GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

ZONING COMMISSION

REGULAR MEETING
1086TH MEETING SESSION (4TH OF 1999)
MONDAY, MAY 10, 1999

The meeting of the Zoning Commission of the District of Columbia commenced at 1:30 p.m. at the Office of Zoning Hearing Room, 441 4th Street, N.W., Suite 220, Washington, D.C., Jerrily Kress, presiding.

ZONING COMMISSION MEMEBERS PRESENT:

JERRILY R. KRESS, Chairperson
ANGEL F. CLARENS
HERBERT M. FRANKLIN
ANTHONY HOOD
JOHN F. PARSONS

COMMISSION STAFF PRESENT:

Sheri M. Pruitt-Williams, Interim Director, Office of Zoning
Vincent C. Erondu, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Alberto Bastida, Office of Planning
David Colby, Office of Planning
Patricia Young, Office of Corporation Counsel

I N D E X

Page

PRELIMINARY MATTERS 5

ACTION ON MINUTES 5

A. Regular public meeting on April 12, 1999 (1085th Session)

PROPOSED ACTION

The Commission has heard the following cases; proposed action is requested:

98-20 (PUD) Walter Washington Estates 8

98-14 (PUD and Map Amendment from SP-2 to C-4 for portion of lot 842 in Sq. 184 @ 1000 16th St., NW (Solar Bldg.) 25

98-11 (Map Amendment, Eighth Street Overlay and rezoning from C-M-1 to C-3-A for Sqs. 906, 907, 929 and 930) 82

98-8 Update of Child Development Center Regulations 105

HEARING ACTION

The Commission is requested to determine whether the following case should be set for public hearing:

Page

FINAL ACTION 110

The Commission has taken proposed action on the following cases; final action is requested:

a. 98-19 (Text Amendments-Zoning Commission and Board of Zoning Adjustment Rules of Practice and Procedures

b. 88-16C (Consolidated PUD @ 901 New York Ave. N.W.)

c. 98-1M/97-9C (PUD Modification, Map Amendment, and Use of Air Space in Sq.51@2200 M 00 M Street, NW - Millennium Partners)

d. 94-4M/89-31C (Consolidated PUD and Map Amendment @ 500 5th Street, NW) to be provided on Monday

REPORT OF THE DIRECTOR 154

Correspondence

a. Letter dated April 30, 1999, from Angel F. Clarens requesting sua sponte review by the zoning Commission under Section 3130 of the Zoning Regulations of the Board of Zoning Adjustment decision concerning the granting of a use variance for BZA Case No. 16426

b. Memo dated May 4, 1999, from Douglas J. Patton, Deputy Mayor for Economic Development concerning recordation of covenants under Transfer of Development Right (TDRSO and Planned Unit Developments (PUDs)

Adjourn 16

P R O C E E D I N G S

2:00 P.M.

CHAIRPERSON KRESS: I'd like to call to order the Zoning Commission's regular meeting, the 1086th meeting, 4th of 1999 for May 10th. I'm Jerrily Kress, Chairperson. Joining me this afternoon are Commissioners Franklin, Hood, Clarens and Parsons. I hereby declare this meeting open.

First, I will begin with preliminary matters. Ms. Pruitt-Williams?

MS. PRUITT-WILLIAMS: Yes, staff has just one preliminary matter that we would like just for a course of matter of information. The hearing that was originally scheduled for the prison hearing which was originally scheduled for April 15th of last month, has been rescheduled for the first hearing to be May 17th, starting at one o'clock at the Commerce Auditorium. There will also be another hearing date scheduled for the 24th at the Commerce Building. That hearing will start at 7. If there's a need for a third hearing, that will be on the 27th and that will be held in this room. This will also be in the D.C. Register this Friday, and there should be press releases on it, but we just wanted to inform the public.

CHAIRPERSON KRESS: And if anyone needs information on exactly where and how to get there, they may be able to get that from you and your office, is that not correct?

MS. PRUITT-WILLIAMS: Correct. It is near the

Federal Triangle Metro stop at 15th and Constitution Avenues.

CHAIRPERSON KRESS: Thank you.

MR. BASTIDA: Madam Chairperson, I did have a preliminary matter. It's more of a perception than anything else. I have been talking to some lawyers trying to reschedule the 1001 New York Avenue. It doesn't have anything to do with the agenda or anything like that. But I don't want the public to have the perception that I was discussing something related to the meeting.

CHAIRPERSON KRESS: All right, thank you.

MR. BASTIDA: Thank you.

CHAIRPERSON KRESS: With that we'll move on to the minutes, action on the minutes of the meeting of April 12th. And before there's a motion I'd like to point a few things out. Mr. Clarens' name cannot be spelled correctly. It's spelled about four different ways. Normally, I don't pick that up. I just found that.

I would like to make a comment of substance and that's particularly under the status report on page 3, Office of Planning, monthly comprehensive plan status report. I believe and I would like Commissioner Parsons to comment on this, that he was the one that emphasized the open space studies being long overdue and that he would continue to recommend the formation of a task force and indicated his willingness to chair that, rather than Mr. Colby. Am I correct on that?

MR. COLBY: Yes.

COMMISSIONER PARSONS: Yes.

CHAIRPERSON KRESS: So the status report needs to be rewritten. I have rewritten it and I can just pass that down afterwards.

I did want to ask while we were on that same page if on item C, Mr. Clarens, Commissioner Clarens, is it correct that you were not voting, not present or not voting, not having heard the case, did you pick that up when you were reading that? On page 3, item C?

COMMISSIONER CLARENS: Not voting, not having heard the case.

CHAIRPERSON KRESS: Okay, we will have that as amendment.

Under the Report of the Director, under the correspondents having to do with the Millennium Partners, 2C. I am misrepresented there in my vote. I am listed as voting to deny and instead I was not voting, not having participated in the case.

The rest of my comments are all typos which I will pass on to the Director for incorporation.

Does anyone else have any other comments?

COMMISSIONER FRANKLIN: Yes, Madam Chair.

CHAIRPERSON KRESS: Commissioner Franklin.

COMMISSIONER FRANKLIN: On page 3, item B, I should be shown as not voting, not having heard the case.

CHAIRPERSON KRESS: Yes.

COMMISSIONER FRANKLIN: And you're shown at all,

so I take it you were part of the -- or were you not present?

CHAIRPERSON KRESS: I was not voting, not having heard the case.

COMMISSIONER FRANKLIN: Right, the two of us were in the same --

CHAIRPERSON KRESS: Both Franklin and Kress.

COMMISSIONER FRANKLIN: And I have a number of typographical corrections which I'll give to Ms. Pruitt-Williams.

CHAIRPERSON KRESS: Any other comments on the minutes?

COMMISSIONER CLARENS: Move to approve.

CHAIRPERSON KRESS: There's a motion made by Mr. Clarens.

COMMISSIONER PARSONS: I second.

CHAIRPERSON KRESS: And seconded by Commissioner Parsons to approve the minutes as amended. All those in favor signify by saying aye.

(AYES.)

CHAIRPERSON KRESS: Those opposed? The motion is carried.

MS. PRUITT-WILLIAMS: It will be recorded as 5 to 0 to approve the motion made by Mr. Clarens and seconded by Mr. Parsons.

CHAIRPERSON KRESS: The next item of action is Walter Washington Estates under proposed action.

MR. BASTIDA: Madam Chair, for the record, the

Office of Planning filed its summary of the last public hearing on April 8th. I don't know if you had an opportunity to go over it. If you want me to go over it, but the main part is on page 3 of my report which states the point that the Commission requested further information and they are four points of additional information including a site plan, a landscape plan, as well as legal recommendation regarding the use and the layout of the off-site parking facility prepared by the Applicant. I believe the Applicant has done such. The specification for this is a sign of the proposed townhouse decks. Those were submitted also for the record. A detail of such plan showing the reconfiguration of the pool area and the adjacent tot lot and that was also submitted for the record. And a detailed lighting plan for the modification areas and that was also in the Office of Planning opinion submitted for the record.

If you want, need to be more extensive on the presentation, I'll be glad to do so.

CHAIRPERSON KRESS: Before you do that, I had several things on my list as having been requested and I just wanted to check with your recollection. I had in my notes that one of the issues was the location of the townhouse decks which on the site plan, the townhouse decks are shown, but they're shown on almost every single house as a possibility. My concern with that is as I was trying to compare because it was not on a topog plan and it was just on a site plan without the topography and when I tried to look at those decks side by

side with the topography plan, it was very difficult to see the situation or how far those decks were off the ground which was the purpose of asking for that plan.

Also, in reviewing the light fixture plan, it references several light fixtures by name and number, but I did not have in my package a catalog cut to show me what those light fixtures looked like and at one point it referred to a note 3 and I did not have any such note 3, nor did I have in my package which I thought we were getting descriptions of species and perhaps I should check with Commissioner Parsons if I missed that because there were a few things missing from my package. I saw graphically where trees where, but I did not understand or have the information as to what they were.

And finally, I thought we asked for finding of facts, conclusions of law and a decision which is only a request we can make of the applicant and none of that which we received either. So --

MR. BASTIDA: Madam Chairperson, I'm sorry --

CHAIRPERSON KRESS: That was my list of what I thought we asked for and what we found and I wanted directions from you on what I had and what I didn't have.

MR. BASTIDA: Perhaps I saw certain things that were not submitted for the record. The finding of facts and conclusion of law, we take those as a given and accordingly we don't make a special request because it is something that the Applicant proffered and if they provide it, great, but if they don't provide it not much I believe the Commission can do

about it.

On the deck, you are correct. the site plan that I saw and I think it was submitted this morning into the record shows decks proposal and a series of houses that are the kind that the Office of Planning review the plan, coordinate it with a grade and it will not impair in our opinion the privacy of other houses because the balconies are much higher than the roof of adjacent houses and they are shown in a series of houses. It doesn't mean that all those houses will have those decks. It's just that they have the possibility to build those decks.

With the light fixtures, perhaps --

CHAIRPERSON KRESS: Before we go on to that though I would like to know about those studies because as I was doing them I didn't come up with the same results.

One of my concerns is is that that we don't have decks because of the change in grade, better say three or four feet off the ground because you can develop which I believe we have talked about before, dark things that can clutter and you don't really want to see built and it's not really clear on the other side with the slope changing whether there's a patio or how one is entering the unit.

COMMISSIONER CLARENS: My recollection was that in the request for modification, the Applicant had requested permission to build decks and that the Commission felt that the deck had to be detailed, that the decks would be on the downside units where there is a great difference that allows

for the -- and the argument was that the living space was on what then became a second floor, one floor removed, so -- and they have provided us with a detail drawing both in elevation and plan for a typical deck and our concern was that these decks would be -- if we allowed decks to be built as an option on these units, then the decks would be -- is that correct? Is that my recollection?

CHAIRPERSON KRESS: Absolutely.

MR. BASTIDA: And I concur with that. I thought that the issue of the grade differential is really a steep drop away, slope away from the house where the decks are proposed. And that was, in my opinion, was submitted for the Commission's hearing. The Commission had trouble with the new proposed nine townhouses and the decks were not shown on those and I made sure that in fact, when the new plans were submitted that those make sense that it was the same condition.

I only narrow it down to those. I didn't go back and look at the previous review that we had done, that the Office of Planning had done.

CHAIRPERSON KRESS: Maybe I am totally wrong. I thought that the decks were a new request period?

COMMISSIONER CLARENS: Yes.

CHAIRPERSON KRESS: And so I just didn't look at these. I looked at all the decks all around and except for here --

COMMISSIONER CLARENS: No, no. They're shown on

the down side of the slope. The hill is coming this way.

CHAIRPERSON KRESS: Actually, the only place they're not shown is here and again, it's not clear. I'm not saying that perhaps you're not correct, but every -- if one goes by the symbol, see where they say deck and it looks like that then I have to believe that that also applies to all of these everywhere and I'm just not --

MR. BASTIDA: Madam Chairperson, you are correct. The graphic way to depict them doesn't make it clear. We can ask the Applicant to resubmit in such a fashion that it's much better depicted.

CHAIRPERSON KRESS: Here's the topogs. And these don't have any of the decks.

COMMISSIONER CLARENS: Correct.

CHAIRPERSON KRESS: And there's certain kinds of places where you've got --

MS. PRUITT-WILLIAMS: Excuse me, you need to speak up if you want to be on the record.

CHAIRPERSON KRESS: I'm sorry. The plan I'm looking at is one that was submitted before that wasn't a part of the revised package.

MR. BASTIDA: You are correct. The way that it's depicted on the plans that was submitted for the record is not clear. It appears like every townhouse has a deck and that's not the case. I think that we have to request from the Applicant that that plan will be depicted in such a fashion that there is not a discrepancy between what is deck and what

is a patio. The problem is that both have graphically speaking the same depiction. Accordingly, it's difficult to recognize one from the other.

COMMISSIONER CLARENS: And furthermore, there is a -- I think that it is important to reconcile the plans because in this plan which is dated --

CHAIRPERSON KRESS: This is old. This is our original --

COMMISSIONER CLARENS: I know. It's a deck location plan, March 11, 1999 and it shows the location and then in addition to this location, there are at least one, two, three, four rows of houses approximately 16 townhouses that are shown with decks. Is that correct?

CHAIRPERSON KRESS: To me, this says deck location plan, but it isn't.

COMMISSIONER CLARENS: And then the decks are located here.

MR. BASTIDA: The thing is that the decks and the patios look identical in the graphic depiction and that's the problem. We'll have to make that clear so that the Commission -- there's not any problem with the plan that one is a patio and another is a deck. I am sorry, I only looked at the new townhouses and the relocation of the 9th one and concentrated on that. So I will work with the Applicant to submit that for the record and make sure that you're properly satisfied.

CHAIRPERSON KRESS: All right, thank you.

Questions of Office of Planning?

COMMISSIONER PARSONS: So are we going to request a new plan for decks?

MR. BASTIDA: If you do, I need you to reopen the record to receive that.

CHAIRPERSON KRESS: Well, I wanted to ask my colleagues are they happy with the -- all of the information, do you feel you have all of the information you need to be able to make a decision?

I personally felt I was short a couple of pieces and I wanted to propose reopening the record, but I --

COMMISSIONER HOOD: Madam Chair, if I may add, the parking covenant issue needs to be more definite. It's more open. The times and I was looking for more definite items as opposed to just this is how this is going to happen between that time and this time. What definite times as far as when the residents have to be in, leave, what times the residents can go in, more or less. Because what it has now it's just open ended.

MR. BASTIDA: So you want specific parameters.

COMMISSIONER HOOD: There should be some --

MR. BASTIDA: Or timewise.

COMMISSIONER HOOD: It should be more definite.

MR. BASTIDA: Okay, fine. I'll work with the Applicant to make sure that that is submitted for the record, if the Commission so chooses to reopen the record.

CHAIRPERSON KRESS: All right.

COMMISSIONER PARSONS: You are correct. The landscape shows only deciduous and evergreen. It does not give any sizes. I can't recall what the original landscape plan said on the original PUD.

MR. BASTIDA: Yes, on the original PUD there was specifically to the type of the planting material and that still rules.

CHAIRPERSON KRESS: But wouldn't we need that description for the new areas?

MR. BASTIDA: It would make it easier for the Zoning -- yes. You need it for the new area, but I think that it would make it easier for the Zoning Administrator if it's all consolidated in one landscape plan and that way he does not have to go back and forth to both of them. So it would make the task so much easier for the Zoning Administrator. Accordingly, I will work with the Applicant to make sure that both are consolidated in one drawing.

CHAIRPERSON KRESS: Is there any uncomfortableness with the light fixture? Would anyone like to see the catalog cuts of what the light fixtures look like?

COMMISSIONER FRANKLIN: Madam Chair, just for the record, the map that you were referring to was not delivered to me. It was awaiting me on the podium here and I have not had a chance to review it.

MR. BASTIDA: I think that the Commission should have a look at what visually the light that is proposed would

look like. Accordingly, I think that it should be submitted for the record and if it hasn't been submitted, and delivered to every Commissioner so every Commissioner has the ability to see the total picture.

COMMISSIONER HOOD: Madam Chair, for the record, I too would like to put on the record that I too was not afforded the opportunity to be able to look at the map. I just received it as I took my seat.

CHAIRPERSON KRESS: For the future, we should ask the Applicants for -- make sure we make copies when they submit, only a limited number, so we can have more of a chunk to review it. We'll have to be more careful of copying all of the information.

As we're talking about reopening the record to receive any information, is there anything else?

COMMISSIONER CLARENS: I'm not sure we want to -- the reference in the sheet SP2 which is the -- it's where the details of the swimming pool, deck and the tot lot area are indicated, there's a reference to an SP1 which is not included in the package. I think it refers to the detail of the play equipment. I'm not sure that we want to include that, but it is a reference in one that deals directly with what the zoning was concerned with and we might want to view it for review.

CHAIRPERSON KRESS: So we believe we want to review sheet SP1.

COMMISSIONER CLARENS: Yes.

CHAIRPERSON KRESS: Let me go over the list and we'll see if we have it.

Item 1 I have is more definitive information in the covenant on the parking times. Is that correct, did I say it right?

MR. BASTIDA: Yes.

CHAIRPERSON KRESS: Item 2, a consolidated landscape plan that shows the types and species of the new area particularly and its landscaping.

No. 3, actually, I'd like to request if it's not too much trouble to consolidate it, lighting fixture.

MR. BASTIDA: Fine.

CHAIRPERSON KRESS: But one that also depicts graphically for us the catalog cuts that describe the fixture that we're looking at.

COMMISSIONER CLARENS: I think they show a picture of the light fixture with the dimensions.

CHAIRPERSON KRESS: There's particularly one that's talked about that's bronze and not included and I'm concerned about what that looks like.

We talked about the deck location. We need some kind of a -- what is a patio, what is a deck.

COMMISSIONER CLARENS: That is correct.

CHAIRPERSON KRESS: And perhaps one could say that -- and maybe they might want to look at putting a requirement that decks will only be located on buildings where there is an 8 foot clearance on grade.

COMMISSIONER CLARENS: I think they have identified that in the hearing, that was discussed. I think that it is an issue, recording it properly on the plans.

CHAIRPERSON KRESS: Okay.

MR. BASTIDA: I think, Madam Chairperson, I think for everybody's peace of mind that it should be depicted on a grade plan and that way there is not any doubt the slope on where those decks are located at.

CHAIRPERSON KRESS: Terrific and then a request that we also have a copy of SP1 drawing.

COMMISSIONER CLARENS: The SP1 drawing is referring to which drawing, please?

The SP1 drawing is a reference. There is a reference which apparently has to do with the playground equipment.

MR. BASTIDA: Right, but it's depicted on which drawing that it refers to --

COMMISSIONER CLARENS: SP2.

MR. BASTIDA: SP2.

COMMISSIONER CLARENS: It refers to SP1.

MR. BASTIDA: Thank you.

CHAIRPERSON KRESS: And then finally we would find it very, very helpful to have findings of fact, conclusions of law and a proposed decision for us to be able to review in making our decision. It would certainly speed up the project.

MS. PRUITT-WILLIAMS: Madam Chair, on your

consolidated landscaping plan, you want also the identification species and size?

