

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

SEPTEMBER 14, 2009

+ + + + +

The Regular Meeting of the  
District of Columbia Zoning Commission  
convened in Room 220 South, 441 4<sup>th</sup> 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  
PETER MAY, Commissioner  
KONRAD SCHLATER, Commissioner  
MICHAEL G. TURNBULL, Commissioner  
(AOC)

OFFICE OF ZONING STAFF PRESENT:

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Board of Zoning Adjustment  
District of Columbia  
CASE NO. Transcript  
EXHIBIT NO. null  
(202) 234-4433

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

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER  
JOEL LAWSON  
MATT JESICK  
PAUL GOLDSTEIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN H. BERGSTEIN, ESQ.  
JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Regular meeting held on September 14, 2009.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

2 7:04 p.m.

3 CHAIRMAN HOOD: This meeting will  
4 please come to order.

5 Good evening, ladies and gentlemen.

6 This is September 14, 2009.

7 My name is Anthony Hood. Joining  
8 me are Commissioners May, Schlater and  
9 Turnbull. We're also joined by the Office of  
10 Zoning staff, also the Office of the Attorney  
11 General, and the Office of Planning.

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

15 We do not take any public testimony  
16 at these meetings unless the Commission  
17 requests someone to come forward.

18 Please be advised this proceeding  
19 is being webcast live. Accordingly, we must  
20 ask you to refrain from any disruptive noise  
21 or actions in the hearing room. Please turn  
22 off all 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: Let me just say on  
5                   behalf of the three District Mayoral  
6                   Commissioners, we are very excited -- and I'm  
7                   sure my other two colleagues would agree on  
8                   behalf of the Zoning Commission as a whole --  
9                   we're excited about our new Director of the  
10                  Office of Zoning, Director Jamison L.  
11                  Weinbaum. He's going to bring a new spirit  
12                  and energy to the Office.

13                  Personally, I am extremely excited  
14                  -- I'm sure my colleagues are also -- with the  
15                  new venture that the Office is going to go  
16                  down. We are extremely sure that this Office  
17                  will be as user-friendly as it has been in the  
18                  past or even better.

19                  We are wishing Mr. Weinbaum the  
20                  best. And I will ask the residents of the  
21                  District of Columbia to please work with him  
22                  as he moves this Office to the next level.

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1                   So with that, we will hear from  
2 Director Weinbaum.

3                   MR. WEINBAUM: Thank you very much,  
4 Chairman Hood -- Vice Chairman Keating is not  
5 here -- Commissioner Schlater and the entire  
6 Zoning Commission for this extraordinary  
7 opportunity.

8                   I'm thrilled to be taking on this  
9 exciting and challenging new position. As  
10 many of you know, the independent Office of  
11 Zoning is an extremely well run office. It's  
12 aided by a first-rate group of professionals.

13                  And my goal simply is to continue the  
14 successes of the Office and build on them and  
15 maintain the terrific reputation for quality  
16 and service that the Office has attained over  
17 the years.

18                  Specifically, as Chairman Hood  
19 alluded to, we've begun to lay the groundwork  
20 for some exciting new initiatives. On the  
21 technology front, we look forward to releasing  
22 an updated zoning map and exploring ways to

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1 make more filing information available online.

2 We also plan to increase our outreach to the  
3 public, meeting regularly with ANC groups and  
4 ANCs and community groups to discuss our  
5 practices and our procedures.

6 Overall, I think it's a great time  
7 for the Office of Zoning. And I'm quite  
8 enthusiastic about the terrific work we'll be  
9 doing in the future, and our continued service  
10 to the public.

11 I want to again thank the  
12 Commissioners. I look forward to working with  
13 them. And also, if any members of the public  
14 are interested in speaking with me, I really  
15 do have an open door. So I hope you all take  
16 advantage of that and do so.

17 Thank you.

18 CHAIRMAN HOOD: Again, thank you  
19 and welcome aboard.

20 And I'd just ask those present,  
21 just give him a round of applause and thank  
22 him for accepting the job.

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1 (APPLAUSE.)

2 MR. WEINBAUM: Thank you very much.

3 CHAIRMAN HOOD: We all are really  
4 looking forward to it and much success. And  
5 it's going to be incumbent upon all of us to  
6 make sure that this is successful because this  
7 is all of our office.

8 MR. WEINBAUM: Thank you.

9 CHAIRMAN HOOD: So thank you again,  
10 Director Weinbaum.

11 MR. WEINBAUM: Thank you.

12 CHAIRMAN HOOD: Okay. Does the  
13 staff have any preliminary matters?

14 MS. SCHELLIN: No, sir.

15 CHAIRMAN HOOD: Okay. I think, Ms.  
16 Schellin, there are some things that we're not  
17 going to take up tonight. One in particular  
18 is Zoning Commission Case No. 08-15. That is  
19 the issue of the reconsideration of condition  
20 number 16.

21 So those who are here for that  
22 particular case, which is the Friendship-

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1 Macomb Reconsideration of Zoning Commission  
2 Case 08-15, my colleagues and I would like to  
3 -- the vagueness of -- without me getting into  
4 too much of the merits of the condition -- the  
5 vagueness of it, the issue was to try to  
6 capture everything that the Applicant has  
7 proffered or even agreed to. And basically  
8 what we're going to have to do is streamline  
9 and go down that one by one to make sure that  
10 the submittals that we have are sufficient.

11 So we will be taking that up  
12 October the 1st, at our second meeting. Well,  
13 it's supposed to be our second meeting of the  
14 month, but it'll be our second meeting which  
15 is going to be October the 1st at 6:30.

16 So those who are here for that,  
17 forgive us for tonight. We'll come back, if  
18 you wish or watch us webcast, on October the  
19 1st. And I think that's the only one.

20 Okay. We have a consent calendar -  
21 - Zoning Commission Case No. 07-27, EYA, LLC  
22 and St. Paul's College, Request for Technical

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1 Changes to Zoning Commission Order No. 07-27.

2 Ms. Schellin?

3 MS. SCHELLIN: Yes, sir. This is a  
4 request before us asking the Commission to  
5 consider two basic technical changes to the  
6 order that was issued.

7 One, the property that was in  
8 question has been subsequently subdivided, and  
9 so they're asking that the new plat be  
10 substituted for the one that was attached to  
11 the original order. And the second request is  
12 to correct an incorrect site to the exhibit in  
13 the decision portion of the original order.  
14 It referred to Exhibit 1 when it should have  
15 referred to Exhibit 4.

16 So if the Commission would please  
17 consider this request.

18 CHAIRMAN HOOD: Okay. Colleagues,  
19 I think the request is very minimal. If you  
20 look at Exhibit -- I believe it's 63 -- if you  
21 look at Exhibit 63, what Ms. Schellin has just  
22 described is so noted on pages 1 and 2 of the

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1 submittal. And if you look behind, you'll see  
2 the corrections behind the Tabs A, B and also  
3 the final order proposed -- well, the final  
4 order behind C. And I think these are very  
5 minor.

6 Any questions or comments?

7 (No audible response.)

8 CHAIRMAN HOOD: Not hearing any, I  
9 would move that we approve the two corrected  
10 items noted in Exhibit No. 63 dated September  
11 3 by the law firm of Pillsbury, Winthrop and  
12 Shaw Pittman, LLP, and ask for a second.

13 COMMISSIONER SCHLATER: Second.

14 CHAIRMAN HOOD: It's been moved and  
15 properly seconded.

16 Any further discussion? Any  
17 further discussion?

18 All those in favor?

19 (A chorus of ayes.)

20 CHAIRMAN HOOD: Not hearing any  
21 opposition, Ms. Schellin, could you record the  
22 vote and the proxy?

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1 MS. SCHELLIN: Yes. Staff records  
2 the vote five to zero to zero to approve the  
3 consent calendar request on Zoning Commission  
4 Case No. 07-27. Commissioner Hood moving;  
5 Commissioner Schlater seconding;  
6 Commissioners May and Turnbull in support;  
7 Commissioner Keating in support by absentee --  
8 I'm sorry. I do not have an absentee ballot  
9 from Commissioner Keating, so I'll re-record  
10 the vote four to zero to one. Commissioner  
11 Hood moving; Commissioner Schlater seconding;  
12 Commissioners May and Turnbull in support;  
13 Commissioner Keating not present, not voting.

14 CHAIRMAN HOOD: Okay. Thank you  
15 very much, Ms. Schellin.

16 Let's go to hearing action.

17 The first case for hearing case is  
18 Zoning Case No. 06-01B, Steuart H Street, LLC,  
19 PUD Modification at Square 776.

20 Mr. Jesick?

21 MR. JESICK: Thank you, Mr.  
22 Chairman and Members of the Commission.

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1           My name is Matt Jesick.

2           The Applicant in this case proposes  
3 to modify an already approved PUD. The  
4 project is at 3rd and H Streets, N.E.

5           The approved PUD was for a mixed-  
6 use building at eight stories, 90-feet tall  
7 and 4.7 FAR. The proposed modification would  
8 result in a building of six stories, 75-feet,  
9 and 4.1 FAR.

10           The number of units would drop  
11 slightly. And the residential parking ratio  
12 would decrease from 1.1 space per unit to 0.7  
13 spaces per unit.

14           No new areas of zoning relief are  
15 required, although the PUD-related map  
16 amendment would still be necessary to change  
17 the northeast corner of the property from C2A  
18 to C2B.

19           The amenities for the project would  
20 remain the same. Amenities would include the  
21 provision of a grocery store, widening of the  
22 alleys to the rear of the site, and first-

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1 source and CBE agreements.

2                   The project would not be  
3 inconsistent with the comprehensive plan,  
4 including the H Street Northeast Strategic  
5 Development Plan which calls for a six- to  
6 eight-story building on this site.

7                   The Office of Planning therefore  
8 recommends that the Commission set down the  
9 modification for a public hearing.

10                  And I'd be happy to take any  
11 questions.

12                  CHAIRMAN HOOD: Okay. Colleagues,  
13 let's open it up for any questions of Mr.  
14 Jesick.

15                  Commissioner Schlater?

16                  COMMISSIONER SCHLATER: It seems  
17 like the Applicant is asking for flexibility  
18 to go either way on this development, to  
19 either move forward under the original plans  
20 and to move forward under the smaller building  
21 options. Is that typical in a plat approval  
22 to give people sort of that fork in the road

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1 where they can go down either path?

2 MR. JESICK: I would say it's not  
3 typical. And I think normally we wouldn't  
4 like the -- I guess I would use the  
5 uncertainty -- that that would give to the  
6 community.

7 In this case, however, they're  
8 asking for a smaller project with lesser  
9 impacts on the neighborhood -- lesser heights,  
10 lesser density, less traffic, et cetera. So I  
11 think in this particular case, we can be okay  
12 with that.

13 But in the future, we would I guess  
14 reserve the right to take each case on a case-  
15 by-case basis on whether that would be an  
16 appropriate situation.

17 COMMISSIONER SCHLATER: And in  
18 addition to the removal of the top floors, you  
19 said the mezzanine level of the grocery store  
20 had also been removed. Does that impact the  
21 functioning of the project?

22 MR. JESICK: I don't think

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1 significantly. I think the key part is that  
2 the Applicant is still proposing a grocery  
3 store which will be a valuable amenity for  
4 that neighborhood. So we're still supportive  
5 of the overall use mix.

6 COMMISSIONER SCHLATER: Okay. No  
7 further questions. Thank you.

8 CHAIRMAN HOOD: Any other comments  
9 or questions?

10 (No audible response.)

11 CHAIRMAN HOOD: Okay. I would also  
12 agree with Commissioner Schlater's comments.  
13 I don't typically remember us doing that. But  
14 as you mentioned, Mr. Jesick, it seems like  
15 we're reducing the height and the FAR. So I  
16 think we're getting a lesser building with  
17 doing that.

18 I just hope that everyone knows  
19 we're not setting a precedent, that we're  
20 going to give you two options, because I'm  
21 sure we'll see it again.

22 Okay. If I don't hear anything --

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1                   COMMISSIONER TURNBULL: Mr. Chair,  
2 are we looking for two sets of documents then?  
3 Are we going to see two sets? I'm asking --

4                   CHAIRMAN HOOD: Are we going to get  
5 two sets?

6                   COMMISSIONER TURNBULL: -- the  
7 Office of Planning. Are we looking for two  
8 sets of drawings on this?

