

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1122nd MEETING SESSION (14th OF 2001)

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MONDAY
OCTOBER 15, 2001

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

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairman
JAMES HANNAHAM	Commissioner
PETER G. MAY	Commissioner
JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, ZC

OTHER AGENCY STAFF PRESENT:

Ellen McCarthy, Deputy Director,
Office of Planning
Jennifer Steingasser, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.

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- 3. Z.C. Case No. 01-22TA/MA (Sq. 3584 Lot 109 from M to C-3-C & Add to North Capitol Street Receiving Zone)
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P-R-O-C-E-E-D-I-N-G-S

(1:32 p.m.)

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the Zoning Commission of the District of Columbia for Monday, October 15, 2001.

My name is Carol Mitten. Joining me today are Vice Chairman Anthony Hood and Commissioners Peter May and John Parsons.

Mr. Bastida, do we have any preliminary matters before we begin?

SECRETARY BASTIDA: Madam Chairman, the staff has no preliminary matters.

CHAIRPERSON MITTEN: All right, let's go right to the minutes.

SECRETARY BASTIDA: You don't have any minutes in your package, Madam Chairman.

CHAIRPERSON MITTEN: And the ones that are missing are just from our September 17th meeting?

SECRETARY BASTIDA: Correct, Madam Chairman.

CHAIRPERSON MITTEN: So we'll take that up at next month's meeting.

SECRETARY BASTIDA: Correct.

CHAIRPERSON MITTEN: All right, the status report from the Office of Planning.

1 DEPUTY DIRECTOR MCCARTHY: Good afternoon, Madam
2 Chair, and Members of the Commission. You have before you the
3 status report from the Office of Planning. Let me just
4 highlight a few individual issues because some of them tie into
5 correspondence that I know you had on your agenda for later on
6 today.

7 First of all, there are no cases that have been
8 submitted for set down this month. There are several cases that
9 we are looking to bring to you for set down next month.

10 The first one on your status report is the West
11 End Rezoning. You have a letter from the law firm of Holland &
12 Knight with regard to that. We had met with the client, the
13 Applicant, and his attorneys in September and had indicated to
14 them that because of the volume of zoning cases that were before
15 the ANC and citizen groups in that area and the area of Square
16 37 that we thought it ill-advised to proceed to trying to go for
17 a set down in September or October, but we had already indicated
18 that we were planning a November time which I believe is what
19 the letter from Holland & Knight is asking you for. So I think
20 that we're set in terms of bringing that to a November set down.

21 Arthur Jackson from our office who is the project manager for
22 that is making a presentation to the ANC this Wednesday night
23 with the preliminary recommendations from the Office of Planning
24 to get their feedback.

25 CHAIRPERSON MITTEN: On this particular case, can

1 we just be committed to the Commission taking up the issue of
2 the set down and agree that we will vote it up or down in
3 November and we expect that we'll have your report?

4 DEPUTY DIRECTOR McCARTHY: Oh yes. That's
5 exactly the time that we are planning on bringing you the report
6 for.

7 CHAIRPERSON MITTEN: Great. Thanks.

8 DEPUTY DIRECTOR McCARTHY: And I should mention
9 the delay which was cited in the letter was at least partly when
10 the Applicant had first asked us for a set down. The Applicant
11 themselves had asked us not to move for several months to give
12 time for extensive work with the community and that then there
13 was an unresolved issue of the city-owned parcels and the city
14 had another property owner who was in active discussions with
15 them and had submitted an unsolicited proposal, so that had tied
16 up our ability to move forward because the Holland & Knight's
17 client had indicated that they wanted -- they did not want to go
18 forward with out the city-owned parcel and so those -- that was
19 the reason for the delays have gotten us to this point, plus our
20 suggestion to the Applicant that they consider it as a PUD which
21 was rejected by them.

22 So we are back on the track of a map amendment, but definitely
23 expect to have that to you for a set down in November.

24 The antenna tower regulations, as you know, the
25 Task Force has been meeting, had a hard time coming up with a

1 meeting date that worked for everybody in September and which
2 was further complicated by the September 11th events, so we do -
3 - we do have a set of draft regulations which we're planning on
4 getting to the group on the 12th of October.

5 And then with regard to the Trenton Terrace
6 planned unit development, Mr. Altman, the Office of Planning
7 Director has spoken with H.R. Crawford, the Applicant on that
8 issue about our remaining design issues, some issues with the
9 Department of Public Works and with the Office of Planning and
10 we have recommitted to him that we are looking at a November set
11 down which he indicated was fine in terms of his timing.

12 CHAIRPERSON MITTEN: Just to add to that a
13 conversation that I had with Mr. Bastida regarding the timing of
14 the -- the scheduling of the hearing if we do decide to set it
15 down in November which could be a hearing date scheduled for
16 January which is what the Applicant was looking for and that's
17 contingent upon the Applicant providing their pre-hearing
18 statement pretty much coincidental with the set down. So it's a
19 dual responsibility that will achieve the January hearing. I
20 just wanted to add that.

