

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1117th MEETING SESSION (9th OF 2001)

+ + + + +

MONDAY
JULY 16, 2001

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened at 1:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Anthony J. Hood, Vice Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Vice Chairperson
HERBERT FRANKLIN	Commissioner
JAMES HANNAHAM	Commissioner
JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, ZC
Gerald Forsburg, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Andrew Altman, Director, Office of Planning
Ellen McCarthy, Deputy Director,
Office of Planning
Jennifer Steingasser, Office of Planning
Julie Wagner, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Marie Sansone, Esq.

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

1:43 P.M.

VICE CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the D.C. Zoning Commission, Monday, July 16, 2001 at 1:43.

Joining me for this meeting are Commissioner Hannaham, Commissioner Parsons and Commissioner Franklin.

Chair Mitten is ill and we wish her a speedy recovery.

Preliminary matters, Mr. Bastida.

SECRETARY BASTIDA: Mr. Chairman, the staff has two preliminary matters. One is the announcement and it was concurred by the Commissioners that the August 13th meeting will not take place. The next, as scheduled regular meeting will be September 17th as advertised in the Register.

The second matter is that to announce that by consensus the Commission -- I would like to say by consensus the Commission grant me the opportunity to send to NCPC for federal impact comments the Human Rights Campaign building prior to the decision of the Commission on the September meeting.

VICE CHAIRPERSON HOOD: Okay.

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1 Commissioners, Mr. Bastida is making a request. Any
2 objections? No objections. Then we can agree by
3 consensus.

4 SECRETARY BASTIDA: Thank you, Mr.
5 Chairman. The staff has no other preliminary matters.
6 Thank you.

7 VICE CHAIRPERSON HOOD: Okay. Thank you,
8 Mr. Bastida. The only other agenda change I wanted to
9 make upon the proposed action, I wanted Zoning
10 Commission case, the Bryan School, 00-34C, to be the
11 first topic we take up. Next, Zoning Commission Case
12 No. 00-03C, Albemarle Associates, Inc. to be the
13 second and we'll deal with American University
14 afterwards.

15 Any objections? Okay, no objections.

16 SECRETARY BASTIDA: Mr. Chairman, could I
17 interrupt you?

18 VICE CHAIRPERSON HOOD: Yes.

19 SECRETARY BASTIDA: It might be a good
20 point to clarify right now that even though American
21 University is a proposed action, this has been heard
22 by the rules of the Board of Zoning Adjustments and
23 accordingly there is only one action by the
24 Commission. The Board rules doesn't contemplate to
25 have two actions, the proposed action and final

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1 action. So that is just for clarification, not as
2 much for the Commissioner, but for the public in
3 general.

4 VICE CHAIRPERSON HOOD: Thank you for that
5 clarification, Mr. Bastida. So we'll just kind of
6 leave that kind of hanging. We won't say proposed or
7 final.

8 If anyone has any objections to the way
9 the agenda is moved, the Commission has moved forward,
10 you may want to discuss that with staff, but as we
11 stand right now that's the way we're going to proceed
12 unless it's just totally taking someone way out of
13 their way.

14 What I'd like to do now is move along with
15 the action of the minutes. Mr. Bastida?

16 SECRETARY BASTIDA: Mr. Chairman, you have
17 received the meeting minutes and the staff would
18 request an action on the meeting minutes of June 11,
19 2001.

20 VICE CHAIRPERSON HOOD: Colleagues, we're
21 asking to approve the minutes.

22 COMMISSIONER FRANKLIN: Mr. Chairman?

23 VICE CHAIRPERSON HOOD: Yes, Commissioner
24 Franklin.

25 COMMISSIONER FRANKLIN: On page 6, looking

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1 at the meeting of June 11th at this point?

2 VICE CHAIRPERSON HOOD: The one before us
3 is June 11th, right.

4 COMMISSIONER FRANKLIN: On page 6, item
5 13, the vote with respect to that matter should have
6 been recorded as 3 to 1 to 1. I was not concurring
7 with the majority on that item.

8 VICE CHAIRPERSON HOOD: Okay. The vote
9 shall reflect 3-1-1. Will the staff make that note?

10 SECRETARY BASTIDA: Yes, Mr. Chairman, Mr.
11 Vice Chairman.

12 VICE CHAIRPERSON HOOD: Any other
13 comments?

14 SECRETARY BASTIDA: The Chairman and
15 Commissioner May have some editorial comments that the
16 staff will include on the final minutes.

17 VICE CHAIRPERSON HOOD: Also, no, that's
18 on the next set. Okay, I'll move approval with the
19 necessary corrections.

20 COMMISSIONER PARSONS: Second.

21 VICE CHAIRPERSON HOOD: It's been moved
22 and seconded. All those in favor by using the sign of
23 voting.

24 (Ayes.)

25 VICE CHAIRPERSON HOOD: Any opposition?

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1 So ordered.

2 Staff would you record the vote?

3 SECRETARY BASTIDA: Yes, the staff would
4 record the vote 4 to 0. I have a proxy from Ms.
5 Mitten saying that she is in favor of the approval
6 also. The staff would record the vote 5 to 0. Mr.
7 Hood moving it, Mr. Parsons seconded it, Mr. Franklin
8 and Mr. Hannaham voting in the affirmative and Ms.
9 Mitten voting in the affirmative by proxy.

10 Thank you.

11 VICE CHAIRPERSON HOOD: Okay, next we have
12 the minutes in front of us from Thursday, June 21st.
13 Any comments?

14 The only comment I have, I would have is
15 on No. 4 on page 2. I believe Mr. Franklin, I believe
16 this whole set of minutes should reflect that Mr.
17 Franklin participated. This hearing actually started,
18 this special meeting actually started around 6
19 o'clock. There's no indication that the meeting even
20 started at 6 o'clock, so I think we need to make those
21 corrections because some of the information that Mr.
22 Franklin did provide was very instrumental in moving
23 that whole process and he's not even listed at all as
24 even being even present. So I think that we need to
25 correct that.

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1 Am I correct, Commissioner Franklin?
2 Maybe you can -- if I'm correct on that? That's on
3 the EFs.

4 COMMISSIONER FRANKLIN: That was one of
5 the meetings where I was not able to be present for
6 the actual vote, but was present for initial
7 discussion and I left my comments with Chairman
8 Mitten, so I was present for part of it, but did not
9 take part in the actual vote.

10 VICE CHAIRPERSON HOOD: While it's noted
11 that Commissioner Franklin didn't take part in actual
12 vote, I think we need to adjust the minutes to reflect
13 that he did participate at 6 o'clock, at the beginning
14 of that which was then reconvened at 9:40 and I think
15 should spell that out on these minutes.

16 Colleagues, any other comments? If not, I
17 accept the motion.

18 COMMISSIONER PARSONS: Well, with an
19 important correction and a very important correct that
20 this was a two-part meeting. I would move approval.

21 VICE CHAIRPERSON HOOD: It's been moved.
22 I'll second it. It's been moved and seconded. All
23 those in favor use the sign of voting.

24 (Ayes.)

25 Any opposition? No opposition. Staff,

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1 would you record the vote with the proxy?

2 SECRETARY BASTIDA: Yes, Mr. Chairman, Ms.
3 Mitten will vote in the affirmative to approve. The
4 Board vote will be recorded 5 to 0. Mr. Parsons moved
5 it and Mr. Hood seconded it. Mr. Franklin and Mr.
6 Hannaham voting in the affirmative. Ms. Mitten voting
7 in the affirmative by proxy.

8 Thank you.

9 VICE CHAIRPERSON HOOD: Okay, thank you.
10 Also, I wanted for the public, I wanted for the
11 knowledge of the public there may be some proxy votes
12 where Commissioner May's name may be called because
13 we're going through a transition period right now and
14 a small transition, so we're dealing with different
15 issues, different Commissioners here, different cases,
16 so if you hear that, please do not be dismayed.

17 Next, the status report, Office of
18 Planning.

19 DEP. DIR. MCCARTHY:

20 COMMISSIONER HANNAHAM: Good afternoon,
21 Mr. Chairman, Members of the Commission. You received
22 from us a copy of the Office of Planning Status
23 Report. I just wanted to highlight a couple of issues
24 that were in there and add two new ones that the
25 Commission has asked us to consider which were added

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1 after the report was submitted for the record.

2 I wanted to mention to you under cases
3 pending set down, well, first of all, with regard to
4 set down we will be at this point we plan to bring to
5 you a recommendation for set down on the International
6 Monetary Fund PUD at the July 26th meeting, but I
7 would caution that there are several items yet to be
8 worked out, including the design in the amenity
9 package, so that's what we are aiming for and we will
10 know better by later on today, first thing tomorrow,
11 whether we will be able to get a set down report into
12 the Commission for that meeting.

13 Then with regard to cases pending set
14 down, on the TDRs for Historic Churches and
15 Synagogues, we've done a considerable amount of
16 background research for that proposed zoning change
17 and there are a number of complicated questions that
18 have come up ranging from whether there is sufficient
19 receiving zone capacity, given that we've calculated
20 the universe of potential sending of TDRs and it is
21 over 4 million square feet and so how we might limit
22 that for some of the very large places of worship that
23 could generate a very large number, what we do about
24 churches that are in our 1 zones where there is
25 technically no FAR, unused FAR. There's a number of

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1 complicated questions, so September may be overly
2 optimistic in terms of saying that we would have a set
3 down report for you in September.

4 And with regard to the Welsh School
5 rezoning, Square 369 and 370, there have been a number
6 of significant changes in ownership in those two
7 squares, so we have a meeting scheduled with some of
8 the new property owners for later this week and we
9 will see if they want to make any changes in the
10 requests that they had made for rezoning on that.

11 Just to keep you up to date with the
12 latest developments with regard to that and then on
13 page 2, you'll notice the Commission had asked us to
14 add at the bottom there, the bottom of that first
15 section, open spaced zoning and special streets and
16 circles and in addition to those two, the Commission
17 asked recently that we also take a comprehensive look
18 at Section 223 and the issue of nonconformity of
19 residential structures with some of the questions that
20 came to light when we dealt with the text amendment at
21 the hearing on July 12th, so we will add that to the
22 list as well and also in light of the Phillips case, I
23 think the Commission felt that a number of questions
24 had been raised about just what accessory uses were
25 legitimate accessory uses for museums, so we will add

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1 that to the list as well as something else that the
2 Office of Planning will be looking for with regard to
3 potentially a new zoning text case.

4 Then I think the rest of the report is
5 fairly self-explanatory and I'd be happy to address
6 any more specific questions that the Commission
7 Members have.

8 VICE CHAIRPERSON HOOD: Okay, thank you,
9 Ms. McCarthy.

10 Colleagues, any questions for the Office
11 of Planning?

12 COMMISSIONER PARSONS: I had a question
13 about the Convention Center. Is that to be a strict
14 rezoning or is it a PUD?

