

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1133RD MEETING SESSION (8TH OF 2002)

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MONDAY
JUNE 10, 2002

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The Regular Meeting of the District of Columbia Zoning Commission convened at 1:45 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., Carol J. Mitten, Chairperson, presiding.

COMMISSIONERS PRESENT:

Carol J. Mitten, Chairperson
Anthony J. Hood, Vice Chairperson
John G. Parsons, Commissioner
Peter G. May, Architect of the Capitol
James Hannaham, Commissioner

COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, Zoning Commission
Sharon Sanchez, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Andrew Altman, Director, Office of Planning
Ellen McCarthy, Deputy Director, Office of Planning
Jennifer Steingasser, Office of Planning
Steven Cochran, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esquire

I-N-D-E-X

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1:45 p.m.

CHAIRPERSON MITTEN: Good afternoon ladies and gentlemen. This is the regular monthly meeting of the Zoning Commission of the District of Columbia. Today is Monday, June 10, 2002. My name is Carol Mitten, and joining me this afternoon are Vice Chairman Anthony Hood and Commissioners Peter May, John Parsons and James Hannaham.

I believe there are copies. Are there copies of the agenda available?

SECRETARY BASTIDA: Yes.

CHAIRPERSON MITTEN: I think the pile is empty, so if you can bring in additional copies.

SECRETARY BASTIDA: Oh, okay, well we can get more. That's not a problem.

CHAIRPERSON MITTEN: All right. Thank you. Mr. Bastida, before we proceed, are there any preliminary matters?

SECRETARY BASTIDA: Yes, Madam Chairman. There are two additions to the agenda, one a hearing action and one in the consent calendar. The one on the hearing action would be the Capitol Gateway Point overlay district for consideration to add additional

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language for another hearing to that project, and the other one is on the consent calendar on the antenna regulations of 102 on the re-codification issue of the existing regulations.

CHAIRPERSON MITTEN: All right, so even though - just for clarification, even though the re-codification is going to have the same case number, it's a narrow issue that's on the consent calendar related to just clarifying something that was mis-codified in the text.

SECRETARY BASTIDA: That is right, Madam Chairman, and if an order - if you approve it and an order is issued, it would be labeled re-codification and that way it would be much narrower in the scope if you were to set down the antenna regulations as they are proposed in the hearing action by the Office of Planning.

CHAIRPERSON MITTEN: Thank you, Mr. Bastida. Let's proceed to the minutes, please.

SECRETARY BASTIDA: The staff has provided you the minutes of April 19 and April 25th and request an action on both meeting minutes.

CHAIRPERSON MITTEN: All right. I think, well let's take these up separately. We have the minutes

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of the April 19, 2002 meeting before us. I have a few editorial changes, but other than that, I don't think there's anything substantive. So, I would move approval of the April 19th minutes.

VICE CHAIRPERSON HOOD: Second.

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

BOARD MEMBERS: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida.

SECRETARY BASTIDA: The staff will record the vote 5-0, Ms. Mitten moving and Mr. Hood seconding, Mr. May, Mr. Parsons and Mr. Hannaham voting in the affirmative.

CHAIRPERSON MITTEN: Thank you. Now the minutes of the April 25, 2002 Special Public Meeting.

VICE CHAIRPERSON HOOD: Madam Chair, I make a motion we approve with the necessary corrections.

CHAIRPERSON MITTEN: Thank you. Is there a second?

COMMISSIONER PARSONS: Second.

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

BOARD MEMBERS: Aye.

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CHAIRPERSON MITTEN: Those opposed please say no. Mr. Bastida.

SECRETARY BASTIDA: Staff will record the vote 5-0, Mr. Hood moving and Mr. Parsons seconding, Ms. Mitten, Mr. May and Mr. Hannaham voting on the affirmative. Thank you.

CHAIRPERSON MITTEN: Thank you. We'll move to the status report from the Office of Planning.

DEPUTY DIRECTOR MCCARTHY: Good afternoon, Madam Chair. Because of the number of items on the agenda, let me be especially brief and just highlight for you the 200 K Street PUD extension request, which we submitted a report to you on.

We supported the extension of the PUD, but we understand that the applicant has modifications or what was submitted with the application we felt constituted a material change in the design of the project and so we recommended that there be an additional public hearing to assess the design change that had taken place.

And, other than that, I think there's nothing that requires going over, and I'd be happy to answer any questions the commission has on the items in the status report.

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CHAIRPERSON MITTEN: When would you anticipate the 200 K Street application would be before us, next month?

DEPUTY DIRECTOR MCCARTHY: I know that the applicant was looking to proceed fairly quickly. Mr. Green, would you say that probably within the next month for 200 K Street? Looks like 30 to 45 days.

CHAIRPERSON MITTEN: Did you have any extra copies? Not all the commissioners have copies of the status report. Thank you. Anything else that you wanted to highlight?

DEPUTY DIRECTOR MCCARTHY: I don't think so.

CHAIRPERSON MITTEN: All right. Any questions from the commission for the Office of Planning? All right, I think we can move on if there are no questions.

We're ready to move to hearing action, the first case under hearing action is Zoning Commission Case No. 01-02TA. These are the antenna regulations, the long-awaited antenna regulations.

And before I turn to the Office of Planning, we would need to waive our rules for the late submittal of the final report from the Office of Planning on the

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proposed regulations. Is there any objection to waiving our rules?

Okay, without objection, we accept the late filing of the Office of Planning Report and I'll turn to the Office of Planning to just briefly walk us through and then anticipate some questions.

MS. STEINGASSER: Yes, ma'am. My name is Jennifer Steingasser with the Office of Planning. The set down report could either be very brief or very extended, so we will go with brief.

The executive summary lays out the overall format of the zoning regulations. We've proposed changes to the existing regulations that consolidate all the antenna regulations into one chapter. It allows rooftop antennas as a matter of right in all zones, except for broadcast antennas in residential zones.

Within those rooftop antennas, there are certain classes of exempt antennas. Beyond that, there are locationally-based criteria, and beyond that, they would be approved by special exception. Within many other zones, the other issues - I'm sorry let me back up a bit.

The other issues beyond the rooftop would

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be the ground mounted antennas, which also have some particular restrictions in height. There's also building mounted, which is a new type of definition and criteria that we've established in these particular regulations but is often used within the operations of antennas.

The antenna towers are probably the most hotly disputed issue within the proposed regulations. We have proposed that they be restricted from residential zones as being inconsistent and incompatible with the intent of the residential zoned districts.

We've allowed them as a matter of right within the industrial zones because of their industrial appearance and nature and felt they were compatible with that particular zoning district. Within other zoned districts, they are allowed by special exception.

The same applies to monopole towers as well.

That kind of lays them out in a very brief nutshell as to where the regulations are going. I'm open for any questions.

CHAIRPERSON MITTEN: All right. Let's see if there are some questions from the commission. Mr. May.

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COMMISSIONER MAY: Yes. I understand what's driving the antenna regulations is probably not the particular concern that I have. But I do have a particular concern with the newly-defined class or altered class, I guess, of dish antennas, and in particular the small dishes that are being installed around the city for Direct TV and that sort of thing.

And in reading the regulations, it seems like that is more explicitly covered than it was before and presumably under the current regulations they're allowed as a matter of right and treated as any other rooftop antenna, I would assume.

MS. STEINGASSER: (Off mike).

COMMISSIONER MAY: I guess the question I have is they're going in all over the place and in historic districts there's probably a little more sensitivity as to how they are installed than in other areas, but I know a lot of the installations that I see clearly don't fly even under the current regulations.

I guess what I'm wondering is how far into the dish antenna field did you go with the meetings and was there any sort of outreach to the people who are actually selling, installing, proliferating with

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these?

MS. STEINGASSER: We did not talk directly with dish antenna manufacturers and installers within the antenna group that reviewed these regulations.

So in the historic districts, they would be subject to the enforcement mechanisms that apply to other construction within the historic district and you expect it to be higher. The regulations, especially in a new proposed format emphasize the restriction to one dish per building by right and that it be on the roof or in the rear and front yard. But as far as dealing with the manufacturers, we did not.

COMMISSIONER MAY: Okay, because you have the clear impression, particularly from the guys who call you up and try to sell you these systems that they really don't have any sense of the requirements for installing antennas, and we can treat this as a regulatory matter and try to do lots of enforcement, but there's probably a little bit of education that needs to occur to get them involved to understand this.

One other clarification, this sort of antenna is allowed as a matter of right, but is a building permit required in order to install it?

MS. STEINGASSER: I believe the small, what

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you're describing is more these 18-inch -

COMMISSIONER MAY: Yes.

MS. STEINGASSER: Direct TV type of dish. I do not believe they require a building permit. They just plug in.

COMMISSIONER MAY: Okay, as opposed to a TV antenna aerial, which theoretically does require a building permit?

MS. STEINGASSER: Yes, sir or the larger dishes that are actually mounted on to some kind of frame. But we can make - we can explicitly contact these manufacturers and the different providers of this type of service and alert them to the regulations and what we're trying to achieve.

COMMISSIONER MAY: Yes. I think it's important to make sure that they're aware of the regulations that they're developing, and I guess I am a little bit confused why you're not required to get a building permit for one now.

MS. STEINGASSER: The small ones, I believe, and I don't know for sure, but I believe they just plug in.

COMMISSIONER MAY: Yes, well I mean an aerial, a rooftop aerial now just plugs in too but you're

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required to get a building permit for that.

MS. STEINGASSER: I can definitely research that and find out whether they do or don't and why.

COMMISSIONER MAY: Okay. As you know, I've been through that myself. That's about it for my pet issue.

CHAIRPERSON MITTEN: Okay, thank you Mr. May. Mr. Hood.

VICE CHAIRPERSON HOOD: Madam Chair, thank you. Ms. Steingasser, I'm just concerned about the setback.

It's a matter of right in residential areas and have we taken into consideration through all those hours and hours of deliberations those areas in the district that abut residential areas, for example, the CM that abuts the residential area. Do we have some type of setback? If it's already here, I don't see it but has that been discussed?

MS. STEINGASSER: Yes, sir. We did propose increasing the setbacks for towers, doubling the setbacks from one to three, being one foot of setback for each three feet of height.

VICE CHAIRPERSON HOOD: Okay, so that's what's on the table. That's in here?

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MS. STEINGASSER: Yes.

VICE CHAIRPERSON HOOD: Thank you.

CHAIRPERSON MITTEN: Just to follow up on Mr. Hood's question, throughout the regulations, that's not something that's specific to where an industrial zone abuts a residential zone, is that correct?

MS. STEINGASSER: That's correct.

CHAIRPERSON MITTEN: So there is no special consideration given to what we have come to realize are not that unusual circumstance where an industrial zone abuts a residential zone?

MS. STEINGASSER: That's correct. They're uniform.

VICE CHAIRPERSON HOOD: Thank you, Madam Chair, for helping me. I was unclear but I can tell you that at the hearing that's what I will probably be trying to look forward to in making an exception for those areas.

Those areas do exist and that's still having impact on those residential areas, even though it's in the CM zone, which is right across the street.

So I think we probably need to look into it a little more. Thank you, Madam Chair.

CHAIRPERSON MITTEN: You're welcome. Any

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of the other commissioners have questions? Mr. Parsons.

COMMISSIONER PARSONS: Ms. Steingasser, I'm concerned about the terms of specifically 2604.1, but it's throughout. How is this enforceable? "Each antenna installation shall be located or screened to minimize to the greatest practicable extent for view of the antenna from adjacent streets, public parks, landmark structure." What is meant by the greatest practicable extent?

MS. STEINGASSER: Well that builds on language that is currently in the regulations. It's very site specific, very antenna specific and very surrounding property specific, so we says it's a moving target.

We take the application as it's submitted. We try to assess the setback, its appearance on the building, if it's an historic district, how the proposed antenna by type interacts with the building and what the adjoining land uses are.

Oftentimes the greatest practicable extent means that they can be flush-mounted and painted to match the building. Other times, as in the case of 1 Massachusetts, they encased 12 antennas within a self

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structure that mimicked the roof layout and appears to be one unified penthouse.

But it's very much a moving target and as the group worked through that, we spent a lot of time arguing back and forth as to what was the best way to describe it with still allowing the flexibility for site specific and antenna specific requirements.

