

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL MEETING
1116 MEETING SESSION (8th OF 2001)

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THURSDAY
JUNE 21, 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 |
| ANTHONY J. HOOD | Vice Chairperson |
| HERBERT M. FRANKLIN | 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
Jennifer Steingasser, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Corey Buffo, Esq.

A-G-E-N-D-A

Preliminary Matters..... (none)

Proposed Action Z.C. Case No. 00-28T
(Text Amendment -Electronic Equipment
Facilities - Permanent Regulations) 5

Final Action Z. C. Case No. 00-39MA
(The Salvation Army - Massachusetts Ave.
Between 5th & 6th Streets N.W.)

POSTPONED

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

(6:00 p.m.)

CHAIRPERSON MITTEN: Good evening ladies and gentlemen. This is a Special Public Meeting of the Zoning Commission for Thursday, June 21, 2001. My name is Carol Mitten. Joining me this evening are Vice Chairman Anthony Hood, and Commissioners Herb Franklin and John Parsons.

For those of you who may have a copy of our revised Agenda, we will not be able to take final action this evening on the Salvation Army rezoning, because three commissioners heard that case and one of whom is no longer on the Zoning Commission, Commissioner Holman (phonetic), and we'll have to have one of the additional commissioners, at least one of the additional commissioners read the record before we can take final action on that. So, we'll move then ?

SECRETARY BASTIDA: Madam Chairman?

CHAIRPERSON MITTEN: Yes.

SECRETARY BASTIDA: I intend to provide the record to Mr. Parsons and Mr. Franklin. It's a very short record because it was a very short hearing, and then we'll take this on the July 16th meeting.

CHAIRPERSON MITTEN: Great. Thank you.

SECRETARY BASTIDA: Okay, thank you.

CHAIRPERSON MITTEN: Are there any preliminary matters before we move to the proposed action?

SECRETARY BASTIDA: No, we don't have any

1 preliminary matters. Thank you.

2 CHAIRPERSON MITTEN: Thank you. So, we'll move to
3 proposed action on Zoning Commission Case #00-28T, Mr. Bastida.

4 SECRETARY BASTIDA: You have received all the
5 information and in addition, the Office of Planning did an
6 excellent job on putting all the alternatives that the
7 Commission has discussed and heard as a special document for
8 you to be able to see easier what is in front of you, and the
9 staff requests that you take an action on this matter.

10 CHAIRPERSON MITTEN: Thank you. I think the
11 easiest way to move through this is if everyone could have the
12 proposed language in front of them that, I believe the Office
13 of Planning provided and is dated June 14, 2001.

14 SECRETARY BASTIDA: Unfortunately, Madam Chairman,
15 that is only on the first page, so it's the page that has ?
16 it's not on the first page, so it begins with Letter A and
17 doesn't have anything at the top.

18 CHAIRPERSON MITTEN: Right, I think we all have
19 it.

20 SECRETARY BASTIDA: Right, yes, I believe that's
21 the case.

22 CHAIRPERSON MITTEN: Very good. Let's begin then
23 with the definitions. We have a definition ? would you like ?

24 COMMISSIONER PARSONS: I'd just like to let the
25 folks know that I did not participate in the hearings, but I
26 have reviewed the record and I'm prepared to participate in the

1 decision.

2 CHAIRPERSON MITTEN: Thank you, Mr. Parsons.
3 Let's begin with the definition of electronic equipment
4 facility. Anyone have any suggestions, problems, with the
5 definition?

6 COMMISSIONER FRANKLIN: Madam Chair, I have a
7 couple of suggestions or questions. First, my question is, is
8 it necessary for us to include the Subparagraph C at all, if in
9 fact the first paragraph covers the functions that we're
10 concerned with. I mean, I'm a little bit concerned about
11 confusing the situation if, and I speak only as somebody who
12 maybe doesn't really know enough technically, but I would be
13 concerned if the first paragraph did not comprehensively cover
14 the functions that are of concern.

15 CHAIRPERSON MITTEN: Well, I agree with that. I
16 think the idea of the Subparagraph C was just because there's
17 not necessarily uniform, well there isn't uniform terminology
18 being used to refer to these things, that if someone were to
19 come to the Zoning Administrator, for instance, and say "well,
20 I would like to put in a telecommunication switching center,
21 not an electronic equipment facility" and the Zoning
22 Administrator wouldn't have the expertise to know that that
23 actually is the equivalent of an electronic equipment facility.

24 I think it's just trying to sort out some of the parallel
25 language that is sometimes used to refer to EEF's.

26 COMMISSIONER FRANKLIN: Well, then somebody can

1 come up with another name.

2 CHAIRPERSON MITTEN: True.

3 COMMISSIONER FRANKLIN: Are we satisfied that the
4 function ? I guess my question is, are we satisfied that the
5 functions described in the first paragraph are comprehensive
6 enough so that regardless of what name is given to a facility,
7 if it can be characterized as the first paragraph characterizes
8 it, it's name is irrelevant.

9 CHAIRPERSON MITTEN: Yes.

10 COMMISSIONER FRANKLIN: And I don't know whether,
11 you know, there's anybody here who can say that or not, but I
12 would hope that's the case because, you know, if it's not and
13 then somebody comes up with another name that's not listed in
14 C, I just think stylistically it's better, well might be better
15 to say something generically about the names given rather than
16 listing them, but not limited to a savings phrase in that
17 Subparagraph C. But, I'm just wondering, is ? for example, is
18 a telecommunications switching center the same thing as what we
19 are describing in the first paragraph?

20 CHAIRPERSON MITTEN: I think so, yes.

21 COMMISSIONER FRANKLIN: It is?

22 CHAIRPERSON MITTEN: Yes.

23 COMMISSIONER FRANKLIN: Is a telecommunications
24 central office the same?

25 CHAIRPERSON MITTEN: Potentially. I mean, if it's
26 the central office of a telecommunications company, no. But,

1 if those ? because specifically under Subparagraph A, it says
2 "such a facility does not include company offices, retail, or
3 customer service operations."

4 COMMISSIONER FRANKLIN: Right. Well, I was
5 wondering whether that sentence couldn't be handled by the word
6 "primarily" that appears in the first paragraph. In fact, I
7 would add primarily ? let me just read the first clause here
8 and see if you can agree with me it might be improved.

9 CHAIRPERSON MITTEN: All right.

10 COMMISSIONER FRANKLIN: "A facility or space used
11 primarily for, or intended to be primarily used for the housing
12 operation and/or co-location of computer equipment that
13 provides electronic data switching" I would add the word
14 storage --

15 CHAIRPERSON MITTEN: Yes.

16 COMMISSIONER FRANKLIN: ? "transmission or
17 telecommunication functions" and then I would change it to say,
18 whether inside or outside the facility, rather than saying both
19 inside or outside.

20 CHAIRPERSON MITTEN: Okay.

21 COMMISSIONER FRANKLIN: I think the intent is to
22 say, these functions are part of the definition whether inside
23 or outside the facility.

24 CHAIRPERSON MITTEN: Okay. I think that's good.
25 Now, could be just, for the sake of clarity, say "electronic
26 data switching, electronic data storage?"

1 COMMISSIONER FRANKLIN: Yes, fine.

2 CHAIRPERSON MITTEN: All right.

3 COMMISSIONER FRANKLIN: Then I would just strike
4 the words "except, however" and just begin with the next
5 sentence that says "this definition shall not include", and
6 here I just have a suggestion. I don't know whether
7 technically it's intended or not. "This definition shall not
8 include independent freestanding structures occupying less
9 than" ?

10 CHAIRPERSON MITTEN: Well, these would be both
11 independent freestanding structures and facilities within an
12 existing building.

13 COMMISSIONER FRANKLIN: Well then, can a structure
14 be a facility within an existing ?

15 CHAIRPERSON MITTEN: I was going to suggest that
16 we change structures to facilities.

17 COMMISSIONER FRANKLIN: Oh.

18 CHAIRPERSON MITTEN: Which would be more, I think
19 more accurate.

20 MR. FRANKLIN: Okay.

21 CHAIRPERSON MITTEN: "This definition shall not
22 include facilities occupying" ?

23 COMMISSIONER FRANKLIN: Fine. That clears up that
24 problem, right.

25 CHAIRPERSON MITTEN: Okay, and then just to finish
26 out where you were going perhaps, "less than 1500 square feet

1 of building area", remove the comma "that are utilized as".