15 DEP. DIR. MCCARTHY: We had initially
16 recommended PUDs for both of those squares because of
17 the sensitivity of those squares. Neither one of the
18 owners who were initiating those requests were
19 interested in PUDs at the time. Since that time the
20 whole issue of Convention Center Headquarters Hotel
21 has come up and there is a request for expressions of
22 interest that's out on the street and the owners of
23 those two parcels now are talking about possibly
24 cooperating with each other on a Convention Center
25 hotel that might bridge underground and be included on

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1 both of those squares. So that's one of the things
2 that has meant either possibly we'll have control, the
3 same sort of control we might have over that site.
4 Through a PUD we might have through the Convention
5 Center request for expressions of interest which would
6 allow us to be a little more flexibility with regard
7 to the map amendment and we might want to look at the
8 map amendment as part of what the city is putting on
9 the table in terms of compensation in order to get a
10 Convention Center hotel because of the widely
11 acknowledged sense that we will need, the city will
12 need to have some financial participation in order to
13 make a Convention Center hotel financially feasible.
14 There are many moving parts and we were trying to see
15 if some more progress or some official determination
16 could be made with regard to the request for
17 expression of interest as an important piece of input
18 into deciding what to do about the rezonings on that
19 square.

20 So I guess the short answer to your
21 question is we're looking at both the PUD and a text
22 amendment.

23 COMMISSIONER PARSONS: I would certainly
24 urge the PUD because I don't see any other opportunity
25 for public review, do you?

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1 DEP. DIR. MCCARTHY: So noted.

2 VICE CHAIRPERSON HOOD: Any other
3 comments, questions?

4 Thank you, Ms. McCarthy.

5 Let's move right along with hearing
6 action. There is none.

7 Proposed Action. Let's take Case No.
8 00-34C, Mr. Bastida.

9 SECRETARY BASTIDA: Mr. Vice Chairman, the
10 staff has prepared a preliminary draft and provided
11 all the information that came as requested by the
12 Commission and the staff requests an action on the
13 Bryan School.

14 VICE CHAIRPERSON HOOD: Commissioners, we
15 have the draft order in front of us. The only thing I
16 would like to add, No. 6 on page 14, we need to
17 incorporate some language that states that who's going
18 to be responsible for the public/private alley. I
19 think the Applicant has provided something in
20 submittal and it's on page 3 of this mission. If we
21 can incorporate that.

22 Also, 7 and 8, again the Human Rights and
23 Local Business Development in the first Source
24 Employment Agreement, I don't know the mechanism, but
25 I was trying to think of a way that we can find out if

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1 that is some kind of update as this process evolves.
2 Maybe they can provide some type -- require them. I
3 don't know if we can legally do it, but require the
4 Applicant to provide an update or status report to the
5 Office of Planning or to the Office of Zoning so that
6 that is being adhered to.

7 And also, I would just add we make sure
8 that the Office of Planning's conditions, I know a
9 number were incorporated, but the other ones should
10 also be incorporated, I believe.

11 With that, colleagues, any other comments?

12 COMMISSIONER PARSONS: I do have one, Mr.
13 Chairman, and I'm not sure how to deal with it, but
14 during the latter part on the hearing a Ms. Bader came
15 forward and talked about a beautification projection
16 of the 1960s which took place on this property along
17 the street and she was urging that we not allow the
18 townhouse to go forward, but to preserve the pool and
19 decorative park on the street.

20 I do not agree with that, but -- the
21 street being South Carolina Avenue -- but I think it's
22 important to somehow record the presence of this for
23 future generations and I would like to impose on the
24 Applicant the retrieval of the drawings from the
25 District of Columbia school system who presumably, or

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1 DPW, who presumably allowed this to be built. If
2 those are not available, I would like to see them do a
3 series of -- a measured drawing of what's there as an
4 alternative and second, a series of photographs of
5 existing conditions to be filed.

6 I know this is an unusual request, but
7 what's becoming increasingly apparent throughout the
8 city is that many of the undertakings of the Lady Byrd
9 Johnson Beautification Program are now becoming
10 historic in their own right. I'm not saying that we
11 shouldn't -- that we should preserve this at all, but
12 this traditional method of doing that in the sort of
13 preservation community is to record and document
14 something before it's destroyed. So that's what I'm
15 urging to do and I don't have any language ready to
16 vote on, but I could probably develop it as we move
17 along. It's simple to retrieve the drawings, the as-
18 built drawings from the school board. If those aren't
19 available, measure what's out there and record it and
20 record it photographically as well.

21 Otherwise, I think it's a good project.

22 VICE CHAIRPERSON HOOD: Okay, thank you,
23 Mr. Parsons. Would it be okay if we, we're under
24 proposed action now. If we maybe have that submitted
25 before we do the final vote.

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1
2 COMMISSIONER PARSONS: That's exactly what
3 I had in mind, thank you. I'm presuming my colleagues
4 agree.

5 VICE CHAIRPERSON HOOD: Any other
6 comments?

7 SECRETARY BASTIDA: Mr. Chairman, I have
8 several comments from Commissioner May.

9 VICE CHAIRPERSON HOOD: Okay, I was
10 wondering where --

11 SECRETARY BASTIDA: I would like to read
12 them for the record.

13 Mr. May would like to state first that
14 he's generally supportive of the Bryan School
15 Townhouses and Condominium Building consolidated PUD
16 and Zoning Map Amendment. It is apparent that EYA
17 Development has worked very hard with the neighborhood
18 and city agencies to develop a plan that would become
19 a very successful project. The design work for the
20 rehabilitation of the Bryan School itself is
21 exceptional and will result in a significant
22 improvement in the quality of life for the surrounding
23 neighbors. I also -- Mr. May also has no doubt that
24 the financial necessity of using the development of
25 the new townhouses to carry some of the cost for what

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1 appears to be top flight renovation work. It is clear
2 from the number of community meetings that have been
3 held concerning this project and from the statement of
4 the ANC, the Capitol Hill Restoration Society, the
5 Bryan School Neighborhood Association, and Council
6 Member Ambrose that this development has broad
7 community support. It is also significant that the
8 project has the strong support of the Office of
9 Planning.

10 However, Mr. May cannot simply vote in
11 favor of the application without registering his
12 primary concern regarding the broader implication of
13 this development. "I regret that I am unable to
14 attend today's meeting to discuss this issue
15 directly."

16 "Almost without exception, the new
17 townhouses will have a 2-car garage and as a
18 consequence, no rear yard. The designers have
19 attempted to compensate for the lack of rear yard with
20 roof decks for every home and a morsel of public green
21 space. Statistically, there is significant open space
22 in the project, but it comes in the form of private
23 alleys. At the public hearing, I questioned EYA
24 development on the demographic implications of the
25 well-garaged but yardless townhouse design. EYA

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1 stated that when they have built such units before
2 they tend to attract buyers who are childless couples
3 or 'empty-nesters,' confirming my suspicion that this
4 is not a child-friendly development. Car-friendly,
5 but not child friendly."

6 "I understand why EYA wants to build
7 townhouses of this type -- parking is a valuable
8 commodity. I understand why the neighborhood is in
9 favor of it -- there will be virtually no impact on
10 street parking. I also understand why the city
11 government is in favor of such development. It will
12 house a substantial number of high-income individuals
13 who by virtue of having no small children, will impose
14 a relatively small burden on city services."

15 "All of these reasons are certainly
16 legitimate and there are other benefits to the project
17 that make it quite laudable overall. However, the
18 Commission, the neighborhood and the Office of
19 Planning need to understand very clearly the choice
20 that we are all making and its long term implications
21 for the city. I am certain that the Office of
22 Planning in particular understands the trade-offs
23 between this type of development and those that are
24 more friendly to young families. Just as important as
25 the tax revenue, and far more important than

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1 convenient parking, the District needs people -- young
2 families in particular -- and the contribution to
3 community that they bring."

4 Those are the comments from Commissioner
5 May. Thank you, Mr. Chairman.

6 VICE CHAIRPERSON HOOD: Maybe I must have
7 missed something, Mr. Bastida, but I don't know
8 whether -- is he prepared to go forward?

9 SECRETARY BASTIDA: Yes.

10 COMMISSIONER PARSONS: He's going to vote
11 against it?

12 SECRETARY BASTIDA: No, he's in favor of
13 the project, but he wanted to put that on the record.

14 VICE CHAIRPERSON HOOD: Okay.

15 SECRETARY BASTIDA: As making his
16 statement for my implications that people know his
17 position and that those issues should be addressed
18 from here forth.

19 VICE CHAIRPERSON HOOD: I'll just say to
20 comment to that, I understand Commissioner May's
21 views, but I also looked at what was presented to us.

22 Yes, we are trying to attract young families into the
23 District, but also I look at it from another angle. I
24 thought it was an excellent piece, to finally see a
25 community, a developer come together, put down all the

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1 issues, go to the table and realize that they all must
2 coexist, so I thought that was a model. Hopefully, my
3 tenure here on the Commission we'll see more come
4 through this process or come through the pipeline
5 exactly how that one proceeded.

6 Any other comments or questions?

7 COMMISSIONER PARSONS: I find his comments
8 troubling because certainly when you read the
9 comments, the implication is he's opposed to this kind
10 of a project and I don't -- he's not here to talk
11 about it.

12 SECRETARY BASTIDA: Mr. Parsons --

13 COMMISSIONER PARSONS: I find it very
14 strange.

15 SECRETARY BASTIDA: Let me read his second
16 paragraph. "However, I cannot simply vote in favor of
17 the application without registering his primary
18 concern regarding the broader implication of this
19 development. I regret that I am unable to attend
20 today's meeting to discuss this issue directly."

21 He wanted to bring the attention of those
22 issues to the Commission to be clear in his position
23 as a Commissioner, but he is not against voting in
24 favor of the application.

25 COMMISSIONER PARSONS: All right.

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1 SECRETARY BASTIDA: I hope that clarifies.

2 COMMISSIONER PARSONS: There's no sense
3 debating with the messenger, so I won't.

4 VICE CHAIRPERSON HOOD: Okay.

5 SECRETARY BASTIDA: I'm sorry.

6 VICE CHAIRPERSON HOOD: I believe on this
7 case, the Commissioners, the only two that are present
8 are Commissioner Parsons and myself who are going to
9 be voting on this case.

10 SECRETARY BASTIDA: That is correct and I
11 have two proxies.

12 VICE CHAIRPERSON HOOD: Okay, with that
13 I'll make a motion that we approve Zoning Commission
14 Case No. 00-34C, Bryan School.

15 COMMISSIONER PARSONS: I would second that
16 with, of course, the provision that I suggested
17 earlier.

18 VICE CHAIRPERSON HOOD: Okay. It's been
19 moved and properly seconded, also with the provisions
20 that were articulated earlier from both Mr. Parsons
21 and myself.

22 All those in favor use the sign of voting.

23 (Ayes.)

24 Any opposition? So ordered.

25 Staff, will you record the vote, along

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1 with the proxies?

2 SECRETARY BASTIDA: The staff has two
3 proxies in favor of approval, Ms. Mitten and
4 Commissioner May. Accordingly, the staff will record
5 the vote 4 to 0, Mr. Hood moving and Mr. Parsons
6 seconded. Mr. May and Ms. Mitten voting in the
7 affirmative by proxy.

8 VICE CHAIRPERSON HOOD: Next, we'll take
9 up Zoning Commission Case No. 00-03C, Albemarle
10 Associates, Inc.

11 Mr. Bastida?

12 SECRETARY BASTIDA: The staff has provided
13 you with all the information that has been received
14 and requests an action on this item.

15 VICE CHAIRPERSON HOOD: Mr. Bastida, for
16 the record, to help me stay clear, who is all voting
17 on this, this case? Who's participating?

18 SECRETARY BASTIDA: It's you, Ms. Mitten,
19 Mr. Parsons.

20 VICE CHAIRPERSON HOOD: And Mr. Franklin.

21 SECRETARY BASTIDA: And Mr. Franklin.
22 Well, the fifth Commissioner was Mr. Holman, but he
23 cannot vote.

24 VICE CHAIRPERSON HOOD: Okay. Colleagues,
25 we have this case in front of us, Albemarle

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1 Associates. They're asking for proposed action. Any
2 comments, questions?

