

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION

REGULAR MEETING

MONDAY, JULY 12, 1999

The regular meeting took place in Room 220, 441 4th Street, N.W., Washington, D.C. 20001, when were present:

ANGEL F. CLARENS	Chairperson
ALBERTO BASTIDA	Office of Zoning
KENNETH KARKE	Office of Zoning
VINCENT ERONDU	Office of Zoning
DAVE COLBY	Office of Planning
ALAN BERGSTEIN	Corporation Counsel
STEPHEN COCHRAN	Office of Planning

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 Sharon Ambrose, D.C. Council
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P R O C E E D I N G S

Time: 1:43 a.m.

CHAIRPERSON CLARENS: This is the July 12, 1999, meeting of the Zoning Commission for the District of Columbia.

Preliminary matters?

I. PRELIMINARY MATTERS:

MR. BASTIDA: No, I don't have any preliminary matters, Mr. Chairman. The Office of Zoning have no preliminary matters.

CHAIRPERSON CLARENS: The actions on the minutes: We have two minutes in front of us.

II. ACTION ON MINUTES:

MR. BASTIDA: Mr. Chairman, I would like to request that those minutes will not be looked at today. There is a couple of issues that I need to try information on them, and I would rather provide them to you for the September meeting.

CHAIRPERSON CLARENS: We'll postpone action on the minutes. Proposed actions? The Office of Planning.

III. PROPOSED ACTION:

A. 98-20M (PUD Walter Washington Estates)

MR. COLBY: The first case is 828 Bellvue Street, S.E., modification to an approved PUD, was submitted sometime ago, actually. A

1 summary of the hearing which was held on March 12th,
2 and I'm happy to go briefly through some of the --
3 some portion of our report if the Commission would
4 like me to do that. It will take me a minute and a
5 half to summarize what we've provided.

6 CHAIRPERSON CLARENS: Yes, I think that
7 will take a minute and a half. My only question is
8 what is this note about not timely submitted to OZ
9 by applicant?

10 MR. BASTIDA: There was a serious
11 request by the Zoning Commission that the applicant
12 did not submit. Accordingly, I didn't include it in
13 the package, because I made the determination that
14 the Commission would not be ready to finalize -- to
15 give a final approval, because all the information
16 would not be in front of you.

17 CHAIRPERSON CLARENS: Wait a minute. So
18 we are not ready to move on this?

19 MR. BASTIDA: No, we are not. It was a
20 last minute, and I wasn't just going to take it out
21 of the agenda. I wanted you to be aware that we
22 have pursued, for you to be able to take a final --
23 to make a final determination on this case, and it
24 was -- or to propose the termination of this case,
25 but the information is not in front of you.

26 CHAIRPERSON CLARENS: What is the

1 information that is not in front of us?

2 MR. BASTIDA: Because the applicant did
3 not provide it in a timely fashion.

4 MS. KRESS: We have not, for example,
5 received the findings of fact and conclusions of law
6 to help facilitate decision making. I believe Mr.
7 Bastida was informed that this wasn't a rush for
8 them, since they are working right now and building
9 right now, and so they haven't felt the urgency to
10 submit the additional information that was requested
11 by the Commission.

12 CHAIRPERSON CLARENS: Okay. So we are
13 postponing action on 98-20M?

14 MS. KRESS: Until September.

15 CHAIRPERSON CLARENS: Until September.

16 **B. 98-2M (SP DISTRICTS UPDATE)**

17 Ms. KRESS: 99-2M, I believe, is all
18 ready to go forward. Perhaps the Office of Planning
19 would like to speak to that.

20 CHAIRPERSON CLARENS: Mr. Colby.

21 MR. COLBY: The next case is a -- Well,
22 it's a modification of an approved PUD to allow
23 construction of 472 room hotel at 1000 K Street.

24 The hearing was held on June 3. Our
25 summary -- Again, I can give you a one minute
26 summary of that.

1 The presently approved PUD allowed
2 construction of a 9.3 FAR, 130 foot office building
3 approved in the late 1980s. The current hotel PUD
4 will have a larger FAR, 10.5 FAR, same height. The
5 applicant includes an agreement with the community
6 to provide off-site housing of 25 partial rate
7 units.

8 The application is not inconsistent with
9 the comp plan, which recommends high density
10 commercial use for this subject property. That's a
11 change in the comp plan from when the PUD was
12 originally approved.

13 We note that the proposed hotel is in
14 the District's eyes a very desirable land use for
15 this location, a short walk from the new Convention
16 Center, and there are numerous mentions in the comp
17 plan about recommending both hotel development near
18 the new Convention Center which is under
19 construction.

20 The ANC is supportive. The persons in
21 opposition, which included the hotel and restaurant
22 parties, Reverend Grayland Hagler and Ellen McCarthy
23 representing a committee of 100, and Ms. Beth
24 Sullivan, oppose the application for various
25 reasons; but the one with the most paper before you
26 is the issue as to whether this application should

1 be allowed as a PUD modification.

2 With that, I'll be happy to answer any
3 questions you may have.

4 CHAIRPERSON CLARENS: Any questions of
5 OP? Any motions?

6 COMMISSIONER FRANKLIN: Mr. Chairman,
7 I'll begin the discussion by moving to approve this
8 application as reflected in the findings of fact and
9 conclusions of law as submitted by the applicant.

10 CHAIRPERSON CLARENS: Do I hear a
11 second?

12 COMMISSIONER HOOD: Mr. Chairman, before
13 we --

14 CHAIRPERSON CLARENS: I need a second
15 for the motion.

16 COMMISSIONER PARSONS: Oh, I thought he
17 did. I'm sorry.

18 CHAIRPERSON CLARENS: No.

19 COMMISSIONER HOOD: I thought we were
20 open for discussion.

21 CHAIRPERSON CLARENS: That's right. We
22 make a motion. We second it. We discuss it. Then
23 we vote.

24 COMMISSIONER HOOD: For discussion
25 purposes, I'll second it.

26 CHAIRPERSON CLARENS: Okay. So it's

1 been properly moved and seconded, and discussion --
2 Mr. Franklin?

3 COMMISSIONER FRANKLIN: I have examined
4 the materials that have been supplied by the
5 applicant and its counsel, and am satisfied that
6 this application is properly before us as a
7 modification, for a number of reasons, not the least
8 that by definition of the dictionary it's a
9 modification, contrary to what we were advised by
10 the opposition.

11 I believe that the improvements to the
12 landscaping and to the -- and the description of the
13 treatment of the lanterns and the signage are
14 responsive to the concerns that I had at the
15 hearing, and I would hope my colleagues would agree.

16 CHAIRPERSON CLARENS: Mr. Hood.

17 COMMISSIONER HOOD: Mr. Chairman, I'd
18 like to associate myself with the comments of Ms.
19 Ellen McCarthy. I think at a certain point in time
20 that the applicant has done the legwork with the ANC
21 and community groups. I think it's a good project,
22 but I'm kind of concerned about the message we're
23 sending as opposed to a modification.

24 From looking at the statistics,
25 everything is changed with the exception, I believe,
26 of the height. I think that this Commission at some

1 point in time -- we need to decide, when we decide
2 on these PUDs, what a modification is.

3 I've looked in the regulations. I went
4 back and forth trying to figure out what is a minor
5 modification, and I, too, would associate myself
6 with the comments of Ms. McCarthy. While I will be
7 voting in favor of it, I would like to see us
8 eventually have some closure to what is a minor
9 modification of a PUD.

10 CHAIRPERSON CLARENS: Well, this is a
11 major modification. It's not a minor modification.
12 I don't think the applicant claimed that it was a
13 minor modification. I think they claimed that it
14 was a major modification, but it is a modification.

15 COMMISSIONER FRANKLIN: I agree with Mr.
16 Hood. We need some clarification, but in the
17 posture of the case at the moment, I'm willing to go
18 forward on the basis of the modification.

19 I'm not quite clear. Perhaps the staff
20 can explain to us what the distinction is between
21 considering this as a new application and a
22 modification. Is it basically the fee?

23 CHAIRPERSON CLARENS: Well, no. This
24 case is more complex than that.

25 MR. BASTIDA: Yes. If the applicant
26 were to begin a new application, then perhaps he's

1 giving up the existing approval, and so it's a
2 clean, new set of rules. By going with a
3 modification, the application is retaining the
4 option to the previous approved PUD and to try to
5 gain a new one without losing the rights that they
6 already have.

7 I don't know if I made myself clear.

8 COMMISSIONER FRANKLIN: Well, it seems
9 to me a meritorious project.

10 MR. BASTIDA: And the Commission,
11 usually when it's a minor modification, approves it
12 without a hearing. If it is a modification to this
13 extent, the hearing takes place, and it's almost
14 equivalent to having a new case, that parties --
15 there is the applicant, parties in opposition. It
16 is the same amount of testimony, the same process,
17 that takes place for an application.

18 COMMISSIONER FRANKLIN: That's why I
19 asked the question.

20 COMMISSIONER HOOD: But I also think
21 that, with one thing changing -- I mean, that's --
22 We need to decide at some point in time -- I have to
23 agree with Commission Franklin that this is a good
24 project and we need to move forward, but with the
25 applicant -- I mean, for the applicant to provide us
26 information about what we've done previously, what

1 the Commission has done previously, I think, is not
2 still coming to any standard of actually how we need
3 to proceed with whether or not we ask for another --
4 I mean a second stage or ask for a new PUD, as
5 opposed to what we have here, because, clearly --
6 clearly, a lot of changes have been made.

7 MR. BASTIDA: It will be something -- a
8 rule that the Commission will have to then
9 establish. As I recall, this is not the first
10 extended modification that has taken place after a
11 previously approved PUD.

12 COMMISSIONER HOOD: Well, I agree with
13 that, Mr. Bastida. I still believe that, even
14 though it was done previously, it doesn't make it
15 correct. I believe at some point in time we need to
16 correct it here on the --

17 MS. KRESS: I believe that we have had
18 the legal interpretation of our own corporation
19 counsel that this is before us legally as a
20 modification. The point that you're making is
21 perhaps this is something we as a Commission -- you
22 as a Commission in the future should discuss and
23 make perhaps some formal definitions. I think that
24 is well worth exploring, but it is legally -- We
25 have been informed it is legally in front of you
26 today.

1 COMMISSIONER HOOD: Also, Mr. Chairman,
2 are we're going into findings of fact or are we
3 just having basically discussion?

4 CHAIRPERSON CLARENS: No, we'll have
5 discussions, and then after we take a vote on the
6 case, then we'll discuss findings of facts and
7 conclusions of law.

8 Mr. Parsons?

9 COMMISSIONER PARSONS: Well, on the --
10 To repeat what's already been said, most of these
11 PUDs that we have modified have resulted in better
12 projects, as I recall, and I think that's the case
13 here. But this is clearly, to me, beyond the word
14 modification. It's a totally new use.

15 I'm going to vote for it, but I think we
16 should spend some time on it, because we're going to
17 get one we don't like and that they'll use this case
18 as a citation why they should be granted a
19 modification. That's my point, is every time these
20 come in, they're usually a better project. Sooner
21 or later, one is going to come in that isn't.

22 CHAIRPERSON CLARENS: Very interesting.
23 Okay. Very well. So any further discussion?

24 All in favor of the motion to approve
25 99-2M, PUD modification at 1000 K Street, signify by
26 saying Aye.

1 MS. KRESS: Excuse me. This does not
2 include the findings of fact. Are you going to
3 discuss them ?

4 CHAIRPERSON CLARENS: Well, we're going
5 to discuss the findings of facts. That's the
6 correct procedure. Okay.

7 Opposed? Hearing none, the application
8 is approved.

9 Okay, discussion on findings of fact and
10 conclusions of law? Madam Director, you have some?

11 MR. BASTIDA: Mr. Chairman, may I count
12 the vote?

13 MS. KRESS: Record the vote.

14 MR. BASTIDA: Record the vote.

15 CHAIRPERSON CLARENS: Okay, sure.

16 MR. BASTIDA: The vote is four to zero,
17 with Mr. Franklin moving the motion, Mr. Hood
18 seconding, and all the Commissioners voting yes to
19 approve.

20 CHAIRPERSON CLARENS: Correct. If you
21 can just give me a second so that I can find the --

22 MS. KRESS: Let me point out something
23 while you're looking, Mr. Chair.

24 Page 20 is in here twice. The first
25 page 20 appears to have been redone to the second
26 page 20. So I would just point that out as you are

1 reviewing the findings of fact and conclusions of
2 law.

3 COMMISSIONER FRANKLIN: Is there a
4 change between the two?

5 MS. KRESS: Yes. Basically, there's an
6 additional sentence on the second page 20, and then
7 what is now Number 10 on the first page 20 becomes
8 11 on page 21.

9 COMMISSIONER FRANKLIN: Because I don't
10 have two pages. My package did not contain -- I
11 don't believe.

12 MS. KRESS: All right. Then I -- That's
13 the anomaly.

14 COMMISSIONER FRANKLIN: So, Ms. Kress,
15 the correct version, in your view, has paragraph
16 number 10 at the bottom of 20 and paragraph 11 at
17 the top of 21?

18 MS. KRESS: Exactly.

19 COMMISSIONER FRANKLIN: That's what my
20 packet has.

21 CHAIRPERSON CLARENS: Okay, I found it.

22 MS. KRESS: Mr. Chairman, you might want
23 to go through page by page or --

24 CHAIRPERSON CLARENS: I understand that,
25 but I just found the proposed findings of fact and
26 conclusions of law. Can you tell me again what was

1 the issue of page 22?

2 MS. KRESS: If you only had one page 20
3 -- I seem to have been the one who got --

4 CHAIRPERSON CLARENS: Page 20 or page
5 22?

6 MS. KRESS: Twenty. I had two in mine.

7 CHAIRPERSON CLARENS: I have only one.

8 MS. KRESS: So then you are correct.
9 You have the correct one.

10 CHAIRPERSON CLARENS: Well, you can
11 guide me through this a little bit, but it seems to
12 me that we should not have to go item by item
13 through all the findings.

14 MS. KRESS: Well, perhaps -- I
15 personally, in reviewing it, did not --

16 CHAIRPERSON CLARENS: I'd rather find
17 issues that the Commission has found that they might
18 disagree or issues that have been left out --

19 MS. KRESS: You might want to use the
20 decision --

21 CHAIRPERSON CLARENS: -- or that the
22 staff might have done, rather than going page by
23 page.

24 MS. KRESS: Then maybe you might want to
25 start with page 21, the actual decision.

26 COMMISSIONER HOOD: Mr. Chair, I have a

1 question on page 11, number 39, in the findings of
2 fact. Feel free to correct me what I say. It says
3 Mr. Fuller stated during the construction period,
4 the project would generate approximately \$55.8
5 million of new income to the business.

6 I believe -- I may be incorrect, but I
7 believe when you're dealing with findings of fact
8 that you're dealing with facts. I don't think
9 that's a fact. I don't know if that should be put
10 in our findings of fact. That shouldn't be
11 included, I don't think.

12 MS. KRESS: You can do whatever you
13 wish. We have in the past included information such
14 as that.

15 COMMISSIONER HOOD: That's an
16 assumption.

17 MS. KRESS: It says through testimony
18 and in economic and fiscal impact study, blah-blah-
19 blah. It states how it's supported. That doesn't
20 mean, if you're uncomfortable with it, it can't be
21 rewritten.

22 CHAIRPERSON CLARENS: Well, I think it
23 would be easy enough to ask staff to check the
24 record and find out if, in fact, Mr. Fuller
25 testified to \$58.8 million. I don't have any
26 recollection one way or another, but if you do,

1 that's fine. But we can ask staff to check that.

2 COMMISSIONER HOOD: I guess my question
3 is -- Maybe I'm misunderstanding what we're doing.
4 I thought we were dealing with facts, and that's an
5 assumption. That's why I highlighted that as to be
6 taken out. I may be incorrect.

7 CHAIRPERSON CLARENS: Well, no, but the
8 finding of fact is not to the 55.8. The finding of
9 fact is to Mr. Fuller's testimony of the 55.8.

10 COMMISSIONER HOOD: Okay. Well, I
11 withdraw that.

12 CHAIRPERSON CLARENS: Okay. So any
13 other issue on the findings of fact? Any comment
14 from staff on the findings of fact?

15 MS. KRESS: No, Mr. Chairman.

16 CHAIRPERSON CLARENS: We are only
17 dealing with the findings of facts. Do we agree
18 with the conclusions of law? I do think we do.

19 COMMISSIONER FRANKLIN: I do, Mr.
20 Chairman.

21 CHAIRPERSON CLARENS: Okay. So,
22 therefore, the decision basically says that, one, it
23 be the size of the relevant plan prepared by
24 Brennan, Baird, Gorman & Monk, and we need to fill
25 in whatever exhibit number is in the --

26 MS. KRESS: Commissioner Clarens, I

1 would point out that this is unusual to say
2 substantial compliance. Typically, the words that
3 the Office of Zoning has used in the past --

4 CHAIRPERSON CLARENS: In accordance with
5 the plan?

6 MS. KRESS: -- is in compliance-
7 whatever. I understand why they're using the word
8 substantial, because they aren't specifically
9 talking to the flexibility which is talked about
10 earlier in the findings of fact and conclusions of
11 law, which is t he flexibility on the side yards and
12 loading berths that they require.

