

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

SPECIAL MEETING

+ + + + +

JULY 27, 2009

+ + + + +

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

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
ESTHER BUSHMAN	Gen. Counsel

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

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON
MAXINE BROWN-ROBERTS
PAUL GOLDSTEIN
ARLOVA JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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

This transcript constitutes the
minutes from the Special Meeting held on July
27, 2009.

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

2 6:48 p.m.

3 CHAIRMAN HOOD: Okay. Let me say
4 good evening. We're ready to get started.
5 This meeting will, please, come to order.
6 Good evening, ladies and gentlemen. This is
7 the July 27th Public Meeting of the Zoning
8 Commission of the District of Columbia.

9 My name is Anthony Hood. Joining
10 me are Vice Chairman Keating, Commissioner
11 Schlater, Commissioner May and Commissioner
12 Turnbull.

13 We are also joined by the Office of
14 Zoning staff, Office of Attorney General and
15 the Office of Planning.

16 Copies of today's agenda are
17 available to you and are located in the bin
18 near the door. We do not take any public
19 testimony at our meetings, unless the
20 Commission requests someone to come forward.

21 Please, be advised that this
22 proceeding is being recorded by a Court

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1 Reporter and is also webcast live.
2 Accordingly, we must ask you to refrain from
3 any disruptive noises or actions in the
4 hearing room. Please, turn off all beepers
5 and cell phones.

6 Does the staff have any preliminary
7 matters? If not, let us proceed with the
8 agenda.

9 MS. SCHELLIN: No, sir, staff has
10 nothing.

11 CHAIRMAN HOOD: I do have two
12 preliminary matters. What I would like to do
13 this evening is kind of move the agenda around
14 for the sake of efficiency. Preliminary
15 matters we will take first and I do have a
16 preliminary matter. Consent calendar we will
17 take second. Final action we will take third.
18 Proposed action we will take fourth and
19 hearing action we will take fifth.

20 First under preliminary matters is
21 selection of Office of Zoning Director. As an
22 update on the status of the Director of the

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1 Office of Zoning, we want to thank all of the
2 applicants who applied for this important
3 position. Something will be going out in the
4 mail tomorrow.

5 Again, we're volunteers. We're
6 doing the best we can, so if they hear it
7 first from this webcast live, I apologize, but
8 hopefully the United States Postal Service
9 will get it to you as soon as possible.

10 We received applications from 8
11 candidates from all over the country. We have
12 worked hard and diligently in filling this
13 position. There has been a lot of give and
14 take in getting to where we are today.

15 There has been a degree of
16 controversy about the qualifications for the
17 position and the overall selection process.
18 We believe that we have carried out this
19 process in a fair and balanced way.

20 The Office of Zoning is an award-
21 winning office and we are confident that this
22 person will do everything in his power to make

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1 sure that it continues to remain so. We have
2 chosen someone that we believe will continue
3 the excellence of this independent agency.

4 I maintained all along, including
5 my testimony at the City Council, that we had
6 a process in place in fulfilling this position
7 and we have completed that process. I am
8 joined by my fellow Commissioners to announce
9 that Mr. Jamison Weinbaum has been selected as
10 the new Director of the Office of Zoning.

11 Mr. Weinbaum is scheduled to start
12 his new position at the end of August. At
13 this time, I would like to thank Richard Nero
14 for his role as Interim Director for the last
15 7 to 8 months or maybe even longer. Also, the
16 Office of Zoning staff, also the Screening
17 Panel which was put together and most of all I
18 would like to thank the residents of the
19 District of Columbia for giving us an
20 opportunity to vet the process, make sure it
21 was transparent.

22 And I will, at this time, open it

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1 up to my colleagues if they wanted to say
2 something. If not, we will do an official
3 action and it will just be the three Mayoral--
4 comments can come from any one of my
5 colleagues, but the vote will come from the
6 three Mayoral Commissioners. Vice Chairman?
7 Commissioner May, did you --

8 COMMISSIONER MAY: No thanks. I
9 always get excited at the opportunity to
10 comment, but I'll pass here. Thank you.

11 CHAIRMAN HOOD: Well, we --

12 VICE CHAIRMAN KEATING: I'll make a
13 motion that we approve the selection of
14 Jamison Weinbaum for the position of Director
15 of the Office of Zoning.

16 COMMISSIONER SCHLATER: Second.

17 CHAIRMAN HOOD: Moved and properly
18 seconded. Any further discussion? Any
19 further discussion?

20 All those in favor?

21 ALL: Aye.

22 CHAIRMAN HOOD: Certainly not

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1 hearing any opposition, there is only three of
2 us and I heard everyone say aye, because they
3 sit on the right and left side of me. Ms.
4 Schellin, could you record the vote?

5 MS. SCHELLIN: Yes. Staff records
6 the vote 3-0-0 to approve Jamison Weinbaum as
7 the new Director of the Office of Zoning.
8 Commissioner Keating making the motion,
9 Commissioner Schlater seconding, Commissioner
10 Hood in support and none opposed.

11 CHAIRMAN HOOD: And I will just say
12 this, there was a lot of give and take, a lot
13 of discussion. My two colleagues, I want to
14 thank you both and I appreciate the
15 opportunity to work with you on this and I
16 think we have a win-win actually for us and
17 for the District as a whole. So I want to
18 thank you both and I appreciate it.

19 Okay. Moving right along with our
20 agenda. Consent calendar, Zoning Commission
21 Case No. 07-35A, Sheridan Terrace
22 Redevelopment, LLC & DCHA - minor modification

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1 to PUD at Squares 5869 and 5872. Ms.
2 Schellin?

3 MS. SCHELLIN: Staff has nothing
4 further to add to this one other than to say
5 that we did not receive a response from the
6 ANCs in this case and I believe Commissioner
7 Schlater has -- will not be participating in
8 this case.

9 CHAIRMAN HOOD: Okay. Thank you
10 very much. Colleagues, we have in front of us
11 Exhibit 2, which is the formal action from the
12 Interim Director of the Office of Zoning, Mr.
13 Richard Nero. And I pay special attention to
14 page 3 and their recommendation to us. It is
15 recommended that the request for modification
16 be granted as it is consistent with the intent
17 of the Commission to approve its original
18 Order No. 07-35 and does not substantially
19 impair the intent, purpose or integrity of the
20 Zone Plan as embodied in the Zoning
21 Regulations and Map Amendment.

22 Any further discussion? And we

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1 also have Exhibit 1 and it talks about the
2 degrees of the modification. Apartment
3 building flex space modification. There is
4 one side yard adjustment. And a change in
5 Unit D-2.

6 COMMISSIONER MAY: Mr. Chairman?

7 CHAIRMAN HOOD: Commissioner May?

8 COMMISSIONER MAY: Yeah. I have a
9 number of questions, because I'm rather
10 confused about the consistency of information.
11 There are three areas where the project will
12 change, albeit, I think, in minor ways, but I
13 think the record ought to be clear.

14 There was a decrease in parking
15 spaces. And what is written in the text is
16 that it would be reduced from 65 to 55, but
17 what shows up in the drawings is a reduction
18 of 8 spaces. So is it 8 or is it 10? And
19 that's one question I have.

20 Then I have a couple of others.
21 Maybe --

22 CHAIRMAN HOOD: Okay. I'm not sure

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1 who -- there's always someone new at every
2 meeting. I'm not sure how we normally get the
3 response.

4 MS. SCHELLIN: Well, I'm sorry, I
5 didn't hear what his question was.

6 CHAIRMAN HOOD: The issue is the
7 parking spaces. We have conflicting
8 information.

9 COMMISSIONER MAY: Commissioner
10 Keating pointed out that it says 63 to 55, not
11 65 to 55. There was one document I have here
12 that says 65 to 55.

13 CHAIRMAN HOOD: One of them says 65
14 to 55 and the other one --

15 COMMISSIONER MAY: Okay. And that
16 was the Office of Zoning summary, so all
17 right, I'll -- that clarifies that question.
18 Next is the reduction in side yard refers to
19 Lots 5 and 14. And I did check this in both
20 documents. And what shows up in the plans is
21 a reference to Lot No. 16, not 5 or 14. So I
22 -- and it's not clear that -- I mean, 16 could

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1 actually be 14, but I don't see any indication
2 that 5 is changing.

3 CHAIRMAN HOOD: Ms. Schellin, whose
4 case is this?

5 MS. SCHELLIN: Ms. Giordano's.

6 CHAIRMAN HOOD: Ms. Giordano. I'm
7 going to do this, Ms. Giordano, if you can
8 come forward and give us some clarification on
9 the record? Yes, she's here.

10 Ms. Giordano, we hope that your
11 daughter is doing well. I don't want to put
12 all that out, but I was able to watch the
13 news.

14 MS. GIORDANO: She's fine. Thanks.

15 CHAIRMAN HOOD: Okay, good.

16 MS. GIORDANO: Thanks very much.
17 The correct is reduction in parking spaces is
18 63 to 55 spaces.

19 COMMISSIONER MAY: Okay. That one
20 was okay. It's the lots with the side yard
21 have been reduced.

22 MS. GIORDANO: It's only one lot

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1 that is affected and --

2 COMMISSIONER MAY: And it's Lot 16?

3 MS. GIORDANO: I believe so.

4 COMMISSIONER MAY: Okay. So all
5 right. And then the last question I had is
6 that, just so I'm clear on this, there are
7 actually going to be 14 units that are going
8 to be reduced in height by about 10 feet.

9 MS. GIORDANO: That's correct.

10 COMMISSIONER MAY: Okay. And what
11 we have is one of those elevations shows the
12 height after the reduction, but we don't see
13 all of the other ones where it has been
14 reduced.

15 MS. GIORDANO: I think it is one
16 basic model.

17 COMMISSIONER MAY: Yeah, but it
18 appears in a number of different locations in
19 the project.

20 MS. GIORDANO: That's correct.

21 COMMISSIONER MAY: Right?

22 MS. GIORDANO: Um-hum.

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1 COMMISSIONER MAY: So it affects
2 potentially a number of those elevations of
3 all those townhouses?

4 MS. GIORDANO: Do you want to see
5 them all? I mean, we could submit them.

6 COMMISSIONER MAY: Yeah. I don't
7 know if anybody else really wants to see that,
8 but 14 units and all of those elevations that
9 are very carefully composed, to me, is
10 something that I would to see what they all
11 look like. But I may be the only one who
12 wants to see them.

13 CHAIRMAN HOOD: Well, let me handle
14 it like this. I don't know what our
15 requirements are, but if it gives you cause or
16 pause, Commissioner May, we may be able to
17 deal with this for about 5 minutes on
18 Thursday.

19 MS. GIORDANO: Oh, that would be
20 helpful, because the applicant is trying to
21 pull the permit in early fall.

22 CHAIRMAN HOOD: Okay. Would

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1 that --

2 COMMISSIONER MAY: Yeah, I would
3 just like to see the elevation before we vote
4 on it, just to know what it is going to look
5 like.

6 CHAIRMAN HOOD: Okay.

7 COMMISSIONER MAY: I mean, it looks
8 reasonable enough in this circumstance,
9 because it happens at the end of a row of
10 similar buildings before you get to a very
11 different building and it looks like a fitting
12 kind of transition piece, but if it's in a row
13 of a bunch of other buildings that are exactly
14 the same, it's going to look like, you know,
15 broken --

16 MS. GIORDANO: Right.

17 COMMISSIONER MAY: -- teeth or
18 something.

19 MS. GIORDANO: Can I introduce the
20 developer directly to --

21 COMMISSIONER MAY: Yes, please.

22 MS. GIORDANO: -- respond? Matt

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1 Engel.

