down in May likely?

MS. STEINGASSER: Yes. Yes, ma=am.

CHAIRPERSON MITTEN: Okay. Any questions for Ms. Steingasser on the status report?

I had a question since this has been hanging around for awhile and now that we=re sort of moving in a direction. On the third page near the bottom, squares 369 and 370. What=s the status of that proposal or rezoning request?

MS. McCARTHY: Yes. That, you will be seeing a proposal probably in the next couple of months on that. Now that the final selection has been made for the site, we are actively working with the successful bidders on that project to develop a zoning

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strategy that deals with the housing requirements and other constraints on that site. So, we expect to bring that to the Commission probably within the next two months.

CHAIRPERSON MITTEN: Do you have a sense of in what form that will come to us, whether it's a planned unit development or map amendment?

MS. McCARTHY: I think it will probably be a text amendment.

CHAIRPERSON MITTEN: Okay.

MS. McCARTHY: With a modification to the downtown development district.

CHAIRPERSON MITTEN: Well, we'll look forward to that then. Thank you.

Any other questions? All right.

Then we're ready for the first item under Hearing Action which is Zoning Commission Case No. 03-04, which is the proposed Meridian Hill Condominium and we'll turn to the Office of Planning for a brief summary and their recommendation.

MS. STEINGASSER: The staff is currently entering the building.

CHAIRPERSON MITTEN: Okay.

MS. STEINGASSER: Just a second to come up the stairs.

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CHAIRPERSON MITTEN: How close are we? Should we go to the next item?

MS. McCARTHY: Maybe we should go to the next item.

CHAIRPERSON MITTEN: All right. Then let's go to Zoning Commission Case No. 03-11 which is the Columbia Hospital -- oh, I was changing back. Where are we now?

MS. McCARTHY: Why don't we go ahead with the Meridian Hill since --

CHAIRPERSON MITTEN: All right. Now we're back to Meridian Hill. Okay.

MS. BROWN-ROBERTS: Good afternoon, Madam Chairman and members of the Commission.

I am Maxine Brown-Roberts from the Office of Planning.

The subject site is currently zoned R5B. This zone is flexible to design in all types of urban residential development and moderate height and density.

The applicant is requesting a development using the PUD standards of the R5B zone to accommodate a multiple dwelling use on the site.

As part of the application, the Applicant has request a deviation from the minimum lot area

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requirement of one acre for a PUD in an R5B district. Based on our preliminary review of the proposal, OP believes that the proposal will be in the best interest of the city.

The proposed lot area is 98 percent of the area required or two percent less than required. Additionally, the proposed project is outside of the central employment area and 100 percent of the gross area of the building will be dedicated to residential use.

From preliminary review, the proposed development meets the purpose and standards for the PUD developments outlined in 11 DCMR, Chapter 24 to encourage high quality developments that provide public benefits.

The proposed development will replace buildings that have been vacant, dilapidated and an eyesore in the community for sometime and will make these properties viable once again.

The proposed planning unit development approach provides the beneficial site planning and design flexibility that a project requires to be incorporated smoothly into the residential community.

As part of the public benefit package, the Applicant has proposed funds for the Garnett-Patterson

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Middle School after-school program and for labor for repair, replacement and installation of specific items.

Two, to provide funds to provide continued support for the metropolitan Boys and Girls Clubhouse Number 10 to support their after-school program.

They will also propose affordable dwelling units on site and landscaping along the entire frontage of their property and complimentary landscaping on the west side of Belmont Street.

We will continue to work with the Applicant and the community to address the specifics of these amenities and how they will serve and impact the community.

Section 2403.4 of the zoning regulation requires that application is not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the subject site. The generalized land use map recommends the subject site for meeting density residential with a multi-unit and mid-rise apartments as a predominant use. The density and residential unit type proposed in this multi-unit development is not inconsistent with that recommendation.

Additionally, the PUD is not inconsistent

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with other sections of the Comprehensive Plan and the ward plan including the major themes of the plan as it relates to housing, land use and urban design.

The applicant has had a number of meetings and discussions with ANC-1C and residents in close proximity to the site to get their input and comments on the proposed development. This dialogue will continue if the application is set down.

The following review of the application, the Office of Planning believes that the proposed PUD is not inconsistent with the requirements of the zoning regulation and elements of the Comprehensive Plan and recommends that the application for consolidated PUD be set down for public hearing.

Thank you, Madam Chairman.

CHAIRPERSON MITTEN: Thank you, Ms. Brown-Roberts.

Questions for the Office of Planning or comments on the proposal?

VICE CHAIRPERSON HOOD: I just have one comment. I'm hoping in the deliberations with the applicant that we make sure that we have a qualified pool for the first source of employment agreement program and I think this is the time for us to do it.

I didn't see it noted. I do know that

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they are offering the first source employment agreement. But I wanted to make sure up front before we get to the hearing process or after that we come up and say that the District, we didn't have any qualified people, we didn't know what jobs. So if we could kind of find that information out up front, I think that would be all.

MS. MCCARTHY: Okay. I have spoken to the applicant about that and that is something that we will be working on.

VICE CHAIRPERSON HOOD: Thank you.

CHAIRPERSON MITTEN: I had a -- I have a question to start off with and then a couple of comments.

The point number 5 that you raised about additional information you'll be seeking from the applicant, the Construction Management Plan, I just want to be clear because it gets confused in certain cases.

Are they suggesting that they're going to proffer that as an amenity because it's not a requirement from zoning?

MS. BROWN-ROBERTS: Yes. We've spoken to them about that. Since this development is going to take place in an area where they are surrounded by a

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vibrant residential neighborhood and they have said, yes, they will do that.

CHAIRPERSON MITTEN: So, they will proffer that as an amendment?

MS. BROWN-ROBERTS: Yes.

CHAIRPERSON MITTEN: Okay. I also just wanted to see some additional discussion which perhaps you could guide. They make a fair amount or they emphasize the fact that the units will be owner-occupied. And I understand that they are proposing a condominium but there=s not necessarily a guarantee that units will owner occupied and I just wondered what strategies they will be pursuing to insure, since they are emphasizing that fact. What steps will they take to insure that these units, in fact, are owner occupied?

And then you mentioned that, this is item number 6, that you want some more details on the garage door along Belmont Avenue. And I was wondering if you could at least explore with them whether there could be a greater separation between the main entrance and the garage door because those are right next to each other and they seem to be in conflict.

MS. BROWN-ROBERTS: Okay. That=s something that we will definitely discuss.

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CHAIRPERSON MITTEN: Terrific.

Any other comments or questions?

All right. We have a recommendation from the Office of Planning to set down Zoning Commission Case No. 03-04 and I would so move.

VICE CHAIRPERSON HOOD: Second.

CHAIRPERSON MITTEN: Any further discussion?

All those in favor please say aye.

(Ayes)

CHAIRPERSON MITTEN:

Those opposed please say no.

Mr. May did not provide an absentee ballot on this item.

Ms. Sanchez, would you record the vote.

MS. SANCHEZ: Yes. The staff would record the vote four to zero to one. Commissioner Mitten moving, Commissioner Hood seconding, Commissioners Hannaham and Parsons in favor. Commissioner May not present, not voting to approve for set down Case No. 03-04 which will be a contested case.

CHAIRPERSON MITTEN: Thank you.

Now we will move to Case No. 03-11 and this is either map amendment or a PUD with a map amendment for the Columbia Hospital site. Ms.

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McCarthy.

MS. McCARTHY: Yes. Thank you, Madam Chair.

The Columbia Hospital project the developer proposes to redevelop Columbia Hospital with high density residential and ground floor retail, that is something that is supported highly by the community. But the R5D classification which the project is located within has no ability to provide commercial use, retail use at the ground floor. So, the developer has submitted a request for a map amendment to commercial zoning in order to make that possible.

While the Office of Planning is highly supportive of the project and is working with the applicant on historic preservation review as well as the zoning, we feel that a straight rezoning of that site to a commercial designation of C2C, given that although the land use map designates it as institutional, the area all around that is designated high density residential.

Even though there is a covenant proposed on the site, we were concerned about the enforceability and about the precedent to be set by that and sat down with the applicant and suggested

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that inasmuch as there is a well-developed proposal for the site that, first of all, we suggested that this was precisely the purpose for which we had drafted the high-density retail residential overlay and the purpose that the Commission had proposed it being set down on that square, on square 25.

The applicant was concerned though that given that that is a creation of a new zoning category, there may be a problem with having that approved in time so that the applicant could proceed quickly. And we agreed with the applicant that given the volatility of interest rates or potential volatility of interest rates and the importance of getting additional housing in the Foggy Bottom/West End neighborhood that it would be good to look at an alternative besides simply looking at HDRR overlay on that site

So, we've proposed in addition or in the alternative that a planned unit development be set down. We talked to the applicant. They were agreeable to that and have submitted a letter to that effect.

So, our proposal would be to set it down in the alternative as a planned unit development and for the high density retail residential overlay which

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is currently set down for consideration on that site.

CHAIRPERSON MITTEN: Thank you.

Any questions for the Office of Planning or comments on the proposal?

I would just note the fact that we did receive a letter from the Foggy Bottom Association that basically suggests that the covenant is adequate to protect the development on the site. And I have to say I share Office of Planning's concern, and a similar issue was raised when we did the American University Campus Plan where a community had a private covenant with the university and they were seeking to have us basically enforce it and we were not able to.

So, while, you know, when everybody is agreeing it's fine. But it's when they disagree that it's a problem. So, I think we have to proceed making land use decisions sort of separate and apart from private covenants.

VICE CHAIRPERSON HOOD: Madam Chair, a clarification. So, we're setting this down now. If it's set down, it's set down as a PUD under HDRO high density?

CHAIRPERSON MITTEN: No. The proposal would be to set down the planned unit development with a map amendment from the existing R5D to C2C and

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already running on a separate track is the inclusion of this site in the HDRR overlay. And the Office of Planning on page 3 of their report has said that they would bring back to us a recommendation that would provide the needed flexibility for a site like this improved with a historic structure because right now even HDRR as it's proposed wouldn't allow the kind of flexibility that they need to get the retail there.

So, there are actually two things moving along. And I think the applicant was interested that HDRR isn't moving along quite as quickly as they needed to, so this is a way of moving ahead.

VICE CHAIRPERSON HOOD: Yes, thank you.

CHAIRPERSON MITTEN: All right. With a recommendation from the Office of Planning and concurrence from the applicant, who would have to then revise their application, that we set down Zoning Commission Case No. 03-11 as a planned unit development and related map amendment from R5D to C2C for the Columbia Hospital for Women site and I so move.

COMMISSIONER PARSONS: I second that.

CHAIRPERSON MITTEN: Any further discussion?

All those in favor, please say aye.

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(Ayes)

CHAIRPERSON MITTEN: Those opposed please say no.

Mr. May did not provide an absentee vote for this case.

Ms. Sanchez.

MS. SANCHEZ: The staff would record the vote four to zero to one to set down Case No. 03-11 as a PUD and related map amendment case.

Commissioner Mitten moving, Commissioner Parsons seconding, Commissioners Hood and Hannaham in favor. Commissioner May not present, not voting. And, again, this will be a contested case.

CHAIRPERSON MITTEN: Yes. Thank you.

All right. The third item under Hearing Action is Zoning Commission Case. No. 03-15 which is a rezoning filed by the Bennett Career Institute.

And whenever you're ready, go ahead.

MS. THOMAS: Thank you. Good afternoon, Madam Chair, Members of the Commission.

I'm Karen Thomas with the Office of Planning presenting our recommendation that a proposed map amendment before us be set down for public hearing.

The Bennett Career Institute has filed a

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request for a map amendment to rezone their property located at 700 Monroe Street, NE, Lot 827 in Square 3657 from the R1 zone to the C1 zone district.

The applicant previously proposed to relocate the existent trade school at this site through a use variance before the Board of Zoning Adjustment in March 2003. At that time, the Board recommended that the applicant withdraw their request for the variance since they were not able to demonstrate any hardship stipulated by the variance test.

The Board suggested that a map amendment before the Zoning Commission was an appropriate action since the proposal was not acceptable in the current R4 zone district and the amendment would be consistent with the general land use map.

The proposed uses and restrictions on the property are consistent with the C1 zone district, the Comprehensive Plan and the adjoining property to the north of the site which is similarly zoned. The generalized land use map defines the overall squares and makes land use combination of low density commercial with production and technical employment.

For these reasons, OP also recommended denial of the variance and supported a map amendment

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request. OP has determined that the use of the property by BCI for a trade school would be permitted by right in the C1 zone and would not be inconsistent with the land use map. Therefore, the Office of Planning recommends that the Zoning Commission set the proposed map amendment down for public hearing.

Thank you.

CHAIRPERSON MITTEN: Thank you, Ms. Thomas.

Any questions?

VICE CHAIRPERSON HOOD: Madam Chair, I=d just ask that we make sure that we -- I guess, this has already been done during the BZA process --that we notify the correct ANC. I don=t know if 5C is the correct ANC, but I know there was some redistricting that took place. So I would hope that we don=t get to the hearing and then find out we have a problem with ANC. So if we can make on that, I would appreciate it.

Thank you.

CHAIRPERSON MITTEN: Okay. Anyone else?
Mr. Hannaham.

VICE CHAIRPERSON HOOD: I had the privilege of sitting on the BZA during the discussion when this proposal was first brought forward, and I mentioned at that time that I was very happy that they would choose

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to come back to us and they have. And I would be very favorably disposed.

Thank you.

CHAIRPERSON MITTEN: Terrific. So, would you like to --

VICE CHAIRPERSON HOOD: I would move that the Zoning Commission Case No. 03-15 be set down for a map amendment to rezone Lot 827, Square 3657, from R4 to the C1 zone district.

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

(Ayes)

CHAIRPERSON MITTEN: Those opposed please say no.

Mr. May did not provide an absentee vote for this case.

Ms. Sanchez.

MS. SANCHEZ: Yes. The staff would record the vote four to zero to one to approve Case No. 03-15 for set down. Commissioner Hannaham moving, Commissioner Mitten seconding, Commissioners Hood and Parsons in favor. Commissioner May not present, not voting. And, again, a contested case.

CHAIRPERSON MITTEN: Thank you. All right.

Now, we're ready for Zoning Commission

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Case No. 03-05 which is the planned unit development for the Department of Transportation Headquarters.

Mr. Altman.

DIRECTOR ALTMAN: Yes, thank you, Chair Mitten.

The Office of Planning recommends set down for the U.S. Department of Transportation Headquarters. I just want to give a few brief comments of background and then Joel Lawson of the staff will walk through some of the issues related to the PUD.

As the Commission knows this really, while a separate case, importantly comes after our recently submitted report that the Commission adopted to set down zoning for the South East Federal Center. That was important because it set the overall context for development of this very important, in total, 55 acre site. The DOT is about ten and a half acres, but, really set, I think the overall framework in terms of establishing a mixed use neighborhood of both office, residential, retail so that it=s not just a single use district, but really a new waterfront neighborhood extending the grid of the city to the water so it=s really connected from the neighborhood to the waterfront providing the public space framework of

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which this will be a part, both for the near southeast neighborhood and the overall Anacostia waterfront initiative. And I think really provided really very good direction that I think will be helpful in terms of understanding the Department of Transportation Headquarters which we believe is consistent with that effort. And while it is not technically a part of that, I think the PUD before you is something we worked very hard on. We worked very hard with the applicant, JBG and DOT and GSA who has brought this forward on many months of work to further this project that=s important to, I think, catalyze the near southeast neighborhood and, in particular, the South East Federal Center.

Primarily, the focus of many of these issues has been how this significant investment of a headquarters, cabinet-level department, can bring the benefit of the waterfront and to this neighborhood and further our objectives while at the same time understanding that there are security issues. And I think that will probably be some of the subject of the discussion and further in the hearing that such an agency has.

So, we have been working really primarily on issues related to: (1) the overall street pattern,

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in terms of the site; (2) the open space network and how this fits in. And you'll hear a bit about that, both in terms of some of the plazas that are being provided, the connection to the waterfront as well as the canal blocks that are just on the other side of M Street, and some of the transportation issues in terms of how circulation will work through the site because it sits at such a critical point of access in terms of connecting New Jersey and Third and Fourth Streets that are really fundamental to making this whole overall project work.

So, we have been working very hard. We haven't resolved all the issues, but I think we've made significant enough progress to bring this forward to you and to move this forward for a public hearing.

And so with that, I'll turn to Joel and walk through some of the issues.

MR. LAWSON: Thank you, Madam Chair, Members of the Commission. My name is Joel Lawson with the D.C. Office of Planning.

The US DOT application is for initial zoning of C3C, while the PUD application would permit additional height. The OP feels that C3C is not an appropriate base zone. Other sites on this side of M Street are or are proposed to be zoned CR, including

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the adjacent South East Federal Center lands and much of the capital gateway overlay district.

The OP recommends a base zoning of CR to insure that if for some reason the US DOT Headquarters does not proceed, consistent zoning would be in place for appropriate development. However, given the proposed form and design of the US DOT building and the proposed amenity package, which I=ll discuss a bit more in a second, OP supports the application for C3C zoning with the PUD which would permit additional height and density.

Federal security requirements have been an overriding factor in citing design and programming including US DOT requirements for a 50 foot security perimeter around the complex, exclusion of publicly accessible retail within the building footprint and a prohibition of vehicular traffic along Third Street, S.E.

The OP and DDOT have consistently expressed concerns with these as being incompatible with zoning requirements for private development in the area and city wide and strongly feel that security decisions must not overly compromise the vitality and public enjoyment of the city and its streets.

District staff and the applicants have

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also been discussing the amenity package. In evaluating the proposal, it is important to distinguish items that are not considered amenities as per zoning regulation definitions. Initiatives intended to provide a quality cabinet-level headquarters and ones that mitigate the detrimental impacts of the stringent security requirements are vital to the success of the building and improving its integration into the surrounding urban fabric, but they do not necessarily constitute a designated amenity.

The whole amenity package however does include initiatives of benefit to the broader community such as the provision of a new publicly accessible South West Plaza, a significant contribution towards the Canal Blocks park, the dedication and construction of portions of public roads and the establishment of a comprehensive signage package for the neighborhood. Additional neighborhood amenities are under discussion and will result in further commitments.

In summary, OP supports the decision to retain the US DOT Headquarters in the District and expects to work with the applicant to address these issues and further improvements to the amenity package

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prior to the public hearing.

We, therefore, recommend that the application be set down for public hearing. And we are available for questions.

Thank you.

CHAIRPERSON MITTEN: Thank you, Mr. Lawson and Mr. Altman.

Any questions or comments for the Office of Planning? Mr. Parsons.

COMMISSIONER PARSONS: I guess the thing that=s of most concern to you and I guess me, I guess you and me, is the security aspects of this proposal.

The only explanation that=s in any of the material that I read over the weekend is that it=s in the lease as though it=s non-negotiable, whether it=s retail on M Street or 50 foot setbacks or whether we=re going to open Third Street. And certainly the applicant who is the successful bidder, if that=s the correct term, who holds the lease is captive to that, as I get it. That is, is there somebody in this mix of people that you=re talking to that represents DOT and is there any wiggle room or compromise?

I mean, to build a fortification like this and say, well, gee, the people can pass through it as pedestrians on the way to the waterfront and

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we=d have a little museum of transportation doesn=t seem like they=re willing to participate in this. They=ve just laid down the law and that=s the way it=s going to be. Is that where we are?