CHAIRPERSON KRESS: Yes, I'm sorry, this is imperative that we know that relating to the particularly the new area that we have not reviewed before or that it's included as part of this modification.

Finally, I'd like to say from everything I've heard this is a wonderful project and none of this is meant to take anything away from what is being built so far and how the project is going. It's just a matter of doing good fiduciary responsibility in reviewing things.

MR. BASTIDA: You are correct, Madam Chairperson. I had the privilege to attend the opening on Friday at the HR Street and it really is very impressive. The retaining walls look very nice. The granite staircase going up the hill and so on, it really -- and the houses, the finishing on the houses are very good. It's really a good project and you should take credit for it.

CHAIRPERSON KRESS: Thank you. Any other comments? We need to officially open the record, I'm sorry.

MR. BASTIDA: And you have six items.

CHAIRPERSON KRESS: I would like a motion to officially open the record for those six items?

MS. PRUITT-WILLIAMS: To receive the new information?

CHAIRPERSON KRESS: Pardon me?

MS. PRUITT-WILLIAMS: To receive the new

information?

CHAIRPERSON KRESS: To receive the new information.

COMMISSIONER HOOD: Madam Chair, I'd like to make a motion that we reopen the record for the remaining things that we further need to move forward with this project, 98-20.

COMMISSIONER FRANKLIN: Second.

CHAIRPERSON KRESS: Thank you. Any further discussion?

All those in favor signify by saying aye.

(AYES.)

Opposed? Motion carries.

MS. PRUITT-WILLIAMS: I'm sorry, Madam Chair, who seconded?

CHAIRPERSON KRESS: Commissioner Franklin.

MS. PRUITT-WILLIAMS: Commissioner Franklin. Is there a time frame as to when you would like this and you propose taking this up at your next meeting, if you get it in in time?

MR. BASTIDA: Madam Chairperson, there is not a real rush with this proposal, because this is Phase 3 and they haven't begun Phase 2, so you can take care of it at your next scheduled meeting, I would think.

CHAIRPERSON KRESS: I guess --

MS. PRUITT-WILLIAMS: The question is do you have a time frame when you need it so that it gives you

sufficient time to review it?

CHAIRPERSON KRESS: If, in fact, they're not in a rush, then as far as I'm concerned they can take the time if they wish to get it to us and once we have gotten it, we will review it.

MS. PRUITT-WILLIAMS: We will schedule it once it's come in.

CHAIRPERSON KRESS: And schedule it on the appropriate agenda.

MS. PRUITT-WILLIAMS: Okay, staff will record the vote as 5 to 0, to reopen the record to allow the submission of the identified items and this will be scheduled for this proposed action once that information has come in and the Commission has had time to review it.

CHAIRPERSON KRESS: Thank you. With that, we'll go ahead and move on to our the Solar Building.

MR. BASTIDA: Yes, Madam Chairperson, for the record my name is Alberto Bastida with the D.C. Office of Planning. We submitted the summary of that -- of the hearing for you to peruse and basically I think that it must be clear in your mind that unless you need some help I will go over it.

CHAIRPERSON KRESS: What is your pleasure, colleagues?

COMMISSIONER CLARENS: For the purpose of the discussion, Madam Chairperson, I would move approval of this application for PUD.

COMMISSIONER FRANKLIN: Second.

CHAIRPERSON KRESS: A motion is made and seconded. With that, we'll open up discussion.

COMMISSIONER PARSONS: Madam Chairman, it probably won't surprise you that I'm opposed to this motion. I find that the additional materials submitted in the second hearing that we had really brought nothing new to light.

In my view, this is clearly inconsistent with the comprehensive plan in Sections 1139.15 and 1120 which tries to preserve this historic street as it is today.

This site has been the product of poor zoning decisions since 1958, in my judgment, and we should not repeat that. That is, the rest of the street has the 100 foot setback that we're familiar with on SP-2 and for some reason in 1958 the line was drawn to follow lot lines so we're now back to 45 feet which in my judgment is totally inadequate, but then the developer has pushed us to 20 feet. To me, a strip of 20 feet is simply not a zone. It's some recognition of architecture, but it is inadequate for that purpose.

Just as recently as 1998 we reaffirmed our commitment to this street as being SP and in no way is this building as designed as I see it in that category.

The precedence setting nature which we talked about before is, I think, very dangerous and a very slippery slope.

In 1955, the BZA authorized this building and didn't put a parking garage in it and now we're asked to do that and a totally inadequate garage, of course, because this

building should have 200 spaces and it's somewhere between 46 and 72 or 76 spaces. So in summary, I think the rationale here is that the builder gets a building, 110 to 125 feet high in violation of what I think the zoning is, an inadequate parking lot, an acre of new office space in the building, the opportunity to have the first retail on 16th Street which I think is improper, reducing the green space on 16th Street, a new parking garage entrance and the public gets $100,000 to Ross Elementary School. I think it's unconscionable. I think we're making a very, very difficult decision, but I think the only proper decision is no. It's opposed by the members of the City Council, the Committee of 100, the ANC, the local residents of the Presidential and other locations. This is an historic street with historic buildings on it and I urge you to deny this application.

COMMISSIONER HOOD: Madam Chair, I also concur with Commissioner Parsons. I had to pull out the map. I don't have as much history as Commissioner Parsons on the issue, but I know that someone had the foresight to zone it as SP zone and I believe that from the comments and from the hearing that I witnessed that the people most affected still have two issues that need to be resolved before I feel comfortable in moving forward with this project. I too will be voting against it.

CHAIRPERSON KRESS: And those two issues as you understand them are?

COMMISSIONER HOOD: Let me find them. I have

them highlighted. You can come back to me, Madam Chair. I will find them.

CHAIRPERSON KRESS: Actually, I might be able to find them.

COMMISSIONER HOOD: A little faster than I. I have them.

CHAIRPERSON KRESS: I believe it was they continued to disagree on the extent of the site that is being rezoned as C-4 and the location of the garage entrance on 16th Street. Is that your recollection? I'm picking that up on page 34?

COMMISSIONER HOOD: Yes. Also one that I have from myself was in the C-4 zone, they had agreed to -- on page 33 of the of the findings of fact and conclusions of law, it says the Applicant agrees to limit uses on SP-2 zone, restaurants, jewelry store, restaurant, etcetera, and reproduction services only in the basement. If things were to change on the tenants or whoever owns -- with a change, then something else because of the zoning can go in there. So I feel uncomfortable with that too, as far as being a C-4 zone.

CHAIRPERSON KRESS: Commissioner Clarens?

COMMISSIONER CLARENS: The PUD establishes what can go there and that's what we are approving. It doesn't go with the ownership or with the tenancy. It doesn't go with the zone. The zone is restricted further within the PUD approval. So even though it's C-4, it doesn't mean that they have rights to all of the uses of C-4.

CHAIRPERSON KRESS: When we make our decision that becomes the covenant and that is listed as a part of our decision and that's the covenant that goes with the -- that says this is what the issues would be restricted to.

COMMISSIONER HOOD: Right. While I respect what was just said to me, I know that some time we live in the real world and things don't actually work that way and I still feel uncomfortable with voting in favor of this project.

COMMISSIONER FRANKLIN: He made the motion.

COMMISSIONER CLARENS: Well, I made the motion, well, let me tell you. I made the motion and I said it not clearly. It was for the purpose of discussion and it is -- and the way I look at it is a little bit different and maybe incorrectly, but I don't think so. A PUD, the whole idea, the concept, the principle at work is that you're trading the strict application of the regulations for a quality product, a product that the Commission feels adds in the overall scheme of things to the quality of life in the city. That's the principle at work.

And it seems to me that overall, in spite of issues raised by Mr. Parsons which I respect, both Mr. Parsons and the issues that he raises, it is -- it seems to me that we have here, in fact, a quality product that we have financially a quality product without the concessions of the PUD request, well, I don't know. I'm not a developer and I don't know if, in fact, we think the floor plate at a building would have without the extra space allowed by the PUD if the same quality

product would be possible, but that's speculative. We have a building in front of us. I believe that it would be a contributing factor to the quality of the overall architecture and design of the city. I think that great efforts have been made, not only to respect but to enhance the quality of 16th Street by the presence of this building. There's only one troubling aspect to the design that continues to trouble me in spite of the fact that the developer or the applicant has tried to resolve it and that's the issue of the parking entrance on 16th Street which is the only aspect of this PUD this I find troublesome and perhaps even nonacceptable, given the character of 16th Street and in spite of the applicants arguments as to not being able to provide any other alternative entrance to the parking.

So for those reasons, overall, I find that this is an enhancement of an existing building that could stay there as it is and that I -- that's it.

CHAIRPERSON KRESS: Thank you. Mr. Franklin?

COMMISSIONER FRANKLIN: I am pleased to second the eloquent of Mr. Clarens. I do not have trouble with the 16th Street curb cut. 16th Street, as the record will show, has many curb cuts. You've got two hotels with -- and the Presidential Apartment Building itself with loop entrance roads in front of them and I think the Department of Public Works was quite plain in saying that the 16th Street access for the garage was acceptable.

I'm really puzzled by the concern over retail.

I passed the property recently and noted that it has what would normally be regarded as retail establishments now. We've got airline offices. It's got an optician and there may be something else there, I can't recall exactly what, none of which look particularly attractive as far as I can tell, and I think that what is being proposed is as Mr. Clarens said from a design standpoint is a suitable and excellent addition to the streetscape. I do not believe that it violates the special nature of 16th Street. I think the Applicant has been responsive to the concerns of the Commission in the modifications that they have made and I am not troubled by this proposal.

I have some comments about the proposed findings of fact and conclusions of law when we get to that point, I'll be glad to state them at that time.

CHAIRPERSON KRESS: Well, I guess it's my turn.

COMMISSIONER CLARENS: It's on your Court.

CHAIRPERSON KRESS: My concern is the precedent setting and it applies not only to this case but to several others that we've talked about and had the force recently and it has to do with changing the underlying zoning and to me, that's a very major issue and it's proposed to us from the developers' point of view and the financial point of view that you have to change the underlying zoning, otherwise the building is not in conformity and if it -- isn't it 50 percent if the building burns down or has a major catastrophe, over 50 percent of its value, then it reverts to what the base zoning

is and perhaps something is built that is not, has not been approved by it.

COMMISSIONER FRANKLIN: I did not understand that to be the driving force here.

CHAIRPERSON KRESS: It's not a driving force, but it is one of those issues in the amount of SP, if I'm understanding it --

COMMISSIONER FRANKLIN: I think it was an FAR issue as I recall, that --

COMMISSIONER PARSONS: Currently, 65 percent of the site is SP, 60-40, I believe, 60 is SP and 40 is C-4. It's going to flip. It will now be 60 percent --

COMMISSIONER FRANKLIN: But for FAR purposes, isn't that correct, John?

COMMISSIONER PARSONS: Sure.

COMMISSIONER FRANKLIN: Because of the guidelines, our PUD guidelines.

COMMISSIONER PARSONS: Height, bulk, density, everything that goes with C-4 is what he wants and that's what we get.

COMMISSIONER CLARENS: The concern that the Chairperson has raised is a concern of mine also and that is what if the building is destroyed for any reason, and as you pointed out very eloquently in our last hearing, it has not happened in other cases.

COMMISSIONER PARSONS: It doesn't happen --

COMMISSIONER CLARENS: It hasn't happened in the District of Columbia in the last 60 years. I don't know over the years you mentioned that buildings get destroyed in their totality, but -- and especially a building of this type of construction it would not be destroyed, it would be partially destroyed.

The question is in approving the PUD and with the destruction of the building, could you then build to the zone without -- to the remap zone with complying with the PUD requirement?

CHAIRPERSON KRESS: That's my question.

MR. BASTIDA: Madam Chairperson, if you don't change the underlying of the base zone when you do a PUD in a related map amendment, it's only for that PUD. If that PUD is not built, the existing base zoning that is there reverts back to it, remains like that and if the PUD is destroyed for one reason or another and somebody wants to rebuild, they either have to rebuild exactly the PUD as it was approved, or it has to come back here or has to build it as the present boundaries of the zoning are presently drawn.

COMMISSIONER CLARENS: If we could get some assurance that that is -- Mr. Bastida, if that is, in fact, the case, then I would feel --

COMMISSIONER FRANKLIN: I believe that's the case.

COMMISSIONER CLARENS: Then that basically solves at least that concern. That means that Madam Chair is

approving is what the City is getting and regardless of consequences the map amendment is tied to the PUD and only tied to the PUD.

MR. BASTIDA: You can request an opinion from Corporation Counsel, but that has been traditionally the opinion that it has been done and that is what you do, an overall rezoning of a site and there is a PUD approved, you don't touch it and you clear -- you go around the area and you don't include the PUD site. But you can get it, a legal opinion from Corporation Counsel.

COMMISSIONER CLARENS: And the map amendment is required as it was stated, solely for elimination of nonconformity issues.

MR. BASTIDA: In this instance, correct.

COMMISSIONER FRANKLIN: For purposes of a PUD only.

MR. BASTIDA: Yes. You see PUD and related map amendment is not a map amendment, it's related map amendment, but I think that for everybody to be at ease, if you request a legal opinion from Corporation Counsel, it would be best for everybody and it doesn't hinge on my work.

COMMISSIONER PARSONS: You are right. I don't think we need a legal opinion. It's true.

MR. BASTIDA: Yes, it's true, traditionally and since PUD where regulations were promulgated that has always been the case.

CHAIRPERSON KRESS: And what are the major

issues of precedent setting?

COMMISSIONER PARSONS: What would you say to the Sheraton-Carlton when they come back next month and say we want to add three floors to our building?

COMMISSIONER CLARENS: I'd say no.

COMMISSIONER PARSONS: To balance the one across the street. Why would you say no?

COMMISSIONER CLARENS: Because it has to be part of a --

COMMISSIONER PARSONS: Okay, it's a beautiful PUD and you love it, right? We're increasing the perceived height of these buildings 20 feet from the edge of the building to a much different configuration with the City Council telling us not to. I don't get it. I really don't. What this needs to be done is to push it back to the elevator core at 60 feet and then we've got, we can stand in front of the public and say we did the right thing instead of letting it come out to this 20-foot overhang. It just -- I'm not going to filibuster all afternoon.

CHAIRPERSON KRESS: No, I wanted to hear. Because I am concerned about the precedence setting.

COMMISSIONER PARSONS: Just look at the section here. What are you going to say? We liked it on one side of the street. We must like it on the other. They're not going to come in tomorrow. I would. It's more rooms out of it.

CHAIRPERSON KRESS: Legally, they could build what they're talking about, but 40 feet back, not.

COMMISSIONER PARSONS: Forty-five feet back on a portion of the site, a very small portion for 76 feet deep. The SP goes back to 100 where it's supposed to be on the rest of the site.

CHAIRPERSON KRESS: Well, then I am correct, they are changing the SP zoning.

COMMISSIONER PARSONS: Sure, they're making it 20 feet wide the whole length of the project.

But as Mr. Bastida points out, if it burns down, or after the big earthquake or World War III or whatever comes next, it will go back to SP-2, this configuration here.

(Pause.)

CHAIRPERSON KRESS: Coming back -- I'm hung up on the two pieces that the community is disagreeing on. For one, really, and I'm trying to understand what they're thinking. On page 34 of Wilkes and Ardis, the parties continue to disagree on the extent of the site that is being rezoned to C-4, but they seem to agree on -- part of the problem here is we're finding out about, we asked the Applicant to meet with the community and what we have is the Applicant responding to what came out of those meetings and not the community. The Applicant seems to be stating that they agreed to include language to identify the unique nature of the property so not to establish a basis for its use as a precedent for other SP-C-4 split zone rezonings which takes care of or looks as if it starts to take care of one of my issues. And I personally see the logic of -- for many reasons

of the location of the garage entrance on 16th Street. I don't actually see any other practical place to put it. So it appears that it's coming down to a disagreement on the extent of the site that's being rezoned C-4.

COMMISSIONER FRANKLIN: Yes.

CHAIRPERSON KRESS: And I don't know if there is any way --

COMMISSIONER CLARENS: Well, once again, I know -- I disagree. I don't think it has to do with that. I think it has to do with a judgment that this Commission is to make as to what the package that is being proposed complete and whole including the additional footage that is being required as a trade off with a quality product and that's the basis for the PUD. That's the whole principle as well as then the amended package which, as you say, may not be particularly handsome in this case. With that offset, the departure from the strict application of the regulations and it is a judgment. I don't know if it is the amount of C-4 and SP because all of that will revert back to what we just clarified. It will revert back to it and in the case of PUD or it doesn't change unless the PUD as designed, as presented to us and approved, if approved, would be built.

COMMISSIONER PARSONS: Yes, it is a disagreement, if you want me to say it. I don't see anything extraordinary about this building. There's plenty of matter of right buildings in this city that are quite handsome. And I don't see anything startling. I remember how hard you had

to work on the first two ground floors to get them to put real stuff on it. I haven't been impressed with this project since it came here, as you know, but -- by the way, I said Sheraton-Carlton before. I meant --

CHAIRPERSON KRESS: I know which one you meant. Could I look at your colored -- I don't have that at my fingertips, what's matter of right again. Matter of right --

COMMISSIONER CLARENS: That's what exists now.

CHAIRPERSON KRESS: Right, but it's not built out to its full C-4 envelope, am I not correct?

COMMISSIONER PARSONS: The one on K Street?

COMMISSIONER CLARENS: Oh, it is built out.

COMMISSIONER PARSONS: Yes --

CHAIRPERSON KRESS: No, but it can have another couple of floors on it. Am I incorrect, Alberto? Couldn't they right now just add a couple of floors on to the two floors?

MR. BASTIDA: To the sixth floor, to the present fifth floor?

CHAIRPERSON KRESS: Yes.

MR. BASTIDA: Yes, that's correct, Madam Chairperson. The present old building is not built out to the maximum C-4. But to the maximum envelope allowed by the C-4.

CHAIRPERSON KRESS: So we're basically -- one last chance and then I will give up. There isn't any way to -- basically, we are going to be changing the underlying zoning for the PUD only and that isn't making anyone uncomfortable?

COMMISSIONER PARSONS: Sure it is, me.

COMMISSIONER CLARENS: It is making two Commissioners uncomfortable. Maybe a third.

CHAIRPERSON KRESS: Is there any way to maintain the underlying zoning. I know it's never been done before.

COMMISSIONER PARSONS: And have the building?

CHAIRPERSON KRESS: Yes.

COMMISSIONER CLARENS: It creates a nonconforming building. It creates --

CHAIRPERSON KRESS: Yes.

COMMISSIONER PARSONS: Supposedly, lenders will not give money --

COMMISSIONER FRANKLIN: The order could state that in the event of the substantial destruction of the building, that the underlying zoning will be -- that -- let's say the total destruction of the building, the underlying zoning is maintained.

COMMISSIONER CLARENS: Reverts back to the --

COMMISSIONER FRANKLIN: Well, it doesn't even revert. It is a confirmation of the underlying zoning outside of the bounds of the PUD, it is still there in the event of the total destruction of the building and the order can so state.

