

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

PUBLIC MEETING

+ + + + +

FRIDAY
APRIL 19, 2002

+ + + + +

WASHINGTON, D.C.

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The meeting was convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice. Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
HERBERT FRANKLIN	Commissioner
JAMES HANNAHAM	Commissioner
JOHN PARSONS	Commissioner

ZONING COMMISSION STAFF PRESENT:

Alberto Bastida, Secretary, Office of Zoning
Sharon Sanchez, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, ESQ.
Marie Sansone, ESQ.

D.C. OFFICE OF PLANNING:

Steve Cochran
Ellen McCarthy
Jennifer Steingasser
Karen Thomas

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

1:44 p.m.

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is the monthly meeting of the Zoning Commission of the District of Columbia. Today is Friday, April 19th, 2002.

I apologize that we're starting a little late today. We have a very full agenda, and we've been receiving a lot of information at the last minute that we're trying to incorporate into what we're considering today.

But before we begin, we have a number of things that we want to either postpone, rearrange on the agenda. We even have a special public meeting that we'd like to schedule. So, if you'll just bear with me, I'm going to run through these items.

The first thing is that the first item under proposed action, which is Zoning Commission case number 96-, dash, 3/, slash, 89-, dash, 1, the Buzzard Point Overlay, will be the first item that we take up after we take up preliminary matters, because Mr. Franklin is here specifically for that case, and we'd like to accommodate his schedule by taking that up first.

Next, we will move the minutes and offer the planning status report til the end, following the matters

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1 for final action, so that we don't bog down the schedule
2 with that up front.

3 Under hearing action, Zoning Commission case
4 number 02-, dash, 18, the map amendment for the Kenilworth
5 Recreation Center. We have an Office of Planning report,
6 however, we don't actually have the application in hand,
7 so we won't be taking that up under hearing action today.

8 Let's see. Under proposed action letter D,
9 Zoning Commission Case Number 02-, dash, 01, which is
10 a text amendment regarding the timing for BZA appeals,
11 that will be moved to our May meeting agenda.

12 Under final action, the first items on the
13 Commission case number 01-, dash, 13C, we have received
14 some advice from corporation counsel that causes us to
15 just take another look at the order. And what we'd like
16 to do is schedule a special public meeting that would
17 precede our next public hearing, which is next Thursday,
18 and that would commence at 6 p.m. And we'll take that
19 up at that time, so as not to cause an undue delay in
20 the decision there, but we just needed a little bit more
21 time to reflect on the order.

22 We will have some discussion on -- I believe
23 we'll have some discussion on the Capitol Point time
24 extension, but the decision on that will be postponed
25 until May, but we will discuss it today.

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1 And then, we received, off the planning
2 report just a minute ago, about the Florida Rock Time
3 Extension and that will be postponed, as well, to May.

4 I know that there was some concern, on the
5 part of the applicant, that they be accommodated in terms
6 of attending a meeting, and I know their representative
7 is here, but now that the Office of Planning Report is
8 late, it would give us -- we need the extra time to consider
9 that. So, that will be postponed to May as well.

10 I think that's everything in terms of the
11 agenda. Anybody else on the Commission, or Mr. Bastida,
12 did I miss anything?

13 MR. BASTIDA: No, Madam Chairman. Just to
14 be precise, the proposed special meeting for IMF is next
15 Thursday, which is April the 25th, at six o'clock.

16 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

17 MR. BASTIDA: Thank you.

18 CHAIRPERSON MITTEN: Now, any other
19 preliminary matters, Mr. Bastida?

20 MR. BASTIDA: Staff has no preliminary
21 matters, Madam Chairman.

22 CHAIRPERSON MITTEN: Thank you. Now,
23 we'll proceed to proposed action, Zoning Commission case
24 number 96-, dash, 3/, slash, 89-, dash 1, the Buzzard
25 Point overlay.

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1 COMMISSIONER FRANKLIN: Madam Chair, for the
2 record, I'd like to indicate that I'm participating in
3 this matter pursuant to a written authority from the [arc
4 tic] of the Capitol to me, as a temporary employee, so
5 that I can vote on matters that I participated in earlier.

6 CHAIRPERSON MITTEN: Thank you, Mr.
7 Franklin.

8 COMMISSIONER FRANKLIN: And I thank you very
9 much for changing the schedule.

10 CHAIRPERSON MITTEN: Our pleasure. It's
11 just one of those days for us.

12 Now, we were given, moments ago as well, a
13 -- I'll call it a consolidated language of a draft for
14 the Buzzard Point Capitol Gateway Overlay District. So,
15 for those of you who may be following along at home, you
16 probably don't have the version that we're looking at,
17 and I apologize for that.

18 There was a map that was requested, also,
19 from the Office of Planning. Has that been provided?
20 Mr. Bastida, can you help us out with that?

21 All right. The way that I'd like to proceed
22 is I will just -- I have a number of issues that have
23 been raised in the context of this case, and any of the
24 Commissioners, as an idea occurs to you, something that
25 you'd like to raise, feel free, but I'll just trigger

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1 discussion on these issues from my list. But if you want
2 to introduce anything else, as I said, feel free.

3 Let's start with something relatively
4 specific. One of the things that is proposed in these
5 regulations is that design control along M Street be added
6 to those sites that are now zoned C3C, and there's a few
7 issues that have been raised about that.

8 One is that sites of a certain size -- this
9 was raised by a property owner -- that the minimum gross
10 floor area reservation requirement for the first floor
11 is difficult to meet on a small site, and that is section
12 1604.4. And we had asked staff to pose the question to
13 the Office of Planning, and I hope such a question was
14 posed. I don't know what the response is, so I'll just
15 have to pose it now, to the Office of Planning.

16 There was an alternative that was suggested
17 by the applicant, in terms of having a requirement for
18 a lower, overall percentage of the gross floor area of
19 the first floor to be reserved for retail space, and then
20 having a frontage requirement. And we wanted to consider
21 whether or not there was a threshold size for making such
22 a distinction, since the proposed language is only onerous
23 to small sites.

24 So, I don't know if staff had posed that
25 question to you, if you have something to offer, by way

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1 of guidance, if we chose to go that way, in terms of having
2 a minimum size before the language of 1604.4 would apply.

3 MS. MCCARTHY: Staff did not pose that
4 question formally. We've been looking at that issue in
5 conjunction with the square 37 zoning, and we're
6 concluding, as we diagram sites, and try to look what
7 .5 FAR meant, that once you got below 10,000 square feet,
8 someplace between 8,000 and 10,000, it got to be very
9 difficult to have the kind of loading and other activities
10 in the lobby.

11 Now, in that instance, we were particularly
12 looking at a residential building where you had to have
13 mailboxes and some other things you wouldn't necessarily
14 have to have in a commercial lobby. But presumably, in
15 a commercial lobby, you've got FedEx boxes and those kinds
16 of things as well. So, it probably balances out.

17 What we have not done is to look at the typical
18 lot widths in this area, and see whether there are a number
19 that are smaller than that or not, which might be relevant,
20 although, with the rate that things are being assembled,
21 it wasn't clear.

22 CHAIRPERSON MITTEN: The specific site in
23 question, I understand there is ongoing assemblage, and
24 I'm sure it will continue. This particular site, I think,
25 could not be assembled any further, because I think there

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1 was a church next door, and something else.

2 So, are you suggesting that 10,000 square
3 feet is a size that, if we chose to change the -- to
4 accommodate what we know to be true, which is that the
5 provisions of the proposed 1604.4 are going to be onerous
6 for those sites, and we would almost be forcing them to
7 seek a variance on that?

8 MS. MCCARTHY: Yeah. I'm sorry, Ms. Mitten.

9 So, there was a particular applicant who had sent
10 something in, in writing, asking for that question to
11 be looked at?

12 CHAIRPERSON MITTEN: Yes. This came from
13 Frank Gambino, on behalf of Lerner. This is at -- I don't
14 know. I think it's -- would be at Half and M Street.

15 Okay. No, we haven't seen a copy of that.

16 What we could do is to say, based on the research we've
17 done on another case, 10,000 is a number that we could
18 be comfortable with now. And as you advertise this for
19 the final hearing, we could take a specific look at that
20 site, and then get back a supplemental report.

21 CHAIRPERSON MITTEN: Okay. Thank you. Let
22 me get the sense of the Commission on this point whether
23 we first want to make an accommodation for size, in terms
24 of putting 1604.4 into effect, as written. And then,
25 if we did make an accommodation for size, what would be

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1 the alternative language, and whether or not that language
2 --

3 I think, what had been suggested by the Lerner
4 folks, was that it would be 35 percent of the first floor
5 gross floor area, and 100 percent of the total frontage
6 along M Street, not otherwise devoted to the building
7 entrance and fire control. That would be reserved for
8 retail.

9 So, the issue is that -- should that
10 substitute for 1604.4, regardless of size, or what are
11 your thoughts, anybody?

12 COMMISSIONER FRANKLIN: Madam Chair, I'm
13 attracted to that suggestion because it seems to me that,
14 particularly with respect to retail, I think that the
15 public policy is to encourage vitality along the street
16 frontage to avoid the deadening effect of walls, etc.
17 And I think that that suggestion is adequately drafted
18 for that purpose. And it would, I think, serve to avoid
19 the granting of variances and other changes for hardship
20 reasons.

21 CHAIRPERSON MITTEN: Okay. So you would
22 endorse the alternative language proposed?

23 COMMISSIONER FRANKLIN: I would, yes.

24 COMMISSIONER PARSONS: I concur with Mr.
25 Franklin.

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1 CHAIRPERSON MITTEN: Okay. Anyone else?

2 VICE-CHAIRPERSON HOOD: And so, what are we
3 doing? Are we going to advertise both languages?

4 CHAIRPERSON MITTEN: No. I think what we're
5 doing today is we will take proposed action on a fixed
6 set of regulations. That will then be advertised, 30
7 day comment period.

8 And then, to the extent that folks weigh in
9 and cause us to make modifications in that, when we do
10 final action, as I anticipate they will. This is a fairly
11 complicated rule-making.

12 VICE-CHAIRPERSON HOOD: Madam Chair, I guess
13 my point is we've just come up with another
14 recommendation. So, I would think it would probably be
15 the best -- to our benefit, if we put this language and
16 the alternative which was just mentioned. That way, we
17 can kind of go see what the feel is and what the basis
18 is on both of them, as opposed to just putting out there,
19 and then, we're all over the place again.

20 CHAIRPERSON MITTEN: Let me just put this
21 question to Mr. Bergstein.

22 Mr. Bergstein, at this juncture, it is
23 appropriate to be advertising language in the
24 alternative, or should we be selecting one as preferable,
25 and inviting comments on that?

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1 MR. BERGSTEIN: I would prefer the latter.
2 I think that, in the preamble to the notes proposed
3 rule-making, we could indicate that the language that
4 is being proposed from 1604.4, differs from the language
5 as advertised, and we could indicate what that difference
6 is in the preamble, and invite comments upon the question
7 of that change. I think I'd prefer to do it like that.

8 CHAIRPERSON MITTEN: I think what Mr. Hood,
9 his concern is that it be called out so that we're really
10 inviting comment, and I think we can accomplish that.
11 All right.

12 So, is there a consensus that we'd like to
13 substitute some alternative language for 1604.4, that
14 the space to be reserved on the ground floor will be 35
15 percent of the gross floor area of the ground floor
16 preferred uses; and that those uses will occupy 100
17 percent of the total frontage along M Street not otherwise
18 devoted to the building entrance and fire control? And
19 then, the balance of the language is 16054.4 would
20 continue, where certain uses are excluded.

21 Is that -- do we have consensus on that?
22 Okay.

23 COMMISSIONER FRANKLIN: I'd like to note,
24 Madam Chair, that if we go in that direction, that there
25 should be some tweaking of 1604.5, because there's a

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1 reference, in the proviso of that section, that says
2 provided that the ground floor space is suitably designed
3 for future occupancy by the preferred uses. We'll have
4 to just sort of indicate that you're not referring to
5 -- in fact, even before we made the change, we probably
6 should have clarified that it's not all the ground floor
7 space we're talking about.

8 CHAIRPERSON MITTEN: Yes. Okay. And I
9 believe that the 1604.5 is actually some range that was
10 added to accommodate phase-in of the retail space and
11 not dissimilar from what we had done with the EES, and
12 allowing some interim occupancy of those spaces. So,
13 I think that's a good addition.

14 Let me go to the beginning of 1604. And this
15 will come up again, but let's deal with this as it says
16 it relates specifically to the special exception review
17 mentioned in 1604.1, that the proposed buildings along
18 M Street shall be subject to approval by the Zoning
19 Commission as a special exception. I think we need to
20 talk about that specifically, and whether we want that
21 reviewed or reside with the Zoning Commission, or to be
22 taken care of by the BZA.

23 Any thoughts?

24 COMMISSIONER PARSONS: Well, I guess we need
25 to be very cautious about the Zoning Commission stepping

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1 in, in special circumstances. Before you know it,
2 they'll all be special.

3 CHAIRPERSON MITTEN: True.

4 COMMISSIONER PARSONS: So, although we have
5 discussed this before, I think the BZA is probably the
6 more appropriate board to deal with this particular
7 situation, that is the M Street façade. So, I'm going
8 to suggest that we move that over to the BZA.

9 CHAIRPERSON MITTEN: Okay. Anyone else?

10 VICE-CHAIRPERSON HOOD: Madam Chair, I would
11 concur with Mr. Parsons.

12 CHAIRPERSON MITTEN: And there is some
13 guidance -- it's not a lot of guidance -- but there is
14 some that, I think, accomplishes -- there is some guidance
15 in 1604 that accomplishes a lot of what the concern was
16 about M Street, which is to animate it, and to get some
17 retail there, and to have wider sidewalks there. And
18 so, the bulk of the concern about M Street, I think, is
19 being accommodated in the balance of 1604.

20 VICE-CHAIRPERSON HOOD: Right.

21 CHAIRPERSON MITTEN: So, do we have
22 consensus about that, that we'll change 1604.1 to be
23 reviewed by the BZA? Okay.

24 Then, let's -- pardon me if we're going to
25 jump around, but this is hard to do in an orderly fashion.

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1 Let's move to the other area --

2 COMMISSIONER FRANKLIN: Before we leave that
3 matter, Chair, could I ask whether everyone is happy with
4 the guidance that is being given to the BZA, when we talk
5 about the building's architectural design, the site plan,
6 landscaping, and sidewalk treatment are of, quote,
7 "superior quality." Do you think that that is sufficient
8 guidance? It's very general.

9 CHAIRPERSON MITTEN: Well, that's always
10 been our struggle when we're approving PUDs or supposedly
11 have superior designs. So, I don't know. Maybe we
12 shouldn't give them any more to go on. We don't need their
13 help.

14 COMMISSIONER FRANKLIN: Well, okay.

15 CHAIRPERSON MITTEN: I mean, do you have
16 something to suggest?

17 COMMISSIONER FRANKLIN: I -- I don't.

18 CHAIRPERSON MITTEN: I understand what
19 you're --

20 COMMISSIONER FRANKLIN: Yeah. I don't, at
21 the moment, have anything to suggest, and I would invite
22 the Office of Planning to address this before this goes
23 into proposed form for publication, to see whether there's
24 anything else, in our regulations, that can invest us
25 with more guidance. That's my only point.

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1 CHAIRPERSON MITTEN: Did you want them to
2 address that now?

3 COMMISSIONER FRANKLIN: Well, I was hoping
4 that they might address it before this gets published.

5 Or do we not have time, Mr. Bergstein? Are we going
6 to just adopt this proposed language today and that's
7 it? If that's the case, I'll withdraw my point.

8 CHAIRPERSON MITTEN: Well, what we could do
9 is -- you now, if there's a series of things, and Mr.
10 Bergstein, tell me if this is going to be too cumbersome,
11 which is if we have areas of concern, and we want to invite
12 comment, not unlike the alternative language for 1604.4,
13 is can we have a series of things where we say, you know,
14 the Commission invites comment on how we can better
15 articulate what's meant by a superior quality of design,
16 or something like that? Or is that going to be too
17 problematic?

18 MR. BERGSTEIN: I'm just trying to think.
19 I think you can invite it but certainly, if you acted
20 on it, you need another proposed. But in a sense, usually
21 by the time you propose a rule, you're supposed to have
22 a pretty firm sense of where you are, and I can't recall,
23 normally, of any rule-making that I've done for other
24 agencies that have suggested other types of comments other
25 than what's in the language of the rule. That's why it's

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1 a comment period on the rule.

2 So, I'm suggesting, and I have suggested
3 that, where there's a clear alternative, you could suggest
4 comment on it, but I would think -- or suggest that you
5 limit it, because it would just be confusing as to what's
6 really being commented about. So, I don't want to dissuade
7 you from doing it, but I think you should limit it as
8 much as you can beforehand.

9 COMMISSIONER FRANKLIN: I withdraw my point.

10 CHAIRPERSON MITTEN: All right.

11 COMMISSIONER FRANKLIN: Let's proceed.

12 CHAIRPERSON MITTEN: All right. Now, the
13 -- let me just ask Mr. Bergstein a question about 1603.6,
14 because this is the other area where the Zoning Commission
15 would have ongoing review. It says, in the BPW2 District,
16 "The Zoning Commission, at its discretion, may grant bonus
17 density," so on and so on.

18 By what means would that come to the
19 Commission?

20 MR. BERGSTEIN: This is part of the special
21 exception review. That is the provision that it emanates
22 from. In fact, there's an earlier reference in the rules,
23 when the other densities are called out, and it's 1601.4
24 that says, "The Zoning Commission may grant additional
25 density to lots in BPW2, as part of the special exception

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1 process."

2 So, it would come to you. It'd be part and
3 parcel of the special exception process.

4 CHAIRPERSON MITTEN: Okay. And then, in
5 1603.1, it's said again, that, "All proposed uses,
6 buildings and structures in the BPW2 district shall be
7 subject to approval by the Zoning Commission, as a special
8 exception." Yes.

9 And so, it's in that context that someone
10 could make application in addition for -- additional
11 density?

12 MR. BERGSTEIN: That's right. Every use,
13 in BPW2, has to come before the Zoning Commission for
14 approval.

15 CHAIRPERSON MITTEN: Okay.

16 MR. BERGSTEIN: At the time they request that
17 approval, while meeting their burden of proof, they can
18 also ask for this additional zoning relief, and satisfy
19 the standards that relates to that.

20 CHAIRPERSON MITTEN: Okay. Thank you.
21 Now, here again, we have a special exception kind of review
22 process being proposed to be conducted by the Zoning
23 Commission, which is not the normal course.

24 COMMISSIONER PARSONS: Well, these, on the
25 other hand, are special. Here, we're talking about six

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1 properties, essentially, that are going to be the core
2 and key to a successful waterfront. And I don't know
3 how we get that before the Zoning Commission, but I
4 certainly don't feel the same way as I did about the M
5 Street side.

6 So, if it's to use some incentive process
7 to lure the PB, that would be another way to go, rather
8 than the special exception, because we can't command or
9 demand a PUD.

10 CHAIRPERSON MITTEN: So, I guess there's two
11 aspects of it. One is that, at least as it's been
12 proposed, that anything that is constructed in the BPW2
13 District would receive special exception review. And,
14 while we might be able to say that if you're seeking this
15 bonus density, then you must seek it through a PUD process.

16 But that doesn't solve the other problem,
17 which is, what if they're not seeking the bonus? We can't
18 force them to come in for a PUD, so we might be stuck
19 with the special exception process, and maybe the simplest
20 thing is just to have it all performed in the context
21 of a special exception.

22 COMMISSIONER PARSONS: You're right.

23 CHAIRPERSON MITTEN: What I also got out of
24 your comments is the fact that the nature of this is so
25 important and different, that it should be in front of

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1 the Commission rather than the BZA.

2 COMMISSIONER PARSONS: Absolutely. I don't
3 know how we'd do that, but if we have to use the term,
4 "special exception," it is just that, and --

5 CHAIRPERSON MITTEN: Let me just verify
6 something with Mr. Bergstein that I think it's true,
7 because we do special exception review under campus plans.

8 But there's not any reason why the Zoning Commission
9 can't review the special exceptions, is there, Mr.
10 Bergstein?

11 MR. BERGSTEIN: That was our interpretation
12 of Section 8 of the Zoning Act, that because the Zoning
13 Commission has the authority to designate certain uses
14 to the BZA, to be heard as special exceptions, that that
15 authority derives from the Zoning Commission, and it can
16 provide that there's a certain class of uses which it
17 wants to hear as special exceptions.

18 And one thing that Ms. Sansone and I were
19 discussing was that it really was sort of redundant --
20 and this is by drafting -- to say as a special exception.

21 It could have simply said to be subject to the approval
22 of the Zoning Commission, which is what the normal special
23 exception language is.

24 In other words, when you read those uses in
25 the entire 11 that are special exceptions, they don't

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1 really say special exceptions. They say the following
2 uses are subject to the approval of the BZA, and if it
3 would raise any comfort level, you could probably just
4 eliminate that phrase, as a special exception, and say
5 it's subject to approval by the Zoning Commission.

6 But that's what it would be. It's
7 conditional zoning, so would be a special exception.

8 CHAIRPERSON MITTEN: Okay. So regardless
9 of whether we called it out there or not, we would follow
10 the BZA procedures for special exceptions; is that right?