I mean, if there=s no further negotiation from their standpoint on these security issues, then we really don=t have anything we can adjust, do we?

DIRECTOR ALTMAN: You know, I=m not going to speak for the applicant on those issues. I mean, I think that they do have certain requirements that they=ve expressed to us that to them are fundamental, I think, to their program. The security requirements that you outlined.

What they are proposing to do, and I think this is something that you really need to directly address to them because I think there=s -- both to JBG, DOT and GSA. What they=re proposing to do is to try to, in a way, mitigate some of those issues or to soften some of those issues in light of their security requirements whether that=s, for example, what they proposed as retail. They have proposed that they cannot have retail in the building. Retail is not directly serving DOT employees, that is retail on the street that would be publicly accessible. So they=ve proposed a system of kiosks and outdoor sort of retail

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in addition to the 14,000 square feet of the pavilion which would be renovated and brought to retail which would be publicly accessible. So, I think what they're proposing and what we need to evaluate is in light of their security requirements or through the mitigations, do the way that they propose to address those meet the overall goals. I think that's something you would need to address to them more than to me.

COMMISSIONER PARSONS: Well, what I mean, Mr. Altman, is GSA a participant in your discussions or is DOT a participant in your discussions?

DIRECTOR ALTMAN: Yes.

COMMISSIONER PARSONS: And there's absolutely no flexibility as far as they are concerned or a lease is a lease, that's what our security guys told us, and we can't violate that because our security guys will --

DIRECTOR ALTMAN: That's right.

COMMISSIONER PARSONS: -- leave or get mad or go away or --

DIRECTOR ALTMAN: Well, that's right. I mean they --

COMMISSIONER PARSONS: It's really a shame.

DIRECTOR ALTMAN: They've done a security

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assessment and those are seen as largely inviolate or at least they are presented as such. And so much of our discussion has been exactly around how to address those issues.

COMMISSIONER PARSONS: So, if we wanted to suggest further study of reopening Third Street, there is no reason to do that because it=s non-negotiable? Or retail on M Street, is non-negotiable?

DIRECTOR ALTMAN: I think you could ask. I mean, I think you can address. To be honest --

COMMISSIONER PARSONS: Yes, but you=ve been there. You=ve been working with them, haven=t you?

DIRECTOR ALTMAN: I have.

COMMISSIONER PARSONS: And you apparently have learned that it=s not possible.

DIRECTOR ALTMAN: Well, that=s not to say that it precludes, you know, your requesting that information from them and making your judgment as to that.

I mean, I felt that we had reached the point where it was important to bring this forward to set down and to public hearings so those issues would not be a matter of an OP and the applicant discussion, but would be a broader conversation with the Commission.

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I'm not going to suggest what that outcome might be. We've reached, I think, the point that we were able to, I think, in enough for a thorough discussion to warrant the public hearing, but I don't think that necessarily stops.

I guess what I'm suggesting to you, Commissioner, is I don't think that stops the conversation. I don't feel that you have to say because OP has not been able to be successful in regard to that, that necessarily the Commission should not ask those questions. I think they do have requirements and that you should hear what they are as well and make a judgment.

COMMISSIONER PARSONS: Well, would it be helpful if we denied setting this down until such time as you could work further with them?

DIRECTOR ALTMAN: No. I don't think that that would be helpful. I think at this point the project has been through and we've had a lot of discussion. I think it's actually much more productive to keep moving the project forward. I think the public hearing would be helpful in that regard. I think the questions that you have that you direct to the applicant that they can respond to you. And I would just keep the dialogue going. I don't

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think it needs to stop or be sent back. I don=t know that we would be able to bring you anything different than what we brought you today that would be worthwhile.

COMMISSIONER PARSONS: Well, have you seen any kind of security report that led to this lease? Maybe it=s so secure they can=t share it with us.

MR. LAWSON: To some extent that=s actually right. We haven=t see a full report. We have seen summaries of some of the security requirements and I believe the applicant has submitted a summary of those security requirements to you. I=m not sure if you=ve received those yet in your package.

COMMISSIONER PARSONS: I didn=t. I saw reference to a lease that said this is the way it=s got to be. But maybe I-- there was a lot of paper so maybe I missed it.

That=s all I have at this point.

CHAIRPERSON MITTEN: How long is the lease to the Department of Transportation?

MR. LAWSON: I believe it=s for 15 years with further options beyond that, I=m not sure. Fifteen years.

CHAIRPERSON MITTEN: Okay. I mean, I think related to, I think, where Mr. Parsons was going and

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you raised the issue in your report is, you know, we're designing something for potentially just a user who is committed at least for 15 years and yet, you know, the impact on the area is going to far out live that tenancy potentially, depending on how long they stay.

I guess to pick up on some of the issues that Mr. Parsons raised, I think what we have to do is we have to understand the issues and what's motivating them and if they're non-negotiable, what the adverse impacts are and then insure that to the extent that these are insurmountable issues, they're not negotiable issues, that we have to insure that the mitigation is sufficient, and that's what the public hearing process is all about. So, what I would like to be able to do is understand in the larger context, not just in the Department of Transportation context, but in a larger context of, you know, the Government and their security requirements, why some of these things are necessary. Because, I mean, NCPC is suggesting that, you know, these are not things that are being recommended, you know, across the board. So I would just like to run through a couple of things that I would like to have flushed out further when we get to a public hearing.

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The first being why does the 50 foot defensible perimeter have to be a design feature because there are many Government buildings that do not have the 50 foot set back and somehow those buildings are considered to be secure. And how is it dealt with and is there another way besides a 50 foot set back to deal with it?

The issue about the M Street linear park is a good example of what is present in a number of the things that are being proffered by the applicant.

It=s being proffered as an amenity, and I think the Office of Planning focused on this too, but it really would constitute mitigation. So, we really need to be clear about what are the adverse impacts and what things are being offered specifically to mitigate those and then anything else that=s left over is an amenity. But, you know, if these things stand, then we have some significant mitigation to deal with.

And so the M Street linear part, I would hope we don=t keep calling it a park, but clearly that=s an item that=s a mitigation item and not an amenity.

And then NCPC also expressed concern about that and I would invite their participation to provide us this sort of big picture view about different ways

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of dealing with security issues.

The publicly accessible retail, are there other ways to deal with the security concerns besides just this whole sale prohibition on publicly accessible retail. NCPC had focused on perhaps having retail just at the corner of New Jersey and M Street, and is there a way to do that without compromising the entire security program for the building?

I don't know if you know the answer to this question, although something that you said suggested the answer, whether or not there will be retail provided within the building to serve the Department of Transportation employees?

MR. LAWSON: Actually, there's kind of two parts to that. The answer is yes.

And I should also note that the building is being designed to accommodate future retail should security requirements diminish with the new tenant. For example, the floor height of the main floor is being designed to incorporate retail at a future date, if possible.

CHAIRPERSON MITTEN: Okay. And then you said, yes, there will be retail serving just the Department of Transportation employees?

MR. LAWSON: I'm sorry, yes, there will.

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CHAIRPERSON MITTEN: And do you know how much?

MR. LAWSON: There=s a -- I don=t know exactly how much. There=s a cafeteria as well as other accessory retails associated. It=s all located on the ground floor.

CHAIRPERSON MITTEN: Okay. I mean, I=m not going to get into making many specific suggestions, but one that comes to mind is, if they won=t have the retail in the building, but they will have something that will keep their employees in the building, then that=s counterproductive on two levels. So, if they just had no retail at all, then it would force people to go out someplace to lunch and that would actually foster development of retail in other projects without sacrificing the integrity of the building.

So, you know, just things like that I think we can probably have a substance of discussion about.

I=d like to know if there is a place that they could use as an example where they could show where these retail kiosks work well sort of in isolation as opposed to part of a larger retail composition.

Another question that I had is if building

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170 is converted to retail or restaurant use, where are the patrons going to park? Is there going to be any public parking in the project or is that going to be off site?

It seems, now this could just be my simplistic reading of the submission, but it seems that the prohibition on public vehicular traffic along Third Street is being driven by the 50 foot set back which isn't being provided along Third Street. So I would like discussion at the public hearing about why the 50 foot set back wasn't incorporated into the design on Third Street so that that street could be open to public vehicular traffic.

I definitely want to understand more about this transportation museum, walking museum, or whatever it is that's being proposed. I would, again, like an example of that that's been used in another context and the degree of success that they've experienced.

DDOT has expressed concern about the traffic impact of Third Street not being open on the balance of the neighborhood as South East Federal Center is developed. I don't want to prejudge where we're going to go, but I think that in order to have a full understanding of the impact that this project

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will have, we do need to understand how Third Street could serve the balance of the neighborhood. So, I would want to see that more developed impact analysis that DDOT has requested.

The NCPC in their letter to us expressed concern over the balance between security and openness and, again, I would look forward to them giving us some advice about what=s being utilized in other context. But, again, to the extent that we can=t accomplish sort of a balance that is satisfactory to the Commission, we=re going to have some mitigation. You know, every time we reach an impasse and it=s counter to the goals that we=re trying to accomplish for the larger area there is going to have to be mitigation of that. and that=s before we get to amenities.

I guess that we can discuss this a little bit more, the Commission can discuss this a little bit more when we decide the base zone for this. But clearly one of the things that this project does that=s counterproductive to the overall goals for the area, is we=re trying to create a mixed use environment and this takes a pretty big block of space and designates it for one kind of use, office use. And so I=d like to know better how this project and

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the design of it is going to be integrated into and relate to what we hope will be residential developments either in South East Federal Center or, you know, adjacent on the peripheral in the area that was part of the capital gateway overlay.

And then I'd also like to see DDOT's concern regarding the partial private control of what would otherwise be part of the New Jersey Avenue right of way. Let's see that if we move to resolve their concerns on that because I think those concerns are legitimate.

Any other comments or questions?

VICE CHAIRPERSON HOOD: Madam Chair, I would definitely agree with both of my colleagues who have spoken so far.

Reading through the material I was very concerned. I thought this whole waterfront initiative was for access for citizens of the city and the like to be able to have access to the waterfront. And I was troubled.

While I, too, would like to see the Department of Transportation remain in the city, I agree with your comments. I do think we need a little more of a balance.

But as I was reading through this, I have

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not necessarily a solution, but I have a direction for the applicants to look, and that is the Ronald Reagan Building. I know there=s some different things here.

This is different as opposed to the Reagan Building, but you have outside, you have the public coming in there. You have the Federal Government in there. You have retail which is used by both. And I think that=s kind of where we want to frame it.

I understand the security issues have changed, but we also have to look towards the future because using this facility now as it is, it=s limited access and it is controlled, but I do believe that it will not benefit the surrounding neighborhood.

So I=m hoping that by the time we have a hearing, that there will be some more mitigating factors that will come into play and help to make this accessible. Because my concern is, I=ve been hearing about this waterfront for so long and it would be nice to just go down M Street and look down Third Street and be able to get to it. Because if anyone has ever walked from M Street down that way, that is actually a long walk.

Let me just ask Mr. Lawson. The way it stands now, what=s being proposed, will I be able to walk from M Street down to the waterfront going on

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Third Street?

MR. LAWSON: Yes, you would.

VICE CHAIRPERSON HOOD: Okay. That=s a long walk. To me it is, and I=m a young person, I think, consider myself. But I would really like for us to look at the Ronald Reagan Building, especially with the retail piece, and I think that could definitely be a starting point. While it won=t solve all the solutions, but I understand security has risen, but let=s look at the Ronald Reagan model because I think that piece is working. It=s definitely working.

The other thing is -- okay, well, maybe I touched it all in that comment.

Thank you.

CHAIRPERSON MITTEN: Thank you.

Mr. Parsons.

COMMISSIONER PARSONS: Those are very good questions. I associate myself with those.

I still would like to get a statement of some kind. I don=t know what I=m really imagining will come as to why the Department of Transportation compared to other agencies feel it is threatened to the point that it needs to set back this far from the street. I mean, this is not the ATF. This is not the

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FBI.

This is -- it's very troubling because if this sets the standard for Federal office buildings that are going to be built in this city, the more threatened will say, well, you know, DOT got 50, but we really need 100.

So, I would ask, somehow, if you can get a statement from the Department of Transportation as to why they feel so threatened because they will be the only Federal agency that I know of -- what did we do with ATF out on New York Avenue? I mean, they're right up against those streets adjacent, aren't they?

Not New York Avenue, but, I mean, they've got that enormous courtyard out on New York Avenue, but when you come around the back, I mean, it was a very narrow sidewalk, 25 feet or so.

DIRECTOR ALTMAN: I'd have to check their setbacks. I think they had significant setbacks in the way they designed it.

COMMISSIONER PARSONS: In the front?

DIRECTOR ALTMAN: In the front.

COMMISSIONER PARSONS: Northwest corner.

DIRECTOR ALTMAN: I'd have to look at what Second Street is.

COMMISSIONER PARSONS: Well, I don't want

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to --

DIRECTOR ALTMAN: The retail is a separate building outside of the --

COMMISSIONER PARSONS: Yes. On the outside.

DIRECTOR ALTMAN: -- headquarters itself. Right.

COMMISSIONER PARSONS: Right. Well, that=s what troubles me most is I just can=t imagine unless the Coast Guard is going to move in there or something, I don=t get it.

I also have never heard so many questions asked prior to having a hearing. In other words, if we=ve got this much concern with this case, I=d still urge us not to set it down, but I sense that=s not the way it=s going. So, it=s just amazing the list of questions you came up with that need to be answered before we start a hearing. And I=m fearful we=re going to come to the hearing and say, you know all those questions you asked? The answer is no.

CHAIRPERSON MITTEN: Well, you know the interesting thing about the questions is they=re not yes or no questions. It=s more like explain why.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: So, hopefully, we

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won't get any non-responses because --

COMMISSIONER PARSONS: All right.

CHAIRPERSON MITTEN: -- you know, I think we're seeking to understand, as you had said, why does the Department of Transportation need this and you were starting to give examples. I mean, the Secret Service building is right on top of the street.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: The FBI field office is right on top of the street.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: So, why, you know, we just have -- we need to understand or how are they dealing with the security without compromising the street scape?

VICE CHAIRPERSON HOOD: Madam Chair, I knew there one other thing, if you don't mind.

CHAIRPERSON MITTEN: Sure.

VICE CHAIRPERSON HOOD: I wanted to make sure the same thing. My standard question about the first source agreement and the local small and disadvantaged business opportunities in this case, if they could let us know up front and work with the Office of Planning up front and take it from there as opposed to waiting until after the hearing and then we

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find out we're not qualified or we don't have a qualified pool. And I would associate myself with your comments, Madam Chair, about this. I think that they've heard our concerns, Office of Planning and applicant, and hopefully at the hearing a lot of this will be mitigated or at least try to find some type of balance.

CHAIRPERSON MITTEN: Thank you.

Mr. Hannaham.

COMMISSIONER HANNAHAM: I agree with everything that's said. I'm really puzzled as to why the comments of security considerations seem to be dominating on this. One of the things might be that the new agency, the Homeland Security Agency, does include Coast Guard. But then that doesn't sound like they're -- everything has gone crazy.

The Navy Yard, which is huge, has never been questioned, you know, with regard to the tightening of security; to move 6,000 people from Virginia. That used to be very open. There was a maritime museum down there, which was a nice place to visit. I think that's on an invitation only basis right now. I don't think you come and go as you used to in the Navy Yard.

CHAIRPERSON MITTEN: Right.

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COMMISSIONER HANNAHAM: But it isn't new to this section of the city, you know, this kind of tight security, especially since 9/11. So, in the larger context, you know, it's not so extraordinary. But I would hope that in developing and opening up this new area of the city that we do everything we can to pursue the concerns that were raised earlier by you and other commissioners, and I think we can. I think we can get their attention and find ways of mitigating a lot of this stuff.

CHAIRPERSON MITTEN: Well, we'll find out.

COMMISSIONER HANNAHAM: And working within the National Capital Planning Commission, too. I think that can be a very nice additional ally.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER HANNAHAM: So, that's all I have to say.

Thank you, Madam Chair.

CHAIRPERSON MITTEN: Okay. Thank you, Mr. Hannaham.

Mr. Hood.

VICE CHAIRPERSON HOOD: Madam Chair, I just want to move that we set down, if we're ready, if it's appropriate.

CHAIRPERSON MITTEN: Well, all I would ask

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is that in your motion you will need to include a motion regarding a base zone for the site because --

VICE CHAIRPERSON HOOD: Sure.

CHAIRPERSON MITTEN: -- we have the applicant requesting C3C base zoning and we have the Office of Planning recommending CR.

VICE CHAIRPERSON HOOD: Okay. I can make the motion and I'll accept any friendly amendments unless I withdraw making a motion and you can make it.

CHAIRPERSON MITTEN: I don't want to stifle you in anyway.

VICE CHAIRPERSON HOOD: You just did.

CHAIRPERSON MITTEN: All right. Then I would move that we set down Zoning Commission Case No. 03-05 for public hearing with CR as the base zone. And I say that because the context that we have set, as Mr. Altman began with, with the South East Federal Center rezoning is for CR for the surrounding properties and we specifically addressed in the capital gateway overlay and map amendment, the whole discussion there, we were asked for C3C zoning on one site or block or whatever south of M Street. We were asked for C3C and we specifically made the decision at that time that CR was appropriate south of M Street because we're trying to create this mixed use

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environment. And I think that there=s a number of compelling reasons why it=s the appropriate base zoning, CR.

COMMISSIONER HANNAHAM: I would second that, Madam Chair.

CHAIRPERSON MITTEN: All right. Any further discussion?

COMMISSIONER PARSONS: Madam Chair, I think it would be helpful if we prepared a memorandum at some time expressing the questions that we=ve asked, not conditional set down but so there=s no misunderstanding as to the questions that you asked, I asked, everybody else asked so when we get to the hearing, they say, well, I didn=t understand that=s what you meant.

CHAIRPERSON MITTEN: I think that=s more than fair.

COMMISSIONER HANNAHAM: Not a part of our minutes, but rather a part of the set down.

VICE CHAIRPERSON HOOD: I would agree, Madam Chair. Actually, that was going to be in my motion, but since I was stifled, but I agree.

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

All those in favor please say aye.

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(Ayes)

CHAIRPERSON MITTEN: Mr. May says aye.

All those opposed please say no.

Ms. Sanchez.

MS. SANCHEZ: Yes. Staff would record the vote five to zero to zero to set down Zoning Commission Case No. 03-05 with a base zoning of CR. Commissioner Mitten moving, Commissioner Hannaham seconding, Commissioners Hood and Parsons in favor. Commissioner May in favor by absentee ballot.

CHAIRPERSON MITTEN: I do want to read a little note that Mr. May included with his absentee vote because it reminds me of something that I wanted to say. Hopefully, he won't mind me quoting this.

AI don't care for the design. There are a multitude of unresolved urban design issues and there seems to be a lot of work ahead for OP and DDOT. And then he goes on to say that he hopes to resolve those during the hearing process.

The design is another feature that, and I have said many times I'm not a design professional, but when it's held out as outstanding design, even I as a lay person should be responding to it as outstanding design and I'm not responding to it on that level. And so then when Mr. May as an architect

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says that, I think that=s another thing to be noted and we=ll include that in our memo of concerns.

All right. I think -- does that satisfy, okay. Satisfy all the issues that folks wanted to bring up? All right.

Now, we=re ready to move on to Proposed Action and the first item under Proposed Action is Zoning Commission Case No. 02-17 which is the Planned Unit Development for 5401 Western Avenue.