I don't see any problem with that. And even if it turns out that Mr. Bastida was not correct in the fact that that happened by operation of law, the order itself will make it plain that that's the case and I take it that that was one

of the questions I had about this draft, findings of fact and conclusions of law because they said they agreed to include language in the draft order, identifying the new nature of the -- that that was the basis for the use, so as not to establish a basis for its use as present or other SP course puts zoning or re-zoning and the order doesn't say that.

CHAIRPERSON KRESS: Exactly.

COMMISSIONER FRANKLIN: So there has to be language in there --

COMMISSIONER PARSONS: Supposing you put that language in there. What does that mean to our successors, to sit here with the demolished building? That it was our desire if it wasn't another quality product that would go back to SP?

COMMISSIONER FRANKLIN: Yes.

CHAIRPERSON KRESS: Exactly.

COMMISSIONER PARSONS: Would you bring in a product that wasn't quality then?

COMMISSIONER FRANKLIN: They do it all the time.

COMMISSIONER PARSONS: They haven't here in my judgment. No, I mean, what are you really saying? You don't have the right to take something from somebody you gave them. You're just staying there's an artificial line on the ground that if World War III occurs and this building is demolished that we'll have another look or we're passing the buck again for this 45 foot mistake in 1958, aren't we? It's the same kind of technique.

COMMISSIONER FRANKLIN: But to quote you this

never occurs.

COMMISSIONER PARSONS: Right, so why put it in there?

COMMISSIONER FRANKLIN: Obviously, it's worrying to some people. And I think that their words can be addressed by it --

COMMISSIONER PARSONS: If that is all it takes to get it approved, go ahead. I can't see what it does.

COMMISSIONER HOOD: I don't know if we should act on the premise that it never happened because you always expect the unexpected and when I look in the regs which make my decision 500.2 which may have changed and says the major purpose of the SP District shall be to act as a buffer between the adjoining commercial and residential areas and some of the concerns were from the people who have invested in that area on 16th Street.

COMMISSIONER PARSONS: Correct.

COMMISSIONER HOOD: So to come in after the fact and now allow a change and I think we're doing them a disservice.

COMMISSIONER PARSONS: We are, because we went through a public hearing process in 1998, got rid of a lot of SP in this area, but not here.

COMMISSIONER HOOD: So somebody had the foresight again to see that this should be SP and remain SP for some reason.

COMMISSIONER FRANKLIN: Well, it's SP at least

for purposes of assuring the uniform cornice line along 16th Street. I mean it's not residential anymore except for the properties to the north on one side of the street. So from that standpoint that particular purpose is not being served by this particular parsing.

I shouldn't mention, Madam Chair, that the Office of Planning has strongly endorsed this project, so it's not as though it doesn't come with that kind of endorsement.

COMMISSIONER CLARENS: The expressions of disapproval from the counsel, except for Council Person Mendelsohn, lack a substantive reason for their disapproval of their recommendation for disapproval of the application.

COMMISSIONER PARSONS: Other than a comprehensive plan amendment, they think we're --

COMMISSIONER CLARENS: That identifies this street as a special treatment street and it is for us to interpret what that means.

I don't think that's exactly why we're here.

COMMISSIONER PARSONS: That's right. We're having a disagreement over what's what.

COMMISSIONER HOOD: Also, I would like to add that the ANC opposes it and by law we're supposed to give them great weight.

CHAIRPERSON KRESS: I think we are giving them great weight. And in fact, I think that's the whole discussion. Some of my concerns are exactly on what's happened. Where I remain concerned is that I think the

Applicant has made several levels of revision, all to the better. I think they have, even at the rest of the last hearing met with significant people in the community and did come to more agreement if I'm reading correctly what is in their findings of fact when what transpired after the close of the hearing they even got further than the testimony that we heard here from the community and from the citizens and that it does boil down in their mind to two issues and to me, we're at a different place than we were at the time of the hearings. We've come further and more issues have been discussed and resolved. And I guess I'm coming to the point that if there is some way to do what the Applicant has agreed and draw some kind of a language that makes this a unique property and a unique nature of circumstances so that it cannot be used as a basis or a precedent for any of these other SP or C-4 split rezonings, that for me takes care of not the way I would like it to, but --

COMMISSIONER PARSONS: You are saying put some language in there that says nobody else should apply because this will never happen again on this street and we're discouraging anybody else from adding to this building or demolishing it, trying to bring
C-4 to this corner?

CHAIRPERSON KRESS: I think it has a unique, as you pointed out by mistake or however it happened, I think a unique set of circumstances have come through to create this particular piece of property as it is.

And I don't think -- one, I don't think there are going to be a lot of cases that have this unique situation because I think it grew out of, as you were reciting some of the history, crazy circumstance.

COMMISSIONER PARSONS: Look across the street. Same thing. Only it's 32 feet wide there. I don't know what went wrong. That's the Capitol Hilton. Gosh, somebody messed with our corner, let's go the whole block.

COMMISSIONER FRANKLIN: Well, Madam Chair, could I make this observation? It goes back to something that Mr. Clarens said earlier. Each PUD is a unique package. Each PUD comes to us with a wide variety of factual and legal circumstances. And I don't think that anyone can point to any PUD and state that it has to be considered a precedent for another PUD. The circumstances of each PUD are unique and I do not think we should -- the whole PUD process was to get us away from looking at everything in sort of a cookie cutter frame of mind. So I guess I don't see the great dangers of precedent setting that others may in a given PUD approval.

COMMISSIONER PARSONS: You would agree that every PUD or map change that comes in here has stapled to it at least five to ten orders of this panel over the last 20 years to back them up. That's the process we go through.

COMMISSIONER FRANKLIN: I know, but that's not something that I give particular weight to. Each PUD -- maybe you do, but I don't.

COMMISSIONER PARSONS: I only do because the

package is heavy to carry around. That's the great weight I give to it.

COMMISSIONER CLARENS: And I think that the purpose of those orders are mostly one of trying to remind the Zoning Commission as to the rationale that justified the positions that the Commission made and not necessarily the particulars of the case.

I truly believe that this is a positive addition to the city that does not do harm neither to the neighbors and I'm visualizing and I'm fairly good at visualizing what this building would be in this corner and I see no harm at the street level which is the majority of the experiencing of this building would take place, by neither passersbys in automobiles or pedestrians walking up and down 16th Street, nor tourists observing the city from Lafayette Park or from the front of the White House or to the President looking up 16th Street from the White House.

And so I really don't see the concerns I think that there is in the proposed findings of fact and conclusions of law of the proposed order. There are restrictions as to what can and cannot happen. We have limited the number of retail openings on 16th Street to one.

I am concerned with the parking. I don't see an alternative. I wish there was, but I don't see that that's sufficient grounds for denying the PUD and that's where I stand and I think if you feel uncomfortable making a decision, we can table. I know that the Applicant is anxious to get

this resolved one way or the other, but if you feel that you need more time to think this project through and come to a conclusion, we can table the motion either for later this afternoon or for a meeting at a later date. Or, if you feel that we need additional information -- I'm offering that as making of a motion.

CHAIRPERSON KRESS: It would just be delaying. I can't imagine that there's more information that we need. I think we do have all of the information in front of us and so I will be prepared to vote.

I would, to me, part of that does depend on what is in the final decision particularly as it relates to establishing the unique nature of the property so as not to establish it as a precedent.

I don't know that we have any real wording on that other than to perhaps -- we have a preliminary vote and a final vote, other than to do a preliminary vote and then have some time to see, to allow the wording to be drafted to see if it accomplishes what we feel it could accomplish.

Did you have any other comments on this Commissioner Franklin relating to major changes in the --

COMMISSIONER FRANKLIN: Well, if there were to be a preliminary bill, Madam Chair, I would have some comments and favor the proposal, I would have some comments on the language that's been presented to us, not -- they don't go to their details.

CHAIRPERSON KRESS: Well, there is a motion and

I am prepared to vote. Would it be appropriate to have the vote prior to deciding the changes in the draft document?

COMMISSIONER FRANKLIN: If there is going to be a vote that is not in favor of going forward, then I think there's no point in discussing the draft document.

CHAIRPERSON KRESS: I will be in favor of going forward if we can get some certain wording regarding the split.

COMMISSIONER FRANKLIN: Well, under that condition, Madam Chair, there are a couple of comments. One I have on page -- well, there's just a typo on page 33, a minor thing. In paragraph 3, the Applicant agreed to limit the size of the sign to 30 feet, change the word sign to size, but more importantly, on page 44, again relating to the signage, I would suggest a change of that first sentence in paragraph 5 regarding retail signage shall be limited to one sign of not to exceed 30 square feet in size, just to clarify that.

And then when there is a reference in the last typewritten line on page 44 to a restaurant, I don't know what the trade terminology is, it's either sit down restaurant or white tablecloth restaurant, one or the other. I would want to have that kind of qualifier before the word restaurant. I think it's white tablecloth is what they normally regard as a restaurant with waiter service and sit down. So it doesn't become a carry out. Fast food doesn't quite get to the whole quality issue.

MS. PRUITT-WILLIAMS: You're also not interested

in a like a chain of restaurants. Is that also of concern?

CHAIRPERSON KRESS: Well, restaurant, I think we have a definition of that 8th Street overlay. And so we do have the definition of what restaurant is.

COMMISSIONER FRANKLIN: In the regs?

CHAIRPERSON KRESS: In the regs. As I say in the 8th Street overlay which we're coming to.

COMMISSIONER FRANKLIN: Well, you get the drift of what I'm saying --

MS. PRUITT-WILLIAMS: A quality restaurant.

COMMISSIONER FRANKLIN: A restaurant that doesn't include fast food is not in my judgment enough of a descriptor. It ought to be a sit down restaurant. A quality restaurant.

CHAIRPERSON KRESS: Why don't we leave that to the wordsmith, then we'll be seeing some of the description of that as we move on to 8th Street.

COMMISSIONER FRANKLIN: Those were my only -- as I say, they were only details.

CHAIRPERSON KRESS: For me, the big one is, I need to see and I don't know -- I need to see the draft --

COMMISSIONER FRANKLIN: The carry out item on page 34.

CHAIRPERSON KRESS: Page 34, item 6. Yes. I need to some drafting on that and I'm looking over at Office of Planning. I'm not sure whether it would be appropriate to reopen the record to see -- to have that drafted or whether

you believe you can work with the Applicant to perhaps --

MR. BASTIDA: If the Commission requests that from the Office of Planning, the Office of Planning would be glad to do so and submit it whenever you so desire.

CHAIRPERSON KRESS: I don't really see -- on page 34, it speaks to the draft order, the unique nature of the property so as not to establish a basis which requests other SP-C force rezoning. I really don't see that written in the decision or I don't see how that's executed.

This is where they're talking about after the meetings with the community and what they agreed on and what they disagreed on and that was one of the things that they agreed on and that was hopefully to help ameliorate some of the problems of the large amount being rezoned to C-4, but I don't -- they agreed to do that, but I don't see the words in the decision that does it.

MR. BASTIDA: Madam Chairperson, if you look at page 37 to see if it, in fact, on that page.

CHAIRPERSON KRESS: I agree it's addressed.

MR. BASTIDA: But you want it tighter?

CHAIRPERSON KRESS: Yes.

MR. BASTIDA: If you so desire me to work on it, it gives me a start at that point and go from there rather than from the beginning?

COMMISSIONER FRANKLIN: Yes, you might want to spell out what the unique features of the existing site are.

MR. BASTIDA: Yes.

CHAIRPERSON KRESS: Yes, the history as the Commissioner of Parks has just pointed out that got us here, that makes this, I think, a more unique property than some of the others?

MR. BASTIDA: Yes. Madam Chairperson, if I may remind you, if you were to vote now, remember that the language will come back to you for the final voting which will be other things can be accommodated, perhaps could be accommodated to your satisfaction. But you have a second shot at it is what I'm trying to say.

CHAIRPERSON KRESS: Exactly

MR. BASTIDA: And if you tell -- and if you do that, also remember that you have to open the record to receive that wording.

CHAIRPERSON KRESS: Not really. That wording can come from you --

MR. BASTIDA: Okay, fine.

CHAIRPERSON KRESS: However you get that.

MR. BASTIDA: And I will provide it to the staff.

CHAIRPERSON KRESS: As you do staff reports.

MR. BASTIDA: Okay, I'll be glad to do that if you so desire.

COMMISSIONER HOOD: Madam Chair, also are we going to open the record because I would like to hear from the community groups as opposed to the latest developments as opposed to just hearing from the Applicant because they have

made some progress.

COMMISSIONER CLARENS: These comments were first -- these proposed findings of fact and conclusions of law were presented and I assume that they were served on the parties.

COMMISSIONER HOOD: So they had an opportunity to respond.

COMMISSIONER CLARENS: The parties had an opportunity to respond.

COMMISSIONER HOOD: Because this is just from the Applicant.

COMMISSIONER CLARENS: That's correct.

COMMISSIONER HOOD: This is his point of view.

COMMISSIONER CLARENS: Point of view. The process was followed. This should have been served on the parties and then the parties had an opportunity to respond. Is that correct?

MS. PRUITT-WILLIAMS: Correct.

CHAIRPERSON KRESS: Is it -- we're sure that these were served?

COMMISSIONER HOOD: I still put forward I would like to see voted up or down, but I still would like to hear response after these latest developments from the ANCs and other people who are in opposition. Some times, Commissioner Clarence, and I know it may not be policy or procedure, but sometimes --

COMMISSIONER CLARENS: I understand and that's what I asked the staff and again, if that's not the case, if

they were not served, then we have a procedural problem that needs to be corrected.

CHAIRPERSON KRESS: Can we ask our staff --

MS. PRUITT-WILLIAMS: They were served. They were served, I'm sorry, yes.

COMMISSIONER CLARENS: And there was no response?

MS. PRUITT-WILLIAMS: Remember this was an extension hearing that dealt with a discrete -- you had findings of fact also from the ANC and those in opposition because the record was closed with the exception of discrete items that were requested.

CHAIRPERSON KRESS: One of the items was this meeting which occurred.

MS. PRUITT-WILLIAMS: Correct, correct.

CHAIRPERSON KRESS: Which was specifically and so my question is did they get --

MS. PRUITT-WILLIAMS: Yes, this was served on the --

CHAIRPERSON KRESS: The findings of fact and conclusions of law and proposed decision in a timely --

MS. PRUITT-WILLIAMS: Yes.

COMMISSIONER CLARENS: And the parties were aware of that and quote have responded to that.

MS. PRUITT-WILLIAMS: Yes, I will check. I don't have the file here with me, but that is my understanding

when I checked it last week and I will go back and verify it for you, if you'd like.

COMMISSIONER CLARENS: And the parties will find out definitely if --

MS. PRUITT-WILLIAMS: I will look right now, but I do recall seeing that it was served on everybody because they have to do a certificate of service.

CHAIRPERSON KRESS: And it does say on the cover. It says enclosure and it talks about Mr. Bastida, ANC-2B and Presidential Owners, Inc., in care of Ms. Carol Mitten.

COMMISSIONER CLARENS: And the ANC.

MS. PRUITT-WILLIAMS: And those are the parties.

CHAIRPERSON KRESS: And it's dated April 28th.

COMMISSIONER HOOD: Well, if everything is in order, I'll just withdraw my last comment.

CHAIRPERSON KRESS: Well, I want to make sure it's in order too. I am as concerned. I'm relying on, as you are, that with these discussions there was agreement on certain items that are laid out here.

And so it appears that Wilkes Ardis Hedrick & Lane are the ones who actually served the ANC-2B and the Presidential Owners. Is that not correct?

MS. PRUITT-WILLIAMS: Correct.

CHAIRPERSON KRESS: Well, I believe whatever decision we're making is based on that information. Did you have something to add?

MS. PRUITT-WILLIAMS: I would just say that the

ANC representatives are here, if you choose. That is very much out of order and I wouldn't necessarily suggest that. I just wanted to let you know for information that they are here.

CHAIRPERSON KRESS: That the ANC-2B representatives are here.

MS. PRUITT-WILLIAMS: Although you have in the record that it was served and the procedure at the end of the hearings and the procedures that typically -- I mean this is not a new procedure to the Zoning Commission of how you respond to issues that you have seven days to respond once it has been served.

CHAIRPERSON KRESS: What's your pleasure, colleagues?

COMMISSIONER HOOD: Well, the reason I asked for that information, Madam Chair, is because that would probably have a little more detail on which way I was going to go, but since I'm not able to obtain it, then I will stick with proposing the project.

CHAIRPERSON KRESS: It was only if we wished to gather some information, additional -- all right, is everyone ready to vote?

MS. PRUITT-WILLIAMS: I have the maker of the motion as Mr. Clarens, who seconded the motion?

COMMISSIONER FRANKLIN: I did.

MS. PRUITT-WILLIAMS: Mr. Franklin, thank you.

CHAIRPERSON KRESS: Are you prepared to vote,

Commissioner Franklin? Is everyone prepared to vote?

All those in favor of approving the Solar Building as revised and as outlined in the findings of facts, conclusions of law and decisions with amendments as discussed, signify by saying aye.

COMMISSIONER FRANKLIN: Aye.

COMMISSIONER CLARENS: Aye.

CHAIRPERSON KRESS: Opposed?

COMMISSIONER HOOD: No.

COMMISSIONER PARSONS: No.

MS. PRUITT-WILLIAMS: The staff will record the vote as 3 to 2 to approve. Maker of the motion is Mr. Clarens, seconded by Mr. Franklin; Ms. Kress to approve; Mr. Hood and Mr. Parsons in opposition.

CHAIRPERSON KRESS: All right, thank you. With that -- that's what I was going to say. I was going to move to the Hoffman Building.

We have on our agenda information that was sent out late on the Wisconsin Avenue Project, 98-21C, the Hoffman Building.

We did not receive -- it was not on our agenda. The package was sent to us late Friday and we did not receive as Commission members the information from Office of Planning, although I'm not exactly clear why until this morning.

(Pause.)

I feel that, and I don't know how you all want to go about discussing this, but in reviewing the package

preliminarily, there seems to be one thing missing and correct me if I'm wrong and that was the actual materials, there is a colored xerox of the materials, but we did not receive the actual materials themselves.

Are we allowed to accept these?

MS. PRUITT-WILLIAMS: You can waive --

CHAIRPERSON KRESS: We have to decide if we want to waive our rules to accept the materials.

COMMISSIONER HOOD: I make a motion that we accept the materials, waive our rules and accept the materials.

CHAIRPERSON KRESS: All right.

COMMISSIONER CLARENS: I have no problem with that motion and I would second the motion. I would like to --

CHAIRPERSON KRESS: All right, all in favor of accepting the waiver, signify by saying aye.