2 COMMISSIONER FRANKLIN: Yes.

3 CHAIRPERSON MITTEN: All right.

4 COMMISSIONER FRANKLIN: Good.

5 CHAIRPERSON MITTEN: And then your thoughts about
6 Subparagraph C?

7 COMMISSIONER FRANKLIN: Well, I would recast that
8 a little bit to ? if I could just put my thinking cap on and
9 come back to that, Madam Chair?

10 CHAIRPERSON MITTEN: Okay.

11 COMMISSIONER FRANKLIN: Then in Subparagraph A, I
12 question whether you need the second sentence if the words
13 "primarily" are inserted in the first paragraph.

14 CHAIRPERSON MITTEN: I know what you mean. I
15 think some of the things that are in here are really just to
16 kind of, to go overboard. It's for the sake of clarity, you
17 know, to say "this is what we mean, and by the way this is what
18 we don't mean." So, I know what you mean when you say that,
19 you know, it's ?do you have strong feelings about that?

20 COMMISSIONER FRANKLIN: No, I don't. I just think
21 that it's important that the word "primarily" be repeated.

22 CHAIRPERSON MITTEN: Yes.

23 COMMISSIONER FRANKLIN: In two places.

24 CHAIRPERSON MITTEN: Okay.

25 COMMISSIONER FRANKLIN: And at least one place up
26 there.

1 CHAIRPERSON MITTEN: Okay.

2 COMMISSIONER FRANKLIN: And then, Subparagraph B
3 doesn't strike me as appropriate for inclusion in something
4 that's a definition.

5 CHAIRPERSON MITTEN: I agree.

6 COMMISSIONER FRANKLIN: It probably should be
7 placed elsewhere in the regulations.

8 CHAIRPERSON MITTEN: Okay, I think that can be
9 accomplished.

10 COMMISSIONER FRANKLIN: So, I would just put down
11 "relocate" in the margin there, just to remind us.

12 CHAIRPERSON MITTEN: Okay.

13 COMMISSIONER FRANKLIN: Right.

14 CHAIRPERSON MITTEN: And perhaps while we're on
15 the subject of Subparagraph B which will go elsewhere, and so
16 will the thought that I'm going to introduce depending what we
17 do with it, is I just want to make sure we don't miss any of
18 the proposals that have been made to us.

19 DCBIA had made a proposal that would allow
20 lessees, who had intended to put an EEF in a building and had
21 signed a lease for that purpose but hadn't completed the
22 construction of it, that they would be somehow able to register
23 those leases and, you know, so that their original intent that
24 predated the emergency regulations and predated these
25 regulations wouldn't be thwarted because they just didn't move
26 fast enough.

1 So, I don't know if anyone has any thoughts about
2 that.

3 COMMISSIONER FRANKLIN: I think that's a fair
4 savings. It might be accomplished, and this is just off the
5 top of my head, after the word "vested", to put in parenthesis
6 "by lease or otherwise." I don't know what vested means really
7 in that context, and there isn't any real explication of what
8 it means.

9 CHAIRPERSON MITTEN: True, and you know, I don't
10 know what they, when they've been issuing certificates of
11 occupancy, I don't know what they've been writing on them in
12 terms of what the facility is.

13 I think, unless anyone has any objections, I'd
14 like to somehow incorporate the language that "DCBIA had
15 proposed" which is on Page 3 of their May 25th submission to us,
16 and then there was an attachment about basically how to
17 accomplish the registration, which is Exhibit 3. Is everybody
18 on board with that?

19 COMMISSIONER FRANKLIN: Yes.

20 CHAIRPERSON MITTEN: So, that will go at the same
21 place where Subparagraph B is relocated to. Anything else on
22 the definitions? We have a definition of ground floor. I
23 would just suggest that the definition of ground floor, say
24 "the floor that is nearest in grade elevation to the adjacent
25 sidewalk."

26 COMMISSIONER FRANKLIN: I was wondering whether it

1 ought to be the adjacent street or roadway, since sidewalks
2 are, you know, you can put some fill in and raise the sidewalk
3 especially if you were doing development.

4 CHAIRPERSON MITTEN: Okay.

5 COMMISSIONER FRANKLIN: And I'm just thinking that
6 if there's an adjacent street ?

7 CHAIRPERSON MITTEN: Why don't we say "adjacent
8 right-of-way", because that's public space, adjacent right-of-
9 way.

10 COMMISSIONER FRANKLIN: Okay.

11 CHAIRPERSON MITTEN: All right. Page 2 ?

12 MR. BERGSTEIN: I'm sorry, Madam Chairman, can I
13 just ask for one clarification about one of the changes that
14 was proposed?

15 CHAIRPERSON MITTEN: Yes.

16 MR. BERGSTEIN: Which is back in the introductory
17 paragraph. You want to add the word "storage" but then you
18 suggested adding the introductory language "electronic data
19 storage." If you do that, the term electronic data I thought
20 modified switching transmission or telecommunication function.
21 If you repeat electronic data after storage ?

22 CHAIRPERSON MITTEN: I see.

23 MR. BERGSTEIN: ? it really is transmission, so I
24 don't think you need to put electronic data before the word
25 storage. I think it's intended to modify everything that
26 follows.

1 CHAIRPERSON MITTEN: And how can we make sure that
2 that's crystal clear and not just intended, but anybody who
3 reads it will understand that?

4 MR. BERGSTEIN: Unless you repeat it every single
5 time.

6 CHAIRPERSON MITTEN: Well, could be do electronic:
7 1) switching, 2) storage, 3) transmission, or 4)
8 telecommunication?

9 MR. BERGSTEIN: Yes.

10 CHAIRPERSON MITTEN: Okay.

11 COMMISSIONER FRANKLIN: You'd want electronic data
12 colon.

13 CHAIRPERSON MITTEN: Yes. That way, there won't
14 be any confusion later.

15 COMMISSIONER PARSONS: Are we going to return to
16 C?

17 CHAIRPERSON MITTEN: Yes. If you have something
18 to say now; otherwise, we'll kind of come back to that. I made
19 a note because Mr. Franklin wanted a little bit more time to
20 think about that.

21 COMMISSIONER PARSONS: It's silly, but aren't they
22 called telecom hotels on the last line? Is that a typo?

23 CHAIRPERSON MITTEN: Yes, they are called telco
24 hotels. They may also be called telecom hotels. I've seen
25 telco hotel used.

26 COMMISSIONER FRANKLIN: I'd rather see us say that

1 more generally, because the inventiveness of people in the
2 field is just unlimited.

3 CHAIRPERSON MITTEN: Right.

4 COMMISSIONER FRANKLIN: And, something that says
5 the definition encompasses that the ? an EEF is as described
6 regardless of the name given to it by anybody, something to
7 that effect.

8 CHAIRPERSON MITTEN: Right. I definitely think
9 that's what, that's the intent of Subparagraph C.

10 COMMISSIONER PARSONS: Right.

11 COMMISSIONER FRANKLIN: Right. Oh, yes.

12 CHAIRPERSON MITTEN: So, perhaps we'll just ? I
13 mean, I think our intent also is known, and maybe we can just
14 noodle around with the language on that a little bit more
15 before it gets published.

16 COMMISSIONER PARSONS: So, the record will reflect
17 we're going to noodle it?

18 CHAIRPERSON MITTEN: Yes. Mr. Bergstein is good
19 at noodling things.

20 COMMISSIONER FRANKLIN: Well, I would suggest,
21 although it's a fairly long run-on sentence, that we could at
22 the end of the first sentence in the definition: ", regardless
23 of the name given to such facility by an applicant."

24 MR. BERGSTEIN: Although, you know that should be
25 the way it is anyway.

26 COMMISSIONER FRANKLIN: Right.

1 MR. BERGSTEIN: I was toying with the idea of a
2 footnote, almost an explanatory footnote that after, "determine
3 electronic equipment facility", putting a footnote, which I
4 never heard in a definition, but I guess I'm throwing it out to
5 say, you know, this name has also been applied to such things
6 as.

7 But, I agree with the general statement that's
8 been made that it doesn't matter what you call the thing in
9 your application, it's the obligation of the Zoning
10 Administrator to look at what's being described, look at this
11 definition and see if the term meets it. But, I also
12 understand the intent behind this. So, we can try noodling in
13 various ways and provide our results to you.

14 CHAIRPERSON MITTEN: Thank you. Page 2. Any
15 comments under the Letter B there, which would be, which relate
16 to 601.2?