I think we have one or two preliminary things to deal with here, not the least of which is reshuffling all of our papers. Okay.

We have a letter from Mr. Hitchcock on behalf of the Ford Group that objects to the statement that Stonebridge filed on April 4th as being untimely and is requesting that it be stricken from the record.

Then we have a response from Holland and Knight on behalf of the applicant regarding the motion to strike.

And, Mr. Bastida, I=m just going to ask you. My understanding was when we requested the additional materials that the date for the additional submissions would be March 24th, 2003, and then responses were to be filed by the applicant by B or not by the applicant, but by the parties on April 4th,

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2003.

SECRETARY BASTIDA: That is correct, Madam Chairman.

CHAIRPERSON MITTEN: Okay. And I guess the contention on the part of Ford is that this is not a response to the additional submission, it goes beyond that. So, I would ask the commissioners for how they would like to proceed.

VICE CHAIRPERSON HOOD: Madam Chair, I would just like a minute to find my -- I think is what we got shortly before we came out.

CHAIRPERSON MITTEN: Those two, the two submissions. The April 8th, which is requesting that certain items be stricken from the record, and then the response from Holland and Knight.

VICE CHAIRPERSON HOOD: I misplaced mine. I don=t have it in front of me.

CHAIRPERSON MITTEN: Okay, we=ll just take a moment then.

(Whereupon, off the record from 2:37p.m. to 2:40 p.m.)

CHAIRPERSON MITTEN: If I can, the information that was in the April 4th letter is really just some additional information from the Census tracts for which we had some information submitted by

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DDOT and Ford. I mean, we've been talking about a lot of different Census tracts, and I don't see how it doesn't relate to it. I guess I would be inclined to deny Ford's motion to strike and keep the April 4th letter from Holland and Knight in the record.

COMMISSIONER PARSONS: And what about the April 8th response to the response?

CHAIRPERSON MITTEN: Well, yes. Then they've asked if we do decide to accept their filing, that we accept their response. I guess the point would be that it's not that we're reopening the record to accept the April 4th filing, it's that Ford's position is that it's not responsive. If we think it's responsive, then we basically have a request from Ford to reopen the record. And I think what we're really in a situation of, just okay, if you want to slice the numbers on the Census tracts one way, well, we'll slice them another way. And this is sort of a never ending exchange.

COMMISSIONER PARSONS: I agree. It's just responses to responses.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: I'm sure Holland and Knight would be glad to respond to Mr. Hitchcock again and then --

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CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: So, I agree with you.

CHAIRPERSON MITTEN: Okay. So, just to reiterate. I move that we deny Ford=s motion to strike and we in effect deny Ford=s motion to reopen the record to accept their April 8th submission.

COMMISSIONER PARSONS: I=ll second that.

CHAIRPERSON MITTEN: All right.

Any further discussion on it?

All those in favor, please say aye.

(Ayes)

CHAIRPERSON MITTEN: Those opposed, please say no.

Ms. Sanchez.

MS. SANCHEZ: Yes. The staff would record the vote four to zero to one to deny Ford=s motion to strike and to reopen the record to accept their April 8th filing. Commissioner Mitten moving, Commissioner Parsons seconding, Commissioners Hannaham and Hood in favor. Commissioner May not present, not voting.

CHAIRPERSON MITTEN: Thank you.

Just a second and I=ll get back on track. I=m just writing something down. Okay.

So now we=re ready, I think finally, to

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deliberate this issue. And I=d like to deal with it in three parts, which the first is that the primary issue is whether or not this level of density and height should be permitted at this location under any circumstances. That=s our threshold question.

And then once we decide that, depending on how we decide that, we would then potentially have to deal with whether or not there are any adverse impacts created by the PUD and whether they have been mitigated by the proposal, and then finally deal with the adequacy of amenities and benefits relative to the relief sought.

So, I just want to run through some of the background information because we received a lot of information. This is not meant to be comprehensive. This is just meant to be a summary.

The existing zoning of the site is R5B and the proposal is rezoning to R5C, and no change in zoning is being requested for the R2 portion of the PUD site. So, only that portion that=s zoned R5B is being requested to be rezoned to R5C in the context of the planned unit development.

The land use designation on the generalized land use map is institutional, so that doesn=t provide us a lot of guidance. But the

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Comprehensive Plan also designates the area which includes the subject site for a regional commercial center and a housing opportunity area, which the opponents suggest that the housing opportunity area does not mean that more housing is intended than the zoning allows, just that more housing should be provide than currently exists.

They also note that the Comprehensive Plan does not specifically mention the Washington Clinic site as a housing development site but calls out three others specifically.

The 1974 sectional plan designated a site for medium density residential which was amended from the former designation of medium bulk major business and employment. Under our zoning ordinance, R5B is moderate density residential. R5C is medium density residential.

In response to the 1974 sectional plan, the Zoning Commission down zoned the site from C3A to R5B as described by NCPC. At time this was done to provide a transition between the high city commercial zoning along Wisconsin Avenue and the low density residential neighborhoods to the east which are zoned R2.

So, what=s at issue here is bulk and

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density and the appropriateness of it in this location. And I think what it turns on is this notion of what is an appropriate transition between the sites to the west fronting on Wisconsin Avenue and the sites to the east, which are the low density residential neighborhood.

So, I invite discussion.

VICE CHAIRPERSON HOOD: Madam Chair, I just have a question and maybe my other colleagues, one of you all may have picked it up.

I remember reading somewhere where, I guess one of the opponents stated that this would be the tallest building on, did they say Western Avenue.

And I'm trying to remember what they said. This would be the tallest building on one of the -- I guess Western Avenue is what they said. I'm not sure. But did anybody else recall reading the statement?

CHAIRPERSON MITTEN: I don't recall that specific statement, but I do recall that the opposition wanted to make the point that sites that had heights that were comparable to what is being proposed here had frontage on Wisconsin Avenue. So, that it was on what was perceived as the commercial corridor, and that that is one thing that the subject property does not have in common with the planned unit

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developments of Chevy Chase Pavilion and Chevy Chase Plaza. I don=t remember the specific comment about Western Avenue.

VICE CHAIRPERSON HOOD: I was just trying to remember.

If this is part of the discussion, I think as far as this is concerned, at the set down I remember I know I had a problem with the mass of the building. But as I look at the information that is in front of us, I think that the applicant has worked tremendously to scale back a lot of density. And the way I look at it, it looks like they=ve done it at least six times. I don=t know how much more they could take off without actually not having a build.

I=m sure some people would actually prefer that, but I think from what I=ve seen and from the record, they have worked very clear and very diligently and good with the neighborhood.

So, if that will start a discussion, if not, I can --

CHAIRPERSON MITTEN: Okay. Just to address maybe very specifically the threshold question is, you find that under certain circumstances, and perhaps those are the circumstances of this planned unit development, that such height and density is

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appropriate. Not necessarily that we, you know, give that as a matter of right, but that --

VICE CHAIRPERSON HOOD: Right.

CHAIRPERSON MITTEN: -- under certain circumstances then perhaps the proposed design achieves that.

VICE CHAIRPERSON HOOD: I think in this case it does. That=s why I prefaced my first question. I was trying to recollect what was stated to us and, unfortunately, I can=t put my hands on it.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: Because I only have one or two sheets in front of me. But I can tell you that that=s kind of where I was going because I wanted to make sure that I addressed the concern of the person who had a problem with that. Unfortunately, I just can=t put my hand on it --

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: -- right away.

CHAIRPERSON MITTEN: All right.

Anyone else on the threshold question?

Mr. Parsons.

COMMISSIONER PARSONS: Well, I have never been convinced or during the hearing was not convinced that this building is too tall or too bulky for this

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site. I think there was some very good exhibits of the transition between the commercial on the avenue and stepping down to the residential. Further, that the transition as we go down towards the day care center, it=s in the right direction. So as far as bulk and density and appropriate zoning, I think we=re there or I=m there.

CHAIRPERSON MITTEN: All right. Maybe I=ll just jump in at this point.

One of the things that folks seem to make a lot out of at the hearing was the idea that, well, this was put in place in 1974, nothing=s changed since then and isn=t this -- the decision was made and why is it being revisited in terms of what the zoning should be for the site.

And I think what=s different is that this is not a request for a blanket map amendment to allow whatever is available under R5C without any scrutiny from the Zoning Commission. This is a request with a very specific design plan to allow the medium density residential that was designated in the sectional plan to be achieved.

I think R5B was appropriate at the time for matter of right. And I think, you know, there=s a context under which R5C would be appropriate here as

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well.

I would just also note that in terms of making this transition to the residential neighborhood, you know, it all depends on where you want -- how you want to align the subject property relative to the neighborhood and, you know, what=s between it. But Chevy Chase Pavilion is a 5.2 FAR developed to 100 feet. Chevy Chase Plaza is 5.2 FAR developed to 90 feet. And this proposal is for 4.15 FAR and that=s relative to the R5C portion of the site, not the entire site to the height of 79 feet. So, it=s like we=re abandoning the transition. I think the transition still exists. So, I think under certain circumstances this is permissible. So, I don=t think that the opponents have made a compelling case for why the zoning can=t be changed in the context of a planned unit development.

So, anyone else on that point before we move off the point?

VICE CHAIRPERSON HOOD: Madam Chair.

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: As I=m looking at other renderings about my height issue, I=m going through some of the material, there are some other buildings and that was my concern. I didn=t want it

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to dwarf. Unfortunately, I've seen some places in the city, hopefully, I didn't have a part to do with it where you have 130 and then you have this low, right across the street is another zone, you know.

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: And that was kind of where I was going. I didn't want us to go into the same problem. But, as I'm looking through here, some of the renderings, there are actually some buildings in that area that are not taller so --

CHAIRPERSON MITTEN: All right. All right.

So then after we've answered the threshold question, then we want to focus on whether or not there are any adverse impacts created by the planned unit development and whether or not they've been mitigated by the proposal.

So, I've identified some potential adverse impacts and we can discuss those, and then if there are any others that the commissioners have identified that we need to address, then we can do that.

And I would just take note, too, that some of these items have been proffered as amenities and I think in part some things can be considered as mitigation up to a point and as an amenity to the extent that they go beyond mitigating the adverse

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impact.

So, the first item is the traffic issue. I think without any mitigation, I think just as a common sense matter, a larger project is likely to create more traffic than a smaller project. So, to the extent that there=s a larger project permitted by the planned unit development, I think that it=s fair to assume that there would be without mitigation some additional traffic.

Now, the mitigation that=s been proposed, which as the applicant had pointed out and which I believe true based on my experiences, that they=ve propose a transportation management plan for a residential project. And that includes, among other things, the ride sharing, the bicycle racks in the parking garage and they=re proposing to have a car sharing service in the building which they will advertise in their marketing materials and so forth. And they=ve also proposed some other things related to traffic. But I would suggest that to the extent that there are adverse traffic impacts, that the mitigation proposal, specifically the transportation management plan, takes care of that.

VICE CHAIRPERSON HOOD: Is that also, Madam Chair, are we including in your discussion that the

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units -- are we talking about the parking spaces per unit?

CHAIRPERSON MITTEN: The number of parking spaces per unit?

VICE CHAIRPERSON HOOD: Right.

CHAIRPERSON MITTEN: Well, actually parking is another potential adverse impact, so I would consider that to be addressing any potential adverse impact from parking as opposed to traffic, although it=s cars. It=s all cars.

VICE CHAIRPERSON HOOD: One of the gamuts to transportation but I=ll wait until we get to it.

CHAIRPERSON MITTEN: Well, let=s just take it up now, which is to the extent that there would be a greater need for parking, the applicant has agreed to provide parking at a ratio of 1 -- I think it=s 1.1 parking spaces per dwelling unit which is three times the minimum required by the zoning ordinance and also to provide for free parking for visitors and for the day care center.

VICE CHAIRPERSON HOOD: Can we take up this -- I don=t know if the recommendation came from us. I=m trying to recall last month.

CHAIRPERSON MITTEN: Yes, I=ll take and I know where you=re going. I=ll take responsibility for

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that.

VICE CHAIRPERSON HOOD: Oh, that was your recommendation?

CHAIRPERSON MITTEN: Yes, it was.

VICE CHAIRPERSON HOOD: Well, I'll go a little easier.

CHAIRPERSON MITTEN: Well, go ahead.

VICE CHAIRPERSON HOOD: I won't say what I really wanted to say.

CHAIRPERSON MITTEN: Just clue everybody in for what it is.

VICE CHAIRPERSON HOOD: I think we're creating a problem here with this sum of parking spaces and not requiring -- not selling the parking spaces along with the unit. And my rationale is because someone may come in, and in actuality I understand around the Metros and the Metro system, not buying a car. But the actuality is people who are probably going to purchase this are going to have a vehicle. And if all the parking spaces are sold we I get there, then I've created a problem. Unless I'm missing something, I just see us hustling backwards. I would rather see the parking space sold with the unit.

CHAIRPERSON MITTEN: I think maybe if I perhaps explain what I had in mind a little bit more.

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VICE CHAIRPERSON HOOD: Maybe I misunderstood.

CHAIRPERSON MITTEN: Well, wait a minute. Let me give it a try anyway.

I'm not suggesting and I don't there's a demand for all the parking spaces to be sold and that there is so much demand for parking spaces, that they will all be sold and then there will be people who would want parking spaces and won't get parking spaces. Rather, what I was trying to do is create an opportunity for, if you say if you want to buy a condominium at, what's this called? Does it have a name? 5401 Western Avenue. That you must buy a parking space. What is you don't have a car? You're going to think twice about whether or not you want to buy there because you are being forced to buy something you don't need. So, all I was suggesting is, if you don't make people purchase a parking space, then you actually stand a chance of attracting people who will not have cars, who will not need the parking space and who will not contribute to more traffic.

VICE CHAIRPERSON HOOD: I agree with you, Madam Chair. But on the other hand if I have bought - - I don't have a parking space now. I bought my unit without a parking space in your realm of your way of

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thinking.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: Now, I move in. I'm ready to sell. All the parking spaces now are gone. So, what do I do?

CHAIRPERSON MITTEN: So, you're thinking down the road?

VICE CHAIRPERSON HOOD: I always try to prepare for down the road in my thoughts.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: But I can assure you and I just see us creating a problem.

I understand where you're going for the immediate need right now. But later on down the road, what are we actually creating?

CHAIRPERSON MITTEN: Well, what I would hope is that it would be difficult for you to sell your unit to someone who has a car and that, in fact, you would attract another non-car owner to the site because you didn't have a parking space. VICE

CHAIRPERSON HOOD: But I can just see us --

CHAIRPERSON MITTEN: Here's what it comes down to, at least in my mind is, I think one of the reasons why there's a -- there's a number of reasons why there's traffic problems in this area. And, you

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know, a lot of the traffic comes from outside the neighborhood. But some of the traffic is generated within the neighborhood. And I'll tell you why I believe that to be true. Because if people complain about traffic, then they're in the traffic. They are the traffic. You don't complain about traffic if you're not in it.

VICE CHAIRPERSON HOOD: You know, this discussion reminds me of the comp plan. There's always something in there that contradicts something else. And I think that this issue what we're talking about it is so much other things.

For example, like I said, if I don't have a parking space and I do buy the place, then now I'm parking in the neighborhood. I'm causing another problem. So, I just see it echoing and the domino effect.

CHAIRPERSON MITTEN: But if you're selling, even if they do the initial sale of you buy, you know, a condominium unit number 801 and you buy parking space number 2001, however they break it out, there's nothing stopping you from selling your parking space to your neighbor who has two cars and you have no car and then your unit is without a parking space again.

VICE CHAIRPERSON HOOD: I just don't see

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how that=s going to work.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: Maybe I don=t have that much --

CHAIRPERSON MITTEN: Why don=t we -- if that=s a problem for you, we=ll break that out as a separate items under conditions if we get that far.

VICE CHAIRPERSON HOOD: Okay.

CHAIRPERSON MITTEN: And you can vote your conscience when we get there.

VICE CHAIRPERSON HOOD: Again, what good is that going to do if it=s voted up or down? But also the day care issue --

CHAIRPERSON MITTEN: Whether that would be a condition or not.

VICE CHAIRPERSON HOOD: Oh, okay. Okay. Okay.

CHAIRPERSON MITTEN: Vote on that separately.

VICE CHAIRPERSON HOOD: Also, can we talk about the day care issue? The parking for --

CHAIRPERSON MITTEN: Having to do with adverse impacts, so if it=s in that category?

VICE CHAIRPERSON HOOD: I think -- I see it as a problem.

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CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: And I'm reading here from one of the commissioner=s -- the center as far as the dropping off point, from 7:30 to 9:30, I think there are eight spaces. Eight visitor spaces. And then no one is going to be there from 7:30 to 9:30. So, I can park there at 9:35. What assurances, and I didn=t see anything, that assures me that that space will be vacant again to match what the applicant is proposing from --

CHAIRPERSON MITTEN: Just tell me what you=re looking out so I can see it on paper.

VICE CHAIRPERSON HOOD: March 24th, 2003. These are the submittal, post-hearing submissions.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: From Holland and Knight.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: And to me that whole gamut just didn=t make sense.

CHAIRPERSON MITTEN: Okay. Okay. I=m there. So, we=re looking at the revised Condition Number 6 is what --

VICE CHAIRPERSON HOOD: Right. Right. Revised Condition Number 6.

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Eight visitor spaces shall be reserved for use by the day care center during the morning drop-off period from 7:30 through 9:30, and the afternoon pick-up period from 4:00 to 6:00.

CHAIRPERSON MITTEN: Okay. And your question is again?

VICE CHAIRPERSON HOOD: I guess I'm questioning is how are you going to remove somebody at 4:00 to be open from 4:00 to 6:00? Maybe it's in here somewhere. Like I say, I didn't have that much to read this weekend, so maybe it's in here somewhere.

CHAIRPERSON MITTEN: I don't know. I mean, that's a little bit of a micro management issue. I think the idea would be that there would signage up and this would be private property. And if someone were parked, if someone who was unauthorized to park there during the pick-up period, then the property owner would have the prerogative to have the car towed away.

VICE CHAIRPERSON HOOD: And I don't see that as a micro managing issue.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: I see it as something that's been presented to us. We already have opposition and we're trying to mitigate --

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CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: -- the issues and I just see this as being a problem --

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: -- along with the parking spaces.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: So, you know, if we have to break that up in the votes, then we could -- I don=t necessarily --

CHAIRPERSON MITTEN: Do you have something to recommend in the alternative or --

VICE CHAIRPERSON HOOD: I do. But I would rather for the -- and I know this is a proposed action. Maybe I=ll just deal with in the final action. Maybe, hopefully, they can come out with something a little more fine tuned at final action.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: That=s kind of where --

CHAIRPERSON MITTEN: Okay. You=re just putting them on notice that you have a concern about how that will be enforced?

VICE CHAIRPERSON HOOD: If we break it up, I will vote against these two pieces right now. If

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you put them for a vote, I=ll vote against them.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: Well, Mr. Hood, let me weigh in here. I agree with you on the parking. Although many people have what they call recreational vehicles, weekend getaways or whatever. And if a unit cost \$340 without and you=ve got to spend \$40 more to get a parking space, I=m making those figures up, that=s not part of the record --

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: -- but that=s a decision that people make and they=re trying to reach a certain level of housing.