COMMISSIONER CLARENS: The problem that I have with receiving the materials now and maybe it's something we should have anticipated when we asked for the materials is that the materials raise issues of concern, at least to this Commissioner that I would like to have an opportunity to discuss with the Applicant and they are not major issues and I would be willing to defer those issues, but I think that the process and that's exactly the problem and this is where I am coming from. The process is flawed because these materials were not presented when they should have been presented, so we would have had an opportunity to discuss them. So now we are

here in a position of making a decision on a case that is substantially completed in terms of its presentation, but because once again, as we've seen in the previous case a PUD hinges to a great extent on the quality of the product that is being produced, and this Commission then sits as arbiters of that quality. Then it is very important that we have the full presentation before us at the time that we close the hearings and that we close the testimony so that we can interact with the developer or the applicant. And here, now, we have a case where perhaps the Commission might have had opinions as to the selection of the materials where we're presented with a situation where short of reopening the case and ordering a new hearing for a very minor concern, the Commission now is forced to take it or leave it type of an issue. Perhaps not enough to deny it, but definitely enough to have some concerns with the selections that have been presented to us. So I'm talking more in terms of a procedural issue and perhaps we should have stopped and -- but it is cumbersome and again the message is being sent to the community and especially to the Council which comes here because Applicants change, even architectural offices don't have experience in front of this Commission as often as Council that is a very small community of lawyers that serve the real estate development community in this city and to come with partial presentations where we now see at the very last minute the materials in front of us becomes problematic at least to this Commissioner. Thank you.

CHAIRPERSON KRESS: Thank you. Any other

comments? We haven't really gotten --

COMMISSIONER FRANKLIN: What is the purpose, Madam Chair, with respect to this application? It was not on the agenda and therefore I didn't bring the materials I had and I had asked the staff for a transcript because I was not able to attend the hearing, although I present at the set down hearing and I'm familiar with the case. Is it the intention to reach a decision today?

CHAIRPERSON KRESS: Well, that's partly what I'm asking the Commission members. I hadn't realized you hadn't had a chance to receive the transcript and read it.

I'm also concerned about the part and what has transpired with the Park Service regarding the parcel of land --

COMMISSIONER CLARENS: The park, you mean?

CHAIRPERSON KRESS: Yes, the triangle park. What is your preference? Is it to try to discuss this and come to a conclusion today or --

COMMISSIONER PARSONS: We have no report from the Park Service as to what their feelings are on this revised landscape plan as far as I'm concerned.

CHAIRPERSON KRESS: Again, because we all have this late, I still haven't been able to study this in depth.

I found a letter in the supplemental materials dated April 13th that talks to --

COMMISSIONER PARSONS: That's the one that criticized the prior plan.

CHAIRPERSON KRESS: Oh, right. Have you had, again, as you all are aware, I did not get this package. Some of you did. Was there a letter in here from the Park Service --

COMMISSIONER PARSONS: Just the April 13th letter, I think. I have had about 10 minutes to review this myself this morning.

CHAIRPERSON KRESS: That's right, you didn't get your package either.

Mr. Colby, is this your case?

COMMISSIONER PARSONS: MR. COLBY: No, I'm sorry. He thought that it wasn't on the agenda and left the room thinking it wasn't going to -- I looked for him and didn't see him. He'll be back, I'm sure, in a moment because he's got other cases.

CHAIRPERSON KRESS: I see.

COMMISSIONER PARSONS: And his glasses are here.

CHAIRPERSON KRESS: Perhaps we could -- we were deciding whether we had what we needed and felt comfortable, as you're aware, several of us didn't get the package or got it quite late to make a decision. I was wondering if --

MR. BASTIDA: For the record, my name is Alberto Bastida with the Office of Planning. I think that there are two pieces of information that was requested by the Commission. I believe that they are not in the package. One was the materials to be used in the building. And the second was the letter from the National Park Service.

CHAIRPERSON KRESS: So you haven't -- the letter from the Park Service -- and some of us got this late -- is not --

MR. BASTIDA: I haven't seen it. You might have it. But I haven't seen it.

CHAIRPERSON KRESS: Okay.

MR. BASTIDA: I'm not saying that that's what my perception is based on the last time I looked at the record. You might have it on the record, the letter of the National Parks Service, but I haven't seen the materials and that is something that is easy to miss. But I think you have it in front of you now.

CHAIRPERSON KRESS: Mr. Clarens, Commissioner Clarens, would you -- it appears that we're not prepared to vote on this at this time, that we definitely want to have the letter from the Park Service, so we'll need to, I guess open the record to receive that.

Commissioner Clarens, would you care to make any comments about the materials? As long as we're going to have to open the record to receive the letter from the Park Service we could also do it regarding any comments you had --

COMMISSIONER CLARENS: No, I think it would be inappropriate because the comments would have been appropriate in the context of a discussion of the selection of the materials and only in an interaction with the designers of the building. I'm not going to make comments and make suggestions without having the opportunity to interact in a direct way

because I might make suggestions that might be argued against by the designers and I might be convinced that their decision and their rationale for making the decisions for the selection of this color palette is perfectly adequate, so I'm not going to go there.

And so that's all, but all I'm pointing is that this particular project is being represented by the firm in Washington, probably with the greatest amount of zoning experience or zoning case experience and it seems to me absolutely unacceptable that we come to this Commission with a piecemeal incomplete presentation.

CHAIRPERSON KRESS: All right, thank you. Commissioner Parsons, is there any other information that you would wish?

COMMISSIONER PARSONS: Well, I find these new panoramic viewpoints confusing. What they've done is moved to a different location from the ones they presented to us at the hearing. They've gotten closer to the building and as a result we can no longer feed off the skyline of Tysons Corner which is the issue here.

I guess it would be helpful if another photograph could be taken from the same point as A-17 which is the prior one. I have the record here if you're interested, with leaves on the trees which is the circumstance today, because that is, that was to me the most offensive view. These here, taken at a different angle from the booklet received today make the building much smaller and certainly it

appears and photograph A-17, if that's possible, I think it will be helpful to take it with the trees in leaf.

COMMISSIONER FRANKLIN: Just as a matter of inquiry, Mr. Parsons, looking at site section 1-1 am I correct in reading this as showing that the difference between what is a matter of right, building height and the proposed building is 9 feet?

COMMISSIONER PARSONS: It's either 9 or less than that. I'm not sure, but yes --

COMMISSIONER FRANKLIN: So this is an issue of that magnitude?

COMMISSIONER PARSONS: Let me show you this. This is 17 and that's the horizon line. Theoretically, that's a matter of right. What I was trying to do and you will read in the materials that they took a look at lesser ceiling heights and taking a roof off the building and taking a layer out of the building and they've got lots of thought process in writing, but I'm interested in that photograph and whether the horizon line is adequate. Believe it or not the key view for Reno is Tysons Corner which is right there.

I don't mean looking at Tysons Corner in a contemporary way. That's where the signal tower was to warn of traffic coming down Route 7.

COMMISSIONER FRANKLIN: Are you saying the view that is obstructed is the view of Tysons Corner?

COMMISSIONER PARSONS: Correct. Some day we're going to have it in the comprehensive plan, the zoning

regulations put these important site lines -- anyway.

COMMISSIONER FRANKLIN: I learn something every time.

COMMISSIONER PARSONS: Do you? That's good. I'm glad we can have that.

CHAIRPERSON KRESS: John, I'm still confused. So none of these, the viewpoints --

COMMISSIONER PARSONS: They're all different angles.

CHAIRPERSON KRESS: So --

COMMISSIONER PARSONS: To convince us that the building is smaller than A17.

CHAIRPERSON KRESS: Where would you guess that viewpoint -- here they have C, B, D -- where would you guess that one -- or did they show in your other book where that was?

Is there anyone that none of these are close enough to suffice?

COMMISSIONER PARSONS: The closer you get to the building, the smaller it -- believe it or not.

CHAIRPERSON KRESS: So it's further out, in your point of view, then page 1 which has B, C and D is further?

COMMISSIONER PARSONS: I believe so, but I'm not sure. There was no section as there is --

CHAIRPERSON KRESS: So your request is to have the official words are the panoramic similar -- it's going to be hard to take the leaves off the trees.

COMMISSIONER PARSONS: No, no. A-17 which was given to us was taken in January.

All I'm asking is for one to be taken in June. I'm presuming you can't see Tysons Corner in the summer from here which I think is reason, some reason to say maybe it's okay. Now that I've the read the Applicant's -- it looks to me that they've made a sincere effort to try to reduce the height of the building. I would just like to have that photograph in the record.

CHAIRPERSON KRESS: So you'd like --

COMMISSIONER PARSONS: Since the ANC said they don't care about the view from Fort Reno. This is a good project. I just want to have that rationale in there, frankly. And I don't know what my colleagues in the Park Service think of this plan, so I'm a little handicapped there.

CHAIRPERSON KRESS: So we're asking -- and I know you have to leave -- sorry, boy, are we really late for you.

COMMISSIONER PARSONS: I may get fired. Then I wouldn't be able to come back.

CHAIRPERSON KRESS: So we're going to record to request a current panoramic view as was --

COMMISSIONER PARSONS: In A-17 at the hearing.

CHAIRPERSON KRESS: As was A-17 at the hearing. And the letter from the Parks Service. Is there anything else?

(Commissioner Parsons leaves the meeting.)

COMMISSIONER FRANKLIN: Well, I know Commissioner Clarens was reluctant to enter upon his reservations on building materials, but since we are present I'm really quite intrigued and would like to know in general what your reservations were and -- no?

COMMISSIONER CLARENS: I'm not going to go there. I will, however, add that I have a question. Once, again, this is the problem when these issues are presented and now we are presented with data, we have no way to interact with the developer. We're no way, for example, there's a suggestion for a wisteria, wonderful, absolutely great. I love wisteria, but my understanding and I might be wrong and I would like to see the Applicant to respond to it, but we don't have an opportunity because we're not in that kind of set up, to respond to the issue of wisteria's tendency to attract bees and wasps and stuff of that nature and no, I'm serious. Because --

COMMISSIONER FRANKLIN: You're quite right, you're quite right.

COMMISSIONER CLARENS: Because then what might happen is that then later on when they are really getting around to plant something in there and it dawns on them and say ah, we cannot do wisteria. We have to put something else. Well, what is something else? And then do they have to go -- is that a minor modification? Is that a major modification? How is that going to change?

So that's the problem with the incompleteness of

the case as it has been presented to us and it is another example of that kind of thing. So maybe for this all we'd really need is a letter, keep the record open to receive the letter from their landscape architect that addresses the issue of the selection of wisteria as it relates to flying bugs.

CHAIRPERSON KRESS: I think that's fine. We'll just add that we're opening the record to receive a letter on the selection of wisteria. I would say that's also available to you for the materials as well.

COMMISSIONER FRANKLIN: Yes. I was going to say if you have some comments that you'd like to make I'd be more than happy to hear them and I'm sure they would too. Otherwise, there will be this lingering cloud and they won't know quite how to dispel it.

COMMISSIONER CLARENS: No, my only comment has to do with the selection of the color for the frame of the windows and that could very well be a very reasonable and very elegant selection. I would have liked to have an opportunity to discuss with the Applicant the possibility of more of an accent color, something that would -- because we have a relatively muted palette that has -- that is all beige and buff, etcetera, etcetera, and maybe that's perfectly adequate. Again, my whole point was not an issue of raising that as a real possibility. I'm willing to go with this proposal. I am saying that in a world especially when we are contemplating all these consolidated PUDs that we need to have a complete package presented to the Commission so that all these issues

can be raised in an interactive way and resolved in an interactive way and a record can be made and therefore we can come to conclusions. Right now we are basically left with the option of denying on a very minor thing that I don't think is the basis for denial or living with something that we might have been able to effect one way or the other as part of the process.

CHAIRPERSON KRESS: Well, I will tell you I was a little disappointed. In the color xerox, I liked the little brighter, not this color, but the little brighter redder brick because I feel that it is a very subtle color scheme.

COMMISSIONER CLARENS: Bordering on dull, but again, maybe not. I mean that's something that we could interact, but we are not able to interact and that's the frustration of being on this side of -- I'm sure there's a frustration on the other side.

CHAIRPERSON KRESS: Well, do you want to ask for another --

COMMISSIONER CLARENS: I don't want to ask for another --

CHAIRPERSON KRESS: Brick sample?

COMMISSIONER CLARENS: No, no, no. I don't want to ask for another nothing. I'm ready to go with what I have. I'm even ready to even introduce the possibility of allowing some latitude, but maybe not.

CHAIRPERSON KRESS: Well, that could come to our decision making. Let's just make sure that we have everything

that --

MR. BASTIDA: Madam Chairperson, if you are going to open the record for the wisteria, you can also open the record to allow for a range of color of materials, if you so choose and then you can approve whatever you would like.

Since you are opening the record, it's not a further delay, but this is the time to say it or otherwise you should remain silent for the rest of your life.

CHAIRPERSON KRESS: On this project. On this project.

MR. BASTIDA: It's the decision of the Commission.

COMMISSIONER CLARENS: How do you feel? Do you want to ask them to submit an alternative color palette that might have a little bit more contrast?

CHAIRPERSON KRESS: There, there you go. That's good. Then you're not telling them what to do and what to change. We'll ask for another alternative, not that we might not choose this one, but an alternative.

COMMISSIONER CLARENS: As well as maybe argument or rationale for selecting this palette as opposed to selecting another palette.

MR. BASTIDA: I think the rationale is elegance and elegance is always subtle in some people's minds.

COMMISSIONER CLARENS: Whatever it is, you know.

MR. BASTIDA: So you open the record for three things, you are going to summarize, Madam Chairperson?

CHAIRPERSON KRESS: Yes.

MR. BASTIDA: Then I'll shut up.

CHAIRPERSON KRESS: I just want to make sure, do you want to say anything else?

COMMISSIONER HOOD: I'll leave that to the architects on the Commission.

CHAIRPERSON KRESS: All right, we're asking for four things. We're asking for a current panoramic view as was presented at the hearing of A-17 as requested by Mr. Parsons, Commissioner Parsons. We're looking for a letter from the National Parks Service regarding. We're looking for a letter or some information regarding the selection of wisteria and we're looking for an alternative color palette.

MS. PRUITT-WILLIAMS: And rationale.

CHAIRPERSON KRESS: And rationale.

COMMISSIONER CLARENS: If you can give me one second.

CHAIRPERSON KRESS: All right.

(Pause.)

COMMISSIONER HOOD: Madam Chair, we're going to do a preliminary vote or are we just going to --

CHAIRPERSON KRESS: No, we're just -- our vote is to open the record.

COMMISSIONER HOOD: Okay.

CHAIRPERSON KRESS: On the case.

MS. PRUITT-WILLIAMS: Is this for the next meeting?

CHAIRPERSON KRESS: Again, I'm referring this until they get us the information.

MS. PRUITT-WILLIAMS: Okay, so not to a time certain at this point.

COMMISSIONER CLARENS: It is clear to the Commission that the proposed new plan is significantly simpler and plan of the park --

MS. PRUITT-WILLIAMS: The Parks Service reservations?

COMMISSIONER CLARENS: Yes, the view layout is significantly simpler than the --

CHAIRPERSON KRESS: I'm sorry, I was just catching Commissioner Franklin up, that we have four things we're requesting of them right now and Commissioner Clarens --

COMMISSIONER CLARENS: I just wanted to share with the Commission my concern that the plan that has now been proposed as a result of the negotiations with the Parks Service is significantly simple and much less interesting than the previous proposal.

CHAIRPERSON KRESS: I think that's why it's important we get the letter from the Parks Services to what the Parks Service is --

COMMISSIONER FRANKLIN: Does the Parks Service control the land?

COMMISSIONER CLARENS: The Parks Service controls the land, that's right. So we have very little to say. If that's what they want, that's what they get.

CHAIRPERSON KRESS: That's why we need to have that information from the Parks Service.

COMMISSIONER CLARENS: Correct.

COMMISSIONER FRANKLIN: And they will continue to maintain the land?

COMMISSIONER CLARENS: The Applicant maintains the land.

CHAIRPERSON KRESS: Well, we'll have to look into that as we vote. I mean hopefully in getting the additional information.

MR. BASTIDA: Those are the findings of fact that we know.

COMMISSIONER FRANKLIN: Well, Madam Chair, I would like to participate in the final decision and therefore I'd ask the staff to make sure I get the transcript.

COMMISSIONER CLARENS: I would welcome your participation.

MR. BASTIDA: You mean the preliminary decision?

COMMISSIONER FRANKLIN: Yes.

CHAIRPERSON KRESS: So we are all in agreement that we're opening the record to receive those four items and once we receive them we will review them and take proposed action and as soon as possible we're going to get the record to Commissioner Franklin so he can have a head start --

MS. PRUITT-WILLIAMS: Actually, staff has -- we'll check with repeat, but we have a transcript -- a record that it went out on April 22nd.

CHAIRPERSON KRESS: To Commissioner --

MS. PRUITT-WILLIAMS: Yes. So we'll follow up in-house on what happened there.

COMMISSIONER FRANKLIN: It went out?

MS. PRUITT-WILLIAMS: Yes, that's what we have that it was messengered to you. We'll check through our courier, but we'll also get you another copy regardless.

COMMISSIONER FRANKLIN: I think it did come to me, but it had the wrong cover sheet on it. It said it was a transcript of another hearing and I couldn't -- know I understand what that little note saying "wrong cover sheet" meant.

CHAIRPERSON KRESS: Okay.

COMMISSIONER FRANKLIN: I do have it.

MS. PRUITT-WILLIAMS: And we apologize for that confusion.

CHAIRPERSON KRESS: All right, with that we'll go back to the -- gee, we've gotten a whole lot done.

MS. PRUITT-WILLIAMS: So now you're back to the 8th Street overlay.

CHAIRPERSON KRESS: 8th Street overlay, yes. That I believe that is -- Mr. Colby, would you like to make a few introductory comments?

MR. COLBY: Yes, Madam Chair. This is the 8th Street overlay case. There were essentially two -- I won't say minor issues, but two issues raised in -- I won't say they're minor at all. Two issues raised at the

hearing. One had to do with height and to a lesser extent, FAR and the second had to do with the desire to further limit fast food restaurants and all that goes with that.

We provided responses to the existing context for height and definitions of restaurants and delicatessen and fast food. And I would point out as the report does when you look at those definitions for fast food restaurant and deli, that a fast food restaurant, a food delivery service and a drive thru, all the more objectionable aspects to communities anyway, residential communities of fast food, those are all permitted as a matter of right in a C-3 zoned district, the zoned district which we are proposing for this overlay area. And it would have been special exception uses in a C-2 area which was what was originally proposed for this overlay area.

CHAIRPERSON KRESS: Just a second, I'm sorry, please forgive me.

COMMISSIONER CLARENS: We are now in the 8th Street overlay.

CHAIRPERSON KRESS: The Commission has said a few things of being kind of exhausted and we still have a bit left to do today. Would everyone mind if we took like a 15 minute break, 10 or 15 minute break and then resume? I'm sorry to cut you off in the middle. Let's adjourn for 15 minutes.

(Off the record.)

CHAIRPERSON KRESS: I'll call the Commission meeting back to order and we'll talk about the 8th Street

overlay and as part of your presentation you might, Mr. Colby, mention which I thought was very helpful the definition and the differences in the restaurants, delicatessens, whatever.

MR. COLBY: The two issues in the case really are in many ways addressed or at least personally addressed in the memo in response to the questions of the Commission.

First of all, the height of the Latrobe Gate is 58 feet and while I wouldn't say that therefore buildings across the street should be no higher than 58 feet, perhaps the scale of the gate is such that you'd want to be lower and respect that. Nevertheless, that is the height.

