

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

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MONDAY,
NOVEMBER 8, 1999

- - - - -

The meeting was held at 1:30 p.m. in the office of the Zoning Hearing Room, 441 Fourth Street, Suite 220, N.W., Washington, DC 20001, Anthony J. Hood, Chair, presiding.

BOARD OF ZONING COMMISSION PRESENT:

ANTHONY J. HOOD,	Chair
HERBERT M. FRANKLIN,	Commissioner
KWASI HOLMAN,	Commissioner
CAROL H. MITTEN,	Commissioner
JOHN G. PARSONS,	Commissioner

OFFICE OF ZONING STAFF PRESENT:

ALAN BERGSTEIN,	Office of the Corporation Counsel
STEFANIE BROWN,	Office of Zoning
DAVID COLBY,	Office of Planning
VINCENT ERONDU,	Office of Zoning
KENNETH KARKEET,	Office of Zoning
JERRILY KRESS,	Office of Zoning

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AGENDA

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

2 1:30 p.m.

3 CHAIR HOOD: Good afternoon, ladies and gentlemen.

4 This is the regular monthly meeting of the D.C. Zoning
5 Commission, Monday, November the 8th, 1999 at 1:30 p.m. in the
6 Hearing Room Suite 220.

7 This afternoon joining me are Commissioners
8 Franklin, Mitten, Holman and Parsons. And I'm Anthony J. Hood,
9 Vice Chair to D.C. Zoning Commission.

10 I'd like to take a personal privilege before we get
11 started to welcome our new Commissioners. Commissioner Mitten and
12 Commissioner Holman, on behalf of the Commissioner we're forward
13 to a good working relationship and we're glad you joined us.

14 Moving right along with our agenda, we'll go to
15 preliminary matters.

16 MS. KRESS: Thank you. Good afternoon.

17 In front of you are the two NCPC reports, dated
18 November 5th. One was received late Friday, one this morning. And
19 we'll discuss that when we get to the Walter Washington Estates
20 and Florida Rock.

21 Also front of you, for the Commissioners who were
22 not sent the full package on Florida Rock, for purposes of
23 discussion is the proposed action, findings of fact/conclusions of
24 law and decision on Florida Rock.

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1 Also, finally, in front of you it came to our
2 attention that part of the transcript was missing regarding the
3 Sua Sponte, and the missing pages are also in front of you.

4 In addition, I would just like to say Alberto
5 Bastido had to return to the hospital last week for some
6 additional emergency surgery and is still in the hospital, and
7 we're not expecting him back for at least another week. It is our
8 understanding that he is doing well and recuperating nicely, but
9 we wanted to let the Commission know so that if anything comes up,
10 please call myself or the other Zoning Commission staff
11 technicians.

12 Finally, the work is underway. We worked all
13 weekend trying to finish up preparing for today, but we were not
14 able to. And so please forgive us for the mess that we have.
15 We're getting there, but we need another couple of days.
16 Hopefully, by the next meeting we have here our offices will be in
17 appropriate shape.

18 With that, I'll turn it back to you, Mr. Chairman.

19 CHAIR HOOD: Thank you, Ms. Kress.

20 Let's keep Mr. Bastido in our prayers and let's
21 govern ourselves according.

22 MS. KRESS: Thank you.

23 CHAIR HOOD: The action our minutes, these are the
24 minutes of our October the 18th meeting. Let's take a minute to

1 look through them and I would like to entertain a motion to adopt.

2 COMMISSIONER PARSONS: I move we adopt them as
3 written.

4 CHAIR HOOD: It's been moved.

5 COMMISSIONER FRANKLIN: Seconded.

6 CHAIR HOOD: It's moved and properly second.

7 All those in favor by the usual sign of voting?

8 (Whereupon, vote taken)

9 MS. KRESS: I would record the vote as, well it's
10 actually three because -- it would 3 to zero to 2; two
11 Commissioners not having attended the meeting or participating in
12 the minutes. So it would be Commissioner Franklin and Parsons.