If that choice isn=t there, that the units are \$380 --

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: -- one is attempted to say, well, I=ll park in the neighborhood or I=ll sell my car, or something. But if you own the parking space, you can rent it if you don=t have a car. You can rent it to business people in the community who want to use it during the day or to a neighbor. And I don=t see that making it optional gains us anything because the parking spaces even if they=re not used by somebody without a car, will be used for parking by

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somebody. In other words, it will take a car off the street.

And I had this imagined situation where nobody signed up for a garage parking space. We then would have the owner coming back asking us for the opportunity to run a commercial parking facility in a residential zone. So, I got turned around this weekend. I thought you had a good idea.

CHAIRPERSON MITTEN: I'm sorry that you got turned around.

COMMISSIONER PARSONS: I turned around this weekend thinking this thing through.

CHAIRPERSON MITTEN: I'm not going to ask how you get to work every day or anything.

COMMISSIONER PARSONS: You know how I get to work. I work on an island.

CHAIRPERSON MITTEN: It's a philosophical issue and I was hoping that we could be a little bit more, what do I want to say, just give some more flexibility to possibly attract people who wouldn't want to buy a parking space and wouldn't want to go to the expense of buying a parking space because they didn't have a car and that was part of their overall decision. But, if I'm not being persuasive, then we'll just move on and talk about other things.

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COMMISSIONER PARSONS: Now, I understand Mr. Hood=s second concern was these eight visitor parking spaces on the surface out front.

I don=t think that=s going to be a zoning issue to be an enforcement problem for the Zoning Administrator. I think this will be very easily self-policed by day care center managers who are out there saying, you=re not going to park there or call the tow truck.

Did you mean that we=re putting something in an order that=s unenforceable by the Zoning Administrator?

VICE CHAIRPERSON HOOD: I=m sorry. I didn=t understand the last part of your question.

COMMISSIONER PARSONS: Well, you were concerned about this parking thing. You said you would vote against it. And that is that these spaces would be reserved from 7:30 to 9:00 and from 4:00 to 6:00.

VICE CHAIRPERSON HOOD: Yeah.

COMMISSIONER PARSONS: And it=s in the draft order as a condition.

VICE CHAIRPERSON HOOD: Right.

COMMISSIONER PARSONS: I thought that you may be concerned that that=s a condition that we as

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the city could not enforce. And I think it will be self-policing.

VICE CHAIRPERSON HOOD: You think that will be self-policing.

COMMISSIONER PARSONS: So I didn't agree with you on that one.

VICE CHAIRPERSON HOOD: Okay. I don't hold that one as much as I hold the first one. So, I mean, I could, like you say, if it's self-policed, I can live with that. But I just don't see it. I just hate to see us always putting stuff in place that doesn't work. And I just don't think that it's going to work. But, again, I guess if I don't have a solution, I have to go along with what I see in front of me. But I just don't see that as working.

But, like you say, if you believe it will be self-policed, I will go with that. But I just don't see it working. But I'm glad that you agree with me on the parking issue.

CHAIRPERSON MITTEN: Okay. Just for the--

COMMISSIONER PARSONS: Moving along with your summary.

CHAIRPERSON MITTEN: Well, just for the record, Mr. May agrees with you on the parking, too.

VICE CHAIRPERSON HOOD: I'm glad Mr. May

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agrees with me.

CHAIRPERSON MITTEN: And so we'll just make that amendment and move on.

All right. Another issue that was raised was related to safety hazards for the children to be enrolled in the new day care center and there was concern expressed that they would crossing Military Road during the morning and afternoon rush hours, and that there would put traffic by children and staff between the two day care facilities.

And there was also concern about the loading and unloading, the proximity of the loading dock. I know that the applicant has proposed to regulate the hours of the loading dock so that they wouldn't coincide with the arrival and departure of the children from day care. And I don't know that there's anything else specifically expressed by way of mitigating any concerns about the Military Road crossing, although I would note that the operator of the day care center didn't call out any concerns about that. So, I'll just either weigh in or I can move on.

There was concern regarding the construction impact. Several people, that was really the focus of their testimony. And that's really not a land use issue, although it has been addressed in the

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proposed amenity. And I think that the construction management plan has been enhanced since it was initially proposed.

So, in terms of adverse impact that requires specific mitigation, I would say that that=s not for us to address.

COMMISSIONER PARSONS: I agree.

CHAIRPERSON MITTEN: And then another adverse impact that the opponents cited, and this is fairly general but it concerns the fact that this planned unit development in their mind constitutes spot zoning and that uncertainty about other sites will, their term, destabilize the neighborhood. And they are especially concerned about the future of the Lizner Home site.

So, I mean, that really is not an adverse impact for the applicant, but it=s a concern and I wondered if there were any comments that anyone wanted to share about that?

COMMISSIONER PARSONS: There=s nothing we can do about that in this case and I think it was possibly Mr. Altman who made the point that during the presentation that, you know, you have to take each case as it comes.

This came in the door or originally

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proposed at R5D. It was worked down through a process.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: So, that=s all we can do.

CHAIRPERSON MITTEN: And I think also there=s, you know, I mean I think this Commission has proven that they=re not afraid to deny someone or to push them to the place that we think is appropriate, and I think the Tenley Park planned unit development is an example of that. That=s the townhouses on Albemarle.

COMMISSIONER PARSONS: Sure.

CHAIRPERSON MITTEN: And, you know, the reason why Tenley Park went the way that it did and why to some extent, although not to the same extent, that there=s always room, the Comprehensive Plan does not tell us what zoning to put in place and freeze things. It gives us guidance.

COMMISSIONER PARSONS: It did on a couple of occasions.

CHAIRPERSON MITTEN: Well --

COMMISSIONER PARSONS: We=ll forget those.

CHAIRPERSON MITTEN: Right.

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COMMISSIONER PARSONS: That=s the old days.

CHAIRPERSON MITTEN: Those are the extreme case.

COMMISSIONER PARSONS: Battle wounds.

CHAIRPERSON MITTEN: But the fact is, that there=s guidance that=s provided from a number of planning documents about what=s appropriate on this site, and the guidance that=s provided on sites to the east is quite different.

So, we don=t just do this willy nilly. So I would hope that, you know, the Comprehensive Plan and the guidance that it provides would give some comfort in that regard.

So, are there any other adverse impacts that any of the commissioners noted that we need to address in terms of mitigation?

COMMISSIONER PARSONS: No.

CHAIRPERSON MITTEN: All right. Then we=ll move on to the --

VICE CHAIRPERSON HOOD: No, actually there is.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: I was kind of hesitant.

We mentioned about the area that=s been

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expanded. Unfortunately, I closed it because I wasn't going to mention the surveying area of what was it, construction?

CHAIRPERSON MITTEN: For the Construction Management Plan. Yes.

VICE CHAIRPERSON HOOD: Right. It's been expanded to 300 feet and you said that was not within -- I think you said within our jurisdiction. I want to make sure I quote you correctly. Actually, I disagree with that because once before -- we've been through this once before and I disagreed then and I disagree now.

What we're doing is part of the -- when you talk about adverse impacts, and I appreciate the applicant going to 300 feet, but the traffic pattern and everything, I think has a bearing on the surrounding community and those heavy trucks cause damage to those specific homes. And I just want to make sure that, again, our job is to protect the interests of the citizens as well as, you know, the city as a whole. And I think sometime we just say that it's not, and I may be misquoting you, Madam Chair, but not within our jurisdiction. I don't necessarily agree with that comment.

CHAIRPERSON MITTEN: Well, okay. I didn't

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want to interrupt you if you want to finish.

VICE CHAIRPERSON HOOD: Go ahead.

CHAIRPERSON MITTEN: I don=t remember precisely what I said, but I think when we have a Construction Management Plan before us it is because It has been proffered to us as an amenity. We cannot require Construction Management Plans because it=s not a land use issue. It=s Department of Transportation, so it=s the truck routes. If there=s anything related to, you know, sub-surface conditions and so forth, that=s dealt within the building permitting process.

But the way that we can make sure if someone is proffering us a Construction Management Plan, we have to decide is that a meaningful amenity. Is it an enforceable amenity and so forth.

You expressed some concerns at our last meeting that it wasn=t sufficient and they made some revisions to it, just like any amenity that=s proffered to us. We can say, we don=t find it=s meaningful. You know, this is not going to accomplish, you know, the goal that is suggested by the applicant that it will. You know, we can express concerns that way.

But, you know, we run into this time after time and I just feel that I need to say it so that

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community folks don=t get the idea that they can come in and say, you have to require a Construction Management Plan and then we get off track. That=s all I meant.

VICE CHAIRPERSON HOOD: Okay. I just --

CHAIRPERSON MITTEN: That=s not the kind of adverse impact that we=re talking about mitigating.

VICE CHAIRPERSON HOOD: I just think that all that=s -- I disagreed with it some months ago and I still disagree with it now.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: So, that=s -- I was going to let it go by, but I just couldn=t.

CHAIRPERSON MITTEN: All right. All right.

Let=s run through the amenities and I don=t know that I=ll have each and every one, but I have the most significant ones and there=s a few issues that were raised and we can address those, and then we can vote it up or down as to whether or not all the adverse impacts have been mitigated and whether the amenities and benefits warrant the relief that was requested.

One of the amenities that was proffered was that this is housing being provided in a housing opportunity area. The opponents argued that housing

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cannot be an amenity if it's already required by the zoning.

The counter argument from the applicant is that there is no guarantee that housing versus some other permitted use will be provided. And my view on it is, you know, at the base level, whatever you want to consider the base level, whether it's the existing zoning or the -- I would say the existing zoning, that certainly whatever housing could be provided under the existing zoning I wouldn't consider that necessarily an amenity. But, certainly, what's above that in a housing opportunity area, I would think of that as an amenity myself.

VICE CHAIRPERSON HOOD: Yes.

CHAIRPERSON MITTEN: Thoughts about that from anybody? Okay.

The affordable housing amenity. There's between four and six units of affordable housing will be provided. The opposition argues that this is not enforceable and that it's an inefficient way of providing affordable housing.

The applicant counters with the fact that affordable housing in close proximity to shopping, transit and employment, in fact, is an amenity. And regardless of whether it's efficient or not. I think

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the memo from the Office of Planning and the Department of Housing and Community Development in their willingness to help insure the enforceability of this goes a long way to making sure that this will be realized in terms of the ongoing enforceability. And I was really happy to see that the survey of the HPAP program showed that the noncompliance rate was less than two percent. I think that=s great. I=m glad to hear that.

So, I think that with these changes and with the involvement of DHCD that this will be an enforceable amenity and I look forward to getting-- perhaps, we could incorporate something or in the future ask DHCD for a specific enforcement report or a compliance report on this particular amenity.

VICE CHAIRPERSON HOOD: Right. I would agree, Madam Chair. I=m glad to see this letter where it says the DHCD has stated it=s willingness to go beyond its unusual enforcement procedures. And as you know, that=s been a tickler for me. So I=m glad to see that.

CHAIRPERSON MITTEN: Next is the day care amenity. The opposition argues that it does not necessarily help the immediate area and there=s no guarantee of affordability, and these are in response

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to the Comprehensive Plan recommendations. And in those recommendations, as the applicant points out, that there is no requirement for affordability per se and the operator will be targeting children from the immediate area for participation.

So, any concerns about the day care center?

Okay. The recreation center donation.

I think the applicant has responded to the concerns that the opposition raised by being willing to just make an outright donation of the \$75,000.

There=s the issue about open space and the number of trees saved on site. I think as we=ve seen in some cases, you know, it=s desirable to save as many mature trees as possible. And I think the number certainly weighs on the extent of the amenity but, you know, retaining whatever is there I think could be considered an amenity of some size. And the applicant has made some proposed changes to insure that the area that=s being proffered as open space will remain available to use by the larger public.

Any concerns about that?

Okay. The Construction Management Plan, as we talked about a minute ago, I think Mr. Hood=s concerns that were raised resulted in some

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modifications. And, Mr. Hood, do you find the Construction Management Plan to be a meaningful amenity at this point?

VICE CHAIRPERSON HOOD: I believe that they definitely heard what I said at the last meeting, so I wouldn't have a problem with it.

I just have a problem with, I guess our approach. But I don't think maybe this is the correct time for me to deal with that. But I appreciate the applicant going back and looking at it.

I still don't see some things that I asked for, and that was to fine tune the plan as far as the 300 feet. I still don't see that, but -- because and also I think I mentioned about the advisory committee.

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: How was that going to be made up? I don't see those things. I didn't see it in what was submitted.

CHAIRPERSON MITTEN: You mean you wanted more detail on it?

VICE CHAIRPERSON HOOD: Right. I'd ask for more detail. But I don't know, you know, one minute I'm told it's not in our jurisdiction, so I don't know whether to ask for it or not anymore, but I can assure you, that's what I was looking for.

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CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: And maybe on final action, that will be fine tuned.

CHAIRPERSON MITTEN: Okay. And, you know, each one of us weighs in their mind the relative merits of amenities. And when we vote, our vote reflects how we weighed the adequacy of the amenities and perhaps one of us will weigh the Construction Management Plan as a greater amenity than another. And you may be one that thinks it's not as significant because it doesn't have that level of detail.

VICE CHAIRPERSON HOOD: So, Madam Chair, I guess -- but still, I just don't see where that really makes a difference to me. Realistically, if I was to vote for the project or against it, that one segment.

I mean, the bottom line is the project will be approved.

I would just go on record and ten years from now someone say, AOh, Anthony Hood had a problem with the Construction Management Plan.@ If they say that, and they're going to go. So, I mean, I understand what you're saying.

CHAIRPERSON MITTEN: Well, we can only do so much. When someone proffers us an amenity, we can't go, oh, you know, we'd rather instead of giving

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\$75,000 to this group, we=d rather you gave it to that group. We can=t do it.

VICE CHAIRPERSON HOOD: Well, no, the --
I=m personally happy with the --

CHAIRPERSON MITTEN: But I=m just saying,
it=s the same notion.

VICE CHAIRPERSON HOOD: -- \$75,000.

CHAIRPERSON MITTEN: It=s the same notion.
It=s the same notion like, oh, we don=t like the way
you talk about a construction advisory committee.
We=d rather that the composition would be thus and so.

VICE CHAIRPERSON HOOD: I guess where I am,
Madam Chair --

CHAIRPERSON MITTEN: Whatever it is.

VICE CHAIRPERSON HOOD: -- I want to make
sure that the assurance is not saying that this
applicant would do it, but I want to make sure that
the assurances of the neighborhood are protected. And
that=s all.

A lot of times, I=ll be frankly honest,
the applicants come in here and tell us one thing and
you got to believe. And, unfortunately, I have to say
it. They do there and something totally different.
It doesn=t happen. And that goes back to the
enforcement piece.

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So, maybe, I know I'm preaching to the choir, maybe I'm saying it at the wrong time, but I'm going to seize the moment.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: Mr. Hood, what this Construction Management Plan says is that the sitting ANC's 3E commissioners shall establish jointly with the developer a community advisory committee with broad representation from the affected area.

It seems as though the representation is not the choice of the developer but the ANC members.

VICE CHAIRPERSON HOOD: And here's why I wanted a little more clear direction. That's exactly why. Because a lot of people come in and testify. They'll tell you in a minute that their single member district person doesn't represent me, or they don't even go to the ANC meetings. So, if we leave it up to the ANC, and I'm sure ANC-3 they're not like this, but there are some ANCs in the city who take it upon themselves to make the decisions for their constituents and not consulting with and not having any type of --

COMMISSIONER PARSONS: No.

VICE CHAIRPERSON HOOD: So I wanted -- yes, I believe that happens.

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COMMISSIONER PARSONS: You=re kidding.

VICE CHAIRPERSON HOOD: I was just trying to make sure that we had a little more, sometime we need a little more guidance. And that=s, but I guess -- if that=s what we have to settle for, we have to hope that ANC 3E, I=m sure which is not like some ANCs, other ANCs.

COMMISSIONER PARSONS: Because in some cases in universities in times past, the universities picked the representatives who would be on the committee. You wouldn=t have the developer do that here. You need some elected officials involved.

VICE CHAIRPERSON HOOD: Well, I was more or less thinking, Commissioner Parsons, that ANC -- I agree with the ANC piece.

COMMISSIONER PARSONS: Okay.

VICE CHAIRPERSON HOOD: Maybe this local civil association. Kind of give them a variety. Because right now, the ANC has full control which I know by law, they are the elected officials --

COMMISSIONER PARSONS: Yes.

VICE CHAIRPERSON HOOD: -- and some ANCs show us and tell us that they are the elected officials. But then you have folks who come down who may not go to the ANC meetings.

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COMMISSIONER PARSONS: I understand.

VICE CHAIRPERSON HOOD: I'm trying to get a full perspective with it. That's fine.

COMMISSIONER PARSONS: Okay.

CHAIRPERSON MITTEN: Mr. Hood, just so that you don't think that your concerns are falling on deaf ears, what perhaps we should do is we should take some existing Construction Management Plans that have been proffered and work up what we consider to be a very meaningful sort of template for, maybe I should use the word template, but, you know, sample that we could say, you know, this is the kind of Construction Management Plan that the Commission finds to be meaningful and encourage applicants to use it.

VICE CHAIRPERSON HOOD: Unfortunately, that won't help us in this case, but, yes, I would agree. Because 300 feet for adjacent residential properties run the site property line. That's not too far. And I think we went through the same, I don't want to call the case, but we had the same issue on another case. And all we're trying to do is just basically put protective measures in place for the citizens. Because who loses? The people who have made that investment.

CHAIRPERSON MITTEN: Okay. Would you like

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us to pull the Construction Management Plan out as a separate item?

VICE CHAIRPERSON HOOD: No.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: I raise it for the next time.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: I don=t want to use the word template, but I think it=s time for us to address that.

CHAIRPERSON MITTEN: Okay. There are various economic benefits that have been proffered and I think we need to keep them in that context of benefits. They=re not being a proffered amenity because, and I think sometimes we get confused about that because in other cases people have basically said you=re not delivering on your obligations that you set about in terms of the tax revenue or whatever. And we really don=t hold applicants accountable for delivering on the tax revenues and so forth, so it=s a benefit of some magnitude, but it=s not an enforceable amenity.

And then there=s, to the extent that any of the items that they proffered as mitigation items and I would say that the traffic, some of the traffic

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mitigation plan as opposed to the Transportation Management Plan, would be in the category of amenity. And certainly the amount of parking that is being proffered I think could be considered an amenity by some folks.

And then I would just note that the opposition mentioned in their submission that the Comprehensive Plan suggests that first source agreements shall be require amenities and planned unit developments. The the nature of the PUD process is such that the Zoning Commission, and this is the same with the Construction Management Plan, cannot compel applicants to proffer anything in particular. So, notwithstanding what was in the Comprehensive Plan, we can=t require amenities. That=s sort of contradictory.

So, there we are. And I would entertain a motion.

VICE CHAIRPERSON HOOD: Ask you a question, Madam Chair. While we can=t require it, but once it=s offered, we can deal with it.

CHAIRPERSON MITTEN: Yes, but it has not been offered in this -- that=s the point. It hasn=t been offered.

VICE CHAIRPERSON HOOD: But I=m saying, in

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that particular, it was not offered, but the Construction Management Plan was offered.

CHAIRPERSON MITTEN: Yes. Right.

VICE CHAIRPERSON HOOD: And that=s my point.

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: Okay. I didn=t ask them to offer it. Once they offer it, then we deal with it.

CHAIRPERSON MITTEN: Yes.

