

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL PUBLIC MEETING

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MONDAY

JULY 28, 2008

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The Special Public Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:00 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
GREGORY N. JEFFRIES, Vice Chairman
CURTIS L. ETHERLY, JR., Commissioner
(OAC)
PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist
ESTHER BUSHMAN, General Counsel

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON
MAXINE BROWN-ROBERTS
ARTHUR JACKSON
ARLOVA JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on July 28, 2008.

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

2 6:09 p.m.

3 CHAIRPERSON HOOD: We are going to
4 go ahead and get started with our special
5 public meeting. This is the special public
6 meeting of the Zoning Commission, the 1254th
7 meeting session. This is our 15th of 2008.
8 Joining me are Commission May and Commissioner
9 Turnbull. We are expected to be joined by
10 Vice Chairman Jeffries and also Commissioner
11 Etherly shortly.

12 We are also joined by Office of
13 Zoning staff to my left and also from the
14 Office of the Attorney General staff, Mr.
15 Bergstein, and Office of Zoning. All those
16 staff are to my left and to the right. We are
17 also joined by the Office of Planning staff.

18 Copies of today's meeting agenda
19 are available to you and are located in the
20 bin near the door. We do not accept any
21 public testimony at our meetings unless the
22 Commission request someone to come forward.

1 Please be advised that these
2 proceedings are being recorded by a court
3 reporter and is also webcast live.
4 Accordingly, we must ask you to refrain from
5 any disruptive noises or actions in the
6 hearing room. Please turn off all beepers and
7 cell phones.

8 Does the staff have any
9 preliminary matters?

10 MS. SCHELLIN: No, sir.

11 CHAIRMAN HOOD: I omitted saying
12 names so if you could hit the mic and just
13 identify yourself if you are on the staff with
14 the Office of Planning.

15 Let me just jump around a little
16 bit. Our agenda is in front of us. I'm going
17 to jump around and give our other two
18 colleagues a moment to join us for more of the
19 cases which may take a little more
20 involvement.

21 Let me deal with correspondence
22 first. We have Zoning Commission Case No. 08-

1 22. This is the Office of Planning Map
2 Amendment in Ward 8. This is a memorandum
3 from Office of Planning requesting waiver of
4 posting. Colleagues, if you remember, we have
5 done this previously. They have to post all
6 those sites.

7 I'm sure we wouldn't mind seeing
8 Office of Planning out there doing that but
9 that is very labor intensive so I think if we
10 could we could agree to give them a waiver for
11 posting and I so move and ask for a second.

12 COMMISSIONER MAY: Second.

13 CHAIRMAN HOOD: Moved and properly
14 seconded. Further discussion? All those in
15 favor?

16 ALL: Aye.

17 CHAIRMAN HOOD: Any opposition?
18 Hearing none, so ordered. Staff, would you
19 record the vote?

20 MS. SCHELLIN: Staff records the
21 vote three to zero to two to approve the
22 waiver of posting in Zoning Commission Case

1 No. 08-22. Commissioner Hood moving,
2 Commissioner Turnbull seconding, Commissioner
3 May in support, Commissioners Etherly and
4 Jeffries not present and not voting.

5 CHAIRMAN HOOD: Okay. Next,
6 colleagues, I think we can take final action.
7 I hope I'm not inconveniencing anyone. I know
8 you have your papers in order but I'm trying
9 to give our colleagues a chance to join us
10 before we get to hearing action. Final
11 actions on Zoning Commission Case No. 05-36A
12 (K Street Development - second stage PUD at
13 250 K Street, N.E.). Ms. Schellin.

14 MS. SCHELLIN: Staff has nothing
15 further to add to this. We did get a letter
16 from NCPC but they did not take a vote.

17 CHAIRMAN HOOD: Okay. Thank you.
18 As Ms. Schellin has mentioned, NCPC took no
19 action.

20 COMMISSIONER MAY: Can I report
21 actually a little further on that?

22 CHAIRMAN HOOD: Sure.

1 COMMISSIONER MAY: It wasn't that
2 there was no vote that was taken. It was that
3 there was no decision that was made. In other
4 words it was a tie in the decision. It was
5 neither voted up nor down so when that happens
6 they take no action.

7 CHAIRMAN HOOD: Thank you. Thank
8 you, Commissioner May. It's good to have
9 somebody who was on the NCPC to come and help
10 us understand exactly what "took no action"
11 means. Again, colleagues, if you remember --

12 COMMISSIONER TURNBULL: Excuse me,
13 Mr. Chair.

14 Commissioner May, was there any
15 issues that were presented that were
16 significant that we should know?

17 COMMISSIONER MAY: No. It's the
18 usual issue that NCPC has taken to discussing
19 height issues and in this circumstance there
20 was a discussion but there was not agreement
21 among the Commission so it was a tie vote.

22 COMMISSIONER TURNBULL: Okay.

1 Thank you.

2 CHAIRMAN HOOD: Okay. Again, this
3 was a K Street Development LLC application.
4 This was a second stage PUD, additional roof
5 structure relief, substantial and consistent
6 with the Zoning Commission order 05-36. The
7 Office of Planning recommended approval.

8 There were some issues that we
9 fleshed out before we took proposed action.
10 They actually answered a lot of our concerns,
11 the different concerns that all of us had
12 before. I think all of us were satisfied.
13 What I would like to do is move approval of
14 Zoning Commission Case No. 05-36A and ask for
15 a second.

16 COMMISSIONER MAY: Second.

17 CHAIRMAN HOOD: It's been moved
18 and properly seconded. Any further
19 discussion? Any further discussion? All
20 those in favor?

21 ALL: Aye.

22 CHAIRMAN HOOD: Any opposition?

1 Not hearing any so ordered.

2 Staff, would you record the vote?

3 MS. SCHELLIN: Staff records the
4 vote three to zero to two to approve final
5 action in Zoning Commission Case No. 05-36A,
6 Commissioner Hood moving, Commissioner May
7 seconding, Commissioner Turnbull in support,
8 Commissioners Jeffries and Etherly not present
9 and not voting.

10 CHAIRMAN HOOD: Okay. I want to
11 thank everybody for allowing me to move the
12 agenda around so we can try to get some of the
13 easier things maybe knocked off as quick as
14 possible.

15 The next hearing action is Office
16 of Planning Zoning Commission Case No. 08-16A.
17 This is the Office of Planning Text Amendment
18 to 199, Definition of Child Development
19 Center.

20 Ms. Steingasser.

21 MS. STEINGASSER: Chairman Hood,
22 Commissioners, we are providing an additional

1 amendment to this text to clarify that infants
2 are indeed allowed in the child development
3 centers.

4 There was an addition of the
5 phrase "two years old and older" that was
6 added erroneously to the definition when the
7 council -- I'm sorry, when the Commission
8 adopted the elderly development center.

9 Nobody can really account for how
10 that phrase got in there. BZA ran across it
11 in two recent child development center cases
12 so we are just proposing a quick amendment to
13 balance out all those definitions.

14 CHAIRMAN HOOD: I think this is
15 pretty straight forward. As Ms. Steingasser
16 said, I think we eliminated where we couldn't
17 have infants and I know that was definitely a
18 mistake. Any questions of the Office of
19 Planning?

20 COMMISSIONER TURNBULL: No. I was
21 on one of the cases that had that. We
22 actually phrased the order so we didn't have

1 to deal with the sort of side step because we
2 couldn't understand. I think the only thing
3 that came up was there any language or
4 requirement for an infant that required a
5 different level of care or licensing. We
6 didn't think there was.

7 MS. STEINGASSER: Not through the
8 zoning ordinance, no.

9 COMMISSIONER TURNBULL: Right.

10 MS. STEINGASSER: If it would be,
11 it would be through the Department of Health
12 and Children Services.

13 COMMISSIONER TURNBULL: As I say,
14 it came up and we questioned it and I'm glad
15 we got it taken care of.

16 COMMISSIONER MAY: I have a quick
17 question since I was not here for the meeting
18 two weeks ago when 08-16 was considered for
19 set down. Was that set down?

20 MS. SCHELLIN: I think it may have
21 been set down. Was that May -- I mean June or
22 July.

1 COMMISSIONER MAY: It was in June.
2 Okay. I just noted here that I had voted by
3 absentee ballot so it was in June. I think I
4 had to leave early for that meeting is what
5 happened. Okay. Just wanted to make sure
6 when that had happened. Thanks.

7 COMMISSIONER TURNBULL: Mr. Chair,
8 I would like to make a motion that we approve
9 Zoning Commission 08-16A, Request for a Text
10 Amendment to the Definition of Child
11 Development Center, Section 199.11 DCMR and
12 move approval.

13 CHAIRMAN HOOD: Okay. We're going
14 to set it down. Do we need to set this now
15 for a hearing or can we just move it for
16 approval?

17 MS. SCHELLIN: No, we actually
18 have to set it down.

19 CHAIRMAN HOOD: Have a hearing
20 whether we can include infants. Okay.

21 COMMISSIONER MAY: I assume that
22 would be part of it. Did we already hear the

1 other case 08-16?

2 MS. SCHELLIN: It's actually
3 scheduled in September but unfortunately we
4 won't have enough time unless we move that one
5 to hear it all at once. There's not enough
6 time to publish this case.