The buildings, on the other hand, that are along 8th Street are relatively low with the exception of one 50 foot high building at a considerable distance north, north of the freeway, so the context, the immediate context for buildings is one to three stories. And I would just say going from that memo quickly to the height issues in the text, there was only -- no witnesses, none of the three witnesses or four witnesses had any problem with four stories. There was some issue of what you could -- what height should accommodate those four stories, but everybody felt that four stories was adequate and whether you took that to be 45 feet or some other number, four stories was the maximum that anybody felt that they needed.

And most of the witnesses, everybody else liked the height that they had basically proposed which was 45 feet.

So let me leave that for a second and go to the

restaurant, fast food issue. The memo just literally pulled from the definitions in the zoning regulations all these definitions of restaurants and drive thrus and fast food delivery and so on. I would only repeat what I started to say before, that restaurants and delis are one kind of use which tends to be a preferred use and all relative perhaps, but preferred to the fast food restaurant, the food delivery service and the drive thru which all have greater impacts and that's recognized by the zoning regulations which permit in a C-3 zoned district as a matter of right that fast food restaurant, food delivery service and drive thru, but that it's a special exception use in the C-2 district. The C-3 zoned district is what we are proposing for this overlay to get the anti-R up close to and to the commercial recommendation of 3.0, so we've gone with a C-3, but with that you bring the potential for a more egregious fast food presence. So in response to that we've recommended some changes in response to that and to the essentially unanimous view of those testifying at the hearing.

We put back in the normal NC overlay linear street frontage restriction of 25 percent on fast food rather than 50 percent restriction and (2) and I think more importantly, as a restriction, we've suggested that the fast food restaurant or food delivery service shall be permitted by special exception only and I would even recommend a slight variation on that, a simplified variation on that language to say in the ES overlay district, the uses shall be --

CHAIRPERSON KRESS: You might point out that that's page 4 --

MR. COLBY: Yes, I'm sorry, page 4, number 5. In the ES overlay district, a fast food restaurant or food -- I'm sorry, in the ES overlay district the uses shall be those permitted in the C2 zoned district. That just covers -- that just pushes them back into C-2 where they probably should be for uses and we'd put them into the special exception requirement for fast food and the equivalent and all those other delivery fast food delivery and drive thru. It's a very simple way of solving that problem and the rest of the -- I'm happy to walk you through item by item.

CHAIRPERSON KRESS: Why don't we just do that quick so we can all agree -- I think you picked the real highlights, but the other ones aren't controversial --

MR. COLBY: The first one --

COMMISSIONER CLARENS: Madam Chairperson, just for clarification --

CHAIRPERSON KRESS: Sure.

COMMISSIONER CLARENS: What is it that we're doing? We're reviewing this memorandum from Mr. Colby through Ms. Akins and from here we go into what? Into the establishment of the actual language of the overlay?

MR. COLBY: Yes.

CHAIRPERSON KRESS: Today we're doing proposed action on the 8th Street overlay and we had left a little piece of it open. We've already done a bunch of it. We left

a little piece open --

COMMISSIONER CLARENS: To deal with this issue.

CHAIRPERSON KRESS: To deal with these issues and OP has done a very good outline of recommendations 1 through whatever.

COMMISSIONER CLARENS: Yes, I read those, but where is the overlay?

MR. COLBY: The overlay is unfortunately made up of the normal NC overlay provisions as well as these specific to the 8th Street.

COMMISSIONER CLARENS: So where is that going to be recorded?

CHAIRPERSON KRESS: Here's the final report that was done on March 8th --

COMMISSIONER CLARENS: I know. I remember that, but --

MR. COLBY: It's in Section 1300 of the zoning regulations and it's a separate --

COMMISSIONER CLARENS: With a text amendment.

MR. COLBY: It has a text amendment.

CHAIRPERSON KRESS: I'm sorry, it wasn't in our package today.

COMMISSIONER CLARENS: Is the text amendment --

CHAIRPERSON KRESS: The 8th Street overlay text amendment is basically here.

COMMISSIONER CLARENS: My question, Mr. Colby is where do we see what will appear of the regulation as a result

of this --

MR. COLBY: I'm sorry, you would see it in the hearing report or the set down report which were essentially the same.

COMMISSIONER CLARENS: What is being modified now?

CHAIRPERSON KRESS: What we're doing is discussing some of the issues that we've readvertized.

COMMISSIONER CLARENS: So what are we voting on? Are we voting on the text amendment?

MR. COLBY: You are voting on the map amendment going from CM-1 to C-3-A.

COMMISSIONER CLARENS: Yes.

MR. COLBY: And you're voting on the overlay which is number one, a fix up. The basic provisions of the neighborhood commercial overlay in the zoning regulations, but adds some very specific sections --

COMMISSIONER CLARENS: I understand that. My question is more narrow than that. It just has to do with where do we have in front of us the end result of these deliberations as represented by items that will be inserted into the regulation?

MR. COLBY: The end result is the items in the summary abstract, the head of each numbers 1 through whatever.

COMMISSIONER CLARENS: I get you, I read you. That's what I wanted. Okay. So the 1309.5, I see, so in order to see what the overlay would read, we would really need

to add --

MR. COLBY: All of those together.

COMMISSIONER CLARENS: All of those together.

MR. COLBY: Yes.

COMMISSIONER CLARENS: Okay. Now I'm understanding.

MR. COLBY: If we start at 1309.1 which is very simple, it just describes the four squares which have been part of this case.

COMMISSIONER CLARENS: I'm with you now, I'm sorry.

MR. COLBY: And the C-3-A zoning for those.

COMMISSIONER CLARENS: Okay. I'm sorry. I just couldn't quite understand what was happening. I understand it now.

MR. COLBY: And I think we can deal with it --

COMMISSIONER CLARENS: And the items in bold are the items that you are changing from the ones that were submitted as the --

MR. COLBY: Previously, for the hearing.

COMMISSIONER CLARENS: Yes.

MR. COLBY: Yes.

COMMISSIONER CLARENS: Very good.

MR. COLBY: Sorry.

COMMISSIONER CLARENS: We're all on the same page.

MR. COLBY: So I wouldn't spend any more time on

one. We'll see it again at the end for the FAR involved.

Number two is the purposes of this particular overlay which go beyond the general purposes for the neighborhood commercial overlays and I think those are -- there's not an issue there. The community certainly subscribes to those pedestrian uses and historic scale buildings and so on.

COMMISSIONER CLARENS: That's fine.

MR. COLBY: Number three is -- deals with the designated use areas which are the street frontages that -- and again, there's no change between what went into the -- there was no testimony basically on this in that except that everybody supported it in the hearing. These are the street frontages where the ground, continuous ground floor uses are required and so that's picked up in number -- well, that's one of the requirements of the basic overlay, the neighborhood commercial overlay is that there will be continuous retail use along these, along the frontages which are spelled out and these are the critical frontages that the community subscribes to too.

I don't think, at least from the community's perspective, there is an issue there. We get into the first issue, number four, where we had originally indicated that the eating and drinking establishments shall occupy no more than 50 percent of the their frontage and we had gone on to say and that could include fast food restaurants. Now we have heard the community very clearly and added on a restriction that is

there in the normal NC overlay district which is to restrict fast food restaurants to no more than 25 percent of the required frontage. I don't know how the Zoning Administrator deals with that, but that's part of an existing, that's an existing condition for all these neighborhood commercial overlays and we're just adding one more.

COMMISSIONER CLARENS: Can we discuss that briefly?

MR. COLBY: Surely.

COMMISSIONER CLARENS: Twenty-five percent, you mean that if I own a rowhouse, I cannot put -- or if I have a building that is maybe 25 feet

--

MR. COLBY: No, it's cumulative.

COMMISSIONER CLARENS: It's for the street.

MR. COLBY: Street front.

COMMISSIONER CLARENS: So how can the Zoning Administrator deal with that on a practical basis when permits for certificate of occupancies or building permits are issued and analyzed on an individual site case?

MR. COLBY: There are other zoning regulations in the tree and slope overlays where there are, where you get an average front yard depth, based on whatever -- whoever's got there before you.

COMMISSIONER CLARENS: So this is on a first come, first serve basis. If you go into this area, find the property, develop it for fast food, somebody else comes later.

MR. COLBY: Yes. I don't think that's necessary fair, but it's certainly -- it's like getting a CDRF and you got there first and the next one has got to be a thousand feet away or there's going to be a problem, if you got there first. It's a neighborhood protection. It's not necessarily democratic --

COMMISSIONER CLARENS: For community effect.

MR. COLBY: Yes.

COMMISSIONER CLARENS: So the whole thing doesn't become a row of restaurants.

MR. COLBY: Yes. And this exists elsewhere in the reg.

COMMISSIONER CLARENS: Okay, so it's understood that this 25 percent applies to the linear street frontage meaning the block?

MR. COLBY: I believe it's the block. I'm happy to report back it is the language which is used elsewhere in the regulations. We've just repeated that, but I can't honestly tell you whether it's the -- two blocks long in this case or per block because there's no linear depth, distance more than two blocks in this particular case.

CHAIRPERSON KRESS: I would think by definition since there's some that date 10 it would be by block.

MR. COLBY: I would think so.

CHAIRPERSON KRESS: We can move that up and clarify that before we pass this final.

MR. COLBY: And we'll get a chance before final

rulemaking to -- for a final decision and I'll report back on that.

CHAIRPERSON KRESS: But this is where those food definitions become very important because it was 50 percent, but the concern was fast food.

MR. COLBY: Yes.

CHAIRPERSON KRESS: The breaking out of the fast food and no more than 25 percent.

MR. COLBY: No. 5, we have provided, we have tried to deal with the fact that C-3-A permits these fast food restaurants as a matter of right by basically pushing them back to the C-2 provisions. There are two ways to do that, I believe. One is as indicated under NO. 5 by specifically spelling out fast food or food delivery and requiring it be handled as a special exception as it would have been in the C-2s own district and the other more simpler way is just to say in the E-S overlay district the uses shall be those permitted in the C-2 zoned district. So it automatically converts C-3 use to C-2 use and then whether you're special exception or whatever it is,
C-3 is a fairly intensive commercial area. It's meant to be fairly intensive. This area is not intended to be that. It's really a pedestrian area where the C-3 is used just to get the commercial FAR up high enough for office development to support the Navy Yard. And so in a way the retail usage should be, should probably be C-2 type uses and that could be solved simply by requiring that the uses be those permitted in

the C-2 zoned district.

CHAIRPERSON KRESS: And you're now preferring that over the BZA because it's --

MR. COLBY: I do because it's more general and simpler.

CHAIRPERSON KRESS: More general, simpler. And there's no downside, as you've presented it and as I've read it?

MR. COLBY: No, I don't believe there is.

CHAIRPERSON KRESS: There's no downside to --

MR. COLBY: This particular language. I mean it's more general language.

CHAIRPERSON KRESS: Yes.

MR. COLBY: No, I don't believe sos.

COMMISSIONER FRANKLIN: Madam Chair, as you know, I will not be voting on this as I was not at the hearing, but I'm a little bit curious as to two things. Regarding the provisions that eating and drinking establishments should occupy no more than 50 percent of the linear frontage with fast food restaurants, which shall be no more than 25 percent of frontage, if there's a fast foot restaurant that occupies 25 percent of the frontage, that means that higher -- well, the other kind of restaurant could occupy only 25 percent, is this correct?

CHAIRPERSON KRESS: The reason I asked --

MR. COLBY: At least that much, I'm sorry.

CHAIRPERSON KRESS: Go ahead and answer that.

MR. COLBY: No, you're right. The more desirable restaurants could only occupy 25 percent if the fast food came in first which I think is your point.

COMMISSIONER FRANKLIN: And other than fast food restaurants what is the objection to other restaurants premised on?

MR. COLBY: They're looking for -- I mean the Capitol Hill area and 8th Street have a lot of restaurants. They're looking for other types of retail services and hard goods like a lot of communities do. They don't want -- there's a lot of trash and sort of I don't know, a quality that comes, I suppose, that comes with nothing but entertainment and/or restaurants. We're getting some of the same feedback on downtown.

COMMISSIONER FRANKLIN: Of course, I look at Bethesda which is a very thriving part of the metropolitan restaurant and there's one restaurant after another there. I'm not participating.

MR. COLBY: The community and with their experience have been very strong on this issue.

CHAIRPERSON KRESS: There was a lot of testimony. I did ask Commissioner Franklin because I think this is --

MR. COLBY: I agree with you, up until I heard the community and I backed off to say that's been their experience and that has been their experience, then so be it.

CHAIRPERSON KRESS: I think this is a helpful

case for educational purposes. That's why I wanted all of us here and because you're dealing with the different kinds of food, eateries that are out there and the different problems and the restrictions.

MR. COLBY: It was an education to me.

COMMISSIONER FRANKLIN: I agree with you, Madam Chair, and I drafted some language while I was sitting here to respond to my concerns on the Solar Building on the basis of the language in this.

CHAIRPERSON KRESS: Good.

COMMISSIONER CLARENS: So is 1309.5, the sense that the fast food and food delivery services to the BZA or are we taking that out and using the C-2 regulations?

MR. COLBY: The C-2 regulations, I would recommend now as simpler and more direct.

CHAIRPERSON KRESS: No, it's not written here. He's just giving us two proposals and we need to decide which one we want, either the one that's written here or the one he's verbally talked about.

COMMISSIONER CLARENS: And the one that verbally talked about what -- I read it somewhere. Don't you talk about the C-2 and the recommendation to the public hearing testimony, right?

CHAIRPERSON KRESS: Yes.

MR. COLBY: It's just the specific language that would change. The same result would --

COMMISSIONER CLARENS: Okay.

CHAIRPERSON KRESS: Would you give us the specific one?

MR. COLBY: Sure.

CHAIRPERSON KRESS: Give us the proposed specific language and then we'll decide.

MR. COLBY: Fair enough. In the E-S overlay district the uses shall be those permitted --

CHAIRPERSON KRESS: I'm sorry, the uses shall be those --

MR. COLBY: Permitted in the C-2 zone district.

COMMISSIONER CLARENS: And the C-2 zoned district doesn't allow fast food restaurants?

MR. COLBY: By special exception only.

COMMISSIONER CLARENS: I see. So you send them back to the BZA, I see.

MR. COLBY: Yes. So not only do you limit the percentage of street frontage, but you also have to go to the BZA which also deals with the drive thru and the delivery service and so on. All that has to go to the BZA and C-3-A, it's a matter of right. I mean you could go in there and do that, as long as you met the 25 percent restriction.

So in a sense, it was an oversight on our part for proposing that high of a commercial zone density without thinking about the fast food problem. It came along with that.

COMMISSIONER CLARENS: I like it.

CHAIRPERSON KRESS: I do too. Are you okay with

this?

COMMISSIONER HOOD: Which one?

CHAIRPERSON KRESS: C-2, that basically, we're doing the last one. It's more restrictive than the C-3-A and it doesn't allow the drive thrus -- you have to go to the BZA for a lot more than you do the way it's written right now. This is the C-2 is more restrictive which represents what the community wanted and asked for.

COMMISSIONER HOOD: Okay.

CHAIRPERSON KRESS: So we've got a consensus on 1309.5.

MR. COLBY: Then 1309.6 designates roadways and there was really no testimony on that either and it designates roadways for curb cuts or opposes curb cuts on certain roadways which is the normal neighborhood commercial overlay, again, encouraging pedestrian usage and limiting curb cuts for loading or garage use.

No changes suggested by anybody there.

CHAIRPERSON KRESS: I think that's fine.

MR. COLBY: Number 7 was the issue that Mr. Clarens was engaging the witnesses in dialogue on as to whether 45 feet -- and I think some good things came out of that because we got a clearer idea of the context which is --

CHAIRPERSON KRESS: We wouldn't have done that otherwise.

MR. COLBY: No, we would not have and I should have done it earlier. You now have the gate and you now have

the context along the street and the same question holds which is how can you get four floors and I think that's the magic number coming out of the testimony and the context, a maximum of four floors, can you get that into 45 feet?

CHAIRPERSON KRESS: Okay. I think the research has proven that 45 feet, the community, I think that's the right answer. Okay, good. Moving right along.

MR. COLBY: And the last one is the gross floor area permitted which is the same for commercial or residential or any combination thereof. The only
-- the community strongly supports that in the sense that they've strongly supported the overlay. One property owner, felt that 3.0 FAR would not "defeat the purpose of growth" which was one of the reasons to have this overlay was to allow the growth, not just to restrict it, commercial development in the area. He would have preferred 3.5 commercial FAR. But the ANC, I think it's safe to say that the Capitol Hill Restoration Society and everybody else would have stuck with the proposed 3.0.

COMMISSIONER CLARENS: What is the occupancy on a C-3-A anyway, is it 75?

MR. COLBY: I can tell you in a moment.

CHAIRPERSON KRESS: I want to get one of those little sheets that has all of those --

MR. COLBY: I've got one.

CHAIRPERSON KRESS: You've got one? Can we xerox it?

MR. COLBY: Unfortunately, it doesn't have lot occupancy on it. Just height and bulk and use.

COMMISSIONER FRANKLIN: Could you add that and then distribute it?

MR. COLBY: I could.

COMMISSIONER FRANKLIN: Thank you.

CHAIRPERSON KRESS: That would be --

MR. COLBY: I'm sorry I don't have that today so I can't answer your question.

CHAIRPERSON KRESS: It's basically an urban situation where we don't have a lot of setbacks and what not.

COMMISSIONER CLARENS: It's probably not 100 percent. It's probably 75 percent.

CHAIRPERSON KRESS: It's probably something like that.

Seventy-five percent. Good guess.

COMMISSIONER CLARENS: Yes.

MR. COLBY: How much was it?

CHAIRPERSON KRESS: Seventy-five percent. Are you comfortable with 3.0 then?

COMMISSIONER CLARENS: Yes, yes.

CHAIRPERSON KRESS: Okay. Considering all of the preliminary decisions may I have --

COMMISSIONER CLARENS: Seventy-five percent is exactly right. It's four fourths, so 75 percent gives you 3.0.

CHAIRPERSON KRESS: There you go. May I have a

motion to approve Case No. 98-11 as we have just finished discussing?

COMMISSIONER CLARENS: So moved.

COMMISSIONER HOOD: Second.

CHAIRPERSON KRESS: Any further discussion? All in favor signify by saying aye.

(AYES.)

Opposed? Motion carries. Commissioner Clarens made the motion. Commissioner Hood seconded. MR. ERONDU: The vote was 3 to 2, Mr. Clarens, Mr. Hood and Chairman Kress. Mr. Franklin not voting, having not participated.

CHAIRPERSON KRESS: Right.

MS. YOUNG: No proxy for Parsons on that one.

CHAIRPERSON KRESS: No, none. Not voting, not present. Okay. Child development regs.

MR. COLBY: All right, the Commission held the record open in this case for a substantial length of time to try to get responses from the -- primarily from the licensing people --

CHAIRPERSON KRESS: What happened to them?

