

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC MEETING

+ + + + +

MONDAY

DECEMBER 14, 2009

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman  
WILLIAM W. KEATING, III, Vice Chairman  
KONRAD SCHLATER, Commissioner  
PETER MAY, Commissioner (NPS)  
MICHAEL G. TURNBULL, FAIA, Commissioner  
(AOC)

OFFICE OF ZONING STAFF PRESENT:

JAMISON WEINBAUM, Director of the Office  
of Zoning  
SHARON S. SCHELLIN, Secretary  
DONNA HANOUSEK, Zoning Specialist

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Board of Zoning Adjustment  
District of Columbia  
CASE NO. Transcript  
EXHIBIT NO. null

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER  
JOEL LAWSON  
STEVE COCHRAN  
ARLOVA JACKSON  
MATT JESICK

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

The transcript constitutes the minutes from the Public Meeting held on December 14, 2009.

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P R O C E E D I N G S

6:37 P.M.

1  
2  
3 CHAIRMAN HOOD: This meeting will  
4 please come to order. Good evening, ladies  
5 and gentlemen. This is the December 14, 2009  
6 Public Meeting of the Zoning Commission of the  
7 District of Columbia.

8 My name is Anthony Hood. Joining  
9 me are Vice Chairman Keating, Commissioner  
10 Schlater, Commissioner May, Commissioner  
11 Turnbull. We're also joined by Office of  
12 Zoning staff, our Director and his staff, and  
13 also Office of Planning staff.

14 Copies of today's meeting agenda  
15 are available to you and are located in the  
16 bin near the door.

17 We do not take any public testimony  
18 at these meetings. We are also being recorded  
19 webcast live. Accordingly, we must ask you to  
20 refrain from any disruptive noise or actions  
21 in the hearing room. Please turn off all  
22 beepers and cell phones.

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1 Does the staff have any preliminary  
2 matters?

3 MS. SCHELLIN: No, sir.

4 CHAIRMAN HOOD: What I would like  
5 to do is move the agenda around. I would ask  
6 that we do final action -- no, I'm sorry. The  
7 consent calendar item first, no, no. Let me  
8 back up.

9 Consent calendar item first, the  
10 final action second, hearing action third, and  
11 proposed action fourth. Again, consent  
12 calendar item first, the final action second,  
13 hearing action third, and proposed action  
14 fourth.

15 Let move right into our -- Ms.  
16 Schellin. Did I call for preliminary matters?

17 MS. SCHELLIN: No, you did not, but  
18 we didn't have any.

19 CHAIRMAN HOOD: Don't have any.  
20 Okay, good. Thank you.

21 Consent calendars items on the  
22 Commission, Case No. 05-36C. This is Union

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1 Place I, LLC, Modification of PUD at 200 K  
2 Street, N.E.

3 Ms. Schellin?

4 MS. SCHELLIN: Staff has nothing  
5 further to add to this other than to advise  
6 that we do have a report from the Office of  
7 Planning and I believe Mr. Cochran provided  
8 that report.

9 CHAIRMAN HOOD: Okay. I'm going to  
10 take this out of the scope. I'm going to ask  
11 Mr. Cochran if he could just surmise a little  
12 bit of what's being asked. There were some  
13 different reports. One was a -- one  
14 superseded or came right behind the other one.

15 If you can just kind of give us where we are.

16 It looks like a lot of people are on the same  
17 page with the language and how it's being  
18 represented. If you could kind of give us a  
19 little small detailed insight on your last  
20 report?

21 MR. COCHRAN: Sure. And I ask for  
22 OAG's concurrence on this, but I believe that

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1 you had some slightly different language  
2 submitted to you this evening by OAG than was  
3 even in the OP report.

4 So I just wanted to be sure that  
5 you know that revisions that OAG made to the  
6 language were simply clarifications and OP  
7 continues to view this as a minor modification  
8 that it supports.

9 The order that was passed in 2006  
10 limited the pricing to something that would be  
11 affordable to a family earning 30 percent of  
12 the Area Median Income of 80 percent. By  
13 tying it to the unit, the housing --  
14 effectively, it limited the availability of  
15 the affordable housing to households earning  
16 only at 80 percent.

17 A piece of the flexibility that the  
18 applicant is asking for would tie that 30  
19 percent limit to the household which actually  
20 makes it possible for households earning less  
21 than 80 percent of the AMI to be considered as  
22 part of the project. In effect, if the

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1 language that had been in there earlier stayed  
2 in, we would have as much of a possible  
3 variety in the types of households that would  
4 be living in the unit.

5           The other change has to do with  
6 how you measure the household income. The  
7 applicant has entered into an agreement with  
8 the Cultural Development Corporation, an  
9 unusual and progressive arrangement, that  
10 would target as many as possible of the  
11 affordable units to working artists. Any of  
12 us familiar with arts know that an artist  
13 can't predict an income unless they're Jackson  
14 Pollack or something. So this gives some  
15 variety to having an artist have a bad year on  
16 selling things one year and a really good year  
17 on selling things the other year. So this  
18 lets the income be averaged over those two  
19 years at no more than the maximum they would  
20 be able to spend of their income to afford the  
21 unit would be 38 percent of their income as  
22 opposed to 30 percent of their income. So

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1 this, I think, pretty much covers why the  
2 applicant is looking to get this minor  
3 modification.

4 CHAIRMAN HOOD: Thank you, Mr.  
5 Cochran. I think, Commissioners, if we look  
6 at the report, the OP report, which is Exhibit  
7 10, I think Mr. Cochran does a thorough job of  
8 laying that out, what the issue is and what  
9 highlights for me is that OP recommends  
10 clarification and simplifying the ACD's  
11 process and by employing the same housing cost  
12 determination methods as used in the  
13 inclusionary zoning program.

14 So let me open it up. Any  
15 questions? Any questions on this minor  
16 modification request? Any comments? Okay,  
17 with that I would move approval of the minor  
18 modification of Case No. 05-36C and ask for a  
19 second.

20 COMMISSIONER TURNBULL: Second.

21 CHAIRMAN HOOD: Moved and properly  
22 seconded. Any further discussion? Further

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1 discussion? All in favor, aye?

2 (Chorus of ayes.)

3 Not hearing any opposition, Ms.  
4 Schellin, will you please record the vote?

5 MS. SCHELLIN: Yes, staff records  
6 the vote 5 to 0 to 0 to approve final action  
7 in Zoning Commission Case No. 05-36C.  
8 Commissioner Hood moving, Commissioner  
9 Turnbull seconding, Commissioners Keating,  
10 May, and Schlater in support.

11 CHAIRMAN HOOD: Okay, next let's go  
12 to final action. Zoning Commission Case No.  
13 03-30B, Square 643 Associations, Three-Year  
14 PUD Time Extension at 734 1st Street, S.W.

15 Ms. Schellin?

16 MS. SCHELLIN: Yes, sir. This case  
17 was last before the Commission in October and  
18 it was deferred for action until December.  
19 And there were a couple of additional filings  
20 since then, some that the Commission received  
21 this evening from the applicant and also  
22 there's an additional filing from the ANC in

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1 support.

2 CHAIRMAN HOOD: Let's look at some  
3 of the issues we had previously. I know there  
4 was some concern about the -- I think it was  
5 referred to as the Rolodex and for some  
6 reason, I don't know what it is, maybe -- I  
7 know we don't take testimony from the  
8 applicant, but it seems like we've got another  
9 Rolodex. I don't know if this is the same  
10 one. Well, maybe this is a cleaner one. I'm  
11 not sure what the issue is.

12 Also, we had some submissions  
13 tonight which I believe are Exhibit 18 which  
14 came into today. Let's just take a moment and  
15 look at it again. This is -- we had some  
16 concerns about the validating of the time  
17 extension.

18 This kind of puts it -- we're going  
19 to take our time. This kind of puts us at a  
20 disadvantage when we get a night off.

21 Can everybody hear me now? Most  
22 people don't want to hear me. So -- okay.

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1 (Pause.)

2 MS. SCHELLIN: Chairman Hood, if I  
3 could just also interrupt? There was a  
4 letter, an additional letter from the ANC that  
5 requested -- brought up a request to add a  
6 condition that is separate from the issue at  
7 hand. This is a request for a time extension  
8 and they were conditioning their support on  
9 the clean up, litter clean up. And I think  
10 this goes back to condition or an amenity that  
11 was offered in the original order and so if  
12 the Commission could also address that, maybe  
13 this is something that we could -- if the  
14 Commission would like, defer this, maybe put  
15 this on our consent calendar for a later day,  
16 if the Commission so desires.

17 CHAIRMAN HOOD: Ms. Schellin, is  
18 this ANC-6B, Exhibit 17?

19 MS. SCHELLIN: It looks like maybe  
20 16. Letter dated December 8, 2009.

21 CHAIRMAN HOOD: Okay, we also have  
22 another one, December 11, 2009.

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1 MS. SCHELLIN: Yes, they submitted  
2 a couple of letters.

3 (Pause.)