11 MR. BERGSTEIN: You're not bound to.

12 CHAIRPERSON MITTEN: Oh, we're not?

13 MR. BERGSTEIN: No. In fact, one thing
14 that's not in here, and that we would put in here, if
15 you did decide to do that, would be the additional language
16 that, for example, was used in the EEF regulations, that
17 incorporated the BZ rules for special exceptions.

18 But there's no reason why the Zoning
19 Commission could not use its own contested case procedures
20 for special exceptions. There might be differences in
21 notice requirements that you might want to consider, and
22 maybe use the BZA notice requirements. You would take
23 a final -- a proposed action, because you don't do that
24 in a special exceptions. So, there may be a need to
25 incorporate parts of the BZA rules.

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1 But it's really your decision, whether or
2 not you want to craft a customized set of rules for this,
3 simply adopt your own rules, and carve out those rules
4 which don't apply, or simply do as you did for the campus
5 plans and EEFs, and simply use the BZA rules.

6 CHAIRPERSON MITTEN: Okay. Any thoughts on
7 that from the Commission?

8 SECRETARY BASTIDA: I think the staff might
9 be -- would be inclined to have the Zoning Commission
10 rules being followed because in that way, would be
11 consistent with the advertisements as rules of the Zoning
12 Commission.

13 Now, it cause some problems when we have to
14 follow the rules of the board to advertise for campus
15 plan and further processing.

16 CHAIRPERSON MITTEN: Are you saying it
17 causes confusion with the public?

18 SECRETARY BASTIDA: Right.

19 CHAIRPERSON MITTEN: Okay.

20 SECRETARY BASTIDA: And also with the
21 applicants.

22 CHAIRPERSON MITTEN: Okay.

23 SECRETARY BASTIDA: Thank you.

24 CHAIRPERSON MITTEN: Well, we want to
25 eliminate as much confusion as possible. So then, I guess,

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1 what we could modify then, in terms of the language of
2 1603.1 would just be to eliminate, "as a special
3 exception," and just "subject to approval by the Zoning
4 Commission," period.

5 COMMISSIONER FRANKLIN: Madam Chair, if we
6 had done that on M Street -- I was not comfortable with
7 the decision to put M Street with the BZA.

8 CHAIRPERSON MITTEN: Okay

9 COMMISSIONER FRANKLIN: If we took the
10 language of special exception away from the M Street
11 provision, would members of the Commission feel more
12 comfortable keeping it with the Commission?

13 CHAIRPERSON MITTEN: Since we know what
14 superior design is --

15 COMMISSIONER FRANKLIN: Absolutely.

16 CHAIRPERSON MITTEN: What do you think, Mr.
17 Parson?

18 COMMISSIONER PARSONS: Well, that would mean
19 that we would have to establish new rules for the
20 processings, right?

21 CHAIRPERSON MITTEN: Not necessarily.

22 COMMISSIONER PARSONS: We could make them up?

23 CHAIRPERSON MITTEN: No. Mr. Bergstein, we
24 could just use our normal contested case rules, right?

25 MR. BERGSTEIN: That's my hope. I'll have

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1 to be frank. I haven't gone through and seen if it would
2 fit squarely within every part of your procedures, but
3 I can't see why not.

4 In essence, your hearing procedures are
5 essentially the same, the order of witnesses, things like
6 that. And I would just have to explore if there's any
7 things that would need to be tweaked, such as I said,
8 the notion of a proposed action which wouldn't apply,
9 and we would have to say that wouldn't apply. But I don't
10 see why your own rules for contested cases could not govern
11 these types of proceedings.

12 COMMISSIONER FRANKLIN: Even though the
13 issues here are mostly design?

14 MR. BERGSTEIN: Well, again, that's a
15 different issue. This sets out its own criteria, just
16 like the EEF rules set out its own criteria. I believe
17 this also does incorporate -- or maybe it's the other
18 one that incorporates -- the 3104 criteria as well, but
19 you don't necessarily have to use the special exception
20 criteria for the BZA.

21 The Zoning Act does not set out the criteria
22 for special exception. It just says that the Zoning
23 Commission can designate those uses which are subject
24 to special exception, and then it's the rules that
25 establish the criteria.

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1 COMMISSIONER FRANKLIN: Okay.

2 CHAIRPERSON MITTEN: Okay. Are you
3 comfortable with that?

4 COMMISSIONER FRANKLIN: Yeah. I'm
5 comfortable with keeping both with the Commission because
6 these design issues are really something the Commission
7 has had a lot of experience with, and the BZA tends to
8 look at exceptions with respect to uses and operational
9 criteria.

10 CHAIRPERSON MITTEN: Well, I think it's
11 good, and I think the thing that was really causing us,
12 I think, pause was just the use of the term special
13 exception. So there would also be a modification, then,
14 in 1601.4, that says the Zoning Commission may grant
15 additional density to lots in the BPW2 District as part
16 of this special exception process. Maybe we just want
17 to say it's part of the review process applicable -- and
18 then, it makes reference to 1603.5 and 6.

19 VICE-CHAIRPERSON HOOD: Madam Chairman, let
20 me just ask first, I think it's good that we move this
21 way, especially being consistent, but we also probably
22 want to look into the fee issue, because this put an
23 abundant amount of fees, different fees, and I'm not sure
24 --

25 CHAIRPERSON MITTEN: That's a good question.

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1 That's a good question.

2 VICE-CHAIRPERSON HOOD: So, we probably want
3 to further investigate.

4 SECRETARY BASTIDA: If staff has these
5 cosigned, we will present something to you when we do
6 the language.

7 CHAIRPERSON MITTEN: Okay.

8 SECRETARY BASTIDA: That's already being
9 considered prior, previous to any sign.

10 CHAIRPERSON MITTEN: Thank you. All right.

11 There was a request by one of the property owners that
12 has property in this area, that there be an exemption
13 from, what we'll call now the Zoning Commission review
14 process, in the BPW2 area for existing buildings on the
15 waterfront, in the event of renovation or reconstruction.

16 And the office of Planning, in their November 16th
17 report, had suggested that they didn't agree.

18 I just wanted to have a little discussion
19 to see whether or not there might be some circumstances
20 under which, depending on the scope of the renovation,
21 that it wouldn't apply, and if we can somehow capture
22 that there were certain distinctions that we would want
23 to make.

24 Given that we're willing, on the one hand,
25 although we haven't discussed it yet, but at least, in

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1 terms of the proposed language, we're willing to -- the
2 language suggests that we're willing to grandfather or
3 allow the expansion of existing industrial uses. And
4 yet, in this other area, if someone were to take a
5 renovation of unspecified scope, that they would come
6 under this review process.

7 So, is there any discussion about maybe what
8 the scope of what a renovation might need to be before
9 it triggered this review for an existing building?

10 This specifically relates to, there's two
11 office buildings down in what's the proposed BPW2 area.

12 VICE-CHAIRPERSON HOOD: Madam Chairman,
13 where are you getting this language, in the report?

14 CHAIRPERSON MITTEN: What this came out of
15 was the -- a follow-up memo that the Office of Planning
16 provided to us November 16th, 2001, responding to a number
17 of issues that had been raised in the context of the
18 testimony at the hearing.

19 VICE-CHAIRPERSON HOOD: Which issue number
20 I think is --

21 CHAIRPERSON MITTEN: Issue Number 5.

22 COMMISSIONER PARSONS: Well, I have no
23 patience for this request because these two buildings
24 are -- well, I'd better not editorialize. I agree with
25 OP.

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1 CHAIRPERSON MITTEN: Okay.

2 COMMISSIONER PARSONS: Their reasons,
3 however, are rather interesting. They say because these
4 buildings are sited quite close to the waterfront, it's
5 important that they have this review.

6 I'm of two minds, Madam Chair. On the one
7 hand, if the owner feels that the review is going to be
8 a matter of great difficulty, then he's discouraged from
9 altering what our buildings that, at the risk of
10 editorializing, are in great need of improvement. And
11 so, I just don't know quite what the answer is here.

12 CHAIRPERSON MITTEN: Well, I --

13 COMMISSIONER PARSONS: At least we are
14 getting shoreline continuity in front of these buildings
15 as a part of renovation, and without some review to urge
16 that to happen, I don't know how we can. I mean, simply
17 to --

18 COMMISSIONER PARSONS: Well, suppose the
19 owner decides to simply gut the interior of the building,
20 modernize the systems, etc., and not change the exterior
21 of the wall. Would that be subject to review by this
22 commission, when there's nothing visible or nothing
23 significantly visible on the exterior?

24 CHAIRPERSON MITTEN: Right. And --

25 COMMISSIONER PARSONS: You mean you would

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1 let them go ahead with internal renovation?

2 COMMISSIONER FRANKLIN: Well, I'm just
3 posing the question as to whether the Commission, under
4 its normal jurisdiction, can review something that
5 doesn't have any affect, arguably, on the exterior, and
6 the land use.

7 CHAIRPERSON MITTEN: And that's what I was
8 driving at. And you articulated a scope of renovation.

9 What if it wasn't even that broad? What if all he wanted
10 to do, depending on where we draw the line, if he were
11 seeking to avoid this potentially onerous review process
12 that I don't know what the result, but I suspect it would
13 cost him some money, in terms of what would need to be
14 done on the exterior.

15 What constitutes this renovation that's
16 going to trigger this review, and is it, as Mr. Franklin
17 says, does it have to, somehow, involve the exterior or
18 can solely interior work trigger this review, or how are
19 we -- I think we need to confront that.

20 COMMISSIONER PARSONS: Well, my objective
21 here is to urge a redevelopment of both of these
22 properties. I mean, tear them down, build something,
23 get with the program. They've got their 20 year lease
24 out of this and let's get with the mayor's program and
25 rebuild this waterfront, anything that allows another

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1 lease occupancy and a continuation of this situation is
2 wrong, in the public interest.

3 COMMISSIONER FRANKLIN: I think the
4 Commission probably agrees with that. The question
5 before us, though, is do we achieve that more readily
6 by imposing some review standard on it or not? I don't
7 know.

8 CHAIRPERSON MITTEN: Well, here's the thing.
9 What if we take the sort of hard line of Mr. Parsons
10 and say, okay, if you pull a building permit to do anything
11 on the inside, you're coming to us. And then, what are
12 we going to do? We're going to make the guy spend
13 potentially millions of dollars when all he wanted to
14 do was re-outfit an office or something? I mean, there's
15 a question of balance, I think.

16 COMMISSIONER FRANKLIN: I mean, you'd like
17 him to move the building further back from the water,
18 but I don't think that's in the cards.

19 COMMISSIONER PARSONS: No. I would like him
20 to blow it up. I mean, we're doing that all over the
21 city with buildings this old. It's not time to get a
22 low end GSA lease and leave these structures on the river
23 any longer.

24 CHAIRPERSON MITTEN: Could I just suggest
25 something, since I know you have, in your day job, you

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1 have this much broader perspective, is -- there are
2 certain --

3 COMMISSIONER PARSONS: And more power.

4 CHAIRPERSON MITTEN: And more power, yeah.
5 And that may be more important.

6 I think there are some things that are so
7 much in the public interest that they need to change,
8 that it's incumbent on the public to use their authority
9 to either buy these buildings, condemn these buildings
10 if they're so entirely offensive to the goals of the Anna
11 Costia Waterfront Initiative, that they don't belong
12 there, that I don't want us to be in the position of so
13 restricting a property owner from using their property
14 that they would have a legitimate claim that we had
15 exceeded our authority.

16 COMMISSIONER PARSONS: All right. Will you
17 go with me on exterior renovation?

18 CHAIRPERSON MITTEN: Of course.

19 COMMISSIONER PARSONS: Okay. So, we'll drop
20 renovation, drop re-occupancy, and talk about exterior
21 renovation?

22 CHAIRPERSON MITTEN: Let's -- now, I lost
23 my section. Anybody that can find this before I do is
24 just --

25 COMMISSIONER PARSONS: It's a race.

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1 CHAIRPERSON MITTEN: -- call it out.

2 COMMISSIONER FRANKLIN: The broad provision
3 is in 1603.1, and I think, because it says "all proposed
4 uses," etc., something should be added to that, that deals
5 with existing buildings and -- uses buildings and
6 structures.

7 CHAIRPERSON MITTEN: Okay. Rather than try
8 to draft something new, let's just add language to 1603.1
9 that accommodates existing structures -- or exempts
10 existing structures -- exempts existing structures except
11 when exterior renovation is contemplated, or how should
12 we say that?

13 MR. BERGSTEIN: I'd quickly draft it,
14 because it talks about all proposed uses, buildings, and
15 structures. I'd add in, "or exterior renovations to
16 existing structures."

17 CHAIRPERSON MITTEN: Perfect.

18 MR. BERGSTEIN: But, do you believe that
19 exterior renovation encompasses non-minimal types of
20 replacements? I mean, is it clear to you all that
21 exterior renovation contemplates a certain degree of
22 work, that you don't have to further qualify that?

23 CHAIRPERSON MITTEN: Well, let me ask you
24 a question. If somebody's just doing some repointing,
25 or calking, or whatever would be considered to be

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1 maintenance, regular maintenance, they don't have to get
2 a permit for that, right?

3 SECRETARY BASTIDA: Yes, they do.

4 CHAIRPERSON MITTEN: They do have to get a
5 permit for that?

6 MR. BERGSTEIN: And I just don't know if
7 there's a certain type of permit that would be required
8 to do the type of extensive renovation you're talking
9 about, and we could identify the permanent or exterior
10 renovation which would require the issuance of a blank
11 permit. If that existed, then we could tie it to it.

12 Otherwise -- well, then, you'd either have
13 to say that we're talking about a, I would assume, a
14 substantial exterior renovation whether or not the word
15 "substantial" would be useful, or do you believe that
16 just saying exterior renovation, by its term, exempts
17 minor maintenance type of activities of the type you're
18 talking about?

19 CHAIRPERSON MITTEN: Well, I think that's
20 the distinction we want to make, is maintenance versus
21 an actual, physical change, even if that change is --
22 maybe a prospective tenant says, I really would like you
23 to do something to make this building look better, and
24 the property owner says, well, I'd love to help you out,
25 but I have to limit it to something that would be

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1 considered non-substantial, so I'm only going to rework
2 the entrance or something. Think we would want to capture
3 that because they're obviously, in that context, trying
4 to avoid coming in.

5 So, if you could work on devising some
6 language that makes a distinction between maintenance
7 and any kind of more proactive change, that's what we're
8 looking for.

9 COMMISSIONER FRANKLIN: All right. Let me
10 -- any alteration in the design of the exterior.

11 CHAIRPERSON MITTEN: That's good.

12 MR. BERGSTEIN: I'm sorry. What was that,
13 Mr. Franklin?

14 COMMISSIONER FRANKLIN: Any alteration in
15 the design of the exterior.

16 MR. BERGSTEIN: Any alteration in the design
17 of the exterior that would result in any exterior
18 renovation which would result in an alteration of the
19 external design?

20 CHAIRPERSON MITTEN: Yes.

21 MR. BERGSTEIN: Okay.

22 CHAIRPERSON MITTEN: That sounds good. Do
23 you still want us to wait while you read the -- Mr.
24 Bergstein?

25 MR. BERGSTEIN: No. I have it.

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1 CHAIRPERSON MITTEN: Okay.

2 MR. BERGSTEIN: No. Well, Ms. McCarthy
3 shared with me a suggestion that I'll share with you.
4 She had indicated there is a DOD standard of renovation
5 in excess of 50 percent of the assessed value of the
6 building. If that, in fact, is a known standard, and
7 you've found that satisfactory, that's another thing you
8 could consider, and maybe Ms. McCarthy could, if you wish,
9 could explain that more, but if that is a standard, then,
10 at least, it would be an objective standard that's out
11 there.

12 CHAIRPERSON MITTEN: I think we'd still like
13 to just get at the -- when they're doing something to
14 the outside.

15 MR. BERGSTEIN: That's understood. I'll
16 work with the existing language. Let's put it that way.

17 CHAIRPERSON MITTEN: Okay. Now, let's go
18 to the issue that's been raised along -- there's a couple
19 of areas where either we advertised alternative language,
20 or an alternative has been proposed by a property owner.

21 So, let's move to the issue that was raised for squares
22 700 and 701, which, if you look on the map, it was proposed
23 for BPCR. I'll just give you the little background on
24 it.

25 When there was the consensus meeting that

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1 the Zoning Commission had five years ago or so, the
2 consensus, at the time, was that these two squares should
3 be zoned C3C. Then, when it came time to advertise this
4 language again, the Office of Planning had recommended
5 CR, and the property owner in question -- or one of them,
6 anyway -- had requested that the C3C be put in place for
7 a variety of reasons, including that that was the original
8 consensus.

9 So, I guess there's a couple of issues that
10 come up, and one is that we received a letter that I'd
11 like to, maybe, get some insight from the Office of
12 Planning about, from Council Member Ambrose, and it
13 relates to the liquor store that -- I don't know which
14 corner it's on, but -- and also the relationship of this
15 property to the development of the Southeast Federal
16 Center, and specifically, the Department of
17 Transportation headquarters.

18 So, if the other Commissioners agree, I'd
19 like to ask the Office of Planning, can you give us any
20 insight into the configuration of the DOT headquarters,
21 and its relationship to these two squares, since it's
22 going to be -- at least that site's going to be 100 percent
23 commercial.

24 And then, if you know, what is the
25 significance of the liquor store and how does that relate

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1 to whether the property is zoned C3C or CR? Because I
2 certainly sympathize with the fact that getting rid of
3 that would be advantageous, given the direction that the
4 area's moving.

5 MS. MCCARTHY: I guess the latest update,
6 with regard to the DOT and the rest of the southeast
7 federal center, is that the Office of Planning has been
8 working with the GSA on a consensus plan for that entire
9 area. The DOT site consists of square 743, 770, and I'm
10 not sure if it includes 801 or not.

11 But the consensus of the plan is that it's
12 very important to have a mix of uses throughout the
13 Southeast Federal Center site, and we are looking at
14 housing sites, both immediately to the east of the DOT
15 site, and to encouraging housing on the west of the DOT
16 site as well.

17 Our feeling was it would be very inconsistent
18 of us, in terms of the policy position, if we were to
19 be working with GSA in developing a plan that actively
20 called for housing along M Street in addition to the rest
21 of the Southeast Federal Center site, and to not be putting
22 on a zoning category like CR, that would permit
23 commercial, but would also require a mix of uses, or would,
24 at least, limit the fact that you would not be able to
25 do commercial in 100 percent of that square, which would

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1 be the case with regard to C3C.

2 So, our feeling was that, with regard to 700
3 and 701, CR allowed the applicants, if they wanted to
4 do commercial along M Street, to get a density equivalent
5 to C3C density, because they would be able to, through
6 the combined laws provisions, under the BPCR, they could
7 take the three FAR of commercial they were entitled to
8 in the south part of the square, and put that on the north
9 part, so they could have 6, if they are of commercial,
10 on the northern half of the square, and have 6, if they
11 are residential, on the southern part of the square.

12 CHAIRPERSON MITTEN: Let me just ask you
13 something. I think I heard you say, a moment ago, that
14 you were certainly encouraging residential uses east
15 of the DOT site, and did you say --

16 MS. MCCARTHY: And west as well.

17 CHAIRPERSON MITTEN: And west. And so,
18 you're saying that the DOT site does not extend to First
19 Street, Southeast? Does not extent to the west, all the
20 way to First Street? Am I accurate in my understanding?

21 MS. MCCARTHY: Right. I'm calling upon my
22 DOT expert here.

23 Madam Chair, we can easily check back with
24 Mr. Brandis, who has all of the DOT plans back at the
25 office if you want to move to a different item, and we'll

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1 just confirm that with him now.

2 CHAIRPERSON MITTEN: Okay.

3 MS. MCCARTHY: Maybe he could even fax us
4 over a map of the DOT site, and we could make copies so
5 the Commission could see exactly where that is, and where
6 the retail is slated for on that building as well.

7 CHAIRPERSON MITTEN: Okay. Can you give us
8 -- I'm sorry.

9 VICE-CHAIRPERSON HOOD: Madam Chair, still,
10 I'm not understanding what the significance is, the
11 difference of what's proposed, BPCR, than what the
12 property owner of 700 and 701 is asking for, BPC3C.

13 Now, I understand trying to accomplish
14 residential, but I think anyone that's familiar with
15 what's going on down there, residential won't occur by
16 moving a liquor store on M Street. It won't occur no
17 time soon, I can assure you.

18 We can sit here and legislate all day long,
19 but I just don't understand the significance of getting
20 a BPCR as opposed to BPC3C. So, when you come back, Ms.
21 McCarthy, you just explain -- because I'm still -- I've
22 been having a time with that --

23 COMMISSIONER PARSONS: Let me try to help
24 you.

25 VICE-CHAIRPERSON HOOD: Please. Thank you,

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1 Mr. Parsons.

2 COMMISSIONER PARSONS: I don't know how many
3 hours I spent with former colleagues --

4 VICE-CHAIRPERSON HOOD: Does that mean I'm
5 going to be leaving soon? You said former.

6 COMMISSIONER PARSONS: No, no, no. This was
7 many, many years ago. The proposal under active
8 consideration, then, was all of the blocks from the
9 waterfront to M Street would be C3C. And the CR would
10 occur to the west of South Capitol Street. And the vote
11 was very close to move back, to push back. All of the
12 owners that owned those six squares wanted C3C. And the
13 idea of a BP was to create a special place in the city.