13 CHAIR HOOD: Ms. Kress, you may want to turn your
14 mic on.

15 MS. KRESS: Sorry. You're correct. Thank you.

16 Who seconded the motion.

17 CHAIR HOOD: It was seconded by Commissioner
18 Franklin.

19 MS. KRESS: Okay. Thank you.

20 CHAIR HOOD: Okay. Thank you.

21 Let's move right along with our agenda. There's no
22 proposed action, no hearing action. Final action, Ms. Kress.

23 MS. KRESS: First on our agenda is the Walter
24 Washington Estates, and as I mentioned the NCPC report if you

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1 would like to take a quick minute to look at it; we did not
2 receive until late and so it was not in your package. But,
3 basically, the NCPC report found that the proposed modification
4 would not adversely effect the federal establishment or other
5 federal interests, nor be inconsistent with the comprehensive
6 plan.

7 I do also have several comments on the draft.
8 There are quite a few typos and there are a few, I believe,
9 changes that need to be made that are of a little more significant
10 stance, particularly under the decision on page 6. I don't know
11 whether you would want me to go through those now or whether you'd
12 rather discuss the case and prepare your vote prior to going over
13 some of the details in error.

14 I will just say that basically it is not of
15 information that's substantive that hasn't been heard. All of
16 these issues have been heard and it's more a matter of just
17 clarification for purposes of the vote.

18 CHAIR HOOD: Okay. I think what we'll do, if it's
19 okay with my fellow Commissioners, we can discuss. If you have
20 any problems, we're open for discussion. Try to fine tune some of
21 the things that we see as opposed to the areas in spelling, and
22 some other things that need to be tightened up by staff. But
23 basically if we can just get to the meat of what's in the language
24 and just open it for discussion.

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1 MS. KRESS: I would just also double check and see,
2 right now there are only 3 Commissioners that are able to vote on
3 this; our 2 new Commissioners have not heard this case or read the
4 record, to my knowledge.

5 CHAIR HOOD: Well, in that case, Ms. Kress, I do
6 have some things. Fellow Commissioners, but I wanted to open it
7 up for other Commissioners.

8 MS. KRESS: All right.

9 COMMISSIONER PARSONS: I'm ready to dispose of it.

10 CHAIR HOOD: Ready to dispose of it?

11 COMMISSIONER PARSONS: The editorial comments.

12 CHAIR HOOD: Okay. I just have 2 things. On page
13 7B. You can join me on that page, fellow Commissioners.

14 Where it says "the applicant may vary the townhouse
15 floor plans for the 11 additional townhomes from those shown in
16 Exhibit 27. The applicant may also vary all four floor plans and
17 interior components in the community center." Did we really want
18 this to read the way it's read, because we're giving them a lot of
19 flexibility here and actually to be able to change the whole
20 plans? We may want to take a look at that. If you're satisfied
21 with it, then we'll just move forward.

22 COMMISSIONER FRANKLIN: Typically, Mr. Chairman, I
23 don't think we go that deeply into the floor plan arrangements
24 under these kinds of approvals. You know, except in terms --

1 well, I guess to the extent that there's a change in the
2 configuration of bedrooms and sizes, and that sort of thing, but I
3 don't interpret this as intended that way. Perhaps Mr. Parsons
4 whose had more experience can enlighten me.

5 COMMISSIONER PARSONS: I think you're correct, and
6 certainly the use isn't going to change.

7 COMMISSIONER FRANKLIN: Okay.

8 COMMISSIONER PARSONS: It isn't as though they're
9 going to convert this to -- I don't know what else it would be.
10 And there wasn't much testimony or concern about those components.

11 In other words, the community wasn't demanding a theater or
12 something that was provided for.

13 So, I think it is pretty flexible, however.

14 CHAIR HOOD: Okay.

15 COMMISSIONER PARSONS: But I think it's okay in
16 this case.

17 CHAIR HOOD: Okay. Well, we'll move right along.

18 Next, same page alphabet D. And my question when I
19 was in my reading was to Mr. Parsons. Was this what you were
20 referring to as far as the normal binding primary street, trees
21 and whatnot?

22 COMMISSIONER PARSONS: With a couple of
23 typographical --

24 CHAIR HOOD: But other than that, you're satisfied

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1 with it?

2 COMMISSIONER PARSONS: Yes. Single willow oak
3 ought to be 3 to 3 ; it's just a typo. And then in IV the cherry
4 should be 2 to 3.