2 MR. ENGEL: Hi, Commissioner May.

3 COMMISSIONER MAY: Thank you.

4 MR. ENGEL: We actually -- that
5 form that you are looking at --

6 COMMISSIONER MAY: Yeah.

7 MR. ENGEL: -- repeats itself 14
8 times.

9 COMMISSIONER MAY: That exact --

10 MR. ENGEL: That exact --

11 COMMISSIONER MAY: -- so you've got
12 three buildings --

13 MR. ENGEL: -- point.

14 COMMISSIONER MAY: -- of a similar
15 kind of treatment and then one where it is
16 going to drop town to two stories?

17 MR. ENGEL: The only difference is
18 in one case it goes to four buildings and then
19 it drops down.

20 COMMISSIONER MAY: Okay.

21 MR. ENGEL: But it's the same.

22 COMMISSIONER MAY: Okay. And are

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1 these the ones that are sort of lined up
2 perpendicular to the parkway, the Sheridan
3 Place or whatever?

4 MR. ENGEL: They are perpendicular
5 to the parkway, that's correct.

6 COMMISSIONER MAY: Okay.

7 MR. ENGEL: Yeah.

8 COMMISSIONER MAY: Okay. All
9 right. Well, that helps me a lot. I think
10 I'm okay with that. If it's going to be the
11 same -- essentially look the same here on all
12 of those circumstances --

13 MR. ENGEL: Yeah. What I would do
14 is I would send you 14 copies of that, which
15 probably wouldn't be helpful to you.

16 COMMISSIONER MAY: No, I don't need
17 that. Thank you. All right. That's good.

18 CHAIRMAN HOOD: Okay. Vice Chair
19 Keating?

20 VICE CHAIRMAN KEATING: I just
21 wanted to come back one second to this side
22 yard issue, because I guess I'm just still not

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1 sure. The letter, which is our Exhibit 1,
2 dated June 29th from Cynthia Giordano, No. 2
3 says Lots 5 and 14 both had side lots of 5
4 feet and now are proposing to reduce both
5 yards to 2.5 feet.

6 And then the picture here is Lot
7 16. Is Lot 5 being reduced or not?

8 MS. GIORDANO: Just the picture.

9 VICE CHAIRMAN KEATING: Just -- not
10 this?

11 MS. GIORDANO: Lot 16, right.

12 VICE CHAIRMAN KEATING: Okay. And
13 that's going to 2.5 feet, not the 2 feet in
14 the picture, because the picture says 2 feet.

15 MR. ENGEL: I believe it's 2.5
16 feet.

17 VICE CHAIRMAN KEATING: So it's a
18 combination of the picture and the letter?

19 MR. ENGEL: There seems to be some
20 discrepancy there.

21 VICE CHAIRMAN KEATING: Can we just
22 clarity that?

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1 MR. ENGEL: It's one side yard.

2 VICE CHAIRMAN KEATING: Okay.

3 MR. ENGEL: And it's going from 5
4 to 2.5 feet.

5 VICE CHAIRMAN KEATING: Okay, okay,
6 okay.

7 CHAIRMAN HOOD: Here's what we're
8 going to do, colleagues, I think, unless, Mr.
9 Turnbull, you have something else you want to
10 add? I think what we'll do is we'll deal with
11 this Thursday at 6:20, this coming Thursday.
12 And I would move that we waive our regulation
13 of 3-005.3, which requires 4 days posting of a
14 meeting notice, so we can deal with some
15 clarification issues before we vote on this
16 and we'll do it this coming Thursday, because
17 I think this coming Thursday is the last time
18 we'll be having a hearing until September.

19 VICE CHAIRMAN KEATING: Right.

20 CHAIRMAN HOOD: So we will move in
21 that fashion. Ms. Giordano, will that meet
22 your --

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1 MS. GIORDANO: That's fine, thank
2 you very much.

3 COMMISSIONER MAY: May I suggest
4 that we get a letter clarifying that we don't
5 need to have the multiple 14 copies of the
6 same elevation.

7 CHAIRMAN HOOD: Yeah, okay.

8 COMMISSIONER MAY: Thanks.

9 CHAIRMAN HOOD: Thank you. So we
10 will deal with this on -- the announcement --
11 we will deal with this Thursday at 6:20.

12 Okay. Final action. Moving our
13 agenda around, we'll go to final action.
14 Zoning Commission Case No. 02-06. This is the
15 Neighborhood Commercial Overlay District. Ms.
16 Schellin?

17 MS. SCHELLIN: Yes, I believe Mr.
18 Bergstein will probably better lead into this,
19 the Neighborhood Commercial Overlay District.
20 This is a case from the past and I think he
21 is probably better fit to lead in for this,
22 because, Chairman Hood, as you know, you are

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1 the only one who was here other than Mr. May,
2 who was here and wearing another hat actually.

3 CHAIRMAN HOOD: Okay. Mr.
4 Bergstein?

5 MR. BERGSTEIN: Thank you, Mr.
6 Chairman. This case concerns a petition that
7 was actually initiated by the Office of Zoning
8 in response to a DCRA Notice of
9 Interpretations of the way of calculating
10 ground floor, linear street frontage of eating
11 and drinking establishments.

12 And so the Commission advertised a
13 proposed text and after several hearings and
14 iterations, we still have this up for final
15 action. But at the same time recently, the
16 Commission held a hearing in Zoning Commission
17 Case 08-06-05, which is part of the ZRR
18 process that concerned Commercial Zones, but
19 specifically looked at the type of zoning tool
20 that is, at this point, limited to the
21 Commercial Neighborhood Overlay, which is a
22 limitation on eating and drinking

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1 establishments.

2 And as part of the ZRR process, the
3 working group is going to look to both refine
4 that tool and apply it as a broader tool for
5 neighborhoods that might need to limit that
6 and other type of uses.

7 So since the topic is being
8 revisited in a larger context, I wrote a
9 memorandum to you recommending along with the
10 Office of Planning that you consolidate this
11 Case 02-06 with Case No. 08-06-5. And if
12 there is any other questions, I would be happy
13 to answer them.

14 CHAIRMAN HOOD: Okay. Thank you,
15 Mr. Bergstein. Any -- I guess we would need
16 to -- if we decide to do that, we'll need a
17 motion.

18 MR. BERGSTEIN: I would suggest a
19 motion, sir.

20 CHAIRMAN HOOD: Okay, okay.

21 MR. BERGSTEIN: And just for the
22 record, because this is purely procedural,

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1 there is no limitation on participation based
2 upon persons who did not appear, who did not
3 hear the hearing or participated in the past
4 meetings.

5 CHAIRMAN HOOD: Okay. All right.
6 Okay. We have before us a request or rather a
7 recommendation from the OAG and I think they
8 have been working collaboratively that we
9 combine two cases which are primarily the
10 same. And what I would like to do, at this
11 time, let me just open it up for comments.
12 Any comments?

13 Okay. I would move that we
14 consolidate Case No. 02-06, Text Amendment to
15 Neighborhood Commercial Overlay District, a
16 limitation for eating and drinking
17 establishments with Zoning Commission Case 08-
18 065, Comprehensive Zoning Regulations Rewrite,
19 Commercial Zones, Mapping and Use Principles
20 and ask for a second.

21 COMMISSIONER TURNBULL: Second.

22 CHAIRMAN HOOD: Any further

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1 discussion?

2 All those in favor?

3 ALL: Aye.

4 CHAIRMAN HOOD: Not hearing no
5 objection, Ms. Schellin, would you, please,
6 record the vote?

7 MS. SCHELLIN: Yes, staff records
8 the vote 5-0-0 to consolidate Zoning
9 Commission Case 02-06 with Zoning Commission
10 Case 08-06-5. Commissioner Hood moving,
11 Commissioner Turnbull seconding, Commissioners
12 Keating, May and Schlater in support.

13 CHAIRMAN HOOD: Okay. Let's move
14 right along.

15 Zoning Commission Case No. 09-07,
16 Scott and Kristen Franklin, Map Amendment to
17 R-4 Zone District at 2269 Cathedral Avenue,
18 N.W. Ms. Schellin?

19 MS. SCHELLIN: Yes, this case is
20 before you for final action. We do have an
21 NCPC report that was received at Exhibit 27.
22 The report was received on July 16th and they

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1 reported no adverse findings.

2 CHAIRMAN HOOD: Okay. Also, Ms.
3 Schellin, I have an Office of Planning report
4 for June 9th, Exhibit 22.

5 MS. SCHELLIN: Yes.

6 CHAIRMAN HOOD: Okay. All right.
7 And I think we need to -- did we do this
8 already?

9 MS. SCHELLIN: Actually, that OP
10 report was previously received. There was
11 just for some reason an extra copy added to
12 your package this time. But you have already
13 seen that report.

14 CHAIRMAN HOOD: So we have already
15 done the waiving.

16 MS. SCHELLIN: Yes.

17 CHAIRMAN HOOD: Okay. Let's move
18 on. Let me open it up for comments from my
19 colleagues. Okay. With that, and I think we
20 hashed a lot of this out, especially during
21 the proposed.

22 I would move that we approve Zoning

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1 Commission Case No. 09-07 and ask for a
2 second.

3 COMMISSIONER MAY: Second.

4 CHAIRMAN HOOD: Moved and properly
5 seconded. Any further discussion? I'll just
6 so note as Ms. Schellin has already mentioned
7 the NCPC report, no adverse impact, Exhibit
8 No. 27.

9 All those in favor?

10 ALL: Aye.

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 4-0-1 to approve Zoning Commission
16 Case No. 09-07. Commissioner Hood moving,
17 Commissioner May seconding, Commissioner
18 Schlater and Turnbull in support, Commissioner
19 Keating not voting having not participated.

20 CHAIRMAN HOOD: Okay. Next, Zoning
21 Commission Case No. 02-51C, this is Center for
22 Strategic & International Studies, Inc., 2nd

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1 Stage PUD at 1616 Rhode Island Avenue, N.W.
2 Ms. Schellin?

3 MS. SCHELLIN: Again, we have
4 received an NCPC report at Exhibit 26. This
5 report too was received on July 16th and again,
6 they found no adverse findings.

7 CHAIRMAN HOOD: Okay. Let's open
8 it up for discussion. Any discussion?

9 If not, I will tell you the motion
10 and we have already talked about NCPC report,
11 which is in the packet.

12 I would move approval of Zoning
13 Commission Case No. 02-51C and ask for a
14 second.

15 COMMISSIONER SCHLATER: Second.

16 CHAIRMAN HOOD: Moved and properly
17 seconded, any further discussion?

18 All those in favor?

19 ALL: Aye.

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

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1 MS. SCHELLIN: Yes, staff records
2 the vote 4-0-1 to approve Zoning Commission
3 Case No. 02-51C. Commissioner Hood moving,
4 Commissioner Schlater seconding, Commissioners
5 Keating and May in support, Commissioner
6 Turnbull not voting having not participated.

7 CHAIRMAN HOOD: What I would like
8 to do, colleagues, is that we move D, E, F and
9 G in block. All these are 2 year time
10 extensions and I would ask when we get to the
11 discussion, colleagues, if you have a
12 discussion on one of those particular
13 alphabets, that we raise the issue or concern
14 then at that time.

15 So I would move Zoning Commission
16 Case No. 06-43A, Zoning Commission Case No.
17 06-29A, Zoning Commission Case No. 05-17C/05-
18 32C, Zoning Commission Case No. 06-31B, these
19 are all 2 year time extensions, and I ask for
20 a second.

21 MS. SCHELLIN: Excuse me, Chairman
22 Hood, one of them is a 3 year, I believe -- I

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1 take that back. They are all 2 year time
2 extensions. I take that back.

3 COMMISSIONER SCHLATER: Second.

4 CHAIRMAN HOOD: Okay. It has been
5 moved and properly seconded. Let's open it
6 up. Any discussion? I would just say on the
7 ANC -- well, I would -- you know what, I
8 messed up.

9 We have -- this is the discussion.

10 We have an ANC letter that was submitted and
11 I think we have to waive our rules. Do we
12 have to open the record to accept it for the
13 ANC letter we got?

14 COMMISSIONER SCHLATER: 6-43A.

15 CHAIRMAN HOOD: Oh, 6-43A. So
16 we're fine. Okay. All right. Well, anyway,
17 we have a letter from ANC-3D. Also a letter--
18 the vote was 6-2 for the time extension. And
19 this is D. Also, we have from Single Member
20 District Thomas M. Smith who cites his reasons
21 in Exhibit 5, yeah, Exhibit 5, of why he
22 thinks that we should not approve it or asking

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1 for further clarification or more time for the
2 community to be able to weigh in.