21 DEPUTY DIRECTOR MCCARTHY: Okay, that's good to
22 know.

23 I think the rest of the items here are relatively
24 self-explanatory and so I won't provide additional details on
25 them and I would be happy to answer any questions from the

1 Commission.

2 CHAIRPERSON MITTEN: The one new item that I
3 didn't recognize was the Gateway Square 3584. Can you just give
4 us a little --

5 DEPUTY DIRECTOR McCARTHY: It's a little
6 confusing since there are many gateways to the city and this is
7 property in the NOMA tech corridor in the North Capitol corridor
8 basically. It's the property that's owned by Sam Rose that was
9 not rezoned C-3-C when a number of other properties in that are
10 were zoned C-3-C and so he's asking for the C-3-C zoning line to
11 be extended to his property.

12 CHAIRPERSON MITTEN: Okay.

13 DEPUTY DIRECTOR McCARTHY: So it's a relative
14 small scale map request.

15 CHAIRPERSON MITTEN: And then the other item that
16 I just don't want to lose track of us the issue that was raised
17 when we considered the modification regarding additions to one
18 family dwellings and flats and we had asked the Office of
19 Planning to particularly take a look at subsection 223.3 which
20 allows special exception review for additional density in excess
21 of the minimums in that zone and there was some concern from
22 some of the ANCs that that's contributing to higher density in
23 fill in their neighborhoods and I just don't want to lose track
24 of that.

25 DEPUTY DIRECTOR McCARTHY: Right and we don't

1 either and I'm sure that ANC 3F wouldn't let us even if we
2 tried.

3 CHAIRPERSON MITTEN: I didn't see that on your status
4 report.

5 DEPUTY DIRECTOR McCARTHY: You're right. We need
6 to put it back on the report.

7 CHAIRPERSON MITTEN: Thank you. Any questions
8 for the Office of Planning on their status report?

9 COMMISSIONER HOOD: Madam Chair, I don't know if
10 this is an appropriate time, but I will mention it anyway. The
11 DOES and the local and disadvantaged businesses, I think what
12 the Commission, what we need to do is initiate a meeting, maybe
13 Council Member Cantana, Council Member Brazil, Council Member
14 Orange, Office of Planning, BOES and local business group and
15 try to get everybody on the same page with how we proceed here
16 in the District of Columbia.

17 I've just spoken to Council Member Brazil and
18 he's on board, so I want to throw that out there for discussion.

19 CHAIRPERSON MITTEN: I think it's definitely what
20 has been missing in the process so far is it's been difficult
21 for the Zoning Administrator evaluate whether or not PUD
22 Applicants are in compliance with their commitments because
23 there's not a sufficient reporting done on compliance. So I
24 think if we could all sit down together, I think it's an
25 excellent idea. I think if we could all sit down together and

1 talk about how we can help facilitate minority hiring in the
2 city and make sure that when Applicants make that commitment to
3 us that it's fulfilled. I think that would be a very worthwhile
4 discussion.

5 DEPUTY DIRECTOR McCARTHY: As I think I mentioned
6 to you at last Thursday's hearing, we had had a meeting with
7 folks from the Deputy Mayor's Office for Planning and Economic
8 Development and I know that the Council has been asking them
9 questions with regard to IRBs that they feel should be
10 considered in a larger context of all city incentives and
11 performance on first source hiring agreements and LSDBE
12 agreements, so I think they would be happy to join in on such a
13 meeting, Mr. Hood.

14 COMMISSIONER HOOD: I guess, Madam Chair, we can
15 work along with Office of Planning and try to set that meeting
16 up through you.

17 CHAIRPERSON MITTEN: That's fine. We will do
18 that.

19 COMMISSIONER HOOD: Can we put a time frame, 30
20 days?

21 CHAIRPERSON MITTEN: Let me ask Ms. McCarthy
22 because she has a better sense of people's schedules than I do.
23 Is that a reasonable expectation, that we could convene a
24 meeting like this in the next 30 days?

25 DEPUTY DIRECTOR McCARTHY: I think that would be

1 reasonable. Normally we would have a meeting this afternoon
2 with the Deputy Mayor's Office on Regulatory Form Issues.
3 That's been canceled because of their move, but I'd be happy to
4 call them back. I need to call them back this afternoon anyway
5 so I'd be happy to call them back and ask them. Would you like
6 them to organize it? Does the Zoning Commission want to be the
7 convener? How would you like to do that part?

8 COMMISSIONER HOOD: I guess the Zoning
9 Commission, we could initiate it.

10 CHAIRPERSON MITTEN: That's fine.

11 COMMISSIONER HOOD: I've already spoken to
12 Council Member Brazil. He's on board. It's just a matter of us
13 getting together, but I want to work along with OP for the
14 simple reasons I know you all had taken a lead on it early when
15 I first asked and you all may be able to help us form later
16 meeting with all the key players involved.

17 If 30 days is realistic, then I think, at least
18 so we can be on the same page. If 30 days is realistic,
19 hopefully, we can do 30 days.

20 DEPUTY DIRECTOR MCCARTHY: Okay, so we should
21 just coordinate with the staff at the Office of Zoning on that?

22 COMMISSIONER HOOD: Right. Thank you. Thank
23 you, Madam Chair.

24 CHAIRPERSON MITTEN: Thank you, Mr. Hood. Before
25 we go to proposed action, there is one modification that I'd

1 like to make on the agenda which is we have a piece of
2 correspondence that actually relates to proposed action which is
3 the letter regarding the Human Rights Campaign Building at 1616
4 Rhode Island Avenue. So I would like to insert that as letter B
5 under proposed action.