5 CHAIR HOOD: Okay.

6 COMMISSIONER PARSONS: That satisfies my concern.

7 CHAIR HOOD: We'll let staff take care of that.

8 Without further ado then, I would like to obtain a
9 motion to adopt.

10 COMMISSIONER PARSONS: So moved, Mr. Chairman.

11 CHAIR HOOD: It's moved.

12 COMMISSIONER FRANKLIN: Second.

13 CHAIR HOOD: Moved and proper second. All those in
14 favor by usual sign of voting.

15 (Whereupon, vote taken.)

16 CHAIR HOOD: Staff, could you record the vote?

17 MR. ERONDU: Staff would record the vote as 3 to
18 zero to approve; Commissioners Franklin, Parsons and Hood approve.

19 CHAIR HOOD: Okay. Thank you.

20 Moving right along with our agenda, final action on
21 98-17F (Florida Rock). Ms. Kress?

22 MS. KRESS: Again, the NCPC report is now available
23 for your review. And, for the record, Commissioner Holman and
24 Commissioner Mitten were asked to read the record regarding

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1 Florida Rock, and it is my understanding they have but you might
2 want to have them state that for the record before you continue
3 your discussion.

4 CHAIR HOOD: Thank you.

5 I'm going to ask that our two new Commissioners
6 state for the record that they have read the record on case 98-17F
7 (Florida Rock).

8 COMMISSIONER MITTEN: I have read the record in
9 this case.

10 COMMISSIONER HOLMAN: I have read the record also.

11 CHAIR HOOD: I'm going to ask fellow Commissioners
12 if we can take a minute or so and look over our NCPC report, and
13 then we'll open it up for discussion.

14 I'd like to just open it up for discussion, fellow
15 Commissioners.

16 MS. KRESS: Commissioner Hood, if I could, I just
17 also wanted to say that in front of you is a copy of the proposed
18 order, as I mentioned earlier, and there are two changes that were
19 made at the time of the proposed action that I would just point
20 out for discussion.

21 The first one is a typo. The second one is on page
22 33, and as you real, the 90% was changed to 85% in item 3 at the
23 top of the page following "the 10th anniversary of the conveyance
24 date, development of the Parcel 3 for residential use as shall"

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1 and the word "occur" was changed "commence no later than the time
2 that market rate residential development on Parcel 3 is deemed to
3 be economically feasible. But in any event, not later than 15
4 years after the date that certificates of occupancy for no less
5 than" and the change "85% of the net rental area of the PDD
6 building have been issued by the District of Columbia."

7 CHAIR HOOD: Thank you, Ms. Kress. Could you note
8 those 2 corrections again and which page they were?

9 MS. KRESS: The first one is on page 31, the very
10 top of the page instead of "the decided" should say "the PUD
11 site." That's really more of a typo, but it is a significant
12 difference.

13 CHAIR HOOD: Okay.

14 MS. KRESS: And then the second one is page 33. It
15 is small i3. The word "occur" is "commence" and the "90%" is
16 "85%."

17 COMMISSIONER FRANKLIN: Mr. Chairman, page 33 is
18 not in my packet, but I do recall this discussion.

19 CHAIR HOOD: I do remember the discussion also.
20 It's not in my packet.

21 MS. KRESS: It's not good the changed page is not
22 in your packet.

23 CHAIR HOOD: Okay. Let's open it up for
24 discussion.

1 Mr. Franklin, you want to start us off?

2 MS. KRESS: That's the only page missing.

3 COMMISSIONER FRANKLIN: I'm prepared to adopt.

4 CHAIR HOOD: Mr. Parsons?

5 COMMISSIONER PARSONS: I will continue to oppose
6 this project.

7 CHAIR HOOD: Okay. Ms. Mitten, do you have any
8 comments?

9 COMMISSIONER PARSONS: I will continue to oppose
10 this project.

11 COMMISSIONER MITTEN: I had a few comments. I was
12 interested in the discussion of the feasibility of the residential
13 portion. And I just wanted to make a suggestion about the
14 analysis of the feasibility of the residential development on
15 Parcel 3 in light of the model standards that are going to be
16 attached or included in this if it passes.

17 I'd like to suggest that the basis for the
18 feasibility of the residential development be the actual price at
19 which Parcel 3 transfers to Potomac Investment, which is going to
20 be a total of \$500,000. Typically in feasibility analysis the
21 standard for the land would be that acquisition price at market
22 value at that point in time and the actual investment by Potomac,
23 we know what it's going to be. So, I'd like to have that be the
24 basis for the feasibility standard.