3 COMMISSIONER PARSONS: Well, we have come
4 a long ways and it appears that the community is
5 happy, the Office of Planning is happy and what's
6 before us is a new plan which responds, I think, quite
7 favorably to the comments of the Commission at its
8 last session on this and with all the stipulations
9 that have come along with that, that is the ANC's
10 comments, the Office of Planning, as well as the
11 proposal by the developer, I'm ready to move forward
12 on this this afternoon.

13 VICE CHAIRPERSON HOOD: Okay, Commissioner
14 Parsons, I'm in line with your comments, especially
15 since I believe there's a purchase that is taking
16 place. We have come a long way. I think we started
17 with 26 or so townhomes. It's been a lot of
18 negotiation again. This is another one of those
19 projects that I would say that the community, the
20 applicant, all involved, work together at the table to
21 realize that things must coexist. So again, this is
22 another model. We're batting two so far, so I hope we
23 can continue. But I also want to make sure that the
24 ANCs understand that there is a comment period between
25 proposed and final because ANC 3F has submitted a

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1 letter and they've asked in their letter that the
2 record be held open and some other issues be dealt
3 with. So I wanted to make that note for the record.

4 Any other comments?

5 COMMISSIONER FRANKLIN: Yes, Mr. Chairman.

6 I agree and concur with the previous comments and the
7 report we have from ANC 3F and another community
8 group. I only have one question. The Office of
9 Planning has given us a report suggesting some
10 conditions and then there are a number of conditions
11 that are set out in the ANC resolution. My only
12 question at this point is the Office of Planning
13 comfortable with all of the conditions that had been
14 set out in the ANC proposal?

15 While they're looking at that, I might add
16 I do think that the articulation of the special merit
17 rationale in the ANC 3F resolution is particularly
18 helpful.

19 DEP. DIR. MCCARTHY: Yes, Mr. Franklin,
20 the Office of Planning is satisfied with the
21 conditions in the ANC resolution.

22 COMMISSIONER FRANKLIN: Good so that we're
23 talking about here an approval which would encompass
24 the conditions set forth in the ANC 3F resolution as
25 well as the -- although they're not stated as

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1 conditions, they seem to be conditions in the Office
2 of Planning Report on page 2 of that report.

3 Colleagues, if that's agreeable, I think
4 we have no a consensus to proceed with approval
5 subject to those conditions and then allowing the
6 proposed findings of fact and conclusions of the law
7 to be presented in a timely way so that we could adopt
8 the appropriate order at the September meeting.

9 VICE CHAIRPERSON HOOD: Mr. Franklin, was
10 that a motion?

11 COMMISSIONER FRANKLIN: I'll move that,
12 yes.

13 VICE CHAIRPERSON HOOD: It's moved. Can
14 we get a second?

15 COMMISSIONER PARSONS: I'll second that.
16 I want to make sure. We're really dealing with the
17 ANC report, the Office of Planning Report and then we
18 have a series of proffers, I'll call them for lack of
19 a better term in Mr. Feola's memorandum, and of
20 course, I couldn't help but notice there's a
21 conservation easement being proposed to the National
22 Parks Service, so I want to make sure that gets into
23 --

24 COMMISSIONER FRANKLIN: Yes, I
25 inadvertently omitted that. I meant to include that.

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1 COMMISSIONER PARSONS: Okay.

2 VICE CHAIRPERSON HOOD: We'll accept that.

3 COMMISSIONER FRANKLIN: That is the same
4 as Mr. Feola's proffer.

5 COMMISSIONER PARSONS: Okay, good.

6 VICE CHAIRPERSON HOOD: Okay, it's been
7 moved and seconded. Any more discussion?

8 Well, let me -- before I call for the
9 vote, I misspoke. There is not a comment period. The
10 only comment period will be to the National Capital
11 Planning Commission, but we will be dealing with this
12 in our findings of facts and conclusions of law, so I
13 wanted to put that on the record.

14 It's been moved and seconded, all those in
15 favor by using the sign of voting.

16 (Ayes.)

17 Any opposition? So ordered. Staff, will
18 you record the vote and the proxies?

19 SECRETARY BASTIDA: The staff would record
20 the vote 4 to 0. Mr. Hood moved and Mr. Parsons
21 seconded; Mr. Franklin voting in the affirmative and
22 Ms. Mitten voting in the affirmative by proxy.

23 VICE CHAIRPERSON HOOD: Mr. Bastida, I
24 think Mr. Franklin moved it. Mr. Franklin moved it.
25 Mr. Parsons seconded.

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1 SECRETARY BASTIDA: Thank you for the
2 correction. And it's been noted.

3 I would also to state that we need the
4 findings of fact and conclusions of law. We need the
5 findings of fact and conclusions of law by August
6 27th, Monday, and we need then to be served on the
7 parties. We need any response by Friday, September
8 7th.

9 VICE CHAIRPERSON HOOD: Thank you.

10 SECRETARY BASTIDA: Thank you.

11 VICE CHAIRPERSON HOOD: Before we move
12 into the next case which is scheduled, which is the
13 American University Zoning Commission Case No.
14 00-36CP/16638, the American University, we're going to
15 adjourn for a few minutes and we're going to go into
16 Executive Session.

17 (Whereupon, at 2:16 p.m., the meeting was
18 adjourned. Executive Session commenced and concluded
19 at 2:36 p.m.)

20 VICE CHAIRPERSON HOOD: We're going to
21 reconvene our regular monthly meeting, Monday, July
22 16, 2001. It's now about 2:36.

23 Our next case, Zoning Commission Case No.
24 00-36-CP/1638, American University.

25 Mr. Bastida.

1 SECRETARY BASTIDA: Mr. Vice Chairman, the
2 staff has provided you with all the information that
3 has come into the record that the staff could provide
4 you and accordingly the staff asks for an action on
5 this case.

6 Thank you.

7 VICE CHAIRPERSON HOOD: Thank you.
8 Colleagues, we have a number of issues in front of us
9 on this case. I'll try and wind down the campus plan.
10 First, let's deal with a series of motions that have
11 been submitted to the Commission. The objections to
12 further participation of Commissioner Herbert Franklin
13 as a Commissioner in this case. I would like to refer
14 that to Corporation Counsel for comments.

15 MR. BERGSTEIN: Thank you, Mr. Vice
16 Chairman. The one comment that we'd like to make in
17 terms of how we view the legal issue is that we
18 disagree with the proposition in the motion and in a
19 letter that was also received that only one person
20 from the Architect of the Capitol can serve at any
21 given time. We believe that the Zoning Act
22 contemplates more than one person being designated,
23 either the architect, him or herself, or a person or
24 persons who are designated to serve either in terms of
25 dates or in terms of the nature of the proceeding or

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1 in Mr. Franklin's case to finish matters that he
2 heard. And so we believe that the Zoning Act properly
3 authorizes Mr. Franklin to sit, notwithstanding that
4 another designee has been made by the Architect of the
5 Capitol.

6 The other issues stated in the motion,
7 perhaps Mr. Franklin might wish to comment on the
8 factual accurate of those representations. But we
9 believe that he has been properly designated by the
10 Architect for the Capitol.

11 VICE CHAIRPERSON HOOD: Commissioner
12 Franklin.

13 COMMISSIONER FRANKLIN: Yes, thank you,
14 Mr. Chairman. If I could add the following, the
15 Architect of the Capitol under federal law has a very
16 broad authority to delegate responsibilities to his
17 employees and in accordance with that statute, I
18 continue as an employee under a written designation of
19 the Architect which contemplates my continued
20 participation in this case and in any other case on
21 which I have previously sat.

22 So my participation here falls squarely
23 within the written authority of the Architect and my
24 duties as an employee of that office. So I think Mr.
25 Elliott was mistaken with respect to his assumption

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1 that I am a private citizen like any other.

2 I am a private citizen like any other, but
3 I'm also an employee of the Architect of the Capitol.

4 VICE CHAIRPERSON HOOD: Okay, colleagues,
5 any other comments on this motion?

6 COMMISSIONER PARSONS: I move we deny the
7 motion, Mr. Chairman.

8 VICE CHAIRPERSON HOOD: Second. All those
9 in favor use the sign of voting.

10 (Ayes.)

11 Any opposition? So ordered. Staff will
12 record the vote.

13 MR. FORSBURG: Staff would record the vote
14 as 4 to 0; Mr. Parsons making the motion and Mr. Hood
15 seconding. Excuse me, 3 to 0. Mr. Franklin voting in
16 the affirmative.

17 VICE CHAIRPERSON HOOD: The next motion in
18 front of us is the motion to publish the Commission's
19 Order and Proposed Form for comment by the parties
20 prior to issuance in final form. I'm going to again
21 refer this to Mr. Bergstein, Corporation Counsel.

22 MR. BERGSTEIN: Thank you, Mr. Vice Chair.
23 I want to remind the Commission that because this is
24 a further processing of a campus plan we're proceeding
25 under BZA rules and I wanted to point out BZA rule

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1 Section 3124.2 which deals with matters before the
2 final decision and states that prior to the filing of
3 the final decision, the Board may, on its own motion,
4 reopen the record and require further hearings,
5 designated issues before the Board, and otherwise, the
6 only process by which matters may be considered
7 between the time of the end of the hearing and the
8 issuance of a final decision is the reconsideration or
9 rehearing process that occurs after a final decision
10 is rendered.

11 Essentially what this motion requests is
12 to move up the reconsideration process before there's
13 even a final decision to consider and allow, in
14 essence, a proposed final decision to be commented
15 upon by the parties. That type of procedure is not
16 contemplated in the BZA rules and as a matter of
17 policy, the Commission may want to consider the
18 implications moving up the process of commenting upon
19 an order before the order is written, rather than
20 issuing the order and if there's a need for
21 clarification or reconsideration, that can be done as
22 contemplated in the rules through a timely filed
23 motion for reconsideration.

24 VICE CHAIRPERSON HOOD: Thank you, Mr.
25 Bergstein.

1 Colleagues, I will make a motion that we
2 deny the motion to publish the Commissioner's order in
3 proposed form for comment by the parties prior to
4 issuance and final form.

5 COMMISSIONER FRANKLIN: Second.

6 VICE CHAIRPERSON HOOD: It's been moved
7 and seconded. Any discussion? All those in favor.

8 (Ayes.)

9 Opposition? So ordered. Staff, would you
10 record the vote?

11 MR. FORSBURG: Staff would record the vote
12 3 to 0. Mr. Hood making the motion and Mr. Franklin
13 seconding to deny. Mr. Parsons voting in the
14 affirmative to deny as well.

15 VICE CHAIRPERSON HOOD: Next, we have
16 another motion, motion to reopen the record to examine
17 and to aid American University rental of housing in
18 neighborhoods adjacent to the University.

19 Again, I will refer this to Mr. Bergstein,
20 Corporation Counsel.

21 MR. FORSBURG: Thank you again, Mr. Vice
22 Chairman. I note also that with respect to this
23 motion an opposition was received from the attorneys
24 for the Applicant, Shaw Pittman, as was the case of
25 the motion concerning Mr. Franklin. I omitted stating

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1 that.