13 So to me, this needs to be rewritten to
14 state "in compliance" and then to speak to the
15 flexibility which is mentioned under number 59 for
16 the minor deviations with respect to the side yards
17 and loading berths. I think that would be more
18 appropriate.

19 CHAIRPERSON CLARENS: So you're saying
20 that to introduce an element within the decision
21 that addresses the flexibility on the issues that
22 have been identified, and make the PUD to be in
23 compliance or according to the plans that we have
24 approved.

25 MS. KRESS: That's my recommendation.

26 CHAIRPERSON CLARENS: That's fine. Is

1 that okay? Okay, any other issues with the
2 decision?

3 MS. KRESS: I think Number 3 -- there
4 needs to be a decision regarding the lighting by the
5 Commission. There are a couple of proposals, and
6 number 3, I believe, needs a decision of the
7 Commission.

8 CHAIRPERSON CLARENS: Number 3, the
9 lighting, meaning the lighting -- There are two
10 issues of lighting.

11 MR. BASTIDA: Mr. Chairman, they are
12 issues, the lighting of the towers that Mr. Parsons
13 had objection to that.

14 MR. FRANKLIN: Oh, that's right, an
15 option.

16 MR. BASTIDA: You know, it was the
17 option. So I think that the issue there is the
18 lighting of those towers. It remains to be decided
19 by the Commission.

20 CHAIRPERSON CLARENS: And the options
21 that we have would be the five towers are lit or one
22 tower, the central tower over the entrance is lit.

23 MS. KRESS: Or none.

24 CHAIRPERSON CLARENS: Or none.

25 MR. BASTIDA: Or that's what the
26 applicant proposed, but you can decide to lit three

1 or to -- you know. I mean, it's up to you. Then
2 the exhibit will have to be modified by saying that
3 you decided to light so many or light none or light
4 them all or whatever.

5 MS. KRESS: And there are two sets of
6 lighting. So this just needs to be rewritten, but I
7 do believe there needs to be a decision.

8 CHAIRPERSON CLARENS: Right. Very good.

9 COMMISSIONER PARSONS: Mr. Chairman, I
10 would recommend that we allow the entry -- the
11 lantern above the main entry to be illuminated, as
12 they have proposed, and not the four corners. As
13 stated in their letter of June 17th, they would
14 prefer all five, but I don't think they're
15 appropriate.

16 CHAIRPERSON CLARENS: Very good.

17 COMMISSIONER FRANKLIN: I don't want to
18 go over the barricades on this one, but I don't have
19 any problem with the fine language.

20 CHAIRPERSON CLARENS: Yes. I don't want
21 to go to the barricades either, and I would
22 acquiesce to you, but I would like the five towers
23 lit, but that's -- but I don't know. I sort of like
24 the idea of the towers lit up, and I don't
25 understand your arguments. Mr. Hood.

26 COMMISSIONER HOOD: I kind of -- Seems

1 like the five towers -- I thought it was very unique
2 and different.

3 COMMISSIONER PARSONS: I guess we'll
4 have to vote on that. This is New York Avenue,
5 directly down the street from the White House, and I
6 think you're wrong. We'll vote three to one on
7 that. I just think it's too risky.

8 CHAIRPERSON CLARENS: Too much light?

9 CHAIRPERSON PARSONS: Well, what's a 60
10 watt bulb tomorrow is a 90 watt bulb the next day,
11 and this Commission is gone and nobody knows why
12 it's too bright, and I don't think it's worth the
13 risk. That's what I said at the hearing.

14 There's no way this Commission can say
15 how this should be illuminated.

16 COMMISSIONER FRANKLIN: Do you want to
17 put a cap on the lumens?

18 COMMISSIONER PARSONS: Well, it's one of
19 those unenforceable, who will approve that kind of
20 situation. Well, let's vote on that, and I'll greet
21 you at the corner of New York and 9th for the
22 opening ceremonies.

23 COMMISSIONER FRANKLIN: We'll be easily
24 recognized, because it's so well lit.

25 COMMISSIONER PARSONS: But, you know, I
26 don't like the hotel signs either. I'll talk about

1 those in a minute.

2 CHAIRPERSON CLARENS: Yes.

3 COMMISSIONER PARSONS: But we can vote
4 on all at the same time and get it over with.

5 CHAIRPERSON CLARENS: No, let's do one
6 at a time.

7 COMMISSIONER HOOD: May I ask a question
8 of Mr. Parsons? Mr. Parsons, is the concern that
9 it's not done that way on New York Avenue? I'm not
10 really sure of the concern.

11 COMMISSIONER PARSONS: It's the concept
12 of Pierre L'Enfant and others, including today's
13 society, I hope, that these avenues are diagonal
14 avenues through the city, and that their terminus
15 will be major public buildings.

16 If there's anything along the way that
17 seems to suggest that it's more important in a
18 terminal building, I have problems with that. At
19 one end of this diagonal is Mount Vernon Library,
20 Mount Vernon Square and the Carnegie Library. At
21 the other is the front door to the White House.

22 So any misplaced modifier on that access
23 seems to be blinking away that it's more important
24 than those two buildings is wrong. So I think it's
25 not worth the risk to introduce them.

26 Wash the facade with floodlights and

1 those kinds of things is okay, but not some kind of
2 a beacon along the edge of the sidewalk at 130 feet,
3 even though the pictures look like, you know, it's
4 not very offensive.

5 CHAIRPERSON CLARENS: Well, we --

6 MS. KRESS: I do believe staff can write
7 something regarding the lumens, and I do believe
8 that, while practically ten years from now --
9 Commissioner Parsons is correct, but I think we can
10 write the lumens and, if it is not at least in my
11 tenure here done to that wattage, it can be enforced
12 by DCRA that those bulbs be changed.

13 CHAIRPERSON CLARENS: I tell you what.
14 I think that it is better to sin on the side of
15 prudence than on the other one. From what you just
16 said, Mr. Parsons, I think that it might be better
17 for the applicant, if and when the building is
18 built, to come back for a modification of this order
19 and ask for the lighting of the other additional
20 four towers if, in fact, the one tower is not
21 objectionable, and at that point perhaps the
22 Commission might change its mind. But it seems to
23 me that it might be better to err on the side of
24 prudence and to be more conservative than not.

25 I think that your planning concepts are
26 well founded and correct. So we'll take a vote.

1 But we have in a sense a consensus. So do we need
2 to take a vote?

3 MS. KRESS: No. If you have a
4 consensus--

5 COMMISSIONER FRANKLIN: Let them build
6 the light in but not turn the switch on. Is that
7 what you're saying?

8 CHAIRPERSON CLARENS: I didn't say that.

9 COMMISSIONER FRANKLIN: Well, but that's
10 what it means. I guess they can throw the switch on
11 and look at it.

12 CHAIRPERSON CLARENS: But we are
13 approving the central lantern to be illuminated as
14 described in the plans and in the text.

15 MS. KRESS: And the wall sconces.

16 CHAIRPERSON CLARENS: And the wall
17 sconces.

18 MS. KRESS: Because they only mentioned
19 lighting one. So both of them should be covered, I
20 believe, under paragraph number 3.

21 CHAIRPERSON CLARENS: And the wall
22 sconces, as they have been presented to us.

23 MS. KRESS: I'm not saying you should.
24 I'm just saying you should address it.

25 CHAIRPERSON CLARENS: Well, I'm
26 addressing it, unless I hear an objection to it. I

1 think they were elegant fixtures.

2 MS. KRESS: Okay, good.

3 CHAIRPERSON CLARENS: Very good. So
4 that will take care of 3. Then the issue of the
5 roof is fairly clear, and I don't have much
6 objection to it, neither in material nor in design.

7 I also reviewed the landscaping, and it
8 also seemed to me that an effort has been made to
9 improve and increase the amount of landscaping on
10 the sidewalk, and it's look good to me.

11 Mr. Parsons?

12 COMMISSIONER PARSONS: It's all right.

13 CHAIRPERSON CLARENS: It's all right.
14 Signage, the issue of signage.

15 COMMISSIONER PARSONS: What they've
16 proposed, as you may be aware, is best seen in these
17 elevations here, I guess, that came with the
18 submission. It shows a total of five signs on this
19 small hotel, which I think is excessive.

20 It also talks about them being 28 inches
21 high and self-illuminated, which is very unusual in
22 this city. It's more the kind of thing that the
23 Marriott would do in the suburbs, not to name
24 specific hotels, but we're more used to a more
25 restrained signage system in the hotels in this
26 city.

1 Normally a bronze plaque on the corner
2 of a building is adequate and, of course, something
3 over the marquee or entrance canopy.

4 You'll notice on the four corners -- or
5 on the corners of 10th Street and again on New York,
6 we have a -- I think the most telling one is the one
7 on New York and K Street, that the sign ends up in
8 this depiction almost a third the width of the
9 hotel.

10 I just don't think we should so go into
11 a situation where we have self-illuminated hotel
12 signs, nor do we need one on New York Avenue when
13 there's one directly at the corner, seen on the
14 other elevation.

15 So I would say back-lighted signs, and
16 only three of them, and they would be facing on the
17 east elevation. I have no -- Well, I do have a
18 quarrel with this height, but -- So that's my
19 suggestion.

20 COMMISSIONER FRANKLIN: Well, Mr.
21 Parsons, I think I agree with you. I have, frankly,
22 not noticed the signs on the south and north
23 elevations. But I would have no objection to a
24 satin finish, stainless steel sign at the hotel.
25 Would you?

26 COMMISSIONER PARSONS: No, as long as

1 it's back-lit. I guess that's my concern. For
2 years we've been trying to discourage self-lit --
3 internally illuminated --

4 CHAIRPERSON CLARENS: Well, I thought we
5 had discussed that at the hearing.

6 COMMISSIONER PARSONS: I thought so,
7 too.

8 CHAIRPERSON CLARENS: And I thought we
9 said no, this is a -- Do we have any description of
10 this besides the ones that are in the drawings?

11 COMMISSIONER PARSONS: The narrative on
12 the letter that says essentially the same thing.
13 Signs would have internally illuminated channel
14 letters up to approximately 28 inches in height.

15 CHAIRPERSON CLARENS: Well, what is
16 that? I think I know what it is, but do we know, in
17 fact, what it is?

18 COMMISSIONER PARSONS: What an
19 internally illuminated channel letter is?

20 CHAIRPERSON CLARENS: Yes.

21 COMMISSIONER PARSONS: Well, it's either
22 illuminated plastic with the letters placed on it, a
23 plastic panel, or it's individual letters like a
24 Marriott Hotel, self-illuminated or illuminated from
25 within.

26 They did not provide an exhibit of

1 that.

2 CHAIRPERSON CLARENS: Can the Office of
3 Planning shed any light on this? Did you have any
4 discussion after our hearing with the applicant on
5 the letters?

6 MR. COLBY: Well, I'm afraid we changed
7 horses in mid-stream. I really can't.

8 CHAIRPERSON CLARENS: I see. And our
9 staff cannot help us with a clarification as to what
10 it is that they are requesting, or maybe we should
11 decide what it is that we want. I know what it is
12 that I think I would like to see.

13 MR. BASTIDA: Mr. Chairman, if I may.
14 When I was with the Office of Planning -- When I
15 used to be with the Office of Planning, we had used
16 caution with a BZA case in which we did extensive
17 research, and I did extensive research --

18 CHAIRPERSON CLARENS: That's for a hotel
19 on 13th Street?

20 MR. BASTIDA: Right. -- for you, and you
21 came to the conclusion that any self-illuminating
22 sign is not really beneficial in general to the
23 city, and you wanted backlit signs. So I'm just --
24 I'm not telling you that I'm advocating that. I'm
25 just refreshing your memory of what was the impact
26 of that story on that particular hotel.

1 CHAIRPERSON CLARENS: And this, the way
2 it is described, is not a backlit sign.

3 COMMISSIONER FRANKLIN: Self-
4 illuminating.

5 CHAIRPERSON CLARENS: Self-illuminating.

6 COMMISSIONER FRANKLIN: Internally
7 illuminated. It says internally illuminated. It's
8 not clear to me what that means, in light of this
9 discussion.

10 COMMISSIONER PARSONS: Well, to me it's
11 a Marriott Hotel. And I'm not singling them out
12 other than they're such an icon that I thought
13 everybody would know right off.

14 CHAIRPERSON CLARENS: Well, let's
15 backtrack here. I think, that, first of all, let's
16 try to divide things. The letters over the -- The
17 name over the canopy would be -- can be, in fact,
18 slightly different than the other ones.

19 COMMISSIONER PARSONS: Yes. Matter of
20 fact, it's smaller. I like them better. They're 18
21 inches instead of 28.

22 CHAIRPERSON CLARENS: They are smaller,
23 and they are part of an architectural element. So,
24 in fact, they could be backlit.

25 COMMISSIONER PARSONS: Sure.

26 CHAIRPERSON CLARENS: And it's an

1 element that will have light, etcetera, etcetera.

2 MS. KRESS: Now do you mean backlit or
3 do you mean internally lit? I thought you were
4 making a contrast.

5 CHAIRPERSON CLARENS: Internally lit.

6 MS. KRESS: I thought that's what you
7 meant to say.

8 COMMISSIONER PARSONS: Well, the
9 description on the elevation is the same.

10 CHAIRPERSON CLARENS: Well, I'm trying
11 to make a distinction between the two. So we can
12 move forward. So we can say that the letters over
13 the entrance could be as shown in the drawings,
14 meaning generally 18 inches high. But if I
15 understand your concern, Mr. Parsons, the other ones
16 -- Well, then there's another issue.

17 So if we can approve that, then we move
18 to the other remaining four signs, and you're saying
19 that there should not be signs either on the south
20 nor the north elevation of this building?

21 COMMISSIONER PARSONS: Well, at least --
22 I'm not as concerned about the north. The south, I
23 would object to, yes.

24 CHAIRPERSON CLARENS: So you don't want
25 a sign on New York Avenue?

26 COMMISSIONER PARSONS: No. There will

1 be one at the corner of 10th and New York, shown
2 here, and not one on the other side.

3 CHAIRPERSON CLARENS: And your vision of
4 these letters would be letters that would be metal
5 of some selection. We don't need to establish, but
6 they will be some sort of a backlit metal projecting
7 letters?

8 COMMISSIONER PARSONS: Yes.

9 CHAIRPERSON CLARENS: A letter that
10 projects from the face of that expanse. I don't
11 have a problem with that, if we can describe it.

12 MS. KRESS: I believe staff could pull
13 together --

14 COMMISSIONER FRANKLIN: What is the --
15 How would you describe the character of what's to be
16 avoided? What are we trying to avoid? I think I'm
17 with you, but I'm trying to articulate what it is we
18 don't like, and I was going to suggest that we
19 approve everything but the signage and have them
20 come back with a better illustration of how they
21 want to treat that in September.

22 MR. BASTIDA: Mr. Chairman, the
23 applicant will have to come for a final approval,
24 and you can specify that at that time, and I believe
25 you can open the record to receive only that.

26 CHAIRPERSON CLARENS: I think that

1 that's the way to proceed.

2 COMMISSIONER FRANKLIN: If we do that, I
3 think they should have some kind of guidance as to
4 what we're trying to avoid here, besides a surplus
5 of signs.

6 CHAIRPERSON CLARENS: It might very well
7 be that is the same thing that they have in mind
8 that we have in mind, but we don't know. We need
9 detail of the -- We don't need to have a typeface,
10 but we need to know what kind of sign it's going to
11 be.

12 MR. BASTIDA: Is the Commission also
13 recommending a size for that, because I heard
14 something about 24 or 20 was not really acceptable?

15 COMMISSIONER PARSONS: Yes. You know,
16 if letters 18 inches high on the Interstate highway
17 is adequate, I would think 18 inch would be all
18 right here.

19 COMMISSIONER FRANKLIN: Well, I'm just
20 looking at this and thinking that perhaps we're not
21 being told, but maybe the marquee would have signs
22 around the corner of the marquee in either
23 direction, in which case you wouldn't need it on the
24 building. It doesn't say anything to that effect.

25 CHAIRPERSON CLARENS: Well, no, the
26 marquee does have letters. It says "Hotel."

1 COMMISSIONER FRANKLIN: Where?

2 CHAIRPERSON CLARENS: Again in the north
3 elevation there is a --

4 COMMISSIONER FRANKLIN: Oh, I see. Yes,
5 you're right. It does. Okay. It just says

6 "Hotel." COMMISSIONER PARSONS: Well, I
7 think you're correct in having them submit something
8 to us.