4 CHAIRMAN HOOD: I think this letter  
5 I'm looking at, colleagues, you all can help  
6 me, is Exhibit 17. The one I'm looking at it  
7 basically just reinforced their support for  
8 the time extension. Ms. Schellin is referring  
9 to another letter from the same ANC which I  
10 thought I saw earlier. Okay. I've got it.

11 Okay, Exhibit 16, Ms. Schellin,  
12 which is December 8th and I want to thank Vice  
13 Chairman Keating. It says "at a regularly  
14 called and properly noticed meeting for  
15 November 9, 2009 with a quorum present, ANC-6B  
16 voted unanimously to support the applicant's  
17 request as presented on condition the  
18 applicant commit to monthly litter cleanup of  
19 the Randall Park ballfield, starting on the  
20 date the applicant applies for the building  
21 permit on Square 643. We thank you in advance  
22 for taking our recommendations into

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1 consideration."

2 I would take the recommendation  
3 upon staff that we deal with this on a consent  
4 calendar item on a date specified and that we  
5 just deal with the time extension in front of  
6 us tonight.

7 MS. SCHELLIN: Staff will add that  
8 to the January 11th meeting agenda, if that's  
9 okay.

10 CHAIRMAN HOOD: Any comments,  
11 colleagues, on the time extension? We have  
12 Exhibit 17 which reaffirms the support and we  
13 have submittals, Exhibit 18 from Woodmont AJ  
14 Street Company in response to some of the  
15 issues that we had previously.

16 COMMISSIONER SCHLATER: Mr.  
17 Chairman?

18 CHAIRMAN HOOD: Commissioner  
19 Schlater.

20 COMMISSIONER SCHLATER: A couple of  
21 things. This is just a point of  
22 clarification. This is an application for a

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1 three-year time extension. I'd say just first  
2 off, I think we as a Commission have been  
3 pretty consistent in resisting time extensions  
4 beyond the two years, so I guess I would  
5 stay firm in that position. If we are to  
6 grant a time extension this time around. The  
7 file has certainly been beefed up  
8 significantly since the first submission for  
9 the time extension. We've got a lot of  
10 information here.

11 I think the most compelling  
12 information we've got in the file is probably  
13 from the ANC Commission who said the applicant  
14 has been a good partner and they are in full  
15 support of pushing the time extension forward.

16 I think my initial concerns of this project  
17 being seemingly dead in the water and just  
18 being up for sale, I guess they still hold. I  
19 haven't seen anything that has really shown me  
20 otherwise. With that being said, with the ANC  
21 Commission in support of the extension, and  
22 all the other information that has been

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1 provided, I think I've been swayed that I  
2 could support a two-year extension.

3 With that on the record, I would  
4 also say the next time it comes around, and I  
5 will be on the Commission the next time it  
6 comes around, I do have concerns that some of  
7 these things stay on the shelf, these PUDs  
8 stay on the shelf too long and when then it  
9 comes around for its third extension, I might  
10 have more serious doubts and questions.

11 CHAIRMAN HOOD: Any other comments?

12 Commissioner Turnbull, not to put you on the  
13 spot, but I think you've raised some issues.

14 COMMISSIONER TURNBULL: I'm not  
15 going to go down that road. If somebody wants  
16 more of my thoughts, I still hold on what we  
17 got before, even this time, but I think I  
18 would concur with Commissioner Schlater on his  
19 point of view.

20 CHAIRMAN HOOD: Okay, anybody else?

21 All right, would someone like to make a  
22 motion? And I will tell you, I endorse

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1 Commissioner Schlater's term as far as two  
2 years. I think we've been pretty consistent  
3 and I think we need to hold to that.

4 COMMISSIONER SCHLATER: I move that  
5 we vote to approve Zoning Commission Case 03-  
6 30B, Square 643 Associates for a two-year time  
7 extension.

8 CHAIRMAN HOOD: So moved. Can I  
9 get a second?

10 COMMISSIONER MAY: Second.

11 CHAIRMAN HOOD: Moved and properly  
12 seconded. Any further discussion? All those  
13 in favor, aye.

14 (Chorus of ayes.)

15 Ms. Schellin, not hearing any  
16 opposition, could you please record the vote?

17 MS. SCHELLIN: Yes, staff records  
18 the vote 5 to 0 to 0 to approve a two-year  
19 time extension in Zoning Commission Case 03-  
20 30B. Commissioner Schlater moving;  
21 Commissioner May seconding; Commissioners  
22 Hood, Keating, and Turnbull in support.

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1 CHAIRMAN HOOD: Okay. Next final  
2 action. Zoning Commission Case No. 08-24.  
3 This is the Abdo Development and Catholic  
4 University, Consolidated PUD and Related Map  
5 Amendment at Squares 3654 to 3657 and 3831.

6 Ms. Schellin?

7 MS. SCHELLIN: Yes, sir. In this  
8 case we have received an NCPC report and they  
9 have no issues with this case.

10 CHAIRMAN HOOD: Thank you, Ms.  
11 Schellin. What exhibit is that?

12 MS. SCHELLIN: Excuse me, that was  
13 Exhibit 72.

14 CHAIRMAN HOOD: Okay, 72.  
15 Colleagues, are receiving the NCPC report. As  
16 Ms. Schellin has already stated, they had no  
17 impacts to federal interest.

18 MS. SCHELLIN: And actually, if I  
19 may, at Exhibit 71, the applicant did submit  
20 one final set of plans, rather than having  
21 bits and pieces of plans so that in the  
22 permitting phase it makes it easier to just

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1 have one set to submit per the order, rather  
2 than exhibits, multiple exhibits when they go  
3 through the permitting process, something they  
4 had asked the Commission permission to do so.

5 So they have done that. If the Commission  
6 would accept that also at Exhibit 71. You can  
7 do that by consensus, please.

8 CHAIRMAN HOOD: So what do we need  
9 to do? We need to approve what we have in  
10 Exhibit 71?

11 MS. SCHELLIN: Yes, if you would  
12 just accept those, because it came in after --  
13 it's something they had asked for leave to do.

14 CHAIRMAN HOOD: So we left the  
15 record open initially.

16 MS. SCHELLIN: To do that. Yes, I  
17 just wanted to bring that to your attention.

18 CHAIRMAN HOOD: Okay. I guess what  
19 we'll do, Commissioners, is any comments on  
20 what we have in front of us, the final order  
21 or Exhibit 71 or any of the submissions that  
22 came in as we asked for? I'll open it up.

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1 And this is 08-24.

2 Commissioner Schlater?

3 COMMISSIONER SCHLATER: Mr.  
4 Chairman, just a couple of questions on the  
5 drafting of the order. I think the proposed  
6 action, I think we all said we supported the  
7 project and supported the proffers and  
8 amenities that were put forward, but we wanted  
9 to see the order cleaned up a little bit.

10 So I have questions on three items  
11 and maybe I can ask them of the Office of the  
12 Attorney General.

13 The first one was a commitment by  
14 the applicant to provide affordable art space,  
15 studios, I think on their Arts Walk. And we  
16 were going to try and wrestle that one and try  
17 to figure out what that meant for it to be  
18 affordable studio space. From what I'm  
19 reading it just means whatever the market will  
20 bear for studio space and I just want to make  
21 sure that's the correct reading of it.

22 And maybe OP is aware of the issue

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1 as well.

2 CHAIRMAN HOOD: I'll tell you what

3 --

4 MR. BERGSTEIN: Are you referring  
5 to condition nine? Maybe you can point me to  
6 -- this is actually Mr. Ritting's case and  
7 he's not able to be here.

8 COMMISSIONER SCHLATER: Condition  
9 16, I believe. It says "the applicant shall  
10 provide artists' studio spaces in Block C at  
11 lease rates below the average rent for all  
12 retail on subject property for the life of the  
13 improvements on Block C."

14 I assume artists can't afford  
15 market retail rent.

16 MR. BERGSTEIN: This is one of  
17 those issues of proffers and how much you can  
18 get. The proffer is this one went through  
19 what we're calling the best and final offer  
20 process. This is the commitment that the  
21 applicant has agreed to and so the extent to  
22 which the lease rates are below the average is

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1 not specified. It's just that they are below  
2 the average and so as long as they satisfy  
3 that then they meet the proffer. If the  
4 proffer is so vague as to be unacceptable,  
5 then you should consider it to be a benefit,  
6 but the proffer is what the proffer is, I  
7 guess.

8 COMMISSIONER SCHLATER: I guess  
9 what I'm confused about is in the hearing we  
10 had, the applicant actually stated that the  
11 rates would be something like discounted at 50  
12 percent. I remember that specifically.

13 MR. BERGSTEIN: Again, that's why  
14 this process is -- what you're seeing here is  
15 what the applicant has indicated during the  
16 process of determining what its real proffers  
17 are. And the fact that they may have and  
18 wasn't there at the hearing, but let's assume  
19 they did. An applicant does have a right to  
20 withdraw a proffer or modify a proffer and the  
21 point of this process is to figure out at the  
22 end of the day, today, what the proffer is.