7 COMMISSIONER TURNBULL: So they
8 are still going to be separate?

9 MS. SCHELLIN: Unless we move the
10 first one.

11 CHAIRMAN HOOD: Can we move the
12 first case to align with this case and do them
13 all in one night? Would that cause a problem?
14 We are already not including infants so that's
15 one thing. Maybe we could use that date for
16 something else.

17 MS. SCHELLIN: Yeah, we -- no, we
18 can't. We don't have enough time to put
19 anything else in that spot.

20 CHAIRMAN HOOD: Here's what I can
21 do. If we keep it like that what we need to
22 do then, if my colleagues would agree, is

1 align that with another hearing for sure.

2 MS. SCHELLIN: Yes. It definitely
3 would be. Otherwise we'd be into December
4 before we would hear it. I'll work it out.

5 CHAIRMAN HOOD: I'll leave that to
6 staff. Okay.

7 COMMISSIONER TURNBULL: Well, let
8 me rephrase it. I move that we set down
9 Zoning Case 08-16A, Request for a Text
10 Amendment for the Definition of Child
11 Development Center and look for a second.

12 CHAIRMAN HOOD: Second. Moved and
13 properly seconded. Any further discussion?
14 All those in favor?

15 ALL: Aye.

16 CHAIRMAN HOOD: Hearing no
17 opposition the staff will record the vote.

18 MS. SCHELLIN: Staff records the
19 vote three to zero to two to set down Zoning
20 Commission Case No. 08-16A. Commissioner
21 Turnbull moving, Commissioner Hood seconding,
22 Commissioner May in support, Commissioners

1 Jeffries and Etherly not voting and not
2 present.

3 CHAIRMAN HOOD: Okay. Next we
4 have Zoning Commission Case No. 08-11, Henok
5 Araya -- hopefully I pronounced that correctly
6 -- Map Amendment at Square 475E, Lot 1.

7 Mr. Jackson.

8 MR. JACKSON: Good evening Madam
9 Chair -- Mr. Chairman.

10 CHAIRMAN HOOD: Me and Carol
11 always have resembled.

12 MR. JACKSON: Excuse the
13 oversight, Mr. Chairman. My name is Arthur
14 Jackson and I'm a Development Review
15 Specialist for the District of Columbia Office
16 of Planning. I am here to present a brief
17 summary of the Office of Planning's
18 preliminary report on the application.

19 Essentially, Mr. Chairman, we
20 would like to stand on the record since you
21 have the report before you. It's fairly
22 short. It summarizes the change that is

1 proposed and the circumstances that currently
2 exist. With that the Office of Planning will
3 stop now and we are available to answer any
4 questions.

5 CHAIRMAN HOOD: Okay. Thank you,
6 Mr. Jackson. You are right, the submittals
7 were very straightforward. I'll open it up
8 for any questions of Mr. Jackson. I think I
9 saw Mr. Turnbull's mic first.

10 COMMISSIONER TURNBULL: Mr.
11 Jackson, let me make sure I understand. We
12 are looking at the end rowhouse on S Street as
13 it meets New Jersey?

14 MR. JACKSON: That's correct.

15 COMMISSIONER TURNBULL: Which is
16 currently R-4 and we want to align that with
17 the C-2-A which currently goes up the street
18 on New Jersey.

19 MR. JACKSON: Actually, the C-2-A
20 if you look at the --

21 COMMISSIONER TURNBULL: I guess
22 what I -- the map didn't quite clearly show

1 the ranges of how things -- your Exhibit 3 I
2 was trying to -- is part of it going through
3 the site?

4 MR. JACKSON: Yes. What has
5 occurred is that the angle of the mixed-use
6 district comes down south of the alley and it
7 comes down at an angle that is larger than the
8 alley, the existing zoning line. As such, it
9 cuts through the properties to the south.

10 COMMISSIONER TURNBULL: So I guess
11 what -- are we saying that a third of the
12 house is R-4?

13 MR. JACKSON: Well, more quickly
14 about 60 percent of the lot. The entire
15 property is R-4 but more than 60 percent of
16 the lot is in a mixed-use designation. In
17 essence what the applicant is asking to do is
18 to change that lot to a C-2-A which if you'll
19 -- I've got a smaller map that actually
20 depicts this but what happens along the street
21 is that the northern half of the square is C-
22 2-A.

1 The southern half is R-4 and R-4
2 also extends across to the square to the south
3 so that the opposite side of New Jersey Avenue
4 is C-2-A. Okay. More correctly the east side
5 of New Jersey Avenue is in C-2-A and the west
6 side is in R-4.

7 COMMISSIONER TURNBULL: Right.

8 MR. JACKSON: The northern part of
9 the square that is being reviewed tonight is
10 in C-2-A and the bottom half is in R-4.

11 COMMISSIONER TURNBULL: On your
12 Exhibit 1 it clearly shows you've got the
13 redline going through and down New Jersey
14 Avenue.

15 MR. JACKSON: Yes.

16 COMMISSIONER TURNBULL: Then I was
17 confused about the land use on Exhibit 3.

18 MR. JACKSON: Right. The land use
19 designation map, the southern boundary of the
20 mixed-use designation extends south of the
21 alley so it goes -- so it cuts into the R-4
22 area. It bisects a number of the lots.

1 COMMISSIONER TURNBULL: Okay. All
2 right. Thank you.

3 CHAIRMAN HOOD: Mr. May.

4 COMMISSIONER MAY: Yes. Only
5 seeing a portion of that Exhibit 3, or a
6 portion of the map that is shown in Exhibit 3,
7 it seems like this is essentially just a
8 drawing error, that somebody connected the
9 wrong point.

10 I'm wondering if there is any way
11 to understand what the intention really was
12 here because I just find it unbelievable that
13 anyone would suggest that these individual
14 properties would be partially in one zone and
15 not partially in another in terms of the land
16 use map.

17 MR. JACKSON: Right. If you like
18 I have a smaller version of the map that shows
19 the entire square if that clarifies things at
20 all.

21 COMMISSIONER MAY: I guess it
22 doesn't really change my conclusion. It seems

1 like they connected to the center point on the
2 map of the intersection between S Street and
3 New Jersey whereas they should have connected
4 to the center point of the alley and New
5 Jersey when drawing the land use map.

6 MR. JACKSON: If you look at the
7 larger map, it does appear that is a set
8 dimension from the center line of Florida
9 Avenue.

10 COMMISSIONER MAY: Oh, so it's
11 drawn off of Florida Avenue.

12 MR. JACKSON: Looking at the
13 orientation of the frontage Florida Avenue and
14 the angle of the boundary it's in parallel.

15 COMMISSIONER MAY: It is
16 absolutely parallel. Okay. That explains why
17 it's drawn that way.

18 MR. JACKSON: The intent is just
19 as a general guide as to land use changes in
20 the future and, as such, it is incongruent but
21 that is not unusual along a major street.

22 COMMISSIONER MAY: Okay. All

1 right. That explains it. It would be useful
2 when we actually have the hearing to see that
3 map in full or larger so we can understand how
4 the map wound up being drawn that way. This
5 little snippet just makes it look like it's a
6 mistake.

7 CHAIRMAN HOOD: Let the record
8 reflect we have been joined by Vice Chairman
9 Jeffries.

10 Any other additional questions of
11 the Office of Planning? Okay. Hearing none,
12 I would move that we set down Zoning
13 Commission Case No. 08-11 and ask for a
14 second.

15 COMMISSIONER TURNBULL: Second.

16 CHAIRMAN HOOD: Moved and properly
17 seconded. Any further discussion? All those
18 in favor?

19 ALL: Aye.

20 CHAIRMAN HOOD: Any opposition?
21 Hearing none. Staff, would you record the
22 vote.

1 MS. SCHELLIN: The staff records
2 the vote four to zero to one to set down
3 Zoning Commission Case No. 08-11, Commissioner
4 Hood moving, Commissioner Turnbull seconding,
5 Commissioners May and Jeffries in favor.
6 Commissioner Etherly not present and not
7 voting.

8 CHAIRMAN HOOD: Okay. Thanks, Ms.
9 Schellin.

10 Next on the agenda is Zoning
11 Commission Case No. 08-15. That's the
12 Friendship-Macomb SC, Inc. - Consolidated PUD
13 and Related Map Amendment at Square 1920N,
14 Lots 1 and 2. I'll go to the Office of
15 Planning.

16 Ms. Brown-Roberts.

17 MS. BROWN-ROBERTS: Good evening,
18 Mr. Chairman and members of the Commission.
19 I'm Maxine Brown-Roberts from the Office of
20 Planning. The applicant, the Friendship-
21 Macomb SC, Inc. proposes a consolidated PUD
22 for a mixed-use development consistent of

1 retail and residential uses.

2 To accommodate this development
3 the applicant has also proposed a map
4 amendment that will rezone a portion of the
5 property from the R-5-A and also the C-1 and
6 the Macomb Wisconsin Overlay to the C-2-A
7 district. A portion of the property will
8 remain in the R-5-A district.