17 I'll just remind everyone that we had some
18 alternative suggestions here. World Com had suggested
19 expanding, to permit expansion of existing EEF's up to 50
20 percent of the gross floor area, and that 35 percent should be
21 a matter-of-right, and that DCBIA had recommended a linear
22 restriction, rather than a percent of building type
23 restriction, just so we're clear about what alternatives have
24 been proposed.

25 Is anyone interested in pursuing any of the
26 alternatives first?

1 COMMISSIONER FRANKLIN: Well, it's very hard to
2 choose between 25 and 35 percent.

3 CHAIRPERSON MITTEN: Right.

4 COMMISSIONER FRANKLIN: Since there is an
5 exception that is being provided, as I understand it, under
6 certain conditions, I guess the real question is do we want to
7 see more people coming in for Special Exceptions? And, one
8 could argue that if you raise it from 25 to 35, you might
9 inhibit a lot of Special Exceptions conceivably. That's my
10 only thought Madam Chair.

11 CHAIRPERSON MITTEN: Yes. I can't say that I have
12 a strong feeling one way or the other, and without a strong
13 feeling, I guess I'd just as soon go with the recommendations
14 of the Office of Planning.

15 VICE CHAIRPERSON HOOD: I also would agree Madam
16 Chair. I understand Commissioner Franklin's point, but
17 sometimes when we kind of get into these things and start
18 tweaking, we open up another gate, so I would concur.

19 COMMISSIONER FRANKLIN: Well, I'm not pushing the
20 point. I just, you know, I agree.

21 CHAIRPERSON MITTEN: Okay. I would just like to
22 say to modify, and if people agree with this, let's see
23 601.2(d), Subparagraph 1, where it says "25 percent of the
24 constructed above-ground gross floor area", above-ground is
25 redundant, because gross floor area is above ground. So, I
26 don't want to convey that we don't understand the meaning of

1 our own terms.

2 And also, in Subparagraph 2, "the EEF use is
3 located 100 percent below ground", that sort of precludes it
4 being at all above ground, so I think it should just be "the
5 EEF use is located below ground", because they could be some
6 below ground and some above ground, and actually occupy in
7 terms of total building area, more than 25 percent.

8 COMMISSIONER FRANKLIN: I agree, Madam Chair.

9 CHAIRPERSON MITTEN: Okay.

10 COMMISSIONER PARSONS: I don't understand.

11 CHAIRPERSON MITTEN: It says that ?

12 COMMISSIONER PARSONS: This makes a specific
13 point, that it has to be completely below ground, and you've
14 eliminated that.

15 CHAIRPERSON MITTEN: What it says at the beginning
16 of that paragraph, is that "shall be permitted as a matter-of-
17 right in the CR District under either or both of the following
18 circumstances."

19 COMMISSIONER PARSONS: Right.

20 CHAIRPERSON MITTEN: So, I guess what I'm saying
21 is, you can't have both with the definition, with #2 written as
22 it is, because if it's 100 percent below ground, it can't be at
23 all above ground.

24 COMMISSIONER PARSONS: So then why don't we
25 eliminate "or both"?

26 COMMISSIONER FRANKLIN: Well, that gets to the

1 major, I think, distinction between the language before us now
2 and the previous language, which if I understand correctly, is
3 to clarify that there could be matter of right EEF's that are
4 totally located below grade or below ground with nothing on
5 top, correct?

6 CHAIRPERSON MITTEN: Yes, that's a possibility.
7 That's one possibility.

8 COMMISSIONER FRANKLIN: Right.

9 CHAIRPERSON MITTEN: Then another possibility ?

10 COMMISSIONER FRANKLIN: Which was questionable at
11 least in my mind under the earlier language.

12 CHAIRPERSON MITTEN: Okay, and then another
13 possibility is that it's completely above grade and it doesn't
14 occupy any more than 25 percent of the building.

15 Then another possibility, depending on how this
16 is written, is that it's below grade and it's above grade, and
17 the above grade portion is limited to 25 percent, but given
18 however big the combination of above grade and below grade is,
19 it may actually occupy more than 25 percent of the total
20 building area.

21 And I think the concern was just that, in terms
22 of the above grade where, you know, you tend to be looking for
23 the activity, we didn't want to have that too concentrated.
24 But, this would, I mean in terms of thinking about whether or
25 not we would want to have, you know, 35 percent instead of 25
26 percent. This does allow some flexibility for a larger

1 facility, just not having too much of it above grade.

2 COMMISSIONER FRANKLIN: I have another question.

3 CHAIRPERSON MITTEN: Mr. Parsons doesn't look
4 completely happy yet. Is it that you didn't understand what I
5 said, or?

6 COMMISSIONER PARSONS: I'm still trying to figure
7 out how you build something 100 percent below grade as a
8 matter-of-right if you take that out.

9 CHAIRPERSON MITTEN: All I'm suggesting is to take
10 out 100 percent, because then it can be below ground either
11 completely or partially, if you take out 100 percent, just take
12 out that.

13 COMMISSIONER FRANKLIN: In effect, what it's
14 saying is that if you're below grade, you can proceed as a
15 matter-of-right. I think that's all it is.

16 VICE CHAIRPERSON HOOD: Madam Chair, I really
17 don't understand whether the 100 percent is in there or not, I
18 really don't see us needing to take that out of there. Maybe
19 I'm not understanding, but I don't see where it makes a
20 difference.

21 CHAIRPERSON MITTEN: Here's the thing, is if
22 someone's going to ? well, first of all we have to decide what
23 our intention is. But, if our intention is to allow someone to
24 have their EEF both above grade and below grade to some extent,
25 then what it says is it's permitted as a matter of right if the
26 EEF is 100 percent below grade, not partially, but 100 percent.

1 VICE CHAIRPERSON HOOD: Right, I understand.

2 CHAIRPERSON MITTEN: So, I'm saying by having 100
3 percent in there, it's a limitation and that we should remove
4 that limitation.

5 VICE CHAIRPERSON HOOD: But what's more than 100
6 percent?

7 COMMISSIONER FRANKLIN: No, it's an unintended
8 limitation in the sense that it sounds as though you can't go
9 below grade unless everything is below grade.

10 CHAIRPERSON MITTEN: Right.

11 COMMISSIONER FRANKLIN: And what the Chair is
12 suggesting is there might be a case where somebody is, let's
13 say got 10 percent above grade and, you know, 50 percent below
14 grade.

15 COMMISSIONER PARSONS: Well, then let's say that
16 because I thought anything that popped above grade we wanted to
17 review. It shouldn't be a matter-of-right, because there comes
18 the obnoxious qualities again.

19 COMMISSIONER FRANKLIN: Well, we're limiting it to
20 25 percent.

21 COMMISSIONER PARSONS: So, I was totally persuaded
22 that 100 percent below grade should go as a matter-of-right
23 because it doesn't have any of those objectionable qualities,
24 but now we're saying "well, come on up a story."

25 COMMISSIONER FRANKLIN: No, it's not the intent.
26 That's not the intent John.

1 COMMISSIONER PARSONS: Well then, I don't think it
2 ought to be a matter-of-right if it comes out of the ground.

3 COMMISSIONER FRANKLIN: Well, then you're
4 objecting to the first subparagraph.

5 CHAIRPERSON MITTEN: Subparagraph 1.

6 COMMISSIONER PARSONS: Yes.

7 COMMISSIONER FRANKLIN: You don't want to have
8 anything above grade.

9 CHAIRPERSON MITTEN: That doesn't get reviewed.

10 COMMISSIONER FRANKLIN: That doesn't get reviewed?

11 COMMISSIONER PARSONS: That's correct.

12 COMMISSIONER FRANKLIN: Okay, we got that
13 clarified.

14 CHAIRPERSON MITTEN: Okay.

15 COMMISSIONER PARSONS: But, I guess I could be
16 persuaded, but I don't see why, I mean, we know these things
17 are not conducive to a lively streetscape. So, why let them do
18 it?

19 CHAIRPERSON MITTEN: Well, let's explore that.
20 One of the concerns, and this is why there's additional
21 language in the CR, which is 601.2(e), is relates to if you're
22 going to have it on grade, that there be some controls on how
23 much of the first floor you can occupy.

24 So, and the rest of the building, if you limit it
25 to 25 percent, it's not really going to be that overpowering
26 kind of presence that we were facing when we did the Special

1 Exceptions, because we were dealing with structures that were,
2 you know, going to be 100 percent EEF's and mostly above grade.