3 I think that, from my standpoint,
4 the ANC as a whole voted and more credence 6-
5 2. I think that they would -- I would -- my
6 vote is going to be in favor of the time
7 extension, because of what is noted on Exhibit
8 No. 4.

9 And basically, when I look at page
10 3, the inability to obtain sufficient project
11 financing due to economic and market
12 conditions beyond the applicant's reasonable
13 control, as we have said in the past, we're
14 starting to see a lot of that. The applicant
15 is asking for the Commission to extend the
16 period, time frame to construct their approved
17 project due to the unprecedented negative
18 economic circumstances. And I think that gets
19 it for me.

20 Any other discussion on any of
21 them?

22 COMMISSIONER MAY: Mr. Chairman?

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1 CHAIRMAN HOOD: Commissioner May?

2 COMMISSIONER MAY: 06-43A, I would
3 just note that the ANC's approval 6-2 did
4 include a caveat that there be -- that the
5 contribution of the increased traffic be
6 included in the campus plan. I think that
7 would result from this building being
8 constructed.

9 And I think it is pretty reasonable
10 to expect that all of the traffic implications
11 of the campus will be addressed when the plan
12 comes up for review in the future. I don't --
13 and I also don't think it is necessarily
14 appropriate to make that some sort of a
15 condition of whatever we decide today. But I
16 certainly expect that we will delve into that
17 issue deeply when it comes time to approve the
18 campus plan.

19 With regard to one of the other
20 cases where we have concerns addressed by the
21 community, it is 06-31B, I think is the one.
22 Forgive me while I fumble through and find the

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1 right piece of paper and I'm not sure I'm
2 finding it.

3 Oh, yeah, there was a concern that
4 the benefits package associated with it has
5 been more or less overtaken by events that it
6 was somewhat out of date. And I think that
7 that's -- while that is understandable, it may
8 need to be addressed at some point in the
9 future as the project moves forward. That's
10 not really what is before us today.

11 The question is whether the real
12 meat of the project has changed in any
13 substantive way, which it has not, and is
14 there a good reason for the extension and
15 there is. And so therefore, I'm comfortable
16 moving ahead.

17 CHAIRMAN HOOD: Okay. And also
18 on --

19 COMMISSIONER MAY: Was that the
20 right one? That was the right one. Yeah, it
21 was the right project. Sorry.

22 CHAIRMAN HOOD: Let me also add,

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1 what number was that you were just doing?

2 COMMISSIONER MAY: That was 06-31B.

3 CHAIRMAN HOOD: Oh, okay. Anyone
4 else? Anything else? I just wanted to
5 comment. We left out two items from the
6 Council Member of Ward 3, Council Member Cheh,
7 also endorsing the PUD extension for 06-31.
8 And also, we have a letter from Neighbors for
9 Liveable Community, they actually are
10 supporting one of the Commissioners who we
11 received a letter from who was in opposition
12 of this moving forward.

13 And with all of that, I would stand
14 on what I spoke about previously, which was
15 submitted by the applicant about the negative
16 economic impacts at this point in time.

17 Okay. Anything else?

18 COMMISSIONER SCHLATER: I have a--

19 CHAIRMAN HOOD: Commissioner
20 Schlater?

21 COMMISSIONER SCHLATER: -- quick
22 question of either the Secretary or OAG. How

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1 far in advance before the expiration of the
2 order can you ask for the time request? Is it
3 as soon as it gets approval you can say there
4 is economic hardship?

5 MR. BERGSTEIN: There's nothing in
6 the regulations that governs that.

7 COMMISSIONER SCHLATER: Because I
8 just will note that some of these were just
9 approved last year and still have another year
10 of effectiveness under the orders. That may
11 be something to think about in the future. I
12 have no objection to granting the approvals
13 right now.

14 CHAIRMAN HOOD: That's a very good
15 point. But anyway, we will deal with that as
16 we get to that point, but I would agree that
17 they still have some more time typically, but
18 I don't know. Just for me, the merits,
19 Commissioner Schlater, the record was
20 complete. It's a very compelling story. I
21 will tell you I have not always believed that,
22 but here recently in the last few months or

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1 so, I definitely believe the economic
2 hardships. Okay.

3 VICE CHAIRMAN KEATING: Can I just
4 get a point of clarification then, based on --

5 CHAIRMAN HOOD: Yes.

6 VICE CHAIRMAN KEATING: When does
7 the clock start ticking for the 2 year
8 extension? Is it today or is it from the time
9 in which their initial approval ends?

10 MR. BERGSTEIN: Well, the extension
11 is from -- the 2 year starts from the
12 effective date of the order, unless there is
13 an appeal, in which case the applicant could
14 choose to toll the 2 year period until the
15 completion of the appeal process. Is that the
16 question you are asking?

17 VICE CHAIRMAN KEATING: Yes.

18 MR. BERGSTEIN: And so the
19 extension is from the expiration date of the
20 order. It doesn't begin upon the vote.

21 CHAIRMAN HOOD: Anything else?
22 Someone ready on this? Okay. It has been

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1 moved and properly seconded. Any further
2 discussion?

3 All those in favor on time
4 extensions on D, E, F and G? Okay. Any
5 further discussion on that? Okay.

6 All those in favor?

7 ALL: Aye.

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

11 MS. SCHELLIN: The staff records
12 the vote 5-0-0 to approve the time extensions
13 requested in Zoning Commission Case Nos. 06-
14 43A, 06-29A, 05-17C/05-32C and 06-31B.
15 Commissioner Hood moving, Commissioner Keating
16 seconding, Commissioners May, Schlater and
17 Turnbull in support.

18 CHAIRMAN HOOD: I shouldn't expose
19 myself, but never come out and try to Chair a
20 hearing with three agendas with something
21 different written on all of them.

22 Let me go back to final action, Ms.

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1 Schellin. Did we -- when we recorded those
2 votes, there were some Commissioners that were
3 not participating. I'm sure you picked all
4 that up?

5 MS. SCHELLIN: Yes.

6 CHAIRMAN HOOD: Okay. Good. Thank
7 you. Okay. Let's go into proposed action.
8 As I stated I'm going to move Zoning
9 Commission Case No. 08-33, which is the
10 Conference Center first, and we will do Zoning
11 Commission Case No. 08-21, the Athena Group,
12 second.

13 Zoning Commission Case No. 08-33,
14 Conference Center Associates, LLC,
15 Consolidated PUD 1st Stage PUD and Related Map
16 Amendment in Parcels 121 and 31. Ms.
17 Schellin?

18 MS. SCHELLIN: Staff has nothing
19 further to add to this one, other than to
20 advise that Commissioner Keating did not
21 participate on this case.

22 CHAIRMAN HOOD: Okay. Colleagues,

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1 as you see, we have some submittals. We have
2 Exhibit 35, 36 and 37 and I think, for me,
3 while I know the applicant supplied us with
4 some information that we asked, if we look at
5 Exhibit 36, we will see some of the things
6 that were requested possibly by us, some
7 things that we needed further clarification
8 from.

9 But let me just comment on the
10 letter from Council Member Ward 5, who is
11 again reiterating his support for the
12 Conference Center. And after so many years,
13 he is glad to see this moving forward, since
14 1986. The team has been working on this
15 project since 1986.

16 Okay. Exhibit 36, I would like for
17 us to just look at it. We have some
18 submittals in the applicant's submission,
19 revised roof plan, additional analysis
20 regarding the proposed treatment of Michigan
21 Avenue and also it comes with that 37, which
22 is DDOT's report.

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1 Discussion of the applicant's
2 commitment to satisfying the applicable
3 Inclusionary Zoning requirements. I'm not
4 sure who asked for what. And then an update
5 on discussion between applicant and
6 representatives of the Urban Forestry
7 Administration.

8 Okay. With that, I'll open it up
9 for comments. I will tell you that there are
10 some things -- you know what, let me open it
11 up for comments. Any comments?

12 COMMISSIONER MAY: Mr. Chairman, I
13 would just note that one of the issues that I
14 had taken a particular interest in which was
15 the configuration of the penthouse and how far
16 it was setback from the exterior walls,
17 particularly the walls facing on Michigan
18 Avenue and it looks like that has been
19 addressed relatively well.

20 We certainly see it in plan that it
21 has been pushed back to a minimum of 17.6 inch
22 setback over most of Michigan Avenue. And the

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1 height was reduced to 17.6. So it meets the
2 1:1 requirement, which I think is important.

3 And then there is a small section
4 at the point where the two wings of the
5 building come together, sort of the T-shape,
6 where it narrows down to 10.6, but I think
7 that's probably not too bad a thing, although
8 it's a little hard to tell without having a
9 new version of those beautiful renderings that
10 had been done.

11 And so it might be worthwhile to
12 see that, depending on what other action the
13 Commission decides to take today. But I do
14 see that there has been significant change on
15 that front. And that's what I would choose to
16 comment on. I think others have comments.

17 CHAIRMAN HOOD: Okay. Is that an
18 item that we could possibly look at for final?

19 COMMISSIONER MAY: Absolutely. I
20 would be comfortable just looking at that at
21 final or just seeing that rendering again.

22 CHAIRMAN HOOD: Okay. Anybody

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1 else? Commissioner Turnbull?

2 COMMISSIONER TURNBULL: I would
3 just agree with Commissioner May. I think the
4 thing about the 10 foot 6 is that it's a pinch
5 point.

6 CHAIRMAN HOOD: Yeah.

7 COMMISSIONER TURNBULL: And it has
8 a bigger area on one side and then it opens up
9 a bit, so it's -- I wouldn't -- that wouldn't
10 really bother me that much. But I can see the
11 concern about it though.

12 CHAIRMAN HOOD: Commissioner
13 Schlater?

14 COMMISSIONER SCHLATER: Um, I would
15 say that I would reiterate my comments from
16 last time that I think this is an excellent
17 project for the neighborhood. I'm looking
18 forward to seeing it move forward.

19 I will say that there was one thing
20 that we're hoping to get maybe a little bit
21 more information on, and I'm not sure exactly
22 what we asked for at the time of the hearing,

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1 but I seem to recollect asking for some new
2 renderings of the Michigan Avenue facade of
3 the structured parking garage.

4 And while I certainly support this
5 PUD moving forward and want to see it move
6 forward as quickly as possible, I would like
7 to see, you know, a rendering of how they are
8 planning to improve that facade and not just
9 leave it up to the architect's devices as they
10 move forward to construction drawings.

11 So I would make a recommendation
12 that we move this PUD today and then when it
13 comes back -- before it comes back for final
14 action, maybe we could get proposed -- revised
15 renderings.

16 CHAIRMAN HOOD: Okay. I'll second
17 that. So you moved and I'm going to second
18 it. But further discussion? Let me just
19 acknowledge the DDOT report and I'll call off
20 a few issues.

21 And I think, if I remember
22 correctly, Commissioner Schlater mentioned

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1 that some of this will be dealt with during
2 the public review process -- Public Space.
3 You actually mentioned that at the hearing, if
4 I recall. See it was recent enough, we can
5 remember.

6 But I will tell you that -- let's
7 just look at Exhibit 37. Let's just kind of
8 walk through this letter. I have a few places
9 highlighted if anyone wants to comment or move
10 on it or see what we need to do to further
11 along the cause.

12 DDOT firmly believes that right-in,
13 right-out restrictions for the Michigan Avenue
14 access point is the safest and most
15 appropriate vehicle turn movement for the
16 proposed site. The restrictions can be
17 encompassed by building a cartway
18 infrastructure to supporting the turn
19 movements.

20 I'm not sure where my colleagues
21 stand with that. I do know that we have a
22 design or some type of design. I don't know

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1 what -- it's the second page of Exhibit 37.
2 If it moves you, must speak up. These are
3 some of the things that I highlighted.

4 The applicant's proposal is shown
5 in Exhibit B. It does not meet DDOT's
6 standards for intersection redesign and the
7 use of stop signs at the signalized
8 intersection as proposed is prohibited. And I
9 know that the applicant is going to have to
10 get some sign-offs, I think, later from DDOT.