2 Again, the citations I refer to in the
3 previous motion apply here. In essence, the only
4 mechanism for reopening the record and having a
5 hearing after a hearing is concluded, at least where
6 the BZA is only upon their own motion and not upon the
7 motion of any other participant. And again, if there
8 is evidence which warrants their being a new hearing,
9 that type of motion is properly made after the
10 issuance of the final order and not before it and that
11 would be the legal guidance I would offer the
12 Commission.

13 VICE CHAIRMAN HOOD: Colleagues, you've
14 heard the recommendation from the Corporation Counsel.
15 Any comments? Any discussion? If not, I'll obtain a
16 motion.

17 COMMISSIONER FRANKLIN: Move to deny, Mr.
18 Chairman.

19 COMMISSIONER PARSONS: Second.

20 VICE CHAIRMAN HOOD: It's been moved and
21 properly seconded. All those favor. Aye.

22 (Ayes.)

23 Any opposition? So ordered.

24 Staff, would you record the vote?

25 MR. FORSBURG: Staff would record the vote

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1 3 to 0. Mr. Franklin making the motion, Mr. Parsons
2 to second the motion and Mr. Hood voting in the
3 affirmative to deny.

4 VICE CHAIRMAN HOOD: Next we have another
5 motion to schedule hearing on the Arts Center. Again,
6 I will refer that to Corporation Counsel, Mr.
7 Bergstein.

8 MR. BERGSTEIN: Actually, it's Assistant
9 Corporation Counsel.

10 VICE CHAIRMAN HOOD: Sorry. I wanted to
11 give you a promotion.

12 MR. BERGSTEIN: A hearing before the
13 Zoning Commission or the BZA is a contested case and
14 therefore the statutory framework of the D.C.
15 Administrative Procedure Act applies which provides
16 that every party in a contested case be afforded cross
17 examination, but the APA doesn't stand for the
18 principle that every subject that is within a hearing
19 or is part of an application is necessarily the
20 subject of cross examination.

21 This motion suggests that when the
22 Commission requested the Applicant in this case or
23 invited the Applicant in this case to offer a revised
24 design to meet several of the concerns of the
25 Commission, it should have, at the same time scheduled

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1 a hearing to allow cross examination of the Applicant
2 with respect to the design.

3 I believe that the requirements for cross
4 examination are no greater than what is required by
5 due process and due process does not require a hearing
6 in every instance. But the critical question is
7 whether or not the design that's been provided by the
8 Applicant in response to the Commission's invitation
9 is one that requires a cross examination to develop
10 further facts or further clarification that would
11 enable the parties in this case to better present
12 their positions with respect to the application or
13 would enable the Commission to better understand the
14 design or the implications of the design upon adjacent
15 properties in accordance with the special exception
16 criteria.

17 So the issue, I believe, is whether or not
18 the design that's been provided by the Applicant is
19 clear enough so that it's import is understood and if
20 the only question is whether or not it actually met
21 the concerns of the Commission and I believe that the
22 letter that's attached to the motion actually only
23 responds to that issue. If that's the case and the
24 question can be resolved simply by looking at the
25 drawing itself and understanding the implications from

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1 the drawing itself, then cross examination will not
2 necessarily be warranted. However, if the design
3 itself is ambiguous or adds new elements that were
4 contemplated by the Commission, so that the cross
5 examination by the parties or by the Commission itself
6 would held the Commission better understand the design
7 or its implications, then cross examination would be
8 warranted.

9 So that's how I see the issue before you.

10 VICE CHAIRMAN HOOD: Thank you, Mr.
11 Bergstein.

12 Colleagues, we have the issue and the
13 motion to schedule a hearing on Arts Center in front
14 of us. Any discussion? If there's no discussion,
15 I'll obtain a motion.

16 COMMISSIONER FRANKLIN: Before we move, I
17 would like to just comment, Mr. Chairman, that this is
18 not a subject that I think lends itself to productive
19 cross examination. The redesign speaks for itself.
20 Also, in Mr. Elliott's motion he seems to imply or
21 state, actually, that we had closed the record and
22 then reopened it and my recollection, although I
23 haven't read the transcript our normal process is to
24 say that the record is closed, but for those matters
25 specifically invited by the Commission. So it's not a

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1 case of reopening the record. We closed the record
2 except for those matters we specifically invited and
3 therefore his assumption that this involves the
4 reopening of the record, I think is in error.

5 I'm ready to move, therefore, that we deny
6 this motion.

7 COMMISSIONER PARSONS: Second. Any
8 further discussion?

9 All those in favor?

10 (Ayes.)

11 Any opposition? So ordered. Staff, would
12 you record the vote.

13 MR. FORSBURG: Staff will record the vote.

14 Mr. Franklin making a motion to deny. Mr. Parsons
15 seconding, and Mr. Hood in the affirmative to deny.

16 VICE CHAIRMAN HOOD: Okay, we have another
17 motion in front of us. I guess this is a late
18 submittal from Advisory Neighborhood Commission 3D.

19 MR. BERGSTEIN: Perhaps, Mr. Chairman, Mr.
20 Vice Chairman, I can help clarify the matters that are
21 before you, at least I can try.

22 You have before you a letter that's dated
23 July 14, 2001 that is from ANC Commission 3D that I
24 believe was received by the Office of Zoning today and
25 any comments with respect to the design that was

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1 submitted by the University was due on the 13th of
2 July, although this letter actually relates to a
3 motion to strike that was submitted by the Applicant
4 with respect to an earlier submittal of Mr. Elliott.
5 But in any respect, it was received after the time
6 that even relevant comments would have been due and so
7 the question is whether or not to accept this as a
8 late filing.

9 The other matter you have before you, just
10 to explain this all in context and I guess I should
11 have started with this first, you have a response from
12 Mr. Elliott on behalf of the Citizens Association
13 that's dated July 13th which is the actual date that
14 any responses should have been due. However, it was
15 received by the Office of Zoning today and in essence
16 replaces a filing that was made timely, but which
17 apparently went beyond the scope of what the
18 Commission contemplated and therefore was not received
19 by the staff. So in essence, in lieu of that timely
20 filing, Mr. Elliott has submitted a filing which is
21 intended, I believe, to be narrower in scope, but was
22 filed today and therefore after the time in which
23 those comments were due.

24 So the question is whether or not to
25 accept Mr. Elliott's late filed response to American

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1 University's filings and then whether to accept the
2 letter from ANC 3D, in essence, asking you to accept
3 that late filing. So that's what you have before you.

4 VICE CHAIRMAN HOOD: Okay, Commissioners,
5 I guess the best way to proceed from my way of
6 thinking is to go ahead and move these en bloc one way
7 or the other unless someone wants to accept one and
8 deny the other, however, but I would be inclined, more
9 or less, to accept it, but I would say with the
10 comments that while I understand that Advisory
11 Neighborhood Commissions are volunteer groups and
12 volunteers, it makes our job a lot harder when we get
13 stuff the day of. We already have it hard enough when
14 we're trying to go through the submittals that we have
15 in front of us and to be handed something 10 or 15
16 minutes when you walk in after studying all weekend I
17 think is a disservice to us as Commissioners and also
18 to the city so we can make informed, intelligent
19 decisions. Nothing from the audience. I'm just
20 making a comment, Mr. Herzstein, I appreciate it, but
21 not at this time. Not at this time. You're out of
22 order, Mr. Herzstein. Not at this time.

23 But I'm more inclined, colleagues, to
24 accept it, if my colleagues agree.

25 I'll open up for discussion.

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1 COMMISSIONER PARSONS: Yes, I think so.
2 Of course, none of us have read it, so we don't know
3 what we're accepting, but it appears as though it was
4 filed in good faith on a timely basis, but exceeded in
5 a previous iteration, exceeded the scope, so these may
6 be useful comments and we should consider them.

7 VICE CHAIRMAN HOOD: Okay. With that,
8 I'll accept the motion.

9 SECRETARY BASTIDA: Excuse me, Mr.
10 Parsons, you are referring -- just to clarify the
11 record -- to the new submission that, in fact, appears
12 to the staff to be within the parameters that the
13 response will be appropriate that was received today?

14 COMMISSIONER PARSONS: Specifically, it's
15 the one that has 8 pages instead of 14.

16 SECRETARY BASTIDA: That is correct. I
17 just want to clarify for the record. Thank you.

18 COMMISSIONER PARSONS: If we're not
19 careful, they're both dated July 12th and we could all
20 get confused.

21 So I'm relying on page numbers to help us
22 through this.

23 SECRETARY BASTIDA: And I think that was
24 very clever of you to do so, thank you.

25 VICE CHAIRMAN HOOD: Okay, so with that I

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1 would move that we accept the response to July 5th,
2 the AU filing and also the letter from ANC-3D.

3 COMMISSIONER PARSONS: Second.

4 VICE CHAIRMAN HOOD: It's moved and
5 seconded. All those in favor use the sign of voting.

6 (Ayes.)

7 Any opposition? So ordered. Staff, will
8 you record the vote?

9 MR. FORSBERG: Staff would record the vote
10 3 to 0, Chairman Hood to accept both the submission of
11 ANC-3F and Mr. Elliott's submission into the record;
12 Mr. Parsons, seconding; and Mr. Franklin voting in the
13 affirmative.

14 VICE CHAIRMAN HOOD: Do we have any more
15 motions? I think we've covered them all, all the ones
16 that I have.

17 SECRETARY BASTIDA: Staff is not aware of
18 any more motions.

19 Thank you.

20 VICE CHAIRMAN HOOD: Thank you. We're
21 also, and I'm not exactly sure how to proceed from
22 this Commission's standpoint. I came in today ready
23 to deliberate and vote, but we have some issues that
24 have been raised. So I want to deliberate or talk
25 among my -- discuss among the Commissioners whether or

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1 not it's advisable for us to proceed. I am inclined
2 to proceed, but we have some other factors now that
3 have come in to play over the past couple of hours
4 which may hinder that, but I do want to send a clear
5 message that if we don't proceed today, I'm sure that
6 my chair will agree with me that September, we will
7 close the deal. Any discussion?

8 COMMISSIONER PARSONS: Well, I think the
9 situation that leaves our Chairman, Ms. Mitten, away
10 from us puts us in a situation, it's the three of us
11 to deliberate on what is a very important case and it
12 would seem to me it would be in everybody's best
13 interest if we waited for her return. If the first
14 time we could do that would be September 16th, fine,
15 so I would urge us to stop at this point and await
16 until a time where we can reschedule it and if that's
17 September 16th fine. But I would hasten to add that
18 we simply must make a ruling here or do something to
19 ensure everybody that anything else that this
20 Commission receives will be sent back. We cannot go
21 on like this, as we have this morning with motions
22 being filed every half hour to try to affect this case
23 and we have to go through the drill of denying them,
24 so I don't know whether Mr. Bergstein could help us
25 with whether or not we need to take some action to

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1 prohibit that. Our rules prohibit it, but it doesn't
2 seem to make any difference.

3 VICE CHAIRMAN HOOD: I would be inclined
4 and I know you asked to speak for Mr. Bergstein, but I
5 would be inclined to let's put that in a motion to
6 show how serious we are because as far as I'm
7 concerned it's ridiculous, but you know, we still need
8 to proceed. I understand people want to get their
9 issues, but we want to make intelligent, informed
10 decisions and to get stuff at the last minute
11 sometimes is very hindering from my standpoint.