9                   CHAIRMAN HOOD: The approved set  
10 and the new set?

11                   COMMISSIONER TURNBULL: Right.

12                   MR. JESICK: Well, the approved set  
13 is still what it is -- what's in the record  
14 from the original case. And the new set is  
15 what we've received as part of 06-01B, which  
16 is the modified version.

17                   CHAIRMAN HOOD: I think though, Mr.  
18 Turnbull, you bring up a good point because if  
19 we're going to have a hearing, if you're going  
20 to ask for two things, I don't think I have my  
21 file. So we would need to see a comparison --

22                   COMMISSIONER TURNBULL: Right.

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1                   CHAIRMAN HOOD: -- of one versus  
2 the other. So that may be a little more work  
3 on our part.

4                   Mr. May?

5                   COMMISSIONER MAY: Yes. I'm not  
6 sure that in the end we're going to want to  
7 necessarily approve an either/or PUD. It  
8 would be interesting to understand whether  
9 there are any legal issues for that.

10                  But maybe there's a path we can go  
11 down where we look at this as an alternative.

12                  And if it were to get the first level of  
13 approval, that we'd hold on final approval  
14 until the owner makes up their mind which way  
15 they want to go. And then we can take it up  
16 as a final action when they're ready to  
17 proceed.

18                  I mean, I'm not comfortable with  
19 the idea of it just being out there as it  
20 could be either/or because it's all of a  
21 sudden we're going to wind up doing a lot of  
22 extra work on projects when people come

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1 forward with well, we've got two different  
2 plans, approve them both, and we'll pick which  
3 one we like when we get through financing.

4 MR. BERGSTEIN: Mr. Turnbull, I  
5 just wanted to point out that there have been  
6 instances where alternatives have been  
7 approved for modifications in cases. One I'm  
8 thinking of is where there was an office  
9 building and a hotel, and they wanted to  
10 reserve the ability to do both, but the  
11 financing wasn't going to work on the initial  
12 project and so they were turning to an  
13 alternative but wanted to continue to do both  
14 in case the financing got better for what was  
15 the preferred project. So that's an instance  
16 where I remember this type of thing occurring.  
17 And so, I just wanted to point that out.

18 COMMISSIONER MAY: It would be  
19 interesting to know a little bit more about  
20 that case.

21 CHAIRMAN HOOD: Was that the famous  
22 minor modification? I'm just curious. It

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1                   started off as a minor modification.

2                   MR. BERGSTEIN: I don't recall.  
3                   And perhaps the Applicant can provide some  
4                   further information. I can try to remember  
5                   which modification that was. But I do  
6                   remember that in working on how to state that  
7                   as a condition.

8                   And sometimes there's even an  
9                   instance where that's what the applicant  
10                   intended to do in either or all. And I've  
11                   had to confirm, is this a replacement or is  
12                   this an alternative? Because there have been  
13                   situations where there have been both.

14                   But anyway, there are no legal  
15                   issues involved. It's just a matter of how  
16                   you phrase the order.

17                   CHAIRMAN HOOD: Okay. All right.  
18                   I think that'll make for an interesting  
19                   hearing.

20                   Okay. With that, were there any  
21                   other questions? I would move that we set  
22                   down Zoning Commission Case No. 06-01B and ask

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1 for a second.

2 COMMISSIONER TURNBULL: Second.

3 CHAIRMAN HOOD: Moved and properly  
4 seconded.

5 Any further discussion?

6 (No audible response.)

7 CHAIRMAN HOOD: All those in favor?

8 (A chorus of ayes.)

9 CHAIRMAN HOOD: Not hearing any  
10 opposition of those present, Ms. Schellin,  
11 would you record the vote with the proxy --  
12 well, record the vote?

13 MS. SCHELLIN: No proxy on this  
14 one.

15 Staff records the vote four to zero  
16 to one to approve setdown of Zoning Commission  
17 Case No. 06-01B as a contested case.  
18 Commissioner Hood moving; Commissioner  
19 Turnbull seconding; Commissioners May and  
20 Schlater in support; Commissioner Keating not  
21 present, not voting.

22 CHAIRMAN HOOD: Okay. Next we will

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1 go to Zoning Commission Case No. 09-12, George  
2 and Dimitri Mallios. Hopefully I'm  
3 pronouncing that right. But anyway, map  
4 amendment is Square 180.

5 Mr. Goldstein?

6 MR. GOLDSTEIN: Good evening, Mr.  
7 Chairman, Members of the Commission. My name  
8 is Paul Goldstein.

9 George and Dimitri Mallios have  
10 filed a zoning consistency application to  
11 change the zoning of their property from DC  
12 R5B to DC C2B. DC signifies the property is  
13 location in the DuPont Circle Overlay  
14 District.

15 The subject property, located at  
16 1622 Q Street is on the south side of Q Street  
17 between 16th and 17th Streets, N.W. The site  
18 is improved of a late 19th Century, 2 1/2-  
19 story building that's a contributing structure  
20 to the DuPont Circle Historic District. In  
21 the past, a portion of the building has been  
22 used for commercial purposes in addition to

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1                   residential uses.

2                   The site is zoned R5B. And a  
3                   comprehensive future land use map designates  
4                   the property as mixed-commercial, low-density  
5                   residential medium density. The proposed  
6                   zoning change to C2B would foremost make  
7                   commercial uses by right. And in this case,  
8                   the Applicant has expressed an intention to  
9                   expand a neighboring restaurant use into the  
10                  site.

11                  Among other features, the proposed  
12                  zoning change would permit heights up to 65  
13                  feet rather than 50 feet. The proposed change  
14                  would also permit an increase in allowed For  
15                  Area Ratio from the present 1.8 to 3.5. C2B  
16                  zones limit nonresidential FAR to 1.5.  
17                  Nonetheless, the application has not proposed  
18                  any building expansion.

19                  Concerning the comprehensive plan  
20                  future land use map, C2B zoning would not be  
21                  inconsistent with a commercial low-density  
22                  residential medium density designation. To

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1 the immediate west and south of the site along  
2 17th Street are C2B-zoned properties that are  
3 also designated similarly as commercial low-  
4 density, medium-density residential.  
5 Extending the C2B zoning district to include  
6 the property would be consistent with several  
7 comprehensive plan policies including  
8 expanding the retail sector and promoting  
9 neighborhood commercial vitality. And C2B  
10 zoning would also be comparable to neighboring  
11 properties.

12 As such, the Office of Planning  
13 recommends that the proposed amendment to the  
14 zoning map be set down for a public hearing.

15 And I'm now available for any  
16 questions. Thank you.

17 CHAIRMAN HOOD: Anyone like to  
18 start with any questions? Any questions?

19 Mr. Goldstein, I'm just curious.  
20 How did that happen? How did we get that on  
21 both sides of it -- C2B -- and we got that  
22 R5B? Is this possibly one of those cases

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1 where you have people concerned about the  
2 zoning on the front side of 17th Street? You  
3 mentioned gradually now going back into the  
4 community.

5 And I'll tell you why. When I look  
6 at page three, and you point to the subject  
7 site -- you have the subject site on page  
8 three of your report -- and then I look at  
9 page two, which shows the diagram. I'm just  
10 curious. It seems like something -- I don't  
11 know -- something was left off? How did they  
12 get split-zoned? How did that happen?

13 MR. GOLDSTEIN: It's interesting  
14 that it happened that way.

15 The future land use map seems to be  
16 drawn rather consistently at a consistent  
17 depth from 17th Street. So that really seemed  
18 to be an intention to draw it to include that  
19 property.

20 As far as the zoning line kind of  
21 carving out that property, it's a little more  
22 unclear. There is a history of commercial use

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1 at the site which makes it a little more  
2 unusual that the zoning line would be drawn  
3 that way. But the future land use map seems  
4 to have been done intentionally to that depth.

5 CHAIRMAN HOOD: Okay. I thought  
6 maybe it might have been an oversight. Okay.

7 COMMISSIONER SCHLATER: I have just  
8 one question for Mr. Goldstein.

9 You said that the building is a  
10 contributing historic structure, is that  
11 right?

12 MR. GOLDSTEIN: That is correct.

13 COMMISSIONER SCHLATER: I'm  
14 supportive of setting this down.

15 One question I would have is  
16 ultimately is it possible that this property  
17 owner could build a commercial building of a  
18 much higher density?

19 I know what their intention is.  
20 And I don't question their intention. But  
21 people sell land all the time and do things  
22 with it that is opposite of what their

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1 original intent was. So I'm just curious and  
2 would like more information about its historic  
3 status.

4                   But historic buildings get  
5 demolished too in time. So it's a question.  
6 How do you ensure that the intention is  
7 followed up upon?

8                   MR. GOLDSTEIN: I think there are  
9 probably a few limitations on what they'd be  
10 able to do.

11                  First of all, under C2B zoning,  
12 they'd be limited to 1.5 FAR of nonresidential  
13 use. So you really couldn't create a much  
14 larger, wholly-commercial building.

15                  Additionally, there is also HPRB  
16 review -- Historic Preservation Review -- that  
17 would then review any changes to the facade or  
18 any development plans.

19                  So I think there are a few checks  
20 on it for any development plan that they could  
21 have in the future.

22                  MR. BERGSTEIN:                    Commissioner

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1 Schlater, you can also request a covenant to  
2 preclude nonresidential development. You can  
3 covenant a map amendment just as you can  
4 covenant a PUD-related map amendment.

5 CHAIRMAN HOOD: Okay. Any other  
6 questions?

7 (No audible response.)

8 CHAIRMAN HOOD: I move that we set  
9 down Zoning Commission No. 09-12, and ask for  
10 a second.

11 COMMISSIONER SCHLATER: Second.

12 CHAIRMAN HOOD: Moved and properly  
13 seconded.

14 Any further discussion?

15 (No audible response.)

16 CHAIRMAN HOOD: All those in favor?

17 (A chorus of ayes.)

18 CHAIRMAN HOOD: Not hearing any  
19 opposition, Ms. Schellin, would you record the  
20 vote?

21 MS. SCHELLIN: The staff records  
22 the vote four to zero to one to set down

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1 Zoning Commission Case No. 09-12 as a  
2 contested case. Commissioner Hood moving;  
3 Commissioner Schlater seconding; Commissioners  
4 May and Turnbull in support; Commissioner  
5 Keating not present, not voting.

6 CHAIRMAN HOOD: Let's go right into  
7 proposed action.

8 Under proposed action, we have  
9 Zoning Case No. 09-08. This is the Brookland  
10 Artspace Lofts, LLC, Consolidated PUD and 1st  
11 Stage and Related Map Amendment at Squares  
12 3831 and 3832.

13 Ms. Schellin?

14 MS. SCHELLIN: Yes, sir. This case  
15 is before the Commission for a proposed  
16 action. We did receive a supplemental DDOT  
17 report at Exhibit 38, and would just ask the  
18 Commission to consider this case for proposed  
19 action.

20 CHAIRMAN HOOD: Okay. Thank you.

21 We also have an additional Exhibit  
22 39. Let me point my colleagues' attention to

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1 that.

2                   And as Ms. Schellin stated, we have  
3 a DDOT report which on page three of the DDOT  
4 report, we're starting to see this as a  
5 standard for every application. And I guess  
6 at the appropriate time or when Mr. Jennings  
7 or someone from DDOT comes back, I'm going to  
8 ask them if this is what we're always going to  
9 see the cars sharing the transit facilities  
10 and the bike facilities, and et cetera.  
11 Because it almost looks like it's a copy.  
12 It's starting to become a carbon copy. So  
13 maybe I just need to get them to compare. But  
14 I'm just wondering if this now is going to be  
15 the standard.

16                   So with that, let's open it up,  
17 colleagues. We have Exhibit 39 and 39. There  
18 are some recommendations.

19                   As we know, DDOT -- I think was the  
20 case where DDOT said they were going to return  
21 to us with more specifics. And they did. And  
22 also the advocate responding in which the ones

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1 that they would consider and the ones that  
2 they would not.