9 The applicant proposes to demolish
10 the existing buildings that are on the site
11 and replace them with a mixed-use neighborhood
12 commercial center at an overall FAR of 1.99.
13 The applicant proposes that the area
14 identified as a northern parcel be developed
15 with a five-story building with ground floor
16 retail and approximately 124 townhouses on the
17 upper four floors.

18 The retail uses would wrap around
19 the building along Wisconsin and Idaho Avenue.
20 The applicant proposes a two-story building on
21 the southern parcel the main feature being the
22 supermarket. The ground floor retail uses

1 will front on Wisconsin Avenue and Newark
2 Street.

3 On the second floor a portion of
4 the building which fronts on Wisconsin Avenue
5 will be for office or flex space. The second
6 floor of the building fronting on Newark will
7 also have 14 loft-style apartments.

8 The applicant further proposes
9 that the R-5-A portion, the portion of
10 property to remain in R-5-A will be developed
11 with eight townhouse units. Parking will be
12 provided under each of the buildings. The
13 applicant has also requested flexibility from
14 the lot occupancy, parking, loading roof
15 structure, and has requested review under
16 Section 353 and 2516.

17 The proposal is not inconsistent
18 with the comprehensive plan. The future land-
19 use map recommends low-density commercial and
20 low-density residential. A portion of the
21 site is designated as a neighborhood
22 commercial center on the generalized land use

1 map.

2 The proposed development is not
3 inconsistent with elements of the
4 comprehensive plan and, in particular, the
5 Rock Creek West element which recommends
6 conserving neighborhood commercial center and
7 a preference for local serving retail uses and
8 housing opportunities.

9 The property or the proposal by
10 the applicant has been reviewed with ANC-3C
11 and they have had meetings with both the ANC
12 and the general community. Community reaction
13 to the proposal has been mixed. Issues of
14 concerns of residents include the density,
15 general vehicular traffic, truck traffic, and
16 the type of retail uses and compatibility of
17 design.

18 Other residents support the
19 development of the site with the mix of uses
20 and the density proposed. The applicant has
21 met with the office of planning and DDOT and
22 the Office of Planning has conveyed to them

1 the concerns of the residents. OP and DDOT
2 and other relevant agencies will continue to
3 dialogue with the applicant and the community
4 to address these issues.

5 The Office of Planning, therefore,
6 recommends that the proposal be set down for
7 public hearing and that the applicant provide
8 the following details of their environmental
9 and green building initiative, truck and
10 traffic management plan, elevations of roof
11 structures, the location of bicycle, further
12 refinement of the architecture of the building
13 facade materials and landscaping. Also
14 information regarding the affordability of any
15 affordable units that will be provided.

16 Thank you, Mr. Chairman. I am
17 available for any questions.

18 CHAIRMAN HOOD: Thank you, Ms.
19 Brown-Roberts. Let me first understand
20 exactly because I'm looking at two different
21 -- this is consolidated PUD and related map
22 amendment. This is not a first stage?

1 MS. BROWN-ROBERTS: No, it is a
2 consolidated.

3 CHAIRMAN HOOD: Okay. It was the
4 first thing on the report. We really read our
5 reports.

6 The other thing is, let me ask
7 this. I'm looking at all the outstanding
8 issues. I know once before -- well, I made
9 the mistake to set something down when at that
10 time it was 10 outstanding issues. When I
11 look here I see seven. It gives me pause.

12 Let me say do you think -- some of
13 them I think can be mediated or come to some
14 type of agreement but some of them I'm just
15 wondering. I know you recommend set down but
16 when I see seven and eight, and I hope you
17 named everything on here as a to-do list or
18 things that we need to work out, it gives me
19 pause to move forward.

20 MS. BROWN-ROBERTS: I would also
21 maybe preface the report with saying that we
22 have been working with the applicant and the

1 committee and they have provided and they have
2 been very responsive to some of these. One of
3 the things that we were concerned about was
4 the location of the loading.

5 They have addressed that. We have
6 been meeting with DDOT and to talk about the
7 traffic management plan. That is something
8 that is ongoing. These are all issues that we
9 are talking about right now but these are
10 things we identify that we are talking about
11 and will continue to talk about.

12 CHAIRMAN HOOD: Let me open up and
13 let my colleagues ask questions.

14 Vice Chairman Jeffries.

15 VICE CHAIRMAN JEFFRIES: Just
16 quickly just adding onto the Chairman. I want
17 to be clear. You wrote the report July 18 so
18 since July 18 you referred to the seven points
19 at the end. Which ones have been somewhat
20 covered?

21 MS. BROWN-ROBERTS: Let's see.

22 VICE CHAIRMAN JEFFRIES: That was

1 10 days ago so I just want to know in the
2 interim.

3 MS. BROWN-ROBERTS: We have spoke
4 to them about the green building initiative.
5 They haven't given us a list but they have
6 told us about the direction they will be going
7 in.

8 VICE CHAIRMAN JEFFRIES: You're
9 happy with that?

10 MS. BROWN-ROBERTS: We are happy
11 with that so far, yes.

12 VICE CHAIRMAN JEFFRIES: Okay.

13 MS. BROWN-ROBERTS: The truck and
14 traffic management that is being addressed by
15 DDOT. We have met with DDOT on a number of
16 occasions. DDOT has asked for specific
17 information so they are working on that. The
18 elevations of the roof structures I think that
19 is something that we usually -- we can get
20 that.

21 Also the bicycle locations.
22 Regarding the architecture we have been

1 working with them. They submitted some
2 revised architectural plans over that which
3 was submitted in the original package. That
4 is being improved. Then the relationship to
5 the affordable units they told us they were
6 providing eight percent. We want to see
7 exactly where that is going to be across the
8 proposed development.

9 VICE CHAIRMAN JEFFRIES: What
10 about the flexibility as to theoretical lots?

11 MS. BROWN-ROBERTS: That is
12 something they still have to address.

13 VICE CHAIRMAN JEFFRIES: So there
14 are three of seven that are just clearly
15 outstanding at this point.

16 MS. BROWN-ROBERTS: Yes.

17 VICE CHAIRMAN JEFFRIES: Okay.
18 I'm sorry, Mr. Chair.

19 CHAIRMAN HOOD: Thank you.
20 Commissioner Turnbull.

21 COMMISSIONER TURNBULL: Thank you,
22 Mr. Chair. Ms. Brown-Roberts, I see by the

1 grocery store on S-103 of what we got from the
2 applicant the turnaround area there is like a
3 gate, I guess, for the trucks that is closed
4 off most of the time.

5 I'm not really concerned so much
6 about that but I guess what I would like to
7 see, and although there have been some
8 sections through the site, I would really like
9 to see some more sections as the store faces
10 the residential area if it's just screening,
11 is there a fence, what kind of fence or a
12 wall. I think I would like to see a little
13 bit more of that edge of how they are meeting
14 that residential area.

15 MS. BROWN-ROBERTS: To the rear?

16 COMMISSIONER TURNBULL: It's the
17 southeast, I think The southeast section. Or
18 southwest I guess it is. Is Newark Street
19 still a through street?

20 MS. BROWN-ROBERTS: It's still a
21 through street. It will remain open.Mr.
22 Humphreys

1 COMMISSIONER TURNBULL: Are they
2 introducing some kind of pedestrian friendly
3 paving system?

4 MS. BROWN-ROBERTS: Yes. I think
5 you can see a little bit -- I'm not sure if
6 you can see a little bit of it but, yes, if
7 you look where the crosswalks are. I'm not
8 sure exactly what the materials are going to
9 be at this time.

10 COMMISSIONER TURNBULL: I think,
11 as was said before, we need to some more
12 information on the landscaping materials and
13 the hardscaping, as well as the shrubs and
14 everything that they are going to be using.
15 I think you're right the architecture we need
16 a lot more information, materials on that. I
17 guess the other thing is signage. Is that a
18 standard big giant sign?

19 MS. BROWN-ROBERTS: Yes. We'll
20 address that.

21 COMMISSIONER TURNBULL: Is it
22 normally that big? I mean, we are nit picking

1 here.

2 MS. STEINGASSER: The sign has
3 certain advocates for it from a historic
4 preservation standpoint --

5 COMMISSIONER TURNBULL: Okay

6 MS. STEINGASSER: -- because it's
7 the original sign.

8 COMMISSIONER TURNBULL: The
9 original sign.

10 MS. STEINGASSER: Yes. I suspect
11 there are also probably tractors for that sign
12 but it is the original giant sign.

13 COMMISSIONER TURNBULL: The
14 original neon sign.

15 MS. STEINGASSER: Elongated kind
16 of deco, late deco.

17 COMMISSIONER TURNBULL: It's been
18 relamped to be more energy efficient, though?

19 MS. STEINGASSER: We'll find out.

20 COMMISSIONER TURNBULL: Okay. It
21 looks like all of the main traffic -- I mean,
22 all the loading is coming off of either Idaho

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1 or Newark and that Wisconsin is kept clear of
2 any kind of driveways.

3 MS. BROWN-ROBERTS: That's
4 correct.

5 COMMISSIONER TURNBULL: I guess
6 the only other issue, as you pointed out, we
7 really would like to see a lot more on the
8 green building initiative that they are
9 proposing for us. Thank you.