COMMISSIONER PARSONS: Well, has there come a time in any recent experience that they can't be screened to a reasonable extent and therefore are denied?

MS. STEINGASSER: There have been two cases that I've worked on where we did indeed hit an impasse. One was along East Capitol where they needed a particular elevation on a particular building that created, just cut the district completely and we felt that it was an unreasonable intrusion on the skyline, and we went back and forth to the engineers.

The engineers finally, over the course of several months, came up with an alternative that appeared like a chimney and they ended up screening that. There are similar cases where they are impossible by purpose to be screened as proposed, and we have worked back and forth to find various solutions.

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But as you will see as you drive throughout the city, there are many antennas. They are visible, when oftentimes the roof can't support the screening structure because of its age or because of the placement requirement or the height is necessary to a degree where it can't possibly be screened.

COMMISSIONER PARSONS: So how is it that this language gives the Office of Planning the right to deny an application?

MR. BERGSTEIN: Mr. Parsons, it doesn't. I assisted in drafting it if you don't mind me jumping in.

COMMISSIONER PARSONS: Please.

MR. BERGSTEIN: If an antenna can't meet these requirements that are location specific, then it goes to a special exception mode. So it doesn't get denied if it can't comply with specific requirements to go to a rooftop or ground mounted or building mounted.

It would then at that point be subject to special exception approval and there's a whole section that deals with the application process for that.

COMMISSIONER PARSONS: So the Zoning Administrator goes to the Office of Planning. The Office of Planning says this can not be screened and then they

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go to the BZA, right?

MR. BERGSTEIN: The Zoning Administrator receives a report from the Office of Planning. A determination as to whether or not the antennas are in compliance is the Zoning Administrator's determination.

He simply sees a report from the Office of Planning as to whether or not these compliance criteria have been complied with. But the determination of whether or not the antenna meets the compliance requirements or requires a special exception is the Zoning Administrator's determination to make.

COMMISSIONER PARSONS: Well, as you know Jennifer, I'm concerned about some antennas that stick up in front of Meridian Park and I don't know how they got there and I don't want to make this case that case.

But I don't think this is strong enough. Is this the same language we have now?

MS. STEINGASSER: It's very, very close.

COMMISSIONER PARSONS: Great practicable - I can't pronounce that - extent.

MS. STEINGASSER: It is very close and as Alan, Mr. Bergstein was pointing out, we do provide just the recommendation to the Zoning Administrator.

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COMMISSIONER PARSONS: All right, well we'll deal with that at the hearing I guess. Thank you.

CHAIRPERSON MITTEN: Any questions, Mr. Hannaham?

COMMISSIONER HANNAHAM: No.

CHAIRPERSON MITTEN: All right. I have a few and some of them maybe are just things missing in the drafting or references that are maybe misplaced.

On the first page of the proposed language in 2600.2, it says: "The construction of new towers and monopoles are considered incompatible with 2520.1 and it shall be permitted," and it goes on to say "and shall be permitted," which if it's incompatible by its very nature with 2520.1, then it would seem that we wouldn't be permitting any. So there's some language missing there.

MS. STEINGASSER: Yes, ma'am I would say there is. The purpose of the statement is to say monopoles are generally incompatible with the preservation of the skyline and should be limited only to industrial zones. Obviously the numeric citation is - I just failed to update that.

CHAIRPERSON MITTEN: Maybe we could just work on that language a little bit better before we

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advertise it, just because it seems like it's setting 2600.2 to be incompatible with 2520.1 and we shouldn't have internal inconsistencies in the ordinance.

MS. STEINGASSER: Right.

CHAIRPERSON MITTEN: On the next page, on Page 2 in 2601.2, this is talking about the certification for compliance with the FCC regulations, and in 2601.2(a) and (b), it's talking about - in (a), let's go there first.

The RF radiation to be generated by the proposed antenna or antennas, I'm asking this question because I just don't know enough about the subject, but is the antenna sort of set on only one - does it have the ability to only emit a fixed amount of RF radiation, or can it be as its proposed to be used it's at 50 percent of its capacity, but it has the ability to increase the amount of radiation emitted by a factor of two?

Because it says two, the language says "to be generated" which suggests as proposed by an applicant, not - and I'm not sure if it's the same amount as could be generated. Is it the maximum?

MS. STEINGASSER: Different antennas can generate varying levels of transmission and radiation.

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CHAIRPERSON MITTEN: Okay, my concern would be that when we're determining compliance that it would be at the maximum level that it's capable of, because there's not going to be any subsequent review at some later date. Do you follow me?

MS. STEINGASSER: Uh huh. Okay.

CHAIRPERSON MITTEN: And then -

MS. STEINGASSER: I just feel I need to talk about they are licensed at certain frequencies for different types of uses.

CHAIRPERSON MITTEN: Okay.

MS. STEINGASSER: I guess let me check with the FCC.

CHAIRPERSON MITTEN: Okay.

MS. STEINGASSER: Contact them on how that should be worded.

CHAIRPERSON MITTEN: If there was this subsequent opportunity where they needed to get relicensed to sort of turn up the juice on a particular antenna, that would be an occasion where we could have someone come back for an additional review. I'm just concerned that no one has the opportunity after they've been reviewed at one frequency to increase it without further review. That's my main concern.

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And then in (b), it talks about the cumulative radiation generated by all other antennas at the proposed site. Did you have any discussion about the fact that it's not just what's on site that's generating radiation that will affect an individual on that site. It's from antennas nearby as well, and is there a way to capture that in the reg?

MS. STEINGASSER: There was talk about how we define a boundary for that. These two were definitely two of the most controversial issues that we dealt with on how to document the levels of RF.

MR. BERGSTEIN: There's also, if I may jump in.

MS. STEINGASSER: We could certainly deal with that.

MR. BERGSTEIN: It's my understanding that at the FCC where they do this analysis, there's a certain threshold of power of the proposed antenna that then requires the commission to take into account the cumulative effect of nearby antennas, and that's part of what the FCC does when it licenses new transmissions from antennas. So maybe that's something that we all need to look into.

But there is, I know as part of the FCC

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RF analysis which the FCC does, that there's a certain threshold of emission which then requires the applicant to take into account nearby antennas, so whatever we do we have to be consistent with what the FCC does.

CHAIRPERSON MITTEN: I understand and I don't know if what I'm about to say can be accomplished, but my understanding is that because of the either lack of expertise, lack of equipment, lack of personnel, that there's not ever a time when there's just this testing to see if the cumulative effect if over what is permissible.

And there's this trigger for the FCC that says, if you're going to propose one antenna that goes up to a certain capacity, that's when we check everything else. What about all the other time?

So I don't know if there's a way to work that into the regulations without being in conflict with the FCC, because I'm sure they have regulations that govern the cumulative amount of radiation that can be emitted at a particular location. So, I'm just trying to capture that through my question. So if you can do anything on that point before we advertise.

On 2603.1, on the ground-mounted antennas it says, "no more than one ground-mounted antenna may

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be installed on any lot." Now is that meant to exclude, because it doesn't say it if it does, is it meant to exclude antenna towers and monopoles?

MR. BERGSTEIN: The term monopole is expressly excluded from the term ground-mounted because of the definition.

CHAIRPERSON MITTEN: Right, so then what you're saying is on a given lot, you can have a ground-mounted antenna, an antenna tower, and a monopole, right? If you're meaning to just isolate one ground-mounted antenna and nothing else per lot, then it would seem to me, I mean I don't know what the intent is at this point, but you could get a -

MR. BERGSTEIN: I understand what you're saying.

CHAIRPERSON MITTEN: Okay.

MR. BERGSTEIN: The regulations could be read as being open to more than one structure on the lot. I understand exactly what you're saying.

CHAIRPERSON MITTEN: Okay, so I would recommend that if you're trying to limit it, that it be expressly limited, not to include antenna towers and monopoles.

On 2603.1 (d), when we talk about, "the

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antenna should be located either in the rear yard or the side yard" and then we talk about the fact that it has to be screened and we have specific regulations that talk about structures in required open spaces.

It's in Section 2503, and I would think that that would - I mean it causes me a lot of concern to think about having these screening structures now being located in side yards and rear yards as a separate structure. So, I don't know if that's something that you've given any thought to but it just kind of slides in the face of 2503.

Is there any reason why the roof-mounted antenna was not defined? Because building-mounted antenna was defined, and while someone could say it's self evident, I just think maybe we should add a definition for roof mounted.

On 2604.1 (a) and (b) - well it's actually (a) and (c). I'm going to ask that this be proofread thoroughly before it gets advertised, because there's a lot of misspellings and stuff. It's what's included on Page 4 as (a) and (c).

It talks about the base of the antenna and unless we define base, that's open to a lot of interpretation and if we're not including the base in

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the measurement, then we could end up with some really large bases, I would think.

On Page 5, there's reference in the roof-mounted antennas and then there's another reference in the building-mounted antennas. It talks about the fact that the antennas have to be secured. Why if they're mounted on a building do they have to be secured, and when they're on the ground, they don't have to be secured?

I didn't see any language that requires the ground-mounted antennas to be secured, only screened.

MS. STEINGASSER: I'm sorry, we would move this. I guess the best thing would be to mimic the language in the ground-mounted to add the secure distance the same as the ground-mounted.

CHAIRPERSON MITTEN: Okay, and I also was wondering if you could explain why if an antenna is roof-mounted, the secure distance is 25 feet and the building-mounted, the secure distance is ten feet.

MS. STEINGASSER: Typically and it may not be as clear as the two who worked on the writing thought. Typically a roof-mounted is sitting on the roof in some form, whether it's mounted on a sled and a

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building-mounted is mounted structurally to the building and typically has a higher elevation up on the wall of a penthouse.

So if it's not clear, it should be and I'll work on making that clear. There is typically a vertical and a horizontal distance that we're working out of.

Where the building-mounted usually has a vertical distance, roof-mounted usually has a horizontal distance.

CHAIRPERSON MITTEN: Okay. I'd just like to recommend in 2605.1(a) where it says "the top of the antenna shall not eclipse the roof of the wall," in my dictionary, I know it's not the official dictionary, the first meaning of eclipse has to do with blocking the sun.

So I wouldn't want someone to say, to be able to find an interpretation in "Webster's Unabridged" that actually was counted to what you really meant. So, I think you can just use a better word there.

On Page 11, 2609.2 and this is about the review process that will take place with the input from the Office of Planning and it says that the Director of the Office of Planning and Zoning Administrator may agree to shorten or lengthen the time period.

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If you decide to lengthen the time period, it seems to be there has to be some kind of parameter there, because otherwise applicants could - I know you wouldn't do this but they could conceivably be held up indefinitely or for a period. I mean they need to know, you know, that there's some finality to the process.

So I don't know what you can do about cleaning that up a little bit, and then based on what Mr. Bergstein said earlier which made me feel better about 2609.3, the report of the director, meaning the report of the director of the Office of Planning "shall indicate whether the antenna complies with the applicable requirements of this chapter."

It sounds like OP is determining compliance when really that's the Zoning Administrator's responsibility. I think you're making a recommendation about whether or not it's in compliance.

And then, I'm sure you've given some thought to this already, but I just want to, if it's possible to include something more at this junction in the definitions and then it's also in the text of course, talking about cabinet, equipment or shelters.

I remember that this came up in the

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roundtable, the fact that these cabinets are being permitted to be placed on roofs right now and they're not being considered, they're not really being considered as roof structures, because they're not being made to comply with the single roof structure or being inside an enclosure and so on.

And, I don't know that that's something that we want to just not focus on because we already have problems with roof structures as it is, and I think without - I'd like to include something that says they must meet some kind of roof structure requirements and then if we determine through the hearing process that that's too restrictive, then we can make it an amendment.

But we don't want to have a whole bunch of these things just sort of popping up on roofs and we certainly wouldn't want that without some kind of size limitation. Because right now, they could be as big as a second penthouse.

MS. STEINGASSER: Madam Chair, there is currently a section that calls out and excludes from roof structure requirements mechanical equipment and electronic equipment that is not necessary to the operation of the building. So, I guess I'm asking for

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direction to include that whole section in the review of this.

CHAIRPERSON MITTEN: I think that's a good idea actually. I think that's a very good idea. Can you tell me is this stealth structure, is that a term of art or is that something that the name has been coined for our use?

MS. STEINGASSER: Term of art.