3                   And I think there we have it. So  
4 I'll just open it up if anybody has any  
5 discussion.

6                   And also, there were things that  
7 some of my colleagues that you all may have  
8 asked for. And if you feel that it moved you  
9 in any way, or it didn't move you, this is the  
10 appropriate time, I guess, for us to comment.

11                  Yes, I think somebody spoke about  
12 the trash pick-up.

13                  COMMISSIONER TURNBULL: Yes, I  
14 don't know if we got complete answers on some  
15 of the questions we had asked.

16                  CHAIRMAN HOOD: Well, I think DDOT  
17 -- and I'm not sure who we referred the  
18 question to. Did we refer the question to  
19 DDOT or to the Applicant?

20                  COMMISSIONER SCHLATER: I think  
21 what happened here is we had trash pick-up on  
22 Kearney Street. We questioned whether this

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1 was going to be a problem with DDOT.

2                   They've come back and asked for  
3 flexibility in the order to put the trash  
4 pick-up down in the garage, if that's what  
5 suits them best.

6                   DDOT, I think, wanted to take a  
7 look at the trash pick-up and decide later, if  
8 I recall.

9                   CHAIRMAN HOOD: I hope -- and I  
10 apologize for not speaking. Can you hear me  
11 in there? Most people don't want to hear me.

12                   Thank you, Ms. Schellin. And if you can't  
13 hear, just raise your hand and I'll make sure  
14 I get away from the mic. And I apologize.

15                   I think -- I'm hoping that we can  
16 get some finality to that issue, Commissioner  
17 Schlater, hopefully before we do final, I  
18 would hope.

19                   Does anyone else feel that way?

20                   COMMISSIONER SCHLATER: Yes. That  
21 would.

22                   CHAIRMAN HOOD: Okay. But I don't

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1 know if it's going to happen because I think  
2 it ended the day DDOT has the final say-so on  
3 that.

4                   Okay. Anything else? Open it up.

5                   Now, let me ask. These measures  
6 that they mention on page three -- no, page  
7 three of the DDOT report -- the Transportation  
8 Coordinator, the car sharing, transit  
9 amenities, and the bike facilities -- does  
10 anyone feel strongly? And let me refresh my  
11 memory what the Applicant responded.

12                  COMMISSIONER SCHLATER: My feeling  
13 is this is an artist's loft, affordable  
14 housing project. It's pretty small. It's  
15 going to have little or no transit impact.  
16 It's located pretty close to the Brookland  
17 Metro.

18                  I think the request to give the new  
19 residents a Zip Car membership, a Smart Trip  
20 fare card and additional bike facilities is  
21 too much to ask on an affordable housing  
22 project. They're already hard enough to

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1 build. I'd like to see us strip out those  
2 requirements.

3 CHAIRMAN HOOD: Okay. Anyone else  
4 like to comment?

5 I would agree with you,  
6 Commissioner Schlater. And I think the  
7 Applicant has agreed to pass on information  
8 about the Zip Car. As you noted, it's right  
9 near the Brookland Station. So I don't  
10 understand the requirement.

11 But anyway, I do appreciate DDOT  
12 giving us their recommendations. And I don't  
13 want that to go get lost in the discussion.

14 Any other comments?

15 COMMISSIONER TURNBULL: Mr. Chair,  
16 I think as you said earlier, it's becoming  
17 boilerplate because we're getting some  
18 standard language that shows up whether it's a  
19 large project or a small project. And I think  
20 DDOT owes us the ability to look at these  
21 projects on an individual basis and sift  
22 through it based upon their merits or what's

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1 actually in the project. And I think to me,  
2 it's a little bit hard, I think as  
3 Commissioner Schlater said to impose  
4 restrictions that you would put on a large  
5 development on a small one like this.

6 CHAIRMAN HOOD: Okay. Commissioner  
7 May?

8 COMMISSIONER MAY: Yes. Like the  
9 rest of the Commission, I'm troubled by this  
10 sort of boilerplate that we're getting in  
11 these DDOT reports now with the same stuff  
12 each time without too much consideration of  
13 the size of the project and the other relative  
14 benefits of the project or how close it is to  
15 Metro, or any of those sorts of  
16 considerations, how likely some of these  
17 features are to be actually used by the  
18 population that would live there or what have  
19 you.

20 It would be helpful, I think, if  
21 DDOT were to provide some sort of a schedule.  
22 When you get up to a certain number of units,

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1 that's when Zip Car kicks in. Or when you get  
2 up to a certain number of units, that's when  
3 you have to do Smart Bike memberships, and  
4 that if it is a certain level of affordable  
5 housing that you can discount some of these  
6 requirements.

7 There's an argument to be made that  
8 many of these features are actually a lot more  
9 useful in an affordable housing project than  
10 they might be in some others. So I wouldn't  
11 want to be too stingy about establishing what  
12 these requirements are. It becomes very hard  
13 to judge the relative value and the relative  
14 expense and the relative benefit that comes  
15 from these things without some sense of that  
16 overall scheme.

17 So I would be very interested in  
18 seeing some more specific guidance from DDOT  
19 so we know how this is all being applied in a  
20 consistent way and not just a throw the  
21 boilerplate language at it.

22 CHAIRMAN HOOD: Maybe what we do so

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1 we won't get specific to any case, I would ask  
2 Ms. Schellin to work with the Office of  
3 Planning to help us work with DDOT to maybe  
4 find out -- maybe we appoint a session within  
5 one of our regularly scheduled meetings so we  
6 ask a few questions.

7                   Because here's the thing. For a  
8 long time, we didn't get a DDOT report. We  
9 had problems with that. So I want to handle  
10 this with kitten gloves and hopefully they're  
11 not watching this webcast. But if they are, I  
12 want them to know that we appreciate the  
13 reports. But we need the reports to be kind  
14 of tailor-made to the specific projects and  
15 not generic to every project because the  
16 advice that they give, at least from my  
17 standpoint -- I'm only going to talk about  
18 Anthony Hood now -- I'm not a traffic expert.

19                   I'm just one that sits in traffic. So they  
20 have the expertise. And I just want to make  
21 sure that what we're getting is advantageous  
22 in our decision making process as we move

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1 forward.

2                   So I would ask Ms. Schellin, if you  
3 can coordinate with Ms. Steingasser. But tell  
4 them we appreciate it. Make sure you tell  
5 them that. We definitely appreciate it. But  
6 we need to ask some of those specifics as my  
7 colleagues have mentioned.

8                   COMMISSIONER TURNBULL: Well, I  
9 think you're right. And I think I have  
10 appreciated Mr. Jennings being here any number  
11 of times. I think we may not always agree  
12 with him, but I think he's fairly clear in his  
13 analysis of what he's looking at.

14                   And no, I greatly appreciate Mr.  
15 Jennings' appearance at out meetings.

16                   CHAIRMAN HOOD: Mr. Jennings, Ms.  
17 Ricks, and we want to name all of them. I  
18 forgot who else came.

19                   But anyway, so if we can work on  
20 that.

21                   COMMISSIONER TURNBULL: I singled  
22 out Mr. Jennings because I think he's here

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1 probably 90 percent of the time. I would not  
2 want to exclude Ms. Ricks from the list of  
3 people that we appreciate. But --

4 CHAIRMAN HOOD: And since we're on  
5 the subject, we had one guy that came one time  
6 and we got on him so bad, I haven't seen him  
7 come back.

8 (LAUGHTER.)

9 CHAIRMAN HOOD: But anyway, so if  
10 we can coordinate that and do that.

13 (No audible response.)

14 CHAIRMAN HOOD: I would move that  
15 we approve Zoning Commission Case No. 09-08 as  
16 so noted, and ask for a second.

17 COMMISSIONER TURNBULL: Second.

18 CHAIRMAN HOOD: It's been moved and  
19 properly seconded.

20 All those in favor?

21 (A chorus of ayes.)

22 CHAIRMAN HOOD: Not hearing any

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1 opposition, Ms. Schellin, would you record the  
2 vote?

3 MS. SCHELLIN: Yes, sir. Staff  
4 records the vote five to zero to zero to  
5 approve proposed action in Zoning Commission  
6 Case No. 09-08. Commissioner Hood moving;  
7 Commissioner Turnbull seconding; Commissioners  
8 May and Schlater in support; Commissioner  
9 Keating in support by absentee ballot.

10 CHAIRMAN HOOD: Okay. Thank you  
11 very much.

12 Let's move right into our final  
13 action.

14 We have deferred Zoning Commission  
15 Case No. 08-15 for those who may have just  
16 gotten here. That's the Friendship-Macomb SC,  
17 Inc., consideration of Zoning Commission Order  
18 No. 08-15. I apologize. We will be dealing  
19 with that on October the 1st at 6:30.

20 Next is Zoning Commission Case No.  
21 08-33. This is the Conference Center  
22 Associates, LLC, Consolidated, 1st-stage PUD

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1 and Related Map Amendment at parcels 121/31.

2 Ms. Schellin?

3 MS. SCHELLIN: Yes, sir. This case  
4 is before you for consideration of final  
5 action. There have been some supplemental  
6 filings and additional requests that the  
7 Commission made. And in addition, we have  
8 received a report from NCPC.

9 CHAIRMAN HOOD: Okay. As Ms.  
10 Schellin said, we do have an NCPC report --  
11 Exhibit No. 41 -- which came in. I'm not sure  
12 if it came in today. Yes, it came in today.

13 But we also have a submission --  
14 Exhibit No. 39 -- which was presented. And  
15 also, I'm not sure when we got Exhibit 40. I  
16 think this is some responses we had to DDOT.

17 So let me just open it up. We have  
18 an updated rendering depicting the revised  
19 main roof structure on the roof of the hotel  
20 building, elevations and detail depicting  
21 enhancements of the Michigan Avenue facade and  
22 a retail parking garage structure, and

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1 additional information for the proposed  
2 reconstruction of the Michigan Avenue/Irving  
3 Street intersection.

4 So let me open it up for any  
5 comments.

6 COMMISSIONER MAY: Mr. Chairman, I  
7 would just want to say first that the  
8 renderings of the front of the building with  
9 particular regard to the penthouse structures  
10 look significantly better than what we had  
11 seen before. So I was pleased to get those.  
12 And I think they make the point that pushing  
13 the penthouses back to comply with setback  
14 requirements a little bit better was worth the  
15 effort.

16 COMMISSIONER SCHLATER: I agree. I  
17 think the penthouse design work definitely  
18 made a lot of progress.

19 I also think that with respect to  
20 the garage and the facade of the garage, we  
21 had asked them to go back and just show us how  
22 they were going to treat it to try and soften

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1 it up a little bit because those above-grade  
2 garages can be a little harsh in residential  
3 neighborhoods.

4                   But I think they've done a good job  
5 of greening up the facade, putting some  
6 planters on the top. I think it's going to  
7 make for a better project. So I'm happy with  
8 the progress we've made there.

9                   CHAIRMAN HOOD: Mr. Turnbull?

10                  COMMISSIONER TURNBULL: And I would  
11 just concur with my two colleagues that from a  
12 design standpoint, the items that we were  
13 concerned about last time, they've really done  
14 their homework and I think it really makes a  
15 step up from what we've seen the last time.

16                  CHAIRMAN HOOD: Okay. And it  
17 appears that there was some consensus on the  
18 issues with DDOT. And I'll just read a  
19 portion of the letter. It says, "Applicant's  
20 initial proposal did not meet DDOT standards  
21 for intersection redesign."

22                  I remember there was a big talk

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1 about the intersection. "During the Thursday,  
2 August 6, 2009 meeting hosted by DDOT, the  
3 Applicant consented to the DDOT proposed plan  
4 for optimal pedestrian safety. The Applicant  
5 will rebuild the Michigan/Irving intersection  
6 with oversight from the DDOT Infrastructure  
7 Project Management Administration."

8                   And then it goes on to talk about  
9 "DDOT requested Applicants to guide commercial  
10 vehicles, visitors' bus and freight to arrive  
11 via North Capitol, Irving and Michigan. The  
12 directions should be provided by the  
13 restaurant employees, proposed grocery  
14 retailers at the site. And the directions  
15 shall be furnished on the website of all  
16 business operations located at the site."