14 It was truly mixed use. And here was its gateway.
15 Here's where it was starting, at M Street. And it
16 shouldn't be, M Street being a continuous row of office
17 buildings like K Street, which is occurring, by the way,
18 and, of course, I can chastise my friends in the federal
19 government that brought DOT down here and fowled it up,
20 but the idea was that the Southeast Federal Center was
21 going to have a CR flavor to it, too.

22 So, I would urge us not to go to C3C because
23 I can assure you that sooner or later -- probably sooner
24 than later -- the other owners will come forward and say,
25 "You see, it's just a little farther, but it's close to

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1 the metro stop. Don't you think C3C should continue to
2 the waterfront, otherwise this place will never be
3 developed and that kind of thing. And we're building
4 an office enclave between the Southeast Federal Center,
5 if we start to build more offices surrounding DOT because
6 it's there.

7 So, I would urge us to stay with what we
8 advertised, stay with the Office of Planning's
9 recommendation out front, BPCR.

10 VICE-CHAIRPERSON HOOD: I understand what
11 you're saying, Mr. Parsons, but I'm just looking at
12 Council Member Ambrose's letter, and when you mentioned
13 normally looks -- I'm very familiar with the area, and
14 I don't understand.

15 I guess what I'm saying is I don't understand
16 what the significance is of the CR as opposed to C3C.
17 What is it that the owner is trying to continually stay
18 with the C3C? And you may have said it. I just didn't
19 understand it.

20 COMMISSIONER PARSONS: He wants new office
21 buildings. He doesn't want to be burdened with
22 residential requirement.

23 VICE-CHAIRPERSON HOOD: Well, C3C is -- we
24 can still have residential in the C3C.

25 COMMISSIONER PARSONS: Oh, you can, yes.

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1 VICE-CHAIRPERSON HOOD: But the reality, I'm
2 dealing with the reality of what's going on right there,
3 right now, and maybe I'm not looking further down the
4 line. That's what I was trying to ask Ms. McCarthy.

5 COMMISSIONER PARSONS: Well, but there've
6 been real exciting things happening here.

7 VICE-CHAIRPERSON HOOD: Oh, I agree, I
8 agree.

9 COMMISSIONER PARSONS: I mean, even to know
10 what's happening.

11 VICE-CHAIRPERSON HOOD: Yeah.

12 COMMISSIONER PARSONS: This whole thing with
13 the Navy yard, and now, DOTs coming. So, what everybody's
14 jumping on is the need for ancillary office use for the
15 private sector that's working with these agencies. And,
16 of course, that's what motivates the marketplace.

17 So, what you've got is a series of office
18 buildings going, and maybe a hotel or two. That hasn't
19 evolved yet. And what we're going to have is this pillage
20 to continue proposals all the way to the waterfront of
21 C3C, which was prevalent when we dealt with this ten years
22 ago, and I think, if we're going to create a special place,
23 and call it Buzzard's Point -- maybe we ought to change
24 the name --

25 UNIDENTIFIED MALE: I second that.

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1 COMMISSIONER PARSONS: Somebody --

2 CHAIRPERSON MITTEN: That's on the list.
3 That's on the list.

4 COMMISSIONER PARSONS: But --

5 VICE-CHAIRPERSON HOOD: But Mr. Parsons, I
6 really agree with everything. There's a lot of exciting
7 things happening, but when you ride by there during the
8 day, the reality of it is that 900 people waiting to go
9 into Norman's liquor store, and I can assure you that
10 would not be buying a house down there near Norman's liquor
11 store, and I think no one else will.

12 So, that's why I'm saying we can sit here
13 and legislate, but the reality of exactly what's going
14 on, let's try and get a feel for what the applicant's
15 actually talking about.

16 Now, I understand your point. But that may
17 come in time.

18 CHAIRPERSON MITTEN: Can I get a sense? I
19 don't know if Office of Planning can -- do you know
20 anything about what is magic about C3C and the liquor
21 store versus CRE and the store?

22 MS. MCCARTHY: Yes.

23 CHAIRPERSON MITTEN: Thank you.

24 MS. MCCARTHY: First of all, the squares for
25 DOT are 770 and 801. I believe also going down to 771

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1 and 802, to Tengee Street, which is not easily shown on
2 the -- oh. I'm sorry. There is Tengee Street, right
3 underneath where it says southeast of Southeast Federal
4 Center?

5 CHAIRPERSON MITTEN: Yes.

6 MS. MCCARTHY: It goes, the southern
7 boundary is -- so, it's basically a square 770 and 801,
8 going over to, you see the diagonal blue line, which is
9 an extension of New Jersey Avenue. That is the western
10 boundary of the site.

11 CHAIRPERSON MITTEN: So, 743 is not in it?

12 MS. MCCARTHY: 743 is not in it.

13 CHAIRPERSON MITTEN: Oh, okay.

14 MS. MCCARTHY: And that's one of the squares
15 where we were talking about trying to encourage working
16 with GSA. That's, I think it was called -- on our
17 consensus plan, I believe that's called Site A, which
18 is one in which we're encouraging GSA to go out with
19 housing, and they've just, this week, released an RFQ,
20 where they are asking for consulting services, from
21 private developers, to review the consensus plan and
22 indicate whether they concur or whether there are any
23 changes that would be recommended.

24 The issue that you're asking me to address
25 with regard to C3C versus CR, that relates to Mr. Hood's

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1 concern, is in either case, you can do commercial along
2 M Street. And I think the applicants --- when the
3 applicant came to visit -- or the concerned parties came
4 to visit us, they indicated that they were willing to
5 do a mix of uses on the square, which they were willing
6 to commit to do, under C3C zoning. But we indicated that
7 the problem is, once that becomes all C3C, the value of
8 the land is such that our experience is, once you have
9 zoning which permits you to do all commercial zoning then,
10 when we go back and say, "Well, now you've done commercial
11 along M Street. What about the southern portion of that
12 square?" Then, the argument would be, "Well, the value
13 of that is too high as commercial, therefore, I can't
14 afford to put housing there.

15 And our response back is you can do,
16 essentially, a 300,000 square foot office building along
17 M Street, which is a large -- the large size of a typical
18 office building, which would be profitable enough and
19 attractive enough -- and you can do that under ZR Zoning
20 -- which would be profitable enough and attractive enough
21 to cause that to be a preferable alternative to Norman
22 D. Liquors.

23 And that's basically what the applicant has
24 said to Mrs. Ambrose, and why she wrote that letter is
25 that she, too, would like to see Norman D. Liquors go.

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1 Our answer is, under the CR zoning, you can
2 still put an office building there. It would still be
3 profitable enough. You could still get rid of Norman
4 D. Liquors.

5 Our concern is just what then happens in the
6 southern part of that square. If 743 gets housing on it,
7 if the 744 south gets housing, and we encourage housing
8 along the waterfront areas there, then the southern
9 portion of 701, the southern half of that square is not
10 as unrealistic to consider for housing and development,
11 and even the applicant is conceding they might be willing
12 to do that.

13 What they suggested to us, when we met with
14 them earlier this week, and pointed out that they didn't
15 have time to proffer something else, is that they might
16 come back during the 30 day advertised period, and come
17 back with a proposed covenant for rezoning of that site,
18 which we said we were sure that was something the
19 Commission would look at before they made a final decision
20 at the final meeting.

21 But our recommendation was, under CR, you
22 get three FAR of commercial, you get three FAR of
23 residential, and we'd rather see that there be, while
24 you're not required to do residential, you can do no more
25 than three FAR of commercial on that site.

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1 So, if we want to see mixed use happen, we're
2 more likely to be able to see mixed use if we limit the
3 amount of commercial that's on the site so that the only
4 way you can maximize your envelope is to do three FAR
5 of residential.

6 But because of the combined lot provisions
7 in CR, you don't have to do three FARs spread evenly over
8 the square. You can take your commercial entitlement
9 and put all of that in one place, and put your residential
10 entitlement, and put all of that in the other place, and
11 just execute a combined lot so you can essentially, then,
12 do a higher density commercial building along M Street,
13 as a matter of right with that combined lot. You don't
14 have to come back to the Zoning Commission, you don't
15 have to do a PUD. You could proceed to do a commercial
16 office building in place of Norman D. Liquors, and still
17 do housing on the southern part of the square.

18 VICE-CHAIRPERSON HOOD: Okay. Ms.
19 McCarthy, I really appreciate that explanation. I think
20 that answered my question.

21 CHAIRPERSON MITTEN: Thank you. And just
22 to put my point of view on the record, I was somewhat
23 sympathetic to the arguments that have been advanced by
24 the property owners for 700 and 701 because I originally
25 thought that the DOT site went all the way to First Street.

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1 It seemed like there was going to be this really massive,
2 commercial project right there. But now that I know that
3 there's likely to be residential use there, there's no
4 question in my mind that mixed use makes sense, and I
5 appreciate Mr. Parsons' description of what the -- the
6 large goal of what's trying to be accomplished in the
7 area, has been and still is.

8 So, what I have by, way of consensus -- and
9 we'll vote on all these things at the end -- is that the
10 consensus is -- and Mr. Hood, if you don't agree with
11 this, please say so -- that CR Zoning for --

12 VICE-CHAIRPERSON HOOD: Have I ever not said
13 anything that I didn't agree with?

14 CHAIRPERSON MITTEN: No. That the
15 consensus is that CR zoning for squares -- BPCR zoning
16 for squares 700 and 701 is the consensus at this point;
17 is that correct? Okay. Great.

18 Just to maybe piggyback on Mr. Parsons'
19 description of this sort of special place that we're
20 trying to create here, I did want to raise the issue
21 because having a large area zoned CR definitely makes
22 me think of the west end, and I just wanted to have some
23 discussion, by the Commission, as the zones exist, in
24 both the W zones and in the CR zones, hotel use is
25 considered to be a residential use. So, when we talk

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1 about the mix, we could be getting a mix of office
2 buildings and hotels rather than what we might otherwise
3 be thinking would be office buildings, retail, and
4 residential use.

5 So, I wanted to get the views of the
6 Commission on whether or not we, in any way, want to limit
7 the ability to count a hotel towards the residential
8 component in either of the W zones or the CR zones in
9 the Buzzard Point overlay.

10 COMMISSIONER FRANKLIN: Well, Madam
11 Chairman, just to clarify something for me, maybe Office
12 of Planning can do so, or perhaps the Chair can. In
13 what zones that we're looking at here would hotels not
14 be permitted?

15 CHAIRPERSON MITTEN: In what zones --

16 COMMISSIONER FRANKLIN: Yes.

17 CHAIRPERSON MITTEN: -- would not be
18 permitted?

19 COMMISSIONER FRANKLIN: Yes.

20 CHAIRPERSON MITTEN: That's involved in the
21 rezoning?

22 COMMISSIONER FRANKLIN: Yes.

23 CHAIRPERSON MITTEN: None of them.

24 COMMISSIONER FRANKLIN: That's what my
25 impression was. Okay. So the question then is, since

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1 we don't want to fool ourselves into thinking that
2 residential use is going to be permanent residence, and
3 we may end up with hotels, from a planning standpoint,
4 if we do wish to make sure that residential means
5 residential, do zones sort of suggest themselves that
6 hotel use would be inappropriate?

7 CHAIRPERSON MITTEN: Well, I mean, just
8 maybe to take off on what Mr. Parsons was saying, in terms
9 of trying -- we're trying to create a new neighborhood,
10 is what we're trying to do. And then, we're also trying
11 to, for a whole variety of reasons, use the waterfront
12 as an extra special place. And that's not, necessarily,
13 to be enjoyed exclusively by a neighborhood. That's to
14 be enjoyed by everyone in the city, and visitors to the
15 city, and so on.

16 So, my feeling would be that in the CR zone,
17 that we might want to say that hotel does not count towards
18 residential use there, but in the W zones, that it would,
19 because there is a distinction in terms of what we're
20 trying to accomplish.

21 Anyone else have any thoughts about that?

22 COMMISSIONER PARSONS: Well, that's tough.
23 I agree with CR, but, you know, we've got this precious
24 six properties here on the waterfront. Well, maybe it's
25 seven. Doesn't make any difference. And I can't imagine

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1 we'd have Hyatt, and then Hilton, and then Four Seasons,
2 and so forth, but --

3 CHAIRPERSON MITTEN: You can't?

4 COMMISSIONER PARSONS: But it could, and
5 there goes the neighborhood. There isn't one. So, I'm
6 inclined to preclude it, and vote the W-2 and the CR for
7 that reason.

8 CHAIRPERSON MITTEN: Well, I just had a
9 thought, and this might just change your view a little
10 bit. Which is, for the BPW-2, the process in 1603, where
11 we're going to review it, is all proposed uses, buildings
12 and structures. Now, I don't know if we felt that there
13 was being too much concentration of hotels along the
14 waterfront if there would be an opportunity, given that
15 ability to do that review, that there would be an
16 opportunity, through that, to say, okay, now we have too
17 many. We have an over-concentration.

18 COMMISSIONER PARSONS: But why not do it as
19 a special exception? They've got to go through a special
20 exception process. Let them convince you that a hotel
21 is a better thing to do here than residential.

22 CHAIRPERSON MITTEN: Okay. So, let's --

23 COMMISSIONER FRANKLIN: Well, then, what is
24 being suggested is -- I'm sorry I used the SP word. I'm
25 meaning special exception, the process we're going to

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1 go through.

2 CHAIRPERSON MITTEN: I think we know what
3 you mean. Please go ahead.

4 COMMISSIONER FRANKLIN: I don't know whether
5 the revision to the definitions is in place for this,
6 but then, what you have to say is residential uses include
7 dwellings, flats, multiple dwellings and, with the
8 approval of the Zoning Commission, guestroom areas of
9 hotels or inns.

10 CHAIRPERSON MITTEN: Would you tell me,
11 where are you, exactly?

12 COMMISSIONER FRANKLIN: 1699.1.

13 CHAIRPERSON MITTEN: Oh, right.

14 COMMISSIONER FRANKLIN: Well, maybe the best
15 thing to do would be to take that language regarding the
16 guest rooms areas of hotels or inns and put it at the
17 very end of the definition, and then precede it with,
18 "and with the approval of the commission."

19 CHAIRPERSON MITTEN: Then that would mean
20 we would entertain it in CR and the W. I just heard "too
21 far" in my right ear. So, I think what Mr. Parsons is
22 saying that he was sympathetic to that in the W, but not
23 in the CR.

24 What I would be inclined to do, which is
25 consistent with what Mr. Parson said, and this will

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1 simplify another issue that I wanted to raise, because
2 we have, for this residential use, this residential use
3 as we've defined it, and you all have to think about this,
4 but we say that residential uses can generate bonus
5 density. Do we want hotels being considered as bonus
6 density for that purpose, and combine light development,
7 we talk about residential uses?

8 So, if we changed the definition of
9 residential use to exclude hotels, and then add that in
10 as a use that would be -- well, it is permitted, that's
11 the thing. It's not that it's not permitted, in W2, it's
12 that it wouldn't be a residential use. They could still
13 have their hotel.

14 MR. BERGSTEIN: Madam Chairman, I just want
15 to remind you that for W2, the residential acreage
16 densities is part of this special exception process.
17 We're into something that you would get because you had
18 residential uses.

19 So, if you're talking about W2 buildings,
20 the only way to get that additional density is through
21 that process. There's no automatic density allowed.

22 CHAIRPERSON MITTEN: Just wait one second.

23 COMMISSIONER FRANKLIN: Maybe the answer is
24 to simply not give bonus density for hotel uses, and not
25 worry about the location.

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1 CHAIRPERSON MITTEN: Okay.

2 COMMISSIONER FRANKLIN: I mean, if the
3 concern is that they would be inadvertently
4 over-stimulating hotels, maybe the countervailing policy
5 would be well, you can't get any incentive bonus for hotel
6 use, but you could for other residential use.

7 CHAIRPERSON MITTEN: Okay. So, let's try
8 that. Okay. So there would be no bonus density for hotel
9 use. Do we have a consensus about that? Okay.

10 Now, let's go back to the other issue, which
11 I was hoping to simplify, and I did not succeed. In terms
12 of the residential use, as we need to reach a consensus
13 about whether or not a hotel will count as residential
14 use in either, both, or neither of W or CR.

15 COMMISSIONER FRANKLIN: My inclination, if
16 we do not give any incentive, would be to let the
17 definition remain the way it is, because I'm not sure
18 I can know when a hotel is appropriate or not, from a
19 locational (sic) standpoint, within this entire rezoned
20 area.

21 CHAIRPERSON MITTEN: Well, the thing is,
22 because this is mixed use zoning, they can put hotels
23 anywhere, it's just a question of are you going to allow
24 hotels to basically use up the residential component of
25 this mixed use zone? I'm going to continue to argue for

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1 at least an exclusion in CR.

2 VICE-CHAIRPERSON HOOD: I must not have the
3 long range plans. Maybe I'm not understanding the long
4 range goal. If we start excluding and nothing has
5 happened yet, we're not opening up the window for an
6 opportunity. We're cutting it off already. We're not
7 giving them -- and I understand, Madam Chair, where you're
8 coming from. We don't want this all to be hotels.

9 CHAIRPERSON MITTEN: Right.

10 VICE-CHAIRPERSON HOOD: And I understand
11 that, but I don't think anything has transpired, anything
12 has taken place yet. So we're already closing -- I just
13 see us putting our hands in a little too much here. I
14 think we might need to leave it as it is, but I could
15 be convinced.

16 CHAIRPERSON MITTEN: Okay. Then let me try.
17 Here's my thing. Here's my view, not my thing. In the
18 west end, what happened was there became what would
19 arguably be an over-concentration, and what's reflected
20 in the Ward 2 plans, an over-concentration of hotels,
21 and that's to the detriment of creating a neighborhood.

22 And what I would prefer, and I think your
23 point is a good one about the long range, and we really
24 don't know what the future holds, but given that we're
25 not having a requirement to build housing, we're trying

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1 to reserve space, so that there can be a critical mass
2 of housing built to create a neighborhood. I would rather
3 err on the side of being more restrictive, at this point,
4 and not forcing us to try and catch up with a situation
5 that has gotten ahead of us, like having hotels being
6 developed in CR, and then we have to come back and say,
7 okay, now it's too much.

8 Instead, I'd like to let this play out awhile
9 and if in five, ten years, we find that look, there's
10 a lot of pressure for hotels, the market just isn't there
11 for housing, we need to ease up on that, I'd rather do
12 that than end up losing the opportunity to create a
13 neighborhood here. That's my main concern.

14 COMMISSIONER FRANKLIN: I think you can
15 articulate the concern the other way around as well.
16 I mean, it's -- you wouldn't want to invest in flood
17 control measures in the desert, and we have a desert right
18 now, so there's not -- couldn't we shut -- if it turned
19 out that there was a climate change and we had a flood,
20 or threat of a flood, could we not make the changes then?

21 CHAIRPERSON MITTEN: Let me just give you
22 another example that hopefully, will help to convince
23 you. You know, Mr. Parsons mentioned the fact that M
24 Street's starting to look like an office canyon, much
25 like Hay Street. That's because we didn't get out ahead

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1 of it. And so, I don't -- we haven't really been able
2 to move all that quickly, necessarily.

3 And again, it's not that we're precluding
4 hotels from being developed. It's that we're trying to
5 reserve the residential component really for housing,
6 so they can build hotels right next to them, on the
7 commercial component of the zoning. And, if we retain
8 hotel use as counting towards residential use in W2, we'll
9 probably be getting the hotels where they're better off
10 being, which is on the waterfront where people, tourists
11 and so forth, want to be.

12 COMMISSIONER PARSONS: Let me try this. The
13 west end -- is my own observation. The CR zone was --
14 and the west end looked like this. And I don't remember
15 the liquor store, but it was probably there. So the
16 regulations were done in 1974, and all we heard, for the
17 next six years, is this is stupid, this isn't going to
18 work, CR's a failure and finally, in 1984, the market
19 arrived. And six years later, it was built out.

20 And what's happening here is the market
21 driver are a Navy complex, and now a DOT complex. They're
22 office complexes, and they need to be served by hotels.

23 And I'd rather see those hotels on M Street than
24 penetrating this fragile, 20 block area that we're trying
25 to create one of the most special locations in the city.

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1 And it's probably going to lie here for ten
2 years until a pioneer comes along and builds something
3 of high quality, or a public investment occurs. But we
4 can't -- we shouldn't be taking the risk to allow what
5 we know has failed elsewhere, to say, well, CR, see what
6 happened in the west end. We had three four-star hotels
7 out of that.

8 Well, I can see that happening here, on these
9 blocks very easily, and the attraction of the waterfront.

10 That isn't the neighborhood that the people in this
11 community are looking for.

12 COMMISSIONER FRANKLIN: On the other hand,
13 hotels often jumpstart the market for residential, and
14 this area does need to be a jumpstart. I don't think
15 it's analogous to the west end, which was an area between
16 two fairly robust market areas of the city, the DePont
17 Circle and Georgetown. We don't have that in this
18 situation.

19 So, I'm a little bit reluctant to say we --
20 I understand. I know, I think the point is well taken
21 that the hotel could then be part of the commercial side
22 of CR and not the residential. That's the Chairman's
23 point.

24 CHAIRPERSON MITTEN: Let's see whose side
25 Mr. Hannaham's on.

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1 COMMISSIONER HANNAHAM: I'm on the side of
2 building neighborhoods. And I would be leaning towards
3 taking measures and legislating this particular area that
4 would pretty much balance toward that particular
5 objective. In other words, Madam Chairman, I'm in line
6 of where you're coming from.

7 CHAIRPERSON MITTEN: Okay. I think we've
8 talked this out. Let's put that aside and we'll vote
9 that up or down separately.

