

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING  
1102nd MEETING SESSION (8th OF 2000)

+ + + + +

MONDAY

JULY 10, 2000

+ + + + +

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairperson
CAROL J. MITTEN	Vice Chairperson
KWASI HOLMAN	Commissioner
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Jerrily R. Kress,	Director, Office of Zoning
Alberto Bastida,	Secretary, Zoning Commission
Stefanie D. Brown,	Office of Zoning
Vincent C. Erondy,	Office of Zoning

## OTHER AGENCY STAFF PRESENT:

Andrew Altman,	Director, Office of Planning
Steven Cochran,	Office of Planning
Ellen McCarthy,	Office of Planning

## D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.  
Marie Sansone, Esq.

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

1:50 p.m.

MR. BASTIDA: Mr. Chairman, the staff is ready to proceed.

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the D.C. Zoning Commission, July 10, 2000 at 1:50 p.m. Again, I apologize for the lateness. We will move as expeditiously as possible.

Moving right along with our agenda, preliminary matters. Mr. Bastida, we have none? Action on the minutes, Mr. Bastida.

MR. BASTIDA: The staff requests approval of the minutes of the June 12 meeting.

CHAIRPERSON HOOD: Colleagues, you have had a chance to look through the minutes of our June 12, 1:30 p.m. meeting.

VICE CHAIRPERSON MITTEN: I have a couple of changes I would like to suggest, Mr. Chairman.

CHAIRPERSON HOOD: Sure.

VICE CHAIRPERSON MITTEN: On page three under number 7, the -- what is noted here is that we authorized the temporary use of Petworth School for the Regional Police Operations Command, and that is not what we did. It was not site specific. So I would propose deleting -- at a minimum deleting the words Petworth School, located at 801 Shepard Street. But

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1 actually what we had approved -- the specific language was we  
2 authorized on an emergency basis the use of temporary modular  
3 facilities to serve as regional operation commands in R-4  
4 Districts as a matter of right for 120 days. And then following  
5 that sentence, "Within the 120 day period, the Commission shall  
6 consider a city-wide text amendment" -- it says to permit, and it  
7 was to accommodate. So we were going to determine how we would --  
8 we wouldn't -- the purpose of it was to deal with it, not  
9 necessarily to permit it. So I would like the language of number  
10 7 to be more clear.

11 MR. BASTIDA: The staff would be glad to make those  
12 changes.

13 VICE CHAIRPERSON MITTEN: And I can provide you  
14 that in writing if it would be more helpful.

15 MR. BASTIDA: Yes, that would be very helpful, Ms.  
16 Mitten.

17 VICE CHAIRPERSON MITTEN: And then the language of  
18 number 4 on page 4 is also not specifically what we voted on, and  
19 I don't know if you would like me to repeat it all. But I have  
20 the specific language that we voted on that I would like that to  
21 be included in number 4.

22 MR. BASTIDA: Yes, if you can provide it to me, I  
23 would be glad to do so.

24 VICE CHAIRPERSON MITTEN: All right. And then page  
25 6, under the consent calendar item, A2 -- "The Commission reviewed

1 and considered the request and the letters in support of the  
2 extension." There were no letters of support. The Commission  
3 reviewed and considered the request and the Office of Planning  
4 report is what I would suggest. There were no letters.

5 MR. BASTIDA: Thank you.

6 VICE CHAIRPERSON MITTEN: And on number 3, since  
7 this may be the thing that we go back to a year from now, I would  
8 like to include the reason why Mr. Parsons had recommended that  
9 this be extended only for one year, and that was because this area  
10 -- this Buzzard Point area is under study by the Office of  
11 Planning, and the one-year extension would more easily accommodate  
12 any changes that might result because of that study. And I would  
13 like that to be included so that we can a year from now recall  
14 what motivated the one-year extension.

15 MR. BASTIDA: Ms. Mitten, now that we have the  
16 transcript, we can do that verbatim.

17 VICE CHAIRPERSON MITTEN: That is all I have, Mr.  
18 Chairman.

19 CHAIRPERSON HOOD: Is that all?

20 VICE CHAIRPERSON MITTEN: I have more, but I am not  
21 going to say any more.

22 CHAIRPERSON HOOD: Okay, colleagues, first are  
23 there any problems with the additions that Ms. Mitten -- anyone  
24 see it any different? The only other thing -- I only have one  
25 thing that I wanted to pose, and I didn't see it. I asked for a

1 letter or something stating from the Office of Planning dealing  
2 with the specific cases that were listed. I am not exactly sure  
3 how I stated it, because that was last month and I didn't see it  
4 in the minutes. So I think something should reflect me asking that  
5 of the Office of Planning.

6 MR. BASTIDA: Yes, Mr. Chairman, we will add that  
7 to the minutes.

8 CHAIRPERSON HOOD: Any other additions or comments  
9 to the minutes? Then I would like to get a motion to adopt the  
10 minutes.

11 COMMISSIONER HOLMAN: So moved.

12 CHAIRPERSON HOOD: Second?

13 VICE CHAIRPERSON MITTEN: Second.

14 CHAIRPERSON HOOD: It is moved and properly  
15 seconded. All those in favor by the usual sign of voting.

16 ALL MEMBERS: Aye.

17 CHAIRPERSON HOOD: Any opposition? So ordered.  
18 Staff, would you record the vote?

19 MS. BROWN: Staff would record the vote as 4 to 0  
20 to approve the minutes with changes. Mr. Holman, Ms. Mitten and  
21 Mr. Hood and Mr. Parsons approved and Mr. Franklin not present and  
22 not voting. Thank you.

23 CHAIRPERSON HOOD: Mr. Bastida, did Mr. Franklin  
24 leave a proxy on the minutes?

25 MR. BASTIDA: No, Mr. Parsons -- I am sorry, Mr.



1 Franklin left a proxy for something -- another item, but not for  
2 the minutes.

3 CHAIRPERSON HOOD: Okay. Thank you. Moving right  
4 along with our agenda. Status report from the Office of Planning.

5 MS. MCCARTHY: Yes, Mr. Chairman. You have before  
6 you a matrix that the Office of Planning prepared, which listed  
7 the cases that you had specifically inquired about and others that  
8 we had been reporting about on our monthly status reports. For  
9 each case, the staff person responsible, which action is required  
10 overall, and then individual or shorter term actions that are  
11 required for each case when there is a final product or action  
12 due, if that has been determined. And then if there are  
13 outstanding issues that need to be resolved, what those might be.

14 It is a fairly extensive list, so I didn't know if  
15 you wanted me to go through each or if you just had a few that you  
16 had questions about that you wanted me to touch on.

17 CHAIRPERSON HOOD: Ms. McCarthy, can you hold one  
18 second? Colleagues, I think we just got this and I know I haven't  
19 really had a chance to go over it. But from looking at it  
20 preliminarily, it looks to be very much so in depth. If we had  
21 any questions that just popped out right quick. If not, Ms.  
22 McCarthy, you can just do a general overview.

23 MS. MCCARTHY: Okay. If I go to the cases that are  
24 listed on the agenda for today -- maybe the easiest thing is to  
25 just go down the ones listed on the agenda, because I know those

1 are the ones that are of most concern to you. I know you are  
2 aware for number 1 and number 2, the campus plan cases, that the  
3 roundtable has been scheduled for July 27. I just found that out.

4 So based on what comes out of the roundtable, we will be  
5 preparing something to go forward. If it looks like there is a  
6 consensus or it looks like there are some issues worth going  
7 forward on in terms of redrafting the zoning regulations.

8 99-12, that is a relooking at Chapter 17 on the  
9 TDR's, and I believe as we reported the last time, the Downtown  
10 Action Plan is taking a second look at that whole section of  
11 downtown, Downtown East, and expects to convene a Downtown Task  
12 Force. I believe the meeting has been scheduled for later on this  
13 month and to have everything finalized in terms of new positions  
14 with regard to downtown east by September. So based on that, we  
15 will then look at whether there is a need to make changes to the  
16 HR overlay or to the DDD provisions with regard to Downtown East.

17 The Welch family rezoning -- the attorney in that  
18 case has proposed that they prepare a draft overlay zone which  
19 would meet the Office of Planning's concerns that we not change  
20 the zoning in such a fashion that office use could be as a matter  
21 of right in that zone merely because we are trying to enable a  
22 convention center hotel. So we agree that there is a need to  
23 increase the density of what is permitted in that zone, but we  
24 want to do it in a fashion that doesn't permit office development  
25 as a matter of right. So the applicant has suggested that they

1 prepare a zoning overlay, and we are just awaiting their  
2 preparation of that.

3 Number 5, the Wilco case with regard to Square  
4 701. The applicant -- we have spoken with the applicant and they  
5 have agreed to wait until September in conjunction with the work  
6 that the Office of Planning is doing on the waterfront.

7 Number 6, the time extension for 4th and K Street.  
8 We did submit a report on that, I believe, a month ago. Oh, I am  
9 sorry, Mr. Cochran is reminding me that the discussion with the  
10 applicant with regard to the Wilco case was September or October  
11 when we would meet with them and then get back to the Zoning  
12 Commission.

13 CHAIRPERSON HOOD: Ms. McCarthy, I think you are  
14 reading from the agenda -- you are reading from our agenda. Is  
15 that what you are reading from, each case specifically?

16 MS. MCCARTHY: Yes.

17 CHAIRPERSON HOOD: Let's refrain -- let's not do  
18 that. I think that we can look here.

19 MS. MCCARTHY: Okay.

20 CHAIRPERSON HOOD: I thought you meant the cases  
21 that we were going to deal with today.

22 MS. MCCARTHY: Oh.

23 CHAIRPERSON HOOD: I misunderstood. No, I don't  
24 think there is any need -- colleagues, and if you think so -- that  
25 she goes down each one of them list by list. I think we have it in

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1 front of us. I do have one question of the status report that we  
2 have here in front of us. The final product and action due, the  
3 dates -- I notice a lot of them are still uncertain and we don't  
4 have any dates. Is that because -- I guess you are still in  
5 conversations with the community and all interests involved?

6 MS. MCCARTHY: Right. In some instances  
7 -- like on the first page you see at the bottom it says uncertain,  
8 and that is just because it is not clear when the draft rezoning  
9 is going to come from the applicant's counsel. The one about that  
10 is Square 701, and that was we have had this discussion and the  
11 applicant has said, okay, they will do some further work thinking  
12 about whether housing could go on this site. So we agreed to look  
13 at September or October as a time frame for them making that  
14 decision. So there is a lot of -- in almost all of those  
15 instances, you will see an outstanding issue listed over on the  
16 right, which is something that needs to be resolved in order for a  
17 final deadline to be set.

18 CHAIRPERSON HOOD: Okay. Now are we going to be  
19 providing this every month hopefully?

20 MS. MCCARTHY: Is that a format that is useful to  
21 you?

22 CHAIRPERSON HOOD: I think it is good. That way we  
23 can really have a status of exactly what the outstanding issues  
24 are, what dates that you all will be finished with them and when  
25 it will come to the Zoning Commission. That kind of keeps us up-

1 to-date.

2 MS. MCCARTHY: Okay. No, that would be great  
3 because it is a format we use internally. So that is nice to have  
4 a consistent format to use with the Commission as well.

5 CHAIRPERSON HOOD: From my perspective, I really  
6 appreciate this. This kind of lets us know where we are. I want  
7 to commend the Office of Planning on this one. Colleagues, any  
8 other questions for the Office of Planning? I see we have been  
9 joined by the Director of the Office of Planning, Mr. Andy Altman.

10 No further questions for the Office of Planning? Okay, thank  
11 you, Ms. McCarthy.

12 Okay, moving right along with our agenda. Hearing  
13 Action, Office of Planning. I will let the Office of Planning  
14 deal with that. Hearing Action, Office of Planning.

15 MR. BASTIDA: May I interrupt, Mr. Chairman? The  
16 Office of Planning usually do the hearing actions, but I have -- I  
17 think that they are not aware of the Yale Steam Limited  
18 Partnership letter. And if they would like my assistance, I would  
19 be glad to do so.

