

DISTRICT OF COLUMBIA  
ZONING COMMISSION

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REGULAR MEETING

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MONDAY,  
MARCH 11, 2002

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The meeting commenced at 2:00 p.m. in the Office of Zoning Hearing Room, 441 Fourth Street, NW, Suite 220, Washington, D.C., 20001, Carol Mitten, Chair, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN Chair  
ANTHONY HOOD Vice Chair  
HERBERT FRANKLIN Architect of the Capitol  
JAMES HANNAHAM Commissioner  
PETER MAY Architect of the Capitol  
JOHN PARSONS National Park Service

COMMISSION STAFF MEMBERS PRESENT:

ALBERTO BASTIDA Secretary  
ALAN BERGSTEIN Corporation Counsel  
MARIE SANSONE Corporation Counsel  
SHARON SANCHEZ Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

ANDREW ALTMAN Director  
JOHN FONDERSMITH Staff  
ELLEN MCCARTHY Staff  
DAVID McGETTIGAN Staff  
STEPHEN PASSALACQUA

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

2:08 p.m.

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is the regular public meeting of The Zoning Commission of the District of Columbia for Monday, March 11, 2002. My name is Carol Mitten. Joining me are Vice Chairman, Anthony Hood, and representing the Architect of the Capitol today we have both Herb Franklin and Peter May. Representing the National Park Service is John Parsons. Commissioner Hannaham will be joining us in a moment.

First let me apologize for the late start today. We spent some important time in an executive session framing some of the issues that we will be discussing today.

I'd like to begin by just revising the agenda a bit to facilitate Mr. Franklin's attendance here today on this one case which under the consent calendar letter B which is Zoning Commission Case No. 00-36CP which is the American University - Motions to Reconsider. We'll take that up first if there are no other preliminary matters.

Mr. Bastida, is there anything else?

MR. BASTIDA: Madame Chairperson, the Staff has no preliminary matters. Thank you.

CHAIRPERSON MITTEN: Thank you, Mr. Bastida. So we will go right to the AU case. Mr. Bastida.

MR. BASTIDA: The Staff has provided all the

1 motions for reconsideration and requests that the Commission make  
2 a decision. The Staff would like to clarify that the Commission  
3 has admitted into the record all the late filings. Thank you.

4 CHAIRPERSON MITTEN: I just wanted to clarify  
5 something. I believe we're going to take up now as a deferred  
6 item the various motions that were provided by Mr. Elliott on  
7 behalf of the neighborhood groups and then responses from the  
8 university.

9 These were requests to admit additional information  
10 into the record and I would move that we accept the all these  
11 additional filings for our consideration.

12 MR. HOOD: Second.

13 CHAIRPERSON MITTEN: Any discussion?

14 (No response.)

15 CHAIRPERSON MITTEN: So the motion is to accept the  
16 various filings in the AU campus plan matter. All those in favor  
17 please say Aye.

18 MEMBERS: (In unison.) Aye.

19 CHAIRPERSON MITTEN: Those opposed please say no.

20 (No response.)

21 CHAIRPERSON MITTEN: Mr. Bastida.

22 MR. BASTIDA: The Staff will record the record four  
23 to zero. Ms. Mitten moved and Mr. Hood seconded and Mr. Parsons  
24 and Mr. Franklin voting on the affirmative. Mr. Hannaham not  
25 voting not having heard the case.

1 CHAIRPERSON MITTEN: Thank you. Now what we have  
2 before us is two motions for reconsideration. One is from the  
3 Tenley Campus Neighbors Association. Let's take that up first.  
4 We have --

5 MR. FRANKLIN: Madame Chair.

6 CHAIRPERSON MITTEN: Yes.

7 MR. FRANKLIN: Before we preceded, could I just  
8 make a statement for the record?

9 CHAIRPERSON MITTEN: Please do.

10 MR. FRANKLIN: This is to clarify for the records  
11 that I'm participating pursuant to a specific written delegation  
12 of authority from Architect of the Capitol to permit me to  
13 resolve matters on which I previously sat or participated.

14 CHAIRPERSON MITTEN: Thank you. Let's take these  
15 up separately. We have the motion from the Tenley Campus  
16 Neighbors Association for reconsideration. We also have the  
17 response from the University to that motion. Thoughts from the  
18 Commission.

19 MR. HOOD: Madame Chair, when you asked for  
20 thoughts to see whether we wanted a motion to approve the  
21 reconsideration, is that what you are asking for or just  
22 discussion?

23 CHAIRPERSON MITTEN: We have motion before us from  
24 and I'm just trying to isolate this so we can take up these  
25 matters separately the Tenley Campus Neighbors Association to

1 reconsider our orders specifically as it relates to the Tenley  
2 Campus. They object to our characterization of circumstances and  
3 various findings of fact. They are of view that we did not give  
4 great weight to ANC 3-E and the Tenley neighbors did not have  
5 adequate opportunity to participate in the campus plan  
6 negotiations.

7 MR. HOOD: Madame Chair, I believe that when we  
8 found out that they were not notified I think we went to an extra  
9 hearing I believe, I recall. I may not be fully correct. I  
10 thought we accommodated them fairly well.

11 As far as not giving the ANC 3-E great weight, I  
12 think we did. We deliberated extensively. We particularly went  
13 through specific items individually. I would be opposed to it.

14 CHAIRPERSON MITTEN: Any others?

15 MR. PARSONS: I agree with Mr. Hood and would move  
16 that we deny this motion.

17 MR. FRANKLIN: Second.

18 CHAIRPERSON MITTEN: All right. We have a motion  
19 and a second to deny Tenley Campus Neighbors Association motion  
20 to reconsider the AU campus plan order. Any further discussion?

21 (No response.)

22 CHAIRPERSON MITTEN: All those in favor please say  
23 aye.

24 MEMBERS: Aye.

25 CHAIRPERSON MITTEN: Those opposed please say no.

1 (No response.)

2 CHAIRPERSON MITTEN: Mr. Bastida.

3 MR. BASTIDA: Just for the record. Mr. Hood was  
4 the one who seconded the motion.

5 CHAIRPERSON MITTEN: Mr. Franklin.

6 MR. BASTIDA: Mr. Franklin. Thank you. The Staff  
7 will record the vote four to zero. Mr. Parsons moved it. Mr.  
8 Franklin seconded. Mr. Hood and Ms. Mitten voting in the  
9 affirmative. Mr. Hannaham not voting not having heard the case.  
10 Thank you.

11 CHAIRPERSON MITTEN: Thank you, Mr. Bastida. Now  
12 we have before us a motion from The Neighborhood Association for  
13 reconsideration of the American University campus plan order.  
14 There are numerous issues that they raise.

15 I think in large measure the issues that are raised  
16 by the Neighborhood Associations if you recall Mr. Elliott had  
17 asked if a draft order could be circulated among the parties for  
18 their comments. I think that they took the opportunity now to  
19 give us their comments. A few of those comments I think deserve  
20 further consideration on our part in order to clarify the order.

21 The issue related to the bleachers there is I  
22 believe an error in our order. This is on page 28 in the first  
23 full paragraph relating to project c with the reduction in the  
24 size of the bleachers to 250 seats and with their construction on  
25 the ground arranged in three horizontal rows facing the campus

1 rather than the nearby houses. I recall from our discussions and  
2 our deliberation and also as reflected in the conditions of the  
3 order that these three rows of bleachers will be facing the  
4 houses albeit at a distance but not facing the campus. That was  
5 our intention. So this is just an inconsistency with the  
6 governing part of the order that I think bears correction.

7 Two other items where the University in their  
8 response articulate their commitment to do two things. One is to  
9 chain the old Western Road and prohibit certain vehicular traffic  
10 and two is not to install gate controls on the entrances of the  
11 parking garages that have access off of Massachusetts and  
12 Nebraska Avenues.

13 I think rather than have the assumption that the  
14 University would comply with our intentions there and certainly I  
15 don't think they have any objections to it and it's certainly  
16 their commitment that the order would appropriately be modified  
17 to just incorporate those provisions.

18 MR. FRANKLIN: Madame Chair, as I recall I think  
19 the parameter fence falls in the same category of assumptions  
20 that probably ought to be explicitly addressed.

21 CHAIRPERSON MITTEN: Yes.

22 MR. PARSONS: So that sounded like a motion.

23 CHAIRPERSON MITTEN: The motion would be to grant  
24 in part the motion for reconsideration of Order Number 949 to  
25 modify the language on page 28 as it relates to the bleachers and

1 to incorporate the provisions that the University will chain the  
2 old Western Road and prohibit certain vehicular traffic. Also  
3 that they will not install gate controls on the parking garages  
4 with entrances from Massachusetts or Nebraska Avenues. Then, Mr.  
5 Franklin, could you just piggyback the last one since I am having  
6 trouble finding the parameter fence?

7 MR. FRANKLIN: I don't think any problem because  
8 it's not in the order as such. But it was the subject of  
9 correspondence and possibly testimony. I think it was mostly  
10 correspondence where the University agreed that they would be  
11 maintaining the parameter fence which was created pursuant to the  
12 1989 order.

13 CHAIRPERSON MITTEN: Right. Mr. Parsons has  
14 provided the language from here which is that the University will  
15 maintain the parameter fence and gates adjoining the residential  
16 neighborhoods and continue to provide access cards for  
17 neighboring residents in accordance with past practice.

18 So I would move that we grant the motion for  
19 reconsideration as it relates to those items and deny on all  
20 other issues.

21 MR. FRANKLIN: Second.

22 MR. HOOD: Question. I was wondering if we also  
23 could look at the liaison issue and unfortunately, Madame Chair,  
24 I don't have the order in front of me.

25 CHAIRPERSON MITTEN: Here.

1 MR. HOOD: If you could just bear with me one  
2 second. I don't know how my other colleagues feel but it seems  
3 to be of expressingly interest of not necessarily designated or  
4 limited to the specific organizations which have already from a  
5 community standpoint have done the dialogue thus far. I would be  
6 in favor of maybe adding some of these lists so they can create  
7 the liaison committee with also but not limited to just these  
8 names here that I see in front of me that were submitted in the  
9 motion for reconsideration.

10 I think some of these ANC 3-D, 3-E, Spring Valley  
11 West I don't know if we should necessarily name them but I would  
12 be in favor of naming some but not just limit it to that specific  
13 group because some people in the neighborhood don't even  
14 participate in any of those groups at all. I think that would  
15 give them a source to start with.

16 CHAIRPERSON MITTEN: How would you if we were to  
17 amend the motion to include that want that to be articulated

18 MR. HOOD: I guess to say inclusive of but not  
19 limited to. I don't want to get really into too much of it. I  
20 guess maybe I shouldn't have opened my mouth. But anyway ANC 3-  
21 D, ANC 3-E, The Spring Valley Westly Heights Citizens  
22 Association, The American University -- Citizen Association, The  
23 Fort Gain Citizen Association, Neighbors for Liberal Communities,  
24 The Spring Valley Court Citizen Associations, The Tenley Campus  
25 Neighbor Association, The Westover Place Citizen Association but

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1 it's not necessarily saying that you would have to have someone  
2 from every specific group but a representation should be there.  
3 Right now it is open ended and it's like a good faith effort. It  
4 may not even happen.

5 CHAIRPERSON MITTEN: How about if we were just  
6 craft that where members of those groups but not exclusively  
7 those groups would be invited to participate on the liaison  
8 committee. Then there is no requirement on anyone's part to  
9 participate. What we don't want to do is to hold the University  
10 accountable for the actions of another group.

11 MR. HOOD: That's fine.

12 CHAIRPERSON MITTEN: All right. If we include that  
13 as members of those community groups will be invited to  
14 participate in the liaison committee, I would accept that as a  
15 friendly amendment. Mr. Franklin as a second.

16 MR. FRANKLIN: Well, you didn't list the property  
17 owners on Sedgwick Street who are a separate group. I frankly am  
18 inclined to leave things as they are because I think they will  
19 fall into place in an good faith effort which I assume will take  
20 place.

21 The minute that you start naming groups you're  
22 going to omit one and there may be some new groups that will be  
23 created two years from now that is not in the order. Then  
24 somebody will get up and say that they weren't listed.

25 MR. HOOD: That's what I was saying, Mr. Franklin

1 when I said [but not limited to.] I can go along with your  
2 rationale. I will withdraw my statement, Madame Chair.

3 CHAIRPERSON MITTEN: All right. Any other  
4 discussion on the motion?

5 MR. PARSONS: No.

6 CHAIRPERSON MITTEN: So the motion is to grant in  
7 part and deny in part the motion from the Neighborhood  
8 Associations for reconsideration. All those in favor please say  
9 aye.

10 MEMBERS: Aye.

11 CHAIRPERSON MITTEN: Those opposed please say no.

12 (No response.)

13 CHAIRPERSON MITTEN: Mr. Bastida.

14 MR. BASTIDA: The Staff will record the vote four  
15 to zero. Ms. Mitten moving and Mr. Franklin second. Mr. Parson  
16 and Mr. Hood voting on the affirmative. Mr. Hannaham not voting  
17 not having participated on the case. Thank you.

18 CHAIRPERSON MITTEN: Thank you, Mr. Bastida. Thank  
19 you for joining us today, Mr. Franklin. Good to see you.

20 MR. FRANKLIN: Always a pleasure.

21 CHAIRPERSON MITTEN: Could someone ask Mr.  
22 Hannaham to join us?

23 (Pause.)

24 CHAIRPERSON MITTEN: Let the record reflect that we  
25 have now been joined by Commissioner Hannaham. We'll go back to

1 where we were on our agenda and take up the action on the  
2 minutes. Mr. Bastida.

3 MR. BASTIDA: The Staff requests that the  
4 Commission take action on the draft of the meeting minutes of  
5 February 11, 2002.

6 CHAIRPERSON MITTEN: I wasn't here but I did have a  
7 question as I was reading through the minutes. Just for  
8 clarification, on page 3 under the Waterside Mall case. It says  
9 that Vice Chairman Hood specified this matter to be a rule  
10 making. I guess I would thought that should a contested case.  
11 I just want to clarify that.

12 MR. BERGSTEIN: I think that was a tax amendment.

13 MR. BASTIDA: It's a tax amendment. It is a rule  
14 making case.

15 CHAIRPERSON MITTEN: Oh, it's a tax --

16 MR. HOOD: I'm just separating my notes, Madame  
17 Chair. Did you get an answer?

18 CHAIRPERSON MITTEN: Yes. I would entertain a  
19 motion to approve the minutes of February 11, 2002.

20 MR. PARSONS: So moved.

21 MR. HANNAHAM: Second.

22 CHAIRPERSON MITTEN: All right. We have a motion  
23 and a second to approve the minutes of February 11, 2002. All  
24 those in favor please say aye.