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1           So to the extent that you may have  
2 believed that the applicant made a more  
3 detailed proffer or to the extent the  
4 applicant did, in fact, make a more detailed  
5 proffer, the fact is that what you're seeing  
6 here on 16 is the proffer.

7           CHAIRMAN HOOD:    Okay, can we do,  
8 Commissioner Schlater, I think we have one or  
9 two more --

10           COMMISSIONER SCHLATER:  I just have  
11 one more and it's just a clarification.  I'm  
12 not sure if it was borne out on the record and  
13 I just wanted to make it clear that it was.  
14 It has to do with the affordable townhouses.  
15 I saw a change in the order saying that the  
16 affordable townhouses would be 14-foot wide  
17 townhomes as opposed -- I don't even remember  
18 how many 14-foot wide townhomes there were,  
19 but that's where they would be located and I  
20 just wanted to get clarification on that.

21           MR. JESSICK:  Good evening, members  
22 of the Commission.  My name is Matt Jessick.

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1 We did look at that issue. Our housing  
2 planner felt that the size of the unit was not  
3 necessarily the most important issue, but that  
4 they be distributed geographically so to speak  
5 throughout the townhouse section of the  
6 development. So we did work with the  
7 applicant on that issue. The townhouses will  
8 be distributed, but size of the unit for an  
9 affordable unit, does not necessarily have to  
10 be same exact size.

11 COMMISSIONER SCHLATER: Mr.  
12 Jessick, I don't really have a problem with  
13 affordable units maybe being smaller. I guess  
14 my concern would be is if all of the -- all  
15 14-foot wide units are affordable. That would  
16 be my concern.

17 MR. JESSICK: There will be three  
18 affordable row houses and those three will be  
19 14-foot wide. There will be other 14-foot  
20 wide row houses that will be market rate.

21 COMMISSIONER SCHLATER: That  
22 addresses my concern.

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1 CHAIRMAN HOOD: Any other issues,  
2 Commissioners?

3 Commissioner Schlater mentioned  
4 about condition 16.

5 Commissioner Schlater, I'm trying  
6 to get -- and my other colleagues have me  
7 uneasy about -- the Commission has pointed  
8 out, "the applicant shall provide the artists'  
9 studios places in Block C at lease rates below  
10 that" -- "at lease rates below the average  
11 rent for all retail of the subject property  
12 for the life of the improvements of Block C."

13 I think Commissioner Schlater --  
14 and I don't recall it, but I think you're  
15 saying at the hearing, I think they said 50  
16 percent. Is that what they said or something  
17 to that effect? And right here, it could be  
18 five percent. So I think what you're asking  
19 for and what we probably need to ascertain is  
20 some type of percentage or something a little  
21 more -- something that will specify a little  
22 more that what we have here in this condition.

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1                   Does everybody -- because what we  
2 basically do is hold it up and ask them to  
3 come back with something on Condition 16. I'm  
4 prepared to do that unless someone else has  
5 the issue. I see a lot of caucusing going on  
6 to my left. Maybe they will have an answer  
7 for us.

8                   MR. BERGSTEIN: I don't think we  
9 heard the question. I'm sorry.

10                  CHAIRMAN HOOD: I just saw a light  
11 going on. I thought maybe you all were able  
12 to respond to 16, because actually what we are  
13 thinking about doing, Mr. Bergstein, is to let  
14 the applicant come back with more specificity  
15 on Condition 16 which will handle Commissioner  
16 Schlater's issue.

17                  MR. BERGSTEIN: Well, you can ask  
18 them to do that. But they could also say that  
19 from their point of view, it's specific  
20 enough. I just want to point that out that we  
21 went through this process of -- and it was  
22 confirmed by applicant's counsel that the

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1 proffer is a proffer. And so you can go  
2 through an exercise of saying I asked for  
3 more, but ultimately, they can say we think  
4 it's firm enough for the purposes of the  
5 proffer that it would be up to you for you to  
6 judge the value of the amenity based upon the  
7 firmness of it. But you could certainly ask  
8 for it, if you care to.

9 MS. SCHELLIN: And also, as far as  
10 the 50 percent per Mr. Thomas, at the hearing  
11 he said that was an example. That was a  
12 given. As Mr. Bergstein just stated, the  
13 proffer that's listed in the -- or the  
14 condition that's listed in the order is the  
15 condition that they're offering and the  
16 example of the 50 percent was what was stated  
17 at the hearing. That was an example. That  
18 was given, yes. So it could be.

19 COMMISSIONER SCHLATER: It could  
20 be, but it may not.

21 MS. SCHELLIN: It could be, but it  
22 may not.

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1                   COMMISSIONER SCHLATER: It could be  
2                   75 or it could be 99.

3                   MR. BERGSTEIN: That's exactly  
4                   right.

5                   COMMISSIONER SCHLATER: I guess on  
6                   this point, I can understand how it might be  
7                   difficult to say what 50 percent of market  
8                   rate rent is. It's kind of a weird and  
9                   cumbersome requirement. On the other hand,  
10                  we've got affordable housing. We know how to  
11                  quantify that. We don't so much have a good  
12                  grasp on how to delineate what is affordable  
13                  artists' rental space and I think it would be  
14                  nice to come up with a standard like that.  
15                  Otherwise, I don't know. That space could be  
16                  rented out.

17                  MR. BERGSTEIN: Again, the choice  
18                  is to either say the proffer is so vague as to  
19                  be meaningless, and therefore you don't  
20                  consider it in judging and balancing the  
21                  public benefits against the zoning flexibility  
22                  that's being offered. Or you could ask the

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1 applicant to say basically we don't think this  
2 is sufficient enough. We won't count it as a  
3 public benefit, unless you come back and give  
4 us an actual range so we can understand that  
5 it won't be 99 percent. It will at least be  
6 80 percent.

7 So you can say it in those terms.

8 COMMISSIONER TURNBULL: Mr. Chair,  
9 we just had a discussion with Mr. Cochran  
10 about how artists one year may do well and the  
11 next year won't do well and I think Mr.  
12 Schlater has brought up a good point. I think  
13 we need further clarification. I think it  
14 needs to be -- we're talking about trying to  
15 get affordable space for artists and we need  
16 to know where it's going to go.

17 CHAIRMAN HOOD: Anybody else?  
18 Commissioner May?

19 COMMISSIONER MAY: I think it's a  
20 valid point. It's a very soft condition. It  
21 doesn't really say very much.

22 I think if it's going to be in

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1 there, it ought to be fairly specific.

2 CHAIRMAN HOOD: So what we -- I'm  
3 sorry, Vice Chair?

4 VICE CHAIRMAN KEATING: I have to  
5 concur with that. I think specifically since  
6 they gave us an example of what it could be  
7 which stuck in my head as well, I think we  
8 ought to understand what it will be. So  
9 asking for clarification in this case I think  
10 is reasonable.

11 CHAIRMAN HOOD: Okay, well, what I  
12 propose is we hold off on this and ask the  
13 applicant to go through, as Mr. Bergstein  
14 says, an exercise and I will tell you, we may  
15 come back and this proffer may not even be  
16 here. So I don't know what to expect, but I  
17 think what we'll do is we'll ask the applicant  
18 to go through the exercise, tighten up 16 and  
19 give us more specificity, try to narrow it  
20 down as best as possible and we'll look for  
21 that and that's the only thing that we will  
22 consider. I guess our next public meeting is

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1 -- or can we do this sooner? Do we have  
2 anything coming up, Ms. Schellin, or can we do  
3 it sooner?

4 MS. SCHELLIN: If the Commission  
5 would be inclined to do so, we could have a  
6 special public meeting next Monday at 6:15.

7 CHAIRMAN HOOD: Okay. Will the  
8 applicant be ready?

9 MS. SCHELLIN: Yes, I sure they  
10 will because if I'm not mistaken, timing is --  
11 they have some timing issues that they need to  
12 try to get through before the end of the year,  
13 so they're really running into some timing  
14 issues.

15 CHAIRMAN HOOD: Okay, well, we'll  
16 put this off just for the specificity of  
17 Condition 16. I think the applicant has heard  
18 the discussion up here. So we'll put this off  
19 until next Monday --

20 MS. SCHELLIN: Next Monday at 6:15.  
21 Special Public Meeting.

22 CHAIRMAN HOOD: And that's all

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1 we're asking for, not anything else.

2 MS. SCHELLIN: Yes, I'm sure they  
3 can do that. We'll work on a schedule by the  
4 end of the week.

5 MR. BERGSTEIN: Ms. Schellin, do  
6 you want to establish a date for them to  
7 submit by?

8 MS. SCHELLIN: Wednesday. That  
9 works.

10 (Pause.)

11 CHAIRMAN HOOD: Okay, let's move  
12 into Zoning Commission Case 08-24A, Catholic  
13 University's amendment to -- wait a minute.  
14 Where are we at? Where are we at? I got  
15 confused.

16 Ms. Schellin, are those two  
17 together?

18 MS. SCHELLIN: They are. You  
19 really need to take action on 08-24 before you  
20 do 08-24A, so we'll put them both on for  
21 Monday.