VICE CHAIRPERSON HOOD: Thank you.

COMMISSIONER PARSONS: Madam Chairman, I would vote -- move that we approve this application and based on the discussion we=ve had here this afternoon, I don=t think we would be changing anything in the applicant=s proposed order.

CHAIRPERSON MITTEN: Including their revised conditions and especially Number 6.

VICE CHAIRPERSON HOOD: Excuse me.

CHAIRPERSON MITTEN: Although I=d be perfectly happy not to call it out to you, but in --

VICE CHAIRPERSON HOOD: Number 6 is the parking.

CHAIRPERSON MITTEN: -- in the spirit of fair play, I will.

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COMMISSIONER PARSONS: And --

CHAIRPERSON MITTEN: This, I'm looking at the March --

COMMISSIONER PARSONS: -- you said the vote was three to two or three to something. Right?

CHAIRPERSON MITTEN: Well, you have at least three so I'm not going to put up a fight. I'm not going to put up a fight.

COMMISSIONER PARSONS: That's what I have.

CHAIRPERSON MITTEN: Right. But what would you call --

COMMISSIONER PARSONS: Do you want to call that out so you could against, we could do that?

CHAIRPERSON MITTEN: Oh, thank you. But, no, I've made my point and I'm tired now on that.

There's a revised Condition Number 6 so what I take it you're proposing is just that the underlying passage in their March 24th submission on page 2 would just be deleted. They had added that --

COMMISSIONER PARSONS: No. I was conveniently going back to --

CHAIRPERSON MITTEN: -- kindly responding to me.

COMMISSIONER PARSONS: -- this draft order here.

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CHAIRPERSON MITTEN: But that doesn't include the revision so there are other revisions that have been --

COMMISSIONER PARSONS: I'm sorry, I'm --

CHAIRPERSON MITTEN: -- proposed.

COMMISSIONER PARSONS: I'm confusing myself.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: So, you're --

COMMISSIONER PARSONS: 6 would remain as written in this original order then.

CHAIRPERSON MITTEN: Okay. So you have moved approval of the proposal with the conditions as represented by the applicant's proposed findings of fact and conclusions of law incorporating the changes from their March 24th submission to the Commission with the exception of the proposed change to Number 6 which you just want to return to its original state.

COMMISSIONER PARSONS: Thank you. That's exactly what I had in mind.

CHAIRPERSON MITTEN: Okay. Is there a second?

VICE CHAIRPERSON HOOD: Before I second, can I -- I'm trying to find Number 6. I want to

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remember how it was --

CHAIRPERSON MITTEN: Here. It=s right here.

VICE CHAIRPERSON HOOD: This is the original.

CHAIRPERSON MITTEN: So, we=ll be taking out the underlined portion.

VICE CHAIRPERSON HOOD: Oh. Okay.

CHAIRPERSON MITTEN: All right. So that=s a second?

VICE CHAIRPERSON HOOD: I=ll second.

CHAIRPERSON MITTEN: All right. Any further discussion?

Mr. Altman, I=m sorry.

DIRECTOR ALTMAN: Just one question, clarification on this issue and I only raise with respect to the affordability.

CHAIRPERSON MITTEN: Yes.

DIRECTOR ALTMAN: Because I=m wondering is you also -- do you want to include the affordable units in this of the units that are required? In other words, do you want to exempt those out because we=re trying to make those units to be as affordable as they can be, the four to six units of what your proposal was? Just throw that in for discussion.

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In other words, is that an additional cost that would then be incurred by people going into those units?

VICE CHAIRPERSON HOOD: I would be inclined of taking it out, but that raises another issue. Do we go down a fine line that maybe -- well, I don't want to track, I don't want to say you were right. But --

CHAIRPERSON MITTEN: Go ahead, it's just us.

VICE CHAIRPERSON HOOD: Yes, I would agree with that, however we need to do it. I don't know what the legal sufficiency or how we should do that, but I would think that maybe have some affordable units, they would be exempt.

That's kind of where -- I mean, then I heard that discussion.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: Just those, I think it's 6.

CHAIRPERSON MITTEN: Well, we can say if we go back to the proposed revision to Number 6, the underlying part, we could say parking spaces shall be offered for sale separately from the affordable dwelling units and no purchaser of an affordable

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dwelling unit shall be required to purchase a parking space. How=s that?

COMMISSIONER PARSONS: All right. I, too, am getting tired.

CHAIRPERSON MITTEN: Okay. Okay.

So, Mr. Parsons is willing to accept that amendment.

Mr. Hood, do you accept that amendment ? All right.

All right. So 6 is in with the revision and the addition of the word Aaffordable@ twice as I read.

Any further discussion?

All those in favor say aye.

(Ayes)

CHAIRPERSON MITTEN: Mr. May says aye.

And those opposed please say no.

Ms. Sanchez.

MS. SANCHEZ: The staff would record the vote five to zero to zero to approve Case No. 02-17 based on the applicant=s proposed findings of facts and conclusions of law which incorporate their March 24th changes with the exception to Condition Number 6 will --

CHAIRPERSON MITTEN: Thank you.

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MS. SANCHEZ: -- be modified as stated.

CHAIRPERSON MITTEN: Thank you.

And I think the Commission needs to take a five minute break. So I would ask the indulgence of the folks that are a little farther down on the agenda to give us five minutes for a break.

Thank you.

(Whereupon, off the record from 3:31 p.m. to 3:39 p.m.)

CHAIRPERSON MITTEN: And the next case under Proposed Action is Zoning Commission Case No. 03-01 which is a map amendment for a group of industrial properties along Blair Road to rezone them from CM1 to C2A in order to implement the Takoma small area plan.

This proposal was supported by the Office of Planning and some neighborhood groups. I would just note that ANC 4B sent a letter in support but the letter does not meet the requirements for great weight, but we will take note of their support for the map amendment.

And I would move approval of Zoning Commission Case No. 03-01.

COMMISSIONER PARSONS: Second. We also have a letter from planned Takoma.

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CHAIRPERSON MITTEN: Yes. Right. That came in March 17th. Thank you.

Any discussion?

All those in favor, please say aye.

(Ayes)

CHAIRPERSON MITTEN: Mr. May votes aye.

Those opposed please say no.

Ms. Sanchez.

MS. SANCHEZ: The staff would record the vote five to zero to zero to approve for proposed action Case No. 03-01. Commissioner Mitten moving, Commissioner Parsons seconding and Commissioners Hannaham and Hood in favor and Commissioner May in favor by absentee ballot.

CHAIRPERSON MITTEN: All right. The next case is Case No. 02-35. And this was a proposed text amendment regarding the definition of building height.

And the advertised text included a modification to the definition of height of building as well as a proposed new definition for natural grade.

We had a number of suggestions either presented at our public hearing or subsequent to our public hearing. And I would just ask if everyone has the advertised text in front of them and then you'll know what our point of departure is. And if anyone

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needs a copy, just say so.

The Office of Planning had proposed changing relative to the advertised text where it says, AIn the case of a property fronting on a street that is elevated above grade,@ that that be changed to in the case of a property fronting on a bridge or viaduct. That was also suggested by Commissioner Bardin from ANC 3F04.

I think that captures more specifically what we were trying to address so I would want that changed to be incorporated. Anyone else?

COMMISSIONER PARSONS: I=m lost.

CHAIRPERSON MITTEN: You=re lost. I=m sorry. Okay.

COMMISSIONER PARSONS: Start over again. Please. I don=t know what you=re talking about.

CHAIRPERSON MITTEN: Okay. We=re on the building height.

COMMISSIONER PARSONS: I=m not that lost.

CHAIRPERSON MITTEN: We=re here. It=s Monday. Okay.

COMMISSIONER PARSONS: Monday.

CHAIRPERSON MITTEN: Okay. The Office of Planning when they made their report during the, I believe this was the report they made during the

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public hearing, they had recommended changing from the language that we had set down, changing the definition to reflect that it=s not a street that we=re focusing on. We=re focusing on a bridge or viaduct.

So, I=m asking, do we want to incorporate that recommendation --

COMMISSIONER PARSONS: Yes, yes.

CHAIRPERSON MITTEN: Okay. Is there anyone who is opposed to that recommendation?

All right. Then we had a suggestion from the ANC 3D Task Force on Zoning that we put the new language in a separate sub-section or paragraph. I believe that their reason for saying that is because they are looking ahead to future modifications while - - and, in fact, we received a number of suggestions for other modifications and we encourage people to, you know, that we=re taking up a very specific issue at this time, but we will focus on their other suggestions later.

I think to the extent that further modifications would indicate that it would be superior to having a separate graph, we can do that at that point not that I don=t think there=s anything confusing about it particularly at the moment.

COMMISSIONER PARSONS: You mean to have

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another case focusing on the ANC 3D concerns?

CHAIRPERSON MITTEN: They=re saying in the -- this is going to be a quote from their letter of March 31st. AIt seems to our task force that to incorporate a narrowly applicable special provision dealing with bridges and overpasses into the general language dealing with building heights particularly for private residences, will greatly complicate our mutual task as we seek to clarify the ambiguous language in Section 199.1 dealing with the measurement of building heights. Therefore, we would respectfully request that the language proposed by the Office of Planning dealing with the structures fronting on a bridge or overpass be made a separate section of 199.1, leaving the language in 199.1 in tact for future revision.@

So, I think they=re being motivated by something in the future. And what I=m suggesting is that I think we can accommodate that in the future if we take up some of these other recommendations.

VICE CHAIRPERSON HOOD: Madam Chair, when you=re talking about the future, are we also incorporating what Ms. Hubbard -- I found her information to be helpful, especially when she started talking about the water table and the ground sinking

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and, you know, some of those things really will come into play.

So, I don=t know how that would tie in at this point in time, when maybe, I don=t know if it=s appropriate, how we move. I know we have an additional, what is it, 40 days or 30 days comment period. And we may want to ask the Office of Planning to look at the piece that Ms. Hubbard -- because I have highlighted a lot of issues that she raised. And we asked her for this in her testimony because she states in here where the ground is sinking and they have some evidence of that obviously from her correspondence.

CHAIRPERSON MITTEN: Not unlike some of the other submissions that we received, I think, you know, her suggestions are worth consideration. I=m just not sure that they=re appropriate to this very narrow --

VICE CHAIRPERSON HOOD: I just wanted to make sure that the Office of Planning looked at it to see if there=s anything to fine tune to fit into that.

CHAIRPERSON MITTEN: Okay. We=ll incorporate this into our larger discussion of building height that we plan to undertake in the near future. Would that be satisfactory?

VICE CHAIRPERSON HOOD: Yes. That=s fine.

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And also, maybe I'm jumping ahead. I'll wait.

CHAIRPERSON MITTEN: We also had a recommendation from Whayne Quin who was representing -- is that where you were going?

VICE CHAIRPERSON HOOD: Yes. That's where I was going to.

CHAIRPERSON MITTEN: Okay. Representing the Akridge Company at the hearing that he suggested that we change, rather than having the word be measured from the lower of the natural grade or the finished grade at the middle front of the building, that it be the higher of. And I believe his reasoning for that was that the Height Act, I actually couldn't put my finger on the exact passage that says this, but that the Height Act requires greater heights when there is an alternative. And what I found was that the purpose of the Height Act is to set the upper limit of height but not to in any other way control what the Zoning Commission or the City Council determined to be any heights lower than those height limits.

So, unless someone has another understanding, I'm not in favor of changing --

COMMISSIONER PARSONS: No.

CHAIRPERSON MITTEN: -- the -- okay.

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VICE CHAIRPERSON HOOD: I would agree.

CHAIRPERSON MITTEN: Okay. And then the other suggestion from Mr. Quin was a deletion from the definition of natural grade and that the deletion would be to delete the following words, "Because of an existing building or structure." So, the definition would read: The undisturbed ground level formed without human intervention, or with the under disturbed ground level cannot be ascertained, the undisturbed existing grade.

I think that that actually makes it a little more liberal so I don't think --

COMMISSIONER PARSONS: Yes, it does.

CHAIRPERSON MITTEN: You know, and then it doesn't -- I think there's a variety of reasons why, especially since we don't define "undisturbed" because it's not fixed at a point in time, that that would actually be a superior definition.

Maybe I'll just Ms. Steingasser if it would cause you any consternation?

MS. STEINGASSER: No.

CHAIRPERSON MITTEN: Okay. And this will be advertised, too, so the extent that you want to weigh in in the future.

COMMISSIONER PARSONS: What would we be

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taking out?

CHAIRPERSON MITTEN: We would be taking out
ABecause of an existing building or structure.@ So,
in essence, it would say where the undisturbed ground
level cannot be ascertained for any reason. I mean,
it doesn't have to say -- that=s what implied. Not
these specific narrow reasons, but for any reason.

VICE CHAIRPERSON HOOD: You know, looking
at that, Madam Chair, I don't see where that feeds the
language that goes on. I don't see where that causes
a problem.

CHAIRPERSON MITTEN: You don't -- Okay. So
you=re in favor of keeping it as is or deleting?

VICE CHAIRPERSON HOOD: To leave it in
there.

CHAIRPERSON MITTEN: Okay. Where are you,
Mr. Parsons?

COMMISSIONER PARSONS: I=m trying to figure
out why there would be another reason you couldn't
just ascertain the --

CHAIRPERSON MITTEN: Well, I guess the
point is --

COMMISSIONER PARSONS: -- undisturbed
ground. There would have to be a building or
structure in the way.

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CHAIRPERSON MITTEN: But I guess it runs to the question of --

COMMISSIONER PARSONS: Unless somebody wanted to mind it or --

CHAIRPERSON MITTEN: What=s undisturbed until. You know, undisturbed as of yesterday? Undisturbed as of a month ago? Undisturbed as of, if it had been terraced or graded or something like that.

And in some cases, I=m sure, it=s obvious that something has happened because it=s different than what=s immediately adjacent.

We can leave it in and ask Mr. Quin for more, you know, he can weigh in some more explanation.

COMMISSIONER PARSONS: That made sense to me during the hearing, but now that I start to unravel it, it doesn=t make sense.

CHAIRPERSON MITTEN: Okay. So, we=ll leave it in and we=ll let them take another shot at it.

COMMISSIONER PARSONS: The definition of grade.

CHAIRPERSON MITTEN: Okay.

SECRETARY BASTIDA: Madam Chair, this will be a rule making so there will be a comment period --

CHAIRPERSON MITTEN: Right.

SECRETARY BASTIDA: -- on what you

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propose?

CHAIRPERSON MITTEN: Yes, thank you.

SECRETARY BASTIDA: Okay.

CHAIRPERSON MITTEN: Okay. So those were all the suggestions that I found on revisiting this.

Is there anyone else that had picked anything else up that they wanted to introduce?

VICE CHAIRPERSON HOOD: I guess the concerns of 4 citizens association and those kind of concerns we're taking up at a later date?

CHAIRPERSON MITTEN: Yes. Right.

VICE CHAIRPERSON HOOD: Okay.

COMMISSIONER PARSONS: let me bring to your attention something that has troubled me for a number of years.

In 1989 this Commission took proposed action on measuring heights on slopes adjacent to parks.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: And came up with the methodology for not taking the street. The classic was the Sheraton Hotel which would build as a matter of right, a 190 feet from Rock Creek Park, because they were measuring off a culvert.

So we undertook a full hearing, took

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proposed action and it is the only case that I know of in the history of the Zoning Commission that never came to fruition. I mean, we went through exactly what we're going through here.

So, I would urge the staff and David Coulby was going to take a look at this in retirement.

I was pushing Ms. McCarthy out of -- because it's a full case.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: And it's exactly what is shown in ANC, I mean, it's this situation --

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: -- where you measure from the front street address and you end up building an enormous house on the other side of the slope. It doesn't have to be a park. In that case it was, but there's a basis of information as to how we dealt with averaging and so forth.

So, maybe we can resurrect the 1989 case.

CHAIRPERSON MITTEN: Let me just ask you, because we shouldn't have something dangling like this.

Would you want us all to read the record and then vote on final action or would you like that to be revisited in this larger context?

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COMMISSIONER PARSONS: Well, I think in a larger context.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: Because I just didn't want discover this --

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: -- you know, the staff to discover this later when I remind them.

CHAIRPERSON MITTEN: Okay. That=s fair.

COMMISSIONER PARSONS: Okay.

CHAIRPERSON MITTEN: All right. So, what we have is everything as was advertised with the exception of the second additional sentence to the definition of building height will read AIn the case of a property fronting on a bridge or viaduct, the height of the building shall be measured,@ etcetera, etcetera.

So, I would move approval of Zoning Commission Case No. 02-35 with that amendment to the language that was set down for public hearing.

COMMISSIONER PARSONS: Second.

CHAIRPERSON MITTEN: Any further discussion?

All those in favor please say aye.

(Ayes)

CHAIRPERSON MITTEN: Those opposed please say no.

I=m going to have to vote -- I=m going to abstain Mr. May because Mr. May doesn=t know about the amended language that we voted on. He was in favor of the text as advertised so I would like Mr. May to be an abstention by absentee vote.

MS. SANCHEZ: Okay. Should I go ahead and record the vote?

CHAIRPERSON MITTEN: Yes, please, I=m sorry.

MS. SANCHEZ: Yes. Staff would record the vote four to zero to one to approve the proposed action Case No. 02-35. Commissioner Mitten moving, Commissioner Hood seconding, Commissioners Hannaham and Parsons in favor. Commissioner May abstaining by absentee ballot.

CHAIRPERSON MITTEN: Who did you say seconded that?

MS. SANCHEZ: I thought it was Hood. Maybe I --

CHAIRPERSON MITTEN: No, it was Mr. Parsons.

MS. SANCHEZ: I=m sorry.

CHAIRPERSON MITTEN: They=re often confused

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for each other. Okay.

Next is Zoning Commission Case No. 02-34 which is the Optical Transmission Nodes case.

This was a request from the Office of Planning for a text amendment to permit optical transmission nodes as a matter of right in commercial and industrial zones and to permit them by special exception in other zones.

The Commission had asked the Office of Planning to consider whether there would be any potential adverse impacts created if an optical transmission node as a matter of right use was introduced in close proximity to a residential or mixed use zone. And we have an April 4th memo from the Office of Planning addressing that concern and also suggesting that they did not recommend any additional setbacks or other controls.

We also received a letter from Mr. Donohue representing the Comcast Cable and it explains the use of optical transmission nodes and recommends a few clarifications. Among them are distinguishing the controls on exterior versus interior optical transmission nodes.

So, let me just ask first -- I might, let=s see.

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Ms. Sanchez, you're going to have to help me. Did you give us that hearing proposal?

MS. SANCHEZ: Yes, I did. Did you need another copy?

CHAIRPERSON MITTEN: Well, Mr. Hood is sharing his with me. I seem to have misplaced it in my paperwork.

I think Mr. Donohue's point was that in the definition that was advertised, an optical transmission node is a facility. So, that facility is interior or exterior and then when we set forth the special exception criteria, we're really addressing the ones that are exterior only. And I guess he's not satisfied that there's enough clarity there to preclude the Zoning Administrator from attempting to apply the special exception criteria in the case of an interior optical transmission node in the mixed use zones.

Ms. Steingasser, had you had a chance to read Mr. Donohue's --

MS. STEINGASSER: I have.

CHAIRPERSON MITTEN: -- letter and --

MS. STEINGASSER: Yes, I have and I've spoken with Mr. Donohue about the issue.