17                   So it looks like there's a  
18 consensus versus what I read here in the  
19 submission which is dated August the 31st, and  
20 this was dated September the 4th.

21                   Anything else?                   Commissioner  
22 Schlater?

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1                   COMMISSIONER SCHLATER: I guess I  
2 looked at the draft order and I had a few  
3 questions there.

4                   The first one is around the lead  
5 status of the project. And it was just my  
6 impression from the hearing process and  
7 reading the application that the Applicant had  
8 been proffering up LEED certification for the  
9 project, and it didn't find its way into the  
10 conditions of the order. So it was my  
11 expectation when reading it, I guess, was that  
12 it would be in there.

13                  We had asked the Applicant a few  
14 times about the certification. I think they  
15 had stated that they had enough points to get  
16 to certification. They were a few shy of  
17 Silver certification. And they were going to  
18 try to get to Silver certification.

19                  So I'm wondering how you guys feel  
20 about this. But I certainly would have liked  
21 to have seen that in the order.

22                  COMMISSIONER MAY: Well, I think

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1 the Commission has been becoming increasingly  
2 consistent and demanding if you will on the  
3 LEED front. And it just doesn't seem very  
4 special anymore unless we're going to see  
5 certification or LEED Silver actually is  
6 really becoming --

7 CHAIRMAN HOOD: Excuse me. Can  
8 everybody hear? Because if they can hear me  
9 -- can everybody hear you?

10 MS. SCHELLIN: Barely.

11 CHAIRMAN HOOD: I don't want to  
12 hear you either. But we can put you close  
13 because --

14 COMMISSIONER MAY: Now I turned it  
15 off. No, it was on before.

16 Anyway, I think the Commission has  
17 been consistent in insisting on more and  
18 higher levels of LEED certification. And so I  
19 think it would be good to see if this were  
20 proffered at a LEED Silver preferably.

21 CHAIRMAN HOOD: So I'm hearing that  
22 there's some unwritten, Mr. Turnbull?

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1                   COMMISSIONER TURNBULL: I concur  
2 with them.

3                   CHAIRMAN HOOD: Okay. So I guess  
4 we want more clarification, exactly maybe a  
5 condition or whatever that this is. Do we  
6 have a point? What is it -- 32 or 33, or LEED  
7 Silver? That's what we're asking? Are you  
8 going to do LEED Silver or not? That's the  
9 question. Okay.

10                  Okay. Let me see how we're going  
11 to proceed with that.

12                  Anything else?

13                  COMMISSIONER SCHLATER: Yes.

14                  CHAIRMAN HOOD:            Commissioner  
15 Schlater?

16                  COMMISSIONER SCHLATER: The other  
17 point -- and I don't think it's a point of  
18 contention at all -- but one of the major  
19 commitments to the community in this case was  
20 that the Applicant was going to deliver a sit-  
21 down restaurant. And if you actually read the  
22 order itself, it makes no mention of the sit-

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1 down restaurant as a condition of our approval  
2 of this hotel.

3                   And I think since that's viewed as  
4 the main amenity to the community, we should  
5 make sure that there's teeth in the order that  
6 the Applicant's going to provide a sit-down  
7 restaurant as part of this complex.

8                   CHAIRMAN HOOD: Sorry, Commissioner  
9 Schlater. I was having a sidebar.

10                  So you want to see designated --  
11 making sure that that restaurant is going to  
12 be in that footprint?

13                  COMMISSIONER SCHLATER: In the  
14 first building.

15                  CHAIRMAN HOOD: In the first  
16 building. Okay.

17                  All right. Ms. Schellin, you want  
18 to add something?

19                  MS. SCHELLIN: I was just going to  
20 clarify that the Applicant's representative  
21 just came forward and said that they did agree  
22 to LEED certified. They are going to aspire

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1 to go to LEED Silver. But what they agreed to  
2 was LEED certified.

3 CHAIRMAN HOOD: What about the  
4 restaurant issue?

5 MS. SCHELLIN: The restaurant  
6 issue, they're okay. They agree to that.

7 CHAIRMAN HOOD: Then before the  
8 order is issued, let me try to work something  
9 out. If not, we'll deal with it October the  
10 1st.

11 And make sure, my colleagues,  
12 before the order is issued, can we make sure  
13 those conditions are working with OAG --

14 MS. SCHELLIN: We can have OAG --

15 CHAIRMAN HOOD: Make sure those two  
16 points are in the --

17 MS. SCHELLIN: In the order? Are  
18 we good with that?

19 CHAIRMAN HOOD: Can we do that?  
20 Let me see if Mr. Schlater is fine with that  
21 first.

22 COMMISSIONER SCHLATER: I'm almost

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1 done.

2 CHAIRMAN HOOD: Okay. You got one  
3 more. Okay. Well, we might not get there.  
4 Okay. Keep going.

5 COMMISSIONER SCHLATER: The last  
6 one was explicitly raised at the hearing. The  
7 Applicant said that they were going to try and  
8 put a grocery store in the ground floor of the  
9 garage. The community said they had been  
10 promised one on the ground floor of the  
11 garage. And I'm just wondering how the  
12 Commission would like to address this issue.

13 I think we all understand that  
14 there's market realities as to whether a  
15 grocery store will go on the ground floor of  
16 the garage. But what we don't want is  
17 applicants coming before the Commission  
18 promising things that can't be achieved, and  
19 then getting community support because of  
20 those promises, and then not being held  
21 accountable.

22 So I don't know what you do about

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1 that one. But I just wanted to put it out  
2 there on the record.

3 CHAIRMAN HOOD: Anybody have any  
4 other feelings on that?

5 COMMISSIONER TURNBULL: Well,  
6 Commissioner Schlater is right. All the  
7 elevations and perspectives clearly show a  
8 grocery store on that ground level. It's a  
9 very important point of the project.

10 COMMISSIONER MAY: I would just say  
11 that I recall having some discussion of this  
12 during the hearing. And I think the Applicant  
13 was very careful to say that they could not  
14 promise the grocery store. And so the last  
15 thing we'd want to do is to have this project  
16 go forward and then have it sit vacant waiting  
17 for a grocery store.

18 Maybe it's naive to expect that  
19 there is going to be an earnest effort there.

20 But I don't think that that was what was  
21 promised. And I don't think that there was  
22 sufficient marketing done for them to be able

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1 to make that promise. So I'm a little  
2 reluctant to push too hard on this topic.

3 COMMISSIONER SCHLATER: Well, there  
4 is a good example of that I think on 7th  
5 Street, N.W. There is a place, and I think  
6 there was a space where a Balducci's was  
7 supposed to go as a JPI project. And it sat  
8 vacant for the past -- I don't know -- five to  
9 seven years because they did say it was going  
10 to be a grocery store.

11 So I agree. We don't want the  
12 space to be empty. But we also want to make  
13 sure when people are making commitments to the  
14 community that they at least make a good faith  
15 effort to go out there and get the grocery  
16 store they've committed to.

17 CHAIRMAN HOOD: Okay. So right now  
18 we have three issues. I thought I could work  
19 through the other two and keep moving. But I  
20 don't know if the third one, Commissioner  
21 Schlater, you have me at a stopping point.

22 Let me also just comment on the

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1 NCPC report. While we so noted -- it was  
2 Exhibit 41 -- they're mentioning because the  
3 proposed residential use is inconsistent with  
4 the March 1999 agreement between the General  
5 Services Administration and the District of  
6 Columbia.

7                   Typically, the Zoning Commission  
8 does not enter or deal with or speculate or  
9 comment or get into different agreements  
10 between two parties. We just deal with what's  
11 within our jurisdiction.

12                   But for the record, we have so  
13 noted the NCPC report. And I'm sure that  
14 there will be an avenue to be able to deal  
15 with that 1990 agreement between GSA and the  
16 District of Columbia.

17                   Okay. The third point that  
18 Commissioner Schlater brought up, I was going  
19 to move those other two points, and I asked  
20 that before the order is signed and written  
21 that OAG work with us and the Applicant and we  
22 can finalize the language for those two

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1 points. I'm not sure if we can do that with  
2 the third point. I think we would need a  
3 response or something from the Applicant with  
4 further clarification. I'm not sure.

5 Since you asked it, what do you  
6 think? Because I want to make sure you're  
7 satisfied with what we vote.

8 COMMISSIONER SCHLATER: I'm not  
9 asking for a condition that that space be  
10 reserved for a grocery store because I think  
11 that's a prescription for it sitting vacant as  
12 Commissioner May pointed out.

13 What I'd like to see is a condition  
14 that the developer make good faith efforts to  
15 get a grocery store in there, and at least be  
16 acknowledged that that was the commitment that  
17 they made and that the community's looking for  
18 them to follow through on that commitment to  
19 try and get a grocery store in there.

20 CHAIRMAN HOOD: So you'd like to  
21 have something pointing to that?

22 COMMISSIONER SCHLATER: Yes.

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1                   CHAIRMAN HOOD:    So apparently, I  
2 think we can do that too.

3                   MS. SCHELLIN:    And the Applicant  
4 has indicated they're agreeable to having that  
5 put in the order.  Yes.

6                   CHAIRMAN HOOD:    Is that okay, Mr.  
7 Bergstein?  Can we do that?

8                   MR. BERGSTEIN:    Yes.  And if I  
9 could just go through these three.

10                  As I understand it, one would be  
11 that the Applicant will achieve LEED  
12 certification and will aspire to Silver LEED  
13 certification.

14                  The second has to do with the  
15 description of the sit-down restaurant which I  
16 would use from what's shown as Finding of Fact  
17 No. 13 in the proposed order.  I would add the  
18 word "sit-down" and I would also relate it to  
19 as shown on the plans.

20                  And the third one would be that the  
21 Applicant will make good faith efforts to  
22 secure an occupant for grocery store use at

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1 that location.

2 So is that what the Commission  
3 would like?

4 COMMISSIONER SCHLATER: Yes. As  
5 shown on the plans. I mean, I think you want  
6 to make sure the restaurant is what they said  
7 that it was going to be in terms of the plans.

8 And I don't have any doubt that that's what  
9 the Applicant was intending to do. I just  
10 want to make that clear. I just want it to be  
11 on paper.

12 And I also believe that the  
13 Applicant's intention is there to be an  
14 entrance off the public street in there. So  
15 this is not nearly to be a hotel restaurant or  
16 bar. This is meant to be a neighborhood  
17 restaurant that people can go to.

18 MR. BERGSTEIN: It does say that  
19 it's accessible from both within the  
20 restaurant and directly from Michigan Avenue,  
21 and the restaurant will offer an outdoor  
22 seating area along Michigan Avenue.

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1                   COMMISSIONER SCHLATER:       Great.

2                   Thank you.

3                   CHAIRMAN HOOD:   Any other comments?

4                   And again, we want to do this and make sure  
5                   everything is complete and sufficient before  
6                   the order is issued.   Okay?

7                   Okay.   I would move approval of  
8                   Zoning Commission Case No. 08-33, which is the  
9                   Conference   Center   Associates,   LLC,  
10                  Consolidated PUD, 1st Stage Amendment and  
11                  Related Map Amendment at parcels 121 through  
12                  31, with the additions of the amendments that  
13                  have been expressed by Commissioner Schlater.

14                  And I would ask for a second.

15                  COMMISSIONER SCHLATER:   Second.

16                  CHAIRMAN HOOD:   It's been moved and  
17                  properly seconded.

18                  Any further discussion?

19                  (No audible response.)

20                  CHAIRMAN   HOOD:       No   further  
21                  discussion.   All those in favor?

22                  (A chorus of ayes.)

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1                   CHAIRMAN HOOD: Not hearing any  
2 opposition, Ms. Schellin, would you record the  
3 vote?

4                   MS. SCHELLIN: Staff records the  
5 vote five to zero to zero to approve final  
6 action of Zoning Commission Case No. 08-33.  
7 Commissioner Hood moving; Commissioner  
8 Schlater seconding; Commissioners May and  
9 Turnbull in support; Commissioner Keating in  
10 support by absentee ballot.

11                  CHAIRMAN HOOD: And Ms. Schellin, I  
12 would ask that at least particularly  
13 Commissioner Schlater be able to see those  
14 three issues before the order is issued.  
15 Okay? Thank you.