CHAIRPERSON MITTEN: Okay. I guess I have some of the same concerns with this alternative language that if we - I just want to give a lot of consideration to the idea that we would be either allowing secondary structures on roofs or allowing secondary structures in people's, you know, in yards because I think it could have a very unpleasant side effect in terms of design and so on. Those are all my comments/questions on the subject.

Oh, I did have one more request, which is on Page 5 of your set down report, you make reference to an Appendix A, which is a copy of the Powerpoint presentation from the folks at the FCC, which wasn't attached but we'd love to see that.

MS. STEINGASSER: Okay, I apologize.

CHAIRPERSON MITTEN: There's also, you make

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reference later down on Page 5 to the FCC publication "The Local Official's Guide to RF." It might be good for the Zoning Commission to take a look at that as well. Anyone else have questions for the Office of Planning.

All right, we have a proposal to set down, Zoning Commission Case No. 01-02TA with certain flexibility based on the questions that were asked to allow some language modification and with the recommendation that the proposed language be proofread again before it's advertised.

VICE CHAIRPERSON HOOD: Madam Chair, I make a motion to set down Zoning Commission Case No. 01-02TA with the modifications that have been discussed be incorporated.

COMMISSIONER MAY: Second.

CHAIRPERSON MITTEN: All right, we have a motion and a second. Any further discussion? All those in favor of setting down Zoning Commission Case No. 01-02TA, please say aye.

BOARD MEMBERS: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida.

SECRETARY BASTIDA: Madam Chairman, the

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staff will record the vote 5-0, Mr. Hood moving and Mr. Parsons seconding, Ms. Mitten, Mr. May and Mr. Hannaham voting in the affirmative.

CHAIRPERSON MITTEN: Thank you. The next case under hearing action is Zoning Commission Case No. 02-17, which is a request for a PUD and related map amendment at 5401 Western Avenue. Let me just get that.

And the first order of business here again is the Office of Planning report was received late and we would need to waive our rules to accept the late filing of the Office of Planning report. Is there any objection? Any objection? All right, then without objection, we'll accept the late filing of the Office of Planning report and move to an overview from the Office of Planning staff.

DEPUTY DIRECTOR MCCARTHY: Thank you, Madam Chair. I'm here with Steve Cochran, who wrote the report and who's available for answering the detailed questions. I just wanted to hit the highlights and then we are both available for questions on the project.

The Office of Planning is recommending setting down this planned unit development. It is immediately adjacent to Metro Station, and the Office

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of Planning has a transit-oriented development policy, which the mayor is in the process of publishing.

We've had numerous workshops. We've had a task force working on the development of the transit-oriented development policy.

We're trying to focus on policies which increase density at Metro stations as a way of recapturing our investment in Metro, and of achieving density and the kind of quality of life that can occur by putting projects together that provide basic needs within easy walking distance of each other and accessible to Metro stations.

We're recommending set down of this project and, as you know, in our report we express a number of issues that we would like to see addressed or further refined by the time the public hearing is held.

A further look at traffic generation and parking and other related issues, both individually for this project and then in light of the cumulative impact of the substantial amount of development that's being proposed for the Friendship Heights area on both sides of the border.

We'd like that addressed specifically with regard to rush hour and weekend traffic. A further

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review or possibly some further work on the building massing to focus more on the building height and massing along Western Avenue, where it is immediately adjacent to some very tall buildings on the other side of Western Avenue in Maryland.

And also, so that we can reduce the height and density immediately adjacent to both the Lizner home and the residential areas across Military Road from the site.

We have stressed with the developer that there are some very large trees involved that were proposed in what's before you, proposed to be cut down for underground parking and possibly for a tot lot, and the developer has indicated that they are very interested in working further on that and looking at the possibility of saving those trees.

We'll also ask the urban forester by the time of the public hearing to assess the viability of those trees and the value of those species.

We suggested to the applicant that the public benefits and proposed public amenities package could use some further work in light of the extent of zoning flexibility requested, and that there be a further review on the balance between the neighborhood

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impacts and citywide planning objectives.

So, but we commend the applicant for having spent a considerable amount of time working with the ANC and with the Task Force for Concerned Neighbors.

I know you have some correspondence from those neighbors who were urging that the project not be set down/

But we feel that the issues that were raised in that correspondence are largely addressed by the Office of Planning and include the issues that we expect to work further with the applicant on refining before the public hearing takes place.

CHAIRPERSON MITTEN: Thank you, Ms. McCarthy. Any questions for Ms. McCarthy related to the OP report?

VICE CHAIRPERSON HOOD: Ms. McCarthy, you noted the trees. I'm glad to see the Office of Planning, because I was concerned about those trees, and the photograph that I have from one of the concerned neighbors.

My question is the density of the project. The compilation sheet that I see here on Page 2, which was provided by, well it's dated June 6, and I was just looking at things that were a matter of right and then

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went to Stone Bridge application.

We're saying for example, the gross square footage in matter of right is 78,912. The Stone Bridge application was 235,000. Looking at those numbers, and I don't know exactly if you have that in front of you, Ms. McCarthy, but in looking over this project, I did have a concern about the density of it.

I'm not making light of the situation, but it gave me the sense of someone who wears a size 38 trying to squeeze into 32, and I say that to say if it's doable, I just want to make sure before we set down where there are some differences that it's doable, as opposed to us moving forward and setting it down and then go through the whole hearing process and it's not actually doable.

So I guess I just want to make sure does the Office of Planning feel confident where those differences lie that they can at least come closer and make this doable?

I'm basically going on what I have here in front of me from one of the concerned neighbors. This is dated June 6th. It's addressed to Alberto Bastida. I'm sorry, it's addressed to the chairman and let me see who it's from. Actually, it's from a

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couple of people, Marilyn Simon, Hazel Ribold and Lawrence Freedman.

DEPUTY DIRECTOR MCCARTHY: I can't address that specifically, Mr. Chair, because I have April 11, May 24th and May 26th. I think that's the only, but I think what is highlighted is certainly one of the areas that we had indicated we wanted to address with the applicant because the issues about numbers of units and density are the two most substantial impacts of data related either to traffic or the urban design.

And why we're urging the applicant to put as much height as possible on Western Avenue, because the height on that side of the site is very consistent with the height of the buildings that are around there, actually that are on both sides of the site because Chevy Chase Pavilion is 110 feet, and on the other side of the line, it's 143 feet for the Chevy Chase Metro Center building.

So urban design wise, we like to see that height pushed as far as possible away from the residential development. Traffic wise, that's an issue that we want to work with the applicant on further as to whether that number of units can be accommodated on that site without causing a substantially

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detrimental impact on the intersections in that area.

VICE CHAIRPERSON HOOD: Thank you.

CHAIRPERSON MITTEN: Any other questions from the commission for the Office of Planning? I just, well I guess since it's a comment for my colleagues, I'll just save it for the discussion.

We have a recommendation from the Office of Planning to set down Zoning Commission Case No. 02-17 and I would so move.

COMMISSIONER PARSONS: Second.

CHAIRPERSON MITTEN: I wanted to say I think the statement on Page 7 of the Office of Planning Report is exactly right, which is - this is one paragraph up from the bottom. "There is little guidance about how much housing should be built on this site.

And I understand that there's a lot of concern about density, and having been one of the folks who was on the Mayor's Transit-Oriented Zoning Task Force, what to me is missing is, there's many things that we talked about in terms of what makes a good transit-oriented development, and with that often comes increased density.

But there's so much more and so much more creativity that should be apparent in a true

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transit-oriented development, not just well give us the density because that's the knee-jerk reaction to saying that something's being built in close proximity to a Metro Station.

And, I think they're really reaching far with R-5-D, and I share the concern that Mr. Hood discussed. I share the concern of the community and I think that if this is going to move forward at this level of density, then we should see a very high level of creativity about really maximizing this location to promote transit use and minimize the use of cars.

So I just want to say that so that no one's surprised by it later when I have a harsh word if we don't see a change. Any further discussion on the motion? All right, we have a motion and a second to set down Zoning Commission Case No. 02-17 for public hearing. All those in favor, please say aye.

BOARD MEMBERS: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida.

SECRETARY BASTIDA: Madam Chairman, the staff records the vote 5-0, Ms. Mitten moving and Mr. Parsons seconding, Mr. Hood, Mr. May and Mr. Hannaham voting in the affirmative.

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CHAIRPERSON MITTEN: Thank you, and I forgot to do this earlier, but this case we just set down will be a contested case, and the previous case on the antenna regulations will be a rule-making, correct?

SECRETARY BASTIDA: Correct.

CHAIRPERSON MITTEN: All right. Now let's move to the item that we added for hearing action and this goes back to a case that was a very large, lengthy tax amendment case and map amendment too for the Capitol Gateway Overlay District, and during the deliberation, we voted on something that had not been advertised, and I'm going to ask Mr. Bergstein to just give the explanation for this.

MR. BERGSTEIN: Thank you, Madam Chairman.

During the time that the commission took proposed action on what's now called the Capitol Gateway Overlay, it added to the proposed text a provision which would disallow hotel uses from using an area - I'm sorry - to be able to use residential FAR in counting towards the total amount of FAR that would be available to them.

So that although currently in CR, they could go up to six FAR with the CGCR, and in essence based upon the proposed text, they could only use three FAR commercial and they could not take advantage of

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the extra FAR that would also be available in the CGCR overlay district if that additional area is used as residential.

So because we viewed that as being more restrictive than the text that was advertised, we're recommending to the commission that you re-advertise that one text change and hold a hearing on it. We are going to continue to publish a notice of proposed rule-making with that text language in it, so that at the conclusion of the hearing, you'd have the option of taking a final action on that complete text.

CHAIRPERSON MITTEN: Thank you, Mr. Bergstein. I have a question for you that is not related to that specific language but I had neglected to say this during the deliberation on the overlay itself.

We had passed a design review provision for properties on M Street and for properties in the W Zone that was a special exception review that would be conducted by the commission.

And it strikes me that if there were any other zoning relief needed by an applicant, other kind of special exception or a variance, that they should be able to have that taken care of by the commission

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as well, and I didn't know if that was something that we needed to advertise. We don't want them to have two different processes.

MR. BERGSTEIN: I agree. I think it's not something that you would have needed to re-advertise if you had added that at the time you took proposed action. Since you have before you, in essence, a proposed hearing action, I think the sufficient thing to do would be to throw that in and we can advertise that as part of the text amendment.

But I would include it as part of the proposed rule-making.

CHAIRPERSON MITTEN: Thank you. So we have a recommendation that in order to, I guess, fulfill proper notice requirements and so on for the language that we voted on for the Capitol Gateway Overlay District related to the hotel use not counting as a residential use in the CR.

I don't know if it's BPCG or CGCR, but in the CR district within that overlay and then this additional language that would essentially permit one-stop-shopping for an applicant who needed to come to the commission for design review on M Street or in the W Zone.

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VICE CHAIRPERSON HOOD: Madam Chair, I would ask that we vote for those issues separately because the first one, I'm going to be consistent. I'm going to be voting against the first one. But the second one I would like to vote for.

CHAIRPERSON MITTEN: Okay. So we'll deal with the - would you like to propose a motion in the affirmative on the latter issue then?

VICE CHAIRPERSON HOOD: No, I'll just wait and let you propose the motion.

CHAIRPERSON MITTEN: All right, well then I move that we set down the language for public hearing that would prohibit hotels being counted as residential uses in CR zones within the Capitol Gateway Overlay District.

COMMISSIONER PARSONS: Second.

CHAIRPERSON MITTEN: All right. We have a motion and a second to set down the proposed language.

Is there any discussion? All those in favor, please say aye.

BOARD MEMBERS: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no.

VICE CHAIRPERSON HOOD: Opposed. No.

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CHAIRPERSON MITTEN: Mr. Bastida.

SECRETARY BASTIDA: The staff will record the vote 4-0-1, Ms. Mitten moving and Mr. Parsons seconding, Mr. May and Mr. Hannaham voting in the affirmative, Mr. Hood voting in the negative.

CHAIRPERSON MITTEN: Thank you but I think the vote should be 4-1-0.

SECRETARY BASTIDA: Yes, that's correct. Thank you.

CHAIRPERSON MITTEN: Thanks. And then on the second issue?

VICE CHAIRPERSON HOOD: Madam Chair, I would make a motion that we approve the certain language that would allow someone coming with a special exception, I believe as you stated, coming before the Zoning Commission without having to go to anyone else and we can deal with it as a one-stop-shop.