20 CHAIRPERSON HOOD: I really think we can probably  
21 cut that short. Colleagues -- Mr. Bastida, if you will hold a  
22 second. Colleagues, we have a letter requesting postponement. I  
23 am sure all of us have read it. Do we have any problems  
24 postponing or would we like to talk about it? Ms. -- Commissioner  
25 Mitten?

1 VICE CHAIRPERSON MITTEN: I was just going to make  
2 a motion.

3 CHAIRPERSON HOOD: Oh, sure. We can expedite.  
4 Good.

5 VICE CHAIRPERSON MITTEN: I move that we postpone  
6 consideration of Case No. 00-01 regarding the Yale Steam Limited  
7 Partnership until our September meeting.

8 COMMISSIONER HOLMAN: Second.

9 CHAIRPERSON HOOD: It has been moved and seconded.  
10 All those in favor by the usual sign of voting.

11 ALL MEMBERS: Aye.

12 CHAIRPERSON HOOD: Any opposition? So ordered.  
13 Staff, would you record the vote?

14 MS. BROWN: Staff will record the vote as 4 to 0 to  
15 postpone 00-01 until the September meeting. Carol Mitten, Kwasi  
16 Holman, Mr. Hood and Mr. Parsons to postpone. Mr. Franklin not  
17 voting and not present. Thank you.

18 CHAIRPERSON HOOD: Okay.

19 MR. BASTIDA: Mr. Chairman, if I may interrupt  
20 again.

21 CHAIRPERSON HOOD: Sure.

22 MR. BASTIDA: On the item B, there is a dual  
23 request, one for an emergency legislation and another for a set-  
24 down. I think that you might also like to have the input from  
25 Corporation counsel besides the input of the Office of Planning,

1 if any.

2 CHAIRPERSON HOOD: Okay. Why don't we do the --  
3 let the Office of Planning do their report and then we will come  
4 back and hear from Corporation counsel and then colleagues we will  
5 discuss it. So Hearing Action -- thank you, Mr. Bastida. So  
6 Hearing Action, Office of Planning.

7 MS. MCCARTHY: The Office of Planning doesn't have  
8 a report with regard to the emergency rezoning because we just  
9 received it in our package. Unfortunately, I was out of town, so  
10 I received it this morning.

11 CHAIRPERSON HOOD: There seems to be a lot of that  
12 going around. Mr. Bastida, could you comment on the emergency for  
13 us, please?

14 MR. BASTIDA: I would request for Corporation  
15 counsel to make comments on that.

16 CHAIRPERSON HOOD: Okay.

17 MR. BASTIDA: Mr. Bergstein.

18 CHAIRPERSON HOOD: Okay. Ms. Sansone?

19 MR. BASTIDA: Oh, Ms. Sansone.

20 MS. SANSONE: Mr. Chairman, I didn't receive this  
21 either until just a few moments ago, and I am not familiar with  
22 Mr. Bergstein's concerns. Perhaps he has spoken with Mr. Bastida,  
23 but I can't comment on them.

24 CHAIRPERSON HOOD: Okay.

25 MR. BASTIDA: Mr. Chairman, the concern for the

1 emergency legislation is that Corporation counsel determined that  
2 the applicant doesn't meet the APA requirements for emergency  
3 legislation and accordingly advises negatively about having an  
4 emergency legislation.

5 CHAIRPERSON HOOD: Mr. Bastida, I believe that we  
6 have sufficient time -- if it wants to be set down, to set it down  
7 for a hearing before the applicant goes in front of the Board of  
8 Zoning Adjustment, am I correct?

9 MR. BASTIDA: Likely.

10 CHAIRPERSON HOOD: I think they are going in  
11 October. Will that -- if we just set it -- if we set it down -- I  
12 am just trying to get my thoughts together. If we did set it down,  
13 not on an emergency basis, will we still have the required time to  
14 post and also to be able to set it down and have an actual hearing  
15 before their date that they need before going before the Board of  
16 Zoning Adjustment?

17 MR. BASTIDA: Yes, you will have the time to have a  
18 hearing prior to the considerations by the Board of Zoning  
19 Adjustment.

20 CHAIRPERSON HOOD: Okay. Colleagues, in front of us  
21 we have a request from Wilkes Artis Chartered to have emergency  
22 legislation. We have read the submittals. What are your comments  
23 or pleasure?

24 VICE CHAIRPERSON MITTEN: I guess I will begin with  
25 a comment, which is I think this is -- what they are asking for is



1 very reasonable. And I was actually surprised to learn after  
2 becoming a Zoning Commissioner that when area-wide rezonings take  
3 place that the underlying zoning of a PUD isn't automatically  
4 changed. So I think that it is very appropriate that we should go  
5 forward quickly on this specific case, but also on just the  
6 general notion that when a rezoning takes place in an area that  
7 that wouldn't become the zoning to which the property would revert  
8 if the PUD expired.

9 CHAIRPERSON HOOD: Any other comments?

10 COMMISSIONER PARSONS: I disagree with Ms. Mitten,  
11 but I am not sure what we are here for.

12 CHAIRPERSON HOOD: Actually --

13 COMMISSIONER PARSONS: What is it we  
14 are --

15 CHAIRPERSON HOOD: What we are trying to do --

16 COMMISSIONER PARSONS: Bergstein says we shouldn't  
17 grant this. So are you asking us to set this down for hearing?

18 MR. BASTIDA: Well, Mr. Bergstein said -- oh, I am  
19 sorry.

20 CHAIRPERSON HOOD: We are dealing with the  
21 emergency. First, we are trying to see whether or not we should  
22 deal with this on an emergency basis to allow the applicant  
23 flexibility -- I don't think we are going to lose either way. But  
24 let me just say we are allowing them flexibility to be able to go  
25 in front of the Board of Zoning Adjustment on an emergency basis

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1 to change the -- they are asking us for a map amendment. So they  
2 want us to change that before October -- I am not sure of the  
3 date. I am going off the top of my head and that is bad -- October  
4 3. I still think that if we set it -- if we did it in a timely  
5 manner, we will would have time. And I think that is what the  
6 applicant also has put into their submittals. So we are trying to  
7 see now, Mr. Parsons, whether or not we should do this on an  
8 emergency basis. Make this amendment on the emergency  
9 legislation.

10 COMMISSIONER PARSONS: Well, the first time we are  
11 going to have a hearing on this is in September. The first time we  
12 will be able to make a decision on this is after October 3, unless  
13 we make a decision that night or that day, right?

14 CHAIRPERSON HOOD: Right. You are right.

15 COMMISSIONER PARSONS: We are forcing ourselves  
16 into a bench decision.

17 CHAIRPERSON HOOD: Or we are going to make a  
18 decision here now without any input from the surrounding areas,  
19 community or advertising. So that is why I am real skeptical about  
20 doing it Ms. Mitten's way.

21 VICE CHAIRPERSON MITTEN: Well, maybe I didn't -- I  
22 was making a comment. I was not endorsing that this is an  
23 emergency.

24 CHAIRPERSON HOOD: That is right.

25 VICE CHAIRPERSON MITTEN: In fact, I don't think

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1 this rises to that level. But I would recommend that we could go  
2 forward with a hearing in September. And if at the close of that  
3 hearing, we could either render a bench decision or couldn't we do  
4 emergency action at that point, if that is what we wanted to do?

5 CHAIRPERSON HOOD: Right. That particular night,  
6 we could do an emergency action right there on the spot.

7 VICE CHAIRPERSON MITTEN: So, I mean, if you want a  
8 recommendation as opposed to a comment --

9 CHAIRPERSON HOOD: Here we go, comments and  
10 recommendations. I just thought that was the way that you wanted  
11 to proceed with making this emergency legislation. But if not, I  
12 will --

13 VICE CHAIRPERSON MITTEN: No.

14 CHAIRPERSON HOOD: Okay. Excuse me.

15 VICE CHAIRPERSON MITTEN: I think that you had a  
16 good idea, which is to have a hearing in September.

17 CHAIRPERSON HOOD: Okay. That sounds good. I had a  
18 good idea.

19 MR. BASTIDA: Mr. Chairman?

20 CHAIRPERSON HOOD: Mr. Bastida?

21 MR. BASTIDA: When you talked to me, you said if  
22 you could have the hearing prior to the case being in front of the  
23 Board. That is correct. But that means that there will not be a  
24 zoning category assigned to the site. Accordingly, the applicant  
25 will have to postpone the hearing date in front of the Board

1 because the Board cannot make a decision without the zoning being  
2 applied to the site.

3 VICE CHAIRPERSON MITTEN: I am sorry, Mr. Bastida.

4 Did you just say the BZA can't make a decision without the zoning  
5 in front of it?

6 MR. BASTIDA: Well, no, I am sorry.

7 VICE CHAIRPERSON MITTEN: They have a hearing  
8 scheduled with the BZA.

9 MR. BASTIDA: That is right.

10 VICE CHAIRPERSON MITTEN: And presumably with their  
11 old zoning, since that is all they have.

12 MR. BASTIDA: Right.

13 VICE CHAIRPERSON MITTEN: So there is nothing -- as  
14 long as they have something concrete by their hearing before the  
15 BZA, they are fine.

16 MR. BASTIDA: I stand corrected. I had forgotten  
17 that there is an existing HR/SP2 zoning on the site and that is  
18 what they have applied under.

19 CHAIRPERSON HOOD: And one of my concerns -- and I  
20 am looking for the map -- right next to where they are proposing  
21 that we make the amendment, I believe it was R-5-E. And I am  
22 looking for that as a -- R-5-E. And I wanted to make sure that we  
23 get input or at least allow opportunity for the people in that  
24 area to give their input. So if we do it emergency now, we are  
25 excluding input, and I am not in favor of doing that.

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1 COMMISSIONER PARSONS: Mr. Chairman, I move we set  
2 this down for a public hearing on an expedited basis.

3 COMMISSIONER HOLMAN: Second.

4 CHAIRPERSON HOOD: You pulled a fast one on me. I  
5 am running a little slow here. Are we going to dissolve of the  
6 emergency or we don't need to do that? I think we were dealing  
7 with the emergency -- whether or not we should deal with this as  
8 an emergency first. I don't want any misunderstanding.

9 VICE CHAIRPERSON MITTEN: Mr. Chairman, I think --

10 CHAIRPERSON HOOD: We do have a motion on the  
11 table, but I wanted to clear that up with Mr. Parsons.

12 COMMISSIONER PARSONS: You mean you want two  
13 motions, one to deny the emergency request?

14 CHAIRPERSON HOOD: No. I wanted you to just make  
15 sure that in your motion we state that we are not dealing with  
16 this as an emergency or that we were. I am not sure. That is what  
17 I need to be clarified.

18 COMMISSIONER PARSONS: I guess if we were dealing  
19 with it on an emergency basis, we would not have a hearing.

20 CHAIRPERSON HOOD: Okay.

21 COMMISSIONER PARSONS: What I was trying to do was  
22 leave the option open at the end of that hearing process to deal  
23 with it on that basis. But at the same time, we haven't heard Mr.  
24 Bergstein tell us why he doesn't think this is an emergency.

25 CHAIRPERSON HOOD: Commissioner Parsons, I think

1 what you were saying was in order. I just wanted to make sure that  
2 all of us were clear, especially those who are listening in the  
3 audience. But before we do that, if we could hold the motion and  
4 hear from Mr. Bergstein and then come back to Mr. Parsons' motion.

5 Mr. Bergstein?

6 MR. BERGSTEIN: I really don't have a position as  
7 to whether or not this is or is not an emergency. The only thing  
8 I wanted to call to the Commission's attention was the requirement  
9 under the APA that must be met in order for the Commission to find  
10 that this is an emergency, which is stated in 1-1506C that "public  
11 comment is not necessary if an emergency as determined by a mayor  
12 or an independent agency the adoption of rule" -- and this is the  
13 language that the Commission needs to focus on -- "is necessary  
14 for the immediate preservation of public peace, health, safety,  
15 welfare or morals." You can interpret that phrase in conjunction  
16 with the relief requested here to determine whether or not this  
17 does invoke public welfare in terms of the importance of the  
18 project that has been provided to you. But I wanted the Commission  
19 to be aware of the standard that is required under the APA in  
20 order to proceed on an emergency basis.