16                  Okay. Next, Zoning Commission Case  
17 No. 08-21, The Athena Group Consolidated PUD  
18 and Related Map Amendment at 4460 MacArthur  
19 Boulevard, N.W.

20                  Ms. Schellin?

21                  MS. SCHELLIN: Yes, sir. This is  
22 another case before you for a final action.

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1 And we did receive an NCPC report also on this  
2 case, along with several other filings.

3 CHAIRMAN HOOD: Okay. As Ms.  
4 Schellin mentioned, I think we need to -- we  
5 have a joint letter here dated August the  
6 31st. Let me get my notes.

7 MS. SCHELLIN: Yes, I'm sorry. But  
8 at Exhibit 100, that was a request from the  
9 ANC. They notified us that they actually  
10 asked for permission to file their request  
11 late because they were not going to meet  
12 during the month of August. And they did  
13 subsequently file their final Exhibit 104.

14 CHAIRMAN HOOD: Okay. But we  
15 already dealt with that, didn't we?

16 MS. SCHELLIN: We haven't dealt  
17 with it.

18 CHAIRMAN HOOD: We haven't dealt  
19 with them?

20 MS. SCHELLIN: Right. So you can  
21 do that by consensus.

22 CHAIRMAN HOOD: Is there anything

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1 else that we need to waive on this?

2 MS. SCHELLIN: They were the only  
3 ones who filed late. And the Palisades group  
4 -- actually Citizens Association actually  
5 joined in with the ANC. So they did a joint  
6 filing at Exhibit 104.

7 CHAIRMAN HOOD: So I guess because  
8 it's ANC's letter, now that they've done a  
9 joint --

10 MS. SCHELLIN: Palisades didn't ask  
11 for -- yes.

12 CHAIRMAN HOOD: And we told the ANC  
13 --

14 MS. SCHELLIN: Yes. They just kind  
15 of joined in.

16 CHAIRMAN HOOD: Okay. Let's just  
17 go ahead and accept, colleagues, by general  
18 consensus. Let's just accept -- I believe  
19 it's Exhibit 104. Any objection?

20 (No audible response.)

21 CHAIRMAN HOOD: So noted. We'll  
22 accept it.

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1                   Okay.     Let me get all these  
2 exhibits together.   We have Exhibit 100.   We  
3 have Exhibit 101, 102, 103, and 104.

4                   And we also have I think 105 from  
5 the National Capitol Planning Commission which  
6 came in this evening.   And I'm trying to see  
7 what their recommendation is.

8                   COMMISSIONER TURNBULL:   There's no  
9 objections.

10                  CHAIRMAN HOOD:    No objections?  
11                  Thank you, Mr. Turnbull.   Okay.

12                  NCPC has no objection.

13                  Okay.   Who would like to start us  
14 off?   And I would say that the Applicant's  
15 submission is Exhibit 101.   And these are some  
16 things that we may have asked for.

17                  I know the FAR was a major issue.  
18                  Well, let's see.   Before we get to that,  
19 anything else that anyone asked for?   Do you  
20 remember?   Or was the FAR the only issue?

21                  Okay.     Let's talk about the  
22 calculation.

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8 CHAIRMAN HOOD: Okay. I see the  
9 103. Can you point me to where you said that  
10 was -- where they say we now support it? Oh.  
11 "We now support the development."

12 So we need to open the record  
13 actually for this too also, Ms. Schellin. Why  
14 don't we just open the record for everything  
15 that came in? That may be the easiest way to  
16 do it.

17 MS. SCHELLIN: Actually, they were  
18 all on time. They filed theirs. They had  
19 until August 24th to file theirs.

20 CHAIRMAN HOOD: But I thought we  
21 only asked for something from the -- oh,  
22 that's right.

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1 MS. SCHELLIN: But we gave them  
2 until August 24th.

3 CHAIRMAN HOOD: Okay.

4 MS. SCHELLIN: So they were okay.  
5 That was only the ANC who filed theirs late.  
6 Sorry if I didn't make that clear.

7 COMMISSIONER SCHLATER: Can I start  
8 off by maybe asking the Office of Planning  
9 about the exhibit that they submitted?

10 CHAIRMAN HOOD: Okay. Let's start  
11 off that way.

12 COMMISSIONER SCHLATER: I think  
13 what the crux of the discussion is today is in  
14 regards to this FAR calculation methodology,  
15 and whether or not private streets should be  
16 included in the lot size when calculating FAR.

17 And if I'm reading this correctly, Office of  
18 Planning is citing Section 25.16a, which says,  
19 "The area of land that forms a covenant means  
20 of ingress or egress shall not be included in  
21 the area of any theoretical lot or in any yard  
22 that is required by this title."

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1                   Does the Office of Planning take  
2 that to mean when you're calculating FAR you  
3 shouldn't be counting the area in private  
4 streets?

5                   MS. STEINGASSER: In terms of a  
6 theoretical lot subdivision that would  
7 normally go to the BZA, that's correct. But  
8 once it becomes part of a PUD, historically  
9 the tradition has been to include those  
10 private streets and that they do become part  
11 of the lot area. It's like there's almost two  
12 forms of calculation -- that which is  
13 calculated for the BZA under a theoretical lot  
14 and the way it's calculated under the PUD.

15                   COMMISSIONER SCHLATER: Is FAR  
16 calculated off of the theoretical lot? I'm  
17 just at a loss why there'd be two different  
18 standards.

19                   MS. STEINGASSER: I can't say how -  
20 -

21                   COMMISSIONER SCHLATER: Is it just  
22 history and practice that's governing this?

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1                   MS. STEINGASSER: It's history and  
2 practice.

3                   COMMISSIONER SCHLATER: Does it  
4 seem like from the language of this section  
5 25.16.6a that you would exclude private  
6 streets if the history and practice had it  
7 otherwise?

8                   MS. STEINGASSER: Not if it is a  
9 theoretical lot subdivision standing on its  
10 own. But when the theoretical lot subdivision  
11 becomes part of a PUD, then the practice has  
12 been to include the private streets almost as  
13 if they were driveways as opposed to private  
14 streets.

15                  COMMISSIONER SCHLATER: Yes.

16                  MS. STEINGASSER: And then they  
17 become part of the lot area. And that comes  
18 from a reading not to necessarily disguise the  
19 calculation, but when you read through the  
20 definitions of what constitutes FAR and what  
21 constitutes lots.

22                  COMMISSIONER SCHLATER: Yes. Well,

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1 I guess I expressed this when we took proposed  
2 actions. I'm certainly hesitant to change the  
3 rules in the middle of the game.

4 I think it is something that we  
5 should address in the form of a text  
6 amendment. And we should have a hearing on it  
7 so that we can hear everybody's opinion about  
8 it and decide going forward how we're going to  
9 address FAR in the case of the PUD.

10 That doesn't solve the problem for  
11 tonight. My understanding is that we have a  
12 new submission that says if you did not count  
13 the private street areas but did count the  
14 private alley area, you would get to an FAR of  
15 1.04.

16 MS. STEINGASSER: That's correct.

17 COMMISSIONER SCHLATER: Okay. And  
18 is everybody comfortable that that calculation  
19 has been made?

20 MS. STEINGASSER: The Office of  
21 Planning is very comfortable. We met with the  
22 Applicant and they went through in detail how

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1       they   arrived   at   that.       And   we're   very  
2       comfortable with it.

3                   COMMISSIONER SCHLATER:    Okay.    I  
4       also have an understanding that PUD guidelines  
5       grant the Commission flexibility to go above  
6       the 1.0 FAR to 1.05 in certain circumstances.  
7       Is that correct?

8                   MS. STEINGASSER:    That is correct.  
9       The Commission does have that discretion when  
10      it's determined after the hearing that the  
11      additional FAR is essential to the successful  
12      functioning of the project.

13                  COMMISSIONER SCHLATER:    Okay.

14                  CHAIRMAN HOOD:    You're doing good.  
15      You finished?

16                  COMMISSIONER SCHLATER:    I think I'm  
17      finished.

18                  CHAIRMAN HOOD:    All right.    That's  
19      fine.

20                  As    Commissioner   Schlater   has  
21      already teed this up for us, the issues are  
22      after recalculations, which I think somebody

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1 up here asked for. We asked for it to be  
2 clarified. And I agree with the text  
3 amendment. I'm sure all of my colleagues do.

4 Right now, the Applicant says they  
5 come in at 1.04. And we can grant them --  
6 within our jurisdiction -- up to 1.05, if I'm  
7 correct. And they say they are at 1.04. And  
8 I think this has been teed up very well by  
9 Commissioner Schlater.

10 Any other comments? Commissioner  
11 Turnbull? No comments? Commissioner May?

12 COMMISSIONER MAY: I would just say  
13 that I understand what past practice may have  
14 been. But I'm not sure that at least in my  
15 own past consideration of similar cases  
16 whether the inclusion of a private street in  
17 the FAR calculation determination of the total  
18 project area -- whether that was really fully  
19 understood and explained in the process of  
20 doing the PUD.

21 I mean, this project was something  
22 of a revelation in terms of understanding.

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1 That's the difference between the private  
2 street and in a PUD. I think I was aware that  
3 this is the way it was being calculated. But  
4 I didn't understand how that interacted with  
5 the theoretical lot subdivision rules. And  
6 now that I understand that a little bit  
7 better, I definitely want to get it clarified  
8 because I think that I've been troubled by  
9 that practice -- the idea that something that  
10 was essentially -- I mean, to everyone in the  
11 universe who doesn't read the land records --  
12 which is almost everybody -- it would be a  
13 public street treated like a public street.  
14 Why wouldn't that be subtracted from any land  
15 calculations? It doesn't make common sense.  
16 So I would like to see it clarified.

17 In terms of this case, I guess I'm  
18 satisfied with a calculation that shows this  
19 is a 1.04 which is in the range of flexibility  
20 that could be granted. And so it doesn't  
21 necessarily mean something radically different  
22 for this case. And I do think this is a

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1 matter that at least from this case forward  
2 we're going to be examining this issue a  
3 little bit more carefully, and as Commissioner  
4 Schlater suggested, we probably should have  
5 clarified in the zoning regulations.

6 CHAIRMAN HOOD: Believe it or not,  
7 somebody asked you to pull your mic closer.  
8 No, they didn't ask to record. Some people  
9 want to pull it away. But some people want  
10 you --

11 COMMISSIONER SCHLATER: I  
12 understand.

13 CHAIRMAN HOOD: I actually agree  
14 with you.

15 I think though -- I don't know what  
16 the problem is tonight. We've got to sit this  
17 close.

18 MS. SCHELLIN: We're trying to take  
19 notes down here and we can't here him.

20 CHAIRMAN HOOD: Oh, that's what it  
21 is. Okay. All right.

22 COMMISSIONER TURNBULL: I would

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1 agree with the notion of exploring the text  
2 amendment to clarify that. I think whether  
3 consciously or however we've been operating in  
4 the past, we should probably take a step back  
5 and really review it and make sure we know we  
6 have clear guidelines for the future and that  
7 all future applicants know what we're going to  
8 be looking at.

9 MS. STEINGASSER: We'll be happy to  
10 take a look at that. And I hear your concern  
11 and I hear your urgency that you don't want to  
12 see more PUDs coming forward with this type of  
13 cross-interpretation and calculation. So we  
14 will make it a priority.

15 CHAIRMAN HOOD: And as I look at  
16 the joint letter from The Athena Group, and I  
17 don't know if anyone's compelled to any  
18 movement, but again I don't necessarily see  
19 the calculation argument standing out.

20 I see again some of the things that  
21 we heard in the hearing about the floors  
22 coming off and the reduction accomplished by

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1 the elimination of one unit, preferably by  
2 eliminating the fourth floors. And I think we  
3 went through that during the testimony.

4 But I just want the joint group --  
5 ANC and the Palisades Citizens Association --  
6 that we do read their submittals. While I  
7 don't have to agree with my colleagues, I  
8 think the calculation of 1.04 is perfectly  
9 within our jurisdiction. And I am prepared to  
10 move forward.