10 VICE CHAIRMAN JEFFRIES: Excuse
11 me, Mr. Chair. Just one other question.
12 Newark Street currently is that a fairly well-
13 traveled street currently? I mean, that cuts
14 between Wisconsin and Idaho?

15 MS. STEINGASSER: They are doing a
16 traffic count of all these intersections and
17 streets. I don't know off the top of my head
18 what the volume level is that it takes
19 compared to Idaho and Wisconsin.

20 VICE CHAIRMAN JEFFRIES: There is
21 just a general observation. I mean, the
22 treatment of landscape and hardscape on this

1 introduction, obviously you're making it
2 pedestrian friendly but vehicular traffic can
3 still do through.

4 MS. STEINGASSER: Yes.

5 VICE CHAIRMAN JEFFRIES: But the
6 way in which it's designed and so forth I'm
7 wondering if it's really going to cut down on
8 a lot of vehicular traffic. I mean, it's so
9 pedestrian friendly that I'm just wondering
10 whether traffic that normally would have gone
11 through there is going to be going through
12 there once this is done.

13 I think it's a transportation
14 question. I'm just wondering about cut-
15 through traffic and so forth and whether
16 people will come to this which has been
17 introduced again as a pedestrian friendly
18 thoroughfare between Wisconsin and Idaho.

19 I'm just wondering the impact it's
20 going to have on vehicular traffic, traffic
21 that typically would have driven through there
22 that is not going to do it now because it's so

1 incredibly pedestrian friendly which I like
2 but, you know, I'm curious about that.

3 MS. STEINGASSER: That is one of
4 the issues we've heard from the neighborhood
5 is what the impact is that this has on the
6 circulation both in terms of neighborhood
7 vehicles as well as traffic that may come to
8 the site, how will it access it.

9 VICE CHAIRMAN JEFFRIES: Right.

10 MS. STEINGASSER: And DDOT is
11 working with the applicant and the development
12 team to look at the counts, the circulation
13 pattern, future circulation, the interaction
14 of the car, the pedestrian, and the bicycle
15 all happen. Is it happening in the right way.

16 VICE CHAIRMAN JEFFRIES: If the
17 applicant is within earshot, I just want to
18 make certain that we really spend some time on
19 that because it seems like we clearly have a
20 level of impact.

21 Again, I like what is going on
22 there but if I were in my car and sort of came

1 to that, I perhaps would just drive along and
2 not bother because it looks more for the
3 pedestrian and not for the vehicle.

4 Anyway, that's it, Mr. Chair.

5 COMMISSIONER TURNBULL: Mr. Chair,
6 could I add just one thing?

7 CHAIRMAN HOOD: Okay.

8 COMMISSIONER TURNBULL: I don't
9 recall. It may have been addressed but if we
10 could see something on the staging or the
11 phasing. Is the south area being developed
12 first or north or are they both doing them
13 together?

14 MS. BROWN-ROBERTS: I don't know
15 but I will find out. That is something we'll
16 address.

17 COMMISSIONER TURNBULL: Okay.
18 Thank you.

19 COMMISSIONER MAY: Thanks. I
20 think a lot of points have been well covered
21 here so I don't really have a whole lot to
22 say. I will say that I am very, very glad to

1 have received the second package of drawings
2 dated July 21st because after having seen the
3 initial package and, in particular, seeing the
4 elevations of the buildings I was really
5 distressed.

6 I think there has been significant
7 progress in what is proposed now. As I said,
8 I'm glad that it's improved the way it has.
9 I would urge the Office of Planning to
10 continue to work with the applicant on
11 refining the elevations. My usual comments
12 are it's a little too complicated or busy in
13 certain areas.

14 It needs to be internally coherent
15 within each piece which it certainly wasn't
16 before and now it's a lot better but it still
17 needs work. I'm very interested in seeing all
18 of the surfaces of the building.

19 I assume that when we get new and
20 improved drawings that we'll see every
21 elevation because there are some elevations
22 that only show up in the initial package that

1 I am interested in seeing because this is
2 something that if not seen from the street on
3 all sides, it's going to be seen. It's going
4 to be visible from many different directions.

5 I would also say that between the
6 first package and what we received now there
7 has been a step in the direction of making it
8 more consistent architecture with each
9 building so that we're not looking at a
10 building and seeing somebody's attempt to make
11 it look like four or five different buildings
12 to break up the facade.

13 We've stepped away from that
14 significantly with the improved design
15 package. When it comes to the triangular
16 building or the V-shaped building
17 -- I don't know, is that parcel -- that's the
18 north parcel. Thank you. I think you could
19 go a little further in that direction because
20 it still has a sort of split personality.

21 It looks like three parts now
22 instead of five but it's okay. The building

1 is not so big that it can't be seen as a
2 single building and I think it could be a very
3 elegant single building if you keep going in
4 that direction. I would associate myself with
5 the comments of my colleagues with regard to
6 resolving the various pedestrian issues and
7 transportation, truck access, those issues as
8 well. That's it for me.

9 CHAIRMAN HOOD: Vice Chairman, do
10 you have another question?

11 VICE CHAIRMAN JEFFRIES: Office of
12 Planning, there was a question about
13 affordability. Can you repeat that again in
14 terms of what they are proposing and what you
15 are requesting?

16 MS. BROWN-ROBERTS: I think they
17 just generally said they were doing 8 percent
18 which under IZ is the minimum so we are asking
19 to show the square footage and where they are
20 going to be located and that sort of thing.

21 VICE CHAIRMAN JEFFRIES: So you
22 are not looking for additional affordability

1 but just more --

2 MS. BROWN-ROBERTS: That is still
3 on the table.

4 VICE CHAIRMAN JEFFRIES: Okay.
5 The reason you're going there is just given
6 the level of relief that is being requested
7 and so forth?

8 MS. BROWN-ROBERTS: Exactly, yes.

9 VICE CHAIRMAN JEFFRIES: I would
10 concur with you. I do think that this
11 applicant is asking for a considerable amount
12 of relief.

13 I think in terms of IZ I was the
14 lone Zoning Commissioner who didn't vote in
15 favor of that but one of the strengths of the
16 IZ was that it is to be used throughout the
17 city and so forth so I want to make certain
18 that given the amount of relief that is being
19 requested and particularly the location, the
20 area of this. I would like to see the
21 applicant sharpen its pencil a bit in terms of
22 affordability.

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1 Then the other statement is I like
2 the architecture of the elevations. I think
3 the architect has done a successful job
4 particularly of the east elevation of the
5 north parcel. I think it's broken down quite
6 nicely and made it very interesting and
7 rhythmic.

8 I would align my comments with
9 Commissioner Turnbull about the Giant. I
10 think we could introduce a little bit more
11 verticality there. It's looking like a very,
12 very horizontal building and I think if we
13 could just break it down just a tad more.

14 I like the strength of the
15 horizontal band that separates the ground
16 floor from the upper level but I think if we
17 could perhaps introduce just more vertical
18 elements there just to break it down it would
19 be nice. Other than that I think the
20 architectural is going in the right direction.
21 Thank you.

22 CHAIRMAN HOOD: Commissioner.

1 COMMISSIONER TURNBULL: I mean,
2 unless there is some historical again, like
3 you were saying, they are trying to generate.
4 I feel like you ought to have a little malt
5 shop on the corner. It's got that '50s kind
6 of --

7 COMMISSIONER MAY: I don't want to
8 get too far into the debate of the
9 architecture here but the elevation that I
10 liked the most was actually that very
11 horizontal elevation so we are kind of on
12 opposite sides.

13 COMMISSIONER TURNBULL: You just
14 want the malt shop.

15 COMMISSIONER MAY: Yeah, I want
16 the malt shop. I think there is an historic
17 reason for it. I think if we can get a better
18 sense of what the retail environment looks
19 like in that neighborhood, I think you might
20 see that, in fact, it is an appropriate
21 architectural response.

22 VICE CHAIRMAN JEFFRIES: I don't

1 see that just yet but I would be waiting to
2 see what the applicant puts forward in terms
3 of an explanation. I mean, that is the
4 wonderful beauty of the Zoning Commission. We
5 are buried in our ideas of things. I like
6 verticality. Commissioner May likes
7 horizontality. You just work it out.

8 COMMISSIONER MAY: That's
9 simplifying things way too much. Maybe that
10 is part of what we're looking for when they
11 come back is an architectural fit, what they
12 are looking at, examples, what they're
13 choosing, how they are trying to pick, and
14 some rationale for show the design is really
15 fitting as it goes around the complex.

16 CHAIRMAN HOOD: Okay. Let the
17 record reflect we have been joined by
18 Commissioner Etherly.

19 Ms. Brown-Roberts, let me just ask
20 one quick question. The Macomb Wisconsin
21 Overlay District. You mentioned about the
22 dialogue with all the parties involved. I

1 will tell you in reading the submittals I
2 don't know whether we're taking it out or
3 adding to it. I'm not sure what I'm doing
4 here if we were to approve this.

5 MS. BROWN-ROBERTS: The map
6 amendment?

7 CHAIRMAN HOOD: Yes. What are we
8 doing with the Macomb Wisconsin Overlay? What
9 is happening with that? Is that still intact?