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1 CHAIR HOOD: Okay. So I guess, and you'll have to
2 explain it in a little more detail, what you're asking for us to
3 do is add something to the final order?

4 COMMISSIONER MITTEN: Yes.

5 COMMISSIONER FRANKLIN: Do you have suggested
6 language?

7 COMMISSIONER MITTEN: I do.

8 COMMISSIONER FRANKLIN: Good.

9 COMMISSIONER MITTEN: Now I just have to find where
10 I would suggest that it goes.

11 MS. KRESS: Ms. Mitten, could we perhaps Xerox that
12 to facilitate discussion among the members?

13 COMMISSIONER MITTEN: It's actually just one
14 sentence.

15 MS. KRESS: Okay.

16 COMMISSIONER MITTEN: I'll just read the sentence
17 and then we can decide where it goes.

18 The discussion about feasibility, and then I would
19 just like to suggest that such feasibility analysis would reflect
20 a land value for Parcel 3 of \$500,000.

21 COMMISSIONER FRANKLIN: Could you repeat that,
22 please?

23 COMMISSIONER MITTEN: Such feasibility analysis
24 would reflect a land value for Parcel 3 of \$500,000.

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1 COMMISSIONER FRANKLIN: In other words, what I hear
2 you say is that you don't wish the land value to be appraised at
3 some higher value downstream as a facet of a feasibility analysis?

4 COMMISSIONER MITTEN: That's correct.

5 COMMISSIONER FRANKLIN: Right.

6 COMMISSIONER MITTEN: Because any appreciation is,
7 in part, a result of what they're getting as a total part of the
8 PUD package.

9 COMMISSIONER FRANKLIN: Right. Right. Okay. I
10 think that's a very good observation.

11 CHAIR HOOD: Commissioner Mitten, are you finished
12 or --

13 COMMISSIONER MITTEN: I had just a couple of other
14 things.

15 CHAIR HOOD: Sure.

16 MS. KRESS: What page is that again?

17 CHAIR HOOD: That was page 20.

18 COMMISSIONER MITTEN: I would suggest that it be in
19 terms of the conclusions of law, that it might be added to letter
20 F on page 35.

21 And then while we're at letter F, I think this is
22 appropriate to include. There had been in the findings of fact
23 the suggestion that \$10,000 would be provided. This would be on
24 page 21. \$10,000 would be provided to the Zoning Commission to

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1 acquire some expertise to evaluate the feasibility analysis when
2 it's provided.

3 CHAIR HOOD: Right. Right.

4 COMMISSIONER MITTEN: And I didn't see that in the
5 conclusions of law.

6 CHAIR HOOD: Okay. We're going to need to
7 incorporate that in the conclusions of law, because it is in the
8 findings.

9 MR. BERGSTEIN: Probably belongs exactly where she
10 identified earlier, section F.

11 CHAIR HOOD: Section F. So far we have 2 additions
12 to section F.

13 Staff, are you making those?

14 MS. KRESS: Yes.

15 CHAIR HOOD: Okay.

16 Good points.

17 COMMISSIONER MITTEN: And then I have one final
18 point.

19 CHAIR HOOD: Sure.

20 COMMISSIONER MITTEN: This is just really for
21 clarity and consistency. On page 33 in that section where there
22 has already been an edit, which would be 3, number 3 begins
23 "following the tenth anniversary of the conveyance date
24 development of Parcel 3 for residential uses shall commence," and

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1 so on. And later it really just makes the provision that
2 residential development, this would be on page 34 letter D, of
3 Parcel C may occur earlier than the tenth anniversary. And I
4 would just like to delete on page 33 the words "following the
5 tenth anniversary of the conveyance date" because that almost
6 implies that they have to wait, which is inconsistent with later
7 language.

8 COMMISSIONER FRANKLIN: Mr. Chairman, I agree with
9 that observation.

10 CHAIR HOOD: Okay.

11 COMMISSIONER FRANKLIN: So that number 3 would
12 start with the words "development of Parcel 3," etcetera.

13 COMMISSIONER MITTEN: That's what I would suggest.

14 COMMISSIONER FRANKLIN: Right.

15 CHAIR HOOD: Okay. Those are good points, because
16 I know there was a lot of discussion about those situations.
17 Those are some good points.

