

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL PUBLIC MEETING
CASE NO. 00-33C

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THURSDAY
FEBRUARY 15, 2001

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The Regular Meeting of the District of Columbia
Zoning Commission convened at 6:00 p.m. in the Office of Zoning
Hearing Room at 441 4th Street, Northwest, Washington, D.C.,
Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
HERBERT M. FRANKLIN	Commissioner
KWASI HOLMAN	Commissioner
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

OTHER AGENCY STAFF PRESENT:

Andrew Altman, Director, Office of Planning
John Fondersmith, Office of Planning
Ellen McCarthy, Deputy Director, Office of
Planning
Julie Wagner, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Mary Nagelhout, Esq.
Marie Sansone, Esq.

<u>Z.C. Case No. 00-33C</u> , Former Woodward and Lothrop Department Store Building	4
Presentation by Arthur Jackson, Office of Planning	5

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

(6:08 p.m.)

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen, or mostly gentlemen, I guess.

(Laughter.)

CHAIRPERSON MITTEN: This is a special public meeting of the Zoning Commission for Thursday, February 15th, 2001. The case before us this evening is Zoning Commission Case No. 00-33C, which is the Woodies planned unit development that would permit the applicant to provide both retail and office uses within the Landmark former Woodward and Lothrop Department Store building in exchange for various amenities and public benefits, including off-site housing.

Mr. Bastida, are there any preliminary matters before we proceed?

SECRETARY BASTIDA: Madame Chair, there are no preliminary matters.

Thank you.

CHAIRPERSON MITTEN: Thank you.

There's some additional information that's been provided to the record since we last convened on this matter. We have two illustrative concept drawings related to the massing particularly of the upper floors where there was going to be some demolition and replacement of the penthouses on the top two floors of the building.

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1 And we've just been handed a supplemental report
2 from the Office of Planning, and I'd like to turn to them now to
3 get a little summary report, an oral summary report, since we
4 haven't had a chance to look at this.

5 MR. JACKSON: Madame Chair, we apologize for the
6 delay in delivering this report, but we've been refining it
7 since the meeting on Monday, and we since have come up with some
8 adjustments and changes to the recommendations in line with what
9 the Commission had mentioned at that meeting.

10 Specifically, we have incorporated the issues,
11 the changes that we had stated at that meeting into the text of
12 the recommendations.

13 We also looked at issues related to the concerns
14 that the Corporation Counsel have an opportunity to review or to
15 respond to the issue of being a beneficiary to the performance
16 bond; to look at the timing issue and how the response should be
17 established; the interest the Commission had expressed in
18 reviewing the architectural plans for the Woodies Building on
19 the ninth and tenth floors; whether the PUD should be in two
20 phases or one; how the District of Columbia could assume the
21 role of finishing the promised residential construction on the
22 subject property if that should be necessary; the ways of
23 establishing when the promised housing on Square 517 would be
24 constructed; and whether the applicant should be allowed to
25 reserve a portion of the residential development on this square

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1 for combined lot development.

2 Essentially, after reviewing these issues, the
3 Office of planning came up with the following findings. We have
4 a better understanding now of just what's involved with the
5 performance bond; that normally that's between the contractor
6 and the applicant, and so it wouldn't be a case of -- one of the
7 concerns that was expressed by the Corporation Counsel was the
8 concern that there would be -- as beneficiary, the District
9 would be receiving funds that would not have been budgeted, and
10 therefore, there was no link to take those funds, put them into
11 a budget, and apply them to a specific project.

12 As such, the way a bond would normally work would
13 be if the project was not completed and the performance bond was
14 called upon to be used to finish construction, it would just be
15 a case of the bond authority contacting the beneficiaries and
16 asking them who else should be doing the work.

17 So it would not be a case of actual transfer of
18 funds. It would be more a direction of who would finish the
19 project that was under construction.

20 So we thought that that would address most of the
21 concerns expressed by Corporation Counsel about that element,
22 and on that basis we're suggesting that the Office of Planning
23 serve as benefitting agency on behalf of the District of
24 Columbia.

25 As per the timing, we've scheduled at the

1 sequence based on some assumptions, and that sequence is
2 reflected in the amended conditions.

3 As for architectural reviews, you have received
4 copies of plans, of illustrative elevations of the proposed
5 ninth and tenth floor renovations and expansions on Square 346
6 and the proposed elevation for the residential development on
7 Square 377. This was provide as promised by the applicant.

8 And looking forward to Square 517, there are so
9 many questions surrounding that that the Office of Planning
10 would recommend that the Commission not tie -- make the 517
11 development subject to Commission design review.

12 As far as the PUD phases, with the elimination of
13 the design concerns, which really seem to be the only issue that
14 would carry over, OP recommends proceeding with the consolidated
15 PUD as proposed.

16 There does not appear to be a mechanism for
17 insuring that the proposed housing is developed by a certain
18 date on Square 517, again, because of the uncertainties, and OP
19 would have to agree with the applicant that the final decision
20 would be predicated on market conditions.

21 We would recommend, however, that the applicant
22 only be allowed to use a portion of the total on site
23 residential development for a combined lot. So what we're
24 suggesting is that the Buy Right FAR is 8.5. We would suggest
25 that at 4.5 FAR, the difference between the 4.5 FAR required in

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1 the housing priority Area B and whatever square footage, which
2 at this point we think is 13,000 square feet, that would be
3 required to equal a total of 2.0 FAR on the Woodies site in
4 conjunction with Square 377; the difference between that and the
5 Buy Right FAR at 8.5 be available for the applicant to use for a
6 combined lot.

7 However, any additional residential FAR approved
8 for the site would be ineligible for combined lot development.

9 So in conclusion, we continue to feel that this
10 project would benefit the District, and the DD in particular,
11 and that the benefits and amenities are more than substantial
12 enough to merit its approval subject to certain conditions, and
13 with that, I guess I should walk through the specific
14 conditions, unless you have questions about them, Madame Chair.

15 CHAIRPERSON MITTEN: Mr. Franklin.

16 COMMISSIONER FRANKLIN: I have just maybe a
17 procedural question. Do I understand you as making comments
18 that change the character of the draft that we have before us of
19 the conditions? And are you going to then use that draft as the
20 basis for making suggested changes?

21 Because as I look at what has been provided to us
22 by the Office of Planning, it's very hard to know, reading your
23 memo, to what extent, if any, it is changing the draft that was
24 sent to us earlier, which I guess was prepared by the applicant
25 of conditions.

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1 How are we going to be able to parse this tonight
2 in a way that can come to some kind of conclusion?