21 CHAIRPERSON HOOD: Okay.

22 MR. BERGSTEIN: I can provide each one of you with  
23 a copy of the relevant section.

24 CHAIRPERSON HOOD: Thank you, Mr. Bastida, I think  
25 -- I am sorry, Mr. Bergstein. So I think we could -- with that,

1 we have a motion on the table. I think Mr. Parsons has clarified  
2 his motion. Any more in readiness? And I think it has been  
3 seconded, am I correct?

4 MS. BROWN: Yes.

5 CHAIRPERSON HOOD: Okay. Any more questions?

6 VICE CHAIRPERSON MITTEN: Well, I don't know if  
7 this could just be -- I mean, I think this falls under the same  
8 category and it is within the language of the motion. But given  
9 that at the end of that hearing we are either going to render a  
10 bench decision or we are going to consider taking emergency action  
11 that we would ask the applicant to make a presentation about -- a  
12 specific presentation about how they meet the standard under APA  
13 for an emergency.

14 MR. BASTIDA: For clarification, Ms. Mitten, you  
15 are saying the applicant at the time of the hearing should make  
16 that for the record?

17 VICE CHAIRPERSON MITTEN: Yes.

18 MR. BASTIDA: Thank you.

19 CHAIRPERSON HOOD: Mr. Parsons, does that sound  
20 suitable to go along with your motion?

21 COMMISSIONER PARSONS: Well, I think they would  
22 remind us that they did that on page 3 of this memorandum. But I  
23 -- or attempted to. But if we need more information, that is  
24 fine. I am sure they will do that.

25 CHAIRPERSON HOOD: Okay. So it has been moved and

1 seconded. All those in favor by the usual sign of voting?

2 ALL MEMBERS: Aye.

3 CHAIRPERSON HOOD: Any opposition? So ordered.  
4 Staff, would you record the vote?

5 MR. BASTIDA: Mr. Chairman, Mr. Franklin will vote  
6 in proxy in favor.

7 CHAIRPERSON HOOD: Mr. Bastida, I was just  
8 reminded. I think we need to make sure that we have a date. But  
9 we can do that after you record the vote.

10 MR. BASTIDA: That is right.

11 CHAIRPERSON HOOD: Okay.

12 MR. BASTIDA: But usually the staff work that with  
13 the applicant to set it up for the date and we will be glad to do  
14 that for the date. If you want me to do it now before the hearing  
15 is over, I will be glad to do that.

16 CHAIRPERSON HOOD: Let's just try to accommodate  
17 and do it before the hearing. Again, the motion stated in an  
18 expedited manner.

19 MR. BASTIDA: Right. Yes.

20 CHAIRPERSON HOOD: Okay. If you can just record  
21 the vote now.

22 MR. BASTIDA: Yes. Stefanie?

23 MS. BROWN: Staff would record the vote as 4 to 0  
24 by Mr. Parsons, Mr. Holman, Mr. Hood and Ms. Mitten to set for a  
25 public hearing on an expedited basis, and Mr. Franklin not present



-- I am sorry, Mr. Franklin in favor by proxy.

MR. BASTIDA: Mr. Chairman, I think that the staff would like to request that you take an action on the proposed rulemaking or defer that and put it on the record for sometime in the future.

CHAIRPERSON HOOD: Proposed rulemaking? You lost me, Mr. Bastida.

MR. BASTIDA: I mean, the emergency rulemaking -- the emergency rulemaking, I am sorry.

CHAIRPERSON HOOD: Emergency --

MR. BASTIDA: Related to this case. There are two things in front of you.

CHAIRPERSON HOOD: That is right. And I think that is why I had asked, Mr. Bastida, that Mr. Parsons kind of clarify that. Because we have -- we are going to have a hearing. We are not going to do it today as an emergency. There may be a chance that after the hearing, if everything is equal and everything is - - you know, depending upon this Commission that we may take an action at the end of that hearing.

COMMISSIONER PARSONS: On an emergency basis.

CHAIRPERSON HOOD: On an emergency basis if we have to.

MR. BASTIDA: Okay. I am sorry. Thank you.

CHAIRPERSON HOOD: Okay?

MR. BASTIDA: Yes, it is clear now. Thank you.

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CHAIRPERSON HOOD: Okay. And next moving right along with our agenda. Hearing Action, Office of Planning, number C -- alphabet C.

MR. COCHRAN: The Office of Planning has received an application from -- actually, the Office of Zoning receive an application from GSF Realty to set down a public hearing on the redevelopment of a site owned by GSF Realty in Northwest Washington. The site is approximately 3.2 acres. It is about two blocks north of the Washington National Cathedral. It is bound on the east by Wisconsin Avenue, on the north by Newark Street, on the west by Idaho Avenue, and on the south by a line running parallel to both Macomb and Newark Street, just to the north of Macomb Street.

Approximately two-thirds -- well, approximately one-third of the site which runs on Wisconsin Avenue is now zoned MW/C1. This stands for the Macomb-Woodley overlay zone, neighborhood overlay zone, with C1 as the underlying zoning, and the other two-thirds is R-5-A, that is to the west of the MW/C1 zoning.

The applicant currently has a Giant Food Store on the property that was developed in the 1950's. The applicant also owns adjacent property which has a C.F. Murphy, whose lease is running out at the end of this year, as well as two stores that front on the parking lot that is used for the Giant Food Store. The applicant also owns property to the north of Newark Street.

1           The applicant is asking for a consolidated PUD and  
2 map amendment to rezone the entire property to MW/C1 in order to  
3 develop both a larger Giant Food Store and Pharmacy and a  
4 structured parking lot that would serve the Giant, the Pharmacy,  
5 shops that would be built in conjunction of this, offices that  
6 would be on the second floor, and probably overflow parking for  
7 the property that the applicant also owns on the north side of  
8 Newark Street.

9           The Office of Planning recommends that this  
10 application be set down for a public hearing, and I can go into  
11 details if the Commission desires.

12           CHAIRPERSON HOOD:       Thank you, Mr. Cochran.  
13 Colleagues we have read the submittals. We have also read the  
14 Office of Planning's report. We just heard the statements of Mr.  
15 Cochran and the position of the Office of Planning. Any questions  
16 of the Office of Planning or something you want to put on record  
17 that maybe the applicant -- if it is set down, the applicant may  
18 come back with or however we choose to proceed.

19           VICE CHAIRPERSON MITTEN:   I have a question, Mr.  
20 Chairman.

21           CHAIRPERSON HOOD:       Of me or of the Office of  
22 Planning?

23           VICE CHAIRPERSON MITTEN:       Of the Office of  
24 Planning.

25           CHAIRPERSON HOOD:   Good. Thank you.

1 VICE CHAIRPERSON MITTEN: In the submittal by the  
2 applicant and then again in the Office of Planning report, the  
3 comment is made that the entire site on the generalized land use  
4 map is in the low density commercial land use category. And I have  
5 a copy of that map, and I don't know if it is the most current one  
6 or if there is an error on it, but according to my map, it is not  
7 entirely in that category.

8 MR. COCHRAN: The zoning map, as you know, is  
9 purposefully soft-edged so that no particular parcel is included  
10 as -- the map is not supposed to indicate any particular parcel  
11 within the land use element map. The majority of the site is  
12 shown as being within that respective use, and we feel that it is  
13 not inconsistent with the map and therefore it deserves a hearing.

14 Certainly this issue will come up from some people in the  
15 neighborhood. But again, I would stress that the map is left  
16 purposefully soft-edged for just this question -- kind of  
17 question.

18 VICE CHAIRPERSON MITTEN: And I am not suggesting  
19 that we shouldn't set it down for a hearing. I am just suggesting  
20 that it bears discussion. If somebody in choosing to put the  
21 colors on the map chose to put yellow instead of pink, then that  
22 is worth talking about. So that is something that I would like to  
23 see discussed going forward.

24 MR. COCHRAN: We will do that.

25 VICE CHAIRPERSON MITTEN: And I guess I would just

1 like to raise a couple of concerns that I believe from the Office  
2 of Planning report have already been raised which is things  
3 related to the truck traffic and loading near residential uses and  
4 the purpose of the gate from 38th Street and what sort of traffic  
5 would be accommodated there as well as the other issues that were  
6 raised in the Office of Planning report. And I find that I have  
7 one additional question if you know the answer. On drawing A-2-2,  
8 it shows 45 parking spaces on a parcel that is on the, I guess,  
9 north side of Newark Street. It is right next to where it says  
10 existing Crestar Bank.

11 MR. COCHRAN: Okay.

12 VICE CHAIRPERSON MITTEN: Do you see where it says  
13 that?

14 MR. COCHRAN: Right.

15 VICE CHAIRPERSON MITTEN: Are those 45 spaces in  
16 the 414 or 417 spaces -- that total number? Or I don't understand  
17 why they are being shown on this drawing that way.

18 MR. COCHRAN: I don't know either. I don't know  
19 whether those spaces are included or not.

20 VICE CHAIRPERSON MITTEN: Okay. If we can get that  
21 sorted out at some point too.

22 MR. BASTIDA: Mr. Chairman, could I interrupt?

23 CHAIRPERSON HOOD: Sure.

24 MR. BASTIDA: The Office of Zoning received two  
25 letters regarding this application and has provided copies to the

1 Commission. One from Advisory Neighborhood Commission 3C and  
2 another from Committee to Examine the Giant Giant. And I just  
3 want to put into the record that you have received that  
4 information and you have read it and have taken it into account on  
5 your decision.

6 CHAIRPERSON HOOD: Mr. Bastida, again because of  
7 the late mailman, I am reading it as my other colleagues are  
8 asking questions. But we will -- I will comment on that at the  
9 end of our questioning period with the Office of Planning.

10 MR. BASTIDA: Okay, thank you.

11 CHAIRPERSON HOOD: Mr. Parsons, do you have any  
12 questions?

13 COMMISSIONER PARSONS: Maybe this is contained  
14 within the materials, but I am concerned about the lighting within  
15 the parking garage and its appearance on Idaho Avenue and the  
16 artificial stone that is being used in the retaining walls. Not  
17 that any of that needs to be answered today, but I would like to  
18 see that in the submission. I am sorry, I meant to say I don't  
19 see any lighting on the upper deck of the parking garage either.

20 CHAIRPERSON HOOD: Okay. No further questions?  
21 Okay, thank you. Colleagues, we have in front of us whether or  
22 not to set down the case number 00-12C, lots 56, 57 and 58, map  
23 amendment Square 1920. Before I address these two letters and we  
24 come up with some type of rationale or date for the concerns of  
25 the Committee To Examine the Giant Giant and the Advisory

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1 Neighborhood Commission 3C, first I would like to see whether or  
2 not we choose to either set it down for a hearing or postpone it  
3 or whatever your pleasure.

4 COMMISSIONER HOLMAN: You made it kind of tough  
5 because I was going to say in light of the ANC letter, I would  
6 like to have it set down in a time frame that accommodates the  
7 concerns of the ANC.

8 CHAIRPERSON HOOD: Believe me, that is exactly what  
9 I was going to address. But I wanted to see first if we was going  
10 to set it down first. And I think they are asking for sometime in  
11 late October or November. But I think if we choose to,  
12 colleagues, we could set it down or not set it down and then we  
13 can address their letters and try to hope we find a happy medium  
14 between the applicant and the ANC, afford them the same  
15 opportunity, especially since they are most affected.

16 MR. COCHRAN: Mr. Chair?

17 CHAIRPERSON HOOD: Mr. Cochran?

18 MR. COCHRAN: The Office of Planning has spoken  
19 both with the Chair of the ANC and with the applicant, and neither  
20 side seems to have a problem with the -- should the Zoning  
21 Commission decide to set the case down now but not have a hearing  
22 until perhaps October. They weren't necessarily pushing for the  
23 absolutely soonest hearing date.