10 MS. BROWN-ROBERTS: No. What the
11 applicant is asking for is to do a full
12 rezoning of both the C-1 and the overlay and
13 just do C-2-A district.

14 CHAIRMAN HOOD: So we are going to
15 tamper with the Macomb Wisconsin Overlay?

16 MS. BROWN-ROBERTS: Yes.

17 CHAIRMAN HOOD: Okay. How is that
18 going with the community? Is that going
19 pretty good? Let me ask this. Let me back
20 up. Is this the same case that went on some
21 years ago? I think at that time it was called
22 Giant and Giant. Is this something similar?

1 MS. STEINGASSER: This is the same
2 site.

3 CHAIRMAN HOOD: Same site but that
4 was another case. This one here --

5 MS. STEINGASSER: It was another
6 case. I want to clarify the overlay question.
7 The applicant is requesting a rezoning from
8 the overlay, the C-1, and the R-5-A zone to a
9 C-2-A for HUD purposes only so should the PUD
10 not be built, the base zoning including the
11 overlay still remains.

12 CHAIRMAN HOOD: Okay. Those
13 conversations have been going pretty good with
14 the community?

15 MS. STEINGASSER: They've been
16 going.

17 CHAIRMAN HOOD: Okay.

18 MS. STEINGASSER: I don't want to
19 speak on behalf of the community because we
20 have been very clear that OP cannot testify
21 for one proponent or supporter. We have been
22 lobbied very heavy. This is a very

1 controversial case.

2 Let me be very clear on that.
3 There are strong feelings on both sides. We
4 have gone through some of the issues that have
5 been raised and we will be hearing more.
6 There is some concern raised to us about
7 allowing a rezoning in lieu of the overlay.

8 CHAIRMAN HOOD: I think this
9 Commission -- help me remember. This
10 Commission has done that in the past?

11 MS. STEINGASSER: Yes, sir. We
12 have. The H Street most recently with the
13 Dreyfuss property. Then, of course, in the DD
14 we've done it twice as well.

15 CHAIRMAN HOOD: Okay. It's going
16 to be very interesting. Very interesting.
17 Okay. That was it. Okay. All right.
18 Colleagues, what is your pleasure? I'm
19 hearing they are ready to move forward.

20 VICE CHAIRMAN JEFFRIES: I would
21 like to make a motion, Mr. Chairman, that we
22 set down Zoning Commission Case No. 08-15,

1 Friendship-Macomb SC, Inc., consolidated PUD
2 and related map amendment at square 1920 N,
3 Lots 1 and 2 and I look for a second.

4 COMMISSIONER ETHERLY: Second, Mr.
5 Chair.

6 CHAIRMAN HOOD: Okay. It has been
7 moved and properly seconded. Any further
8 discussion? Any further discussion. All
9 those in favor aye?

10 ALL: Aye.

11 CHAIRMAN HOOD: Any opposition?
12 Hearing none. Staff, would you record the
13 vote.

14 MS. SCHELLIN: Staff records the
15 vote five to zero to zero to set down Zoning
16 Commission Case No. 08-15. Commissioner
17 Jeffries moving, Commissioner Etherly
18 seconding, Commissioners Hood, May, and
19 Turnbull in support. I'm sorry, Chairman
20 Hood. Just to go back, this is being set down
21 as a contested case.

22 The first case, 08-16A, was a

1 rulemaking case and I believe 08-11, Ms.
2 Steingasser, is that a contested or is that a
3 consistency case, the map amendment?

4 MS. STEINGASSER: The property
5 owner filed it as a consistency case.

6 MS. SCHELLIN: So it's a
7 rulemaking also. We just missed that. Just
8 wanted to add that.

9 CHAIRMAN HOOD: Thank you very
10 much. Okay. Let's move on with our agenda.
11 Zoning Commission Case No. 08-13 (Marriott
12 International, Inc. - Airspace Development at
13 Square 370). I think this is basically
14 dealing with the airspace or air rights. This
15 is not revisiting the whole PUD.

16 Ms. Steingasser.

17 MS. STEINGASSER: No, sir. it's
18 not. The development team met with OAG and
19 then the Deputy Mayor for Planning and
20 Economic Development to discuss the
21 appropriate ways to deal with the subterranean
22 development. They all came to the conclusion

1 that it was more appropriate to go through the
2 Public Space Utilization Act for airspace
3 development.

4 Airspace development by definition
5 also includes subterranean space and it's a
6 more permanent type of approach than just
7 standard public space or vault space permits.
8 They have filed this request and quickly to
9 try to align the consideration of the airspace
10 review, subterranean airspace with the PUD
11 since they are critically essential to each
12 other.

13 CHAIRMAN HOOD: Thank you, Ms.
14 Steingasser. Again, I guess we did a text
15 amendment, a PUD, and now we're doing this so
16 all that is going to have to work in some type
17 of sequence, I believe. Am I correct?

18 MS. STEINGASSER: That is correct.
19 The text amendment will be complete prior to
20 the PUD being considered and they would like
21 for this airspace application to be heard in
22 concert with the PUD because of the

1 subterranean activities, the connection from
2 the PUD to the Convention Center are all one
3 operation.

4 CHAIRMAN HOOD: And the applicant
5 has reminded us, colleagues, on page 2 of
6 their submittal that we have done something
7 similar to this previously in our Zoning
8 Commission Order 961, Case No. 01-07C. Let me
9 open it up for questions of Ms. Steingasser.

10 Ms. Steingasser, I think you did
11 very well. No questions.

12 Commissioner May. Okay.

13 COMMISSIONER MAY: I'm curious
14 about the case at 1700 K Street and how
15 similar that was to the circumstance. It's
16 pointed out by the applicant as being similar
17 but --

18 MS. STEINGASSER: I can't answer
19 that at this time. We can get that
20 information for you but I really don't know
21 the particulars of that case.

22 COMMISSIONER MAY: Okay. I would

1 be very interested in finding out more about
2 that one. What is the extent to which the --
3 we've had projects with extensive vault space
4 development like this in the past?

5 MS. STEINGASSER: To the degree
6 that it has become necessary for this case,
7 it's a little bit -- it's a larger degree here
8 than what we usually see. We usually see it
9 more traditional parking, loading, things like
10 that, that project into the public space.

11 Here we are actually trying to
12 connect to the Convention Center under 9th
13 Street and that allows for the rearrangement
14 and sharing of the massive loading trucks in
15 the Convention Center. There are some really
16 large trucks and they will be able to come in
17 through the Convention Center and stay below
18 grade and service the hotel. It is much more
19 extensive than a central connection than we
20 usually see.

21 COMMISSIONER MAY: But the major
22 portion of this is actually not on 9th Street.

1 It's on Massachusetts Avenue. Right?

2 MS. STEINGASSER: There is a lot
3 on Massachusetts that allows at the narrower
4 part of the lot the -- the development team
5 does not control the entire square. Pepco has
6 a station at the very northwest corner. It
7 allows for them to put a lot of the parking
8 and circulation below grade so that it circles
9 beneath the street as opposed to beneath the
10 building allowing them to capture the floor
11 space.

12 COMMISSIONER MAY: But it's a lot
13 more than the ramping.

14 MS. STEINGASSER: It is more than
15 just the ramping.

16 COMMISSIONER MAY: It's the whole
17 facade along Mass. Ave. is going to be built
18 out 30 feet?

19 MS. STEINGASSER: I don't believe
20 the whole facade, the subterranean facade.
21 There will be some junior ballrooms and some
22 conference space and utility space that are

1 below grade. The facade itself stays on the
2 property line with the exception of the normal
3 protrusions.

4 COMMISSIONER MAY: Right, but
5 along the entire building front, if you will,
6 on Mass. Ave. it's built out under the --

7 MS. STEINGASSER: Under the
8 street, yes.

9 COMMISSIONER MAY: Under the
10 street. Under the right-of-way.

11 MS. STEINGASSER: Up to the curb
12 line, I believe.

13 COMMISSIONER MAY: Okay. We've
14 not had anything on that scale but we've done
15 similar things with occupiable space, involved
16 space.

17 MS. STEINGASSER: I don't know how
18 occupiable. We've certainly had mechanical
19 space, storage space, those kind of
20 utilitarian spaces.

21 COMMISSIONER MAY: Those typically
22 wind up being arranged under public space --

1 MS. STEINGASSER: Under space for
2 permitting or lease.

3 COMMISSIONER MAY: -- which is
4 leased.

5 MS. STEINGASSER: Right. This is
6 a much more permanent type of arrangement that
7 will ensure the --

8 COMMISSIONER MAY: So will the
9 city then negotiate a sale of these air
10 rights?

11 MS. STEINGASSER: I really don't
12 know. I'm going to have to refer to OAG on
13 this. You can see the application came in
14 Friday. I really don't know beyond the
15 mechanics how the details will work but we'll
16 certainly have that by the hearing.

17 COMMISSIONER MAY: When this case
18 was originally filed it was on the assumption
19 that it would be a public space.

20 MS. STEINGASSER: Yes, it was
21 always assumed that there would be public
22 space utilization.

1 COMMISSIONER MAY: Right. It
2 would be interesting to know what the nature
3 of that arrangement winds up being.

4 MS. STEINGASSER: I think that's
5 fair.

6 COMMISSIONER MAY: That's it for
7 me.

8 CHAIRMAN HOOD: Vice Chairman.

9 VICE CHAIRMAN JEFFRIES: Yes. Ms.
10 Steingasser, I'm still trying to fully grasp
11 why this is in front of the Zoning Commission.
12 That is the piece I'm still having some
13 difficulty with.