9 MR. BASTIDA: But are you providing a
10 guideline that you are not happy with the height of
11 those letters?

12 CHAIRPERSON CLARENS: Well, let's try to
13 make a decision first on the number of signs. Are
14 we going to approve -- We are not happy with five
15 signs? We want to reduce to three? Is that a
16 consensus? Everybody is on the same page?

17 COMMISSIONER HOOD: No, I'm not on the
18 same page. I want to ask -- and I don't want to
19 keep asking Mr. Parsons questions, but I'm just
20 curious why on the 10th Street side, I believe, you
21 said you don't want a sign over there at all?

22 CHAIRPERSON CLARENS: On the New York.

23 COMMISSIONER HOOD: New York. Why is
24 that?

25 COMMISSIONER PARSONS: To tell you the
26 truth, I don't want any signs on this building. I

1 really don't, and I thought we had a pretty strong
2 policy on this Commission of discouraging this kind
3 of stuff.

4 You know, an address and a map and signs
5 on the marquee are fine with me, three of them, and
6 that's what's submitted here; and suddenly we've got
7 four more, and I just think that's wrong. We just
8 don't -- That's not the way we treat hotels and
9 other retail establishments in this city. We don't.

10 So I'm trying to get it as small as
11 possible in the spirit of compromise, and have them
12 -- I think the best thing to do, rather than us
13 waste another 20 minutes on this this afternoon, is
14 have them submit something and give it some more
15 thought.

16 MS. KRESS: I think, as you formally
17 open the record, I think they probably have heard
18 the discussion and have a sense, and rather than
19 giving them specific instruction --

20 CHAIRPERSON CLARENS: So we want less
21 signs and smaller signs that are not internally lit
22 but backlit, and they are opaque letters that will
23 be backlit.

24 COMMISSIONER PARSONS: That's good.

25 MS. KRESS: So there is consensus to
26 open the record for that one piece of information

1 right now only?

2 CHAIRPERSON CLARENS: That is correct.
3 We will then reopen the record to permit additional
4 material on the issue of signage for this building
5 to reduce the number of signs, to reduce their size,
6 and to control the lighting.

7 MR. BASTIDA: Mr. Chairman, would you
8 set up a deadline, because it has to be submitted to
9 the other party.

10 MS. KRESS: I think we can handle that.
11 We'll handle the deadline.

12 You are now on Number 7, which I would
13 point out, has the word materially in the last
14 sentence on the variations, and I don't know if that
15 is of a concern. It has to do with the necessary
16 possibility to make adjustments with respect to the
17 interior components.

18 CHAIRPERSON CLARENS: I don't have a
19 problem with that with the exception of the -- When
20 they say including partition slabs, we're not
21 talking about the number of slabs. We're talking
22 about the configuration of the slabs.

23 MS. KRESS: Then perhaps the appropriate
24 thing to do is add just what you said, including
25 partitions, slab configuration.

26 CHAIRPERSON CLARENS: Not that they

1 could, even if they wanted to have a slab. I think
2 that that's the intention, and it has to do with
3 some of the mezzanine spaces or two-story spaces
4 they have.

5 Item number 8 -- I think that we've
6 reviewed those plans, and I've reviewed the plans
7 that were submitted as part of the last package, and
8 they seem quite adequate.

9 Item 9 --

10 MS. KRESS: These are our standard, and
11 they have included the three standard paragraphs,
12 number 9, 10 and 15, that we normally request.

13 CHAIRPERSON CLARENS: Okay. If I don't
14 hear any further comments, then we will incorporate
15 these findings and conclusions of law into the order
16 with the provision for the signage, as we agreed,
17 and notification for the order itself, and then
18 issue the order for review by NCPC.

19 MS. KRESS: Did you have any other
20 comments?

21 MR. BASTIDA: No, I do not.

22 CHAIRPERSON CLARENS: Then we will deal
23 with the issue of the signage at the time of the
24 final approval.

25 MS. KRESS: After NCPC review.

26 CHAIRPERSON CLARENS: After NCPC review.

1 MS. KRESS: You feel you need a separate
2 motion or is it just the consensus on the findings
3 of fact and conclusions of law and decision?

4 CHAIRPERSON CLARENS: I don't think we
5 need a -- Do we need another --

6 MS. KRESS: I don't think so. I think
7 the order is the order, and the order will be the
8 final order, and I think the concerns are clear. I
9 just asked what you felt more comfortable with.

10 CHAIRPERSON CLARENS: Okay. So that
11 concludes 99-2M. Then we move to Item C, 97-7(I).

12 CHAIRPERSON CLARENS: Can we -- This is
13 just a question, because that's a rulemaking case.
14 Should we sort of change the order here and move to
15 99-1C and 98-17F, and then deal with 97-7 at the
16 end?

17 MR. COLBY: Certainly.

18 CHAIRPERSON CLARENS: That's the
19 question of the Chair. This is just a tentative
20 agenda in the way of order?

21 COMMISSIONER FRANKLIN: I would suggest
22 that to the Chair.

23 CHAIRPERSON CLARENS: Okay, well, let's
24 move then to Item D. and then we'll deal with the SP
25 districts update at the end of the proposed action.
26 Let's move to 99-1C(Fort Lincoln), and I guess the

1 Office of Planning. Go ahead.

2 **III.D. 99-1c (FORT LINCOLN)**

3 MR. COLBY: Chairperson Clarens, the
4 hearing was held fairly recently, and this decision
5 meeting comes before we've had a chance to view the
6 transcript on the case and do a summary of the
7 hearing.

8 So if the Commission takes that up today
9 and the hearing was fairly recent and relatively
10 noncontroversial, the Commission may feel
11 comfortable deciding it without input from the
12 Office of Planning.

13 MS. KRESS: I believe that's the Office
14 of Zoning's recommendation as well.

15 CHAIRPERSON CLARENS: Has either the
16 Office of Planning or our staff or Corporation
17 Counsel had an opportunity to review the homeowner's
18 association package by-law, proposed by-law?

19 MR. BASTIDA: No, Mr. Chairman. The
20 Office of Zoning intent was that, if you approve it,
21 then send it to Corporation Counsel for their
22 review, and then you can talk to them to find out
23 approval.

24 MS. KRESS: I think the idea here was an
25 outline. It was not a final. It was an outline so
26 you could see the kinds of issues, and as I reviewed

1 it, it seems to include those kinds of issues.

2 I'm not sure personally that we need the
3 Corporation Counsel, because this is not the
4 document that would be in place anyway.

5 CHAIRPERSON CLARENS: That is correct.
6 This is a model.

7 MS. KRESS: This is a model and an
8 outline of the way things would be covered, and I
9 believe it satisfies your question, unless there's a
10 problem with something in the model that the
11 Commissioners have found.

12 COMMISSIONER FRANKLIN: But how can we
13 approve something which says we've asked for
14 additional information and left the case open for
15 the following which begins on the bottom of page 6
16 and the top of 7, when we don't have that, as I
17 gather, for us. Do we?

18 MS. KRESS: Yes, you -- What do you not
19 have?

20 COMMISSIONER HOOD: A,B and C was what
21 was missing.

22 MS. KRESS: What you received --

23 MR. BASTIDA: Earlier today.

24 COMMISSIONER FRANKLIN: Earlier today?

25 CHAIRPERSON CLARENS: No, no, no. The
26 package -- The additional information was received

1 earlier today. It was not in your package.

2 MS. KRESS: It was omitted from the
3 package. Mr. Bastida and I discovered it this
4 weekend, and that was partly why we asked you to
5 come early, and that was handed to you as you walked
6 in.

7 COMMISSIONER FRANKLIN: Oh, oh, that
8 package.

9 MS. KRESS: So that you could review it
10 in the hour before we began the meeting.

11 CHAIRPERSON CLARENS: Well, I don't want
12 to postpone this. I would like to move it forward.
13 I think that it is a good application. I think that
14 the lighting issue has been taken care of. I can
15 see in the plan.

16 I would like to find something that
17 tells me that they are introducing sidewalks.

18 MS. KRESS: No.

19 COMMISSIONER HOOD: They spoke about the
20 sidewalks, Mr. Chair, and I believe that it is not
21 cost effective to do the sidewalk piece.

22 COMMISSIONER PARSONS: Any sidewalk?

23 COMMISSIONER HOOD: Yes.

24 MS. KRESS: You might take a look at
25 the--

26 CHAIRPERSON CLARENS: There is a plan.

1 MS. KRESS: Yes.

2 CHAIRPERSON CLARENS: There is a plan
3 that shows sidewalks, a five-foot concrete sidewalk
4 in a manner that would be --

5 MS. KRESS: I believe sidewalks were
6 added but not everywhere.

7 CHAIRPERSON CLARENS: No, I understand
8 that, and that was the testimony. That was what
9 they agreed to.

10 MS. KRESS: They agreed to add
11 sidewalks?

12 CHAIRPERSON CLARENS: Well, they agreed
13 at the hearing to add sidewalks to one side of the
14 street, but you say that in the --

15 COMMISSIONER HOOD: I've read somewhere.
16 Maybe it was in the material that we received today,
17 but I did read that they said it wasn't cost
18 effective. I think they agreed to show us on the
19 plans.

20 MS. KRESS: It's number 2 on the cover
21 letter, number 2, Exhibit B, site plan revision.
22 This exhibit shows the addition of sidewalks,
23 additional street lighting and refined garage
24 elevations, etcetera. Exhibit B modifies blah-blah-
25 blah.

26 The applicant investigated the

1 feasibility of putting in sidewalks on both sides of
2 the street, but determined that it would be
3 prohibitively expensive to do so.

4 CHAIRPERSON CLARENS: That is correct.
5 So they are agreeing to the plan as shown, with the
6 plan as shown meaning they are agreeing to this
7 plan. They just don't want to do sidewalks on both
8 sides. They are agreeing to sidewalks on one side.
9 I'm talking about this plan. Right?

10 The applicant investigated putting in
11 sidewalks on both sides of the street, because I
12 asked him to do that, but determined that it will be
13 -- both sides of the street; but they are agreeing
14 to one side of the street, which is what they agreed
15 at the meeting -- at the hearing. That's the way I
16 read that statement. That's the way I would propose
17 that we move forward on this. I see somebody
18 nodding.

19 That's the way I read the letter, and
20 that's the way that I read the plan, that they have
21 agreed to build a sidewalk, as indicated on 6 of 7,
22 sheet 6 of 7 of Fort Lincoln, which is part of our
23 package.

24 The issue of lighting that Mr. Franklin
25 raised -- I think that that has been handled.
26 That's been addressed.

1 COMMISSIONER FRANKLIN: That's been
2 addressed. Mr. Chairman, I don't quite understand
3 what we're being told on the garage elevations,
4 which is in a drawing that seems to be 4 of 7.

5 MS. KRESS: I'm sorry, I can't hear you.

6 COMMISSIONER FRANKLIN: What are we
7 being told, Ms. Kress, about the garage elevations
8 in these drawings? There's a drawing here that is
9 unlabeled as to number that appears to be the fourth
10 one in. I defer to the architects.

11 CHAIRPERSON CLARENS: Well, they've
12 added two sketches.

13 COMMISSIONER FRANKLIN: Right.

14 CHAIRPERSON CLARENS: One has a recessed
15 door.

16 COMMISSIONER FRANKLIN: That, I can see.

17 CHAIRPERSON CLARENS: Twelve inches
18 behind the plane of the wall of the garage, and in
19 the other one there is a three-foot overhang with
20 brackets.

21 COMMISSIONER FRANKLIN: With a bracket.
22 Now I do see that, but I don't -- One is called
23 Scheme 1, and one is called Scheme 2. Are they
24 trying to tell us that 101 is Scheme 1, 102 is
25 Scheme 2? It doesn't seem to read that way.

26 CHAIRPERSON CLARENS: No, I don't think

1 so. I think that they are basically saying that
2 those are alternatives to the elevations as shown.

3 COMMISSIONER FRANKLIN: Oh, I see.

4 CHAIRPERSON CLARENS: And the letter is
5 not clear, but in the spirit of the hearing what I
6 believe they would want is to have the flexibility
7 to offer these things as options as part of the
8 project.

9 COMMISSIONER FRANKLIN: Oh, I see.

10 CHAIRPERSON CLARENS: So we are not
11 saying that so many of the houses need to be this
12 way and so many of the houses have to be that way,
13 but basically saying that this kind of alternatives
14 should be offered to the marketplace as
15 possibilities, and it is up to us to -- or do we
16 want to establish that -- you know, that we should
17 have -- Every three garages there should be one of
18 these alternatives that create a little bit more
19 interest and shade and shadow and all that kind of
20 stuff.

21 COMMISSIONER FRANKLIN: The cover letter
22 doesn't explain that. I don't happen to have a
23 cover letter in my package.

24 CHAIRPERSON CLARENS: Yes, I didn't get
25 a cover letter. Mr. Hood has one.

26 MS. KRESS: It does say -- We haven't

1 gotten to the findings of fact and conclusions of
2 law, but on page 11 in the findings of fact and
3 conclusions of law it does say the garage elevations
4 shall be constructed in accordance with those shown
5 on the applicant's post-hearing submission marked
6 Exhibit -- of the record.

7 So they are saying --

8 CHAIRPERSON CLARENS: Well, but we have
9 basically three alternatives. We have sort of kind
10 of a flat garage, regular garage. Then we have one
11 with the door recessed, and then we have one with
12 the roof overhang, projecting three feet, and we
13 have no way of controlling which one they are going
14 to build.

15 MS. KRESS: I would say the elevations
16 don't read that way. All of the elevations read as
17 if there is at least minimally some recessed -- I
18 mean, see what I'm saying? There isn't a section
19 cut.

20 In fact, the edge of the garage, by the
21 virtue of how it's detailed at that small scale,
22 appears that all of these are recessed.

23 CHAIRPERSON CLARENS: So what you are
24 saying basically is that Scheme 1 is -- that all
25 garages will have either Scheme 1 or Scheme 2.

26 COMMISSIONER FRANKLIN: Well, that's

1 what I would like to see.

2 MS. KRESS: Yes.

3 COMMISSIONER FRANKLIN: And I think they
4 intend that from their cover letter.

5 CHAIRPERSON CLARENS: That sounds good
6 to me. Okay. So basically, Scheme 1 and Scheme 2
7 are, in fact, what we are approving?

8 MS. KRESS: That would be the way I read
9 this.

10 CHAIRPERSON CLARENS: That is fine. So
11 all garages will either have Scheme 1 or Scheme 2 as
12 their design.

13 MS. KRESS: And we could add those
14 words, if this is so approved, under decision Number
15 12 on page 11. We can say "in accordance with
16 Scheme 1 and 2 as shown on the applicant's post-
17 hearing submission marked as Exhibit blank."

18 CHAIRPERSON CLARENS: He's requesting
19 they not participate in --

20 MS. KRESS: No, he did not.

21 CHAIRPERSON CLARENS: And we didn't make
22 a move to approve or disapprove this case. Do you
23 care to make a motion?

24 COMMISSIONER HOOD: Can I just also add
25 that I believe at the hearing I asked for a letter
26 from the ANC for the full Commission. While this

1 isn't a letter for full Commission vote, I think we
2 would still give it great weight, because it is ANC,
3 but it's not -- The regulations state the full
4 Commission, and I notice that this letter was just
5 coming from the Commissioner, which I'm sure --

6 CHAIRPERSON CLARENS: A single.

7 COMMISSIONER HOOD: SMD, right, but I'm
8 sure he's done his homework, but I just wanted to
9 let the record reflect that, if we could. But if
10 it's too late, then we can use this and just give it
11 great consideration.

12 MS. KRESS: And I think the way the
13 findings of fact and conclusions of law are written,
14 it makes it clear that it is just the ANC.

15 CHAIRPERSON CLARENS: Okay. Can we move
16 forward with this. Do I hear a motion to approve?

17 COMMISSIONER HOOD: I make a motion to
18 approve.

19 COMMISSIONER FRANKLIN: Second.

20 CHAIRPERSON CLARENS: It has been
21 properly moved and seconded, and we've had
22 discussion on this case, and pending review of the
23 findings of fact and conclusions of law, all in
24 favor signify by saying Aye. Opposed? The Ayes
25 have it, and now we need the findings.

26 MR. BASTIDA: Mr. Chairman, let me

1 record the vote, if I may. It's my understanding
2 that Mr. Hood moved it. Mr. Franklin seconded, and
3 then it was approved three to zero, Mr. Parsons
4 abstaining.

5 CHAIRPERSON CLARENS: That is correct.

6 MS. KRESS: Mr. Chairman, you may wish
7 to just see if anyone has any comments on the
8 findings of fact and conclusions of law in general,
9 and then again go to the decision for final
10 discussion.

11 CHAIRPERSON CLARENS: Any comments on
12 the findings?

13 COMMISSIONER HOOD: Mr. Chair, on page
14 2, number 5, I believe the elementary school is
15 stated incorrectly. It should be Thurgood Marshall
16 Elementary School, and it's stated as the Lincoln
17 Elementary School.

