

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION

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REGULAR MEETING  
1153rd MEETING SESSION (11th of 2003)

\* \* \* \* \*

Monday

October 20, 2003

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

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

ALBERTO BASTIDA	Secretary
SHARON SCHELLIN	Office of Zoning

OFFICE OF PLANNING STAFF PRESENT:

ELLEN McCARTHY	Deputy Director,
JOEL LAWSON	Office of Planning
STEPHEN MORDFIN	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

ALAN BERGSTEIN, ESQ.

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

1:29 p.m.

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is the monthly meeting of the Zoning Commission of the District of Columbia for October 20, 2003. My name is Carol Mitten and joining me this afternoon are Vice Chairman Anthony Hood and Commissioners Peter May and John Parsons.

And we invite all of you to take your jackets off and be comfortable because one of our Commissioners forgot their jacket and we don't want them to stand out. So feel free to take your jackets off.

Mr. Bastida, are there any preliminary matters?

MR. BASTIDA: Staff has no preliminary matters, Madam Chairman. Thank you.

CHAIRPERSON MITTEN: All right. Thank you.

Copies of the agenda for our meeting today are in the bin near the door and I would just remind those present that we don't take testimony from anyone in the audience unless they're invited to come forward by the Commission.

I think since we have some lengthy items

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1 on our agenda for today, I'll ask the Office of  
2 Planning to allow us to move their status report to  
3 the end of the agenda. And one other change would  
4 be that under proposed action, the first item,  
5 Zoning Commission Case Nr. 03-09, which is the text  
6 amendment regarding Section 217 will not be on our  
7 agenda for today.

8 So then the first item is the consent  
9 calendar item, Case 03-31/01-09C, which is a minor  
10 modification application for Station Place.

11 Mr. Bastida, did you want to introduce  
12 that?

13 MR. BASTIDA: Yes, Madam Chairman. The  
14 staff has provided all the necessary required  
15 documents for the Commission to make a decision and  
16 the staff requests that the Commission take an  
17 action.

18 CHAIRPERSON MITTEN: Thank you. And we  
19 have no submissions of any objections from the  
20 parties in the case. And we have the proposal to  
21 substitute sculptures and planters for the water  
22 features that had been included in the Station Place  
23 development.

24 Mr. Parsons?

25 COMMISSIONER PARSONS: I will move that

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1 we approve this application for a minor modification  
2 request. I've learned a long time ago that you  
3 never get any objection to public art until it's  
4 erected and that will certainly occur, I'm sure,  
5 because that's the way life is. But, relying on the  
6 Commission of Fine Arts who has clear jurisdiction  
7 over these matters, I think we ought to move  
8 forward.

9 CHAIRPERSON MITTEN: Thank you. I'll  
10 second. Any discussion?

11 VICE CHAIR HOOD: Madam Chair, I guess  
12 they still are asking for the option. There still  
13 may be a chance that they may do the water features  
14 too, I believe, right? The way I anticipate it.  
15 They're just asking for the option.

16 CHAIRPERSON MITTEN: I thought it was  
17 that they were clearly substituting them.

18 VICE CHAIR HOOD: They're clearly  
19 substituting?

20 CHAIRPERSON MITTEN: Yes.

21 VICE CHAIR HOOD: Okay. Unfortunately,  
22 we think.

23 CHAIRPERSON MITTEN: Anyone else have a  
24 different understanding? I think it's a  
25 substitution as opposed to an alternative. All

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1 those in favor, please say aye. Aye.

2 VICE CHAIR HOOD: Aye.

3 COMMISSIONER MAY: Aye.

4 COMMISSIONER PARSONS: Aye.

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

7 Mrs. Schellin?

8 MS. SCHELLIN: The staff would record  
9 the vote 4 to 0 to 1 to approve the minor  
10 modification in Case Nr. 03-31, Commissioner Parsons  
11 moving, Commissioner Mitten seconding and  
12 Commissioners Hood and May in favor. Commissioner  
13 Hannaham not present, not voting.

14 CHAIRPERSON MITTEN: Thank you. The  
15 first matter under hearing action is Case Nr. 03-28  
16 and this is a request by the Department of Public  
17 Works for a planned unit development to allow the  
18 expansion of a solid waste facility on Bates Road.

19 And I'll turn to Ms. McCarthy for a  
20 summary.

21 MS. MCCARTHY: Thank you, Madam Chair.  
22 This project is a major priority of the District of  
23 Columbia and we are really pleased to be able to  
24 move it forward because it represents a major  
25 improvement in the environmental quality and quality

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1 of life in that neighborhood, the ability to  
2 modernize that facility and make it really state of  
3 the art and reduce the adverse impacts that it has  
4 been having up until this point.

5 And I'll ask Mr. Mordfin to present the  
6 details of what is being requested.

7 MR. MORDFIN: Good afternoon, Madam  
8 Chair, members of the Commission. I'm Stephen  
9 Mordfin with the Office of Planning.

10 The applicant, which is the D.C.  
11 Department of Public Works, has applied for a  
12 consolidated planned unit development and related  
13 map amendment to assign the M district to a portion  
14 of the Fort Totten solid waste transfer station.  
15 The subject property is split zoned between the M  
16 district, including the Fort Totten Overlay District  
17 and the R5A district, on which a majority of the  
18 site is located. A solid waste transfer station is  
19 not permitted within the R5A district, either as a  
20 matter of right or by special exception, however the  
21 use is permitted by special exception within the M  
22 district. And the purpose of this application is so  
23 that the existing facility can be modernized.

24 Due to the public nature of the  
25 facility, no amenities are proposed as a part of the

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1 application. The Office of Planning believes that  
2 the proposed PUD and related map amendment are not  
3 inconsistent with the comprehensive plan and will  
4 allow for the modernization of the facility and the  
5 Office of Planning recommends that the Zoning  
6 Commission set down for public hearing the proposed  
7 PUD and related map amendment.

8 CHAIRPERSON MITTEN: Thank you, Mr.  
9 Mordfin. Any questions for Ms. McCarthy or Mr. Mr.  
10 Mordfin?

11 VICE CHAIR HOOD: I just had a few  
12 issues about the circulation plan and this is just  
13 to be advised and if it's set down for a hearing.

14 When you look at the Exhibit 4, the  
15 scale is, I guess, to the -- get my orientation  
16 correct, the scale is to the west and where the  
17 private haulers and the collection vehicles enter is  
18 to the east. Now, I'm trying to figure out how  
19 that's going to work. I mean, the vehicles have to  
20 be weighed first before they even unload. So we're  
21 going to have them coming in, making a left, going  
22 all the way to the west to unload the trash, going  
23 back to the east to go into the facility. So I  
24 would hope that the applicant would revisit that or  
25 maybe I'm -- no, I know what I'm looking at, so I'm

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1 not even going to say maybe I don't understand the  
2 circulation plan because I do. So that's one of the  
3 things we need to look at.

4 Also, the entrance to the  
5 employee/visitor parking lot. It needs to be  
6 clarified because it looks like it's an exit. That  
7 means they would have to go through the collection  
8 vehicle and private haulers entrance also. If  
9 anyone knows the existing conditions, and if this is  
10 a PUD, it should be an improvement and from this  
11 Commissioner's standpoint, I'm going to be looking  
12 for.

13 Another thing is in the Office of  
14 Planning's report, you mentioned the site will be  
15 designed to accommodate periodic citizen drop offs  
16 of household, hazardous waste, recyclables and bulk  
17 solid waste items. I know they do that now, but I  
18 hope that we would be a little more specific because  
19 the word that confuses me or gives me pause is  
20 "periodic."

21 Okay. I guess everything else, if it's  
22 set down, I will wait for the hearing. I just  
23 wanted to put that major issue about the circulation  
24 because the way it's going now is exactly what I see  
25 here in the circulation plan and that is not

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1 working. So being a PUD, it should be an amenity,  
2 or it should be much better than the way it is being  
3 done now. Thank you, Madam Chair.

4 CHAIRPERSON MITTEN: And we'll be happy  
5 to work with the applicant on that.

6 Mr. Parsons?

7 COMMISSIONER PARSONS: The largest  
8 abutting owner is the National Park Service. All  
9 the green trees you see in the photographs are part  
10 of Fort Totten. For some reason the applicant felt  
11 I guess that this was under the jurisdiction of the  
12 District of Columbia Department of Parks and  
13 Recreation because that's where they sent the  
14 materials for notice. So the Park Service is not  
15 yet noticed. So I just urge the applicant to be  
16 working with the Park Service, not with the  
17 Department of Recreation. I guess that's all the  
18 comments I have.

19 CHAIRPERSON MITTEN: Thank you. Yes,  
20 Mr. Hood?

21 VICE CHAIR HOOD: Also, Madam Chair, I  
22 mentioned on the east side where the private haulers  
23 and those who will be entering into the facility,  
24 I'm hoping that to the left of there where all that  
25 debris, and I understand we're taking all the debris

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1 in under our cover and I'm hoping all this that's  
2 been sitting out there for years is something that  
3 the applicant is going to deal with and I guess  
4 that's why they're moving into the 21st Century. So  
5 this down at the bottom, I hope will be -- okay.  
6 Yes. Yes, okay.

7 COMMISSIONER MAY: It's still showing  
8 up. I mean, that pile of construction debris that's  
9 down at the bottom of the hill that I think  
10 Commissioner Hood is referring to is still shown on  
11 the plan. It's just construction and demolition  
12 debris. So it's not clear what the plan is to do  
13 with that.

14 VICE CHAIR HOOD: I sure hope it's under  
15 cover, so I'm sure the applicant is hearing our  
16 concerns.

17 CHAIRPERSON MITTEN: Thank you. Mr.  
18 May, did you have anything else?

19 COMMISSIONER MAY: No.

20 CHAIRPERSON MITTEN: My question is  
21 just, in both the application and in the Office of  
22 Planning report the request is to be rezoned to M.  
23 But is that within the Fort Totten Overlay District,  
24 or not? And if not, why not?

25 MR. MORDFIN: Yes, it is.

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1 CHAIRPERSON MITTEN: Okay. So we would  
2 have to have the application amended then to reflect  
3 that.

4 MR. MORDFIN: Okay. To reflect the Fort  
5 Totten.

6 CHAIRPERSON MITTEN: All right. We have  
7 a recommendation from the Office of Planning to set  
8 down Case Nr. 03-28 and we will I guess just accept  
9 that the intent was to, and certainly the intent of  
10 my motion is that the planned unit development  
11 include a related map amendment to assign the FT/M  
12 district to the portion of the land to be rezoned.

13 VICE CHAIR HOOD: Second.

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

17 VICE CHAIR HOOD: Aye.

18 COMMISSIONER MAY: Aye.

19 COMMISSIONER PARSONS: Aye.

20 CHAIRPERSON MITTEN: Those opposed,  
21 please, say no.

22 Mrs. Schellin?

23 MS. SCHELLIN: The staff would record  
24 the vote 4 to 0 to 1 to set down Case Nr. 03-28,  
25 Commissioner Mitten moving. Commissioner Hood

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1 seconding. Commissioners May and Parsons in favor.

2 Commissioner Hannaham not present, not voting.

3 And this will be a contested case?

4 CHAIRPERSON MITTEN: Yes. Thank you.

5 MS. SCHELLIN: Thank you.

6 CHAIRPERSON MITTEN: Next for hearing

7 action is Zoning Commission Case. Nr. 03-22. And

8 this is a request to rezone property at 1333 M

9 Street, S.E. from M to R5B.

10 And I'll turn to the Office of Planning,

11 Ms. McCarthy, for a summary.

12 COMMISSIONER PARSONS: Before we do

13 that, Madam Chair, the National Park Service has a

14 planning process ongoing for the Anacostia

15 Waterfront and one of the suggested boundary

16 adjustments is to place this property and others

17 within the boundary of the park and acquire them for

18 park purposes, so I think it would be in the best

19 interest to the Commission and the Park Service if I

20 recuse myself.

21 CHAIRPERSON MITTEN: All right. Thank

22 you. Don't go too far away.

23 All right. Now we'll ask for the

24 summary from Ms. McCarthy.

25 And let the record reflect that Mr.

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1 Parsons is departing the room temporarily.

2 MR. LAWSON: Madam Chair, members of the  
3 Commission, my name is Joel Lawson. I'm a  
4 development review planner with the D.C. Office of  
5 Planning.

6 This application is to amend the zoning  
7 map to rezone square 1048S2 in Ward 6 from M to R5B.  
8 The small roughly triangular site is bound by M  
9 Street S.E. to the north, the right of way for  
10 Virginia Avenue S.E. to the south and the right of  
11 way for 14th Street S.E. to the east and a small  
12 federal reservation to the west. The Anacostia  
13 River is to the south with a number of small marinas  
14 and boating clubs. To the west is the Maritime  
15 Plaza development and the Washington Navy Yard. The  
16 site is within the Anacostia Waterfront initiative  
17 area, as well as being on the eastern edge of the  
18 near southeast target area plan. IT's currently  
19 somewhat isolated, but on the edge of a rapidly  
20 developing and changing area.

21 The property is designated on the  
22 generalized land use map as production and technical  
23 employment. This designation reflects the current  
24 fuel storage use or former fuel storage use of the  
25 site, but not current planning thought and policy

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1 regarding appropriate uses for this section of the  
2 waterfront. The AWI in the near southeast plans  
3 both envision a mixture of uses emphasizing ones  
4 that better relate to the vision of an active  
5 publicly accessible waterfront recreation area than  
6 the current use designation. The housing, urban  
7 design, land use and Ward 6 elements of the  
8 comprehensive plan also include objectives and  
9 policies which would support alternative uses on the  
10 site.

11 The applicant has proposed R5B zoning to  
12 permit the construction of a town home development.  
13 OP has proposed a higher density zone district CR.  
14 This would provide additional desired flexibility  
15 for additional development and would be more  
16 consistent with the generalized land use map and the  
17 AWI objectives. The applicant had indicated support  
18 for this alternative zone designation.

19 Just very briefly I should also note  
20 that there's a typo in the OP report. The site is  
21 located in ANC 6B, not ANC 6D. And that concludes  
22 my testimony. And OP is available for questions.  
23 Thank you.

24 CHAIRPERSON MITTEN: Thank you, Mr.  
25 Lawson. Any questions for Mr. Lawson? Mr. May?

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1                   COMMISSIONER MAY: I guess the one  
2 question I have is this development seems to be not  
3 just slightly, but highly isolated and the  
4 consideration of this particular application also  
5 seems to be isolated and I'm wondering what  
6 consideration you had given, I mean obviously you've  
7 given consideration to other zone designations, but  
8 in terms of the broader planning context, the  
9 relationship to the waterfront, the relationship to  
10 other development and potential development in the  
11 area and other vehicles for accomplishing the  
12 development on the site, I mean, what sort of things  
13 have you given consideration to already and are  
14 there large open issues for you because it's not  
15 very comforting to me to look at it in this narrow  
16 fashion.

17                   MS. MCCARTHY: Obviously as part of the  
18 Anacostia Waterfront Initiative we are trying to  
19 look at that entire area, but when we looked at the  
20 newest plan that had been done as part of AWI it was  
21 basically looking at it more with the thought in  
22 mind of memorial and institutional uses. And so it  
23 seemed that without something that we could  
24 definitively go by, we were comfortable on that  
25 particular site in looking at the CR and the

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1 applicant was in agreement with us that he would be  
2 happy to do higher density if in a later stage of  
3 the project it appeared that there was a market for  
4 more than that, but his initial discussions with  
5 lenders were that that was not feasible at this  
6 point in time. And because right now it's just  
7 basically an abandoned industrial area, we had an  
8 applicant that was interested in going forward and  
9 we thought that having a town house development on  
10 there was infinitely preferable to its present  
11 state. So that was some of your thinking.

12 COMMISSIONER MAY: Thanks.

13 COMMISSIONER HOOD: Madam Chair, I'm  
14 very concerned about this because while I applaud  
15 the effort and intent, and I'm going with what was  
16 asked for by the applicant, R5B right in the M zone.  
17 I think that jump starting is a good trend to try to  
18 do, but I would like to see what's going to happen  
19 with those M zones because as you know right now  
20 we're having problems in the city now with things  
21 that happened that are permitted in CM1, CM2 and  
22 CM3, which is like right across the street from  
23 these residential homes and people are really  
24 heavily impacted.

25 And since I've been on this Commission,

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1 that's been something that's been going back and  
2 forth. And I think here going to R5B we're  
3 creating, and I'm not sure if the CR is the answer,  
4 but we're creating some of those same instances that  
5 come down here in front of us previously.

6 While I applaud the applicant for jump  
7 starting that area, maybe we need to revisit this so  
8 we don't have some of those same instances in which  
9 we sit down here many nights, Madam Chair, and deal  
10 with it. So that's kind of the area I'm coming  
11 from. Thank you.

12 CHAIRPERSON MITTEN: Thank you. I share  
13 your concern, Mr. Hood, because there are some  
14 additional parcels of land that are not owned by  
15 Washington Gas, but that would be north of M Street  
16 between the southeast/southwest freeway that would  
17 remain zoned M.

18 And let me ask the Office of Planning,  
19 I'm reluctant to go forward with this isolated  
20 proposal because I have a concern on a number of  
21 levels, not the least of which is the fact that the  
22 R5B is very difficult to support in light of the  
23 generalized land use map designation and I think  
24 this would border on, if not be spot zoning, if we  
25 deal with this parcel in isolation. How quickly

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1 could the Office of Planning come forward to us with  
2 a more comprehensive look at that triangular piece  
3 of the study area for the southeast neighborhood  
4 that we seem to have not been able to focus on  
5 through the other zoning cases that we've had  
6 because it's -- and I'm speaking of the property  
7 that's east of 12th Street, south of the freeway and  
8 then north of Water Street?

9 MS. McCARTHY: I think we could probably  
10 have something for set down by December.

11 CHAIRPERSON MITTEN: All right.

12 MS. McCARTHY: And I should add,  
13 something that Mr. Hood said reminded me, the  
14 Commission has said to us many times in the past on  
15 the issue of M zoning that they would like the  
16 Office of Planning to look at the future demand for  
17 industrial land and the other kinds of services that  
18 take place on M and CM zoned land and wanting to be  
19 responsive to that, we've had that study in your  
20 budget for I think at least two years, maybe three  
21 years. Each time it ended up getting cut in budget  
22 cuts, but I'm pleased to be able to tell you that we  
23 have actually, if it's not out on the street right  
24 now, it will be very shortly in RFP to have an  
25 economic consultant with an background in industrial

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1 uses look at that issue and I don't know if -- I  
2 don't think the full study would be available by the  
3 set down, but certainly by the time we would have  
4 the public hearing, we'd be able to get additional  
5 input from that to enlighten our look at PTE  
6 sections on the comp plan in general and appropriate  
7 uses for waterfront industrial land.

8 CHAIRPERSON MITTEN: Thank you. I think  
9 that would be very helpful.

10 Let me just ask, Mr. May, if you're  
11 inclined towards the general consensus because if we  
12 were to deny this we'd have to ask the applicant and  
13 his representative to come forward. So I want to  
14 get the consensus before we take a vote.

15 COMMISSIONER MAY: You mean whether I'm  
16 inclined to go forward to set this down at this  
17 time?

18 CHAIRPERSON MITTEN: I think the  
19 consensus that Mr. Hood and I have is that we're  
20 reluctant to set this down.

21 COMMISSIONER MAY: Yes.

22 CHAIRPERSON MITTEN: And that we would  
23 rather that there be this more comprehensive look.

24 COMMISSIONER MAY: Yes, absolutely.  
25 We'd very much rather see the comprehensive look. I

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1 hate to lose any potential momentum that comes with  
2 this, so I would like it to be addressed as quickly  
3 as possible, but by the same token, we don't want to  
4 sort of step into this not doing the right thing for  
5 that area because it's sort of a unique spot and  
6 would need to be addressed carefully and I'd hate to  
7 think, you know, 20 years from now we made the wrong  
8 move at this moment.

9 CHAIRPERSON MITTEN: Right.

10 COMMISSIONER MAY: And I would also  
11 frankly like to commend what I see so far in terms  
12 of the design for the town houses because we've seen  
13 a lot of different town houses, or versions of town  
14 houses, permutations of them, and this one I think  
15 makes better use of a difficult site and still  
16 manages to capture the sort of things that I think  
17 we should be seeing in them now, not necessarily in  
18 terms of the details of the architecture, which I  
19 think need a fair amount of work, but the overall  
20 concept plan for them I think is good. But, this is  
21 really just a map amendment case at this moment  
22 anyway.

23 CHAIRPERSON MITTEN: Right.

24 COMMISSIONER MAY: So the design is not  
25 as critical. But I had to mention that while I was

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1 here.

2 CHAIRPERSON MITTEN: That's fine. Okay.  
3 Then I'll ask Mr. Green and Mr. Cohen to come  
4 forward since you've heard the consensus and if  
5 you'd like to attempt to persuade us.

6 MR. GREEN: Good afternoon, Madam Chair  
7 and members of the Commission. My name is Fred  
8 Green. Do you need my address?

9 CHAIRPERSON MITTEN: Sure.

10 MR. GREEN: Okay. Address is 1230 31st  
11 Street, N.W., Washington, D.C.

12 Madam Chairperson, we thought we had  
13 recommended the use that was consistent with the  
14 Anacostia Waterfront Initiative. We worked  
15 extremely hard with the Office of Planning and I'm  
16 not quite sure as to what we're doing. If you're  
17 asking us to wait until the OP study is complete --

18 (Public announcement system signal  
19 sounded.)