3 MR. JACKSON: The changes that I've outlined are
4 basically the ones reflected in our recommendations, and they do
5 not refer to the applicant's draft.

6 COMMISSIONER FRANKLIN: Well, then are you saying
7 that we just have to look at your suggestions and then have
8 another meeting before we adopt something? I thought the
9 purpose of getting together tonight was to adopt something.

10 DEP. DIR. MCCARTHY: Right. Mr. Franklin, the
11 only changes that were made in the conditions were the changes
12 related to the issues that Mr. Jackson just reviewed.

13 COMMISSIONER FRANKLIN: On 517?

14 DEP. DIR. MCCARTHY: On the issue of --

15 COMMISSIONER FRANKLIN: And the bond?

16 DEP. DIR. MCCARTHY: Right. The other issues --
17 let me just run down the issues.

18 COMMISSIONER FRANKLIN: Well, how about Condition
19 10 on the applicant's draft that goes into the combined lot
20 development permission? Are you suggesting changes to that?

21 DEP. DIR. MCCARTHY: Okay. The applicant's draft
22 we don't have.

23 COMMISSIONER FRANKLIN: And you haven't seen it?

24 CHAIRPERSON MITTEN: If I could, while you're
25 looking at that, I understood from what Mr. Jackson was saying

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1 was that there has been some change in the language of the
2 condition specifically as it relates to the performance bond.

3 But when I look back at the original report that
4 you all had provided to us on February 5th, I can't discern any
5 change in the language related to the execution of, you know,
6 the bond or the notion behind the bond of accomplishing the
7 housing if the applicant is unable to deliver it.

8 MR. JACKSON: I think the principal change would
9 be that we've named an entity that would be the beneficiary, and
10 we're saying it's the District of Columbia Office of Planning.

11 CHAIRPERSON MITTEN: That's the only change?

12 DIRECTOR ALTMAN: What we did was -- yeah, and
13 that was the only change -- what we did since the meeting was to
14 investigate as Arthur Jackson was saying to insure that there
15 was -- there was a question about guaranteeing that this
16 mechanism, in fact, could be effective and that the District of
17 Columbia could be a party to it, and that it could be executed,
18 and so we've done the research about how to insure that that
19 happens. I think that was one of the questions the Commission
20 had.

21 COMMISSIONER FRANKLIN: I think I have language
22 that can address that, Madame Chair, if I understand where the
23 Office of Corporation Counsel is coming from on that, but my
24 question goes to the combined lot development issue.

25 DEP. DIR. MCCARTHY: Right. You were asking

1 about Condition No. 10.

2 COMMISSIONER FRANKLIN: Yeah, and are you telling
3 us that --

4 DEP. DIR. MCCARTHY: Right. I'm looking at that
5 now, and I think the only thing that the difference between this
6 language and what we've, I believe, negotiated with the
7 applicant and what is contained in our draft is that this is
8 saying any residential square footage in excess of that amount
9 shall be available for combined lot development.

10 And I think more precisely it should be any
11 residential square footage in excess of that amount up to the
12 full amount of the 8.5 FAR, which is permitted currently on site
13 as a matter of right shall be available for combined lot
14 development, and we mutually agree that should the downtown
15 development housing incentives that are under discussion be
16 adopted and should the applicant be permitted to go above the
17 8.5 FAR as a matter of right on this project, just as on any
18 other place where that recommendation is currently applicable,
19 any additional development will not be eligible for combined
20 lot.

21 COMMISSIONER FRANKLIN: Okay, fine. All I'm
22 driving at is some way in which we can take account of your
23 comments now. I'm sorry that you, I guess, did not have a
24 chance to look at the applicant's draft so that we can move
25 along and change it as we see fit rather than looking at two

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1 disjunctive pieces of paper.

2 CHAIRPERSON MITTEN: Did you want to make the
3 suggested change to the language related to the performance
4 bond, Mr. Franklin?

5 COMMISSIONER FRANKLIN: If the chair wants to
6 address that at the moment I can.

7 CHAIRPERSON MITTEN: Okay. I guess I would like
8 to just step back a second and find out: is everybody
9 comfortable that we now have adequate information in the record
10 to proceed to a decision?

11 COMMISSIONER HOLMAN: Yes, Madame Chair. I'm
12 comfortable, yes.

13 COMMISSIONER FRANKLIN: Yes, but I have some
14 questions.

15 CHAIRPERSON MITTEN: That was just a threshold
16 question.

17 (Laughter.)

18 CHAIRPERSON MITTEN: Okay, and then I guess since
19 this is another threshold question, and this was Mr. Parson's
20 issue. Are you satisfied that we should proceed with this as a
21 two-stage consolidated planned unit development as opposed to
22 breaking it up?

23 The Office of Planning has recommended that we go
24 forward, although there's not a whole lot of discussion in that.

25 COMMISSIONER HOLMAN: You mean a one stage.

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1 CHAIRPERSON MITTEN: One stage. I'm sorry.

2 COMMISSIONER HOLMAN: Okay.

3 COMMISSIONER PARSONS: No, I'm not, but given the
4 circumstances of this property, I think it's the right thing to
5 do, but to say that this sketch here tonight or this other
6 sketch is what we normally do with the PUD, gosh help those who
7 come forward saying, "You did this for Woodies. Now do it for
8 us."

9 It's just wrong.

10 CHAIRPERSON MITTEN: Well, I think we would want
11 to have language in the order that would express the sort of
12 uniqueness of this circumstance and also the fact that we
13 recognize that there will be oversight from the Historic
14 Preservation Review Board.

15 COMMISSIONER PARSONS: Right.

16 CHAIRPERSON MITTEN: I guess what I think might
17 be an efficient way to just run through this is to talk about
18 whether or not we think that the amenities and public benefits
19 that have been offered are adequate, and we can just run through
20 those quickly and perhaps offer any kind of changes that we see.

21 The first one had to do with the fact that this
22 would provide a major retail anchor for the downtown core and
23 revive F Street. Is everyone comfortable with that and the
24 language related to the letter of core completion and the uses
25 to which the basement and the vaults and the first two floors

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1 will be put?

2 COMMISSIONER PARSONS: I am comfortable, and I
3 did have a question with the two options there. I'm looking at
4 the OP report on page 4, where they recommended these
5 conditions.

6 CHAIRPERSON MITTEN: Yes.

7 COMMISSIONER PARSONS: And I wondered why in
8 number two it appears that the cumulative square footage is
9 50,000, whereas in number one it's 60,000, and I wondered why
10 that was the case.

11 MR. JACKSON: Well, what we have there is a
12 minimum of 25,000 square feet, which is a standard that's used
13 in the zoning regulations. So it could be 30, 35.