18 MS. KRESS: Thank you. We will
19 doublecheck that.

20 CHAIRPERSON CLARENS: We can doublecheck
21 that and make sure that that is correct.

22 MS. KRESS: Certainly. Any other
23 comments prior to getting to page 10?

24 CHAIRPERSON CLARENS: Mr. Franklin, any
25 other comments on the findings?

26 COMMISSIONER FRANKLIN: No.

1 CHAIRPERSON CLARENS: Okay. So the
2 decision then says that the PUD shall be developed
3 in accordance with plans prepared and materials
4 submitted by the architect/engineering firm of
5 Devereaux and Associates and VICA, Inc., as modified
6 with the guidelines and conditions of this order.

7 The project shall be a residential
8 development. That's the description of the project.
9 I don't think we need to go into that. Landscaping
10 will be in accordance with the plans that we have
11 reviewed. The height of the individual homes to not
12 exceed 40 feet nor shall they exceed three stories.
13 The lot occupancy shall not exceed 80 percent.

14 MS. KRESS: Number 6 has a big typo.
15 They left out the word interior building components.

16 COMMISSIONER FRANKLIN: Yes, I was
17 wondering about that.

18 MS. KRESS: Very large skip in meaning,
19 which I'm sure it's just a typo.

20 CHAIRPERSON CLARENS: We want to add
21 then "interior."

22 MS. KRESS; Interior building
23 components, including partition, slag, hallway
24 columns, stairways, etcetera, etcetera.

25 CHAIRPERSON CLARENS: Number 7 is the
26 flexibility of various design amenities be included

1 in the individual single family or condominium
2 units.

3 COMMISSIONER FRANKLIN: I don't know
4 what that means. That seems to me to be quite --

5 CHAIRPERSON CLARENS: I believe,
6 frankly, that it is the intention of this issue that
7 deals with the addition of such things as
8 fireplaces, chimneys. We talked about different
9 kinds of porches. We talked about different
10 treatments of the elevation, the use of brick, the
11 use of siding, etcetera, etcetera.

12 So I assume that --

13 MS. KRESS: I think the problem is the
14 word amenities. I don't know if that's the
15 appropriate word. Options?

16 COMMISSIONER FRANKLIN: Are these
17 interior or exterior?

18 MS. KRESS: I think that's interior and
19 exterior, and I think the sense should really be
20 options instead of amenities.

21 COMMISSIONER FRANKLIN: Well, I'd like
22 to have them refer to something we've been shown. I
23 mean, we were shown what the options were.

24 MS. KRESS: I believe that will be
25 covered in like number 1, all the exhibits.
26 Certainly, the porches are covered in a separate

1 one. The garage is recorded in a separate one.

2 If you would leave those to staff, let
3 me make sure everything -- We will make sure
4 everything is covered. We'll change the word to
5 option.

6 CHAIRPERSON CLARENS: I think that if we
7 can be more specific on number 7 and say what are
8 these things that we're granting flexibility on.

9 MS. KRESS: Yes, and call them options
10 rather than amenities.

11 MR. BASTIDA: Mr. Chairman, the staff
12 can list that, and then you can go over it at the
13 final decision to make sure that, in fact, it
14 reflects exactly what you wanted to say.

15 CHAIRPERSON CLARENS: Correct. Number 8
16 deals with our request that a porch be shown in at
17 least one of the models that they are proposing to
18 build, in order to encourage the people buying the
19 porches.

20 The lighting -- we dealt with that;
21 sidewalk, we've dealt with that. I would like to
22 request that staff reviews again the homeowner's
23 association model specifically for the issue of the
24 funding of the association. Whatever provisions
25 have been made for the funding of the association by
26 the developer, I think it is important that we are

1 well grounded there.

2 MS. KRESS: We can present that with the
3 final draft order for your review.

4 CHAIRPERSON CLARENS: I think that we
5 need to refer to the specific page of the exhibit
6 for the sidewalks as they appear in this package
7 that we received today, as well as the lighting, as
8 well as the garage elevations, as we've just
9 discussed.

10 MS. KRESS: I have a note, Mr. Chair,
11 that one of the things that was not -- was discussed
12 but not specifically shown was the brick turning the
13 corner.

14 CHAIRPERSON CLARENS: That is very
15 important.

16 COMMISSIONER FRANKLIN: Yes.

17 CHAIRPERSON CLARENS: That is very
18 important, and that should be a condition of the
19 order, that whenever brick facades are used, that
20 the brick should turn the corner for a minimum of --

21 MS. KRESS: I believe the testimony was
22 -- Well, the testimony, they said, I believe, was
23 four inches; but it can be whatever the Commission
24 desires, but that was only in the testimony.

25 COMMISSIONER FRANKLIN: I defer to the
26 Chair, whatever you think.

1 CHAIRPERSON CLARENS: Well, I don't like
2 them, but you know, if we have to have them, might
3 as well turn the corner for more than four inches.
4 So I would say 12 inches should be pretty good.

5 COMMISSIONER HOOD: Is there a standard,
6 Mr. Chair, on that, on the brick turning the corner.

7 Is there a standard, normal? What do
8 you normally see, 12 inches, four inches?

9 MS. KRESS: Actually, normally, I think
10 you see none. You see the wafers.

11 CHAIRPERSON CLARENS: You see a one-inch
12 wafer of brick applied to the front of that now; but
13 a four-inch will be the width of a brick. If you
14 are basically adding a brick on the back of that
15 around the corner, the brick is on the outside of
16 the facing of the house anyway. So it's just a
17 matter of taking the shelf on which the bricks are
18 laid around for one foot behind the face of the
19 house.

20 So it probably does increase the cost a
21 little bit, but we discussed it.

22 COMMISSIONER HOOD: Well, I have no
23 problems with that. I really would object to
24 putting it in the order, because, frankly, I don't
25 see the significance. I know it must be somewhere,
26 but I don't see the significance of four inches of

1 brick going around the side of the house.

2 CHAIRPERSON CLARENS: Well, it makes the
3 brick a little bit more substantial. It is pretty
4 insubstantial anyway, and you heard the discussion
5 that we had at the hearing. But at least it doesn't
6 make this kind of, you know, western town sort of
7 facade. It gives a little bit more visual weight.
8 That's the only way to say it.

9 I don't think that it is an imposition
10 on the applicant, and I think that it will enhance
11 the project somewhat.

12 MS. KRESS: Is there consensus on that
13 issue?

14 CHAIRPERSON CLARENS: Is there consensus
15 on that?

16 COMMISSIONER FRANKLIN: Yes.

17 MS. KRESS: And it's 12 inches? Thank
18 you.

19 COMMISSIONER FRANKLIN: At least. At
20 least.

21 CHAIRPERSON CLARENS: The balance are
22 again standard provisions of the orders, the issue
23 of the source of funding agreement, the memorandum
24 of understanding with the Department of Human
25 Rights, the issue of the covenant.

26 MS. KRESS: You have three standard

1 paragraphs, the 13th and 14th and 18th, which are
2 here appropriately.

3 CHAIRPERSON CLARENS: Very good. I
4 don't see any other issue concerning the order. Any
5 other issue that you want to deal with? Does staff
6 have any other issue with this order?

7 MS. KRESS: No.

8 MR. BASTIDA: No, Mr. Chairman.

9 CHAIRPERSON CLARENS: Okay. That
10 concludes then the discussion on 99-1C, and we've
11 already voted on it. It's approved, and so we move
12 forward and we'll say it in final action.

13 MS. KRESS: And that's when the order
14 will be official then.

15 CHAIRPERSON CLARENS: Correct.

16 COMMISSIONER FRANKLIN: I think this
17 must set some kind of a record to have a public
18 hearing on June 24th and a proposed order on July
19 12th.

20 MS. KRESS: We hope that to be.

21 CHAIRPERSON CLARENS: It's the wave of
22 the future.

23 MS. KRESS: More of the future.
24 Absolutely.

25 CHAIRPERSON CLARENS: Okay. next
26 proposed action has to do with 98-17F, the Florida

1 Rock project.

2 **III.E. 98-17F (FLORIDA ROCK)**

3 CHAIRPERSON CLARENS: I believe that we
4 have all four Commissioners voting in that case.

5 MS. KRESS: I believe that to be true

6 CHAIRPERSON CLARENS: Okay. My first
7 question would be are we ready to move forward on
8 this case? I'm addressing the Commission.

9 COMMISSIONER FRANKLIN: Mr. Chairman,
10 let me say I think that this applicant has made a
11 very comprehensive submittal in response to the
12 questions we have posed.

13 I have gone through 50 percent of it. I
14 haven't gone through the whole thing, and I would be
15 aided by having a review by Corporation Counsel and
16 the Office of Planning in terms of all of the items
17 that have been submitted. k

18 It's really a tour de force, and I do
19 believe it's been, at least on the surface, very
20 responsive to the concerns that we have expressed.

21 MS. KRESS: I have reviewed it in depth,
22 and it is a very complete response to everyone of
23 the issues that we have noted.

24 COMMISSIONER FRANKLIN: Are you
25 satisfied, Ms. Kress, that this is in a posture
26 ready to be voted on?

1 MS. KRESS: Yes, I do. I do feel,
2 however, that some of the concerns such as having
3 Corporation Counsel review the covenants is
4 appropriate. I do also think it is appropriate --
5 There is a lot of new information presented here --
6 that the Office of Planning take the time, depending
7 on what the Commission desires and the necessity of
8 this project to move ahead.

9 I think it would be worth hearing from -
10 - having a more in depth analysis done by Office of
11 Planning on all of these issues -- I mean, on all of
12 this response, which I believe wa your suggestion,
13 Mr. Franklin.

14 COMMISSION FRANKLIN: Well, then you do
15 not think it's ripe for a vote?

16 MS. KRESS: Oh, I personally do, but the
17 covenants typically -- and we have Corporation
18 Counsel here. The covenants typically are worked
19 out with Corporation Counsel and their approval. Is
20 that not -- Perhaps Corporation Counsel --

21 MR. BERGSTEIN: The PUD that relates to
22 a covenant -- I'm sorry. The covenant the relates
23 to a PUD is worked out after the order has been
24 finalized. It's just a question of making sure that
25 the covenant conforms to the conditions.

26 MS. KRESS: There are several legal

1 agreements, and you might take a quick glance. But
2 there are several legal agreements that are intended
3 to be a part of the covenant. Now that's a little
4 different than the covenant agreement itself.

5 MR. BERGSTEIN: And is it the
6 Commission's concern that before they vote, they
7 want to make sure that these agreements are either
8 (1) lawful or (2) do what it is the Commission
9 expects the covenant to do? What is it that you are
10 looking for at this period?

11 MS. KRESS: I believe that, initially,
12 that comment came from Commissioner Franklin. So
13 perhaps he could answer that.

14 COMMISSIONER FRANKLIN: Well, to answer
15 Mr. Bergstein's question, all of the above.

16 MR. BERGSTEIN: I'd be glad to look at
17 the covenants and the attached agreements.

18 MS. KRESS: But typically, the covenant
19 is worked out -- The actual covenant is worked out
20 after?

21 MR. BERGSTEIN: That's correct.

22 MS. KRESS: And so that is something
23 that -- and then if that can't be worked out and if
24 there's a problem, then it would return to us. Is
25 that not correct ?

26 MR. BERGSTEIN: If it can't be worked

1 out, I suppose --

2 MS. KRESS: I mean legally. If legally
3 it was not sufficient.

4 MR. BERGSTEIN: If we couldn't get the -
5 - If we felt that a covenant -- that the conditions
6 of this required certain things and that the
7 covenant -- that the applicant wouldn't agreed to
8 language that we felt actually was consistent with
9 the things required in the order, we would report it
10 to you; because we wouldn't sign off on the legal
11 sufficiency.

12 MS. KRESS: And that would apply both to
13 the covenant itself as well as legal agreements that
14 would be referred to in the covenant?

15 MR. BERGSTEIN: I'm not sure what these
16 legal agreements are. If it's an agreement between
17 the District and the applicant, that's one thing.
18 If it's an agreement between --

19 MS. KRESS: For example, the two third
20 parties?

21 MR. BERGSTEIN: We would look at it,
22 because the agreement -- If it was an agreement, a
23 binding agreement between two third parties, and you
24 want to make sure that we agree that the agreement
25 said what was your expectation that it would say, we
26 would let you know that. That's as much as we can

1 do, but we can't renegotiate agreements between the
2 parties, but what we could do is tell you that -- If
3 you expected the covenants required an agreement to
4 do X and we didn't feel the agreement really did X,
5 we would advise you of that, and then you would
6 inform the parties you need to renegotiate an
7 agreement that is consistent with what you thought
8 the covenant required.

9 CHAIRPERSON CLARENS: Well, let me tell
10 you -- Well, it seems to me that then we're ready to
11 proceed. It seems to me that we can at least go a
12 little bit further than to postpone it. I think
13 that we can begin discussions.

14 So I would then entertain a motion to
15 initiate the discussion to either approve or deny
16 this application or do we want to discuss it before
17 making a motion?

18 COMMISSIONER HOOD: I think in order
19 we've done previously, I think we've made a motion
20 to approve it and then we discussed it. That's how
21 we've been doing so far this afternoon.

22 CHAIRPERSON CLARENS: Well, or to deny.

23 COMMISSIONER HOOD: But I would make a
24 motion to approve this application.

25 CHAIRPERSON CLARENS: Do I hear a
26 second?

1 COMMISSIONER FRANKLIN: I'll second.

2 COMMISSIONER PARSONS: Mr. Chairman, I'm
3 confused. I thought we were going to ask the Office
4 of Planning to take a look at this and give us a
5 report, and also for the Corporation Counsel to look
6 at the conditions that are before us and the
7 covenants. But now you're ready to move ahead. Is
8 that what you just decided?

9 COMMISSIONER HOOD: I believe how we've
10 been doing it so far today -- and I'm trying to get
11 in synch with it myself -- we've been voting to
12 either approve or deny, and having discussions, and
13 then we do our final order.

14 Correct me if I'm wrong, Mr. Chair. We
15 do our final and then we put the other pieces in.
16 At least, that's how we've been doing it.

17 CHAIRPERSON CLARENS: Well, either we're
18 going to discuss it or we're not going to discuss
19 it. We're going to discuss it. We've been using a
20 motion and then using the discussion. That's the
21 way we've been doing it. That's the way we did it
22 before. That's the way we've done it in the past.

23 Now the question is whether we want to
24 discuss it at all or whether we want to refer this
25 package, which is done on Friday, back to the Office
26 of Planning for review.

1 My concern, to be perfectly honest, with
2 this application continues to be the same one that I
3 had at the time of the hearing, and that is the
4 linkage of this applicant to the housing component
5 of this application and their responsibility for it.

6 I haven't had time since this I got this
7 on Friday to have a clear idea of whether that
8 situation has changed or not, and that's why I am a
9 little bit concerned about proceeding with this
10 thing. But maybe there is in the review that the
11 staff has done and the review that perhaps some of
12 the other Commissioners have done -- sufficient
13 information to proceed.

14 That was my concern. My concern was
15 that the applicant was saying, well, we're going to
16 build some housing when the conditions are, you
17 know, fine and appropriate, and when and if that
18 happens, then we will build it.

19 I don't know that that has been
20 clarified.

21 MS. KRESS: I could speak to that and
22 show you where that is, should you decide to discuss
23 that.

24 CHAIRPERSON CLARENS: That's my major
25 concern. Otherwise, I can see us going through and
26 moving. But if you are more comfortable, Mr.

1 Parsons, with sending this back to both of our
2 staff, our staff and to the Office of Planning for
3 further review and comments, we can do it that way.

4 MS. KRESS; I don't want to misspeak --
5 Excuse me. I just want to make sure everyone --
6 There is an Office of Planning report here. It just
7 does not -- and it speaks to the additional
8 materials that were requested by the Zoning
9 Commission and which we have received.

10 What it does not speak to is evaluating
11 the materials that were received. I just wanted
12 that to be very clear. I'm sorry for interrupting.

13 COMMISSIONER PARSONS: This is simply a
14 hearing summary of last December's hearing.

15 CHAIRPERSON CLARENS: Correct.

16 MS. KRESS: Right. With a listing of
17 the outstanding issues.

18 CHAIRPERSON CLARENS: The difficulty
19 we're having is that this is, in fact, a major
20 office that we have in front of us. I mean, this is
21 -- and we received it -- I received it Friday night,
22 and this is -- which is fine. That's typically when
23 we receive our package.

24 COMMISSIONER FRANKLIN: It's not fine.

25 MS. KRESS: Yes, and we will try in the
26 future for large packages -- I know this was a very

1 tough agenda -- to get significant pieces such as
2 this out as soon as we get them, so that you have as
3 much time as possible to review them.

4 COMMISSIONER HOOD: Mr. Chair, if I can
5 just add, I, too, have a concern about the
6 residential piece as opposed to coming back to us
7 when the market is ready for the residential piece
8 in ten and 11 years, but I figure we would discuss
9 that at a later time. But let me just say that,
10 through my going through the document -- and I
11 thought, like Commissioner Franklin said, the
12 applicant did an excellent job in coming back with
13 us.