11 Okay. With that, I would make a  
12 motion that we approve Zoning Commission Case  
13 No. 08-21, The Athena Group. And it's so  
14 noted that the calculation is 1.04. And ask  
15 for a second.

16 COMMISSIONER TURNBULL: Second.

17 CHAIRMAN HOOD: Moved and properly  
18 seconded.

19 Any further discussion?

20 (No audible response.)

21 CHAIRMAN HOOD: All those in favor?

22 (A chorus of ayes.)

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1                   CHAIRMAN HOOD: Ms. Schellin, would  
2 you record the vote with any proxies?

3                   MS. SCHELLIN: Yes, sir. Staff  
4 records the vote five to zero to zero to  
5 approve final action on Zoning Commission Case  
6 No. 08-21. Commissioner Hood moving;  
7 Commissioner Turnbull seconding; Commissioners  
8 May and Schlater in support; Commissioner  
9 Keating in support by absentee ballot.

10                  CHAIRMAN HOOD: Okay. Next is  
11 Zoning Commission Case No. 08-17. This is  
12 from the Office of Planning, Text Amendment to  
13 the Reed-Cooke Overlay District.

14                  Ms. Schellin?

15                  MS. SCHELLIN: Yes, sir. This case  
16 is before you for final action also. And we  
17 have received comments from Holland & Knight.  
18 And we also received a letter from the Zoning  
19 Administrator today. And I believe we also  
20 have report from NCPC.

21                  CHAIRMAN HOOD: Okay. Thank you.

22                  Mr. Turnbull, did you have a chance

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1 to look at the NCPC letter? Okay.

2                   While Mr. Turnbull is looking at  
3 that, the letter -- no, I don't think they --

4                   COMMISSIONER        TURNBULL:        I 'm  
5 reaching for it and I can't find it.

6                   CHAIRMAN HOOD:    You've been doing  
7 so good for me tonight with the NCPC letters.

8                   COMMISSIONER TURNBULL: Yes, I have  
9 a copy of it now.

10                  The letter, which is Exhibit No.  
11 20, is that the NCPC has found that the  
12 proposed text amendment to the Reed-Cooke  
13 Overlay would not be inconsistent with the  
14 comprehensive plan for the National Capitol,  
15 nor would it adversely affect any other  
16 identified federal interests.

17                  CHAIRMAN HOOD: Thank you. Again,  
18 we have some submittals that came in as Ms.  
19 Schellin has noted. And thank you, Mr.  
20 Turnbull. I think we have -- what's this  
21 Exhibit 17, 19 -- again from Holland & Knight  
22 who's representing Harris Teeter.

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1           We also have the letter from the  
2 Zoning Administrator which came in today. And  
3 we want to thank him for that.

4           One of the things that I have  
5 highlighted on his letter -- I went straight  
6 to three. But before we do that, let's open  
7 it up for any comments, any questions or  
8 comments on this. And I think we went to this  
9 because we asked him to write this because we  
10 were talking about percentage. And we got  
11 into this whole thing about I think what is  
12 accessory, or main use, or what he was  
13 selling. I think it was beer and wine. I  
14 don't think alcohol -- liquor -- was in on  
15 this, but beer and wine.

16           But anyway, that's as much as I can  
17 tee this up. Maybe I'll go to Mr. Bergstein  
18 to help me tee it up a little better than  
19 that.

20           MR. BERGSTEIN: Yes. This case  
21 actually started with an appeal by Reed-Cooke  
22 neighborhood coalition, I guess, concerning

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1       whether or not the amount of beer and wine  
2       that was proposed for the new Harris Teeter  
3       store was allowed within the Overlay District.

4       The BZA decided that it was. This text  
5       amendment would say that that use would not be  
6       allowed.

7                   Harris Teeter has asked basically  
8       to be allowed to be seen as conforming. And  
9       the ANC suggested that there should be a cap  
10      on the extent to which that use should be  
11      continued to be allowed in the store.

12                  The BZA order had noted that the  
13      building permit had stated that the area for  
14      beer and wine was approximately four percent.

15                  Apparently the Zoning Administrator is  
16      satisfied that the actual amount is 5.82  
17      percent of the area that's being occupied by  
18      beer and wine sales. Harris Teeter has asked  
19      to go up to 20 percent based upon a precedent  
20      involving the YMCA that actually was only  
21      concerned with the percentage of revenue, in  
22      that case a finding that approximately three

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1 percent of revenue would be an accessory use.

2                   But the issue did not go to gross  
3 floor area but went to revenue only. And the  
4 BZA order itself distinguished between the two  
5 finding the use was an accessory use because  
6 it occupied the floor area and would not be  
7 able to exceed more than 50 percent of the  
8 gross receipts because of the ABC law.

9                   So the issue is whether or not you  
10 place no cap at all on the amount of this  
11 accessory use, whether or not you limited it  
12 to the amount of use that was shown on the  
13 building permit which is four percent, whether  
14 or not you allow the use as now is 5.82  
15 percent, whether you allow it as 20 percent or  
16 come up with some other figure that you find  
17 satisfactory.

18                   CHAIRMAN HOOD: Okay. Thank you  
19 very much, Mr. Bergstein.

20                   Colleagues, if you remember, we  
21 accepted the language. We just need to find  
22 the percentage I think of the GFA.

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1                   So with that -- oh, somebody  
2 actually wants to hear me.

3                   So I think that's where we are. We  
4 had actually accepted the language. And I  
5 think what we need to do is find out where  
6 we're going to be, what percentage of the GFA  
7 that we're trying to determine.

8                   And I'll just open it up for any  
9 comments. Commissioner Schlater?

10                  COMMISSIONER SCHLATER: I think the  
11 whole purpose of amending the text amendment  
12 was to ensure that Harris Teeter, which had  
13 moved to the neighborhood, would not find  
14 themselves in a situation where they had a  
15 nonconforming use in their store. And I think  
16 that's fair. I mean, you don't want to pass  
17 new texts that puts them in that situation if  
18 it impacts their operations at all.

19                  So the only question is should they  
20 be given the flexibility to expand their beer  
21 and wine section as a conforming use going  
22 forward. And I think there should be some

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1 flexibility in there to allow them to  
2 rearrange their store at some level. I don't  
3 think we need to say you've got 25,977 square  
4 feet and you cannot go one foot over that.

5 On the other hand, I think 20  
6 percent is high. And I think the  
7 neighborhood's concerns are legitimate. I  
8 don't think the Applicant needs the  
9 flexibility to triple the amount of beer and  
10 wine floor space. I think that would be  
11 inconsistent with the spirit of what they've  
12 been representing with their store up to this  
13 point. Or at least that's what the record  
14 seems to reflect from my standpoint.

15 So I guess what I'm saying is I  
16 would support some number between 5.8 percent  
17 and 20 percent.

18 CHAIRMAN HOOD: Okay. Now that  
19 we've got it narrowed down --

20 COMMISSIONER TURNBULL: Well, six  
21 percent would obviously cover their existing  
22 operation. And then it just depends if we

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1 feel that as you said there's some measure of  
2 flexibility in if they could grow, still being  
3 an incidental use -- an accessory use.

4 CHAIRMAN HOOD: I actually would  
5 agree. We had 5.83. And I think six percent  
6 gives them a little bit more than the 5.83,  
7 but not much. But still, I think that's  
8 within the jurisdiction they can work with.

9 And I think if it's agreeable to  
10 all my colleagues, we could -- six percent --  
11 I think that was the issue we were going back  
12 and forth with is five percent to 20 percent.

13 But --

14 COMMISSIONER TURNBULL: Yes. I was  
15 just saying six percent covers what they have  
16 right now. But as Commissioner Schlater was  
17 saying, is there a percentage beyond that that  
18 we -- is it eight percent? I don't know. I  
19 mean, that's purely just picking things out of  
20 the air. Six percent covers what they have  
21 now.

22 CHAIRMAN HOOD: Right. I thought

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1 it was 5.83.

2 COMMISSIONER TURNBULL: Well, I  
3 know. But I don't want to write 5.83 on an  
4 order. I would say six percent or eight  
5 percent or something.

6 CHAIRMAN HOOD: I mean, we can put  
7 some numbers in a hat. But I think six  
8 percent, unless somebody else wants to up it.

9 And I --

10 COMMISSIONER MAY: I would support  
11 a little bit more flexibility than just .17  
12 percent, which is not very big. Seven, eight  
13 percent would be okay with me.

14 COMMISSIONER SCHLATER: I would be  
15 okay with eight.

16 CHAIRMAN HOOD: Do I hear nine?

17 (LAUGHTER.)

18 CHAIRMAN HOOD: Okay. So do we  
19 have an agreement for eight percent?

20 COMMISSIONER MAY: Most people are  
21 saying eight, I think.

22 CHAIRMAN HOOD: Eight percent?

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1               Okay. So what I will do in that  
2 case is --

3               COMMISSIONER SCHLATER: Let's see  
4 here.

5               CHAIRMAN HOOD: Okay. Go ahead.

6               COMMISSIONER SCHLATER: I move that  
7 we approve Zoning Commission Case No. 08-17,  
8 Amendments to the Reed-Cooke Overlay, with the  
9 clarification that the cap on square footage  
10 for beer and wine alcoholic beverage sales  
11 would be at eight percent.

12              MR. BERGSTEIN: One clarification.

13              Eight percent of its current total gross  
14 floor area? Or eight percent of whatever  
15 amount it could possibly be expanded to?

16              COMMISSIONER MAY: I'd say current  
17 because eight percent of the 25,000 -- I mean,  
18 that's a lot of floor space.

19              MR. BERGSTEIN: Just wanted that  
20 clarification. Thank you.

21              COMMISSIONER MAY: I mean, that's  
22 my suggestion is that the --

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1                   COMMISSIONER SCHLATER: I'm okay  
2 with that.

3                   CHAIRMAN HOOD: Okay. And I'll  
4 second it.

5                   It's been moved and properly  
6 seconded.

7                   Any further discussion?

8                   (No audible response.)

9                   CHAIRMAN HOOD: All those in favor?

10                  (A chorus of ayes.)

11                  CHAIRMAN HOOD: Not hearing any  
12 opposition, Ms. Schellin, would you record the  
13 vote?

14                  MS. SCHELLIN: Yes. Staff records  
15 the vote five to zero to zero to approve final  
16 action on Zoning Commission Case No. 08-17 as  
17 stated. Commissioner Schlater moving;  
18 Commissioner Hood seconding; Commissioners May  
19 and Turnbull in support; Commissioner Keating  
20 in support by absentee ballot.

21                  CHAIRMAN HOOD: Okay. Thank you,  
22 Ms. Schellin.

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1                   We have some time extensions, which  
2 are coming up -- Zoning Commission Case No.  
3 03-30B.        This is Square 643 Associates.  
4 They're asking for the three-year PUD time  
5 extension at 734 1st Street, S.W.

6                   Ms. Schellin?

7                   MS. SCHELLIN:    Staff has nothing  
8 further to add on this one except to advise  
9 that we did not receive a response from any of  
10 the parties.

11                  CHAIRMAN HOOD:    Okay.    Colleagues,  
12 is this Exhibit 1?    Okay.    Exhibit 1.    Okay.

13                  Well,    okay.    Anyway we have in  
14 front of us Exhibit 1 with the order behind it  
15 -- behind Tab A -- and the other order -- the  
16 first-time extension -- behind Tab B.    And  
17 they are asking for a three-year time  
18 extension.    And I think typically in the past  
19 we have done two years.

20                  But I came in with the mindset that  
21 this should have been two years.    But after I  
22 re-read the submission which is Exhibit 1,

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1 Residential Development, this Applicant is  
2 asking for three years time extension. And I  
3 don't think -- unless my colleagues feel  
4 compelled otherwise -- I'm not going to pro or  
5 con on that issue whether it's two or three.  
6 If they're asking for three, unless someone  
7 feels otherwise, I would agree with their  
8 request.

9 COMMISSIONER SCHLATER: I just have  
10 a question on policy. I'm a new guy, so I get  
11 to ask the stupid questions.

12 This appears to be the second  
13 extension request for this Applicant. Do we  
14 have any thoughts on how many extension  
15 requests one received before you get a  
16 skeptical look?