24 CHAIRPERSON HOOD: Okay. That is good. Good.  
25 Okay, so that may ease up your motion, Mr. Holman.

1 COMMISSIONER HOLMAN: In that event, then, I would  
2 move that we set the -- goodness, the case number is escaping me -  
3 -

4 CHAIRPERSON HOOD: 00-12C.

5 COMMISSIONER HOLMAN: Yes, set 00-12C down for a  
6 hearing during the month of October.

7 COMMISSIONER PARSONS: Second.

8 CHAIRPERSON HOOD: Okay, it has been moved and  
9 properly seconded. All those in favor by usual sign of voting.

10 ALL MEMBERS: Aye.

11 CHAIRPERSON HOOD: Any opposition? So ordered.  
12 Staff, would you record the vote?

13 MS. BROWN: Staff will record the vote as 4 to 0 to  
14 set down case number 00-12C, Mr. Holman, Mr. Parsons, Mr. Hood and  
15 Ms. Mitten. Mr. Franklin -- did you get a --

16 MR. BASTIDA: No. The staff has not proxy from Mr.  
17 Franklin regarding this matter.

18 MS. BROWN: Okay, Mr. Franklin not presenting and  
19 not voting. Thank you.

20 CHAIRPERSON HOOD: Okay. Mr. Bastida, if we could,  
21 I think the motion entailed for October, and I think that would be  
22 sufficient enough time for ANC 3C and the Committee to Examine the  
23 Giant Giant to do their presentations. But preliminarily looking  
24 at the letters -- and let me state this just in case ANC 3C is in  
25 the audience and the Committee to Examine the Giant Giant. It

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1 would be good if -- I am not sure exactly who are the Committee to  
2 Examine the Giant Giant, but my recommendation is hopefully these  
3 two groups can get together and work with the applicant to make an  
4 easier case when you come before the Commission. And I am just  
5 throwing that out as a suggestion. You don't have to. I am just  
6 asking that that be done, and I think we could move as  
7 expeditiously as possible with the hearing of this case.

8 So, Mr. Bastida, we have set this case down for  
9 sometime in October, and you all will work out the details?

10 MR. BASTIDA: I will work out the exact date with  
11 the applicant and I will make -- and I will do the necessary  
12 advertisement to make sure that it reaches everybody.

13 CHAIRPERSON HOOD: Okay. Thank you. Next Hearing  
14 Action, Zoning Case 00-17. This is the hearing notice of proposed  
15 rulemaking related to police and fire uses. Mr. Bastida, did you  
16 want to comment on that first before I go to the Office of  
17 Planning?

18 MR. BASTIDA: I would be glad, Mr. Chairman. The  
19 concerns of the Commission is that I requested from Corporation  
20 counsel to provide you with certain language in order to provide a  
21 notice of public hearing that will set the parameters for that  
22 public hearing. If you want details on what Corporation counsel  
23 have put forth, I would be glad to do so. But I think that Mr.  
24 Bergstein is here, which was the author of the proposed notice of  
25 rulemaking -- I mean, notice of public hearing, and he could

1 address the specifics of the document better than I could.

2 CHAIRPERSON HOOD: Okay. Before we go, I wanted to  
3 -- Office of Planning, did you want to make a comment on this?  
4 Okay. Mr. Bergstein?

5 MR. BERGSTEIN: I provided a draft document, and I  
6 actually provided it without actual text rules because as I was  
7 developing it, I felt that there were a number of specific  
8 technical issues that needed to be addressed with respect to  
9 police and fire uses and further clarification with respect to the  
10 special exception standard that would be proposed wherein police  
11 and fire uses would be proposed in residential areas. The concern  
12 was that for police and fire, there may be paramount public safety  
13 issues which the BZA would need to consider in relation to any  
14 adverse impacts identified. And I have proposed a draft standard  
15 to address that.

16 But in addition, with respect to both matter of  
17 right uses and special exception, there may be additional  
18 requirements with respect to parking that would need to be  
19 addressed as well. And also I had a question about whether or not  
20 the type of specific standards that you often see with private  
21 school uses relating to traffic and parking and not number of  
22 students but perhaps number of visitors would be appropriate for  
23 these types of uses. So given the questions that I had and the  
24 need for further guidance, the question is whether or not to  
25 propose a general rule as just described, but not actually set

1 down in technical terms, or to postpone this so that I could draft  
2 technical language with some variance that the Commission could  
3 consider and then actually have that in a notice of hearing that  
4 would be set down.

5 CHAIRPERSON HOOD: Thank you, Mr. Bergstein. Well,  
6 colleagues, I am in the mindset of postponing this until we get  
7 some language so we can address some of the specifics. And if it  
8 gets to the point where the emergency that we passed last month  
9 seems or deems to be that it is going to expire, I think that we  
10 can come back and just reassert what we did in June and do another  
11 emergency. So I want to open it up for discussion. If not --

12 COMMISSIONER HOLMAN: Are we going to receive  
13 comments from the Office of Planning? Not necessarily today, but  
14 I think that would really be helpful in terms of helping us assess  
15 some of these neighborhood impacts.

16 CHAIRPERSON HOOD: For the -- if it is set down for  
17 a wide hearing?

18 COMMISSIONER HOLMAN: Yes.

19 CHAIRPERSON HOOD: Ms. McCarthy?

20 MS. MCCARTHY: We -- you will note in the status  
21 report that we passed out, one of the things that we mentioned  
22 that the Office of Planning wanted to do in conjunction with that  
23 would be to set up a consultative process with -- I know the  
24 Federation of Citizens Associations had representatives here  
25 before and had some concerns. So to have some sort of process

1 going with the police and citizens groups and to do a planning  
2 analysis for the Zoning Commission. And we will also work with Mr.  
3 Bergstein just on the drafting of the text so that there is a  
4 planning input as well as a legal input.

5 MR. BERGSTEIN: That would be very much  
6 appreciated.

7 COMMISSIONER HOLMAN: Excellent.

8 CHAIRPERSON HOOD: Okay, good. Commissioner  
9 Mitten?

10 VICE CHAIRPERSON MITTEN: I just wanted to ask  
11 about the timing, Ms. McCarthy, in developing this consultative  
12 process with the various groups at interest. Is that going to  
13 accommodate you making a report to us in September or October, or  
14 is that going to be getting geared up about that time?

15 MS. MCCARTHY: Well, August as a time for  
16 consultative process is not the greatest in Washington for sure.  
17 So my thought had been we would probably try to do something early  
18 in September and get something back to you for the October meeting  
19 if that worked in the schedule.

20 VICE CHAIRPERSON MITTEN: What would you  
21 -- if you have a recommendation about how we could dovetail that  
22 exercise that you are going to go through with our having a  
23 hearing.

24 MS. MCCARTHY: What I was thinking about was having  
25 the Office of Planning report reflect meetings with the Federation

1 and other groups.

2 VICE CHAIRPERSON MITTEN: But is that prior to us  
3 having a hearing or, you know -- can we move all of this along or  
4 does this need to be sequential in your mind?

5 MS. MCCARTHY: Oh, no, no. I meant and then to come  
6 back with an Office -- the same way we would normally do it with a  
7 hearing where the Office of Planning report would be submitted to  
8 you and would be discussed at the hearing.

9 VICE CHAIRPERSON MITTEN: Okay, so it is sequential  
10 then. Because you are saying that you would have complete this  
11 prior to us scheduling a hearing.

12 MS. MCCARTHY: Right. Or we would have least begun  
13 it because the public hearing process is another -- you know, is  
14 another variation of the consultative process. Certainly people -  
15 - I would assume no matter what people say in meetings with us and  
16 no matter what we are reflecting back, there will probably be  
17 people who want to come to the public hearing and weigh in on it.

18 But if we get a draft text put together fairly soon, we can send  
19 that out to the Federation and have it available on the Office of  
20 Zoning Website and try to publicize it. So that even though there  
21 may not be a critical mass of people available for a meeting in  
22 August, it can be being reviewed and people can be getting  
23 comments to us in writing or whatever, with us then scheduling  
24 some sort of meeting early in September.

25 VICE CHAIRPERSON MITTEN: Okay. I am just saying

1 this because we had pledged to move this along expeditiously.

2 MS. MCCARTHY: Right.

3 VICE CHAIRPERSON MITTEN: And I just want to make  
4 sure that we can do that.

5 MS. MCCARTHY: Right.

6 VICE CHAIRPERSON MITTEN: Okay. Thank you.

7 CHAIRPERSON HOOD: I want to kind of get a sense  
8 and to follow-up Commissioner Mitten's question, not necessarily  
9 to the Office of Planning but to Mr. Bastida. If everything goes  
10 as planned for August, which I know in this city August is a  
11 vacation month, when are we looking to set this -- or have a  
12 hearing on this proposed rulemaking?

13 MR. BASTIDA: We could do it anytime in September.

14 CHAIRPERSON HOOD: September?

15 MR. BASTIDA: In September if you so wish.

16 CHAIRPERSON HOOD: And what we did on the emergency  
17 expires in October?

18 MR. BASTIDA: Correct.

19 CHAIRPERSON HOOD: So there is a chance that we may  
20 have to re-op our emergency legislation that we did last month?

21 MR. BASTIDA: There might be a chance that you  
22 might have to reconsider it.

23 CHAIRPERSON HOOD: Okay. Colleagues, I guess what  
24 is on the table is to postpone. I don't know if we need to take a  
25 vote or just do a general consensus. Okay, so it is general

1 consensus that we postpone? Okay, we are going to postpone the  
2 final action -- well, the rulemaking on this case until Office of  
3 Planning, Corporation counsel and others are able to come up with  
4 language, specific language, to go out to all interested bodies to  
5 bring back to us to have a hearing. Is that in order?

6 MR. BASTIDA: Mr. Chairman, if I may interrupt, I  
7 erred. We cannot advertise it without the language. We need at  
8 least 30 days to advertise it. So that means that the time table  
9 for the Office of Zoning to receive a general guideline has to be  
10 in early October to have the hearing in September.

11 MR. BERGSTEIN: Early August.

12 COMMISSIONER HOLMAN: Early August.

13 MR. BASTIDA: I mean early August, right? Yes,  
14 early August, I am sorry.

15 CHAIRPERSON HOOD: Well, again -- I think to be  
16 fair and also be fair to the applicant, I think that the  
17 Commission -- we would be willing to re-op our emergency  
18 legislation and give them additional time until we set and get  
19 this finalized. So I don't -- colleagues, do you have any  
20 problems at that point if we have to?

21 MS. MCCARTHY: Well, also, Mr. Chair, I mean I was  
22 assuming that in terms of our timetable, the Office of Planning  
23 and the Corporation Counsel would get together in the next couple  
24 of weeks. Because we know this is an emergency and the proposed  
25 rulemaking we could have before you would need to approve it to

1 advertise it in August. You know, if you want to circulate -- I  
2 don't know if you want to have a meeting to consider it or if you  
3 want to circulate it in writing and determine whether you want to  
4 set it down. I am not sure how your session would work. Maybe I  
5 didn't quite understand Ms. Mitten's question before about the  
6 sequential. My assumption was we would put something together in  
7 draft and try to run it by people as much as possible, but that  
8 the consultative process didn't have to all take place before we  
9 had a draft rulemaking. It could then continue because the Office  
10 of Planning can always come back to you at the public hearing and  
11 say based on further input, we would recommend changing this  
12 language this way or that way.

13 CHAIRPERSON HOOD: Okay. In that respect, you are  
14 going to be working with Mr. Bergstein. You all are going to be  
15 working together on that.