14 It's very resourceful, and I think we
15 should put this on the expedited move, because in my
16 tenure here on the Commission I haven't seen
17 anything on that side of town, and I think this is a
18 good project that would jump start that particular
19 area, and I think it would trickle out to the whole
20 area.

21 So I'm not in any favor of prolonging
22 it, but as long as all the other Commissioners get
23 the information that they have, I'm ready to move
24 forward.

25 CHAIRPERSON CLARENS: Yes, and I hear
26 you, and I agree except that this whole project is

1 predicated on the idea of obtaining a contract with
2 a Federal agency to be major tenant in this
3 building, and there is no great -- That's not going
4 to happen in the very immediate future. It's going
5 to happen, but it's not going to happen within the
6 next six weeks.

7 So I mean, if the staff can guide us
8 through the issue of the housing amenities package,
9 I am willing to proceed with how the motion on the
10 table has been seconded, and we can proceed with
11 discussion of the case.

12 COMMISSIONER FRANKLIN: Well, Mr. Chair,
13 it's the amenity package that I was really
14 addressing when I said I was not ready. I think
15 that, from the architectural standpoint of the
16 project, they have been responsive. I have no
17 problem with what they are proposing. It's an
18 improved proposal.

19 If there is some way we can indicate a
20 sense of the Commission that we are going to move
21 forward with this project subject to whatever
22 refinements or conditions relate to the amenity
23 package, I would certainly be in favor of that.

24 MS. KRESS: May I just point out to you,
25 if you look at the findings of fact and conclusions
26 of law, page 26 is called the development of the

1 amenities site generally, and page 26, 27, 28 deals
2 with the maritime education, the terminus park.

3 Page 29 deals with the residential
4 development. These are all subheadings under the
5 development of the amenities site, and then page 30
6 deals with the covenants burdening and binding the
7 amenities site.

8 So, basically, the decision is a good
9 summary of what I have evaluated in the proposal --
10 I mean in the additional information itself. So I
11 just wanted to point that out, that if you wanted a
12 quick summary of the amenities site and what's
13 included in it, you might want to take a few minutes
14 break, if you felt like you wanted to go ahead and
15 review that piece.

16 CHAIRPERSON CLARENS: Yes, and that's
17 exactly what we discussed in the hearing, and that's
18 what I'm having difficulties with. I think it's
19 Item 3 of the residential development in Item B(3).

20 You have that mandatory residential
21 development shall commence on parcel 3 no later than
22 one year after the date that market rate residential
23 development on parcel 3 is determined to be
24 economically feasible. So mandatory residential
25 development may not be required to be commenced
26 earlier than the tenth anniversary of the conveyance

1 date.

2 MS. KRESS: And there is-- Now they also
3 set up this market rate model. The only problem I
4 had with the -- personally, as I was reviewing it,
5 was that this was left open-ended, that there was --
6 you know, that things were discussed about the
7 residential development and waiting for the market
8 to be appropriate, and we asked them to set up some
9 kind of a model of when the market would be
10 appropriate, and they've done all of that.

11 The problem is there is absolutely no
12 end to when that market rate time has to be
13 established. COMMISSIONER FRANKLIN: In
14 other words, it may not be -- it may never become
15 economically feasible. Is that what you're saying?

16 MS. KRESS: That's the way I --

17 MR. BASTIDA: Yes, that's correct.

18 COMMISSIONER HOOD: And I believe some
19 of the key support and some of the supporters were
20 very pro residential going down the road. That's
21 why I had a problem when I read beginning on the
22 11th anniversary of conveyance date that such and
23 such may happen; if not, we'll come back with
24 another report. So we could be talking about 15
25 years.

26 MS. KRESS: Absolutely.

1 COMMISSIONER HOOD: And that's what I
2 basically had a problem with. Other than that, I
3 thought it was a good project.

4 CHAIRPERSON CLARENS: Well, yes, but
5 this is an intrinsic component of the project, and I
6 think it is an important component to the city. So
7 we need to try to figure that out. We cannot
8 separate them. They are together.

9 MS. KRESS: Certainly, you could request
10 changes on when things were to be begin, as well as
11 put a cap on the maximum date by which things had to
12 be done. You could start it whenever -- I mean, not
13 whenever, but at least propose to start it at
14 whatever date you feel is appropriate, and then put
15 a cap on how long you will consider leaving it open
16 to the feasibility of the market rate.

17 CHAIRPERSON CLARENS: What is the sense
18 of the Commission? How do you want to proceed? I
19 think that the PUD is a fine application. It's a
20 good building. I think it's a very fine
21 architecture. I think that it will be -- there will
22 be, you know, the scale, everything -- I think it's
23 fine.

24 The problem that I have is that this
25 issue of the residential development is a -- The
26 developer has taken no responsibility for making it

1 happen.

2 COMMISSIONER HOOD: Is there a way that
3 we could write an order where he will have
4 responsibility? I believe first, even before we get
5 to the residential piece, we have to have some
6 enticement. I know that's a given, and that's
7 understood. So we have to start somewhere.

8 To just say let's hold off and wait
9 until we address this piece, this piece will not
10 happen until that other piece starts and is in
11 progress to the point where people would want to
12 come down there enticed and want to invest in that
13 area.

14 So we're going to have to start
15 somewhere. And I agree, the residential piece needs
16 to be there. It's just the fact of how to institute
17 it so it will be mandatory and it's there.

18 CHAIRPERSON CLARENS: Mr. Parsons,
19 you've been very quiet.

20 COMMISSIONER PARSONS: Well, you know
21 I'll oppose this. So I really don't want to jump
22 in and influence you. But I was confused, because
23 at the beginning you seemed to sense some need for
24 staff analysis, and now you're proceeding. That's
25 all I was trying to do. I don't like this project
26 any better than I did the first time.

1 Now that you've invited me, I think this
2 is a significant precedent we're setting with this
3 amenity, and I think we ought to do it with caution
4 and make sure that what we're doing here is not
5 setting a precedent that others will come with
6 housing linkage in sites that are not yet ready or
7 available and come in with this market rate argument
8 in a much different context.

9 COMMISSIONER FRANKLIN: Maybe I missed
10 it, because I didn't have much time to review all
11 this material; but suppose the housing does not
12 become economically feasible after, you know, 13
13 years, 12 years or whatever. What takes its place?
14 A park?

15 MS. KRESS: I presume that -- I mean,
16 the documents presume that at some point it will
17 become feasible. I did not read myself -- or don't
18 recall reading what would happen.

19 In the interim, it is a park. It is --
20 From the eleventh anniversary -- The park is -- I
21 was going to point it out to you, the terminus park.
22 Here, it's on page 28, Item 2, development of the
23 terminus park shall occur not later than -- Oh, I'm
24 sorry, no. That speaks for itself. I'm sorry.

25 The issue of -- shall be developed and
26 maintained in a park-like setting. I knew I had

1 read that, to be developed and maintained in a park-
2 like setting and condition until residential
3 development commences. That's on page 30, excuse
4 me.

5 COMMISSIONER FRANKLIN: That's all I saw
6 what we could end up with after 30 years and, of
7 course, housing is the major amenity.

8 MS. KRESS: I do think that is a problem
9 that needs to be addressed.

10 CHAIRPERSON CLARENS: Well, I sense that
11 -- I really sense that we are not ready to move it
12 forward. I think that this issue has to be
13 addressed, and I think that it needs to be referred
14 back to the Office of Planning, especially this
15 issue of the residential component, and we need some
16 specific recommendations as to what language to
17 place in our order to tighten this requirement and
18 to see --

19 MS. KRESS: Excuse me, Mr. Chair. Could
20 we perhaps reopen the record for the specific
21 information? I think that, from what I'm hearing,
22 there is a consensus of uncomfortableness with the
23 open-endedness of the model on the market rate
24 feasibility.

25 CHAIRPERSON CLARENS: Yes, but this was
26 discussed at the hearing, and the applicant heard

1 us, that we were very uncomfortable with this open-
2 endedness, and yet we have the same situation coming
3 to us in their proposed findings of fact.

4 So I'm not sure that that's going to
5 change.

6 MS. KRESS: Well, if we opened and say
7 there needs to be a conclusion. It can't be left
8 totally open-ended. There needs to be a final, that
9 we asked them to evaluate how to -- a cap or some
10 kind of methodology to --

11 CHAIRPERSON CLARENS: Yes, I would be
12 inclined to open the record just simply to deal with
13 that issue, and get official information.

14 MS. KRESS: I would feel more
15 comfortable with that coming from them rather than
16 from Office of Planning or Corporation Counsel or
17 ourselves. In the end, that may be what happens,
18 but I think it would be very reasonable to open the
19 record and let the applicant propose to us how to
20 finally cap this deal on the amenities.

21 COMMISSIONER HOOD: Mr. Chair, for my
22 clarification, what are we asking? I know what
23 we're asking. We're asking them to give us a more
24 definite resolution to the residential piece. But
25 is that a fair question with the market -- I mean,
26 we can't tell what the market is.

1 I mean, I, too, would like to see this
2 dealt with, but I'm just asking us to ask ourselves,
3 is that a fair question for us to ask them to tell
4 us what the market is going to be ten -- I hope it
5 wouldn't go ten years, personally, but is that a
6 fair question for us to ask them? How would we ask
7 them?

8 COMMISSIONER FRANKLIN: Well, it seems
9 to me, Mr. Hood, that we want to know -- Suppose
10 after a certain period of time -- I don't know which
11 period I would choose -- that the project has been
12 built but no housing has ever been built, and an
13 objective analysis would indicate that housing, for
14 whatever reason, is not economically feasible.

15 Is there some substitute at a given time
16 that, pursuant to the Commission's decision, would
17 be triggered?

18 MS. KRESS: See, to be clear here, the
19 residential doesn't even start at the earliest until
20 year ten.

21 COMMISSIONER FRANKLIN: I know.

22 MS. KRESS: I'm sorry. I was saying
23 that for Commissioner Hood's benefit. They're not
24 even proposing that it could start before year ten.
25 So the residential component will only even be
26 considered at year ten, and then forward.

1 COMMISSIONER FRANKLIN: Now if -- Could
2 you explain, Ms. Kress, what this market standard
3 is, or model? Where is this?

4 MS. KRESS: The market model is 13(b).

5 MR. BERGSTEIN: Isn't that the proposed
6 model standard for determining when market rate
7 residential development is feasible? Is that what
8 we're talking about?

9 MS. KRESS: Yes.

10 COMMISSIONER FRANKLIN: You were reading
11 from where?

12 MR. BERGSTEIN: I'm reading from --

13 MS. KRESS: 13(b).

14 MR. BERGSTEIN: It's the last half.

15 COMMISSIONER FRANKLIN: I guess I never
16 got there.

17 MR. BERGSTEIN: And if you don't mind, I
18 suggest, as you look at these things, you ask
19 yourself do they themselves represent hard,
20 objective standards or do they represent themselves
21 somewhat subjective criteria.

22 Speaking of evidence of strong sales,
23 for example, what does strong sales mean?
24 Evaluation of the rate to development cost,
25 evaluation in relationship to -- Well, it's a
26 comparison, but in what sense are they compared?

1 There seems to be a somewhat nebulous
2 standard, and again the entire model only allows
3 something to be deemed, I assume by the applicant.

4 Really, your choices are either to
5 permit that degree of what amounts to large
6 discretion or for you to trigger the -- or an
7 outside third party to trigger the development when
8 they deem this model to be satisfied, or to have
9 some sort of an arbitration. But the way this is
10 set out, it is left entirely within the discretion
11 of the applicant, both in terms of when to deem it
12 and the subjective evaluation of these what amount
13 to evaluation factors as opposed to cold and hard
14 data that you could point to and say this has indeed
15 been met.

16 CHAIRPERSON CLARENS: Well, and in
17 answer to Mr. Hood's earlier question, it seems to
18 me at this point that what we need from the
19 applicant is an alternative. A residential
20 component is important to us, is important to this
21 Commission, is important to the city as part of the
22 approval of this PUD.

23 If we are not to get it because the
24 market conditions are simply never developed
25 sufficiently, and that could happen -- maybe it
26 won't, but maybe it will. If they don't, then what

1 happens?

2 Then do we just get a park, and that's
3 all we get? What I would like to see is a proposal
4 for an alternative. If after X number of time,
5 whatever that is, 11 years, 12 years, 50 years,
6 whatever it is, we cannot make the housing work,
7 then something else is going to happen that is going
8 to benefit the community.

9 COMMISSIONER HOOD: Mr. Chairman, I
10 believe we're really going to have to put a time --
11 give some extensive time to that, because the
12 residential piece is what attracted me to this whole
13 piece here.

14 Normally, when -- I've seen, when those
15 things happen, it seems like the office use then
16 comes in, and then it takes over, and I'm not saying
17 what the applicant may do or may not do, but I know
18 that that's going to be heavily weighted office use.
19 Then our waterfront would not be like the Baltimore
20 Harbor and other waterfronts. We'll still be going
21 over to Baltimore as opposed to going right down
22 here in the Navy Yard.

23 COMMISSIONER PARKER: How many of you
24 voted on the first stage, when I think about it, but
25 the only reason we got an affirmative vote was this
26 housing component, because the developer was being -

1 - asking to be relieved from zoning that we had
2 literally passed two months ago to try to achieve
3 the kind of waterfront we have in Baltimore.

4 He first came forward with a hotel, and
5 then came forward with this proposal. To allow that
6 to escape is unfortunate.

7 There's a lot of attention and concern
8 by Sharon Ambrose and others about the future of
9 this waterfront, and I think the South Capital
10 Street corridor is going to become a real amenity in
11 the city in the next ten or 15 years, and this
12 housing probably will come. But we don't want a
13 modified PUD in here like we had two hours ago
14 saying, gee, I want to build more office.

15 So I think you're right. We need an
16 alternative, either that or dedicate this to a park,
17 develop it and get it to the city before they could
18 have occupancy, and get on with it, go one way or
19 the other, but not have something hanging out there.

20 COMMISSIONER HOOD: My concern was that
21 we give them enough time -- or they be allowed
22 enough time to make that a viable community where
23 people want to invest and go buy a piece of property
24 down there, and that's my concern. Ten years is
25 probably not going to do it, but I guess that will
26 come at a later time.

1 MS. KRESS: Well, no, I thought the
2 suggestion on the table was to perhaps open the
3 record for -- and I don't know what the
4 Commissioners decided, but under discussion was is
5 opening the record for the applicant to propose some
6 resolution, either a cap or some other alternative
7 of what happens if and when the market rate model
8 doesn't work within whatever number of years.

9 I would also reiterate what Corporation
10 Counsel has said, that there is a potential to
11 insert ourselves into the market rate housing by
12 naming a third party or a third party to be named
13 later such as in an arbitration to really help deal
14 with your issue of is this really not ready, so that
15 we have an outside, objective opinion rather than
16 just the applicants themselves.

17 COMMISSIONER FRANKLIN: I think that's
18 an important point. As I look at 13(b), the
19 applicant will always be able to come with a parade
20 of experts and tell us that such housing is not
21 feasible, and they may be right. But they may not
22 be.

23 I would be much more comfortable with
24 having some kind of mechanism there that would allow
25 a third party to give to the Commission some kind of
26 advice. And in the event that that advice is, after

1 a certain period of time, that housing is still not
2 feasible, we ought to then have -- although our
3 successors could always change it, but it should
4 have in the order some indication of what is then
5 triggered, what other substitute amenity.

6 If it appears that housing is not
7 financially feasible throughout the whole submarket
8 area, then obviously, this Commission has read the
9 crystal ball wrong or its general program for
10 upgrading this area had not succeeded, and something
11 else has to be done.

12 CHAIRPERSON CLARENS: So let's try to
13 reach resolution here. We want to table the motion,
14 and we want to reopen the record to receive from the
15 applicant further development of the residential
16 concept. How can we -- the whole issue of the
17 amenity package as it concerns the residential
18 development, if we can tighten that somehow, if
19 somehow we can come up with either narrower time
20 frames or more specific means of making this happen
21 or, in the event that it is not feasible, a time
22 frame in which an alternative plan goes into effect.

23 COMMISSIONER FRANKLIN: And the
24 determination of feasibility.

25 CHAIRPERSON CLARENS: And the
26 determination of feasibility by a third party.

1 COMMISSIONER FRANKLIN: Or something.

2 CHAIRPERSON CLARENS: Or something.

3 MS. KRESS: Corporation Counsel.

4 MR. BERGSTEIN: And again, these are
5 just suggestions that the applicant can respond to.
6 But for example, one way of having some certainty to
7 this would be for the applicant to report after the
8 tenth years an annual report as to whether or not it
9 does or does not deem the model to be satisfied at
10 this point--

11 MS. KRESS: It is called for in here
12 right now.

13 MR. BERGSTEIN: It is? All right.

14 MS. KRESS: Starting the eleventh year.

15 MR. BERGSTEIN: Oh, I'm sorry. I didn't
16 see that. Okay. Then what happens after that is
17 what is the response going to be? What is a way of
18 reconciling positions, making something happen?