What he's concerned about is in many cases

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they may be able to just lease out unused basement space of an existing office building and hotel and as the staff proposed the language, it could be easily interpreted to require them to get a special exception even for that small use.

We have no objection to his desire to clarify that difference if that=s where the Commission is comfortable and allow kind of a sub-lease operation of an OTN within an existing building. Go forward as a matter of record.

CHAIRPERSON MITTEN: Okay. I mean, is it your sense that if we -- I can=t quite tell if he=s proposing that we add this language that he has in quotes AAny new construction solely for the purpose of housing optical transmission nodes.@

MS. STEINGASSER: That=s OP=s language.

CHAIRPERSON MITTEN: That wasn=t in the set down. Right?

MS. STEINGASSER: It was not in the set down.

CHAIRPERSON MITTEN: Oh, okay.

MS. STEINGASSER: Right. It was proposed after -- to the final hearing working with the cable company and the Office of Cable Television and Mr. Donohue.

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CHAIRPERSON MITTEN: Okay. And he=s not satisfied with that? He=s not satisfied that that goes far enough?

MS. STEINGASSER: Yes. He thinks it does not go far enough in clarifying the distinction between occupying an existing building as a sub-tenant and being a sole occupant.

CHAIRPERSON MITTEN: How about if we said any new construction -- any construction. Any new construction of a free-standing structure solely for the purpose of housing? I think we also said primarily. I think we maybe modified that at the -- I think it was primarily.

MS. STEINGASSER: Mr. Donohue=s focused on the definitions in 199.1, but perhaps focusing on how and where the special exception applies is more appropriate than trying to redefine a facility as a tenant versus a sole occupant.

CHAIRPERSON MITTEN: Right. I would rather do that myself.

MS. STEINGASSER: Yes. I agree.

CHAIRPERSON MITTEN: Okay. So, what we could do is we could just adapt the amended language that you had proposed for 509.2a, 608.2, the introduction and 907.2 the introduction. What we

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could do is say any new construction of a free-standing structure primarily, I would like to say primarily for the purpose of housing and optical transmission node. Do you think that would --

MS. STEINGASSER: I think it would.

CHAIRPERSON MITTEN: -- satisfy Mr. Donahue?

MS. STEINGASSER: I think it clarifies that it's not a tenant build out permit --.

CHAIRPERSON MITTEN: Okay.

MS. STEINGASSER: -- for construction.

CHAIRPERSON MITTEN: Okay. What I'm looking at that I borrowed from Mr. Parsons is in the Office of Planning report of March 14th, they had suggested a couple of modifications to the set down language and most of it focuses on what we're talking about here.

They also recommended deleting what had been advertised as 509.2b and changing the word Asignage@ to Aadvertisement.@

And with the additional language, I would move approval of the OP text in their March 14th report to us with this addition of free-standing structure primarily for the purpose of housing an optical transmission node.

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VICE CHAIRPERSON HOOD: I will second that, Madam Chair. But I just had a question about 608.1. Mr. Donahue B or have we already addressed it?

CHAIRPERSON MITTEN: I don=t know. Ask me what it is.

VICE CHAIRPERSON HOOD: He mentioned that the -- let me see what he says. Talks about the CR district must demonstrate the facility would be appropriate in furthering objectives of the mixed use districts.

This is a difficult burden to prove. OTNs are necessary for the provisions of cable services and high speed Internet access and necessary under the terms of the franchise, and on and on and on.

It=s actually on his letter and he mentioned -- he brought that up as a concern.

CHAIRPERSON MITTEN: Yes, he did.

VICE CHAIRPERSON HOOD: 608.1. I just didn=t want to see us trying to do a special exception and creating a problem.

CHAIRPERSON MITTEN: Well, it kind of goes for all of those uses that are listed in 608.1. I mean, how are you going to prove any of those? Substation, natural gas regulator station. I mean, I think it=s probably meant to be a high standard

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because they=re not encouraging them.

VICE CHAIRPERSON HOOD: One thing I will say, I=d like to thank OP for answering my question, and my concern was right across from residential areas. And I=ll read into the record.

It says AThe location of this use across the street from a residential district, will more likely function as a buffer.@

I appreciate that. I don=t understand how it=s going to function as a buffer, but maybe I=ll wait to see one. But I appreciate OP researching that for me.

CHAIRPERSON MITTEN: Okay. I made a motion. I don=t know that anyone seconded the motion yet.

VICE CHAIRPERSON HOOD: I second.

CHAIRPERSON MITTEN: You second, okay.

VICE CHAIRPERSON HOOD: Yes, second.

CHAIRPERSON MITTEN: Now, did you have -- did you want to change 608.1 in anyway?

VICE CHAIRPERSON HOOD: No. I just was throwing it out for discussion. I wanted to make sure we addressed this concern. Like you said, it=s meant to be a higher standard and I can live with that.

CHAIRPERSON MITTEN: Okay. And if it

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proves to be problematic, then I think we need to revisit it in a larger context because it doesn't just apply exclusively to optical transmission nodes.

Any further discussion? Okay.

All those in favor please say aye.

(Ayes)

CHAIRPERSON MITTEN: Those opposed please say no.

I'm going to have to abstain Mr. May again. He was in favor of the text as advertised, but since we've modified it somewhat, I don't feel comfortable voting him in favor without him knowing the amended language.

Ms. Sanchez, would you record?

MS. SANCHEZ: Yes. The staff would record the vote four to zero to one to approve Case No. 02-34 for proposed action. Commissioner Mitten moving, Commissioner Hood seconding. Commissioners Hannaham and Parsons in favor and Commissioner May abstaining by absentee ballot.

CHAIRPERSON MITTEN: Thank you.

All right. Then the next item is Zoning Commission Case No. 02-44, Retail Arcades.

This is a request for a text amendment that was taken up on the Commission's own motion in

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response to a letter from the District of Columbia Building Industry Association. The amendment would permit existing open arcades that meet certain criteria to be closed without seeking a density variance and would eliminate the density credit for new open arcades.

Following the public hearing, we received a letter from DCBIA that responds to some of the issues that were discussed at the hearing. The DCBIA letter suggests that: First, that the language regarding historic structures is unnecessary; second, that the open arcade closure rule not be limited to those arcades for which a density credit was taken, and they also call out a possible error in the codification of Section 2515.3. And we had received general support for the text amendment by Office of Planning, DCBIA, the Department of Housing and Community development and various developers that have property in downtown Washington.

And, again, I'd like to use the public hearing notice as the point of departure for our discussion.

So, I think perhaps the biggest issue confronting us is the notion of whether or not we wanted to limit this opportunity to close an open

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arcade to only those for which a floor area limitation credit was taken or to all properties that have open arcades subject to the conditions proposed in 2513. Well, I guess we have -- yes, 2513.15. That would be the first one.

I think what was flushed out in the DCBIA letter is the fact that if anyone who took advantage of the floor area -- let me step back. All the open arcades are included in the FAR measurement and it=s for those who took advantage of the credit, they actually are over their densification to the extent of the credit, whereas, the other buildings, presumably would not be. So, it=s almost like you=re giving the people who took advantage of the credit a goody twice and you=re giving the other people nothing.

So, I don=t think we heard anything, any real compelling reason why that it should be limited.

Anybody have any thoughts about that?

COMMISSIONER PARSONS: So, are you suggesting that it shouldn=t be limited?

CHAIRPERSON MITTEN: Yes. I=m suggesting that --

COMMISSIONER PARSONS: The --

CHAIRPERSON MITTEN: Okay. It would eliminate --

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VICE CHAIRPERSON HOOD: You're saying it should or shouldn't?

CHAIRPERSON MITTEN: Should not be limited. So, in the --

VICE CHAIRPERSON HOOD: Okay. I agree with that.

CHAIRPERSON MITTEN: -- advertised text, the freeze for which a floor area ratio, it should say credit, was previously granted pursuant to 2515.3. And I'm just suggesting that we take that out.

Is everybody in agreement about that?

COMMISSIONER PARSONS: Yes.

VICE CHAIRPERSON HOOD: Yes, that's fine.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: There was another clause, Madam Chair. And I forget who proffered it, but it said except in the case of building designated as historic landmarks.

CHAIRPERSON MITTEN: Well, that was another point that they wanted us to focus on.

VICE CHAIRPERSON HOOD: I agree with the argument. The argument was, I believe, it still comes in front of the Historic Preservation Review Board so is it necessary for that to be in there?

CHAIRPERSON MITTEN: And this language was,

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just so everyone is clear, the language we're talking about now was not part of the advertised language but, instead, was language that was proposed to be added by the Office of Planning in their March 14th report to us. So, that at the end of the proposed 2513.15, it would say: AExcept in the case of buildings designated as historic landmarks or contributing to historic district where the Historic Preservation Review Board has determined that the arcade constitutes a feature contributing to the buildings historic or architectural significance.@

I agree with you, Mr. Hood, but I'm in favor of the language staying in and I'll tell you why.

It's because one of the things that happens is people, and maybe it's because of our use of the phrase Amatter of right@. There's a sense of entitlement under the zoning to density or any matter of right provision, even though that's always for landmark or probably an historic district, it's always subject to review by HPRB.

So, I think this puts them on notice that you know what, you're not entitled to it. And having the language be absent, while it will still be the reality of the situation that HPRB will have the

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authority to review that, you know, there=s this implied entitlement, I think. And that=s the only reason why I think it=s important to be there.

VICE CHAIRPERSON HOOD: Okay. I=m not going to fight on that one.

CHAIRPERSON MITTEN: Okay. Got you tired out from earlier.

VICE CHAIRPERSON HOOD: Yes, you wore me out.

CHAIRPERSON MITTEN: Okay.

VICE CHAIRPERSON HOOD: I still say, though, I mean there=s always a good fight left in me, but I still agree with Mr. Collins= argument. Again, it has review. I really -- I guess, maybe I don=t understand what the significance is with it being in there or out of there, I guess.

When I read his piece, I thought that it would be good just to leave it -- not to have it in there because it still has to be reviewed. But then when I=m hearing your argument -- I guess the best thing, Madam Chair, is for me to be quiet so we=ll move on.

CHAIRPERSON MITTEN: Okay. The Office of Planning had also recommended at the time of our hearing that the language that was advertised, that it

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be amended to say that the arcade may be enclosed if devoted solely to retail arts and service uses. So, the word Asolely@ would be added. And they also deleted Aentertainment uses@ from the list.

I think we had been a little bit uncomfortable with the inclusion of entertainment as well.

VICE CHAIRPERSON HOOD: Madam Chair, I'm assuming that we have dealt with the issue that was raised in the March 21st Office of Planning report, which the staff had -- the concern was a two-step process. I guess we dealt with that, it's on the March 21st supplemental. I don't know if we covered that.

CHAIRPERSON MITTEN: What's that? You got the second point under the recommendation?

VICE CHAIRPERSON HOOD: Actually, it's the additional information. Where they mention about a two-step process. Staff of -- conversions of eligible properties not be a two-step process.

I guess the concern is that it's still going to have to go in front of the Board, the Board of Zoning Adjustment, even if the Zoning Commission approved a recommended text amendment.

I have it highlighted. I just don't

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remember.

CHAIRPERSON MITTEN: Okay. Let me just review it again.

COMMISSIONER PARSONS: This language is offered to avoid a two-step process on page 2. Is that correct? Ms. Steingasser can help us with that.

MR. JACKSON: The Office of Planning was looking at situations where there have been instances where there are some buildings in the downtown area that are actually set back. Now, they have arcades, but the building itself is set back. And in order to allow those buildings to enclose their arcades and to move forward to the right of way, we thought it would be good to have a provision that would allow for them to extend the maximum of the arcade area or 25 percent of the first floor area. But that was just to address those instances where you had buildings that were actually sitting back from the right of way and had an arcade.

CHAIRPERSON MITTEN: Is that the only thing that you were trying to address there? Because, did you read Mr. Collins' letter, because he said that that wouldn't constitute an open arcade in the first place.

MR. JACKSON: Right. And, in fact, that is

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in line with what we were discussing. In one instance, I think 1140 Connecticut Avenue, the property has a 937 square foot arcade. The arcade actually is within the perimeter of the building.

The building itself though was set back such that, you may be familiar with the property. I think the -- there=s a comedy club in the basement.

CHAIRPERSON MITTEN: Right.

MR. JACKSON: But at any rate, the building itself was sitting back from the street. It was set back from the street. Actually, in order for them to move the retail frontage to the street edge, they needed an allowance of an additional area beyond what was allowed for the arcades.

So, for instance, the arcade in that case was not 137 square feet. They actually needed a little over 1,100 square feet in order to really bring it back out to the street. Now --

CHAIRPERSON MITTEN: Did they go to BZA?

MR. JACKSON: Yes. That=s how they were able to achieve that.

CHAIRPERSON MITTEN: Just wanted to be sure.

MR. JACKSON: Right. So, looking forward to the possibility of there being others instances

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like that, we looked at the possibility of, since the goal is to bring the --

CHAIRPERSON MITTEN: I see.

MR. JACKSON: -- frontage of the building to the street --

CHAIRPERSON MITTEN: Right. Okay.

MR. JACKSON: -- at least at ground floor level --

CHAIRPERSON MITTEN: Okay.

MR. JACKSON: -- then they would need an additional area.

CHAIRPERSON MITTEN: Okay.

MR. JACKSON: But we would note that this is probably a fairly unique situation. It probably would not be as prevalent downtown as the normal situation where the arcade area exactly meets the space that=s been eliminated for public use within the building.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: And then we could use that for the Department of Transportation building when they move out.

CHAIRPERSON MITTEN: Got to think ahead. Right? Mr. Hood likes to think ahead and Mr. Parsons likes to think ahead.

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Okay. Let=s see. Well, I still think unless we modify the language of 25, whatever it is. I got to find the section. Oh, this is supposed to be 2515. I=ve been saying the wrong thing all this time. It=s 2515.13, not 2513.15.

We would still need to address the issue. You know, it restricts the closure policy to an open arcade. It really doesn=t even -- it doesn=t fold in the idea of bringing out, you know, because if you read the introduction to it.

So, I think I=m willing to live with a two-step process for a couple of the anomalies and just kind of solve this more, the broader problem that we started with. That would be my preference.

COMMISSIONER PARSONS: We set out to solve what, six problems. Right? And now it=s sitting in a --

VICE CHAIRPERSON HOOD: Madam Chair, I think that was 2515.3. Right?

CHAIRPERSON MITTEN: Well, we have to deal with that,too. We have to deal with -- I was speaking specifically of 1515.13.

VICE CHAIRPERSON HOOD: 13, okay.

CHAIRPERSON MITTEN: Yes. Okay.

Then we have seque into Mr. Hood=s point,

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we have also the paragraph that eliminates the credit for open arcades that is contained within 2515.3. And that is where Mr. Collins was suggesting that there was an error in codification.

Staff has done some research and has said that they will continue to research that point. And since we have a period of advertisement between now and final action, I would hope that we can get that resolved. But for the time being, I=d like to just deal with the advertised language on 2515.3, knowing that we=ll have the codification issue resolved by final action.

So, I would move approval of Zoning Commission Case No. 02-44 with the language as advertised for 2515.3 and with the language for 2515.13 modified to read as follows: Notwithstanding the limitations of Section 771.2 of this title, an open arcade existing in a commercial district in the central employment area on the date on which the Commission=s final rule is published in the D.C. Register, may be enclosed if devoted solely to retail, arts and service uses permitted in the zoning district as a matter of right, except in the case of buildings designated as historic landmarks or contributing to historic district where the Historic Preservation

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Review Board has determined that the arcade constitutes a feature contributing to the building's historic or architectural significance.

COMMISSIONER PARSONS: Second.

CHAIRPERSON MITTEN: Is there any further discussion?

All those in favor please say aye.

(Ayes)

CHAIRPERSON MITTEN: Those opposed please say no.

Let's see. I'm just reading Mr. May's note. I will vote Mr. May in favor because he did say he was in favor of the broader language to allow any building to enclose the open arcade. So, Mr. May is in favor.

MS. SANCHEZ: Okay. Staff would record the vote five to zero to zero to approve proposed action in Case No. 02-44 with modifications as discussed.

Commissioner Mitten moving, Commissioner Parsons seconding. Commissioners Hannaham and Hood in favor and Commissioner May in favor by absentee ballot.

CHAIRPERSON MITTEN: Thank you. Okay.

Now, we're ready to move on to Final Action and the first item under Final Action and I

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will ask Mr. Hood to take over the meeting for the moment because I have a conflict on that case.

VICE CHAIRPERSON HOOD: Okay. Thank you, Madam Chair.

We have in front of us a request for time extension on 1616 Rhode Island Avenue which is on the Commission Case No. 02-51.

We know the history. We read through the submittal and I think that this shows good cause. I'm in favor of the time extension.

Any discussion?

COMMISSIONER PARSONS: Is that a motion, Mt. Chairman?

VICE CHAIRPERSON HOOD: I will put it to a motion.

COMMISSIONER PARSONS: I'll second that motion.

VICE CHAIRPERSON HOOD: Let me formally, I make a motion that we --

COMMISSIONER PARSONS: All right.

VICE CHAIRPERSON HOOD: -- approve a two-year time extension as recommended on Zoning Commission Case No. 02-51, 1616 Rhode Island Avenue, two-year time extension.

COMMISSIONER PARSONS: Second.

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VICE CHAIRPERSON HOOD: It=s moved and properly seconded. And I so note that the applicant=s submittal very thoroughly gave us the history and also pointed out the good cause.

So, all those in favor?

(Ayes)

VICE CHAIRPERSON HOOD: Any opposition?

So order.

Staff, would you record the vote?

MS. SANCHEZ: Do we have an absentee ballot for Mr. May?

CHAIRPERSON MITTEN: Ms. Mitten is absent right now. Let me see.

MS. SANCHEZ: Okay.

COMMISSIONER PARSONS: Apparently, he hadn=t read it thoroughly enough so he=s not casting a vote, but I=ve got the --

VICE CHAIRPERSON HOOD: Okay.

MS. SANCHEZ: All right. Then staff would record the vote three to zero to two. Commissioner Hood moving, Commissioner Parsons seconding. Commissioner Hannaham in favor to approve final action 02-51. Commissioner Mitten recusing herself, not voting and Commissioner May not present, not voting.

VICE CHAIRPERSON HOOD: Thank you. For the

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record, the Chairman has returned to the room.

CHAIRPERSON MITTEN: Thank you, Mr. Hood.
We probably took all day.

VICE CHAIRPERSON HOOD: You want me to
finish now?

CHAIRPERSON MITTEN: Sure. Go ahead.

COMMISSIONER PARSONS: Let=s see if you can
beat him now.

CHAIRPERSON MITTEN: Okay. Zoning
Commission Case No. 03-08/99-02M which is a time
extension for 1000 K Street. If I could find my final
action. Okay.

The request is for a period of one year
and this has been -- this case has been around a long
time and I=m in favor because, you know, it=s kind of
unusual circumstances, but I would suggest that if the
applicant can=t get this thing moving in a year, it=s
time to reconsider the project.

VICE CHAIRPERSON HOOD: Madam Chair, I
think that we, even though I know he only asked for a
year, they mentioned it would take eight months to get
things moving, and I forgot exactly what they
mentioned. I just remember them mentioning the time
frame. And I want to make sure this time that we
allow them enough time because there=s eight months, I

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believe, because there was something that was supposed to transpire and I have it highlighted here somewhere.

CHAIRPERSON MITTEN: Right. It=s with respect to the TIF, the applicant expects to receive a decision from the District of Columbia within eight to twelve months.