18 Are you finished, Commissioner?

19 COMMISSIONER MITTEN: Yes, I am.

20 CHAIR HOOD: Okay. Good.

21 MS. KRESS: Staff has recorded all of those
22 changes.

23 CHAIR HOOD: Okay. Good.

24 Any further discussion?

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1 COMMISSIONER FRANKLIN: Commissioner Mitten's
2 sentence when it is inserted, probably should, since we're going
3 to get more than one feasibility report I gather -- does your
4 earlier comment, Commissioner Mitten, also effect the language on
5 35 in F "On or about the eleventh anniversary of the conveyance
6 date"?

7 COMMISSIONER MITTEN: I believe that's just when
8 the feasibility reports start to come in. Prior to that date it's
9 really just up to the applicant to determine feasibility and
10 whether or not they'll proceed.

11 COMMISSIONER FRANKLIN: So if they proceed, then we
12 don't need a feasibility report, I gather?

13 COMMISSIONER MITTEN: Right.

14 COMMISSIONER FRANKLIN: Okay.

15 COMMISSIONER MITTEN: Ideally, we would never get
16 one.

17 COMMISSIONER FRANKLIN: Right. Okay.

18 COMMISSIONER MITTEN: Could I just make another
19 suggestion?

20 CHAIR HOOD: Sure, go right ahead.

21 COMMISSIONER MITTEN: That the investment, the
22 \$500,000 investment that Potomac Investment will make, that for
23 feasibility purposes it could be \$500,000 in 1999 dollar value.
24 Since moving forward, this will be at least ten years down the

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1 road, and we can have some acknowledgement of the change in the
2 purchasing power of the dollar.

3 CHAIR HOOD: Okay. You want to make sure that we
4 have the value of \$500,000 in 1999 as opposed to ten years later?

5 COMMISSIONER MITTEN: Yes.

6 CHAIR HOOD: Okay.

7 MS. KRESS: Would it be appropriate to add that
8 where we say "such feasibility analysis would reflect a land value
9 for Parcel 3 of \$500,000" and add right there "in 1999 dollars"?

10 COMMISSIONER MITTEN: That's fine. That would be
11 fine.

12 MS. KRESS: Thank you.

13 CHAIR HOOD: Okay. Any further comments?

14 I'd like to obtain a motion.

15 COMMISSIONER FRANKLIN: Mr. Chairman, I'll move the
16 adoption as revised by the discussion today.

17 CHAIR HOOD: It's been moved. Thank you.

18 Second?

19 COMMISSIONER HOLMAN: Second.

20 CHAIR HOOD: Moved and properly second.

21 All those in favor by using usual sign of voting.

22 (Whereupon, vote taken.)

23 CHAIR HOOD: Any opposition? Okay. Could you
24 record the vote?

1 MR. ERONDU: Staff records the vote as 5 to zero --
2 4 to zero. Four to 1, I'm sorry. Commissioner Franklin,
3 Commissioner Holman, Commissioner Mitten, Commissioner Hood adopt
4 and Commissioner Parsons opposed. Thank you.

5 CHAIR HOOD: Okay.

6 COMMISSIONER PARSONS: Mr. Chairman.

7 CHAIR HOOD: Yes, sir?

8 COMMISSIONER PARSONS: I want to highlight in the
9 Planning Commission's report to us, page 2, where they have a
10 related comment. And that has to do with the future of this
11 waterfront and how this building that you have just approved, we
12 have just approved, could set a potential precedent that we would
13 be sorry for -- some of us would be sorry for in the future.

14 And I notice in the paper this morning that Mr.
15 Altman has placed a great deal of emphasis on the waterfront and,
16 as you know, we have spent a great deal of time developing a
17 zoning proposal for this waterfront, which was never implemented
18 by this Commission. So I am hoping that through our persuasion we
19 can get the staff of the Office of Planning to pick up where we
20 left off on the zoning for the overall waterfront and make it one
21 of their highest priorities to bring back to us a proposal for a
22 zoning category on this waterfront here. And I don't know whether
23 we need to do that in the form of a motion or urging them to do
24 that, or relying on newspaper accounts of his enthusiasm for this

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1 waterfront, but I think to allow the private sector to proceed
2 thinking this is going to be the standard on this waterfront would
3 be unfair to all, I think.

4 CHAIR HOOD: I would concur with you, Commissioner
5 Parsons. I think that we need to put it in the form of a vote,
6 and we will ask staff to move as expeditiously as possible so we
7 can have our findings from Office of Planning.