20 MR. GREEN: I didn't do that.

21 (Public announcement message given.)

22 CHAIRPERSON MITTEN: And I guess what  
23 we're saying is that we are still convinced that  
24 this is the appropriate use. This is the proper use  
25 for this site and consistent with the Anacostia

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1 Waterfront Initiative.

2 Now the question is how do we go forward  
3 to make this happen?

4 CHAIRPERSON MITTEN: Yes.

5 MR. GREEN: I would obviously rather  
6 that you approved this, set it down today and if we  
7 need to not schedule the hearing until such time as  
8 the Office of Planning complete it's report, I think  
9 we're prepared to work with you on that.

10 But to outright throw it out of the door  
11 and say this is clearly not consistent or  
12 inappropriate, or not consistent with the direction  
13 in which the Anacostia Waterfront Initiative is  
14 going, I just don't think that would be fair in this  
15 case.

16 We ask for housing. We ask for the R5B.  
17 The Office of Planning recommended the CR, which  
18 they feel and we agree that it's probably more  
19 appropriate with the Anacostia Waterfront Initiative  
20 and more appropriate with the planning goals. I  
21 thought the Office of Planning did a pretty good  
22 report in terms of demonstrating how this request is  
23 consistent with the conference plan and I just don't  
24 think again that we should throw it out. So those  
25 are my, you know, comments.

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1 CHAIRPERSON MITTEN: Okay.

2 MR. GREEN: And I'm also asking that we  
3 come up with an with an alterative to just outright  
4 turning it down.

5 CHAIRPERSON MITTEN: Right. And we have  
6 alternatives like that available.

7 MR. GREEN: Well, I'm asking you to  
8 exercise that today.

9 CHAIRPERSON MITTEN: Okay.

10 MR. GREEN: You see what I'm saying? I  
11 want to be extremely clear here.

12 CHAIRPERSON MITTEN: Okay. I think  
13 we're clear.

14 MR. GREEN: I mean, I could see if this  
15 was an office building or something like that. This  
16 is residential.

17 CHAIRPERSON MITTEN: Right.

18 MR. GREEN: And it's right there on the  
19 waterfront. And these are ugly looking tanks, if  
20 you haven't looked at them and we're trying to do  
21 the right thing here.

22 CHAIRPERSON MITTEN: Okay. And I think  
23 you've heard -- Mr. Cohen, did you want to add  
24 something?

25 MR. COHEN: I would, if you don't mind.

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1 MR. GREEN: Sure. Push the button.

2 MR. COHEN: My name is Ronald Cohen.

3 What I'd like to also indicate is that this is a  
4 very unique site in many ways, not only from its  
5 physical shape, but also its use as a tank forum  
6 where there's some questionable materials which  
7 precludes the real density to be developed here  
8 because of the level that we are forbidden to go  
9 down below of actually 11 feet before we start  
10 hitting certain areas or certain contaminated areas.

11 So this was really very, very -- it was  
12 designed in a way to meet all of the various  
13 elements, and quite honestly, in an area like this  
14 which is on the tail end of an area which we know  
15 eventually is going to happen obviously greater  
16 density would create a greater massing, but for the  
17 fact that there's many, many limitations that would  
18 even allow anywhere near why we have basically given  
19 up almost 150 feet of FAR because we just know it  
20 just can't happen there because of all these various  
21 constraints that we're confronted with.

22 We think that the design, which I thank  
23 you very much, Mr. May, we put a lot of thought into  
24 it because we know that we have a marketing job  
25 ahead of us and we think that we can do that. We

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1 can pull it off. We can anchor this area. We can  
2 open it to the public, which there's a lot of open  
3 space getting down to the waterfront when it is  
4 ultimately developed and we would love the  
5 opportunity to be able to even parallel track  
6 certain efforts if the Board, you know, is so  
7 inclined. We don't mind doing that. We do not want  
8 to lose the momentum, if it's at all possible, and I  
9 recognize that you all, you know, have a process  
10 ahead of you, but we're also very cognizant of  
11 trying to create a use for an area and juggling the  
12 economy at the same time. And there's just a lot of  
13 factors that go along and we don't expect to come  
14 here and try to blind side you. And if there's a  
15 study that has to be done, so be it. Let it be  
16 done. We have no problem. But I'd like to keep the  
17 track moving, if that's at all possible. Thank you.

18 CHAIRPERSON MITTEN: Okay. Thank you.  
19 And I think, I mean, you've heard a couple things.  
20 You've heard support for what you're trying to do,  
21 that it is consistent with the AWI. And what we're  
22 trying to do is create actually a better environment  
23 for what you're proposing. So, you know, I think we  
24 all want to work together.

25 What I would like to propose is that we

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1 just postpone action on this until the Office of  
2 Planning comes back to us in December and maybe make  
3 a commitment to you that if, just to give the Office  
4 of Planning some extra incentive, that if they're  
5 not able to get back to us in December, then we will  
6 take action on your proposal at that time in  
7 December. So, it'll help give them an incentive to  
8 get their work done.

9 Does that sound fair? Because as you  
10 said, even if we set it down, we're not going to  
11 move forward with a hearing on this before the  
12 Office of Planning has moved forward on the, you  
13 know, more inclusive study. So I think that gives  
14 everybody something to work towards.

15 Mr. Green?

16 MR. GREEN: Well, then I guess yes. The  
17 answer is yes. Let me just remind you of one thing.  
18 The site in front of this is a mixed-used  
19 development, the Washington Gas site. It is my  
20 understanding.

21 CHAIRPERSON MITTEN: And when you say  
22 "mixed use," what do you mean?

23 MR. GREEN: Well, I think there's a  
24 hotel component.

25 CHAIRPERSON MITTEN: Yes.

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1 MR. GREEN: There's an office component  
2 and there's above ground parking right there on the  
3 water. And all we're doing is rounding out the  
4 mixed use part, which is residential. So, I guess  
5 my point, it is already begun to change and we don't  
6 think when you tell us residential is not  
7 inconsistent with that.

8 CHAIRPERSON MITTEN: Okay. Thank you.

9 VICE CHAIR HOOD: Okay. A point of  
10 clarification. The site 1048S, what I'm looking at  
11 on this map, is surrounded by M zone.

12 CHAIRPERSON MITTEN: That's true. The  
13 Washington Gas property is zoned M and has been  
14 developed according to those regulations.

15 VICE CHAIR HOOD: Right. Now what Mr.  
16 Green just cited is actually in the CM1, which is  
17 closer to the water, I believe, right?

18 CHAIRPERSON MITTEN: No, actually what  
19 he cited, that 1025E is the Washington Gas property,  
20 the triangular piece here.

21 VICE CHAIR HOOD: Okay. And that's  
22 zoned M.

23 CHAIRPERSON MITTEN: M. Yes.

24 VICE CHAIR HOOD: Okay. So my point  
25 still remains the same. I thought he was telling us

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1 something that I may have missed.

2 CHAIRPERSON MITTEN: So, okay. Thank  
3 you.

4 My proposal then to my fellow  
5 commissioners is that we not take action on this  
6 today and that we put it on our December agenda,  
7 either on its own or perhaps we'll have an Office of  
8 Planning proposal in lieu of this, but that we take  
9 it up again, take the subject up again in December.

10 Do we have a consensus on that?

11 VICE CHAIR HOOD: Yes, we do. Let me  
12 just say one more point, Madam Chair. I really hope  
13 that we can come up with something because like I  
14 stated earlier this is what I thought also we were  
15 trying to do. My only concern is that it's  
16 surrounded by M zones and in Ward 5 and that  
17 shouldn't go there, but this has created problems in  
18 the past and I don't want to be a part of a problem  
19 in the future. Thank you.

20 CHAIRPERSON MITTEN: You're absolutely  
21 right, Mr. Hood.

22 All right. Then we have a consensus on  
23 that and we'll see you both again in December.

24 MR. GREEN: Thank you.

25 CHAIRPERSON MITTEN: Thank you. Could I

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1 ask someone to go get Mr. Parsons?

2 All right. Under proposed action, we  
3 have our first case is Nr. 03-06, and this is the  
4 zoning for the Southeast Federal Center.

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

7 MR. BASTIDA: Not really, Madam  
8 Chairman. The only thing is you have been provided  
9 with all the documents that have been filed and the  
10 staff just recommends that you go through it and  
11 discuss it and perhaps take appropriate action.

12 CHAIRPERSON MITTEN: Thank you. We have  
13 a number of draft versions of the overlay and just  
14 so that my colleagues are on the same page with me,  
15 the draft that we will use for discussion today is  
16 the most recent version that was submitted by the  
17 office of planning that has a title on it in red  
18 ink, "Southeast Federal Center Overlay Draft for  
19 Discussion," dated October 20, 2003.

20 And what I'd like to do is go through a  
21 series of issues that have been raised and then if  
22 there are any that any of the Commissioners want to  
23 add at the end or that occur to you as we go along,  
24 we'll just deal with those as they come up. And I  
25 think many of these are shown in red ink on the

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1 draft that we'll be using.

2 First is just a small change in 1800.2  
3 regarding the second sentence. Is there any concern  
4 about that proposed language change? All right.

5 There's an introductory sentence  
6 proposed in 1802.1 which just introduces by saying,  
7 "The following sub-sections set forth the objectives  
8 of the Southeast Federal Center Overlay District."

9 There's a suggested language change in  
10 1802.2 that says that this will be -- rather than  
11 saying "in consideration of the objectives of the  
12 Anacostia Waterfront Initiative," that it will be  
13 "in recognition of the objectives of the Anacostia  
14 Waterfront Initiative."

15 I'm just going to keep reading, so jump  
16 in if you --

17 There are in 1802, what would be new .6,  
18 because of the introduction of 1802.1, that -- let's  
19 see --

20 MR. BERGSTEIN: Madam Chair, it's really  
21 a reordering of those clauses.

22 CHAIRPERSON MITTEN: Right. I'm not  
23 sure they got reordered correctly in the draft. I  
24 thought the proposal was that the sentence would  
25 read "requires suitable ground level retail and

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1 service uses near the Navy Yard Metro station near  
2 the Waterfront Park referenced in Section 1802.7 and  
3 at other key pedestrian locations along M Street,  
4 S.E."

5 MR. BERGSTEIN: Well, the reference to  
6 Waterfront Park should be eliminated for reasons  
7 that I explained.

8 CHAIRPERSON MITTEN: Right. How about  
9 just staying with me on where M Street belongs? Or  
10 is that just supposed to be a stand-alone -- I see.  
11 Stand-alone.

12 MR. BERGSTEIN: Well, M Street was  
13 really supposed to be all the way at the end  
14 because, and maybe this didn't really fix it, it  
15 still sounds like it's -- oh, well, actually maybe  
16 I've been misinterpreting the provision myself.

17 CHAIRPERSON MITTEN: Yes.

18 MR. BERGSTEIN: It was unclear what the  
19 relevance along M Street was, whether or not it was  
20 a separate requirement or a qualifier to something  
21 else, which I guess is what it's supposed to be.

22 CHAIRPERSON MITTEN: Okay. It looks  
23 like it's being proposed as a separate requirement.

24 MR. BERGSTEIN: Yes.

25 CHAIRPERSON MITTEN: Okay. Everybody

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1 like that?

2 COMMISSIONER PARSONS: For both ends of  
3 the project.

4 CHAIRPERSON MITTEN: Okay. Fine.

5 COMMISSIONER PARSONS: I agree with the  
6 change to get rid of "Waterfront Park" and use the  
7 W0 as a substitution.

8 CHAIRPERSON MITTEN: I agree with that  
9 too, so do we have a consensus about that so I don't  
10 have to keep raising that each time it comes up,  
11 that we will substitute reference to the SCFC/W0  
12 District as opposed to the Waterfront Park wherever  
13 we encounter it? People comfortable with that?  
14 Okay.

15 Then we're at 1803.2, which would delete  
16 the introductory clause and begin, "Within the  
17 SCFC/CR District" and also remove the reference to  
18 "special "exception and just make reference to  
19 "approval by the Zoning Commission." And that's  
20 another series of changes that have been suggested  
21 that we not call our approvals "special exceptions"  
22 and that it will be then subject just to the Zoning  
23 Commission review standards in 1808 and 1809. Is  
24 everyone comfortable with that? Okay.

25 There was a question about in 1803.2o,

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1 what does "temporary" signify, and I think the  
2 proposed language changed to flesh that out is  
3 "temporary parking lot or garage for a maximum  
4 approval period of five years which may be renewed  
5 by the Zoning Commission as a principal use located  
6 at or above grade." There's that issue.

7 But then there's also the issue that I  
8 would just bring to your attention that those last  
9 two points, the temporary parking lot or garage and  
10 then letter P, solid freestanding walls and/or  
11 security gates exceeding a height of four feet.

12 Those were introduced in the applicant's draft and  
13 that was not part of the public hearing notice. So  
14 if anyone has concerns about those being introduced  
15 and want to call that out. So any concern about  
16 qualifying "temporary" as a five-year period?

17 VICE CHAIR HOOD: Madam Chair, the only  
18 thing, I guess I've seen it other places in the  
19 ordinance where it wasn't clear. At least it's  
20 clear here now. But the only issue that I have is  
21 temporary and this actually could be come permanent.  
22 Because all I have to do is come in front of the  
23 Zoning Commission every five years six or seven  
24 times and that parking lot remains. Is that what we  
25 -- I understand that this is all an if.

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1 CHAIRPERSON MITTEN: Right.

2 VICE CHAIR HOOD: But is that what we're  
3 trying to achieve here?

4 CHAIRPERSON MITTEN: Well, each time  
5 they would come before the Commission, the first  
6 time and every subsequent time for renewal, they  
7 would have to show that they were in compliance with  
8 the review standards of 1808. And among the things  
9 that would be considered that are outlined in 1808.2  
10 are compatibility with the surrounding area, this  
11 would be in 1808.1a, that the use, building or  
12 structure will help achieve the objectives for the  
13 Southeast Federal Center Overlay District. So, you  
14 know, if they came back repeatedly, they would have  
15 to show how having a parking lot that was becoming  
16 sort of permanent was actually facilitating the  
17 objectives of the overlay district.

18 VICE CHAIR HOOD: Okay.

19 CHAIRPERSON MITTEN: So, you know,  
20 there's a standard that they'll be judged against.

21 CHAIRPERSON MITTEN: Okay. Thank you.

22 COMMISSIONER PARSONS: It really doesn't  
23 make sense that somebody would invest in a parking  
24 garage for five years.

25 CHAIRPERSON MITTEN: Well, that's true.

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1 I think that would be a question that one could ask  
2 at the time, which is how temporary is this.

3 COMMISSIONER PARSONS: Right.

4 CHAIRPERSON MITTEN: Okay. Anyone have  
5 any other issues before we leave 1803.2?

6 Okay. 1803.4. In the introduction, or  
7 in the first paragraph of 1803.4 basically, and this  
8 is another change that would carry throughout the  
9 draft, which is instead of talking about designated  
10 ground floor street-oriented uses, that, by the way  
11 in parens, we call preferred uses that we just call  
12 them preferred uses for ease of reference. And I  
13 think that's helpful myself. Anyone have any  
14 concern? Okay.

15 In 1803.4a there was the suggestion that  
16 some additional language describing the historic  
17 wall might be helpful and the proposed language  
18 would say, "This requirement shall not apply to  
19 buildings directly south of the historic wall along  
20 M Street S.E. between 4th Street S.E. and the  
21 Washington Navy Yard for so long as the wall  
22 remains." Anyone have any concerns about that  
23 change?

24 UNIDENTIFIED SPEAKER: No.

25 CHAIRPERSON MITTEN: All right. Here's

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1 another change then, In 1803.4b, and this comes up  
2 periodically, that "ground level" be changed to  
3 "ground floor level" because "ground floor" is not  
4 defined, but "ground" -- wait. No, "ground floor"  
5 is defined, but "ground level" is not. So "ground  
6 floor level" would be more definitive.

7 All right. 1803.4c. The purpose of  
8 this, and maybe we just all want to read this  
9 because this is a little complicated. The purpose  
10 of 1803.4c is that in the CR zone any use that is  
11 permitted by special exception and listed in 1803.2  
12 be counted as a preferred use and the two uses that  
13 are in the list that may not be counted as a  
14 preferred use would be the gas station or a  
15 temporary parking lot.

16 COMMISSIONER PARSONS: Frankly, I find  
17 an automobile, truck or motorcycle accessory sales  
18 including installation as offensive as a parking  
19 lot.

20 CHAIRPERSON MITTEN: Okay.

21 COMMISSIONER PARSONS: I wish I'd caught  
22 it before because I really don't have any idea why  
23 that's in there.

24 CHAIRPERSON MITTEN: Well, I think that  
25 list is taken out of the CR section. In fact, I can

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1 check.

2 I'm going to ask, Mr. Lawson, if you can  
3 help me out with that. Where does the list that's  
4 in 1803.2, where does that originate, or where did  
5 that originate, if you remember?

6 MR. LAWSON: Madam Chair, we developed  
7 that list using examples from other overlays such as  
8 Capitol Gateway and DDD.

9 CHAIRPERSON MITTEN: Okay.

10 MR. LAWSON: So we tried to make it  
11 consistent with similar kinds of areas and similar  
12 kinds of overlays.

13 CHAIRPERSON MITTEN: Okay. So, since  
14 we're talking about uses that would count as  
15 preferred uses, I think anything that we wouldn't  
16 consider preferred we should put in the list in  
17 1803.4c.

18 So, Mr. Parsons, are you suggesting that  
19 we include automobile, truck or motorcycle accessory  
20 sales including installation?

21 COMMISSIONER PARSONS: Yes, I am.

22 CHAIRPERSON MITTEN: Okay. Do we have  
23 any objection to that?

24 And I would add, we have "temporary  
25 parking lot" and I think we should also have "or

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1 temporary parking garage."

2 COMMISSIONER PARSONS: Oh, yes. Yes,  
3 those wood parking garages, you know, we really need  
4 to look at those.

5 CHAIRPERSON MITTEN: Okay. Anybody  
6 else?

7 MR. BERGSTEIN: Madam Chair, I'd like  
8 authority to sort of try to tweak this later on  
9 because I don't think it quite says what it means to  
10 say.

11 CHAIRPERSON MITTEN: Okay.

12 MR. BERGSTEIN: I'd like to say that in  
13 essence those uses may be used to satisfy the  
14 preferred use requirements to both permit it, but  
15 they also can be used to satisfy the preferred use  
16 requirement, which I think is the heart of this.

17 CHAIRPERSON MITTEN: While we're on  
18 that, Mr. Bergstein, I have no problem with you  
19 tweaking. But while you're tweaking, it says in  
20 1803.4c, "In addition to the permitted uses listed  
21 in 1807.2 any use listed in 1803.2," and it's clear,  
22 but it's maybe difficult, it takes a couple  
23 readings, is not everything that's listed in 1803.2  
24 is a use.

25 MR. BERGSTEIN: That's true.

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1                   CHAIRPERSON MITTEN: So I don't know if  
2 while you're tweaking that you could possibly clean  
3 that up just to make it easier for people to  
4 understand, or if that would end up making it more  
5 complicated. But I just call that out for your  
6 consideration.

7                   All right. Anything else to be added to  
8 "C?" All right. "D." I think this is just  
9 conforming some language. I don't think there's  
10 anything new there. And I think that the same is  
11 true of "E." "H" we already dealt with.

12                   1803.5. "The maximum building height in  
13 the SCFC/CR District shall not exceed 110 feet  
14 unless the site has frontage on any portion of New  
15 Jersey Avenue, S.E.," and it goes on from there, "as  
16 opposed to has frontage on all or any portion of New  
17 Jersey Avenue." That sounds like a sensible change.

18                   UNIDENTIFIED SPEAKER: Yes.

19                   CHAIRPERSON MITTEN: 1803.6. I think  
20 this is really just clarifying the parameters of the  
21 height, removing the reference to special exception  
22 and adding a standard for review for the height at  
23 the end there about considering the relationship to  
24 the Navy Yard. Anybody have any concerns with  
25 1803.6?

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1 All right. 2803.10. It's a long one.  
2 I'll let you guys read that.

3 I think the issue that was being raised  
4 is about how would a historic structure affect this  
5 and the only thing that I could think of, and the  
6 modified language is certainly fine, but it doesn't  
7 deal with the situation that I don't if we would  
8 even ever have where we would have an addition to a  
9 historic structure. But then I guess it would up to  
10 HPRB to help guide that choice about whether or not  
11 there would be setback. Does anybody have any  
12 concerns about the new language?

13 All right. In 1803.12, there's a  
14 suggestion of adding private residential recreation  
15 space. I don't have any objection to that, but I  
16 would just note that the term "residential  
17 recreation space" is the defined term, not "private  
18 residential recreation space." I don't think it  
19 hurts one way or the other to add "private."

20 1803.13. Before we deal with the  
21 language change, I just want to point out that that  
22 is another new section that the applicant put in  
23 that was not in the set down language and is  
24 different. So in the CR zone, there's 100 percent  
25 lot occupancy permitted for the commercial portion

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1 of a building and then if it's a mixed-use building  
2 and the residential portion has a 75 percent lot  
3 occupancy limitation starting at the plane where  
4 that use begins. So this would eliminate that  
5 provision that's typical in CR. So I wanted to hear  
6 some discussion about that.