6 And Mr. Bastida will go to Item A under proposed
7 action.

8 SECRETARY BASTIDA: Madam Chairman, the staff has
9 provided the information to the Commission to make a decision on
10 this matter and the staff requests that you make a decision in
11 this matter.

12 CHAIRPERSON MITTEN: Thank you and I just should
13 say for the other Commissioners before I do that let me just say
14 let the record reflect that we've been joined by Commissioner
15 Hannaham.

16 I have the actual sample building materials if
17 anyone would like to see that.

18 This was a PUD that did not involve a rezoning.
19 This is for the vacant land that was formerly occupied by the
20 Fort Dupont Dwellings and additions and will be a mixed income
21 project known as Dupont Commons.

22 Are there any questions regarding the additional
23 submissions?

24 COMMISSIONER PARSONS: Yes, Madam Chair. I think
25 I had asked for some indication from the Applicant as to what

1 would be done with the property that is not designated to be
2 built upon in this planning and development. There's no
3 response to that, so I would urge that we designate this as
4 community open space which is a term used in the rest of the
5 plan for areas devoted to community use, I guess. Even though
6 it's very steep and I don't mean to imply that there's
7 playgrounds or anything else in there, but I think since it was
8 submitted as part of the PUD, we should include it in some
9 category, possibly open space zoning would be a nice category if
10 we had one and that's my fault, nobody else's.

11 So that's my suggestion. Otherwise, I think this
12 is in order.

13 CHAIRPERSON MITTEN: All right. I think that's a
14 fine suggestion. I don't think it's going to cause any problems
15 with executing the PUD.

16 I would entertain a motion to approve this PUD.

17 COMMISSIONER HANNAHAM: So moved.

18 COMMISSIONER HOOD: Second.

19 CHAIRPERSON MITTEN: We have a motion and a
20 second to approve the application in Zoning Commission Case No.
21 01-12C. I think we perhaps should take note of the conditions
22 that have been proposed and those are enumerated in the proposed
23 findings of fact and conclusions of law by the Applicant. I
24 think there needs to be an addition made regarding the -- I take
25 it back. It's 8 and 9 we have the signed agreements. So as

1 long as it's understood that that would be incorporating the
2 conditions outlined on pages 7 and 8 on the proposed findings of
3 fact and conclusions of law.

4 Was that your intention, Mr. Hannaham?

5 COMMISSIONER HANNAHAM: Yes.

6 CHAIRPERSON MITTEN: We have a motion and a
7 second to approve Zoning Commission Case No. 01-12C. All those
8 in favor, please say aye.

9 (Ayes.)

10 Those opposed, please say no.

11 Mr. Bastida, would you record the vote?

12 SECRETARY BASTIDA: Yes, Madam Chairman, the
13 staff will record the vote 5 to 0, Mr. Hannaham moving and Mr.
14 Hood seconding; Mr. Parsons, Mr. May and Ms. Mitten voting in
15 the affirmative.

16 Just for a point of clarification for the staff,
17 you refer to paragraphs 87 and 88 to be incorporated on the
18 findings of fact?

19 CHAIRPERSON MITTEN: No, I'm sorry, I had
20 overlooked those items when I looked at it the first time and
21 there doesn't need to be any change.

22 SECRETARY BASTIDA: Okay, thank you, Madam
23 Chairman.

24 COMMISSIONER PARSONS: I want to make sure
25 there's no confusion over my recommendation. I hope you all

1 concur in that.

2 CHAIRPERSON MITTEN: Yes, we do.

3 COMMISSIONER PARSONS: It would -- it's the area
4 to the south of Burns Place, now labeled grove of shade trees
5 would be relabeled community open space. I think that needs to
6 be part of the decision.

7 CHAIRPERSON MITTEN: Okay, let's just have an
8 additional motion.

9 COMMISSIONER PARSONS: I would move we add
10 another item, if you will, to the 13 points in the decision
11 which clarifies the purpose of the area to the south of Burns
12 Place which is now labeled on the site plan contained in item 6,
13 post-hearing submission dated September 24, 2001. It now says
14 "groves of shade trees" which could remain that space should be
15 labeled "community open space" as our others. That's quite a
16 long motion. I'm sure the staff can help get it down to where
17 it belongs.

18 CHAIRPERSON MITTEN: Second. We have a motion to
19 just add a designation on the site plan. The area now labeled
20 "grove of shade trees" will additionally be labeled "community
21 open space."

22 All those in favor, please say aye.

23 (Ayes.)

24 Those opposed, please say no.

25 Mr. Bastida?

1 SECRETARY BASTIDA: The staff will record the
2 vote 5 to 0. Mr. Parsons moving it. I couldn't quite catch who
3 seconded it?

4 CHAIRPERSON MITTEN: I did, Mr. Bastida.

5 SECRETARY BASTIDA: Ms. Mitten seconded it. Mr.
6 Hannaham, Mr. May and Mr. Hood voting in the affirmative.

7 CHAIRPERSON MITTEN: Thank you.

8 SECRETARY BASTIDA: Madam Chairman, could I
9 request that then the record would be open to accept a revised
10 map from the Applicant prior to the November, by November 9th by
11 noon?