3

4 So, there is the additional language for the CR
5 that we could, of course, incorporate into the other districts,
6 or at least the C-3 and C-4 Districts, that have some
7 controlling language as it relates to the first floor, which is
8 where you really want the activity. Does that give you any
9 comfort?

10 COMMISSIONER PARSONS: No, but.

11 CHAIRPERSON MITTEN: Let me ask at this point, we
12 know where you are Mr. Parsons.

13 COMMISSIONER PARSONS: I don't think it ought to
14 occupy any of the ground floor.

15 CHAIRPERSON MITTEN: Any of the ground floor?

16 COMMISSIONER PARSONS: Any of the ground floor.

17 CHAIRPERSON MITTEN: Okay.

18 COMMISSIONER PARSONS: And that's what I would
19 urge you to do.

20 CHAIRPERSON MITTEN: Okay, that's a possibility as
21 well.

22 COMMISSIONER PARSONS: There's no sense with 50
23 percent of a street frontage anywhere in this City, having a
24 blank wall, and that's what this says.

25 CHAIRPERSON MITTEN: What do you all think about
26 that? That's one way to control it. It just can't go on the

1 ground floor.

2 COMMISSIONER PARSONS: We're talking a matter-of-
3 right here.

4 CHAIRPERSON MITTEN: Yes. I could go along with
5 that. Mr. Hood? Mr. Franklin?

6 VICE CHAIRPERSON HOOD: I'm trying to think back
7 on what did we do when we did our temporary?

8 CHAIRPERSON MITTEN: When we did the ? oh, you
9 mean about the rule making?

10 VICE CHAIRPERSON HOOD: Yes, what are some of the
11 ones that we had approved back in, I guess it was December?

12 CHAIRPERSON MITTEN: One of the things that we
13 were striving for, and I think we had accomplished it at least
14 in some cases where the projects weren't particularly small,
15 was that there was a requirement that they have an animated
16 street frontage even if, you know, in the areas where the
17 Special Exceptions were located was not an area where retail
18 use was viable at the moment. But they did have requirements
19 to have landscaping and to animate their first floor with
20 lighting or with display windows or something like that, not
21 that it would be a blank wall.

22 So, one way of dealing with that would be ?
23 because let's remember too, these are buildings, if they're
24 only going to have 25 percent EEF, they are going to have
25 another use in the building, have to have at least one other
26 use, and that certainly could go on the ground floor.

1 VICE CHAIRPERSON HOOD: So, right now we have, I
2 guess, two proposals from what I'm hearing. You're saying
3 strike 100 percent in 2, and Mr. Parsons is saying take out the
4 25 percent in 1.

5 CHAIRPERSON MITTEN: Well, I think at the moment
6 it's possible that depending on whether or not we could get
7 some kind of consensus on whether or not we would forbid EEF's
8 as a matter-of-right on the ground floor, that we might be able
9 to get Mr. Parsons to get comfortable with the 25 percent, and
10 I'm not sure.

11 COMMISSIONER PARSONS: The 25 percent is fine.
12 It's this ground floor I'm objecting to.

13 CHAIRPERSON MITTEN: It's the ground floor, okay.
14 It's the ground floor.

15 COMMISSIONER PARSONS: And I'm compromising you
16 see.

17 CHAIRPERSON MITTEN: Of course.

18 COMMISSIONER PARSONS: And I want 2 and that's it,
19 but.

20 COMMISSIONER FRANKLIN: Madam Chair, would it be
21 appropriate to ask the Office of Planning if they had any
22 comment on this?

23 CHAIRPERSON MITTEN: Sure. Do you have any
24 thoughts on the discussion that you heard as it relates to
25 prohibiting EEF's on the ground floor as a matter-of-right?

26 MS. STEINGASSER: Yes, Madam Chairman, I do.

1 Thank you. What I was writing here was to read for: "1) no
2 more than 25 percent of the constructed gross floor area above
3 the ground floor may be occupied by EEF use", and then; 2)
4 would read "100 percent of the below grade area may be occupied
5 by EEF use." That addresses the exclusionary read that you had
6 on the original language and protects the ground floor area.

7 CHAIRPERSON MITTEN: Would you just read that one
8 more time?

9 MS. STEINGASSER: "No more than 25 percent of the
10 constructed gross floor area above the ground floor" and that's
11 the issue that you and Mr. Parsons were discussing.

12 CHAIRPERSON MITTEN: Right.

13 MS. STEINGASSER: "May be occupied by EEF use" and
14 then #2 would read "100 percent of the below grade area may be
15 occupied by EEF use."

16 CHAIRPERSON MITTEN: All right, and then in the
17 introduction then, 601.2(d) would have to be reworded then,
18 right?

19 MS. STEINGASSER: Yes.

20 CHAIRPERSON MITTEN: Instead of saying "under
21 either or both of the following circumstances" it would be
22 "shall be permitted as a matter-of-right provided" ?

23 MS. STEINGASSER: I believe that it would still
24 stand under either or both. "Either no more than 25 percent of
25 the gross floor area is occupied."

26 CHAIRPERSON MITTEN: Okay.

1 MS. STEINGASSER: I think that would read correct.

2 CHAIRPERSON MITTEN: Okay. Does everybody
3 understand and ?

4 COMMISSIONER PARSONS: I like it.

5 COMMISSIONER FRANKLIN: I think it's a good
6 phrase.

7 CHAIRPERSON MITTEN: Okay, that's good.

8 COMMISSIONER PARSONS: So we knock off even.

9 CHAIRPERSON MITTEN: Thank you very much.

10 COMMISSIONER PARSONS: Yes.

11 CHAIRPERSON MITTEN: Yes, ease out. And, if you
12 could just submit that language to staff to make sure that they
13 get it incorporated.

14 MS. STEINGASSER: Yes, ma'am.

15 CHAIRPERSON MITTEN: Thank you. Okay. So, we've
16 handled that.

17 COMMISSIONER FRANKLIN: Well, not completely. I
18 have one question.

19 CHAIRPERSON MITTEN: Okay.

20 COMMISSIONER FRANKLIN: And this probably should
21 go to the Office of Planning. Is it intended ? I notice that
22 741.8 which we are about to move to talks about the CR and the
23 C-3 District really creating a ?

24 MS. STEINGASSER: Yes, that's a typo.

25 COMMISSIONER FRANKLIN: Is that a typo?

26 MS. STEINGASSER: Yes, sir.

1 CHAIRPERSON MITTEN: Could you turn on your mike?

2 MS. STEINGASSER: Excuse me. That is a typo.

3 COMMISSIONER FRANKLIN: Okay. Fine, that clears
4 up ?

5 MS. STEINGASSER: It cut from the report into the
6 text and it should just be the C-3 instead of ?

7 COMMISSIONER FRANKLIN: Okay.

8 CHAIRPERSON MITTEN: Okay, now moving to 741.8
9 which goes onto Page 3. Now, here we are facing a similar
10 situation which is, do we want to have parallel language to
11 what Ms. Steingasser just read for the CR, which is
12 incorporating an exclusion on the ground floor? Or, do we want
13 it to basically read as it is?

14 COMMISSIONER FRANKLIN: I think parallel language
15 would be appropriate.

16 CHAIRPERSON MITTEN: All right.

17 COMMISSIONER PARSONS: Good.

18 CHAIRPERSON MITTEN: So, we will have, just so
19 it's clear, for 741.8 we will have parallel language to that
20 which Ms. Steingasser just read for 601.2(d).

21 All right. Now, what I think we should do is
22 take this up to 7:00, or take this up to five minutes to 7:00,
23 and then recess and finish it after the hearing if everyone's
24 on board with that. All right? Okay.

25 On Page 3 under Section 745, this is the first
26 time that we're confronted with the jurisdictional issue, I

1 think. So, let's just talk about that, about who will have
2 jurisdiction over hearing the Special Exceptions.

3 I think in the latest report by the Office of
4 Planning, they didn't have a preference, and I think there's a
5 compelling reason for people that might need variances and the
6 like to have, you know, one-stop shopping and go to the Board
7 of Zoning Adjustment, which is where Special Exceptions are
8 traditionally heard.

9 So, does anyone have a problem with the Board of
10 Zoning Adjustment handling these?

11 COMMISSIONER PARSONS: Substituting?

12 CHAIRPERSON MITTEN: Substituting.

13 COMMISSIONER PARSONS: Yes, no problem.

14 CHAIRPERSON MITTEN: Does everybody?

15 VICE CHAIRPERSON HOOD: No objection.

16 CHAIRPERSON MITTEN: Okay, so we'll have,
17 everywhere it says Zoning Commission as having jurisdiction,
18 that will be BZA.