10 VICE-CHAIRPERSON HOOD: We need to -- I
11 imagine you know where it is.

12 CHAIRPERSON MITTEN: Yeah, yeah.

13 COMMISSIONER PARSONS: Give you a little
14 time to change your mind.

15 VICE-CHAIRPERSON HOOD: No. A little time
16 for Mr. Hannaham to change his mind. But I really think,
17 Madam Chair, you said something about building up -- I
18 forgot what your exact comments were, about industry.
19 Even before that, as far as I can remember, industry --
20 and I don't want to say it was a junkyard, but it was
21 not one of your desirable places to even put office space.
22 So that jumpstarted that area.

23 And I just think if we start restricting
24 things in that area now, I think we are getting far ahead
25 of ourselves.

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1 Something else, Mr. Parsons, I don't
2 understand. Were you saying that you didn't want hotels
3 along the waterfront? You didn't say that?

4 COMMISSIONER PARSONS: I certainly don't
5 want it as the obvious substitute for housing. Somehow,
6 we've got to have the mix here. We don't need five hotels
7 along the waterfront, making it a tourist attraction
8 instead of a neighborhood. And that's I'm afraid it would
9 become. It would become a tourist destination.

10 VICE-CHAIRPERSON HOOD: is that what the
11 long range goal is, for it to be a mixture of both, but
12 you do want hotels along the waterfront, I would think.
13 At least, I thought that was where we were going.

14 COMMISSIONER PARSONS: Right. And I think
15 those will come in under this Commission review process
16 that we spoke about earlier, the Commission review of
17 those six properties.

18 VICE-CHAIRPERSON HOOD: And something else,
19 Madam Chair, I think it looks like we're going to be doing
20 this Commission review, and then I hear sometime going
21 over discussion exception. I think, to keep it
22 consistent, and I may have just misheard, I may be
23 misspeaking, but to keep it consistent.

24 I think, if we're going to do the review
25 process, we need to do a review process. Don't mix in

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1 and say whether go to the BZ or not. I think we just
2 need to stay focused, be consistent, and just do the review
3 process.

4 CHAIRPERSON MITTEN: And I think that's the
5 consensus.

6 VICE-CHAIRPERSON HOOD: And do the special
7 exception after we --

8 COMMISSIONER PARSONS: I used the "S" word.
9 I'm sorry.

10 CHAIRPERSON MITTEN: Okay. So, we'll come
11 back to that issue. Okay.

12 We have another issue on the map amendment.
13 And this relates to the Capitol Point PUD site. The
14 recommendation from the property owner was that BPCR would
15 be more appropriate with the height restrictions
16 incorporated into the text of the overlay that are now
17 present in the PUD, rather than mapping it as proposed
18 BPW1 and BPW3. And I just wanted to have a discussion
19 about that.

20 This was in the November 16th Office of
21 Planning memo on -- this is issue number nine, and the
22 Office of Planning was not in favor of that, of the
23 property owner's recommendation. And it would also
24 necessitate a further public hearing, because the CR zone
25 hadn't been advertised.

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1 What I would recommend is, as a way to
2 proceed, I think that, particularly in light of the Office
3 of Planning's continued recommendation for the advertised
4 zoning, that we could vote the advertised zoning up or
5 down and if, at some point, the property owner wanted
6 to make application for a map amendment, then they could
7 do that and we could decide whether we wanted to set it
8 down, based on the merits of that proposal at that time,
9 rather than bogging ourselves down any more than we
10 already are with -- because they would be singled out
11 anyway, for re-advertisement and rehearing.

12 COMMISSIONER PARSONS: I would agree, Madam
13 Chairman. We fought so hard to get that W1 along the
14 backside of Fourth that to release that, at this point,
15 is just wrong.

16 CHAIRPERSON MITTEN: Anybody else on that
17 subject?

18 VICE-CHAIRPERSON HOOD: I would also agree
19 with -- I mean, it's hard to believe that I would agree
20 with Mr. Parsons.

21 CHAIRPERSON MITTEN: Maybe it's the start
22 of a trend.

23 COMMISSIONER FRANKLIN: I would agree with
24 the Chair and Mr. Parsons.

25 CHAIRPERSON MITTEN: Okay. Another topic

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1 for discussion is the -- this is in 1605 of the proposed
2 language. What the language does is it makes the
3 industrial uses, that have valid certificates of
4 occupancy as of, I guess, the date of the order, would
5 be considered conforming uses, and they shall be entitled
6 to expand on either their current lot or lots, as a matter
7 of right, up to the permitted commercial FAR and so on.

8 So, I don't know if -- I mean, I certainly
9 am sympathetic to them being allowed to remain. I just
10 -- the idea of allowing them to expand could be
11 counterproductive because some of the uses -- they're
12 not really -- because they are -- their businesses are
13 so unique and specialized, they're not, necessarily,
14 going to be displaced as normal land economics would
15 dictate. So, any thoughts about that?

16 COMMISSIONER PARSONS: Well, if you're going
17 to allow them to expand, I think we ought to specify to
18 expand that. Just because they're making concrete this
19 week, they want to expand a gas fault. But if --

20 CHAIRPERSON MITTEN: Okay.

21 COMMISSIONER PARSONS: Or open a junkyard.
22 I mean, we're trying to protect a business here, so --

23 CHAIRPERSON MITTEN: So we would say shall
24 be entitled to expand the use specified in the certificate
25 of occupancy?

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1 COMMISSIONER PARSONS: Something like that,
2 yes. And we are restricting them to that lot. Lot or
3 lots, is that --

4 CHAIRPERSON MITTEN: I think it means that
5 if they occupied multiple lots, that they'd be allowed
6 to.

7 COMMISSIONER PARSONS: And not to jump the
8 street to the next guy's lot.

9 VICE-CHAIRPERSON HOOD: Madam Chair, I'm
10 just concerned that this may be setting a precedent.
11 I guess it won't because we're dealing with BP. I'm
12 thinking now, maybe this may open up something else all
13 over the city.

14 CHAIRPERSON MITTEN: Well, I think, really,
15 the origin of this is that the uses that are on Buzzard
16 Point are really critical to the city, but we don't have
17 -- there's no natural place for them to relocate, and
18 that's why there was a lot of, I think, sympathy towards
19 allowing them to remain in place.

20 VICE-CHAIRPERSON HOOD: I agree with him,
21 and I would beg to differ. There is somewhere else we
22 can locate. That's what I'm just concerned. I guess just
23 -- we're dealing with BP and I guess we need to stay on
24 BP. I wanted to make sure that we don't set a precedent
25 for other M and CM zones.

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1 COMMISSIONER PARSONS: Well, it would be a
2 precedent if we were converting them or trying to convert
3 them to another use. I don't know what that would be,
4 but a pub near Fort Totten comes to mind.

5 VICE-CHAIRPERSON HOOD: Yeah. I figured
6 that would come to mind.

7 COMMISSIONER PARSONS: But if you're
8 suggesting we shouldn't allow them to expand, Mr. Hood?

9 VICE-CHAIRPERSON HOOD: No. I'm not
10 necessarily suggesting. I don't have the wherewithal
11 to really exactly make -- I do believe they should be
12 grandfathered in, but the expansion part, and keeping
13 in line with your comments about what excitement is going
14 down in this area. When do they stop expanding? When
15 will they take out some of that excitement that you're
16 talking about, that you spoke so eloquently about earlier.
17 I just threw that out for discussion.

18 COMMISSIONER PARSONS: I think that to deem
19 them a conforming use is benefit enough. And, of course,
20 in the process of these hearings, I've urged that they
21 not be given that status, but I haven't prevailed, but
22 to deem them a conforming use and then go further, and
23 say they shall be entitled to expand in an area where
24 you're trying to change the character of the area seems
25 to me to be an oxymoron.

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1 CHAIRPERSON MITTEN: You're right. I
2 agree. I think we've got a consensus there. Okay. So,
3 we're going to delete the, "and shall be entitled to
4 expand."

5 Now, one issue that I just have to raise
6 because I just have to, is the idea -- there's been
7 numerous reasons why this discussion has been postponed
8 from meeting to meeting, but one was, after our hearing,
9 that some of the industrial users down there wanted to
10 be given the opportunity to get certificates of occupancy
11 if they didn't have them, or they wanted to make sure
12 they were updated.

13 And one of the uses down there -- and there
14 are standards for external effects in CM and M, and I
15 just am at a loss, and maybe Mr. Bergstein could help
16 us address this, is there's a -- I don't even know, really,
17 what you call it, but it's one of the Pepco facilities
18 down -- I think it's on --

19 COMMISSIONER PARSONS: It's a reserve
20 generating station, isn't it not?

21 CHAIRPERSON MITTEN: Right. It's a
22 generating station, S and Half Street.

23 MR. BERGSTEIN: They're strange looking
24 things. There's 18 of them. They're awful.

25 CHAIRPERSON MITTEN: And it makes this --

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1 I mean, I haven't heard it personally, but I've been told
2 that it makes just this horrendous noise. And I don't
3 know if they were successful in getting a certificate
4 of occupancy, but I guess I'd be concerned that, if they
5 had sought certificates of occupancy, that the standards
6 of external effects tests were applied, and specifically
7 for that generator that makes a horrendous amount of
8 noise. Do you have some way of helping us find out about
9 that, Mr. Bergstein?

10 MR. BERGSTEIN: Are you asking me whether
11 -- I mean, if a certificate of occupancy was granted,
12 and it was granted in the area of where the standards
13 of external effect apply, the hope would be that the
14 standards of external effect were investigated. I have
15 no way, except to ask DCRA if they could pull their file,
16 if that's what you're asking, to see whether, in fact,
17 that was done.

18 CHAIRPERSON MITTEN: I think that's what I'm
19 asking, specifically as it relates to that noise issue
20 there, because if we're trying to build a neighborhood,
21 that's not going to be very conducive.

22 MR. BERGSTEIN: The other issue is -- and
23 I don't know the answer to this either, but there are
24 noise regulations, in the District of Columbia, that are
25 based, I think, on the type of residence -- of area you're

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1 in, and I don't know if they directly relate to zoning
2 districts.

3 If you make a change in the zoning district,
4 then the different level of noise regulations might apply.

5 And what I could investigate, because I don't know the
6 answer to this, is whether or not that's true, and whether
7 or not a different set of noise regulations would apply,
8 and then whether or not, the fact that these were existing
9 structures, would somehow be grandfathered under the sort
10 of principles of nonconforming use you see when it's a
11 noise regulation and not a zoning regulation.

12 So I don't know whether or not, in fact, the
13 noise regulations would become more stringent with
14 respect to this particular facility because of the change
15 in zoning that you've made.

16 CHAIRPERSON MITTEN: I think that we would
17 benefit from your research on that subject.

18 MR. BERGSTEIN: My last question, as long
19 as I have my mike open, is you're going to deem these
20 uses to be conforming uses, doesn't that mean that they're
21 conforming as they can expand, without any need for you
22 to say that? It'd only be if they were nonconforming
23 use, that they could not expand.

24 COMMISSIONER FRANKLIN: I think you're
25 right.

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1 MR. BERGSTEIN: so, if your intent is to --
2 and I don't know what, again, on being a conforming use
3 if they can't expand, that's sort of the point.

4 COMMISSIONER FRANKLIN: Well, they may be
5 able to get financing to improve without expansion.

6 MR. BERGSTEIN: Right. So --

7 COMMISSIONER FRANKLIN: Or something for
8 they can rebuild.

9 MR. BERGSTEIN: -- if your intent is to
10 prohibit their -- in other words, these would normally
11 be nonconforming uses.

12 COMMISSIONER FRANKLIN: Right.

13 MR. BERGSTEIN: If your intent is to prohibit
14 their expansion, but to allow them whatever other benefits
15 there are by being otherwise deemed conforming, then
16 you're going to need to expressly say they're deemed
17 conforming but may not expand.

18 CHAIRPERSON MITTEN: Okay.

19 COMMISSIONER FRANKLIN: Very good.

20 CHAIRPERSON MITTEN: Then, we shall do that,
21 and shall not be entitled to expand. Thank you for
22 mentioning that. I'd lost sight of that. Okay.

23 There's also a request, and this relates to
24 the Florida Rock PUD, that there be a zoning accommodation
25 for their amenity site, because the zoning that's proposed

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1 for the amenity site does not permit, as a matter of right,
2 what has been approved as the amenity, so they'd have
3 to have an additional review at the time that they were
4 required to put the amenity in place.

5 COMMISSIONER FRANKLIN: What if the PUD
6 never occurs?

7 CHAIRPERSON MITTEN: Well, I think what was
8 being proposed is that it wouldn't be a blanket rezoning,
9 but it would relate to the amenity. It would be specific
10 to the amenity. Let me see. That's in the Office of
11 -- let's see. This was issue number three in the November
12 16th Office of Planning report.

13 I guess, what the proposal language from the
14 Office of Planning -- does everybody have that in front
15 of them or not, because I can read it out loud if you
16 don't have it in front of you. Here's what it says, page
17 five.

18 "If the lots in square 664E, identified as
19 parcel three of the amenity site in Zoning Commission
20 Order Number 910, are developed with residential
21 buildings, in accordance with that order, a maximum height
22 of 90 feet shall be allowed."

23 COMMISSIONER FRANKLIN: Suppose the order
24 gets changed, does that change the zoning, too? I guess
25 I'm saying, indirectly, Madam Chair, is I don't understand

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1 why this is necessary. The order, itself, is a legal
2 control of that parcel, is it not?

3 CHAIRPERSON MITTEN: No.

4 COMMISSIONER FRANKLIN: A PUD?

5 CHAIRPERSON MITTEN: The PUD, in the sense
6 that it supersedes the underlying zoning, the PUD, or
7 the project site, or the PUD site, is only what you think
8 of as where the office buildings would go. The amenity
9 site is just a property where they're going to do
10 something. It wasn't part of the project itself.

11 COMMISSIONER FRANKLIN: But isn't it
12 addressed in the order?

13 CHAIRPERSON MITTEN: Yes, but the underlying
14 zoning of it doesn't change. It doesn't rezone or have
15 any control, so the idea is the amenity has to be
16 permissible within the zone on the amenity site.
17 Otherwise, they have this problem, which is look, we
18 promised to do this amenity but now, the zoning doesn't
19 permit it. That's the problem.

20 MS. MCCARTHY: Because the site wasn't
21 contiguous, Mr. Franklin.

22 COMMISSIONER FRANKLIN: Yeah. I remember
23 it wasn't contiguous, but did not the PUD order address
24 that site in particular? It's been a long time, but I
25 thought it did.

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1 COMMISSIONER PARSONS: Yes, but it was not
2 site amenity, and it didn't deal with --

3 COMMISSIONER FRANKLIN: It didn't deal with
4 the height of the buildings, you're telling me?

5 MR. BERGSTEIN: I was reviewing the order,
6 trying to find if there was any discussion of the amenity
7 site, and actually do have the order in your packet because
8 it's part of the attachment to the motion to extend.
9 But I didn't see any reference allowing a particular
10 height for the amenities, because there would not have
11 been a need to, because the existing zoning allowed it.

12 And the issue now is that you're proposing
13 a zoning change which would be different from that which
14 was contemplated in the order. And therefore, the
15 applicant is saying you're now disallowing me to do the
16 thing that you want me to do, which I could have done
17 under the zoning as it existed at the time your order
18 was issued, but I cannot do if you change the zoning.

19 COMMISSIONER FRANKLIN: If that's the case,
20 then I think we should adopt this language.

21 CHAIRPERSON MITTEN: Okay. No, go ahead.

22 COMMISSIONER PARSONS: I just wanted to ask
23 Ms. McCarthy, on the bottom of page four, on the other
24 hand, she says,

25 "Since the Florida Rock PUD will be

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1 considered for extension by the Commission, OP recommends
2 the mapping of the amenity site be addressed in the context
3 of that process."

4 MS. MCCARTHY: I think our original
5 inclination was to go for a map amendment separately,
6 given that there was a considerable time lag built into
7 the Florida Rock order, as it originally existed. But
8 what we're talking about now, with Florida Rock, and the
9 potential, if that's gets extended, that the applicant
10 will be coming back with a modification which could be
11 substantial, and which may up the time that they would
12 consider that housing.

13 It may make sense now, to simply include this
14 so that there would be no additional zoning step that
15 Florida Rock would have to go through in order to be able
16 to build the amenity, should the PUD be extended.

17 But I should probably add that Florida Rock,
18 after we had written our November report, from which this
19 is taken, Florida Rock had then submitted a letter
20 pointing out that, under the amenity, the height that
21 they had proposed for the housing was 128.6 feet.

22 So, if you want to pass this and make it
23 possible for Florida Rock to proceed without any further
24 zoning relief, then it would need to be 128.6 feet, if
25 it's going to be in accord with order number 910, or

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1 whatever extension of that occurs after that time.

2 COMMISSIONER FRANKLIN: Now, that's a change
3 in what I understood was the situation. You're saying
4 that the PUD which approved certain plans, is
5 contemplating housing in a height in excess of 90 feet.

6 MS. MCCARTHY: That was correct. That was
7 the amenity, as submitted.

8 COMMISSIONER FRANKLIN: Okay. And now, why
9 doesn't that solve the problem? The PUD order has
10 approved plans that are of certain height.

11 MR. BERGSTEIN: It did that, assuming that
12 the zoning was compatible, but --

13 COMMISSIONER FRANKLIN: Well, it supercedes
14 the zoning, does it not?

15 MR. BERGSTEIN: No.

16 MS. MCCARTHY: No.

17 MR. BERGSTEIN: Any map amendment related
18 to the PUD site itself, and not the amenity site, because
19 there was no need to deal with the amenity site, because
20 the zoning on the amenity site would have handled the
21 height of the contemplated amenity.

22 Again, you're changing the zoning, and just
23 because you had a part order with an offsite amenity site,
24 which could have allowed that amenity to be developed
25 under the existing zoning, as it existed at the time of

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1 the order, doesn't mean that if you change your mind,
2 you don't have to come back and seek what would amount
3 to a variance or for some sort of relief.

4 COMMISSIONER FRANKLIN: Let me rephrase my
5 question and maybe try to untangle my mind. If we did
6 nothing today, with respect to this issue, and they wanted
7 to develop the amenity site in pursuance of the approved
8 PUD, would they be able to do so?

9 MR. BERGSTEIN: I would think they need a
10 variance, because what would happen is, they would go
11 down to the zoning administrator, request a building
12 permit for that height. The zoning administrator would
13 look at the zone designation, would say you can't build
14 something that high. You need an area variance. And
15 what they would have to say is, "Well, gee, there was
16 this order, by the Zoning Commission, which was under
17 the old zoning, but they contemplated that we would do
18 this."

19 And then, you'd be placing the zoning
20 administrator in the position of saying what you might
21 have contemplated, even though this is all before you
22 now, and you didn't make any exception for this particular
23 problem. So, you'd be asking the zoning administrator
24 to approve a height that's at odds with the zoning, as
25 shown on the zoning map, based upon something that you

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1 might consider to be implicit from the PUD order. And
2 I think that's the problem for the Florida Rock applicant.

3 COMMISSIONER FRANKLIN: Did the PUD order,
4 with respect to the basic site of the building, effectuate
5 a change in the zoning?

6 MS. MCCARTHY: No. No relief was sought for
7 that square at all. All of the relief, or all of the
8 main action, basically, was with regard to the main part
9 --

10 COMMISSIONER FRANKLIN: So, zoning
11 permitted what they wanted to do.

12 MS. MCCARTHY: Yes, as a matter of right.

13 COMMISSIONER FRANKLIN: As a matter of
14 right. But now, we're being told that we're changing
15 the zoning, and we're now imposing the limitation upon
16 that particular amenity site that would not permit the
17 PUD amenity, as approved by the plan, to go forward,
18 because we're downzoning.

19 MS. MCCARTHY: Right.

20 COMMISSIONER FRANKLIN: Is that what you're
21 telling me?

22 MS. MCCARTHY: Yes.

23 COMMISSIONER FRANKLIN: And you want to make
24 sure that -- well, actually, what this language does is
25 it downzones it. It says you were going 128 feet and

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1 now you'll only have 90; is that correct?

2 MS. MCCARTHY: This 90 foot line, which was
3 an attempt to deal with the fact that it was being
4 downzoned through the impact of the rest of the overlay.

5 And, to tell you the truth, because this was November,
6 I don't exactly remember why we had said 90 feet.

7 But we received a letter from Florida Rock
8 after -- I think it may have been that we had an old copy
9 of the amenity, because it was further refined, I believe,
10 when the keys were brought in to be the partners, and
11 the site was further refined, at any rate. Oh, yes, in
12 phase two, the site was further refined of the PUD. And
13 I think we may have been using the phase one information.

14 I'm not sure.

15 When confronted with this issue, when Florida
16 Rock raised this issue, we were left with three
17 alternatives, if Florida Rock is to build this amenity
18 as part of their PUD. One is to require them to come
19 back for a variance; two is to say, look, if it comes
20 to be, when we get to that point, and you've satisfied
21 the other requirements that then touch off the need to
22 build this housing or you decide you want to build this
23 housing, you can come back and we will re-map that square;
24 or, the third thing is to put the relief in now, to permit,
25 if it's built in accordance with that order, to put the

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1 relief in at the height that would be necessary to build
2 it without any further zoning relief.

3 COMMISSIONER PARSONS: We could also reduce
4 the requirement for housing, and get the building down
5 to the scale that we wanted, at W2.