MR. COLBY: I have made, I can't tell you how many calls. I got one -- I faxed it to everybody, in fact, I delivered it to everybody. Made a number of calls and never had a conversation with the people that I was trying to reach and --

CHAIRPERSON KRESS: And you told them why you

were calling?

MR. COLBY: Yes, yes, left messages to that effect.

COMMISSIONER CLARENS: Silence is assent.

CHAIRPERSON KRESS: I am just shocked.

MR. COLBY: I really don't know what to say because I understand where you are and it would make me nervous to make changes in regulations without getting some, either they're good or bad or something from agencies. And I have not been able to do that.

CHAIRPERSON KRESS: And not any agency.

MR. COLBY: I have not gone and knocked on their door and said you've got to respond. I did not do that.

COMMISSIONER FRANKLIN: Perhaps the record of decision should reflect that Mr. Colby is reporting.

CHAIRPERSON KRESS: Yes, but there's no real rush on this and I hate to --

MR. COLBY: No, there's not and --

CHAIRPERSON KRESS: But I think I'd like to try to give them some cause. This is directing affecting them. They told me they wanted say.

COMMISSIONER CLARENS: I think maybe the Commission needs to write whoever it is that we need to write directly.

MR. COLBY: Okay.

COMMISSIONER CLARENS: I don't know if that might move some people, but maybe it should go all the way to

-- is this DCRA?

MR. COLBY: No, the one that's the biggest and most important is the Health Department which is where the licensing regulation for --

CHAIRPERSON KRESS: Well, there's a task force that I was -- excuse me for interrupting. There was a task force that was formed to work on redoing these licensing regulations and they were the people that are supposedly rewriting these things right now.

COMMISSIONER CLARENS: I concur that I think we need the participation and so in order to expedite things with a letter from the Commission, signed by the Chairperson to the head of the Health Department.

MR. COLBY: And to the Office on Aging.

COMMISSIONER CLARENS: And the Office of Aging with copies to the Mayor and Ms. Cropp and to everybody else that we can find out there who might have an interest, talking about the importance of this decision and the importance of their participation and that we've tried to get the participation and we have not been successful in doing that and we would appreciate them getting in touch with you. Something to that effect.

COMMISSIONER HOOD: If there is a motion, I will second it.

COMMISSIONER FRANKLIN: May I say this, Madam Chair?

CHAIRPERSON KRESS: Certainly.

COMMISSIONER FRANKLIN: I did not for the life of perceive any reason why these people who we are so anxious to participate in this proceeding would have any objection to what we are proposing here. I hope that this is not frustrating, I mean, the delay in adopting this is not frustrating people who want to provide elderly day care in settings where it seems to me it's entirely appropriate that they do so.

CHAIRPERSON KRESS: It's not stopping any -- correct me, if you believe I'm wrong, but I don't believe this is stopping anyone at the moment, is it?

COMMISSIONER FRANKLIN: Remember, the bulk of this case came up as a recommendation from the Board of Zoning Adjustment.

MR. COLBY: The BZA, presumably.

COMMISSIONER FRANKLIN: I don't know if they're getting cases that --

COMMISSIONER CLARENS: I think mostly as a result, not so much with the elderly, it's something that the Zoning Commission has added. It came mostly as a result of the expanded nature of the child care services and that's what we're trying to correct.

COMMISSIONER FRANKLIN: I've sat on a couple of cases.

CHAIRPERSON KRESS: And it was the whole counseling issue, you can't counsel or you can counsel.

COMMISSIONER FRANKLIN: I would rather, frankly,

that we adopt it and if there are problems between preliminary and final, at least we'll have -- I think we're justifiably criticized for not doing anything.

COMMISSIONER CLARENS: Okay, we can do that. I think maybe we can do both. We can move and at the same time we send the proposal with a letter from you to all those people saying we are ready to move on this and we haven't heard from you.

COMMISSIONER FRANKLIN: And this is what we've adopted preliminarily.

CHAIRPERSON KRESS: Let me just quick say that one of the issues was the numbers of people and how that goes along with their licensing and how we coordinate those as an issue that could be problematic for them, depending on what we adopt here, but I think that's terrific and you had made a motion and you had seconded it and so --

COMMISSIONER CLARENS: I am modifying the motion.

CHAIRPERSON KRESS: You're modifying the motion and the seconder accepts it.

COMMISSIONER HOOD: Yes.

CHAIRPERSON KRESS: And so hearing no more discussion, all those in favor signify by saying aye.

(AYES.)

Opposed? Will you record the vote for us, please?

MS. YOUNG: There was a proxy by Mr. Parsons and

he voted to approve.

CHAIRPERSON KRESS: All right.

MR. ERONDU: Staff records the vote 4 to 0, 5 to 0. Mr. Clarens, Commissioner Hood.

CHAIRPERSON KRESS: With that, we'll go ahead and move to the final action and we'll start with the text amendments for the Zoning Commission.

COMMISSIONER CLARENS: Could we quickly go through the memorandum from the D.C. Zoning Commission on the rule making, final rule making, Case 98-19 and then deal with those comments and once those are explained then we can go ahead to approve the --

CHAIRPERSON KRESS: Actually, that's -- you and I think exactly alike. In checking everything that I had asked, the Office of Planning to look at, and I've gone back, they have addressed and so I think that is absolutely the right way to go about it.

I would just say that the only thing I would say as we approve this finally, we still need to go back and somebody has to read word for word because some things, this had to get retyped and when that happens some things get left out or not done exactly correctly, so even if we do take final action on this today, it will need to come back to us perhaps once more for the incorporation of final action items which may include some typos, so I just wanted to set that out today before we forget.

MR. BASTIDA: Madam Chairperson, could I

recommend when the final is prepared that it should be sent to you as a formal draft and that way you can look it over?

CHAIRPERSON KRESS: Yes. And I'm trying to beg it to go also to Corporation Counsel to look at it, final final. And I'm trying to beg --

MR. BASTIDA: Okay, well, the draft can go to Corporation Counsel and then it can be finalized and then sent to you.

COMMISSIONER CLARENS: I think so.

MR. BASTIDA: Sorry, I got the message.

CHAIRPERSON KRESS: Thank you.

MR. BASTIDA: Somebody has to proof read it, that's basically what you want.

CHAIRPERSON KRESS: Very fine proofreading, yes.

With that and maybe we can just go down, I don't know and maybe people can stop me where they feel, I think a lot of this does speak for itself. I don't know, how would you prefer to handle this?

Some of these I had to go back --

MR. COLBY: I would just go down quickly and if people are familiar with it, just ask if they have a problem with these as you go through.

COMMISSIONER CLARENS: That's fine, let's do that.

CHAIRPERSON KRESS: Okay.

MR. COLBY: And I've got a comment to make on one or two as you go.

CHAIRPERSON KRESS: All right, on the NCPC basically there is a proposed change to incorporate that, correct?

MR. COLBY: Yes.

CHAIRPERSON KRESS: And your proposing the wording that was put forth in the NCPC letter, is that not correct?

MR. COLBY: Okay, so unless anybody wants something different we're proposing the word change -- because there were several proposals of wording for this. This one proposes the change of wording to match NCPC's wording, correct? Are we all in agreement? Okay.

The next one, I think speaks for itself, stop me if you wish. The next item it mentions Corporation Counsel. I'm sorry, I've got to set this side by side with my other comments. That was the one that had to deal with --

COMMISSIONER CLARENS: The notice of the --

CHAIRPERSON KRESS: The condominium. I'm sorry.

COMMISSIONER CLARENS: Notice to owners, excuse me. You've participated with us on that, Pat and so as far as you're concerned you don't feel there's any diminished -- there is some diminished, but notifying the Board of Directors of a large condominium does not put us in a liable position?

MS. YOUNG: No, I mean, it's a reasonable way to convey the notice and then have them pass it along with their members.

CHAIRPERSON KRESS: Okay, good. Oh, here's the one, first one is the -- appears to be valid, that has to do with BZA and Zoning Commission should read identically regarding time limits. That should always have been that way and we'll tell you that was just an oversight, typo, whatever and so that definitely needs -- that change needs to be incorporated, so disagree with me, anyone or stop me.

The next we go on to are Lindsey Williams' comments.

MR. COLBY: In our comments, we had 20 foot six inches. It's actually only a one foot difference maximum, so it would be 19 foot 6. I think our response would be the same, but it's not quite as egregious as a two foot difference would have been.

Does everyone understand that? Does anyone wish to -- do you agree with --

COMMISSIONER CLARENS: You lost me on the 19'6", what was that?

CHAIRPERSON KRESS: Basically, Mr. Williams proposed that the roof structure -- the deviations be allowed to be the greater of 10 percent or 12 inches, blah, blah, blah, blah and it applies to roof structure, set back and then he rewrites it and says roof structures along with minimum required dimensions of the blah, blah, blah. If it is roof structures, then --

COMMISSIONER CLARENS: What page are we on? I'm lost.

CHAIRPERSON KRESS: You don't have it. This is a Linsley Williams --

COMMISSIONER CLARENS: Oh, I have it, I have it, I'm sorry, what page.

CHAIRPERSON KRESS: I'm on the top of the second, page 2. I believe that was in your package. He's recommending that this includes flexibility to allow heights greater than the present overall limit of 18 foot 6 inches. The opposition, OP basically says that we fought really hard and long to determine this 18'6" and we don't feel that there should be flexibility in the 18'6".

MR. BASTIDA: Madam Chairperson, the 18'6" has always been fought to lower. In any special exception we always have lowered that mechanical equipment. Mechanical equipments are getting smaller rather than bigger. I would really, my personal point of view and I'm talking for the Office of Planning will have problems that you will be allowed to increase that height when a group of structures tends to obtrusive to the eye. So I would cap the height. I would give the latitude of the other lineal dimensions, but not on the height because in all the cases usually it hasn't been any problem by the 18'6". It has been when we want them lowered below 18'6".

CHAIRPERSON KRESS: I don't -- I agree with you. What I'm saying is what was being proposed was to allow flexiblity higher and we're basically, unless somebody disagrees, saying we wanted 18'6" or lower.

COMMISSIONER CLARENS: That is correct.

MR. COLBY: Yes, with no flexibility on the --

COMMISSIONER CLARENS: I would rather have no flexibility on that.

So you are suggesting not to change the height, but to allow the Zoning Administrator to change the setbacks of the --

MR. COLBY: Sets.

COMMISSIONER CLARENS: The setbacks, yes?

MR. COLBY: Correct.

COMMISSIONER CLARENS: But aren't they related? Shouldn't roof structures be excluded? I was thinking more of the, for example, old buildings that have two roof structures and they are already located in such a fashion that you really cannot push them back. Historical structures always have that problem. So you always have problems with the placement of the roofing structure, not really with the height.

MR. COLBY: If the roof structure were permitted to be 19'6", the setback would be 19'6" too automatically on 1 to 1, but this provision would allow a deviation of up to a foot in that setback. The setback could be reduced?

COMMISSIONER CLARENS: You could go up to 17.

MR. COLBY: You actually run very quickly into NCPC's 1910 height act issue which still requires a 1 to 1. I mean a lot of this almost couldn't happen because of that. But it just seemed like if you allowed the equipment to stick up over the penthouse walls --

COMMISSIONER CLARENS: We have a conflict? Do we have a conflict with the NCPC that says it's a 1 to 1 and then we are allowing a 9 to 1?

MR. COLBY: You get back to their language again which says "shall not exceed a 19'10" height act on setbacks."

CHAIRPERSON KRESS: That's their proposal, "provided that all deviations of roof structure setback requirements must comply with provisions of the act to regulate" blah, blah, blah, blah -- I'm sorry this is in the NC -- that's not written there. This is the -- I'm reading out of the NCPC letter that was sent.

COMMISSIONER CLARENS: It's also here.

CHAIRPERSON KRESS: Is it there? I don't think it's there, no, it's not there. I'm sorry. I had to get things out of my other files. You didn't get everything in your package you needed, forgive me.

COMMISSIONER CLARENS: Well, that's okay.

MR. BASTIDA: And you see, Mr. Clarens, because roofing structures equipment now can be lowered if they have a latitude on the 10 percent they still can meet without too much of a problem. And I can site innumerable number of buildings that, in fact, if the latitude was in the books it could have of where they are going to the Board with a roofing structure special exception. And the one that comes to mind is the Episcopal Building on the corner of Maryland and First Street across from the Supreme Court, that is undergoing renovation right now?

COMMISSIONER FRANKLIN: The Methodist Building?

COMMISSIONER CLARENS: Methodist, right. Right building, wrong religion, sorry.

CHAIRPERSON KRESS: Basically, on this one, Office of Planning is recommending to leave it as it is.

MR. COLBY: Which one is that, I'm sorry?

CHAIRPERSON KRESS: I'm sorry, we're on Lindsey Williams on the flexibility on the roof structure.

MR. COLBY: Yes, he, Lindsey Williams did not -- did suggest, require, or request or gain the approval or agreement with so he was approaching it basically to say the Commission -- it should say in the rules that the Commission through the rules send a message to the applicant to say it is useful or helpful to the Commission to have a draft order, but I just -- I think my comments apply if you were to require them you would hurt people who can't, aren't equipped to provide that order. If you encourage it which you do occasionally, whether you do that in the regulations or do it verbally that's another matter.

CHAIRPERSON KRESS: I'm sorry, you jumped ahead of us, but that's great.

MR. COLBY: I'm sorry, I thought that's where you were.

CHAIRPERSON KRESS: We were just on the 2522.1.

MR. COLBY: Yes.

CHAIRPERSON KRESS: I was just trying to get us all in agreement on that, that we leave the wording as

proposed by NCPC, as it is.

The next one I do think we have to talk about, it's the double bite which basically proposes that the flexibility to apply to both permit drawings and also construction deviations, so essentially and you have -- I'm not quite sure in reading this how it reads -- how do you all have it, how do you believe it reads now? I'm sorry, the interpretation of how it reads now? Do you want to speak to that issue?

MR. COLBY: I mean, it may already apply to construction deviations from permit drawings. If it does then I'm suggesting that I find that a difficult concept, but I shouldn't be raising it if it already applies.

COMMISSIONER CLARENS: What do you mean construction deviations? If it is not built according to permit drawings?

MR. COLBY: Yes, yes. That's what I understand that to mean.

CHAIRPERSON KRESS: We have got to watch our language and it just says deviations not to exceed. It doesn't say when.

COMMISSIONER HOOD: Is there a certain percentage?

CHAIRPERSON KRESS: Yes, it's 10 percent, 12 inches, whatever. Typically, and maybe you can read exactly where that is written, because that was when I wasn't clear on either. 2522.1C, let's double check. But typically what

happens is when you're getting your drawings, especially when you have an existing structure you are off a little bit and that's when we're trying to get -- if you have got an existing building, that's why we're trying to give the Zoning Administrator flexibility. That's the way --

MR. COLBY: It's still in advance of construction.

CHAIRPERSON KRESS: It's in advance of construction. But on the other hand I have had a case where and we had to rip down the wall and it seemed a little silly for something that was imperceptible, but --

COMMISSIONER CLARENS: You do a wall check and you find that you are three inches encroaching or something like that and then it is up to the inspector to either let you go or turning you down. And what this allows is for you to be able to go to the Zoning Administrator and say I have a condition and -- or it's even more than that. You're saying basically that then those kinds of deviations are allowed.

MR. COLBY: Up to 10 percent or up to a foot.

COMMISSIONER CLARENS: With the Zoning Administrator intervention or without it?

CHAIRPERSON KRESS: Oh, the Zoning Administrator has to approve this, right?

MR. COLBY: Yes, yes. And my comment is incorrect because mine assumed it had been built or you're saying --

CHAIRPERSON KRESS: It can be both. What I'm

saying is to me when I typically -- it sounds like we've run into the same conditions. When I run into it it's when I have a building that's existing and I'm doing something to the building and in order to put the shim on and make everything line up and I'm off a little bit in square footage or whatever for some good reason because you're working with existing conditions. And then that happens, then the Zoning Administrator would have the time and I want to make sure how this reads and have Corp. Counsel be very sure how this reads. Then the Zoning Administrator can say well, you're only off just a little bit and I can see you've got to make this line up and you've got to do that and it's historic, whatever, so we'll give you that deviation.

MR. COLBY: Well, then Lindsey is correct that you shouldn't be double counting.

CHAIRPERSON KRESS: Well, that's right.

COMMISSIONER FRANKLIN: Well, Madam Chair, it seems to me we have to give some credit to the zoning people for a sound judgment and this is not you're requiring that they give waivers. This is giving flexibility and if somebody has been given flexibility in the drawings and then it turns out to have abused that by actually having constructed something that's even at further variance than the flexibility that has been previously granted, the Zoning Administrator presumably or whoever is doing the inspecting should have enough presence of mind not to provide flexibility.

COMMISSIONER CLARENS: Well, Mr. Franklin, I'm

troubled, I'm a little bit troubled by that. Because I think that unfortunately if we lived in a world where everybody was scrupulous and decent it would be a different kind of thing, but we are now going to say that we're going to be given a 10 percent, is that what we're talking about -- 10 percent?

COMMISSIONER FRANKLIN: Yes.

COMMISSIONER CLARENS: 10 percent leeway. And this is for areas, for example, side yard requirements. And you have a -- you have a situation where you have an eight foot side yard requirement in a residential district and once the word gets out that there is this leeway, etcetera, etcetera, I wonder how many times contractors are going to be building, encroaching into those eight feet by 10 percent which is about 10 inches which sounds very little, but it is a significant encroachment to great benefits to the interior because basically you're putting the whole wall on the outside of what it is and that then after the fact you go back to the Zoning Administrator and say ah, we blew it. We made a mistake. We built the wall incorrectly and then we go do a wall check and we're encroaching 10 inches into the side yard and could you give us a variance and the moment that the Zoning Administrator gives the first one, we are then down the road, up the creek without a paddle or however you want to say it. I mean it is -- then we are in trouble because once one is given then the Zoning Administrator cannot basically deny any other one.

COMMISSIONER FRANKLIN: So is your point that

you would only allow flexibility on drawings?

COMMISSIONER CLARENS: Absolutely.

COMMISSIONER FRANKLIN: And not on construction.

COMMISSIONER CLARENS: Yes, because once it's allowed, it's allowed. It's allowed on the drawing. If there is a problem in the drawing, you establish what the regulations are. If you want to encroach as a new construction, if it is an existing condition, it should already be encroaching and it's a preexisting condition.

COMMISSIONER FRANKLIN: If the wall is built a half an inch --

CHAIRPERSON KRESS: Your wall checking.

COMMISSIONER FRANKLIN: If your wall check shows it's a half inch too far --

COMMISSIONER CLARENS: Under present regulation it's incorrect and it is the judgment -- it is and contractors, good contractors are very much aware of that and wall checks are being ordered almost on every structure that's being built in the city right now. And contractors are very careful about where they build their walls when there is an encroachment possibility because walls are being taken down. And remember that the wall check is made not at the end, necessarily, of the job but at the time that the foundation is laid or the wall is built. So the foundation wall is built. So it's nowhere we're tearing down an entire structure, but there is a sense of rigor and what we're now doing is creating a kind of a fuzzy area that I think might be problematic. I

don't know.