25 MEMBERS: Aye.

1 CHAIRPERSON MITTEN: Those opposed please say no.

2 (No response.)

3 CHAIRPERSON MITTEN: Mr. Bastida. I would like to  
4 be recorded as not voting not having attended the meeting.

5 MR. BASTIDA: Thank you, Madame Chairperson. The  
6 vote will be four to zero to one. Mr. Parson moving and Mr.  
7 Hannaham second it. Mr. May and Mr. Hood voting affirmative.  
8 Ms. Mitten not voting not being present at the meeting. Thank  
9 you.

10 CHAIRPERSON MITTEN: Thank you.

11 MR. HOOD: Madame Chair, I think Mr. Hannaham  
12 seconded it. I didn't even have my mike on so I know I didn't  
13 second it.

14 MR. BASTIDA: I stand corrected. Thank you, Mr.  
15 Hood.

16 CHAIRPERSON MITTEN: Thank you. We'll move to the  
17 monthly status report by the Office of Planning. Ms. McCarthy.

18 MS. MCCARTHY: Thank you, Madame Chair. I'm  
19 passing out a revised version of the Office of Planning status  
20 report to update you on some last minute changes on some of the  
21 projects. So let me just briefly go down and highlight a few  
22 cases.

23 We will hear today from Mr. McGettigan about the  
24 proposed setdown for East Capital Dwellings. There are three  
25 cases listed as April cases. Those are all related, Buzzard

1 Point and the extension of the Capitol Point PUD and the Florida  
2 Rock PUD.

3 For the two individual PUDs, we are still working  
4 with the applicants on what may be some design or other  
5 modifications to the projects that would considered as part of  
6 the extension. We expect to bring that back to the Commission at  
7 the April meeting for action on all three of those items.

8 Two hundred Case Street the applicant has agreed  
9 with us that what they were proposing was not just an extension  
10 but was in fact a modification of the PUD. They have indicated  
11 that they are going to submit a application for minor  
12 modification.

13 For the antenna towers, we believe that we are  
14 nearing the end in attempting to work with the task force and  
15 arrive at consensus on the antenna tower regulations. Ms.  
16 Steingasser is here who is project manager for that if you have  
17 any more detail questions.

18 With regard to the PUD modifications and transfers  
19 of development rights from historic churches which is listed at  
20 the bottom of the second page, both of those the commission has  
21 agreed to do round tables. The Office of Planning has prepared  
22 the first draft of white papers that would be used as a basis of  
23 discussion on those. So we are just finishing the revisions on  
24 that and then we will work with the Office of Zoning staff on  
25 getting a date established for the round tables and a list of

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1 invitations or a way of getting word out for attending both of  
2 those round tables.

3 Just some updates on the second page. The concrete  
4 plant tax amendment. You adopted it on the emergency basis and  
5 you set it down for a public hearing. That is waiting to be  
6 scheduled. Basically the same status I think on all of these.  
7 The projects have been accepted for setdown and the are just  
8 waiting for a hearing.

9 For concrete plan United House of Prayer, East  
10 Capitol Dwelling, senior housing, recreation centers, Waterside  
11 Mill Tax Amendment. Then in the neighborhood servicing retail,  
12 that's been setdown and we know that we are waiting for the  
13 transportation study for a prehearing statement on that and  
14 Trenton Terrace PUD and the PUD for assisted living or elderly  
15 housing at North Capitol and Riggs Road.

16 Then I think that the rest of the cases are pretty  
17 much self explanatory. I'd be happy to answer any questions on  
18 those items.

19 CHAIRPERSON MITTEN: Thank you. Any questions from  
20 the Commission for the Office of Planning. I would just like to  
21 take this opportunity to say as it relates to the cases that are  
22 on for April because we only have four commissioners on those  
23 cases specifically on Buzzard Point. We're having trouble  
24 scheduling everybody to sit down at the same place for having a  
25 meeting.

1           It's clear that all of the commissioners cannot  
2 attend our regularly scheduled meeting date for the April  
3 meeting. The April meeting will be rescheduled but at the moment  
4 I can't say until when. We have not set the date but it will be  
5 a date that is after the regularly scheduled for our April  
6 meeting. So just to put people on alert that there will be a  
7 change on the meeting date for April.

8           Thank you, Ms. McCarthy. The next item is hearing  
9 action Zoning Commission Case Number 02-05, the New East Capitol  
10 PUD and Map Amendment, Part 2. Is Mr. McGettigan going to make  
11 the presentation?

12           MR. MCGETTIGAN: Yes, Madame Chair. Good  
13 afternoon. My name is David McGettigan from the Office of  
14 Planning. The application before you is for the rest of the East  
15 Capitol development. The application is for part of a Hope 6  
16 project to redevelopment three former public housing projects.  
17 The overall project will provide 550 units in a variety of  
18 housing types, a commercial center with a grocery store, retail  
19 and office space, a community center and a day care center.

20           The project contains five major components: the  
21 senior apartment building which we set down last meeting; the  
22 community center and day care center building which is at the  
23 southeast corner of 56th Place, Southeast and East Capitol  
24 Street, two uses in one combined building; a four story apartment  
25 building which is at the southwest corner of Southern Avenue and

1 East Capitol; the commercial center with is on the north side of  
2 East Capitol and occupies the entire site frontage along East  
3 Capitol; and the remainder of the development is residential and  
4 it's going to have a variety of housing types.

5 The majority of the existing site was developed in  
6 sort of super block design containing a series of short cul-de-  
7 sacs running by through streets. This design along with a large  
8 concentration of public housing created a problematic urban  
9 design for the site. The new design proposes a more traditional  
10 grid design with homes close to the street and where possible  
11 alleys to provide necessary service access.

12 The design will be providing the mixed uses of  
13 commercial center. It hopes to have a grocery store and some  
14 office space. The residential offerings will have a range of  
15 styles and affordability including the 120 unit low rise  
16 apartments, 102 townhouses, 92 semi-detached houses, 15 single  
17 family detached houses and nine four-unit grand houses.

18 The application is going to be a Stage One. We'll  
19 come back later with a State Two. The Office of Planning is  
20 recommending that we set the stage down one for Stage One plan  
21 unit development. Some additional work we will see from the  
22 applicant are going to be some more detailed lot lines and  
23 building pad locations so evaluate compliance with the zoning  
24 regulations.

25 A list of uses that will prohibited in the retail

1 center which will be worked out with the community. The zoning  
2 of the commercial component we would like to leave up to some  
3 more negotiation whether C2A or C2B is most appropriate. There  
4 will be some continued discussion about the retail design to make  
5 sure it compliments the area and fits in with the community.

6 Further evaluation of the community center in  
7 particular with regards to the location of the loading space.  
8 Some additional refinement of the design of the multi-family  
9 apartment and refinement of the design for the community center.

10 I'll take any questions.

11 CHAIRPERSON MITTEN: Thank you. I just want to  
12 note for the record that we have received the revised zoning map  
13 amendment application form that modifies the request by the  
14 applicant for rezoning for the commercial component to C-2-B  
15 instead of C-3-A.

16 MR. ALTMAN: Madame Chairperson, I just wanted to  
17 add a couple of comments about this. We've been working very  
18 closely to bring this to you today. We've been working very  
19 closely with the Housing Authority as well as with the community  
20 and the developer to bring the set down report forward. A lot of  
21 work on site planning issues that has preceded this literally for  
22 the past eight or nine months of very intensive work and a lot of  
23 community meetings to bring forward something that's both  
24 important in terms of the service that it will provide to east of  
25 the river and as part of the Hope 6, grocery store, neighborhood

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1 service, the housing community center and putting a design back  
2 together that integrates this part of the neighborhood as opposed  
3 to the way any of these projects have been designed before I  
4 think as David McGettigan alluded to.

5 Also some of the things that were in the site  
6 planning before that we worked with them very closely on. For  
7 example there have been discussion earlier of gas station or  
8 discussion earlier about fast food restaurants as part of the  
9 grocery store area and part of the commercial complex. Through a  
10 lot of discussion and flexibility on the part of both the Housing  
11 Authority and the developer we were able to create I think a  
12 better site plan that eliminated those components which were  
13 problematic for the community and in a way didn't meet the  
14 community goals, meet planning goals and bring this before you  
15 today to set it down for public hearing.

16 CHAIRPERSON MITTEN: Thank you. Any questions for  
17 the Office of Planning? Mr. Parsons.

18 MR. PARSONS: I think we talked about this  
19 previously. I'm concerned about the R-5-A on the north side of  
20 East Capitol Street and the environmental concern over the storm  
21 water and its impact on Watts Branch. In the February 6 memo,  
22 you highlighted that not directly but talked about the need to  
23 correct infrastructure problems. I would hope you'd referred  
24 this to the Department of Recreation. I'm going to be looking in  
25 the hearing for a pretty specific proposal for how we are going

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1 to retain the storm water and enhance this tributary to the  
2 Anacosta rather than its current situation. Maybe you are doing  
3 that already but it's not referenced in your March 1 report.

4 MR. MCGETTIGAN: There has been some restoration  
5 work on the Watts Branch as separate from this application. That  
6 will continue. It certainly is important how they handle the  
7 storm water management and preservation of that stream. That is  
8 good information that they should provide.

9 MR. PARSONS: Okay. Thank you.

10 MR. HOOD: Madame Chair, I just have a question.  
11 Mr. McGettigan, on page 10 of your report you mention that there  
12 has been some outreach to ANC 7-C and 7-E. But I know in most  
13 public housing establishments, they have what is called a tenant  
14 association. I was wondering were they involved with the talks.  
15 If not, then maybe they need to be included.

16 MR. MCGETTIGAN: They have been involved all along  
17 with numerous meetings and actually more involved than the ANC in  
18 the development.

19 MR. HOOD: Sounds good. Thank you.

20 MR. ALTMAN: I also believe and correct me if I'm  
21 wrong and a representative from the Housing Authority is here  
22 that a steering committee has been set up. I think they were  
23 already meeting last week and have representatives to go through  
24 all work on the design issues and take this project forward to  
25 implementation.

1 (Discussion from someone in back of room.)

2 CHAIRPERSON MITTEN: Sir, if you are going to speak  
3 which we just as soon you not at a public meeting, I think Mr.  
4 Altman has captured it. Thank you.

5 MR. ALTMAN: Thank you.

6 CHAIRPERSON MITTEN: Any other questions for the  
7 Office of Planning. Mr. May.

8 MR. MAY: Your report mentions specifically what  
9 you will continue to work with the applicant on and what should  
10 be provided in terms of the first bullet point, the more detailed  
11 lot lines, the building pad locates to allow OP to insure  
12 compliance with the zoning requirements. I'm particularly  
13 interested in that because the information that we have on this  
14 project weeding through the particulars of what is occurring with  
15 each of the different building types in terms of the fit of the  
16 building to the zoning.

17 It seems there are a number of areas where there is  
18 something of a mismatch. It also makes me wonder whether the  
19 right zoning is being requested or whether there is some logic  
20 that I'm not seeing. I'm hoping that it's logic that I'm not  
21 seeing simply because there isn't a lot of information here.

22 If you look at some of where the lot widths  
23 required are 30 feet but the applicant is proposing 22 feet and  
24 we know there is going to have to a variance for side yards.  
25 When you add all those pieces up it seems like something isn't

1 quite working the way it is.

2 If we get more information that might become clear  
3 to me. It just seemed like there were some misfits there. I'm  
4 particularly interested in the side yard issues because it seems  
5 like there might be a lot of them with the zoning the way it's  
6 being suggested.

7 MS. MCCARTHY: And that's exactly what we had in  
8 mind. That as we know from the past two Hope 6 applications,  
9 sometimes you do need to request flexibility in terms of rear  
10 years and side yards but it's important that those be listed in  
11 detail so that Commission has that information available before  
12 they decide on the Stage 2 PUD. That is one reason why it makes  
13 sense to stage this as Stage One and Stage Two.

14 MR. MAY: Thank you.

15 CHAIRPERSON MITTEN: Any other questions for the  
16 Office of Planning? All right. We have a request before us to  
17 set down Zoning Commission Case Number 02-05 which is a first  
18 stage PUD application for public hearing.

19 MR. HOOD: So moved, Madame Chair.

20 CHAIRPERSON MITTEN: Second. Any further  
21 discussion? All those in favor, please say aye.

22 MS. MCCARTHY: Madame Chair, could I just remind  
23 you about the C-2-A and C-2-B being set down in the alternative  
24 for that. If the Commission could put that in its set down  
25 request.

1 CHAIRPERSON MITTEN: Yes. Let me just back peddle  
2 here for one moment and ask Mr. Hood if he would --

3 MR. HOOD: I will withdraw my motion.

4 CHAIRPERSON MITTEN: Let's just ask if you would  
5 modify the motion to include advertising the C-2-A and C-2-B in  
6 the alternative for the commercial.

7 MR. HOOD: I sure will. No problem. I will  
8 include that in my motion.

9 CHAIRPERSON MITTEN: Thank you.

10 MR. HOOD: I was going to take it off the table and  
11 then put it back on but that's fine.

12 CHAIRPERSON MITTEN: Okay. And I would second  
13 that. So now is there any further discussion?

14 All those in favor please say aye.

15 COMMISSIONERS: Aye.

16 CHAIRPERSON MITTEN: All those opposed please say  
17 no.

18 (No response.)

19 CHAIRPERSON MITTEN: Mr. Bastida.

20 MR. BASTIDA: The Staff will record the vote five  
21 to zero. Mr. Hood moving in. Ms. Mitten second it. Mr. May,  
22 Mr. Parsons and Mr. Hannaham voting on the affirmative. Thank  
23 you.

24 CHAIRPERSON MITTEN: Thank you, Mr. Bastida. Now  
25 moving to proposed action Zoning Commission Case Number 01-13C

1 the IMF PUD.

2 MR. BASTIDA: The Staff has provided you with all  
3 what was submitted in the record. The Commission has accepted  
4 into the record the late filing. The Staff requests that the  
5 Commission take an action on the proposed IMF building project.

6 CHAIRPERSON MITTEN: Thank you, Mr. Bastida. And  
7 just perhaps to amplify what you just said, in executive session  
8 we accepted the late filing by ANC 2-A of their proposed findings  
9 of fact and conclusions of law and we accepted the letter from  
10 Chief Ramsey clarifying the police department's position.

11 Just to begin by laying out the general matters for  
12 our discussion. What's being proposed is a rezoning from C-3-C  
13 to C-4 for the site for the IMF Headquarters II. And the large  
14 issues to be decided are issues related to design, to security  
15 and then perhaps the most contentious matter is the adequacy of  
16 the amenities.