22 CHAIRMAN HOOD: Okay, let me ask

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1 this. Does anybody have any issues with 24A?

2 That's the amendment to the campus plan, so  
3 we can work on all that between now and next  
4 Monday.

5 Okay, not hearing anything, okay,  
6 so we will put both of those on for 6:15 next  
7 Monday.

8 MS. SCHELLIN: Right, actually it  
9 can be taken at the same time. Joint, one  
10 action, but --

11 CHAIRMAN HOOD: Okay, thank you.  
12 Let's move right into Zoning Commission No.  
13 06-10, the Morris and Gwendolyn Cafritz  
14 Foundation, first stage PUD related map  
15 amendment and consolidated PUD in Squares 3765  
16 and 3769.

17 Ms. Schellin?

18 MS. SCHELLIN: On this case we also  
19 received NCPC report at Exhibit 98 and again  
20 NCPC had no issues with this case.

21 (Pause.)

22 CHAIRMAN HOOD: Okay, Commissioners

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1 we have in front of us a draft order. We have  
2 submissions. We have an Office of Planning  
3 report, Exhibit 97. We have submission from  
4 the applicant's representative Holland &  
5 Knight, Exhibit 95, also, Exhibit 96. These  
6 are some of the things I believe we asked for.

7 Let me just open it up for discussion. I  
8 can't remember all what we asked for, but if  
9 you look at Exhibit 95, you'll some of the  
10 things that I believe we asked for. Also, in  
11 Exhibit 95, it outlines the benefits proffered  
12 and it has a proposed condition under this new  
13 system in which we've established along with  
14 OAG.

15 (Pause.)

16 Any issues? I'm not rushing.  
17 Let's take our time to make sure we get it  
18 right. No rush. We've got plenty of time.  
19 There's no rush.

20 (Pause.)

21 Ms. Schellin, we didn't get  
22 anything tonight on this case, did we?

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1 MS. SCHELLIN: Just NCPC report.

2 (Pause.)

3 COMMISSIONER SCHLATER: Mr.  
4 Chairman?

5 CHAIRMAN HOOD: Yes, Commissioner  
6 Schlater?

7 COMMISSIONER SCHLATER: I move that  
8 we vote to approve Zoning Commission Case No.  
9 06-10, the Morris and Gwendolyn Cafritz  
10 Foundation. 1st Stage PUD and related Map  
11 Amendment.

12 COMMISSIONER TURNBULL: Second.

13 CHAIRMAN HOOD: Okay, it's been  
14 moved and properly seconded. Any further  
15 discussion?

16 All those in favor?

17 (Chorus of ayes.)

18 Not hearing any opposition, Ms.  
19 Schellin, will you please record the vote?

20 MS. SCHELLIN: Staff records the  
21 vote 5 to 0 to 0 to approve final action in  
22 Zoning Commission Case No. 06-10; Commissioner

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1 Schlater moving, Commissioner Turnbull  
2 seconding; Commissioners Hood, Keating, and  
3 May in support.

4 CHAIRMAN HOOD: Okay, moving right  
5 along, thank you, let's go to our hearing  
6 action. Zoning Commission Case No. 09-21,  
7 Office of Planning, Text and Map Amendments to  
8 Establish Chapter 29, Union Station North  
9 (USN) District.

10 Mr. Jessick?

11 MR. JESSICK: Thank you, Mr.  
12 Chairman, and members of the Commission. The  
13 Office of Planning is proposing text and map  
14 amendment in order to create a new zone that  
15 would guide development on the air rights over  
16 the railroad tracks behind Union Station. The  
17 air rights extend, as you can see on the  
18 screen, they extend from the back of Union  
19 Station north to K Street with the H Street  
20 Bridge in the middle.

21 And the Comprehensive Plan talks  
22 specifically about this site and its potential

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1 and also speaks generally about the need for  
2 in-fill development, especially downtown. For  
3 example, the land use and transportation  
4 elements talk at great length about transit-  
5 oriented development and in-fill development.

6 The land-use element speaks specifically  
7 about the central employment area and where  
8 this site is located and states that zoning  
9 should promote high value land uses in the  
10 central employment area and enhance the CEAs  
11 image as the center of the District and the  
12 region.

13 The land use zoning goes on to say  
14 that development should make the most  
15 efficient use possible existing transportation  
16 infrastructure. The central Washington area  
17 element also speaks to this site specifically.

18 It says that the air rights development could  
19 be a way to heal the divide that the railroad  
20 tracks cause in the city and could also  
21 support the revival of H Street further to the  
22 east.

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1           Now the future land use map which  
2 is on the screen, this site is outlined with a  
3 dashed line, a black dashed line and the  
4 future land-use map calls for a high-density  
5 mix of uses over the entire site.

6           So it's clear that the Comp. Plan  
7 puts a lot of emphasis on this site. The NOMA  
8 plan and the H Street plan also speak to this  
9 site as a very important location. And it's  
10 certainly an area that the Office of Planning  
11 would like to see developed. And the proposed  
12 zoning would help bring this important project  
13 one step closer to reality.

14           That leads us to the purposes that  
15 are included in the text of the new zone.  
16 There are things like reconnecting the city.  
17 That's probably the most important purpose.  
18 And to do that, we'll need to improve the  
19 character of H Street, make H Street a very  
20 walkable retail-friendly street and overall in  
21 the development, we want to see a mix of uses.

22           Another purpose is that any

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1 development in this area should provide a  
2 suitable visual relationship to its  
3 surroundings. This includes the neighborhoods  
4 to the east and west, historic structures like  
5 Union Station and also federal areas south of  
6 Union Station.

7 Another purpose of the zone is to  
8 really take advantage of the multi-modal and  
9 transit accessibility offered at Union  
10 Station. The zone should encourage walkable  
11 environment, a bikeable environment, and  
12 improved access to Union Station.

13 So how will we implement this? I  
14 want to go through a couple of the provisions  
15 in the new zone. The first one might be a  
16 little bit different than something the  
17 Commission has seen before. We want to  
18 consider all structures south of H Street to  
19 be one building fronting on H Street and all  
20 structures north of H Street to be one  
21 building fronting on H Street.

22 Now why are we doing this? The

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1 buildings, of course, have to front on a  
2 public street as with any location in the  
3 District, but we have a pretty big site here.

4 It's over 14 acres and there's only one  
5 public street that goes through it. That's H  
6 Street. So it's unlikely that every building  
7 could possibly front on that street. So for  
8 zoning purposes, the proposed text, as I said,  
9 calls for two individual buildings, one north  
10 of H Street, one south of H Street.

11 The zone also proposes a maximum  
12 height of 130 feet, as measured from the H  
13 Street Bridge. This measuring point is  
14 consistent with the Height Act and the 130-  
15 foot maximum is also consistent with  
16 development just to the west near North  
17 Capitol Street. It's consistent with other  
18 approved and constructed projects near Union  
19 Station. And the same -- it's also the same  
20 height as other areas in the downtown that  
21 have the same comp. plans as high-density  
22 commercial or high-density mixed use.

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1           But the Office of Planning is  
2 sensitive to the visual relationship of this  
3 development to its surroundings. So we've  
4 build in a Zoning Commission design review  
5 process. Also, the Historic Preservation  
6 Office will be reviewing any development on  
7 this site. And the Commission on Fine Arts  
8 will be reviewing development south of H  
9 Street.

10           So there will be a lot of review by  
11 different agencies, a lot of opportunities for  
12 public input.

13           Another point about the zone, it  
14 would require significant bike parking which  
15 is a first for the District. The zone would  
16 not require a minimum amount of automobile  
17 parking. Again, this is a very transit-  
18 oriented site. The developer could provide as  
19 much parking as they feel is appropriate, but  
20 we're not requiring a minimum.

21           The zone would also contain some  
22 streetscape requirements. We want a lot of

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1 retail along H Street. The zone would call  
2 for 14-foot ceilings and also limitations on  
3 bank and big box frontage. And this is, of  
4 course, to create an active streetscape. But  
5 the Office of Planning does anticipate the  
6 relief could be required from some of these  
7 provisions, so we have built in a special  
8 exception provision.

9 Now the design review by the Zoning  
10 Commission would be similar to that in the CG  
11 overlay which the Commission may be familiar  
12 with. That's the overlay south of the Capitol  
13 near the new ballpark. There would be a set  
14 of review criteria that would guide the  
15 Commission and OP in our review. These are  
16 items like external activity, visual  
17 relationships to surroundings, providing for a  
18 multi-modal environment and of course, green  
19 development.

20 In terms of process, this  
21 application would again be similar to the CG  
22 overlay. An application would go directly to

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1 public hearing before the Zoning Commission.

2           The Office of Planning has met with  
3 the ANC's Planning, Zoning and Environment  
4 Committee. That was a few weeks ago. We have  
5 another meeting scheduled with some ANC  
6 members and other community representatives in  
7 early January and we'll continue to involve  
8 the community throughout the process. And we  
9 will also continue to work with OAG to refine  
10 the zoning text as we move forward.