11 The other one that -- the applicant
12 has suggested that it can require the
13 Washington Hospital Center employees who
14 currently park at the existing parking lot to
15 use the signalized Irving Street entrance once
16 the traffic signal has been installed.

17 DDOT believes this is an action
18 item that should be made part of our Zoning
19 Order. I think we can actually condition that
20 and we can do that if -- unless my colleagues
21 object.

22 No, I'm sorry. And then DDOT

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1 believes that key fob controlled entrance/exit
2 near the Irving Street point of access will
3 serve as the best means to gain access to the
4 Washington Hospital Center employee parking.
5 I'm not sure if that came up at the hearing.
6 I would just ask that at least those four
7 points that we have some kind of response from
8 the applicant before we take final.

9 It seems as though everything that
10 we have requested, I think we can get at
11 final. And also, I would just -- yeah, before
12 we get final, yeah.

13 COMMISSIONER MAY: I would agree
14 with that. I think that there has clearly
15 been some further discussions with DDOT to
16 resolve what we think are some potentially
17 problematic automobile movements and they are
18 making progress. They just haven't quite
19 finished it. There are certain things that we
20 can incorporate in the order that we know
21 about, at this point, but with a little bit
22 more work hopefully we can get it all

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1 finalized before it comes to us for final.

2 CHAIRMAN HOOD: And I think that
3 there is, obviously, still some ongoing
4 dialogue with the applicant. I think, yeah,
5 this is the right case. There is some ongoing
6 dialogue with the applicant and DDOT, even as
7 we sit here today. They are still having
8 discussions.

9 So unless there is anything else, I
10 would move that we approve Zoning Commission
11 Case No. 08-33, the Conference Center
12 Associates, LLC and ask for a second.

13 COMMISSIONER MAY: Second.

14 CHAIRMAN HOOD: And I would just
15 add to my motion that the things that we
16 discussed before final be given to us before
17 final action. Any further discussion?

18 All those in favor?

19 ALL: Aye.

20 CHAIRMAN HOOD: Not hearing any
21 opposition, staff would you record the vote
22 with those who participated?

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1 MS. SCHELLIN: Yes. Staff records
2 the vote 4-0-1 to approve the proposed action
3 in Zoning Commission Case No. 08-33 with the
4 items due by final action, as discussed on the
5 dias. Commissioner Hood moving, Commissioner
6 May seconding, Commissioners Schlater and
7 Turnbull in support, Commissioner Keating not
8 voting having not participated.

9 CHAIRMAN HOOD: Okay. Thank you,
10 Ms. Schellin. Let's move right along with the
11 agenda. Let's go to Zoning Commission Case
12 No. 08-21, The Athena Group, Consolidated PUD
13 and Related Map Amendment at 4460 MacArthur
14 Boulevard, N.W. Ms. Schellin?

15 MS. SCHELLIN: Yes, a couple of
16 things. The first thing just to confirm on
17 the record that Commissioner Schlater was
18 provided with the full record of this case and
19 to confirm that he has read the record and
20 will be participating in this case.

21 COMMISSIONER SCHLATER: I have and
22 I will.

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1 MS. SCHELLIN: Okay. And then we
2 did receive -- we have three exhibits that
3 were received after the record closed. If the
4 Commission desires to reopen the record to
5 accept them, they were Exhibits 91, 97 and 98.

6 CHAIRMAN HOOD: I would move that
7 we open the record and accept Exhibits 91, 97
8 -- I mean, 97 and 98 and ask for a second.

9 COMMISSIONER MAY: Second.

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

12 All those in favor?

13 ALL: Aye.

14 CHAIRMAN HOOD: Not hearing any
15 objection, Ms. Schellin, would you record the
16 vote?

17 MS. SCHELLIN: Yes. Staff records
18 the vote 5-0-0 to reopen the record to accept
19 Exhibits 91, 97 and 98. Commissioner Hood
20 moving, Commissioner May seconding,
21 Commissioners Keating, Schlater and Turnbull
22 in support.

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1 CHAIRMAN HOOD: Okay. Okay. We
2 have -- we asked for a lot of refining. To go
3 back, we asked the applicant to go back and
4 look at a lot of things. I will tell you that
5 even in some of the letters I saw, there was
6 mention of significant changes. I'm not going
7 to say improvement, but changes. I'm sure the
8 applicant would probably say improvement and
9 changes and the community will probably say
10 we're getting there.

11 But I think it's evident that the
12 applicant has been working. While they have
13 not -- the community, from what I have
14 reviewed, has not fully agreed with what is
15 before us tonight. I think this applicant has
16 done a lot to get at least closer to where my
17 colleagues would like to be.

18 So with that, I would just say that
19 we have asked for -- we have Exhibits 87
20 through 98 are some of the things we asked for
21 through the tailend of the process. And what
22 I would like to do is to open it up for any

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1 comments or concerns that you have and have
2 they been addressed? Do we need further
3 submissions from the applicant?

4 And I would just like to open it up
5 and let's have a discussion. Commissioner
6 May?

7 COMMISSIONER MAY: Yes. Mr.
8 Chairman, I would like to echo that the --
9 what you said before about the reports that we
10 got in here that a number of letters cited the
11 changes have been made to the project. In
12 fact, when I read the very first one and it
13 sounded so very positive, I was getting my
14 hopes up really high and then by the second
15 paragraph, I was a little disappointed again.

16 But I think it is significant,
17 there has been, I think, some substantial
18 improvement in the project. I think that the
19 elimination of the fourth floor on one of the
20 buildings was an improvement. And the changes
21 to the affordable units is also a significant
22 improvement.

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1 I think that the final -- oh, and
2 the reduced -- the reduction of the number of
3 units by another two units also an
4 improvement. And I think this project has
5 improved significantly.

6 I think the area where there --
7 well, the biggest area where it doesn't seem
8 like we are going to reach a full conclusion
9 or a satisfactory conclusion for the
10 neighborhood is on the issue of the height and
11 the absolute need to reduce the heights of
12 buildings to three stories on every single
13 building.

14 I'm not sure I totally agree with
15 that position, but I certainly understand
16 where it is coming from.

17 There is, I think, however, another
18 issue that I do feel does need to be addressed
19 and I'm not sure how best to address it and
20 that is the issue of the FAR and the -- you
21 know, whether the private streets can be
22 counted in the overall lot area when

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1 calculating the FAR.

2 And having studied this issue now
3 since the last hearing and based on the
4 submissions that we have gotten, I pretty
5 firmly believe that we need to subtract the
6 public -- or the public -- sorry, the private
7 streets from the calculation of the total lot
8 area, which effectively pushes the FAR over
9 1.0. We don't have an exact calculation of
10 how far over it is.

11 As I understand it, based on some
12 past cases, but also the sort of inherent
13 logic of how shared driveways are treated in
14 zoning cases, it is possible to treat the
15 alleyway between Buildings 1 and 2 as part of
16 the overall lot calculation, because shared
17 driveways can be considered in that overall
18 lot size.

19 But even with that calculation, it
20 is still not likely to bring it down below
21 1.0. So I think there is still a little bit
22 of -- well, first of all, we need to have a

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1 really firm calculation of what the numbers
2 are. But also, I think it needs to get down
3 to where we can approve it, which is 1.0 plus
4 whatever flexibility we have under the PUD
5 rules.

6 I don't think that we can -- that
7 it is appropriate for us to grant flexibility
8 in the area of how this is calculated. I
9 think that how we calculate it has to be
10 consistent for all projects. And it is just
11 common sense that we shouldn't include the
12 roadways in the overall lot area, even if they
13 are privately owned. I just think it's
14 nonsensical to me.

15 CHAIRMAN HOOD: Okay. I would say
16 this, Commissioner May, I think you bring up a
17 good point and I know we have grappled in the
18 past with that. I'm not sure exactly how we
19 can proceed, but I would suggest that we deal
20 with the other issues, because, for me, that
21 is the sticking point, because if it's over
22 that flexibility, then I think we are out of

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1 compliance with our own regulations and we
2 can't do that.

3 I don't know whether I asked for a
4 briefing. Now, I look to Mr. Bergstein on
5 that issue, maybe we asked for the
6 calculations on the briefing paper or whatever
7 from the applicant. And I think we would have
8 to give the parties a chance to do that. I'm
9 not sure.

10 MR. BERGSTEIN: Well, the parties
11 should get an opportunity to respond to
12 whatever you asked the applicant to submit.
13 But as I hear it, the question is what is the
14 -- how is the FAR calculated for the 1.0 cap?
15 Is it the FAR that excludes the streets,
16 which is the 2516 standard or is it a
17 different calculation assuming that the 2516
18 standard is not complied with, but there is a
19 degree of flexibility?

20 So what you would be asking for is
21 for the applicant to provide the FAR
22 computation for the record lot excluding the

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1 private streets, as if they were public
2 streets. And then you could allow the
3 opposition to respond to the accuracy of the
4 calculation.

5 CHAIRMAN HOOD: Okay. Thank you,
6 Mr. Bergstein, for helping me simplify that.
7 That's one of the things, I think, that we
8 will -- I don't know if we could get that
9 before Thursday, but let me see what else we
10 have on the docket. Let's see what else we
11 have pertaining to that on the docket.

12 COMMISSIONER MAY: Mr. Chairman?

13 CHAIRMAN HOOD: Yes?

14 COMMISSIONER MAY: I would also
15 point out the way we request the calculation,
16 that we have some very clear diagrams of what
17 is included in the calculation and what is
18 not, because there are some things like the
19 parallel parking spaces which, you know, on a
20 normal public street are part of the street,
21 but maybe in this circumstance they are not
22 really, because they are often in the private

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1 property.

2 I don't know, but I think that
3 there ought to be -- it ought to be very clear
4 what's in and what's out. And you know, I
5 think that there may be some room for
6 discussion about what should be in and what
7 should be out, but I think the basic streets
8 that are the public ways ought to be out of
9 the calculation.

10 CHAIRMAN HOOD: Okay. Commissioner
11 Schlater?

12 COMMISSIONER SCHLATER: I just have
13 a quick question of OAG. Mr. Bergstein,
14 looking at the applicant's post-hearing
15 submission, they reference their method of
16 calculation for the FAR. And they say "This
17 method was used by the Zoning Commission in
18 St. Paul's College PUD, Stanton Square PUD,
19 Fort Lincoln Townhouse PUD and the 6000 New
20 Hampshire Avenue PUD, to name a few." Is that
21 true?

22 MR. BERGSTEIN: I believe it likely

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1 is true. I read what I think in those cases,
2 the applicant did provide the Zoning
3 Commission numbers, but I think I found the
4 cases that were all involved. And indeed,
5 they all were applications like this and
6 involved theoretical lots brought under 2516,
7 but none of the decisions, that I read when
8 zoning flexibility was discussed, mentioned
9 the inclusion of the private streets as the
10 zoning flex -- as part of zoning flexibility
11 sought.

12 And therefore, the computation
13 occurred including the land or the streets
14 without specifically calling it out. So there
15 is nothing that I read in the orders that
16 would make me think that the Zoning Commission
17 was aware that, in fact, one of the
18 prerequisites, one of the computational
19 devices used in 2516 was not being used by the
20 applicants in that case.

21 But I stand to be corrected,
22 because all I did was briefly read the orders

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1 and look at the zoning flexibility that was
2 being requested.

3 COMMISSIONER SCHLATER: I wonder if
4 at the same time if we do ask for this
5 calculation of the applicant, whether the
6 Office of Planning can go back and look at
7 those referenced PUDs, find out what the FAR
8 would have been relative to what they were
9 allowed? If that other standard had been
10 applied. Is that possible?

11 MS. STEINGASSER: It's certainly
12 possible for us to go back and check and see
13 how they were calculated. Whether we can
14 actually recalculate an FAR, but we will give
15 it our best shot. We will absolutely.

16 COMMISSIONER SCHLATER: Well, I
17 guess what just my concern is is that we are
18 very late in the process here in analyzing
19 this PUD. And we may be raising a standard
20 that hasn't been applied to other cases and to
21 some, that might be viewed as unfair.