CHAIRPERSON MITTEN: All right so that's to set that down for public hearing?

VICE CHAIRPERSON HOOD: Set that down for public hearing, right.

MR. BERGSTEIN: I guess I'd ask you specifically to authorize me to edit the proposed text, because it really is, since you're adding it, it's a

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necessary proposed action to take. So I'd ask that you vote to do both, even though I don't think it's really necessary for it to be re-advertised, I think it is necessary for you to take proposed action on that so I can actually add it to the proposal, make noise, and there won't be a delay.

CHAIRPERSON MITTEN: I see. Okay, so you're asking us to set it down just for the ultimate in clarity, but also that we take proposed action to include that.

MR. BERGSTEIN: Right.

CHAIRPERSON MITTEN: Okay, I'm with you. Would you amend your motion?

VICE CHAIRPERSON HOOD: I'll amend my motion to also, so we can set it down and also give Mr. Bergstein authority to go ahead and advertise it as stated.

CHAIRPERSON MITTEN: Thank you. Is there a second? I second. Okay, we have a motion and a second to both set down for public hearing and take proposed action that would permit an applicant who had to undergo special exception design review because their property is on M Street or in the W Zone that they would also have the ability to come to the Zoning Commission at the same time for any other special

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exception or variances. Any discussion? All those in favor, please say aye.

BOARD MEMBERS: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida.

SECRETARY BASTIDA: The staff will record the vote 5-0, Mr. Hood moving and Ms. Mitten seconding, Mr. May, Mr. Parsons and Mr. Hannaham voting in the affirmative.

CHAIRPERSON MITTEN: Terrific. Thank you.

All right, now we're ready to move to proposed action.

The first case under proposed action is Zoning Commission Case No. 01-36-C, which is the Unified Communications Center.

SECRETARY BASTIDA: Madam Chairman, the staff has provided you with all the information that has come into the record. That information came several days late, so I would request that you open the file to accept that information in to the record so we can move forward on that.

In addition, you are being handed out the memo that the applicant has just submitted regarding how to handle the historic preservation issues related to the proposal.

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CHAIRPERSON MITTEN: All right.

SECRETARY BASTIDA: And I would you also to allow that to come into the record.

CHAIRPERSON MITTEN: All right. Let's take up all the late filings together. Is there any objection to accepting the late filings from the applicant related to the UCC Case. We have numerous late filings.

SECRETARY BASTIDA: Madam Chairman, can you consider extending that to the ANC, because the ANC had to file late because the applicant filed late, so they needed the time to address properly what the applicant filed.

CHAIRPERSON MITTEN: All right. So that would include whether or not there are any objections to accepting the late filing by the ANC. Any objection?

All right. Let me just begin this discussion by saying that some of the things that have been submitted can't be considered as final in their current form.

We have a draft memorandum of understanding with the community representatives and, in fact, the two different versions of the draft that we've been provided. The two versions of the draft that we've been provided are different, and then we also have -

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in order for us to consider that we would have to have a signed copy.

We also have a draft of the memorandum of understanding related to the LSDBEs. We would need a signed copy of that in order to consider it. And, in addition, we have a late filing that has not been - I don't believe it's been served on the parties since this was just delivered today.

And given that in the applicant's proposed findings of fact and conclusions of law we saw on Page 13, we saw a significant modification to the historic preservation amenity.

And then, the memo that we've just be handed is yet a further modification and I have a concern that the parties to the case, specifically the ANC, have not been given the opportunity to comment on this. So I think it's premature for us to take a vote at this time.

VICE CHAIRPERSON HOOD: I would concur, Madam Chair. I'd personally like to see a signed MOU and as you stated, we have two different versions and I have not had the sufficient time, I don't think, to review what I just got in front of me.

SECRETARY BASTIDA: Okay.

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CHAIRPERSON MITTEN: I'm going to ask for other comments about the submissions in a minute, but if we could just deal with the issue of the timeliness and the fact that we don't have really completed submissions at this point. Can I get comments on that?

COMMISSIONER PARSONS: Well, I would agree but I wonder if we could, talking in terms of a time certain when we could deal with it.

CHAIRPERSON MITTEN: Oh, absolutely.

COMMISSIONER PARSONS: A couple weeks, not our next meeting. Fine.

CHAIRPERSON MITTEN: Absolutely. Mr. Bastida, if we were to allow some additional time for parties to respond, and even if we didn't wait until our July meeting, we have numerous hearings as we're all aware. We could have a Special Public Meeting to take a vote. Can you get a sense of how quickly we could get final versions of the MOUs and some feedback on this?

SECRETARY BASTIDA: Yes, Madam Chairman. Would you allow me a few minutes to consult the applicant and resolve it in a way that would be favorable to everybody, hopefully?

COMMISSIONER PARSONS: Well, maybe we could

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do that later?

CHAIRPERSON MITTEN: Yes, well let's see if there's any discussion on any of the other submissions while you do that.

SECRETARY BASTIDA: Thank you.

CHAIRPERSON MITTEN: Any comments or concerns? We received numerous additional submissions, including proposed findings of facts and conclusions of law.

COMMISSIONER PARSONS: Yes, Madam Chair. I am probably not surprising anybody in my disappointment for the study of height, which is quite thorough and very persuasive and so forth.

But, I'm still concerned about the views from the Suitland Parkway and would not want to rely on the Douglas Fir that has been suggested to be placed along in the new landscape plan placed along the edge of the site.

And I wondered in the interim if we could ask the applicant to converse with the Department of Public Works who has jurisdiction over the Suitland Parkway in an effort to further screen the project in the long term, obviously, not the short term, but as seen from the Suitland Parkway. That is, get closer

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to the automobiles, not try to screen this structure completely from the site itself, and I have no specific proposal, but I was looking for the initial simulation.

CHAIRPERSON MITTEN: I think it might be Page 7.

COMMISSIONER PARSONS: Thank you very much.

CHAIRPERSON MITTEN: I think it is.

COMMISSIONER PARSONS: Thank you very much, Page 7. In the upper photograph, what I'm hoping is that the applicant could gain the permission of the Department of Public Works to plant plants along the lower slope there in the upper plate that would screen from that lane as headed out.

The Douglas Firs that are shown in the simulation are probably 40 feet high. That's going to take about 20 years, and I was hoping that we could place something, a berm even or vegetation on that slope, and I would hope the department would be acceptable to that. They have no particular use for the property that I'm aware of.

It's a much more difficult process, to me the more important view in Plate 6, but I think it's important enough to take a look at the outbound lanes, Plate 5. I don't see how you could do what I'm trying

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to articulate in the inbound lanes. There's no median there to deal with of any substance.

So I would ask for that kind of submission here in the next couple of weeks, so that I could vote favorably on this project, even though I don't want to.

CHAIRPERSON MITTEN: I think it's definitely worth exploring and since we have some additional time. I'd like to ask you, Mr. Parsons, just to help me because I looked at this, the simulation on Page 7 and it looks like there's an awful lot of little trees that look like they're supposed to be Douglas Firs. They're all the same. They're sort of triangular looking.

COMMISSIONER PARSONS: Yes, those are the new trees.

CHAIRPERSON MITTEN: And then when I look on Page 32, which is the landscape plan, I just see a single row of trees. Maybe I'm just reading it wrong.

COMMISSIONER PARSONS: You're right in both instances.

CHAIRPERSON MITTEN: So does the visual simulation actually have more trees than are intended to be planted?

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COMMISSIONER PARSONS: Thank you, you're very. I didn't notice that. That looks like a double row of trees, doesn't it?

CHAIRPERSON MITTEN: It looks like at least a double row of trees.

COMMISSIONER MAY: That's a landscape designed by Photoshop.

COMMISSIONER PARSONS: Let's ask for some clarification, because if there was to be a double row of trees, I think it should be a combination of Oak as well as - here's a previous simulation for instance.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: That's all Oak trees. Let's ask for a heavy up on that. That is a row of Oak as well as conifers.

CHAIRPERSON MITTEN: And then another simulation.

COMMISSIONER PARSONS: And then something to -

CHAIRPERSON MITTEN: An accurate simulation?

COMMISSIONER PARSONS: This is the scar from the Metro tunnel. It's about 70 feet below. That's what's showing here. It was never restored. Anyway,

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I don't want to -

CHAIRPERSON MITTEN: Let me just ask so we're clear about what we're requesting. Do we want both things that you mentioned?

COMMISSIONER PARSONS: Yes.

CHAIRPERSON MITTEN: So we want them to explore the possibility of putting some kind of planting on the berm or whatever the proper terminology is, as well as to do a proposed row of Douglas Fir as shown on Page 32, along with an additional row of Oak.

COMMISSIONER PARSONS: Yes. I would say Pin Oak would be the most effective.

CHAIRPERSON MITTEN: All right. Anyone else have any comments about that proposal? All right. One thing and I don't know if this is just my reading of the Commission of Fine Arts letter with some degree of concern or whether the concern is well placed or not.

But in the CFA letter, which is Page 48, the chairman mentions that they have two items of concern, and the second item was to evaluate carefully the facility's perimeter security features.

The preliminary landscape plan indicates barriers that could prevent a vehicular intrusion into

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the structure but would not sustain a sufficient standoff distance for glass protection.

And so they seem to be, you know, very concerned and also, you know, amenable to possibly increasing that standoff distance, and I don't know because this is just a conceptual design approval. But typically, we just allow, and the language of the proposed order is that the applicant would be allowed to make architectural changes initiated by the Commission of Fine Arts to be consistent with the final approval.

But I guess I would just want to be sure that it was absolutely clear that the commission would reserve its right to review any changes that might be proposed that would like move the building, so that would increase the standoff distance.

Usually, we don't have to concern ourselves with such things, but I don't know if anyone else shares my concern, but I just didn't know how much flexibility we would be granting for - what degree of change are we granting that flexibility for?

COMMISSIONER MAY: Madam Chair.

CHAIRPERSON MITTEN: Yes.

COMMISSIONER MAY: I just want to echo that

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concern. I found that paragraph rather odd because of the way it was phrased and the way the subject was not explicitly dealt with in the presentations to us.

So it is hard to know where it would go, but obviously if we're talking about doing something to increase standoff distance by any measurable amount, we are talking about something that would be a new building in our eyes.

CHAIRPERSON MITTEN: So perhaps by the time we vote, take proposed action on this after we get the additional submissions, we could have some modified language that would preserve our control there.

And I just have another comment that I thought Mr. Parsons might be interested in, which is what was interesting in Appendix E where the CFA transcript is included and they're having their discussion back and forth.

And I think this was the representative of the applicant made the statement, and I can't refer you to the page because the pages aren't numbered. But it's the third page from the back of the transcript.

Ms. Sovokova, I think, at the end of the first paragraph where she's speaking there, talking about the Suitland Parkway, and the last statement is:

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"And it will not be perceivable from the Suitland Parkway." So I don't know what they were showing the CFA, but it's clearly perceivable from the Suitland Parkway, so I thought I'd mention that.

All right, Mr. Bastida? Oh, did he go away. Any other comments on the additional submissions that we received? Mr. May.

COMMISSIONER MAY: I tried in reading all this information to really try to understand what was going on with the antennas.

CHAIRPERSON MITTEN: I'm glad that you did that.

COMMISSIONER MAY: And I'm still very confused, so I was just wondering since we happen to have a resident expert on antennas in the room, whether we might just get some short opinion. Now it could be rendered here now or it could be given to us at a later date.

But I just want to know that it's not going to be a jumble of everything that they showed us cut sheets for, and that it's all going to be very visible or what have you, because it's not nearly as clean as they show in the drawings, the renderings if you will but it may well be perfectly fine and visible. Do you

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have an understanding of this?

MS. STEINGASSER: It's my understanding, Commissioner May, that some of the antennas will be visible. The widths have been designed with visibility in mind and they circle and they have also included widths to keep an aesthetic balance.

COMMISSIONER MAY: So it's going to happen the way it's been -

MS. STEINGASSER: Right.

COMMISSIONER MAY: Because it just looked like it might have been just sort of a diagram of what's represented.

MS. STEINGASSER: It's my understanding based on what they submitted and my conversations with the applicant that they are going to be installed to either live antennas or plexiglass poles to appear as antennas as needed. The poles will be removed and the live antennas will be installed.