19 COMMISSIONER FRANKLIN: Mr. Chairman, I
20 am willing to go on record as saying that I believe
21 this is, at least so far as I know at the moment,
22 the only reservation that I have with respect to
23 this project. I think that they have been very
24 forthcoming and responsive on all the other elements
25 that we were concerned about.

26 COMMISSIONER HOOD: I guess my question

1 is should we vote on something, leave it open, or
2 just --

3 CHAIRPERSON CLARENS: No, no. We're
4 tabling it.

5 MS. KRESS: The motion has been tabled?

6 CHAIRPERSON CLARENS: Yes. The motion
7 has been tabled. The motion has been tabled pending
8 receipt from the applicant of additional
9 information, and then the other question is --

10 MS. KRESS: Yes, we reopen the record
11 just for the issue surrounding this discussion.

12 CHAIRPERSON CLARENS: Do we refer the
13 package to the Office of Planning for additional
14 analysis of the substance of the package?

15 MS. KRESS: I believe that's what was
16 discussed and, if that's what the Commission wants,
17 I believe we can also reopen the record to receive
18 the -- to ask the Office of Planning to evaluate the
19 package and submit a report to us.

20 CHAIRPERSON CLARENS: I think that the
21 applicant was present in the room and has the sense
22 of the Commission and the concerns of the
23 Commission, and they can address whichever way they
24 feel they should. Mr. Parsons?

25 COMMISSIONER PARSONS: I'd like to draw
26 your attention to 3(A) and ask the staff of Office

1 of Planning to take a look at this. You there, Mr.
2 Colby? Are you at 3(A) in your book?

3 This is a new plan of the Pavilions in
4 which there's tables up to within eight feet of the
5 seawall, if I scaled it properly. I think anybody
6 who has been to places like Washington harbor or
7 Baltimore probably would agree that eight feet is a
8 little narrow there.

9 In that it's just so specific and it's a
10 second stage PUD, I think we ought to take a look at
11 whether this is a shoreline promenade or something
12 else. Possibly, the intent is to have the promenade
13 go back in front of the detail, which I can
14 understand -- that is, to the rear of the detail of
15 this. But I think they need to make a clear
16 decision as to whether this -- where the promenade
17 is here, as to whether this is a dining area or a
18 shoreline promenade. So I just highlight that for
19 OP's information.

20 It might be more helpful if you looked
21 at Tab 5(a), which would show you what I mean by the
22 two different concepts for promenades. 5(a) is a
23 landscape planning plan, but it serves the purpose
24 of showing that people coming off of Potomac Avenue
25 then would come down to the river.

26 If this area was to be more exclusive

1 towards dining, then you would direct them back to
2 going in front of the specialty detail, which may or
3 may not be a good idea. I would just ask the Office
4 of Planning to look at that.

5 CHAIRPERSON CLARENS: Okay. Any other
6 thing?

7 MS. KRESS: I would make -- Corporation
8 Counsel has pointed out that on page 29 -- and there
9 are some conflicts between, but obviously, the order
10 would override. But on page 29 it does leave the
11 market rate development to be economically feasible
12 at such time as the Zoning Commission determines
13 that market rate residential development is
14 economically feasible by applying the model
15 standards. That's 29, 4 and 5 deal with that issue.

16 So I just wanted to point that out.
17 That is in -- not necessarily conflict, but it is
18 different than was spoken of in the master
19 materials. So I'm assuming that this overrides, but
20 I just wanted to point that out, because I was
21 incorrect.

22 COMMISSIONER HOOD: Excuse me, Ms.
23 Kress. What page are you on?

24 MS. KRESS: On page 29 of the findings
25 of fact and conclusions of law.

26 MR. BERGSTEIN: It's under Roman Numeral

1 V. Roman Numeral IV says market rate residential
2 development shall be deemed to be economically
3 feasible, but then it doesn't say by who, but then
4 in the very last -- The next sentence has to do with
5 the reports that Ms. Kress was referring to, and
6 then it says that they will be submitted biannually
7 thereafter until such time as either residential
8 development on parcel 3 is commenced or the Zoning
9 Commission determines that the market rate
10 residential development is economically feasible,
11 which means at that point that the development would
12 have to occur. It's just not clear whether
13 or not the Zoning Commission has to -- can do that
14 upon receipt of the first four, but I guess it can.
15 But maybe if that's the intent, it can be clarified
16 that it's the Zoning Commission that would determine
17 after the eleventh anniversary when the model has to
18 be satisfied, and that would trigger the
19 requirement.

20 CHAIRPERSON CLARENS: Anything else that
21 we need from the applicant?

22 MS. KRESS: Not from the applicant, but
23 in leaving the record open I think the other --

24 CHAIRPERSON CLARENS: We are reopening
25 the record. We are not leaving the record open. We
26 are reopening the record.

1 MS. KRESS: Exactly, reopening the
2 record.

3 CHAIRPERSON CLARENS: To get additional
4 information from the applicant, a review from the
5 Office of Planning, and do we need also from
6 Corporation Counsel as to the agreement --

7 MS. KRESS: I think as to the agreements
8 that are included in the covenants, and I don't know
9 that we need that as a part of the motion, but just
10 for clarification, those are the three things that
11 we would like to have done in sufficient time to
12 evaluate at our September meeting.

13 MR. BASTIDA: And the applicant will
14 have to serve these to any parties, and will have to
15 accept the parties -- leave the record also open to
16 accept the parties' responses to them.

17 MS. KRESS: We will work with the
18 applicant.

19 CHAIRPERSON CLARENS: And the time frame
20 -- you will announce a time frame for this
21 submittal?

22 MR. BASTIDA: Yes.

23 CHAIRPERSON CLARENS: You will let the
24 applicant know?

25 MS. KRESS: Yes. We need to check the
26 calendar and work backwards so that there is

1 sufficient time for the response of the other party.

2 CHAIRPERSON CLARENS: Very good. Okay.

3 That concludes then the discussion on Florida Rock.

4 We're going to take a five-minute
5 recess, and we'll reconvene in exactly five minutes.

6 (Whereupon, the foregoing matter went
7 off the record at 3:44 p.m. and went back on the
8 record at 3:58 p.m.)

9 CHAIRPERSON CLARENS: Okay. Members,
10 let's reconvene. The next issue in front of us as
11 proposed action is case 97-7(I), and that is an SP
12 Districts update, and the Office of Planning is
13 prepared, I see, to make a wonderful presentation to
14 help us come to some resolution.

15 **III.C. 97-7(I) (SP DISTRICTS UPDATE)**

16 MR. COCHRAN: Mr. Chairman, the Office
17 will be pleased to give a presentation if you think
18 that it would help make a decision, given the
19 materials that have been presented. I say it only
20 because I understand that you are at some time
21 constraints today.

22 CHAIRPERSON CLARENS: Well, we are, but
23 if you could very quickly guide us through what is
24 in front of us.

25 MR. COCHRAN: Sure. Then I'd like to
26 point out that this six-page, rather drab document

1 is the official record that we submitted after the -
2 - to summarize the last hearing; whereas, this
3 multi-colored, thicker document is only an appendix
4 on that issue raised earlier.

5 So you do have a document signed by the
6 Acting Director and dated July 7 which is the
7 official summary for the rulemaking case. Then I've
8 also handed out this map, which is the recommended -
9 - final recommended zoning by the Office of
10 Planning.

11 You may also want to be aware, in your
12 multi-colored report on page 1, 2, 3, 4, the one
13 that says current zoning, during the last hearing
14 you had asked for a better, more legible map of what
15 the current zoning is. It's contained on page 4 of
16 the multi-colored report -- appendix, rather.

17 Okay. This is what we anticipate will
18 be the final major action on the SP rulemaking cases
19 that started in 1997. This area is known as Logan
20 Circle. If I get too far away from the microphone,
21 please --

22 We are looking at an area bounded
23 generally by 14th Street, 11th Street, P Street and
24 M Street, N.W. These lines indicate the areas --
25 the more particular areas that are up for rezoning
26 consideration today.

1 In general, we are looking at N Street
2 as a dividing line between the less intensive zoning
3 to the north and the somewhat more intensive zoning
4 to the south. Whereas, formerly we had suggested --
5 the Office had suggested that most of this area be
6 rezoned as R-5-B, as of the last hearing report we
7 suggested that in fact it made more sense to
8 distinguish a little bit more the R-5-B zoning
9 closer to the circle in these areas immediately
10 adjacent to the historic district.

11 Something that reflects the market
12 better, R-5-C zoning in this next band, then
13 generally south of N Street R-5-E zoning. We have
14 one or two exceptions to that recommendation for R-
15 5-E. Let's look at the remaining SP-2 zoning.

16 This is the lot that's adjacent to the
17 Washington Plaza Hotel. Everyone has understood for
18 several years that this was intended as expansion,
19 and so it's my understanding from before when I got
20 to the office that this is acceptable to the
21 community and to any number of other groups that
22 this remain as SP-2.

23 We're looking at a sliver of R-5-D
24 zoning which is intended to not be the kind of high
25 rise zoning we imagine we might be appropriate here,
26 but sort of a transitional zone between R-5-C and R-

1 5-E.

2 The R-5-D area is the part of Logan
3 Circle where the market isn't quite as hot, where we
4 thought that a 3.5 FAR might serve to get the kind
5 of quality development that Logan Circle deserves,
6 but yet would not be the intense R-5-E that is
7 appropriate closer to Massachusetts Avenue, closer
8 to Thomas Circle, and makes somewhat of a transition
9 as you move over towards the Blagdon Alley area.

10 Then there is some C-2-C zoning in
11 through here and some somewhat controversial R-5-E
12 zoning that we're recommending in through here. Let
13 me just highlight the areas of potential
14 controversy. These are the areas where essentially
15 not all parties seem to agree.

16 In Square 280, right in through here,
17 that's the square that has the Iowa. In your map
18 it's -- In this handout it's labeled Roman Numeral
19 III. We've got an alternate proposal that would
20 have this area go to R-5-E with some proposal for
21 covenants along 13th Street and some more typical R-
22 5-E zoning about 110 feet in.

23 We are suggesting instead R-5-C zoning.
24 Now the alternative proposal is based on 13th Street
25 being considered as a special street deserving a
26 special visual, special aesthetic consideration with

1 uniform cornice lines, higher overall heights,
2 etcetera.

3 We go, I mean, precisely in the opposite
4 direction, literally. Whereas, the alternative
5 proposal would have us look north/south at 13th as a
6 special street, we're suggesting that, in fact, N
7 Street is the street that you need to think about as
8 a way of stepping down from the intense uses that
9 are intended along Massachusetts Avenue, the CBD, up
10 to the more R-5-B store preservation oriented uses
11 in the Logan Circle area.

12 So we're suggesting that you make this
13 R-5-C, not R-5-E, as a way of keeping the heights in
14 particular more in conformance with what we see
15 throughout the bulk of that part of the
16 neighborhood, while still allowing adequate density
17 to get the kind of development that we referred to
18 in our last report as the so called ideal
19 development.

20 I don't think that there is much
21 controversy, if any, on the R-5-D. Let's move on to
22 Roman Numeral I, the C-2-C area.

23 CHAIRPERSON CLARENS: The alternative
24 will be to stretch C-2-C all the way to the corner.

25 MR. COCHRAN: The alternative would be
26 to stretch -- Actually, we can't stretch C-2-C all

1 the way to the corner. The alternative would be to
2 stick with the SP-2, because we advertised R-5-B.
3 We can't go as high as advertising -- We didn't
4 advertise C-2-C in any of the iterations on this.
5 So we can't really go to that high a zoning now.

6 We're suggesting the R-5-E as sort of a
7 holding type zoning until we can get back to looking
8 at this specific area in greater detail. R-5-E
9 would keep this in residential use.

10 What we're concerned about is that this
11 lot may be -- these one, two, three, four lots here
12 may be large enough to consolidate and turn into
13 office uses. So we're trying to retain what's there
14 for now with the R-5-E zoning and then look at it
15 again.

16 The C-2-C zoning was specified in the
17 comprehensive plan for these two lots, in
18 particular. We felt that, since there was already
19 C-2-C here, we would, at least for now, be hard
20 pressed to argue that C-2-C was inappropriate.

21 Frankly, there was some back and forth
22 within the neighborhood on what they preferred in
23 the area. That's why we think that we are looking
24 at this as an interim recommendation. Put the R-5-E
25 here now to hold the residential uses on this
26 corner. Go with the C-2-C because that is specified

1 in the comprehensive plan. That is what the
2 neighborhood had formerly wanted for this area in
3 order to make sure that the investments that were
4 put into these properties were not terribly
5 downgraded. We're comfortable with that for now,
6 but we may well be coming back in the future.

7 CHAIRPERSON CLARENS: Now what is wrong
8 with making it SP-2, I mean as long as we have an
9 SP-2?

10 MR. COCHRAN: It would then make the
11 uses nonconforming, and one of the --

12 CHAIRPERSON CLARENS: But we are keeping
13 an SP-2 next to the hotel.

14 MR. COCHRAN: Okay. That gives you an
15 even larger opportunity. If we keep all of this as
16 SP-2, it gives you a fairly large opportunity, since
17 these are not in any historic district right now, to
18 consolidate all of these properties. And if either
19 because the Office of Planning or you don't get back
20 to it, we risk conversion.

21 CHAIRPERSON CLARENS: Well, what is the
22 intention? What is the Office of Planning
23 intention? The C-2-C is there, and that is --

24 MR. COCHRAN: C-2-C is right here.

25 CHAIRPERSON CLARENS: I understand that.
26 And that little parcel, those two lots, are also C-

1 2-C.

2 MR. COCHRAN: These would be recommended
3 for C-2-C.

4 CHAIRPERSON CLARENS: What are they now?
5 They are SP?

6 MR. COCHRAN: SP.

7 COMMISSIONER PARSONS: Keep in mind that
8 all of that R-5-E that's shown on that document is
9 currently SP-2.

10 CHAIRPERSON CLARENS: Yes.

11 COMMISSIONER PARSONS: So the proposal
12 is to re-bound that whole two-block area as R-5-E.
13 If we were to leave an SP-2 remnant over here in the
14 corner as spot zoning, it goes against the whole
15 concept of the planning principle here. I think it
16 ought to be R-5-E, as we advertised.

17 CHAIRPERSON CLARENS: I understand it.
18 I just don't understand -- You say it becomes then
19 R-5-E as a holding pattern.

20 MR. COCHRAN: We're not going to pretend
21 that the comprehensive plan amendments of 1998 and
22 their specification for this area are necessarily
23 the most rational recommendations for this site that
24 we could now imagine, but we have to respect the
25 intentions of the City Council and the ANC for some
26 of this area.

1 We feel that, as currently constituted,
2 the ANC would like to maintain this as residential
3 zoning -- as residential usage, but we also know
4 that, perhaps because of some mixed messages, this
5 was put in as C-2-C.

6 Therefore, in effect, we're taking a
7 Solomon-like approach at splitting the baby or
8 recommending the split of the baby, keeping this as
9 C-2-C where the owner has put in money. It is
10 adjacent to the C-2-C area, but not giving a large
11 enough area to really make it worthwhile to
12 consolidate all of the property and convert it to a
13 highrise structure.

14 We will probably then, we hope, come
15 back to you and suggest another look at this corner,
16 now that the ANC's previous recommendations don't
17 seem to be the same recommendation -- the same as
18 their current recommendation.

19 So that's why we call it a holding
20 pattern. R-5-E, basically --

21 CHAIRPERSON CLARENS: You would not be
22 coming back to us. You will be going back to the
23 Council. You will be going back -- It is the
24 comprehensive plan that --

25 MR. COLBY; Yes. If we came back and
26 restudied it, and I'm not going to -- I don't know

1 what it would be -- we probably would also look at
2 11th Street with the commercial zoning/mixed use
3 zoning along there which includes the HCD
4 residential properties on the corner of C-2-C.

5 MR. COCHRAN: All of this is on C-2-C,
6 even though it's used residentially.

7 CHAIRPERSON CLARENS: I understand about
8 that. Okay. Items 2 and 4?

9 MR. COCHRAN: Okay. Item 2 is the
10 request by the owners of the apartment building here
11 known as the Evergreen to become zoned -- or rather,
12 to remain zoned SP rather than go to R-5-E.

13 You have had a chance to review the
14 record. You understand that they feel that it
15 would be difficult to get financing for conversion
16 to hotel use. We looked at the record, noted that
17 they hadn't -- it didn't seem as though there had
18 been tremendous effort put into getting financing
19 yet, but I can't speak directly for them, only what
20 they testified.

21 We felt that it would set a dangerous
22 precedent to do a spot of SP there and a spot of SP
23 there, and then risk the conversion of the Sutton
24 Tower apartments from residential uses into some
25 other office type use permitted under SP-2.