22 I would like to know what -- I

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1 would like the information. I would like
2 reliable information on what the actual
3 calculations are, so I definitely support
4 Commissioner May in that request. But
5 likewise, I would just like to know how the
6 standard has been applied in the past and I
7 don't want to necessarily start new precedent
8 with this case.

9 COMMISSIONER MAY: You know, I
10 think I appreciate that concern, but I also
11 think that if we have made a mistake in the
12 past, we shouldn't keep repeating it simply
13 because we didn't notice it before. And so I
14 think that there -- I mean, it would be
15 interesting to know what has been done in the
16 past, but I don't think that we should be
17 afraid of looking at -- you know, trying to
18 look at the regulations and determining
19 ourselves what is the right way from this
20 point forward and deciding it on that basis.

21 COMMISSIONER TURNBULL: Mr. Chair,
22 I would go along with both Commissioner May

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1 and Commissioner Schlater. I think we need to
2 do this analysis. We need to develop a
3 consistency, so that this Commission doesn't
4 get stuck in the same position again. I think
5 it would be good for us to know exactly what
6 has been done in the past and what should be
7 going ahead in the future.

8 I think at the applicant -- an
9 applicant coming before this Commission needs
10 to deal with consistency. Just like it does
11 before the BZA. I think they have to know
12 this is what is going to happen. We know they
13 are going to look at it like this. So I would
14 echo Commissioner May's concern, but also
15 Commissioner Schlater, so excellent point on
16 being late in the game here.

17 CHAIRMAN HOOD: Uh, okay. So we
18 will put that in the parking lot if there are
19 enough spaces. We'll hold off on that. Let's
20 see if there are some other issues that we
21 had. And you know, I looked at some of the
22 opposition and Mr. Tucker's letter really

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1 popped out at me, not that I didn't look at
2 Palisades and the ANC, but he goes on to talk
3 about this.

4 He seems to think with more time,
5 he says "Time constraints have not allowed for
6 full resolution and execution of a tentative
7 agreement. The conclusion of a satisfactory
8 agreement with Athena is an essential
9 condition."

10 We don't get into the -- it's not
11 our position to push agreements between the
12 community and the applicant. But it looks
13 like -- and I'm not sure if Mr. Tucker is also
14 speaking for everyone in opposition or just
15 for the president -- I mean, for the Canal
16 View Homeowners Association. It looks like
17 discussions are taking place.

18 It looks like the -- they are still
19 working together from the way I read the
20 submittal, unless somebody reads it
21 differently. And it looks like that's an
22 opportune time. But I will say from what I

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1 have reviewed and I said this early on, it
2 looks like the applicant has made a lot of
3 changes in trying to come closer to what the
4 community has requested.

5 Are we going to get there fully?
6 I'm not sure. And I just wanted to know if
7 anyone wanted to encourage that, what was
8 written in Exhibit 93, that's another side
9 bar. I mean another parking lot issue.

10 Any other issues that -- so it
11 would be predictable when Athena, the
12 applicant and the community come back. And,
13 Ms. Schellin, I will say that we cannot do
14 Thursday, because after I thought about it,
15 today is Monday and we want to make sure they
16 get responses back for the FAR computations.
17 So that's out of the question. That's not
18 going to work. You know that's not going to
19 work already.

20 Anything else?

21 COMMISSIONER SCHLATER: Is it
22 possible to get the computations and the

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1 analysis before final action, if we were to go
2 that route?

3 COMMISSIONER MAY: Mr. Chairman,
4 can I respond to that? I think the thing that
5 makes me uncomfortable there is that if the
6 project as it exists right now can't be
7 calculated at an FAR that is approvable, in
8 other words 1.05 or less, you know, we don't
9 really know what it is. And so potentially,
10 we could be voting to approve something that
11 we don't -- that is beyond our authority to
12 approve.

13 So I think we need to know for sure
14 that this -- we need to take a stand about how
15 it is measured and then we need to know that
16 it is 1.05 or less before we take a vote.
17 That would be my take on the matter.

18 COMMISSIONER SCHLATER: Um, I
19 understand Commissioner May's position. I
20 just think the case has been dragging on for a
21 long time and I don't know. It's certainly
22 not a new issue. And I would like to see if--

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1 well, I'll just say I have had the benefit of
2 reading the record, the entire record fresh,
3 seeing where it is -- where it began and where
4 it ends.

5 I know there are concerns in the
6 community about height. I know there are
7 concerns in the community about density. But
8 I think a lot of those concerns have been
9 addressed over time. And I think overall when
10 you look at the total context of this
11 development, it is a development that is going
12 to be -- it's going to reflect very well upon
13 the neighborhood. And it is going to
14 represent very high quality development and
15 that's something we are certainly here to
16 support.

17 And so reading the case, it has
18 just been -- it has been well over a year
19 since it started and it has been dragging
20 along. So I would just look to the other
21 Commissioners to see if there is any way to
22 see if we can move it forward, because it is a

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1 case that -- assuming we can get through this
2 one issue on the FAR limitation, that I would
3 like to see move forward.

4 MR. BERGSTEIN: Can I just address
5 a procedural issue? Proposed action, the
6 purpose of proposed action is really to
7 satisfy the charter requirement that when
8 there is a proposed change in the Zoning Map,
9 as is being requested here, it must be sent to
10 NCPC for a period of review. That's why when
11 you do special exceptions there is only one
12 vote.

13 So when you take proposed action,
14 you are not really approving the project in
15 its entirety, but you are saying the project
16 is at a point now where NCPC can provide us
17 its advice concerning whether or not the
18 proposed Map Amendment is consistent with the
19 federal elements of the Comprehensive Plan.

20 It really has no other procedural
21 or precedential effect than that. And I just
22 wanted to share at least my view of what

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1 proposed action is with you.

2 CHAIRMAN HOOD: Let me open it up
3 and hear from my other colleagues. Apparently
4 we have two issues at hand. I just wanted to
5 hear from -- what Commissioner May is saying
6 is if we're over the FAR and we essentially
7 approve something that we are not authorized
8 even to approve anyway, because we go by
9 flexibility, which is what .5 or whatever it
10 is or .05.

11 But anyway, Commissioner Schlater
12 and also Mr. Bergstein, I think, echoed a lot
13 of that saying the proposed means not actually
14 -- I have always thought that proposed meant
15 you send a strong signal that you're getting
16 ready to approve something.

17 Tonight I learned that proposed
18 doesn't mean that. So like I say, it's always
19 something different every night.

20 COMMISSIONER MAY: Yeah, proposed
21 now means good enough for NCPC is what it
22 means.

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1 CHAIRMAN HOOD: Yeah. So let me
2 open it up to my other colleagues and see
3 which -- before I give my position, I would
4 like to hear from either Mr. Turnbull or Mr.
5 Keating. If not, I think --

6 COMMISSIONER MAY: See, I think, I
7 believe that in the course of trying to
8 address the FAR issue, it is possible that the
9 project might change in some substantive way.

10 I mean, they might wind up having to reduce
11 the size of some of the buildings and I'm -- I
12 mean, I just don't know. I mean, if there is
13 a real rush to do it today, because otherwise,
14 you know, the world falls apart, I don't know.

15 I mean, we are dealing with all
16 these other PUDs where they are asking for 2
17 more years, so that they can get financing.
18 What's the -- you know, what is the urgency of
19 doing it absolutely today? I don't know. I
20 don't want to make it drag on any farther than
21 it needs to, but I also want to know what we
22 are voting on, frankly.

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1 CHAIRMAN HOOD: We are getting
2 ready to close it down. Commissioner
3 Schlater, did you want to add to it? I was
4 looking for to either hear from Commissioner
5 Turnbull or Vice Chair Keating.

6 COMMISSIONER TURNBULL: Well, I'm
7 not opposed with going ahead and voting
8 approval of this in proposed action and
9 getting everything that we need in final. The
10 FAR, I think, I have seen a calculation that
11 shows that they are awfully close to this at
12 1.05, so I don't know if it's going to be that
13 much of an egregious work for the applicant to
14 produce that number.

15 I mean, I don't know how fine a
16 calculation you get this down to. There is
17 always a little wiggle room when you do these
18 calculations, so I guess it depends upon how
19 the applicant is measuring. I mean, actually,
20 you know, I could do a calculation and
21 Chairman Hood you could come back and it would
22 be totally different.

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1 So I guess there is going to be a
2 fine point on this, but right now, I think the
3 applicant, you know, going back, they had 41
4 units. They were all at 4 stories. Now, less
5 than half the units are 4 stories. And they
6 got all the rest are at 3 stories. They have
7 cut back the gross floor area of the units
8 from 120 back down to 108.

9 There has been significant movement
10 here. I think the applicant is trying to
11 create an environment that will fit in with
12 the neighborhood and be compatible. We're not
13 going to please everybody everywhere, but I
14 think that they have made a significant
15 contribution with this PUD.

16 CHAIRMAN HOOD: Commissioner Vice
17 Chair?

18 VICE CHAIRMAN KEATING: Yeah, no, I
19 would have to agree with that. I'm impressed
20 with what I'm seeing here and saw before the
21 meeting this evening. But I do think we need
22 to get that question answered. And so I'm not

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1 opposed, if I'm understanding the process
2 right, and I understand what proposed action
3 is at this point, with moving forward and
4 approving that, but also getting this question
5 answered.

6 I understand OP can do their work
7 pretty quickly and if we can do the rest of
8 the other pieces, we need to do those before
9 we get to final action, I'm okay with moving
10 forward tonight. But I do want the -- I would
11 like to get that question answered, because I
12 do believe we need to be consistent and need
13 to set a standard for ourselves in what we do.

14 COMMISSIONER TURNBULL: I would
15 concur 100 percent. And when we get to final
16 action, if we don't like something, we don't
17 have to approve it.

18 CHAIRMAN HOOD: Let me see if I can
19 just go back. And I heard three of my
20 colleagues say let's move forward with the
21 proposal tonight. But let me just put this
22 back on the table. One thing I try to do, I

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1 always try to give a full compliment of 5. I
2 don't know how the Chairman of the Council
3 gets 13, because sometimes it's hard to get 5.

4 But I will say that while I concur
5 as Vice Chair Keating there with Commissioner
6 May's comments, I wonder what really are we
7 losing? Because for me, proposed actions
8 means that basically with a little fine tuning
9 or whatever, you pretty much endorse this
10 project.

11 So I mean, what are we really
12 losing? And I think it would be good -- you
13 said it has been a year. I don't think it has
14 been a year, but it might have been. Has it
15 been a year? Oh, okay. My how time flies.

16 But I will tell you that I have to
17 agree with Commissioner May, what is the rush?
18 Again, they are closing the loop was from Mr.
19 Tucker. Maybe that may continue to happen.
20 And I think that if we set this for September,
21 our first meeting in September, I really don't
22 see -- you know, and I think we can make time

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1 up. But I really don't see the significance
2 of us moving ahead with that FAR issue still
3 out there and being brief and allowing time
4 for both the opposing parties to briefly brief
5 us on the issue with the FAR computation.

6 So I would just ask my colleagues,
7 three who I think are ready to do proposal
8 tonight, if we could just reconsider and do
9 this in September with all the necessary
10 information, so we can have a full compliment
11 of Commissioners voting? Even though I know
12 that is not the -- it's a democratic process.

13 You know, everybody has a vote, but I just
14 think that -- I would just like to see all --
15 we're not far off.

16 And I think if we move tonight and
17 propose, I'm not sure what the outcome will
18 be, but I would just think that a little more
19 time is not going to hurt anything else. Is
20 anybody open to that? Vice Chairman Keating?

21 VICE CHAIRMAN KEATING: Well, just
22 my only concern would be I think we do lose 30

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1 days or so in the process, because if we come
2 back in September we will be voting on
3 proposed at that point and then it goes to
4 NCPC for their review and then we get back to
5 final sometime in October now, based on the
6 calendar, as opposed we might be able to get
7 the final in September. No, maybe, possibly?
8 Okay.