7 COMMISSIONER PARSONS: I'm confused. Do  
8 you say this would eliminate it?

9 CHAIRPERSON MITTEN: Yes, because this  
10 would say if the building were a mixed-use building  
11 in CR, there's basically no restriction on lot  
12 occupancy, whereas now in CR, say you had a six  
13 story building and the first three floors were  
14 commercial. They could occupy 100 percent lot  
15 occupancy. And then you get to the residential  
16 floors, they would be limited to 75 percent. It's  
17 about creating light and air.

18 COMMISSIONER PARSONS: Sure.

19 CHAIRPERSON MITTEN: So I didn't want  
20 that to just slide by without some discussion.

21 COMMISSIONER PARSONS: Well, why should  
22 we do that here?

23 CHAIRPERSON MITTEN: I don't know.

24 COMMISSIONER PARSONS: There's no  
25 rationale given for that.

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1 CHAIRPERSON MITTEN: That's correct.

2 COMMISSIONER PARSONS: It wasn't part of  
3 the hearing. It wasn't part of --

4 CHAIRPERSON MITTEN: I don't recall  
5 discussing it and we did not advertise it.

6 COMMISSIONER PARSONS: So if we were to  
7 do anything, we should conform to the CR provision?

8 CHAIRPERSON MITTEN: That's what I would  
9 recommend.

10 COMMISSIONER PARSONS: I would agree.

11 CHAIRPERSON MITTEN: Let me just --

12 COMMISSIONER PARSONS: Maybe that's  
13 what's intended anyway.

14 CHAIRPERSON MITTEN: I don't think so.  
15 Let me just ask Mr. --

16 COMMISSIONER PARSONS: Well, let's --

17 CHAIRPERSON MITTEN: Could I ask Mr.  
18 Lawson and see what I'd like to say on the subject?

19 Mr. Lawson? I guess the first point is,  
20 is my interpretation as I just described it of  
21 1803.13 correct, that it's different than what's  
22 permitted under CR, and what's the Office of  
23 Planning's position on that? Why would we make a  
24 change?

25 MR. LAWSON: Yes. It is different from

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1 what's under the CR. I'd have to go back through  
2 the record to see if this section was part of the  
3 advertised text. I believe it actually may have  
4 been, but --

5 CHAIRPERSON MITTEN: I don't think so.  
6 I have the notice of public hearing and it wasn't.

7 MR. LAWSON: Okay. Thank you, Madam  
8 Chair. Office of Planning does support this change.  
9 We felt that it would provide additional flexibility  
10 for doing mixed-use buildings within the CR zone.  
11 It's simply another one of those regulations that we  
12 feel adds desired flexibility in the Southeast  
13 Federal Center area.

14 CHAIRPERSON MITTEN: Okay. Thank you.  
15 So it's flexibility. It's added for flexibility.  
16 And I guess the argument for it is when, and this  
17 was one of the concerns that was raised by one of  
18 the ANCs as they focused on additional height. They  
19 thought that there was additional density being  
20 granted as well, sort of that the mass would just  
21 increase with the height and I think that some of  
22 the flexibility on height is meant to have more  
23 interesting looking buildings. And I suppose  
24 without adding the constraint for lot occupancy that  
25 may as well -- although I think having the

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1 flexibility on height actually makes it easier to  
2 conform to the provisions of the underlying CR  
3 District.

4 I think what I would propose to do is to  
5 conform -- well actually, just to delete 1803.13 and  
6 then if people feel strongly about it, we can get  
7 some more specific targeted comments during the  
8 publication period, the time that it's out for  
9 public comment.

10 COMMISSIONER PARSONS: Good idea.

11 CHAIRPERSON MITTEN: How do you --

12 VICE CHAIR HOOD: Are you saying delete  
13 it now and then re-advertise?

14 CHAIRPERSON MITTEN: I'm saying delete  
15 it now and if anybody feels strongly enough about it  
16 that during the period of public comment that they  
17 can make the argument for inclusion.

18 VICE CHAIR HOOD: Okay. Why don't we do  
19 just the reverse? Leave it in there and then delete  
20 it after the period of time?

21 CHAIRPERSON MITTEN: Because I might  
22 forget.

23 VICE CHAIR HOOD: Well, that's what I'm  
24 saying. See, that we take it out of there, you  
25 know, because if we leave it in and then we'll get

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1 more comment.

2 CHAIRPERSON MITTEN: Okay.

3 VICE CHAIR HOOD: Because if we  
4 advertise without it, some people may not be aware  
5 of it.

6 CHAIRPERSON MITTEN: Okay.

7 COMMISSIONER MAY: I would tend to  
8 agree. I'm also worried about remembering it,  
9 but --

10 VICE CHAIR HOOD: Just don't forget.

11 COMMISSIONER MAY: -- not advertising it  
12 is --

13 CHAIRPERSON MITTEN: All right. But  
14 we --

15 COMMISSIONER MAY: -- isn't exactly  
16 inviting comment on it.

17 CHAIRPERSON MITTEN: Okay. I want  
18 everyone to help me remember though that --

19 COMMISSIONER MAY: Okay.

20 COMMISSIONER PARSONS: Because if nobody  
21 comments, we'll forget. So we ought to put in here  
22 "potentially to be deleted."

23 CHAIRPERSON MITTEN: Could you add  
24 something like that, Mr. Bergstein?

25 MR. BERGSTEIN: Yes. Yes, I will.

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1 CHAIRPERSON MITTEN: Thank you.

2 MR. BERGSTEIN: But I'll just say that  
3 you're interested in comments concerning it.

4 CHAIRPERSON MITTEN: Thank you. Okay.  
5 Then let's focus on the language change that is  
6 proposed, which is instead of saying for "mixed-use  
7 commercial and residential buildings," it would say  
8 for "mixed commercial and residential use  
9 buildings." I think there's probably some, you  
10 know, third way of wording that that Mr. Bergstein  
11 will come with. I think that's fine for the time  
12 being, but I think we can do better on that.

13 1804.1 is just deleting "museum" because  
14 I think it's implied that it's permitted under  
15 1804.2a. I think we're just deleting some  
16 unnecessary references here.

17 All right. 1804.3b. "For good cause  
18 shown the Commission may authorize interim occupancy  
19 of the preferred use space required under 1804.3a by  
20 other uses permitted in the SCFC/R5D and R5E  
21 Districts for up to a five-year period." Any  
22 concerns about that? I think that's more  
23 clarifying. Anybody else have anything in 1804.3?  
24 I don't think there's anything other than  
25 clarifications included.

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1 All right. There's an issue about --  
2 this relates to the new proposed 1804.5 and in  
3 1804.4 we say that the maximum height permitted in  
4 the Southeast Federal Center R5E District shall be  
5 110 feet and then in R5D it's 90 feet. The Height  
6 Act would permit the greater than 90-foot height if  
7 it were a business street. So then that's the  
8 purpose of adding 1804.5, which says, "For the  
9 purposes of Section 25-11 of this title," which is  
10 where the reference is made to the Height Act, "the  
11 SCFC/R5D and R5E Districts are considered mixed-use  
12 districts."

13 First of all let me ask, Mr. Bergstein,  
14 is that all it takes?

15 MR. BERGSTEIN: That's all it takes for  
16 your regulations to be consistent. Your regulations  
17 say, "This is what we consider business streets and  
18 if it's in a mixed-use zone, then it's a business  
19 street," and this would provide consistency with  
20 that governing principle, so yes, that's all it  
21 takes.

22 CHAIRPERSON MITTEN: Let me just ask, is  
23 this appropriately here or is this more  
24 appropriately an amendment to 25-11?

25 MR. BERGSTEIN: No, because 25-11 tells

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1 you where business streets are located.

2 CHAIRPERSON MITTEN: Okay.

3 MR. BERGSTEIN: And it says "located in  
4 mixed-use zone." This zone, were it not in an  
5 overlay, would not be considered a mixed-use zone.  
6 By designating this as a mixed-use zone, it enables  
7 a cross reference to make sense. Okay?

8 CHAIRPERSON MITTEN: Okay. Thank you.  
9 Anybody uncomfortable?

10 COMMISSIONER PARSONS: Yes.

11 CHAIRPERSON MITTEN: Okay.

12 COMMISSIONER PARSONS: Because I don't  
13 understand it yet.

14 CHAIRPERSON MITTEN: Okay.

15 COMMISSIONER PARSONS: Does this then  
16 mean that because we call these business streets or  
17 mixed-use districts that potentially all the  
18 buildings in R5D could go to 110?

19 CHAIRPERSON MITTEN: Only in the  
20 Southeast Federal Center.

21 COMMISSIONER PARSONS: Oh, I object. I  
22 mean we were sold a project that stepped down to the  
23 water. What are we doing here?

24 VICE CHAIR HOOD: Let's go --

25 COMMISSIONER PARSONS: From 110 to 90.

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1 CHAIRPERSON MITTEN: Right.

2 COMMISSIONER PARSONS: And we're just  
3 releasing that by this one sentence.

4 CHAIRPERSON MITTEN: No, let me just  
5 pull out something.

6 COMMISSIONER PARSONS: Thank you. I  
7 need help.

8 COMMISSIONER MAY: Ninety is more or  
9 less the last step.

10 COMMISSIONER PARSONS: Down?

11 COMMISSIONER MAY: Yes. But it didn't  
12 go any lower -- I mean, except for the W0.

13 COMMISSIONER PARSONS: Yes, the little  
14 development area.

15 COMMISSIONER MAY: Yes.

16 COMMISSIONER PARSONS: But now we just  
17 increased it to 110.

18 COMMISSIONER MAY: I don't --

19 CHAIRPERSON MITTEN: Well, you got to  
20 use in reference. That would be only for R5E. You  
21 have to go back to 1804.4.

22 COMMISSIONER MAY: Right, R5E.

23 COMMISSIONER PARSONS: I don't trust you  
24 yet.

25 CHAIRPERSON MITTEN: Okay. Just a

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1 second. Just a second. Mr. Bergstein?

2 COMMISSIONER PARSONS: It says R5D.

3 CHAIRPERSON MITTEN: Do we need the  
4 reference?

5 MR. BERGSTEIN: Yes, that's what I was  
6 talking to Mr. Lawson about. That since it's on the  
7 R5E overlay, part of the overlay that goes to 110  
8 and not the D, it's unnecessary to include R5D in  
9 the next section.

10 CHAIRPERSON MITTEN: It is unnecessary?

11 MR. BERGSTEIN: It is unnecessary, yes.

12 CHAIRPERSON MITTEN: Okay. So does that  
13 make you feel any better?

14 COMMISSIONER PARSONS: Well, I'm just  
15 greatly relieved.

16 CHAIRPERSON MITTEN: Okay. Anyone else?  
17 Okay. The changes to 1805.1 just provide the  
18 parallel to the development area. So that's calling  
19 out the development area, calling out the open space  
20 area and the changes. Then the development area is  
21 defined in 1805.3 and the open space area is defined  
22 in 1805.4. The purpose is in 1805.1. The area  
23 itself is in 1805.3 and 4. Is everybody comfortable  
24 with that?

25 COMMISSIONER PARSONS: Yes.

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1                   CHAIRPERSON MITTEN: Let's just look at  
2 our map real quick. Okay. Then the new 1805.6  
3 outlines those uses that will be permitted within  
4 the open space area and those are the boat launching  
5 facility dock, boat rental facility, cruise line  
6 operation, security gate, marina, concessions and  
7 kiosks of a maximum size, water taxi information and  
8 ticket booth and shelter, and other maritime uses  
9 normally requiring direct access to the water.

10                   I think I want to add to little (b)(iii) on  
11 page 9, "other public maritime uses normally  
12 requiring direct access to the water." Because I  
13 think that's the spirit of this open space area.

14                   COMMISSIONER PARSONS: I like that.

15                   CHAIRPERSON MITTEN: Anybody else?

16 Okay. Now, as we go through 1805.7 --

17                   COMMISSIONER PARSONS: Well, before we  
18 go there --

19                   CHAIRPERSON MITTEN: Yes?

20                   COMMISSIONER PARSONS: I'm feverishly  
21 looking for boat houses. I don't see them. That is  
22 for non-motorized boating. We've got marina, we've  
23 got boat rental, we've got everything but, I don't  
24 know why.

25                   CHAIRPERSON MITTEN: Let me see what

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1 was --

2 COMMISSIONER PARSONS: Mr. Lawson, can  
3 you help with that?

4 MR. LAWSON: Madam Chair, we listed uses  
5 which we felt would potentially benefit the public  
6 enjoyment of a space like this. We included marina  
7 because a marina tends to activate the water's edge  
8 and, at least in normal circumstances, certainly  
9 does not always involve large structures and the  
10 taking away of open space.

11 We had two concerns. Number one, we  
12 were concerned that a boat house could do that and  
13 our second concern is that the AWI has also  
14 identified areas where we're hoping to specifically  
15 encourage boat houses and uses such as that in a new  
16 boat house row, which is a little bit further down  
17 the river. That was our reasoning.

18 COMMISSIONER PARSONS: So then what  
19 would other maritime uses normally requiring direct  
20 access to the water do for us?

21 MR. LAWSON: We can't really anticipate  
22 what that might be.

23 COMMISSIONER PARSONS: It could be a  
24 boat house, couldn't it?

25 MR. LAWSON: Well, that's a good point.

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1 COMMISSIONER MAY: If it were public.

2 CHAIRPERSON MITTEN: Yes, if we add  
3 "public," then that does give some measure of  
4 control and this is -- let me just go back and make  
5 sure. Just jumping ahead to 1805.11 is that  
6 anything that's going to be built, any structure or  
7 building, change to a building, is going to be  
8 subject to the standards of 1808 in terms of  
9 promoting the -- so, you know, there is review and  
10 to the extent that there were an area where we were  
11 trying to promote boat house development and this  
12 wasn't it, there would be the opportunity for that  
13 case to be made.

14 COMMISSIONER PARSONS: So let me go then  
15 to why you inserted the word "public."

16 CHAIRPERSON MITTEN: Yes. Basically  
17 consistent with what Mr. Lawson said, which is, I  
18 think, the purpose of this particular area. If we  
19 go back to the original name, which was Waterfront  
20 Park, that it's for the public. It's not to be  
21 construed to be any of these structures are going to  
22 be for private use and that's why I thought  
23 including "public" would just be an extra emphasis  
24 on that.

25 COMMISSIONER PARSONS: All right.

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1 That's fair.

2 CHAIRPERSON MITTEN: Okay? And I just  
3 want folks to just glance through this. Starting  
4 with the newly renumbered 1805.7, we start talking  
5 about the combined lot provisions for the SCFC/W0  
6 District. And I just want to make sure that this is  
7 now being presented as we intend.

8 COMMISSIONER PARSONS: But these lists  
9 are amusing, you know, and whenever --

10 CHAIRPERSON MITTEN: You're jumping  
11 ahead.

12 COMMISSIONER PARSONS: I'm sorry. I  
13 know they are amusing and we'll get to that. I just  
14 want to stay focused on this for a second.

15 I need to have Mr Bergstein's attention  
16 for a moment.

17 MR. BERGSTEIN: One second.

18 CHAIRPERSON MITTEN: That's okay. I'm  
19 looking now, Mr Bergstein, on page 9 of the draft  
20 that we're looking at, and we have some revised  
21 sections. And then I think there had been a concern  
22 that we were now going to be aggregating density  
23 across the entire W0 District and sort of blurring  
24 the line between the development area and the open  
25 space area. And that seems to now be deleted.

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1 MR. BERGSTEIN: Yes, I actually on my  
2 notes had a question of how that type of provision  
3 would work with the specific combined lot provision  
4 that was in the advertised text. This aggregate  
5 text was added by the petitioner as part of his  
6 prehearing statement.

7 CHAIRPERSON MITTEN: Right.

8 MR. BERGSTEIN: And as I've understood  
9 the intent of this, was that it be seen as another  
10 type of combined lot process. This one would just  
11 involve lots within what's now being called the open  
12 space zone. And if that's the case, then we should  
13 say that expressly because there's nothing in this  
14 that would suggest that there would be a covenant  
15 that would bind the owners, etcetera. So if that's  
16 the intent, then really there can just be one  
17 combined lot provision that would allowed combined  
18 lot within the open space are, a combined lot  
19 between the open space area and the development  
20 area, but not a combined lot between a development  
21 area and the open space area. And the original  
22 provision was only to allow a combined lot one-way  
23 transfer of density.

24 CHAIRPERSON MITTEN: Right. And that's  
25 been preserved.

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1 MR. BERGSTEIN: That's been preserved.  
2 But this, just on the face of it, would seem to  
3 suggest an aggregate FAR cap which would mean that  
4 there wouldn't be a cap per building, but a cap per  
5 zone, for the entire zone, and that with each  
6 building permit application the applicant would need  
7 to demonstrate what the aggregate FAR and the W0  
8 overlay district is and what their proposed project  
9 would add to that. That's my understanding that  
10 that's not the intent of this, that it was an  
11 attempt to allow for some sort of process that  
12 within the open space zone property owners could  
13 transfer density between lots for the purposes of  
14 perhaps combining all the density in one area.

15 But again, maybe Mr. Lawson can throw  
16 some light on what the purpose of the language was.  
17 I didn't strike it. I merely had a question of what  
18 its intent was and how it would play in with the  
19 combined lot provision that was advertised.

20 CHAIRPERSON MITTEN: Okay. I guess I  
21 just want to get to where we are rather than how we  
22 got there so we can react to where we are. As I  
23 read this now, it's a one-way transfer of density  
24 from the open space area to the development area and  
25 a combined lot-type transfer. And by striking the

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1 old 1805.8, which has the sort of aggregated density  
2 idea, then each lot will be judged in terms of  
3 density based on the provisions of the proposed W0  
4 text, which would be a .5 FAR limitation for the  
5 combined lot.

6 MR. BERGSTEIN: Yes.

7 CHAIRPERSON MITTEN: Is that where we  
8 are?

9 MR. BERGSTEIN: Yes.

10 CHAIRPERSON MITTEN: Okay. Then I just  
11 need a little help here. 1805.9 now says, "Gross  
12 floor area within structures in the SCFC/W0 District  
13 in existence as of February 14, 2003." Should we  
14 just say "do not count towards the density limit"  
15 instead of towards the --

16 MR. BERGSTEIN: I'm not even sure why  
17 that provision is any longer necessary if there's  
18 not going to be an aggregate FAR for this portion of  
19 the overlay zone and it's not necessary to --

20 CHAIRPERSON MITTEN: Okay.

21 MR. BERGSTEIN: But maybe Mr. Lawson can  
22 comment on that as well.

23 CHAIRPERSON MITTEN: Mr. Lawson, do you  
24 see the benefit of retaining 1805.9 at this point?

25 MR. LAWSON: Well, I do see the benefit

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1 of retaining 1805.9. The reason that I had proposed  
2 striking 1805.8 is that I thought it would be a good  
3 discussion about whether or not that clause was  
4 necessary at all. The W0 zone establishes an FAR  
5 cap of 5.0.

6 CHAIRPERSON MITTEN: 0.5.

7 MR. LAWSON: Or sorry, 0.5. This seemed  
8 simply redundant with an existing W0 regulation.  
9 1805.9 permits the existing structure. There's only  
10 one.

11 CHAIRPERSON MITTEN: Okay.

12 MR. LAWSON: The existing structure in  
13 the W0 zone to be retained and developed and that  
14 the space within that structure would not count  
15 towards that overall limit within the W0 zone of  
16 0.5. That was the intent.

17 CHAIRPERSON MITTEN: Okay. So the main  
18 purpose of 1805.9 at this point is just to say that  
19 the existing building doesn't count towards any kind  
20 of density limitation?

21 COMMISSIONER PARSONS: Mr. Lawson, do  
22 you know if that's an historic structure?

23 MR. LAWSON: It's not. My understanding  
24 is that none of the buildings are being land marked.  
25 It's certainly been identified as a structure of

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1 historic merit. It's the first -- I'm going to get  
2 this wrong, so I probably shouldn't even describe  
3 it. But it's a 1941 concrete structure. It's the  
4 first post-tension -- I'm getting it wrong, so I'm  
5 going to stop there.

6 COMMISSIONER PARSONS: That's all right.  
7 What would this provision do if it was demolished?

8 MR. LAWSON: If it was demolished,  
9 essentially they would lose the FAR potential that's  
10 contained within the structure itself right now.

11 COMMISSIONER PARSONS: But it would not  
12 become part of the development area, or it would?

13 MR. LAWSON: It would be part of the  
14 development area.

15 COMMISSIONER PARSONS: Okay.

16 MR. LAWSON: So it could be redeveloped  
17 within the development area. But then they would  
18 essentially not receive what is in essence a bonus  
19 for retaining the building.

20 COMMISSIONER PARSONS: Okay. Thank you.

21 CHAIRPERSON MITTEN: That's definitely  
22 what we want to give them, right, a bonus for  
23 retaining that building?

24 CHAIRPERSON MITTEN: It's a very pretty  
25 color. Pink.

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1 MR. LAWSON: I should just note in this  
2 case it's the structure which is important. It's  
3 covered with a corrugated tin or something, which  
4 nobody anticipates would be retained. But the  
5 structure itself underneath all that stuff is of  
6 some historic significance.