The most visible antennas are shown on Page 104 (a) and those would be the dish antennas that are shown centered in the building at both the top and the bottom on the left. The dish antennas do have a maximum height of 13 feet, four inches. They're kind of hatched there.

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They are, however, set back well in excess of the - the one setback that both the existing and the proposed regs support, I think it's 25 feet off either edge and about 17 feet from the front. But due to the elevation of the site and the group here, they will be visible and the applicant has shown them as being visible on the next page, showing an elevation that shows the antennas.

Those are the most visible ones. On the bottom of Page A-301, you can see two whips just peeking over the tops of that parapet wall. They're set inside there.

But it is my understanding that these antennas will be installed in a particular range but there are some also proposed behind the louvers along the top of the long facade. As those antennas become active or installed, the louvers would be removed.

If the applicant were to come forward outside of the process, it would be required to get a special exception to install this many antennas in this particular location, so it does permit the Zoning Commission to approve those special exception uses as part of the PUD process.

So if it's the commission's intent, I think

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it's cleaner that the antennas be considered as part of the PUD process and not set back for supplemental review. Did I answer your question?

COMMISSIONER MAY: Yes, but it raises a new one. If that's the case then do we need to have more information to understand? If we're evaluating this as a special exception, we need more information to be able to evaluate these antennas.

CHAIRPERSON MITTEN: Well that's a good question because I was just going back tot he proposed regs, you know given that we wouldn't want to violate the spirit of it right off the bat.

The idea is that each antenna installation shall be located or screened to minimize to the greatest practicable extent, whatever that means, the view from among other things, any landmark, structure, or site within one quarter mile and the immediately adjacent property is a historic landmark. So, is this included within the landmark?

MS. STEINGASSER: The West side is the landmark. I'm not sure. I can give you that.

CHAIRPERSON MITTEN: Okay, well in any event.

MS. STEINGASSER: It is right across the

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street.

CHAIRPERSON MITTEN: I think what Mr. May is getting at, which is we have all this information but we really don't know what's the view going to be from these important places. So maybe we need an additional submission that would give us the sense of what will people be seeing. How about that?

COMMISSIONER MAY: Yes, I think so. That's what I was getting to by the special exception because we have to understand what it really would look like and, you know, we're seeing plans which don't really tell us that and the elevations which are not really true, although given the distance it's what we see at an eye level perspective. It's got to be pretty close to this, so we will very much see those dishes at the end of the building I'm sure.

CHAIRPERSON MITTEN: Just to make a specific request, tell me if this would be satisfactory. Since we don't know exactly what landmark at the moment, if we could just ask for views from whatever landmarks are in, whether it's just the West Campus or if it's part of the East Campus, whatever would be considered a landmark.

If we could have views from those

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locations, specifically what the antennas are going to look like. Would that satisfy you, Mr. May?

COMMISSIONER MAY: Yes, I think so. Is there anything more that needs to be done in order to explicitly approve the antennas for the special exception or is that not part of the process now?

CHAIRPERSON MITTEN: Let's ask Ms. Steingasser.

MS. STEINGASSER: Procedurally, there is a provision 2405.7 under the PUD regulations that does allow the Building Commission to consider special exception usage and special exception modifications as part of a PUD process.

So we don't need to have any additional procedural action taken. However, if you do request those particular views, I'm sure the applicant would be happy to provide those for us.

And I'd be happy to work with the applicant to go through the regs further and see and direct how they would affect neighborhood characteristics, this kind of material that was set out. This will be an excellent first case and Commissioner Parson's concerned about how that moving target from a practical extent, how we provide that.

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CHAIRPERSON MITTEN: Right.

MR. BERGSTEIN: I'm just going to add that the regulation also says that you're not required to apply the special exception standards when something before you is part of a PUD that is ordinarily required to be complied with. So, you can if you'd like to, but you're not compelled to.

CHAIRPERSON MITTEN: I think Mr. May was just trying to inquire as to what are the standards as it relates to antenna, a special exception for an antenna right now.

So let's just proceed with Ms. Steingasser's recommendation, which is that she'll work with the applicant to, you know, achieve the - well, we'll get the additional submissions regarding the views and then to the extent that there is any type of modification to be recommended, she'll work with the applicant to make that modification. All right.

COMMISSIONER MAY: I would also like to know a little more about what you just suggested before, which was that at certain points when openings, I guess, become necessary in that screening wall for the operation of certain antennas, that we're going to wind up removing the louvers.

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And is then the louver the right design if we're going to wind up with some things being louvered and some things, you know, other antennas or receivers or whatever lined up behind them. What is that going to look like?

I'm sure it's stated somewhere in the materials but I missed the fact that some of those things are going to be going away and then we'll wind up staring straight at the equipment. Maybe we won't. Maybe it won't all be visible, but.

CHAIRPERSON MITTEN: Thank you, Mr. May.

COMMISSIONER PARSONS: Well now that you've read that section, the next section goes on to say from public space, doesn't it, not only landmarks?

CHAIRPERSON MITTEN: Yes.

COMMISSIONER PARSONS: So you have antenna one, two, three and four, Washington Gas, NVW Singer, Red Cross and NVWUHF, which probably will be visible from the Suitland Parkway. They're only 30 feet but we ought to see that too.

CHAIRPERSON MITTEN: Yes. Ms. Steingasser, did you get that one? Thank you. We're going to be hypersensitive to antennas now, I can tell. All right, are you ready with a schedule for us?

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SECRETARY BASTIDA: Yes, but that schedule, I haven't consulted with the Office of Planning but this would be the former consultation. Do you think the Office of Planning could provide their comments by June 24th, which is two weeks from today?

DEPUTY DIRECTOR MCCARTHY: When would you be proposing - does that include views of what is visible from public space and historic landmarks of the antennas?

SECRETARY BASTIDA: Correct.

DEPUTY DIRECTOR MCCARTHY: And when would you be proposing that be submitted to us?

SECRETARY BASTIDA: I would have to check the applicant, when the applicant thinks they can provide that to you. He will be advising me shortly, but the ANC has agreed that they can resolve all their problems by June the 24th.

And if we can get the Office of Planning to provide that information by June 24th, shortly after or about that time, then we can consider it at our regularly scheduled meeting of July the 8th.

CHAIRPERSON MITTEN: Mr. Bastida, I just want to state maybe the obvious, but I just want to make sure that the ANC gets that letter that we received

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today.

SECRETARY BASTIDA: They already have it.

CHAIRPERSON MITTEN: Okay. Why don't we move on to another case and we'll just resolve the scheduling issue later. Can we do that Mr. Bastida?

SECRETARY BASTIDA: I think that's a wise idea.

CHAIRPERSON MITTEN: All right, so everyone can continue their consultations on that and we'll just move on.

SECRETARY BASTIDA: The second case, Madam Chairman, for the proposed action is Zoning Commission Case No. 01-35. It's Waterside Mall. The staff has provided you all the information regarding that matter and request an action by the commission. Thank you.

CHAIRPERSON MITTEN: Thank you. I did want to say one thing about the - we received a letter from the chair of ANC-2D, just trying to tie up some loose ends as it related to the fact that we did not have an initial ANC report, but one of the ANC commissioners just orally testified as to what the vote was, and I just want to state that for the record.

So initially, we had no ANC, no official ANC report and secondly, we have this new letter, dated

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May 22nd and it does not fulfill all the requirements, all the technical requirements for the ANC to be given great weight on the second vote, because it doesn't - I don't believe. Maybe I could ask Mr. Bastida, but to my reading it did not, but we could certainly acknowledge receipt of that letter.

So the issue then is we've received some additional submissions and the scope of the proposed text amendment is actually quite narrow, relative to the broad topics that were brought into the discussion during the public hearing.

What I would like to propose to my colleagues right now is, I am sensitive to the concern that was expressed by some folks, although I know now that this won't completely satisfy them.

But the language that was proposed that said that if part of the Waterside Mall property is demolished so as to create a roadway or public thruway, generally along the former right of way of 4th Street S.W., there was concern about the use of the term roadway.

I would like to suggest that appropriate alternative language that doesn't suggest what kind of public use would go through there is just to say

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to create a public right of way generally along the former right of way of 4th Street, S.W., and then it doesn't sort of in any way -

COMMISSIONER PARSONS: I concur.

CHAIRPERSON MITTEN: Yes, it addresses their concern.

COMMISSIONER PARSONS: You have the jurisdiction anyway as to what it's going to be.

CHAIRPERSON MITTEN: Correct. Right. And this is an if kind of a text amendment. This does not dictate that there will be this change and in the event that there weren't the change, then they would not be able to be treated as separate lots or a single lot for zoning purposes.

COMMISSIONER PARSONS: So then you need to go on further, which is such roadway or thruway.

CHAIRPERSON MITTEN: Right.

COMMISSIONER PARSONS: And finish that.

CHAIRPERSON MITTEN: Right, right of way it would say. So I would propose approval of the text amendment with the modification that I just articulated.

COMMISSIONER PARSONS: Second.

CHAIRPERSON MITTEN: Any further

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discussion? All those in favor of the amended language for the Waterside Mall text amendment, please say aye.

BOARD MEMBERS: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida or Ms. Sanchez.

MS. SANCHEZ: Yes, the staff would record the vote 5-0-0, Ms. Mitten moving, Mr. Parson second, Mr. May, Mr. Hood and Mr. Hannaham voting in the affirmative.

CHAIRPERSON MITTEN: Thank you.

SECRETARY BASTIDA: Madam Chairman.

CHAIRPERSON MITTEN: Yes, sir.

SECRETARY BASTIDA: Can we go back to the previous item?

CHAIRPERSON MITTEN: Certainly.

SECRETARY BASTIDA: I think that the applicant would like to have a clarification on what the commission would like. Can you come forward and request what the clarifications are regarding what exactly the commission would require? Would the chair permit that? Would the chair permit that interaction?

CHAIRPERSON MITTEN: Yes, because we want to make sure we get the submissions we're looking for.

If you could state your name for the record when you

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begin speaking, that would help us out.

MS. SAVOKOVA: Irena Savokova. I would like to get clarification on behalf of the applicant.

What I would like to get the clarification on is what specific views you would like to see to clarify our antenna designs relative to historic site or Suitland Parkway.

What we have currently shown are one view from Martin Luther King Boulevard and two views from the Suitland Parkway. I would like to clarify whether you would like those views modified with all the antenna equipment, and would you like to see additional views relative to the ones we already have submitted.

CHAIRPERSON MITTEN: If we could, let's just turn to the views that you were just making reference to, can you?

MS. SAVOKOVA: Yes, if you can give me a brief moment.

CHAIRPERSON MITTEN: Right.

MS. SAVOKOVA: Currently, what you can see on the cover page is a view rendering from Martin Luther King Boulevard down at the bottom.

CHAIRPERSON MITTEN: Okay, the entry view?

MS. SAVOKOVA: Exactly. So that will be one

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of the views that we'll submit showing the satellite dish antenna which is set further back on the rooftop.

CHAIRPERSON MITTEN: All right, one thing I would ask if that it could be a full size and that it would be quite clear as to where the antennas were, to the extent that they were visible.

MS. SAVOKOVA: Right.

CHAIRPERSON MITTEN: The Office of Planning is going to assist in identifying - we know the West Campus is the historic site.

MS. SAVOKOVA: Correct.

CHAIRPERSON MITTEN: So we're going to a view from the West Campus.

MS. SAVOKOVA: From the West Campus.

CHAIRPERSON MITTEN: Right. Now to the extent that there's also a historic site on the East Campus, they'll help identify that and then we would need a view that was basically looking - I lost my north orientation. But looking from, I think it's north.

MS. SAVOKOVA: North, South.

CHAIRPERSON MITTEN: North, South, yes. So it would be a view looking North then from the balance of the East Campus if that's determined to be a landmark site. That's adjacent. And then we would need, I would

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say we'd need two views similar to -

MS. SAVOKOVA: Similar to 7?

CHAIRPERSON MITTEN: Right, you know, in each direction from Suitland Parkway, showing I would say without the trees, because that's the view, at least would be the view for the near future showing whatever would be visible from Suitland Parkway in each direction.

MS. SAVOKOVA: All right.

CHAIRPERSON MITTEN: Does that clarify? All right. Anything else need clarification?

MS. SAVOKOVA: That's all.