CHAIRPERSON KRESS: I agree with you. I kind of think maybe one of the ways and there are several suggestions here is that we say the total deviation on any item --

COMMISSIONER CLARENS: Is 10 percent.

CHAIRPERSON KRESS: Yes. Or at the foot from design all the way through finish of construction so that you don't get several bites. You get it, but you only get a total of that -- up to that maximum.

COMMISSIONER FRANKLIN: But that doesn't answer Mr. Clarens' concern because if they've gotten approval on their drawings there's been no deviation, then it's understood his argument though that they've got one big bite of the apple and that's when they built it. And of course, they do it at their own risk because they --

CHAIRPERSON KRESS: Very much at their own risk.

COMMISSIONER FRANKLIN: They haven't gotten that approval in advance.

CHAIRPERSON KRESS: But I'd hate to, somehow out loud because we've all had the wall check problems and that is a legitimate thing that happens that contractors aren't being bad guys necessarily.

COMMISSIONER CLARENS: Yes, that's right. And then the other thing, perhaps, that I was looking for and I couldn't find and maybe somewhere in here is trying to give some guidelines to the Zoning Administrator as to the issues of this kind of a leeway so that in fact we're not totally

trusting -- we're trusting the Zoning Administrator but we are establishing some guidelines for the issues of this so that they have something to rely on in order to grant these variances which are, in fact, what they are. They are simply taking variances out of for that small portion from the BZA because -- before to the Zoning Administrator. Isn't that, in fact, what we're doing?

And we have guidelines that apply to the BZA for the granting of variances that we will discuss later today and we have -- but we're not getting any guidelines to the Zoning Administrator and the problem with that is that the Zoning Administrators change, it creates the issue of presses, well, you gave it to so and so, why not give it to me and so what is the criteria the Zoning Administrator uses to grant these things? Is it to take over mistakes? I mean why would you encroach. If we have 8 feet, we have 8 feet. Why does it have to become 7'4" or 7'2"? On the basis of what? Is there some reason, rationale?

COMMISSIONER FRANKLIN: I guess that hearing you, I am persuaded that it's one thing to permit flexiblity because there's some rational reason, some basis for it in the drawings. There's some persuasive case to be made for allowing some flexibility in the drawings. There probably is no case you can make for actually just not following the drawings. That's just a mistake. That's a mistake.

CHAIRPERSON KRESS: It is a mistake, but it's --

COMMISSIONER CLARENS: Well, the mistake could

be a reason why you go then to the Zoning Administrator and say we blew it. Now the Zoning Administrator needs to make a judgment as to whether this was a real mistake, but you can see where you are putting the Zoning Administrator, is in making those kinds of --

CHAIRPERSON KRESS: The big thing is and one of the things I'd ask you to do particularly on this one was check with Armando. Did you check with

--

MR. COLBY: No, I'm sorry. I thought that was referring to the roof structure issue.

CHAIRPERSON KRESS: Oh, I'm sorry. Maybe I wasn't clear. I've not had that conversation with the Zoning Administrator.

COMMISSIONER CLARENS: I feel uncomfortable about creating this flexibility without producing some guidelines that control the rationale for the granting of that flexibility. I don't know --

CHAIRPERSON KRESS: And maybe it's one on the one side and it's more flexible one place?

MR. BASTIDA: I have been told that the problem is when there is a discrepancy between the surveyors' locations and those and I think that then the language should be tailored to that specifically and not a 10 percent deviation of the wall because it's from the drawing, because a mistake is a mistake and if you give 10 percent, that's quite a bit for side yards, rear yards and height and so on.

COMMISSIONER CLARENS: We're in fact using all the side yards and rear yards. Everyone is going to be making mistakes.

MR. BASTIDA: Indeed, indeed. But I think that the problem is between the surveyors depicting the line at one point and then finding that it's another, then some flexibility should be done for that, but I think that the language should be then differently.

CHAIRPERSON KRESS: How are you going to know that? If you're doing your wall check, I mean, how are you going to know? Are you talking about the D.C. Surveyor and the plat they do?

MR. BASTIDA: Right?

CHAIRPERSON KRESS: That's the only time you're going to let a contractor be off a little tiny bit? That's just normal construction, construction tolerances. The situation I'm talking about is past. Yours is certainly one, absolutely that we should allow deviations for, but I'm talking about another realistic one that happens every day. I would like to, as we still have so much, I think this is such a hot one, maybe table this and think about it a little bit more. I would like to talk to Armando. This is also one of the things that the Control Board felt so strongly about because so much was coming to BZA that was --

COMMISSIONER CLARENS: Minutiae.

CHAIRPERSON KRESS: Minutiae. So finding this line is a very, I think, one of the most important things

we're doing with what we're doing right now and we're not happy that we found it yet.

COMMISSIONER CLARENS: I'm wondering if the key is in finding some language that establishes, as I've said before, just like in BZA, we have a criteria and a burden of proof. We are just simply delegating. We are passing the delegation from the BZA to the Zoning Administrator which is a more expeditious way of making a decision, rather than going through a hearing process. We are allowing the Zoning Administrator what he must find the same elements or similar elements of proof before the granting of the exception. There must be something unique. There must be some special. There must be some --

MR. COLBY: You have never -- you have granted a small portion of that to the Office of Planning and Administrative Review. You have, if I'm correct, given none of that to the Zoning Administrator in the past, reserving that, you, the Commission, reserving that -- because administratively that's a decision made best by somebody who understands a larger context than you have given the Zoning Administrator credit for understanding, either what's out in the field, what's next door or something else that he's not going to go out of the office to look for, typically. He's got to make a decision, he or she, looking at the plans.

COMMISSIONER FRANKLIN: I think we should call these just cause administrative deviations. In other words getting to the point that the language that we use suggests

that the Zoning Administrator should have some cause to grant the administrative deviation rather than just --

COMMISSIONER CLARENS: When are we going to decide what those causes are?

MR. BASTIDA: It cannot be self-inflicted. It's one of the things that I would put up front because a lot of people will go on the justification well, we built it that way and it was self-inflicted.

CHAIRPERSON KRESS: Well, I'm not sure that that's the right jargon.

MR. BASTIDA: No, no, you're right. But I am just -- I am not saying that the language. The idea.

COMMISSIONER CLARENS: But are we agreeing that we need to spell out somehow the just reasons that --

COMMISSIONER FRANKLIN: Yes.

COMMISSIONER CLARENS: To create some wording that establishes the groundings under which the Zoning Administrator can grant this --

COMMISSIONER FRANKLIN: I wouldn't make it necessarily consistent with the variance language.

COMMISSIONER CLARENS: No, that's okay, I understand that, but we are instructing the Office of Planning to come up with that language?

(Laughter.)

MR. BASTIDA: Thank you.

COMMISSIONER FRANKLIN: Requesting, yes.

CHAIRPERSON KRESS: In the end, we may decide

that only applies to construction and not to the design because just cause when you're designing has a different level of --

COMMISSIONER CLARENS: No, it's the opposite. It's precisely this leeway which the whole principle behind it is to kind of expedite things in the city, make the regulations more user friendly, allows me, for example, if I can go to Ms. Hicks and say look, this is the 8 feet side requirement, but I have a situation here that it's kind of a special, and I can make my argument and I make my argument based on what? Based on, you know, like architects come before the BZA all the time saying look, it looks pretty, you know --

CHAIRPERSON KRESS: Well, that's valid. Doesn't meet one of your criterias, but --

COMMISSIONER CLARENS: But if I have some criteria, I can then go and go down the list and say this is where it is and I don't need to go to BZA. I get it from Gladys and that expedites and that cuts a lot of --

COMMISSIONER FRANKLIN: I frankly would defer to the expertise and the experience and judgment of the designers from the Commission for some articulation of the bases under which those deviations would reasonably be granted.

CHAIRPERSON KRESS: And I think we could maybe start with some of the rights we've given Office of Planning, if that's a right -- that we have already done in the past, as you pointed out, that starts to take that step and I agree, it

really resides with us to come up with the final language.

MR. COLBY: This is not an ex parte case. We can check with you or --

CHAIRPERSON KRESS: And the whole world.

MR. COLBY: I can certainly talk to the Zoning Administrator's --

CHAIRPERSON KRESS: I mean, actually, this came down from the Control Board thing. That's where it originated.

MR. BASTIDA: I think in all fairness the Office of Planning can put something together talking to the Zoning Administrator, but your expertise, Ms. Kress and Mr. Clarens --

COMMISSIONER CLARENS: And the next thing that we're going to deal with --

MR. BASTIDA: I was teasing him.

COMMISSIONER CLARENS: My name is now John.

MR. BASTIDA: Clearance. And since you have the expertise out there in the real world that then you massage the language a little.

MS. YOUNG: Madam Chair, I will offer my services, because I did work on this with you to meet with Mr. Colby and perhaps Mr. Lorenzo to work on this language.

CHAIRPERSON KRESS: Yes, she was with us at all the meetings that we were doing. That would be wonderful. Thank you, thank you, thank you.

COMMISSIONER FRANKLIN: Madam Chair, I must

leave here at a quarter of or 10 to 6.

CHAIRPERSON KRESS: Okay, let's go. We're at the next one. I agree with the Office of Planning.

MR. ERONDU: Are you defending this?

COMMISSIONER CLARENS: No, we're going to continue with that.

COMMISSIONER HOOD: So you don't agree with 301127D?

CHAIRPERSON KRESS: I agree with OP which --

MR. COLBY: You could put in language if you wanted to express to urge the applicant to provide, if you wanted to --

CHAIRPERSON KRESS: I actually would like to do that. That's one of the things.

COMMISSIONER HOOD: I wanted to see if they had counsel because a lot of people don't have counsel.

CHAIRPERSON KRESS: See, why not just encourage them? They don't have to.

MR. COLBY: I'm not sure what the language is, but I think you actually have to make that, request that of the applicant each time and when it's somebody who says well, what do you mean, I don't know what a draft order is, I think you then back off of it which is what Mr. Hood is getting at. I think if they can do it, the Commission is better served by having that.

COMMISSIONER CLARENS: I encourage that.

CHAIRPERSON KRESS: I agree. I

think we all agree. The three of us and I don't know about you --

MR. COLBY: I agree.

CHAIRPERSON KRESS: We should not require it at this point certainly, but I see no problem with requesting them. In fact, I've done it before when you've got very active opposition so to me if we can draft something that says yes, if you would.

COMMISSIONER CLARENS: Could you say it may be required -- and leave it to the particular case and the particular words of the BZA or the Zoning Commission and make a judgment? If it is a contested case where both cases are represented by counsel, they may require proposed orders. In the event that there's no counsel representation --

COMMISSIONER FRANKLIN: Counsel would be falling down on their job if they were not ready, willing and able to provide the proposed order.

CHAIRPERSON KRESS: I would just say we spent, I can't tell you how much time we spent going around and around this summer and I was fighting on behalf of us and the community. They kept wanting to put dates, times and more requirements and I kept saying we can't do that yet. Once we get staff, get people hired and be working, then we can come back and reevaluate this. So don't consider this a one time thing. We have no choice. We're going to have to be back. That's how I've convinced people to give us more money and all my testimony, I'm saying we've got to have more money because

we can't do this unless we have more money. We've got it. Now we have got to get the people to spend it and then we're going to have to start being more accountable.

I really think that we shouldn't be going and that's what a lot of these comments are saying. We've already been around and around this about 18 times. I'd rather not head a whole lot of new directions. I'd like to get this one out and then once we're operating come back and do this. So asking them if they would, I don't see any problem with -- I think the effective date is a good point and I do think that we should say that something like we do with building codes that if it's filed and you're in the process then it's your option which regs you go under and otherwise from the date of publication it's four weeks. But I think and I have some words that I will write up a little better, but I believe that's, I think, a reasonable way to look at the effective date.

DCBIA, actually, I'm going to partially, going to publicly drop some of the -- some things of DCBIA. One of the things that I was particularly interested in was allowing the applicant to rely on its written submissions with an opportunity for questions, particularly where it's a noncontested case and go straight to a bench decision, both for Zoning Commission and BZA. I think that's a pretty big leap. That's the second item proposed by DCBIA and that, this you don't have in your package. I'm summarizing for you. I think it's a great idea, but considering what I just said

earlier, let's put this off until next time around.

The one out of the DCBIa that I would like to include is -- I'm trying to rush this because we need to get out of here. It started at 7, it's 17. This is where if prior to the commencement -- let me just read it and let me see what does that show? I've forgotten what Office of Planning -- let me get there.

COMMISSIONER CLARENS: What part --

CHAIRPERSON KRESS: I'm flipping -- I don't think you have this in your package.

COMMISSIONER CLARENS: I know, but --

CHAIRPERSON KRESS: 3,005.10.

COMMISSIONER CLARENS: 3,000.10 is on page 6.

COMMISSIONER FRANKLIN: Oh, this would add flexibility to postpone a hearing without having a need to convene the Commission to do so.

I'm all in favor of that.

(Laughter.)

CHAIRPERSON KRESS: Me too. That's why I didn't want that one to slip by. And it's 3105.14. That applies to BZA and to --

COMMISSIONER CLARENS: And the Zoning Commission.

CHAIRPERSON KRESS: And the Zoning Commission. It's No. 17 in DCBIA's letter. The second part of it, executing an affidavit, I think that's an awful lot of legalistic stuff for not any very good reason. We don't need

to tie ourselves with more legalistic things. I just wanted to see if there was anything else.

I think -- was there anything else, did any of you pick out a few that were -- you thought were specifically things we should do?

COMMISSIONER FRANKLIN: No, they were tightening up and I think things the Commission had already gone through, trying to be very precise about how long every step takes.

CHAIRPERSON KRESS: Which we again, we've been through that. You were with me, David, fighting this stuff all summer and fall. I don't want to go back there.

COMMISSIONER CLARENS: Madam Chairperson, basically, 18 now is complied with verbally and it's on the record.

CHAIRPERSON KRESS: 18 from DCBIA?

COMMISSIONER CLARENS: The affidavit. We're talking about the affidavit.

MR. BASTIDA: At the present time there is no need for it.

CHAIRPERSON KRESS: Yes, well, that's what I'm recommending.

COMMISSIONER CLARENS: Okay, great.

MS. YOUNG: Instead of affidavits, you can just do a notice because you're going to do a notice for the next hearing date anyway.

MR. BASTIDA: No, you do not -- if you do it at a regular constituted meeting, you don't have to do notice

again and they post it at the regular hearing constitutes a notice.

MS. YOUNG: No, but I thought following up on 17, 17 is postponement when it's not at a meeting.

MR. BASTIDA: Then you have to renotice it.

MS. YOUNG: Right.

MR. BASTIDA: Which is a problem, but you have to renotice it.

CHAIRPERSON KRESS: No, not from scratch. That's what we're saying.

MR. BASTIDA: Well --

CHAIRPERSON KRESS: Posting notice in the Office of Zoning in plain view, blah, blah, blah and by appearing in person in the hearing room at a scheduled time, only it doesn't have to be the Zoning Commissioners or the BZA. Basically, that's what we do now and you have the continuation.

MR. BASTIDA: Correct.

CHAIRPERSON KRESS: But I don't -- the whole point is not that we stop it and have to readvertise and start all over. It's that we just, all of us don't have to sit, come to a meeting to sit here and say we're not going to have a meeting.

MR. BASTIDA: That's right, but that is basically, yes, that is not a constituted hearing, but in fact, you're doing it at the hearing date. Basically, it's the same thing.

CHAIRPERSON KRESS: Well, we need to talk to Corp. Counsel. I'm trying to rush things.

COMMISSIONER FRANKLIN: There's sort of a built in irony to all of this and that is the present rules apparently require the Commission to convene to announce that it doesn't have enough people to constitute a forum and therefore they postpone the hearing. And this is a group that is not able to act because it lacks a quorum convening.

CHAIRPERSON KRESS: Or, and it's not just for -- I hear where you're going. And that's why I want some more thinking on this. But it's more than that because we also will meet just because the applicant has said I want a postponement, but you've got the public coming. You have to still convene to keep it going to announce the next meeting. So this one needs more work and I'm sorry I haven't gotten into enough writing on it, but I do think at this point we've taken this long, let's go ahead and get these couple cleaned up and I'd be happy to work with you all. Let's get these couple of things cleaned up and I think we've represented the universe of the issues now. Nothing else can possibly else come up, please and we'll call it done.

COMMISSIONER CLARENS: Madam Chair, if I can just make this suggestion. I didn't feel that the materials that were presented to me and they would need to really intelligently go through this stuff.

CHAIRPERSON KRESS: I'm sorry, I had to go back to all of my stuff.

COMMISSIONER CLARENS: This material is not helpful.

CHAIRPERSON KRESS: I know. I had to go back -- I'm sorry. We're going to be working on things and talking about it this evening if I can convince Mr. Franklin to stay a few minutes.

Okay, let's table this until next month. 88-16C, the consolidated PUD.

COMMISSIONER CLARENS: That's a request for an extension.

CHAIRPERSON KRESS: This is final. We've already approved this. This is the final --

COMMISSIONER CLARENS: And I thought that we had talked about this. I believe this is the hotel that is being changed, that they were going to settle on the 5th of May.

CHAIRPERSON KRESS: Right.

COMMISSIONER CLARENS: And I thought that we had talked about one year. I remember talking about it and saying if --

COMMISSIONER FRANKLIN: I think you're right.

COMMISSIONER CLARENS: They are selling and they are ready to move, why are we extending it two years? Let's extend it for one year. That definitely is enough for them to make their final arrangements or whatever and if they need a modification, wasn't that --

CHAIRPERSON KRESS: I'm not remembering the two or two years. I don't remember extending anything for one

year to be honest.

COMMISSIONER CLARENS: We discussed it. Maybe you weren't here.

CHAIRPERSON KRESS: Yes, I voted on that. I remember that. I just don't remember two years.

COMMISSIONER CLARENS: We talked about it and we said there's no reason for two years.

COMMISSIONER HOOD: I remember you not participating, not voting --

(Laughter.)

COMMISSIONER HOOD: I may be wrong --

(Laughter.)

MR. BASTIDA: Madam Chair, I was here when you stated that. You stated that based on the reason that I said they were trying to do it just to make sure they can come with a modification so I don't know if the other Commissioner accepted that one or it was something that you rationalized that way not to extend it beyond what it was needed.

COMMISSIONER CLARENS: Well, let's first take it -- let's see, no, what I was not here for, Mr. Hood, was for the decision. I was not here on April 12th. I was here for the case.

COMMISSIONER HOOD: For the case.

COMMISSIONER CLARENS: I participated for the request and then we acted on it on the 12th.

CHAIRPERSON KRESS: That's wrong, it's not present, not participating. This is where this is wrong then.

It should say not voting, not present.

COMMISSIONER CLARENS: -- not being present.

COMMISSIONER HOOD: I remember your comments. I was just trying to figure out --

CHAIRPERSON KRESS: Thank you for picking up on that. Thank you.

COMMISSIONER CLARENS: I was present for the presentation, for the hearing in which is was requested.

Well, I don't care, I thought that a year, given their time table was sufficient, but --

CHAIRPERSON KRESS: But you've got to get to the point of filing for the building permit. You've got to do your drawings.