6 CHAIRPERSON MITTEN: I think that you're on
7 the right track. I don't know that, in terms of the
8 quantity that we do -- but maybe the way the configuration
9 of it, and that's really the larger issue, which is
10 whatever the Zoning Commission had in mind, at that time,
11 it obviously wasn't what we have in mind now, in terms
12 of having W2.

13 And I think there'd be a pretty significant
14 disparity in height, and that's an important issue to
15 confront. And I don't think we want to just kind of write
16 it off. I think that deserves independent consideration.

17 COMMISSIONER PARSONS: I thought that what
18 was meant, by the first suggestion of OP, is you deal
19 with this issue when you're dealing with the extension.

20 CHAIRPERSON MITTEN: Yes.

21 COMMISSIONER PARSONS: You don't deal with
22 it in a larger context. You go ahead with W2 and fix
23 it on a specific, not in a general.

24 CHAIRPERSON MITTEN: Right. And maybe,
25 based on the correspondence that we've received, related

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1 to the extension, there would be the opportunity to do
2 that --

3 COMMISSIONER PARSONS: Right.

4 CHAIRPERSON MITTEN: -- in the future.

5 COMMISSIONER FRANKLIN: I think that's the
6 way to proceed --

7 CHAIRPERSON MITTEN: Okay.

8 COMMISSIONER FRANKLIN: -- because it's very
9 anomalous to have this kind of language in a text
10 amendment, it seems to me.

11 COMMISSIONER FRANKLIN: Right.

12 CHAIRPERSON MITTEN: I agree. I wanted to
13 raise it because it was a big issue, and I just wanted
14 to get some resolution about that.

15 Okay, now, the last issue that I have is
16 whether or not we want to keep calling this the Buzzard
17 Point Capitol Gateway Overlay District because, while
18 we're all very comfortable with the BP abbreviation,
19 there's been sort of little asides about Buzzard Point.

20 It's not the most desirable name, if you're trying to
21 build a special place, and a new neighborhood, and so
22 on.

23 And so, by institutionalizing it at our end,
24 we're not going to be able to change what everybody does,
25 but it's possible that we could adopt a name that at least,

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1 wouldn't perpetuate it on our part. So, does anyone have
2 any thought about that?

3 COMMISSIONER FRANKLIN: I endorse that idea
4 wholeheartedly, Madam Chair. I think that Buzzard Point
5 is, in itself, one of the problems of this area, I mean
6 the moniker. And I don't understand why we can't use
7 this Capitol Gateway instead, which has also got some
8 tradition behind it, although I've never been quite sure
9 as to where Buzzard Point stopped, and Capitol Gateway
10 began. But Buzzard Point is, in any event, a very small
11 physical part of this whole area of town, and it deserves
12 a more dignified label. And CG doesn't sound bad.

13 CHAIRPERSON MITTEN: No, it doesn't. And,
14 in essence, that is part of the title that's been
15 advertised so far. Anybody else have any thoughts about
16 the name?

17 COMMISSIONER PARSONS: Well, I wish we could
18 link it to the Anna Costia River somehow, but Capitol
19 Gateway is a term so, just to get through it. Anything
20 to get rid of Buzzard Point. We'll keep the name of our
21 little marina Buzzard Point Marina for the 30 boats.

22 COMMISSIONER FRANKLIN: Capitol Gateway is
23 okay, but maybe we ought to have a contest.

24 COMMISSIONER PARSONS: Do we have it on
25 license plates?

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1 COMMISSIONER FRANKLIN: Well, maybe the Park
2 Service can come up with a better bird instead of buzzard.
3 Do you want to call it Heron Point?

4 MR. BERGSTEIN: It was traditional. That's
5 where the canal dumped out, and the dead mules and things.

6 COMMISSIONER FRANKLIN: Yeah.

7 MR. BERGSTEIN: And that's where the
8 buzzards went.

9 COMMISSIONER FRANKLIN: We don't want to
10 remind everybody of that. How about a nice bird?

11 CHAIRPERSON MITTEN: Mr. Bernstein, is this
12 going to cause -- I mean, I know it's going to cause editing
13 problems, but in terms of from a legal perspective, if
14 we delete, from the title, Buzzard Point, and then, change
15 the abbreviation.

16 MR. BERGSTEIN: It's a criminal act. I can
17 tell you that, but -- no. I think that's a
18 non-substantive matter that you didn't need to have a
19 hearing on, and I think we can use a replace function
20 guide to take care of that.

21 SECRETARY BASTIDA: Madam Chairman, there
22 is precedent for that with a street and a slope overlay.

23 CHAIRPERSON MITTEN: The street and slope
24 overlay?

25 SECRETARY BASTIDA: Yes. It was called the

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1 Norman D. --

2 UNIDENTIFIED MALE: Norman Stone.

3 SECRETARY BASTIDA: Stone. And then, it was
4 changed when it was finally adopted.

5 CHAIRPERSON MITTEN: Okay. Thank you.

6 VICE-CHAIRPERSON HOOD: Madam Chair, for
7 point of clarification, I know we're talking about Capitol
8 Gateway, but will people have a chance to comment on
9 Capitol Gateway?

10 CHAIRPERSON MITTEN: Yes. They'll have 30
11 days to comment.

12 VICE-CHAIRPERSON HOOD: To maybe give us
13 some other -- not that I have a problem with it, but --

14 CHAIRPERSON MITTEN: Sure.

15 VICE-CHAIRPERSON HOOD: Okay.

16 CHAIRPERSON MITTEN: Okay. Any other
17 issues from the commissioners that I overlooked, that
18 were pressing issues in this case, before we put this
19 to a vote? Okay. We've made a series of --

20 COMMISSIONER FRANKLIN: Oh. There was one
21 more matter, Madam Chair.

22 CHAIRPERSON MITTEN: Sure, sure.

23 COMMISSIONER FRANKLIN: There is language,
24 in here, about setback from the water, which says 75 feet.
25 Unless the Commission finds that such setback renders

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1 development unfeasible, and I don't understand how the
2 Commission could determine what was feasible and
3 unfeasible. Are we talking about physical, economic?
4 So, for clarity, I would just suggest that we just use
5 75 feet.

6 CHAIRPERSON MITTEN: Well, you know, that's
7 true because they would have a basis for a variance if
8 it would -- okay. Is everybody onboard with that? This
9 would be 1603.3A,

10 "The building or structure should be setback
11 by no less than 75 feet from the bulkhead."

12 COMMISSIONER PARSONS: Ms. McCarthy, I'm
13 trying to deal with the issue of shoreline and bulkhead.

14 In the case of Florida Rock, what they've done is to
15 -- as you may have noticed -- fill in a considerable amount
16 of the Anna Costia River to reach the bulkhead, because
17 the shoreline wasn't there at that time.

18 That's all legal and so forth, but do you
19 know, if we -- the bulkhead line was established in 1899
20 by the corp of engineers, gives a person a matter of right
21 to fill up to that, and the corp can't say no. So, do
22 we know where the bulkhead is along these properties?
23 Are we encouraging filling acres and acres of the Anna
24 Costia River to try to reach this 75 foot promenade, or
25 are we pretty safe here? That's how they got most of

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1 their promenade, was to fill the river.

2 MS. MCCARTHY: Right. I know that the
3 Commission had had a pretty lengthy discussion about that
4 before, and felt that if they -- I'm trying to remember
5 the final rationale. If you measure from the shoreline
6 -- I guess, in the end, I think the Commission concluded
7 that people would be building out to their bulkhead line
8 anyway, so that's the language that the Commission had
9 included.

10 I know, in earlier drafts of this, we had
11 discussed the high water mark and other measuring points,
12 and this was a decision that the Commission had made at
13 an earlier point.

14 COMMISSIONER PARSONS: But if we made it 75
15 feet or even 50 feet back from the existing shoreline,
16 we would discourage filling in the Anna Costia River,
17 wouldn't we?

18 MS. MCCARTHY: It would -- it would --

19 COMMISSIONER PARSONS: There would be no
20 reason to, other than to create a larger plaza in front
21 of your property.

22 I know this is a last minute thought, but
23 I wonder if it's possible to get a bulkhead diagram and
24 existing shoreline diagram out of the old file to see
25 just how much filling we're encouraging here. It's

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1 certainly not in the best interest of the river, or its
2 ecology of the river.

3 COMMISSIONER FRANKLIN: Is the shoreline
4 something that is permanent, varied, or --

5 COMMISSIONER PARSONS: In most cases, it's
6 fortified in some way. Usually dumped over concrete or
7 whatever. But, I mean, it's not eroding, if that's what
8 you mean.

9 COMMISSIONER FRANKLIN: Well, it's not --
10 I mean, the waterline changes because the shoreline is
11 high or low at tide.

12 COMMISSIONER PARSONS: Most of these are
13 vertical. It's the same shoreline with the tide high
14 or low.

15 COMMISSIONER FRANKLIN: But it sounds to me
16 like you're describing the shoreline and the bulkhead
17 as the same.

18 COMMISSIONER PARSONS: The current one is,
19 but there's also a bulkhead line out in the water, that
20 was established in 1899, and in some cases, it's
21 contiguous. In other words, the prior owner filled to
22 that point.

23 In the case of Florida Rock, they had to,
24 and if you go down there now, it's quite obvious. They've
25 created a straight bulkhead and created the promenade.

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1 They've built it, but the space was there to do it.
2 So, I was just asking how many occasions is that going
3 to permit of filling in more of the Anna Costia River?

4 COMMISSIONER FRANKLIN: With fill-in aid in
5 the creation of appropriate landscaping and amenities?

6 COMMISSIONER PARSONS: Oh, it would. It's
7 just whether this Commission is encouraging the filling
8 in of the Anna Costia River by this zoning ordinance.
9 That's --

10 COMMISSIONER FRANKLIN: Well, if it would
11 achieve the amenities and the character that we're
12 seeking, as long as it doesn't go beyond the bulkhead
13 line, why would we be concerned?

14 COMMISSIONER PARSONS: Well, others are
15 concerned with the filling of the river. That's all.
16 That takes away the --

17 COMMISSIONER FRANKLIN: Then, what you're
18 telling -- and I'm a complete ignoramus on legal issues
19 here, but if you're saying that I, as an owner, tomorrow,
20 could fill in to the bulkhead line without any legal
21 impediment, then why are we concerned?

22 COMMISSIONER PARSONS: I might be sorry I
23 asked. I think Florida Rock was an exception, is the
24 point I was trying to get to, is that you'll find that
25 the bulkhead line is not halfway out in the river, and

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1 --

2 COMMISSIONER FRANKLIN: Well, I'm sure the
3 bulkhead line is -- well, maybe I shouldn't be sure because
4 I don't know anything, but it would seem to me the bulkhead
5 line would not be halfway out into the river.

6 CHAIRPERSON MITTEN: Well, I think what it
7 is, is that it's a valid point because if we don't know
8 how far out the bulkhead line is, then we don't know how
9 -- if we're accomplishing our objective by having a
10 setback of whatever magnitude from it. So, what I would
11 suggest is I think we advertised both -- I'd have to ask
12 Mr. Bergstein or Mr. Bastida what we had advertised.

13 I think maybe we had advertised bulkhead or
14 shoreline and --

15 COMMISSIONER FRANKLIN: Yes, we did, and it
16 says whichever provides a larger setback.

17 CHAIRPERSON MITTEN: Okay. So, what we
18 could do is pass -- we could go with the language that's
19 in the current version that we have in front of us, ask
20 for more research from the Office of Planning on this
21 subject, and then we can take that up when we vote on
22 final action.

23 COMMISSIONER FRANKLIN: Good. Presumably,
24 we'll get comments on what feasible means, other than
25 circumstantial.

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1 MS. MCCARTHY: Right. I know we do have a
2 map, Madam Chair, that we could make available, and as
3 I recall, that may have been why we chose the bulkhead
4 line, because it was an established line. There was no
5 question about where it was. We had it mapped. But we'd
6 be happy to bring the map and, if possible, in our GIS
7 system, we'll see if we can highlight what's the
8 difference between existing shoreline and bulkhead.

9 CHAIRPERSON MITTEN: That would be great.
10 Thank you.

11 So, what we've done is we have made a series
12 of modifications, and I'm not going to repeat all of them.

13 And I think we had, in terms of the text, we had consensus
14 on everything except the issue of whether or not a hotel
15 would count for residential use in CR and W. And so,
16 for the time being, I'm going to set that aside, and we're
17 going to vote that up or down separately.

18 I'd like to have a motion on the text
19 amendment, as modified in our discussions by consensus.

20 COMMISSIONER PARSONS: Move approval.

21 COMMISSIONER FRANKLIN: Second.

22 CHAIRPERSON MITTEN: Okay. We have a motion
23 and a second to approve the text as modified by consensus.

24 Any further discussion on the text? And again, this
25 does not include the issue of hotel counting for

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1 residential use in either CR or W. Mr. Hood, did you
2 have discussion? I'm sorry.

3 VICE-CHAIRPERSON HOOD: You just answered
4 my question.

5 CHAIRPERSON MITTEN: Okay. Any further
6 discussion on that?

7 All those in favor, please say aye. Aye.

8 VICE-CHAIRPERSON HOOD: Aye.

9 COMMISSIONER PARSONS: Aye.

10 COMMISSIONER HANNAHAM: Aye.

11 COMMISSIONER FRANKLIN: Aye.

12 CHAIRPERSON MITTEN: Those opposed, please
13 say no. Thank you. Mr. Bastida?

14 SECRETARY BASTIDA: The staff will report
15 five to zero, Mr. Hannaham moving and Mr. Franklin second
16 it. Ms. Mitten, Mr. Hood, and Mr. Parsons voting in the
17 affirmative.

18 CHAIRPERSON MITTEN: Thank you. Now, let's
19 move to the map.

20 COMMISSIONER PARSONS: I made the motion.

21 VICE-CHAIRPERSON HOOD: Parsons made the
22 motion.

23 SECRETARY BASTIDA: Did you make -- oh, I
24 corrected. Thank you so much. Mr. Parsons moving and
25 Mr. Franklin second it. And then, Mr. Hannaham, Ms.

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1 Mitten, and Mr. Hood voted in the affirmative. Thank
2 you.

3 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

4 Now, let's vote on the map amendment, and
5 then we'll take up this final text issue at the end.

6 I believe, and either Mr. Bergstein or Mr.
7 Bastida, help me if I'm missing something.

8 I believe the only alternative mapping that
9 we advertised was for squares 700 and 701. Is that
10 correct? Is there any other alternative on the map
11 amendment?

12 SECRETARY BASTIDA: I believe that's the
13 case, but I would like to check the hearing notice. Is
14 going to take five minutes.

15 CHAIRPERSON MITTEN: Okay. Let's take up
16 the issue, then, of whether or not we will count hotel
17 for residential use in CR and W. I move that in the BPCR
18 zone, that hotel be excluded from those uses considered
19 to be residential uses.

20 COMMISSIONER PARSONS: Second.

21 CHAIRPERSON MITTEN: Any further discussion
22 on that?

23 Okay. For the motion and the second to
24 exclude hotel from those uses that are considered
25 residential uses in the BPCR zone, all those in favor,

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1 please say aye. Aye.

2 COMMISSIONER HANNAHAM: Aye.

3 COMMISSIONER PARSONS: Aye.

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

6 COMMISSIONER FRANKLIN: No.

7 VICE-CHAIRPERSON HOOD: No.

8 CHAIRPERSON MITTEN: We have two no's on
9 the end here.

10 SECRETARY BASTIDA: Thank you.

11 CHAIRPERSON MITTEN: Would you like to
12 record that vote, Mr. Bastida?

13 SECRETARY BASTIDA: Yes. The vote will be
14 recorded three to zero to two. Ms. Mitten moving and
15 Mr. Parsons second it. Mr. Hannaham voting in the
16 affirmative. Mr. Hood and Mr. Franklin voting in the
17 negative.

18 CHAIRPERSON MITTEN: I believe that should
19 be three to two to zero.

20 SECRETARY BASTIDA: Okay. Thank you.

21 CHAIRPERSON MITTEN: Please. Okay. And
22 then, I move that hotel continued to be considered a
23 residential use in the BPW zones.

24 COMMISSIONER FRANKLIN: I'll second that.

25 CHAIRPERSON MITTEN: Does that surprise you?

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1 Okay. Any further discussion on that? All those in
2 favor, please say aye. Aye.

3 VICE-CHAIRPERSON HOOD: Aye.

4 COMMISSIONER FRANKLIN: Aye.

5 COMMISSIONER HANNAHAM: Aye.

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

8 COMMISSIONER PARSONS: No.

9 CHAIRPERSON MITTEN: Okay. Mr. Bastida?

10 SECRETARY BASTIDA: The staff will record
11 the vote four to one to zero. Ms. Mitten moving and Mr.
12 Franklin second it. Mr. Hood and Mr. Hannaham voting
13 in the affirmative, Mr. Parsons voting in the negative.

14 CHAIRPERSON MITTEN: Thank you. Everything
15 closed on the --

16 SECRETARY BASTIDA: File is here, and you
17 want to go to 1017, and then you'll have it.

18 CHAIRPERSON MITTEN: No. I want to just
19 finish.

20 SECRETARY BASTIDA: Okay. Just a minute.

21 COMMISSIONER FRANKLIN: Madam Chair, just
22 want to clarify the votes regarding hotel that we just
23 went through, had an underlying consensus that hotels
24 would not earn bonus density.

25 CHAIRPERSON MITTEN: Yes. That was -- yes.

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1 COMMISSIONER FRANKLIN: That was part of the
2 earlier consensus.

3 CHAIRPERSON MITTEN: Yes. I'm glad you
4 mentioned that, but yes, that was part of the earlier
5 consensus.

6 SECRETARY BASTIDA: Madam Chairman, I need
7 a couple minutes so I can retrieve it. Thank you. It
8 was handed to me.

9 CHAIRPERSON MITTEN: Bless you.

10 (Whereupon, the foregoing matter went off
11 the record at 3:54 p.m. and went back on the record at
12 3:54 p.m.)

13 SECRETARY BASTIDA: Only squares 700 and 701
14 were advertised in the alternative.

15 CHAIRPERSON MITTEN: Thank you. Now, we've
16 lost Mr. Hood, and I don't want to --

17 MR. BERGSTEIN: Madam Chair, before you vote
18 on the map amendment, I just want to point out the end
19 of the OPP compilation that you have, there's a note that
20 the description of the rezoning from M to BPQ has suggested
21 a change in how that's articulated, and I just want to
22 make sure that you understand that, and if you're
23 concurring with that change.

24 CHAIRPERSON MITTEN: Since you say it should
25 read, how did it read?

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1 MR. BERGSTEIN: It just read in the southern
2 half of square 665. So, it would add, for a distance
3 of 400 feet, the right of way line of district southeast.

4 CHAIRPERSON MITTEN: Okay. But it's
5 consistent with what this map shows, correct?

6 MR. BERGSTEIN: You'll have to ask OP that
7 question.

8 CHAIRPERSON MITTEN: Is the line that cuts
9 across square 665, does that reflect 400 feet north of
10 the right of way of B Street, because it doesn't look
11 halfway, certainly.

12 MS. MCCARTHY: It doesn't, Madam Chair, but
13 we can easily redraw this map to make sure that it reflects
14 that, or we can easily check, and make sure, and get that
15 to Mr. Bastida by tomorrow, so that before he advertises
16 it, he'll have the correct map.

17 CHAIRPERSON MITTEN: Okay. Thank you. Now
18 that we're back to our full strength, the issue about
19 the map amendment, there was only one alternative zoning
20 advertised, and that was for squares 700 and 701, and
21 the consensus was that the map amendment for squares 700
22 and 701 would be CR, and the remainder of the map would
23 be amended as advertised. And I would move approval on
24 that basis.

25 COMMISSIONER PARSONS: Second.

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1 CHAIRPERSON MITTEN: Okay. We have a motion
2 and second to approve the map, basically as represented
3 by the map that the Office of Planning has provided to
4 us today, with the possible adjustment of the line in
5 square 665.

6 Any further discussion on the map amendment?
7 Did you want to interject something?

8 MS. MCCARTHY: We've noticed that the map,
9 as it's currently written, does not include -- as it's
10 currently drawn, left off square 771, which is listed
11 in the text.

12 CHAIRPERSON MITTEN: Okay. Let me rephrase
13 it then. What we've voted on doesn't have anything to
14 do with the map. It is the advertisement with the
15 exclusion of the alternative for square 700 and 701 for
16 C3C, they'll be mapped as CR. So, everybody clear about
17 that? Okay.

18 Any further discussion on the map amendment?

19 All those in favor, please say aye. Aye.

20 COMMISSIONER PARSONS: Aye.

21 COMMISSIONER FRANKLIN: Aye.

22 COMMISSIONER HANNAHAM: Aye.

23 VICE-CHAIRPERSON HOOD: Aye.

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

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1 SECRETARY BASTIDA: The staff will record
2 the vote five to zero to zero. Ms. Mitten moving and
3 Mr. Parsons second, and Mr. Hood, Mr. Franklin, and Mr.
4 Hannaham voting on the affirmative.

5 CHAIRPERSON MITTEN: Thank you. So that
6 concludes the Capitol Gateway Overlay.

7 COMMISSIONER FRANKLIN: Not bad for four
8 years.

9 CHAIRPERSON MITTEN: Yes. This has been
10 going on quite awhile. Thank you all for your patience.
11 I know you were spellbound by the discussion.