CHAIRPERSON MITTEN: Thank you.

SECRETARY BASTIDA: Madam Chairman, can I go ahead and give them the dates?

CHAIRPERSON MITTEN: Yes, Mr. Bastida.

SECRETARY BASTIDA: Will provide OP the additional information no later than June 24th. The Office of Planning will provide the information to the Office of Zoning by Monday, July 1st, and then it will be scheduled for the regular meeting of July the 8th for the session. The ANC would also agree that they can provide and come to a resolution by June 24th.

CHAIRPERSON MITTEN: All right. You

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consulted with OP?

SECRETARY BASTIDA: Yes, I consulted with OP.

CHAIRPERSON MITTEN: All right. And then we would just have it on the agenda for proposed action at our July 8th meeting?

SECRETARY BASTIDA: Our regular July meeting.

CHAIRPERSON MITTEN: Okay, thank you.

SECRETARY BASTIDA: Thank you.

CHAIRPERSON MITTEN: Would you just like to mention the third case there. I neglected to mention it.

SECRETARY BASTIDA: Yes. Zoning Commission Case NO. 02-04 New East Capitol - Senior Building. The applicant requested a postponement for consideration Thursday, July 8 meeting, so they could do further refinements to their proposal. Thank you.

CHAIRPERSON MITTEN: Thank you, Mr. Bastida. Now we'll move on to final action, and the first item under final action is the request for extension in the Capitol Point PUD, which is Zoning Case No. 01-05TE. Mr. Bastida.

SECRETARY BASTIDA: Madam Chairman, the

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staff has provided you all the information that came. There is a letter that came in today and I - no, I'm sorry that came in on Friday, that I provided to you this morning. I hope you had time to be able to read it and accumulate it, and provided that you have been able to do all that, then staff requests action on this matter.

CHAIRPERSON MITTEN: Do we have to open the record to accept the letter?

SECRETARY BASTIDA: Yes, thank you.

CHAIRPERSON MITTEN: All right, is there any objection to reopening the record to accept the letter from Shaw Pittman dated June 7th, any objection? All right, that's good.

Now, let's take up the - as you will recall, those of you who were here the last time, we had a discussion about the Capitol Point PUD extension request that revolved around the fact that they were basically proffering not to seek a building permit under the existing PUD approval.

And, that they would be making a modification and we, I think the consensus was that we wanted to broaden the scope of the review to be exclusive to whatever the applicant would seek because

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of the changes in the circumstances in the immediate vicinity.

But that we would basically like to revisit what was approved in the second stage of the PUD and we had asked Mr. Bergstein regarding - we asked him to explore the idea of whether or not we could extend the first stage approval and not extend the second stage approval.

And, Mr. Bergstein, I'm just going to ask you to give a brief summary of your opinion on that subject.

MR. BERGSTEIN: Well, I concluded that the Zoning Commission could be presented with a case where it found that although there was a substantial change in material facts, which relied upon respect to the elements of the second stage approval it made and therefore could not grant the extension with respect to the second stage.

They could nevertheless find that no similar substantial change took place with those elements approved in the first stage and it therefore could grant the extension only with respect to the first stage PUD, which would put the applicant back in a position where it had first stage approval and had a

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year to file a new second stage PUD for your review.

And I think there's other parts of the regulations that are consistent with that conclusion.

CHAIRPERSON MITTEN: Thank you. And then just for clarification what's in the -

MR. BERGSTEIN: I guess there's a wrinkle to this case. I did answer the question generally. This particular PUD apparently, the PUD related map amendment was granted as part of the stage two proceeding rather than the stage one proceeding where it's normally designated and in this instance, you would have the authority if you did consider only extending the first stage to nevertheless keep the related map amendment that you made for CR as far as that part of the PUD to remain intact.

CHAIRPERSON MITTEN: Right, thank you and I was just going to mention that that was the gist of the letter from Ms. Prince on behalf of the applicant.

So, I think without having to reiterate the full discussion that we had at our previous meeting, we're clearly in a posture that we wanted to pursue.

Now legally we can pursue it, that we can deny the PUD extension for the stage two approval of the Capitol Point Community and we can approve an

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extension for the first stage and include in that the PUD related map amendment to CR, and I would so move.

COMMISSIONER PARSONS: Second.

CHAIRPERSON MITTEN: Any discussion?

VICE CHAIRPERSON HOOD: I'm trying to remember, didn't we do something on this action last month or did we delay it until this month? Is this action that we delayed for? I'm trying to remember.

CHAIRPERSON MITTEN: We deferred action pending Mr. Bergstein doing some research into the legality of proceeding this way, as opposed to the way that applicant had proffered.

VICE CHAIRPERSON HOOD: I'm getting mixed up. Thank you.

CHAIRPERSON MITTEN: Okay. Any further discussion? All those in favor of granting the extension to the first stage PUD and the PUD map amendment to CR and denying the extension on the second stage PUD, say aye.

BOARD MEMBERS: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida.

SECRETARY BASTIDA: Madam Chairman, the staff will record the vote 5-0, Ms. Mitten moving and

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Mr. Parsons seconding, Mr. Hood, Mr. May and Mr. Hannaham voting in the affirmative. Thank you.

COMMISSIONER PARSONS: I'm sorry, Madam Chair, did you clarify that this is only related to the PUD? This is not placing zoning on the site as a matter of right?

CHAIRPERSON MITTEN: That was a different discussion.

COMMISSIONER PARSONS: Okay, thank you. All right. And just to clarify what we just voted on was to continue, we voted to continue the PUD related map amendment for Capitol Point, which was from a combination, I think of W-1 and W-2 or W-1 and W-3 to CR. So that's what we just put in place, but I'll remind you of the other discussion in a minute.

All right, Mr. Bastida, next case. Zoning Commission Case No. 01-17M.

SECRETARY BASTIDA: That's 1957 E Street/ George Washington University. The staff has provided you all the information that had come into the file. The National Capitol Planning Commission at its meeting of June 6 determined it would not have adverse impact to the federal interest, and the staff requests an action on this case on this matter. Thank you.

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CHAIRPERSON MITTEN: Thank you, Mr. Bastida. I believe we had taken proposed action at our previous meeting as Mr. Bastida just said. So, if there isn't any issue to raise, I would entertain a motion for final action.

(Pause)

COMMISSIONER MAY: I would make a motion that in Zoning Case No. 01-17M/93-5F-91-18P 1957 E Street be approved, the revised Condition 9-A that was submitted.

CHAIRPERSON MITTEN: Is there a second? I'll second. I should let the record reflect that Mr. Parsons has left the room for the discussion on this case. Any discussion on the motion? Any discussion? All right. All those in favor of final approval of Zoning Commission Case No. 01-17M with the revised Condition 9-A, please say aye.

BOARD MEMBERS: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida.

SECRETARY BASTIDA: Madam Chairman, the staff will record the vote 4-0-1, Mr. May moving, Ms. Mitten seconding, Mr. Hannaham and Mr. Hood voting in the affirmative, Mr. Parsons not being present.

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CHAIRPERSON MITTEN: For clarification, Mr. Parsons had recused himself on that case.

SECRETARY BASTIDA: Thank you, Madam Chairman.

CHAIRPERSON MITTEN: Okay, Mr. Bastida, now it's time to explain what you just handed to us.

SECRETARY BASTIDA: Okay, Madam Chairman, the staff has just received a request from the Department of Parks and Recreation, requesting an extension of the Emergency Rule in the matter of the Zoning Commission Order 02-15, which is the one that you allowed any - the ability of the Department of Recreation to provide those facilities in the R District, and I would be glad to go and make copies of the Emergency Order that you approved back on February 11th.

The person rule-making has expired. We have a hearing I believe on July 1st to adopt permanent regulations regarding this case. That concludes my presentation regarding this matter. I just handed you the two-page memo from the Department of Recreation. Thank you.

CHAIRPERSON MITTEN: Mr. Bastida, I would like to get the text language in front of the

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commissioners before we vote.

SECRETARY BASTIDA: Okay.

CHAIRPERSON MITTEN: And also, I have a question for you, which is - I don't know if you can answer it or not.

SECRETARY BASTIDA: Sure.

CHAIRPERSON MITTEN: Has the department proceeded to undertake the renovation and expansion of the recreation centers that caused them to request the emergency in the first place?

SECRETARY BASTIDA: Madam Chairman, I can not answer that question. Perhaps the Office of Planning might be able to address it. I have no basis to believe that they can or can not. Thank you.

CHAIRPERSON MITTEN: I don't know if the Office of Planning has any knowledge of this.

MS. STEINGASSER: We do indeed. I don't know if they have undertaken permits for all of the recreation centers. They have undertaken permits for, I would guess, between ten and 12 recreation centers.

CHAIRPERSON MITTEN: Okay, thank you.

SECRETARY BASTIDA: Madam Chairman, I am getting copies of the Emergency Rule made. If you want, we can pause or we can move on to another item on the

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agenda and then come back to this.

CHAIRPERSON MITTEN: I would dearly love to take a five-minute recess, so we'll take five minutes.

SECRETARY BASTIDA: Thank you.

CHAIRPERSON MITTEN: Thank you.

(Whereupon, the above-entitled matter went off the record.)

CHAIRPERSON MITTEN: All right, we're back on the record now. We have a copy of the text language that we had passed in the first emergency rule-making that we will be having a hearing on early next month.

And now we have a request, as Mr. Bastida said, for an extension of the Emergency Rule in Case NO. 02-15TA.

VICE CHAIRPERSON HOOD: Madam Chair, I make the motion that we extend the emergency legislation in Zoning Commission Case 02-15 for the rationale of the construction process that may already be in the pipeline, not to further delay any movement of the Department of Parks and Recreation.

COMMISSIONER PARSONS: I'll second that. Do you have a time period or know how many days?

VICE CHAIRPERSON HOOD: We have a hearing

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July the 1st, and I don't know if we can - I know the emergencies are usually for 120, so I just want to leave it at 120.

COMMISSIONER PARSONS: Okay.

CHAIRPERSON MITTEN: So we have a motion.

MR. BERGSTEIN: It starts today.

CHAIRPERSON MITTEN: I'm sorry, Mr. Bergstein.

MR. BERGSTEIN: It starts today. We actually did a little research on it and once you vote a new emergency, the new time takes over from the old time.

CHAIRPERSON MITTEN: All right.

MR. BERGSTEIN: So it would be 120 days from today.

SECRETARY BASTIDA: For clarification, this emergency rule you have in front of you has expired already.

CHAIRPERSON MITTEN: Okay, all good to know. Mr. May?

COMMISSIONER MAY: I have a question for Mr. Bergstein. We're undertaking this action to allow building permits to be filed essentially for these properties, right? If that's the case, maybe I'm - all this information becomes a blur, but I remember

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a prior conversation with you regarding uses of you know - if it continued to allow use of unzoned properties, right? I'm talking about earlier today. We were talking about unzoned properties and the need or the requirement that it be zoned in order for a permit to be issued.

Here we're not dealing with unzoned properties. We're dealing with a use that's not recognized. Is that the critical difference here?

MR. BERGSTEIN: I don't have the text right in front of me, but if I remember this correctly, it was a text amendment to recognize its particular use beginning in R zone.

COMMISSIONER MAY: Beginning in R zone, right.

MR. BERGSTEIN: That was the issue here.

COMMISSIONER MAY: Then I am mixing up my discussions.

CHAIRPERSON MITTEN: I think so. This would only be for zoned property, which the rec centers are on zoned property. All right, so we have a motion and a second to extend the emergency in Case No. 02-15TA. All those in favor, please say aye.

BOARD MEMBERS: Aye.

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CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida.

SECRETARY BASTIDA: The staff will record the vote 5-0, Mr. Hood moving and Mr. Parsons seconding, Ms. Mitten, Mr. Hannaham and Mr. May voting in the affirmative.

CHAIRPERSON MITTEN: Thank you.

SECRETARY BASTIDA: Thank you.

CHAIRPERSON MITTEN: All right. We will move to the consent calendar and I would like to begin by saying thank you to Mr. Bastida. This is exactly the kind of memo by way of recommendation that we would like to have on all consent calendar items. So, bravo and let's keep doing that.

I did want to ask, since I didn't see any comments from the Office of Planning, was this referred to the Office of Planning? Maybe I should state what we're talking about. I forgot to read that first item, sorry. Let me go back a second and then I'll repeat the question.