14 MS. STEINGASSER: I may have to
15 refer to OAG on it because I have not seen the
16 Public Space Utilization Act so I'm not that
17 briefed. I know Section 3010.2 of the Zoning
18 Regulations require the Zoning Commission to
19 approve air space developments but there is
20 not a lot of detail in the zoning regs. as to
21 how or what that process is and that is
22 covered through the Public Space Utilization

1 Act.

2 VICE CHAIRMAN JEFFRIES: Okay.

3 Does Office of the Attorney General -- oh,
4 they are looking it up now. Okay.

5 MS. STEINGASSER: I'm sorry. We
6 will be happy to get all of that information
7 for you.

8 VICE CHAIRMAN JEFFRIES: I mean,
9 you know, again, this is a very, very
10 important project for the District and so
11 forth so I'm just curious.

12 MS. STEINGASSER: Normally we
13 would have held this until September to work
14 out those details but we wanted to align the
15 hearing and get the notice timing
16 requirements.

17 COMMISSIONER TURNBULL: I guess
18 this raises issues about is the language going
19 to tie it to the facility, to the applicant
20 and is it just for this applicant? I mean,
21 I'm sure you will have the answers by then but
22 it's like leasing and all that aspect and how

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1 does that -- if someone else -- if a different
2 applicant takes over the facility, do they
3 have to reapply for these --

4 MS. STEINGASSER: I would think
5 not. I think it ties into the structure.

6 COMMISSIONER TURNBULL: So it's
7 tied to the facility. Is there a time limit?

8 MS. STEINGASSER: I don't know.

9 COMMISSIONER TURNBULL: Okay.

10 VICE CHAIRMAN JEFFRIES: Mr.
11 Chairman, I can go forward. It's on the
12 record. In terms of that question we can get
13 that answer during the hearing.

14 CHAIRMAN HOOD: Anyone else? Any
15 further discussion? All right. We'll move to
16 reset down Zoning Commission Case No. 08-13
17 with the answers that the Office of Planning
18 and others will give us at the time of hearing
19 or anything before.

20 Whatever the case may be we will
21 have those answers. Oh, Marriott
22 International, Inc. Thank you, Mr. Vice

1 Chairman, Air Space Development at Square 370
2 and that these hearings that are connected be
3 coordinated by staff. I would ask for a
4 second.

5 VICE CHAIRMAN JEFFRIES: Second.

6 CHAIRMAN HOOD: Moved and properly
7 seconded. Any further discussion? All those
8 in favor?

9 ALL: Aye.

10 CHAIRMAN HOOD: Any opposition?
11 Hearing none. Staff, would you record the
12 vote?

13 MS. SCHELLIN: Yes. Staff records
14 the vote five to zero to zero to set down
15 Zoning Commission Case No. 08-13 as amended to
16 add the Air Space Development to the
17 previously set down case. Commissioner Hood
18 moving, Commissioner Jeffries seconding.
19 Commissioners Etherly, May, and Turnbull in
20 support. This is set down as a contested
21 case.

22 CHAIRMAN HOOD: Thank you, Ms.

1 Schellin.

2 For those who are here for our
3 hearings that are supposed to start at 6:30,
4 we will be starting those as soon as we finish
5 our Special Public Meeting which hopefully
6 won't be but an additional 15 minutes or less.

7 Next, Zoning Commission Case No.
8 08-20. This is the Office of Planning Text
9 Amendment to Regulate the Establishment of a
10 Firearm Retail Sales Establishment Use). And
11 also emergency action is requested.

12 Ms. Jackson.

13 MS. JACKSON: Thank you. Good
14 evening, Chair Hood, and members of the
15 Commission. For the record my name is Arlova
16 Jackson and I'm with the D.C. Office of
17 Planning. Zoning Commission Case No. 08-20 is
18 a text amendment for zoning regulations to
19 regulate firearm sales by permitting them only
20 as special exception in certain districts.

21 The Office of Planning is
22 requesting that the Zoning Commission do the

1 following. Adopt the following text
2 amendments on an emergency basis. Add the
3 definition of firearms and firearm retail
4 sales establishments.

5 Amend Chapter 7 to permit firearm
6 retail sales establishments as a principle or
7 accessory use by special exception in the C-3-
8 C, C-4, and C-5 districts, and not permit
9 firearm retail sales as a principal or
10 accessory use in any other district. We also
11 ask that you set down Zoning Commission Case
12 0-20 for public hearing and authorize the
13 immediate publication of a notice of public
14 hearing and proposed rulemaking.

15 The proposal is to permit firearm
16 retail sales establishments only by special
17 exception in three commercial districts. The
18 districts chosen are the most intense
19 commercial districts allowing medium to high
20 density, mixed-use development, all of which
21 are centrally located, easily assessable and
22 highly visible.

1 Allowing uses by special exception
2 is consistent with current zoning regulations
3 and practice in the District. We have similar
4 regulations and restrictions on the operation
5 of sexually oriented business establishments
6 and other uses are permitted only by special
7 exception in various zones each with their own
8 review criteria.

9 In addition, this practice is
10 consistent with other communities we looked at
11 which are specifically regulating gun sales.
12 Of the four that we were able to research
13 recently three of which permit gun sales as
14 conditional use is only in commercial
15 districts.

16 The proposed regulations include
17 specific review and approval criteria
18 including the provision of safety measures and
19 limits on the proximity to residential uses.
20 These criteria relate to ensuring safety and
21 security of the proposed use, enhancing the
22 visibility of the use, and providing for

1 review of potential locations by relevant
2 District agencies including the Metropolitan
3 Police Department and the Office of Planning.

4 We are asking for emergency action
5 because the current regulations are silent on
6 gun sales. Our regulations don't currently
7 explicitly define firearms or establishments
8 that sell firearms and, as a result, could be
9 viewed generally as retail uses and authorized
10 wherever retail uses are permitted.

11 We would also like to limit the
12 potential for creating nonconforming uses
13 between now and the public hearing. We
14 wouldn't want to leave this unresolved until
15 after the August recess. In the meantime the
16 Office of Planning will continue to study and
17 research this issue and report back at the
18 public hearing if subsequent or additional
19 changes are recommended.

20 To conclude, the Office of
21 Planning request approval of the emergency
22 text amendment, set down of the public

1 hearing, and immediate authorization for
2 public notice. I thank you and will take any
3 questions you have at this time.

4 CHAIRMAN HOOD: Thank you, Ms.
5 Jackson. Let me just say that as I was
6 reading through this report it was very well
7 done because one of my issues were where were
8 the C-3-C and C-5 and 5? Where were they? I
9 will tell you when I got to the last page you
10 took away one of my questions so this is very
11 well done.

12 Let me just ask before the '70s I
13 think the law was different. What did the
14 zoning -- have we researched the history and
15 found out how it was handled at that point?

16 MS. JACKSON: Not at this point.
17 Not yet.

18 CHAIRMAN HOOD: I would be
19 interested in seeing that actually at the
20 hearing. The other issue is on 746.7 I
21 noticed that -- I can understand the
22 Metropolitan Police Department for review and

1 comment but what is the purpose of the Office
2 of Planning?

3 Not that I'm trying to take any
4 work away from you guys but I'm just curious
5 what is the purpose of the Office of Planning?
6 Normally in general the Office of Planning
7 gets notified anyway.

8 MR. LAWSON: Joel Lawson with the
9 Office of Planning. The Office of Planning is
10 normally notified of these. It may have been
11 a little bit redundant to have put that in and
12 that is one of the things that we'll be
13 looking at as we can of refine the text a bit.

14 We wanted to make sure it was
15 referred to us so that we could comment to the
16 BZA on those other criteria, whether the
17 application had met all of those other
18 criteria. That is normally the job of the
19 Office of Planning to do.

20 CHAIRMAN HOOD: Okay. That's
21 right, you said Zoning Commission. I don't
22 know if the rules read the same for Zoning

1 Commission and BZA.

2 MR. LAWSON: I'm sorry. Did I say
3 Zoning Commission? I meant BZA.

4 CHAIRMAN HOOD: No, you said BZA.
5 I'm thinking out loud actually which is
6 probably dangerous. Okay. That's all I have.
7 Anything else?

8 VICE CHAIRMAN JEFFRIES: Mr.
9 Chair.

10 CHAIRMAN HOOD: Vice Chair.

11 VICE CHAIRMAN JEFFRIES: First of
12 all, there are long lines of folks standing
13 around waiting to purchase guns. Just
14 waiting, sitting around waiting to purchase
15 their guns and start the wild wild west?

16 MR. LAWSON: I'm not sure if that
17 is a question. The answer would be that we
18 are bringing this forward because there is a
19 lack of appropriate regulation.