14 The thought was that that was just a level -- one
15 of the break points in the zoning regulations, and we were
16 looking t having at least two of that size, but in essence, you
17 could have any combination of that or others.

18 COMMISSIONER PARSONS: But shouldn't the total of
19 60,000 be the same in both is my question.

20 MR. JACKSON: It could.

21 CHAIRPERSON MITTEN: Mr. Parsons, we could amend
22 that to say because anchor retail is defined as 25,000 square
23 feet or above --

24 COMMISSIONER PARSONS: Right.

25 CHAIRPERSON MITTEN: -- and what we could do is

1 we could say two or more anchor retail uses each with a floor
2 area equal to or greater than 25,000 square feet and totaling in
3 combination at least 60,000 --

4 COMMISSIONER PARSONS: Exactly where I was going.

5 CHAIRPERSON MITTEN: Oh, great. Okay.

6 DEP. DIR. MCCARTHY: But, Ms. Mitten, I think the
7 idea was not to say two or more because we wanted not just any
8 amount of retail on there, but two anchors of at least 25,000
9 square feet. So it was really no more than two.

10 CHAIRPERSON MITTEN: Okay. Well, your language
11 on page 4 says two or more.

12 DEP. DIR. MCCARTHY: Oh, yeah.

13 COMMISSIONER FRANKLIN: Which was in the original
14 report, as I recall.

15 COMMISSIONER PARSONS: So it should say two?

16 CHAIRPERSON MITTEN: So it's two anchor retail
17 uses with a minimum floor area of 25,000 square feet each and
18 totaling in combination at least 60,000 square feet.

19 DEP. DIR. MCCARTHY: That's fine.

20 CHAIRPERSON MITTEN: Is that fine?

21 COMMISSIONER PARSONS: Good.

22 CHAIRPERSON MITTEN: I would also like to suggest
23 that in alternative one that we add language that would permit a
24 department store, since it says "must designate," and department
25 is a distinctly different category than anchor retail. So I

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1 would suggest that we say for number one or letter A, 5A,
2 depending on what you're looking at, "a department store with a
3 floor area equal to or greater than 90,000 square feet of gross
4 leasable area or one anchor retail use," and so on.

5 MR. JACKSON: Madame Chair.

6 CHAIRPERSON MITTEN: Yes.

7 MR. JACKSON: Might I suggest that we maybe have
8 three options then? That one would be a department store use.

9 CHAIRPERSON MITTEN: That's fine. I mean, that
10 accomplishes the same thing.

11 MR. JACKSON: Okay

12 CHAIRPERSON MITTEN: And then I would also just
13 like to make sure that when we use square feet, we're speaking
14 of gross leasable area because that's the language in Chapter 17
15 as it relates to these types of uses.

16 And the other thing I would like to suggest, and
17 I have a similar recommendation later when we get to the issue
18 about housing and trying to do something to motivate that on a
19 timely basis, is that for bonus density, for TDRs for retail and
20 the DD, typically they can be generated when the space is
21 reserved, but I think as an additional motivation in this case
22 what we should say is that the TDRs may not be generated until
23 the C of O is issued because then it won't be the case where the
24 space is sitting empty and the applicant in the meantime would
25 have been able to generate TDRs based on a retail use that's not

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1 yet there.

2 COMMISSIONER FRANKLIN: Madame Chair, what
3 specific paragraph are you looking at in that connection?

4 CHAIRPERSON MITTEN: I guess I'd like to go to
5 what the applicant had provided just because I spent more time
6 with that.

7 COMMISSIONER FRANKLIN: Yes, sure.

8 CHAIRPERSON MITTEN: Perhaps it would be another
9 --

10 COMMISSIONER FRANKLIN: A separate?

11 CHAIRPERSON MITTEN: A separate condition.

12 COMMISSIONER FRANKLIN: Yeah.

13 CHAIRPERSON MITTEN: Maybe after five, you know,
14 between five and six or something.

15 COMMISSIONER FRANKLIN: Okay.

16 CHAIRPERSON MITTEN: But basically that would tie
17 the ability to generate TDRs to a C of O instead of just
18 reserving space.

19 COMMISSIONER FRANKLIN: Right. Before we leave
20 five, I'm not sure what it means where it says the applicant
21 must designate and secure for the building a letter of core
22 completion. I don't know what the word "designate" means in
23 that context.

24 CHAIRPERSON MITTEN: That's a good question.
25 Let's see what kind of language Office of Planning had

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1 recommended on that.

2 MR. JACKSON: Madame Chair.

3 CHAIRPERSON MITTEN: Yes, sir.

4 MR. JACKSON: The thought was that the
5 application would essentially identify what part of the building
6 is going to be assigned to the retail uses on the first floor,
7 whether it be the first two floors, the first three floors, and
8 of course, the lower level.

9 At that point when they went for -- they would
10 outfit that space for future retail use, and when they outfit
11 that space, basically they do the rough-in, but of course, the
12 retailer, and particularly if it was a department store or even
13 a small anchor, would come in and do the finishing up.

14 They would get the CO for the finished store at a
15 later date, but the applicant would essentially rough out the
16 space and have a cursory inspection -- not cursory, but a
17 preliminary expression by the plumber, electrician, by the fire
18 department, and at that point we get a letter of core
19 completion.

20 That would essentially say that this space is
21 ready to be occupied by a future tenant, which it's anticipated
22 to be retail.

23 CHAIRPERSON MITTEN: Is the use of the word
24 "designate," as I understand you, is that just to differentiate
25 between whether they're going to have two floors above grade of

1 retail or three floors above grade of retail?

2 MR. JACKSON: Right. It's really a synonym for
3 identify. Just identify where the retail is going to be, then
4 rough out that space, and then after you rough out that space,
5 then you can go on and renovate and occupy the office space on
6 the upper floors.

7 COMMISSIONER FRANKLIN: Wouldn't a letter of core
8 completion itself designate the affected space? I mean, this is
9 a two-step process. Must they do something before they secure
10 the --

11 MR. JACKSON: Well, by using that, it would be
12 designated on the building plans when they were submitted, and
13 then they'd be issued a letter of core completion based on those
14 building plans.

15 COMMISSIONER FRANKLIN: Is somebody going to
16 review that designation? Is that the purpose?

17 MR. JACKSON: Well, we needed a trigger to
18 identify that the space has been prepared and is ready for a
19 retail occupant. We did not want to make the applicant wait
20 until the final CO came for the store in that that could take --

21 COMMISSIONER FRANKLIN: I understand that.

22 MR. JACKSON: Yes.

23 COMMISSIONER FRANKLIN: But I just wanted to know
24 whether we're talking about a process here that has some
25 official review.