17 At some point, these PUDs become  
18 stale, and they're not state-of-the-art  
19 anymore. And things change. The  
20 neighborhoods change. The market changes.  
21 Technology changes. And I just wonder, I  
22 think we should give thought to at what point

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1 we just say enough is enough, come back to us  
2 when you actually have a plan that you think  
3 you can build. Because it would appear that  
4 this plan that's been approved by the Zoning  
5 Commission is not financially feasible because  
6 it sat on the shelf during one of the hottest  
7 real estate markets in the history of real  
8 estate markets.

9 CHAIRMAN HOOD: Commissioner  
10 Schlater, while I would agree wholeheartedly  
11 -- and I can let someone else also answer --  
12 but one of the things that made me stick with  
13 two years or re-looking at that -- because the  
14 Commission went through that cycle once before  
15 where all PUDs and the ones we were dealing  
16 with in the '90s were ten years or they sat on  
17 the shelf so to speak as you mentioned. They  
18 sat there for ten years and it was former  
19 Commissioner Franklin who brought those issues  
20 up. And then I agreed with him.

21 But this one to me compared to  
22 those is relatively new. So I don't know what

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1 anyone else feels. I just think that while I  
2 agree with you wholeheartedly, I still think  
3 this was a relatively new request compared to  
4 the ones I've dealt with in the past that were  
5 15 and 20 years old.

6 I don't know if Ms. Steingasser  
7 wants to comment.

8 MS. STEINGASSER: Well, it is  
9 something that's always concerned the Office  
10 of Planning. And you're right. Some of the  
11 PUDs we had were coming in for five and six  
12 extensions with no real justification.

13 And I believe Commissioner Franklin  
14 and ex-Chairman Mitten also brought up the  
15 concept that we're not selling zoning through  
16 PUDs, that you can't just come in and get your  
17 PUD and just keep it indefinitely. So  
18 as part of the PUD revision section of the  
19 zoning review, that is one of the things we're  
20 looking at is at what point can they actually  
21 request the extension, how many extensions can  
22 they be, how long should they be for, so that

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1 there is kind of a certainty for the  
2 neighborhood.

3 And you're right. These PUDs  
4 expire. The relevance does change as the  
5 markets change. So it is something we are  
6 looking at. I don't have any answer for you  
7 tonight, but it is definitely one of our top  
8 issues.

9 COMMISSIONER MAY: Mr. Chairman,  
10 I'm wondering whether we should actually  
11 consider deferring taking action on this  
12 particular one and to be able to consider this  
13 a little bit more carefully. And maybe we  
14 need to get input from the Office of Planning.

15 I don't know.

16 I mean, this project is one that -  
17 - I wasn't around when it was approved  
18 initially. But I think I'm familiar with the  
19 project. And as I recall, this is a project  
20 that is on sale. I mean, the building is up  
21 for sale and it's been up for sale for years.

22 I don't know when it first went up for sale,

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1 but in the two years that I've been riding  
2 past it, it's been up for sale.

3 So I don't know if there's really a  
4 serious intent to actually develop it in this  
5 way, or whether it's just part of the value  
6 that they're trying to get out of the  
7 property. I don't know.

8 But maybe we ought to take a little  
9 closer look because what we're doing is  
10 guaranteeing three more years of it being the  
11 way it is without any real sense that it's  
12 going to get better. I don't know.

13 COMMISSIONER TURNBULL: It seems to  
14 me that I've seen this. I mean, the location  
15 of this when we were talking about the Randall  
16 School Project, it was on the corner. It was  
17 talked about. And it was one of the  
18 "influences" that were talked about in the  
19 relationship to the Randall School  
20 development. And it seemed like everything  
21 was going fine.

22 But I think Commissioner May brings

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1 up a good point. Do we need to defer this and  
2 talk about it a little bit more?

3 CHAIRMAN HOOD: So I guess if we  
4 defer it, I guess the Applicant will know  
5 about it first of all. And second of all, we  
6 ask them for some input from the Office of  
7 Planning? I guess I'm asking that to my  
8 colleagues. Is that what we're asking for so  
9 we can make sure we're all on the same page?

10 Commissioner May, since you  
11 mentioned the Office of Planning, are we  
12 asking for input from the Office of Planning?

13 COMMISSIONER MAY: Yes. I don't  
14 know. It was just an idea I threw out there.  
15 I'd ask the Office of Planning whether they  
16 think that they could bring some input of  
17 value to this particular discussion.

18 MS. STEINGASSER: We're happy to  
19 take a stab at it.

20 We also contacted the Applicant's  
21 representative and asked for an explanation of  
22 why the three years and not the standard two

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1 years. And we've received no response.

2 So we're happy to try to push  
3 further to get the Commission a little bit  
4 more information and understanding of the  
5 property, if that's what you'd like.

6 COMMISSIONER SCHLATER: I would say  
7 my inclination is to not serially extend PUDs.

8 I think if the Applicant can  
9 demonstrate in some way that they've made  
10 progress to maybe they've spent some money and  
11 they got a building permit but they just  
12 couldn't pull together the financing, that  
13 would be one thing. Have they secured  
14 tenants? There's nonprofit office space. Had  
15 they expended any effort towards the  
16 realization of the project, I think you'd be  
17 sympathetic. You wouldn't want to pull out  
18 their approval from under an active effort.

19 But not knowing anything else  
20 besides the fact that they're just back here  
21 asking for an extension, I'm not inclined to  
22 approve it at this point.

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1                   CHAIRMAN HOOD: I would just say  
2 this though, Commissioner Schlater, I think  
3 what you're asking for is almost like a deja  
4 vu and re-living it.

5                   They'd only come down here with the  
6 money spent. If I remember correctly, those  
7 20-year PUD -- I may be overexaggerating --  
8 maybe it was just 15 years. But they're going  
9 to come down with all the money they've  
10 invested. Once we start asking for it, I'm  
11 sure we will get an influx of that.

12                  I just want to caution us. If  
13 we're really going to reconsider this with  
14 input from the Office of Planning, I want us  
15 to have the Office of Planning go through all  
16 this and then we disapprove it anyway for  
17 three years and we've wasted their time. I  
18 think if we're going to take that harsh stand  
19 as Mr. Franklin has said that actually the  
20 Zoning Commission did take previously, then we  
21 need to do it. I just want to put that caveat  
22 out there.

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1                   So I guess what do we want to do?

2                   COMMISSIONER MAY:        I think  
3                   Commissioner Schlater has made it pretty clear  
4                   that he's not inclined to vote in favor of  
5                   this based on the information that we already  
6                   have. So it's by no means clear that we'll  
7                   get satisfactory information.

8                   I would like to see the same  
9                   things. I would like to see that there's  
10                   really been an effort. And I think it's worth  
11                   it to get that information into the record if  
12                   nothing else. Even if that's all we do get  
13                   out of it and we do wind up extending, at  
14                   least we will be able to show that it was for  
15                   good reason.

16                   CHAIRMAN HOOD: Okay.

17                   COMMISSIONER SCHLATER: I think the  
18                   fact that they're asking for three years shows  
19                   that they don't have a high level of  
20                   confidence that it's going to be executed in  
21                   the next two years. I mean, that's the only  
22                   assumption you could make from the request

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1 that there is no supporting documentation of  
2 the request.

3 CHAIRMAN HOOD: But typically, --  
4 and I'm just mentioning it -- because  
5 typically when we get extensions especially  
6 here now, we always tell by the financing.  
7 And everybody knows and we've said this  
8 previously that -- I'm not as familiar with  
9 the site and maybe some of my colleagues might  
10 be -- but typically, they come down and tell  
11 us they're having problems getting financing.

12 And in this day and time, we know that's  
13 always the case.

14 So anyway, what we'll do is we'll  
15 ask for additional information from the  
16 Applicant. And they didn't even respond to  
17 Ms. Steingasser's request about the three to  
18 two years. So that's another thing.

19 I think the Office of Planning  
20 themselves needs some additional information.

21 So hopefully you all can get that, and we can  
22 get the concerns that Commissioner Schlater

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1 raised, which I think are very valid.

2 COMMISSIONER TURNBULL: And that's  
3 not even in a BZA case where they ask for  
4 extensions. I mean, I've got one for tomorrow  
5 that we got a letter from the bank explaining  
6 why they're not being approved. And I think  
7 that kind of documentation goes a long way in  
8 granting an extension.

9 CHAIRMAN HOOD: Okay. Okay. All  
10 right. We're setting it to another level.  
11 That's good. I don't have any problems with  
12 it.

13 Okay. So do we have a time frame  
14 on this, Ms. Schellin? Or do we just put this  
15 --

16 MS. SCHELLIN: I'm going to look to  
17 Ms. Steingasser and see if October 1st is good  
18 for them?

19 MS. STEINGASSER: The 1st would be  
20 fine.

21 MS. SCHELLIN: October 1st? So  
22 we'll put it on the next agenda.

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1                   CHAIRMAN HOOD: And the Applicant  
2 also is going -- well, actually the Applicant  
3 is going to have to be a major part in your  
4 response. Okay. Okay.

5                   All right. So we will defer this  
6 until October the 1st.

7                   Okay. Thank you for that lively  
8 discussion.

9                   Next, Zoning Commission Case No.  
10 06-01A.

11                   Ms. Schellin?

12                   MS. SCHELLIN: Yes, sir. This is a  
13 request for a two-year term extension. And  
14 there are no responses from any parties on  
15 this one.

16                   CHAIRMAN HOOD:            Commissioner  
17 Schlater, are we going to do the same thing  
18 with this one? We might as well --

19                   COMMISSIONER SCHLATER: No, we're  
20 not going to do the same thing.

21                   I just will note that I think we've  
22 already addressed this project at another

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1 point in the agenda. It's the Steuart-H  
2 Street, LLC PUD mod. So I guess they're  
3 asking for an extension? I just want  
4 clarification.

5 The extension of the existing  
6 approval for the high density, while they've  
7 come back to us asking for a modification of  
8 that initial approval, I'm confused.

9 MS. SCHELLIN: That's correct.  
10 They actually filed their request for the time  
11 extension on July 7th. And then I believe it  
12 was late August, they filed the modification  
13 request. That's correct.

14 COMMISSIONER SCHLATER: I don't  
15 want to prejudice this. But why don't we just  
16 all consider them at the same time?

17 CHAIRMAN HOOD: I think there's  
18 some timing issues.

19 MS. SCHELLIN: Well, a time  
20 extension only requires one vote, so it goes  
21 under final action.

22 You mean you want to consider it at

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1 the time of the hearing?

2 COMMISSIONER SCHLATER: That's what  
3 I was thinking.

4 May I ask? When are their two  
5 years up?

6 MS. SCHELLIN: Their two years is  
7 up October -- it appears to be October 12th.

8 COMMISSIONER SCHLATER: Is that  
9 before? So we can --

10 MS. SCHELLIN: We could do it. I  
11 mean, once they've actually filed their  
12 application, it stays the time. Or it tolls  
13 the time I believe is the correct phrase. So  
14 we can actually defer action on this until the  
15 hearing if you choose to do so.

16 CHAIRMAN HOOD: Well, let me ask  
17 this now. Once we set it down so the time is  
18 stayed, because we set it down --

19 MS. SCHELLIN: You don't actually  
20 set a time extension down. You can just  
21 decide to take the other case.

22 CHAIRMAN HOOD: No, I'm talking

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1 about --

2                   MR. RITTING: Just to clarify what  
3 Ms. Schellin said, it's at your discretion  
4 whether you want to stay the deadline. If you  
5 indicate that you're going to stay the  
6 deadline and toll it until some date certain  
7 or some other time that you will determine in  
8 the future, as long as you say so, then that's  
9 okay.

10                  CHAIRMAN HOOD: Okay. The problem  
11 with that is do we have a time frame on this  
12 Steuart 06-01B which we set down tonight? I  
13 mean, what's the time frame?

14                  MS. SCHELLIN: It's up to the  
15 Applicant to file their pre-hearing statement.

16                  If you'll recall, we did the same  
17 thing on the Capper/Carollsburg case.  
18 Remember they filed for a modification. They  
19 filed for a time extension. And the Zoning  
20 Commission decided that even though there is  
21 no hearing required for the time extension,  
22 the Commission decided that they would wait on

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1 the time extension until they heard the other  
2 cases and do it all at one time. If you'll  
3 recall, we did that like the fall of last year  
4 -- same type situation.