11           So that concludes my presentation,  
12 but I'd be happy to take any questions.

13           CHAIRMAN HOOD: Thank you, Mr.  
14 Jessick. Let's open it up for questions or  
15 comments.

16           Commissioner May?

17           COMMISSIONER MAY: What's the  
18 height of H Street above grade?

19           MR. JESSICK: The H Street Bridge  
20 is approximately -- I want to say 28 feet  
21 above the grade of the railroad tracks.

22           COMMISSIONER MAY: Okay. The case

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1 that caused the refinement of the definition  
2 of height several years ago was the adjacent  
3 development at Station Place, right?

4 It was prompted largely because of  
5 the attempt to measure height from H Street.  
6 In effect, what you're doing here is you're  
7 saying that because this will only front on H  
8 Street, that that's really the only way to  
9 measure it and so therefore, it's worth  
10 another 28 feet of height here. Is that where  
11 you essentially come down on it?

12 MR. JESSICK: Yes, I think we  
13 recognize that this site is, if not unique,  
14 extremely rare in the city and in the case of  
15 Station Place to the east, they did have  
16 another option to measure height. They did  
17 have a natural grade. We also recognize that  
18 the platform that will be required to  
19 construct any development on this site would  
20 be extremely expensive. And also, like I  
21 mentioned, we want to take full advantage of  
22 the proximity to Union Station.

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1 MS. STEINGASSER: I'm going to add  
2 a little bit more. We also recognize that  
3 height is very important here, not just in  
4 terms of additional density, but in terms of  
5 design and form and allowing the building to  
6 respond to the massing and the historic  
7 resources that are around it. So as we  
8 started to look at the site and how we would  
9 start to move the density around to maintain  
10 the view sheds of the Union Station itself and  
11 some of the landmarks around the area, we  
12 wanted to have maximum flexibility in how we  
13 put that massing, so we did go with the 130  
14 feet.

15 We also recognized that with  
16 Station Place, they could build that grade.  
17 they had that option. This side does not have  
18 that option. It's built only on a platform.  
19 So in order to have a commensurate type of  
20 competitive development envelope with the high  
21 density around it and the high density that is  
22 common throughout the city, there was no way

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1 to give them that without giving them extra  
2 height.

3 Otherwise, they would be at a 28-foot  
4 disadvantage compared to like land.

5 COMMISSIONER MAY: Yes.

6 MS. STEINGASSER: With the extra  
7 expense of having to build their own platform  
8 to actually construct there.

9 COMMISSIONER MAY: I mean --

10 MS. STEINGASSER: Most developments  
11 don't have to build the earth beneath it.

12 COMMISSIONER MAY: I understand  
13 that. This is a more difficult site, a more  
14 complicated site and there was a natural sort  
15 of height limitation that goes with it because  
16 you don't have that 30 feet that everybody  
17 else has closest to the ground.

18 I understand that, but I'm not sure  
19 that that's sufficient justification to go  
20 that high above it. We're not talking about  
21 the difference between -- I mean we're talking  
22 about a zone that would otherwise be 90 feet

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1 that you're pushing up to 120. You're talking  
2 about 130 going up to 160. And we don't have  
3 160 in a lot of places.

4 MS. STEINGASSER: We would disagree  
5 with that interpretation. It is --

6 COMMISSIONER MAY: No. I mean the  
7 way you read the zoning regulations right now,  
8 that's exactly what it says. It would be 160  
9 feet, that's why you're trying to redefining  
10 that.

11 MS. STEINGASSER: We're redefining  
12 it the way we also redefined it for those  
13 particular cases where there are options.  
14 This development does not have that option.  
15 It's also consistent with other air rights  
16 that have not had the at-grade options. So  
17 those are areas where there are at-grade  
18 options. We -- I'm happy to put this on -- we  
19 will not be looking to artificially raise  
20 their height, but in this particular case,  
21 they don't have the at-grade option.

22 COMMISSIONER MAY: I don't have a

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1 completely closed mind to this issue, but I do  
2 remember thinking ahead at that time because  
3 the prospect of the air rights development  
4 existed at the time when the height measuring  
5 was defined. And it was specifically to make  
6 sure that it was appropriately limited.

7 I guess what I'm interested in  
8 knowing because as I recall Station Place  
9 didn't get up to 130. Station Place was in  
10 the 90 to 110 range, right? So we're talking  
11 about 130 above -- 130 measured from the  
12 bridge above 110 foot building measured from  
13 the ground. So it's got to be 50 feet taller  
14 than Station Place. Rough math.

15 I think what I would like to see  
16 when this comes to a hearing is an analysis of  
17 what that volume will mean, sort of three  
18 dimensionally, so we know what the total  
19 envelope is. And it may be that I'm worrying  
20 about nothing because it isn't going to be as  
21 visible or as prominent as it appears in my  
22 mind right now. So we have to see.

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1 MS. STEINGASSER: We have asked and  
2 have begun to look at some skyline studies and  
3 some view shed studies of how the massing will  
4 feel, both from Columbus Circle, the station,  
5 as well as from the backside.

6 COMMISSIONER MAY: It's views, but  
7 sections and other three-dimensional diagrams  
8 so I think will be very helpful in  
9 understanding this.

10 I think -- oh, I did have another  
11 question. Will essentially declaring at this  
12 moment that the buildings north, north and  
13 south will be fronting on H Street regardless  
14 of configuration, will there actually be  
15 frontages on the other streets that flank it?

16 I mean it's going to be built out close to  
17 those streets or are there other things in the  
18 way?

19 MR. JESSICK: H Street is the only  
20 street that this property fronts on. On the  
21 west, it's bounded by the Red Line right of  
22 way. On the east, it's bounded by Station

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1 Place and the REA building. So it actually  
2 doesn't touch any other street.

3 COMMISSIONER MAY: And the north?

4 MR. JESSICK: North, it approaches  
5 K Street. We're encouraging the developer to  
6 make connections down to K Street, excuse me,  
7 but they would have to go through Amtrack  
8 property to get down to K Street, so we can't  
9 require --

10 COMMISSIONER MAY: Right, and K  
11 Street runs under the rail line?

12 MR. JESSICK: Right, exactly.

13 COMMISSIONER MAY: Okay, I think I  
14 need to see some sort of analysis of that too  
15 when it comes to hearing. Thanks.

16 CHAIRMAN HOOD: Anybody else?  
17 Commissioner Turnbull?

18 COMMISSIONER TURNBULL: Thank you,  
19 Mr. Chairman. I'd like to just continue on,  
20 maybe with some questions, that Commissioner  
21 May has started.

22 How wide is H Street and how wide

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1 is it at the bridge?

2 MR. JESSICK: The right of way, I  
3 believe, is 125 feet wide at the bridge.

4 COMMISSIONER TURNBULL: If H Street  
5 is the only street, I mean, are you going to  
6 have access? Everything is going to come off  
7 of H Street?

8 MR. JESSICK: Well, all the  
9 vehicular traffic --

10 COMMISSIONER TURNBULL: Our friends  
11 at DDOT, I can hear Mr. Jennings now.

12 MR. JESSICK: All the vehicular  
13 traffic will come off of H Street, but we are  
14 encouraging connections in other locations for  
15 pedestrians or bicycles. There is also the  
16 possibility of a vertical connection to a new  
17 Union Station entrance underneath H Street.  
18 So we anticipate a lot of movement to and  
19 through this site by non-automobile modes of  
20 travel. Also the street car may come up H  
21 Street to this point. I don't think that's  
22 been finally determined yet. But there will

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1 be a lot of modes of access to this site  
2 besides automobile.

3 COMMISSIONER TURNBULL: Well, I  
4 guess I'd be interested in further -- your  
5 offer to talk about views massing. I would  
6 like to see what -- I mean, originally the  
7 buildings on the other side, on the east side,  
8 after you go over the bridge were looked at as  
9 gateway buildings. And now you're discussing  
10 this site as a gateway, H Street. I mean I  
11 think the buildings on the other side are 90  
12 to 100 feet. I'm not -- I'm trying to  
13 remember, because one of them I know we were  
14 worried about this trellis that was going to  
15 be on the top of it.

16 MS. STEINGASSER: The old  
17 Children's Museum I think got up to 110 with  
18 parts of it being at 130 and then the Dreyfus  
19 site had a corner piece that went up to 130.

20 COMMISSIONER TURNBULL: Right, and  
21 we struggled with that because of H Street.

22 MS. STEINGASSER: Well, because of

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1 H Street and because they actually are down in  
2 the row house neighborhood.

3 COMMISSIONER TURNBULL: Right.

4 MS. STEINGASSER: They have a much  
5 lower designation in the comp. plan. They're  
6 a medium density as opposed to the high  
7 density that the site is viewed as.