20 VICE CHAIRMAN JEFFRIES: I know.
21 It's just amazing that the Supreme Court gave
22 such a recent ruling and already we are so

1 quickly addressing this. I note in your memo
2 that you looked at four examples of U.S.
3 cities to get a sense of how there are only
4 regulations addressed of firearm sales and so
5 you are pretty comfortable. You looked at
6 Minnesota, Denver, Philadelphia, and Detroit.

7 You are pretty comfortable that
8 those are good comparable cities compared to
9 the District? I look at the map and
10 everything is pretty much centrally located
11 except south of Independence. If you could
12 just comment a little bit on just the
13 comparability of those other cities to D.C.
14 and how it plays out.

15 MS. JACKSON: Well, given the time
16 frame that we were working under these were
17 the first examples we found of cities that we
18 felt to be comparable. We will certainly
19 continue to research more but we were, I
20 guess, encouraged that they all had very
21 similar regulations and they are all treating
22 them in almost the same way as a conditional

1 use and in districts that are high density
2 commercial.

3 VICE CHAIRMAN JEFFRIES: I guess
4 I'm really dealing with distance from the
5 residential zone. I mean, that is principally
6 the thing that I am most focused on.
7 Obviously I guess we all go to our own
8 neighborhoods and look where these Cs are and
9 so forth and go "Um." I think that is the
10 concern I have just in terms of where these
11 zones sit tied to proximity to the residential
12 zone.

13 MS. JACKSON: Three of the four
14 had specific separation requirements from
15 residential either uses or zones also.

16 VICE CHAIRMAN JEFFRIES: Okay.

17 MR. LAWSON: I would note that the
18 zones that we have proposed to include this
19 special exception use tend to be the downtown
20 zones so they are not typically surrounded by
21 residential zones. It does occur but they
22 tend to be in a more kind of mixed use

1 surrounded by other higher density mixed-used
2 zones.

3 VICE CHAIRMAN JEFFRIES: Do we
4 have any C-3 -- Georgia Avenue is C-2. All C-
5 2?

6 MR. LAWSON: Right. The map of
7 the report shows all of the C-3-C, C-4, and C-
8 5 zones in the District.

9
10 VICE CHAIRMAN JEFFRIES: Okay.
11 Thank you.

12 CHAIRMAN HOOD: Commissioner
13 Etherly.

14 COMMISSIONER ETHERLY: Thank you
15 very much, Mr. Chair. I'll just echo
16 Commissioner Jeffries' point with respect to
17 that comprehensive or, shall we say,
18 comparative analysis of looking at other
19 cities would indeed be very helpful in terms
20 of getting a sense of best practices.

21 It is so very difficult not to
22 express an opinion on why this is just so

1 distressing that we have to even be here.
2 That is a whole other topic for another body,
3 for another venue and not here. I appreciate
4 the Office of Planning's speed and expeditious
5 approach towards getting this in the pipeline
6 as quickly as possible as was indicated by Ms.
7 Jackson. There are no issues created during
8 the transition period, if you will.

9 One thing that perhaps I will be
10 interested in some refinement on is as we look
11 at the map in the back of the Office of
12 Planning's report, and the Chair was right on
13 target that was, indeed, very helpful, I take
14 it that the thinking as you've looked at some
15 of the best practices, even just a very quick
16 look up to this point because you were moving
17 so fast.

18 The best practices don't get to
19 the level of specificity of identifying
20 proximity to residential uses. It's only
21 proximity to residential districts, if you
22 will.

1 Would that be an accurate
2 characterization that the way to not think
3 about this is firearm retail sales as a
4 primary use or as an accessory use and its
5 adjacency to a residential use regardless of
6 what type, regardless of what district it may
7 be in?

8 MS. JACKSON: Actually, what we
9 found so far has both, some regulated based on
10 the distance of the use itself and/or the
11 district.

12 COMMISSIONER ETHERLY: Okay.

13 MS. JACKSON: It's being done both
14 ways.

15 COMMISSIONER ETHERLY: But at this
16 point is it proper to characterize OP's
17 position as leaning more towards regulating it
18 with respect to the district as opposed to the
19 use?

20 MS. JACKSON: At this point, yes.

21 COMMISSIONER ETHERLY: Okay. Is
22 that still somewhat perhaps of an open

1 question from OP's standpoint?

2 MS. JACKSON: We can definitely
3 continue to look at it.

4 COMMISSIONER ETHERLY: I would
5 appreciate it. I think that would be helpful
6 to kind of refine that a little bit.

7 Further, this issue of firearm
8 sales as an accessory use. I'm trying to
9 figure out -- capitalism sometimes can be a
10 funny thing and oftentimes you would be amazed
11 what you find paired with other sales
12 opportunities whether it's cell phones, beauty
13 shops, barbershops and, at the same time, you
14 can get rims for your car.

15 I don't know. Part of me is
16 perhaps struggling with this notion of as an
17 accessory use the use of firearm sales. If I
18 understand correctly, the draft as it
19 currently stands takes a fairly restrictive
20 approach, would you say, in that regard?

21 MS. JACKSON: Yes.

22 COMMISSIONER ETHERLY: Is that

1 consistent with, again, the quick look that
2 you've taken in terms of best practices in
3 other jurisdictions?

4 MS. JACKSON: Yes.

5 COMMISSIONER ETHERLY: Okay.

6 Again, as we begin to flesh out more of that
7 comparative analysis with respect to other
8 jurisdictions it would be helpful to be sure
9 as one commissioner that I have a real good
10 sense of that. My tendency would probably be
11 to be as restrictive as possible in terms of
12 firearm sales as an accessory use.

13 Again, I want to be consistent. I
14 want to be -- what's the word I'm looking for?
15 Respectful of the decision of the Supreme
16 Court and, in that regard, I know there is
17 some care with which we have to step here.
18 Those are a couple of my quick observations.
19 Kudos to the Office of Planning for moving us
20 quickly as you have in this case to bring this
21 forward. Thank you.

22 Thank you, Mr. Chair.

1 VICE CHAIRMAN JEFFRIES: Excuse
2 me. One other comment. If you could look at
3 the map on the last page. I see that there is
4 a C-3-C zone that is south of New York Avenue
5 and east of North Capital and actually a
6 little north of New York Avenue as well.
7 Source and Carter is a little to the west of
8 North Capital, though. Correct?

9 MR. LAWSON: Yes. Source and
10 Carter would be to the west of North Capital.
11 The C-3-C area is essentially the NoMa area
12 that is currently a massive construction zone.
13 Lots of offices going in that area.

14 VICE CHAIRMAN JEFFRIES: Okay.
15 Just some of the mapping of this just gives me
16 a little heart burn. I understand. I mean,
17 I think it makes sense in terms of 3-C-3 and
18 C-4. Again, it's a special exception so I
19 know there will be hearings and so forth but
20 I'm looking at that area as well as this area
21 that is C-3-C that is on M Street Southwest.
22 Is that Waterside Mall? Okay. Thank you.

1 CHAIRMAN HOOD: Any other
2 questions, Commissioner May?

3 COMMISSIONER MAY: Yes. I'm going
4 to ask a really dumb question but why do we
5 actually need to sell guns? I mean, we have
6 to permit them but why do we have to sell
7 them? Can you not buy them any other way?

8 MS. STEINGASSER: I'm going to
9 again refer to OAG on some of these issues
10 that exceed the zoning.

11
12 COMMISSIONER MAY: If we are gong
13 to decide where you sell them, I want to just
14 know that we actually do have to sell them.

15 MS. NAGELHOUT: I'm not prepared
16 to answer that right now but we can get back
17 to you. You want the rationale of why we have
18 to permit the sale of guns?

19 COMMISSIONER MAY: Yeah. I mean,
20 I don't know anything about gun sales. I
21 don't know how you can buy them. I know in
22 some states you can go into the Wal-Mart and

1 buy them and I know you can go into gun shops
2 and buy them.

3 I know that in some towns you
4 can't buy them even if it's legal in the
5 state. There is local regulation that
6 prohibit gun shops. I just want to know why
7 we actually have to permit it. Is it because
8 of interstate transportation of guns? Those
9 are the sort of thing. I just want to
10 understand why we actually have to sell them.

11 VICE CHAIRMAN JEFFRIES: You're
12 saying it's one thing to permit ownership but
13 quite another to actually sell them. That's
14 your point.

15 COMMISSIONER MAY: Right. I mean,
16 do we have to permit the sale within the
17 boundaries of the District or can we simply
18 make legal the interstate transportation. I
19 mean, maybe you can make interstate
20 transportation but maybe you can buy them by
21 mail order and receive them in your home.

22 I'm just curious about that and I

1 would like to understand kind of the basics of
2 that. I don't really want to have a lengthy
3 legal brief on that but just the basics of it.

4 The second is I would like to
5 understand what the mechanics are of actually
6 purchasing a gun in a gun shop in an area
7 where you are not presumably going to be
8 permitted to carry guns around. In other
9 words, you take the Metro down to the C-3-C
10 zone from your home up in the Northwest or
11 something like that and buy your gun and it
12 stays in a box or can you load it up and tuck
13 it in your belt? How do you get the gun home?
14 I want to know what the legal --

15 CHAIRMAN HOOD: Let me say this.
16 Let me just add to this.

17 COMMISSIONER MAY: There's a
18 zoning reason for this question.

19 CHAIRMAN HOOD: I understand. I
20 understand but there are some other things
21 that come into play and I think when OAG comes
22 back we will understand the full circle. It

1 will all come full circle because I know the
2 other entities have some regulations that had
3 to be abided by also.