17 I'll begin by asking the Commission just to get a  
18 discussion going if they have any concerns related to design.  
19 That would include the massing and the facade design, street  
20 scape along Pennsylvania Avenue or the loading and parking garage  
21 entrance. Any of those issues that any of the Commissioners  
22 would like to discuss. Mr. May.

23 MR. MAY: I would like to just say that I think the  
24 design of the building overall has improved and would be a  
25 welcome addition to that stretch of Pennsylvania Avenue. With

1 regard to some of the particulars I think there may be some room  
2 for refinement. But I don't see any need for any major  
3 modifications with regard to what the applicant has proposed.

4 CHAIRPERSON MITTEN: I would agree with you. When  
5 I first saw the design of the building and I'm not as  
6 esthetically sensitive perhaps as an architect but I wasn't  
7 particularly keen on the design of the building and I have come  
8 to with the changes that have been made like it very much. I  
9 appreciate the modifications that have been made to the design.

10 Let me just mention one specific design issue that  
11 has come up for some of the community folks which is perhaps  
12 let's get a little discussion from the Commission on this the  
13 location of the loading dock and parking garage entrance on 20th  
14 Street versus H Street. Also there was some suggestions that  
15 perhaps the proffered restriction on the loading dock usage  
16 should be expanded from just being exclusively for the a.m. rush  
17 hour to the p.m. rush hour as well. Any thoughts from the  
18 Commission on those issues?

19 MR. HOOD: Madame Chair, pertaining to the loading  
20 dock, I believe we have correspondence from D Dot stating that  
21 they concluded the optimum street would be 20th Street.

22 CHAIRPERSON MITTEN: Yes.

23 MR. HOOD: Okay.

24 CHAIRPERSON MITTEN: And the reasoning is pretty  
25 compelling which is just that H Street is more constrained and it

1 also tends to serve more community folks because it crosses the  
2 neighborhood and provides more access for residents. I think I  
3 would accept the conclusions of D Dot that 20th Street is a  
4 superior location. Based on the traffic study that the applicant  
5 provided which has not been refuted in any substantive way, I  
6 think the restriction for the a.m. rush on loading should be  
7 sufficient since that's when the heavy traffic is on 20th Street.

8 Any other thoughts about design before we move on?

9 All right. There are issues related to security  
10 that have been raised throughout the discussion. We have gotten  
11 from Chief Ramsey I'd say a conclusive response that MPD has no  
12 objections to the approval of Headquarters II. I know there was  
13 on going concern that there should be some kind of Federal  
14 review. Mr. Hood.

15 MR. HOOD: Madame Chair, this response  
16 unfortunately that we got previously about an hour or so ago as  
17 far as I'm concerned from Chief Ramsey is unacceptable. I have  
18 serious problems with what I see here in front of me.

19 I will tell you to the argument of what is a  
20 nonjurisdiction and what is not. In our regulations the  
21 evaluation standards in 2403.3 they impact the project on the  
22 surrounding. Unless someone of a legal mind can me tell me of  
23 the difference I think this is significant. The response that I  
24 got from Chief Ramsey does not satisfy me to that point.

25 CHAIRPERSON MITTEN: And relevant to what the

1 applicant is proposing for this project, how would you like us to  
2 proceed as it relates to security issues?

3 MR. HOOD: I think that now don't get me wrong the  
4 project is a good project but I think that what the citizens that  
5 are surrounding that area are concerned about is their safety.  
6 I'll go back again to our charge which is to protect the safety  
7 and health of the residents of the city. Also I saw a lot of  
8 correspondence what's a nonjurisdiction and what is not.

9 But I was ask the applicant who is listening to  
10 also look at 2403.3. It says again the impact of the project on  
11 the surrounding area and upon the operation of city services and  
12 facilities should not be found to be unacceptable. I believe  
13 that goes along with the whole piece of the project. You can't  
14 separate it. 2403.3.

15 Now I will tell you that I'm not a security expert.  
16 I'm just looking for something that will assure the folks of  
17 concern that not necessarily saying that something won't happen  
18 because we can't safeguard from that but saying that this is what  
19 measurements we have in place. This is an okay facility. We can  
20 assure you that you are safe.

21 I think that's what the people are looking for. I  
22 may be wrong but that's the impression I got.  
23 Now to offer a remedy. Anthony Hood does not have one. That's  
24 why I was basically depending on looking at the police department  
25 to come up with some conclusions or some type of analysis that

1 will make me feel confident in voting in favor of this project.

2 CHAIRPERSON MITTEN: All right. Mr. Parsons.

3 MR. PARSONS: I think we need to talk about this  
4 because this is a city of demonstrations whether we like it or  
5 not. I think that what the metropolitan police department is  
6 telling us is they will protect the citizens of this city.  
7 That's their mission.

8 Of course they will be another one of these  
9 meetings on April 11 as you probably know. And we'll be able to  
10 see in a couple of weeks whether that's true. But I think  
11 although disruptive the last demonstration they proved that they  
12 could handle it. The last demonstration having to do with the  
13 IMF World Bank. So I'm not sure what you would have us do.  
14 Certainly we can't tell them to meet in Reston somewhere.

15 I mean I think it is outside our jurisdiction. I  
16 don't know what remedy we could find within a zoning parlance if  
17 you will to say put in the order you can't meet here.

18 MR. HOOD: I guess what I'm looking for is  
19 something a little more than just a subordinate made a decision  
20 and he was the subordinate and I'm the official. I guess I'm  
21 looking for something that we can put in the record so that I can  
22 feel confident that when I go home at night and go to sleep that  
23 I know that we've done the best we possibly can do and the record  
24 is sufficient.

25 As far as I'm concerned this is in incomplete

1 record with what I see here in front of me about a subordinate  
2 official concerning the case and his recommendations that are  
3 contained in the letter represent a personal opinion and not the  
4 department's official position.

5 MR. PARSONS: Well, I agree with the subordinate's  
6 opinion. That's exactly what the chief should do. I mean what  
7 he's saying is I think we ought to meet in another jurisdiction.  
8 He doesn't have the right as a police officer to say that. He  
9 can. He signed it. But it deserved to be reversed. He didn't  
10 give us any solution other than to say I don't think you ought to  
11 be meeting here.

12 MR. HOOD: But here, Mr. Parsons, you have that  
13 commander of that district saying one thing. Now he's the  
14 commander. He's running the operations out of that district.  
15 The chief is downtown. He's coming back and he reversed it. But  
16 that just shows you how the hierarchy works.

17 I just will say again that I have a concern and it  
18 may not be legally correct but I disagree with us not being on  
19 jurisdiction. When I look at 2403.3 in our regulations. I can  
20 read the impact of the project on the surrounding area. Until I  
21 get some sufficient information on the metropolitan police  
22 department report other than somebody just writing a letter and  
23 sending it over here about a subordinate then I don't feel  
24 confident in voting for this. I hate to do because I think it is  
25 a fairly decent project but we need something better for the

1 file.

2 CHAIRPERSON MITTEN: Let's let Mr. May get in on  
3 this.

4 MR. MAY: Thank you. I'd like to further muddy the  
5 waters by agreeing with both of you on certain points. First of  
6 all I would agree with Commissioner Hood that this is a matter of  
7 in a certain sense in our jurisdiction. If we were talking about  
8 introducing a use to the neighborhood or a project to the  
9 neighborhood that would increase the threat somehow to the people  
10 of that neighborhood, then we would certainly have to consider  
11 that matter and whether we would approve the application.

12 In this circumstance, what we are in effect doing  
13 is looking at an addition to an existing use. I mean it's a new  
14 lot and a new building but the existing use and the impact that  
15 the operation of the IMF already has on that neighborhood is  
16 already there. And it's going to stay there as far as we know  
17 regardless of whether this project goes ahead.

18 If anything we may be giving the police, IMF and  
19 everybody else that is involved in security the opportunity to  
20 improve the operation by improving the meeting facility or  
21 putting it on Pennsylvania Avenue instead of a block off into the  
22 neighborhood. I agree with you, Anthony, that it would be nice  
23 to know more analytically about the relative threat whether it  
24 goes down or up by this. But it's existing and it's not going to  
25 change because of this project.

1 CHAIRPERSON MITTEN: Thank you, Mr. May. Just to  
2 perhaps follow on. The emphasis in 2403.3 does focus on the  
3 impact of the project and the project in this case is the  
4 headquarters to project. There hasn't been anything in the  
5 record that shows there is a relationship between the  
6 Headquarters II building and the annual meetings. And if  
7 Headquarters II hasn't existed and the annual meetings come to  
8 Washington.

9 I agree. The responses that we got right along  
10 from the police department were not very substantive but they are  
11 the ones charged with mitigating any unacceptable consequence  
12 that relates to public safety. The highest authority while it's  
13 not a particularly substantive response has said we don't have an  
14 objection. So absent both showing that there is some  
15 relationship between Headquarters II to the annual meetings and  
16 some security authority telling us that in fact the police can't  
17 mitigate any issues related to safety, I think that based what is  
18 on the record we would have to accept the police department's  
19 position. That's my view on security. Any other thoughts from  
20 the Commission before we move on to another subject?

21 Perhaps the largest subject in this case which is  
22 the adequacy of the amenities. I'll just begin by summarizing a  
23 discussion that went on both through written submissions and at  
24 the hearing as to what if any the degree of zoning relief being  
25 requested by the applicant in this case.

1 I believe that it's the applicant's position that  
2 there's in effect little if any relief being requested because of  
3 many of the surrounding properties not all are either zoned C-4  
4 or developed or able to be developed to densities that  
5 approximate C-4. Given the generalized land use map designation  
6 for the subject property of high density commercial, that C-4 is  
7 appropriate and the main reason for coming to the Commission with  
8 a PUD was to enhance their comfort level that an approval would  
9 be forthcoming as opposed to that there would be unnecessary  
10 balancing of relief with amenities and benefits. That's one  
11 position I think.

12 The other extreme of that would be that the zoning  
13 relief being offered is in fact the full density increase from C-  
14 3-C to C-4 and that is the relief that is being sought along with  
15 some design issues. That the amenities and benefits should be  
16 commensurate with that degree of relief.

17 I guess after thinking about it for quite some time  
18 I think the answer is someplace in the middle which is when  
19 relief has been provided either in the form of PUD for adjacent  
20 property or in the new downtown receiving zone for TDRs. There  
21 are public benefits that flow from that although probably not to  
22 the degree that the density increase from six and a half FAR to  
23 ten would suggest. I think that it's in that context that we  
24 have to do the judging, balancing and reconciling of the relief  
25 requested with the benefits being offered.

1 As background and a little bit of my own opinion,  
2 I'll ask if any of the Commissioners have concerns or comments  
3 regarding the adequacy of the amenities in this case. Both West  
4 End Citizens and ANC believe that the amenities are inadequate.

5 MR. PARSONS: I wanted to talk about and I don't  
6 have my notes so I need help this issue of whether the facade and  
7 water feature has dropped in value by two million dollars or not.  
8 Does anybody else have a idea? I was reading from the West End  
9 Citizens' proposed findings on 43 under the IMF amenities  
10 package.

11 CHAIRPERSON MITTEN: Just let us catch up with you.

12 MR. PARSONS: What they were saying originally  
13 proffered facade and water feature was \$3,244,364 and in their  
14 January submission which is the current submission they are at  
15 \$1,205,886. They're suggesting that they are \$2,000,000 short  
16 and that money should be back on the table.

17 I didn't have handy over the weekend my notes from  
18 the original submission. I'm putting everybody on the spot.

19 CHAIRPERSON MITTEN: First let me just clarify that  
20 what you are making reference to is the proposed findings of fact  
21 and conclusions of law from the ANC.

22 MR. PARSONS: I'm sorry.

23 CHAIRPERSON MITTEN: That's what was faxed to us on  
24 Friday. It's number 43 on page 9.

25 MR. PARSONS: But --

1 CHAIRPERSON MITTEN: Just bear with us and we will  
2 help you. Okay the explanation for it if that's what you are  
3 looking for is on the first page of a post hearing submission by  
4 the applicant February 14, 2002. They give an updated list of  
5 the project amenities and benefits.

6 In some text that goes with it, it says that this  
7 is updated listing. This updated information reflects revised  
8 numbers for the facade premium based on calculations from the  
9 most current drawings and construction estimates which indicate  
10 lower overall cost for the facade and removal of the security  
11 cost premium for blast resistant glass.

12 I think that in the discussions with perhaps  
13 someone testifying for the ANC they had asked the security cost  
14 associated with the facade was really not a benefit to the  
15 community and they wanted that eliminate from the calculation. I  
16 think that's why it is a significantly lower number. I think  
17 that's the explanation.

18 MR. PARSONS: Okay. Thank you. They have a facade  
19 premium in here at \$205 on this table attached to their annotated  
20 amenities.

21 CHAIRPERSON MITTEN: Yes.

22 MR. PARSONS: There they've less premium for blast  
23 resistant glass.

24 CHAIRPERSON MITTEN: Yes.

25 MR. PARSONS: Less cost reduction -- estimate. Is

1 what you are saying that the facade and the water sculpture were  
2 combined in one figure previously at three million?

3 CHAIRPERSON MITTEN: No. I think the point of it  
4 regardless of how the numbers come about is that the ANC is  
5 saying look. When they originally costed this out it was \$3.2  
6 million. Now it turns out that it's less than that but we still  
7 want to hold them to the higher number. That's the point of it.

8 MR. PARSONS: Yes. And your point is that when  
9 they took the glass and other things that couldn't even be  
10 construed as an amenities, that's fair.

11 CHAIRPERSON MITTEN: That's what caused the number  
12 to decline.

13 MR. PARSONS: Right. But they are still spending  
14 \$3,244,000 they are just not calling it an amenity.

15 CHAIRPERSON MITTEN: Right.

16 MR. PARSONS: Thank you. Now that wasn't your  
17 question was it?

18 CHAIRPERSON MITTEN: No. My question was whether  
19 or not any of the Commissioners have any concerns regarding the  
20 adequacy of the amenities being offered.

21 MR. PARSONS: I do not.

22 CHAIRPERSON MITTEN: Okay. Then let me just say a  
23 few things. One is that in the applicant's proposed findings in  
24 fact and conclusions of law there are numerous economic benefits  
25 that are discussed and they're discussed in some detail at

1 findings numbers 134, 135, 136 and so on. In talking about the  
2 contributions that Headquarters II will make the District of  
3 Columbia in terms of revenue contributions to the gross state  
4 product, local spending by visitors, employees and family members  
5 of the employees, it's suggested that it's all new money flowing  
6 from the project.

7 In fact the way that this has been presented to us  
8 is that this is a consolidation of existing offices that are  
9 leased from other entities and I didn't get the sense that there  
10 is going to be a new significant influx of new employees. These  
11 are existing employees so this is just really reshuffling an  
12 existing contribution that the IMF makes to the local economy and  
13 attributing it to Headquarters II. I don't think it's new money.