7 CHAIRPERSON MITTEN: Thank you. Let me  
8 just see if we have a common understanding of what  
9 1805.9 should say, which is basically that the  
10 existing building, if retained, does not count  
11 towards any density limitation and if it were  
12 removed, that it would be subject to the density  
13 limitation. Do we have a common understanding of  
14 that, fellow commissioners?

15 Okay. And then we'll ask Mr Bergstein  
16 to work on the language for that to make that clear.

17 MR. BERGSTEIN: Madam Chair, we've been  
18 receiving notes up here from the petitioner  
19 suggesting that we might need to revisit the Height  
20 Act issue with respect to R5D and that it would not  
21 be possible for a structure in the R5D overlay zone  
22 to be able to obtain a height of 90 feet unless we  
23 designated the streets within that zone as business  
24 streets. So, I'm raising --

25 CHAIRPERSON MITTEN: So my little note

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1 was not quite accurate then that the 90 foot is the  
2 threshold point at some lower point? What's the  
3 maximum height on a residential street then that  
4 would be permitted by the Height Act? Or is that  
5 like an unfair question to ask you on the fly?

6 MR. BERGSTEIN: I think at this point  
7 I'm not able to answer that.

8 CHAIRPERSON MITTEN: Okay.

9 MR. BERGSTEIN: That's the dialogue.  
10 What we're hearing is that it's 10 feet less for a  
11 residential street than for a business street.

12 Would you like to join us?

13 MS. MCCARTHY: Ten feet less than the  
14 width of the street in front and some of these  
15 streets petitioner notes are only 85 feet. So that  
16 would make it substantially lower than what we had  
17 expected and substantially lower clearly than the 90  
18 feet.

19 So one suggestion was to change,  
20 actually Ms. Steingasser suggested that maybe in  
21 1804.5 we could add after "for the purposes of  
22 Section 25-11 of this title," and then add, "and for  
23 purposes of achieving the height prescribed in  
24 1804.4 the Southeast Federal Center R5D and R5E  
25 Districts are considered mixed-use districts." And

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1 we thought that perhaps that was sufficiently  
2 prescribed to satisfy Mr. Parson's concerns.

3 CHAIRPERSON MITTEN: Let's see. Mr.  
4 Parsons?

5 COMMISSIONER PARSONS: In other R5D  
6 circumstances in the city is there a possibility  
7 they could go higher than 90 feet in a mixed-use  
8 district?

9 MS. MCCARTHY: Well, I think I'll defer  
10 to Mr Bergstein's legal opinion, but we would be  
11 specifying that it's not just R5D and R5E. It's  
12 SCFC/R5D and SCFC/R5E.

13 COMMISSIONER PARSONS: No, I understand.

14 MR. BERGSTEIN: That would be the  
15 limitation, that we're just speaking of this zone,  
16 overlay district.

17 COMMISSIONER PARSONS: All right. All  
18 right.

19 MR. BERGSTEIN: Okay.

20 CHAIRPERSON MITTEN: Okay. So we will  
21 advertise the language as Ms. McCarthy just recited.

22 Okay. Now we are back to 1807. Here we  
23 are just outlining the preferred uses. And Mr.  
24 Parsons had a comment about lists.

25 COMMISSIONER PARSONS: I object to three

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1 things. Animal hospital, blueprinting service, shoe  
2 shine parlor and ticket office. In a couple of  
3 instances, I don't think those are even uses in this  
4 city, but I think a ticket office is generally  
5 deadly to retail lively retail and I cannot imagine  
6 why an animal hospital or veterinarian is considered  
7 to be an amenity in a retail area.

8 CHAIRPERSON MITTEN: Okay. We have a  
9 proposal that would from the list of preferred uses  
10 delete letter A, letter N, letter KKK and letter  
11 OOO. Anybody have any objection to that?

12 COMMISSIONER PARSONS: My favorite is  
13 UUU. It's on the next page.

14 CHAIRPERSON MITTEN: Aw, that's so  
15 sweet.

16 COMMISSIONER MAY: What's the objection  
17 to the ticket office? What kind of tickets?

18 COMMISSIONER PARSONS: These are  
19 airlines. They used to be along K Street,  
20 proliferating K Street.

21 COMMISSIONER MAY: Right.

22 COMMISSIONER PARSONS: And what happens  
23 of course at 5:00 -- their only purpose is to serve  
24 those in the office buildings. Now whether they  
25 still exist or not, I don't know. I know they were

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1 absolutely deadly to the retail aspects of -- I  
2 mean, they didn't even stay open after office hours  
3 because that was their only function. So why should  
4 they be preferred is my point.

5 COMMISSIONER MAY: I guess I was  
6 wondering whether the definition of "ticket office"  
7 extended to other types of tickets that are sold in  
8 a storefront.

9 COMMISSIONER PARSONS: Well, you may be  
10 right. I mean, if this was half-priced theater  
11 tickets, I suppose I'd have a different opinion.

12 COMMISSIONER MAY: Exactly. That's what  
13 I was thinking.

14 COMMISSIONER PARSONS: So maybe I'm  
15 acting too quickly here. But that's covered under  
16 UUU. I don't know what that means, but --

17 COMMISSIONER MAY: Yes, except for that  
18 one, I think it's -- I don't there are a lot of  
19 strictly shoe shine parlors that exist, but --

20 COMMISSIONER PARSONS: Or blueprint.

21 COMMISSIONER MAY: Well, and blueprints  
22 are pretty much a thing of the past.

23 COMMISSIONER PARSONS: Yes.

24 CHAIRPERSON MITTEN: Well, I think  
25 ticket offices pretty much are too.

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1 COMMISSIONER PARSONS: Yes.

2 CHAIRPERSON MITTEN: Except for, as you  
3 say, perhaps like a half-price ticket the day of or  
4 something.

5 VICE CHAIR HOOD: I'm not sure if we  
6 want to do away with ticket office and my comments  
7 will go along with Mr. May.

8 COMMISSIONER PARSONS: All right. All  
9 right. All right. Come on. We got to get on with  
10 the afternoon.

11 VICE CHAIR HOOD: Well, let me just say  
12 this. I do have an issue with "I" and I want to  
13 know why we designated bank and financial  
14 institutions provided the use is not located on the  
15 intersection of two streets. I just wanted to know  
16 why was that picked. Maybe I missed it. Maybe I  
17 wasn't here.

18 CHAIRPERSON MITTEN: Mr. May, do you  
19 want to take a shot at that?

20 COMMISSIONER MAY: No, I was curious  
21 about that too. We like banks, but not when they're  
22 on the corner?

23 COMMISSIONER PARSONS: Well, that's  
24 something we decided years ago.

25 VICE CHAIR HOOD: Is it a security

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1 issue?

2 COMMISSIONER PARSONS: Same reason.  
3 That's when banks closed at 3:00. And they were  
4 deadly. They were just the absolute thing to put on  
5 an intersection, on a corner. So we fixed it. So  
6 the staff has merely repeated that fixing.

7 VICE CHAIR HOOD: But now they close at  
8 6:00 on Fridays.

9 COMMISSIONER PARSONS: Anyway.

10 CHAIRPERSON MITTEN: Well, what would  
11 you like?

12 COMMISSIONER PARSONS: They don't add  
13 much to the retail on weekends. And the trouble  
14 with doing this --

15 COMMISSIONER MAY: There's got to be an  
16 ATM somewhere.

17 COMMISSIONER PARSONS: The trouble with  
18 doing this is we could spend the rest of the  
19 afternoon.

20 CHAIRPERSON MITTEN: Yes, we could.

21 VICE CHAIR HOOD: We got plenty of time.

22 COMMISSIONER PARSONS: Maybe it's  
23 another case we could hold in the future.

24 VICE CHAIR HOOD: We have plenty of  
25 time.

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1 COMMISSIONER MAY: Let's move on.

2 CHAIRPERSON MITTEN: We always have  
3 final action, so let's leave it as it is for now.

4 COMMISSIONER PARSONS: Ah, yes.

5 COMMISSIONER MAY: I'm just thinking of  
6 the future legacy of those bank buildings that were  
7 on the corner that eventually become clothing  
8 retailers and what not because they're really nice  
9 buildings.

10 COMMISSIONER PARSONS: Yes.

11 COMMISSIONER MAY: Oh, well.

12 CHAIRPERSON MITTEN: Okay. So we're  
13 going to go along with everything that Mr. Parsons  
14 suggested except ticket office, and we're leaving  
15 that in.

16 VICE CHAIR HOOD: And we'll revisit  
17 everything else in final.

18 CHAIRPERSON MITTEN: I look forward to  
19 that.

20 Okay. And here now we're in 1808, just  
21 getting into the review standards. There's nothing  
22 here that I think is new.

23 COMMISSIONER PARSONS: I move approval  
24 as we have amended it this afternoon.

25 VICE CHAIR HOOD: Second.

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1 CHAIRPERSON MITTEN: Did I --

2 COMMISSIONER PARSONS: Do you want to  
3 say something else?

4 CHAIRPERSON MITTEN: Yes. Okay. Well,  
5 we have a motion and a second. So now we'll have  
6 some discussion.

7 I wanted to ask, Mr Bergstein, we had a  
8 lot of back and forth in the hearing and then we had  
9 additional submissions on the -- I'll just right at  
10 the moment make reference to the attachment to the  
11 petitioner's September 22, 2003 letter, which is  
12 called "Proposed Streets and Zoning Areas." And how  
13 does this all get incorporated? How do we use this  
14 proposed streets and zoning areas? What impact does  
15 this have given that, you know, we're doing a text?  
16 There's the text and then there's the map. But this  
17 is not our traditional map. So how does that get  
18 blended in?

19 MR. BERGSTEIN: Well, there will have to  
20 be meets and bounds which I though were attached to  
21 the prehearing submission for each of the zones.

22 CHAIRPERSON MITTEN: Okay.

23 MR. BERGSTEIN: And those meets and  
24 bounds would indicate the boundaries of the various  
25 districts. The proposed streets really aren't

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1 relevant except as a point of context for you. But  
2 ultimately the streets would be added through the  
3 process of amending the highway plan, but that's  
4 something that council will do.

5 CHAIRPERSON MITTEN: I'm just going to  
6 need your help because I don't remember precisely.  
7 The meets and bounds description though sort of  
8 defines the entire area, does it not? It doesn't --  
9 for instance, I think the intention is that the  
10 parcels which are in yellow are really what we're  
11 zoning and there was some discussion back and forth  
12 about the streets and whether the boundary lines  
13 would extend to the middle of the streets or not and  
14 how is the meets and bounds description to be used?  
15 It's going to include the area to be proposed for  
16 streets, or not?

17 MR. BERGSTEIN: I'm hearing a yes. But,  
18 I hope I'm understanding your question. The meets  
19 and bounds as I see them on attachments for each of  
20 the proposed zones themselves set forth the  
21 boundaries. The zoning commission could always  
22 suggest that when the streets are added to the  
23 highway plan that they be added so that the center  
24 of the street reflects the boundary of the zone.  
25 But that's something that ultimately gets decided

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1 later on. Am I misunderstanding your question?

2 In other words, you can't compel the  
3 location of the proposed streets which haven't yet  
4 been added to the highway plan.

5 CHAIRPERSON MITTEN: Okay.

6 MR. BERGSTEIN: You could state your  
7 preference. You created zone boundaries and you can  
8 state your preference that when the streets are  
9 created that the boundaries of the zones be  
10 consistent with the middle of the street. But that  
11 may not happen and then it would be up to you to  
12 adjust your meets and bounds when the streets are  
13 created so that that occurs. But you can't  
14 guarantee that.

15 CHAIRPERSON MITTEN: Okay.

16 MR. BERGSTEIN: I mean, you can't  
17 guarantee that there will be streets at all.

18 CHAIRPERSON MITTEN: Right. Well, I  
19 guess my concern is that there are still some issues  
20 with where the zoning boundary lines would be. So  
21 that's why I didn't want to just move forward  
22 without having discussed that. And, you know, I  
23 think the main concern is there's a pretty dramatic  
24 change in the line between the our R5E zone and the  
25 R5D zone on the eastern portion of the site, and I

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1 don't know what street that's potentially going to  
2 be. I think maybe it's supposed to be Water Street.  
3 So if you're tracing the line and you're going past  
4 the existing building and you then you jog around, I  
5 mean, that's a funny little traffic configuration to  
6 be creating. And I understand why the lines are  
7 where they are, but it causes a problem in the  
8 future. So we need to talk about what we want to do  
9 about that.

10 COMMISSIONER PARSONS: What we want to  
11 do about the fact that the existing buildings  
12 penetrate the street space?

13 CHAIRPERSON MITTEN: Well, first of all  
14 there's no street. There's just a potential street.

15 COMMISSIONER PARSONS: A proposed  
16 street.

17 CHAIRPERSON MITTEN: Proposed street.  
18 And I'm less worried about the little blip around  
19 the existing building. I'm more concerned about  
20 this building that is indicated as a 2.48 acre  
21 parcel where the street jogs around the northern  
22 perimeter of it. Imagine you're driving on that  
23 street and somebody's coming down 4th Street and  
24 what that traffic control is going to look like. So  
25 I don't think that's a normal street configuration

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1 that we would be wanting to set up the zoning to  
2 support a configuration like that. So that's why  
3 I'm raising it and I think was a concern that the  
4 Office of Planning had raised.

5 COMMISSIONER PARSONS: It's like the one  
6 in the Navy Yard, "Beware of the guy on the left,"  
7 sign. There's one just like that in the Navy Yard.

8 CHAIRPERSON MITTEN: Oh, there is?

9 COMMISSIONER PARSONS: Doesn't mean it  
10 should be done.

11 CHAIRPERSON MITTEN: Okay.

12 COMMISSIONER PARSONS: I understand.

13 COMMISSIONER MAY: I don't think we want  
14 to be considering our street grid in comparison to  
15 the Navy Yard and the way that works.

16 COMMISSIONER PARSONS: No, I'm jesting.

17 CHAIRPERSON MITTEN: Open to  
18 suggestions.

19 COMMISSIONER PARSONS: Do you mean for  
20 us to start moving these proposed streets around  
21 this afternoon?

22 CHAIRPERSON MITTEN: Well --

23 COMMISSIONER PARSONS: We could do that.  
24 We could move the proposed street 21 feet 56 inches  
25 north.

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1 CHAIRPERSON MITTEN: Well actually --

2 COMMISSIONER PARSONS: Existing building  
3 and then --

4 CHAIRPERSON MITTEN: We want to focus on  
5 the zoning lines. We don't want to focus on the  
6 streets. The streets are there sort of as a guide  
7 to something in the future, but what we need to  
8 focus on is where the zoning line is going to be.

9 I think what the Office of Planning had  
10 said is, "Recommends that the zoning order clearly  
11 state that development potential is based on the  
12 yellow parcel -- oh well, there's that too -- based  
13 on the yellow parcel areas to ensure that ultimate  
14 development potential on the Southeast Federal  
15 Center site corresponds to the densities anticipated  
16 in the illustrative plan."

17 So we have two things. One is where  
18 the zoning line is going to be. And then the other  
19 is, as implied, that, you ,know the Office of  
20 Planning would have us state is that this is not all  
21 intended to be developed under the zoning  
22 categories, that there is the intent that there be  
23 streets dedicated and that the ultimate development  
24 will bear some relationship to these yellow parcels.

25 COMMISSIONER PARSONS: Well, the only

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1 way to solve your concern is to reduce the R5D  
2 parcel by 80 feet.

3 CHAIRPERSON MITTEN: Right. That's  
4 right. And I think that's what -- I'll just double  
5 check with Mr. Lawson. Am I correct that on page 2  
6 that's what you're recommending so that it doesn't  
7 jog around the R5D parcel, that it would in essence  
8 reduce the size of that parcel in favor of  
9 increasing the size of the R5E parcel to the north?

10 MR. LAWSON: We certainly recommended  
11 additional discussion about this. Quite frankly, I  
12 see pluses and minuses to both. I should note that  
13 the planning process to date has always shown a jog  
14 around parcel D. And it is important that parcel D  
15 remain of a size that's appropriate for development.  
16 DDOT and the Office of Planning had some concerns  
17 about the street jogging and how that would lead  
18 to, you know, the long term functioning of the  
19 street. You know, it's one of those things where  
20 there many pluses and many minuses kind of on both  
21 sides.

22 You know, Office of Planning in general  
23 has concerns about the exact location of the map  
24 along the south edge of R5E though.

25 CHAIRPERSON MITTEN: And you go so far

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1 as to recommend that we realign Water Street or in  
2 essence realign the zoning line so that it's more of  
3 a straight line. And I guess at this point what I'm  
4 asking is you to be more precise in that would you  
5 have the line raised up to its most northerly point  
6 where it goes around so that it would be straight  
7 across starting on the east side, go straight across  
8 from the northern part of the R5D, or would you have  
9 us start at the point on the west which is the  
10 western boundary of the proposed Water Street and  
11 carry that forward, reducing the size of the R5D  
12 parcel?

13 We need a recommendation at this point.

14 MR. LAWSON: Sure.

15 CHAIRPERSON MITTEN: Because I'm not  
16 getting anything from these guys.

17 VICE CHAIR HOOD: We got a motion and a  
18 second.

19 MR. LAWSON: I guess my first  
20 recommendation is that certainly on the --

21 CHAIRPERSON MITTEN: There's an  
22 unresolved issue.

23 VICE CHAIR HOOD: Yes.

24 MR. LAWSON: Certainly my first  
25 recommendation would be that certainly on the, I

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1 guess it would be the west side of the site, the  
2 proposed street, and I understand that's separate  
3 from the zoning boundary line to some extent.

4 CHAIRPERSON MITTEN: Right.

5 MR. LAWSON: The proposed street is in  
6 the correct location.

7 CHAIRPERSON MITTEN: Correct.

8 MR. LAWSON: Again, we have some  
9 questions about the zone boundary line would be  
10 within that street right of way. But the second  
11 part to that question I guess is the street between  
12 the R5E and the R5D area. DDOT has recommended that  
13 a straight through alignment results in a more  
14 functional street alignment. OP doesn't disagree  
15 with that. We would have to take a close look at  
16 what that does to the R5D parcel in terms of its  
17 developability and how that would relate to the  
18 overall vision in terms of the development potential  
19 that was agreed to for the site.

20 CHAIRPERSON MITTEN: Okay. Here's what  
21 I'm going to propose and you can guys can -- or, Mr.  
22 May, you want to make a proposal?

23 COMMISSIONER MAY: Could I ask a  
24 question? The existing building that is right in  
25 the middle there, the R -- not the existing building

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1 that's in the development area, but the one directly  
2 north of that.

3 CHAIRPERSON MITTEN: Yes?

4 COMMISSIONER MAY: Is that a building  
5 that is going to stay there in the long term?

6 MR. LAWSON: That would be up to the  
7 developer to determine. Again, it's not a protected  
8 building. It is a listed historic building. We  
9 would like to see it preserved, but there's no  
10 requirement in the RFP or in the zoning that would  
11 mandate that that building be retained.

12 COMMISSIONER MAY: Okay. Because the  
13 street, Tingey Street is going right through the  
14 north end of it.

15 MR. LAWSON: I'm sorry. I didn't hear  
16 you.

17 COMMISSIONER MAY: The proposed Tingey  
18 Street is going right through the north end of that.

19 MR. LAWSON: Well, the street right of  
20 way is going through the edge of the building. Now  
21 again, the street, the paved surface of the street  
22 would be somewhere within that.

23 COMMISSIONER MAY: Right. Okay. I  
24 asked that question simply because I mean the other  
25 way to address having this would be to work backward

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1 from that point, work down. And then maybe  
2 eliminate some of these other jobs in the process  
3 because you have that existing building which is not  
4 sitting happily on that entire block. I mean, that  
5 doesn't do you any good for the right of way of  
6 Tingey Street because you already have the other  
7 existing building on the parcel to the north that's  
8 here with the DOT site.

9 But I'm just -- your concern on the one  
10 hand is making the R5D parcel too small to be  
11 developable. But one way to address that would be  
12 instead of moving that zoning line further to the  
13 south, move the other line further to the north.  
14 Because I mean the proposed street as it passes  
15 directly north of the W0 zone aligns with N Place  
16 across the way, but it doesn't have to because it  
17 has that building in between. I know that has  
18 implications for the overall development of the  
19 site. I'm not sure how much.

20 I mean, there are other aspects of this  
21 too. It's sort of a difficulty not having a real,  
22 you know, kind of master plan to go with it because  
23 the development of the R5D parcel and the proposed  
24 street that kind of rings it there, is that really  
25 the best way to treat that property's relationship

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1 to the park as well?

2 MR. LAWSON: You know, this is certainly  
3 raising an awful lot of questions and I think all I  
4 can do really is go back to what the intent was, you  
5 know. And certainly the intent was to, number one,  
6 make sure that there was a waterfront park space of  
7 approximately 5.5 acres, that that not be reduced in  
8 size. This map does show waterfront park space of  
9 approximately 5.5 acres.

10 And the second thing I guess is to make  
11 sure that the parcel areas and the street system  
12 that we're establishing at this point has some logic  
13 to it. I wouldn't want to preclude the idea that at  
14 some point when we see an actual master plan, when  
15 we see a development plan for this site that some  
16 minor tinkering with this is going to be necessary  
17 and hopefully beneficial to the overall plan. I  
18 think what we're trying to do here is to kind of  
19 establish what the ground rule is, what the basis is  
20 that we're expecting the eventual developer to work  
21 from. Some additional flexibility may very well be  
22 requested and may very well be beneficial at some  
23 point in the future. I know that's not really  
24 adding much, but I think those are important  
25 considerations.