8 COMMISSIONER TURNBULL: I guess  
9 what I would like to -- if you're still  
10 following up on showing your -- I wouldn't  
11 mind the massing to show what's on the  
12 opposite streets on east and west, showing the  
13 developments, the heights, if we could look at  
14 it and compare. I'm struggling, I think, like  
15 with -- we may have seen suddenly these huge  
16 edifices, and I'm struggling with how they're  
17 going to actually work, just coming in and off  
18 of H Street. So I think some kind of a  
19 massing diagram that shows the bridge and how  
20 you come over and what's on either side and  
21 you said, paraphrase, I think you said a  
22 skyline type. I'd like to see sections

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1 through that that would help us better get a  
2 handle on what this is really going to -- or  
3 what it could be.

4 MS. STEINGASSER: We'll absolutely  
5 get you those.

6 COMMISSIONER TURNBULL: Okay.

7 VICE CHAIRMAN KEATING: Mr. Chair?

8 I just really had one question and this is  
9 kind of a long-range planning question. I  
10 know that the street cars are coming into H  
11 Street on the east side. I've heard  
12 conversations about connecting that all the  
13 way through the west side of the city and  
14 coming across the bridge and part of that,  
15 what I've heard, was that the bridge might be  
16 lowered in order to accommodate the street car  
17 going over it. I don't know if that's in the  
18 plans or what's happening on that side, but  
19 I'd be curious to know kind of how that might  
20 affect some of the planning that you have  
21 here, the bridge height actually changes, or  
22 the bridge structure actually changes.

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1 MR. JESSICK: Well, I think I can  
2 say there's a big if, if the bridge were to be  
3 lowered, we would measure the height from  
4 similar point. But I can tell you just from  
5 being out on the site and you know, looking at  
6 the trains underneath the bridge, there's not  
7 that much room to lower the bridge, not to  
8 mention the cost factor.

9 I hadn't heard that. This is  
10 nothing that's impossible, but I can't imagine  
11 that DDOT would have the funds to undertake  
12 that at this point.

13 VICE CHAIRMAN KEATING: And about  
14 the connectivity of the streetcar to the rest  
15 of the city?

16 MR. JESSICK: I think the ultimate  
17 goal is to get the street car across the whole  
18 city. Some structural enhancements to the  
19 bridge may be required and then we're dealing  
20 with some of the same cost issues. But I can  
21 look into that further. I can get into touch  
22 with DDOT and see what their latest plans are.

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1                   VICE CHAIRMAN KEATING:     I'd be  
2 interested in knowing because it does feel to  
3 me that once this starts to move forward, if  
4 we don't have any kind of plan for getting  
5 that streetcar across, it will never get  
6 across.    So that would basically, the whole  
7 idea of this, one of the pieces here was  
8 integrating that side of the city with the  
9 rest of the city because it had been cut off  
10 for so long and yet the prime mode of  
11 transportation that we're promoting is public  
12 transportation and yet we cut what is our  
13 newest attempt at public transportation by not  
14 letting the streetcar through.

15                   MR. JESSICK:    We'll definitely get  
16 more information for you.

17                   CHAIRMAN HOOD:   Any other comments?  
18                   Thank you, Vice Chairman.

19                   Commissioner Schlater?

20                   COMMISSIONER SCHLATER:   I just have  
21 a couple of questions for OP as to why are we  
22 doing it -- I guess there's a lot of different

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1 ways you could skin this cat. One, you could  
2 probably operate within -- could you operate  
3 within the existing zoning there is and do a  
4 PUD for this property?

5 MR. JESSICK: Well, the existing  
6 zone for the site is CM3 and M. So we  
7 couldn't get the real mix of uses that we  
8 would want with those zones in place. We  
9 could look at an overlay, but I think in  
10 general the Office of Planning is trying to  
11 move away from overlays. And by proposing  
12 this zone, we're just incorporating everything  
13 that the overlay would do anyway into one  
14 place in the text. So it's easier for users  
15 and for both the private sector and us in the  
16 public sector to use that form.

17 COMMISSIONER SCHLATER: And was  
18 there consideration given to just doing this  
19 as a PUD with a related map amendment?

20 MR. JESSICK: The existing -- we  
21 thought about that possibility, but the  
22 existing zoning did not, I guess, take into

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1 account the unique characteristics of this  
2 site, like building a platform over the  
3 railroad tracks, the added elevation, and the  
4 unique things like extra connections that we  
5 want to encourage to the neighborhood. So we  
6 felt that getting all the characteristics the  
7 city wants to see in one new zone would be the  
8 easiest, cleanest form to take.

9 COMMISSIONER SCHLATER: I think  
10 there's no doubt this is a wonderful  
11 opportunity to reconnect the city and I think  
12 everything that I've read in the comp. plan to  
13 the NOMA plan to some of the planning around H  
14 Street says that it's important to have a mix  
15 of uses and that means to have retail. It  
16 means hopefully cultural, if the developer and  
17 the city can get together and figure out a way  
18 to do that. It means having office uses. It  
19 also means having residential uses and one of  
20 the concerns I have about the on-going  
21 development of NOMA is one that it lacks a lot  
22 of amenities like parks and open space and

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1 cultural facilities, but also it's probably  
2 slanting a little bit more towards office  
3 building development and it lacks a certain  
4 character as a result.

5 I guess I'm concerned with this  
6 proposal because you're talking about  
7 potentially 5.5 FAR as a matter of right for  
8 commercial on a 14-acre site which I think is  
9 something like, as a matter of right, 5  
10 million square feet of office or something.  
11 Is that right? Is my math right? Do you know  
12 what the development potential is here?

13 MR. JESSICK: Well, the total site  
14 is 622,000 square feet, approximately. So I  
15 think 5 FAR would be around 3 million plus  
16 square feet.

17 COMMISSIONER SCHLATER: The way  
18 I've constructed -- the way this is currently  
19 constructed, the way I've read it says that  
20 you don't have to build residential. You only  
21 have to build residential if you go above and  
22 beyond that 5.5 FAR commercial. And that

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1 seems like a lot of FAR of commercial,  
2 probably plenty for the site.

3 So my concern is it can be an all-  
4 office campus. It could be a federal-office  
5 campus, who knows? So I think there's a lot  
6 of good things in here with regard to the  
7 design review. I think we really need to  
8 focus on how to create a finer grain here so  
9 we don't end up with huge floor plates of  
10 buildings which I think is difficult to do  
11 when you don't have a lot of street, I mean  
12 how is the street grid going to look like on  
13 this site. It's something I'd like to see  
14 more on.

15 But most of all, I think  
16 consideration needs to be given to getting a  
17 true mix of uses on the site and how do we  
18 ensure that housing is going to be a component  
19 of those mix of uses and I'm not sure you're  
20 there yet.

21 CHAIRMAN HOOD: Any other comments?

22 Okay, Commissioners, I'll entertain a motion

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1 if somebody would like to make one to set it  
2 down or not to set it down.

3 (Pause.)

4 COMMISSIONER SCHLATER: I move that  
5 we set down Zoning Commission No. 09-21,  
6 Office of Planning text and map amendments to  
7 establish Chapter 29 Union Station North  
8 District.

9 VICE CHAIRMAN KEATING: Second.

10 CHAIRMAN HOOD: Moved and properly  
11 seconded. Further discussion?

12 All those in favor?

13 (Chorus of ayes.)

14 Not hearing any opposition, Ms.  
15 Schellin, would you record the vote?

16 MS. SCHELLIN: Yes, staff records  
17 the vote 5 to 0 to 0 to set down Zoning  
18 Commission Case No. 09-21 as a rulemaking  
19 case. Commissioner Schlater moving;  
20 Commissioner Keating seconding; Commissioners  
21 Hood, May, and Turnbull in support.

22 MR. BERGSTEIN: May I ask a

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1 question of the Commission? Particularly with  
2 respect to what you just raised, Commissioner  
3 Schlater, would you prefer that the Office of  
4 Planning and the Office of Attorney General  
5 attempt to add language as part of the public  
6 hearing notice that might be responsive to  
7 your concerns and the concerns raised by the  
8 Commission or is that something -- or would  
9 you rather have us advertise this text and  
10 then come to you with a supplemental report?

11 If it were the former, I'd ask for  
12 flexibility in terms of the text.

13 COMMISSIONER SCHLATER: I'm not  
14 sure how my fellow Commission members feel on  
15 that particular topic. I'd be open to that  
16 suggestion.

17 MR. BERGSTEIN: Then what I'll do  
18 is I'll assume that you want the text  
19 advertised as is and that will address any  
20 additional changes as part of the hearing  
21 report.

22 CHAIRMAN HOOD: Let me just say

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1 unless we hear an objection to go along with  
2 Commissioner Schlater, unless somebody  
3 strongly opposes that, I think it's better to  
4 do it that way in the advertisement, if you  
5 work with OP and OAG, work together to try to  
6 so we can kind of close the gap of the concern  
7 when we get ready for the hearing. If that's  
8 -- okay. Okay, I think that will save us some  
9 time as opposed to getting to the hearing and  
10 then have an issue. Right. Thank you. Why  
11 wait? Thank you.