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1 MR. JACKSON: Yes. There would be --

2 COMMISSIONER FRANKLIN: Before they secure a
3 letter of core completion.

4 MR. JACKSON: Yes.

5 COMMISSIONER FRANKLIN: Is somebody going to look
6 at that before they even go forward to secure the letter?

7 MR. JACKSON: Yes, the letter of core completion
8 indicates that the building inspector, the plumbing inspector,
9 the fire inspector, and electrical inspector have inspected
10 both.

11 COMMISSIONER FRANKLIN: I understand that you
12 can't get a letter of core completion without those processes.

13 MR. JACKSON: Right.

14 COMMISSIONER FRANKLIN: But I just wondered is
15 there a process that this contemplates even before you apply for
16 a letter of core completion?

17 MR. JACKSON: Yes. This anticipates that a
18 formal set of building plans will be submitted to DCRA.

19 COMMISSIONER FRANKLIN: Well, if it's intended to
20 do that, then I think we should be a little bit more specific
21 about it.

22 MR. JACKSON: So you're saying possibly to refer
23 that a letter of core completion is issued by DCRA for the --

24 COMMISSIONER FRANKLIN: No. I'm asking you
25 whether before they even go in to secure such a letter, you're

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1 suggesting that we impose a condition that somebody look at
2 these plans and approve them, and then they go in and start
3 work.

4 MR. JACKSON: Yes, we're anticipating that DCRA
5 would approve a set of plans.

6 CHAIRPERSON MITTEN: Mr. Franklin, would you be
7 more comfortable if it said the applicant must secure? Because
8 we're talking about a minimum area. So the minimum area is
9 really all they're being held to, and if they choose to get
10 more, then they'll submit plans for more.

11 COMMISSIONER FRANKLIN: Well, that simplifies it.

12 CHAIRPERSON MITTEN: Okay.

13 COMMISSIONER FRANKLIN: That's all right with me.

14 CHAIRPERSON MITTEN: Okay, great.

15 Anything else related to the retail?

16 COMMISSIONER HOLMAN: Well, yeah. I just wanted
17 to understand the letter of core completion. Is that a standard
18 industry practice? It's not something I've seen a lot of
19 before. Could someone just explain how it operates?

20 MR. JACKSON: How?

21 COMMISSIONER HOLMAN: A letter of core
22 completion. Is it a DCRA issued document?

23 MR. JACKSON: Yes.

24 COMMISSIONER HOLMAN: And they're familiar with
25 this at DCRA?

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1 MR. JACKSON: Yes. I called and talked to DCRA
2 because my initial thought of the shell CO was shot down in
3 flames. So I asked them what they had that was similar to that,
4 and what they said was that what they anticipated happening was
5 that the applicant -- well, this is just a possible scenario --
6 the applicant would prepare a set of building plans for the
7 entire building. It would be submitted at one time and
8 identified that the first two floors or three floors and
9 basement would be partially completed for a future retail use.

10 They would all submit at one time, reviewed and
11 then inspections would be done looking at issuing a letter of
12 core completion when they finished -- okay. All work was
13 started at the same time, and at some point work on the first
14 three levels or two levels and basement would stop, and at that
15 point they would have finished, and they would ask for an
16 inspection for an issue of a letter of core completion.

17 The letter would be issued. The work would
18 continue on the upper floors, and then at some point when that
19 work on the upper floors and the office conversion is completed,
20 then there would be the issuance of CO for the office.

21 So that's an identifiable point, and the document
22 is normally issued by DCR for partial completion of a space in
23 anticipation of a future tenant.

24 COMMISSIONER HOLMAN: Okay.

25 DEP. DIR. MCCARTHY: And our expectation is given

1 the time frame at least of the department store with whom the
2 negotiations have been proceeding, that their timing is such
3 that as soon as the shell is at the state where they can begin
4 the work to do their own tenant fit-out, they'll have the
5 certificate or the core completion will be issued, and they will
6 immediately commence or even before that time commence on their
7 tenant fit-out activity.

8 So while the rest of the activity is going on in
9 the building for the office space above, the work will also be
10 proceeding with regard to the retail space, but the applicant's
11 obligation in this point will end with the issuance of the core
12 completion as far as the retail space is concerned.

13 MR. BERGSTEIN: Madame Chair, would it be better
14 for it to say then that the applicant shall receive a letter of
15 core completion from Department of Consumer Regulatory Affairs,
16 four?

17 CHAIRPERSON MITTEN: That sounds fine. Is
18 everyone comfortable with that?

19 COMMISSIONER HOLMAN: Yes.

20 CHAIRPERSON MITTEN: Anything else about the
21 retail?

22 (No response.)

23 CHAIRPERSON MITTEN: Okay. The housing, let's
24 move on to that. Basically what is being offered is the housing
25 amenity. We know where it will be located, and the amount will

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1 be equivalent; the amount that's being proffered as the amenity
2 is the equivalent of 2 FAR relative to the Woodies site or
3 100,560 square feet.

4 And we have a mechanism or a suggested mechanism
5 for insuring delivery of the housing on Square 377 within a
6 certain time frame. We don't have a similar mechanism for
7 Square 517.

8 Any concerns or are people satisfied with the
9 adequacy of the equivalent of 2 FAR residential as the amenity?

10 We've also had a suggestion that there should be
11 some designation of a portion of that for affordable housing.

12 COMMISSIONER HOLMAN: I'm comfortable.

13 COMMISSIONER PARSONS: I have some questions on
14 the condition.

15 CHAIRPERSON MITTEN: On the conditions? Oh,
16 other conditions.

17 COMMISSIONER PARSONS: Having to do with housing.

18 CHAIRPERSON MITTEN: Great.

19 COMMISSIONER PARSONS: I note that they have to
20 get a building permit. Well, wait a minute now. Within one
21 year of our order, and they have apparently two years to
22 complete that. I wondered why it would take two years to build
23 this complex, but maybe that's what it takes.

24 Why did you come up with those two time frames?

25 MR. JACKSON: The discussions before us seem to

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1 indicate that the applicant indicated that it will take 18
2 months at maximum to finish out the Woodies structure, and so it
3 appeared it would take two years to do the -- 18 months -- well,
4 I thought it was around two years to do the new housing, and it
5 would take them a year maximum to get all approvals associated
6 with both developments.