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1 MS. PRINCE: If I could at some point  
2 speak on behalf of the General Services  
3 Administration?

4 CHAIRPERSON MITTEN: Sure. Why not?

5 MS. PRINCE: Allison Prince from Shaw  
6 Pittman. These parcel sizes were all heavily  
7 discussed and they're in the RFP material.

8 The R5D parcel size is a critical parcel  
9 size to make it a buildable R5D area. Pulling the  
10 street straight to the east, and this is a street to  
11 nowhere, by the way. I mean, this is a dead-end  
12 street. So whether it jogs around or goes straight  
13 to the east, I think it's a distinction without a  
14 difference. But jogging around, as we propose,  
15 maintains that very critical parcel size. The  
16 change that's been discussed would enlarge the R5E  
17 area, which we do not need, and diminish the R5D  
18 area.

19 And I'll also add that it's really not  
20 within the purview of this Commission at this point  
21 to think about the functioning of the streets.  
22 That's very much a part of the dedication process.  
23 DDOT will weigh in heavily at that point. Office of  
24 Planning will weigh in heavily. And if it's  
25 ultimately determined that that's a problematic

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1 grid, the appropriate bodies within DDOT can review  
2 that. But at this point it's absolutely critical  
3 for us to maintain the parcel sizes that are part of  
4 the RFP.

5 CHAIRPERSON MITTEN: Okay.Thank you.

6 COMMISSIONER PARSONS: I agree. And if  
7 it gets hard, we'll come back and we rezone it.

8 CHAIRPERSON MITTEN: Okay. So part of  
9 your proposal is that we use the zoning boundary  
10 lines that are included in the applicant's proposed  
11 streets and zoning areas?

12 COMMISSIONER PARSONS: Yes.

13 CHAIRPERSON MITTEN: That we conform to  
14 that? Okay.

15 COMMISSIONER PARSONS: What else have  
16 you got?

17 CHAIRPERSON MITTEN: That's all. I'm  
18 not going to say anything else.

19 All right. Is there any further  
20 discussion?

21 COMMISSIONER MAY: Yes, I wanted to  
22 hopefully have a brief discussion of this, but I was  
23 particularly interested in the comments that we had  
24 received from the Committee of 100 and some of the  
25 issues that were raised. I mean, building height

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1 we've touched on just a little bit and the idea of  
2 stepping down the buildings toward the waterfront.  
3 And there are a couple of other issues in there that  
4 I think are worth noting, but at this point not  
5 particularly persuasive to me.

6 But I am concerned about this notion or  
7 the question of the retail spaces or the prospect of  
8 the retail spaces would essentially all become ABC  
9 establishments and that we would be recreating  
10 something similar to the Washington Harbor  
11 Development. Is that the right one?

12 CHAIRPERSON MITTEN: Yes.

13 COMMISSIONER MAY: Yes. Right. Which,  
14 you know, is a terrific place to visit on a Friday  
15 night, but not a great place to live next to, I  
16 would imagine, for that same reason. So I'm just  
17 wondering whether that gave pause to any of the  
18 other members of the Commission.

19 CHAIRPERSON MITTEN: I read that. I  
20 noted that. I guess one of the things that I think  
21 about is that there's going to be an awful lot of  
22 opportunity as this particular area gets built out  
23 for the Zoning Commission to be weighing in on what  
24 is being proposed and I think there would certainly  
25 be the opportunity if we felt that there was

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1 becoming an over concentration of any particular  
2 kind of use that we would have some opportunity  
3 because there's so many occasions that we would be  
4 in a review mode. We'd be able to weigh in at that  
5 point.

6 And then also I think of this just in  
7 terms of, you know, as we talk about coming back  
8 after the street grid is finally conceived, and as  
9 we talked about when we were doing the Capitol  
10 Gateway Overlay that, you know, this is a big area  
11 and we're taking the best first shot that we can and  
12 it may come to the point where, you know, we need to  
13 refine these as the areas start to build out and  
14 that, you know, I don't think that anyone thinks of  
15 this as a finished product.

16 So I think the concern is worth noting  
17 and I think it's premature at this point to really  
18 try and micro-manage the development now before we  
19 see what starts to transpire. That would be my  
20 thought. Anybody else? Mr. May?

21 COMMISSIONER MAY: Okay. Thanks. No, I  
22 just wanted your -- at least address it.

23 CHAIRPERSON MITTEN: Okay. Thank you.

24 COMMISSIONER MAY: Thanks.

25 CHAIRPERSON MITTEN: All right. We have

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1 a motion and a second to approve Case Nr. 03-06  
2 consistent with the draft that we reviewed today and  
3 the changes that we proposed, as well as the  
4 configuration for the zoning categories on the  
5 applicant's proposed zoning boundary map. All those  
6 in favor, please say aye. Aye.

7 VICE CHAIR HOOD: Aye.

8 COMMISSIONER MAY: Aye.

9 COMMISSIONER PARSONS: Aye.

10 CHAIRPERSON MITTEN: Those opposed,  
11 please, say no.

12 Mrs. Schellin?

13 MS. SCHELLIN: The staff would record  
14 the vote 4 to 0 to 1 to approve for proposed action  
15 Case Nr. 03-06, Commissioner Parsons moving,  
16 Commissioner Hood seconding, Commissioners May and  
17 Mitten in favor. Commissioner Hannaham not present,  
18 not voting.

19 CHAIRPERSON MITTEN: Thank you. We're  
20 going to take a five-minute recess and we'll be back  
21 shortly. Thank you.

22 (Whereupon, at 3:47 p.m. off the record  
23 until 3:54 p.m.)

24 CHAIRPERSON MITTEN: -- 03-05, which is  
25 the PUD for the Department of Transportation

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1 Headquarters Building.

2 Mr. Bastida, did you want to say  
3 anything by way of introduction?

4 MR. BASTIDA: The staff have provided  
5 you all the documentation and has put it in front of  
6 you for your consideration. Thank you.

7 CHAIRPERSON MITTEN: Thank you, Mr.  
8 Bastida.

9 All right. I just wanted to go back to  
10 a couple of points that we had raised early on. The  
11 first is that we determine a base zone for this  
12 parcel and that will affect the degree of relief  
13 that's being requested. So we had two proposals.  
14 One was CR and one was C3C. The Office of Planning  
15 had proposed that the base zone be CR and the  
16 applicant had requested that the base zone be C3C.

17 Then going back even as far as the set  
18 down, we had noted that there were a number of areas  
19 where mitigation was required as opposed -- well,  
20 mitigation required of negative impacts. Among  
21 those items that we had called out originally were  
22 the close of 3rd Street to traffic, the 50-foot set  
23 back required for a "defensible perimeter," the lack  
24 of publicly accessible retail spaces within the  
25 building and in the event that we use CR as the base

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1 zone and trying to promote a mixed-use environment,  
2 this project would be completely commercial and  
3 that, depending on where we come out on the base  
4 zone, may also be viewed as an negative impact that  
5 would need to be mitigated.

6 I guess I want to start this discussion  
7 with a sense of where the Commission is regarding  
8 the base zone. When we were doing the Capitol  
9 Gateway Overlay case and there was rezoning being  
10 contemplated along M Street and we had a request  
11 from an applicant, I don't remember the exact  
12 square, but it was along the south side of M Street  
13 and they were requesting that they be zoned C3C and  
14 we decided that the best zone in that case would be  
15 CR because we are trying to promote a mixed-use  
16 environment. And I think that was the thrust behind  
17 the Office of Planning's recommendation for, in this  
18 case, you know, in the event that this development  
19 did not go forward, that CR would be the appropriate  
20 base zone and I guess I would speak in favor of CR  
21 as the appropriate base zone. Mr. May?

22 COMMISSIONER MAY: And I would note that  
23 that would be consistent with what we are  
24 contemplating for the surrounding area.

25 CHAIRPERSON MITTEN: Yes.

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1                   COMMISSIONER MAY: On both sides of the  
2 street. It seems sensible from that point.

3                   CHAIRPERSON MITTEN: Okay. So we have  
4 two.

5                   VICE CHAIR HOOD: Madam Chair, remember  
6 in that case, while I voted against it at that time,  
7 in trying to make sure we're consistent, I would  
8 agree with the CR zone recommended by the Office of  
9 Planning.

10                  CHAIRPERSON MITTEN: Any thoughts, Mr.  
11 Parsons?

12                  COMMISSIONER PARSONS: Four for four.

13                  CHAIRPERSON MITTEN: Okay. So we're  
14 dealing with CR as the base zone. So that would  
15 then bring into consideration the fourth item that I  
16 think would be one that we should think about when  
17 we're talking about mitigating factors or adverse  
18 impacts that need to be mitigated, which is that  
19 this is a completely commercial development in an  
20 area that we would otherwise want to see for mixed-  
21 use development. I certainly think some of the  
22 proposals that the applicant has made go towards  
23 mitigating that adverse impact, but I just want to  
24 make sure that we view in that light.

25                  Let me go to the first issue then that I

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1 had raised that had given us concern from the very  
2 beginning, which is the fact that 3rd Street will  
3 not be open to traffic. And I just want to ask a  
4 point of clarification from the Office of Planning,  
5 if I can.

6 As a legal matter, is 3rd Street open  
7 regardless of how traffic moves right now? Is it  
8 considered to be open or is it considered to be  
9 closed now?

10 MR. LAWSON: The 3rd Street right of way  
11 was closed some time ago, back in the early 1900s,  
12 so it's not an open street.

13 CHAIRPERSON MITTEN: Okay.

14 VICE CHAIR HOOD: Madam Chair, I'd like  
15 clarification so I know what a opened and closed  
16 street is. Obviously I don't know as someone who  
17 uses 3rd Street. What do you mean by whether it's  
18 closed or open? I'm just trying to understand  
19 because --

20 CHAIRPERSON MITTEN: It means  
21 technically it's not on the highway plan.

22 VICE CHAIR HOOD: But it's still used.  
23 People are still using that street.

24 CHAIRPERSON MITTEN: Well --

25 MR. LAWSON: There is a paved surface

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1 and cars can go on it. It's gated.

2 VICE CHAIR HOOD: Okay.

3 MR. LAWSON: But it's, as Ms. McCarthy  
4 stated, it's not on the map.

5 VICE CHAIR HOOD: Oh, it's not on a map?  
6 That's what it means by being closed. Because, you  
7 know, right now you show your driver's license you  
8 can go on through as it exists right now. To me  
9 that's open, but if the legal definition, legal term  
10 is closed, then I would accept being closed.

11 CHAIRPERSON MITTEN: Well, as we find  
12 out you proceed at peril of your tires.

13 VICE CHAIR HOOD: Actually it's not too  
14 bad. It isn't.

15 MR. LAWSON: I'm sorry?

16 VICE CHAIR HOOD: I'm saying the road  
17 was in disrepair, but actually it's not -- I've  
18 driven on worse that are open.

19 CHAIRPERSON MITTEN: Okay. I just  
20 wanted to clarify that before we start this  
21 discussion.

22 I think we have an area that we have to  
23 sort out, which is we have a recommendation from --  
24 first let me say, we have a submission from the  
25 Department of Transportation, DDOT, I'm sorry, the

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1 District Department of Transportation that outlines  
2 a study that they commissioned to understand the  
3 traffic impacts for the entire area in the vicinity  
4 of the DOT headquarters and that came in after the  
5 public hearing and there wasn't the opportunity for  
6 the Commission to ask questions or for the applicant  
7 to cross examine. But the conclusion of the report,  
8 one of the conclusions of the report is that there  
9 is adverse impact created by the fact that 3rd  
10 Street will remain closed and they're recommending  
11 that we assess a financial fee or require a  
12 financial contribution of \$500,000 to \$600,000 per  
13 year to mitigate that adverse impact. And I think  
14 I'd like to start there. So, I'll ask for initial  
15 reactions to that, which the applicant is clearly  
16 opposed to.

17 VICE CHAIR HOOD: Madam Chair, in all  
18 fairness, unfortunately this was not presented to us  
19 earlier, because when I first read it, I looked back  
20 and I said, "What's the history? Has this been done  
21 before?" I don't believe it's ever been done  
22 before. I don't recall and I would have to direct  
23 that question to Mr. Parsons.

24 But that's a substantial amount  
25 annually, but then again not being able to ask any

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1 questions on it, I would feel rather uncomfortable  
2 in moving forward on this piece. This piece would  
3 make me -- I'm very hesitant about moving forward  
4 knowing that I have some figures in front of me that  
5 are recommended by the authority here in the city of  
6 \$500,000 to \$600,000 annually.

7 Now I think in all fairness maybe it's  
8 possible we can ask for briefs or have a hearing or  
9 whatever, but I feel very uncomfortable. And also I  
10 want to make sure we're fair to the applicant  
11 because \$500,000 to \$600,000 annually may make  
12 people rethink some things. That's my point of  
13 view.

14 CHAIRPERSON MITTEN: Mr. Parsons?

15 COMMISSIONER PARSONS: Well, a couple of  
16 thoughts. One, I share your view, we had no hearing  
17 on this. Second, I think it exceeds our  
18 jurisdiction. That is for us to impose this kind of  
19 penalty, if you will, on the Federal Government for  
20 staying in the city and having to close the street  
21 for a period of time, and I don't know where that  
22 leads. I mean, there are a lot of streets closed in  
23 the city at this point and we could do more studies  
24 of this kind and send the bill to the Congress for  
25 nine dollars per hour. I'm glad to know how much

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1 DOT thinks we're worth, by the way. Nine bucks an  
2 hour is interesting. At least while we're in our  
3 cars.

4 But I don't know how we can deal with  
5 this. I just think clearly it's a tax. It's  
6 something that, as Mr. Hood said, maybe we could  
7 have another hearing on the concept, but not hold up  
8 this project for it. I mean, it seems to me the  
9 city council is the one who should be holding  
10 hearings as they close streets, if it's proven to be  
11 detrimental, that they somehow deal with this  
12 impact. But not to throw this into the mix here at  
13 this point in time. So I would note the report and  
14 return it.

15 CHAIRPERSON MITTEN: Thank you. Mr.  
16 May?

17 COMMISSIONER MAY: Okay. Well, I have  
18 highly mixed feelings about the report and the  
19 suggestion in the report. I wouldn't go so far as  
20 to say that the idea of assessing this kind of a  
21 cost is a tax and is therefore outside the realm of  
22 what the Commission can do. But then again, it's  
23 very hard to believe that a street that is not  
24 currently open that would essentially just remain  
25 closed with this project that the impact, logically

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1 the impact of that, it's just so hard to imagine  
2 that it's going to cause all the failing  
3 intersections that the report implies when the road,  
4 you know, even when there's development further to  
5 the south is only going to go another two blocks.  
6 It's hard to -- it's just a common sense reading of  
7 it that it just doesn't make sense that there's that  
8 much impact associated with the closing.

9 Now, that's not to say that there's not  
10 a significant impact to it. I mean, it's useful to  
11 see it this way and see it quantified and I think  
12 that it is something that needs to be mitigated as  
13 part of the development and I think that the study  
14 is useful in that regard and that it does attempt to  
15 quantify it in a way that perhaps we've never seen  
16 before, but at least it does quantify it. It's  
17 useful to see a demonstration of it. It's hard to  
18 believe it's as bad as it as, but it's useful to see  
19 the demonstration of it.

20 You know, ultimately I'm not sure what  
21 the right solution is. I don't think that we need  
22 to have a hearing on the concept of doing this kind  
23 of an assessment because I don't think there's a lot  
24 of future for it. But I think that having this  
25 method of quantifying the cost as an instrument for

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1 coming to terms with what mitigation is necessary,  
2 you know, I think it's useful in that regard whether  
3 we need to have further discussions of that and  
4 further discussions with the public on that. I  
5 believe it is something we'd be willing to  
6 entertain. I'm not ready to just jump right in and  
7 say though that it's going to cost this amount and  
8 therefore we should be charging the applicant.

9 CHAIRPERSON MITTEN: I agree with the  
10 concerns that Mr. Hood raised and I generally agree  
11 with everything else that's been said.

12 I think what we need to deal with is to  
13 the extent that there are adverse impacts created by  
14 this project, and specifically now we're talking  
15 about traffic and that's a concern. We have to deal  
16 with that because we can't approve a project that  
17 has an unacceptable impact on city services and  
18 facilities, and traffic would be one of them.

19 I guess what's missing from this report  
20 by DDOT is there is no connection between the  
21 adverse impact that they say would result and the  
22 mitigation proposed, which is there's no connection  
23 between the money that they say should be assessed  
24 and a solution, a mitigating solution.

25 So I mean there are a number of things

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1 that I would like to know further, including why  
2 this particular project is unusual in DDOT's mind or  
3 else are they taking a new approach relative to  
4 other projects where there have been some impacts on  
5 traffic that were worsened, but they were not made  
6 unacceptable and why is this unacceptable versus  
7 some of the other cases that we have had where the  
8 background traffic has been worsened as a result of  
9 the project. And I'd like to know if in fact they  
10 do have some proposal in mind where this money would  
11 be used to actually mitigate the negative impacts of  
12 this project on traffic, specifically as it related  
13 to keeping 3rd Street closed.

14 So I guess I would be in favor, because  
15 I think the applicant probably has questions of DDOT  
16 and we certainly have questions of DDOT that we  
17 would want to flesh that out in a further, albeit  
18 narrow, public hearing, sa Mr. Hood had suggested.

19 So I don't know if there's -- I think I  
20 heard Mr. May being supportive of that. Was that  
21 accurate?

22 COMMISSIONER MAY: Of a further hearing  
23 on the subject?

24 CHAIRPERSON MITTEN: Narrow.

25 COMMISSIONER MAY: Narrow. I would have

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1 no objection to that. I have no objection to --  
2 there's a lot of information to absorb related to  
3 this case and I think that further study of the  
4 traffic issue in a hearing could be a benefit so I  
5 wouldn't be opposed to that.

6 CHAIRPERSON MITTEN: Mr. Parsons?

7 COMMISSIONER PARSONS: I object.

8 CHAIRPERSON MITTEN: Just maybe turn the  
9 mike on, or I'll just note Mr. Parsons says he  
10 objects, but I think he's willing to not do that too  
11 loudly and go along with the --

12 COMMISSIONER PARSONS: -- microphone on.

13 CHAIRPERSON MITTEN: Okay. All right.

14 Well, what I'd to do then is, so we have  
15 that issue, we have the issue of 3rd Street  
16 remaining closed, the adverse impacts that the  
17 Department of Transportation has identified. We  
18 have a proposed mitigation plan that doesn't seem to  
19 be connected to the problem and the magnitude of the  
20 mitigation plan, the applicant finds objectionable.  
21 And I think we would want to have a narrow hearing  
22 basically on the submittal and recommendations by  
23 DDOT so that we could cross examine, ask further  
24 questions and so forth. But I would like to go  
25 through the balance of the issues so that if there

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1 were any additional issues, that we could flesh them  
2 out at that time or ask for additional submissions  
3 at this point.

4 One of the other issues that we had  
5 raised early on was the 50-foot set back required by  
6 the Department of Transportation and the basic  
7 proposal. This to some extent is related to the  
8 lack of publicly accessible retail in the building.  
9 So I guess maybe I'll keep those two together  
10 because the set back would basically preclude, to  
11 some extent, even if they were to include retail,  
12 having it be more successful.

13 So, among the things that have been  
14 proposed to mitigate those negative impacts are the  
15 landscaped area along M Street that's specifically  
16 for the set back. Regarding the lack of retail, we  
17 have a proposal to include at least 8,000 square  
18 feet of retail space in building 170. We have  
19 permanent retail structures at New Jersey and M and  
20 4th and M, seasonal kiosk program along M Street and  
21 then the potential at the time that the federal  
22 tenancy of the building would end to convert a  
23 minimum of 24,000 square feet of space to retail.  
24 And then we have the open space for the community  
25 including the Southwest Plaza.

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1                   So I'd like some discussion on whether  
2                   or not, first of all, the things that I had just  
3                   enumerated, does the Commission find those to be  
4                   elements that are mitigating the negative impacts of  
5                   the 50-foot set back and lack of retail space in the  
6                   building, or do we find those to be amenities?  
7                   Because I think we need to be thinking very clearly  
8                   in terms of what is a mitigation, what's being  
9                   proffered to mitigate an adverse impact versus what  
10                  is a benefit and an amenity to be balanced against  
11                  the relief being sought. And if you'd like a  
12                  summary of all of the benefits and amenities that  
13                  the applicant has proposed, there's a list at  
14                  finding of fact Nr. 40 on page 9 of their proposed  
15                  order.

16                   COMMISSIONER PARSONS: I'm a little  
17                   confused, Madam Chair.

18                   CHAIRPERSON MITTEN: Yes.

19                   COMMISSIONER PARSONS: Because we got a  
20                   letter this morning, I believe, that somehow changed  
21                   this to say, "We won't dedicate the million and a  
22                   half to specific purposes, but rather we will leave  
23                   it on the table for future decision making. Am I  
24                   mistaken?"

25                   CHAIRPERSON MITTEN: Well, that relates

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1 to a general contribution that had been proffered to  
2 us at the public hearing where there was an  
3 undefined contribution of \$1.5 million towards area  
4 wide benefits and that was not defined at the public  
5 hearing. That was just a, "Okay. We're going to  
6 give you \$1.5 million." So that's not what I just  
7 articulated.