VICE CHAIRPERSON HOOD: And here=s my issue with that, Madam Chair.

I would be inclined to give them, and I don=t normally like to do this with PUDs as my former colleague Commissioner Franklin, but I would be inclined to give them a year and a half.

CHAIRPERSON MITTEN: Eighteen months?

VICE CHAIRPERSON HOOD: Eighteen months.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: Second.

CHAIRPERSON MITTEN: All right.

Any further discussion?

All those in favor of extending the PUD for 1000 K Street for an additional 18 months please say aye.

(Ayes)

CHAIRPERSON MITTEN: Those opposed please say no.

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Mr. May was in favor of a 12 month extension, but I'm going to vote him as abstaining from the 18 month extension.

MS. SANCHEZ: Okay. Staff would record the vote four to zero to one. Commissioner Hood moving, Commissioner Parsons seconding. Commissioners Hannaham and Mitten in favor. Commissioner May abstaining by absentee ballot. And this is to approve final action in Case No. 03-08 for a period of 18 months.

CHAIRPERSON MITTEN: Thank you. Okay.

Next we have Zoning Commission Case No. 00-04 which are some miscellaneous technical corrections to the zoning ordinance, and it's called out in the draft order.

VICE CHAIRPERSON HOOD: I'll move approval, Madam Chair, Zoning Commission Case No. 00-04, Minor modifications to the zoning regs.

CHAIRPERSON MITTEN: Second. Any discussion?

All those in favor please say aye.

(Ayes)

CHAIRPERSON MITTEN: Mr. May says aye.

All those opposed please say no.

Ms. Sanchez.

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MS. SANCHEZ: Staff would record the vote five to zero to zero to approve for final action Case No. 00-04. Commissioner Hood moving, Commissioner Mitten seconding and Commissioners Hannaham and Parsons in favor. Commissioner May in favor by absentee ballot.

CHAIRPERSON MITTEN: Okay.

And the last item under Final Action is Zoning Commission No. 02-32 which is the Georgetown Performing Arts Center.

And if you will remember at our last meeting, there had been a number of issues regarding compliance with the conditions of the campus plan that had been raised and some of the issues have been resolved by the passage of time. For instance, the enrollment issue, but I think our goal was to provide some guidance on interpretation going forward.

So, there were four conditions that we had asked for specific responses and then there were two additional conditions that the Citizens Association of Georgetown had raised that they raised again that the Commission hadn't asked for any additional information so I just note that if anyone wants to bring anything up.

So, I'll just run through each of the

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conditions and briefly summarize the position of the University versus the Citizens Association of Georgetown.

The issue about enrollment was whether or not averaging the enrollment for purposes of the cap was consistent with the order for the campus plan, specifically, Condition Number 2.

The University provides evidence to us that averaging was mentioned in responses to the BZA during the campus plan proceedings and that it was a long-standing practice and the Citizens Association of Georgetown says that there is no indication in the record that the averaging concept was picked up by the Office of Planning, the BZA or the community.

So, I will just toss in my view and then ask for other responses.

In the university=s response and also in the citations that they made from the record of the campus plan case, they mentioned that averaging was used as it related to an academic year. And I would say that presuming that the BZA did understand that the university averaged enrollment when expressing the enrollment for an academic year, the BZA did not -- they specifically did not incorporate the words Academic year@ when they specified the enrollment

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cap.

So, it doesn't say the applicant shall not increase the undergraduate enrollment above the cap of 56274 in academic year. I mean, so let's just assume that BZA understood everything that was put before them. I don't know how we could stretch it to say that they meant academic year when they didn't say academic year.

And I would say that that conclusion is reinforced by the fact that the reporting requirement for the enrollment, which is contained in Condition 17, is that the enrollment be reported 30 days prior to the hearing date which also suggests that averaging was not intended.

And as I said earlier, or as I think I said earlier or meant to say earlier, that enrollment figure as it stands right now is below the cap, or the most recent submission that we had.

VICE CHAIRPERSON HOOD: Madam Chair, I don't know. Do we average any campus plans, the enrollment?

CHAIRPERSON MITTEN: Well, I think the orders, I'm not sure that any of them have been specific on the subject. And my recollection is that when there was -- in the recent case with GW and their

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figures that they were submitting for enrollment, we specifically indicated that we did not intend that averaging would be used.

VICE CHAIRPERSON HOOD: Okay. Thank you.

COMMISSIONER PARSONS: Well, I'm not comfortable with this. Certainly, if you read Number 2, there's no doubt about it. I mean, that's it. You can't read it any other way. Cap is cap. And I'm really torn to the point that I wanted to see if there was possibly a tape available. I don't think there were transcripts in those days. Maybe there aren't today. BZA meetings.

I can't believe they didn't debate this. Even, you know, there's a footnote that they went on to clarify this point, although they didn't deal with averaging. So, you would think that somewhere in the record it would say, we're not buying the averaging argument like we would do.

And I guess we don't know how to find that out. Because certainly it's quite clear that the university brought averaging to them. That's part of the record. It shown to us in their submissions.

CHAIRPERSON MITTEN: Well, they brought --

COMMISSIONER PARSONS: So why is it they didn't deal with it?

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CHAIRPERSON MITTEN: Well, I think there=s a distinction to be made. It=s one thing to say what=s your enrollment for an academic year? You have to average something to get that answer --

COMMISSIONER PARSONS: Sure.

CHAIRPERSON MITTEN: -- because it changes presumably, you know, could change every day.

COMMISSIONER PARSONS: Right.

CHAIRPERSON MITTEN: But I didn=t sit on Georgetown, but I can tell you from the other campus plan cases that I=ve sat on, there=s a reason that drives the cap and in each of these cases it was related to student housing. So, if you have -- and so there=s supposed to be some relationship between the amount of housing that=s being provided on campus and the actual number of students. Not from average of number of students because it=s not an average amount of housing.

So, I think if you go even sort of go to the next level and look at the motivation, the motivation suggests that averaging wasn=t an appropriate tool to use because they were trying to address a housing situation. And if someone comes in the fall semester, they need housing. Even if they leave in the spring semester, and otherwise whatever

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adverse impact the cap is meant to address, it=s still being created for that, you know, six to ten percent of students who are, you know, how they float above the cap at a given point in time.

So, I mean, I think we have to give the benefit of the doubt to the BZA that they said what they meant which was an absolute cap, not an average, because -- you know, that=s my view.

COMMISSIONER PARSONS: So, that would mean the university would have 200 empty beds during the spring semester?

CHAIRPERSON MITTEN: Well, no. They wouldn=t have 200 empty beds. They would have 200 beds available for graduate students or someone who was -- I don=t -- they would have 200 beds available to offer to someone else who perhaps hadn=t been --

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: Well, they don=t capture -- they don=t capture --

COMMISSIONER PARSONS: It=s kind of like a personal --

CHAIRPERSON MITTEN: They don=t B yes. They don=t capture everyone in the living on campus thing anyway. They don=t have 100 percent of their undergraduates living on campus anyway. So, graduate

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students could come on campus.

You want to get in on this, Mr. Hannaham?

COMMISSIONER HANNAHAM: I really don=t.

CHAIRPERSON MITTEN: Well, you turned your
mike on.

COMMISSIONER HANNAHAM: I just got
questions, you know. I=m still not clear on all of
this stuff.

CHAIRPERSON MITTEN: Right.

COMMISSIONER HANNAHAM: There are different
classes or categories of students. So, they don=t
necessarily have to fit with the availability of beds.
You have the students that live off campus. They
don=t count as the cap. So, the cap is strictly
related to students who are on campus? All classes of
students?

CHAIRPERSON MITTEN: The cap is an
undergraduate enrollment.

COMMISSIONER HANNAHAM: All undergraduate.
Okay. What about the other campus plans? How do the
other universities report their caps? Is there
anything consistent? Is there any precedent? Do they
also indicate average?

CHAIRPERSON MITTEN: The only thing I can
say, as I said to Mr. Hood, my recollection is that

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when we were discussing the Wellness Center case recently with GW, we specifically said, you know, we don't intend for you to average. The other ones I can't say.

I mean, it's clearly something that needs to be very specifically dealt with so that it's -- I mean, this is something that apparently is unclear. So in the future, I think we need to be crystal clear.

But in the absence of that, I think what we had suggested is we were going to provide some guidance for the Zoning Administrator about what we think it means, going forward. Right now, it's a non-issue because their current enrollment is below the cap. It wasn't when they came to us originally, but now it is.

So, this case can go forward. It's a question of what happens the next time and the next time and the next time.

COMMISSIONER HANNAHAM: Oh, I see. So, it's below the cap. You like to see the cap measured in the future? It's below the cap now is it?

CHAIRPERSON MITTEN: Correct.

COMMISSIONER HANNAHAM: As you understand it.

CHAIRPERSON MITTEN: Right.

COMMISSIONER HANNAHAM: To be properly

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accounted.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER HANNAHAM: Okay. That helps.
Thanks.

VICE CHAIRPERSON HOOD: Madam Chair, I'm sitting here trying to look back at the campus plan that we handled, which I think was our first one and I don't believe with this Commission ever we didn't set a cap at averaging. That's just my recollection.

So, I think -- my concern is as long as we can -- may not be in 10 years I'm sure, but at least let's send a message and be consistent. I think that's kind of the way you're going, but I believe that from the Commission standpoint, we were not averaging with American University and, what was it Trinity?

CHAIRPERSON MITTEN: We did Trinity and we did American and Catholic is pending.

VICE CHAIRPERSON HOOD: Catholic is pending. Okay.

CHAIRPERSON MITTEN: Right.

VICE CHAIRPERSON HOOD: I don't think we've ever done the averaging so --

CHAIRPERSON MITTEN: Okay. So, is the guidance that we want to give to the Zoning

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Administrator that when it says enrollment cap that is not an average for an academic year? Is there a consensus on that?

COMMISSIONER HANNAHAM: Yes. Undergraduate.

CHAIRPERSON MITTEN: Undergraduate enrollment.

COMMISSIONER HANNAHAM: Undergraduate enrollment. Okay.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER HANNAHAM: Understand.

CHAIRPERSON MITTEN: Do we have a consensus on that?

COMMISSIONER PARSONS: I'm still thinking. I may abstain.

CHAIRPERSON MITTEN: Okay. Well, we can come back to that then. Okay.

The next issue relates to the off campus student affairs program. The university says that the sanction of revoking off campus housing that the off housing privilege is contained within the code of conduct and, in fact, one student with discipline problems has been required to return to live on campus. The Citizens Association of Georgetown says, and I'm quoting here. We merely ask that Georgetown University be precluded from doing the opposite,

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encouraging or permitting students with records of bad performance to leave campus and live in the community.@

The Citizens Association wants the university to be compelled in some way to revoke off campus housing privileges and, again, I quote, ABut isn=t the point of specifying remedies that the remedies would be put to use@

My suggestion on that is that really goes beyond the -- I think that goes beyond the scope of what was the condition. That might have been the ultimate intent on the part of some, but that is not what the condition compels the university to do.

So, I think that the university is in compliance with that and that their program right now is consistent with that.

COMMISSIONER PARSONS: I agree.

VICE CHAIRPERSON HOOD: I=m not sure if I agree. Give me one second.

CHAIRPERSON MITTEN: Uh-huh.

VICE CHAIRPERSON HOOD: So, what are you saying, Madam Chair? You=re saying that, again, as I think we might have been in this area before.

CHAIRPERSON MITTEN: Uh-huh.

VICE CHAIRPERSON HOOD: You=re just saying it is there. Are you saying that it shouldn=t be

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enforced or they're just putting that out there? I'm not following you.

CHAIRPERSON MITTEN: Okay. Let me just go back to the text of the condition. I'm not going to deal with the whole thing, because I think we narrowed it. But it says "The off campus student affairs program implemented and enforced by the applicant shall specify that off campus housing is a privilege that can be revoked due to student misconduct whether a violation occurs on or off campus."

So, what we have is that the university does specify in their code of conduct that off campus housing is a privilege that may be revoked, okay, and, in fact, they have revoked it. But this doesn't compel them. This condition does not compel them to revoke off campus housing and I'm not -- well, I'll just leave it at that. It doesn't compel them to do that.

So, what I'm getting is that, you know, the Citizens Association would have preferred a stronger condition but that's not what they got. So, I think the university's living within the parameters of the condition that the BZA put in place.

VICE CHAIRPERSON HOOD: So, they're planning to the bare minimum, I guess?

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CHAIRPERSON MITTEN: Well, I --

VICE CHAIRPERSON HOOD: I mean, that=s basically what was happening. I don=t know. I don=t know how to do it. Okay, we can continue.

CHAIRPERSON MITTEN: Okay.

The next relates to Condition 9 and this regards the data on complaints about students.

The university provided an example of a typical report for us and it includes the number of calls to the Hotline, the types and numbers of calls to MPD. The Trash Report, which I=m not sure what that is exactly and that=s the numbers on the Trash Report. Sanctions given to students living off campus by number and type. The offenses by students living off campus by number and type.

And I think there were a couple of issues here. Whether or not the data was intended to be about students living off campus only and then it was also about the adequacy of the reporting. And I think we had some discussion, at our previous meeting, about whether or not the reports were intended to deal strictly with students living off campus but as the university suggests, some of the information that=s included in these reports relates to students living on campus as well.

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The focus for the Citizens Association is that the condition requires that the report include the outcome of each complaint and that these are not included in the reports and that they are desirous of case-specific outcomes as required by Condition 9.

What I would suggest is that, I mean, what you have is as you look at the different reports that come in, there isn't a direct connection between a report that came in and whether or not -- well, a specific report came in on a certain day and it was assigned a tracking number. And that was then a confirmed incident and went on to be dealt with in a following manner. We don't have that. But we have aggregated information about what happened.

And I mean, if you look at the numbers on the sanctions and so forth, I think it's, at least as far things related to the Hotline, it suggests that the sanctions exceed the number of offenses so it's suggesting that, you know, something is happening that's not -- there aren't things slipping through.

So, then the question becomes, is the provision to provide the outcome of each complaint, is that supposed to be complaint specific or is that supposed to be aggregated? That's what it comes down to.

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VICE CHAIRPERSON HOOD: But in the condition it=s really no guidance. In Condition Number 9 it says, available data indicated in a number of types of complaints received in certain student misconduct shall make publicly --

COMMISSIONER PARSONS: Well, I think it should be in the aggregate.

CHAIRPERSON MITTEN: Could you put on your mike there.

COMMISSIONER PARSONS: Well, I think it should be in the aggregate. To me it=s a stray into an invasion of privacy to start targeting or releasing internal documents that are specific to each student.

If that=s the outcome desired, I just think it=s --

CHAIRPERSON MITTEN: I think the Citizens Association was not suggesting that names be attached, but that they have a blind tracking number or something. So, somebody who called on a specific day could see whether their complaint was --

COMMISSIONER PARSONS: I can=t buy that.

CHAIRPERSON MITTEN: Okay. Anybody else?

VICE CHAIRPERSON HOOD: You mean some type of system in place to see whether their complaints or the issues they have were dealt with?

CHAIRPERSON MITTEN: Right. Because if

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somebody wants to know, look, I called in and I was assigned number 1001 as my complaint number and I want to know what happened with my complaint, whatever, you know. Which I guess the bottom line, I don=t know what to do with that information. You can only really do something about aggregate information. Otherwise, you know, it=s really particularly from a planning perspective and we=re trying to deal with adverse impacts. And we=re going to get into, you know, individual neighbors calling and saying, you know, I want to know what you did and when you did it on the complaint.

COMMISSIONER PARSONS: What=s their name? Who is their mother? Who is their father? Where do they live?

CHAIRPERSON MITTEN: Yeah, I just --

VICE CHAIRPERSON HOOD: I agree.

CHAIRPERSON MITTEN: I don=t have the sense that that=s what was intended.

COMMISSIONER HANNAHAM: I was just wondering. How are these students living in the neighborhoods? Aren=t they just like any other citizen? For instance, if there=s a complaint made that might be some activity that would require police response, that they would be treated just like anybody

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else if --

CHAIRPERSON MITTEN: Yes, and there=s two kinds of complaints.

COMMISSIONER HANNAHAM: And the police, you know --

CHAIRPERSON MITTEN: There=s ones that go to the Hotline and then there=s ones that go to the police and there=s different reports on each.

COMMISSIONER HANNAHAM: Okay. Seems to me as though the police cases would be public, you know. The police have a docket and public access to reporters and the citizens and even to a site, a website.

CHAIRPERSON MITTEN: Well, certainly the cases that are reported to the police department, they could find out the outcome of those and the others or the Hotline cases are the ones that are handled in house.

I=m sorry, you just turned your mike off.

COMMISSIONER HANNAHAM: The Hotline cases as far as the neighborhoods are concerned can be just as severe as anything that they call the police for.

CHAIRPERSON MITTEN: Oh, sure. Sure. So, I guess, what we need to decide though is whether or not what was intended by Condition --

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COMMISSIONER HANNAHAM: 9.

CHAIRPERSON MITTEN: -- 9, thank you, was that the report was supposed to contain, almost like it would be able to track the progress of any given complaint.

COMMISSIONER HANNAHAM: Right. Like a 727-1000.

CHAIRPERSON MITTEN: Yes, kind of like that.

COMMISSIONER HANNAHAM: The mayor=s hotline.

CHAIRPERSON MITTEN: Right.

COMMISSIONER HANNAHAM: And you get a case number or whatever.

CHAIRPERSON MITTEN: Something like that.

COMMISSIONER HANNAHAM: Okay. That=s possible. I mean, at least it=s possible for one class of complaints, and that=s the police accounts. The police type. And we should be able to get some sense as to whether the system is working, you know, by just looking at the police record.

CHAIRPERSON MITTEN: Okay. So, okay. What=s your view on Condition 9 and the university=s compliance with it at the moment? Is it your sense that the reports that they are providing do comply

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with the requirements of Condition 9 or that they don=t?

COMMISSIONER HANNAHAM: They probably do to the extent that they have been required to do in Section 9.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER HANNAHAM: But it=s not going to be perfect. I don=t think anybody is going to be able to devise a perfect system for tracking and sanctioning. Maybe by example when a couple of kids are expelled from school for misconduct, I think that will be a better message than any of these systems.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER HANNAHAM: That=s my own personal, and that=s beyond our purview.

CHAIRPERSON MITTEN: Okay. Okay.

VICE CHAIRPERSON HOOD: Madam Chair, let me just ask. What if we do like the BZA does sometimes? Why don=t we send it back to them and ask them. I=m sure no one is in favor of this, but I=m going to put it out there. Send it back to them and ask them what they meant in these three areas and give us specifics, and let them evaluate it. They=re the ones who created these conditions.

CHAIRPERSON MITTEN: Send it to the BZA?

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COMMISSIONER PARSONS: BZA, they=re all gone.

VICE CHAIRPERSON HOOD: Well, when I first come to the Zoning Commission, the only person -- and I don=t mean this like I=m going to say it, Mr. Parsons.

CHAIRPERSON MITTEN: Yes, you do.

VICE CHAIRPERSON HOOD: The only person who has been here was you. Because what I=m hearing, we=re sitting here guessing what the -- not guessing, but with what=s provided in the record, making the most intelligent decision that we can. And then I look down here at Condition 19. Somebody meant something to be very specific and to be very much so enforced. Go back to my English class, but anyway. To be enforced because that=s a very strong statement in Condition 19. And I think maybe it may be inappropriate for us to sit here and try to think what this person meant and what that person meant.