7 The assumption is that the Woodies review by the
8 HPRB would be probably easier to attain because there's less new
9 construction involved than would be the review of the
10 development on 377 so that assumedly Woodies could start work
11 first, and then at the end of that year period, they'd start
12 work on the housing on 377 given final review by HPRB.

13 What we're doing is looking at the worst case
14 scenario on review by the agencies and essentially the historic
15 review, but we wouldn't think it would take that long.

16 COMMISSIONER PARSONS: But it would take two
17 years to build this housing; is that --

18 MR. JACKSON: We think that would be two years at
19 the maximum, yes.

20 COMMISSIONER PARSONS: The next question I have
21 is at the bottom of page 5. Apparently what the Commission is
22 doing, which is unprecedented, is to delegate the design of this
23 housing to HPRB. In other words, there's no reason to come back
24 here if the sketch you've provided us here tonight changes
25 substantially; is that right?

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1 MR. JACKSON: Well, what you are approving is the
2 conceptual design, and if you approved it as it's written, the
3 approval of the final design would be left to HPRB.

4 The thought was that the concerns, most of the
5 concerns pertaining to preserving historic character of the area
6 and preserving the historic district would be on the shoulders
7 of HPRB to address, and that we thought the Commission would
8 agree to defer to them in this instance.

9 DEP. DIR. MCCARTHY: Mr. Parsons, our feeling was
10 also that it is not at all uncommon for the Commission when it
11 comes to dealing with properties which are amenities, such as in
12 the 901 New York Avenue development.

13 When the developer was completing the housing on
14 I think it was 10th Street and in the 1000 K Street, the housing
15 on 12th Street, no drawings at all were ever submitted of that,
16 for that housing to the Commission. That was just understood
17 that the amenity was to construct that housing in sites that had
18 been designated and in levels and amounts that had been
19 designated in the PUD documentation.

20 And so we felt that this was, in terms of the
21 Commission's review, superior. You'd have a chance to look at
22 the conceptual drawings, and then this is going to be subject to
23 HPRB anyway, and by some past legal precedents, Historic
24 Preservation Review Board authority over design is in effect
25 stronger than the Commission's. If push comes to shove, HPRB

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1 trumps the Zoning Commission with regard to design issues on
2 buildings that are designated historic.

3 Therefore, we thought that this was a reasonably
4 good compromise.

5 DIRECTOR ALTMAN: We also felt that, I mean, I
6 think the assumption was that the principle building --
7 separating the principal building from the amenity building and
8 site was really essentially going to be a preservation project,
9 that there's not significant alteration of the principal
10 structure other than the ninth and tenth floor as an addition.

11 So really the design issue then is one of the
12 consistency with the existing building, which is what the
13 purview of HPRB is. So it doesn't necessarily, I think, set
14 precedent with that respect because the assumption is that this
15 building will be what you see today, just enhanced and restored,
16 and so that would be their role to insure that.

17 COMMISSIONER PARSONS: Well, I was trying to
18 structure this. I agree with you, and I was trying to suggest
19 or make sure we had language that didn't saddle them that they'd
20 have to come back here because our normal PUD -- if this sketch
21 of Woodies changed significantly, I don't know what it would be.

22 They would essentially have to come back here, and I don't
23 think our objective is to hold this project up.

24 So that's all I was fishing for there. I don't
25 know. Maybe the applicant took care of that in their

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1 conditions, but I didn't find that. It just says, "All subject
2 to the design approval of the Historic Preservation Review
3 Board."

4 MR. JACKSON: Would it be helpful to change that
5 sentence to say Zoning Commission review of the conceptual
6 architectural plans and HPRB approval, final design approval?

7 COMMISSIONER PARSONS: I'm trying to say I don't
8 want to see them again.

9 MR. JACKSON: If you review it, you can just say
10 you reviewed it.

11 DIRECTOR ALTMAN: What you can say is all --
12 you're looking at our page 5, right?

13 COMMISSIONER PARSONS: And their page 2.

14 DIRECTOR ALTMAN: Hold on.

15 COMMISSIONER FRANKLIN: Why don't you just add
16 the word "solely" before the word -- "solely of the Historic
17 Preservation," "design approval solely"? Doesn't that do it,
18 one word? "All subject to the design review solely of the
19 Historic Preservation" --

20 COMMISSIONER PARSONS: All right, fine.

21 DIRECTOR ALTMAN: That's right. That's good.

22 COMMISSIONER PARSONS: I'm confused. This sketch
23 of the housing, which building are we looking at here?
24 Certainly not all of these.

25 DIRECTOR ALTMAN: That's F. Are you looking at

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1 this?

2 COMMISSIONER PARSONS: F Street, yeah. Which
3 one? The three little row houses in the back?

4 MR. BERGSTEIN: Those aren't the historical
5 houses that they have to preserve.

6 COMMISSIONER PARSONS: And the tall one is a new
7 building?

8 DEP. DIR. MCCARTHY: The construction behind the
9 three -- the three structures are preserved to a depth of about
10 60 feet.

11 COMMISSIONER PARSONS: Oh, so the tall building
12 adjacent to the street is not yet in the developer's hands.

13 DEP. DIR. MCCARTHY: Okay. Well, actually yeah.
14 It might make sense to have the applicant review that slightly
15 because what they're saying is this tall structure is new
16 construction. That's a noncontributing building that it's
17 replacing, and then the three buildings next to it, which are
18 contributing buildings are preserved to around 60 feet, with the
19 new construction then pushed substantially behind them.

20 CHAIRPERSON MITTEN: Mr. Parsons?

21 COMMISSIONER PARSONS: I think I understand that.
22 A nice setback.

23 (Laughter.)

24 COMMISSIONER PARSONS: I mean it's very seldom we
25 find a developer who's willing to do this. Usually it's ten

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1 feet, and that's all I can do, and I congratulate you.

2 COMMISSIONER FRANKLIN: I have a couple of
3 questions, Madame Chair. The first question is going to
4 conditions affecting Square 377, which is Paragraph 7,
5 Subparagraph C. What if the building permit for this referenced
6 residential development is not obtained within one year of our
7 final order? What happens?

8 MR. BERGSTEIN: Normally HUD conditions are
9 conditions to the issuance of the building permit for the PUD
10 itself or the C of O or would represent, if the building had
11 been constructed, arguably, grounds for revoking the C of O for
12 the PUD or at least limiting the building to matter of right
13 zoning.

14 COMMISSIONER FRANKLIN: Well, you're heading in
15 my direction on this because it seems to me if you ask yourself
16 the question under Paragraph C and you go down to Paragraph E,
17 it seems to me the cart is before the horse.

18 And one way of, I think, addressing that problem
19 because, you see, the bond that's referred to in D doesn't even
20 kick in until there's a building permit. So if there's no
21 building permit, D is not triggered.