12 Okay. Now, we're ready to move on our agenda
13 to hearing action. The first item under hearing action
14 is Zoning Commission case number 00 -- oh, and I should
15 say thank you for joining us today, Mr. Franklin.

16 COMMISSIONER FRANKLIN: Thank you for
17 altering the agenda.

18 CHAIRPERSON MITTEN: It would have been a
19 long wait otherwise, probably.

20 Zoning Commission case number 00-, dash, 01,
21 which is an application for the approval of air space,
22 use of air space for an alley bridge related to the
23 development of the Yale Quandary site. And this case
24 has actually been with us for awhile, and the applicant
25 has decided to go forward and request a set down. I guess

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1 we're going to move to the Office of Planning for a little
2 summary of it.

3 COMMISSIONER PARSONS: A little premature
4 for a motion, Madam Chairman? Set this down? I think
5 we've all had an opportunity to review this.

6 CHAIRPERSON MITTEN: Yes. Did you have
7 anything new that we need to know about this one?

8 MS. MCCARTHY: No. We'd be happy to stand
9 on our January 31st, 2000 report.

10 CHAIRPERSON MITTEN: Okay. No, then. I'm
11 going to say it's not premature, Mr. Parsons.

12 COMMISSIONER PARSONS: Oh, so moved.

13 VICE-CHAIRPERSON HOOD: Second.

14 CHAIRPERSON MITTEN: Okay. We have a motion
15 and a second to set the case down for public hearing.
16 Is there any discussion?

17 All those in favor, please say aye. Aye.

18 CHAIRPERSON MITTEN: Those opposed, please
19 say no. And I have a proxy from Mr. May in the
20 affirmative.

21 SECRETARY BASTIDA: Madam Chairman, the
22 staff will record a vote five to zero. Mr. Parsons moving
23 and Mr. Hood second it. Ms. Mitten and Mr. Hannaham
24 voting in the affirmative. Mr. May voting in the
25 affirmative by absentee ballot.

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1 CHAIRPERSON MITTEN: Thank you. Next case
2 is Zoning Commission case number 01-, dash, 32TA, which
3 has to do with a text amendment related to a special
4 exception review for concrete plans in the CM zone. And
5 this, I think we will need just a few minutes from the
6 Office of Planning on this.

7 MS. THOMAS: good afternoon, Ms. Chairman,
8 members of the Commission. I'm presenting OP's set
9 amendment of the set down that we propose text amendment,
10 the special exception review.

11 CHAIRPERSON MITTEN: Would you state your
12 name for the record, please?

13 MS. THOMAS: Karen Thomas.

14 CHAIRPERSON MITTEN: Thanks.

15 MS. THOMAS: The special exception review
16 of facilities within CM zone districts. OP has amended
17 the original report to include asphalt plans. Due to
18 the similarities with nuisance elements of concrete
19 plans, they are grouped together, in similar zoning
20 ordinances, of local jurisdictions, which we included
21 in the report. The original submission for appendix E
22 needs to be amended to read,

23 "Amend Chapter 8 industrial districts as
24 follows by adding a new section, 80217, not able to attend
25 a stated informal submission."

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1 Appendix was included to address landscaping
2 requirements, management controls and pollution controls
3 as enforced by other district agencies, mediation and
4 plan cease operations. The inclusions are referenced
5 in the amendment to Chapter 8 of 11DC1 as a new section,
6 80217, and changes in the report and also includes 80217H,
7 I, J, K, L and M. OP recommends approval of the proposed
8 text amendment to include section 80217 of the line in
9 appendix A.

10 Thank you.

11 CHAIRPERSON MITTEN: Thank you. Let me just
12 ask first off, is this just to modify the language that
13 we set down or at that same meeting, we had also done
14 an emergency role making, and are you asking that this
15 be imposed on the emergency as well, and that we modify
16 the emergency, or are we just concerned with the set down
17 language?

18 MS. THOMAS: Yes, just the set down language.

19 CHAIRPERSON MITTEN: All right. This may
20 be something that we want to flesh out through the hearing
21 process, but maybe I could just ask Ms. McCarthy to address
22 it briefly, or Ms. Thomas to address it briefly.

23 Some of the items that are included in 802.17
24 now go beyond the authority of the Zoning Commission,
25 really, and they speak to regulations that are not land

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1 use regulations, and that they require compliance on the
2 part of the applicant for other things, which suggest
3 that -- you know, we often run into trouble because the
4 public doesn't understand where the limit of our authority
5 is, or where the limit of the zoning administrator's
6 authority is.

7 And so, I have a concern that this confuses
8 the issue, and suggest that the, for instance, under
9 letter I, that the issue regarding ground water, this
10 suggests that the zoning administrator has some kind of
11 authority over that, and I guess I would hesitate to
12 confuse the public that way. And I was wondering what
13 you had in mind by introducing these other -- the issue
14 about groundwater, the issue about erosion and sediment
15 control, the issue about even restoration of the site,
16 and some of these other things. And the Noise Control
17 Act compliance and so forth.

18 MS. THOMAS: Well, the intent, what I was
19 looking at was to sort of -- all these regulations are
20 part of other agencies' enforcement guidelines, post
21 management control and air and water quality control.

22 The intent is, at this point, to sort of put
23 it into the zoning ordinance as a reinforcement of those
24 regulations, and insofar as applicants who come in could
25 provide up front, water management plans, as opposed to

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1 the backend of the process, have it brought up in advance.

2 They do have to comply to these things, but
3 it's not stated forcefully enough, to my --

4 MS. MCCARTHY: I think, Madam Chair, maybe
5 the biggest problem could be under the wording of I,
6 because it looks like we missed the symmetry of the format
7 in the rest of the requirements there, where what we were
8 trying to do was to assist the regulatory agencies by
9 requiring that when they came into you, they have a plan,
10 a landscaping plan, a storm water management plan that
11 the Commission could review as to its adequacy.

12 And I see what you're talking about that in
13 I, we simply said "minimize the releases that would have
14 an adverse impact on human health and the environment
15 with regard to the ground water. So we can, since we
16 require a storm water management plan, are we basically
17 covering that so we --

18 MS. THOMAS: Yes, just sort of a
19 reinforcement that they should have this up front because
20 usually, they come at the back end of -- after they get
21 a special exception or something, and it's usually --

22 MS. MCCARTHY: Right. So, we could either,
23 depending on the Commission's pleasure, we could either
24 modify I so that it put that in the form of -- as part
25 of its submission, showing the Commission how we plan

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1 to deal with minimizing waste constituents in the ground
2 water, or we could just strike that and go with the storm
3 water management plan, because I -- yes, obviously, that's
4 something that is not within the purview of the zoning
5 administrator to enforce, and it's not bringing -- unless
6 we insert some language that says, show how you're going
7 to do this, so the Commission can review, it's not strictly
8 zoning.

9 CHAIRPERSON MITTEN: I guess, as you develop
10 the information for the hearing, I'd just like those
11 distinctions to be made because we don't want the people
12 to think that we have any expertise in order to review
13 those plans, or that the zoning administrator has any
14 authority to enforce those other, non-land use issues.

15 MS. MCCARTHY: But our sense was that we
16 could -- if we included that requirement, then when the
17 Office of Planning refers those two, the other agencies,
18 you could then have reports back from those agencies,
19 Department of Health and all the rest of them, so that
20 when you make your decision on the special exception,
21 your jurisdiction would be enlightened by that. So, yes.

22
23 CHAIRPERSON MITTEN: Okay.

24 MS. MCCARTHY: Would you like us to redraft
25 that provision so that it puts it in the form before it's

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1 officially advertise, so it puts it in the form that's
2 it a report back --

3 CHAIRPERSON MITTEN: I think that would be
4 helpful.

5 MS. MCCARTHY: Okay.

6 CHAIRPERSON MITTEN: Thank you. Any
7 questions for the Office of Planning on the --

8 VICE-CHAIRPERSON HOOD: Madam Chair, could
9 I just ask -- maybe this is more of a legal than it would
10 be for Office of Planning. Is the intent here to make
11 those plants that are in existence comply to these
12 regulations?

13 MS. MCCARTHY: No. My understanding is they
14 would be grandfathered in. This would be just to cover
15 new plants.

16 MS. THOMAS: And, as well as, if plants close
17 or cease operation --

18 VICE-CHAIRPERSON HOOD: It would come back
19 up under these plans.

20 MS. MCCARTHY: Right.

21 MS. THOMAS: Yes.

22 VICE-CHAIRPERSON HOOD: So, none of this
23 would apply to any existing plans?

24 MS. THOMAS: No.

25 VICE-CHAIRPERSON HOOD: I'm sorry to hear

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1 that. Thank you.

2 CHAIRPERSON MITTEN: All right. So, what's
3 being requested here is that we modify the language that
4 we set down in November for Zoning Commission case number
5 01-, dash, 32TA. Is there a motion?

6 VICE-CHAIRPERSON HOOD: I make a motion that
7 we set down -- what is it?

8 CHAIRPERSON MITTEN: A modifier set down
9 language.

10 VICE-CHAIRPERSON HOOD: Oh. A modifier set
11 down language for 01, dash, 32TA.

12 CHAIRPERSON MITTEN: Second? Any
13 discussion?

14 COMMISSIONER HANNAHAM: Second. I second
15 that. I've got a second.

16 CHAIRPERSON MITTEN: Oh, you seconded it?

17 COMMISSIONER HANNAHAM: Well, if you don't
18 have it already.

19 CHAIRPERSON MITTEN: Okay. Mr. Hannaham
20 seconded it. Okay. Any further discussion?

21 SECRETARY BASTIDA: Yes. Madam Chairman,
22 I think it's time we feel more comfortable if that language
23 is revised to the know what it is part of the zoning
24 regulations and the Commission have the authority all
25 throughout, and to make sure that you give us the latitude

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1 to work with the Office of Planning to make sure that
2 we achieve that end.

3 CHAIRPERSON MITTEN: Oh, yes, absolutely.
4 So there'd be flexibility for staff to work on the language
5 in accordance with the discussion that we've had.

6 SECRETARY BASTIDA: Right. Thank you.

7 CHAIRPERSON MITTEN: Yes. All those in
8 favor, please say aye. Aye.

9 COMMISSIONER PARSONS: Aye.

10 VICE-CHAIRPERSON HOOD: Aye.

11 COMMISSIONER HANNAHAM: Aye.

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

14 SECRETARY BASTIDA: The staff will record
15 the vote five to zero, and I believe that Mr. Hood move
16 it and Mr. Hannaham second it.

17 CHAIRPERSON MITTEN: And Mr. May did leave
18 an absentee vote in the affirmative.

19 SECRETARY BASTIDA: Right. And Ms. Mitten,
20 Mr. May, and Mr. Parsons voting in the affirmative. Just
21 for point of clarification, this would be a rule making
22 case, and it would be a contested case.

23 CHAIRPERSON MITTEN: Thank you for the
24 clarification.

25 SECRETARY BASTIDA: Thank you.

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1 CHAIRPERSON MITTEN: All right. Next, we
2 have Zoning Commission case number 02-, dash, 19, which
3 is a petition from Forest Hills Citizens' Association
4 for a tree and slope overlay.

5 SECRETARY BASTIDA: Madam Chairman, sorry
6 to interrupt, but I just want to point out that we've
7 received a series of letters Friday and this morning,
8 and those letters has been provided to the Commission.

9 CHAIRPERSON MITTEN: Yes. Thank you.

10 SECRETARY BASTIDA: On this case. Thank
11 you.

12 CHAIRPERSON MITTEN: Yes. All right.
13 We'll turn to the Office of Planning again.

14 MS. MCCARTHY: Thank you, Madam Chairman.
15 I'll try to keep this very brief, given the hour.

16 Essentially, the Office of Planning is
17 supporting set down of this case because, as this is the
18 third application to specifically map an existing set
19 of provisions in the zoning regulations to tree and slope
20 overlay to a particular area, it seemed highly unlikely
21 to us that there was any circumstance in which this was
22 not worth having a public hearing and discussing the
23 provisions. And, in fact, this was one of the sites that
24 was originally mentioned to the Zoning Commission before
25 the first tree and slope overlay was mapped, specifically

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1 with regard to Woodland Normanstone, and the Commission,
2 at that time, provided direction to Forest Hills, to come
3 back when that had been mapped, and to apply to their
4 particular neighborhood.

5 Our understandinai is, that although this
6 was originally -- when originally conveyed to the
7 Commission, it was discussed as an emergency zoning
8 regulation. Given that this is on the agenda to be set
9 down today, that the applicants would be willing to do
10 this not as an emergency, but to just have this set down,
11 and go through the regular process. That's what they
12 communicated to us.

13 And I thought what I would like to do is,
14 this is essentially like the basic tree and slope overlay,
15 but there are some provisions that differ from those.
16 As you know, every tree and slope overlay is slightly
17 tailored to the neighborhood in which it's been applied.

18 There have been slight differences between those. So
19 I thought Ms. Thomas could very briefly run through what
20 is unique to this tree and slope overlay that is not shared
21 with the Woodland Normanstone version, and the Chamber
22 Trodian Riskey Terrace version.

23 CHAIRPERSON MITTEN: All right.

24 SECRETARY BASTIDA: Madam Chairman, could
25 I interject something before, though? Just for

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1 clarification, this is an overlay, so accordingly, will
2 be a map amendment. So, if the Commission says it today,
3 in fact, it is vested, and it starts running from today.

4 CHAIRPERSON MITTEN: Right.

5 SECRETARY BASTIDA: For the application.

6 So --

7 CHAIRPERSON MITTEN: Thank you.

8 SECRETARY BASTIDA: Thank you.

9 MS. THOMAS: Madam Chair, at this time,
10 before I proceed a little bit further into what we're
11 going to look at, what OP's going to look at, I'd like
12 to inform the Commission that the ENC's, or Forest Hills
13 Citizens Association meeting on April 16th, that property
14 in squares 2263, 2040, and 2041, petition to be included
15 in the map amendment. And I'd just like to note that
16 for the record.

17 CHAIRPERSON MITTEN: Let me just ask you,
18 just because I wasn't looking in the right place when
19 you ran down those numbers. In terms of what's before
20 us, on 1515.6, in the package that we received, are those
21 squares included?

22 MS. THOMAS: No. The squares that I
23 mentioned are not included, and they have asked to be
24 included.

25 CHAIRPERSON MITTEN: And would you tell me

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1 what those squares are again, please?

2 MS. THOMAS: That's 2263, 2040, and 2041.

3 CHAIRPERSON MITTEN: All right.

4 MS. THOMAS: While OP recommends approval
5 of the set down, based on preliminary review on typical
6 standards of the relevant elements of the comprehensive
7 plan, and current restrictions of the predominant zone
8 in the neighborhood, R1E, we also want to recognize that
9 the community has questions and concerns, and prior to
10 public hearing, OP will work with all parties to address
11 the issues including some of the -- and I'll just go
12 through a list of the issues that were raised at the public
13 meeting on April 16th.

14 Lot occupancy, lot size, side (inaudible)
15 are requirements which propose from 8 to 16 feet, set
16 back requirements. We can also look at building and slope
17 properties, developer's rights, the rights of property
18 owners to develop or subdivide any properties. Trees
19 and its relation to property values, the efficacy of
20 existing tree and slope overlays in other neighborhoods,
21 and the elements of the proposed tree bill.

22 So, we are going to try to address the
23 concerns and work with everybody concerned who has issues
24 with this. And, at this time, we would recommend set
25 down for public hearing and for further review.

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1 CHAIRPERSON MITTEN: And does your
2 recommendation include the three squares that the
3 neighborhood had requested be included?

4 MS. THOMAS: Yes.

5 CHAIRPERSON MITTEN: Thank you. Any
6 questions from the Commission? One thing that I'd like
7 to take a hard look at when we have a hearing -- presumably,
8 we'll get there sooner or later -- in 1512.1, this overlay
9 district would be mapped in combination with R1A, R1B,
10 R2 or R5D, and in terms of being not inconsistent with
11 the comprehensive plan, up to 75 percent lot occupancy
12 is permitted in R5D, and the lot coverage restrictions
13 in this proposed overlay are a maximum of 30 percent.

14 I'd like to talk about whether or not we can
15 achieve consistency with generalized land use
16 designations that would lead to a zoning category of R5D,
17 with those kinds of restrictions in place.

18 So, if that could be developed, because I
19 don't know that we've, in the past, if the tree and slope
20 overlays have been mapped in combination with medium or
21 high density residential.

22 MS. THOMAS: We will look at that and try
23 to come to some resolution on that. One other thing I'd
24 like to mention, the petitioners have asked that we
25 include in their text, in Section 1514 3 and 4, where

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1 it reads, "to include new residential," --

2 CHAIRPERSON MITTEN: I'm sorry.

3 MS. THOMAS: That's 1514.3.

4 CHAIRPERSON MITTEN: Oh, sorry.

5 MS. THOMAS: Yes. Where it says, "all
6 residential buildings," it should read, "all new
7 residential buildings."

8 CHAIRPERSON MITTEN: Okay.

9 MS. THOMAS: And 1514.4, where it says, "this
10 idea of requirement for all residential buildings," it
11 should read, "all new residential buildings."

12 CHAIRPERSON MITTEN: Okay. Thank you.

13 MS. THOMAS: Thank you.

14 CHAIRPERSON MITTEN: Any other questions for
15 the Office of Planning? All right. Office of Planning
16 recommends -- oh, go ahead.

17 VICE-CHAIRPERSON HOOD: Madam Chair, I guess
18 we'll take the issue up of this set down, of what's
19 requested here, and I'm readying through a lot of this
20 that we just got about NC3F, which I believe, from what
21 it states here, the host overlay is in that area.

22 They're asking that, because of the abut ANC
23 3C and 3G -- okay. Never mind there. I thought they
24 was asking -- never mind. Okay. I think they were just
25 asking that ANC 3C and 3G, and I think we normally do

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1 that, because if ANCs about the area which we are getting
2 ready to make a decision on, we usually include those
3 ANCs. But I don't know if this is something we need to
4 take up now, see if it moves forward to hearing.

5 But I can tell you, I just wanted to ask the
6 Office of Planning. You mention a meeting on April the
7 --

8 MS. THOMAS: Sixteenth.

9 VICE-CHAIRPERSON HOOD: -- 16th? The
10 correspondence said there were never no public meetings,
11 so I'm just concerned about that. So I would hope we'll
12 come prepared and ready to respond. It may be in front
13 of me, but a lot of this stuff, we got just at 11:07 and
14 whatnot, so I'm very concerned about that because there
15 seems to be a very equally distributed opinion on whether
16 or not to move forward or not, and I want to make sure
17 that there was some public meetings and public notice.
18 And also, that people had a chance to weigh in.

19 In one of the letters, I see -- one of the
20 constituents even concerned mentioning this. The ANC did
21 not hold proper meeting or something. So, anyway, at
22 the time, hoping we can respond to that, if it's set down.

23 CHAIRPERSON MITTEN: Okay. And if it
24 addresses your concern at all, and Mr. Bergstein can hold
25 me out on this -- I believe, at the stage of a set down,

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1 where we decide whether or not we're going to set something
2 down, it's truly, at this point, we're just determining
3 whether the proposal before us has merit for public
4 hearing, and the process of really eliciting
5 participation from the public and so one, takes place
6 through the hearing process.

7 Would you say that's a fair representation,
8 Mr. Bergstein?

9 MR. BERGSTEIN: Yes.

10 CHAIRPERSON MITTEN: Thank you. So, we're
11 looking at this on its merits, at this point, although
12 I share your concern and we want people to get involved
13 as early in the process as possible.

14 VICE-CHAIRPERSON HOOD: And Madam Chairman,
15 just add to that. I really appreciate your help. You
16 know I always do. But I wanted to make sure that they
17 came prepared, and this is another opportunity where they
18 hear what our concerns are upfront, so we don't wait until
19 the time of the hearing to bring them, and it becomes
20 a surprise. That's actually where I was going.

21 CHAIRPERSON MITTEN: Thank you.

22 COMMISSIONER PARSONS: Madam Chairman, I
23 would urge us to set this down for hearing. I think a
24 lot of the mail we've got in the last 24 hours is typical
25 in matters of this kind, where an increased awareness

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1 in the neighborhood has occurred, and some who may have
2 felt left out are expressing concern, but I think that's
3 what a hearing is for. And there will certainly be plenty
4 of time in the intervening -- we'll probably be out in
5 June somewhere, before -- the leaves will be on the trees
6 by the time we have a hearing on this. So I would move
7 that we set this down for hearing.

8 VICE-CHAIRPERSON HOOD: I'll second it.

9 CHAIRPERSON MITTEN: Thank you. I just want
10 to clarify that that would include the editorial changes
11 to 1514.3 and 1514.4, and include the three squares that
12 Ms. Thomas --

13 COMMISSIONER PARSONS: Yes. I'm sorry.

14 CHAIRPERSON MITTEN: -- suggested. That's
15 fine. I just want to clarify that.

16 COMMISSIONER PARSONS: Thank you.

17 CHAIRPERSON MITTEN: Any further
18 discussion?

19 All those in favor, please say aye. Aye.

20 COMMISSIONER HANNAHAM: Aye.

21 COMMISSIONER PARSONS: Aye.

22 VICE-CHAIRPERSON HOOD: Aye.

23 CHAIRPERSON MITTEN: Those opposed, please
24 say no. Mr. May left his vote in the affirmative.

25 SECRETARY BASTIDA: Madam Chairman, the

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1 staff will record the vote five to zero to zero. Mr.
2 Parsons move it and Mr. Hood second it. Ms. Mitten and
3 Mr. Hannaham voting in the affirmative. Mr. May voting
4 by absentee ballot. And this would be a rule making case.