19 This is the Special Exception language. Again,
20 this would allow for an increase from the 25 percent of the
21 gross floor area to be increased to 50 percent, and again World
22 Com had suggested that that be 75 percent. Now, we have two
23 alternative, I guess ways of expressing the test for the
24 Special Exception, and the Office of Planning, although in
25 this, they have included alternative language. They recommend
26 that the original language be preserved.

1 So, I don't know what the feelings are about
2 whether the original language is preferable, or whether the
3 current language is preferable.

4 COMMISSIONER FRANKLIN: By the original language,
5 you mean the bold stricken language?

6 CHAIRPERSON MITTEN: Yes.

7 COMMISSIONER FRANKLIN: And not accepting the Capa
8 Tell language?

9 CHAIRPERSON MITTEN: Correct.

10 COMMISSIONER FRANKLIN: I have to confess that I
11 didn't compare the two, but just looked at the new proposals
12 assuming that it was not significantly different, but I guess
13 it is.

14 MS. STEINGASSER: I wanted to focus ? we're on
15 Point 3, right?

16 CHAIRPERSON MITTEN: Yes, right.

17 COMMISSIONER PARSONS: I wanted to focus on the
18 words "inhibit future revitalization of the neighborhood, and
19 will not preclude future revitalization of the neighborhood"
20 and obviously, somebody gave that a lot of thought.

21 CHAIRPERSON MITTEN: Yes.

22 COMMISSIONER PARSONS: And if they could help me
23 with that, the staff or corp counsel, why are we going from
24 "inhibit", which to me was preferable, to "preclude." I can't
25 imagine that test before the BZA. Prove to me that you're not
26 precluding.

1 CHAIRPERSON MITTEN: Right. Ms. Steingasser, can
2 you speak to Mr. Parsons question of why the language was
3 changed from "inhibit future revitalization" to "preclude
4 future revitalization?"

5 MS. STEINGASSER: I agree that I think inhibit is
6 a better word. Preclude seemed a little bit more absolute and,
7 in trying to revise these, I was trying to bring them down to
8 something that could be documented, so they could be precluded
9 if it had the fortress architecture along the street, if it had
10 barbed wire along the sidewalks, that kind of thing was a more
11 absolute type of criteria when I came up with the alternate
12 language. I do agree that inhibit is a preferred word.

13 COMMISSIONER PARSONS: Preclude means stop,
14 essentially.

15 MS. STEINGASSER: Definitely more absolute.

16 COMMISSIONER PARSONS: Right, be hard to prove.

17 CHAIRPERSON MITTEN: So, our preference I think
18 would then be that it not say "preclude" but it say "inhibit."

19 COMMISSIONER FRANKLIN: That would be my
20 preference.

21 COMMISSIONER PARSONS: All right. The same here.

22 CHAIRPERSON MITTEN: Ms. Steingasser, can you tell
23 us what were you trying to accomplish with the revision of this
24 language, because I have to confess, I don't remember what
25 triggered it as a result of the hearing.

26 MS. STEINGASSER: Yes, ma'am. At the end of the

1 hearing, it was just a comment by one of the commissioners that
2 the staff look at alternate language to the review criteria,
3 and possibly condensing it a little bit. There wasn't a great
4 deal of discussion about it.

5 CHAIRPERSON MITTEN: Okay.

6 MS. STEINGASSER: It was just one singular
7 comment.

8 CHAIRPERSON MITTEN: So, this is just repackaging
9 the same thoughts basically.

10 MS. STEINGASSER: More or less, trying to put it
11 from four sections into three.

12 CHAIRPERSON MITTEN: Okay, thanks. I mean, I'd be
13 just as happy with the original language, I think. Sorry to
14 have put you through that, but is everybody comfortable with
15 the original language that was there?

16 COMMISSIONER FRANKLIN: I have no problem with it.

17 CHAIRPERSON MITTEN: Perhaps what needs to be done
18 is just moving, we had the original 745.3, followed by 745.4,
19 and maybe we need to just move 745.7 up to be 745.5, because
20 it's more, you know, it flows more naturally from the previous
21 two subsections, and that may be all that we need to do.

22 COMMISSIONER FRANKLIN: So, are you saying Madam
23 Chair, that we wouldn't include these various Sub A, B, C, D
24 that we have before us?

25 CHAIRPERSON MITTEN: No, I was just suggesting
26 that if you go back to the original language of 745.3, and

1 745.4, 745.7 is an additional thought that is more related to
2 that, so I think it should just be moved up in the order, not
3 to say that anything of the original language of 745.3 or 745.4
4 should be lost.

5 COMMISSIONER FRANKLIN: Well, haven't they moved
6 that up there in ?

7 CHAIRPERSON MITTEN: Right, that's why, and that's
8 in the new language.

9 COMMISSIONER FRANKLIN: The new language.

10 CHAIRPERSON MITTEN: So, I was just suggesting, if
11 we kept the original language, we can accomplish the same thing
12 they were doing by just moving 745.7 up.

13 COMMISSIONER FRANKLIN: Oh. Okay.

14 CHAIRPERSON MITTEN: Okay. I think now is a good
15 time to break and take five minutes and get ready for our
16 hearing. I'm going to recess this Special Public Meeting until
17 after our 7:00 Public Hearing.

18 (Whereupon, the above-entitled matter went off
19 the record.)

20 CHAIRPERSON MITTEN: We're going to resume our
21 Special Public Meeting to discuss the EEF regulations, Zoning
22 Commission Case #00-28T. And, I will say that Mr. Franklin who
23 was here with us earlier has departed, but he's given me his
24 notes so that I can at least attempt to include his thoughts as
25 we move through this discussion.

26 And, I believe we left off, we were on Page 4,

1 and we were sorting through the Special Exception requirements,
2 and I think we were satisfied that the original language was
3 preferable to the proposed alternative language in 745.3, .4
4 and .7. Is that everyone's understanding of where we were?

5 I also, before I forget, I wanted to go back to
6 the issue of the lease that we were hoping to capture in terms
7 of EEF vesting and all of that, and we were going to
8 incorporate some of the language that the DCBIA had suggested
9 to us. And maybe I would just ask Mr. Buffo if he would
10 explain the concern that you had raised to me, so that we could
11 discuss that.

12 MR. BUFFO: Yes, we just had some concern that
13 during the time that this is proposed, before it goes final,
14 people will see that they could go out and go ahead and get an
15 entire lease space, having already had 50 percent of the ground
16 floor area, if we're looking at the language that you
17 recommended, and then, being in a position to vest that space.

18
19 I think perhaps your intent was, if they already
20 had that lease space before, perhaps before the Emergency
21 Regulations were in place, that that would be the way that they
22 would be vested, and not something that ? so that they don't
23 have a way to be vested after this date.

24 CHAIRPERSON MITTEN: All right, and I don't know
25 if the Commissioners have the DCBIA submission in front of
26 them, but I'll just read you the section that related to what

1 Mr. Buffo was saying.

2 "An existing EEF which occupies at least 50
3 percent of the gross floor area of the space owned or leased
4 within a building by that EEF for EEF uses, as of the date of
5 this regulation" which would be when it goes into effect, and
6 the concern is that someone would go out in the meantime and
7 sign such a lease. And I think what we've been attempting to
8 accommodate is people who had sort of long-standing intentions
9 of doing this, that would actually predate the emergency.

10 So, I think we would want to amend that so that
11 it wouldn't take effect with the date of the regulation, which
12 would be sometime in the future, but actually capture those
13 leases that were in place before the emergency went into effect
14 whenever that was.

15 Is that?

16 COMMISSIONER PARSONS: Sure. So we just change it
17 to say, at the beginning of these proceedings or the
18 establishment of the emergency?

19 CHAIRPERSON MITTEN: Yes, I think we can find a
20 specific date.

21 COMMISSIONER PARSONS: Sure.

22 DIRECTOR ALTMAN: October 16th.

23 CHAIRPERSON MITTEN: October 16, 2000.

24 COMMISSIONER PARSONS: Good.

25 CHAIRPERSON MITTEN: Okay, so that will be ? I
26 think, Mr. Buffo, you know what we're trying to capture and you

1 can adapt that language for us.