12 CHAIRPERSON MITTEN: Well, we can either do that
13 or it's a relatively simple think to just write it on there. I
14 mean if you're uncomfortable with that, then --

15 SECRETARY BASTIDA: Sometimes the Zoning
16 Administrator questions those labels added in long hand and I
17 think I would fee more comfortable if we have it submitted by
18 the Applicant.

19 CHAIRPERSON MITTEN: All right, is there any
20 objection to reopening the record to accept a revised site plan
21 with the designation?

22 COMMISSIONER MAY: No objection. I also think we
23 should clarify. You refer to this area south of Burns Place and
24 I think if you look at the other map it's actually that portion
25 of the roadway is C Street.

1 COMMISSIONER PARSONS: Thank you.

2 COMMISSIONER MAY: Look at the plans that we just
3 received today.

4 (Pause.)

5 COMMISSIONER PARSONS: You're correct. It's C
6 Street. Sheet C-7.

7 COMMISSIONER MAY: Right.

8 CHAIRPERSON MITTEN: I guess maybe to add further
9 clarity it's the section of the subject property that's in
10 Square 5401.

11 COMMISSIONER MAY: Yes. Just for everyone's
12 complete understanding.

13 SECRETARY BASTIDA: Madam Chairman, for further
14 clarification any maps in which it has to be relabeled, the file
15 is open, the record is open to accept all the maps that need to
16 be revised to add that label to it.

17 CHAIRPERSON MITTEN: Yes. Yes, that's fine.

18 SECRETARY BASTIDA: Thank you.

19 CHAIRPERSON MITTEN: Thank you. Mr. Bastida,
20 let's go next to the request from the Human Rights campaign?

21 SECRETARY BASTIDA: Yes, the staff has provided
22 you with the letter that HRC provided the staff requesting that
23 for several reasons as stated in the record that the decision
24 will be postponed until the January meeting.

25 CHAIRPERSON MITTEN: All right.

1 SECRETARY BASTIDA: And they ask staff requests
2 an action on that.

3 CHAIRPERSON MITTEN: Right, just to refresh
4 everyone's memory, we had the proposed modification to the 1616
5 Rhode Island Avenue PUD to accommodate the Human Rights Campaign
6 Headquarters was on our agenda last month. We deferred action
7 until this month and the Applicant is requesting a further
8 deferral on proposed action until our January meeting and I
9 would move that we defer action on Zoning Commission case No.
10 01-4M/98-12M/88-32C until January 2002.

11 COMMISSIONER PARSONS: Second.

12 CHAIRPERSON MITTEN: We have a motion to defer
13 action on the Human Rights Campaign PUD modification. All those
14 in favor, please say aye.

15 (Ayes.)

16 Those opposed, please say no.

17 Mr. Bastida?

18 SECRETARY BASTIDA: The staff would record the
19 vote 5 to zero to approve the request for the extension of
20 consideration. Ms. Mitten, moving; Mr. Parsons seconded; Mr.
21 Hood, Mr. May and Mr. Hannaham voting in the affirmative.

22 CHAIRPERSON MITTEN: Thank you. Now what is now
23 item C is a sua sponte request by me regarding a case that I was
24 involved in at the BZA. I believe everyone has been given a
25 copy of the order in Appeal No. 16716.

1 This was the appeal of a building permit that was
2 approved by the Zoning Administrator for the construction of an
3 Assisted Living Facility on Connecticut Avenue and this is --
4 there were numerous issues raised in the appeal and for the most
5 part the appeal, as the BZA made the decision, the appeal was
6 denied on all counts.

7 There were a couple of issues they gave me that
8 concerned me and I wanted to bring those to the Zoning
9 Commission because I just felt that the Zoning Administrator had
10 made an interpretation that went beyond the intent of the zoning
11 regulations and then by the BZA upholding his decision that they
12 were compounding the problem and there had been several
13 precedents cited. And specifically, I'm asking for sua sponte
14 review under Section 3128.7a which is in a particular instance
15 where it appears to the Zoning Commission that the Board has
16 exceeded its prerogatives and has thus, in effect, changed the
17 zoning.

18 Now the specifics of this relate to the location
19 of a penthouse that is not set back from the front of the
20 building and the explanation for the lack of set back was that
21 it is enclosed in a tower element that is considered to be an
22 architectural embellishment. This penthouse was otherwise
23 treated as a penthouse and the waiver of the FAR attributed to
24 that structure was imposed, so it was treated as a penthouse for
25 one purpose and not treated as a penthouse for another purpose.

1 And my reading of the zoning ordinance is there really is no
2 exception permitted without getting a variance for the setback
3 provision for rooftop penthouse. So that was my concern and in
4 addition to that which was the fact that the Zoning
5 Administrator did not refer the roof structure plan to the
6 Office of Planning as is required by Subsection 411.