22 MR. BERGSTEIN: The Office of Planning's version
23 that actually has the bond required within a certain period of
24 time after the Zoning Commission's decision. That's one of the
25 distinctions, although if this is a true performance bond, that

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1 is, a bond between the owner and the contractor, I don't know
2 how the applicant could be in a position to award a contract
3 until they've got building permits.

4 COMMISSIONER FRANKLIN: Right. So what I'd like
5 to suggest, colleagues, is that what we should be saying in E or
6 some comparable provision is that you can't get a C or O for
7 your space not associated with the preferred uses until there
8 has been a building permit issued on 377.

9 COMMISSIONER PARSONS: That's okay. That's a
10 good idea.

11 COMMISSIONER FRANKLIN: I mean, we're being told
12 the 377 is a slam dunk; it's going to happen. But I think we
13 ought to structure this so that there is a real incentive to do
14 it.

15 CHAIRPERSON MITTEN: I think that's a good
16 suggestion.

17 COMMISSIONER PARSONS: Good idea.

18 COMMISSIONER FRANKLIN: Then if that is done and
19 we look at D and sort of assume that -- by the way, going back
20 to C, I'm not sure essentially what is being said at the second
21 half of C, where it says, "Subject to obtaining proper
22 governmental approvals, assuming the applicant is diligently
23 pursuing the same."

24 I think the intent, as I read it, is that, yeah,
25 you have to get your building permit, but there may be other

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1 governmental approvals that haven't yet been obtained, although
2 you've got the building permit, although I don't know what those
3 might be, but it seems to me the building permit is the
4 culmination of a District process.

5 So maybe the Office of Planning can shed some
6 light on what's intended by that language.

7 MR. JACKSON: You're referring to?

8 COMMISSIONER FRANKLIN: The subject to obtaining
9 proper governmental approvals, et cetera.

10 MR. JACKSON: We didn't see --

11 DIRECTOR ALTMAN: That's not our language.

12 COMMISSIONER FRANKLIN: That's not your language.

13 All right. That's where the horse is buried then. Okay.

14 COMMISSIONER HOLMAN: Madame Chair, we've been
15 referring back and forth to these various documents. I guess
16 staff is going to have to sort this out later, but I'm just
17 wondering if we've identified all of the inconsistencies between
18 the two because I haven't looked at them side by side exactly.

19 CHAIRPERSON MITTEN: I think if we can nail down,
20 you know, 90 percent of our intent, when we do a final order, we
21 can clear those things up.

22 MR. JACKSON: Madame Chair, back to the issue of
23 the issuance of the bond.

24 CHAIRPERSON MITTEN: Yes.

25 MR. JACKSON: The reason that we tied it to the

1 six months for the effective date was that, going back to our
2 assumption that all of the work could be done in three years.
3 If the bond was initiated within six months, that would be six
4 months and three years for -- that would allow six months and
5 three years for the applicant to get all of the work done.

6 So it allows flexibility. It had a finality
7 because once the bond is in place, then assuming all the other
8 elements are in place to get the work done, and it's just a
9 matter of getting the final approval. So that's why we opted to
10 go that route as opposed to using certain language of looking
11 for if and when all of the approvals are secured.

12 CHAIRPERSON MITTEN: Okay.

13 DIRECTOR ALTMAN: We also had to clear -- I mean,
14 part of the language here, the issue between seven and ours is
15 when we tried it to the order was, I think, what you're pointing
16 out, Mr. Franklin, the concern with what's the enforcement. If
17 you don't have the building permit within one year, everything
18 else is triggered based on that, right? Your three years for
19 the bond, everything else.

20 So you're concerned if you're not diligent, but
21 you proceed with the rest of the development. Then what's the
22 reasonable enforcement you're going to undertake?

23 So to simplify that, I thin what we have proposed
24 was imply saying from the date of the order that there's a
25 three-year time period and that that bond is already posted, and

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1 so just to kind of eliminate any potential risk of that
2 occurring.

3 COMMISSIONER FRANKLIN: I understand that, but
4 what I'd like to suggest, Mr. Altman, is that I don't see the
5 point unless you can enlighten me as to what is the intent of
6 all the language beginning with subject two in Paragraph C.

7 CHAIRPERSON MITTEN: That's the applicant's
8 language. And, Mr. Franklin, I think with your addition to E of
9 the requirement --

10 COMMISSIONER FRANKLIN: Yeah, holding the others
11 hostage to that.

12 CHAIRPERSON MITTEN: Right. We may be able to
13 eliminate C entirely.

14 MR. BERGSTEIN: The only government --

15 COMMISSIONER FRANKLIN: Well, I'd still like to
16 say that we're expecting it in the year. I mean, I understand
17 what you're saying, but I think it may be belts and suspenders,
18 but I think --

19 CHAIRPERSON MITTEN: Okay.

20 COMMISSIONER FRANKLIN: But I don't see the need
21 for anything --

22 CHAIRPERSON MITTEN: Anything after that?

23 COMMISSIONER FRANKLIN: -- after "subject to," et
24 cetera.

25 CHAIRPERSON MITTEN: All right. Is everybody

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1 comfortable with getting rid of "subject to"?

2 COMMISSIONER PARSONS: Yes.

3 DEP. DIR. MCCARTHY: I think we have seen
4 language in other cases that suggested that building permit is
5 supposed to be obtained within one year of the date of the
6 Zoning Commission final order unless -- I'm trying to remember
7 the language. It would basically suggest unless this was not at
8 the fault of the applicant, if it were held up by the city, if
9 the applicant had done everything necessary to request the
10 permits and the action had not been forthcoming as a result of
11 city action and not the applicant's fault, that that would be
12 the extenuating circumstance, and that would be the only
13 extenuating circumstance.

14 MR. BERGSTEIN: Unless you want to change it from
15 attained to applied for, and then once the building permits were
16 applied for, assuming that the plans were complete, so that all
17 processes could occur after that, then any delay after an
18 application was filed would be on the government.

19 SECRETARY BASTIDA: Madame Chairperson, if I may,
20 I have concerns about "may apply for a building permit" because
21 it doesn't address the totality of the drawings to apply for
22 that building permit because there are many stages in which you
23 can apply for a building permit at stages of the drawings.

24 Accordingly, I would suggest a different
25 language, but let me point, if I may, something out. This

1 proposal will have to be reviewed by the National Capital
2 Planning Commission. Unfortunately, I tried to set it on their
3 calendar for the March meeting, and they will not be able to do
4 that. So we're going to have to wait until the NCPC April
5 meeting that then will have our April meeting.