12 Any other discussion? Okay, Mr.
13 Bergstein, I think Commissioner Parsons asked for some
14 comments from you.

15 MR. BERGSTEIN: I think that what you
16 could indicate is that there will be no further
17 submissions or motions other than in the nature of
18 emergency motions to continue because I would never
19 want to preclude a party from filing a motion to
20 continue if there's an emergency circumstance. But
21 otherwise, the record is closed. All the issues are
22 now before you. There's nothing else out there you're
23 requesting, so what I would suggest you may want to do
24 is to say to the parties that there simply will be no
25 further submissions, whether they're called motions,

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1 objections, letters or any forms of correspondence
2 submitted with respect to this case, and that staff is
3 authorized to return those to any proposed, any
4 submitter other than a motion to continue.

5 COMMISSIONER PARSONS: Now that motion to
6 continue wouldn't necessarily come from the applicant,
7 not any party that wanted to --

8 MR. BERGSTEIN: Anyone who is a party in
9 this case would have a right to at least request a
10 continuance. That doesn't meant we have to grant it.

11 COMMISSIONER PARSONS: I understand, but
12 we'll get five on September 16th.

13 MR. BERGSTEIN: Mr. Bastida is reminding
14 me that the case itself is closed, so actually I can't
15 even contemplate a circumstance where someone would
16 request a delay in making decisions. So I'll even
17 rescind what I said. I think at this point you can
18 simply say no further submissions of any kind would be
19 authorized and the staff is authorized to return
20 anything that is submitted.

21 VICE CHAIRMAN HOOD: I think the message
22 is clear. I didn't know whether we should take a
23 motion. Now obviously, we don't need to. I think we
24 are sending a strong signal that we will make our
25 decision on what we have in front of us unless like

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1 Mr. Bergstein has said, an emergency comes up, because
2 those do happen, but we're now proceeding with what we
3 have. I think that point has been made and we're
4 ready to proceed.

5 But let me just ask another question
6 unless my colleagues have any more discussion on that
7 --

8 COMMISSIONER FRANKLIN: I just wanted to
9 add, Mr. Chairman, that we should allow the option of
10 the Commission, of course, to invite, if it should
11 occur, some specific information.

12 VICE CHAIRMAN HOOD: Right, thank you,
13 Commissioner Franklin.

14 VICE CHAIRMAN HOOD: If the consensus is
15 to delay final decisions in which we have scoped that
16 we're going to deal with today until September, is
17 there anything that's hindering -- I know there's and
18 I'll speak specifically to Katzen Center. I know that
19 that's a gift. Will that issue hinder anything or
20 urgency on any of that? I know we can't do further
21 processing until we do the campus plan, but I want to
22 make sure there's not an urgency order, the city is
23 not going to lose anything. I don't know who to
24 direct that question to. Maybe I will use the chair's
25 prerogative and direct it to the Office of Planning or

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1 maybe they may be more in tune or Mr. Bastida, do you
2 have any insight?

3 SECRETARY BASTIDA: I understand that it's
4 not such a crucial matter. What I was going to
5 request the Commission that there might be a
6 possibility of having a special meeting in which this
7 could be taken care of, so I don't know if that would
8 be possible and I'm not promising anything. What I
9 would like is that the motion is that these items will
10 not be taken any later than that Monday, September
11 17th, but there might be a sooner time to be able to
12 do so.

13 VICE CHAIRMAN HOOD: I would be inclined
14 to think if we can move this faster, if we can deal
15 with it faster, sooner than later. I know that there
16 are some issues out there. I don't know if they're
17 time sensitive, but I know that there are some issues
18 out there that people just need to know where they are
19 and where we are.

20 SECRETARY BASTIDA: Well, the thing is I
21 would like to consult the availability of the
22 Commissioner's and Ms. Mitten and that's why I am not
23 willing to state any date now, but to leave that
24 possibility open, if that is the pleasure of the
25 Commissioners.

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1 COMMISSIONER FRANKLIN: Well, Mr. Bastida,
2 I understand that the hearing that was to have been
3 held this Thursday on the 19th has now got to be
4 rescheduled and I was wondering whether my colleagues
5 felt if Ms. Mitten had recovered sufficiently it would
6 be possible for us to instead of having that hearing
7 on the 19th as planned, to actually deal with AU that
8 evening.

9 SECRETARY BASTIDA: That is correct,
10 Commissioner Franklin, but there is already a special
11 meeting on the 26th and I was thinking that it might
12 be best just to piggy back on that special meeting on
13 the 26th --

14 COMMISSIONER FRANKLIN: I will be in town
15 on the 26th.

16 SECRETARY BASTIDA: Oh, you will not be,
17 then I will have to check with Ms. Mitten to see when
18 she will be soon enough to withstand such a heart
19 breaking and crucial debate, but that would be a
20 possibility.

21 I wouldn't know until later on this week,
22 unfortunately.

23 VICE CHAIRMAN HOOD: So we're not closing
24 -- did we close the door on the 19th? I'm not in
25 follow. So we're closing the door on the 19th?

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1 SECRETARY BASTIDA: Definitely, we don't
2 have a date certain and I haven't been able to discuss
3 it with Ms. Mitten. We have discussed the matter, but
4 Buzzard Point is definitely going to be rescheduled
5 for either the end of September of some time in early
6 October. That is definite.

7 VICE CHAIRMAN HOOD: My question is --
8 right, can we do a special public meeting on the 19th?
9 I guess we can't foresee whether Commissioner Mitten
10 is going to be well at that time or not.

11 SECRETARY BASTIDA: Right, because that's
12 only three days away.

13 VICE CHAIRMAN HOOD: Yes.

14 SECRETARY BASTIDA: But I would be glad to
15 notify all the parties in the case if there is a
16 possibility that we'll have that special meeting on
17 the 19th.

18 VICE CHAIRMAN HOOD: Can we leave that
19 open and --

20 SECRETARY BASTIDA: Yes.

21 VICE CHAIRMAN HOOD: We will attempt to do
22 so we can move expeditiously --

23 SECRETARY BASTIDA: Or any other day that
24 we can do it prior to the 17th of September.

25 COMMISSIONER FRANKLIN: Would it make

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1 sense to avoid having to have a 30-day advertisement
2 of the meeting to actually schedule the 19th today,
3 subject to the health of the Chairman?

4 SECRETARY BASTIDA: If that is the
5 pleasure of the Commissioners, but the Commissioner
6 could call a special meeting at any time.

7 COMMISSIONER FRANKLIN: Without
8 advertising?

9 SECRETARY BASTIDA: Correct.

10 COMMISSIONER FRANKLIN: Okay. I didn't
11 know that.

12 VICE CHAIRMAN HOOD: Okay, so that's what
13 we will try to do. Hopefully, Commissioner Mitten is
14 aback on target by the 19th. I know that's not giving
15 her much time after what went on this morning, but if
16 that's not the case, then we will look at another
17 date.

18 SECRETARY BASTIDA: Correct.

19 VICE CHAIRMAN HOOD: But as soon as
20 possible.

21 SECRETARY BASTIDA: Right.

22 VICE CHAIRMAN HOOD: Let me do something
23 that's out of the norm. Let me go to the Office of
24 Planning and ask do they know of anything, my
25 colleagues, I hope you will indulge me. Do they know

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1 of anything that is pressing, that needs to move
2 forward? If not, we will proceed as we've already
3 talked about.

4 MR. ALTMAN: Thank you, Commissioner Hood.

5 I would actually say we turn over to -- from the
6 applicant because they're the ones who are the closest
7 to the nature of the gift and Katzen, that's obviously
8 the issue has been timing there that's been most
9 significant, but I think they are closer to it, to
10 speak to it than I am.

11 VICE CHAIRMAN HOOD: I don't see any
12 acknowledgment, so obviously everything is okay with
13 discussions and from all the parties, I don't see any
14 -- we don't want to have a hearing. I'm just trying
15 to get a feel for it. I want to make sure just as
16 congenial to the applicant as to the community, so I
17 don't see any problems. Okay.

18 With that we'll proceed as normal. Mr.
19 Bastida, it's in your hands.

20 SECRETARY BASTIDA: I don't know if I want
21 that, but thank you.

22 (Laughter.)

23 VICE CHAIRMAN HOOD: Colleagues, moving
24 right along with our agenda, final action, Zoning
25 Commission Case No. 00-30TA, the DDD Zoning Changes.

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1 SECRETARY BASTIDA: Mr. Chairman, the
2 staff has provided you with all the information
3 regarding this case except for a letter received from
4 NCPC this morning in which basically they have stated
5 that -- I'm trying to find the -- basically, what it
6 boils down to NCPC has withdrawn their objection to
7 the consideration of the recreational space to be
8 taken today and I will be passing this letter to you.

9 Accordingly, the staff requests that you take
10 affirmative action -- you take an action on the DDD
11 Part I and II which is related to FAR recreational
12 space which is part of the final order that was
13 included in your package. And so the staff requests
14 an action on those two items.

15 Thank you. And I will be passing copies
16 of that letter from NCPC that would receive --

17 VICE CHAIRMAN HOOD: Okay, colleagues, we
18 have in front of us Mr. Bastida is passing out the
19 NCPC letter for us to look at. Give us a moment to
20 look at it.

21 MS. McCARTHY: Mr. Chair?

22 VICE CHAIRMAN HOOD: Ms. McCarthy.

23 MS. McCARTHY: There also was an issue of
24 a clarification which the Office of Planning had
25 submitted to the Office of Corporation Counsel as part

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1 of the final editing that the Office of Corporation
2 Counsel was doing on this notice or on the rule making
3 before you which was related to Section 1706.7B that
4 provides now for a density bonus only for those
5 projects that have only residential use or residential
6 use and arts retail and service. And we had suggested
7 that that -- there was some lack of clarity in that
8 drafting and that actually since projects are
9 permitted, a certain amount of commercial envelope as
10 part of their matter of right envelope, all we were
11 trying to do was to provide the opportunity for
12 additional residential and we just wanted to be sure
13 that nobody took that extra density and converted it
14 into commercial instead of residential, but I think
15 that the 1706.7B as it's currently worded went too far
16 in limiting it only to projects that were entirely
17 residential. The Office of Corporation Counsel said
18 that they understood our point. They thought that the
19 scope of the editing they were doing was too limited
20 to be able to make that change, but I thought it made
21 sense for the Commission to consider eliminating
22 entirely in 1706.7B so that somebody could build up to
23 their matter of right commercial if they had a mixed
24 use project on site and still be able to get the
25 residential density bonus on site.

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1 VICE CHAIRMAN HOOD: Okay.

2 MS. MCCARTHY: And my sense was I
3 preliminarily discussed this with Ms. Sansone that
4 because that was less restrictive to the property
5 owner, it was not something that needed to be
6 readvertised. It could be done within the scope of
7 the existing wording before you, or the existing
8 notice under which we're operating.

9 VICE CHAIRMAN HOOD: So Ms. McCarthy, let
10 me make sure I understand. The Office of Planning has
11 recommended that we take out 1706.7B, that whole
12 language. Is that the recommendation?

13 MS. MCCARTHY: No. It would change to
14 "except for historic landmarks and properties listed
15 in 1707.4 in the downtown historic district, the
16 maximum FAR limitations in Section 1706.4, 1706.5 and
17 1706.6 shall apply to any lot that is devoted" and so
18 take out the not and take out the entirely -- "shall
19 apply to any lot that is devoted to residential use or
20 to a combination of residential use and retail service
21 and arts related uses listed in 1710.1 to 1711.1."

22 VICE CHAIRMAN HOOD: Okay.

23 COMMISSIONER FRANKLIN: Ms. Sansone, Mr.
24 Chair, had also suggested a change to B3 which I think
25 is consistent with what you're saying. Is that --

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1 MS. McCARTHY: Yes.