14 Also construction spending was not quantified in  
15 terms of the spending that will result from construction of  
16 Headquarters II versus matter of right. Although I suppose one  
17 could assume that the PEPCO building would remain and not be  
18 renovated so there would be no comparable expenditure. I don't  
19 think that's a likely scenario. We're getting a lot of numbers  
20 being proffered to us that I think are actually in excess of what  
21 will be a net gain to the city.

22 I have concerns about that to the extent that the  
23 Commission is just accepting that the order of magnitude of those  
24 benefits is that high. I'd also like to mention that there is a  
25 proffer of superior landscaping and I believe that there is an

1 expenditure attached to that.

2 MR. PARSONS: Could we stick with the first issue?

3 CHAIRPERSON MITTEN: Sure.

4 MR. PARSONS: What Dr. Fuller was saying is as I  
5 understood him here's what they were doing in 1997. Here's what  
6 they are doing in 2001. That there was no new money. I didn't  
7 take his testimony other than having to do with construction jobs  
8 as being any more than materially showing us what the economic  
9 benefit of the IMF was to the city whether it's here or in the  
10 headquarters. Did you feel that these numbers 132 through  
11 whatever was implying that with this project these benefits would  
12 accrue because I didn't take it that way?

13 CHAIRPERSON MITTEN: I'm glad to know that you  
14 didn't take it that way. I guess I was trying to establish that  
15 some of the statements perhaps that are in the findings in fact  
16 and conclusions of law offered by the applicant that are  
17 characterizing Dr. Fuller's testimony are not conveying if you  
18 understood what Dr. Fuller was saying his full sentiment.

19 Just to give an example in finding fact 135 where  
20 it's talking about the sources of local spending and then the  
21 concluding sentence is "Dr. Fuller concluded that the economic  
22 impacts flowing from Headquarters II are substantial and  
23 constitute a net positive impact to the District." I think the  
24 suggestion there is if you read the entire paragraph they are  
25 certainly trying --

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1 MR. PARSONS: I think we ought to take that  
2 sentence out of there.

3 CHAIRPERSON MITTEN: I guess I just wanted to  
4 clarify --

5 MR. PARSONS: The only jobs I saw were the 112 jobs  
6 to care for the buildings. And that's what it says in the next  
7 one. It says there's going to be 112 new jobs in retail and  
8 caring for the building and so forth. I may have missed the boat  
9 but I think it was nice to know information.

10 CHAIRPERSON MITTEN: I guess I just wanted to  
11 clarify that every number that is associated with Headquarters II  
12 is not necessary a net benefit arising from Headquarters II.

13 MR. PARSONS: Absolutely. It was almost as though  
14 if they left town here would be the impact.

15 CHAIRPERSON MITTEN: Yes.

16 MR. PARSONS: In the opposite.

17 CHAIRPERSON MITTEN: Thank you for clarifying that.

18 The issue about superior landscaping which is approximately  
19 \$600,000 in the applicant's summary of benefits. In another  
20 context and this would be in finding fact 107 this is in response  
21 to concerns from the community regarding the design of the street  
22 scape elements that are function in part as safety features, it  
23 says that the Zoning Commission finds that the street scape plan  
24 does not objectionably encroach into public space. The  
25 Commission finds that beautification improvements of the street

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1       scape within public space are typical for new development.□

2                       I think that□s true.   I think that we don□t have  
3       any showing other than a statement from the applicant that this  
4       landscaping is in fact superior.   I think it is typical for new  
5       development.   So I guess I□m not convinced that the landscaping  
6       is superior.

7                       I also just want to call out some other areas of  
8       concern.   Some of these have been raised by the community groups.

9       For the retail spaces at the corners, I think there needs to be  
10      some kind of provision that would I hesitate to say guarantee  
11      that there will be retail occupance but we□ve seen and this is an  
12      extreme case but it illustrates my point in the   most efficient  
13      way where in certain projects like the Arnold and Porter building  
14      there was space set aside for a department store.

15                      Now this is on a much smaller scale but we don□t  
16      want the space to be set aside for retail and then never  
17      occupied.   We actually want this retail space that the IMF is  
18      providing to be occupied.

19      I think there should be some kind of provision where if it  
20      becomes necessary that the rent be discounted in order to get an  
21      occupant that it would be done.   I leave that to the applicant to  
22      devise that.   All we know is that the space will be reserved for  
23      retailers.

24                      I also wanted to mention that Mr. Hood was kind  
25      enough to open up this zoning ordinance to Chapter 24.   There is

1 a requirement in Chapter 24. It's 2403.13 that public benefits  
2 other than affordable housing such as public facilities or public  
3 open space may be located off site with two provisions. That  
4 there's a clear public policy relationship between the benefit  
5 and that the off site benefit shall be located within one quarter  
6 mile of the PUD site or within the boundaries of the ANC that  
7 includes the PUD site.

8 I think we need some more clarification of the  
9 contribution to D.C. Central Kitchen that in effect the payment  
10 will benefit that specific geographic area that's required under  
11 2403.13.

12 I would say the same about the trees and other  
13 beautification projects. The location of the trees has been  
14 specified but not withstanding the fact that ANC 2A will  
15 participate in deciding where the money. I think we need to  
16 specifically to tie it to the geographic area that's dictate by  
17 our regulations.

18 I don't know but I could ask Mr. Bastida this have  
19 we yet received a copy of the first source agreement?

20 MR. BASTIDA: We just received it a few minutes ago.  
21 I can hand it out if you so wish.

22 CHAIRPERSON MITTEN: Please. Just to summarize  
23 what I was saying. I guess I have some concern that we need to  
24 have some tighter controls to make sure that the amenities that  
25 we intend to accept will meet the requirements of the ordinance

1 in terms of where they are located to the extent that they are  
2 off site that we have some assurance through and I think it can  
3 be accomplished I don't know that it's our place to devise the  
4 mechanism for making sure that those retail spaces get occupied.

5 Also I have a concern that the landscaping amenity is actually  
6 not in fact superior to matter of right. I'll leave it to the  
7 other Commissioners to state any concerns that they may have.

8 MR. HOOD: Madame Chair, I just have a concern in  
9 the conclusions of law 102. I think that should be taken out  
10 completely. I'm just having an issue with what's a  
11 nonjurisdiction and what's not. I'm finding that very difficult  
12 for me to deal with. When I read the regulations and then when I  
13 look at what Commissioners' roles and responsibilities are. Also  
14 on page 30 of 138 and 139 that should be stricken.

15 Unfortunately I didn't receive a copy of the  
16 correspondence that was faxed. Our fax machine ran out at that  
17 time. I did see the first page but I will tell you that I think  
18 this is page nine. Forty-four raises a very good point. I have  
19 been speaking about or talking about LSDBEs and the DOES but the  
20 ANC has brought something to my attention. I'm just curious  
21 maybe Mr. Bergstein or someone can help me with this. Thirty-  
22 five percent, do they have to be District residents? I was  
23 trying to look through the agreement. Is there something that  
24 specifically spells out that it has to be District businesses  
25 like a dozen at DOES proffer?

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1 MR. BERGSTEIN: The answer is I don't know at this  
2 moment.

3 MR. HOOD: They raise a very good question. I  
4 always took it for granted that it was. But when I looked at it  
5 and saw it just now, I haven't been able to find that.

6 CHAIRPERSON MITTEN: I don't know that this is  
7 going to answer your question specifically but let me just read  
8 what the commitment is in the MOU with the Office of Local  
9 Business Development which is that they commit to utilize local  
10 small and disadvantaged business enterprises certified by the  
11 D.C. Local Business Opportunity Commission with the goal of 35  
12 percent LSDBE participation. That's the function of an adjusted  
13 budget number.

14 So I don't know if in order to qualify you  
15 necessarily have to be a local business. I just can't answer  
16 that right now.

17 MR. HOOD: Not necessarily, Madame Chair, I'm  
18 picking on this particular case but I think in our further  
19 discussions we need to pinpoint and find out exactly whether from  
20 the evidence I see in front of me if you have to be a District  
21 business solely. You can be certified and have your business  
22 also in Virginia, Maryland or whatever else. We just need  
23 clarification on down the line.

24 CHAIRPERSON MITTEN: All right.

25 MR. PARSONS: Madame Chair, let me just jump in on

1 the landscaping. You know a normal C-4 office building what  
2 they've been lately is to put wooden benches, a little bit of  
3 planting around the base of street trees you are required to put  
4 in. Many of the wooden benches are there to avoid street vendors  
5 but that's another issue.

6 So here comes I think a very creative solution to a  
7 problem that is plaguing this city. That is how to make a  
8 building secure at the same time not ringing it with what are  
9 obviously security devices. Here they used a combination of  
10 bollards, planters and walls. I'm looking forward to seeing this  
11 completed I mean as a potential solution to many of our Federal  
12 office buildings. So to me this is true. It's out of their own  
13 necessity for security but it's way beyond the normal street  
14 furniture if you will and landscaping that's provided in a C-3 or  
15 C-4 downtown circumstance.

16 Not only that they ring the whole building with  
17 planters as they did with their previous project. It's really  
18 landscaped on four sides which is not typical. I feel this  
19 landscaping is above and beyond what we would normally see.

20 CHAIRPERSON MITTEN: And you feel that the degree  
21 to which or the extent to which it is above and beyond serves the  
22 community and not exclusively the IMF?

23 MR. PARSONS: Yes. I think it will be. I'm just  
24 looking at this PowerPoint. I pulled it out to look at. You  
25 know I like flowers. So do you. These sketches have a very

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1 humane feeling to them as opposed to the existing World Bank  
2 building for instance which is also in the PowerPoint for  
3 probably that reason. I feel it's above and beyond and as a  
4 amenity even though it's solving a security problem as well.

5 CHAIRPERSON MITTEN: Thank you. Mr. May.

6 MR. MAY: I would have to speak up in agreement. I  
7 think that what is typical in this regard is maybe some of the  
8 concepts involved in the sense of having planters on the  
9 sidewalk, having benches in the sidewalk and that sort of thing.

10 But what really makes this amenity is the way the design  
11 integrates them into the space and makes it more humane as you  
12 say. I think generally speaking it's is very beneficial to the  
13 neighborhood or it will be. It does go above and beyond what is  
14 typical.

15 CHAIRPERSON MITTEN: Thank you. Any other concerns  
16 that any of the Commissioners would like to raise for discussion?

17  
18 (No response.)

19 CHAIRPERSON MITTEN: All right. Then I would  
20 entertain a motion. Don't be shy now.

21 MR. PARSONS: I move we approve the application but  
22 we need to discuss the condition of course as suggested in their  
23 proposed order.

24 CHAIRPERSON MITTEN: All right.

25 MR. PARSONS: All we need is a second to get going

1 here.

2 MR. MAY: Second.

3 CHAIRPERSON MITTEN: Let's have some further  
4 discussion.

5 MR. PARSONS: So should we use the draft order  
6 provided by the applicant?

7 CHAIRPERSON MITTEN: We can use that as our point  
8 of departure.

9 MR. PARSONS: Well sticking with landscaping, I  
10 find it curious that apparently the applicant has no sense of  
11 approval by the Department of Public Works here so what we are  
12 considering which I consider is an amenity turns out to be may  
13 be placed in number four on page 35. In other words, if Public  
14 Works for some reason says no we're not going to do that, the  
15 amenity isn't there.

16 CHAIRPERSON MITTEN: Correct.

17 MR. MAY: I guess there is no control over that.  
18 It's the tentative nature of the word may that just jumped out  
19 at me. But I guess there is nothing we can do about it.

20 CHAIRPERSON MITTEN: Which actually raises another  
21 point.

22 MR. PARSONS: I wanted to change it to will.

23 CHAIRPERSON MITTEN: I guess the reason that you  
24 can't say will is because it is subject to review and approval.

25 MR. PARSONS: Yes.

1 CHAIRPERSON MITTEN: Then given that we really  
2 don't have any authority over public space, what does that do to  
3 accepting the amenity if they can't get it approved?

4 MR. PARSONS: I don't know.

5 MR. BERGSTEIN: Can I just talk about the premise?  
6 I'm sorry to interrupt.

7 CHAIRPERSON MITTEN: No please.

8 MR. PARSONS: Thank you. We needed something.

9 MR. BERGSTEIN: I think since it says "subject to  
10 the approval" you can say "will" or "shall" be placed. You are  
11 conditioning the requirement that it of course is subject to the  
12 approval of DPW but as far as you are concerned it is a  
13 condition.

14 CHAIRPERSON MITTEN: Okay.

15 MR. BERGSTEIN: If there is no approval, then they  
16 are off the hook. But if it is approved by DPW, then it is in  
17 fact an enforceable condition. So I think you can change that to  
18 make it "shall."

19 MR. PARSONS: Good because "may" seemed to go to  
20 whether the applicant felt it was necessary or not in the future.  
21 Yes.

22 CHAIRPERSON MITTEN: Let's just say at the extreme,  
23 DPW says no you can't do any of that. If we accept a \$600,000  
24 amenity or an amenity that has been valued at that and then DPW  
25 says no then can we have a provision that they have to come back

1 because we would have lost an amenity that we were anticipating?

2 MR. BERGSTEIN: The other thing is to suggest to  
3 the applicant that they come up with an alternative for that  
4 amenity in an event that the condition can't be satisfied. So  
5 you have a built in alternate for it equal to the value of that  
6 rather than require them to come back. If I could suggest that.

7 CHAIRPERSON MITTEN: Okay.

8 MR. PARSONS: And I would be surprised if the  
9 \$613,000 went just to those things in public space. I think this  
10 is talking about an overall but I don't know that. But there is  
11 much more landscaping than just in public space.

12 CHAIRPERSON MITTEN: What I guess we might be able  
13 to do because I think we did this with Station Place for instance  
14 is asked for a little bit more clarification. We could take  
15 proposed action and just to finalize it we can get some language  
16 from the applicant to help us with this.

17 MR. PARSONS: Maybe they've made some progress with  
18 the Department of Public Works.

19 CHAIRPERSON MITTEN: Perhaps.

20 MR. HOOD: Madame Chair, can I just ask a point of  
21 clarification? Before we go through all these conditions, we  
22 have a vote and I understand normally we have discussion. Before  
23 we go through all this I would like for us to carry out the vote  
24 and then come back and do the conditions if it's favorable.

25 CHAIRPERSON MITTEN: That's fair. That's an

1 efficient use of our time.

2 MR. PARSONS: All right.

3 CHAIRPERSON MITTEN: Let me restate the motion as  
4 we would like to vote on it. Then you tell me if this is  
5 acceptable.

6 The motion is to give conditional approval to  
7 Zoning Commission Case Number 01-13C. The conditions will be  
8 fleshed out in a subsequent motion.