5 CHAIRPERSON MITTEN: Thank you. all right.

6 Now, we're under proposed action. We already took care
7 of the first case. Now, we're moving on to Zoning
8 Commission case number 01-, dash, 17MM/, slash, 93-, dash,
9 5F/, slash, 91-, dash, 18P. Mr. Bastida?

10 SECRETARY BASTIDA: Yes, Madam Chairman.
11 Before we go into this case, I would like to request the
12 waiver of accepting into the record the late filing of
13 the report from the applicant, ANC, and the West End Civic
14 Association. The applicant had to file -- was late.
15 I apologize -- of the applicant ANC because, in order
16 to reach certain agreements, the applicant requested more
17 time. I cannot provide that. The Commission has to do
18 that, and that triggers the process of things filing late.

19 CHAIRPERSON MITTEN: All right. So we need
20 to waive our rules to reopen the record to accept those.
21 Is that correct?

22 SECRETARY BASTIDA: Correct.

23 CHAIRPERSON MITTEN: Any objection? All
24 right. Without objection, Mr. Bastida.

25 SECRETARY BASTIDA: Thank you, Madam

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1 Chairman. Now, you have received all the information
2 that was in the file and the staff request an action on
3 this matter. Thank you.

4 CHAIRPERSON MITTEN: I'd like the record to
5 reflect that Mr. Parsons has left the room. Anyone who's
6 been involved in this case will recall that he had recused
7 himself, and we'll call him back when we've disposed of
8 this issue.

9 When we last visited this case, we had
10 expressed some concern -- the Commission had expressed
11 some concern that the amenities being offered by the
12 application were insufficient, in light of the benefits
13 being received, or the relief being requested, I should
14 say, and we asked the applicant to revisit the issue of
15 the amenity package and I'd like to begin first, by asking
16 Mr. Bergstein, who's given us some advice on the subject
17 of what had been articulated as an amenity in the original
18 PUD, as it related to potential tax revenues, and how
19 that relates to the status of the university as a tax
20 exempt institution.

21 MR. BERGSTEIN: Well, Madam Chair, as I've
22 been researching the law, it seems to suggest that the
23 tax exempt status of an applicant for zoning relief is
24 not something which should be relevant to a zoning
25 authority. The rationale being once the legislature has

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1 established that certain types of entities should be
2 exempt from taxation, that represents a judgment
3 concerning the benefit to the public at large, with
4 respect to that institution. And therefore, for a zoning
5 body to withhold zoning approvals on the basis of the
6 tax exempt status of a entity would be contrary to the
7 public policy that was expressed by the legislature.

8 And for that reason, it's been held the zoning
9 body should not take into account the tax exempt status
10 of entities, particularly if it involves the requirement
11 of amenities, since if you require a tax exempt body to,
12 in essence, make up for the value of their lost taxes,
13 you have, in essence, taxed that entity, which is only
14 something the Council of the District of Columbia can
15 do.

16 So, for that reason, I do not believe that
17 the Zoning Commission should take into account the tax
18 exempt status of the university or any other nonprofit
19 applicant before you.

20 CHAIRPERSON MITTEN: Thank you very much for
21 that explanation. And also, if we could take it a step
22 further in the discussion that we had, there was a specific
23 amount -- and I don't have it in front of me at the moment
24 -- but there was a specific amount of tax revenue that
25 was anticipated to be generated by the project, and that

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1 was articulated as an amenity of the project, and that
2 was never delineated as the amount of tax revenue that
3 would be generated over and above a matter of right.

4 And so, I think the conclusion that we were
5 drawing, after our discussion, was that that was somewhat
6 misleading in terms of being articulated as an amenity.

7 MR. BERGSTEIN: I think that that's correct,
8 that my view would be that any economic benefit that is
9 offered to the Zoning Commission as an amenity, and any
10 adverse economic consequence that's raised by opponents
11 of the application has to relate to the zoning relief
12 that's being requested, so that it's not simply enough
13 that, under a matter of right zoning, a certain amount
14 of revenue, or adverse economic consequences might arise,
15 but that benefit, or that adverse consequence has to be
16 tied to the zoning relief that's actually being granted
17 above matter of right.

18 CHAIRPERSON MITTEN: Thank you. So, that
19 just has informed our view in this case. What I would
20 like to say, at this point, is that I'm appreciative of
21 the effort that the applicant made to revise their amenity
22 package, and while I don't share the concern of the ANC
23 in terms of the magnitude of the amenity that has been
24 offered is woefully inadequate, I do share their concern
25 that there are many aspects of the amenity package that

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1 are really unenforceable.

2 What I would like to suggest, and I think
3 that this is not overly onerous, I'd like to suggest that,
4 given the concerns articulated by the ANC, just in terms
5 of the enforceability of the amenities, and issues
6 related, for instance, to the group -- what's the
7 foundation that's -- I'm losing the name of the
8 foundation. But the foundation to -- the Foggy Bottom
9 Feeding Program Foundation Incorporated, we don't know
10 anything about that group.

11 We don't know -- they don't, as far as I know,
12 have a track record. We don't know who is in charge,
13 how they've been organized, and so forth. We don't know,
14 as well, whether it's realistic to expect that the folks
15 who had operated Scholls Cafeteria would be available,
16 or interested, or willing to either run the operation
17 that's been suggested or lend their name to the operation
18 that's been suggested. And I think that needs to be
19 fleshed out further.

20 And I would be in favor of -- while
21 semantically, I don't have any problem with what's being
22 offered, I think this needs to be tightened up so that
23 if we handed this to the zoning administrator, that
24 something could be done with it, and that there could
25 be some realistic expectation that these amenities would

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1 be provided, and that there would be oversight for that.

2 Any other --

3 VICE-CHAIRPERSON HOOD: I would definitely
4 concur, Madam Chairman. Initially, when I started
5 looking at this again, from the last time, and the
6 direction that we sent, I was thinking that we needed
7 to move forward and vote it up or down. But after reading
8 through the materials, I would agree with you that we
9 want to make sure that we have something that is
10 enforceable. And I would agree with some of the comments
11 in the ANC letter.

12 But then again, I was trying to weigh it,
13 and thinking again, were we diving in a little too much.

14 But then, after reading the ANC, I think that we should
15 try to approach something that's a little more
16 enforceable. And that would be my comment. I don't know
17 where we will go from here, Madam Chairman, but I would
18 think that maybe we would give them another chance.

19 CHAIRPERSON MITTEN: I think the direction
20 they might appreciate at this point is whether or not
21 we thought that these amenities were adequate, if they
22 could be made to be enforceable.

23 VICE-CHAIRPERSON HOOD: And something else
24 in the letter, and I have this highlighted, and I was
25 trying to remember why I highlighted it, but it's in the

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1 President's letter of the Western Citizens Association.

2 It says,

3 "We believe that initiative 2D is not an
4 amenity to our community, since there are no students
5 from our community in a school without walls."

6 I don't know about anybody else, but I had
7 a problem with that statement because I guess, assuming
8 a school without walls is in that area, just because
9 there's no students in that area, still, the school is
10 there. And at some point in time during the day, the
11 students are a part of that community.

12 So, I just had a problem with that statement.

13 Maybe I'm looking at it wrong. I don't know if anyone
14 else picked up on that.

15 CHAIRPERSON MITTEN: Okay. But just to --
16 an I agree with that. I think, though, in terms of
17 fleshing out that particular amenity -- for instance,
18 it says, "The university will enhance its partnership
19 with a school without walls." It doesn't give any kind
20 of standard against which it will be judged for, if the
21 zoning administrator is dispatched to go determine
22 whether or not the partnership, in fact, has been
23 enhanced, what is he going to be judging it against.
24 And I think that's the kind of information we need. And
25 I think this is on the applicant, to make these revisions.

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25

Mr. Hannaham, any thoughts about that?

COMMISSIONER HANNAHAM: No. I concur, with your statement and Mr. Hood, that it's very difficult to get a handle on this to see whether anything could actually -- would happen. There's no accountability, basically. It is a nice idea, just thrown out, but would they actually take place, would this benefit actually accrue for the community? There's still no certainly, based on the draft that I've seen thus far.

VICE-CHAIRPERSON HOOD: But Madam Chairman, also -- I'm sorry. Were you finished?

COMMISSIONER HANNAHAM: I'm finished. That's fine.

VICE-CHAIRPERSON HOOD: I wonder sometime, we go down this road, sometime, I think we need this -- and I know where we're going with this. We need to vote what's in front of us up or down. It's almost like we're -- I understand where we're going, but it's almost like we're saying, okay, we'll give them another chance and give them another chance. And what they've presented to us is basically their case, What they did last time, I'm not going to say I was in disagreement with doing that, but I was thinking we was trying to balance something here. And here we are again, doing it again.

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1 How many times are we going to continue doing
2 -- we need to send a clear message that the next time
3 it comes in and we don't think it's sufficient, we're
4 going to vote it up or down, what's in front of us. And
5 I think on other cases, and I'm not talking about even
6 the GW and the Foggy Bottom area, I'm talking about other
7 cases we've gotten ourselves into trouble.

8 CHAIRPERSON MITTEN: I agree. This case has
9 got to be one of the most frustrating because it seems
10 like there's not a proper dialogue taking place in the
11 community. We're offered what I would consider to be
12 feel good kind of amenities that are not -- they're just
13 not readily quantifiable, and consequently, not easily
14 enforceable, and therefore, they're rendered basically
15 meaningless.

16 Now, with what we're being offered as
17 amenities are meaningless gestures, then those are
18 insufficient. If we're offered meaningful gestures,
19 then that may, in fact, be sufficient.

20 So, what I would suggest is that the applicant
21 take one last crack, and I'm with you, that we vote it
22 up or down the next time, and Mr. Bergstein, if there's
23 any assistance that you could provide in making these
24 conditions, these proposed amenities more meaningful and
25 more readily enforced by the zoning administrator, if

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1 you could make yourself available to assist the applicant,
2 we would appreciate it because we want to move on. Could
3 you make -- is that appropriate to ask?

4 MR. BERGSTEIN: I'm -- well, normally I don't
5 meet directly with applicants unless the other parties
6 are involved.

7 CHAIRPERSON MITTEN: I see. I didn't think
8 they would need help to do this, but I'm concerned, based
9 on the fact that this is in front of us.

10 MR. BERGSTEIN: If, perhaps, they wanted to
11 share a draft with me and the other parties, I don't know.

12 I'm concerned about just meeting with them alone, but
13 it is sort of their -- if you haven't taken a vote on
14 it, I'm just concerned with doing that. I understand
15 what your intent is, and perhaps I can give guidance,
16 but I'd at least like to share what I said to them, to
17 the other parties.

18 CHAIRPERSON MITTEN: Well, and maybe that's
19 what needs to take place, is, if it would be helpful to
20 them to meet with you, that they invite the other parties
21 to attend.

22 MR. BERGSTEIN: Yes, or at least that I can
23 gauge and disclosure of what I'm saying to them.

24 CHAIRPERSON MITTEN: Okay. Okay. Well,
25 any assistance that you could provide, that doesn't

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1 compromise --

2 MR. BERGSTEIN: I understand. I understand
3 what you'd like.

4 CHAIRPERSON MITTEN: Thank you. Thank you.
5 So, we will take this up at our May meeting, up or down,
6 do or die, that'll be it.

7 Okay. The next case is Zoning Commission
8 case --

9 SECRETARY BASTIDA: Madam Chairman?

10 CHAIRPERSON MITTEN: Yes?

11 SECRETARY BASTIDA: Should we give the
12 parties a deadline for summation, and then a deadline
13 for responses to those submissions? Otherwise, we don't
14 know when this will be submitted.

15 CHAIRPERSON MITTEN: That's a good idea.
16 That's a good idea.

17 SECRETARY BASTIDA: if the applicant would
18 like to have these for in the May meeting, you have to
19 provide your submission by Friday, April the 26th, by
20 three o'clock, and the --

21 CHAIRPERSON MITTEN: You know what, Mr.
22 Bastida?

23 SECRETARY BASTIDA: Yes.

24 CHAIRPERSON MITTEN: Because, apparently,
25 there was a problem in the parties communicating because

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1 there was so little time and we're doing it again, let's
2 put this on the agenda for the June meeting, give everybody
3 plenty of time. There won't be any excuses about lack
4 of time to communicate, and we'll be able to take this
5 up.

6 MR. FEOTA: Madam Chairman?

7 CHAIRPERSON MITTEN: Yes, sir?

8 MR. FEOTA: May I address the issue?

9 CHAIRPERSON MITTEN: Sure. Come on.

10 MR. FEOTA: Thank you, Madam Chair. For the
11 record, Phil Feota for the university applicant in this
12 case. This case has been going on quite some time,
13 started at the BZA a long time ago, and the university
14 is building a building that it hopes to house students
15 in September.

16 We can turn the amenity package into
17 enforceable conditions by tomorrow, close of business
18 -- well, not tomorrow. Tomorrow is Saturday -- by Monday,
19 close of business, so -- the university is not --

20 We're not going to be able to squeeze more
21 amenities out of the university. It is nonprofit. It
22 provides a certain level of benefit to this community,
23 bigger community may, and we can turn these conditions
24 or these amenities package into enforceable conditions
25 in a zoning order. That won't take much time. And then,

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1 the Commission can vote it up or down.

2 But we're concerned about the timeframe
3 because June means then the order has to come out. It
4 means the plans have to be amended, the inspectors have
5 to come out, and we're back up against this August 15th
6 -- need in order to get the kids in, in September. We
7 need to know sooner that we can't, if we can't do it,
8 or if we can, if we can. So --

9 CHAIRPERSON MITTEN: Let me just respond,
10 and I don't want to be short with you, but I am impatient
11 with this whole case, and I know that you know what an
12 enforceable condition and what an enforceable condition
13 is not, and I think that you have had more than ample
14 opportunity to put something that was enforceable in front
15 of us, for us to vote on today, and that was not done.

16 MR. FEOTA: No. The Chair and the Zoning
17 Commission asked us to present an amenities package for
18 your review. We didn't get an opportunity to propose
19 an addition to our proposed findings of fact and
20 conclusions of law in the zoning order. Had that been
21 part of the request, we could have added condition number
22 15, and listed that an enforceable condition.

23 So, we were following the instructions of
24 the Commission, I thought, but maybe I misunderstood.
25 But I didn't think we had an opportunity to revise our

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1 proposed zoning order. Maybe I misunderstood that.

2 CHAIRPERSON MITTEN: Well, is there
3 something that you -- I mean, do you agree -- well, I
4 don't want to get into a big debate about this.

5 MR. FEOTA: No. All I'm saying is that the
6 proposal, the amenities proposal was proffered in good
7 faith, that you would decide that these are good or bad.
8 If they're good, the staff can write them into
9 enforceable conditions. The school without walls
10 proposal is, if you read it, the Elliot School will set
11 up a program to take kids from the School Without Walls
12 and teach them about international affairs. That's the
13 program, and that can be made condition 15A of a zoning
14 order.

15 So, all I'm saying is that the enforce --
16 and then, the zoning administrator looks at it and says,
17 "Where's this program? Where are the kids going? How
18 many kids belong?"

19 And so, I think, if you like the amenities,
20 they can be made into an enforceable condition.

21 CHAIRPERSON MITTEN: Okay.

22 MR. FEOTA: If you don't like the amenities,
23 that's a different question.

24 CHAIRPERSON MITTEN: Okay.

25 UNIDENTIFIED: What is that? What's it --

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1 CHAIRPERSON MITTEN: Yes. And let me just,
2 while you're doing that, Mr. Bergstein, could you just
3 come down here and sit next to me for a second?

4 MR. BERGSTEIN: Yes.

5 CHAIRPERSON MITTEN: You were going to say?
6 Mr. Barber seemed to want to say something.

7 MR. BARBER: Thank you. Madam Chairman,
8 Charles Barber, senior counsel for the university. Time
9 is of the essence, but I hear what you're saying. I
10 wouldn't mind until the May meeting to put these in a
11 format that is acceptable to the Commission, with the
12 appropriate response time for the other parties.

13 I would request not to push us off until June,
14 but I think that the May meeting may be time well spent.

15 CHAIRPERSON MITTEN: Okay. Hold on a
16 second.

17 VICE-CHAIRPERSON HOOD: I'm sorry. Can I
18 just ask for --

19 CHAIRPERSON MITTEN: Okay.

20 VICE-CHAIRPERSON HOOD: You know, like we
21 do in other cases, we might not have to take it to June.
22 We have other hearings and we're going to be doing it
23 next week. We can always -- we want to make sure everybody
24 has sufficient enough time. If you're going to make an
25 error, make an error on the side of caution. We do have

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1 other hearings, I think, set up for May, but we may be
2 able to do it earlier.

3 CHAIRPERSON MITTEN: Okay.

4 VICE-CHAIRPERSON HOOD: So that's something
5 -- another avenue we can look at.

6 CHAIRPERSON MITTEN: Just let us have one
7 brief --

8 (Whereupon, the foregoing matter went off
9 the record at 4:46 p.m. and went back on the record at
10 4:48 p.m.)

11 CHAIRPERSON MITTEN: We would like you to
12 turn around as quickly as you said you could, on Monday,
13 revised proposed findings of fact and conclusions of law
14 that incorporate these amenities to be enforceable, with
15 the understanding that they're intended to be
16 enforceable, and if we're not satisfied with the language,
17 we will make them enforceable, that they're not being
18 offered in a vague or unenforceable way.

19 And that will give, if you can turn it around
20 on Monday, Mr. Bastida was telling me that that will --
21 and serve the parties, that will give the community two
22 weeks, correct?

23 SECRETARY BASTIDA: Correct. It would be,
24 to be specific about days, if the applicant were to turn
25 it in by three o'clock on Monday, April the 22nd, the

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1 parties, and that means the ANC and the Western Civic
2 Association, will have until Monday, May the 6th, at three
3 o'clock, to turn in their comments regarding the finding
4 of facts and conclusion of law. In that way, it could
5 be taken at the public meeting on May 13.

6 CHAIRPERSON MITTEN: Mr. Barber?

7 MR. BARBER: I just wanted to make sure that,
8 in making this submission Monday, that we, at the
9 university, could make change enhancements to the
10 amenities, and not just stick to word changes. I mean,
11 we would be free to --

12 CHAIRPERSON MITTEN: Certainly.

13 MR. BARBER: Okay. That would -- that time
14 -- thank you.

15 CHAIRPERSON MITTEN: Have at it.

16 MR. BARBER: The more the better, I might
17 add. Thank you.

18 CHAIRPERSON MITTEN: What Mr. Bergstein
19 suggested, also, for the community, is the more substance
20 your comments can be in regard to what would be proposed
21 by the university in terms of making specific language
22 changes, proposing specific language changes to us, to
23 make the conditions more enforceable if you find the
24 language to be inadequate that's being propose by the
25 university, that's helpful to us rather than saying we

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1 don't like that. That doesn't help us.

2 MR. BARBER: And I'm sorry. One other
3 change. Could we have until Tuesday, three o'clock,
4 because it's two full working days --

5 CHAIRPERSON MITTEN: I was just taking Mr.
6 Feota at his word.

7 MR. BARBER: No. If we're not just talking
8 about changing the language that's a drafting, and I take
9 it, from what your concern, it's more than a drafting
10 exercise.

11 CHAIRPERSON MITTEN: Yes.

12 MR. BARBER: Then, we'd like a little more
13 time, whatever works for the May 13th hearing.

14 CHAIRPERSON MITTEN: Fine.

15 SECRETARY BASTIDA: What's wrong with
16 Saturday and Sunday?

17 MR. BARBER: I'm happy to work. It's just
18 not typically a working day.

19 CHAIRPERSON MITTEN: Mr. Feota gets time and
20 a half on the weekend.

21 SECRETARY BASTIDA: Madam Chairman, then the
22 staff will push it back, for the community to receive
23 the comments, until Tuesday, the 7th, but we're going
24 to need 20 copies of each of that when it is filed. The
25 staff will not have time to make that many copies to

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1 prepare that package. So, with that proviso, we'll give
2 the community a full two weeks to address the issue.

3 CHAIRPERSON MITTEN: Okay. Thank you.

4 SECRETARY BASTIDA: Thank you.

5 CHAIRPERSON MITTEN: Thank you, Mr. -- thank
6 you.

7 MS. ELLIOT: Madam Chairman, may I?

8 CHAIRPERSON MITTEN: Sure.

9 MS. ELLIOT: I just want to put an objection
10 on the record about this procedure because we would like
11 this voted up or down also, and that's one objection.
12 And we would like a little bit additional time. I think
13 we're not going to have enough time, and we'd like an
14 additional week, if there's any possibility to do that.
15 If there's not, I'd like that on the record.

16 We're at a disadvantage here, without counsel
17 to take this back, and I believe we still feel that the
18 major issue in this is the housing issue, and the housing
19 element if supposed to be for the community housing for
20 the community. And --

21 CHAIRPERSON MITTEN: Let me just help you
22 out a little bit, which is, we know what all your
23 objections are, so you don't need to reiterate that.
24 You don't need to submit that any more, for the record.
25 That's in the record.

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1 What we'd like you to do is respond directly
2 to the changes that the applicant will be making as it
3 relates to the exercise we're going to go through now.