26 We have to acknowledge that the owners'

1 representative for the Evergreen did state that the
2 Sutton Tower had been recently renovated. Perhaps
3 it would be unlikely that it would be converted to
4 office use after a recent refurbishment as
5 residential.

6 We didn't want to take that risk and
7 continue the SP-2 in a sort of an L-shaped area as a
8 spot -- almost as if spot zoning. So we recommend
9 that all of this become R-5-E.

10 Finally, Area 4: This is the area with
11 the liquor stores and the warehouse that the doctor
12 has testified to in the past are now commercial
13 uses, although in an SP zone.

14 We have not seen statistical evidence
15 that indicates that the property owner couldn't make
16 a go of it with something that would be R-5-E. We
17 recommend that all of this go as R-5-E as part of
18 the residential zone.

19 I can certainly go into more detail
20 rather than give you the overviews on any of these,
21 if you have questions.

22 CHAIRPERSON CLARENS: No, I think that
23 is fairly clear. My only question is, in the case
24 of the apartment building wanting to become a hotel
25 in the R-5-E, what is the cure to that, from a
26 zoning point of view? It would need to get a use

1 variance?

2 MR. COLBY: They've gotten that.

3 CHAIRPERSON CLARENS: They have a use
4 variance. That's right.

5 MR. COLBY: You've done everything that
6 you possibly could to make it possible --

7 CHAIRPERSON CLARENS: They have a
8 special exception.

9 MR. COLBY: Yes, and they would become
10 nonconforming and would then require a use variance
11 to become conforming.

12 CHAIRPERSON CLARENS: So in order to
13 gain financing if the financing institution has a
14 difficulty with the nonconformity of the zoning, in
15 order to cure that they would need to request a
16 variance.

17 MR. COLBY: Once they've lost the SP
18 underlying zoning.

19 CHAIRPERSON CLARENS: Once the SP owner
20 wished the hotel was permitted as a special
21 exception. Okay. So -- and there would be a
22 rationale for the granting of a variance, because
23 this is a -- there's a zoning history that supports
24 -- Maybe I'm preempting what the BZA would do, but
25 it seems to me that they would -- Okay. And the
26 same thing for the -- What is the name of the

1 apartment building on the other side, the Sutton --
2 What is it called?

3 MR. COCHRAN: Sutton Towers, which we
4 certainly wouldn't recommend be anything other than
5 R-5-B.

6 CHAIRPERSON CLARENS: Okay. Then the
7 commercial -- those commercial -- little commercial
8 buildings would be nonconforming uses.

9 MR. COLBY: As they currently exist.
10 The new owner could maintain those uses, yes. In
11 fact, they're nonconforming now, because they are
12 retail uses in an SP zone.

13 CHAIRPERSON CLARENS: But once it turns
14 into R-5-E, they would become nonconforming.

15 MR. COLBY: They are nonconforming.

16 MR. COCHRAN: They would remain as they
17 are, nonconforming.

18 MR. COLBY: They are currently
19 nonconforming.

20 CHAIRPERSON CLARENS: Oh, they are
21 currently nonconforming. That's right. So they
22 could continue to operate as nonconforming
23 grandfathered uses, but if they need to change, they
24 would change then to R-5-E.

25 COMMISSIONER PARSONS: Mr. Chairman, I
26 think we should support the Office of Planning and

1 the presentation, not here today but at the hearing
2 -- here today as well, but as contained in the
3 hearing, and I would move we approve the rezoning as
4 presented by the Office of Planning to us here.

5 COMMISSIONER HOOD: I second the motion.

6 CHAIRPERSON CLARENS: Very good. Any
7 further discussion? All in favor, signify by saying
8 Aye. Opposed? The Ayes have it. So ordered.

9 MR. BASTIDA: Mr. Chairman, as the
10 office records the vote: Mr. Parsons moved, Mr.
11 Hood seconded it, and voting three to zero to
12 approve.

13 We have a proxy for Mr. Franklin?

14 MS. KRESS: He would have given it to
15 us. We don't have one.

16 CHAIRPERSON CLARENS: Mr. Franklin? No.

17 MS. KRESS: Unless he gave it to you.

18 CHAIRPERSON CLARENS: No, he did not
19 give me a proxy on this case. He expressed a proxy
20 on another case that's coming.

21 Okay, well, that concludes then, such as
22 it is, the proposed actions, Item III of the agenda,
23 and we move to Item IV, Hearing Action.

24 **IV. HEARING ACTION.**

25 CHAIRPERSON CLARENS: There is none. Is
26 that correct, Mr. Colby? We are now in Item IV,

1 Hearing Action, Office of Planning.

2 MR. COLBY: Yes. There are no hearing
3 actions.

4 **V. REAFFIRMATION OF HEARING ACTION.**

5 CHAIRPERSON CLARENS: Now reaffirmation
6 of hearing action.

7 MS. KRESS: May I introduce that, Mr.
8 Chair?

9 CHAIRPERSON CLARENS: Sure.

10 MS. KRESS: It was a concern, and I
11 definitely want Office of Planning to report,
12 because they have done, I think, a yeoman's job in
13 putting together the history relating to these
14 miscellaneous DD amendments.

15 Just to set the stage, the bench
16 decision that was made has gone ahead or is going
17 ahead and being forwarded to NCPC. Is that correct?

18 MR. BASTIDA: That is correct.

19 MS. KRESS: And the set-down for
20 September 9th that happened June 3rd is getting
21 ready to go to the register and is still planned to
22 be heard on September 9th.

23 MR. BASTIDA: That is correct. We are
24 planning on forwarding to the register sometime this
25 week.

26 MS. KRESS: The issue and what we're

1 talking about in the reaffirmation are all of those
2 other issues, and the reason I requested a second
3 look is because I felt some of these were being done
4 in bits and pieces without a global view of what the
5 concerns were.

6 I understand the need to break out the
7 pieces that belong to the Woodward & Lothrop
8 building and the other -- some of the other pieces
9 that have clearly gone ahead, but I'm concerned
10 about the global view on the remaining issues and
11 whether perhaps it might be appropriate to put on
12 hold those other miscellaneous issues we've already
13 set down -- you have already set down -- until there
14 could be a little more work done on them and a
15 little more global view.

16 I just wanted to say that as background,
17 because this came out of a request that I made when
18 I was still Chairperson, and I just wanted to set
19 the stage prior to the report of Office of Planning.

20 Would you like to -- keeping in mind
21 we're reevaluating it, and I do appreciate your
22 status report.

23 MR. COLBY: Thank you. There are --
24 Picking up on what Ms. Kress just said, there are
25 two proposals for a -- not by the Office of Planning
26 -- that I think are in the category that Ms. Kress

1 referenced.

2 One is on the bottom of page 2, that
3 don't relate to Woodies and that aren't already part
4 of the bench decision. They are the 1301 L Street,
5 residential use of approved PUD office component at
6 the bottom of page 2, and at the bottom of page 3,
7 the DOES site for FAR on-site residential
8 requirement.

9 Those two came to light during the
10 hearing which the Commission held on office use of
11 the Woodward & Lothrop building, and we have
12 commented briefly on both.

13 I would say that -- and I've got a few
14 more comments that aren't in the report from a
15 discussion with GSA on the DOES site. I would say
16 that the essential difference between the two, the
17 1301 L Street project and the DOES site, is that the
18 1301 L Street project proposal came from the owner's
19 representative for that property to make more likely
20 a potential hotel use, but nevertheless, that came
21 from the owner.

22 In the case of the DOES site where the
23 District is the owner or has jurisdiction over it,
24 the proposal came from the neighborhood and not from
25 the owner, speaking essentially for the District's
26 property.

1 We have listed some issues which are
2 essentially the issues we raised during the hearing,
3 but we've had further discussion with GSA on that
4 DOES site, and I would only add that they are now
5 looking at -- As our report notes, they are looking
6 at a 100 percent residential possibility and
7 evaluating that, and they are also looking at a
8 hotel, 200 unit hotel, or office use where
9 apparently both bring the same return.

10 I would only add that what our report
11 does not say is that replacement of the DOES
12 function, which is critical to the District -- for
13 that to be relocated elsewhere, according to the
14 GSA, cannot be assured with the 4 FAR option for
15 residential on the site; and they believe it can be
16 assured with the 2 FAR residential.

17 So that is a significant reason why the
18 Office of Planning would recommend -- if the
19 Commission decides to reevaluate their prior action,
20 that the Office of Planning would recommend that
21 they do so in the case of the DOES site, have less
22 immediate concerns with the 1301 L Street site, but
23 clearly the Commission could put both of those in
24 the same category and request a set-down report from
25 the Office of Planning, basically go back in time,
26 if that's your pleasure to do so.

1 Beyond that, I've jumped around in this
2 report. I'll be happy to answer any questions that
3 you may have. You clearly can look at the Woodward
4 & Lothrop building issues, too, but we -- The two
5 cases that the Commission -- that Ms. Kress
6 referenced are the DOES site and the 1301 L Street
7 site.

8 COMMISSIONER PARSONS: Let's talk about
9 DOES a minute. I'm not sure I understand what
10 you're saying. We're advertised at 2 FAR housing.
11 Is that right?

12 MR. COLBY: It's been -- The Commission
13 bench decided 2 FAR for on-site residential. It's
14 currently -- there's a 2 FAR requirement, and the
15 comp plan was changed to say that all that should
16 occur on site. So the 2 FAR requirement is there
17 for residential that will now, according to the
18 Commission's decision in May, have to be all
19 provided on site, and that works.

20 CHAIRPERSON CLARENS: On site?

21 MR. COLBY: On site.

22 CHAIRPERSON CLARENS: But the Commission
23 also voted to increase it to 4 FAR.

24 MR. COLBY: To set it down for a hearing
25 to consider 4 FAR.

26 MS. KRESS: What happened is we had --

1 COMMISSIONER PARSONS: So what is being
2 asked of us today? I don't understand.

3 MS. KRESS: Perhaps I'm doing the
4 asking. What's being asked is, for example, on the
5 historical landmark density restrictions, rather
6 than being written in a general way, it was written
7 specifically for the Woodies project.

8 My concern was that we were dealing with
9 small issues in order to perhaps expedite the
10 Woodies without dealing with the larger issue and
11 the more global issue.

12 The other piece had to do with some --
13 We had received some major correspondence on the
14 DOES site, and things were changing, and I thought
15 we should have an update before we went ahead and
16 published and set the hearing date. I thought we
17 should have that additional information.

18 COMMISSIONER PARSONS: I have never been
19 so confused in my entire time on this Commission. I
20 just can't believe I'm not getting this.

21 We decided 2 FAR. We've advertised for
22 4 FAR. You're reporting to us that GSA is
23 considering 100 percent residential, and the
24 District of Columbia is totally opposed to anything
25 more than 2. Is that what you're saying?

26 So you would appear at this hearing on

1 behalf of the Mayor and oppose 4 FAR. Is that
2 correct?

3 MR. COLBY: No. I think that's not
4 right at all. Let me -- First, I thought you were
5 making some other point. No, let me be very clear.

6 GSA, on behalf of the District, is
7 looking at a number of alternatives -- have their
8 economic consultants looking at a -- not a policy
9 decision on the part of GSA. They are putting
10 together an RFP for the District that the District
11 will embrace or not, because it's the District's
12 property, for reuse of that site.

13 One of the alternatives, which is what's
14 required under zoning and now required by the --
15 further required by this Commission's bench
16 decision, is for two of that six roughly FAR that's
17 possible on the site to be residential. The
18 District -- We have supported that.

19 COMMISSIONER PARSONS: But you also said
20 that you're convinced that that's what it has to be
21 to remain economically viable. That's why I said
22 you come and oppose it.

23 MR. COLBY: Nobody has yet weighed in on
24 the -- and GSA is exploring that -- on the
25 possibility of being able to, one, get a developer
26 who is interested in all residential for that site

1 and, two, providing the resources to move to DOES
2 function elsewhere and provide them space somewhere
3 else in the District, both of which have to happen,
4 reuse of the site and relocation of the DOES
5 function.

6 COMMISSIONER PARSONS: I guess I
7 misunderstood you. I thought the District had
8 already made a decision based on some other studies
9 that this had to be no more than 2 or it wouldn't
10 work.

11 MR. COLBY: It did. I mean, GSA is
12 saying, on the basis of the studies that they did,
13 on the basis of the study, to the extent that it is
14 completed, the current study, that that's the case;
15 and it can be no more than 2 FAR residential to be
16 certain that the DOES functions be relocated or
17 leased somewhere else. But in any case -- I mean,
18 I'm not sure.

19 CHAIRPERSON CLARENS: Well, let's
20 backtrack a little bit. Why do we have a
21 reaffirmation of hearing action?

22 MR. COLBY: That's the basic question.

23 MS. KRESS: There were letters and
24 testimony that -- and the Deputy Mayor's letter
25 raised the issues that the Commission proceeded
26 improperly without having received a report from OP,

1 and that the Commission may wish to invite
2 participation from the public on a broader range of
3 issues concerning downtown development.

4 COMMISSIONER PARSONS: Have we seen that
5 letter?

6 MS. KRESS: Yes. That was handed --

7 CHAIRPERSON CLARENS: It is in the
8 package.

9 MS. KRESS: It's in the package, and in
10 addition, reviewing the -- as I mentioned, the
11 amendment to overcome the historic landmark density
12 restrictions has only been done basically for the
13 Woodies building and not for buildings in general.

14 My concern was that it was also being
15 done in bits and pieces. I can be -- I mean, if
16 everyone is fine, I just wanted to bring it up,
17 because I, as Commission Parsons, have never been so
18 confused on so many issues and the way we've been
19 handling them, that I just wanted to bring it up for
20 discussion. If everyone is comfortable, then that's
21 fine. I just wanted to --

22 COMMISSIONER HOOD: I would like to add
23 my name to those who are confused.

24 COMMISSIONER PARSONS; I thought I was -
25 - I missed the May 20th event, and I thought that's
26 why I was confused and was alone in that.

1 COMMISSIONER HOOD: I'm just a little
2 unclear what we are being asked to do, and did make
3 the May meeting.

4 MS. KRESS: I will say that the Office
5 of Planning's report does appropriately designate
6 what transpired. I wasn't even sure what exactly
7 had transpired, to be quite honest, until Office of
8 Planning prepared this report. I am more clear now
9 as to what we did do.

10 COMMISSIONER HOOD: So, apparently, we
11 made a mistake.

12 MS. KRESS: I wouldn't necessarily say
13 it's a mistake. I would just say we were doing
14 small packages, and perhaps -- and we did not have
15 Office of Planning's appropriate input into some of
16 the things we set down.

17 I mean, we had their comment, but I
18 meant they didn't have time to study. Some issues,
19 like I say, have only been done on a small scale for
20 the Woodies -- purpose of the Woodies building,
21 without looking at the global issue such as the
22 historic density issue.

23 My suggestion would be -- and I'd really
24 like to hear from Office of Planning -- is that how
25 do you feel about going back and reevaluating 1301
26 L? Would there be any benefit? If not, please say

1 it. I think you have done more analysis now
2 on the DOES site, taking a look at the global issue
3 of the amendment -- an amendment to overcome
4 historic landmark density generally instead of just
5 specifically.

6 I'm lost, too. I would really like to
7 hear Office of Planning's proposal. Are you happy
8 with what's set down and the way it is, and should
9 we just stay where we are?

10 MR. COLBY: In a --

11 CHAIRPERSON CLARENS: Mr. Colby, let me
12 interrupt. Let me see if I can summarize what I
13 understand, and then whoever can correct me, and
14 maybe this will help, and it comes from your memo or
15 -- yes, Ms. Aiken's memo which, I assume, is mostly
16 yours.

17 We did make a bench decision. We voted
18 to make residential use a possible use in the
19 Woodies building, and that we voted on.

20 MR. COLBY; Right.

21 CHAIRPERSON CLARENS: We also voted on
22 the TDR issue applicable throughout the DB and C4
23 areas.

24 MR. COLBY: We then, from the Office of
25 Planning as well as from Wilkes, Artis coming from
26 two different places, that amendment was adopted by

1 the Commission.

2 MS. KRESS: Can I ask a question. Do you
3 support that? Does Office of Planning support this
4 TDR amendment?

5 MR. COLBY; Yes.

6 MS. KRESS: Okay, thank you.

7 CHAIRPERSON CLARENS: Well, and we voted
8 on it.

9 MS. KRESS: No, but Office of Planning -
10 - Some of this was added by Wilkes, Artis. I wasn't
11 sure Office of Planning supported it.

12 CHAIRPERSON CLARENS: Okay. Then we
13 also voted to make the 2 FAR, which is the standard
14 FAR residential use, not transferable in the case of
15 the DOES building.

16 MR. COLBY: For a C-4 property, standard
17 for a C-4 property indeed, which is what's the case
18 here. Yes, you did.

19 CHAIRPERSON CLARENS: Yes, that's right.
20 It was the case there. That's right. Okay. So
21 those were voted on and decided, and we also then
22 had a special meeting after that hearing in which we
23 decided on having a hearing on the issue of the
24 relationship between residential, office and retail
25 use of the Woodies building.