9 MR. PARSONS: I think that's exactly what I said.

10 CHAIRPERSON MITTEN: Okay. Good.

11 MR. PARSONS: Meant to say. Excuse me.

12 CHAIRPERSON MITTEN: Is there any further  
13 discussion on that matter?

14 (No response.)

15 CHAIRPERSON MITTEN: All those in favor please say  
16 aye.

17 COMMISSIONERS: Aye.

18 CHAIRPERSON MITTEN: All those opposed please say  
19 no.

20 MR. HOOD: Opposed.

21 MR. BASTIDA: The Staff would record the vote. Ms  
22 Mitten, you didn't vote did you? I couldn't hear you clearly.

23 CHAIRPERSON MITTEN: I believe I said aye.

24 MR. BASTIDA: Aye. I'm sorry. Thank you. The  
25 vote will be four to one. Mr. Parsons moving and Mr. May second.

1 Mr. Hannaham and Ms. Mitten voting on the affirmative. Mr. Hood  
2 opposed for the motion. Thank you.

3 CHAIRPERSON MITTEN: Thank you. All right. Let's  
4 go back to the conditions then. I actually think that was a very  
5 good idea. That is the way we should run this thing.

6 MR. HOOD: I will be participating in here.

7 CHAIRPERSON MITTEN: Absolutely. That's why I said  
8 I think it was a good idea. Now that you know how it's going to  
9 go. Hang in there on the conditions. So, Mr. Parsons, you had  
10 the floor before.

11 MR. PARSONS: Bollard shall --

12 CHAIRPERSON MITTEN: Condition number 4, planters,  
13 benches and bollards shall.

14 MR. PARSONS: Yes.

15 CHAIRPERSON MITTEN: And then we will ask the  
16 applicant to see if they could suggest some language that would  
17 give us some comfort that in the event that the amenity can't be  
18 satisfied what would happen in the alternative.

19 MR. MAY: I would to suggest at this point that  
20 alternatives being offered there would not be a lot of creative  
21 alternatives. I like the idea of them having to come back since  
22 we are talking about something of significant value to the  
23 neighborhood and treat this as a modification. Because first of  
24 all, I'm optimistic that it will fly with DPW but I don't want to  
25 just wind up with some alternate which may have the same cash

1 value but wouldn't have the necessarily the same value to the  
2 public.

3 CHAIRPERSON MITTEN: I understand and I know they  
4 heard you. So that could influence their suggestions. Did you  
5 have anything else, Mr. Parsons, that you wanted to discuss?

6 MR. PARSONS: No thank you.

7 CHAIRPERSON MITTEN: As I said, I don't want to  
8 craft what I think needs to be done but I would like there to be  
9 some indication that there will be an effort made to get the  
10 retail spaces occupied as reflected in condition number 6 and  
11 condition number 7. If that means that if necessary the rent  
12 were to be discounted from market rent then so be it. But I  
13 would like there to be some mechanism in place so that those  
14 retail spaces will actually be occupied in a reasonable period of  
15 time.

16 MR. PARSONS: Are you talking about something like  
17 prior to the issuance of the certificate of occupancy for the  
18 remainder of the building?

19 CHAIRPERSON MITTEN: No.

20 MR. PARSONS: That's the kind of teeth you can put  
21 into this.

22 CHAIRPERSON MITTEN: Yes. I think that might be  
23 too harsh.

24 MR. PARSONS: Okay.

25 CHAIRPERSON MITTEN: I know it's hard to believe.

1 MR. PARSONS: But you don't have many tools here.

2 CHAIRPERSON MITTEN: I'm asking them to suggest  
3 something.

4 MR. PARSONS: All right.

5 CHAIRPERSON MITTEN: On number 8D, the IMF shall  
6 contribute \$100,000 to the D.C. Central Kitchen. I think we need  
7 that to be tied to the neighborhood in accordance with 2403.3(b).  
8 I think that the same is true of E. The geographic area that is  
9 outlined in (I) is fine but the other neighborhood beautification  
10 projects also need to be within the geographic area required  
11 under 2403.13.

12 MR. PARSONS: Are we keeping inside the ANC you  
13 mean?

14 CHAIRPERSON MITTEN: Or within I think a half mile  
15 of the PUD site.

16 MR. PARSONS: Okay.

17 CHAIRPERSON MITTEN: Any other suggested  
18 modifications? We are using the conditions in the applicant's  
19 proposed findings of fact and conclusions of law as our point of  
20 departure just for crafting the conditions. Any other  
21 modifications? So I would move that we would condition our  
22 approval that we just voted about for Zoning Commission Case  
23 Number 01-13C with the conditions outlined by the applicant and  
24 reopening the record to accept some suggested changes that would  
25 tie certain amenities to the neighborhood and also guarantee that

1 the proffered retail spaces would in fact be occupied. Is there  
2 a second?

3 MR. MAY: Second.

4 CHAIRPERSON MITTEN: Any further discussion?

5 (No response.)

6 CHAIRPERSON MITTEN: All those in favor please say  
7 aye.

8 COMMISSIONERS: Aye.

9 CHAIRPERSON MITTEN: Those opposed please say no.

10 (No response.)

11 CHAIRPERSON MITTEN: Mr. Bastida.

12 MR. BASTIDA: Madame Chairperson, did Mr. Hood vote  
13 on that?

14 MR. HOOD: I sure did, Mr. Bastida.

15 MR. BASTIDA: I'm sorry. I'm having problems  
16 hearing some of the Commission. The Staff will record the vote  
17 five to zero. Ms. Mitten moving and Mr. May second. Mr. Hood,  
18 Mr. Hannaham, and Mr. Parsons voting on the affirmative. Thank  
19 you.

20 CHAIRPERSON MITTEN: Thank you. I think Mr.  
21 Bastida can you give some guidance to the applicant about I don't  
22 know how quickly we need to get this back on our agenda for final  
23 action a deadline for submitting the additional language for the  
24 conditions that we asked for.

25 MR. BASTIDA: Do you want me to do it now or could

1 I have a few minutes and then do it in a little while when I  
2 consult with the applicant?

3 CHAIRPERSON MITTEN: Sure. That's fine.

4 MR. BASTIDA: Thank you.

5 CHAIRPERSON MITTEN: I just didn't want to forget  
6 that. Next under proposed action we have Zoning Commission Case  
7 Number 01-17M which is the former Associate General Contractors  
8 PUD now 1957 E Street.

9 MR. BASTIDA: Madame Chairperson, the Staff has  
10 provided you with all the materials received into the record and  
11 request that the Commission make a decision. The Chairperson I  
12 would like to advise that all the late filings were submitted  
13 into the record. Thank you.

14 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

15 (Pause.)

16 CHAIRPERSON MITTEN: Just bear with me one minute  
17 while I talk to Mr. Parsons off the record.

18 (Discussion off the record.)

19 CHAIRPERSON MITTEN: All right. 1957 E Street. As  
20 Mr. Bastida said, we have reopened the record to accept the  
21 responses filed from West End Citizens to the late Office of  
22 Planning report and we reopened the record to accept the letter  
23 from the University explaining the proffer related to parking.

24 MR. PARSONS: Madame Chairperson, I ought to recuse  
25 myself from this. I'll just leave the room.

1 Thank you.

2 CHAIRPERSON MITTEN: Thank you, Mr. Parsons. Let  
3 the record reflect that Mr. Parsons is leaving the dais having  
4 recused himself.

5 Just as background for the discussion, I just want  
6 to remind the Commission that this is a PUD modification that  
7 been proposed and we treat this as a second stage PUD  
8 application. The first stage approval remains in effect as  
9 outlined in Order Number 720.

10 The general parameters of that approval were the  
11 site was rezoned from SP2 to C-3-C for a mixed use project  
12 containing commercial and residential uses. The total density  
13 approved was 7.96 FAR divided between commercial density 5.79 FAR  
14 and residential density 2.17 FAR. Total height of 107 feet was  
15 permitted through the first stage approval with set backs at 94  
16 feet along the street frontages.

17 The project was required to include at least 55  
18 residential units with a provision that some units might be  
19 combined in response to market conditions. There was a  
20 requirement to have at least 200 parking spaces on site.

21 The specific modification requested by the  
22 University was to eliminate the open balconies, to change the  
23 exterior buildings materials slightly, to eliminate one of the  
24 entrance to the parking garage, to eliminate one loading dock and  
25 in its place include first floor retail space and to include

1 academic uses in the commercial portion of the building which  
2 would be approximately 18 percent of the commercial area. Then  
3 other issues that have arisen through the hearing and so on is  
4 there is an issue the use of the residential portion of the  
5 building by students and there's an issue regarding the adequacy  
6 of the amenities.

7 I would also like to say by way of background that  
8 while it has I think been helpful as a point of departure to  
9 examine the amenities and benefits that were accepted in the  
10 original approval that is not the standard for approval. The  
11 standard is that we judge balance and reconcile the relative  
12 value of the amenities and benefits against the degree of  
13 development incentives and any adverse effects arising from the  
14 project. So it's not a measurement against what was originally  
15 proffered. I just want to keep that in mind as we proceed.

16 There has been I think provided to us by the  
17 University a listing of the amenities in their eyes, non-economic  
18 amenities and economic amenities. Then we also have a grid from  
19 the ANC that balances what had been proffered against what is  
20 being proffered. So let me begin by asking do any of the  
21 Commissioners have any concerns over the specific modifications  
22 that were requested by the University? Again those are the  
23 balconies, the building materials, changing the parking garage by  
24 eliminating a parking garage entrance and a loading dock and  
25 including academic uses. Any concerns there?

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1 (No response.)

2 CHAIRPERSON MITTEN: All right. Any discussion on  
3 the concern regarding the use of residential portion of the  
4 building by students versus long term residents?

5 MR. HOOD: Madame Chair, I just want a point of  
6 reference. I'm trying to remember at the hearing it was stated  
7 that this facility sits off by itself at the end of the street.  
8 It may be another case. I think it was this one.

9 CHAIRPERSON MITTEN: I'm not calling that.

10 MR. HOOD: I'm trying to get --

11 MR. MAY: The residential portion is one portion of  
12 the building. It's the west end of the building.

13 MR. HOOD: It kind of sits off.

14 MR. MAY: It's one building and all attached. But  
15 the western third of the building is a residential component.  
16 Its own tower if you will.

17 MR. HOOD: Okay.

18 MR. MAY: It has its own elevator core and all of  
19 that.

20 MR. HOOD: Thank you, Madame Chair. Thank you,  
21 Commissioner.

22 CHAIRPERSON MITTEN: So any questions regarding the  
23 use of residential portion of building by students rather than  
24 long term residents. I would like to address this. I don't know  
25 if it's going to give the community any satisfaction but one of

1 the things we struggled with and I think one of the things that  
2 became clear in the hearing for this case is that this is not a  
3 dormitory. Regardless of how one thinks of a dormitory, a  
4 dormitory is not a defined term in the zoning regulations. When  
5 we go to the dictionary as we are directed when terms are not  
6 defined, a dormitory is defined by its physical configuration and  
7 not by who occupies it.

8 While it is frustrating the idea that the  
9 University is able to expand outside its existing campus  
10 boundaries and acquire properties for use by students, legally  
11 there is no remedy for that right now because students are a  
12 protected class. There is no way the Zoning Commission could  
13 craft a condition that would be construed to prohibit students  
14 from using this building or being the primary users of this  
15 building that would not be illegal because they are protected.

16 I know that the community is frustrated about that  
17 but I think that's just the way it is. For us to act in any  
18 other way is just going to invite legal action. Our decision  
19 would not be tenable.

20 That brings us to the final issue then which is the  
21 adequacy of the amenities. I'll ask if any of the Commissioners  
22 would like to address that if you have concerns about the  
23 amenities being offered. Mr. Hood.

24 MR. HOOD: Madame Chair, I think one of the issues  
25 I would like for us to discuss is the first source. I'm not

1 sure. Forgive me. I'm a little unorganized. I don't know if  
2 it's being proffered if that is actually an amenity. That may  
3 need to be put on of the chopping block because I think from my  
4 materials that I've read it's already being done. It's not  
5 necessarily an amenity. We are being repetitive. Is that the  
6 way my other colleagues see it?

7 CHAIRPERSON MITTEN: I agree with you. I think in  
8 whatever context they proffer their first source agreement and  
9 their LSDBEs that's where it becomes an amenity. So if it is  
10 required by the bond program and they choose to participate in  
11 the bond program, they go there first. Then it's an existing  
12 requirement.

13 If they had come to us first for a PUD modification  
14 before they had gotten the financing to build this building and  
15 they didn't have an existing requirement then I think we could  
16 have accepted that as an amenity because it wasn't being required  
17 from some other source. I think it is duplicative to suggest  
18 that they can satisfy an existing requirement and that we should  
19 accept that as an amenity. If I am understanding you correctly I  
20 would not characterize that as an amenity.

21 One of the amenities that gives me concern is the  
22 donation to the foundation that is supposed to provide meals for  
23 the elderly and the indigent. My concern is as I raised in the  
24 prior case that off site amenities need to be tied to a  
25 geographic area that is either within an half a mile of the PUD

1 site or within the affected ANC.

2 My first concern is that there is no such  
3 geographic tie for the \$500,000 donation. I am very  
4 uncomfortable about making a donation to a foundation that  
5 doesn't even yet exist. I just think that I'm not against it in  
6 concept but we have a greater responsibility to the public in  
7 terms of determining that the amenities we accept are likely to  
8 achieve the results we intend. I mean this foundation not only  
9 is it new but it doesn't even exist. It doesn't have a board of  
10 directors. There is nothing to evaluate in terms of seeing that  
11 this is realized. I have a lot of concern about the donation.  
12 Not that I'm against it, we just need more definition of who's  
13 getting it, who are they, what's their track record and where's  
14 the money going to be spent.

15 MR. HOOD: Madame Chair, are you asking for  
16 clarification to specify exactly who is going to receive the  
17 money within that jurisdiction, I guess, with the ANC boundary?  
18 Are we tying in a boundary to it?

19 CHAIRPERSON MITTEN: I guess I'll just state the  
20 concern and then leave it to the University to determine how they  
21 want to improve that. It's fairly abstract at the moment. I  
22 think that it needs work both on the geographic area where will  
23 the money be spent and then what is the structure of this  
24 foundation and how will be run and who will run it and who's on  
25 the board of directors and so forth before we can accept that.

1 MR. HOOD: Madame Chair, if I could just expound on  
2 that a little bit? If there is nothing within that area suitable  
3 then maybe they need to offer another amenity.