8 COMMISSIONER PARSONS: So this letter  
9 today didn't do anything to change that? Is that a  
10 different subject?

11 CHAIRPERSON MITTEN: It's a slightly  
12 different subject.

13 COMMISSIONER PARSONS: Okay. Well then,  
14 we'll move on.

15 CHAIRPERSON MITTEN: Well, let me just  
16 bring that to closure, which is we had a general  
17 proffer of \$1.5 million that was not defined about  
18 how it would be spent. Then we had a submission by  
19 the applicant on the 8th of October that said,  
20 "Here's how we're going to spend the \$1.5 million."  
21 The Office of Planning suggested that they were not  
22 in favor of that allocation and then the applicant  
23 has since basically said, "Okay. Forget that  
24 allocation. We're back to the more abstract proffer  
25 of \$1.5 million and we'll work with the Deputy Mayor

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1 and Office of Planning to define that better."

2 And I guess because it's ill-defined at  
3 this point, I wasn't focusing on it as a possible --  
4 it could still be in part used to mitigate if we  
5 find that these various negative factors haven't  
6 been fully mitigated, but I was trying to focus on  
7 those things that were clearly meant to address  
8 adverse impacts by particularly the security  
9 constraints on the project.

10 COMMISSIONER PARSONS: Well, I have a  
11 chart that maybe nobody else has in front of them,  
12 it was part of the hearing, but in view of public  
13 benefits, project amenities and development  
14 centers --

15 CHAIRPERSON MITTEN: Yes.

16 COMMISSIONER PARSONS: -- and they break  
17 it down into two categories, public benefits and  
18 project amenities on site.

19 CHAIRPERSON MITTEN: Right.

20 COMMISSIONER PARSONS: And off site, or  
21 community benefits and amenities. And it would see  
22 to me in large part that the on-site benefits and  
23 amenities are mitigation.

24 CHAIRPERSON MITTEN: Yes.

25 COMMISSIONER PARSONS: Rather than what

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1 we would traditionally call amenities --

2 CHAIRPERSON MITTEN: Yes.

3 COMMISSIONER PARSONS: -- because of the  
4 peculiar nature of the project. I mean, this whole  
5 setting around building 170 is going to be wonderful  
6 and it's on the south side of the building. It's  
7 just going to be a wonderful place to be. And to me  
8 that is mitigation for the fortress they've got to  
9 build, if that's what you meant in stimulating this  
10 conversation.

11 CHAIRPERSON MITTEN: Yes, what I'm  
12 trying to get the Commission to focus on is we have  
13 this whole pile of things that have been proposed  
14 and we need to sort out, okay, all the adverse  
15 impacts have to be mitigated.

16 COMMISSIONER PARSONS: Right.

17 CHAIRPERSON MITTEN: That's point number  
18 one. Once we get to that point, then we can start  
19 talking about benefits and amenities that go to the  
20 balance between the relief being sought and what's  
21 being proffered in terms of benefits and amenities.  
22 So that's what I was attempting to do.

23 Now, are you suggesting that we should  
24 use this chart and go through and identify point-by-  
25 point what's --

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1 COMMISSIONER PARSONS: I think that  
2 would be helpful, yes.

3 CHAIRPERSON MITTEN: Okay. I see  
4 everybody has this chart but maybe Mr. May. Do you  
5 have this chart with you?

6 COMMISSIONER PARSONS: (Off microphone.)

7 CHAIRPERSON MITTEN: Okay. That might  
8 be the best thing. I think you can also use the  
9 proposed order because most of the things, if not  
10 all of the things, are in finding of fact Nr. 40 and  
11 pretty much in the same order. There you go. Okay.

12 Okay. So we're using the exhibit that  
13 we were given at the public hearing rather than the  
14 proposed order.

15 COMMISSIONER PARSONS: Okay.

16 CHAIRPERSON MITTEN: So the first is  
17 land contribution of about 90,000 square feet to  
18 dedicate various streets. I view that as  
19 mitigation.

20 COMMISSIONER PARSONS: Oh, yes.

21 CHAIRPERSON MITTEN: Anybody who  
22 doesn't, speak up. Okay.

23 Improvements to New Jersey Avenue and  
24 portions of 4th Street and Tingey Street, including  
25 design and construction of the roadway. Mitigation.

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1 Adaptive reuse of building 170.

2 Mitigation.

3 COMMISSIONER PARSONS: Yes.

4 CHAIRPERSON MITTEN: Permanent retail  
5 structures at M and New Jersey and M and 4th  
6 Streets, and in the Southwest Plaza. Mitigation.

7 COMMISSIONER PARSONS: Yes.

8 CHAIRPERSON MITTEN: Seasonal kiosk  
9 program along M Street. Mitigation.

10 COMMISSIONER PARSONS: Yes.

11 CHAIRPERSON MITTEN: Ability and  
12 commitment to provide additional ground floor  
13 retail, a minimum of 24,000 square feet at the end  
14 of the federal tenancy. That's mitigation light.

15 COMMISSIONER PARSONS: Light mitigation?

16 CHAIRPERSON MITTEN: Yes. I mean it's  
17 so far in the future that it doesn't weigh as much.

18 Okay. Contribution of \$1.5 million  
19 toward area wide benefits. I think we'll have to  
20 just keep that aside for a moment with a question  
21 mark.

22 Then the next one, transportation-themed  
23 site animation and activation program and the paren  
24 was to be deleted. I view that as mitigation as  
25 well.

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1 COMMISSIONER PARSONS: Yes.

2 CHAIRPERSON MITTEN: Okay? Enhance  
3 landscape and streetscape materials for  
4 approximately 170,000 square feet of open space.  
5 What do you think?

6 COMMISSIONER PARSONS: Well, I'm  
7 confused by this because the open space is the  
8 Southwest Plaza and the rest are streets.

9 CHAIRPERSON MITTEN: Let me see if this  
10 fleshes it out any further.

11 COMMISSIONER PARSONS: See, if you go to  
12 the next one down, it talks about the Southwest  
13 Plaza at 35,000 feet.

14 CHAIRPERSON MITTEN: Yes.

15 COMMISSIONER PARSONS: Unless you  
16 include the defensive perimeter, so the 170 is what  
17 I'm questioning. Where is all of that?

18 CHAIRPERSON MITTEN: I don't know. Let  
19 me ask the Office of Planning if they can help us  
20 out with that.

21 We're trying to define, if you're  
22 looking at our chart, it's at the top of page 2. If  
23 you're looking on the proposed order, it's finding  
24 of fact Nr. 40, letter K, page 12. Can you help us  
25 identify the 170,000 square feet of open space?

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1 MR. LAWSON: I can give you my guess.

2 CHAIRPERSON MITTEN: Okay.

3 MR. LAWSON: I assume that that includes  
4 all the landscaped areas which would include M  
5 Street, 3rd, the 3rd Street pedestrian way as well  
6 as the Southwest Plaza and probably the New Jersey  
7 set back as well. I see the applicant nodding, so I  
8 believe that's correct.

9 CHAIRPERSON MITTEN: Okay. So that's  
10 the landscaped areas that they're creating by the  
11 set back?

12 MR. LAWSON: All around the site.  
13 That's correct.

14 CHAIRPERSON MITTEN: Okay. So that  
15 would definitely be mitigation then. And then the  
16 open space including the Southwest Plaza. That's  
17 mitigation. Environmental benefits.

18 VICE CHAIR HOOD: That's mitigation,  
19 Madam Chair.

20 CHAIRPERSON MITTEN: We think mitigation  
21 on environmental benefits?

22 VICE CHAIR HOOD: Yes, because it's in  
23 with Brownsfields and everything else. That's  
24 mitigation.

25 CHAIRPERSON MITTEN: Well, I guess the

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1 benefit is that, or I should say the adverse impact  
2 is not being created by the project. It's that the  
3 opportunity to clean it up is being created by the  
4 project and in fact I think the Federal Government  
5 had already invested a significant amount of money  
6 in cleaning up the whole Southeast Federal Center.

7 VICE CHAIR HOOD: What are you saying?  
8 You want to change it?

9 CHAIRPERSON MITTEN: Well, there's a  
10 couple things I guess.

11 VICE CHAIR HOOD: You brought up a good  
12 point about the cleaning up of the site, so I'm not  
13 going to be hard nosed on that.

14 CHAIRPERSON MITTEN: Okay. So we'll  
15 call that amenities and benefits.

16 Okay. Then we have community benefits  
17 and amenities. Contribution of \$2.5 million to the  
18 Canal Blocks Park. I could view this one of two  
19 ways. One is when I think of the underlying zone  
20 and the desire to create a mixed-use area, I can  
21 think of the Canal Blocks Park contribution as a  
22 mitigation factor because there will be no  
23 residential use in this project and this is serving,  
24 this contribution is serving to enhance the  
25 residential neighborhood to the north and become a

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1 centerpiece. If I don't focus on the mixed-use  
2 zoning as much, I can think of this as more a pure  
3 amenity, but I leave it to the Commission as to how  
4 they view it.

5 COMMISSIONER PARSONS: Well, I think  
6 it's an amenity. I mean, the fact that we want an  
7 underlying zone of CR, this is purely a commercial  
8 project. I mean, to say that they owe something  
9 else to assist and enhance a residential area with a  
10 canal park, I'm not with you on that.

11 CHAIRPERSON MITTEN: Okay. Anybody  
12 else? Mr. May?

13 COMMISSIONER MAY: Yes, I'm inclined to  
14 consider this an amenity.

15 CHAIRPERSON MITTEN: Okay. Contribution  
16 of \$75,000 toward a comprehensive signage program.  
17 I think that's an amenity.

18 COMMISSIONER PARSONS: Yes.

19 CHAIRPERSON MITTEN: Yes? Yes, I see  
20 nodding heads.

21 For source agreement LSDBE and a  
22 memorandum of understanding. Both amenities.

23 So let's just go back a second and I  
24 guess at this point we're embracing three main  
25 adverse impacts. One is that related to

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1 transportation and traffic generation. And with the  
2 understanding that we'll flesh out the 3rd Street  
3 closure in greater detail in a limited public  
4 hearing. The 50-foot set back and the lack of  
5 retail space in the building.

6 So then the question is for all these  
7 mitigation factors that we listed and all these  
8 contributions in that regard, do those sufficiently  
9 mitigate the adverse impacts, leaving aside 3rd  
10 Street because we'll flesh that out?

11 COMMISSIONER PARSONS: But you skipped  
12 over the contribution of \$1.5 million.

13 CHAIRPERSON MITTEN: Oh, I did skip  
14 over. So then I guess that's the point, is how are  
15 we going to view the \$1.5 million contribution? And  
16 maybe we can't flesh that out fully without having  
17 the 3rd Street discussion.

18 COMMISSIONER PARSONS: But it's to me  
19 clearly an amenity. I mean, it's \$1.5 million  
20 contribution not on site.

21 CHAIRPERSON MITTEN: Yes. Right.  
22 Right, right, right, right. Right off site. Right.

23 COMMISSIONER PARSONS: Right.

24 CHAIRPERSON MITTEN: Okay. So that we  
25 consider an amenity. So then, keeping 3rd Street

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1       aside, do all the other things proffered by way of  
2       mitigation, are they sufficient to satisfy the other  
3       negative impacts that we've identified? And again,  
4       keeping 3rd Street aside.

5                   VICE CHAIR HOOD: I just want to go back  
6       to the kiosk program along M Street.

7                   CHAIRPERSON MITTEN: Yes.

8                   VICE CHAIR HOOD: It went kind of fast  
9       and I was sitting here, I put a question mark by it.  
10       I didn't know whether that was an amenity or  
11       mitigation. I was kind of torn on that one. So I'm  
12       still not sure about the seasonal kiosks because of  
13       the security issues. They're still trying to come  
14       up with retail. I don't know if that's an amenity.  
15       I mean, you know, I'm not going to be hard-nosed  
16       about it, but I think that might be more in the  
17       frame of an amenity because of the -- well we've  
18       heard this whole bit about homeland security and  
19       security issues and retail not going to this place  
20       and making a sacrifice here in trying to put the  
21       kiosks, trying to put something there.

22                   CHAIRPERSON MITTEN: Right. Well, I  
23       think that's the point. They're putting it there  
24       because they're not putting it in the building. So  
25       they're mitigating the adverse impact that they're

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1 creating by not putting retail in the building.

2 VICE CHAIR HOOD: Okay. All right. Got  
3 you. Got you.

4 CHAIRPERSON MITTEN: That's why I think  
5 we said mitigation.

6 So what's the sense there? Keeping  
7 aside 3rd Street, are the proffers related to  
8 mitigation sufficient to offset the adverse impacts  
9 being created?

10 COMMISSIONER PARSONS: I'm curious. Do  
11 you mean that the 3rd Street discussion is separate  
12 from this?

13 CHAIRPERSON MITTEN: Well, we are going  
14 to flesh that out in greater detail in a public  
15 hearing.

16 COMMISSIONER PARSONS: Yes.

17 CHAIRPERSON MITTEN: So I don't want to  
18 pretend that we can decide that.

19 COMMISSIONER PARSONS: Okay. Well then  
20 I think they are.

21 CHAIRPERSON MITTEN: Okay. Do we have a  
22 consensus about that generally?

23 VICE CHAIR HOOD: I'm trying to remember  
24 what the \$1.5 million toward area wide benefit was.  
25 Was it specific?

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1 CHAIRPERSON MITTEN: Well, it has been  
2 specific and now it's general again.

3 VICE CHAIR HOOD: Now, it's general.

4 CHAIRPERSON MITTEN: But what's clear is  
5 that they're now proffering it for off site. So Mr.  
6 Parsons is suggesting -- well, that is going to be  
7 an amenity because it's going to be enhancing things  
8 off site.

9 VICE CHAIR HOOD: Off site?

10 CHAIRPERSON MITTEN: Yes.

11 VICE CHAIR HOOD: And I know we went  
12 through this before in other cases, but is it a  
13 certain area it should be done in? I think they  
14 requested area at the ANC or this may be another  
15 case, but I'm remembering them --

16 CHAIRPERSON MITTEN: Right.

17 VICE CHAIR HOOD: -- specifically asking  
18 for it in a specific area.

19 CHAIRPERSON MITTEN: Well, I think --

20 VICE CHAIR HOOD: ANC to whatever.

21 COMMISSIONER PARSONS: What they did, as  
22 I recall, is they proffered some ideas and the  
23 Office of Planning is objecting to those in their  
24 report saying for various reasons they don't think  
25 they're appropriate. So here we go. I mean, we

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1 made this exception last week with a different ANC  
2 to say, "Well, this isn't very complicated. Let  
3 these two ANC Commissioners deal with it. Very  
4 small ANC. We won't be setting a precedent for this  
5 kind of a solution."

6 So I think we've got to get pinned down  
7 what this \$1.5 is for and put it in the order rather  
8 than -- I think this letter says, "If a non-profit  
9 corporation or if a development corporation is  
10 established to treat or deal with this area, we'll  
11 give it to them." It's too loosey goosey.

12 CHAIRPERSON MITTEN: Okay.

13 VICE CHAIR HOOD: And that's my point.  
14 I remember last week we had the same issue.

15 CHAIRPERSON MITTEN: Right.

16 VICE CHAIR HOOD: And I'd just like to  
17 see us be consistent. That might have been an  
18 exceptional case, but I just see us going on down  
19 the road. Now I would like to still see the  
20 surrounding area benefit. You know, of course I'd  
21 like to bring it over to my area, but I can't.

22 CHAIRPERSON MITTEN: You could move down  
23 here.

24 VICE CHAIR HOOD: I won't comment on  
25 that.

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1 CHAIRPERSON MITTEN: Okay. Here's what  
2 we can do, since we will be --

3 COMMISSIONER PARSONS: I think that was  
4 a good one. All right.

5 CHAIRPERSON MITTEN: Since we will be  
6 having some further discussion, notwithstanding the  
7 mechanism that might be desirable for distributing  
8 these funds, is that if we could narrow the  
9 potential application of the money, that I think  
10 would give us some more comfort. Okay. There's  
11 that point aside.

12 All right. So I still haven't gotten  
13 the definitive read, but I think what I'm hearing is  
14 that the factors, or the contributions made to  
15 mitigate adverse impacts are generally sufficient,  
16 keeping aside the issue of the closure of the 3rd  
17 Street, which we will flesh out further with DDOT.

18 Do we have a general consensus?

19 COMMISSIONER MAY: I think so and I'll  
20 try to be as definitive as possible.

21 CHAIRPERSON MITTEN: Okay.

22 COMMISSIONER MAY: Back when we first  
23 started learning of this project and the competing  
24 concerns that we had of the program, the size of the  
25 building, the set back requirements, the street

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1 closing, all of the issues that are associated with  
2 it, I think frankly what they have done to mitigate  
3 the negatives associated with this building program  
4 overall is I think very successful and I frankly am  
5 amazed that it has gone as well as it has, all  
6 things considered. Because there were some real  
7 tough conflicting interests here and I think it's  
8 come a long way from where it started out. So I  
9 think it's well mitigated.

10 CHAIRPERSON MITTEN: I agree. Okay.  
11 Then the next question, which I'm going to ask after  
12 I speak to Mr Bergstein for one minute. Just hold  
13 on.

14 All right. Then the next question is  
15 for all those other proffers that we consider to be  
16 amenities, are those amenities, which would be the  
17 \$1.5 million plus the \$2.5 million for the Canal  
18 Blocks Park, \$75,000 for signage, the first source  
19 agreement, LSDBE agreement. Are those sufficient to  
20 balance the requested relief and flexibility? And  
21 that's outlined on page 3 of this chart that we've  
22 been using that we were given by the applicant at  
23 the hearing and we have to have a discussion about  
24 building height too, but the maximum height of the  
25 building and two portions of the building, the issue

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1 about grouping compact parking spaces and less than  
2 five and the set back for the roof structure.

3 COMMISSIONER PARSONS: Yes.

4 VICE CHAIR HOOD: I think it is, Madam  
5 Chair.

6 CHAIRPERSON MITTEN: Okay. So we're  
7 satisfied with the amenities, we're satisfied with  
8 the mitigation proffers and the 3rd Street issue is  
9 going to be fleshed out in some greater detail.  
10 We're agreed about that? Yes?

11 COMMISSIONER PARSONS: And the million  
12 and a half.

13 CHAIRPERSON MITTEN: Yes, and we're  
14 going to have that be more well-defined. Let me  
15 just take a moment and have a side bar here.

16 (Whereupon, off the record to for a side  
17 bar discussion.)

18 CHAIRPERSON MITTEN: The one remaining  
19 issue that we need to have some input on from the  
20 applicant is, what we're being asked to do is to  
21 allow two buildings to be measured from one  
22 reference point for purposes of height and that's in  
23 part what I think the flexibility that the applicant  
24 was referencing. But I think we need a  
25 clarification whether this is relief that is

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1 actually being sought or is there some legal basis  
2 for us to depart from the normal way in which  
3 building height would be measured and, you know, the  
4 requirement that the buildings be joined if they're  
5 going to be treated as a single building? So I  
6 think we could ask for an additional submission on  
7 that particular point so we would know specifically  
8 whether that was relief that was being sought or  
9 there's some other legal interpretation that we're  
10 being invited to make.

11 MR. BERGSTEIN: What I'm looking at is  
12 3025 of the zoning regulations, which allows the  
13 Commission to after a hearing in essence reopen the  
14 record and have a further hearing on issues  
15 designated for the Commission. In that case, the  
16 notice of hearing is 14 days to the parties.

17 CHAIRPERSON MITTEN: Oh, fabulous.

18 MR. BERGSTEIN: That wasn't my bright  
19 idea, I'll confess.

20 CHAIRPERSON MITTEN: But it's a good  
21 idea and we don't care that it wasn't yours.

22 All right. So that's much better.  
23 Thank you. I'm very relieved to hear that. So we  
24 can set that date after we're done here, is that  
25 correct?

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1 MR. BERGSTEIN: Yes.

2 CHAIRPERSON MITTEN: Okay. Thank you.  
3 Thank you very much, Mr Bergstein.

4 All right. So if everyone is in  
5 agreement then, we will have a narrow further  
6 hearing on the subject of the DDOT submission and  
7 that would allow us to ask questions, it would allow  
8 the applicant to cross examine, it will allow the  
9 ANC to cross examine and then we can flesh out  
10 exactly the nature of the adverse impact and exactly  
11 the nature of how this money would be spent towards  
12 mitigating. And then I think we have a general  
13 consensus on the balance of the proffers. Is that  
14 correct? Are we in agreement about that?

15 UNIDENTIFIED SPEAKER: Yes.

16 CHAIRPERSON MITTEN: Okay. So then we  
17 will defer taking action on the Case Nr. 03-05 until  
18 after the subsequent public hearing.

19 Anything else I need to do on that, Mr  
20 Bergstein or Mr. Bastida, before we move on?

21 MR. BASTIDA: No, Madam Chairman. I  
22 will find a specific date to see if it complies with  
23 the Commission and then give it to you.

24 CHAIRPERSON MITTEN: Thank you, Mr.  
25 Bastida.

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1           Okay. Then we're ready to move to the  
2 cases under final action. We're going to have to  
3 take something out of order because we're about to  
4 lose Mr. Parsons.