4 So, it's a very finite task that we're about at this
5 juncture, just to go from this meeting to the next meeting
6 is to give teeth to these amenities. Everything else
7 has been -- there has been ample opportunity for everyone
8 to put things in the record about that, and we have that
9 in the record, okay?

10 I mean, does that help define it for you?
11 It's not quite as broad a scope as --

12 MS. ELLIOT: Well, you're simply talking
13 about the amenities now, and not in relationship to the
14 yes or no about the entire project.

15 CHAIRPERSON MITTEN: Well, I mean, we
16 haven't had a vote yet.

17 MS. ELLIOT: Yes, I know.

18 CHAIRPERSON MITTEN: So, what I'm saying is
19 we're trying to define a very small component of what
20 we will be considering in part of this larger issue.

21 MS. ELLIOT: And you have our responses on
22 that already.

23 CHAIRPERSON MITTEN: Exactly. That's what
24 I'm saying. I don't think it's going to be quite as
25 onerous as you might think, in order to work within this

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1 two week timeframe, because we're not looking for you
2 to respond to all those large issues again.

3 MS. ELLIOT: All right.

4 CHAIRPERSON MITTEN: Thank you.

5 MS. ELLIOT: Thank you.

6 CHAIRPERSON MITTEN: Okay. And if anyone
7 has any questions about the schedule --

8 SECRETARY BASTIDA: Could I just quickly for
9 the record. Then the applicant will file his findings
10 of fact and conclusion of law on Tuesday, April the 23rd,
11 and will serve it, at the same time, on all the parties.

12 The parties will have until three o'clock on Tuesday,
13 May the 7th, and there will be 20 copies provided with
14 that. Okay? Thank you, Madam Chairman.

15 MS. ELLIOT: How long do we have to respond?

16 SECRETARY BASTIDA: The parties, the NC and
17 the West End Civic Associations, and I think that those
18 are the only parties on the record, and the only parties
19 can be respond, has to respond by May the 7th, to --

20 CHAIRPERSON MITTEN: Okay. We're going to
21 get Mr. Parsons back out here. All right. Mr. Parsons
22 is back among us.

23 All right. The next case is Zoning
24 Commission case number 00-, dash, 41P, which is the
25 Capitol Hill commercial district overlay, and I'm going

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1 to ask Vice Chairman Hood to take over the discussion
2 at this point, after Mr. Bastida introduces this case,
3 because I did not sit on this case, and I will have a
4 difficult time trying to coordinate the discussion.

5 SECRETARY BASTIDA: The staff has provided
6 all the information that has come into the record, and
7 request an action on this matter. The staff also has
8 provided, this morning, a copy of the maps that outline
9 the proposed overlay, and has crossed out the area that
10 encompasses Easter Market and the Natatorium because the
11 applicant pulled it out at the hearing.

12 If I didn't provide the map to any of the
13 commissioners, I have extra copies that I can provide
14 right now, that it might make your discussion a little
15 easier to follow.

16 VICE-CHAIRPERSON HOOD: Okay. Thank you,
17 Mr. Bastida. I think this was pretty straightforward,
18 other than the issue of not having the outreach. It
19 amazed me that this project could be the rezoning issue
20 for C2A could go on for, I think five I-- I want to say
21 five or 15 years, or whatever it was, and so few people
22 knew about what was going on.

23 I believe that they worked through this, and
24 as Mr. Bastida has mentioned, certain areas were omitted
25 to compensate, and I think it was support. It was just

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1 an issue on the outreach. And I think the statement was
2 that we can all work a lot better with that.

3 With that, colleagues, I would open it up
4 for discussion. If there's no discussion, I --

5 COMMISSIONER PARSONS: Well, you know the
6 whole case seemed to revolve around people that didn't
7 think they'd been informed. That is, most of the hearing
8 did, which is kind of too bad. Well, I guess we heard
9 a lot about that last night, and some other nights, and
10 so forth. Some people seem to use that excuse, but other
11 than that, there was not much testimony that would change
12 the basic concept. So, I have nothing to add at this
13 point.

14 VICE-CHAIRPERSON HOOD: Okay. Mr.
15 Hannaham, did you want to add something?

16 COMMISSIONER HANNAHAM: I can't put my hands
17 on the materials, but I do remember having a question
18 in my mind when we first got the presentation on this.
19 And something thing puzzled me, there was a gap on
20 Pennsylvania Avenue. I can't remember -- 13th Street
21 comes to mind, and I never really understood why that
22 was proposed.

23 VICE-CHAIRPERSON HOOD: But at least,
24 Commissioners, I think from the testimony, those areas
25 that needed to be eliminate were. I don't want to say

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1 this was a fly by night because some of those folks have
2 been out there, working on zoning issues in this city
3 for a long time.

4 I think, like Mr. Parsons was saying, the
5 issue was the outreach, and I think they have accommodated
6 those people who had issues with taking out specific areas
7 that cause concern. So, I guess, with that, I'll make
8 a motion that we approve Zoning Commission case number
9 00-, dash, 41P, the Capitol Hill commercial district
10 overlay.

11 COMMISSIONER PARSONS: I'll second that
12 motion.

13 VICE-CHAIRPERSON HOOD: It's been moved and
14 seconded. All those in favor?

15 COMMISSIONER HANNAHAM: Aye.

16 COMMISSIONER PARSONS: Aye.

17 VICE-CHAIRPERSON HOOD: And in opposition.
18 So ordered, and do we have a proxy?

19 CHAIRPERSON MITTEN: Mr. May's proxy is in
20 the affirmative.

21 SECRETARY BASTIDA: The staff will record
22 the vote four to zero to one. Mr. Hood moving, and Mr.
23 Parsons seconded. Mr. Hannaham voting in the
24 affirmative. Mr. May voting in the affirmative by
25 absentee ballot. Ms. Mitten abstaining because she was

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1 out of the hearing, and she was not provided with the
2 record.

3 CHAIRPERSON MITTEN: Thank you, Mr.
4 Bastida, and thank you, Mr. Hood.

5 Now, we will move to file action. As we said,
6 the IMF case will be taken up at a special public meeting.

7 What's the date of next Thursday again, Mr. Bastida,
8 25?

9 SECRETARY BASTIDA: Twenty-fifth, at six
10 o'clock.

11 CHAIRPERSON MITTEN: Thank you. April
12 25th, at six o'clock.

13 SECRETARY BASTIDA: 2002.

14 CHAIRPERSON MITTEN: I hope no one would be
15 confused by that.

16 So, now we'll move to Zoning Commission case
17 number 02-, dash, 16, which is a request to rescind a
18 covenant pertaining to 4500 Wisconsin Avenue, Northwest.

19 Mr. Bastida?

20 SECRETARY BASTIDA: Yes, Madam Chairman.
21 This is a request to rescind this covenant because of
22 the proposed development of Sears that has been approved
23 by the Historic Preservation review board, and this is
24 only to authorize corporation counsel to start the
25 initiative in order to void the requirement. And that's

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1 the action that the staff is requesting. Thank you.

2 CHAIRPERSON MITTEN: All right. Thank you.

3 And we have a --

4 SECRETARY BASTIDA: Okay. Excuse me. And
5 there is also a request I would request that you waive
6 the OP report into the record, since the report was filed
7 late.

8 CHAIRPERSON MITTEN: All right. Any
9 objection to waiving our rules to accept the late filing
10 of the OP report?

11 COMMISSIONER HANNAHAM: No objection.

12 CHAIRPERSON MITTEN: Okay, without
13 objection. So we do that the Office of Planning report,
14 which does not object to the rescission of the covenant
15 and I believe that, unless we were interested in retaining
16 some kind of review authority, which would be conducted,
17 anyway, by an Historic Preservation review board, because
18 the property has been land marked, I don't think there
19 would be anything lost, in terms of control, by rescinding
20 the covenant.

21 VICE-CHAIRPERSON HOOD: I would agree, Madam
22 Chair, and I would make a motion we stand on Office of
23 Planning's report, and we rescind Zoning Commission case
24 number 01-, dash, 16, and request to rescind the covenant
25 pertaining to 4500 Wisconsin Avenue, Northwest, Lot 15,

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1 square 1730, Sears.

2 CHAIRPERSON MITTEN: Is there a second?

3 CHAIRPERSON MITTEN: Okay. We have a motion
4 and a second to approve the request to rescind the
5 covenant. Any further discussion? All those in favor,
6 please say aye.

7 Aye.

8 CHAIRPERSON MITTEN: Aye. Those opposed,
9 please say no. And Mr. May's absentee vote is in the
10 affirmative.

11 SECRETARY BASTIDA: Thank you, Madam
12 Chairman. The staff will record for the vote, five to
13 zero to zero. Mr. Hood move it and Mr. Parsons second
14 it. Ms. Mitten and Mr. Hannaham vote in the affirmative.
15 Mr. May voting by absentee ballot, in the affirmative.

16 CHAIRPERSON MITTEN: Thank you. All right.
17 The next case under final action is Zoning Commission
18 case number 01-, dash, 05TE, which is a time extension
19 request for the Capitol Point PUD, and I did mention that
20 this was going to be voted on in May, but we would like
21 to have some discussion on the subject today, and maybe
22 we can get a preliminary response from the office of
23 Planning.

24 The report that we have was back in October,
25 2001. And at that point in time, the comment made that

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1 the military district of Washing was development plan
2 in light of the recent attack on the Pentagon. And their
3 comments were expected to be forthcoming at that point.

4 And we haven't had any additional submissions for the
5 record.

6 And I don't know, Ms. McCarthy, if you're
7 aware of any comments, but without any comments, we would
8 like to request that they weight in on the status of the
9 security, and how --their security issues, and how this
10 project relates to Fort McNeer, because it was obviously
11 an issue in the PUD approval, and we want to know the
12 extent to which circumstances have changed from their
13 perspectives.

14 MS. MCCARTHY: We'd be happy to contact MDW
15 and get a response back.

16 CHAIRPERSON MITTEN: Thank you. and if it's
17 possible, we'd like to have that response -- I know it's
18 difficult to press other entities, but if we could get
19 that response in time for or May meeting, we'd like to
20 take up this issue at that point in time.

21 MS. MCCARTHY: Certainly.

22 CHAIRPERSON MITTEN: Any other comments on
23 the Capitol Plan time extension?

24 All right. And then, we also were extending
25 the Florida Rock. We're postponing decision on the

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1 Florida Rock case until our May meeting. And now, we
2 will go to --

3 SECRETARY BASTIDA: Madam Chairman, would
4 you like the applicant to -- from Capitol Point to address
5 the Commission if they have any objections?

6 Well, now, the question was -- Mr. Bastida,
7 is if you're going to be requesting information that's
8 relevant to the application, should not the applicant
9 have an opportunity, before you make your decision, to
10 respond to whatever it is that you'll be receiving into
11 the records?

12 CHAIRPERSON MITTEN: Oh, yes, yes. So, I
13 guess -- do we need to set some time parameters for that
14 or is that what you're driving at?

15 SECRETARY BASTIDA: It would be a very tight
16 timeframe if you want to have it on the May meeting.

17 MS. PRINCE: If I may, Madam Chairman.

18 CHAIRPERSON MITTEN: Oh.

19 MS. PRINCE: We've been seeking precisely
20 those comments since October as well, so anything that
21 the Office of Planning could do to help expedite in getting
22 any input whatsoever, from Fort McNair, would be
23 appreciated. We've had discussions but have got nothing
24 that amounts to input.

25 CHAIRPERSON MITTEN: Okay. Well, let's do

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1 this. If the opportunity presents itself that they make
2 a response and the application has sufficient time to
3 comment on the response in order to get it on the agenda
4 for the May meeting, we'll take it up on May, and if not
5 -- I mean, this is an important enough issue that I think
6 we need to at least give it some additional time to try
7 and elicit the information.

8 And perhaps, also, we could get an office
9 planning report and the point that you wrote your October
10 report, it said, "Until the final decision is reached,
11 it is unclear whether the existing PUD will need to be
12 extended, and what additional development conditions and
13 design changes are needed. And so, it didn't say a whole
14 lot at that point, and so, there could be an additional
15 Office Of Planning report provide in sufficient time that
16 Ms. Prince could respond to that too. We'd appreciate
17 it. Thank you.

18 SECRETARY BASTIDA: You want to set any
19 timeframes of --

20 CHAIRPERSON MITTEN: Let's just see how it
21 goes.

22 SECRETARY BASTIDA: Okay.

23 CHAIRPERSON MITTEN: All right. Now, let's
24 take up the minutes.

25 SECRETARY BASTIDA: The staff has provided

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1 you with the minutes of the March 11, 2002 meeting, and
2 request an action on it.

3 CHAIRPERSON MITTEN: All right. Mr. Hood?

4 VICE-CHAIRPERSON HOOD: Madam Chairman, I
5 don't know if you can participate. You weren't here,
6 I don't think.

7 CHAIRPERSON MITTEN: Well, that was a
8 suggestion that I was going to make for a change, since
9 I appear to have voted on numerous --

10 SECRETARY BASTIDA: You were present?

11 CHAIRPERSON MITTEN: Yes, I was.

12 SECRETARY BASTIDA: Okay.

13 CHAIRPERSON MITTEN: On that day.

14 SECRETARY BASTIDA: Yes, but it was six that
15 were there that day.

16 COMMISSIONER PARSONS: There were six of us.
17 Maybe that needs explanation.

18 CHAIRPERSON MITTEN: Perhaps. Yes, that
19 might need some explanation. I have some editorial
20 changes to offer. I don't know that there's anything
21 substantive, other than the fact that I did attend the
22 meeting that I would like to change on the record. Does
23 anyone have any substantive changes or we can just submit
24 our changes to Mr. Bastida.

25 COMMISSIONER PARSONS: No. I'll make the

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1 motion, though. I don't think it would be appropriate
2 if you did until these are amended.

3 Motion to approve, as long as it reflects
4 that Chairman was the present.

5 VICE-CHAIRPERSON HOOD: Second.

6 CHAIRPERSON MITTEN: Okay. We have a motion
7 from Mr. Parsons, and a second from Mr. Hood, to approve
8 the minutes of our March 11th, 2002 public meeting, with
9 the addition of carol mitten as a zoning commission member
10 who was present. All those in favor, please say aye.

11 COMMISSIONER HANNAHAM: Aye.

12 COMMISSIONER PARSONS: Aye.

13 VICE-CHAIRPERSON HOOD: Aye.

14 CHAIRPERSON MITTEN: And all those opposed,
15 please say no. And I will abstain, on the advice of Mr.
16 Parsons, and Mr. May's proxy is in the affirmative.

17 SECRETARY BASTIDA: The staff will record
18 a vote four to zero to one. Mr. Pardons move it and Mr.
19 Hood second it. Mr. Hannaham voting in the affirmative,
20 Mr. May voting in the affirmative by absentee ballot,
21 Ms. Mitten abstaining.

22 CHAIRPERSON MITTEN: Now, we'll have a brief
23 status report from the Office of Planning.

24 MS. MCCARTHY: Thank you, Madam Chair.
25 Mostly, the report is self explanatory and let me just

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1 add a very few notes, which is the intent of regulations
2 set down report is completed. The regulations are
3 completed. The office of corporation counsel had some
4 concerns about formatting to make it consistent with the
5 regulations, so we're in the process of doing that now.

6 We don't expect any problems to have that to you way
7 in advance of the May meeting.

8 The antenna committee taskforce has reviewed
9 these. I believe there may be some of the private
10 attorneys that have a minority report that they would
11 like to submit, but we have submitted and we will have
12 them reformatted and get them back to you.

13 Concrete plant you did. Kenilworth, again,
14 we submitted our set down report but the applicant wasn't
15 quite able to get their application finalized and in on
16 time, so --

17 CHAIRPERSON MITTEN: That's how good the
18 Office of Planning is.

19 MS. MCCARTHY: We were thinking maybe one
20 report one month in advance, be parceled out as ration
21 for a day here, a day there. And we will have a report
22 to you on Capitol Point, Florida Rock.

23 One thing that's not mentioned in term of
24 hearing days, I don't think, but it's listed as a new
25 case submitted is 5401 Western Avenue, which is the

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1 Washington clinic. We have been in discussions with the
2 AFB and the applicant on that, and anticipate coming back
3 to you with a set down report for the May meeting.

4 In the hearing phase, I think, basically --
5 we have made some modifications to the neighborhood
6 commercial overlay to deal with the request that one of
7 the property owners had made, and looking at whether there
8 was a minimum size below which the mandatory ground floor
9 retail requirements should not apply, and so, we expect
10 to be discussing that with the property owner and with
11 the ANC in the next couple of weeks, and coming back to
12 you in May on that case. And the 200 K Street PUD
13 extension report, we also will have a report on that at
14 the May Zoning Commission meeting.

15 CHAIRPERSON MITTEN: Thank you.

16 MS. MCCARTHY: Just to give you some things
17 to look forward to.

18 CHAIRPERSON MITTEN: And we do. Now that
19 we have Buzzard Point taken care of, it's like a whole
20 new ballgame.

21 Okay. Any questions for Ms. McCarthy on the
22 status report? Thank you very much. Thank you for
23 hanging in there with us to the bitter end, on a Friday
24 afternoon.

25 Okay. Under correspondence, I think we have

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1 a memo from -- where's the memo?

2 SECRETARY BASTIDA: Thank you. And I
3 believe Mr. Hood would like to talk about it or ask
4 questions, ask me questions.

5 VICE-CHAIRPERSON HOOD: No. I'm not going
6 to ask you questions, Mr. Bastida, because I think that
7 the response -- we're making a good faith effort to get
8 the response to the committee, which we thought we had
9 assembled, dealing with the DOES and LSDBs.

10 Madam Chair had request that we -- those
11 interested to meet with the directed offices only, see
12 how we are to proceed. I'm in the mindset of maybe like
13 putting something out there, and this is actually one
14 of Mr. Bastida's ideas, of drafting our own piece, and
15 just put it out there and then get a response.

16 We did receive something from the local
17 business office, Jack McClouds.

18 CHAIRPERSON MITTEN: Yes.

19 VICE-CHAIRPERSON HOOD: But I'm just --
20 we're trying to make a good effort and trying to make
21 something work. I'm very dissatisfied with the response
22 that we got from that good meeting that I thought we had
23 back in -- what was it, February? And we haven't received
24 but one response. So, I think we need to at least make
25 it known that the Zoning Commission has tried to make

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1 a good faith or good attempt to deal with those issues.

2 And if we're not getting the help that we
3 need, then maybe we need to take it further to some counsel
4 members. And I'm sure that, when we deliver the annual
5 report, that will be something we could mention.

6 CHAIRPERSON MITTEN: That's good, that's
7 good. Thank you.

8 VICE-CHAIRPERSON HOOD: So, Mr. Bastida,
9 you're off the hook.

10 SECRETARY BASTIDA: Thank you, Mr. Vice
11 Chairman. You were right, but just to give emphasis to
12 the time delayed, the meeting was on January 30th, and
13 I have given all the different government identities until
14 April the 30th to provide the follow up information.
15 So on May 1st, I think that we can move to initiate in
16 our own initiative, whatever you would like to do.

17 VICE-CHAIRPERSON HOOD: Well, let me just
18 say, though, Mr. Bastida, I think we have extended that
19 date because originally, it was set for like the first,
20 second week in March.

21 SECRETARY BASTIDA: Oh.

22 VICE-CHAIRPERSON HOOD: That date was -- we
23 have extended it because no one has responded. So, I
24 guess we could wait, Madam Chair, until April the 3rd,
25 I believe, is the date?

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1 SECRETARY BASTIDA: Correct.

2 VICE-CHAIRPERSON HOOD: And then we would
3 need to proceed, because I think we're making a good faith
4 effort to get this thing narrowed down.

5 CHAIRPERSON MITTEN: I agree.

6 SECRETARY BASTIDA: And I stand corrected.
7 Yes, it was extended. The memorandum of April the 9th
8 is a reaction to the lack of input from all the government
9 entities but for LDOC.

10 CHAIRPERSON MITTEN: Thank you. Thank you,
11 Mr. Bastida.

12 SECRETARY BASTIDA: Thank you.

13 CHAIRPERSON MITTEN: And it is a little
14 frustrating. I mean, we're trying to help them and
15 they're not cooperating, so --

16 Let's see. We've also been provided a court
17 decision, which is Citizens Association of Georgetown,
18 et al. against the Zoning Commission. I assume that was
19 favorable to us.

20 SECRETARY BASTIDA: That's an old decision
21 in which several issues regarding communications are
22 addressed, and I thought that you might be interested
23 on reading that case.

24 CHAIRPERSON MITTEN: Oh, okay. Thank you.
25 So, it's not something new?

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1 SECRETARY BASTIDA: No. It's several years
2 old.

3 CHAIRPERSON MITTEN: Okay. Thank you. And
4 then, we have the reminder schedule from Mr. Bastida,
5 and I would just encourage everyone to add to that the
6 special public meeting on Thursday, this coming Thursday,
7 the 25th, at six p.m.

8 Anything else? Any other business that
9 anyone would like to bring to the Commission? Anything
10 else, Mr. Bastida.

11 SECRETARY BASTIDA: The other business items
12 are self explanatory and I don't think that we need to
13 go into that, but I would like to have a meeting right
14 after this meeting, to schedule your attendance at BZA.

15 CHAIRPERSON MITTEN: Thank you.

16 SECRETARY BASTIDA: Thank you.

17 CHAIRPERSON MITTEN: If there's no further
18 business, I now declare this public meeting closed.

19 (Whereupon, the above-entitled matter was
20 concluded at 5:11 p.m.)

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