2 MR. BUFFO: Yes, sure I will.

3 CHAIRPERSON MITTEN: Thank you. Okay, now we're
4 at the bottom of Page 4, Section 745.8. This is dealing with,
5 there was a concern by Holland and Knight representing a
6 particular client who has a multi-building project, with one
7 building already being an EEF, and perhaps having an additional
8 building, and they wanted to have some accommodation made of
9 having a multi-building development and being able to put the
10 EEF use into one building, instead of having it be a maximum of
11 25 percent in each building. So, this proposed language is
12 trying to address that issue.

13 I guess my concern is, and it seems like we've
14 come across this a couple of times lately where we're trying to
15 capture some aspect of a project that we want to have control
16 over, and seemingly the only mechanism of doing that is a
17 planned unit development and then all of these other
18 requirements flow from that.

19 And so, I guess my question is, can't we craft
20 this in such a way that it can be a Special Exception, as
21 opposed to a planned unit development? And, I think we can is
22 my conclusion.

23 VICE CHAIRPERSON HOOD: I'm not following here.
24 First of all, I think we know that the Board of Zoning
25 Adjustment is going to have jurisdiction.

26 CHAIRPERSON MITTEN: Right.

1 VICE CHAIRPERSON HOOD: So, we would have to
2 automatically take out a planned unit development, because BZA
3 can not do PUD's, right?

4 CHAIRPERSON MITTEN: Well, that's true. I guess
5 this would be a specific subset, a specific category which
6 would be "look, if you want to have ? if you're doing a multi-
7 building development and you want to sort of cluster the EEF
8 use in one of those buildings, then you'd have to come in for a
9 planned unit development" and clearly that's outside of the
10 BZA's jurisdiction. So, are you in favor of trying to craft
11 this in such a way that it can be a Special Exception with some
12 guidelines?

13 COMMISSIONER PARSONS: Not clear to me. Are you
14 suggesting that a planned unit development is not the right way
15 to go here?

16 CHAIRPERSON MITTEN: Yes.

17 COMMISSIONER PARSONS: Okay, I thought it was two
18 things you were trying to do, a 2-D threshold and a Special
19 Exception threshold.

20 CHAIRPERSON MITTEN: No. No. I think that
21 particularly, you know, given what other requirements come with
22 a planned unit development, it's very difficult to just narrow
23 in on the EEF issue without basically giving an applicant in
24 that circumstance a lot of additional baggage.

25 COMMISSIONER PARSONS: It's like trying to prove
26 that his facility is a public amenity?

1 CHAIRPERSON MITTEN: Yes, like that.

2 COMMISSIONER PARSONS: I agree with the difficulty
3 of it, so?

4 CHAIRPERSON MITTEN: So, the question is, can we
5 craft it in such a way.

6 COMMISSIONER PARSONS: You mean here tonight?

7 CHAIRPERSON MITTEN: Well, here's the thing is we
8 have in the June 1 Office of Planning report on Page 9, granted
9 that that's an earlier version of what they were thinking
10 about, but under certain circumstances, you could say under
11 certain circumstances if you go through a Special Exception
12 process, you can have an EEF that exceeds the 50 percent gross
13 floor area.

14 And some of those circumstances would be if, as
15 the Office of Planning had suggested, that it's a multi-phase
16 development on a single record lot. The lot is not less than
17 200,000 square feet in size, or some threshold in size, and
18 then you talk about the aggregate total area devoted to EEF use
19 relative to the total project.

20 I mean, and then we can still capture all of
21 those things that we want to capture with the Special
22 Exceptions, and there's this additional opportunity for someone
23 with a multi-phase development to come in for a certain kind of
24 Special Exception if they meet the threshold criteria. I think
25 we can do that.

26 So then, the question would be, is the threshold

1 size of 200,000 square feet of land, I mean, this would
2 certainly capture the project in question.

3 VICE CHAIRPERSON HOOD: Here's my concern about, I
4 guess, the way we're proceeding. When I reviewed this, I
5 looked at this whole EEF process to me has been a step and
6 learning experience for all of us.

7 CHAIRPERSON MITTEN: Yes.

8 VICE CHAIRPERSON HOOD: And I thought the language
9 that was here in front of us was through ? I'm not saying we
10 can't go in and tweak it, but I thought it was through a step
11 process that we had come from as far as what October 16th, and
12 everything, all this evolved around that step what we did in
13 December, where we did, I guess whenever, in March or whenever
14 it was.

15 And I thought this was something that ? because
16 my concern is going in here changing and I can tell you that I
17 don't have the expertise. But going in here making changes,
18 what else are we creating? Like some of the documents that you
19 eluded to.

20 Unfortunately, I don't have them in front of me,
21 and I thought we had kind of weaned out some of those
22 specifics, with the exception of World Com and some letters
23 that we got recently and I guess that's what's kind of delaying
24 me as far as my participation. I thought this was more the
25 direction we were going in, what's in front of us, so.

26 CHAIRPERSON MITTEN: Well, I think that some of ?

1 I mean, it certainly has been an evolutionary process of the
2 regulations, and at our Public Hearing is when some of these
3 sort of specialized circumstances were brought to our
4 attention.

5 And a particular specialized circumstance is the
6 situation and the project was described to us. It's at 1st and
7 M N.E., where the old Woodward & Lothrop (phonetic) Warehouse
8 is. That's been converted to an EEF, and they had considered
9 as part of this multi-building development, that they might
10 want to do another whole building EEF, which would not be
11 permitted under the regulations as proposed.

12 So, they're suggesting that there may be an
13 opportunity to accommodate that. Now, it's a question of how
14 do you accommodate that? Do you, A) you can say, we don't want
15 to accommodate that. The regulations are fine the way they
16 are, or to the extent that we do want to accommodate it,
17 there's a PUD process that's been suggested. There's a Special
18 Exception process that's been suggested.

19 COMMISSIONER PARSONS: How then did we come to the
20 PUD? Can Mr. Altman help us, or maybe you know that?

21 CHAIRPERSON MITTEN: Mr. Altman, if you could
22 enlighten us, that would be great.

23 DIRECTOR ALTMAN: Jennifer Steingasser and I can
24 enlighten you. We looked at this and I didn't just look at
25 this project because I also wanted to think down the road of
26 how else might this play out and be applicable.

1 I mean, if the notion was if, you know, you could
2 sort of consolidate into one building and have your data
3 center, our concern the way we can do the PUD versus the
4 Special Exception is that if you have a large site, what's
5 really critical to understand is the relationship of where that
6 now 100 percent building data center would be in a multi-phased
7 development, relevant to the overall site plan, so that you
8 don't end up with simply only the data center being built, but
9 you actually want the data center being built as part of what
10 would be a larger planned unit development.

11 So, literally the idea was not to provide what
12 could be in essence a loophole or encouraging single
13 development of one data center, which might actually pick
14 exactly the wrong place on the site, absent understand the
15 largest site, and also in terms of the amenity, which the
16 amenity discussion was, if you're going to have this large
17 scale, larger development of which it will be a part. It is
18 very important that there be an amenity that would be provided
19 in terms of, you know, what would be the level, some of the
20 street issues we talked about? What might be the public space
21 that would be provided as part of this larger development?

22 Then, in other words, so to us the concern was
23 that you might come through with the Special Exception, you
24 might have that building either in the wrong location in terms
25 of the overall development. There would be no sense of
26 commitment flocking in, that as part of the larger development,

1 so at the end I might have four data centers that have come up
2 through a Special Exception process, but the rest of the
3 development may never have occurred and there was no way to
4 have a more, a real enforcement and approval that the PUD would
5 give us.

6 Also, in terms of the architecture, in terms of
7 the massing, in terms of all of those issues which are harder
8 to get at in a Special Exception, which is just a sort of
9 adverse impact and the criteria.

10 But, if there was really, if what the applicants
11 are really saying is "look, what we want is to be able to do
12 this as part of a unit, an integrated development, then the
13 best vehicle for us", and after much internal debate, you know,
14 because we really went through, not trying to think how can we
15 be more stringent, we were actually more sympathetic to the
16 fact that flexibility should be provided if you want to do a
17 100 percent data center on a site, but it should be done in the
18 part of the larger context, and the PUD we thought was the
19 vehicle we thought to achieve that larger context and allow us
20 to look at citing issues, amenity issues, and massing. I'll
21 let Jennifer add to that.

22 COMMISSIONER PARSONS: I find that very
23 persuasive.

24 DIRECTOR ALTMAN: Anything you wanted to add?

25 MS. STEINGASSER: Should I just not tamper with a
26 good thing?

1 DIRECTOR ALTMAN: I could say especially ? let me
2 just add a consideration in that. In particular to the area
3 that we're speaking about is the Northern Massachusetts Avenue
4 area, and there are many large sites there.