6 I think that the staff will be glad -- OZ staff
7 will be glad to work with the applicant to eliminate all those
8 discrepancies and try to work in that proposed final draft what
9 your concerns are.

10 CHAIRPERSON MITTEN: That sounds like a good
11 suggestion.

12 SECRETARY BASTIDA: Thank you.

13 COMMISSIONER FRANKLIN: Madame Chair, if I could
14 then proceed to Paragraph D because I have some issues there.

15 CHAIRPERSON MITTEN: Yes, Mr. Franklin, please.

16 COMMISSIONER FRANKLIN: I know that OP is now
17 suggesting that the bond, however it's characterized, ought not
18 to be tied to at least in timing terms the issuance of a
19 building permit, but the problem I have with this bond idea is
20 that until there are final plans and specs, which presumably you
21 have for a building permit, you don't know how much the bond
22 should be, I mean, because that's going to be the basis for the
23 cost of the project.

24 CHAIRPERSON MITTEN: Good point.

25 COMMISSIONER FRANKLIN: So I'm kind of inclined

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1 to leave it tied to the building permit because that will
2 determine basically the value of the bond, and we might say not
3 less than 18 million or the appraised cost of the plans and
4 specs., whichever is higher.

5 But I don't know that we need to call it a
6 performance bond either. I suggest we might just say "provide a
7 bond in form and substance satisfactory to the Corporation
8 Counsel," and let them worry about the characteristics of the
9 language.

10 Sorry to throw it in your direction, but I think
11 just to get this thing underway and not fuss over the technical
12 aspects of it, I think if it's satisfactory to you guys, you
13 know, within a reasonable time, that should suffice.

14 MR. BERGSTEIN: I think I would ask you to at
15 least state the intent of the bond. Is it to furnish a bond
16 that would guarantee the completion of the housing, the
17 presidential housing, envisioned or promised or however you
18 would put it?

19 COMMISSIONER FRANKLIN: Well, the first phrase
20 says "to assure to construction of" this housing. Is that
21 inadequate?

22 MR. BERGSTEIN: I might just reverse it. "The
23 applicant shall provide a bond to assure the construction of
24 housing," and I would say in an amount not less than \$18 million
25 or the price of any contract awarded for the housing, whichever

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1 is greater.

2 COMMISSIONER FRANKLIN: Fine.

3 Then we go down to the language in the next
4 sentence. "The bond shall be structured so that if the
5 referenced housing is not completed within three years from the
6 date of issuance, the bond can be called by the District Office
7 of Planning." Is that really what we're being told?

8 "And the proper entered to complete housing
9 construction," and I would add the phrase "by or at the
10 direction of the District OP."

11 In other words, they are not themselves going to
12 -- or you can strike the word "by" if you want and just leave
13 "at the direction of," yeah. I don't know if you want to go
14 into the housing construction business, Mr. --

15 MR. BERGSTEIN: I didn't realize this is a whole
16 new line of work for me.

17 COMMISSIONER FRANKLIN: Well, it's called multi-
18 tasking, I think, these days.

19 MR. BERGSTEIN: And I would suggest "to the
20 extent permitted by law."

21 CHAIRPERSON MITTEN: Always.

22 COMMISSIONER FRANKLIN: Alan, we would never do
23 anything that was not permitted by law.

24 (Laughter.)

25 COMMISSIONER FRANKLIN: I'm trying to help

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1 somebody here.

2 CHAIRPERSON MITTEN: Can you work with that, Mr.
3 Bergstein?

4 MR. BERGSTEIN: I will do my best.

5 COMMISSIONER FRANKLIN: That is all I had, Madame
6 Chair, on that section.

7 CHAIRPERSON MITTEN: All right. I wanted to make
8 a similar sort of suggestion since we don't have a timing
9 mechanism to guarantee delivery of housing on square 517. A
10 similar sort of withholding of incentives under the downtown
11 development district provisions if there's not timely delivery
12 of housing on Square 517.

13 So I would like to, in an appropriate place, to
14 add that there would be no DD incentives available for Square
15 517 if construction of housing on Square 517 does not commence
16 within six years of the date of the zoning order, which
17 typically it would be then five years from the date of the order
18 for a building permit, and then construction to commence within
19 one year.

20 And that way it will give an added incentive to
21 them doing it sooner as opposed to later since we don't have any
22 other mechanism for that.

23 Anybody have any reaction to that?

24 COMMISSIONER FRANKLIN: I was in a colloquy with
25 Mr. Altman, and I didn't quite hear what you said.

1 COMMISSIONER HOLMAN: This is as opposed to
2 letting the market -- okay. I'm thinking.

3 CHAIRPERSON MITTEN: Okay.

4 COMMISSIONER HOLMAN: I'll turn my microphone
5 off.

6 CHAIRPERSON MITTEN: Maybe I'll tell Mr. Franklin
7 what I said and then you think.

8 (Laughter.)

9 CHAIRPERSON MITTEN: The idea is that we don't
10 have another mechanism for sort of encouraging the applicant to
11 deliver housing on Square 517 sooner as opposed to later. So I
12 was suggesting if we included language that would basically
13 eliminate the DD incentive so that the opportunity to do
14 combined lot development and the opportunity to generate TDRs,
15 if they don't do it within six years of the zoning order, which
16 I think gives them ample time, you know, considering Square 377
17 will be delivered first.

18 It is an incentive then to get it done soon. It
19 was the thought.

20 COMMISSIONER FRANKLIN: Yeah, I think that that's
21 a reasonable approach. Actually in the absence of that housing,
22 presumably you know they don't have the FAR that's qualifying to
23 some degree for combined lot usage anyway, or am I wrong about
24 that?

25 CHAIRPERSON MITTEN: I think that's incorrect.

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1 COMMISSIONER FRANKLIN: That's incorrect?

2 CHAIRPERSON MITTEN: Yeah. I mean eventually --
3 let's say after this time period had expired -- I mean, well,
4 whenever they build something on Square 517, they have 123,000
5 square feet of required residential on the site because of the
6 zoning, and then approximately 13,000 square fee of the
7 additional housing will count as the amenity for this PUD, and
8 then the rest of it, up to eight and a half FAR and if they get
9 more because we ease up on the density restrictions and they
10 don't get to count it, but that gap would be available for
11 combined lot development.

12 COMMISSIONER FRANKLIN: But if there's no
13 housing, that amount isn't --

14 CHAIRPERSON MITTEN: Well, yeah, but the idea is
15 to get the housing there earlier and to give them the incentive
16 to do it by saying you would get to benefit from the DD
17 incentives if you do it within six years.