2 COMMISSIONER FRANKLIN: Do I understand
3 that change as well?

4 MS. McCARTHY: Yes.

5 COMMISSIONER FRANKLIN: Strike the words
6 "residential development" and substitute the words
7 thereafter "may be accepted" so it would read, "the
8 maximum residential FAR that may be accepted through
9 combined lot development, etcetera.

10 VICE CHAIRMAN HOOD: Okay.

11 MS. SANSONE: Mr. Chairman?

12 VICE CHAIRMAN HOOD: Ms. Sansone.

13 MS. SANSONE: I had discussed this
14 proposed change with the Office of Planning last week
15 and I guess -- well, we had a couple of concerns. One
16 was that making a change of that magnitude wasn't
17 within the scope of the Office of Corporation
18 Counsel's drafting and legal sufficiency review. And
19 we also had a concern though that it really was
20 serious change in the rule. This language that we're
21 considering deleting here was included in the Notice
22 of Public Hearing that initially went out and then it
23 was also included in the Notice of Proposed
24 Rulemaking, so this is not any new language. This is
25 what was circulating and what people were commenting

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1 on. So we were concerned that by opening this up to
2 buildings with commercial use perhaps was too large a
3 change to accommodate without additional public
4 comment, not necessarily hearing, but comment and I
5 think if we were to make that change so it would
6 probably read that -- well, except for the historic
7 landmarks and properties that are listed in Section
8 1707.4 in the downtown historic district, the maximum
9 FAR limitations in Section 1706.4, 1706.5 and 1706
10 shall not apply and then provide it because what this
11 introductory language in B is doing is this is the
12 part that is providing the relief from the FAR
13 limitation, provided these other conditions are
14 occurring. So if we were to make the Office of
15 Planning change, I think that's probably how it would
16 read.

17 MS. MCCARTHY: Thank you, Marie. I took
18 out the not when I should have just taken out the
19 entirely.

20 COMMISSIONER FRANKLIN: So the only change
21 is to strike "entirely"? I'm confused, Mr. Chairman.

22 MS. SANSONE: Everything from after the
23 word "apply" up to the semi-colon before "provided".

24 VICE CHAIRMAN HOOD: Okay. Commissioner
25 Franklin, are you on board now?

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1 COMMISSIONER FRANKLIN: Yes.

2 SECRETARY BASTIDA: Excuse me, Mr. Vice
3 Chairman. Are you saying that if those changes are
4 made we will have to republish the proposed rule
5 making and have a 30-day comment period? Because my
6 understanding, that's what you implied at one point.

7 MR. BERGSTEIN: I'm sorry?

8 COMMISSIONER FRANKLIN: I thought that the
9 Office of Planning is suggesting the contrary, that
10 since this is less restrictive, the change would be
11 less restrictive than the advertised language that we
12 could proceed.

13 SECRETARY BASTIDA: Well, in my opinion,
14 the change is more permissive. Accordingly, you might
15 have to readvertise it because you can always go for a
16 less permissive -- for a wider to a less permissive,
17 but no vice versa.

18 COMMISSIONER FRANKLIN: I think that
19 unless Mr. Bergstein --

20 MR. BERGSTEIN: I have to say that for APA
21 rule making, either doesn't matter. What the APA says
22 is that if the final rule making differs substantial
23 from that proposal you have to do another 30-day
24 notice of proposal and as we read the original
25 language, at least it seemed clear to us that this was

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1 restricted only to the -- that the additional density
2 would only be available to buildings that were either
3 residential or a mix of residential and arts and
4 certainly commercial wasn't there. In fact, we're
5 talking about striking all that language shows that we
6 are making that change and that change differs, I
7 would say substantially and the fact that it may allow
8 more to be done doesn't mean that there's not an
9 important policy determination that at least doesn't
10 seem to have been contemplated by the Zoning
11 Commission and that is whether or not the only issue
12 is that you use the additional density for residential
13 as opposed to and you also at least within the FAR
14 limitation not include commercial. I think that -- I
15 personally do believe that that is a substantial
16 change within the Administrative Procedures Act and if
17 you did want to do that you'd have to do another
18 30-day period of comment to allow people to address
19 the wisdom of that choice.

20 VICE CHAIRMAN HOOD: Let me just ask, Mr.
21 Bergstein, so let me do this first. Ms. McCarthy, so
22 we're all clear, could you read back and make sure
23 that Ms. Sansone and we're all on the same page.
24 Could you read back 1706.7B for us again, so we make
25 sure that we all have exactly what's being proposed?

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1 MS. McCARTHY: Well, we were trying to
2 leave as much of it as possible intact and simply
3 change it to the maximum FAR limitations shall not
4 apply to any lot that's devoted to residential use or
5 combination of residential use and the other uses, but
6 it didn't say "entirely". But Ms. Sansone is
7 suggesting, I think, changing it to the maximum FAR
8 limitations shall not apply provided and then going to
9 1, 2 and 3.

10 VICE CHAIRMAN HOOD: Okay.

11 MS. McCARTHY: And then there are also Ms.
12 Sansone's changes to B3, the maximum residential FAR
13 that may be accepted through combined lot development
14 is listed in the following table.

15 VICE CHAIRMAN HOOD: Okay, colleagues, any
16 other comments?

17 SECRETARY BASTIDA: Mr. Vice Chair?

18 VICE CHAIRMAN HOOD: yes.

19 SECRETARY BASTIDA: Just to make the
20 record clear, if you were to vote on those changes,
21 then this is a proposed action. It's not a final
22 action because I have to send it to the Register for a
23 30-day comment period, so you would not be able to
24 take final action until September 17th.

25 VICE CHAIRMAN HOOD: Okay, so it's placed

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1 wrong on the agenda, right?

2 SECRETARY BASTIDA: No, it was placed
3 correctly in the agenda, but if you make substantial
4 changes, then it becomes a proposed action that I have
5 to readvertise it for the 30-day period.

6 VICE CHAIRMAN HOOD: Okay, so I guess I'm
7 --

8 SECRETARY BASTIDA: And your actions for
9 what Mr. Bergstein said, in fact, it is an action of
10 such magnitude that it needs to be readvertised.

11 So I just wanted to clarify that for the
12 record. Thank you.

13 MS. MCCARTHY: It may help in your
14 consideration of it to know that when we met recently
15 with the Developers Round Table they also suggested a
16 number of changes in the advertised text for the
17 combined lot requirements and that we will be
18 forwarding a memo to the Commission for their
19 consideration on the 26th that the Commission may
20 decide to take some actions altering that as well, so
21 having to advertise this for an additional 30 days
22 although we're all trying to conclude this as quickly
23 as possible, may not be as much of a problem given
24 that there looks like there need to be some changes to
25 the advertised text with regard to combined lot as

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1 well.

2 VICE CHAIRMAN HOOD: Okay.

3 COMMISSIONER PARSONS: I would suggest we
4 move forward on this today, Part 1.

5 VICE CHAIRMAN HOOD: And Part 2.

6 COMMISSIONER PARSONS: Part 1, right?
7 Part 2 is combined lot.

8 VICE CHAIRMAN HOOD: I looked at Part 1 as
9 what the FAR and what the recreation and then Part 2,
10 okay, would be the combined lot in which we need to
11 discuss and deal with, so with that I also recommend
12 that we move forward this today, but if the
13 substantial change is enough to where we have to
14 readvertise and I don't want to -- I want to make sure
15 we're legally sufficient and technically correct, so I
16 guess --

17 COMMISSIONER PARSONS: We'll be 30 days
18 ahead if we do it now, right?

19 VICE CHAIRMAN HOOD: Okay.

20 COMMISSIONER PARSONS: I would move we
21 adopt Part 1 of 00-30TA, Order No. 943 with the
22 exception of 1706.7B which will now read "except for
23 historic landmarks, properties listed at 17" yadda,
24 yadda, yadda, "shall not apply provided."

25 VICE CHAIRMAN HOOD: Okay. It's been

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1 moved. We have a second. Any discussion?

2 COMMISSIONER FRANKLIN: Plus the changes
3 in subparagraph 3.

4 VICE CHAIRMAN HOOD: Okay.

5 COMMISSIONER FRANKLIN: Second.

6 VICE CHAIRMAN HOOD: It's been moved and
7 seconded with the necessary changes. All those in
8 favor?

9 (Ayes.)

10 VICE CHAIRMAN HOOD: Any opposition? So
11 ordered. Staff, would you recall the vote?

12 SECRETARY BASTIDA: The staff would record
13 the vote 3 to 0. Mr. Parsons moving, Mr. Hood
14 seconded it and Mr. Franklin voting in the
15 affirmative.

16 VICE CHAIRMAN HOOD: Let's now take up the
17 combined lot development, a lot of information has
18 come into the -- for the record. And I would ask the
19 Office of Planning to work along with Corp. Counsel to
20 help incorporate and seek some of the recommendations
21 that are made. Greenstein, DeLorme and Luchs has
22 alluded to some contradictory statements, but I would
23 ask that Corp. Counsel and also the Office of Planning
24 work together to achieve for the combined lot to be
25 able to come back to us, I believe at our next -- is

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1 it our next regular meeting, Mr. Bastida?

2 SECRETARY BASTIDA: We're going to have a
3 special meeting on the 26th in which we were hoping to
4 be able to dispose of that. The Office of Planning
5 mentioned that they could submit their report in a
6 timely fashion on the 16th which I believe is today.
7 Accordingly, we had tentatively scheduled a special
8 meeting on that day, prior to the hearing on that day.

9 VICE CHAIRMAN HOOD: I don't know, I'm
10 sure that the Office of Planning and Corp. Counsel
11 know their work, but I do know that from what I read
12 it's very convoluted and I don't know if they're going
13 to have it in by today.

14 MS. McCARTHY: Mr. Chair, we're happy to
15 work with the Office of Corporation Counsel. I think
16 what we had suggested to Mr. Bastida was that we could
17 get it in by the 19th. We thought that would be easy
18 in terms of delivering it to you because you would be
19 here for the Buzzard's Point case anyway. Now that
20 that hearing is not going to be held, we still could
21 get it to the Office of Zoning to get to you or we
22 could fax it out or deliver it ourselves, but we met
23 with the development round table last week. They made
24 a number of suggestions. We incorporated them in
25 draft. We have a number of additional suggestions or

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1 input back from that, so I think we need, that we've
2 just gotten from them today, so we need a couple of
3 days to digest that and work with the Office of
4 Corporation Counsel, but if it's acceptable to the
5 Office of Corporation Counsel, I think we could
6 certainly aim for the 19th.

7 VICE CHAIRMAN HOOD: Mr. Bergstein, is
8 that acceptable?

9 MR. BERGSTEIN: Yes.

10 VICE CHAIRMAN HOOD: Or Ms. Sansone?
11 Okay, thank you.

12 Is there any other discussion, colleagues?

13 SECRETARY BASTIDA: Mr. Chairman?

14 VICE CHAIRMAN HOOD: Mr. Bastida, hold on,
15 one second.

16 SECRETARY BASTIDA: Okay, sorry.

17 VICE CHAIRMAN HOOD: Colleagues, any other
18 comments?

19 COMMISSIONER FRANKLIN: Just to state
20 again that I will not be here on July 26th, but I
21 think the matter should proceed as indicated and if
22 it's possible I will give you a written proxy for the
23 26th.