9 MS. SCHELLIN: Yeah, if you take
10 proposed tonight, you would have final in
11 September, that's correct.

12 CHAIRMAN HOOD: So is --

13 VICE CHAIRMAN KEATING: That's what
14 I was thinking. And given that, you know,
15 just, you know, think about the economy, if
16 they -- if we are moving forward here and it's
17 -- you know, I don't know if we ever asked the
18 question about financing in place on this
19 project or not, but, you know, there is a risk
20 that things change in 30 or 60 days or
21 investors get cold feet or something changes.

22 I just feel like we kind of can

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1 move this thing forward.

2 CHAIRMAN HOOD: Okay. Anyone else?

3 Did I change anybody else's mind? Ms.
4 Schellin, let me ask, is NCPC going to deal
5 with this in August?

6 MS. SCHELLIN: No, they would take
7 it up at their September 3rd meeting.
8 September 3rd.

9 CHAIRMAN HOOD: Okay. But what I
10 would ask for is that some of the things that
11 Commissioner May -- well, the main FAR
12 computation would be briefly briefed by the
13 applicant. We will work out a schedule for
14 that.

15 Also, I would ask that -- taking
16 what Mr. Tucker said in Exhibit 93 about how
17 again -- and I know I don't want to put it all
18 on the applicant, but the community has got to
19 give some leeway, too, to try to come a little
20 closer together and maybe the ANC and
21 Palisades and the rest of the opposition
22 groups can join in.

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1 And I'm only just asking. I'm not
2 directing. I can't do that. It's not within
3 my authority. But I'm only asking because at
4 the end of the day, I realize if the folks who
5 live in that ANC area and live in that Canal
6 View Park and Palisades, in those areas, are
7 the ones who are going to be affected. So the
8 closer you all can get together, I know you're
9 getting there, but let's continue to get
10 there.

11 It takes a little give and take on
12 both as I opened this meeting up when we were
13 talking about the -- hiring the director. But
14 anyway that's where we are.

15 MS. SCHELLIN: Commissioner?

16 CHAIRMAN HOOD: What I'll do is
17 open it up for a motion. Ms. Schellin?

18 MS. SCHELLIN: Chairman Hood, could
19 we go ahead and set a schedule for the due
20 dates now, so that -- since the parties are
21 here, so they would have those dates?

22 CHAIRMAN HOOD: Sure.

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1 MS. SCHELLIN: Allow the applicant
2 two weeks and then the parties two weeks after
3 that to file their responses. So the
4 applicant would have until August 10th and the
5 parties would then file their responses by
6 August 24th.

7 CHAIRMAN HOOD: Okay. Okay. Is
8 that fine? Everybody is fine with that?
9 Okay. I will obtain a motion. Okay. You
10 know what, I would move approval of Zoning
11 Commission Case No. 08-21, The Athena Group,
12 Consolidated PUD and Related Map Amendment for
13 4460 MacArthur Boulevard, N.W., and I would
14 also put in my motion that this proposed
15 approval is not to be any sign that final
16 would be approved, also that Commissioner
17 May's comments be incorporated in what the
18 schedule was just set and we get that before
19 final and also my comments about working
20 together again with the community and
21 applicant trying to close the gap a little
22 more to see how we can address the issues.

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1 And I will say on the record and
2 also in my motion that I think the applicant
3 has made that gap smaller. I would just ask
4 that the community do the same thing, because
5 at the end of the day, the community is going
6 to be the one that lives there.

7 So anything else, Commissioner May,
8 you would like to add to that motion, even
9 though I don't know where you -- which way you
10 are going to come out on this?

11 COMMISSIONER MAY: No, I'm inclined
12 to vote against it just on the principle that
13 I would like to have it verified.

14 CHAIRMAN HOOD: Do you want to put
15 in -- but anything you want to put in that
16 motion? Something you would like to say?

17 COMMISSIONER MAY: No, I think
18 we've covered what we need to see. And it
19 needs to be substantive. I think we're not
20 looking for another explanation of why we
21 don't need to worry about the streets issue or
22 something like that. We're not looking for

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1 that kind of an explanation. We are looking
2 for a solid calculation and something that
3 shows on the plan what areas are calculated --
4 are included in which calculations and what
5 the areas are of things like, you know, the
6 streets and the driveways or to the extent
7 they are involved. Those sorts of things.

8 CHAIRMAN HOOD: Okay.

9 COMMISSIONER MAY: Okay.

10 CHAIRMAN HOOD: But you know, I
11 have another question. What happens -- maybe
12 Mr. -- yeah, okay. I was just sitting here
13 thinking what happens if we find out that we
14 are over and we have sent it to the NCPC?
15 Then what happens then? We will be
16 retracting. At some point, we're going to
17 have to retract it.

18 MR. BERGSTEIN: No, because again,
19 I view NCPC's role in the PUD process as more
20 limited than what we normally get from NCPC,
21 because really they are looking at it for the
22 purposes of the Map Amendment only and not as

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1 a project-specific issue. But certainly even
2 when you send things to NCPC, the project
3 might evolve between when you send it to them
4 and final action.

5 You often see changes from proposed
6 to final that doesn't require a resubmission.

7 Again, this all comes down to the charter
8 requirement that says that before the Zoning
9 Commission may take any action to approve any
10 amendment to the Text or Map, it shall, after
11 hearing, send a proposed change to NCPC for a
12 30 day period of comment.

13 That is what you are doing. And
14 unless you vote for a different Map Amendment
15 or, frankly, I don't see any reason why you
16 would need to revise your submittal if the
17 project itself changes in some way in terms of
18 its design or units or whatever.

19 CHAIRMAN HOOD: All right. Thank
20 you, Mr. Bergstein. Okay. It has been moved
21 and seconded.

22 COMMISSIONER TURNBULL: Mr. Chair,

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1 I would just say that the applicant should,
2 for consistency sake, meet with the Office of
3 Planning and make sure that the calculation of
4 the FAR is exactly what we think it's going to
5 -- how it's going to be calculated.

6 CHAIRMAN HOOD: Okay. I think they
7 heard you loud and clear, Mr. Turnbull. And I
8 hope some coordination, Mr. Feola, I think
9 that's your case, I didn't mean to call your
10 name, but I saw you. Okay, Mr. Feola, I hope
11 there's some coordination.

12 And also, I'm sure it's all served
13 on the ANC and all that stuff will happen.
14 Okay. Ms. Schellin, did you want to say
15 something?

16 MS. SCHELLIN: I did not hear
17 anyone second this. Did someone second that
18 motion?

19 COMMISSIONER SCHLATER: I will
20 second the motion.

21 MS. SCHELLIN: Okay.

22 CHAIRMAN HOOD: Okay. Any further

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1 discussion?

2 All those in favor?

3 VICE CHAIRMAN KEATING: Aye.

4 CHAIRMAN HOOD: Aye.

5 COMMISSIONER SCHLATER: Aye.

6 COMMISSIONER TURNBULL: Aye.

7 CHAIRMAN HOOD: Any opposition?

8 Any --

9 COMMISSIONER MAY: Opposed.

10 CHAIRMAN HOOD: Okay. Ms.

11 Schellin, we have one person opposed. Could
12 you record the vote?

13 MS. SCHELLIN: Yes. Staff records
14 the vote 4-1-0 to approve Zoning Commission
15 Case No. 08-21 for proposed action with the
16 conditions as stated. Commissioner Hood
17 moving, Commissioner Schlater seconding,
18 Commissioners Keating and Turnbull in support,
19 Commissioner May opposed.

20 CHAIRMAN HOOD: Let's move right
21 along. Hearing action. Zoning Commission
22 Case No. 09-10. This is the Office of

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1 Planning Text Amendment to allow the
2 establishment of a water tower of the St.
3 Elizabeth's Campus. Ms. Jackson? Take your
4 time, Ms. Jackson.

5 MS. JACKSON: Good evening, Chair
6 Hood and Commissioners. For the record, my
7 name is Arlova Jackson and I'm a Development
8 Review Specialist in the D.C. Office of
9 Planning.

10 The case before you is a Text
11 Amendment brought forth by the Office of
12 Planning that would allow the establishment of
13 a D.C. Water and Sewer Authority water tower
14 on the east campus of St. Elizabeth's
15 Hospital.

16 The St. Elizabeth's site is a 336
17 acre area divided by Martin Luther King Drive
18 and to its east and west campus is a
19 designated Historic District and contains
20 several contributing buildings.

21 The east campus which the District
22 took control over in 1987 has now been

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1 subdivided into record lots and zoning is not
2 in place for the majority of the area. WASA
3 would like to install a new water tower on-
4 site enabling them to improve fire protection,
5 address poor water pressure, maintain existing
6 water quality and support future development
7 in the area.

8 Currently, this Zoning Regulations
9 prohibit the issuance of a building permit for
10 any property that does not have a Zone
11 District or is not located on a lot of record.

12 The proposed amendments to sections 106.7 and
13 3202 would allow the issuance of a building
14 permit specifically for the establishment of a
15 WASA water tower on the east campus of St.
16 Elizabeth's.

17 The proposed new section 3206
18 allowed for an advisory review by the Office
19 of Planning. This review would consist of an
20 analysis of the proposed location and design
21 for consistency with adopted plans for the
22 site and provide time for communication

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1 between OP and the Zoning Administrator prior
2 to the issuance of a building permit.

3 A similar process is currently used
4 for antennas and for projects in the DD
5 Overlay.

6 Additionally, a provision to refer
7 projects to the BZA for review as a special
8 exception request has been suggested by the
9 Office of the Attorney General as a way to
10 address the proposal that is found to be
11 inconsistent with relevant planning policies
12 and adopted plans.

13 The 2006 Comprehensive Plan
14 supports the amendment particularly with
15 regard to the land use, urban design and
16 infrastructure elements and the proposed
17 amendment would also further a relevant policy
18 of the Forest Southeast/Southwest Area Element
19 by helping provide the infrastructure
20 necessary to allow for the redevelopment of
21 St. Elizabeth's East Campus.

22 The most recently adopted plan for

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1 the subject property, the St. Elizabeth's East
2 Redevelopment Framework Plan anticipated the
3 construction of a new water tower on-site both
4 to support the future development envisioned
5 in the plan as well as to meet the needs of
6 existing residents.

7 The requested Text Amendment is not
8 inconsistent with this plan or the 2006
9 Comprehensive Plan as it will allow for the
10 immediate development of a water tower needed
11 to serve the current and future residents of
12 Ward 8.

13 OP recommends that the requested
14 Text Amendment be set down for public hearing
15 and will continue to work with the Office of
16 the Attorney General on refining the text
17 prior to the public hearing. Thank you and
18 I'll take any questions you have, at this
19 time.

20 CHAIRMAN HOOD: Thank you very
21 much, Ms. Jackson. Let's open it up. Any
22 questions for Ms. Jackson? Commissioner May?

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1 COMMISSIONER MAY: Yeah. Um, I'm
2 just looking at the site plan for St.
3 Elizabeth's. I don't recall when the evidence
4 warehouse got zoned in or got -- was that a
5 modification of the UCC PUD that occurred some
6 time ago or what's that?

7 MS. JACKSON: That's simply a
8 proposed location that OPM was considering.

9 COMMISSIONER MAY: Oh, so it's not
10 been zoned?

11 MS. JACKSON: It has not been, no.

12 COMMISSIONER MAY: Oh, okay, okay.

13 MS. JACKSON: No.

14 COMMISSIONER MAY: I thought maybe
15 it had been. And is that going to be coming
16 some time or is that going to -- are we
17 waiting for the -- are we really actually
18 going to get the full plan and the Master Plan
19 of the zoning for the whole site before that
20 happens?

21 MS. JACKSON: Our intention is to
22 bring forward the Master Plan in zoning for

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1 the site. However, we won't have the
2 subdivisions and the street layouts in the lot
3 of records for quite some time, depending on
4 the development scenario.

5 COMMISSIONER MAY: Okay. The -- I
6 mean, the only hurdle that we can really clear
7 though is the zoning itself. I mean, there
8 are -- well, we will call it back. I guess I
9 know you are sensitive to the lingering
10 concern that the Commission has had since the
11 first PUDs were done for the hospital and for
12 the UCC and there was a fair bit of angst
13 about moving ahead with those as PUDs and not
14 moving the whole campus.