7 So I'm asking the Zoning Commission to perform a
8 sua sponte review of the two decisions that are listed on page
9 number 16 of the BZA order. I'm not asking that the entire
10 appeal be reheard, but merely those two issues that are the
11 second and third vote which is the roof structure not being
12 reviewed by the Office of Planning which is really not being
13 reviewed. It's the referral that's actually the bigger issue.
14 And the issue regarding the elevator penthouse setbacks relative
15 to the adjacent exterior wall.

16 COMMISSIONER HOOD: Madam Chair, through you to
17 Mr. Bergstein, I'm trying to remember -- I know that sua spontes
18 are not common, not a lot of them have been done since I've been
19 here. If this one proceeds, this will be the second one. But
20 I'm trying to remember the procedure and Mr. Bergstein, if you
21 could enlighten me again on the procedure and what we need to do
22 if it's done.

23 MR. BERGSTEIN: All right, what I believe the
24 zoning regulations call for is at this stage the Commission
25 would determine whether or not to review an order. That's the

1 only decision you have before you today, not to actually take
2 action on it, but whether or not the order should be reviewed.
3 At that point if you did decide to review the order, the BZA
4 record would be then transmitted to you. After the order is
5 transmitted to you, you would have another meeting to decide
6 what you wanted to do with respect to the order which could be
7 either reversing it, modifying it or affirming it.

8 If you decided in the course of that second
9 meeting that it seemed to you that you were headed towards a
10 reversal, you must give the parties an opportunity to respond to
11 the issues and that's what happened in the last sua sponte where
12 it became clear in the course of the meeting that the Zoning
13 Commission was inclined to reverse and at that point there was a
14 briefing schedule set up for the parties. Those briefs were
15 submitted and then at a -- what would be the third meeting in the
16 process, you would take the vote, if the vote was to reverse.
17 If it did not seem to you at the second meeting that you were
18 heading towards a reversal or that you were intending to affirm
19 it, you want me to do that, you could go ahead and simply
20 affirm, let the order stand. But because this issue at this
21 point does not involve any party, you would have to get the
22 parties involved if you were going towards reversal of the BZA
23 order. So that's how I see it, basically a three meeting
24 process, meeting first to determine to review, a second meeting
25 to discuss, and if it seemed as if you were going to reverse, an

1 opportunity to brief, and then the third meeting to take a
2 decision.

3 COMMISSIONER HOOD: Thank you, Mr. Bergstein.

4 Madam Chair, through your comments, I'm hearing
5 that the rooftop structure is being used -- it's almost, through
6 your comments, it's almost as if it's being used as a
7 convenience, depending upon how it's used and I do take issue
8 and briefly looking at this order, I would be inclined to have
9 the order looked at. I believe it's the first step we have to
10 take. I would be inclined to do that.

11 Are you asking for a motion or discussion?

12 CHAIRPERSON MITTEN: I guess at this point,
13 discussion. And if I could just also expand on why this gives
14 me so much concern is the only time that I'm aware of that
15 architectural embellishments are mentioned in the zoning
16 ordinance that relates to building height and if we start -- if
17 we believe that the Zoning Administrator is correct saying that
18 we can eliminate the setback requirement for penthouses by
19 putting them in architectural embellishments and at the same
20 time waive the density that goes with it, then we are in effect
21 encouraging additional density to be put up, I guess, up against
22 the line of the building and it's not just a height issue which
23 is not -- because it's not a height issue in this particular
24 case. It's a bulk issue. I don't think that was ever intended
25 by the zoning ordinance. I think his reading is -- goes -- I

1 think he goes beyond -- he has gone beyond the plain language to
2 make an interpretation that is inappropriate and that's why I'm
3 so concerned about it and the fact that there have been other
4 occasions when that was done is why I think this is something
5 significant enough for us to take up.

6 So I will move that the Zoning Commission take
7 the BZA order 16716A under sua sponte review for the two items
8 listed as Decision No. 2 and No. 3 of the order.

9 COMMISSIONER PARSONS: Second.

10 CHAIRPERSON MITTEN: Any further discussion?

11 COMMISSIONER PARSONS: You had referred to two
12 votes, but shouldn't we be referring to specific items in the
13 order that should be briefed? For instance, under building
14 height there's a whole series, called elevator penthouse moved
15 to mechanical equipment. These are findings, right?

16 CHAIRPERSON MITTEN: Yes.

17 COMMISSIONER PARSONS: Is that where we should
18 focus people's attention?

19 CHAIRPERSON MITTEN: Yes. I guess the reason I
20 was focusing on the decisions is that's what we are going to
21 look at is their decision. Now I think it's appropriate, as you
22 say, to focus people's attention in terms of briefing us.

23 COMMISSIONER PARSONS: Maybe they could read to -
24 - it's just 53 through 64, that section deals exclusively with
25 that, I guess.

1 CHAIRPERSON MITTEN: Ys.

2 MR. BERGSTEIN: There is no briefing at this
3 point.

4 CHAIRPERSON MITTEN: Okay.

5 MR. BERGSTEIN: Again, at this point all you're
6 doing is, in essence, requesting that the record be provided to
7 you. It's at the second meeting you discuss the record and if
8 you felt that -- and you really are talking about -- there are
9 three votes listed on page 16 of the decision. And it's my
10 understanding that you're requesting sua sponte review of the
11 issues surrounding this second and third votes that are
12 described there, but at this point there's no briefing. It's
13 just that you go forward and receive the record and then have a
14 meeting to discuss the issues. Although I don't think there's
15 anything to -- well, there's nothing to preclude you from
16 requesting the parties to do it up front, but I think that you
17 would still have to give a party who would be reversed another
18 opportunity. In the last sua sponte review, there was no
19 briefing between the first meeting and the second meeting.
20 There's nothing I see that precludes you from doing that, but
21 you'd have to make sure that the record got out to the parties
22 in time and it's not really our procedure that's described in
23 the rules.