16 MS. MCCARTHY: Right.

17 CHAIRPERSON HOOD: Okay.

18 MR. BERGSTEIN: I think we both recognize the need  
19 to get this out as quickly as we can. Though I would urge the  
20 Commission not to get involved in any discussions about extending  
21 the emergency unless that is formally before you, because that  
22 might seem to indicate that that would be a foregone conclusion.  
23 So at the point where you would need to consider the need to  
24 extend the emergency, that would be a formal agenda item and a  
25 formal vote. And it may be that the applicant has become vested



1 under the emergency rule so that a further extension would not be  
2 necessary. But that is what we would have to see where we are as  
3 we get to the expiration of the emergency.

4 CHAIRPERSON HOOD: Okay. Thank you, Mr. Bergstein.

5 We will take that definitely under advisement. Colleagues, if  
6 you could just forget the statement that I made about  
7 automatically making it an emergency the next time. So I will  
8 just withdraw my comment. So I guess we are at the point where we  
9 need a motion to postpone so those other avenues can take place.

10 VICE CHAIRPERSON MITTEN: I just need a little tiny  
11 bit more clarification, which is if we postpone setting it down  
12 for a hearing, then because we don't have specific language in  
13 front of us, then there is going to be language that would not  
14 have come before the Zoning Commission that is going to be  
15 circulated. And how do we handle that? Given that we want to move  
16 along quickly, but how do we handle the sort of formal -- the  
17 formality of us looking at the language to be circulated and  
18 saying we want to eventually have a hearing on that?

19 MR. BERGSTEIN: That is what you would need to do  
20 at your next meeting. That is, once the language has been  
21 crafted, your next meeting, which I guess is September, that is  
22 when you would vote to have the set-down based upon the specific  
23 language that is crafted, and that you would have to meet the 30-  
24 day period for that.

25 VICE CHAIRPERSON MITTEN: Okay.

1 CHAIRPERSON HOOD: I was just thinking, we might  
2 have to -- and I am set against meeting in August.

3 COMMISSIONER PARSONS: How do you feel about this  
4 Thursday night? I am kidding. Seriously, I mean we don't have to  
5 meet on August 15. If we have an agenda item, we can pick another  
6 time.

7 CHAIRPERSON HOOD: Right. We may need to -- do we  
8 need to publicize that, Mr. Bastida? Do we need -- we may need to  
9 have a -- September is too long for us. I agree with Mr. Parsons  
10 and I think my other colleagues agree. We may need to set a  
11 special meeting sometime in August.

12 COMMISSIONER PARSONS: Sometime in July.

13 COMMISSIONER HOLMAN: July.

14 CHAIRPERSON HOOD: Sometime in July. Maybe we can  
15 do it the 27th.

16 MR. BASTIDA: That is correct, Mr. Chairman. The  
17 other possibility is that you can set the hearing down today and  
18 allow the staff to prepare the language to be advertised.

19 COMMISSIONER PARSONS: We would do that through the  
20 mail?

21 MR. BASTIDA: That would be correct -- through the  
22 fax -- with a fax.

23 CHAIRPERSON HOOD: I see some openminded  
24 -- I try to read minds.

25 MR. BASTIDA: You can also have it on the 27th,

1 because we are going to have that roundtable and then the  
2 Commissioners would be here and we can have a small -- I mean a  
3 short -- a very short meeting to consider the language. But that  
4 means that Mr. Bergstein and Ms. McCarthy will have to provide  
5 that language at least a couple of days in advance in order for  
6 the Commission to be able to review it -- the Commissioners -- and  
7 be ready to move forward on that case at that time.

8 CHAIRPERSON HOOD: Mr. Bastida, what time does the  
9 roundtable start?

10 MR. BASTIDA: 7:00.

11 CHAIRPERSON HOOD: 7:00. So Commissioners, if we  
12 come in at 6:30 and try to deal with this issue? Is that okay  
13 with everyone's schedule? So that is what we will do. On the  
14 27th, if we can get everything from the Office of Planning and  
15 Corp Counsel and working with staff, and then that way we can move  
16 on it on July 27.

17 MR. BASTIDA: Thank you, Mr. Chairman.

18 CHAIRPERSON HOOD: Okay. Do we need to do a formal  
19 motion? Or do we just -- just consensus, general consensus.

20 MR. BASTIDA: Yes, it is consensus.

21 CHAIRPERSON HOOD: Okay. Moving on -- Proposed  
22 Action, we have none. Final Action, Mr. Bastida.

23 MR. BASTIDA: Thank you. Mr. Chairman, you have  
24 received in your package a draft of the Zoning Commission notice  
25 of rulemaking 923 in case 99-08, which reflects the actions that

1 you took on June 12. It is in front of you for action, and the  
2 staff requests that you make some action. If I may add, this is  
3 the first combined final rulemaking and order that will be  
4 published by this Commission on the register, which in fact we  
5 worked in conjunction with Corporation counsel to have that  
6 advantage, since it will save quite a bit of time rather than  
7 writing and publishing a separate final rulemaking and final  
8 order. So that is why the order might look different to you than  
9 what you have previously seen.

10 CHAIRPERSON HOOD: Also, let me just add  
11 -- and I can touch on this correspondence piece. The only thing  
12 we had in correspondence was a letter from Wilkes Artis Chartered  
13 asking us to support the Summit Properties initiative program. So  
14 I think we have taken care of correspondence too with this.

15 MR. BASTIDA: Thank you, Mr. Chairman.

16 CHAIRPERSON HOOD: Okay. Okay, colleagues, we have  
17 in front of us the final on the Text Amendment Downtown Housing  
18 Properties Residential Rehabilitation Incentive Program. Any  
19 comments? Any discussion?

20 COMMISSIONER PARSONS: Mr. Chairman, I am somewhat  
21 confused. I am going to page 2 on the third paragraph, which  
22 reports the vote of May 8 by the Commission. And it was reported  
23 to me that my proxy was to disapprove or to --

24 MR. BASTIDA: Excuse me, Mr. Chairman, the staff  
25 erred. At that vote, I exercised Mr. Parsons' proxy and it was to

1 deny.

2 CHAIRPERSON HOOD: Okay.

3 COMMISSIONER PARSONS: And I can appreciate the  
4 confusion that Mr. Bastida had at that point and understand why he  
5 voted that way. But I will be changing that vote on today's final  
6 order. That is the problem with giving a proxy and then things  
7 evolve during the meeting. So I want to let you know that I will  
8 be voting the other way today.

9 CHAIRPERSON HOOD: Okay.

10 COMMISSIONER PARSONS: And will try to be more  
11 clear with my proxies in the future.

12 CHAIRPERSON HOOD: Okay. All right. I am sure  
13 that the -- anyway. Any other comments, colleagues? The only  
14 other change -- I would hope that -- and I think when the person's  
15 name is first, they usually make the motion. I don't remember  
16 making the motion on this. If we could check the transcript. I  
17 think we discussed that. But I am unsure of me making the motion.

18 MR. BASTIDA: We will double-check the transcript  
19 to make sure that that is the case or not. CHAIRPERSON

20 HOOD: And the only other correction is on my name, J instead of  
21 M. Other than that, just it needs to be right for the record.  
22 Okay, colleagues. We have a final action on Zoning Commission  
23 Case 99-08. If there is no more discussion, I would like to  
24 obtain a motion for final action.

25 VICE CHAIRPERSON MITTEN: I move that we approve

1 the Text Amendment put forward in Case No. 99-08 as represented by  
2 this draft final rulemaking with the correction that Mr. Parsons  
3 noted.

4 CHAIRPERSON HOOD: It has been moved. Can I get a  
5 second?

6 COMMISSIONER HOLMAN: Second.

7 CHAIRPERSON HOOD: It is moved and properly  
8 seconded. All in favor by the usual sign of voting.

9 ALL MEMBERS: Aye.

10 CHAIRPERSON HOOD: Any opposition? Staff, would  
11 you record the vote also with Commissioner Franklin, I believe.

12 MR. BASTIDA: For the record, Commissioner Franklin  
13 has no further proxies.

14 CHAIRPERSON HOOD: Oh.

15 MS. BROWN: Okay. Staff will record the vote as 4  
16 to 0 to adopt order number 923, Ms. Mitten, Mr. Holman, Mr.  
17 Parsons and Mr. Hood, and Mr. Franklin not present and not voting.

18 CHAIRPERSON HOOD: Okay, thank you. Next, Final  
19 Action B, Zoning Commission Case No. 00-11MM/97-14Z. Mr. Bastida?

20 MR. BASTIDA: Mr. Chairman, this is the minor  
21 amendment that was voted favorable at the last meeting regarding  
22 the TDR transfer areas in Southwest Urban Renewal area. It was  
23 put for comment and no comments were received.

24 CHAIRPERSON HOOD: Okay. Colleagues, we have done  
25 proposed action. Now ready for final action. Any discussion? If

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1 not, I would like to obtain a motion.

2 MR. BASTIDA: You wanted to remind -- Mr. Parsons  
3 you wanted to be reminded of the circumstances of the amendment?

4 COMMISSIONER PARSONS: No.

5 MR. BASTIDA: Thank you.

6 COMMISSIONER PARSONS: I do think we ought to  
7 record the vote of the Commission on the May 8 meeting in page 2,  
8 third paragraph from the bottom there. Isn't that traditional to  
9 record the vote as who voted for what?

10 MR. BASTIDA: It will be recorded. This was a  
11 draft.

12 COMMISSIONER PARSONS: Okay. Because the same  
13 statement then appears on page 3, third paragraph from the bottom.

14 And I wondered whether that isn't the more appropriate place to  
15 do it -- record those two votes on page 3 rather than inserting it  
16 into the finding of facts section.

17 MR. BASTIDA: Again, this is a final notice of  
18 rulemaking, an order, and we are trying to find a way to make it  
19 as clear as possible. So that will be looked into and adjusted  
20 accordingly.

21 COMMISSIONER PARSONS: All right.

22 MR. BASTIDA: And this will be the second order  
23 that will be in such a fashion.

24 COMMISSIONER PARSONS: So the staff is suggesting  
25 that we put the previous vote of the Commission in a final order

1 into the findings of fact?

2 MR. BASTIDA: No, that was a way to do it. I am not  
3 making a recommendation. What you have stated makes it easier for  
4 the public to realize where the two votes were, and I think that  
5 it merits consideration and I would just like to have a little  
6 time to consider it and perhaps have the ability to go one way or  
7 another after internal discussions.

8 CHAIRPERSON HOOD: I think, Mr. Parsons, if you can  
9 inform me of what you are speaking of. I think you are saying that  
10 that should be recorded on page 2 under May 8, 2000 regular  
11 monthly meeting.

12 COMMISSIONER PARSONS: Well, it has always been our  
13 practice to record the two votes at the end of the order. And  
14 what is being suggested is that that be changed or at least it is  
15 here. Not to confuse you, but certainly we are not going to  
16 record both these votes in different places.

17 MR. BASTIDA: Mr. Parsons, if you see, I didn't put  
18 the votes for the May 8. But both votes, May 8 and July 10, are  
19 at the very bottom of page 3.

20 CHAIRPERSON HOOD: Let me just say, Mr. Bastida,  
21 let's just keep it how we had it. Because we can be confused  
22 enough. So we want to keep it how it has been done. I know  
23 sometimes we come up with innovative ways to do things. But for  
24 the sake of confusion, let's keep it like we have had it.

25 MR. BASTIDA: We will put it at the end of the



1 order -- the proposed -- the final rulemaking and order and we  
2 will provide the two votes at the end of that page.

3 CHAIRPERSON HOOD: Okay, colleagues. If there is no  
4 more discussion and if I can get a motion?

5 COMMISSIONER PARSONS: I move that we adopt order  
6 number 924 with that one little change that we just spoke about.

7 CHAIRPERSON HOOD: I'll second the motion. All  
8 those in favor by the usual sign of voting?

9 ALL MEMBERS: Aye.

10 CHAIRPERSON HOOD: Any opposition? So ordered.  
11 Staff, would you record the vote?

12 MS. BROWN: Staff will record the vote as 4 to 0 to  
13 adopt order number 924 in the notice of final rulemaking in case  
14 number 00-11MM/97-14Z by a vote of 4 to 0, Mr. Parsons, Mr. Hood,  
15 Ms. Mitten and Mr. Holman, Mr. Franklin not present and not  
16 voting. Thank you.