24 VICE CHAIRMAN HOOD: Okay. Mr. Hannaham,
25 any comments?

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1 COMMISSIONER HANNAHAM: No, I have none.

2 VICE CHAIRMAN HOOD: Okay, Mr. Bastida?

3 SECRETARY BASTIDA: Can you then since we
4 know for certain that the report from the Office of
5 Planning will be late, could you waive the late
6 requirement and that way we don't have to handle that
7 matter at the special meeting?

8 VICE CHAIRMAN HOOD: Waive the report?

9 SECRETARY BASTIDA: Waive the late filing
10 of the report.

11 VICE CHAIRMAN HOOD: Okay, colleagues, I
12 make a motion that we waive the late status of Office
13 of Planning's report for Zoning Commission Case
14 00-3TA, the combined lot?

15 Can I get a second?

16 COMMISSIONER PARSONS: Second.

17 VICE CHAIRMAN HOOD: Second. All those in
18 favor, aye?

19 (Ayes.)

20 So ordered. Staff?

21 SECRETARY BASTIDA: Staff would record the
22 vote 3 to 0. Mr. Hood, moving; Mr. Parsons, seconded
23 it; Mr. Franklin voting in the affirmative.

24 VICE CHAIRMAN HOOD: I'm sorry, Mr.
25 Hannaham, he's not on this one, right?

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1 SECRETARY BASTIDA: That is correct, Mr.
2 Chairman.

3 VICE CHAIRMAN HOOD: I called on him. I'm
4 sorry. It gets confusing after a while.

5 Moving right along with our agenda, Zoning
6 Commission Case No. 00-39MA, the Salvation Army,
7 Massachusetts Avenue between 5th and 6th Streets,
8 Northwest.

9 Mr. Bastida?

10 SECRETARY BASTIDA: Mr. Chairman, the
11 staff has provided you with all the information
12 regarding that matter. Mr. Hannaham has been provided
13 with the record and I think that he is willing to
14 participate, but I think that he wants to put into the
15 record the fact that he has the record in its
16 entirety.

17 VICE CHAIRMAN HOOD: Okay, Mr. Hannaham,
18 if you can put that in the record for us?

19 COMMISSIONER HANNAHAM: Mr. Chairman, for
20 the record, I have read the materials provided in the
21 Salvation Army case.

22 VICE CHAIRMAN HOOD: Okay, thank you.

23 COMMISSIONER PARSONS: Mr. Chairman, I
24 have done that as well. I'm ready to participate.

25 VICE CHAIRMAN HOOD: Okay, with that

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1 Commissioners, do we have any discussion? We have the
2 proposed order in front of us, findings of fact and
3 conclusions of law.

4 Any additions? Any comments? If not,
5 I'll accept a motion.

6 COMMISSIONER PARSONS: Mr. Chairman, I
7 move that we approve the order as written.

8 Excuse me, I didn't have my microphone on.
9 Mr. Chairman, I move that we approve the order as
10 written in this case.

11 VICE CHAIRMAN HOOD: I will also concur,
12 Commissioner Parsons. I didn't see anything that
13 flared up at me. I also will second that. With that,
14 it's been moved and properly seconded. All those in
15 favor?

16 (Ayes.)

17 Any opposition?

18 COMMISSIONER FRANKLIN: I'm not
19 participating. I haven't heard the case.

20 VICE CHAIRMAN HOOD: Okay, staff would you
21 record the vote and the proxies?

22 SECRETARY BASTIDA: Ms. Mitten has, is
23 voting in the affirmative for the proposed action and
24 Mr. Hannaham is abstaining, so accordingly, the staff
25 will record the vote 3 to 0; Mr. Hood moving and Mr.

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1 Parsons seconding; Ms. Mitten voting in the
2 affirmative by proxy.

3 VICE CHAIRMAN HOOD: Is Mr. Hannaham
4 abstaining or did he read -- he didn't participate?

5 COMMISSIONER HANNAHAM: Mr. Chairman, I
6 did not participate in the hearings that preceded
7 this. I did read the case.

8 VICE CHAIRMAN HOOD: Okay, so you still
9 wanted to --

10 COMMISSIONER HANNAHAM: I decided to just
11 abstain.

12 VICE CHAIRMAN HOOD: Okay, thank you.
13 Next, moving right along with our agenda, Zoning
14 Commission Case No. 00-38C, the Frederick Douglass.
15 Mr. Bastida?

16 SECRETARY BASTIDA: Yes. Mr. Vice
17 Chairman, the staff has made the Commissioners aware
18 of the lack of notice from the applicant regarding Lot
19 60 and 61. The staff has worked with the applicant to
20 try to provide some remedy in the near future, but the
21 staff recommended that you approve the order as
22 written with the following changes. There will be
23 less -- there will be 21 less parking spaces and 21
24 less buildings and also, the staff has provided you
25 with a revised paragraph, 33, that in fact, addresses

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1 those issues and the staff requests an action on this
2 report.

3 VICE CHAIRMAN HOOD: Colleagues, any
4 discussion? I will move approval for Zoning
5 Commission Case 00-38C with the necessary corrections
6 that were mentioned by staff.

7 Mr. Bastida, can I get a second? I can't
8 get a second. Oh, we've got another problem. Nobody
9 participated.

10 Did you participate?

11 COMMISSIONER PARSONS: I did not.

12 SECRETARY BASTIDA: I have proxies from
13 two individuals, from two of the individuals who
14 participated.

15 VICE CHAIRMAN HOOD: But how do we get a
16 second?

17 SECRETARY BASTIDA: Can I? Based on the
18 proxy can I -- I have two proxies in favor. That's my
19 question.

20 VICE CHAIRMAN HOOD: It's never a dull
21 moment.

22 SECRETARY BASTIDA: Okay, can we go to the
23 next item on the agenda until we have a --

24 VICE CHAIRMAN HOOD: We will come back to
25 Zoning Commission Case 00-38C and I will take the

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1 motion off the table.

2 SECRETARY BASTIDA: Thank you, Mr. Vice
3 Chairman.

4 VICE CHAIRMAN HOOD: Were you getting
5 ready to call me Ms. Mitten?

6 (Laughter.)

7 VICE CHAIRPERSON HOOD: Moving right along
8 with agenda consent calendar, Zoning Commission Case
9 No. 01-14MM/99-05C, minor modification Fort
10 Lincoln/Premium Distributors.

11 Mr. Bastida?

12 SECRETARY BASTIDA: Yes, the staff has
13 provided you with all the information required to
14 make, to take an action on this item and the staff
15 would like to clarify one point, that it was not clear
16 on all the documents submitted to you, the elimination
17 of the 17 parking spaces does not include any handicap
18 space, otherwise, you have all the information in
19 front of you and staff would request an action on this
20 matter.

21 COMMISSIONER FRANKLIN: Mr. Chairman, I'd
22 be glad to move the approval of this modification.

23 COMMISSIONER PARSONS: Second.

24 VICE CHAIRPERSON HOOD: It's been moved
25 and got a second. All those in favor use the sign of

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1 voting.

2 (Ayes.)

3 Any opposition? So ordered. Staff will
4 you record the vote with the proxies?

5 SECRETARY BASTIDA: Yes, the staff will
6 record the vote 4 to 0. Mr. Franklin moving, Mr.
7 Parsons seconded and Mr. Hood voting in the
8 affirmative; Mr. May voting in the affirmative by
9 proxy.

10 VICE CHAIRPERSON HOOD: Thank you. We
11 have no legislative report.

12 COMMISSIONER FRANKLIN: Mr. May cannot
13 vote on the same matters that I'm voting on.

14 SECRETARY BASTIDA: I'm sorry, you are
15 correct. I stand corrected. It's Ms. Mitten voting
16 in the affirmative.

17 COMMISSIONER FRANKLIN: Thank you.

18 VICE CHAIRPERSON HOOD: Okay. No
19 legislative report. Litigation, Mr. Bastida.

20 SECRETARY BASTIDA: The staff included
21 that decision of the court and the main issue
22 regarding there is it addressed the issue of
23 timeliness.

24 VICE CHAIRPERSON HOOD: Okay.

25 COMMISSIONER FRANKLIN: Mr. Chairman, is

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1 Mr. Bergstein still here?

2 VICE CHAIRPERSON HOOD: No, he stepped
3 out.

4 SECRETARY BASTIDA: He stepped out.

5 COMMISSIONER FRANKLIN: Sorry, I had a
6 question for him about this.

7 VICE CHAIRPERSON HOOD: We can come back
8 to it, Commissioner Franklin. Just remind us.

9 COMMISSIONER FRANKLIN: Thank you.
10 Correspondence, Mr. Bastida?

11 SECRETARY BASTIDA: A letter from the
12 Cleveland Park Citizens Association requesting
13 codification of Zoning Commission Order 587 and that
14 is there for your information. We're working with
15 them trying to see if we can resolve that issue.

16 VICE CHAIRPERSON HOOD: Okay, that's just
17 for our information. I didn't know whether we were
18 going to have do action or not on this.

19 SECRETARY BASTIDA: So correspondence,
20 it's for your information.

21 VICE CHAIRPERSON HOOD: Okay. The report
22 of the Secretary, Mr. Bastida. Reminder schedule.

23 SECRETARY BASTIDA: You have the reminder
24 schedule through September 17th and I anticipate that
25 after that we're going to have a very busy schedule

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1 because all the cases that you set down last month, if
2 they file in a timely fashion will be a schedule
3 shortly after the 17th and there are three cases so
4 far that we know and then also we will have the BP,
5 the Buzzard Point that we'll need to also reschedule
6 after the 17th of September, so it seems like
7 September, October are going to be very busy months,
8 the second half of September and October.

9 VICE CHAIRMAN HOOD: Okay. Other
10 business, Mr. Bastida?

11 SECRETARY BASTIDA: Well, the perennial
12 item about your calendar for attending BZA meetings.

13 VICE CHAIRMAN HOOD: I believe
14 Commissioner Mitten, if able to, will be serving
15 tomorrow, but I guess we have to play that by ear. I
16 think she's scheduled for the 17th.

17 SECRETARY BASTIDA: That is correct and
18 she's scheduled for the morning and the afternoon, so
19 I -- given her condition to date, or my perception of
20 her condition to date, or her condition to date, by
21 her voice and demeanor, I don't know if she would be
22 able to have such a grueling day, so if we could have
23 a volunteer for the morning. There is only one case
24 in the morning because my understanding is two have
25 gone away.

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1 VICE CHAIRMAN HOOD: What about the
2 afternoon?

3 SECRETARY BASTIDA: Well, the afternoon is
4 the one that also is of great importance, but I felt
5 that if she had the stamina for part of the session
6 that it would be preferable for her to be here in the
7 afternoon.

8 VICE CHAIRMAN HOOD: The Board of Zoning
9 Adjustment does have a quorum. I was thinking in
10 terms of basically the afternoon, so I don't know if
11 it's necessary for one of us to -- they can change
12 their schedule for tomorrow. It's such a late date,
13 but the issue is if they didn't have a quorum then I
14 would change mine, but they do have a quorum, so I
15 don't think I need to.

16 SECRETARY BASTIDA: That's right. We have
17 -- we anticipate that if the swearing takes place at 9
18 o'clock in the morning, we will have a quorum.

19 VICE CHAIRMAN HOOD: If the swearing in
20 takes place at 9 o'clock in the morning, then you'll
21 have a quorum?

22 SECRETARY BASTIDA: Correct, with that
23 caveat. That's what we're afraid of, that we will not
24 have a quorum, but it seems like it's a good
25 percentage that, in fact, we will have a quorum.