5 So, the concern was that if what we were really
6 trying to do is to in many ways protect this area to allow it
7 to be a mixed-use area, for mixed-use development around the
8 new Metro stop, then in particular that's where we want to take
9 special care for what kind of development goes in. And that's
10 where the PUD, I think, particularly around the Metro Station,
11 particularly, you know, in this Northern Massachusetts and this
12 zone, should be given that heightened scrutiny.

13 And so many of the property owners that we meet
14 with are either amassing sites or have large sites. So, if
15 anything, we wanted to encourage them to do something that
16 would be an integrated development, than a stand alone
17 development in this area.

18 CHAIRPERSON MITTEN: Let me just ask you a
19 question. If we had a PUD process ? maybe I'm going to
20 actually make a statement and then you can just respond to the
21 statement. There's no way in a multi-phase PUD, unless you say
22 like you can't get the Certificate of Occupancy for Building A
23 until you've completed Building B, you still don't have a
24 guarantee that they're going to build all the buildings or
25 anything other than, you know, the EEF.

26 And then, I hesitate to say this, but you know,

1 this is shorthand to describing a problem, is Med Star
2 (phonetic), okay? We were trying to solve this very narrow
3 problem and we really opened up a big box of other problems,
4 and so my concern is that, you know, you're trying to control ?
5 let's say you have four buildings and one of them is going to
6 be the EEF for the whole thing.

7 All of a sudden, this whole project now has a
8 design review, and you know, there's an architectural standard
9 that's going to have to be met. And it really I think, if we
10 set the standard too high, which I'm afraid that the PUD
11 standard is too high, then we're just not going to have EEF's
12 as part of these multi-building developments. I mean, they
13 just won't make use of this accommodation, and so it's really
14 no accommodation at all.

15 DIRECTOR ALTMAN: I guess, Madam Chair, I mean I
16 don't think that ? let me put it this way. The goal here is,
17 we're not trying to encourage in this area, in this zone, in
18 particular what we're talking about here, in the C-3-C, we're
19 not trying to encourage EEF's.

20 CHAIRPERSON MITTEN: Right.

21 DIRECTOR ALTMAN: Our basic policy premise was,
22 we're going to provide large swath in this City in the
23 industrial zone, and the CM and the M Zone, where they could
24 go, you know, sort of unfettered, basically go, and we
25 encourage you to go there.

26 If you're going to go to the C-3-C Zone, and

1 you're going to come to the C Zones, particularly and we're
2 really talking about where the demand has been, it doesn't
3 exist anymore but if it returns in the future, for the New York
4 and Florida Avenue area, if anything we do want to raise the
5 bar, that we do want to raise the bar for the standards of the
6 things that you speak of, the architecture, good site planning,
7 good amenities.

8 If anything around this Metro Station, I guess
9 our theory was, we should make it a very high bar, not make it
10 easier for an EEF to go in. In which case, if it's easier on
11 that theory, I'd say if it's easier, if that's too stringent a
12 requirement and that becomes prohibitive, then maybe they
13 shouldn't go there in the first place.

14 CHAIRPERSON MITTEN: Yes.

15 DIRECTOR ALTMAN: Then they should go to the rest
16 of the areas of the City. If you're going to come into New
17 York and Florida Avenue, where we're going to have a new Metro
18 Stop and new investment, if anything I want the best quality
19 design, the best quality buildings in the creation of this
20 environment, and if that's too high a bar the PUD sets for you,
21 then I'd recommend that there are other parts of the City that
22 are more appropriate.

23 CHAIRPERSON MITTEN: So, it doesn't make you
24 uncomfortable that this may be too high of a standard?

25 DIRECTOR ALTMAN: No, it doesn't make me
26 uncomfortable at all.

1 CHAIRPERSON MITTEN: Okay.

2 DIRECTOR ALTMAN: No, for that very reason. And
3 if we weren't providing the other parts of the City, I would
4 say I'd be, you know, less comfortable. But given the areas
5 that are not far away, literally just the other side of the
6 track that fall into the CM Zone and all the way up New York
7 Avenue, I don't see this as being problematic.

8 CHAIRPERSON MITTEN: Okay. I know where you are.
9 How about you, Mr. Hood?

10 VICE CHAIRPERSON HOOD: I'm fine. Madam Chair,
11 I'm fine with what I see in front of me, the PUD. That's fine
12 with me.

13 CHAIRPERSON MITTEN: Okay.

14 VICE CHAIRPERSON HOOD: Unless you wanted to still
15 elaborate your point.

16 CHAIRPERSON MITTEN: I don't want to beat that
17 horse anymore. I just want to suggest some language that Mr.
18 Franklin has on his copy. "An EEF use may occupy more than 50
19 percent of the gross floor area of a building in the C-3 and C-
20 4 Zone Districts" is one thing he would like to have added, so
21 that that wouldn't then translate down into, for instance, if
22 we get the Buzzard Point (phonetic) area rezoned CR, it
23 wouldn't affect down there, and so on, that suggestion.

24 And then, "if approved by the Zoning Commission
25 as part of a planned unit development in accordance with"
26 instead of "subject to the requirements of Section 2400" and

1 "subject to the following additional criteria" which I think
2 are good suggestions.

3 VICE CHAIRPERSON HOOD: That's good.

4 CHAIRPERSON MITTEN: Okay. We may now turn the
5 page.

6 COMMISSIONER PARSONS: We're almost a third of the
7 way through this.

8 CHAIRPERSON MITTEN: Okay, I think we're gaining
9 some momentum here. So now, the period or the semicolon would
10 be after "floor area of the entire project" and then eliminate
11 the rest because it's been moved up in the sentence.

12 Subsection B, at the end "so as to preclude
13 retail service and office uses from being developed on street
14 frontage of the project" is what he wanted to have added.

15 COMMISSIONER PARSONS: Okay.

16 VICE CHAIRPERSON HOOD: Are we taking out
17 "precluded" I'm sorry.

18 CHAIRPERSON MITTEN: No, I don't ? unless Mr.
19 Parsons wants precluded out of this one?

20 COMMISSIONER PARSONS: No, I don't have any
21 problem with that. It's precluding retail, precluding the
22 future revitalization of a neighborhood that I was having
23 trouble with.

24 VICE CHAIRPERSON HOOD: Oh, okay.

25 COMMISSIONER PARSONS: Which is down in 755.3 at
26 the bottom here. Maybe we should do the same over again, is

1 keep the language.

2 CHAIRPERSON MITTEN: I think that's what we want
3 to do, is just for clarity now. We've made some decisions
4 about how we're going to modify Sections 745 and we would want
5 those same modifications to go into 755.

6 COMMISSIONER PARSONS: Yes.

7 CHAIRPERSON MITTEN: See, we're getting momentum.

8 COMMISSIONER PARSONS: I see.

9 CHAIRPERSON MITTEN: Now, we're on Page 7.

10 COMMISSIONER PARSONS: Pace is picking up.

11 CHAIRPERSON MITTEN: Is the wind blowing through
12 your hair? Okay. Section F, 801.7: the suggestion was made by
13 DCBIA and Greenstein DeLorme and Luchs that this, as it relates
14 to the Metro Rail Station, that the distance be reduced to 800
15 feet. And, Mr. Franklin was in favor of that reduction. I'm
16 in favor of that reduction in large measure because if you have
17 M and CM Zones that close to a Metro Station anyway, there's a
18 lot of other more offensive industrial uses that could be that
19 close, so.

20 COMMISSIONER PARSONS: All right.

21 VICE CHAIRPERSON HOOD: That's definitely true,
22 but I also read Madam Chair, it was somewhere, I don't know
23 where they referenced, they said the Office of Planning was
24 changing their mind too on that. I don't know if that's
25 correct.

26 CHAIRPERSON MITTEN: Well, should be ask them?

1 COMMISSIONER PARSONS: Sure.

2 VICE CHAIRPERSON HOOD: Yes.

3 MS. STEINGASSER: No, sir. We've held with 1250.

4 VICE CHAIRPERSON HOOD: With 1250, okay. I don't
5 know where, I read that somewhere, but anyway.

6 CHAIRPERSON MITTEN: So, as it relates to the
7 Metro Station, 800 feet?

8 COMMISSIONER PARSONS: In CM only, right.

9 CHAIRPERSON MITTEN: In CM only, correct. And
10 then, although I don't know under what circumstance CM would be
11 mapped within 1200 feet of the river, but shall we maintain
12 that 1250 feet or reduce that one as well in #2?