This is a request, the first item on the consent calendar is a request for minor modification of Zoning Case No. 02-23, which is the Woodward and Lothrop Department Store PUD, which is Order 940. I'll

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just repeat, did you refer this request for the minor modification to the Office of Planning?

SECRETARY BASTIDA: I don't believe that was the case, but let me specifically explain the nature of the minor modification. The applicant realized that they have requested a building permit three days after the expiration date they have to solicit it by, and I did call the ANC and the ANC had not taken an official position.

I talked to the chairman and he provided me the information that the ANC was not against the proposal; on the contrary, they would like to have been able to have a time frame to be able to vote on it for their next meeting that doesn't occur until sometime next week. And accordingly, they couldn't take a formal action.

The request was of a minor nature, and I believe that the applicant had a conversation with the Office of Planning, so I really forget to check with the Office of Planning with regard to this, ma'am.

CHAIRPERSON MITTEN: Okay, but in the future, it's your intent that on consent calendar items for minor modifications that you would enlist their opinion, is that right?

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SECRETARY BASTIDA: Oh, right.

CHAIRPERSON MITTEN: Okay. Did the Office of Planning have an opinion that they would like to share with us?

DEPUTY DIRECTOR MCCARTHY: We've reviewed the letter from the applicant and we've been working actively with the applicant on the design for the housing on Square 377 and on 517; 377 did require going through the Historic Preservation Review Board. That took some time, and we've been working with them on 517, which is going to the BZA for a variance. So we have no problem in bringing additional delay.

CHAIRPERSON MITTEN: Thank you. All right, we have a request for a minor modification that would just retroactively extend the deadline for a few days.

Is there a motion?

COMMISSIONER HANNAHAM: So moved.

CHAIRPERSON MITTEN: Second. Any discussion? All those in favor of approving the minor modification, please say aye.

BOARD MEMBERS: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida.

SECRETARY BASTIDA: Staff will record the

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vote 5-0, Mr. Hannaham moving, Ms. Mitten seconding, Mr. May, Mr. Hood and Mr. Parsons voting in the affirmative.

VICE CHAIRPERSON HOOD: Mr. Parsons made the motion.

SECRETARY BASTIDA: I stand corrected. I'm sorry. Mr. Parsons moving, Ms. Mitten seconding, Mr. Hannaham, Mr. May and Mr. Hood voting in the affirmative.

CHAIRPERSON MITTEN: Thank you, Mr. Bastida. We have a second item that we placed under the consent calendar section, and it relates to the mis-codification of antenna towers as a matter of right in the C-1 District, and Mr. Bastida, did you want to give an overview or Mr. Bergstein?

SECRETARY BASTIDA: Alan, would you like to address that, very briefly, please.

MR. BERGSTEIN: I will do it very briefly.

At the request of the Office of Zoning, we reviewed an opinion of counsel that was provided by the Stop Tower Systems Coalition. That asserted that antenna towers were not matter of right uses in C-1 and should have been subject to the special exception process.

And after reviewing the materials and

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looking into the history of the regulations and the order, we have agreed that there was likely a mis-codification, that it was the Zoning Commission's intent at the time of the original order to make antenna towers subject to special exception in all zones, both residence and commercial.

And, there was an inadvertent failure to strike the matter of right provision that occurs in 701.6(g), and if you agree with that, one of the options you have, and that's why it's on the consent agenda, is to issue a notice of proposed rule-making, allow to take final action to correct that error.

CHAIRPERSON MITTEN: Thank you, Mr. Bergstein. And the specific amendments are detailed in the material we have before us, but specifically, it would repeal Section 701.6(g), repeal 721.2 (t) and amend the Section 1201.2 (c), and we also for our review have been provided a copy of the Zoning Commission's Order in this case that led to the antenna text amendment in 1989.

I would move that we approve the recommended text amendments that will bring the zoning ordinance into consistency with Zoning Commission Order 587.

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VICE CHAIRPERSON HOOD: I'll second that motion.

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

BOARD MEMBERS: Aye.

CHAIRPERSON MITTEN: Those opposed, please say no. Mr. Bastida.

SECRETARY BASTIDA: The staff will record the vote 5-0, Ms. Mitten moving and Mr. Hood seconding, Mr. May, Parsons and Hannaham voting in the affirmative. Thank you.

CHAIRPERSON MITTEN: Thank you. The next item would be correspondence and we received some interesting correspondence this month. The first one is a letter from Holland & Knight regarding our action of last month to deny the extension of the Florida Rock PUD.

And while I think it's a little premature, basically the request is for reconsideration, it does give rise to some concern on my part that their posture is that it is a compelling reason for the Zoning Commission to grant some degree of relief to the Florida Rock property because we're ultimately motivated to eliminate industrial uses in the Capitol Gateway

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Overlay District.

And, I guess I have a couple thoughts. One is if we were really concerned about getting rid of them quickly, we would have done something with the overlay, other than grandfathering the uses in. I guess that's the first point.

But, what it does for me is it makes me - I would like before I would even give any thought to reconsideration, I would like to understand the economics of these industrial uses in the Capitol Gateway Overlay District, and whether or not they do need incentives for relocation and if they do, what's the magnitude of it.

Because, as the letter implies, the only thing that would be acceptable to make it economically feasible for them to relocate. Well, they're the only ones, the applicant is the only one who understands what that is really without any background information for the commission to know what the threshold level is.

To the extent that there is some incentive required, this is a very large issue for the city because we certainly need to have land in the district that is zoned and intended for industrial uses and my

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understanding of the concrete business in the city is that it's important from a cost perspective, to have concrete plants in the city so that when someone's building something, they don't have to pay all the additional transportation costs of bringing concrete from someplace outside the beltway.

So we should be motivated clearly to examine the issue because it has broad economic development implications, and I would like to have some more baseline information about the economics of the industrial uses in Capitol Gateway in general, so that we could have - to the extent that we would take up the question of reconsideration.

Since this seems to be the primary motivation, that they're suggesting that if we do not act now, you know, it will be in the long term before we can expect this industrial use to be relocated.

I don't have enough understanding of that subject and I don't know that it's necessarily proper to get that understanding or that we will get that understanding in the context of a PUD application.

So I don't know if the Office of Planning is prepared to or has given -- I know you've given thought in general to industrial uses and where they

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need to be and planning for that. But would you be in a position to give us any kind of report on the economics of those uses down there?

Please?

DIRECTOR ALTMAN: It's an interesting question. We clearly overall in terms of the initiative, the Anacostia Waterfront have looked at moving the industrial areas into mixed use, you know, and trying to provide the incentives and obviously the budget point zoning.

But also when we're working with our overall economic development program and where we can put incentives in trying to create the environment there that will, we think in the long term lead to the mixed use development.

I mean, for example, trying to encourage residential and what we're doing with, we successfully awarded the Hope Six Grant to sort of start to get the residential, you know, reinforce the residential environment, because there are industrial uses on the other side as well, on the other side M Street, not as heavy industrial uses.

But you have a lot of sort of softer industrial uses, manufacturing, et cetera, in trying

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to move, strengthen everything in the residential market, working with GSA on the Southeast Federal Center as a mixed use project, so we're continuing to move to a mixed use nature of this, closer and closer to Buzzard Point, as you get into the harder core.

The one thing I would say about this, a couple things, one is the Florida Rock site itself is also very unique, and in the sense that there's a broader sort of industrial area within Buzzard Point.

The Florida Rock where it sits at sort of the South Capitol Gateway and as John Parsons has been to many of session or will be at many of our session on the South Capitol, where we're actually looking at approving Congressman Hoyer's legislation for the complete redesign of South Capitol.

It really sits back in this really critical place, and you know, I too entered the discussion. This had long preceded my being here, the discussion of the PUD itself about its massing and its bulk.

When I looked through all of it, what was clear was that if there was ever an ideal PUD site, this was an ideal PUD site in the sense that you're right at the Gateway. You have the bridge that's going across.

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You're sitting at literally the entranceway to the Capitol, and it is when I looked at the broader, sort of what we're doing along the coast along the whole swamp of the river front there, the question of the provision of public amenities, public spaces.

Beyond that, that would simply be allowed through or enabled through or required through the Buzzard Point zoning, the waterfront zoning and given its very odd configuration and shape, it's an irregular parcel, it did strike me that it's a place you would want to do a PUD in order to guarantee that public benefit as well as the design issues and the amenities.

One of the things, for example, is that we have the Navy yard that has an open space they built over southeast Federal Center to have as part of that development and then this is the next key piece.

So what we do is very special and I guess one concern I have is I don't know what the right economic point is to get to your question. I don't know exactly where that line is and what's the right economic incentive versus by right, what they would to in terms of incenting them to move from industrial to mixed use or to mixed use development.

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But it is clear to me that in any case, you would want to be encouraging whoever it was that we would want to have a PUD. We'd want the right design for the PUD. Put aside their specific design at the moment, because my read of what they're saying is it's very similar to Capitol Point, which is okay.

We're willing to put on the table a whole bunch, you know, really address some of the fundamentals that were issues before the commission that you raised at the last meeting and for the Office of Planning, both height, provision of public amenity, mixed use on the site, all the things that struck us when I first saw these issues.

I'm willing to say let's work on a redesign and see if we can make this a great site given its location. I think it's an approach that makes sense. We haven't done a study to tell you what that exact point is.

I think it has been clear in talking to many of these users down there that they're willing to continue many of these uses for a very long time, that they have a market for these uses. They do feel that given the amount of industrial land in the city, it is scarce. You know, it's sort of a scarce resource.

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They do have good access in terms of freeway.

You couldn't get better access than where these sites are in many ways for industrial uses, harder for mixed uses. That's why even more you're trying to encourage them because their distance from the subway is a little further. They're just a little more isolated, but for industrial uses and trucks, you know they can get on 395, 295, M Street, a lot of access, and I haven't found any of them in a great, how would you say, a great hurry to move on.

So, in some sense we are trying to figure out to do the incentives, not at any cost, and I think that's for the commission. I think the question this raises is if there's the willingness to really completely go back and modify and come up with a new design, which may or may not be the right design.

I think we're sort of held harmless in the sense that all of us, both Office of Planning and the Commission, there's no loss to that. We can basically say go and do a redesign and we'll see if we like it. You've heard what our designs are. We can work on what that right incentive is.

Clearly, given what they have with the budget, given what Zoning now has at the W-2 zoning,

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which really does cut back dramatically in terms of the amount of density, and I think it's a site that can handle density. It's a question of how it's handled, you know, how the massing is handled, how the height is handled, how the setbacks are handled, how the public space is handled.

I don't think in and of itself, the amount of envelope is a problem per se, that a PUD would allow them. I think it's a question of, it really is a design challenge and you know, somewhere, whether it's exactly what they had before or less than that, but I don't think it's a problem from my perspective of the development envelope.

I think it does serve as an incentive. So I guess that's the long way of saying, Madam Chairman, no we haven't done an economic study. It has been clear that the incentives, we've been trying to work with them to create incentives to move forward to this kind of development.

I think the South Capitol Gateway is a perfect PUD site, and I think what's being proposed, as I read it, the letter was, let's see if we can work out a right solution here that could work for Office of Planning, work for the Zoning Commission, that's

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going to make the kind of changes.

As I read this, the concern of the commission was would they just be cosmetic changes and were we just talking about a little nip and tuck here and there in the building. I think they're putting forward clear recognition that they want to modify their design and use in a way that provides for the incentive.

And I guess what we would do is through that process, we would be undertaking a more critical examination of what the right economics are.

In other words, rather than doing it in the abstract around industrial uses in Buzzard Point, because I think they'll have different characteristics for the different types of industries. But I think we'd be able to work with the applicant to figure out what the right, if you will, price point is.

And, I don't know what that right level density is that gives them the incentive. We could also look at what economic analysis we think makes sense and maybe there is some meeting in the middle about what that is.

CHAIRPERSON MITTEN: I appreciate everything you said, and I guess at this point, I was hoping to just focus on the fundamental question,

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because without going to whether or not I even think it's worth reconsidering our decision.

Because they set a rather ominous tone in their letter, which is you know like if you don't give us what we need, then you're going to be stuck with this. And I think that I want to understand that better, and I think that it goes far beyond what is going on, although it certainly impacts what is going on at Capitol Gateway, because we have this larger issue of planning for industrial uses.