5           If you have just another minute or two.

6           COMMISSIONER PARSONS: Yes, I do.

7           CHAIRPERSON MITTEN: We have a piece of  
8 correspondence on the GW Wellness Center and this is  
9 item B on the agenda, Case Nr. 02-26. And this was  
10 a case that Mr. May did not participate in.

11          COMMISSIONER MAY: So I'll take my  
12 leave?

13          CHAIRPERSON MITTEN: Not for the day.  
14 We're not -- okay. Yes, don't go away for the day.

15          All right. We have a letter from the  
16 applicant asking us to proceed to take up the merits  
17 of the case which we had denied originally for being  
18 out of compliance with the condition 9. And we also  
19 have a report that has been submitted by Mr. Slade  
20 that came in after the closing of the record. So I  
21 guess the first question would be do we want to  
22 reopen the record to receive the Slade report, or do  
23 we want to strike the Slade report? Because there  
24 would be implications if we reopened the record that  
25 we would, as we did in the prior case, have a

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1 limited hearing on the issue or allow the parties to  
2 respond.

3 So we need to decide first about how to  
4 deal with the Slade report. My suggestion would be  
5 that we just strike it and not accept it into the  
6 record.

7 VICE CHAIR HOOD: I'll agree, Madam  
8 Chair, we send it back.

9 COMMISSIONER PARSONS: I agree.

10 CHAIRPERSON MITTEN: Okay. Then to take  
11 it up on the merits, I'm going to need a little  
12 update from Mr Bergstein on what the status of the  
13 litigation is overall.

14 And then if you give us a status report  
15 and then if you could make a recommendation on  
16 whether it's prudent for us to take this up at this  
17 time.

18 MR. BERGSTEIN: Well, the status is is  
19 that the District of Columbia Court of Appeals has  
20 ruled on the challenged brought by the university,  
21 to put it in short form, they invalidated what we've  
22 referred to as the interim phase or phase one of the  
23 housing requirement, which was the condition that  
24 you had found the university not to be in compliance  
25 with. They sustained condition 10, which is the

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1 requirement that the university house all of its  
2 freshman and sophomores on campus, which was not a  
3 condition that you actually addressed at the  
4 decision meeting because condition 9 took care of  
5 the compliance issue. However, the Court of Appeals  
6 stayed condition 10, which it found to be invalid  
7 pending the remand.

8           The District of Columbia has filed a  
9 petition for review asking the court in essence to  
10 reconsider its decision to stay a provision that it  
11 found to be valid and I'm not sure if the university  
12 has yet filed its response, but it will take some  
13 time, perhaps a matter of weeks, for the Court of  
14 Appeals to review that.

15           My concern is that the reason that a  
16 decision couldn't be issued in the first instance  
17 here is because the legal landscape changed between  
18 the time that the Commission found non-compliance at  
19 its decision meeting and when the Court of Appeals  
20 issued its stay of that condition. My concern is if  
21 you take action on the merits, that may well happen  
22 again.

23           My recommendation is that at this  
24 juncture you wait until the Court of Appeals has  
25 ruled on the petition for review and issued its

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1 mandate. At that point, it'll be clear whether or  
2 not condition 10 is in effect. If it is in effect,  
3 then the university would have an opportunity to  
4 prove compliance with that and the District has  
5 suggested in its brief a means to do that. And if  
6 the Court of Appeals continues to maintain the stay  
7 on condition 10, then you can move ahead to the  
8 merits finding that they are in compliance. So I  
9 would wait for that to occur.

10 CHAIRPERSON MITTEN: Thank you. Is  
11 there any objection to that?

12 COMMISSIONER PARSONS: Seems like good  
13 advice.

14 CHAIRPERSON MITTEN: All right. Then we  
15 would wait to have some further action by the Court  
16 of Appeals before we take this issue up on the  
17 merits.

18 VICE CHAIR HOOD: Madam Chair, let me  
19 just ask a question. Will that conclude everything  
20 that's in litigation, or is that just for that  
21 particular issue? I guess my question is, are we  
22 going to wait until you complete everything?  
23 Because it seems like this has been going on for  
24 awhile.

25 MR. BERGSTEIN: I'd like to think that

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1 this is it. In the federal case, the Supreme Court  
2 denied certiorari on the federal challenge so the  
3 federal case -- well, part of the federal case is  
4 over. There is in fact more to the federal case  
5 involving equal protection claims, a takings claim,  
6 a claim under FERPA, there is a status conference  
7 going on. That still may well percolate some more.  
8 So that is still going on and it's also possible, I  
9 suppose, that the university, if it loses in the  
10 District challenge, could try to seek certiorari.

11 So I'd hate to say it's ever over. I'd  
12 like to think we're coming close to the finish line,  
13 but with this particular litigation, I'd be wary  
14 about making any declarations like that.

15 VICE CHAIR HOOD: Thank you.

16 MR. BERGSTEIN: But in terms of what I'm  
17 recommending, the only impediment to going forward  
18 is that right now there is in fact a stay of both  
19 conditions because the court hasn't issued its  
20 mandate and there is no other injunction or stay in  
21 place. And what we're waiting for is to see whether  
22 or not the Court of Appeals will decide to lift the  
23 stay with respect to condition 10 since it had found  
24 that to be a valid condition. And if it disagrees,  
25 continues the stay, then you should move on the

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1 merits and not wait for any further proceedings.

2 Of course, if it changes its mind, that  
3 would be an opportunity to ask the university to  
4 demonstrate compliance with condition 10 and if you  
5 find compliance you can go ahead and reach the  
6 merits.

7 CHAIRPERSON MITTEN: Thank you, Mr  
8 Bergstein.

9 MR. BERGSTEIN: That's about as clear as  
10 I can make that.

11 CHAIRPERSON MITTEN: Thank you. I'm  
12 inclined to take Mr Bergstein's recommendation.

13 VICE CHAIR HOOD: I am too, Madam Chair.

14 CHAIRPERSON MITTEN: And, Mr. Parsons?

15 COMMISSIONER PARSONS: Yes.

16 CHAIRPERSON MITTEN: Yes? All right.  
17 Thank you very much.

18 And thank you, Mr. Parsons, for staying  
19 a few minutes past when you thought you'd have to  
20 leave. Thank you.

21 All right. Now we're back to the  
22 regular agenda. Final action, Case. Nr. 02-35. If  
23 someone would be so kind as to call Mr. May.

24 Okay. The first case is 02-35, which is  
25 the Text Amendment regarding the measurement of

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1 building height. And we have a proposed order. I  
2 have some editorial changes, nothing substantive.  
3 And the only piece of correspondence I think we got  
4 is the NCPC Report during the period for public  
5 comment. Is that correct? No? Mr. Bastida's not  
6 here?

7 MS. SCHELLIN: Yes.

8 CHAIRPERSON MITTEN: Is that correct?  
9 Thank you.

10 VICE CHAIR HOOD: I would move approval,  
11 Madam Chair, Zoning Commission Case. 02-35, text  
12 amendment to building height.

13 CHAIRPERSON MITTEN: Second. Any  
14 discussion?

15 COMMISSIONER MAY: No, I don't know if I  
16 need to state this for the record, but I don't think  
17 I was here when the proposed action was taken, but  
18 I've read the record of that discussion and am  
19 prepared to vote in the final vote.

20 CHAIRPERSON MITTEN: That's terrific,  
21 because otherwise we wouldn't be able to move on  
22 that. So that is great.

23 All those in favor, please say aye.  
24 Aye.

25 VICE CHAIR HOOD: Aye.

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1 COMMISSIONER MAY: Aye.

2 CHAIRPERSON MITTEN: Those opposed,  
3 please, say no. And I have an absentee vote that  
4 Mr. Parsons just gave me in favor. So we actually  
5 have his vote in favor too.

6 Mrs. Schellin?

7 MS. SCHELLIN: Okay. Staff would record  
8 the vote 4 to 0 to 1, Commission Hood moving,  
9 Commissioner Mitten seconding, Commissions May and  
10 Parsons, by absentee ballot, in favor, Commissioner  
11 Hannaham not present, not voting. And this is to  
12 approval final action in Case Nr. 02-35.

13 CHAIRPERSON MITTEN: Thank you. Next is  
14 case Nr. 03-25 and this would amend the text to  
15 allow the Office of Zoning to adjust the fees for  
16 the copy of the zoning map and to actually now offer  
17 a color copy of the zoning map. And I would move  
18 approval of 03-25.

19 VICE CHAIR HOOD: Second.

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

22 VICE CHAIR HOOD: Aye.

23 COMMISSIONER MAY: Aye.

24 CHAIRPERSON MITTEN: Mr. Parsons votes  
25 aye.

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1 Mrs. Schellin?

2 MS. SCHELLIN: Staff would record the  
3 vote 4 to 0 to 1 to approve final action in 03-25,  
4 Commissioner Mitten moving, Commission Hood  
5 seconding, Commissioner May in favor and  
6 Commissioner Parsons in favor by absentee ballot.  
7 And Commission Hannaham not present, not voting.

8 CHAIRPERSON MITTEN: Thank you. Next we  
9 have Case Nr. 03-17, which is Bethune Hall at Howard  
10 University. This is a further processing case  
11 basically to replace an improvement existing  
12 building.

13 VICE CHAIR HOOD: I will move approval,  
14 Madam Chair, Zoning Commission Case Nr. 03-17,  
15 Howard University New Bethune residential hall.

16 CHAIRPERSON MITTEN: And I'll second.  
17 Any discussion?

18 COMMISSIONER MAY: Yes, Madam Chair. We  
19 did get some additional materials on this. We got  
20 the campus plan with some modifications noted in it.  
21 And I have to say that while what we got in terms of  
22 the modifications of the campus plan did editorially  
23 correct some things that needed to be changed to  
24 reflect this change of use of the one building, it  
25 didn't seem that there was any effort made to

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1 address how this different use fits into the overall  
2 plan.

3 Now, I didn't study the plan in great  
4 detail, but it doesn't look like anybody has taken  
5 the time to think, "Well, we had been planning on a  
6 faculty center. Instead we have this pressing need  
7 for new dormitory space and so therefore it changes  
8 our vision in this way, or our direction in this  
9 way." And, you know, given some of the blanket  
10 statements that exist in the plan, I would have  
11 thought they would be addressed, such as the fact  
12 that, you know, the office of residence life stated  
13 that there is no need for additional dormitory space  
14 for the foreseeable future. And so now we have that  
15 statement in the plan and yet they have a new dorm  
16 that they want to build. So I found it lacking in  
17 that regard.

18 Now, is it lacking enough for me to not  
19 want to proceed at this point? I wouldn't say that.  
20 But, it does make me question how seriously the plan  
21 itself is being taken.

22 The second thing I wanted to note in  
23 this particular case is that I really did want to  
24 see something that described better what these  
25 penthouses look like on the building. And, you

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1 know, we have a drawing that shows the penthouse and  
2 shows the compliance with set backs or, you know,  
3 how it works in terms of set backs. But it does not  
4 address, I think, at all what these things will  
5 really look like. And in fact, you know, when you  
6 look at some of the other additional drawings that  
7 we did receive where there are these models or  
8 computer models that are done that show what the  
9 building looks like from a variety of different  
10 angles and, you know, magically the penthouse isn't  
11 there. And I mean these are not insignificant  
12 penthouses on a building that's this narrow and it's  
13 going to be a very obvious thing. And I really  
14 would like to know what it's going to look like.

15 VICE CHAIR HOOD: If Mr. May has some  
16 uncertainty, I don't have any problem taking my  
17 motion off the floor.

18 CHAIRPERSON MITTEN: In lieu of doing  
19 what? Asking for some additional --

20 VICE CHAIR HOOD: Asking for some more  
21 information. I will tell you that the reason that I  
22 didn't have any problems making the motion was  
23 because there were other sites and here they're  
24 trying to build dorms and keep students on site.

25 CHAIRPERSON MITTEN: Right.

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1                   VICE CHAIR HOOD: I thought that was the  
2 first thing we need to do, is more forward so we  
3 don't have some existing problems that go on. And  
4 also, when I looked at the -- I think they wanted to  
5 use it for a faculty lounge room, or whatever it  
6 was. I assume it was a faculty lounge room. And I  
7 thought that was so unnecessary and I thought this  
8 was a much better use. But now looking at the  
9 architectural piece of it, I don't mind withdrawing  
10 it because I really didn't look at that too much  
11 about the penthouse. Probably wouldn't have even  
12 noticed it.

13                   CHAIRPERSON MITTEN: Let me say a couple  
14 of things. One is, if I understood you correctly, at  
15 the moment you're not satisfied with what you've  
16 seen in terms of the additional submissions as to  
17 how the pent houses will look. Is that correct?

18                   COMMISSIONER MAY: Yes, we have nothing  
19 that really shows us what it's going to look like.  
20 We have, you know, some elevation drawings that are  
21 very, very simplistic.

22                   CHAIRPERSON MITTEN: Okay. Then I guess  
23 the next thing would be I'm just trying to avoid a  
24 situation where we ask for some additional  
25 submission, we come back in a month and then you go,

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1 "Oh, now that I see it, it's ugly and I don't want  
2 to vote in favor of it." So, you know, I just want  
3 to kind of move ahead to doing something that would  
4 be more helpful if we did go back to the applicant  
5 and I don't think there was really any lack of  
6 clarity on your part at the hearing.

7 COMMISSIONER MAY: Well, you know, the  
8 mere prospect that we could come here in a month,  
9 look at what they've designed and then I would say,  
10 "Well, I don't like it" and then be voting against  
11 it, I mean, all the more reason not to go forward  
12 today.

13 CHAIRPERSON MITTEN: Well, no. And I'm  
14 not trying to suggest it.

15 COMMISSIONER MAY: Yes.

16 CHAIRPERSON MITTEN: I'm just trying to  
17 give a maximum amount of direction to the applicant  
18 in that, you know, it's not just that we want to see  
19 what they're going to look like. It's beyond that.  
20 And if they have a certain, you know, appearance or  
21 what's it going -- give some guidance in making that  
22 request.

23 COMMISSIONER MAY: Okay. I guess what  
24 I'm looking for is more than a demonstration of sort  
25 of technical compliance or how this penthouse works

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1 from a strictly technical point of view. We did  
2 talk about the possibility of, since this is a  
3 building that has taken the roof itself and made it  
4 into a feature and, you know, tried to make the very  
5 top floor a significant aspect to the building, that  
6 they exert the same standard of care for the  
7 development of the penthouses and not simply have,  
8 you know, some painted corrugated metal up there  
9 that you got to mask the air-conditioner, or the  
10 elevator penthouses, I think is pretty much all it  
11 is.

12 I guess I want to know that it is going  
13 to be designed and that it is going to be something  
14 that fits with the architecture. And given what  
15 we've seen so far with the architecture of the  
16 building overall, I have every confidence that the  
17 architects can actually address this successfully.

18 CHAIRPERSON MITTEN: Okay.

19 COMMISSIONER PARSONS: It does need to  
20 be really designed. It can't just be a big metal  
21 box on the top.

22 CHAIRPERSON MITTEN: Okay. Mr. Hood has  
23 withdrawn his motion? Yes?

24 VICE CHAIR HOOD: Actually, I will.

25 CHAIRPERSON MITTEN: Will you? Okay.

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1 VICE CHAIR HOOD: Yes, I'll withdraw it.

2 CHAIRPERSON MITTEN: Okay.

3 VICE CHAIR HOOD: Didn't really want to,  
4 but I will.

5 VICE CHAIR HOOD: Okay. I think in the  
6 long run it'll be in everyone's best interest.

7 So then we would ask the Office of  
8 Planning perhaps to carry the message back to the  
9 applicant that in addition to seeing renderings that  
10 reflect the appearance of the penthouse as we had  
11 asked before, in order for whatever that looks like  
12 to be found acceptable to the Commission, the  
13 recommendation is that the penthouse actually be  
14 designed to be consistent with the balance of the  
15 architecture and not merely be a, what would the  
16 proper terminology be, an overlooked appendage?

17 COMMISSIONER MAY: Yes, just a box on  
18 top of the roof.

19 CHAIRPERSON MITTEN: Okay. Is that  
20 sufficient guidance, Ms. McCarthy? I see you  
21 nodding your head. Okay.

22 So then we will postpone action on case  
23 03-17 and reopen the record to receive the  
24 renderings from the applicant and if necessary if  
25 they were to revise those to follow the guidance

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1 offered by Mr. May that that would be all to the  
2 good.

3 COMMISSIONER MAY: I would also note, I  
4 don't think that everything that's been rendered  
5 needs to be rendered again. I mean, there are four  
6 or five views in here that are all, you know, very  
7 interesting, but I think they could be pretty  
8 selective. I mean, just a couple of different  
9 versions of it that allow us to see the building and  
10 see the penthouse as it's been designed.

11 CHAIRPERSON MITTEN: All right. We're  
12 getting there.

13 All right. The next thing to take up is  
14 then the first item under correspondence. We have a  
15 number of pieces of correspondence relating to Case  
16 Nr. 02-32. This is the Performing Arts Center at  
17 Georgetown University. I guess we'll just take  
18 these in the order that they are on the agenda.

19 So first we have a motion for  
20 reconsideration or clarification of our order from  
21 the Citizen's Association of Georgetown. And then  
22 we have the applicant's opposition to that motion.  
23 So we'll deal with that first.

24 If you remember, when we took up the  
25 Performing Arts Center case, there was actually no

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1 objection for the processing case itself. The  
2 issues turned on compliance with a variety of the  
3 conditions. And we have a revisiting in this motion  
4 of those issues that I thought we had given quite a  
5 bit of consideration to regarding compliance,  
6 specifically condition 3, condition 9, condition 14  
7 and I guess I would just ask if there is among the  
8 argument that's made for reconsideration for those  
9 three conditions, and I will leave condition 19 for  
10 just a moment, which is a substantial compliance  
11 condition, whether there's any concern that any of  
12 the commissioners that has merit to give granting  
13 the motion for reconsideration.

14 VICE CHAIR HOOD: If I remember  
15 correctly, Madam Chair, and I'm going on memory. I  
16 read the submittal. I think we had an issue about,  
17 what was it, code of conduct, and whether that was  
18 being enforced?

19 CHAIRPERSON MITTEN: Right. That was --

20 VICE CHAIR HOOD: And I have a few  
21 things here highlighted, but I just can't remember  
22 exactly. I'm trying to recall --

23 CHAIRPERSON MITTEN: It relates to the  
24 off-campus housing and the university's ability to  
25 revoke the privilege of off-campus housing in the

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1 case where there is student misconduct. And that's  
2 condition 3. Condition 9 relates to the type of  
3 information being reported to the community on  
4 various types of complaints and the way that those  
5 complaints are being handled by the university. And  
6 then condition 14, which has to do with the  
7 enforcement of the, you know, students registering  
8 their vehicles.

9 VICE CHAIR HOOD: Didn't we receive a  
10 submittal from the Department of Motor Vehicles?

11 CHAIRPERSON MITTEN: Yes, we did.

12 VICE CHAIR HOOD: On the issue?

13 CHAIRPERSON MITTEN: Yes, we did.

14 VICE CHAIR HOOD: So I think that issue  
15 has been resolved. I forgot exactly what they ruled  
16 on that and I remember specifically that they had  
17 commented on that to us and I think in their view  
18 they thought that they were dealing with it as best  
19 as they could. Now I stand to be corrected.

20 CHAIRPERSON MITTEN: I think that's  
21 generally true. I think what's happening is, you  
22 know, in some of the conditions on various orders,  
23 and this is not an isolated case, there is some  
24 disconnect between the expectations of the people  
25 who propose conditions and what can actually happen

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1 either legally or what can happen to be in  
2 compliance with the language of the condition. So  
3 there's clearly dissatisfaction on the part of some  
4 members of the community that the spirit of this  
5 condition isn't being met, but what the piece of  
6 correspondence that we got from the Department of  
7 Motor Vehicles suggested that, you know, the  
8 university had done what they had been asked to do  
9 in terms of sharing the information with DMV and  
10 that was about as far as it could go.

11 VICE CHAIR HOOD: So how do we -- well,  
12 go ahead.

13 COMMISSIONER MAY: Well, I don't know  
14 that I have any specific points to address here, but  
15 just in reviewing this information and recalling  
16 what was discussed in the hearing and the subsequent  
17 discussions, I really don't see that we are covering  
18 any new ground with the information that was  
19 submitted by the Citizens Association and I don't  
20 frankly see reason to reconsider the order as it was  
21 issued with regard to these specific conditions 3,  
22 9, 14. I'm sure that's all. I just didn't see any  
23 new information.

24 CHAIRPERSON MITTEN: I'd have to agree  
25 with you. I mean, I thought we took great pains to

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1 analyze exactly what was happening in each of these  
2 cases and while in some cases I think the conditions  
3 were not -- I don't think it was fully understood  
4 what could be done when the condition was written  
5 and perhaps in some cases they're not written as  
6 artfully as they could be, but I think under the  
7 circumstances and given the wording of the order, I  
8 think the university is in compliance. I should  
9 say, now going to condition 19, substantial  
10 compliance.