13 VICE CHAIRPERSON HOOD: I think with the river we
14 might want to leave it at 1250.

15 COMMISSIONER PARSONS: Yes, I think the river.

16 CHAIRPERSON MITTEN: I agree. Okay, now ?

17 VICE CHAIRPERSON HOOD: Or 1350.

18 COMMISSIONER PARSONS: Turning the page.

19 CHAIRPERSON MITTEN: Yes, turning the page.

20 COMMISSIONER PARSONS: I see "to preclude the
21 future revitalization" again.

22 CHAIRPERSON MITTEN: Again, we want to incorporate
23 those same changes that we incorporated into Section 745 and
24 755 in Section 802.

25 COMMISSIONER PARSONS: .12.

26 CHAIRPERSON MITTEN: .12, all right. Now, on Page

1 9, this was in response to concerns about EEF facilities where
2 they were adjoining a residence district.

3 I just wanted to introduce the notion of, is it
4 strictly residence districts that we care about, or is it also
5 special purpose, mixed-use, waterfront, and/or commercial
6 districts?

7 I think we're focusing on dwellings, as opposed
8 to necessarily just residence districts, because it's possible
9 that you would have dwellings and special purpose, mixed-use or
10 waterfront, and then perhaps you might care about these
11 undesirable qualities as well in the commercial district,
12 particularly the barbed wire, razor wire. So, I just raise
13 that as to whether or not we want to restrict that just to
14 residential zones.

15 VICE CHAIRPERSON HOOD: Are you speaking in terms
16 of the barbed wire only?

17 CHAIRPERSON MITTEN: I think rather than, you
18 know, slice it too fine, I'm just raising the whole thing. Do
19 we just want to confine it to residence districts?

20 COMMISSIONER PARSONS: I would agree with W Zones,
21 yes, and SP. I think you've got a good point, and CR for that
22 matter.

23 CHAIRPERSON MITTEN: Okay. So, we'll add "that
24 abuts a residence, special purpose, mixed-use, or waterfront
25 district."

26 COMMISSIONER PARSONS: Okay.

1 VICE CHAIRPERSON HOOD: Are we satisfied, Madam
2 Chair, with the 200 feet?

3 CHAIRPERSON MITTEN: We can talk about that. Are
4 you satisfied?

5 VICE CHAIRPERSON HOOD: I was just wondering if my
6 colleagues were. I'm fine. I'm glad we have some distance.
7 I'm fine with the 200 feet.

8 CHAIRPERSON MITTEN: Okay. Mr. Franklin's
9 suggestions are back up in 804.14, "where an electronic
10 equipment facility use is proposed in a CM District on a lot
11 that abuts."

12 COMMISSIONER PARSONS: Oh, that's good.

13 CHAIRPERSON MITTEN: Yes, isn't that good?

14 COMMISSIONER PARSONS: That's very good.

15 CHAIRPERSON MITTEN: Herb catches all this good
16 stuff.

17 COMMISSIONER PARSONS: Wow.

18 CHAIRPERSON MITTEN: And then, in #2 under B,
19 "located no closer than 200 feet from the nearest." I think we
20 want to say, we also have to repeat the "residence, special
21 purpose, mixed-use, or waterfront zone district property line."

22 COMMISSIONER PARSONS: Yes.

23 CHAIRPERSON MITTEN: Okay. Page 10. Back again,
24 821.7 to the distance from the Metro Station in 821.7(1).

25 COMMISSIONER PARSONS: Yes.

26 CHAIRPERSON MITTEN: 800. And maintaining 1250 ?

1 COMMISSIONER PARSONS: Yes.

2 CHAIRPERSON MITTEN: ? relative to the
3 waterfront. I think we want to have the same kind of language.

4 COMMISSIONER PARSONS: Right.

5 CHAIRPERSON MITTEN: Here, and 825.13, as we had
6 in 804.14 that we just modified.

7 COMMISSIONER PARSONS: Yes.

8 CHAIRPERSON MITTEN: In 827.3, 827.4, and 827.7,
9 we want to incorporate those same modifications that we had in
10 Section 745.

11 COMMISSIONER PARSONS: Yes.

12 CHAIRPERSON MITTEN: I would just add one
13 modification that needs to be made in 827.2, is the standards
14 of external effects is in Section 825, not 826.

15 COMMISSIONER PARSONS: Oh.

16 CHAIRPERSON MITTEN: I have to go back to
17 something. It's on this page but it really goes back all the
18 way to 745. I just want to make sure that Mr. Franklin's
19 thought does not get lost.

20 If you look at 827.5, and it's been repeated
21 throughout these other sections, his concern is it says "you
22 weigh the potential adverse factors delineated in" whatever the
23 sections are "shall consider the economic development potential
24 of the area in which the EEF is proposed to be established."

25 He thought that was a pretty broad task for the
26 applicant to establish, and then for the BZA to analyze the

1 economic potential of the area.

2 COMMISSIONER PARSONS: And he offered in the
3 alternative?

4 CHAIRPERSON MITTEN: He offered to cross it out.
5 I'm just ?

6 COMMISSIONER PARSONS: So, we should not consider
7 the economic development potential of the area?

8 CHAIRPERSON MITTEN: I guess he felt that was a
9 quite broad statement and ?

10 COMMISSIONER PARSONS: Well, at the same time
11 we're asking them to ensure that it will not inhibit the
12 economic vitality of the neighborhood, right?

13 CHAIRPERSON MITTEN: True.

14 COMMISSIONER PARSONS: So, isn't this a verse of
15 that?

16 CHAIRPERSON MITTEN: I think it's all right to
17 have it in there.

18 COMMISSIONER PARSONS: Yes.

19 VICE CHAIRPERSON HOOD: I do too.

20 CHAIRPERSON MITTEN: Because it says "consider".
21 It's not really ? and I can't argue for it because it's not my
22 thing.

23 VICE CHAIRPERSON HOOD: Madam Chair, I think
24 that's key. I would like to leave that in there.

25 COMMISSIONER PARSONS: Yes.

26 CHAIRPERSON MITTEN: Okay. Page 13 and stop me if

1 I passed by anything that you care about.

2 COMMISSIONER PARSONS: No, that's good.

3 CHAIRPERSON MITTEN: Okay. Under the large
4 paragraph on the right-side of the page, which would be under
5 electronic equipment facilities and related to the number of
6 parking spaces required. It starts "up to 50 percent of the
7 required parking may be set aside as a parking reserve and may
8 be used for non-habitable" that's another Herb. Okay?

9 On Page 14, again all of this will have to be
10 under M. All of this will have to be modified to reflect the
11 BZA, instead of the Zoning Commission, having jurisdiction over
12 the Special Exception. And, I think that is all.

13 COMMISSIONER PARSONS: I move that we adopt the
14 language we have proposed here tonight.

15 VICE CHAIRPERSON HOOD: I'll second, and if we
16 could just add with the necessary corrections.

17 COMMISSIONER PARSONS: Yes.

18 CHAIRPERSON MITTEN: Yes, and with the corrections
19 and modifications that the corporation counsel will make on
20 behalf, as they understand what we had expressed on a few of
21 the items.

22 COMMISSIONER PARSONS: Referred to as noodling.

23 CHAIRPERSON MITTEN: Noodling, yes. That's a
24 technical term.

25 COMMISSIONER PARSONS: I think that's the first
26 time that term has appeared in a Motion before this Commission,

1 but that's good.

2 VICE CHAIRPERSON HOOD: There's a first time for
3 everything, I guess.

4 COMMISSIONER PARSONS: Are we ready?

5 CHAIRPERSON MITTEN: All those in favor of
6 approving the zoning regulations related to EEF's as amended,
7 please say aye.

8 (Chorus of ayes.)

9 CHAIRPERSON MITTEN: Those opposed, please say no.

10 (Silence.)

11 CHAIRPERSON MITTEN: Mr. Bastida.

12 SECRETARY BASTIDA: Madam Chairman, did Mr.
13 Franklin leave the proxy?

14 CHAIRPERSON MITTEN: I can't say that he did, no.

15 SECRETARY BASTIDA: Then staff will record the
16 vote 3-0. Mr. Parsons moving, Mr. Hood seconded, and Ms.
17 Mitten voting in the affirmative.

18 CHAIRPERSON MITTEN: Thank you, and I hope
19 everyone has a nice evening. This Special Public Meeting is
20 adjourned.

21 (Whereupon, the above-entitled matter was
22 concluded.)

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