4 CHAIRPERSON MITTEN: Absolutely.

5 MR. HOOD: With the same dollar value.

6 CHAIRPERSON MITTEN: At least.

7 MR. HOOD: At least. Okay.

8 CHAIRPERSON MITTEN: Let me just maybe summarize  
9 where we are. We have in terms of the balancing that we need to  
10 go through a project that after the rezoning to C-3-C the density  
11 of the project is 7.96 FAR. The matter of right in C-3-C is 6.5  
12 FAR so there is a significant increase in density that is being  
13 provided by the project.

14 What we have in terms of amenities and I'm going by  
15 the list that George Washington compiled is that they will be  
16 able to innovatively use their educational resources in the new  
17 facility in being able to have training sessions. It's just a  
18 more modern facility. Through this as well there would be  
19 contributions made to the study of international affairs. Those  
20 things do not change based on our discussions.

21 We have that they are providing residences. Those  
22 residences will be occupied by students. Consistent with their  
23 agreement with West End Citizens, those students will either  
24 juniors or seniors or graduate students or students participating  
25 in the honors program.

1 Now we have the retail space that they've offered.

2 I think we need to have a similar provision if we are going to  
3 accept that as an amenity as we discussed for the IMF which is  
4 how are you going to get that space occupied. In the event that  
5 it becomes necessary perhaps they would want to proffer that they  
6 will offer the space at discounted rent. I think as well in  
7 their proposed findings in fact and conclusions of law they need  
8 to state as well the commitment that they made to the West End  
9 Citizens that the retail space in Mitchell Hall will be  
10 designated as such for a minimum of 10 years.

11 If we eliminate the first source and LSDBEs as an  
12 amenities that comes off of the list. They've offered to  
13 restrict truck deliveries at the loading dock not to have  
14 deliveries during certain hours. Then we have the donation to  
15 the foundation which needs some work in terms of greater  
16 specificity.

17 Then they also suggested that there is tax revenue  
18 that will flow from the retail venues and the income taxes that  
19 will be paid by the employees of the retail venues. There has  
20 been some question from the community about whether or not that  
21 retail space which was permitted in the original PUD is actually  
22 something new but relative to balancing with the relief being  
23 sought. It certainly is something that offsets the relief.

24 Then the economic activity generated by the use of  
25 the executive training facility. I think the student spending

1 that was suggested that would result is actually a base that is  
2 an existing condition. I don't think they are suggesting that  
3 more students will be attending the University because of the  
4 Elliott School renovation.

5 I think from my prospective we have eliminated some  
6 areas that were considered benefits at least what the University  
7 had proffered. We have some concerns about others. I think this  
8 needs a little bit more work before it's ready. Mr. May.

9 MR. MAY: Can we go back to the LSDBE issue for a  
10 second?

11 CHAIRPERSON MITTEN: Certainly.

12 MR. MAY: I understand that once this requirement  
13 is introduced because of the bond program that in effect we are  
14 going to get that no matter what essentially.

15 CHAIRPERSON MITTEN: Yes.

16 MR. MAY: Because of the applicant. When we  
17 compare this project to what would be done as a matter of right  
18 that LSDBE is not part of it. It's part and parcel of the  
19 project as it's being presented. Whether it's in effect a  
20 requirement for this particular owner doesn't really make a  
21 difference in terms of the benefit to the city theoretically that  
22 comes from an LSDBE.

23 Just by having this particular owner develop the  
24 property, we are going to get that amenity. It just so happens  
25 that in a PUD that amenity means something as opposed to another

1 type of project where it wouldn't necessarily mean anything.

2 I don't know that it's really fair to the applicant  
3 to automatically discount it simply because they had to do it  
4 anyway. There is still benefit that comes with it as a result of  
5 this being a PUD by this applicant.

6 CHAIRPERSON MITTEN: There is actually two aspects  
7 to what you are saying. Let me just try a slightly different  
8 perspective. You are saying it's related to this PUD by this  
9 applicant. The fact is this applicant, this property owner, has  
10 a choice of developing the property matter of right or developing  
11 this property as a PUD.

12 I can't say this emphatically because we don't know  
13 because we're not going down the matter of right road but I would  
14 suggest that if the University were developing this site matter  
15 of right they would be using this revenue bond financing.  
16 Because it's the University regardless of whether it's matter of  
17 right or PUD, you get that benefit. So for this owner there is  
18 no difference.

19 Now would they be the owner absent PUD and all of  
20 that? I take your point and maybe it doesn't deserve to be  
21 totally wiped out. I think there has to be some discounting of  
22 the amenity because it's an existing requirement. The City gets  
23 it regardless.

24 MR. MAY: It's an automatic condition. But there  
25 are certain automatic conditions that come with other applicants

1 for other projects. The fact that this other condition happens  
2 also to be considered as a benefit in this process, I don't know  
3 if it's fair to automatically discount it.

4 I mean certainly I don't think it's fair to  
5 discount it completely. But should there be some recognition  
6 that it's a requirement of some other program and therefore we  
7 would of gotten it anyway. Well, okay. We can do that. But I  
8 still think it counts. It is meaningful even if it is a  
9 requirement for something else.

10 CHAIRPERSON MITTEN: Each of us weighs the  
11 amenities that are proffered more or less in our mind and decides  
12 if the balance is met. We'll clearly be measuring them  
13 differently on that point. Mr. Hannaham, did you have anything  
14 that you wanted to interject at this point?

15 MR. HANNAHAM: I'm still learning.

16 CHAIRPERSON MITTEN: You need to turn on your  
17 microphone.

18 MR. HANNAHAM: I'm just beginning to learn about  
19 these matters before this Commission having been here only about  
20 six months. I still feel we are missing something in terms of  
21 benefits. I can't really articulate what that might be.

22 I looked at the University's presentation of an  
23 comparative of benefits that was requested some time ago. They  
24 are all legitimate as far as I'm concerned. The non-economic  
25 benefit fits the flow from the educational contribution the

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1 University makes specifically from this particular site, the  
2 Elliott School, contributions to international affairs and the  
3 fact that there will be 193 people resident in the building,  
4 residents though they may be students they are still residents  
5 and the retail space.

6 It seems to me that there should be something else.

7 I don't know exactly what it should be. Maybe the limitation  
8 here is because it's a University. I don't know. Maybe the  
9 limitation is just the lack of imagination and creativity.

10 Then the discussion the last few minutes has seemed  
11 to reduce those benefits that have already been proffered as  
12 things that would have normally come along anyway. So what we  
13 are left with is what's described here under GW's economic  
14 benefits: \$71 million Elliott School construction; they indicate  
15 that the District's bond program fee and contracts with LSDBEs to  
16 date \$1.399 million; donation under the WECA agreement for  
17 \$500,000 over five years; tax revenue from the operation of the  
18 retail establishment; they indicate a one time payment of \$2.2  
19 million.

20 It just seems to me as though there should be a  
21 greater degree of benefit. Monetary benefit it seems to me in  
22 some way that it might flow. I just feel as though the  
23 capability of this University to do more is there.

24 CHAIRPERSON MITTEN: You feel they're half way  
25 getting over the hurdle.

1 MR. HANNAHAM: I don't think they have in a sense  
2 reached that point in this particular PUD.

3 CHAIRPERSON MITTEN: You mean as it relates to the  
4 relief that they are getting.

5 MR. HANNAHAM: Yes. The relief they are getting as  
6 opposed to the benefits that the city derives are in many  
7 different ways and including the noneconomic benefits. I would  
8 like to see it a little better but I can't specify what I think  
9 that it might be. I just have not been excited by the creative  
10 reaction of the University for this particular situation. I get  
11 the impression that it was a foregoing conclusion.

12 They first approached us and asked us to make a  
13 summary judgement on this thing. We immediately saw that there  
14 was more to it. We are at this point now and I don't know  
15 whether all the give or take between then and now has brought us  
16 any further.

17 CHAIRPERSON MITTEN: In getting them to be in front  
18 of us which I'm very happy that they finally did come to us but  
19 it all started back with an appeal of the building permit being  
20 granted. This has been a long road for them.

21 Let me see if the Commission would be amenable to  
22 deferring our decision on this case to next month. Mr. Hannaham  
23 has stated his concern regarding the adequacy of the amenities.  
24 I have some concern that the amenities are not sufficient given  
25 the level of relief being sought. I'll let Mr. Hood and Mr. May

1 weigh in on that. If you share the concern, then let's give them  
2 an opportunity to see what they can do and also to tighten up  
3 some of the other conditions that they've proposed.

4 MR. HOOD: Madame Chair, I'm going to expand a  
5 little bit on Mr. May's explanation of how we should still  
6 include or at least give partial -- I am not exactly sure. I  
7 don't want to put words in your mouth but I was sitting here  
8 thinking about that.

9 When I go to the store and if I buy one item, I  
10 don't get two. I guess that's maybe a weak analogy but I still  
11 think under the revenue bond process that we would have gotten  
12 that anyway. I'm just not understanding your point. I'm hoping  
13 the University is listening to what my colleagues are saying.  
14 Maybe they can come back with something additional or something  
15 other than that. I'm just not understanding that point.  
16 Unfortunately I disagree with that. What is your point, your  
17 analogy?

18 MR. MAY: I think that's fine. As our Chairperson  
19 said, we all have the job weighing the relative benefits of these  
20 amenities. My only point was that without this particular  
21 project that I mean it could have been done without any LSDBE and  
22 the fact that it's a requirement of something else, I didn't  
23 think should mean taking it off the table.

24 Now having said that and having listened to what  
25 Mr. Hannaham had to say and the Chairperson as well, I would

1 certainly be amenable to giving the applicant a little more time  
2 to tighten up some things in the amenity package and revise or  
3 add to or whatever in order to make the amenity package balance  
4 out better against the benefits received in this application.

5 CHAIRPERSON MITTEN: Mr. Hood, do you concur with  
6 that?

7 MR. HOOD: Yes. But let me just ask, Madame Chair.

8 I'm sure that everyone wants us to do a resolution. I don't  
9 know if they can come up with something between now and the next  
10 time we meet which would be on the 21st. Maybe we could do a  
11 meeting previously to try to fine tune this and then conclude  
12 this case.

13 Or would you rather just wait until our next  
14 monthly meeting which is going to be tight and I'm going to make  
15 all of us aware that it's going to be tight with a lot of work  
16 load. So I was hoping that we could do that sooner as opposed to  
17 later. I would think maybe the 21st if it's not too soon.

18 MR. BASTIDA: Madame Chairperson.

19 CHAIRPERSON MITTEN: I was just going to say before  
20 I let you speak, Mr. Bastida, is that the parties do have to have  
21 the opportunity to respond. So accelerating this too much is  
22 going to cause problems in terms of community groups being able  
23 to respond. Mr. Bastida, you were going to say.

24 MR. BASTIDA: No, you preempted me. Thank you.

25 CHAIRPERSON MITTEN: I was reading your mind.

1 MR. HOOD: That's getting dangerous.

2 CHAIRPERSON MITTEN: So we have a consensus that we  
3 will defer this matter for proposed action and I would just  
4 summarize the discussion which has taken place. Our concern  
5 revolves around the adequacy of the amenities. We are satisfied  
6 that the design modifications are appropriate. We are satisfied  
7 that the project may be occupied by students of the University.  
8 We just have a concern that the relief being requested is not  
9 being adequately offset by public benefits and amenities. We ask  
10 the applicant to revisit that.

11 (Pause.)

12 MR. BASTIDA: I was trying to trying to get a date  
13 from the applicant and he's consulting. But I can go back to the  
14 IMF. The applicant will provide its revised comments by Monday,  
15 April 18 no later than 12:00 noon. I wanted the concurrence of  
16 the Commission. I understand that this is what the Commission  
17 had requested. It will be part of the record. It will not be  
18 served from the applicants nor served from the parties nor  
19 comments from the parties are anticipated.

20 CHAIRPERSON MITTEN: I think that it would be  
21 appropriate for the parties to comment on these modifications to  
22 the conditions. I mean it would be exclusive to that. Let me  
23 ask Mr. Bergstein.

24 MR. BASTIDA: No. I'm talking about IMF.

25 CHAIRPERSON MITTEN: Right. I'm with you.

1 MR. BASTIDA: Okay. Alan, can you address that?

2 MR. HOOD: Madame Chair, point of clarification.  
3 Are we talking about the IMF or the case we are on now?

4 CHAIRPERSON MITTEN: He's back to IMF at the  
5 moment.

6 MR. HOOD: I would really like and I understand  
7 where we are going but maybe so that we won't get confused one  
8 can finish one case. Because I was thinking we're talking about  
9 1957.

10 CHAIRPERSON MITTEN: I think it's too late for the  
11 confusion. Let me just ask Mr. Bergstein. I want to protect  
12 everyone and their rights.

13 I want to know if we accept these expanded  
14 conditions that we've asked applicant in the IMF case for things  
15 related to what are we going to do in the alternative if their  
16 landscaping plan doesn't get approved by DPW. How can they make  
17 sure that the retail space actually gets occupied and then they  
18 need to tie a couple of their contributions more to the local  
19 area.

20 Now if they offer us some expanded versions of the  
21 conditions incorporating those notions that we have said that we  
22 are interested in, do we need to allow the parties the  
23 opportunity to comment?

24 MR. BERGSTEIN: As you have articulated that, yes I  
25 think you do.

1 CHAIRPERSON MITTEN: Thank you. So back to you,  
2 Mr. Bastida.

3 MR. BASTIDA: I will not go into that before the  
4 previous consultation. I am waiting still for 1957 to give me a  
5 date. I'm sorry. I'm correct. IMF. The applicant then will  
6 serve all the parties on Monday the 18th and will give the  
7 parties two weeks to respond to the proposals by the applicant  
8 and that will be the parties' comments which include the ANC will  
9 be due on April 1st.

10 CHAIRPERSON MITTEN: I'm sorry. I thought you  
11 originally said April 18th by 12:00 noon.

12 MR. BASTIDA: No. It's March 18th. I'm sorry.  
13 And that will give the parties including the ANC two weeks to  
14 submit their comments by Monday, April 1st.

15 CHAIRPERSON MITTEN: Okay. You don't want to set  
16 the schedule for 1957 E right now. Is that correct?

17 MR. BASTIDA: I am waiting for the applicant to see  
18 how soon he can provide that. As soon as he provides that then I  
19 can set up the schedule for it.

20 CHAIRPERSON MITTEN: Okay.

21 MR. BASTIDA: If that's agreeable.

22 CHAIRPERSON MITTEN: Should we proceed or should  
23 we give you a minute to do that?

24 MR. BASTIDA: Can you give me a minute?

25 CHAIRPERSON MITTEN: Yes.

1 MR. BASTIDA: Then we can complete that. Thank  
2 you.

3 (Pause.)