17 CHAIRPERSON HOOD: Okay, colleagues, we are moving  
18 right along with our agenda where it says Consent Calendar. Mr.  
19 Bastida?

20 MR. BASTIDA: The Office of Zoning received a  
21 request for a minor modification about the Walter Washington  
22 Estates, and the Office of Zoning provided you with the submission  
23 by the applicant by a small report from the Office of Zoning  
24 regarding the background criteria for the proposed modification  
25 and the community comments regarding this matter, and provided you

-- I mean, provided the Commission also with an order. This is a proposed change of those 11 townhouses that had been proposed that the applicant obtain a grant from HUD to put housing for the elderly and it changes slightly the overall idea of the proposed or of the approved PUD. The advantage to this proposal is that low or moderate income housing will be provided for the senior citizens of the District of Columbia, which is very much needed. These are the same individuals that tried to build this facility and which the Commission heard twice in the Northeast section of the city and it is in front of you for your disposal.

CHAIRPERSON HOOD: Okay, colleagues. We have this minor modification in front of us. Any discussion?

COMMISSIONER PARSONS: I think this is a major modification. I cannot imagine us setting this precedent. As much as this is a good project. But our approval for this site were townhouses, isn't that the case?

MR. BASTIDA: Yes, correct. That was a modification.

COMMISSIONER PARSONS: So now we are talking about a major building here.

MR. BASTIDA: Mr. Parsons --

COMMISSIONER PARSONS: That is five stories high on one side.

MR. BASTIDA: This was first where the community center was located and then it was moved and then townhouses were

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1 put here. And then the community center, which was the first  
2 approval of the PUD, was a building that more or less had the same  
3 cubic feet and approximately the same height of what is proposed  
4 here and it was moved in an easterly direction and then the  
5 townhouses were here when the applicant was able to buy more land.

6 That increased the original size of the PUD.

7 COMMISSIONER PARSONS: Well, let's go to sheet G-2  
8 then. I thought that was what we approved.

9 MR. BASTIDA: That was the modification. That was  
10 not the original PUD.

11 COMMISSIONER PARSONS: So what was the original  
12 PUD?

13 MR. BASTIDA: The original PUD had a community  
14 center on the site.

15 COMMISSIONER PARSONS: And we simply slipped that  
16 little community center around the corner into the L shape which  
17 is shown on the drawing.

18 MR. BASTIDA: Correct.

19 COMMISSIONER PARSONS: It was never the bulk and  
20 density of this building. It couldn't have been.

21 MR. BASTIDA: It was --

22 CHAIRPERSON HOOD: Didn't we move the community  
23 center?

24 MR. BASTIDA: Correct.

25 CHAIRPERSON HOOD: That moved --

1 MR. BASTIDA: In an easterly direction.

2 COMMISSIONER PARSONS: Well, that is my view.

3 CHAIRPERSON HOOD: Colleagues, any other

4 -- are you finished, Mr. Parsons?

5 COMMISSIONER PARSONS: Yes.

6 CHAIRPERSON HOOD: Any other comments?

7 VICE CHAIRPERSON MITTEN: I am inclined to agree  
8 with Mr. Parsons. We have had sort of ongoing discussions about  
9 what constitutes a minor modification and a change of use, even  
10 though it is residential, it is the change of the kind of use, a  
11 change in density of this magnitude I think is enough to rise sort  
12 of beyond the level of a minor modification. And I would be  
13 interested in hearing from Mr. Hood because he has a high level of  
14 sensitivity on this matter.

15 CHAIRPERSON HOOD: I don't know how high it is, but  
16 on this particular case, I would be inclined to disagree with my  
17 colleague, Mr. Parsons. We have been asking for minor  
18 modifications from Office of Planning and Corp counsel and Office  
19 of Zoning staff and the like, and it hasn't happened as of yet. I  
20 think from my knowledge of architecture, and I am treading in  
21 very, very deep waters here -- but it looks like the facade and  
22 everything is going to remain the same. Now, I understand the  
23 height is going to increase. They are going from townhomes to  
24 elderly apartments. And I cannot in good conscience -- when I have  
25 seen modifications come through here that should not have been

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1 changed and I reluctantly -- and I am on record reluctantly voting  
2 for the modification -- this is a modification here that I could  
3 vote for. I think that it is due diligence to the seniors in that  
4 community. It has the ANC support. And until we come up with  
5 something finite from the Office of Planning and Corp counsel and  
6 we have a hearing on minor modifications, I don't think the  
7 seniors -- at least in my judgment -- I am not going to pick the  
8 senior case to turn it down. Any other comments?

9 COMMISSIONER HOLMAN: What are the alternatives if  
10 we don't approve this as a minor modification?

11 COMMISSIONER PARSONS: Set it down for a hearing.

12 COMMISSIONER HOLMAN: And how would that affect the  
13 project?

14 MR. BASTIDA: It would delay the process and I  
15 don't know if they will remain qualified to receive the HUD grant.  
16 And there will be an additional cost on the hearing for the  
17 applicant. And if you want, the applicant is here and could  
18 address any other specific problems that you might have.

19 CHAIRPERSON HOOD: Colleagues -- and I understand  
20 the point -- the point that was made previously. But if you look  
21 at things that change here -- I mean, we have approved things --  
22 and I may be getting into trouble here, but it won't be nothing  
23 new. We have approved things that are much more of a difference  
24 than what I have here in front of me. I feel bad enough about  
25 voting against a senior citizen project previously. So that is

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1 why I will be voting in favor of the modification.

2 MR. BASTIDA: Mr. Hood, in addition, the FAR nor  
3 the parameters of the PUD really are changed. Because the overall  
4 area of the PUD is so large that the minor addition done to it  
5 don't affect the basic figures that were approved for the PUD.

6 CHAIRPERSON HOOD: Has Mr. Holman's questions been  
7 answered? Mr. Holman? Okay, they have not?

8 COMMISSIONER HOLMAN: Oh, no. I would like to hear  
9 from the applicant, Mr. Chairman, if that  
10 is --

11 CHAIRPERSON HOOD: Okay, colleagues, if that is not  
12 a problem. Ms. Giordano, the applicant, if you can come to the  
13 table.

14 MS. GIORDANO: Good afternoon. For the record, my  
15 name is Cynthia Giordano with Lenows and Blocher Law Firm. With  
16 me is Pastor Davis, who has been involved with this project, the  
17 elderly housing project, for some time. My understanding from the  
18 pastor is that there is a very high likelihood that the financing  
19 for the project from HUD will be lost if we have to wait another,  
20 I would say, six months because we would have to file the  
21 application, go through the set-down of a hearing. That hearing  
22 probably, I can't imagine, could happen before mid-fall, and then  
23 get a decision. So I am going to ask Pastor Davis to speak to that  
24 directly if I might, because he -- I have had no direct dealings  
25 with HUD myself.

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1 PASTOR DAVIS: Good afternoon. I am Pastor Davis. I  
2 am Executive Director for Senior Housing for the Seventh Day  
3 Adventist Churches and the Allegheny East Conference. We cover  
4 five states and the District and our church has been in helping  
5 people, seniors, youth and community service for many, many years.

6 This particular project, as some of you know, began with the  
7 property that the Dupont Park Church owned on Alabama Avenue.  
8 There was some community opposition. I will not recall -- I will  
9 not speak about it as such. It was not all of the people, just a  
10 few people, very, very involved. And so we were able to talk with  
11 some persons concerning this property and we would sponsor this.  
12 Now HUD has given us a number of extensions, and I am certain that  
13 if this is denied, that will be lost to the city. Our seniors  
14 indeed need safe, affordable, comfortable and attractive  
15 surroundings. And if you have looked at the facade of the building  
16 and the landscaping, it will be an excellent addition to improving  
17 the Southeast section. So I certainly hope that the committee will  
18 look favorably upon this application. Because I am certain from  
19 our dealings with HUD that they have gone beyond really what they  
20 normally would do because they see the need for senior housing in  
21 D.C. Thank you.

22 CHAIRPERSON HOOD: Thank you. Your name again is  
23 Pastor --

24 PASTOR DAVIS: Pastor Daniel Davis.

25 CHAIRPERSON HOOD: Pastor Daniel Davis.

1 MS. GIORDANO: And if I might just add, I think  
2 that this situation is fairly unique as far as modifications go  
3 because the Zoning Commission has considered the Walter Washington  
4 PUD a number of times. They have also considered this particular  
5 component that we are asking to be placed in the Walter Washington  
6 PUD in another PUD case. So this project has received review. I  
7 think the consensus was that it was a very worthwhile project, but  
8 it was just the wrong place before. And the place that we are  
9 proposing to put it in now can accommodate it without any change  
10 in the PUD parameters.

11 PASTOR DAVIS: I might also mention the density  
12 situation. I believe there were 11 townhouses planned. If we will  
13 think about townhouses and the younger people there and the number  
14 of people who will be staying in these 45 units, normally they are  
15 elderly ladies. 45 units on the same property and 11 townhouses  
16 of three or four or five people in the townhouse. So the density  
17 problem is something that we don't think will be a big problem  
18 really.

19 CHAIRPERSON HOOD: Mr. Holman, were your questions  
20 answered? Any other questions while we have Ms. Giordano and the  
21 applicant at the table?

22 COMMISSIONER HOLMAN: I don't think they are  
23 necessarily questions the applicant can answer. I just am kind of  
24 wondering how we are getting this at this point in time with so  
25 few options. I guess that is not really a question the applicant



1 can answer necessarily.

2 CHAIRPERSON HOOD: Well, I guess I see two things  
3 in front of us. Either we can vote it up or down or we can turn  
4 down the modification and have a hearing. But then that leaves the  
5 applicant, from what I am hearing, in a rather bad position as far  
6 as financing from HUD. Am I correct, Ms. Giordano?

7 MS. GIORDANO: I am assuming that -- I asked the  
8 Pastor would a four to six month delay be a problem, and I think  
9 your answer was, yes, maybe if we could cut it down somehow in  
10 treating this as a request for a regular modification and have a  
11 very speedy hearing. Maybe we could accomplish the objective.

12 CHAIRPERSON HOOD: Okay, Commissioners. Thank you,  
13 Ms. Giordano and Pastor Davis. Daniels or Davis -- I can't even  
14 read my own writing -- anyway, Davis. Daniel Davis, okay then.  
15 Okay, colleagues, how do we wish to deal with the request for  
16 minor modification, zoning case number 00-16MM/97-00MM/97-03C?

17 VICE CHAIRPERSON MITTEN: Well, I will say  
18 something and then I will make a motion if Mr. Holman doesn't want  
19 to.

20 COMMISSIONER HOLMAN: Oh, I will.

21 VICE CHAIRPERSON MITTEN: I mean, I don't want to  
22 jeopardize this project by staking out the minor modification  
23 territory on this case, much as I believe I heard Mr. Hood say.  
24 But if we could -- so in that sense, if the only way to proceed  
25 were to grant the minor modification, then I would reluctantly go

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1 along with it. If we can move it along and sort of adhere to what  
2 we have been striving for, which is really not to call things  
3 minor that are not minor and still accommodate this project, that  
4 is what I would prefer.

5 COMMISSIONER HOLMAN: How is that done?

6 VICE CHAIRPERSON MITTEN: By what Ms. Giordano  
7 said, which is to basically set it down for a hearing today.

8 CHAIRPERSON HOOD: And have an expedited hearing.

9 VICE CHAIRPERSON MITTEN: Yes.

10 CHAIRPERSON HOOD: There seems to be a lot of that  
11 going around.

12 COMMISSIONER HOLMAN: And I guess my concern is it  
13 seems like on at least three or four of the cases that we dealt  
14 with today, we are loading up September to be quite an exciting  
15 month, which is fine with me. But --

16 CHAIRPERSON HOOD: Well, it is time for some  
17 excitement.

18 COMMISSIONER HOLMAN: I am all in favor of it, Mr.  
19 Chairman. I guess -- I guess we still need that guidance from the  
20 Office of Planning in terms of trying -- because I don't want to  
21 do this. However, I am going to be uncomfortable with this  
22 decision however we make it today. So I hope we don't have to face  
23 this kind of decision in this way much longer.