4 COMMISSIONER MAY: I understand.
5 I just want to understand a little bit of the
6 overall regulatory environment so I understand
7 what we necessarily have to permit. Where
8 this all started for me, and I'm getting back
9 to it now, is should we have an explicit
10 parking requirement associated with gun shops
11 so that somebody doesn't have to get on the
12 Metro to take their gun home or walk down the
13 street to take their gun home.

14 We want to make sure they have the
15 ability to put it in their car and lock it in
16 their trunk and take it home because that is
17 the only legal way they can do it. I don't
18 know what the legal ways are they can move it
19 but I think we ought to have thought that one
20 through. As I said, it started with parking
21 and then I backed all the way into why do we
22 need to in the first place.

1 MS. STEINGASSER: I think that's
2 something you're going to request your
3 attorneys to give you an attorney client
4 briefing on.

5 COMMISSIONER MAY: That's fine.
6 However we get the information I think that's
7 helpful.

8 That was it for me.

9 CHAIRMAN HOOD: Okay.

10 COMMISSIONER TURNBULL: Mr. Chair.

11 CHAIRMAN HOOD: Yes, sir.

12 Commissioner Turnbull. I was on a thought but
13 I always try to yield to my colleagues first.
14 Let me just say I'm hoping we'll have
15 testimony also from MPD at the hearing if not
16 for anything else to educate us.

17 Commissioner Turnbull.

18 COMMISSIONER TURNBULL: Thank you,
19 Mr. Chair. I think Commissioner May has
20 brought up an interesting point there.
21 Although handguns are allowed to be owned in
22 the District, why do you really have to allow

1 the selling of them. It's an interesting
2 point of law. It's an interesting issue.

3 I guess one of my questions is are
4 the overlays affected in any sense within
5 these C-3-C areas? Does that bring about
6 something else?

7 MS. JACKSON: No.

8 COMMISSIONER TURNBULL: It
9 doesn't?

10 MS. JACKSON: No.

11 COMMISSIONER TURNBULL: Sounds
12 like a lot of community groups might be
13 interested. I guess the other thing affected
14 by this buying of guns, does this leave itself
15 open to then practice ranges? Do we have
16 practice ranges, run ranges now? Is that
17 going to now come up?

18 MR. LAWSON: We viewed that as a
19 separate issue. It's not part of this
20 initiative. We aren't aware of any private --

21 COMMISSIONER TURNBULL: Gun clubs
22 or gun facilities?

1 MR. LAWSON: -- practice
2 facilities in the District. That doesn't mean
3 that there aren't any but OP isn't aware of
4 them. They would be going through DCRA.

5 COMMISSIONER TURNBULL: Okay.
6 Thank you.

7 CHAIRMAN HOOD: Okay. Any other
8 questions?

9 COMMISSIONER MAY: Yes, Mr.
10 Chairman.

11 CHAIRMAN HOOD: Mr. May.

12 COMMISSIONER MAY: I guess I want
13 to also understand why this needs to be
14 considered as an emergency text amendment
15 because we are theoretically opening the door
16 for starting applications within these zones
17 or something like that to open up gun shops.

18 Is this the sort of thing we
19 really have to immediately right now today
20 decide that we have to start allowing this?
21 You see how far away I am from even the
22 concept of selling guns in the city. I would

1 like to understand why we have to act right
2 now.

3 MR. LAWSON: It's not so much a
4 question of allowing the use. It's actually
5 a question of putting the parameters in place
6 so that as we complete the analysis and move
7 forward toward a public hearing that there are
8 some regulations in place. Otherwise there
9 simply aren't any regulations specific to
10 firearm sale establishments.

11 COMMISSIONER MAY: So somebody
12 could ask to put one in an R-1 zone and we
13 wouldn't be able to say no because it's not
14 zoned?

15 MR. LAWSON: Not in an R-1 zone
16 but as a residential use C-1 --

17 MS. STEINGASSER: Retail.

18 MR. LAWSON: Sorry, retail. Not
19 as a residential use, as a retail use it would
20 be allowed. We feel it would be allowed in
21 any zone that allows retail use scattered all
22 throughout the District.

1 COMMISSIONER MAY: So assuming
2 that someone on the legal side of things
3 assumes that we have to sell guns, then if we
4 don't take this action now, we could
5 theoretically be in a spot where we would have
6 to permit it anywhere where commercial use or
7 reasonably equivalent commercial use if
8 permitted. Right? We don't have to say it's
9 C-1 but maybe it is C-2. Right?

10 COMMISSIONER ETHERLY: I mean, put
11 another way, the interpretation as it
12 currently stands is it's a retail transaction
13 so wherever retail would currently be allowed
14 under existing zoning, the interpretation
15 would conceivably be in the absence of further
16 zoning clarity that it is a retail transaction
17 that is allowed wherever other retail
18 transactions take place.

19 MR. LAWSON: Well said.

20 CHAIRMAN HOOD: Thank you,
21 Commissioner Etherly. Very well said and
22 thank you. Okay. Any other questions,

1 Commissioner May? Are you comfortable?

2 COMMISSIONER MAY: Comfortable is
3 not the right word but I guess we can proceed.

4 CHAIRMAN HOOD: Okay. What I
5 would like to do is move this motion all in
6 one unless anyone objects. We'll move this
7 all in one motion. Okay. I move that Zoning
8 Commission Case No. 08-20, first of all, that
9 we request Office of Planning's request for a
10 waiver of our rules for the late filing of
11 this report which was less than 10 days.
12 Also, that we move to set this case down and
13 also that the emergency action that we are in
14 agreeance that this is also -- let me see. I
15 guess I have to -- let me ask this.

16 Do we have to do those separately,
17 Ms. Nagelhout, or do we have to do them all at
18 once? We've got to set it down first and then
19 do the emergency or does it matter? If it
20 doesn't matter, I'll just keep going.

21 VICE CHAIRMAN JEFFRIES: Is there
22 a particular order that we have to vote on

1 this or can he do it all in the consolidated
2 fashion?

3 MS. NAGELHOUT: I think you can do
4 it all in one.

5 CHAIRMAN HOOD: Okay. I'm being
6 told two variations but I had better go to my
7 left. No disrespect to OP. What I'm being
8 advised also, let me just say this. OP is
9 saying we need to waive the late filing first.

10 MS. NAGELHOUT: Yeah, that makes
11 sense because if you don't waive your rules
12 then you don't have anything to consider.

13 CHAIRMAN HOOD: Okay. Let me pull
14 that back. I make a motion that we waive our
15 rules for Zoning Commission Case No. 08-20 to
16 accept the late filing to Office of Planning
17 and ask for a second.

18 COMMISSIONER MAY: Second.

19 CHAIRMAN HOOD: Moved and properly
20 seconded. Any further discussion? All those
21 in favor, aye.

22 ALL: Aye.

1 CHAIRMAN HOOD: Any opposition?
2 Hearing none, staff would you record the vote.

3 MS. SCHELLIN: The staff records
4 the vote five to zero to zero to waive the
5 rules to accept OP's late filing of their
6 report. Commissioner Hood moving,
7 Commissioner May seconding, Commissioners
8 Jeffries, Etherly, and Turnbull in support.

9 CHAIRMAN HOOD: Thank you very
10 much, Ms. Steingasser.

11 Next and my question actually was
12 set down emergency. If you don't have
13 anything to set down, you can't do an
14 emergency. What I'm going to do is do that
15 all in one. The set down will be first and
16 then the emergency will be second. I move
17 that we set down Zoning Commission Case No.
18 08-20 and also that we take emergency action
19 effective immediately and ask for a second.

20 COMMISSIONER MAY: Second.

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

1 further discussion? All those in favor aye.

2 ALL: Aye.

3 CHAIRMAN HOOD: Not hearing any
4 opposition, staff, would you record the vote?

5 MS. SCHELLIN: Staff records the
6 vote five to zero to zero to set down Zoning
7 Commission Case No. 08-20 and to take
8 emergency action also. Commissioner Hood
9 moving, Commission May seconding,
10 Commissioners Etherly, Jeffries, and Turnbull
11 in favor. This is being set down as a
12 rulemaking case.

13 I would like to just clarify one
14 thing, whether the Office of Planning is also
15 asking for the immediate publication of a
16 proposed rulemaking in this case.

17 MS. STEINGASSER: Yes.

18 MS. SCHELLIN: Do they need to
19 revote or they can just include that?

20 MS. NAGELHOUT: I was going to ask
21 the same question if the Commission is
22 authorizing the immediate publication.

1 CHAIRMAN HOOD: By general
2 consensus, colleagues, let's authorize
3 immediate publication. So ordered. Okay.
4 That's done by general consensus.

5 Mrs. Schellin, do we have anything
6 else for our special public meeting?

7 MS. SCHELLIN: No.

8 CHAIRMAN HOOD: Okay. We are
9 going to go right into our hearing. This
10 special public meeting is adjourned.

11 (Whereupon, at 7:27 p.m. the
12 special public meeting was adjourned.)
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