I don=t know. I just threw that out there for discussion.

COMMISSIONER PARSONS: Well, if we=re going to take Number 2 on its face --

CHAIRPERSON MITTEN: Uh-huh.

COMMISSIONER PARSONS: -- then we ought to

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be taking Number 9 out of its face.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: It's quarterly reports of aggregate activities.

CHAIRPERSON MITTEN: Okay. That's your -- okay.

I mean, Mr. Hood, what we have before us is that we have a request for further processing. And what we have to do is decide if the university is in substantial compliance with the order, and there's been a number of issues raised about compliance. And we have to, you know, make this decision at this point.

Now, it could be, well, you know, we don't know what we think about Condition 9 in a very fine tuned sense, but we think they're substantially in compliance with it so we can move on and go from there.

COMMISSIONER HANNAHAM: What was 19. I just don't happen to have --

CHAIRPERSON MITTEN: I'm sorry?

COMMISSIONER HANNAHAM: -- the conditions with me. What was 19?

CHAIRPERSON MITTEN: Oh, 19 is basically that you don't get --

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COMMISSIONER HANNAHAM: We might as well throw that one out.

CHAIRPERSON MITTEN: You don=t get further processing unless you=re in substantial compliance.

COMMISSIONER HANNAHAM: Oh, I see.

CHAIRPERSON MITTEN: That=s the condition.

COMMISSIONER HANNAHAM: Okay.

CHAIRPERSON MITTEN: Yes. Okay. I think we=ve beat that one to death.

VICE CHAIRPERSON HOOD: Yes. Madam Chair, no one bought into the direction I was trying to go into.

COMMISSIONER PARSONS: To reassemble Sockwell, Reed, Renshaw, and Franklin as consultants?

CHAIRPERSON MITTEN: No. I=m not buying into that, I=m sorry.

COMMISSIONER PARSONS: No.

CHAIRPERSON MITTEN: And besides the order has to stand on -- is intended to stand on its own.

Condition Number 14, this relates to the motor vehicle registration. The university was directed to consult with the Department of Motor Vehicles which they have submitted evidence that they have done and is being acknowledged by DMV. The DMV has expressed that they do not enforce the

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registration rules, that the police department does.

The police department has not provided any information to the university that there are any students in violation of the registration requirement.

And then finally, the university is limited in the amount of information it can share with either the DMV of the MPD because of FERPA. And I=d just like to take a moment and ask Ms. Nagelhout, if you can address that particular issue about the sharing of the information and whether it=s excluded by FERPA.

MS. NAGELHOUT: I don=t think I can provide anything terribly helpful.

As you know, this is still up on appeal before the District of Columbia Court of Appeals. The District=s position is that Condition 14 is valid and that the license plate numbers of the student motor vehicles are within the directory information exemption under FERPA so that there can be some sharing.

The university has not shown that there is no way they can comply with Condition 14 without also violating FERPA, so obviously the details remain to be worked out. But, I think there is some validity to the directory information exemption.

CHAIRPERSON MITTEN: Okay. Then finally

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just so that I have everything rounded out, the Department of Motor Vehicles, we have a letter, April 7th that says, or even if they did provide us the list or the fact that they didn't provide us a list, doesn't concern us because the student may not be the owner. They're merely the driver and they may be an appropriate driver, but the owner lives elsewhere and so they wouldn't be required to register the vehicle.

So, there, we have all that.

VICE CHAIRPERSON HOOD: So we have a condition? I'm just making sure. We have a condition here that was put into this order which is basically not enforceable. Basically, it's a moot point. I mean, it really shouldn't even be here according to the letter we got here from, the way I understand it, what we got here from Mrs. Stanley, the administrator down at DMV.

So, you know, I guess I'm saying that to say that hopefully now the Zoning Commission as we move forward that we make sure we put things that way we won't raise the community's expectations that this can actually be taken care of or done. Obviously, it can't. That's the way I look at it.

CHAIRPERSON MITTEN: Okay. Well, I think

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part of the problem is, is that I don=t think Condition 14 is particularly well worded to accomplish the intent. I mean, I think we know more about the way the enforcement structure works and had more input from DMV than the BZA had at the time that they wrote this.

I mean, the applicant is required to consult with the DMV and they have and DMV says they have, and it=s kind of hard to say what specific information is supposed to be provided and so on. And then DMV doesn=t consider it their role to enforce.

VICE CHAIRPERSON HOOD: So, it goes back to my original point. We have no Condition 14. I mean, there=s one here, but it doesn=t make a difference.

CHAIRPERSON MITTEN: It doesn=t really accomplish what it was intended to accomplish, I don=t think.

And so, I guess, you know, to the extent that we see a weakness, I don=t think it=s our role to revise the condition, to write in what was intended.

VICE CHAIRPERSON HOOD: But I think that for me this is a learning experience so that when the campus plan is coming in front of us.

CHAIRPERSON MITTEN: I=m telling you.

VICE CHAIRPERSON HOOD: We can deal with it

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accordingly.

CHAIRPERSON MITTEN: It=s requires --

VICE CHAIRPERSON HOOD: That=s if we=re still here.

CHAIRPERSON MITTEN: Well, it=s right --

COMMISSIONER PARSONS: That means 10 years to wait for release of substantial revision of these aspects of the plan?

CHAIRPERSON MITTEN: Well, I don=t know what the opportunities are by way of amending conditions and so forth, but we have been told numerous times by corporation counsel that when conditions change to the point where any BZA order is not accomplishing the protections that it=s intended to accomplish, that that=s grounds for requesting revision of a BZA order.

Ms. Nagelhout, I=m paraphrasing what I=ve heard Mr. Bergstein say.

MS. NAGELHOUT: I also recall Mr. Bergstein saying something along those lines.

COMMISSIONER HANNAHAM: Will that be Number 14 then? Wouldn=t that be?

CHAIRPERSON MITTEN: Well, I don=t know I mean I don=t know if fine tuning these conditions reaches the level of significance because any party

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has the opportunity. You know, you don't get to comment on -- you know, the BZA doesn't circulate stuff like we do. They don't have two votes before they take final action. They have one vote. So, they don't have a provision where folks can comment on proposed action, but that's what the request for reconsideration are to the extent that people think conditions are weak. And if somebody doesn't avail themselves of that because they haven't dealt with the condition, I don't know what provisions there are, you know, two, three, four years down the road to revisit those. But, you know, somebody is certainly able to explore that with staff or corporation counsel if they wanted to do that.

COMMISSIONER HANNAHAM: I'd like to do that because I don't see any end to this.

CHAIRPERSON MITTEN: I'd rather someone out there do it.

COMMISSIONER HANNAHAM: Well, yes. Somebody -- whatever is possible.

CHAIRPERSON MITTEN: Uh-huh.

COMMISSIONER HANNAHAM: I think there should be a serious look at this and if there's agony that can't be resolved in the actual execution of commitments to this plan, then that just leaves

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neighbors in a terrible dilemma.

CHAIRPERSON MITTEN: Well, yes, ambiguity doesn't serve anybody --

COMMISSIONER HANNAHAM: No.

CHAIRPERSON MITTEN: -- in the conditions.

VICE CHAIRPERSON HOOD: Madam Chair, I would agree with Commissioner Hannaham because what will happen is, we'll show up a year from now with further processing and --

CHAIRPERSON MITTEN: Would be right back where we are.

VICE CHAIRPERSON HOOD: -- basically would be sent right back in the same place. So, if this Commission can help mitigate or solve that issue, I think that would be well worth us looking into, or not, since you don't want us, whoever may listening.

CHAIRPERSON MITTEN: They can instigate or institute or investigate.

COMMISSIONER PARSONS: So, in summary, they're in compliance with this Number 14?

CHAIRPERSON MITTEN: As I read it, I think --

COMMISSIONER PARSONS: It's --

CHAIRPERSON MITTEN: I think so.

COMMISSIONER PARSONS: You do.

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CHAIRPERSON MITTEN: I think so. Okay.

One of the things that I had raised and then I didn't get a final thought on is whether or not the intention of Condition 9 is to capture complaints about students living on campus or off campus. And I think we had a sort of non-definitive discussion at our last meeting on the subject, and that's been quoted back to us in some of the submissions. If you want to read what you said, you can look back.

So, what are the thoughts?

COMMISSIONER PARSONS: Are you going to read back what we said?

CHAIRPERSON MITTEN: I thought you could read back to yourself what you said.

COMMISSIONER PARSONS: Oh.

CHAIRPERSON MITTEN: Let me see. If you want to read, it's on -- certain portions of it are on, starting on page 7 and 8 of the March 10th submission from applicant's representative.

COMMISSIONER PARSONS: I thought that's what I said.

CHAIRPERSON MITTEN: Well, would you say it again or say it in a new way?

COMMISSIONER PARSONS: To me, the whole direction of this is for students living off campus,

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not what=s going on in the dormitory or going on on M Street at 34th.

CHAIRPERSON MITTEN: Well, what happens actually, and I think this is the university=s point, is that some of these complaints, that they encompass both, both groups.

COMMISSIONER PARSONS: Yes, but the most obnoxious quality is people living off campus raising hell in their community --

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: -- for one reason or another; trash, noise, drunkenness. That kind of thing. Then, of course, there=s the kids returning from whatever they=re doing on Wisconsin Avenue at 2:00 in the morning and hollering all the way home.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: And that gets into the category, I moved into next to a university and I don=t like kids being noisy. Then don=t move in next to the airport. That= a pretty harsh view, but it=s different to have residential stock being converted to student housing, and that=s a whole different circumstance to me.

CHAIRPERSON MITTEN: Well, I would also note that the MPD reports break down whether or not

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there was on campus and off campus students. So, the MPD reports include both. And they also have the -- they have the highest -- they have a higher number of incidents than is actually confirmed incidents on the Hotline. So, I think the lion=s share, I mean they=re getting the lion=s share of off campus student complaints. On campus student complaints if the students live on campus if they=re doing something off campus, I think it=s being captured.

So, I don=t think it=s here. I think there=s other evidence that suggests that it, particularly the motivation of it as I think you=re suggesting, is that it=s students living off campus and so I don=t think you can stretch it to say that they=re not in substantial compliance because they=re not specifically reporting both. That would be where I would fall out on that.

VICE CHAIRPERSON HOOD: But, you know, Madam Chair, looking at one of the reports about the trash violations and looking at how many violations there were, 47 and two were fined. Two out of the 45 were told -- were fined, I guess they had to pay a ticket or whatever the case is.

We got bigger problems when I=m looking at that ratio. If I=m understanding what I see in this

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report, we got bigger problems than just compliance issue. We got other problems and it=s probably in other agencies. But if you got 47 violations and you only ticket two people, two people have to pay a fine, we got a big problem. I mean, I just threw that in there.

CHAIRPERSON MITTEN: Okay. Well, I=d like to do this in two phases.

One is I=d like to take a vote on the proposal for the Georgetown Performing Arts Center and I will make a motion to that effect in a moment. And then I would like to just get a consensus on each of the conditions and any position that we want to take on future interpretation of any of the conditions.

So, I would move approval of Zoning Commission Case No. 02-32 for the Georgetown Performing Arts Center on the basis that this special exception is consistent with the parameters of the campus plan and will not cause any adverse conditions.

But also that the university is at the moment, in substantial compliance with the campus plan.

VICE CHAIRPERSON HOOD: Madam Chair, I would just ask, I would --

COMMISSIONER PARSONS: Second.

VICE CHAIRPERSON HOOD: I would just like

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to ask, Madam Chair, for discussion that we take out the word Asubstantial.@

CHAIRPERSON MITTEN: Well, that=s the finding we have to make.

COMMISSIONER PARSONS: We got to use it.

VICE CHAIRPERSON HOOD: Is that in 19?

CHAIRPERSON MITTEN: Yes, it is.

COMMISSIONER PARSONS: Substantial is less than 100 percent.

VICE CHAIRPERSON HOOD: I still don=t understand why we need to use the word Asubstantial.@ We just find them in compliance.

CHAIRPERSON MITTEN: Well, I just said because that=s the test in Condition 19. And I think that whether, and Ms. Nagelhout can correct me if I=m wrong, but I think that=s implied whether it=s stated or not. I think case law suggests that substantial compliance is the standard, not absolute compliance.

Am I right about that?

MS. NAGELHOUT: I don=t know.

CHAIRPERSON MITTEN: Oh, okay.

MS. NAGELHOUT: But I think the intent was to -- substantial compliance is something a little bit easier than strict compliance. So, I mean, the intention was to not require the Commission to look at

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minute details on all the conditions.

VICE CHAIRPERSON HOOD: I would just feel more comfortable, and I know case law and I=ll worry about that when I get to that point. I would just feel more comfortable if we took out Asubstantial@, but if it has to be in there then, unfortunately, then we=ll leave it in there because I really don=t think that we have enough evidence to find that fact. I would just say that they are in compliance.

CHAIRPERSON MITTEN: Okay. Well, why don=t we just -- I just move approval of the case under whatever --

VICE CHAIRPERSON HOOD: That=s sounds --

CHAIRPERSON MITTEN: That=s fine. Okay.

Any further discussion on the proposed further processing?

All those in favor, please say aye.

(Ayes)

CHAIRPERSON MITTEN: Mr. May votes aye.

All those opposed please say no.

Ms. Sanchez.

MS. SANCHEZ: The staff would record the vote five to zero to zero to approve Case No. 02-32 as discussed. Commissioner Mitten moving, Commissioner Parsons seconding. Commissioners Hannaham and Hood in

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favor and Commissioner May in favor by absentee ballot.

CHAIRPERSON MITTEN: Yes, okay.

Now, I would like to get a consensus regarding the Condition 2, the enrollment.

Is there a consensus that we do not endorse the averaging concept because the average is meant to reflect an academic year and that was specifically not stated by the BZA in their order?

Do we have a consensus about that?

COMMISSIONER HANNAHAM: Yes.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: I'm still not there.

CHAIRPERSON MITTEN: You're not there.

COMMISSIONER PARSONS: Because what I want to ask about that is so, what's the consensus? Does that mean that --

CHAIRPERSON MITTEN: It's just guidance. I mean, we can't --

COMMISSIONER PARSONS: Well, the next time the university comes in for processing of a building, there was a consensus of commissioners present that we can't average? Does that mean -- or does that mean what?

CHAIRPERSON MITTEN: First of all, it's not

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just about us. It=s about giving guidance to the Zoning Administrator --

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: -- because he has -- there=s more than just further processing that are governed by Condition 19. It=s --

COMMISSIONER PARSONS: Well, my point is, are you amending the order?

CHAIRPERSON MITTEN: No, we=re interpreting the order. We are rendering an interpretation of the order.

Now, you could say, you know what, I really don=t want to go there right now because --

COMMISSIONER PARSONS: I don=t.

CHAIRPERSON MITTEN: -- I=ll worry about that the next time that it comes.

COMMISSIONER PARSONS: I really would like to review the tapes. I said that at the beginning of the meeting, to see --

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: -- if there are any discussion that said we=re not buying that averaging item.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: Maybe the tapes are

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lost.

VICE CHAIRPERSON HOOD: Mr. Parsons, I really want to see the difference in what I'm suggesting and what you're suggesting. We still are recreating the Sockwells and Ms. Reid, and you're going back to the tapes. I just figure we send it back to the BZA.

I just thought I'd mention that.

CHAIRPERSON MITTEN: Okay, well --

COMMISSIONER PARSONS: It wasn't for myself.

CHAIRPERSON MITTEN: Okay, I'm --

COMMISSIONER PARSONS: I'm sorry. But if the three of you, that's the consensus that's fine.

CHAIRPERSON MITTEN: No, it's not a consensus then. It's not a consensus and it's -- if we can't decide this, then the discussion that we've had is just going to stand on its own. It's just a bunch of opinions running around out there.

And the BZA can do what the BZA does and the next time they come to us, depending upon who is sitting up here --

COMMISSIONER PARSONS: Can we request the tapes? I don't want this to die.

CHAIRPERSON MITTEN: Well, you can request

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the tapes.

COMMISSIONER PARSONS: I=d like to request the tapes. If the BZA --

CHAIRPERSON MITTEN: You probably want to see the transcript. You don=t want to listen.

COMMISSIONER PARSONS: Meeting, no, no.

CHAIRPERSON MITTEN: You want the tapes?

COMMISSIONER PARSONS: Yeah, the tapes of the meeting where they make a decision.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: I mean, that=s where we come off. Not did they have the evidence before them. I think that=s obvious, but --

CHAIRPERSON MITTEN: You wouldn=t like the transcript of the tape as opposed to the audiotape?

COMMISSIONER PARSONS: I=m sorry. I don=t want somebody to say, well, what happened to the request for the transcript? Well, we had to send it out and tape cost \$3,000. I=ll listen to it in my car.

CHAIRPERSON MITTEN: Okay. Yes, I was hoping you would listen to it and then tell us what it says.

COMMISSIONER PARSONS: I would. And I would report back to you and, of course --

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CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: -- the tapes are probably in the basement somewhere, but it=s --

CHAIRPERSON MITTEN: Would you --

COMMISSIONER PARSONS: The meeting of September 3 meetings.

CHAIRPERSON MITTEN: Okay.

COMMISSIONER PARSONS: And 5th. Only two years ago.

SECRETARY BASTIDA: September what?

COMMISSIONER PARSONS: 5th, 8th and December 5th, I=m sorry. September 5th, November -- here, take this. That=s the order.

CHAIRPERSON MITTEN: Okay. Well, we look forward to you reporting to us further on that, Mr. Parsons.

COMMISSIONER PARSONS: I will.

SECRETARY BASTIDA: This is probably a transcript and not a tape.

COMMISSIONER PARSONS: Oh, good.

DIRECTOR KRESS: We don=t do tapes anymore.

SECRETARY BASTIDA: So --

DIRECTOR KRESS: I=m sorry.

COMMISSIONER PARSONS: Well, that=s great.

DIRECTOR KRESS: And not only that,

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they=re probably all up on the web.

CHAIRPERSON MITTEN: I need for you to be on a microphone if you=re going to be talking to the Commission.

COMMISSIONER PARSONS: That=s all right. We got it.

DIRECTOR KRESS: You got it.

COMMISSIONER PARSONS: The transcript is preferable. That=s fine.

CHAIRPERSON MITTEN: Okay.

SECRETARY BASTIDA: And it is on the web?

CHAIRPERSON MITTEN: Mr. Parsons has requested a copy of the transcript and I would like you to provide it to him.

SECRETARY BASTIDA: Well, we=ll provide you the copies.

CHAIRPERSON MITTEN: Thank you.

SECRETARY BASTIDA: Okay. Thank you.

CHAIRPERSON MITTEN: Okay. We -- would you turn on your --

COMMISSIONER HANNAHAM: There=s no consensus on this particular item?

CHAIRPERSON MITTEN: Right. There=s not and I don=t want to go through the rest of them because I=m tired now. I want to go on to other

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things. Okay.

COMMISSIONER PARSONS: I want to get home.

CHAIRPERSON MITTEN: Yes. The consent calendar item we postponed to our special public meeting and there=s a list of new cases filed on the agenda and I would ask Mr. Bastida if there=s anything else that we need to deal with today?

SECRETARY BASTIDA: No, Madam Chairman. You may go home.

CHAIRPERSON MITTEN: Thank you. And I will declare this public meeting adjourned.

(The meeting was adjourned at 5:13 p.m.)

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