24 CHAIRPERSON MITTEN: Is there some way -- I mean
25 I really and I guess I feel like I want to say this. I am not

1 in any way not supportive of the Applicant's project. And I
2 don't want this to get bogged down in a lengthy process. I feel
3 that this particular action by the Zoning Administrator is
4 inappropriate and I want that to be examined, but is there some
5 way that we can -- how can we move this along pretty
6 expeditiously, Mr. Bergstein?

7 MR. BERGSTEIN: The one thing that I was sort of
8 suggesting as an option again, it wasn't done in the last one,
9 but is to invite the parties to present written statements at
10 this time. Not because you've made a determination to reverse,
11 but because you think it would be helpful to get their
12 perspective at this point with the understanding that if, in
13 fact, you were going towards reversal, pursuant to the rules,
14 you would give the parties yet another opportunity if they chose
15 to accept it, but that way you would -- the record that you
16 would be reading would have some context to it.

17 CHAIRPERSON MITTEN: All right.

18 MR. BERGSTEIN: There would have to be enough
19 time. I don't know how long -- it shouldn't take any time at
20 all, I think for the record to actually get to you since this is
21 a BZA record, but you'd have to determine when you'd set that
22 briefing schedule and certainly the record should be available
23 to all, although I would imagine that it is at this point
24 anyway.

25 CHAIRPERSON MITTEN: Okay, in terms of what kind

1 of -- in terms of timing to --

2 MR. BERGSTEIN: In other words --

3 CHAIRPERSON MITTEN: How much time is
4 appropriate?

5 MR. BERGSTEIN: Well, assuming you were going to
6 take this matter up at your next month's meeting, you'd want to
7 backtrack and ask yourself how much time you would want to have
8 those materials provided to you and ask yourself is there enough
9 time between today and then for the parties to provide you with
10 something that would be useful.

11 SECRETARY BASTIDA: Madam Chairman, the next
12 meeting is November 19 which is approximately four weeks away.

13 CHAIRPERSON MITTEN: Right.

14 SECRETARY BASTIDA: The record is available to
15 anybody asking for it in this office and if you want to suggest
16 that they could provide a briefing regarding the matters I just
17 discussed by I would say November 9th or thereabout, that would
18 seem to me that that would be sufficient time because then the
19 time between the November 19th meeting and the December 8th is
20 shorter and in that way you can only will give two weeks for
21 them to rebrief any other point that has not been overlooked if
22 you want to dispose of it by December 8th. December 8th is the
23 meeting date, perhaps I am wrong, but it's early December.

24 CHAIRPERSON MITTEN: All right, and then you
25 would take responsibility for notifying the Appellant and the

1 Appellee?

2 SECRETARY BASTIDA: That's right. We will --

3 CHAIRPERSON MITTEN: And the Intervenor?

4 SECRETARY BASTIDA: We will do that.

5 CHAIRPERSON MITTEN: Okay. So we have a motion
6 and a second to exercise sua sponte review over BZA Appeal No.
7 16716A, the decisions 2 and 3 by the BZA.

8 Any further discussion? All those in favor,
9 please say aye.

10 (Ayes.)

11 Those opposed, please say no.

12 Mr. Bastida?

13 SECRETARY BASTIDA: The staff would record the
14 vote 5 to zero, Ms. Mitten moving; Mr. Parsons seconding and Mr.
15 Hannaham, Mr. May and Mr. Hood voting in the affirmative.

16 Thank you.

17 CHAIRPERSON MITTEN: Thank you. Well, let's see,
18 the correspondence. The only correspondence we haven't spoken
19 about thus far is a letter regarding the Capitol Hill Commercial
20 Overlay District which we set down and we acknowledge receipt of
21 the letter.

22 And I guess the next thing is the BZA meetings.
23 If everybody would pull out their BZA schedule.

24 SECRETARY BASTIDA: Madam Chairman, if you turn
25 to page 3 that is where we need to start for October 23rd.

1 CHAIRPERSON MITTEN: Yes. Well, Mr. Parsons is
2 on the 23rd.

3 SECRETARY BASTIDA: I'm just affirming that he is
4 available.

5 SECRETARY BASTIDA: Mr. Bastida is attempting
6 affirm that you are available for the 23rd, Mr. Parsons.

7 COMMISSIONER PARSONS: I'm sorry, yes, I am, all
8 day.

9 COMMISSIONER HOOD: Madam Chair, maybe you lost
10 me. Did we do everything we ere supposed to up on the
11 correspondence?

12 CHAIRPERSON MITTEN: Yes.

13 COMMISSIONER HOOD: Okay. If you'd like me to
14 review, I acknowledged the receipt of the correspondence labeled
15 A.