We also have, which I would not want to repeat any mistakes that were made in the Downtown Development District Overlay, which is we tried to create exclusively an incentive for various uses and the only incentive was zoning incentives, or the only incentives were zoning incentives, instead of what we finally came to after, you know, ten or 12 years, is we said we need the zoning incentives and we need economic incentives from the city.

So, I don't want to be in a position, depending on how we go down this road again, where we get to the end of the line, after going through a process again, or with some other applicant, where we're left with, well you know what, if you don't give us what

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we need, you're going to be stuck with this use.

We need to understand that and we need to figure out if there should be some other kinds of incentives offered to move them elsewhere, and so to me there's a very big picture that needs to be examined before we just get all, you know, preoccupied with a particular case.

So you may be saying well, interesting idea but we haven't done anything specific yet and we probably won't in the foreseeable future. I just wanted to raise it and I don't know if any of the other commissioners have thoughts on that.

COMMISSIONER PARSONS: I do. On the 24th of this month, we're going to have a hearing on concrete facilities, correct? And Mr. Altman's going to make a report and I would assume much of that discussion is going to be pertinent to this, not site specific.

But he's going to be giving us a full report on this exact use and whether it can move to Prince George's County or Florida Avenue or wherever, not this facility but industrial uses. Why isn't that a way to get the information you want?

CHAIRPERSON MITTEN: I believe that the scope of the text amendment that's proposed is concrete

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plants as a matter of right in CM zones, is that, anybody? Okay, so I don't know we're going to get the full scope of what you just suggested in the context of that hearing. Now, the Office of Planning.

COMMISSIONER PARSONS: Ms. McCarthy said, you probably didn't hear what I said. What is the extent of your report for this forthcoming hearing?

CHAIRPERSON MITTEN: The concrete plants as a special exception in CM zones.

DEPUTY DIRECTOR MCCARTHY: Right. We were not looking at the market. First of all, there is some difference between the concrete batching plan and the sand and gravel operations that we're talking about on the Florida Rock site.

But in addition, what our report is looking at are specifically the kinds of adverse impacts on surrounding or neighboring properties that are experienced by concrete plants and what kind of conditions need to be in any special exceptions for special exceptions in zoning regs in order to mitigate those adverse impacts to a particular location.

We weren't planning on market issues so much. We could as part of the Anacostia Waterfront Initiative ask some of our consultants, assuming that

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Florida Rock would give us some access to some of their economic information, which I'm sure that they would be willing to do, to do some assessment of the development economics of a site like that, versus the economics of sand and gravel and concrete operations.

COMMISSIONER PARSONS: Well, I'm very, very suspicious of that. The letter said adding significant residential, materially reducing the height of the building, substantially reducing overall density, and I don't know what those words mean.

If they said 40 percent, 30 percent, 40 feet, 50 feet, something that I could relate to, I could get more enthusiastic about this.

DEPUTY DIRECTOR MCCARTHY: Well, Mr. Parsons, we did have more specific discussions with the applicant and, in fact, cautioned them against coming in with some of the schematic designs that they already worked further on, because we felt the commission didn't want to get into that kind of detail, that it was - and I know they subsequently had conversations with Mr. Bergstein, who directed them sort of along the same lines.

That if what they were talking about was asking the commission to just permit them some

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additional time in order to come back with a PUD modification, they should indicate they're willing to make major changes and do that.

I think they certainly would be happy to come back to the commission with more specifics about the extent to which they were willing to make concessions, if that would be useful to the commission in making the final decision.

It was really more our guidance to them to not try to get into the specifics of where they were talking about putting density, but they were talking about an increase in residential.

They were talking about a decrease in commercial density on that site, and some mixes of uses between the amenity site and this one, and a substantial design, going as far as to go from two buildings to three on the existing PUD site and having one of those buildings be residential.

COMMISSIONER PARSONS: Well, that's where we started you know. The eastern building was residential and well I don't know what to do. I can not deal with this. You know, they'll say we looked at it and we've cut three feet off the top of the building. Maybe you won't let them do that. And why

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didn't you tell us when you reconsidered that that it was W-2 zoning or some threshold.

It's just too important a site, as Mr. Altman said, to lead somebody down the garden path and then get upset with them when they come in here a year from now. Well, we're not making any decisions here today, but I am not persuaded by this letter that we're going to be stuck with sand and gravel operations for 15 years if this commission doesn't do something. That's all this argument is. That's what I see.

VICE CHAIRPERSON HOOD: Madam Chair, unfortunately I disagree with Mr. Parsons.

COMMISSIONER PARSONS: Surprise.

VICE CHAIRPERSON HOOD: And I disagreed with him last month when we voted. Again, in Mr. Altman's comments, I see this as the same issue in which we dealt with Capitol Point. They're asking for some flexibility and I'm not asking the commission to reconsider, because I know I was in the minority of the vote.

But I will tell you that from the letter I see here, this elaborate reinvention of the waterfront we see is going to also have a gravel pit next to it and I don't think that's exactly what we're trying to accomplish here.

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I think what we're trying to do, I would like to see us - well, I don't want to ask you to reconsider because I know that may not go through. But what I will say is that in the letter here, they're asking for an opportunity to work with the Office of Planning.

That's more than what we have now, and I would like to see a step taken as opposed to a gravel pit in this so-called elaborate waterfront in which we're trying to achieve.

And, I think we're just setting up that scenario, as we've done in the past in other cases that I hear that we have sent people down the wrong road, thinking we're giving them a chance, like we afforded the opportunity to Capitol Point, being consistent across the board is the way I think this commission should move. And again, I'm not asking for reconsideration. I'm just asking for us to reconsider what's in this letter.

CHAIRPERSON MITTEN: I'd just like to add maybe a word of support for Mr. Parsons' position, which is - and this is why I think for myself it's so important to me to understand the economics of what's going on down there in terms of these industrial uses.

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Because if this is the primary motivation and it's certainly implied by Florida Rock, then we're going - if we engage in this and what's happened is it's interesting the language of the letter from the applicant or their representatives, saying that the commission may not have recognized from their previous letter the extent that they were willing to modify the project, and so I, of course, had to reread that letter.

And, there's no misunderstanding on the part of the commission. I mean they weren't serious and they didn't get serious until we denied the request for the extension, and I think it's going to be a tug of war or it has the potential to be a tug of war with this applicant if we engage in this, and I just want to be, I want to have as much background information as they do on the economics.

And so, that's why I'm asking for it. It is premature to consider their request for consideration because the order hasn't been written and I don't feel compelled to make a motion to that effect myself, given the fact that I feel like I'm lacking some important background information.

And, we can take any other comments, if Mr. Altman or any of the commissioners had any other

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comments, and then we'll take a final thought on it.

Anybody? Okay, Mr. Altman, you can have the last word.

MR. ALTMAN: Well, based on what you're saying, Chairman, what may make sense for me is why don't at the next committee meeting, I could report back to you.

Why don't I go back and look at what kind of a scope we can put together in terms of some of the questions you're asking about the economics of the area and the industrial uses, and I mean try to do it in a way that it's not sort of - I'd like to go back and talk to the team of folks that we have working on the Anacostia Waterfront Initiative.

We have a good research base and see if I can put something together. I'd like to see if there's a way to answer that question in sort of a relatively quick way, and then if there's going to be any kind of rethinking of this, that you have that before you fairly quickly. There's obviously a larger site that needs to be done.

So, why don't I bring that back to you, some options back to you with a time frame. I'll also talk to the applicant as well and see what kind of

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information I can get from them that can help with that study, and then we can go from there, and hopefully that will be useful to you.

I think, you know, I agree. I think we want to keep in mind that it is a very special site, and just to clarify what Mr. Parsons said, just to clarify Mr. Parsons' comment about what I was saying earlier. What I was suggesting was that because of the special nature of this site, that it's a site that you probably want to engage.

If an applicant were to come to me today and I never met these folks and never saw anything, competition or anything else that had existed, I would be encouraging them and wanting to engage in a PUD for I think precisely all the reasons that Mr. Parsons would want me to.

COMMISSIONER PARSONS: Sure.

MR. ALTMAN: Which is ensure the design issues, ensure the public amenities at South Capitol because the zoning is so crude there that, crude in the sense that it sets the envelope, but it doesn't allow you to go into the kind of detail that a site like this should want to get into, putting aside the incentives.

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But I think what we're being suggested is a collaborative design process, which may or may not in the end be something you want. But in order to even engage that discussion, why don't I go back and then bring a scope forward and we can talk about it at the next appropriate commission meeting.

CHAIRPERSON MITTEN: Okay, and anything that you might have done. I know there's the impound lot and you know there's salt storage and you've been thinking about those. So anything about the broader discussion about where industrial uses might be located might be something that you want to draw into it.

And I guess I'd like to have the last word, which is maybe while we have this period of time when people are reflecting, I'd like you, Mr. Altman, to think about the fact that when you think of this and you say it should be considered as a PUD, not moving forward, this is really more time sensitive I think.

Do we want to get rid of this industrial use soon, as opposed to later? It's not a question of PUD or we're going to do something awful under matter of right. That's not what we're being threatened with basically.

So, and I don't think, I mean I think it's

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a long shot that anyone would proceed with development of this site without having it be a PUD, because there are just so many advantages to them. And so, I'd just like you to think about that in the meantime.

VICE CHAIRPERSON HOOD: Madam Chair, you can say something after me, but I do want to say the cases that you all named, and I hope that when the Office of Planning comes back, they will look across the board, across the city because every case you just named is in Ward 5. So I would hope you would look across the board for these industrial uses.

CHAIRPERSON MITTEN: Good point. Okay, so

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COMMISSIONER PARSONS: Can I say something?

CHAIRPERSON MITTEN: Yes, you may. Do you want it? You have seniority so you can have the last word. Okay. Now we have another letter from David Brown and it's regarding the process that was followed in the Office of Zoning regarding his request for a Sua Sponte consideration on the part of the Office of Zoning.

And, the policy is, and this was what was undertaken in this case, is that when we have an outside request for Sua Sponte Ricio (ph), that their policy

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has been returned to the person because Sua Sponte review is an internal process.

And while I don't have any problem with what they - I personally, and others can weigh in on it, don't have any problem with the policy that's been in place.

I think since there is no need to answer a Sua Sponte request, I think not even sending a letter, returning the request is necessary and we just accept the Sua Sponte request and leave it at that, that there needs to be no further communication from the office.

Anyone else want to weigh in on that? All right.

Then I don't think there are any other pieces of business. I would just ask the commissioners to stay behind for a scheduling discussion after the meeting is adjourned.

SECRETARY BASTIDA: Madam Chairman.

CHAIRPERSON MITTEN: Yes.

SECRETARY BASTIDA: The only thing I would like is to point out and remind on the schedule to make sure all the commissioners have that very busy schedule through the rest of June and July, and if they don't think that they will be able to attend one of those hearings or meetings, to please let me know. Thank you.

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VICE CHAIRPERSON HOOD: Madam Chair, let me just also add, I think and I want this to be on the record, I think there's definitely a better way to deal with the BZA schedule, because as commissioners I know we all are very busy.

But when I come in here on a Tuesday and see at least four of my colleagues here at the same time, I think we need to coordinate something a little better with the Board of Zoning Adjustment, so that you won't have four and five commissioners coming in once every week. So it's really something that we really need to work on because I think it's getting out of hand.

CHAIRPERSON MITTEN: Yes, if the staff could do anything to facilitate, you know, easing the burden on the commissioners, because conceivably we come in for the day, we serve on the hearing, and then we may be called down for yet another vote at a public meeting.

And as Mr. Hood said, sometimes there's four or five of us down here in a morning. So, I don't know what can be done, but we would request that something, just consideration be given to that. And then, Mr. Bastida, you and I had spoken earlier about the public hearing on July 29th.

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SECRETARY BASTIDA: That is correct, Madam Chairman and, in fact, I have not notified the individuals of the second hearing yet, so I am going to republish and put it for the second half of September, early October. I notified all the individuals that, in fact, that would be the definite date of that hearing.

CHAIRPERSON MITTEN: Thank you. Anything else before we adjourn?

SECRETARY BASTIDA: No, we would like to go home.

CHAIRPERSON MITTEN: Okay. Since there's no other business, I now declare this public meeting adjourned.

(Whereupon, the above-entitled matter was concluded at 4:20 p.m.)

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