COMMISSIONER FRANKLIN: I think we had this discussion and resolved it with two years, frankly, now that I hear this discussion again.

COMMISSIONER CLARENS: Okay.

COMMISSIONER FRANKLIN: You made your point, we discussed it and thought that realistically speaking they would need two years. And I'm, as you know, not one to grant many extensions.

CHAIRPERSON KRESS: I promise, all of these before I sign them --

COMMISSIONER CLARENS: I didn't vote on it, so I shouldn't be --

CHAIRPERSON KRESS: Yes, you heard the case, yes.

COMMISSIONER CLARENS: I heard the case, but I didn't --

CHAIRPERSON KRESS: It doesn't matter, you can vote now.

COMMISSIONER FRANKLIN: You can vote now.

COMMISSIONER HOOD: What are we making the motion for?

COMMISSIONER CLARENS: To adopt the --

COMMISSIONER HOOD: I make a motion that we adopt the final for 629F.

CHAIRPERSON KRESS: 88-16C.

COMMISSIONER HOOD: Oh, 88-16C.

COMMISSIONER FRANKLIN: Yes, one is the order number and one is the case number.

629F is what it says here.

CHAIRPERSON KRESS: Is there a second?

COMMISSIONER FRANKLIN: I'll second it.

CHAIRPERSON KRESS: Commissioner Franklin seconds. All those in favor signify by saying aye.

(AYES.)

CHAIRPERSON KRESS: Did Commissioner Parsons vote?

MR. ERONDU: Yes. The vote is 5 to 0 for proposed order 629F. Commissioner Hood, Franklin making the motion and seconded, respectively.

Thank you.

CHAIRPERSON KRESS: Thank you. Woodies. This

is basically prepared by Corp. Counsel for us and this is where John Clarens is.

COMMISSIONER CLARENS: John Clarens, a new member of the Commission.

CHAIRPERSON KRESS: A new member of the Commission, John Clarens.

COMMISSIONER FRANKLIN: Madam Chair, I move to adopt the order prepared by Corporation Counsel in Case No. 91-3C.

COMMISSIONER HOOD: Second the motion.

CHAIRPERSON KRESS: Any further discussion? All in favor, signify by saying aye.

(AYES.)

Opposed?

COMMISSIONER FRANKLIN: With the correction of Mr. Clarens' name.

CHAIRPERSON KRESS: Yes, I'm sorry.

MR. BASTIDA: Madam Chairperson, are you skipping item C?

CHAIRPERSON KRESS: I'll come back to that. Let him record the vote. I'm sorry. I realize I did that without asking everyone.

MR. ERONDU: Staff records the vote as 5 to 0 to approve the order, Case No. 91-3C. Motion made Commissioner Franklin, seconded by Commissioner Hood. Then Commissioner Parsons voting by proxy. Thank you.

CHAIRPERSON KRESS: Very good. I did skip C.

I'm sorry this is a case that they were unable, as you all are aware, that he is out for at least a month and there was no way they could put the information together for today. Just practically, it couldn't be done. We're going to work very hard to see about getting this together and its records. I'm sorry, I just wanted to note there was something we were missing.

You promised to help pull the things out for the DD. Who worked on the Millennium? Did anybody?

MR. BASTIDA: Guilty. It is my case. What would you like me to do?

CHAIRPERSON KRESS: Can you help?

MR. BASTIDA: Sure.

CHAIRPERSON KRESS: Evidently, things are very hard to find the way Ken organizes things.

MR. BASTIDA: What do you need?

CHAIRPERSON KRESS: It would be very helpful if -- I know Millennium must be in a rush for this.

MR. BASTIDA: Okay.

COMMISSIONER FRANKLIN: Have they prepared a proposed modification for us?

COMMISSIONER CLARENS: This is a final.

CHAIRPERSON KRESS: This is final. I think what we need to do and I forgot that the lawyers were -- I didn't sit on this. I think what we need to maybe do is to call -- I think it was Walt Sardo, wasn't it?

MR. BASTIDA: Correct.

CHAIRPERSON KRESS: Call him and say please send us a new copy.

MR. BASTIDA: We need the final action. We need the action of the NCPC because it was referred to the NCPC. I need to find that out. I'll take care of it, okay?

CHAIRPERSON KRESS: But basically as I recall from the other side, from just listening, there weren't very many changes, if any, to the --

MR. BASTIDA: I'll double check, Madam Chairperson, just to be sure.

You want it for the next meeting date or do you want it sooner?

CHAIRPERSON KRESS: Millennium is -- to the best I know, they're on a bit --

MR. BASTIDA: Okay, I will work with them and find out and then I will get it to you to see if you can take an action on the 20th.

CHAIRPERSON KRESS: Absolutely, that would be wonderful. The 20th?

MR. BASTIDA: You have a meeting, a hearing date --

MR. COLBY: Is it that date we're also asking you to be in a special --

CHAIRPERSON KRESS: Let me just quick ask something. Did you look at the sua sponte?

MR. COLBY: Yes, I was in favor of the review.

CHAIRPERSON KRESS: Thank you.

MR. COLBY: We could ask you to convene a special meeting of that date and you could handle Millennium if you do that, as part of that meeting.

CHAIRPERSON KRESS: That sounds good.

MR. COLBY: On the 20th.

COMMISSIONER CLARENS: It's a light month and we just want to make sure you do some work.

(Laughter.)

COMMISSIONER HOOD: Madam Chairman, may I just add and put this on the record? I don't mind coming in myself on my day off to help, one person, but I understand the staff is short and people are ill. But it should be a file. I don't know how things are done, but when one person is out we still should be able to continue and I will be willing to volunteer my time and come in and help you organize. To stop for one person and I understand people get sick and everything, but that puts everything else on the back burner. That's just my opinion.

COMMISSIONER CLARENS: I appreciate your opinion. I don't know what the solution is for --

CHAIRPERSON KRESS: Quickly, Item E. Sheri was rating and was not able to get to and that was not under any kind of a crisis and so Item E is off the agenda.

MR. BASTIDA: Madam Chairperson, I think -- isn't that a time extension?

CHAIRPERSON KRESS: Yes.

MR. BASTIDA: It shouldn't have been -- and it's

a consent calendar? Because I never --

CHAIRPERSON KRESS: I don't know --

MR. BASTIDA: I don't recall that being referred to also and us providing a report on that case to the time extension. So why don't I look at it and get back to you.

CHAIRPERSON KRESS: Would you, please? Thank you.

MR. ERONDU: If you didn't get it from my office, you can call and say you didn't get it.

MR. BASTIDA: Okay, I'll look into that.

CHAIRPERSON KRESS: Look into that for me, thank you very, very much.

Okay, I hope you really don't want to do a report from the Office of Planning.

MR. BASTIDA: No, that doesn't bother me, but it's just that I don't recall. If it is that the case I'll prepare the report without the referral for next month.

CHAIRPERSON KRESS: No, no, please. I've already said thank you and I've moved on to the status report.

MR. BASTIDA: I'm sorry.

MR. COLBY: The status report --

(Laughter.)

CHAIRPERSON KRESS: We're getting real expedited now.

MR. COLBY: The status report has for you, to read it, if you like, on page 4, the new language reflecting John Parsons concern about open space and some way of looking

at open space zoning or whatever it takes.

COMMISSIONER CLARENS: This is on the May 1999 status report?

MR. COLBY: Yes. May 3rd, page 4, where we got new language about open space study.

COMMISSIONER CLARENS: I see.

CHAIRPERSON KRESS: Okay, and OP has nothing to do and they're just sitting on their hands.

(Laughter.)

MR. BASTIDA: Excuse me, hold it just a moment, now I am.

(Laughter.)

CHAIRPERSON KRESS: With that we'll move on to correspondence and the last thing on the agenda is the sua sponte review. And I would like to turn that over to Commissioner Clarens.

COMMISSIONER CLARENS: Well, I think the letter and the attached transcript of the case are hopefully self-evident. I was appalled at how that variance, this is a use variance and at no point did the Board establish any uniqueness or exceptional condition which would have been the basis for establishing a hardships. The hardship was not established so I believe that the Commission should look at this and furthermore, as I suggested to the Chairperson, I think the Commission needs to have a meeting with the Board of Zoning Adjustment to review the grounds under which variances are granted. So that's -- I think the letter is self-evident.

I was appalled and I hope you had a chance to read the transcript and Mr. Gilreath, in fact, at one point says something "well, I don't know about uniqueness, but there is a hardship because this is a rundown area and what else are you going to put in there?" And those are not the bases for granting a variance in my view.

CHAIRPERSON KRESS: I agree with you.

COMMISSIONER HOOD: I agree with that. When I reviewed that I came up with my scenario, as opposed to putting a transfer station in an R-1 District, so that's how I was with it. I tried to bring it back to something I can understand, so I concurred, we do need to look back.

CHAIRPERSON KRESS: The process to go forward now is and it was clarified, we were somewhat, we do so few sua sponte reviews, we were somewhat confused.

The way this goes forward is we have 10 days to do the review. Subsequent to the publication of the decision so we have to wait until there's a decision and then we have to quick make --

COMMISSIONER CLARENS: Is that how it was --

MR. ERONDU: That's what I was asking. The decision has not been written.

CHAIRPERSON KRESS: And we've got to do it in 10 days from the day the decision is written. So you let us know, give us warning before you turn this out so we can quick schedule our officials to do a sua sponte review.

COMMISSIONER CLARENS: Also, we need to schedule

a special meeting of this Commission within 10 days from the time that the order is published or we have to make sure that the order is published within 10 days or the next meeting.

CHAIRPERSON KRESS: Yes, sorry.

COMMISSIONER HOOD: My next question is do we -- are we rehearing the case? How does that work?

CHAIRPERSON KRESS: We have to decide what we want to do. Typically, and again in my six or seven years, I've only done it once. Basically, what we did and I'll ask Vincent for any information, but what we basically did is read the record and then discuss it. I would like to ask both Alberto and Vincent to comment.

COMMISSIONER CLARENS: I believe the regulations required the Commission before this sua sponte review which is the discussion you are talking about to receive written comments from all parties and from the Board. So the Board of Zoning Adjustment may respond, but we need to advise and this is what I'm not clear. I read what is on the regulations and we need to advise the parties that we are going to review the decision and then they have an opportunity to respond in writing. There is not a hearing. We don't get people talking to us, we don't rehear the case. We look at the record and base our decision on the record, but we can receive additional written information. I believe so. I think it is in the regulations. I don't have it in front of me.

CHAIRPERSON KRESS: I know you studied those, so I'm going to --

MS. YOUNG: If you're not reviewing it from the beginning, you're only reviewing the record, then what you would receive would be perhaps like opinion as to how they were interpreting or what they were looking at. Because if you get certain other things, you basically open the record and you're taking additional evidence so you have to be careful what it is that they're giving you.

COMMISSIONER CLARENS: Where in the regulation? I'll tell you in a minute, if I can get the regulation.

CHAIRPERSON KRESS: Has anybody here done a sua sponte?

MR. BASTIDA: Commissioner Clarens, I want to add here, we have, since I've been here, I happen to know the staff person who works on the sua sponte, so I can look into it and --

COMMISSIONER CLARENS: I think it's right here. It's 3103. It says the Commission's determination to review an order or decision of the Board shall be transmitted. First of all, it says here with 10 day period. It doesn't say anything about the -- it says "no decision or order of the Board shall take effect until 10 days after having become final pursuant to supplemental rules of practice and procedures before the Board of Zoning Adjustment." Within 10 days, a 10 day period set forth, the Zoning Commission -- it doesn't say from where. You said that the interpretation is that it is from the final order. Determine the review, any order, decision of the Board. I guess that that makes sense,

that it is that. The Commission through a decision to review an order, the decision of the Board shall be transmitted forthwith to the Director of Office of Zoning who shall forward to the Zoning Commission the record in the case with notice to all parties before the Board. Before the Board. Upon receipt of the record the Zoning Commission shall review the case and take action as it deems appropriate, provided the Zoning Commission shall not reverse or modify an order, the decision of the order without affording the parties before the Board an opportunity and before the Board -- it's not the Board, so we are not dealing with how they make the decision. That is in the record. An opportunity to present memoranda to the Commission in support or in opposition to the action of the Board.

MS. YOUNG: Right, but that's not additional evidence. That's just like a brief.

COMMISSIONER CLARENS: A brief.

MS. YOUNG: A brief.

COMMISSIONER CLARENS: And the only party on this case is the Applicant.

CHAIRPERSON KRESS: Well, at least thank God for that.

COMMISSIONER CLARENS: Right.

MR. BASTIDA: And the ANC.

COMMISSIONER CLARENS: The ANC didn't participate.

MR. BASTIDA: Okay, thank you, that's fine.

COMMISSIONER CLARENS: Well, the ANC might have voted in favor.

MR. BASTIDA: Right. So you have to notify them.

COMMISSIONER CLARENS: And they might then send memoranda to the Commission so the Board, in fact, does not participate.

MS. YOUNG: Right.

COMMISSIONER CLARENS: Then the Zoning Commission will go to firm and publication, blah, blah, blah, etcetera, etcetera.

So in any case, so we wait for the order to be issued. Then it has to be issued within 10 days of a meeting of this Commission.

CHAIRPERSON KRESS: I need your interpretation here. Do we have to make this whole decision? Because we have got to get all this information. If we get the order --

COMMISSIONER CLARENS: No, we are making the decision that you are going to do the sua sponte.

CHAIRPERSON KRESS: Do the sua sponte.

MS. YOUNG: All you're doing is telling them within 10 days that you are going to review that decision.

CHAIRPERSON KRESS: Okay, but we don't have to have it done in 10 days. We've got to get all this information and review it.

MS. YOUNG: You've got to get the record anyway.

CHAIRPERSON KRESS: I know, but I meant -- my

question is do we have to have a decision other than we're doing the sua sponte.

MS. YOUNG: The only thing you must do in that first 10 days decide to review and advise them that you are going to review.

CHAIRPERSON KRESS: Good.

COMMISSIONER CLARENS: But we cannot do that until the order is written.

MS. YOUNG: Final order.

COMMISSIONER CLARENS: Notice of the order shall take effect until 10 days after having become -- no decision or order shall become final --

MS. YOUNG: No, no, no, no, no, no, no, no. You can tell them now because -- no, no, no. Okay.

COMMISSIONER CLARENS: No decision or order of the Board shall take effect --

MS. YOUNG: Their order comes out. It takes 10 days for it to become final.

MR. BASTIDA: After published in the Register.

MS. YOUNG: Whatever it is that they do.

MR. BASTIDA: Okay, fine.

COMMISSIONER CLARENS: Those are the supplemental rules. That's right.

MS. YOUNG: In that 10 days from the date that the order comes out is when you have to tell them that you plan to review the order sua sponte.

CHAIRPERSON KRESS: But we can take 30 days to

do it.

COMMISSIONER CLARENS: Two months.

MS. YOUNG: You can take as long as you want --

CHAIRPERSON KRESS: That's the important thing.

MS. YOUNG: But you must tell them that you're reviewing it within 10 days.

CHAIRPERSON KRESS: That's fine. And then you can help us write so that we don't get all kinds of extraneous information, you can help us draft what we send to the various parties and what we're looking for in information if they want to submit anything.

MS. YOUNG: Well, you don't want them to submit additional evidence.

CHAIRPERSON KRESS: No, no --

MS. YOUNG: What you want them to --

CHAIRPERSON KRESS: But he's reading they have a right to --

MS. YOUNG: Right, right, they do. What they need to tel you is why they believe that the record before the Board supports the decision the Board made. Why they believe they've established their case is what you're looking for. You can decide well, okay, they did or they didn't.

MR. BASTIDA: What happen is they tried to then add information in that submission as the Commission accepts it.

COMMISSIONER CLARENS: And in my reading of this, that's perfectly correct because it says the opportunity

to present Miranda to the Commission in support or in opposition of the action of the Board which might include, let's say that this gentleman comes back with a memoranda and he, in fact -- he never presented it. The case was not made, at least in my opinion it wasn't made. He comes back and he shows that, in fact, there's some uniqueness, in fact, there's hardship. He can't.

MS. YOUNG: He can't. What he would have to do at that point in time is if you feel that there is --

CHAIRPERSON KRESS: As you to reopen the record.

MS. YOUNG: Remand it with them to take --

COMMISSIONER CLARENS: Ah, remand it to the Board to take that information.

MS. YOUNG: For them to take more evidence, right.

COMMISSIONER CLARENS: I see.

MS. YOUNG: You can't -- you just have to look at what the record is and then their interpretation of what that record was supposed to be --

COMMISSIONER CLARENS: I'm fine. I'm clear on that.

MR. BASTIDA: That means that somebody has to instruct Paul to make sure that the order is not published prior, within 10 days window, prior to a meeting.

CHAIRPERSON KRESS: Can't we vote now? Why do we have to wait? We took a vote today.

COMMISSIONER CLARENS: Why don't we take a vote

today.

CHAIRPERSON KRESS: When it gets to us, we're going to --

MS. YOUNG: The only thing is is because you need a piece of paper to act upon, so they made -- I read that transcript. And they sort of like said as far as we're concerned. They took a vote, but they didn't put out a written order. Nothing is final for the most part if you just say it, is it?

CHAIRPERSON KRESS: No, it's not final until it's done and published in the Register.

MS. YOUNG: Until it's written down.

COMMISSIONER CLARENS: It's final, but the Board has made a decision.

MS. YOUNG: No, I understand that, but what I'm saying is and I don't know if off the top of my head if the rules allow them to reconsider what they're doing.

COMMISSIONER CLARENS: They could reconsider if there is a request for reconsideration.

MS. YOUNG: So they can't do it on their own, okay.

COMMISSIONER CLARENS: They cannot do it on their own.

MR. BASTIDA: But that's what the sua sponte does from the Commission is --

MS. YOUNG: We're talking about the Board --

MR. BASTIDA: Right.

MS. YOUNG: So they have their decision which they made at the end of the hearing on the record, but they haven't produced the written decision.

It seems that there is nothing for you to act upon until they get their piece of paper out there. I'll check with that but I think there's nothing for you to act upon until you get the piece of paper.

MR. BASTIDA: But will it be legally possible to say that the Zoning Commission is intending to review these and that tell the staff to provide that order and publish it 10 days prior to --

MS. YOUNG: You can say that the Zoning Commission has received a request for it to review this decision and therefore it needs to be notified.

MR. BASTIDA: There you go.

CHAIRPERSON KRESS: I've got it.

COMMISSIONER CLARENS: So that will be a memo from you to -- instructions now to Vincent.

MR. BASTIDA: No, it's to Paul.

COMMISSIONER CLARENS: Or to Paul.

MR. BASTIDA: Paul is the one that supposedly has the obligation to prepare that order. That isn't the one there. Sorry.

COMMISSIONER HOOD: Paul is Acting Secretary?

COMMISSIONER CLARENS: No, Paul is the case manager.

CHAIRPERSON KRESS: Case manager of BZA.

CHAIRPERSON KRESS: The meeting is hereby adjourned.

(Whereupon, at 6:08 p.m., the meeting was concluded.)