16 We dealt with the issue regarding Square 37 in
17 the Office of Planning Status Report.

18 We dealt with the letter regarding 1616 Rhode
19 Island Avenue under proposed action.

20 And we dealt with the letter regarding Trenton
21 Terrace under the Office of Planning Status Report as well.

22 COMMISSIONER HOOD: Okay, I just want to make two
23 comments. I did receive a letter from
24 ANC-6A, the Zoning and License Subcommittee. When we set that
25 down to deal with the overlay I believe that was presented to us

1 from Capitol Hill Restoration Society. Can I just ask if it's
2 appropriate, Ms. McCarthy, are you also working with the ANCs
3 because that was a concern that I saw from the -- he said he was
4 the Chair of Zoning, Commissioner Ferrell.

5 DEPUTY DIRECTOR MCCARTHY: Right, Commissioner
6 Ferrell seems to have misread the overlay that was set down
7 because although the original comprehensive plan amendment
8 included H Street as one of the areas that could be subject to
9 the commercial district overlay in the end we had been working
10 even before we got the request from Champs and Capitol Hill
11 Restoration Society for the broader set of overlays, we had been
12 working with Stanton Park and the H Street Merchants Association
13 on an overlay for H Street which will go beyond what is being
14 proposed for Capitol Hill overlays. So we left H Street out.

15 Mr. Ferrell's letter seemed -- he seemed to feel
16 somehow that H Street had been included in the Capitol Hill
17 overlay and it's not.

18 COMMISSIONER HOOD: Okay, so he has been
19 clarified, I guess.

20 DEPUTY DIRECTOR MCCARTHY: Yes.

21 COMMISSIONER HOOD: He has clarification on that.

22
23 DEPUTY DIRECTOR MCCARTHY: But in answer to your
24 broader question, we had insisted that the sponsoring
25 organizations go to both ANC 6A and 6B before we officially set

1 that down because it had not been generated with the formal
2 participation of the ANC so we wanted to be sure that they had
3 bought off on it before we proceeded with set down which they
4 then, both of them had supported it.

5 COMMISSIONER HOOD: Okay, thank you, Ms.
6 McCarthy.

7 Madam Chair, what did we decide on and forgive me
8 if I wasn't paying attention, but what did we decide on Trenton
9 Terrace? I believe that's the project in Ward 8.

10 CHAIRPERSON MITTEN: We will take that up first,
11 set down in November. And that it's possible for the Applicant
12 to have their hearing in January as they wanted provided that
13 they timely file their
14 pre-hearing statement.

15 COMMISSIONER HOOD: And we also get a report from
16 the Office of Planning.

17 CHAIRPERSON MITTEN: Right.

18 DEPUTY DIRECTOR McCARTHY: The Office of Planning
19 has committed to having a report with regard to set down in time
20 for your November meeting.

21 COMMISSIONER HOOD: I was willing to pull back
22 some of the DOES stuff, but since you also have it, that's
23 great. Thank you.

24 CHAIRPERSON MITTEN: Now we're on October 30th
25 for the BZA. We need a Zoning Commission Member for all day

1 with the exception of the last case which is one that I had been
2 on from the original hearing.

3 COMMISSIONER HOOD: Madam Chair, I will take
4 November 6th.

5 CHAIRPERSON MITTEN: November 6th. Okay. For
6 November 6th, I have two cases in the morning and there's a
7 third case in the morning and I was thinking perhaps we should
8 just split that day and you take the afternoon.

9 COMMISSIONER HOOD: That's fine.

10 CHAIRPERSON MITTEN: Okay.

11 COMMISSIONER HOOD: I'll take the afternoon.

12 CHAIRPERSON MITTEN: And I'll take the morning.
13 Anybody for the 30th of October?

14 COMMISSIONER MAY: I believe I can do the
15 afternoon.

16 CHAIRPERSON MITTEN: Of October 30th?

17 COMMISSIONER MAY: Yes.

18 CHAIRPERSON MITTEN: But not the morning?

19 COMMISSIONER MAY: Not the morning.

20 COMMISSIONER HANNAHAM: Do you need somebody for
21 the morning?

22 CHAIRPERSON MITTEN: Yes.

23 COMMISSIONER HANNAHAM: I can take the morning.

24 CHAIRPERSON MITTEN: That would be great.

25 Mr. May, I'm going to try and make a deal with you.

1 COMMISSIONER MAY: Okay.

2 CHAIRPERSON MITTEN: Which is I have one which
3 may be a lengthy case in the afternoon and are you available by
4 any chance to take the entirety of November 13th with the
5 exception of those cases that have Zoning Commission Members
6 already designated?

7 COMMISSIONER HOOD: Madam Chair, I was thinking I
8 would take it because he's already taking the 30th all day,
9 right?

10 CHAIRPERSON MITTEN: Mr. Hannaham is taking the
11 morning of the 30th.

12 COMMISSIONER HOOD: I know I could do the 13th if
13 need be.

14 CHAIRPERSON MITTEN: Or Mr. May, how do you look
15 for the 13th or the 20th because we need somebody all day on the
16 20th.