4 MR. BASTIDA: Madame Chairperson, going back to  
5 Zoning Commission Case Number 01-17M *et al.*

6 CHAIRPERSON MITTEN: Yes.

7 MR. BASTIDA: The applicant will provide its  
8 submission by Friday, March 22nd by 12:00 noon. He will serve it  
9 on all the parties and all the parties will have until Friday,  
10 April 5th to submit their comments.

11 CHAIRPERSON MITTEN: So we will get submissions  
12 from the applicant by the 22nd of March.

13 MR. BASTIDA: Right. Friday, March 22nd.

14 CHAIRPERSON MITTEN: Comments due April 5th.

15 MR. BASTIDA: Friday, April 5th. The applicant  
16 obviously will serve his comments on all the parties including  
17 the ANC.

18 CHAIRPERSON MITTEN: Thank you. Now I think we are  
19 ready to go to the final action. Mr. Parsons actually had to  
20 leave so I have some proxies from him as well as we go forward.  
21 The first case under final action is Zoning Commission Case  
22 Number 01-15M.

23 MR. BASTIDA: Madame Chairperson, the Staff has  
24 provided items related to the Tivoli and a proposed order. Also  
25 the Staff had received this morning the action of NCPC that was

1 taken on March 11, 2002 even though the action was taken March 7,  
2 2002. The National Capitol Planning Commission concludes that  
3 the proposed zoning map amendment will not adversely affect the  
4 identified Federal interest nor be inconsistent with the Federal  
5 elements of the comprehensive plan for the National Capitol.

6 That concludes my presentation. I thank you.

7 CHAIRPERSON MITTEN: Thank you. Can you tell me,  
8 Mr. Bastida, has this order been reviewed by the Office of the  
9 Corporation Council?

10 MR. BASTIDA: Yes.

11 CHAIRPERSON MITTEN: Okay.

12 MR. BASTIDA: There were two items that were not  
13 included that are related on the findings. On the conclusion of  
14 law, we made a determination tentatively that it would be  
15 appropriate to include that will be referring to the historic  
16 nature of the Tivoli Theater and the potential inclusion of the  
17 area on an historic district. That's the only thing that hasn't  
18 been included in your proposed order as you have in front of you.

19 Those items were discussed with corporate and counsel and they  
20 concurred with those facts.

21 CHAIRPERSON MITTEN: I think it needs to be make  
22 clear to us if there are going to be modifications made by  
23 someone else after we vote on it.

24 MR. BASTIDA: The modification proposal is only  
25 twofold. One is that it will point out that the Tivoli is a

1 historic landmark. Second that the area is being considered for  
2 a creation of a historic district.

3 CHAIRPERSON MITTEN: Okay.

4 MR. BASTIDA: Those would be the only two areas in  
5 which it will go beyond what it is on the proposed order. It  
6 wouldn't be a finding of fact but it will be a determination  
7 because of what transpired at the hearing.

8 CHAIRPERSON MITTEN: I have a few editorial changes  
9 that I think need to be made which I would ask that the other  
10 Commissioners would allow me to just pass on to Staff. There was  
11 something substantive that I wanted to have changed. I believe  
12 it's here twice. On page 5, number 13. The last sentence in  
13 number 13. The proposed R-5-B and C-3-A zone districts are  
14 consistent with the urban renewal plans MCSC designation of the  
15 subject property. I wanted to have that say generally  
16 consistent because one of the requirements of a major community  
17 service center is that it's high density housing and neither of  
18 those zoning categories is for high density. It's medium  
19 density.

20 So you can't be consistent with the MCSC  
21 designation and consistent with the generalized land use map.  
22 There's another reference to it if you would allow that change.

23 I would also like to change number 43 on page 12.  
24 This is probably more on to the editorial but I just wanted to  
25 make sure it's fine because I think it's a slightly different

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1 meaning. I'm talking about the testimony of Mr. Eric Gray. It  
2 says "Mr. Gray claimed" a few times and I think it should say  
3 "testified." I think there's a different connotation.

4 Then I would ask Mr. Bastida if the subdivision  
5 plan has been finalized.

6 MR. BASTIDA: It hasn't been submitted to the  
7 record. I would have to check with the applicant for that  
8 determination. Could you hold just a minute please?

9 CHAIRPERSON MITTEN: Sure.

10 (Pause.)

11 MR. BASTIDA: My understanding is that it has not  
12 been finalized yet.

13 CHAIRPERSON MITTEN: I don't know what the  
14 significance is. In one sense I do and in another sense I don't.

15 On page 13 the last line before number 47 starts "The applicant  
16 noted that it expected that proposed C-3-A and R-5-B lots will be  
17 finalized prior to the Zoning Commission's final action in this  
18 case." I had a concern about split zoning lots so I don't know  
19 what we could write that would make this conditional. Mr.  
20 Bergstein.

21 MR. BERGSTEIN: Well, it's a map amendment.

22 CHAIRPERSON MITTEN: Yes. That's right.

23 (Pause.)

24 MR. BERGSTEIN: After some consultation, I think  
25 that the applicant has indicated to us that they would agree to a

1 condition that would make the map amendment conditional upon that  
2 subdivision which would be consistent with the exhibit that's  
3 shown.

4 CHAIRPERSON MITTEN: Yes.

5 MR. BERGSTEIN: So that this map amendment could be  
6 directly related to that exhibit and it would be only conditional  
7 upon the subdivision being recorded and remain consistent with  
8 that exhibit.

9 CHAIRPERSON MITTEN: Are we legally allowed to do  
10 that?

11 MR. BERGSTEIN: Let me say this. Since the  
12 applicant has at least indicated to me that they have no  
13 objection to that, I think you can do that. The other issue is  
14 something that I would like to discuss with you at some further  
15 length.

16 CHAIRPERSON MITTEN: Okay. That will get us  
17 through the day though. Right?

18 MR. BERGSTEIN: Yes.

19 CHAIRPERSON MITTEN: With some little leeway for  
20 some nonsubstantive editorial changes to the order, I would move  
21 approval of Zoning Commission Order Number 956 and we would  
22 acknowledge the proffer by the applicant that the rezoning would  
23 become if this is legally correct for me to say it this way, Mr.  
24 Bergstein, effective upon recordation of the subdivision  
25 configuration as indicated in the record.

1 MR. BERGSTEIN: Yes. I think that's the way to do  
2 it.

3 CHAIRPERSON MITTEN: Thank you. Is there a second?

4 MR. MAY: Second.

5 CHAIRPERSON MITTEN: Any further discussion?

6 (No response.)

7 CHAIRPERSON MITTEN: All those in favor please say  
8 aye.

9 COMMISSIONERS: Aye.

10 CHAIRPERSON MITTEN: Those opposed please say no.

11 (No response.)

12 CHAIRPERSON MITTEN: Mr. Bastida.

13 MR. BASTIDA: Madame Chairperson, do you have a  
14 proxy for Mr. Parsons on this case?

15 CHAIRPERSON MITTEN: Mr. Parsons did not  
16 participate in this case.

17 MR. BASTIDA: Thank you. Then the Staff will  
18 record the vote four to zero. Ms. Mitten moving and Mr. May  
19 second. Mr. Hood and Mr. Hannaham voting on the affirmative.  
20 Mr. Parsons not participating not having heard the case.

21 CHAIRPERSON MITTEN: Thank you.

22 MR. BASTIDA: The second case Miscellaneous  
23 Technical Corrections Case Number 00-04 TA the Staff has provided  
24 you with the set of comments that were received by this office  
25 which was only one. In the proposed order in front of you, we

1 have addressed those issues and the Staff requests that you make  
2 a decision regarding this matter. Thank you.

3 CHAIRPERSON MITTEN: Let me just ask what do you  
4 mean by "we have addressed those issues."

5 MR. BASTIDA: The Staff has addressed the issues  
6 regarding the amendments and the technical report that would  
7 proffer regarding all the issues. We believe that we have  
8 addressed all of them successfully and would request that you  
9 approve the proposed final rulemaking and order.

10 CHAIRPERSON MITTEN: So let me just restate what I  
11 think you said to make sure that I understand what you said. Are  
12 you saying that the draft order that's before us incorporates  
13 those comments from Holland & Knight that you believe were on  
14 point.

15 MR. BASTIDA: Correct. We believe that some points  
16 made by them were on point and some were not. We addressed all  
17 of the points that they made in order to make sure that the  
18 Commission would have a comfort level to perhaps approve the  
19 proposed final rulemaking and order. Thank you.

20 CHAIRPERSON MITTEN: Okay. Let me see if the  
21 Commissioners have any issues that they would like to raise  
22 either on your own or in response to any of the Holland & Knight  
23 points. I just wanted to ask is it the intention in providing  
24 let's see this would be under letter H copies of orders and so  
25 on. Is it just to the ward council member or do we think that

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1 it's beneficial to provide it to the at-large members as well?

2 MR. BASTIDA: When it's a rulemaking we provide it  
3 to all the NCs and to all the council members.

4 CHAIRPERSON MITTEN: I think what we are talking  
5 about under H is --

6 MR. BASTIDA: I am at a loss. What do you mean by  
7 H?

8 CHAIRPERSON MITTEN: Chapter 31 for the zoning  
9 adjustments rules and who is going to get a copy of these? I'm  
10 just questioning whether or not we should be sending these to the  
11 at-large council members. This doesn't have anything to do with  
12 our rules.

13 MR. BASTIDA: We routinely send them to all council  
14 members including the one at-large even though it is not required  
15 by law. We do it as a matter of courtesy on all rulemakings.

16 MS. SANSONE: Madame Chairperson, the intention of  
17 this rulemaking if I may was simply to codify into the Board of  
18 Zoning adjustments rules the requirements of the ANC Reform Act.

19 CHAIRPERSON MITTEN: Okay.

20 MS. SANSONE: That Act does not specifically  
21 require service on anyone other than the effected ward council  
22 member as well as the ANC.

23 CHAIRPERSON MITTEN: Thank you, Ms. Sansone.  
24 That's what I was just trying to understand if we should be  
25 expanding that. Now that I know the source of it I can see that

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1 we don't need to.

2 The point about under letter B about calling out  
3 private garages as a principal use suggesting that somehow that  
4 the overall list in the 201.1 is something other than that which  
5 caused Holland & Knight some concern. I can certainly see their  
6 point so I'm wondering if you could just tell us why you rejected  
7 that.

8 MS. SANSONE: Certainly. The Holland & Knight has  
9 put forward a principle of statutory or regulatory  
10 interpretation. However there is other rules of statutory and  
11 regulatory interpretation that come into play.

12 In this case to the extent that there is a concern  
13 that the list may consist only of principal uses that would be  
14 offset by the preamble to the Notice of Rulemaking which explains  
15 that in fact that list is not consistent entirely of principal  
16 uses. It does contain at least one accessory use and it has two  
17 temporary uses which are probably also accessory uses or they are  
18 something other than a principal use.

19 First of all, we rejected that because it is not an  
20 absolute principle of statutory or regulatory interpretation.  
21 Secondly, the list did contain other types of uses including  
22 accessory uses. Most importantly we felt that including this  
23 phrase in section 201.1H it made it clear that this type of  
24 garage was a principal use. It had a size limitation that is  
25 much more restrictive than a private garage that is an accessory

1 use.

2 When you are trying to track through all the  
3 provisions in Chapter 2 dealing with different types of garages  
4 because of the way the regulation is written there is an  
5 ambiguity there as to whether the garage in 201.1H is really a  
6 principal use or is an accessory use. This proposed amendment  
7 was intended to clarify that. This is the easily way to clarify  
8 it short of trying to rewrite all the other provisions to clean  
9 it up.

10 CHAIRPERSON MITTEN: Okay. Thank you. I would  
11 move approval of Zoning Commission Order Number 959.

12 MR. MAY: Second.

13 CHAIRPERSON MITTEN: Any further discussion?

14 (No response.)

15 CHAIRPERSON MITTEN: All those in favor please say  
16 aye.

17 COMMISSIONERS: Aye.

18 CHAIRPERSON MITTEN: All those opposed please say  
19 no.

20 (No response.)

21 CHAIRPERSON MITTEN: Let me see. I think I have a  
22 proxy. Just a second. Mr. Parsons votes aye.

23 MR. BASTIDA: Thank you, Madame Chairperson. The  
24 Staff will record the vote five to zero. Ms. Mitten moving and  
25 Mr. May second. Mr. Hannaham and Mr. Hood voting in the

1 affirmative. Mr. Parsons voting in the affirmative by proxy.

2 Thank you.

3 CHAIRPERSON MITTEN: Thank you.

4 MR. BASTIDA: The next case is Zoning Commission  
5 Case Number 02-02. It's the Text Correction on Child/Elderly  
6 Development Center. The office received no comments regarding  
7 this proposed minor text amendment and request an action by the  
8 Commission. Thank you.

9 CHAIRPERSON MITTEN: Thank you.

10 MR. HOOD: Madame Chair, I move approval on Zoning  
11 Commission Case Number 02-02.

12 CHAIRPERSON MITTEN: Second. Any discussion on the  
13 text amendment.

14 (No response.)

15 CHAIRPERSON MITTEN: All those in favor please say  
16 aye.

17 COMMISSIONERS: Aye.

18 CHAIRPERSON MITTEN: Including Mr. Parsons. All  
19 those opposed please say no.

20 (No response.)

21 CHAIRPERSON MITTEN: Mr. Bastida.

22 MR. BASTIDA: The Staff will record the vote five  
23 to zero. Mr. Hood moving and Ms. Mitten second it. Mr. Hannaham  
24 and Mr. May voting on the affirmative. Mr. Parsons voting on the  
25 affirmative by proxy. Thank you.

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1 CHAIRPERSON MITTEN: Thank you. Now let's go to  
2 our single item under the Consent Calendar now which is Case No.  
3 01-32TA.

4 MR. BASTIDA: The Commission sometime ago did an  
5 emergency order on the concrete plants and emergency order would  
6 expire on approximately March 20th. In order to keep the  
7 parameters as it exists the Staff is requesting the issue of a  
8 second emergency order.

9 The Staff is working with the Office of Planning  
10 and a corporation counsel to come up with the proper wording for  
11 the prehearing statement so we could advertise dates for hearing  
12 in hopefully the near future. Still because of the timetable of  
13 the consideration, a third emergency order might be required.  
14 Thank you.

15 CHAIRPERSON MITTEN: All right. We have a draft  
16 order in front of us, Zoning Commission Order Number 950 which  
17 would extend the emergency for the special exception use for  
18 concrete plants in CN zone district.

19 MR. HOOD: I'm sorry, Madame Chair. How long are  
20 we going to extend it?

21 CHAIRPERSON MITTEN: It will be another 120 days.

22 MR. HOOD: I make a motion that we extend Case  
23 Number 01-32TA for 120 days.

24 MR. MAY: Second.

25 CHAIRPERSON MITTEN: Just for clarification it will

1 be 120 days from the expiration of the first emergency order. Is  
2 that the way it's going to work? Or is it from today?