12 MS. STEINGASSER: Chairman Hood?

13 CHAIRMAN HOOD: Yes.

14 MS. STEINGASSER: If I could, just  
15 for clarity, so you'd like OP to draft some  
16 language for advertisement in the alternative  
17 that would have -- I'm hearing two different -  
18 - I guess I'm hearing two different  
19 directions.

20 MR. BERGSTEIN: What I think I  
21 heard was they'd like us to advertise the text  
22 as is and then any changed text that would be

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1 responsive to the concerns expressed tonight  
2 would be part of your --

3 MS. STEINGASSER: Supplement --

4 MR. BERGSTEIN: Hearing report.

5 CHAIRMAN HOOD: No, I don't think  
6 that's what --

7 MR. BERGSTEIN: I'm sorry, it's  
8 hard to hear you, Mr. Chair.

9 CHAIRMAN HOOD: Okay. I don't  
10 think that's where I was going. I think, Mr.  
11 Bergstein, what you said earlier, you said  
12 would you like for, in response to  
13 Commissioner Schlater, would you like for  
14 Office of Planning and OAG to work along so  
15 when you advertise it would account for some  
16 of his concerns. We figured that all we could  
17 do that then. That would be all together.  
18 However you get to that point as opposed to in  
19 the alternative, or wait for the hearing. We  
20 figure if you could put it in an  
21 advertisement, up front --

22 MR. BERGSTEIN: I'm hearing you.

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1                   CHAIRMAN HOOD: Okay. We're on the  
2 same page?

3                   MR. BERGSTEIN: You've given us the  
4 flexibility to accomplish that. Thank you.

5                   CHAIRMAN HOOD: Exactly.

6                   MS. STEINGASSER: Could I ask for a  
7 little bit more clarity. So Commissioner  
8 Schlater, you would like to see a higher level  
9 of housing, a housing requirement, or a  
10 general statement about how the developer will  
11 achieve an assured mix? I just want to make  
12 sure we get the right stuff in the  
13 advertisement.

14                  MR. BERGSTEIN: And just to make  
15 that clear, right now there are purposes set  
16 forth and as part of the review, the applicant  
17 has to demonstrate how the development will  
18 further those purposes. Right now I think  
19 there's a generic purpose about a mix of uses.  
20 It doesn't, I think, emphasize residential.

21                  So one way of accomplishing this is  
22 to indicate that the purposes include a mix of

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1 uses with an expectation of a high degree of  
2 residential and then it's up to the applicant  
3 to sort of work that out and come to at the  
4 hearing.

5 The other is to be much more  
6 concrete and to define the actual proportion  
7 of residential that you'd like to see as a  
8 requirement. So those are the two ways of  
9 going there.

10 COMMISSIONER SCHLATER: From my  
11 perspective, I'm not on the dais comfortable  
12 coming up with how it should be written or  
13 formulated. I guess my general expression is  
14 that I think the way it's currently written,  
15 it does not ensure that there's going to be a  
16 mix of uses that includes residential. And  
17 I'd like to figure out a way to ensure that  
18 there is residential on the site.

19 CHAIRMAN HOOD: And this is way  
20 after the fact, but I'd like for us to waive  
21 our rules to accept Office of Planning's  
22 report. And I had to check, it just went

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1 right over. General consensus? Okay, so  
2 ordered.

3 Anything else on that? Okay, Ms.  
4 Steingasser?

5 MS. STEINGASSER: I'm sorry, I  
6 guess I'm confused. We substituted our  
7 report. You're correct. I'm sorry.

8 CHAIRMAN HOOD: Okay.

9 MS. STEINGASSER: We filed an  
10 initial report, withdrew it and filed a  
11 substitute report.

12 CHAIRMAN HOOD: Okay, because I'm  
13 reading here it says waiver of rules, so --  
14 and I didn't do it. So anyway -- okay, let's  
15 move into proposed action. And what I'd like  
16 to do, I didn't announce this earlier, but I  
17 would like to move B to A and A to be, so  
18 let's do Zoning Commission Case No. 09-10.  
19 This is the Office of Planning's text  
20 amendment regarding the Water Tower at St.  
21 Elizabeths Campus.

22 Ms. Schellin?

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1 MS. SCHELLIN: Yes, sir. Just to  
2 put on the record, Commissioners Keating and  
3 Turnbull were both provided with a full copy  
4 of the record in this case, including the  
5 transcripts, so I believe that they will both  
6 confirm that they have read the record and  
7 will be participating in this case.

8 And also, we have received a  
9 request from the Office of Planning asking  
10 that action be postponed.

11 CHAIRMAN HOOD: Okay,  
12 Commissioners, as stated in Exhibit 8 from the  
13 Office of Planning, the Office of Planning  
14 requests that the Zoning Commission postpone  
15 taking action on text amendment in Case No.  
16 09-10, St. Elizabeths' water tower. The D.C.  
17 Water and Sewer Authority has requested a  
18 postponement to allow them time to review the  
19 language and possibly request an opportunity  
20 to make an informational presentation to the  
21 Commission on the status of the tower.

22 I think that might have been in

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1 line with some of the stuff I heard at the  
2 hearing from my colleagues. So I would move -  
3 - unless there's any further discussion, I  
4 would move that we postpone and honor the  
5 request for Zoning Commission Case 09-10, and  
6 honor the request for postponement. I don't  
7 necessarily know if it's a date certain and  
8 ask for a second.

9 COMMISSIONER SCHLATER: Second.

10 CHAIRMAN HOOD: It's been moved  
11 properly seconded. Any further discussion?  
12 All those in favor?

13 (Chorus of ayes.)

14 Not hearing any opposition, Ms.  
15 Schellin, would you record a vote?

16 MS. SCHELLIN: Yes, staff records  
17 the vote 5 to 0 to 0 to grant the postponement  
18 of action in Zoning Commission Case No. 09-10.

19 Commissioner Hood moving; Commissioner  
20 Schlater seconding; Commissioners Keating,  
21 May, and Turnbull in support. And we'll work  
22 with the Office of Planning for a date certain

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1 on that.

2 CHAIRMAN HOOD: Okay, great. Let's  
3 move to the last thing on proposed action,  
4 Zoning Commission Case No. 09-13, Office of  
5 Planning's text amendment regarding BZA  
6 Expedited Review Calendar.

7 Ms. Schellin?

8 MS. SCHELLIN: I believe Director  
9 Weinbaum may have some further information on  
10 this one.

11 CHAIRMAN HOOD: Okay, Director  
12 Weinbaum.

13 MR. WEINBAUM: It's nice to speak.

14 (Laughter.)

15 I believe there was some additional  
16 discussion. The Board of Zoning Adjustment  
17 had received the Office of Planning's  
18 Supplemental Report and then had a few  
19 additional thoughts and comments. So I think  
20 an idea that had been discussed would be  
21 allowing the Board of Zoning Adjustment to  
22 speak further to the Office of Planning and

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1 then provided Office of Planning perhaps a  
2 chance to further supplement their report. I  
3 think that was the idea that I had heard  
4 discussed.

5 CHAIRMAN HOOD: Okay, thank you,  
6 Director Weinbaum. We definitely want to hear  
7 the input and insight of the Board of Zoning  
8 Adjustment because when I'm at BZA I know they  
9 handle much more than that every week and I'm  
10 not. So I'm always going in with a fresh  
11 learned look.

12 So let me just open it up,  
13 Commissioners. Do we have any comments and  
14 some things may change as they continue to,  
15 the BZA continues to dialogue with Office of  
16 Planning and OAG and I believe OZ to try to  
17 refine this.

18 But let me just -- and he's not  
19 doing this because he's annoying us, but Mr.  
20 Williams has fleshed a lot of this out and  
21 looking through this, actually had planned to  
22 use his, along with some of the things to see

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1 if it sparks any interest. I would just ask  
2 Director Weinbaum if it has not already been  
3 done that Exhibit 17 also be looked at in the  
4 comments to help narrow some things down.

5 MR. WEINBAUM: Yes, definitely, it  
6 will be incorporated as well.

7 CHAIRMAN HOOD: Great, great.  
8 Okay, let me open it up, Commissioners, do we  
9 have any comments?

10 COMMISSIONER MAY: Yes, I have a  
11 couple of thoughts. First of all, I think one  
12 of the issues that we had raised earlier in  
13 discussing this was that the concern that if  
14 something was placed on the expedited calendar  
15 that we were requiring certain thing to happen  
16 so far in advance in order to be removed from  
17 the expedited calendar. I'm not sure that the  
18 language that we have there is sufficiently  
19 protective of anyone who might be affected by  
20 a particular case.

21 And I'm wondering whether the 14  
22 days itself is somehow magic, because -- does

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1 that tie to a particular submission that may  
2 be required at any given point? As I recall,  
3 the ANC reports are due and the OP reports are  
4 due in seven days.