26 MR. COLBY: You voted to set that down.

1 CHAIRPERSON CLARENS: To set that down
2 for a hearing on September 9th.

3 MS. KRESS: No, we don't do that until
4 the June 3rd meeting. Excuse me.

5 MR. BASTIDA: That is --

6 MS. KRESS: This was going to be set
7 down additionally at late -- At this point, it's
8 going to be set down, in fact, middle-late fall.

9 MR. BASTIDA: This is on what you sent
10 down at the meeting following that hearing. Then
11 you did these other --

12 CHAIRPERSON CLARENS: I understand that,
13 all the way to here.

14 MR. BASTIDA: And then you did this on
15 June 3rd.

16 CHAIRPERSON CLARENS: Okay. So now I'm
17 a little bit clearer. So now what is it that you
18 are asking about, whether we want to -- Well,
19 originally we are going to go back on the decision
20 that we made on the first --

21 MS. KRESS: No. I never suggested that.

22 CHAIRPERSON CLARENS: Okay. So then the
23 question becomes have we set down hearings for the
24 Woodies building, the L Street residential use, and
25 the DOES site.

26 MS. KRESS: And I was not even proposing

1 the Woodies building, because we heard that, and we
2 have made a commitment and a set-down for September
3 9th, and I would not suggest that we redo the
4 Woodies building.

5 CHAIRPERSON CLARENS: Okay. So you are
6 pulling that out, and then so we are talking really
7 about the L Street residential use.

8 MR. COLBY: And the DOES.

9 MS. KRESS: And a more global view,
10 unless again you disagree with me, Mr. Colby,
11 regarding the amendment to overcome historic
12 landmark density restrictions. Right now it's only
13 written for Woodies. Am I not correct? And it
14 would need to be redone to be written for other
15 historic landmark properties?

16 MR. COLBY: I can't answer that. The
17 bench decided residential use was written for Grid
18 346, and I don't think anybody suggested that that
19 should be written or, you know -- for other
20 department stores. It was really aimed at Woodies,
21 but sites for 346.

22 I think the hearing could explore that
23 issue.

24 CHAIRPERSON CLARENS: Yes. What is the
25 concern with setting then the 1301 L Street
26 residential use and the DOES building for a hearing?

1 MS. KRESS: Well, I'm feeling much
2 better. I now am understanding. Like I say, until
3 I received this, I wasn't even quite sure what we
4 had passed -- my notes weren't clear -- and what we
5 had not passed.

6 CHAIRPERSON CLARENS: Okay. So we have
7 already set Woodies, and we're going to deal with
8 Woodies on September 9th. So we can then reaffirm
9 that we would like to set down for a hearing the
10 other issues that are in front of us, which is this
11 residential use, the L Street residential use and
12 the DOES building.

13 COMMISSIONER HOOD: Second the motion.

14 COMMISSIONER PARSONS: DOES at the 4
15 FAR?

16 CHAIRPERSON CLARENS: Well, all I'm
17 saying is that we agreed that we were going to hear
18 the case. We haven't agreed that we're going to
19 approve it, that we're going to change the text, but
20 that we were going to hear the case.

21 Now you're questioning that petition?
22 Is that what you're doing?

23 COMMISSIONER PARSONS: I don't know what
24 the decision is.

25 CHAIRPERSON CLARENS: Well, the decision
26 is to hear that.

1 COMMISSIONER PARSONS: Have a hearing
2 November, January or some other time or add this to
3 September 9th?

4 CHAIRPERSON CLARENS: No, no. We not
5 going to add anything to September 9th.

6 COMMISSIONER PARSONS: Why not?

7 CHAIRPERSON CLARENS: September 9th is
8 Woodies, because that's already going to be enough
9 of an issue. We're going to hear Woodies on
10 September 9th.

11 COMMISSIONER PARSONS: Why is it that we
12 decided not to take Mr. Docter's advice on the DOES
13 site, and when did we do that?

14 CHAIRPERSON CLARENS: We haven't decide
15 whether to take it or not to take it. What we've
16 decided is to hear it.

17 COMMISSIONER PARSONS: But wasn't that
18 proposal before us on a previous date? We haven't
19 discussed 4 FAR DOES.

20 MR. COLBY: No, you have not.

21 CHAIRPERSON CLARENS: To my knowledge.

22 MS. KRESS: It has not been discussed.

23 COMMISSIONER HOOD: We set it down for a
24 hearing, and I believe that's where we're going, if
25 I'm correct. We had set --

26 COMMISSIONER PARSONS: I understood we

1 voted in May for a 2 FAR nontransferable.

2 MS. KRESS: True.

3 COMMISSIONER PARSONS: This is the first
4 time we've discussed 4 FAR?

5 MS. KRESS: On the May 20th meeting after
6 the bench decision, the 4 FAR was --

7 CHAIRPERSON CLARENS: The 2 FAR is not
8 an issue. The nontransferable 2 FAR was what we
9 voted on.

10 COMMISSIONER HOOD: And we set the 4
11 FAR--

12 CHAIRPERSON CLARENS: And then there is
13 a request which the Office of Planning is
14 characterizing as an unsolicited request for an
15 increase of the 2 FAR to a 4 FAR in the DOES site.

16 COMMISSIONER PARSONS: And we are
17 agreeing this afternoon to set that down for a
18 hearing sometime in --

19 CHAIRPERSON CLARENS: And it was agreed
20 -- It was agreed, and what I guess the Office of
21 Planning is requesting is that we reaffirm that
22 decision.

23 MS. KRESS: Well, are you requesting
24 that, Mr. Colby?

25 MR. COLBY: Being a bad loser, which was
26 where we were after you set it down, because we

1 recommended against setting it down at 4 FAR --
2 Being a bad loser, given an opportunity to come back
3 and say don't do that, that's where we are. We
4 think that's a mistake to even consider 4 FAR for
5 that -- as a requirement for that site.

6 It may work, but not as a requirement.
7 So it's up to the Commission, clearly, whether they
8 want to take the action they've already taken and
9 follow through with it or to backtrack and ask for a
10 set-down report and a more thorough analysis before
11 you take that action.

12 COMMISSIONER HOOD: I think we need to
13 stick with what we said. If Office of Planning at
14 the hearing wants to bring some evidence more, then
15 I think that's in order.

16 CHAIRPERSON CLARENS: And I feel at this
17 point exactly the same way. I feel that I don't
18 know that I understood the wisdom nor the planning
19 principles involved in increasing it to a 4.0 FAR,
20 but it also seems to me that we discussed it --

21 COMMISSIONER PARSONS: That's what the
22 hearing was for.

23 CHAIRPERSON CLARENS: We discussed it --
24 No, we discussed it at the meeting that we had, and
25 we set it down. So we saw enough merit to set it
26 down, and then we should proceed with that and hear

1 the case, and if we find that, if the 4.0 doesn't
2 make any sense, we won't approve it. That's all.

3 COMMISSIONER PARSONS: My confusion is I
4 thought we had added it to the Woodies case of
5 September 9th.

6 CHAIRPERSON CLARENS: No.

7 COMMISSIONER PARSONS: We have not done
8 that?

9 CHAIRPERSON CLARENS: We have not done
10 that, and we have not done either the L Street
11 residential use. So what I guess we are
12 reaffirming, if I can get the votes, is that we will
13 at some point, to be established by the staff and
14 then we need to be informed, to hear both of these
15 issues and for the Office of Planning to prepare
16 accordingly.

17 COMMISSIONER HOOD: So move, Mr.
18 Chairman.

19 COMMISSIONER PARSONS: Second.

20 CHAIRPERSON CLARENS: All in favor,
21 signify by saying Aye. All right.

22 MS. KRESS: Let me point out that at
23 this point, while our regular meeting in September
24 is absolutely crammed, we really right now only have
25 the one hearing on September 9th's schedule. So we
26 could take this also up in September, at one of the

1 dates in September, because we have the summer and
2 the 40 days to get out the information.

3 So these could follow each other, so
4 that the information gleaned from the various
5 hearings could perhaps be used and kept together,
6 since they are all kind of related issues.

7 CHAIRPERSON CLARENS: Yes, and that's
8 what is troubling me about this whole thing, is that
9 it is really very, very much fragmented and
10 piecemeal and spot zoning-like. I don't like it. I
11 don't see overall principles at work, you know,
12 great philosophical ideas implemented. I see we're
13 dealing and we're tinkering with the plan.

14 I think that, unfortunately, that comes
15 a little bit from the comp plan in the way that it's
16 handled certain sites. But it seems to me that you
17 are absolutely right and, if we can deal with it in
18 September, not at the same time but in conjunction
19 with at least in terms of the overall sense of
20 what's happening with the DD area and the housing in
21 downtown, I think that that will be great.

22 MS. KRESS: I think it would also be
23 appropriate to ask Office of Planning if they want
24 to take a little more of a global view and, if they
25 see anything else that --

26 MR. COLBY: For the follow-on meeting?

1 MS. KRESS: Yes -- that relates to --

2 CHAIRPERSON CLARENS: -- those linkages
3 and makes it more comprehensive.

4 MR. COLBY: We started implementing the
5 comprehensive plan, and we've gone beyond that. So
6 I suppose we could look at any other areas.

7 I would only say that we -- I strongly
8 hesitate to get back into DD very far, because we'll
9 never get out of it without some substantial
10 evaluation.

11 CHAIRPERSON CLARENS: No, but I guess
12 what I'm looking for is -- In the presentation of
13 Mr. Cochran, one of the things that I appreciated
14 was the clarity of the planning concepts which were
15 being implemented, the N Street as a division.

16 I know we cannot reach that kind of
17 clarity all the time, but there were underlying
18 principles at work which then kind of help us
19 justify a specific decision. I think that, if we
20 can look at these issues more globally than just
21 simply the one-one-one or the one-one of Woodies,
22 but Woodies in a larger context, I think that will
23 be very helpful.

24 MR. COLBY: We can do that. I'm not
25 sure that it will bring any additional amendments.
26 I'm not sure how we would get at them, but we can

1 certainly put what's before you now into a context
2 where you have a better framework for deciding.

3 CHAIRPERSON CLARENS: That's right.
4 From that discussion, from those principles, then we
5 can establish that there are further actions that
6 this Commission can take that we can direct -- that
7 we can take on our own initiative. Very good.

8 Where are we?

9 MS. KRESS: I believe we're now moving
10 to the final action on the Regulatory Reform Control
11 Board issues.

12 **VI. FINAL ACTION.**

13 MR. BASTIDA: And based on our previous
14 discussion, we would request that you reschedule
15 this for the September meeting.

16 CHAIRPERSON CLARENS: That is correct,
17 and that will be pending some action by both -- some
18 review by both staff and Corporation Counsel on
19 those issues.

20 MR. BASTIDA: That is correct, Mr.
21 Chairman.

22 MS. KRESS: To meet the issues of
23 sufficiency.

24 CHAIRPERSON CLARENS: Yes. So final
25 action on the Regulatory Reform Control Board issues
26 is postponed until September.

1 **VII. CONSENT CALENDAR.**

2 CHAIRPERSON CLARENS: Consent calendar
3 is none.

4 **VIII. STATUS REPORT.**

5 CHAIRPERSON CLARENS: Status report of
6 the Office of Planning.

7 MR. COLBY: I think it, once again,
8 speaks for itself. We have almost no changes at
9 this time except -- It's essentially the same as
10 before mentioned, adding Woodies to the cases that
11 are in there, and it's before you and you can read
12 it. It's just the Italics that you would be
13 interested in as a change from the previous month,
14 and very little is changed.

15 CHAIRPERSON CLARENS: Okay. Any
16 question on that issue from the Commission to the
17 Office of Planning?

18 **IX. LEGISLATIVE REPORT.**

19 CHAIRPERSON CLARENS: Legislative
20 report, Mr. Bastida, is none.

21 **X. LITIGATION.**

22 CHAIRPERSON CLARENS: Litigation is
23 none.

24 **XI. REPORT OF THE SECRETARY.**

25 CHAIRPERSON CLARENS: And you don't have
26 any report to us.

1 MR. BASTIDA: Of the Director?

2 **XII. REPORT OF THE DIRECTOR.**

3 CHAIRPERSON CLARENS: Then report of the
4 Director. Well, first of all, I think that we
5 should as a Commission welcome the Director in her
6 new capacity as Director of the Office of Zoning and
7 wish her the best of luck in performing her duties.

8 COMMISSIONER HOOD: Mr. Chair, if I
9 could just add to that. I'm looking forward to a
10 good working relationship with Ms. Kress. She has a
11 wealth of knowledge, and she's up to the task, and I
12 will be supporting her as Director 100 percent and
13 working with her.

14 CHAIRPERSON CLARENS: Very good.

15 MS. KRESS: Thank you.

16 CHAIRPERSON CLARENS: You had something
17 to say to us about caps on Commission and Board
18 members?

19 MS. KRESS: Basically -- and I don't
20 know if Dan is back, but Niombi, who is our computer
21 specialist, has come on board. Today is his first
22 day, and he will be instrumental in getting us
23 computerized and working with the Hansen system and
24 heading toward our goal of being able to put all of
25 our work, scan it, scan all of our files onto the
26 computer, and be able to both intra, inside, be able

1 to have all the history and information filed by
2 property, lot square, case number, as well as an
3 exchange of information with both DCRA and Public
4 Works, so that we will be able to gather all of that
5 information easily for use in-house as well as out
6 of house.

7 People will be able to access that, both
8 from DCRA, Public Works, and probably also through
9 the Web to gain that information. He is a very --
10 going to play a very, very key role for us, and I'm
11 very pleased and excited that he's on board as of
12 today.

13 The other issue, and I've spoken briefly
14 to Alan Bergstein regarding this, is there are caps
15 right now on how much the Commission makes, the
16 Mayor's members of the Commission, \$3,000, I
17 believe, per individual and \$3500 for the
18 Chairperson of the Board and of the Zoning
19 Commission.

20 Unfortunately -- Fortunately, the
21 Control Board did give us some additional money. We
22 are having some money problems in our base budget
23 because, unfortunately, the Zoning Commission
24 members and the BZA members of the Mayor got changed
25 from being in the personnel to the non-personnel
26 category and basically being a vendor, and happen to

1 be in the same category as the transcribing, which
2 has cost us quite a bit this year because of the
3 lack of --

4 CHAIRPERSON CLARENS: And we walk out
5 and let them see how they conduct business.

6 MS. KRESS: We don't have our mike
7 system and our sound system, and so unfortunately,
8 we haven't had the money, and I'm working on that
9 right now, to pay appropriately Board and Zoning
10 Commission members. But in addition, we do need --
11 We have the problem, even if we have the money and
12 I'm working on that with -- Right now there are caps
13 in place, and we need to go to the City Council to
14 have those caps removed.

15 I've mentioned that to Alan Bergstein,
16 that we need to address some legislation for City
17 Council to remove from us the \$3,000 and \$3500 cap
18 so that the members can get paid what is actually
19 due them. So we'll be working on that for this
20 fall.

21 CHAIRPERSON CLARENS: Maybe after today
22 Ms. Ambrose would be willing to present that
23 legislation.

24 MS. KRESS: But we are working on making
25 changes, and we hope to have a lot to show you in
26 September. September 13th, we hope to have some

1 major things to show you on what we're going to be
2 doing this summer to help reorganize and make us
3 more efficient.

4 CHAIRPERSON CLARENS: Very well.

5 **XII. OTHER BUSINESS**

6 CHAIRPERSON CLARENS: Other business,
7 Mr. Bastida?

8 MR. BASTIDA: Mr. Chairman, you -- In
9 your package was included a reminder schedule, the
10 updated list on the zoning district in the District
11 of Columbia that you requested from the Office of
12 Planning.

13 MS. KRESS: Can I thank Office of
14 Planning for that. We did request that, and I think
15 this is going to be -- I certainly could have used
16 this some years ago as my cheat sheet as a Zoning
17 Commission member. I think this is going to be very
18 helpful, and I want to thank the Office of Planning
19 for doing this.

20 MR. BASTIDA: A letter of Ms. Ambrose
21 requesting -- recommending somebody for my position,
22 and a real estate report from the real estate.

23 CHAIRPERSON CLARENS: On the issue of
24 the letter of Ms. Ambrose, I've asked the Director
25 to write Ms. Ambrose a response on behalf of the
26 Commission informing her that it is the Commission's

1 responsibility to employ a director of the Office of
2 Zoning, and it is the Director of the Office of
3 Zoning responsibility to hire the rest of the staff
4 of the Office of Zoning.

5 So it is not the Commission's
6 responsibility nor authority to hire individual
7 members of the staff.

8 MS. KRESS: And I've written that down.
9 I'll take care of that.

10 CHAIRPERSON CLARENS: Okay. If I don't
11 hear any other business, I am ready to adjourn.
12 Hearing none, this meeting is adjourned.

13 (Whereupon, the foregoing matter went
14 off the record at 4 :55 p.m.)