17 COMMISSIONER HOOD: I believe Mr. May -- if I can
18 just interject not to mess with his schedule, but when I --

19 COMMISSIONER MAY: Apparently you know my
20 schedule better than I do.

21 COMMISSIONER HOOD: Well, they have your name
22 down here with a question mark.

23 COMMISSIONER MAY: I heard the initial
24 discussions and the hearings on party status relating to the
25 Penn Branch case which will continue on November 20th and I was

1 available to continue on that case for the afternoon. I expect
2 that case is going to take through the afternoon into the
3 evening.

4 CHAIRPERSON MITTEN: Okay, but you're not
5 interested in just having a warm up in the morning?

6 (Laughter.)

7 If it doesn't fit with your schedule, then -- is
8 it easier for you to do half days?

9 COMMISSIONER MAY: It is.

10 COMMISSIONER PARSONS: I can do the morning.

11 CHAIRPERSON MITTEN: So Mr. May in the afternoon
12 of the 20th. Mr. Parsons, the morning of the 20th.

13 COMMISSIONER MAY: Am I still on the afternoon of
14 the 30th?

15 CHAIRPERSON MITTEN: I'm thinking that maybe you
16 should just pick up that case that I was on, Alliance Francais.

17 COMMISSIONER MAY: Okay.

18 CHAIRPERSON MITTEN: Okay.

19 COMMISSIONER MAY: You had no prior --

20 CHAIRPERSON MITTEN: Well, we didn't really,
21 there were problems with even getting started with the hearing,
22 so then there's probably been additions to the record, so you'll
23 be as -- there's not any great burden there.

24 COMMISSIONER MAY: All right.

25 CHAIRPERSON MITTEN: Okay, so we're still looking

1 for someone on the 13th.

2 SECRETARY BASTIDA: Madam Chairman, then we have
3 Mr. Parsons for the November 20th in the morning and Mr. May for
4 the afternoon.

5 CHAIRPERSON MITTEN: Yes.

6 SECRETARY BASTIDA: Thank you.

7 COMMISSIONER HOOD: Madam Chair, I can do the
8 13th all day.

9 CHAIRPERSON MITTEN: Let's not cut Mr. Hannaham
10 out of the fun here.

11 COMMISSIONER HANNAHAM: I'm thinking about being
12 out of town somewhere close to that from about the 14th, 15th
13 range until the end of the month.

14 CHAIRPERSON MITTEN: Okay, so maybe for this
15 month it would be better for Mr. Hood to take the 13th. Okay.

16 COMMISSIONER HANNAHAM: I defer.

17 CHAIRPERSON MITTEN: I am just trying to spread
18 the wealth around.

19 COMMISSIONER HOOD: The way it looks now we have
20 a half day on the 6th so I was trying to do my fair share.

21 CHAIRPERSON MITTEN: Okay, so we have Mr. Hood
22 all day on the 13th, except for -- we'll have to talk about the
23 cases that already have Zoning Commissioners designated.

24 Do you have all of that, Mr. Bastida?

25 SECRETARY BASTIDA: The staff has it. I would

1 like to go to November 27th, the reason is that we have civil
2 infractions in the afternoon and we'll have to provide a little
3 training to the BZA Members and the Zoning Commission sitting on
4 that case, especially we have several BZA Members have not
5 participated in civil infraction cases.

6 CHAIRPERSON MITTEN: Okay.

7 SECRETARY BASTIDA: And those civil infraction
8 cases are in the afternoon.

9 CHAIRPERSON MITTEN: Mr. Hannaham, will you be
10 back by then or not?

11 COMMISSIONER HANNAHAM: I'm trying to think, the
12 27th. The 22nd is Thanksgiving, right? I am expected to be
13 back the weekend after Thanksgiving.

14 CHAIRPERSON MITTEN: So this would be the
15 following week. I guess the question would be depending on when
16 you're coming back you might have difficulty prepping if you're
17 not there over the weekend.

18 COMMISSIONER HANNAHAM: I see what you mean.

19 CHAIRPERSON MITTEN: We can wait until December
20 and we'll put you to work.

21 COMMISSIONER HANNAHAM: I'd rather to defer
22 because I'm so fuzzy on the beginning and end of my time off.

23 CHAIRPERSON MITTEN: That's great. Mr. Bastida,
24 I'll take the 27th.

25 SECRETARY BASTIDA: Thank you.

1 CHAIRPERSON MITTEN: Anything else, Mr. Bastida?

2 SECRETARY BASTIDA: The December could wait until
3 the November meeting, December 4th and the 11th.

4 CHAIRPERSON MITTEN: Yes.

5 SECRETARY BASTIDA: And there also will be, in
6 case there is any changes, up through November 27th, it's all
7 advertised already.

8 CHAIRPERSON MITTEN: Yes.

9 SECRETARY BASTIDA: And it will be impossible to
10 make changes because there are 45 calendar days required to
11 comply with APA.

12 CHAIRPERSON MITTEN: Okay.

13 SECRETARY BASTIDA: Okay. Madam Chairman, just
14 in case, the reminder schedule is in front of you and it speaks
15 by itself.

16 CHAIRPERSON MITTEN: Thank you. If there is no
17 other business, then I declare this public meeting adjourned.

18 (Whereupon, at 2:20 p.m., the meeting was
19 concluded.)

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