5 CHAIRMAN HOOD: So under 06-01B,  
6 they've already filed, right?

7 MS. SCHELLIN: Right. We just set  
8 down that case tonight.

9 CHAIRMAN HOOD: So I just want to  
10 make sure I'm clear. So that would take 06-  
11 01A, the time extension would be stayed until  
12 after we finish any proceedings with the 06-  
13 01B?

14 MR. RITTING: That would be  
15 appropriate. Yes.

16 CHAIRMAN HOOD: And then if we have  
17 a problem -- to me, it seems like we're  
18 putting them all on -- well, I guess we are.

19 06-01B if denied, then we would  
20 have to take back up a time extension?

21 MR. RITTING: Well, you're  
22 deferring taking action on the time extension.

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1 You could vote it up or down at that time.

2 CHAIRMAN HOOD: So if 06-01B is  
3 approved, then what happens to 06-01A?

4 MR. RITTING: It depends on what  
5 you do with it. If you're deferring it,  
6 nothing happens until you decide to either  
7 vote it up or down.

8 CHAIRMAN HOOD: Okay. That's all  
9 the questions I'm going to ask on that. I'll  
10 just wait to see what happens.

11 Any other questions?

12 COMMISSIONER MAY: Well, it makes  
13 sense to me to defer the discussion of the  
14 time extension if we can toll it until that  
15 time it stays in force. And so if they manage  
16 to go forward and withdraw the request for the  
17 hearing -- if they manage forward with the  
18 original project, then we'd have to vote it up  
19 or down on the extension. That's all. I  
20 don't know if there's any downside to that.

21 COMMISSIONER SCHLATER: Yes. I  
22 just want to make it clear. I don't have any

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1 problem with the time extension. I doubt I  
2 will be. I just want to know what we're  
3 extending, and which projects we're extending.  
4 So why not just do it all at once?

5 CHAIRMAN HOOD: Okay. All right.  
6 That's a good point.

7 I forgot. This is that one with  
8 two plans. Okay. Which one is it?

9 All right. So we will do that. Do  
10 we need to make a motion? We'll just find for  
11 doing that?

12 MR. RITTING: I would suggest yes,  
13 you make a motion whether or not to toll the  
14 effective date, to toll the decision date on  
15 the PUD extension until you make a decision on  
16 the PUD modification application.

17 CHAIRMAN HOOD: Okay. So I would  
18 move that we toll the decision on the PUD time  
19 extension modification for 06-01A until the  
20 time that we make a decision on Zoning  
21 Commission Case No. 06-01B. Is that  
22 sufficient? And ask for a second.

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1                   COMMISSIONER SCHLATER: Second.

2                   CHAIRMAN    HOOD:        Any    further  
3 discussion?

4                   (No audible response.)

5                   CHAIRMAN HOOD: All those in favor?

6                   (A chorus of ayes.)

7                   CHAIRMAN HOOD: Not hearing any  
8 opposition, Ms. Schellin, would you record the  
9 vote?

10                  MS. SCHELLIN: Yes. Staff records  
11 the vote five to zero to zero to toll the  
12 decision date on Zoning Commission Case No.  
13 06-01A until a decision is made on Zoning  
14 Commission No. 06-01B. Commissioner Hood  
15 moving; Commissioner Schlater seconding;  
16 Commissioners May and Turnbull in support;  
17 Commissioner Keating in support by absentee  
18 ballot.

19                  MR. RITTING: Of course, I didn't  
20 think of this until just now.

21                  But I just wanted to clarify. Are  
22 you going to toll that to the date you take

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1 proposed action on the modification request or  
2 final action, or do you want to decide that  
3 now?

4 CHAIRMAN HOOD: It would probably  
5 be final.

6 MR. RITTING: Okay.

7 CHAIRMAN HOOD: Because we're going  
8 to have to figure out which plan is approved.

9 I don't know which is going to take  
10 precedence over which.

11 MR. RITTING: That makes sense to  
12 me.

13 CHAIRMAN HOOD: Well, that --

14 MR. RITTING: We'll see what they  
15 propose. That would be my recommendation.  
16 You'll have a good sense of where it's headed.

17 CHAIRMAN HOOD: I don't know.  
18 Well, what do you all -- proposed final, set  
19 down -- where do you want to do it? I think  
20 final would probably be the more -- is final  
21 all right?

22 COMMISSIONER MAY: We're not

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1 necessarily deciding when we will decide it.  
2 It's just a question of how long it'll toll,  
3 right? So we could say final and then still  
4 do it at proposed.

5 MR. RITTING: That's correct.

6 CHAIRMAN HOOD: Yes. It just gives  
7 us a little more time -- a little wiggle room.

8 MR. RITTING: Okay.

9 CHAIRMAN HOOD: Okay.

10 COMMISSIONER MAY: We could do it  
11 at the hearing if we decide.

12 CHAIRMAN HOOD: Okay. Zoning  
13 Commission Case No. 02-38B. This is the  
14 Waterfront Associates, LLC, District of  
15 Columbia, Two-Year PUD Time Extension at  
16 square 542.

17 Ms. Schellin?

18 MS. SCHELLIN: Staff has nothing  
19 further to add on to this one other than to  
20 say that this is a two-year extension for the  
21 second-stage PUD for the east and west  
22 residential towers, and ask that the

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1                   Commission consider this request.

2                   CHAIRMAN HOOD: Okay. Thank you.

3                   This is Exhibit -- well, anyway,  
4 it's dated August the 4th.

5                   Let me open it up and hear any  
6 comments. How do you want to proceed with  
7 this one?

8                   COMMISSIONER SCHLATER: I have no  
9 problem extending it for the east and west  
10 residential towers to no later than January  
11 2012.

12                  I would question why the Applicant  
13 is requesting the second part of the request  
14 which is a two-year extension for the  
15 northwest and the northeast building to  
16 January 25, 2015. It seems like a long time  
17 away. And as a resident of Southwest, one  
18 block south of this development, I'm not eager  
19 to extend it for such a long period  
20 preemptively.

21                  CHAIRMAN HOOD: Okay. Any other  
22 comments, colleagues?

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1           I think we would put this one in  
2 the same category as the one prior to the last  
3 one that we just did. And I think  
4 Commissioner Schlater, who's a block away,  
5 does not want to see this extension for such a  
6 long period of time.

7           And I don't know. Let me open it  
8 up and see. It seems to be taking different  
9 courses with PUD extensions.

10           COMMISSIONER SCHLATER: I have one  
11 question. Excuse me. One question on it.

12           So on this two-year extension of  
13 the first-stage PUD, right now the time  
14 deadline is January 25, 2013 to submit that  
15 first-stage PUD application for the  
16 northwest/northeast and west end street  
17 buildings? Is that correct?

18           CHAIRMAN HOOD: For the northwest  
19 building, the northeast building. You're  
20 talking about bullet number two?

21           COMMISSIONER SCHLATER: Bullet  
22 number two. What's the current deadline?

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1 Because if it is 2013, I would recommend they  
2 come back in 2013 and ask for that extension.

3 COMMISSIONER MAY: On the second  
4 page, it says that it's 2013.

5 COMMISSIONER SCHLATER: Yes. So.

6 CHAIRMAN HOOD: So you want to see  
7 them come back later --

8 COMMISSIONER SCHLATER: Yes.

9 CHAIRMAN HOOD: -- at that time and  
10 ask for the extension?

11 COMMISSIONER MAY: Essentially,  
12 they're asking for two-year time extensions  
13 for the two deadlines that they already have  
14 in essence.

15 COMMISSIONER SCHLATER: Yes.

16 COMMISSIONER MAY: January 2010  
17 goes to 2012. January of 2013 would go to  
18 2015.

19 I don't have any objection to that  
20 -- a two-year extension on the second stage  
21 for east and west residential towers, and then  
22 leave the first stage as it is for now and see

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1 how it goes.

2 CHAIRMAN HOOD: And then come back  
3 at a later point in time?

4 COMMISSIONER MAY: Yes.

5 CHAIRMAN HOOD: Okay. Is that a  
6 problem with anybody else up here?

7 (No audible response.)

8 CHAIRMAN HOOD: Okay. So  
9 Commissioner Schlater?

10 COMMISSIONER SCHLATER: I'll move  
11 to approve the request for extension of time  
12 of Zoning Commission Order No. 02-38B,  
13 Modification to First-Stage PUD, Second-Stage  
14 PUD and Related Zoning Map Amendment, with the  
15 amendment that the two-year extension of the  
16 first-year PUD to January 25, 2015 not be  
17 included.

18 COMMISSIONER MAY: Second.

19 CHAIRMAN HOOD: It is moved and  
20 properly seconded.

21 Any further discussion?

22 (No audible response.)

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1 CHAIRMAN HOOD: All those in favor?

2 (A chorus of ayes.)

3 CHAIRMAN HOOD: Not hearing any  
4 opposition, Ms. Schellin, would you record the  
5 vote?

6 MS. SCHELLIN: Staff records the  
7 vote five to zero to zero to approve the two-  
8 year time extension to the second-stage PUD to  
9 January 25, 2012. That excludes the request  
10 for the first-stage PUD extension to January  
11 25, 2015. Commissioner Schlater moving;  
12 Commissioner May seconding; Commissioners Hood  
13 and Turnbull in support; Commissioner Keating  
14 in support by absentee ballot.

15 CHAIRMAN HOOD: Okay. Next we'll  
16 go to our Office of Planning status report.

17 MS. STEINGASSER: Good evening,  
18 Chairman and Commissioners.

19 The status report basically is kind  
20 of an update on the zoning re-write which has  
21 a couple different issues.

22 We started to move on writing the

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1 text for the campus plans. And we'll be  
2 circulating that back to the task force as  
3 Office of Planning has promised and as the  
4 Zoning Commission has requested that the task  
5 force view those before it comes to you. So  
6 we'll be moving that in September and  
7 hopefully we'll get it to you sometime in late  
8 October.

9 Obviously after this evening, we're  
10 also going to make the PUD issues a priority,  
11 at least on some of these technical issues of  
12 when they come to you, how long the requests  
13 are, and stuff like that. So we'll get that  
14 back to you as a priority in the FAR  
15 calculation.

16 Other than that, we don't have any  
17 pressing updates.

18 CHAIRMAN HOOD: Okay. Any  
19 questions at all on the Office of Planning  
20 status report?

21 (No audible response.)

22 CHAIRMAN HOOD: I've been reminded

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1 by one of my colleagues. For the sake of Mr.  
2 Parsons who's served over 30-some odd years on  
3 the Commission, can we get an update on the  
4 open space? Would you like to give us an  
5 update on open space?

6 MS. STEINGASSER: There really is  
7 no update on open space. As part of the  
8 working group, we did look at whether a park  
9 and open-space zone would be appropriate. We  
10 determined based on our research and our  
11 analysis of the city that it would not be  
12 appropriate, and we will not be bringing such  
13 a zone forward.

14 CHAIRMAN HOOD: Is Mr. Parsons on  
15 the task force?

16 MS. STEINGASSER: No, he's not.

17 CHAIRMAN HOOD: Oh, okay. Well,  
18 Mr. Turnbull, when you see him maybe you want  
19 to mention it to him.

20 Okay. Anything else, Ms.  
21 Schellin?

22 MS. SCHELLIN: No, sir.

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1                   CHAIRMAN HOOD: Director Weinbaum,  
2 do you have any closing remarks?

3                   MR. WEINBAUM: No. Just very happy  
4 to be here.

5                   CHAIRMAN HOOD: Good, good. You  
6 see why we put your statement at the  
7 beginning. Because at the end --

8                   MR. WEINBAUM: Yes. I've lost my  
9 audience.

10                  CHAIRMAN HOOD: Right. Okay. Do  
11 we have anything else?

12                  Okay. Ms. Schellin, anything else?

13                  MS. SCHELLIN: No.

14                  CHAIRMAN HOOD: Okay. With that,  
15 this meeting is adjourned.

16                  (Whereupon, at 8:46 p.m., the  
17 hearing was adjourned.)

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