11 I think what we're being asked for, as  
12 it relates to condition 19, and this is where the  
13 clarification comes in, is they're asking us to  
14 clarify what the term "substantial compliance"  
15 means. I think at least as it stands now, for us to  
16 flesh that out in further detail would not be an  
17 interpretation of substantial compliance, which is  
18 what we did. We interpreted what substantial  
19 compliance for us. But to somehow issue language  
20 clarifying what substantial compliance means would  
21 go beyond interpreting it, but it would mean, you  
22 know, basically revisiting the order and revising  
23 the language and that's again not something I'm  
24 prepared to do. So, I think substantial compliance,  
25 you know, it's up to us to determine when it's

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1 before us and it's up to the zoning administrator to  
2 determine when it's before DCRA.

3 So, I would move that we deny the  
4 Citizen's Association of Georgetown motion for  
5 reconsideration of Order 02-32 on the bases that  
6 they have put forward.

7 COMMISSIONER MAY: Second.

8 VICE CHAIR HOOD: Discussion. I

9 CHAIRPERSON MITTEN: Mr. Hood?

10 VICE CHAIR HOOD: I just think, and I  
11 think I said this earlier when we went through all  
12 of this, is that when we do conditions, and I know  
13 we all have said it on the BZA, that we do things  
14 that everybody understands.

15 CHAIRPERSON MITTEN: Yes.

16 VICE CHAIR HOOD: And maybe that's  
17 easier said than done. And then we won't have any  
18 problems coming back, "Well, what do you mean by  
19 that?" All parties have agreed these are the  
20 conditions that went forward. Either you're in  
21 compliance or you're not. And how we work on that  
22 is going to depend on how we craft these conditions  
23 from this point on. So hopefully that eventually in  
24 the future will solve problems from having to  
25 reconsider and reconsider and reconsider.

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1                   CHAIRPERSON MITTEN: Well, you know, I  
2 think you raise a good point and I think, you know,  
3 to its credit, the BZA was trying -- and, you know,  
4 we had a whole slew of campus plans come through and  
5 the BZA had some, we've had some and when you craft  
6 these conditions to deal with problems, either  
7 longstanding problems or new problems that arise,  
8 one of the reasons why we revisit the campus plan  
9 periodically is because, you know, it's a question  
10 of, "Okay. Are these conditions working?" And to  
11 the extent that they're not working, they may not be  
12 working because they're not crafted well and they  
13 may not be working because they were insufficient to  
14 start with, but we learn from it and do better the  
15 next time. And to the extent that these are, you  
16 know, somewhat lacking, then we learn from that and  
17 do better the next time.

18                   VICE CHAIR HOOD: Madam Chair, I will  
19 agree. I thought we fleshed these out in totality  
20 the first time. Thank you.

21                   CHAIRPERSON MITTEN: Thank you. Okay.  
22 So then we now have the applicant's motion for  
23 reconsideration, or in the alternative, for a stay  
24 of part of our order.

25                   MS. SCHELLIN: Excuse me.

1 CHAIRPERSON MITTEN: Yes?

2 MS. SCHELLIN: Madam Chair, do we need  
3 to go ahead and record a vote for that first motion?

4 CHAIRPERSON MITTEN: I'm sorry. Yes,  
5 that's right.

6 MS. SCHELLIN: I'm sorry.

7 CHAIRPERSON MITTEN: Thank you for  
8 reminding me. Okay. Thanks.

9 MS. SCHELLIN: I think you were --

10 CHAIRPERSON MITTEN: On the motion for  
11 the Citizen's Association of Georgetown motion for  
12 reconsideration, all those in favor of denying the  
13 motion, please say aye. Aye.

14 VICE CHAIR HOOD: Aye.

15 COMMISSIONER MAY: Aye.

16 CHAIRPERSON MITTEN: And those opposed,  
17 say no.

18 All right. Mrs. Schellin.

19 MS. SCHELLIN: Okay. Staff would record  
20 the vote 3 to 0 to 2 to deny the Citizen's  
21 Association of Georgetown's motion. Commission  
22 Mitten moving, Commissioner May seconding,  
23 Commissioner Hood in favor, Commissioners Parsons  
24 and Hannaham not present, not voting.

25 CHAIRPERSON MITTEN: Thank you. Thank

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1 you for not letting us forget that.

2 All right. Now we have the applicant's  
3 motion for reconsideration, or in the alternative,  
4 for a stay of paragraph 26 of our order in Case Nr.  
5 02-32. I think we all have a copy of the order in  
6 front of us at this point.

7 And then we also have the Citizen's  
8 Association of Georgetown answer in opposition to  
9 their motion for reconsideration of paragraph 26.

10 And this relates to another issue that  
11 we discussed in detail, which is whether or not we  
12 considered it appropriate for the applicant to use  
13 averaging of their enrollment as the benchmark for  
14 meeting the cap versus actual enrollment at any  
15 given point in time.

16 We did have a fair amount of discussion  
17 about this and as I recall Mr. Parsons even so far  
18 as to listen to some tapes, or to read some  
19 transcripts of public hearings because he was  
20 interested in knowing whether or not the use of  
21 averaging had been discussed during the campus plan  
22 proceedings. And I think he found that that had not  
23 been discussed, although the university's made it  
24 clear that it's been their practice, but I think  
25 there are a number of pieces of evidence in the

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1 record that suggest that that was not the intent of  
2 the BZA in making that -- setting the cap.

3 But one of the things that I guess I  
4 didn't have in mind when reading the order, the  
5 proposed order, was I thought this condition or this  
6 finding was only going to relate to our action. I  
7 did not see it as being interpreted by the zoning  
8 administrator as on any given day that the actual  
9 enrollment would exceed the cap, that there would  
10 be, you know, the opportunity to issue notice of  
11 infraction or revoke a permit or all of that. And  
12 I'm not backing away from the fact that I don't  
13 think average enrollment was appropriate to be used,  
14 but I think particularly if this took the university  
15 by surprise, that we should give at least some  
16 consideration to phasing in the enforcement of it.  
17 I think it was clear what we had done when they came  
18 in. When they made their initial application, they  
19 were to in compliance with our interpretation of the  
20 way that the cap should be interpreted. And by the  
21 time we made the decision, they were because they  
22 were into their spring numbers at that point.

23 So, I would be in favor of reconsidering  
24 paragraph 26 in light of I guess the problem phasing  
25 in the enforcement, but I wouldn't want to back away

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1 from the spirit of it, which is that I don't the  
2 averaging is the proper interpretation. So, Mr.  
3 May?

4 COMMISSIONER MAY: I guess I feel a need  
5 to go back and reread the record in this particular  
6 case because I don't recall that in the end that it  
7 was the consensus of the Commission, it may well  
8 have been, but I just don't recall this, that it was  
9 the consensus of the Commission that averaging was  
10 not acceptable in this case. And so I just want to  
11 go back and refresh my own memory in regard to that.

12 Clearly, that has implications for the  
13 cap itself. If they had been operating on the  
14 averaging concept up to this point and thought that  
15 that had been the acceptable means of measuring what  
16 their enrollment would be, for us to insist on it  
17 being the actual hard count at any given moment has  
18 implications for their existing enrollment, not just  
19 how far up they would go. And I'm not sure how far  
20 into that we would want to venture in this case at  
21 this time. I think that opens up a much bigger  
22 issue.

23 But in any case, I'm quite willing to at  
24 this point stay the enforcement of paragraph 26, if  
25 that's the right way to put it, until we've had a

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1 chance to revisit the question and then we'll  
2 revisit it as quickly as we can.

3 CHAIRPERSON MITTEN: So you're proposing  
4 that we vote to reconsider paragraph 26 and stay the  
5 applicability of paragraph 26 during the period?

6 COMMISSIONER MAY: Yes. Right. Well,  
7 for the reasons that you stated, I think that it  
8 would be problematic to allow it to be enforced  
9 until we've had a chance to reconsider the question.

10 CHAIRPERSON MITTEN: Mr. Hood?

11 VICE CHAIR HOOD: I'm not sure. Is that  
12 exactly what you're saying, stay Nr. 26 as it is  
13 until we have a chance -- I think what I got from  
14 what you said, Madam Chair, and I agree with what  
15 you said earlier, was that I didn't want to back  
16 away from this. But if it's causing a problem, I  
17 think he put it every day, then it's something we  
18 need to look into. But I do want to stand firm with  
19 Nr. 26, but we may have to fine tune it in dealing  
20 with the issue on the cap. I'm not really sure. I  
21 think you're saying something different from  
22 Commission May.

23 CHAIRPERSON MITTEN: Well, I think we're  
24 actually saying the same thing. Let me just say it  
25 differently and maybe collect all the thoughts,

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1 which is I think that the proper interpretation of  
2 the cap, based on everything that was in our record  
3 and in the record of the BZA case and in their  
4 order, is that averaging is the improper  
5 interpretation of the cap. That's not what they  
6 intended.

7           Notwithstanding that, because this was  
8 an assumption that was made by the university and  
9 they have students, you know, that they've enrolled  
10 under that assumption for this year, that that would  
11 be extremely problematic for them to come into  
12 compliance with that or to, you know, hold us --  
13 this would hold up a project that we approved, you  
14 know?

15           So I think that prudence and fairness  
16 would suggest that we revisit the paragraph and try  
17 and figure out a way that we can have the ongoing,  
18 you know, what, at least Mr. Hood and I agree, is  
19 the proper interpretation of not averaging, going  
20 forward without overly penalizing the university in  
21 the short term, but having that long term  
22 interpretation take effect as being the proper  
23 interpretation and the one that was intended by the  
24 BZA.

25           VICE CHAIR HOOD: Madam Chair, let me

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1 ask, Mr. Parsons listened to the tapes or whatever?

2 CHAIRPERSON MITTEN: Yes.

3 VICE CHAIR HOOD: Was anything ever said  
4 about those tapes or clarification? Did they come  
5 out on the hearing or --

6 CHAIRPERSON MITTEN: I recall him saying  
7 something. Now, whether he said it to me publicly  
8 or privately, I don't remember. I don't remember if  
9 we took that up.

10 VICE CHAIR HOOD: So we don't know what  
11 happened with those?

12 CHAIRPERSON MITTEN: No, but if we  
13 reconsider it, we can have Mr. Parsons give us his  
14 conclusion on the record and go from there.

15 VICE CHAIR HOOD: That was nice of him  
16 to listen to all those tapes.

17 CHAIRPERSON MITTEN: It really was. It  
18 really was.

19 So, Mr. May, if I could put a motion in  
20 your mouth, which is that you would move that we  
21 reconsider paragraph 26 and during the time that we  
22 take it up that it would be stayed.

23 COMMISSIONER MAY: Yes, I so move.

24 CHAIRPERSON MITTEN: And I would second  
25 that. Any further discussion? All those in favor,

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1 please say aye. Aye.

2 VICE CHAIR HOOD: Aye.

3 COMMISSIONER MAY: Aye.

4 CHAIRPERSON MITTEN: None opposed. Two

5 absent. Mrs. Schellin.

6 MS. SCHELLIN: Staff would record the

7 vote 3 to 0 to 2 to stay the enforcement of

8 paragraph 26 until it can be reconsidered by the

9 Commission in Case Nr. 02-32.

10 CHAIRPERSON MITTEN: It's actually not

11 quite that.

12 MS. SCHELLIN: No?

13 CHAIRPERSON MITTEN: It's that we have

14 moved to reconsider paragraph 26 and during the

15 period of reconsideration --

16 MS. SCHELLIN: To stay --

17 CHAIRPERSON MITTEN: -- the enforcement

18 of paragraph 26.

19 MS. SCHELLIN: -- the enforcement.

20 Okay. The vote was 3 to 0 to 2, Commissioner May

21 moving, Commissioner Mitten seconding, Commissioner

22 Hood in favor and Commissioners Hannaham and Parsons

23 not present, not voting.

24 CHAIRPERSON MITTEN: Thank you. Okay.

25 Now we're ready for the Office of Planning's Status

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1 Report, for anyone who has any energy left.

2 MS. McCARTHY: Thank you, Madam Chair.  
3 In the interest of low levels of energy, I'll keep  
4 this especially brief. There are just a couple of  
5 things I wanted to note.

6 CHAIRPERSON MITTEN: I don't think we  
7 have copies actually.

8 MS. McCARTHY: Oh.

9 CHAIRPERSON MITTEN: So that might be a  
10 place to start.

11 MS. McCARTHY: That would be good. Just  
12 a couple things I wanted to note. On the first  
13 page, about the fourth one down, Reservation 13  
14 Zoning. Based on the initial reaction from the  
15 residents to our initial proposed zoning, we have  
16 decided to do something completely different and we  
17 are talking about possibly using this as a bit of a  
18 pilot for something more similar to the new Form  
19 Based Codes, rather than the usual Euclidian  
20 approach. We have a plan to go by there, but the  
21 plan steps down in one direction in height and then  
22 steps down in another direction in terms of its  
23 uses. And we don't have zones that fit very well  
24 perpendicularly like that. But we are in the  
25 process of coming with that and I'd say January is

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1 realistic in terms of when we would like to bring  
2 that to you. But I just wanted to explain why it's  
3 now taking much longer than we'd originally been  
4 talking about.

5 On the second page, toward the bottom of  
6 the page, you have the 200 K Street PUD extension  
7 and modification request. We met a few weeks ago  
8 with the applicant. We told them that since that is  
9 essentially in limbo at the moment, they've asked  
10 for a PUD extension. We said they needed to modify  
11 the design as well. And it's been kind of on hold  
12 for awhile waiting for the redesign. There were  
13 some aspects, the massing of the redesign we were  
14 not happy with in terms of how it related to some  
15 two and three-story town houses that were  
16 immediately next to a proposed 130-foot building.  
17 So we have suggested that they redo the massing a  
18 bit, but we've also told them, you know,  
19 November/December, something like that, is the drop  
20 dead date. So, we expect for that to be back again.

21 CHAIRPERSON MITTEN: Did you just say  
22 that you were uncomfortable with the massing of town  
23 houses next to a 130-foot building? Is that what it  
24 was?

25 MS. MCCARTHY: Yes.

1 CHAIRPERSON MITTEN: Okay.

2 MS. McCARTHY: The PUD as originally  
3 approved had 130 feet and the applicant has been  
4 unable to assemble the three town houses on the end  
5 and so right now he was still thinking about 130  
6 feet right next to very small town houses. So we  
7 suggested some alternative ways to mass it that we  
8 thought were more sensitive to the rest of the  
9 neighborhood.

10 CHAIRPERSON MITTEN: Thank you.

11 MS. McCARTHY: On the third page,  
12 inclusionary zoning housing text amendment. I think  
13 we've mentioned in the past we've had a lot of  
14 problems in the procurement cycle of bringing our  
15 consultant on board which includes a nationally  
16 known zoning law firm, Robinson & Cole out of  
17 Boston. We finally have broken that log jam, but  
18 just recently, so we will probably be beginning that  
19 in the next few weeks and we'd originally thought  
20 probably 90 days for that consulting work.

21 For new zone district map and Georgia  
22 Avenue and Southwest Waterfront and Maine Avenue,  
23 these are two new plans that the Office of Planning  
24 is working on. With regard to the Southwest  
25 Waterfront, it's completed and it was just adopted

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1 by the council. So we will begin very shortly to  
2 take that new plan and work up the zoning to  
3 implement that. The Georgia Avenue in the general  
4 vicinity of PEtworth is an ongoing study at our  
5 office. It's been going on for a few months and  
6 we're saying winter of 2003 because we expect that's  
7 probably the time period in which the study will get  
8 wrapped up and we'll be able to take it to the  
9 council for approval and then go forward with the  
10 new zoning.

11 And the Tacoma - DC overlay, as you know  
12 you implemented some of the recommendations out of  
13 our small area plan for Tacoma last year in terms of  
14 a rezoning, but there's also some additional  
15 recommendations for overlay treatment and we're  
16 working on getting them into zoning language right  
17 now. And I think those are all the ones that I  
18 wanted to specifically highlight.

19 CHAIRPERSON MITTEN: Let me ask you a  
20 question that sort of bears on the case that we had  
21 earlier, 1330 M Street, S.E. I know you've had a  
22 couple of small area plans that you've taken to the  
23 city council. Has the Anacostia Waterfront  
24 Initiative been passed by the council as some form  
25 of an amendment to the comprehensive plan?

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1 MS. McCARTHY: There is an overall AWI  
2 document and that is broader brush. And that one  
3 we're not taking that to the council, but then there  
4 are individual pieces of it. So the Southwest  
5 Waterfront was the first piece. The Southeast  
6 Waterfront is the next piece and then there's a  
7 Poplar Point piece east of the river. And there's  
8 also related to that, we're just beginning new plans  
9 for the Ivy City-Trinidad area and the Old Anacostia  
10 area.

11 So what I need to do is to check with  
12 Uva Brand, who's our head of waterfront planning and  
13 see exactly what his time table is for the  
14 Southeast, but I believe that should be going to the  
15 council fairly soon and then hopefully that will  
16 provide us some guidance in terms of the rezoning of  
17 the Maritime Plaza and 1333 M.

18 CHAIRPERSON MITTEN: Good. Because, you  
19 know, the applicant and his representative were sort  
20 of making reference to the AWI and, "Hey, we're just  
21 trying to comply with that," but we still have the  
22 old comp plan and whatever that designation is and  
23 so, you know, until something has actually been  
24 embraced by the council, I think that's another  
25 reason why we kind of need to step back a second and

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1 then go forward.

2 MS. McCARTHY: Right.

3 CHAIRPERSON MITTEN: So hopefully  
4 that'll be another reason to get that Southeast  
5 Waterfront plan going.

6 MS. McCARTHY: That's right. And we  
7 also, this is the final draft of the upper Wisconsin  
8 Avenue corridor study, which we're trying to review  
9 and expect to get out on the web site some time this  
10 week and then to get to the council as well.

11 CHAIRPERSON MITTEN: Okay.

12 MS. McCARTHY: So that will obviously  
13 figure into at least to two PUD applications that  
14 have been filed with the Commission.

15 CHAIRPERSON MITTEN: Okay. Great. Any  
16 questions for Ms. McCarthy?

17 VICE CHAIR HOOD: Madam Chair, I wanted  
18 to ask Ms. McCarthy about, I see on the status  
19 sheet, it looks like it's way off, but it says,  
20 "Halfway house use in industrial zones."

21 MS. McCARTHY: Yes.

22 VICE CHAIR HOOD: I mean, is that  
23 something that's being proposed or that's coming  
24 down the pipeline?

25 MS. McCARTHY: Yes. You remember we had

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1 proposed that originally as a result of a request  
2 from Central Union Mission. When they withdrew  
3 their application, we withdrew, we stopped doing  
4 work on that. But certainly the Bantom case and  
5 some potential or proposed locations have made us  
6 look again at the possibility that we could permit,  
7 even though M zones don't generally permit  
8 residential, that given that some of these uses are  
9 not uses that are desired by neighborhoods to be  
10 close to them, we were thinking that we should take  
11 a look at that again. But we are recognizing the  
12 fact that there are many M zones which immediately  
13 abut residential areas. So this time we were  
14 talking about including a distance provision. Our  
15 notion is to locate those kinds of halfway house  
16 facilities with the M zones by special exception  
17 provided that they are not within a certain distance  
18 of residential areas. But we're working with the  
19 Office of Corporation Counsel to try to refine the  
20 language and to look at those issues.

21 VICE CHAIR HOOD: And let me just say,  
22 it may be a good time for us to look at, I think  
23 it's 807.k. I forgot exactly what that regulation  
24 is. Since we're looking at it. Ms. Schellin is  
25 going to help. I can't remember regulation numbers

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1 too well.

2 CHAIRPERSON MITTEN: Is this one that  
3 defines temporary --

4 VICE CHAIR HOOD: Temporary. Yes. It  
5 may be a good time for us to look at that along with  
6 what we're doing here.

7 CHAIRPERSON MITTEN: At least to clarify  
8 what on earth it is?

9 VICE CHAIR HOOD: Clarify it, keep it  
10 there, remove it or whatever the Commission, you  
11 know, decides the recommendations to come forward.

12 CHAIRPERSON MITTEN: Right. Okay.

13 VICE CHAIR HOOD: Thank you.

14 CHAIRPERSON MITTEN: Sounds like a good  
15 idea.

16 VICE CHAIR HOOD: Thank you, Ms.  
17 McCarthy.

18 CHAIRPERSON MITTEN: I guess I'd also  
19 just want to add, just to go back to something that  
20 you had said earlier when we were talking about  
21 again, you know, 1330 M Street, S.E., which was, you  
22 know, on the one hand we have dwindling M and CM  
23 zones and then on the other hand we're trying to  
24 figure out more things.

25 It's 801.7k was the reference that Mr.

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1 Hood was looking for.

2           You know, we're talking about creating  
3 more competing uses for the industrial land that we  
4 have left and so I think we'd want to look at that  
5 comprehensively and not take up the issue of halfway  
6 houses before we had looked at all the industrial  
7 zones.

8           MS. MCCARTHY: Right. We had an  
9 economic development consultant take a look at some  
10 aspects of that for our vision planning effort  
11 that's part of the comprehensive plan, but we need  
12 something much more detailed. So that's what this  
13 second study is supposed to be doing.

14           CHAIRPERSON MITTEN: Great. Thank you.  
15 Anybody else have any questions?

16           Mr. Bastida, can you think of anything  
17 else that we need to take up today?

18           MR. BASTIDA: No, Madam Chairman. The  
19 rest of the agenda is self-explanatory and I cannot  
20 add anything else.

21           CHAIRPERSON MITTEN: Thank you. Then I  
22 think this meeting is adjourned. Thank you.

23           (The meeting was adjourned at 5:31 p.m.)  
24

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