15 So I personally would feel a lot
16 more comfortable trying to move anything
17 forward if we knew more about the direction
18 that the overall plan for the development of
19 the site was moving and the way the zoning
20 might take shape. And are you going to try to
21 do this sort of foreign-based zoning thing
22 that happened on Reservation 13 or, you know,

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1 any of those sorts of --

2 MS. JACKSON: No.

3 COMMISSIONER MAY: -- any of that?

4 You're not going to do that again?

5 MS. JACKSON: No.

6 COMMISSIONER MAY: Okay.

7 MS. JACKSON: We're happy at the
8 public hearing to give you a presentation and
9 a copy of the plan.

10 COMMISSIONER MAY: Okay.

11 MS. JACKSON: The plan --

12 COMMISSIONER MAY: I think that
13 would help a lot, because the angst about this
14 is that it could be happening more piecemeal
15 than we would like and we do want to make sure
16 that it happens in a comprehensive way.

17 I think that's about it for my
18 concerns.

19 CHAIRMAN HOOD: Okay. Thank you,
20 Commissioner May. Any others? Commissioner
21 Turnbull?

22 COMMISSIONER TURNBULL: Thank you,

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1 Mr. Chair. Is the proposed location one that
2 has been fixed for a while? I mean, is that
3 in all the plans, future plans?

4 MS. JACKSON: The -- no, it has not
5 been fixed. There is a series of public input
6 that needs to go forward first, the section
7 106 under the National Historic Preservation
8 Act would be in play. That's been initiated
9 this month. But there are a couple of sites
10 that are being considered.

11 The fact that it's on St.
12 Elizabeth's has been pretty much determined,
13 but where on the site exactly has not been.

14 COMMISSIONER TURNBULL: Okay. I
15 just -- is it because it is -- I mean, it sort
16 of looks like it's centralized on the map.

17 MS. JACKSON: That's its current
18 location. There is a little gray dot right in
19 the center.

20 COMMISSIONER TURNBULL: Yeah,
21 right.

22 MS. JACKSON: That's the current

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1 location of it and that's the high ground, so
2 that's why they would like to be there.

3 COMMISSIONER TURNBULL: But that's
4 basically replacing it in kind only bigger?

5 MS. JACKSON: Only bigger and it's
6 large enough and it's engineering is advanced
7 enough since the original that it can be
8 placed in other locations and they are looking
9 at another couple of sites over adjacent to
10 the mental health -- the new hospital to the
11 east.

12 COMMISSIONER TURNBULL: Okay.
13 Thank you.

14 COMMISSIONER MAY: I think it might
15 also be helpful to get some sense of just how
16 big this thing is going to be compared to the
17 existing one.

18 MS. JACKSON: Um-hum.

19 COMMISSIONER MAY: Is it going to
20 be bigger? I mean, the one right now, you --
21 if you -- I mean, I have been there several
22 times and I know I have seen it and I still

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1 can't remember anything about where it is or
2 where you can see it from. It's that sort of
3 discrete in the way it is placed.

4 MS. JACKSON: Well, the section 106
5 process has begun to look at these
6 alternatives and their impact on the historic
7 resources on the site. The site is covered by
8 a Memorandum of Agreement with the Council.

9 COMMISSIONER MAY: Advisory Council
10 on Historic --

11 MS. JACKSON: Advisory Council on
12 Historic Preservation. So all that will be
13 taken into consideration, those viewsheds and
14 its appearance will be resolved as part of
15 that. So we will be happy to have that
16 presentation for you as well.

17 COMMISSIONER MAY: Thanks.

18 COMMISSIONER SCHLATER: Quick
19 question. So I'm just looking at the Text
20 Amendment itself and it says that, basically,
21 the Zoning Administrator can approve the
22 building permit until there has been a report

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1 issued by the Director of Office of Planning.

2 MS. JACKSON: That's correct.

3 COMMISSIONER SCHLATER: Such report
4 will contain criteria and information to
5 determine whether the tower is -- complies
6 with the Comprehensive Plans, Small Area Plans
7 or other adopted planning studies on the site.

8 Is that typical? Is that something that we
9 have seen before that structure? Do sometimes
10 the structure come back to the Zoning
11 Commission to make that determination?

12 MS. JACKSON: It hasn't. The
13 intent is that it not have to come back. This
14 is the language that we have been working with
15 OAG to refine and rephrase. They were
16 concerned about the having specific criteria
17 that is not enumerated in the text and also
18 about what is the appeal.

19 In this case, what we have worked
20 out with OAG is that should OP's report
21 conclude that it is inconsistent with the
22 Small Area Plan, that it would be referred to

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1 the BZA as a special exception.

2 MR. BERGSTEIN: Basically, in the
3 other instances where this has happened, which
4 is -- and 10 is in DD, those two regulatory
5 schemes are so complex and technical that the
6 idea was to, basically, have the Office of
7 Planning come in as an expert to assist the
8 Zoning Administrator and that was the purpose
9 of their report.

10 Because the standard here is really
11 a much broader standard that wouldn't actually
12 allow the Zoning Administrator to deny a
13 building permit that is inconsistency with the
14 planning of studies in the Comp Plan, he can
15 deny a permit if it is too high or whatever,
16 that was my suggestion that we have to have a
17 consequence if the Office of Planning finds,
18 in fact, it is the location or size or its
19 relationship to our structures would be
20 inconsistent with the planning goals for St.
21 E's.

22 At that point, it could say let's

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1 refer this for special exception and, in
2 essence, a design review. So that was my
3 suggestion as how we're going to adjust the
4 text accordingly.

5 COMMISSIONER SCHLATER: So it's not
6 coming back to the Zoning Commission because
7 the process is so complicated on the other
8 side?

9 MR. BERGSTEIN: Oh, it -- you can
10 have it. I mean, one is to make this as --

11 COMMISSIONER SCHLATER: I'm sorry.
12 I mean, you call it easily --

13 MR. BERGSTEIN: One option is to
14 make this a special exception and have like
15 you have in certain aspects of CG that
16 anything that gets built comes to you for
17 design review and for review consistency with
18 the purposes of the overlay and things like
19 that.

20 This is sort of a hybrid where
21 hopefully through the entire 106 process and
22 involvement, the right choice will be made and

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1 OP will be able to say that in the report.
2 But if something goes wrong, it's sort of a
3 way of bringing it back. And one issue is
4 does the Zoning Commission want to do that
5 special exception or would it prefer to have
6 the BZA and if you want to provide guidance to
7 us on that, at this point, it's the BZA by
8 default unless you say otherwise.

9 COMMISSIONER SCHLATER: My hazy
10 recollection of this project from when I was
11 back in Government was that this water tower
12 is going to serve a large portion of east of
13 the river.

14 MS. JACKSON: Yes.

15 COMMISSIONER SCHLATER: And it's
16 located at one of the high points east of the
17 river. And there is going to be a very
18 prominent architectural feature of the
19 redevelopment of St. E's. And there is a lot
20 of interest in it. So I'll leave it up to my
21 colleagues to decide whether it is something
22 they wish to weigh in on, but it certainly is

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1 a big project.

2 CHAIRMAN HOOD: I didn't know all
3 that information, but I will tell you that,
4 you know, I never have a problem with setting
5 anything down. But I do have -- I'm waiting
6 to hear some more discussion on 3206, 3206.1,
7 3206.2, 3206.3. I would just like to maybe --
8 maybe my questions and answers will be evolved
9 or come to me as we have the hearing process.

10 I don't have any problems with setting this
11 down.

12 What I do share some of what I
13 heard you say, I just -- to me, I need to
14 investigate a little more and maybe hear some
15 of the people maybe coming to provide some
16 information you just gave me at the hearing.
17 So let me open it up. Any other discussion?

18 COMMISSIONER SCHLATER: I think
19 that that sounds good.

20 CHAIRMAN HOOD: All right.

21 COMMISSIONER SCHLATER: Sorry about
22 that. I move Zoning Commission Case No. 09-10

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1 Text Amendment to allow establishment of a
2 water tower on the St. Elizabeth's Campus for
3 set down.

4 COMMISSIONER TURNBULL: Second.

5 CHAIRMAN HOOD: Okay. It has been
6 moved and properly seconded. Any further
7 discussion?

8 All those in favor?

9 ALL: Aye.

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

13 MS. SCHELLIN: Yes. Staff records
14 the vote 5-0-0 to set down Zoning Commission
15 Case No. 09-10 as a rulemaking case.
16 Commissioner Schlater moving, Commissioner
17 Turnbull seconding, Commissioners Hood,
18 Keating and May in support.

19 CHAIRMAN HOOD: Okay. Let's --
20 next is Zoning Commission Case No. 09-11, a
21 proposed Zoning Text Amendment to permit
22 retail and service uses by special exception

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1 in SP-2 Districts. Hold on one second. Mr.
2 Goldstein?

3 MS. SCHELLIN: Good evening.

4 CHAIRMAN HOOD: It is Goldstein,
5 right?

6 MR. GOLDSTEIN: Yes, you got it.

7 CHAIRMAN HOOD: Thank you. I
8 finally got something right.

9 MS. SCHELLIN: I was going -- I was
10 listening to Mr. Turnbull, so we got -- we
11 were going back and forth. I had to call him
12 out, because we were going back and forth.

13 CHAIRMAN HOOD: Oh, sorry.

14 MR. GOLDSTEIN: Oh, sure. Good
15 evening, Mr. Chairman and Members of the
16 Commission. For the record, my name is Paul
17 Goldstein and I'm a Development Review
18 Specialist with the Office of Planning.

19 The Office of Planning proposes a
20 text amendment to allow by special exception a
21 wider range of principal ground floor retail
22 and service uses in Special Purpose 2

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1 Districts. The Amendment would apply
2 exclusively to SP-2 Districts located south of
3 M Street, N.W. and N.E., would allow by
4 special exception certain uses permitted by
5 right in C-1 neighborhood shopping districts.

6 As background, SP-2 Districts were
7 crafted to be transition zones between
8 commercial and residential areas among other
9 intents. They are chiefly mapped on the
10 periphery of the Central Business District in
11 Northwest Washington.

12 A noble feature of SP Districts is
13 they are near prohibition of active principal
14 ground floor retail and service uses, which is
15 a limitation that was adopted in the 1958
16 Zoning Regulations.

17 This constraint was recently
18 highlighted in three requests for zoning
19 relief, two of which have been approved, that
20 sought to secure active ground floor retail
21 uses in SP-2 Districts. The Amendment aims to
22 permit ground floor retail and service uses in

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1 locations where their operation would not be
2 harmful to neighboring properties.

3 The proposed Text Amendment has the
4 following defining features: First, it is
5 geographically limited to SP-2 Districts south
6 of M Street, N.W. and N.E. The affected areas
7 primarily include SP-2 Districts in Foggy
8 Bottom, along 16th Street, in Judiciary Square
9 and east of the Capitol.

10 The Amendment aims to capture
11 properties that are essentially in core
12 commercial and mixed-use areas. Additionally,
13 nearly every SP-2 District property below M
14 Street is located in an Historic District and
15 areas subject to condition of fine arts review
16 or both. And as such, the design and
17 appearance of any proposed use will be subject
18 to additional reviews.

19 Second, the proposal would allow
20 only C-1 uses listed in section 701.1 through
21 701.5 to be located on or below a building's
22 ground floor. Such uses would only be

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1 permitted if they satisfy the conditions of
2 the special exception test, meaning that they
3 are shown to not be likely to become
4 objectionable to neighboring properties
5 because of noise, traffic or other conditions.

6 Although not raised in OP's report,
7 to address possible parking issues, OP would
8 propose an amendment to Chapter 21 that would
9 include an appropriate parking standard to be
10 included in the notification.

11 The proposed Text Amendment would
12 be in harmony with several Comprehensive Plan
13 policies, including the promotion of
14 commercial centers, encouraging active street
15 life, mixed use development and expanding the
16 retail sector in central Washington.

17 At the same time, the Amendment
18 seeks to respect Comprehensive Plan guidance
19 through the uses of the special exception
20 process to ensure that new development is in
21 concert with its surroundings and these
22 identified transition Districts.