18 COMMISSIONER FRANKLIN: Oh, I see. I see.

19 CHAIRPERSON MITTEN: And if you don't, then you
20 don't get those incentives.

21 COMMISSIONER FRANKLIN: I see. I follow you now.

22 CHAIRPERSON MITTEN: It's the only think I could
23 think of to try and push --

24 COMMISSIONER FRANKLIN: Yeah, I think that's
25 very, very --

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1 CHAIRPERSON MITTEN: -- things forward.

2 COMMISSIONER FRANKLIN: I agree.

3 CHAIRPERSON MITTEN: Okay.

4 PARTICIPANT: What specific words did you have?

5 CHAIRPERSON MITTEN: I said that I don't know
6 exactly where in the thing, but I had said no downtown
7 development district incentives would be available for Square
8 517 or, you know, the amenity site on Square 517 if construction
9 of the residential use on the Square 517 parcel does not
10 commence within six years of the date of the zoning order.

11 COMMISSIONER HOLMAN: Okay. Now I remember my
12 question. Where did the six years come from? I was trying to
13 follow that, and maybe you could explain that.

14 CHAIRPERSON MITTEN: I just thought since we're
15 looking at basically three years, three to four years as the
16 trigger, I mean, and that's in a worst case scenario on Square
17 377, and then I thought, well, if we give them roughly five
18 years on Square 517 to obtain a building permit and commence
19 construction within a year after that, that's where the six
20 years comes from.

21 COMMISSIONER HOLMAN: Okay. I thought there was
22 some issue about the housing market there, and that's what's
23 confusing me, that we were trying to make sure that the housing
24 market had sufficiently matured, and so I was just trying to
25 think about your six years in that context.

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1 CHAIRPERSON MITTEN: Okay. I mean, do you have
2 another suggestion?

3 COMMISSIONER HOLMAN: No.

4 CHAIRPERSON MITTEN: Okay.

5 COMMISSIONER HOLMAN: That's the reason I turned
6 my mic off the first time.

7 COMMISSIONER FRANKLIN: Perhaps one way of
8 dealing with that, which is a legitimate concern would be to say
9 that before they can come back and earn that, they have to come
10 back to the Commission and explain --

11 CHAIRPERSON MITTEN: I think that's legitimate.

12 COMMISSIONER FRANKLIN: -- market conditions
13 don't permit the housing to be developed.

14 CHAIRPERSON MITTEN: Okay.

15 COMMISSIONER FRANKLIN: And then you'd get a
16 renewal.

17 CHAIRPERSON MITTEN: Okay.

18 COMMISSIONER PARSONS: Good, great.

19 CHAIRPERSON MITTEN: Anything else?

20 COMMISSIONER HOLMAN: No.

21 COMMISSIONER FRANKLIN: I have nothing.

22 CHAIRPERSON MITTEN: I had one little -- this is
23 maybe a little pet peeve of mine, but since there's going to be
24 application to designate the parcel in Square 377 as part of
25 housing priority Area C, I would also like there to be

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1 application to remove Square 346 from the list in Section
2 1707.4, limiting it to 6 FAR on site because it probably should
3 have never been in the list in the first place, and I don't want
4 anyone to be able to come back later and use that as an argument
5 for why on a PUD site they should be allowed to exceed 6 FAR
6 under some extenuating circumstance.

7 COMMISSIONER FRANKLIN: Okay. If that's your pet
8 peeve.

9 CHAIRPERSON MITTEN: You'll go with it? Thank
10 you.

11 (Laughter.)

12 CHAIRPERSON MITTEN: All right. So I think aside
13 from some work that Mr. Bergstein needs to do for us to help us
14 with the language of the final order, I think we're ready to
15 vote on including the various suggestions that have been offered
16 by the Commissioners.

17 I would entertain a motion for approval of this
18 planned unit development incorporating the changes to the
19 conditions that we've discussed tonight, the combination of the
20 changed conditions between the proposed conditions from the
21 applicant, and the newly proposed conditions from the Office of
22 Planning.

23 COMMISSIONER HOLMAN: So moved, as long as I
24 don't have to recite them line for line.

25 CHAIRPERSON MITTEN: No, that won't be necessary.

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1 COMMISSIONER FRANKLIN: Second, Madame Chair.

2 CHAIRPERSON MITTEN: It's been moved and properly
3 seconded. Any other discussion?

4 (No response.)

5 CHAIRPERSON MITTEN: All those in favor, aye.

6 (Chorus of ayes.)

7 CHAIRPERSON MITTEN: Opposed?

8 (No response.)

9 CHAIRPERSON MITTEN: Staff would record the vote?

10 SECRETARY BASTIDA: Yes, Madame Chairperson. I
11 have a proxy from Mr. Hood --

12 CHAIRPERSON MITTEN: Oh, very good.

13 SECRETARY BASTIDA: -- in the affirmative.

14 CHAIRPERSON MITTEN: Very good.

15 SECRETARY BASTIDA: So the staff would record the
16 voted five to zero, Mr. Holman moving and Mr. Franklin seconded,
17 Ms. Mitten and Mr. Parsons voting on the affirmative, Mr. Hood
18 voting in the affirmative by proxy.

19 CHAIRPERSON MITTEN: Thank you.

20 SECRETARY BASTIDA: Thank you.

21 I would also -- we will have the advantage of
22 having the transcript, and we will make sure that that draft
23 will reflect as accurately as possible what has transpired this
24 evening.

25 CHAIRPERSON MITTEN: Thank your, Mr. Bastida.

1 SECRETARY BASTIDA: Thank you.

2 CHAIRPERSON MITTEN: Thank you all for attending.

3 DIRECTOR ALTMAN: Chairman, may I just say one?

4 CHAIRPERSON MITTEN: Yeah.

5 DIRECTOR ALTMAN: I just want one thing for the
6 record just to clarify that. We'll just make sure in the
7 language, and we've all agreed to this, that the city is a party
8 to the various covenants and declarations that have been entered
9 into here, in other words, to the performance bond, and we'll
10 assure that when we massage the language that that's the intent
11 of the Commission and was our intent.

12 CHAIRPERSON MITTEN: Thank you, Mr. Altman.

13 COMMISSIONER FRANKLIN: And thank you, Mr.
14 Altman. I think that you and your staff have done a remarkable
15 job in bringing us to this point, and I hope it all will bear
16 fruit.

17 CHAIRPERSON MITTEN: I declare this special
18 public meeting adjourned.

19 (Whereupon, at 7:09 p.m., the public meeting was
20 concluded.)

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