24 MR. BASTIDA: Mr. Chairman?

25 CHAIRPERSON HOOD: Yes, sir.

1 MR. BASTIDA: This is a contested case. So even if  
2 we set it down for September and you have a hearing, you will not  
3 be able to take a preliminary decision until October, so that  
4 means a final decision would not take place until November.

5 MR. BERGSTEIN: Couldn't they make a bench  
6 decision at the end of the contested case hearing? And then if  
7 they did that, that would be the -- if they granted it, that would  
8 be the proposed action and then there would be --

9 MR. BASTIDA: It would have to be an emergency  
10 ruling if you want to make it effective at the end of the hearing.

11 MR. BERGSTEIN: Not effective. I am just saying  
12 they could vote -- the rules allow them at the end of a PUD  
13 hearing to vote on the merits of the --

14 MR. BASTIDA: Yes, but I have to refer it to NCPC.

15 MR. BERGSTEIN: That I agree with you. You need 30  
16 days after that.

17 CHAIRPERSON HOOD: Okay. Well, we know --  
18 colleagues, you have heard our options. We know what is on the  
19 table in front of us. Will one of my colleagues make a motion and  
20 see how we are going to proceed. I'll make the motion. Oh, are  
21 you going to?

22 COMMISSIONER HOLMAN: I move that we approve the  
23 minor modification -- let me make sure I have got the right case -  
24 - if you can help me with the case number --

25 MR. BASTIDA: 00-16MM.

1 COMMISSIONER HOLMAN: Yes. Thank you. 00-16MM/97-  
2 07MM/97-03C.

3 CHAIRPERSON HOOD: Okay, it has been moved. A  
4 second?

5 VICE CHAIRPERSON MITTEN: Second.

6 CHAIRPERSON HOOD: Moved and properly seconded.  
7 All those in favor by the usual sign of voting?

8 ALL MEMBERS: Aye.

9 CHAIRPERSON HOOD: Any opposition? Any  
10 abstentions? Staff, would you record the vote?

11 MS. BROWN: Staff will record the vote as 4 to 0 to  
12 approve the minor modification -- I am sorry, staff will record  
13 the vote as 4 to 0, Mr. Holman, Ms. Mitten, Mr. Hood and Mr.  
14 Parsons to approve, Mr. Franklin not present and not voting, to  
15 approve the minor modification. Thank you.

16 CHAIRPERSON HOOD: Colleagues, I will still put on  
17 the record that we need to address the minor modification issue.  
18 I think I am going on a year and a half now of asking for that. I  
19 am not exactly sure where we left it. It has been a while. But  
20 that is an issue. And from time -- oh, it is on here -- I am  
21 sorry. It is on here now. Can you help me with that? I am just  
22 curious when the date is. Targeted date September. Okay, so we  
23 will be addressing that issue. And when these issues come in front  
24 of us, we will have some kind of procedure and we will be able to  
25 distinguish between a major and a minor modification, which I

1 think is desperately needed here on this Commission.

2 COMMISSIONER PARSONS: Mr. Chairman, I certainly  
3 hope that this Commission's action today is not used as an example  
4 in the OP report. That is the trouble with what we just did.

5 CHAIRPERSON HOOD: Well, okay. So noted. Moving  
6 right along with our agenda. Legislative report, we have none.  
7 Litigations -- Zoning Commission case number 96-07C. Mr. Bastida?

8 MR. BASTIDA: That is in front of you, Mr.  
9 Chairman. You have been provided with all the briefs that have  
10 been submitted for the record plus another extensive  
11 correspondence from Mrs. Newmark or Ms. Newmark and Wilkes Artis,  
12 and it is in front of you to see which steps you would like to  
13 take.

14 CHAIRPERSON HOOD: Okay, colleagues, we have had --  
15 first, I would like to put on the record and I am going to ask  
16 each Commissioner who did not fully participate in that case to  
17 also do so. I would like to put on the record that I have  
18 reviewed the case on the Kennedy Warren, which is case number 96-  
19 07C.

20 VICE CHAIRPERSON MITTEN: Mr. Chairman, I have read  
21 the record in case number 96-07C as well.

22 COMMISSIONER HOLMAN: Yes, Mr. Chairman, I have  
23 read it and I am eligible for a new glasses prescription.

24 CHAIRPERSON HOOD: Okay. And Mr. Parsons and Mr.  
25 Franklin have participated previously. We have in front of us,

1 colleagues, a number of issues. I think one of them -- the first  
2 one -- and we can kind of walk through this -- is to whether or  
3 not we feel that we need to reopen the record. Is there a need to  
4 reopen the record? Or if someone thinks that we have sufficient  
5 enough information in the record to move forward with this case.

6 VICE CHAIRPERSON MITTEN: Well, I guess as someone  
7 who has recently read everything in one sitting, I feel personally  
8 that there is more than sufficient information in the record to  
9 deal with the issues that were the remand issues from the Court of  
10 Appeals.

11 CHAIRPERSON HOOD: Okay. Any other comments on  
12 that? I too feel that I had sufficient enough information to go  
13 ahead and proceed forward. Mr. Holman and Mr. Parsons?

14 COMMISSIONER PARSONS: I would agree.

15 COMMISSIONER HOLMAN: Yes.

16 CHAIRPERSON HOOD: The next issue -- we have some  
17 attachments, if you will pull those out. We have some specific  
18 attachments. And Mr. Bastida, the specific attachments, I believe  
19 -- and correct me -- we were asked if we could submit them into  
20 the record? Was that --

21 MR. BASTIDA: You didn't open the record to receive  
22 that information, but it was admitted into the record. And in  
23 consultation with Corporation counsel, it was determined that --  
24 staff would put it into the record and then the Commission would  
25 decide if they will take it into their considerations during their

1 deliberations or not. And they legally -- my understanding is  
2 that the Commission could do so.

3 CHAIRPERSON HOOD: Colleagues, extra discussion on  
4 that about the additional attachments? Okay. If not, consensus is  
5 we will accept those? By general consensus for further review.

6 VICE CHAIRPERSON MITTEN: Well, I guess I would  
7 recommend that in light of the fact that I thought there was  
8 sufficient information already in the record, I would suggest that  
9 that information not be admitted. Because I think the record is  
10 adequate as it stands.

11 CHAIRPERSON HOOD: Okay.

12 VICE CHAIRPERSON MITTEN: But I would be interested  
13 in other views.

14 MR. BASTIDA: Mr. Chairman, if I may?

15 CHAIRPERSON HOOD: Yes, Mr. Bastida.

16 MR. BASTIDA: It is not that you admit it or not  
17 into the record, it is if you take it into -- if you believe that  
18 you need to take it into consideration for your action. If you so  
19 choose to ignore it, it remains in the record, but it will not be  
20 considered by you for the action, whatever action you propose to  
21 take.

22 CHAIRPERSON HOOD: Okay. So that is a moot point.  
23 It is already in the record. It is up to us whether we use it for  
24 our final decision making, am I correct?

25 MR. BERGSTEIN: Well, I don't know if I quite -- I

1 am sorry Mr. Bastida is all the way on the other side of the  
2 table. My concern is if -- I guess what happened here is that the  
3 staff admitted it or considered it to be -- they put it in the  
4 file and I think the question is still -- because the record is  
5 closed -- the record was closed and has been closed for years. So  
6 what happened, I believe, is that the information was placed in  
7 the file. But I believe that that is different from it being in  
8 the record. So I don't know if I would agree with Mr. Bastida, and  
9 perhaps there was a mix-up of communication between myself and Mr.  
10 Bastida. But I would not consider those items to be in the record  
11 and there has been motions -- at least a motion to strike one of  
12 the attachments. Is that both parties or just one? I am asking  
13 Ms. Sansone, since it is her case.

14 MS. SANSONE: Mr. Chairman, there was a request to  
15 strike one of the attachments to one of the developers briefs and  
16 also there is an issue with seven affidavits that were attached to  
17 the Cathedral Park Condominiums brief plus several other letters  
18 and materials that weren't part of the original record. All of  
19 this would be new factual information that would be put before the  
20 Commission if the Commission chooses to admit it into the record.

21 And that goes to whether or not you feel -- the Commission feels  
22 it needs additional factual information to decide the issues on  
23 remand, which are the density issue and the green space issue.

24 MR. BERGSTEIN: So since those were specifically  
25 attached, the question is a more discreet one than the one you had



1 before you in the last motion, that is, whether or not to reopen  
2 the record for the limited purposes of accepting those materials  
3 or whether or not the record remains closed as to those materials  
4 as well. So I would characterize the motion as a motion whether  
5 either to accept the attachments to the pleadings or not into the  
6 record, as you might care to characterize that motion.

7 CHAIRPERSON HOOD: Okay, thank you, Corp counsel.  
8 Colleagues, you have heard the discussion. I am inclined to say  
9 that the documents are in the file but they are not in the record.  
10 So it might not make sense, Mr. Parsons, but that is what I just  
11 heard. In the file but not in the record.

12 COMMISSIONER HOLMAN: Well, isn't another way to  
13 say it, Mr. Chairman, is that the record was closed and it will  
14 remain closed for those items?

15 CHAIRPERSON HOOD: What is your pleasure,  
16 colleagues? I guess what I am saying is some stuff was in the  
17 file, but it necessarily was not in the -- the way I understand  
18 it, it was not in the record when the record was closed. So it is  
19 in the file, but it is not in the record.

20 VICE CHAIRPERSON MITTEN: Well, the point is if we  
21 are going to consider it in our decision making process. It needs  
22 to be admitted into the record. The record would have to be  
23 reopened so that we could rely on it. If we don't want to reopen  
24 the record, then we cannot rely on it. So that is the choice.

25 CHAIRPERSON HOOD: Okay. Well, colleagues, what is

1 your -- we have -- personally, I have used some of this. When I  
2 read the record, I have used a lot of it. I would be inclined to  
3 reopen the record just for the attachments and attachments only.

4 COMMISSIONER HOLMAN: I just -- Mr. Chairman, I  
5 just think that is a tricky precedent. And if we start doing that,  
6 then I guess I would prefer to just close the record and leave it  
7 at that. But that is one vote.

8 CHAIRPERSON HOOD: I could go either way. Because  
9 it was enough information. There was enough information in the  
10 packet that was sent to us to read to review the record, believe  
11 me. So I guess what I am asking for is what is the pleasure of  
12 the Commission.

13 VICE CHAIRPERSON MITTEN: I don't know if you want  
14 this in the form of a motion, but I would -- I mean, I would  
15 recommend that we not reopen the record period. So for the broad  
16 general, whatever they might want to additionally submit to us as  
17 well as what has been submitted and is in the file.

18 COMMISSIONER HOLMAN: I would second that.

19 CHAIRPERSON HOOD: Okay. We have a motion on the  
20 table. All those in favor by the usual sign of voting?

21 ALL MEMBERS: Aye.

22 CHAIRPERSON HOOD: Any opposition? So ordered.  
23 Now, Mr. Bastida -- I mean, Mr. Bergstein, I need you kind of to  
24 advise me on the next step, just because I have never had to deal  
25 too much with a remand.

1 MR. BERGSTEIN: The next question is whether or not  
2 you would care to hear oral argument on this matter -- on the  
3 remand. You have before you the written briefs. And the question  
4 is whether or not for you to have -- invite oral argument from  
5 each side, which would also allow you to ask questions of the  
6 parties. It is not required. It is completely within the  
7 Commission's discretion.