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1 To conclude, the Text Amendment
2 would not be inconsistent with the
3 Comprehensive Plan. The Office of Planning
4 recommends that the proposed Text Amendment be
5 set down for public hearing and I am now
6 available for any additional questions. Thank
7 you.

8 CHAIRMAN HOOD: Thank you, Mr.
9 Goldstein. Any questions for Mr. Goldstein?
10 Commissioner May?

11 COMMISSIONER MAY: Yeah, what's
12 magic about M Street? Is that just to protect
13 the Dupont Circle area?

14 MR. GOLDSTEIN: In part. It seemed
15 to us to be a clean break between areas that
16 are essentially more commercial and mixed-use
17 from areas that are more predominately
18 residential, which is what you get into as you
19 head north of M Street.

20 COMMISSIONER MAY: Did you give any
21 consideration to sort of establishing a
22 southern limit on it, because it seems like

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1 the only thing that is south of -- well, south
2 of M Street, S.E. and S.W., is the ARC. Is
3 that what that property is?

4 MR. GOLDSTEIN: Yes, I believe so.
5 And that would be an SP-1 Zoned area.

6 COMMISSIONER MAY: Okay.

7 MR. GOLDSTEIN: It just wasn't
8 captured actually by the SP-2.

9 COMMISSIONER MAY: So it's not SP-
10 2. Got it. Okay. Got it. Okay. Just
11 because it shows up on the map, that's what
12 threw me. Okay. You know, I think I will
13 have some concerns about its application in
14 close proximity to the mall, the Elipse, the
15 river. Not that I'm predisposed against it,
16 but when we are that close to such prominent
17 national parkland, there is definitely going
18 to be more of a concern on our part.

19 I don't know what they all are, but
20 I'm -- I've got to look at it more carefully.
21 Thanks.

22 CHAIRMAN HOOD: Any other

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1 questions? Okay. I would move that we set
2 down Zoning Commission Case No. 09-11 and ask
3 for a second.

4 COMMISSIONER SCHLATER: Second.

5 CHAIRMAN HOOD: Okay. Commissioner
6 Schlater seconded. Any further discussion?

7 All those in favor?

8 ALL: Aye.

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

12 MS. SCHELLIN: Staff records the
13 vote 5-0-0 to set down Zoning Commission Case
14 No. 09-11 as a rulemaking case. Commissioner
15 Hood moving, Commissioner Schlater seconding,
16 Commissioners Keating, May and Turnbull in
17 support.

18 CHAIRMAN HOOD: Okay. Next is
19 Zoning Commission Case No. 09-13, Office of
20 Planning Text Amendment to explicitly allow
21 for a BZA Consent Calendar. Ms. Steingasser?

22 MS. STEINGASSER: Mr. Chair,

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1 Commissioners, Office of Planning is
2 recommending this Text be set down. It
3 explicitly allows for a consent calendar for
4 use by the Board of Zoning Adjustment, the
5 intent of which is to both reduce the flow of
6 cases and backlog on hearings before the BZA
7 and reduce the cost to the applicants of such
8 a weight in having to have their architects
9 and lawyers attend hearings that have no
10 opposition.

11 The consent calendar is called for
12 both in the Zucker report, which is a report
13 sponsored by the Office of Planning and paid
14 for by the City Council. It was called for in
15 the Comprehensive Plan to look at the option
16 for a Planning Commission. As part of that,
17 it also looked at the entire development
18 process.

19 It is Recommendation 24 called for
20 the use of the consent calendar by the BZA.
21 The Office of Zoning concurrently commissioned
22 a plan -- a study that looked at the

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1 development processes through White and Smith,
2 LLC and they also concluded that the use of a
3 consent calendar would be efficient for moving
4 forward the BZA procedure.

5 We have proposed that the cases
6 that are eligible for consent calendar be
7 limited. Right now, we are proposing only
8 sections 223, which make up, approximately, 24
9 percent of all BZA cases over the last 5
10 years. They are typically noncontroversial.
11 They are a special exception that look only at
12 limited amounts of relief in terms of lot
13 occupancy, rear yard, front yard and side
14 yards and courts.

15 We have also proposed that it
16 include section 209.1, which allows for
17 private organizations, parks, playgrounds,
18 swimming pools and recreation facilities. We
19 tried to go through and choose those that we
20 felt were the least controversial and would
21 have the biggest bang for the buck with the
22 calendar right now.

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1 As the -- as time moves forward, we
2 can add future sections to the consent
3 calendar, but we felt the calendar had to be
4 limited, otherwise it would become just a
5 parallel log jam of people trying to request
6 consent knowing that they wouldn't get it and
7 then get just jumping to the front of the
8 line.

9 So we felt it was -- the best way
10 to do it was to control it by what could be on
11 there.

12 We think that the Text is not
13 inconsistent with the Comp Plan. It updates
14 land use controls. It minimizes the cost and
15 time associated with housing. It allows for
16 transparency in decisions and it continues to
17 allow for public input and due diligence as
18 any notified party or ANC may request its
19 removal as well as a Board Member or the City
20 Council.

21 We are working with the Office of
22 Attorney General to refine the language for

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1 the public hearing notice. I believe they
2 circulated that to you in a memo last week and
3 that you got in your packet. And our language
4 in the public hearing notice will reflect
5 those changes.

6 CHAIRMAN HOOD: Thank you, Ms.
7 Steingasser. I will say that I support this
8 consent calendar. This is something that we
9 talked about I know for a while. But one of
10 the things that -- you know, some of the
11 things that came across my mind, I was
12 thinking well, why not wait until the ZRR, but
13 that's not going to work.

14 Some of the ways that I thought
15 that we already do things efficiently was to
16 rest on the record. You know, I think this
17 consent calendar idea, I think, will be more
18 efficient in helping to move the processes
19 along within the BZA.

20 It will give them a tool to kind of
21 do like we did tonight. We moved things in
22 block, even though we had a discussion to help

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1 us get through some of the things that we had
2 to discuss, especially if it's nothing to
3 discuss.

4 So I will also -- and I'm glad to
5 hear you say, Ms. Steingasser, that there were
6 other type of case that eventually we're going
7 to look at. I know the 223 is out there, but
8 I know there is some other types of cases that
9 we look at.

10 The only other question that I
11 would ask and I will probably go to the Office
12 of Zoning is to ask the Chair possibly of the
13 BZA, and maybe we can ask one or two chairs,
14 because I know we have -- other than maybe Mr.
15 Turnbull, when you are in and out of BZA all
16 the time, we would really like to hear their
17 comments on what we're getting ready to move
18 forward with, so I don't know if Chairperson--
19 Chairman Loud would be available.

20 I don't know, Mr. Bergstein, I
21 think I can do that. I asked --

22 MR. BERGSTEIN: I forwarded the

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1 most recent Text to Mr. Moy and I assume that
2 he forwarded it to the Board.

3 MS. BUSHMAN: I can speak to that.
4 I forwarded the language with Mr. Moy's
5 assent to the Commission -- to the Board
6 Members and I do believe that they will be
7 taking a look at it and be very happy to
8 provide comment.

9 CHAIRMAN HOOD: Thank you very
10 much. I want to make a formal request from
11 the dias asking that if the time permits, they
12 can come down and we will get them right in.
13 We will treat them like Council Members.
14 We'll get them right in and hear from them and
15 get them out of here, because I know they
16 spend a lot of time here on Tuesday and we
17 appreciate all they do.

18 And they are the experts as far as
19 I'm concerned. Even though we -- other than
20 Mr. Turnbull, we are here every so often. He
21 is usually every week. But so anyway, I'm
22 glad to see this moving forward.

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1 I totally endorse it. We may have
2 to tweak it or do some fine tuning, but I'm
3 glad to see this moving forward.

4 MS. STEINGASSER: I believe, and
5 OAG can confirm, it's a rulemaking case and
6 not a contest case, so we can work with the
7 BZA prior to the hearing.

8 MR. BERGSTEIN: Oh, absolutely.

9 CHAIRMAN HOOD: Oh, well, I'll just
10 call them myself and tell them I expect to see
11 them here. Okay. Any other comments on this?
12 Any other comments, colleagues? Okay.

13 With that, I would move that we set
14 down Zoning Commission Case No. 09-13 and ask
15 for a second.

16 COMMISSIONER TURNBULL: Second.

17 CHAIRMAN HOOD: Everybody must like
18 the consent calendar. I think I heard three
19 seconds.

20 MS. SCHELLIN: Keating and --

21 CHAIRMAN HOOD: Yeah, put them all
22 down as seconding. All right. It's moved and

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1 properly seconded by three Members.

2 Ms. Schellin, put all three of them
3 down for seconding.

4 COMMISSIONER MAY: I think Mr.
5 Turnbull should have the privilege.

6 CHAIRMAN HOOD: Yeah, Mr. Turnbull,
7 could you second it?

8 COMMISSIONER TURNBULL: Second.

9 CHAIRMAN HOOD: Okay. So Mr.
10 Turnbull seconded. Any further discussion?

11 All those in favor?

12 ALL: Aye.

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

16 MS. SCHELLIN: Staff records the
17 vote 5-0-0 to set down Zoning Commission Case
18 No. 09-13 as a rulemaking case. Commissioner
19 Hood moving, Commissioner Turnbull seconding,
20 Commissioners Keating, May and Schlater in
21 support.

22 CHAIRMAN HOOD: Okay. Next, we

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1 will do our status report. Ms. Steingasser?

2 MS. STEINGASSER: Chairman,
3 Commissioners, the status report is before
4 you. The one thing I wanted to point out to
5 you that you are going to see start coming
6 forward now are different Text Amendments that
7 are going to begin to implement part of the
8 zoning review recommendations.

9 The consent calendar is one. Part
10 of moving that forward allows us, once it is
11 complete, to help guide how we write future
12 text that may be coming.

13 We are also going to be moving
14 forward the Campus Plan Text Amendment. And
15 the reason we are moving that one now is there
16 are several Text Amendments-- several Campus
17 Plans, excuse me, that are going to be coming
18 due in 2010 and we want to have the new
19 regulations in place so that as they go
20 through that process, they are working with
21 the most current regs.

22 So you will be seeing that most

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1 likely in September. That will come to you
2 for set down. And that's all we have.

3 CHAIRMAN HOOD: Any questions of
4 Ms. Steingasser? Okay. Do we have anything
5 else before us?

6 We have a hearing on Thursday, but
7 this is our last meeting. We get the whole
8 month off, whopty-do, but anyway, I want to
9 thank everyone for making my colleagues and I
10 very ready for these meetings and for the
11 hearings.

12 I appreciate the Office of Zoning
13 staff and our direct connection to the Office
14 of Zoning staff to Ms. Sharon Schellin. I
15 think she does a fabulous job. And also with
16 the assistance of Ms. Bushman and all those
17 who help her and Mr. Nero and everyone.

18 And also the Office of Attorney
19 General, we appreciate all the guidance and
20 the legal advice that we get from the Office
21 of Attorney General. They definitely help
22 make our lives a lot easier.

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1 And also the reports that we get
2 from the Office of Planning. We appreciate
3 the in depth research that goes into it to
4 help us make an educated and informed decision
5 for the best interest of the city.

6 And I do not want to forget all
7 those participants, the residents and also
8 applicants who present cases and the citizens.

9 Sometimes we may not always agree or it may
10 not be the outcome, but we appreciate the
11 participation, because I will tell you, and I
12 think my colleagues would agree, the way we
13 grapple sometimes and try to balance things
14 it's like trying to balance for a win/win for
15 all neighborhoods.

16 So that's all I have. With that, I
17 hope everyone has a safe month off. But don't
18 forget to come back Thursday now.

19 COMMISSIONER TURNBULL: No.

20 CHAIRMAN HOOD: Don't forget. No,
21 don't forget to come back Thursday. We have a
22 hearing Thursday. And I think that will be

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1 it. Okay. So with that, this meeting is
2 adjourned.

3 (Whereupon, the Special Meeting was
4 concluded at 8:41 p.m.)

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