5 MS. STEINGASSER: The OP reports  
6 are due seven days in advance of the hearing.

7 And the applicant's supplemental would be due  
8 14 days prior to a hearing.

9 MR. BERGSTEIN: And that's also  
10 when party status requests are due. So our  
11 notion was since party status requests are due  
12 on the 14th, it could be one of the things  
13 that would automatically place something off  
14 the calendar and the applicant's supplement is  
15 due on the 14th, that that would be a  
16 reasonable time to put in the objections with  
17 the idea that we're trying to balance the  
18 desire for an applicant to have some assurance  
19 that perhaps there won't be a hearing with the  
20 need to provide enough opportunity for people  
21 to be able to react. And since people have 14  
22 days before to declare their party status,

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1 which is a major thing, that simply objecting  
2 not having a hearing would be an equivalent  
3 type of action.

4 COMMISSIONER MAY: What about those  
5 circumstances where the information that comes  
6 from the Office of Planning or comes from an  
7 ANC report is actually relevant to someone's  
8 concerns? In other words, they may want to  
9 see whether the ANC takes up the issue or not  
10 and they find out they won't, they're not  
11 objecting, they're not listening to my  
12 concerns as an affected person and so the ANC  
13 hasn't submitted a report raising the issue,  
14 then I've got to go and make sure that this is  
15 not treated as an expedited manner.

16 MR. BERGSTEIN: The problem with  
17 that would be then there would be no time left  
18 because the ANC report isn't due until seven  
19 days.

20 COMMISSIONER MAY: Yes.

21 MR. BERGSTEIN: In other words,  
22 then the period for someone to object would be

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1 somewhere less than seven days before the  
2 hearing at which point no one would know  
3 whether or not, even the Board Members would  
4 know whether or not they should assume there's  
5 a hearing or not. But you might as well just  
6 -- one of the issues, should we allow people  
7 to come in and say I object and I think one of  
8 the consensus that was reached between the  
9 Chairman of the BZA and OP and OAG is that  
10 would not be a good idea, that there should be  
11 some time back from the day of the hearing  
12 that everybody gets an opportunity, but it  
13 shouldn't be the day of the hearing.

14 So once you make that time between  
15 seven days and the day of the hearing, it  
16 might as well be the day of the hearing.

17 COMMISSIONER MAY: I'm not entirely  
18 sold on that concept. All right, and then the  
19 next question I have is just sort of a  
20 language issue which is 3118.8 talks about  
21 those written objections and then the  
22 following paragraphs start referring to the

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1 requests, presumably the requests that  
2 something be taken off the expedited calendar.

3 Is that right?

4 So 3118.9, when it says "such  
5 requests" --

6 MR. BERGSTEIN: I think that's a  
7 good point.

8 COMMISSIONER MAY: Is that the  
9 written objection?

10 MR. BERGSTEIN: It should be  
11 objection, yes.

12 COMMISSIONER MAY: So maybe that  
13 should be a subparagraph to 3118.8, as should  
14 3118.10.

15 MR. BERGSTEIN: There's also some  
16 documents that would prevent that. We'll try  
17 to make it clear what it's talking about.

18 COMMISSIONER MAY: It needs to be  
19 clear that such requests and the request are  
20 the same as the written objection.

21 MR. BERGSTEIN: I was going to  
22 change "such requests" to "such objections."

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1 COMMISSIONER MAY: Such objections.

2 Well, and then shouldn't there also be  
3 something in 3118.8 that says something like  
4 subject to -- subject further to 3118.9 and  
5 3118.10 or something like that, so that you  
6 know that it's tied to those things?

7 MR. BERGSTEIN: We'll try to do  
8 that. The drafting rules of the Office of  
9 Documents basically say that each subsection  
10 should contain no more than one or two  
11 sentences and that presents a problem of --  
12 the notion is that things sort of have to  
13 follow, but we'll try to make sure that --

14 COMMISSIONER MAY: Things need to  
15 be tied together, if they're tied together --

16 MR. BERGSTEIN: We'll try to tie it  
17 together.

18 COMMISSIONER MAY: -- so it's tied  
19 together. Thanks. Those are the concerns I  
20 wanted to raise now. And I'll be happy to see  
21 what the product is of any further discussion.

22 CHAIRMAN HOOD: Let me ask you for

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1 the sake of if we're going in the right  
2 direction and I don't want to put you on the  
3 spot, Commissioner May, but if you look at Mr.  
4 Williams -- and I thought he kind of captured  
5 some of it. 3118.2. I don't know if you've  
6 had a chance to look at it.

7 (Pause.)

8 I know somebody walking in who may  
9 not have had the benefit of the ANC and the  
10 Council Member and all the things that we  
11 basically look at, but I think he kind of  
12 tries to capture a lot of it.

13 COMMISSIONER MAY: I read this  
14 before and didn't -- I wasn't totally  
15 reassured.

16 CHAIRMAN HOOD: Okay, I was just  
17 wondering if that was kind of going in the  
18 direction you were looking for, trying to  
19 maybe give some guidance to OAG, OP, the chair  
20 of the BZA and director of the Office of  
21 Zoning and secretary to the Office of Zoning  
22 and all the people who are working on this.

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1 MR. BERGSTEIN: Could you perhaps  
2 repeat that a little closer to the microphone?  
3 We're really having difficulty hearing you.

4 CHAIRMAN HOOD: Actually, it's  
5 really not worth me -- I was trying to close  
6 the loop on what Commissioner May was talking  
7 about in his discussion to try to see the  
8 direction. And I pointed to Mr. Williams'  
9 submittal. I thought that was maybe going  
10 down the road, but I don't think it --

11 MR. BERGSTEIN: We actually did  
12 incorporate Mr. Williams' comment that we  
13 should specifically state the order reflects  
14 the relief granted and you'll see that in  
15 3118.5.

16 CHAIRMAN HOOD: Where is that at,  
17 3118.5? Okay.

18 MR. BERGSTEIN: I believe the  
19 concern was that the original language said  
20 that the order had to indicate what the relief  
21 -- that the relief was being -- what the  
22 actual relief was being granted. And so we

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1 added that in to make that clear.

2 CHAIRMAN HOOD: Okay, so this is  
3 already reflected -- what he gave us, dated  
4 December 4th was already reflected --

5 MR. BERGSTEIN: I'm happy to hear  
6 from Mr. Williams if I didn't capture his  
7 thoughts correctly or completely.

8 CHAIRMAN HOOD: We'll continue to  
9 look towards Exhibit 17 for other great ideas.  
10 Anything else?

11 COMMISSIONER MAY: No, I'm still  
12 not totally there on the advance notice, but  
13 we'll see what happens with the revised  
14 version. Thanks.

15 CHAIRMAN HOOD: Okay, thank you.  
16 Anything else? All right. Let's go to the --

17 MS. SCHELLIN: Chairman Hood, are  
18 we going to just defer this to our January  
19 meeting? Is that the goal?

20 CHAIRMAN HOOD: Right, let's do  
21 this. Is it the first meeting or the second  
22 meeting in January? First meeting?

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1 We'll leave that up to staff.

2 MS. SCHELLIN: The first one is  
3 January 11th. The second one is January 25th.

4 CHAIRMAN HOOD: Why don't we just  
5 leave it up to staff?

6 MS. SCHELLIN: We'll just work with  
7 OP and let OP --

8 CHAIRMAN HOOD: We'll just leave it  
9 up to staff. When we see it, we see.

10 MS. SCHELLIN: Right.

11 CHAIRMAN HOOD: Okay. Let's go to  
12 the -- I think that's all we have. We're  
13 doing to defer that when staff brings it back.

14 Let's go to the Status Report,  
15 Office of Planning.

16 MS. STEINGASSER: There's nothing  
17 of particular need to highlight. We've listed  
18 up some of the items you may be seeing in  
19 January and February. January, we expect to  
20 be pretty light. We will be bringing forward  
21 some corrections to the Ward 7 and Ward 8 R5A  
22 rezoning. Through looking and mapping the

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1 final orders realize that we had misidentified  
2 some squares. Some squares got admitted.  
3 Some squares got -- some lots got renumbered,  
4 so we just want to make sure that that's all  
5 clear as we move forward on that one.

6 We'll also be bringing forward some  
7 initial zoning for St. Elizabeths some time  
8 after the New Year, which will be a new zoning  
9 district similar to the approach we've taken  
10 with Union Station air rights, so probably not  
11 nearly as complex.

12 CHAIRMAN HOOD: Is Mr. Moore coming  
13 back to finish up the Ward 7 and 8 R5A?

14 MS. STEINGASSER: No, we've  
15 assigned that to one of our newer planners.

16 CHAIRMAN HOOD: Okay, I was  
17 wondering. Okay, any questions for the Office  
18 of Planning?

19 Okay, thank you very much. For the  
20 record, I want to thank the Office of Attorney  
21 General, the Office of Planning, the Office of  
22 Zoning for always assisting us, to help us

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1 make the best informed decision as possible.

2 Ms. Schellin, do we have anything  
3 else?

4 MS. SCHELLIN: No, sir.

5 CHAIRMAN HOOD: Okay, with that,  
6 this meeting is adjourned.

7 (Whereupon, at 8:01 p.m., the  
8 meeting was concluded.)

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