8 CHAIRPERSON HOOD: Okay, colleagues, I believe that  
9 in the remand we have three issues. Green space, density and the  
10 comprehensive plan. If you think that is sufficient, we would not  
11 need to hear any oral arguments. But if you don't think it is  
12 submission through our reading of the brief and there were some  
13 questions that you needed to ask, then we probably would need to  
14 hear the oral argument. So, again, that is up for discussion. If  
15 there is no discussion, I will obtain a motion.

16 COMMISSIONER PARSONS: The motion is necessary to  
17 deny the request for oral argument?

18 CHAIRPERSON HOOD: I would have to -- Mr.  
19 Bergstein, is it in the best interest of the Commission to do a  
20 formal vote?

21 MR. BERGSTEIN: Well, let me -- Ms. Sansone pointed  
22 out -- and maybe I will have her characterize it -- one of the  
23 parties actually requested a oral hearing and the other party did  
24 not. I am just going to let her state that. And perhaps what we  
25 should view this is as a vote to either grant or deny the request

1 of Cathedral Park for an oral hearing.

2 COMMISSIONER PARSONS: I move we deny the request.

3 CHAIRPERSON HOOD: It has been moved. A second?

4 COMMISSIONER HOLMAN: Second.

5 CHAIRPERSON HOOD: Moved and properly seconded.

6 All those in favor by the usual sign of voting?

7 ALL MEMBERS: Aye.

8 CHAIRPERSON HOOD: Any opposition. So ordered.

9 Staff, would you record the vote?

10 MR. BASTIDA: Yes, Mr. Chairman. The staff will  
11 record the vote 4 to 0 to deny, Mr. Parsons, Mr. Holman, Mr. Hood  
12 and Ms. Mitten to deny.

13 CHAIRPERSON HOOD: Again, colleagues, I think next  
14 -- I believe the next step is for us to discuss green space,  
15 density and the comprehensive plan. I am in the mindset of  
16 believing that I would like to have a full Commission, since Mr.  
17 Franklin did participate in the Kennedy Warren and three of us  
18 didn't and two of us did. So I don't know -- I would hope that we  
19 could postpone. I know we are doing a lot of postponing. I don't  
20 like to do a lot of postponing, but I am hoping that we could  
21 postpone this particular case because of a lot of significance to  
22 a lot of parties and I would like for us to have a full Commission  
23 to move forward if that is in order.

24 COMMISSIONER PARSONS: I agree with you, Mr.  
25 Chairman. I think this is that important. Whether we need a

1 special meeting to talk about that or September, I am not sure.

2 But what did you have in mind?

3 CHAIRPERSON HOOD: Do we have any time constraints,  
4 Mr. Bastida?

5 MR. BASTIDA: No. Only the need for the applicant  
6 and the opposition to make a decision on the case. But there is  
7 not time constraints as such.

8 CHAIRPERSON HOOD: Okay. So I guess, Mr. Parsons,  
9 we don't have any time constraints. Okay, we just had a  
10 suggestion. Do you want to put it on the record?

11 VICE CHAIRPERSON MITTEN: Well, we are going to be  
12 getting together before the Campus Plan roundtable and we already  
13 have one small item on the agenda for a meeting to be held prior.  
14 We can do this at the end of the month, if Mr. Franklin is  
15 available.

16 CHAIRPERSON HOOD: But you know, Commissioner  
17 Mitten, this is kind of steep. This may take more than 30 minutes.

18 COMMISSIONER HOLMAN: I was thinking --

19 VICE CHAIRPERSON MITTEN: I am not suggesting that  
20 it is going to take 30 minutes. I am just saying we could give  
21 ourselves ample time and take it up then.

22 COMMISSIONER HOLMAN: Oh, you mean after midnight?

23  
24 VICE CHAIRPERSON MITTEN: No, I mean like before.  
25 But start --

1 CHAIRPERSON HOOD: At 5:00?

2 VICE CHAIRPERSON MITTEN: I'd start earlier than  
3 that.

4 CHAIRPERSON HOOD: We may need to -- so we have our  
5 awareness when we are doing the Campus Plan and the other issue in  
6 front of us, we may need to put this sometime in September.

7 COMMISSIONER PARSONS: All right. September it is.

8  
9 CHAIRPERSON HOOD: Okay. So do we need to do a  
10 formal motion on that or just a consensus. At the September  
11 meeting we will discuss this. All right. Let's move right along  
12 with our agenda.

13 MR. BASTIDA: Mr. Chairman, you have a copy of the  
14 reminder schedule that I have provided you through the year  
15 basically -- to the end of the year. Basically what it has is the  
16 Zoning Commission dates for their meetings and the hearing date  
17 for Albemarle case. I would like to remind the Commissioners that  
18 the case for this coming Thursday has been requested for  
19 postponement. I didn't take it off the reminder schedule because I  
20 am waiting for the request from the applicant and the Office of  
21 Planning, the formal request.

22 CHAIRPERSON HOOD: Mr. Bastida, on Thursday,  
23 Commissioner Holman has agreed to come in and hope and adjourn the  
24 meeting in my absence. I will be out of town.

25 MR. BASTIDA: Okay. I will provide him the

1 necessary information so he can do so.

2 COMMISSIONER PARSONS: Mr. Bastida, hasn't this  
3 case been postponed before?

4 MR. BASTIDA: Which case?

5 COMMISSIONER PARSONS: Medstar?

6 MR. BASTIDA: No, it has not.

7 COMMISSIONER PARSONS: It hasn't? Fine.

8 MR. BASTIDA: The concern for the postponement is  
9 that the Office of Planning has requested further studies  
10 regarding the traffic impacts in accordance with the requested  
11 zoning category and that just was provided or is about to be  
12 provided.

13 COMMISSIONER PARSONS: That is all right. That is  
14 okay.

15 CHAIRPERSON HOOD: Okay. The report of the  
16 Director. Do we have a report?

17 MR. BASTIDA: Yes. She has a report. I am going to  
18 ask her to come and join us.

19 CHAIRPERSON HOOD: Okay.

20 MR. BASTIDA: But I will keep on going.

21 CHAIRPERSON HOOD: Yes, let's finish the agenda.

22 MR. BASTIDA: Other business. Attendance to BZA  
23 meetings. I think that --

24 CHAIRPERSON HOOD: I think we are covered through  
25 August, right?

1 MR. BASTIDA: Correct. But how about early  
2 September.

3 CHAIRPERSON HOOD: Is anyone on tap for the  
4 September meeting? Let me see.

5 COMMISSIONER HOLMAN: I'll be available. I'll take  
6 the 5th.

7 MR. BASTIDA: No pun intended, right?

8 CHAIRPERSON HOOD: Okay, that is September 5,  
9 right?

10 MR. BASTIDA: Correct. Thank you, Mr. Chairman.

11 CHAIRPERSON HOOD: So that is all we needed, right?

12 MR. BASTIDA: Right. And you have a list of the  
13 two new cases filed?

14 CHAIRPERSON HOOD: Yes, we also need -- let me just  
15 say we need someone for the 19th. I'll do the 19th.

16 MR. BASTIDA: Of September?

17 CHAIRPERSON HOOD: It looks like a short agenda.  
18 Yes, I will do the 19th.

19 MR. BASTIDA: We can amplify it in if you so wish.

20 CHAIRPERSON HOOD: No, that is all right. I will sign up  
21 for the 19th. And I think Mr. -- oh, I am sorry, Ms. Mitten and  
22 also Mr. Parsons -- the only other day -- we need somebody for  
23 October. We can wait and do that in our September meeting.

24 MR. BASTIDA: Correct.

25 CHAIRPERSON HOOD: Okay.



1 MR. BASTIDA: My only concern was for early  
2 September.

3 CHAIRPERSON HOOD: Okay. So we are covered through  
4 the whole month of September. Let me just add -- so I think we  
5 finished our agenda. Let me also just add I want to thank the  
6 staff.

7 MR. BASTIDA: Mr. Chairman, if I may, we are almost  
8 finished.

9 CHAIRPERSON HOOD: Right, let me just do this. I  
10 want to thank the staff, Ms. Brown and Vincent and Alberto.  
11 Sometimes we don't recognize the hard work that the staff does.  
12 But I can surely see a lot of difference in our packets. A lot of  
13 time has gone into it. And I think the Zoning Commission staff is  
14 doing an excellent job, especially in making the Commissioners --  
15 having us prepared for our meetings. So, again, I want to commend  
16 you and thank you and keep up the good work. Next, Ms. Kress?

17 MS. KRESS: Good afternoon. I just wanted to do a  
18 very brief report on two items. First of all, regarding the  
19 Campus Plans. Last month, there was a discussion about asking me  
20 to write a letter to the Council regarding some emergency  
21 legislation to allow the Commission to move forward more quickly  
22 on the Campus Plan issues, particularly the issue of perhaps the  
23 Commission itself taking over the Campus Plans.

24 Subsequent to that, in an investigation that was  
25 done by our Corporation counsel, it turned out that it is his

1 interpretation that the Commission itself does have the right at  
2 any time to do special exceptions, which is basically how Campus  
3 Plans are heard now and how the continuation of further work on  
4 the campuses are done. So there is no need for any emergency  
5 regulation with the Council.

6 Subsequently, there has been much discussion about  
7 having a roundtable regarding the Campus Plan issues. And since  
8 that has now been preliminarily scheduled and I believe I  
9 understand that the Commission is in agreement to happen on July  
10 27 at 7:00 p.m., it would appear now that it makes sense to wait  
11 until after the roundtable for the Commission to decide how it  
12 wants to proceed. We have had letters and comments, both from the  
13 community and from the universities, that it would perhaps be good  
14 for the Commission to wait until it has conducted the roundtable  
15 before it decides the direction it may wish to go.

16 I did deliver to you a little earlier a press  
17 release regarding the roundtable and I just ask for your final  
18 comments before you leave today. And also the list of invitees to  
19 the roundtable.

20 The other quick issue was I think we had a really  
21 good meeting. There is a regulatory reform committee that has  
22 been meeting and will be meeting on a very regular basis, I think  
23 at least once a month and maybe every two weeks. It is the  
24 regulatory reform subcommittee of the economic development  
25 committee, and is composed of members of DCRA, the Office of

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1 Planning and Economic Development, the Office of Planning. We  
2 have now also been invited and there are several members from the  
3 community -- I mean from the development community who are also  
4 members and participators. And in our attendance at the first  
5 meeting, there was a lot of discussion about zoning and zoning  
6 concerns, many of which we have either in our strategic plan or  
7 underway. And happily there was discussion about possibly funding  
8 some of our additional technological needs as it regards the money  
9 that we were not funded. As you may recall, we asked for  
10 approximately \$1 million for our additional expenses regarding the  
11 technology and the things we wanted to do. Initially, the mayor  
12 didn't give us any. But then the Council saw fit to add about  
13 \$500,000.00 to our budget, which was about half of what we had  
14 asked for. So in this meeting, I brought up that that was the  
15 other amount of money that we needed to be able to do all of our  
16 full plans we had set out to do. Lloyd Jordan said that he would  
17 be happy to help bring this forward and to see if there maybe  
18 could be some capital monies available to help us fund and  
19 complete more rapidly the Web things that we are wishing to do and  
20 our map and whatnot.

21 So that is hopeful at this point and we are now  
22 meeting this Thursday again and I will be exploring that further  
23 this Thursday. So with that, that is quickly my updates on two  
24 major issues. Do you have any questions?

25 CHAIRPERSON HOOD: I would just like to say that

1 this office has definitely improved over the past few months. I am  
2 hearing a lot of things in my travels, and I want to commend you  
3 and your staff for doing a great job. Keep up the good work.  
4 While everything is not easy and we haven't accomplished and have  
5 all the fix-all's right now, we have made a lot of progress. So  
6 continue to do the good work. Thank you.

7 MS. KRESS: Thank you.

8 CHAIRPERSON HOOD: If everything is in order --

9 MR. BASTIDA: That is it, Mr. Chairman.

10 CHAIRPERSON HOOD: Okay. With that, this meeting  
11 is adjourned. Thank you.

12 (Whereupon, at 3:38 p.m., the meeting was  
13 adjourned.)  
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