3 MR. BERGSTEIN: That's a very good question. We'll  
4 write the legal answer when we write notice of emergency. It's  
5 going to be in effect one way or the other. I just don't know if  
6 technically speaking it begins again today or whether or not we  
7 can state that it has a delayed start. I need to look at that.

8 CHAIRPERSON MITTEN: Okay.

9 MR. HOOD: Madame Chair, I will amend to give  
10 corporation counsel the flexibility to put in the 120 days at  
11 either date.

12 CHAIRPERSON MITTEN: Thank you. Did you second?

13 MR. MAY: Yes.

14 CHAIRPERSON MITTEN: So we have a motion and a  
15 second to extend the emergency on Zoning Commission Case Number  
16 01-32TA. All those in favor please say aye.

17 COMMISSIONERS: Aye.

18 CHAIRPERSON MITTEN: Including Mr. Parsons. Those  
19 opposed please say no.

20 (No response.)

21 CHAIRPERSON MITTEN: Mr. Bastida.

22 MR. BASTIDA: The Staff will record the vote five  
23 to zero. Mr. Hood moving and Mr. May second it. Ms. Mitten and  
24 Mr. Hannaham voting on the affirmative. Mr. Parsons voting on  
25 the affirmative by proxy.

1 CHAIRPERSON MITTEN: Thank you. All right. I  
2 would like to spend a little bit of time on the correspondence.  
3 We have a letter from the law firm of Laytham & Watkins  
4 requesting that rescind a covenant that restricts 4500 Wisconsin  
5 Avenue NW Basically because of subsequent actions by various  
6 bodies in the District the covenant is no longer serves a  
7 purpose. Let me ask if anyone has any questions first about the  
8 request. Any questions?

9 (No response.)

10 CHAIRPERSON MITTEN: Are we ready to take action on  
11 this today then in the absence of any questions? Take action to  
12 rescind today? Is there readiness or unreadiness? Mr. May.

13 MR. MAY: This is a matter that I have no  
14 familiarity with in terms of what actions have been taken in the  
15 past by the Zoning Commission. Before acting on it, I would just  
16 like to know that there isn't something else brewing here or  
17 something else that we need to be certain of before we act on it.

18 Would this essentially become a consent calendar item and  
19 therefore we vote to rescind it? I just don't know enough about  
20 what's involved and what the possible ramifications of any action  
21 would be.

22 CHAIRPERSON MITTEN: Let me ask Mr. Bergstein or  
23 Ms. Sansone if you could respond to Mr. May's question about  
24 what's the consequence of rescinding the covenant?

25 MR. BERGSTEIN: As I understand it, there was an

1 order from the Zoning Commission in 1940 which cannot at this  
2 point be located at least by this applicant. But we do know that  
3 as a result of that order, a covenant was entered into by the  
4 then Commissioners of the District of Columbia which would be  
5 comparable to the mayor.

6 The covenant included the restrictions which must  
7 have been requested by the Zoning Commission at that time. But  
8 it also provided that the Zoning Commission could authorize the  
9 extinguishment of the covenant.

10 The question before you is that there are two  
11 things that the covenant required. One is that the building be  
12 built in accordance with the plans and specifications something  
13 like you put in every one of your PUDs. That happened 50 years  
14 ago.

15 So the point that's being made by the applicant is  
16 we've already built this building. We want to build another  
17 building. That issue is before the Board of Zoning Adjustment  
18 and I let Ms. Sansone speak to that. In terms of the first  
19 condition, the argument that they are making to you is we've  
20 satisfied that condition and therefore the covenant can be  
21 extinguished for that.

22 The other condition is that no changes be made in I  
23 think the entrances or exits to the building without going before  
24 the Zoning Commission. Again what's being argued to you and we  
25 are talking about what's in this covenant, in fact they want to

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1 build a totally different building. So this covenant has now  
2 become irrelevant. They want to remove this from the land  
3 records because both of the conditions are irrelevant.

4 That's what they are arguing to you. All you can  
5 do is look on the face of the covenant and ask yourself whether  
6 or not it's appropriate to extinguish the covenant based upon the  
7 representations that are being made. I'll let Ms. Sansone  
8 address the other issue.

9 MR. BASTIDA: In addition, the Historic  
10 Preservation Review Board has reviewed and approved the new  
11 concept for the development of this site which actually adds some  
12 residential units on top of the existing Sears building. This is  
13 the Sears building. So it has been reviewed by another  
14 government agency and approved by it. Also as Ms. Sansone will  
15 address, it will be in front of the Board of Zoning Adjustment on  
16 April 8th. Ms. Sansone.

17 MS. SANSONE: Madame Chair, I believe that's  
18 correct. I haven't had a chance to actually review what's before  
19 the BZA.

20 However Mr. Davidson did contact me. He was  
21 pursuing an inquiry as to whether in fact the covenant could be  
22 rescinded as a result of the BZA process. So I had him fax me  
23 this very old document. In looking through it, it was clear that  
24 it was a covenant related to a map amendment. So I got back with  
25 Mr. Davidson and explained to him that it would not be

1 appropriate for the BZA to rescind a covenant that had been  
2 attached to a matter that would be within the Zoning Commission's  
3 jurisdiction. But that's about the extent of my familiarity with  
4 it.

5 MR. BERGSTEIN: The other point that I think made  
6 clearly also as Mr. Bastida pointed out because this is a  
7 historic structure. At least it is represented to be a historic  
8 structure and any changes to it would have to go before the HPRB.

9  
10 The argument being made to you is that the Zoning  
11 Commission doesn't have to concern itself with any changes if  
12 they were to the existing structure because that would go before  
13 the Historic Preservation Review Board. Whatever you decide or  
14 not, those are correct representations to you whether or not you  
15 feel comfortable or not to extinguish this covenant based upon  
16 those arguments.

17 CHAIRPERSON MITTEN: Okay.

18 MR. BERGSTEIN: It would not extinguished at your  
19 vote by the way. I am really asking for you to authorize me to  
20 start the process of legally certifying it. It would be the  
21 mayor who would actually sign the legal document which would  
22 extinguish the covenant.

23 CHAIRPERSON MITTEN: All right. I guess just as I  
24 think about it one of the things that typically happens if we put  
25 something on our consent calendar and usually the covenants have

1 come about because of a case that was before and there were  
2 parties participating in the case and at a minimum there would be  
3 the ANC that if we were to put this on the consent calendar for  
4 next month that I think we should give the ANC notice that this  
5 is going on the consent calendar. This request has been made. I  
6 feel that somebody should weigh in on this. I don't know how the  
7 rest of you feel about that.

8 MR. BASTIDA: Madame Chairperson, the Staff has  
9 contacted the applicant and even though the applicant would like  
10 to have it sooner rather than later, they don't have a basic  
11 problem with the April meeting although I made him aware that it  
12 probably would occur much later than April 8th.

13 CHAIRPERSON MITTEN: Okay.

14 MR. BASTIDA: So that might provide you with the  
15 ability in fact postpone it for the next meeting and for us to  
16 advise the ANC immediately that in fact it will be in front of  
17 the Commission on the next April meeting.

18 CHAIRPERSON MITTEN: Let me see what the other  
19 Commissioners think too. Do you want to notify the ANC and put  
20 it on our consent calendar for the next meeting. Do you want to  
21 take action today? Somebody give me your preference. Mr.  
22 Hannaham.

23 MR. HANNAHAM: I'd very much like to give the ANC  
24 an opportunity to react to it and that's the community through  
25 the ANC.

1 CHAIRPERSON MITTEN: Yes.

2 MR. HANNAHAM: I think that's appropriate.

3 CHAIRPERSON MITTEN: Mr. May.

4 MR. MAY: That's fine.

5 CHAIRPERSON MITTEN: Then we will put this on our  
6 schedule on the consent calendar for the April meeting and if you  
7 would please notify the ANC as soon as possible.

8 MR. BASTIDA: Yes. We will do that tomorrow in  
9 writing.

10 CHAIRPERSON MITTEN: Thank you.

11 MR. BERGSTEIN: The next business correspondence is  
12 from a misunderstanding but The Committee of 100 on the Federal  
13 City could always ask for a reconsideration when that order is  
14 issued. If they have a serious problem with the action as  
15 transpired.

16 CHAIRPERSON MITTEN: Okay.

17 MR. BASTIDA: What I can tell you is the applicant  
18 called me in February and asked me to put it on the regular  
19 calendar. I was never notified that in fact other forces were at  
20 work to put it back into the consent calendar accordingly when  
21 the Committee of 100 contacted me. I am informed how the wishes  
22 of the applicant had been proffered to me at that time.

23 CHAIRPERSON MITTEN: I think there's couple of  
24 things that arise from this that we could all perhaps learn from  
25 for the future. Certainly when something is put on the consent

1 calendar the parties are notified and then there is the  
2 opportunity for them to respond. I think it should be emphasized  
3 that conversations with the Staff are not the equivalent of a  
4 written response. Then we are relying on everyone's  
5 understanding of what they are hearing. So I would ask that in  
6 the future that the parties be encouraged to respond in writing.

7 That would be point number one.

8 Point number two is I think we would also benefit  
9 from what is required by our regulations. There should be a  
10 written report of the director that advises us whether or not a  
11 request for an item being on the consent calendar is appropriate  
12 in the director's view. Then again we get everything in writing.

13  
14 Given the situation that we are at now so there is  
15 no further misunderstanding or miscommunication is that a letter  
16 be sent from Mr. Bastida or Mrs. Kress notifying the Committee of  
17 100 of what their recourse is at this point. If they feel  
18 strongly then they can request reconsideration and that it be  
19 done in writing. They should be given that opportunity.

20 MR. HOOD: Madame Chair, may I just add? At last  
21 month's meeting there was an explanation given to the  
22 Commissioners at that time. It escapes me to what that was. If  
23 Mr. Bastida could remind us why we didn't get correspondence from  
24 the director. I know you made a statement at last month's  
25 meeting. My memory fails me right now.

1 MR. BASTIDA: It was similar to what I said. It is  
2 an interpretation of the regulations, what the regulations say  
3 versus what has occurred all the time. I stated for the record  
4 that my mistake was that I relied on a communication rather than  
5 in writing. And I intend for that not to ever happen again.

6 MR. BASTIDA: Mr. Bastida, no. I'm saying the  
7 reason that we didn't get anything in writing last month it was a  
8 little different explanation that I remember.

9 MR. BASTIDA: Okay. I could elaborate on that and  
10 give you the transcript but basically what it boils down is that  
11 the Staff in order to put something on the consent calendar  
12 always relied and had to have received a written communication  
13 from the parties on the case and that they are not opposed to it.

14 The regulations are written in a way that give leeway to in fact  
15 as long as the parties had been notified of the request it can  
16 ahead on the consent calendar and disposed by the Commission.

17 MR. HOOD: I'll tell you what, Mr. Bastida. Let's  
18 get the transcript because it fails me right now. If I could  
19 just get a copy of the transcript so I could share that with the  
20 Chair.

21 MR. BASTIDA: Sure.

22 MR. HOOD: Because there was an explanation given  
23 to the Commissioners at that time. Thank you.

24 CHAIRPERSON MITTEN: Thank you. So, Mr. Bastida,  
25 will you send a letter to the Committee of 100 notifying them

1 that they have the opportunity after the order is written to  
2 request reconsideration.

3 MR. BASTIDA: The Staff will do that.

4 CHAIRPERSON MITTEN: Thank you.

5 MR. BASTIDA: Sometime early this week.

6 CHAIRPERSON MITTEN: Then we will go to your report  
7 then, Mr. Bastida. I have an additional area to report. You  
8 have received the reminder schedule and I think this is self-  
9 explanatory.

10 In addition the Staff has been in contact with LBOC  
11 and DOS's staff and have been trying to work with them to get a  
12 system to communicate to make sure when there is an approval of a  
13 PUD they would receive that information at the same time. We  
14 typed in our language and our orders in order to make sure LBPC  
15 and DOS is notified at the same time the applicant notifies the  
16 Commission when they initiate the process of the construction, of  
17 the building permit and so on.

18 LBOC and DOS advise me that they will put something  
19 in writing and they will have it to me last week. I called them  
20 on Friday when I had not received anything and they said they  
21 will have it no later than 10 o'clock this morning. I have  
22 received nothing from them. So I intend to follow that up and  
23 make sure that in fact I have something in writing for next  
24 monthly meeting.

25 CHAIRPERSON MITTEN: I believe that there was

1 definitely some material that we were expecting from the LBOC and  
2 DOES folks but also some of the attorneys that were present at  
3 our meeting were going to make some suggestions in terms of  
4 changes that could be made. Was there any correspondence from  
5 them?

6 MR. BASTIDA: No. There was not any correspondence  
7 from the attorneys, either Mr. Glasgow or Mr. Briggs. I will  
8 contact them and remind them also of that.

9 CHAIRPERSON MITTEN: Thank you. We want to get all  
10 of the input. As soon as you receive this information since it's  
11 not an on-going case if you would share that with us because this  
12 is something we would like to move on sooner rather than later.  
13 Every PUD that comes through without some revised language is  
14 going to be relatively less effective.

15 MR. BASTIDA: I'll be glad to do that. Since  
16 probably it will be just a few pages, I will be glad to fax them  
17 to all of the Commissioners upon receipt of this by this office.

18 CHAIRPERSON MITTEN: Thank you.

19 MR. HOOD: Madame Chair, can I just add? We were  
20 supposed to have a follow-up meeting I think or have everything  
21 in by the first or second of week March. Actually I think it was  
22 the first week.

23 CHAIRPERSON MITTEN: Yes.

24 MR. HOOD: I would just say when we take our annual  
25 report around we may want to stop by because Mr. Bastida has

1 expressed that he is not getting cooperation.

2 CHAIRPERSON MITTEN: Right.

3 MR. HOOD: After the meeting with the mayor and  
4 city council, we may want to stop by and I'll mention to Mrs.  
5 Flowers and to Mr. Irish of the attempts that we are trying to  
6 make. Maybe if he can get his staff to get in line and get  
7 aboard with us so we can make this thing happen as you said,  
8 Madame Chair.

9 CHAIRPERSON MITTEN: Yes. Good idea. Anything  
10 else, Mr. Bastida?

11 MR. BASTIDA: No. That concludes all the concerns  
12 that the Staff had that we would like to have addressed by the  
13 Commission at this meeting.

14 CHAIRPERSON MITTEN: Any other concerns from any of  
15 the Commission?

16 (No response.)

17 CHAIRPERSON MITTEN: There being no further  
18 business I now declare this public meeting adjourned.

19 (Whereupon, the foregoing matter was concluded at  
20 5:00 p.m.)