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1 VICE CHAIRMAN HOOD: What I'll do then,
2 colleagues, if anyone is able to be on stand by, if
3 not, I guess I can be on stand by, Mr. Bastida,
4 tomorrow, if the necessity arises that I need to come
5 over, I will be on standby.

6 SECRETARY BASTIDA: I am sure you would be
7 delighted to be here.

8 VICE CHAIRMAN HOOD: I sure will. No
9 problem.

10 The next is July --

11 SECRETARY BASTIDA: July 24th.

12 VICE CHAIRMAN HOOD: Do we have anyone
13 sitting?

14 SECRETARY BASTIDA: No. Let me see, I
15 don't believe so.

16 COMMISSIONER PARSONS: Seeing as I was
17 supposed to do tomorrow and Carol jumped in to help
18 me, I am fairly certain I can do the 24th. I'd like
19 to make a phone call, but I'll make that commitment
20 all day.

21 VICE CHAIRMAN HOOD: All day. Now you
22 know they have you also on the 31st for a case or two.
23 I think a lot of us are going to be here on the 31st.

24 SECRETARY BASTIDA: It's for the decision
25 for Mr. Parsons.

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1 COMMISSIONER PARSONS: But I already did
2 that one.

3 SECRETARY BASTIDA: 16722?

4 COMMISSIONER PARSONS: Last month. I'm
5 looking at 16 and 89.

6 SECRETARY BASTIDA: Oh, I was looking at
7 16722.

8 COMMISSIONER PARSONS: Yes. Fine, well,
9 that's just a meeting date.

10 VICE CHAIRMAN HOOD: Mr. Parsons has the
11 24th and I think a number of us are going to be here
12 on the 31st.

13 COMMISSIONER PARSONS: It doesn't show
14 anybody for the afternoon.

15 SECRETARY BASTIDA: I believe that Mr. May
16 would be willing to do the afternoon session.

17 VICE CHAIRMAN HOOD: Okay, if not, let me
18 know. I'll do it.

19 SECRETARY BASTIDA: We need to go and list
20 it until September 18th, because we don't have any
21 other meetings, so how about September 4th?

22 VICE CHAIRMAN HOOD: If you promise to let
23 me out before 10 o'clock, September 4th because I have
24 another meeting. I would rather really not do the
25 4th, but I know I have to come in the morning for a

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1 decision because I have another commitment every first
2 Tuesday of the month.

3 SECRETARY BASTIDA: Is it 10 o'clock in
4 the evening?

5 VICE CHAIRMAN HOOD: That's what time I've
6 been getting out of the last two or three times.

7 SECRETARY BASTIDA: I cannot assure you of
8 that, but we will try very hard to try to let you out
9 of here at a reasonable time.

10 Now what might be reasonable to me might
11 not be reasonable to you.

12 VICE CHAIRMAN HOOD: They only have two
13 cases in the afternoon on the 4th?

14 SECRETARY BASTIDA: That is correct.

15 VICE CHAIRMAN HOOD: So I should -- that
16 should be fine because I have to be here anyway on the
17 BPM --

18 SECRETARY BASTIDA: How about for the
19 11th?

20 VICE CHAIRMAN HOOD: Anyone? Mr.
21 Hannaham, do you want --

22 COMMISSIONER HANNAHAM: I'll be around.

23 VICE CHAIRMAN HOOD: Yeah.

24 COMMISSIONER HANNAHAM: I'll be around.
25 I'll take on the 11th.

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1 VICE CHAIRMAN HOOD: Okay, good.

2 SECRETARY BASTIDA: Thank you, Mr.
3 Hannaham.

4 VICE CHAIRMAN HOOD: Is that it?

5 SECRETARY BASTIDA: No, we have the 18th.

6 COMMISSIONER HANNAHAM: When I speak of
7 the 11th am I talking about all day on the 11th?

8 SECRETARY BASTIDA: Yes.

9 VICE CHAIRMAN HOOD: Can we hold off on
10 the 18th. We could talk to Chair Mitten. The Chair
11 may be able to --

12 SECRETARY BASTIDA: Okay, why don't we put
13 Carol there and then when she has time we can ask if
14 she could do that day.

15 VICE CHAIRMAN HOOD: Okay.

16 SECRETARY BASTIDA: Because I knew that
17 she would be out of town basically until the 15th or
18 something like that, but that is a possibility.

19 VICE CHAIRMAN HOOD: Okay, let's just put
20 her down with a question mark.

21 SECRETARY BASTIDA: Right.

22 VICE CHAIRMAN HOOD: And again, let me
23 just go back, Mr. Bastida, to the 31st, the afternoon.
24 You said Mr. May.

25 SECRETARY BASTIDA: Yes. That's correct.

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1 VICE CHAIRMAN HOOD: And I'll put myself
2 down just in case.

3 SECRETARY BASTIDA: You can put that down
4 for sure.

5 VICE CHAIRMAN HOOD: Put him first.

6 SECRETARY BASTIDA: I already checked with
7 him.

8 VICE CHAIRMAN HOOD: Oh, he said -- he's
9 fine.

10 SECRETARY BASTIDA: Yes.

11 VICE CHAIRMAN HOOD: Let me scratch my
12 name off. Good.

13 All right.

14 SECRETARY BASTIDA: Unless he break his
15 promises, I would have to fall back on you, but I
16 don't think Mr. May would do such a thing.

17 VICE CHAIRMAN HOOD: Okay, so I think
18 we're covered for BZA.

19 SECRETARY BASTIDA: That is right.

20 VICE CHAIRMAN HOOD: Thank you,
21 colleagues.

22 COMMISSIONER PARSONS: I just called and
23 I'm okay for the 24th.

24 VICE CHAIRMAN HOOD: Thank you, Mr.
25 Parsons, okay for the 24th.

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1 SECRETARY BASTIDA: Now Mr. Bergstein is
2 back at the podium, do you have an announcement for
3 the Salvation Army case?

4 MR. BERGSTEIN: Yes. Any of the
5 Commissioners, even those who could not participate in
6 the actual vote can move the matter.

7 SECRETARY BASTIDA: Okay.

8 VICE CHAIRMAN HOOD: It's not the
9 Salvation Army case.

10 SECRETARY BASTIDA: The Frederick Douglass
11 case, I'm sorry.

12 VICE CHAIRMAN HOOD: Let me put my motion
13 back on the table. I make a motion that we approve
14 Zoning Commission Case No. 00-38C, the Frederick
15 Douglass.

16 Can I get a second? He said anybody can
17 second.

18 COMMISSIONER HANNAHAM: I'll second.

19 VICE CHAIRMAN HOOD: Okay, Mr. Hannaham
20 seconds.

21 VICE CHAIRMAN HOOD: It's been moved and
22 properly seconded. All those in favor.

23 (Aye.)

24 Any opposition? So ordered. Staff, would
25 you record the vote and the proxies?

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1 SECRETARY BASTIDA: The vote will be to 3
2 to 0. Mr. Hood, moving it; Mr. Hannaham, seconding,
3 but with not voting; Ms. Mitten and Mr. May voting in
4 the affirmative by proxy.

5 VICE CHAIRMAN HOOD: Thank you. There's
6 always a way out.

7 Also, Commissioner Franklin had a question
8 for Mr. Bergstein.

9 COMMISSIONER FRANKLIN: Before that, just
10 to clarify where we are on the 19th, it is still on my
11 calendar, Mr. Bastida, and I assume that if we're not
12 going to meet you will so inform us.

13 SECRETARY BASTIDA: No, we are not --
14 we're not having -- definitely, we're not having the
15 hearing on the BP.

16 COMMISSIONER FRANKLIN: I understand that.

17 SECRETARY BASTIDA: But we're meeting --

18 COMMISSIONER FRANKLIN: I'm referring to
19 the special meeting.

20 SECRETARY BASTIDA: I will send you an
21 e-mail stating the time of the meeting which probably
22 will be 7 o'clock because we'll be only open and
23 closed -- the meeting will take two or three minutes.
24 So it will be 7 o'clock.

25 I will confirm that by e-mail to you.

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1 COMMISSIONER FRANKLIN: I'm talking about
2 if the Chairman can attend, we will deal with AU on
3 Thursday night.

4 SECRETARY BASTIDA: And that will be
5 solely the only item on the agenda.

6 COMMISSIONER FRANKLIN: Right, thank you.

7 VICE CHAIRMAN HOOD: Mr. Franklin?

8 COMMISSIONER FRANKLIN: I just wanted to
9 ask Mr. Bergstein, in reading the Waste Management
10 decision in relation to the Board of Zoning
11 Adjustment, it struck me as interesting that the Board
12 of Zoning Adjustment has no specific time limits and a
13 question to you is whether this Commission should with
14 respect to appeals to the Board have a specific time
15 limit so that people don't have to guess as to what's
16 reasonable and spawn the kind of litigation that
17 produced this result.

18 MR. BERGSTEIN: I think the Court of
19 Appeals has done it for you in that they've said in
20 the Waste Management decision that absent
21 extraordinary circumstances, de facto reasonable
22 period of time for an appeal is two months. Now that
23 still relates to when a person is chargeable. I don't
24 read the -- with notice. I don't read the Court of
25 Appeals case as saying that it's two months from the

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1 time that let's say a permit is issued. In a
2 particular case, it was a denial of a CFO, so the time
3 of the action was certain and known to the person, to
4 the appellate, but in many of the instances in a BZA
5 appeal, the person who is appealing it has no
6 knowledge of the facts that would warrant an appeal
7 until they see both the building going up and going up
8 in a manner that's inconsistent with the zoning
9 regulations. So you still have that notion of
10 chargeability, but the Court of Appeals has now said
11 that from the time that you are chargeable with
12 notice, the de facto reasonable period is two months.

13 So the only reason why I think the Zoning Commission
14 would want to get involved would either be to codify
15 that or if it disagreed with that, to state what a
16 reasonable period should be for appeal, but with this
17 decision from the Court of Appeals, at least as a
18 matter of law, the two month period will now apply.

19 COMMISSIONER FRANKLIN: But you'll still
20 need a lawyer to tell you when you're chargeable with
21 notice.

22 MR. BERGSTEIN: Well, I don't know if
23 that's necessarily true because most people are able
24 to at least say, particularly if we ask them, when did
25 you first become aware of the events that -- from

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1 which the appeal arose, so I think most people could
2 say that. I don't know that in every instance you
3 would need a lawyer to figure that out for you, but I
4 suppose just to be careful and not say the wrong thing
5 that could well be sound advice.

6 COMMISSIONER FRANKLIN: Well, I don't want
7 to suggest anything that would reduce the ability to
8 earn legal fees, but it seems to me that the
9 Commission might well consider providing some guidance
10 to somebody who just can't really understand what
11 timely means in the absence of some specific guidance,
12 but anyway.

13 VICE CHAIRMAN HOOD: Mr. Franklin, I think
14 that point is well taken. Hopefully we can -- we'll
15 mention it to Office of Zoning and see if we can
16 further evaluate and look into that whole piece
17 because I agree with you, we should have something,
18 maybe more or less in layman's terms to deal with that
19 whole time limit issue.

20 Okay, also the new cases filed,
21 colleagues, we can read those on the agenda that's
22 been provided and if everything is clear and in order,
23 this meeting is adjourned.

24 (Whereupon, at 3:49 p.m., the meeting was
25 concluded.)

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