8 So, I would like to obtain a motion if you'd like
9 to make that motion, Commissioner?

10 COMMISSIONER PARSONS: Well, I would ask this
11 Commission then to urge the Office of Planning to undertake zoning
12 for the Anacostia waterfront as its highest priority and its
13 earliest convenience.

14 CHAIR HOOD: Okay. It's moved. Can I get a second?

15 COMMISSIONER HOLMAN: Second.

16 CHAIR HOOD: Moved and properly second.

17 All those in favor by usual sign of voting.

18 (Whereupon, vote taken.)

19 CHAIR HOOD: Any opposition?

20 So ordered.

21 Again, I just want to enumerate to staff that if we
22 can move as expeditiously as possible in a letter to Office of
23 Planning.

24 MS. KRESS: I was going to say, we will draft one

1 immediately.

2 CHAIR HOOD: Thank you.

3 COMMISSIONER FRANKLIN: Just as an observation in
4 passing, Mr. Parsons on page 2 of the NCPC report what particular
5 observation are you drawing our attention to?

6 COMMISSIONER PARSONS: Third paragraph in the
7 Commission action after the bold paragraph.

8 COMMISSIONER FRANKLIN: As a related comment,
9 etcetera?

10 COMMISSIONER PARSONS: Yes.

11 COMMISSIONER FRANKLIN: Well, I interpret that a
12 little bit differently from what you have stated. It says "The
13 Commission notes that matter of right development of Square 708
14 could result in a physical environment inappropriate to the
15 gateway status.

16 COMMISSIONER PARSONS: Right.

17 COMMISSIONER FRANKLIN: I didn't construe that to
18 be anything impliedly criticizing what we're doing on this
19 particular project.

20 COMMISSIONER PARSONS: It's not criticizing what
21 we're doing, it's saying Square 708, which lays between the
22 amenity site and the Florida Rock major site, is open to matter of
23 right development and shouldn't the Commission undertake a zoning
24 action.

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1 COMMISSIONER FRANKLIN: Right. Okay.

2 COMMISSIONER PARSONS: And I'm taking that to the
3 whole waterfront, not just to Square 708.

4 COMMISSIONER FRANKLIN: Okay. To that extent, I
5 agree completely.

6 COMMISSIONER PARSONS: Okay.

7 COMMISSIONER FRANKLIN: I thought I may have
8 misheard what you said.

9 COMMISSIONER PARSONS: Well, I wasn't very clear.

10 COMMISSIONER FRANKLIN: Okay.

11 COMMISSIONER PARSONS: Thank you.

12 CHAIR HOOD: Again, I want to thank my colleagues
13 for taking time to read the NCPC report. The decision came kind
14 of later and also our report information we had to kind of skim
15 through this morning, but it's pretty straight forward.

16 So, without further ado, I'm going to move on the
17 agenda, again, to final action 99-416/16426 (Sua Sponte). Ms.
18 Kress?

19 MS. KRESS: Thank you.

20 The Sua Sponte package in front of you has a draft
21 of a potential decision, but there is no decision make. The
22 choices that you have here today is to, basically, affirm what the
23 BZA has done or to remand it to the BZA for further consideration,
24 or to totally deny their action that they have taken, and

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1 basically to deny the variance that was given.

2 I might ask Alan Bergstein if he would like to add
3 anything, since it was Corporation Counsel who has prepared
4 statements on behalf of both BZA as well as the draft of a
5 possible decision.

6 MR. BERGSTEIN: I think you have stated the choices
7 correctly. The only change that occurred, or it is a substantial
8 one since the Board last looked at this, was that apparently
9 although the decision of the BZA related to a variance there is an
10 argument that has been made, and I think it's conceded by the BZA,
11 that actually the matter before it was more properly stated as a
12 request for a special exception. And therefore, the issue on
13 remand for you is as to whether or not it's appropriate to send
14 the matter back to the BZA to allow the applicant to address the
15 special exception standard since he had been, in essence, directed
16 by the zoning administrator to seek a variance or upon reflection
17 of the record to find that there was no plausible argument that
18 has been made or can be made that would permit you to find that a
19 special exception could be proved even if remanded. And with
20 that, I think that's the choices that you have.

21 CHAIR HOOD: Commissioners, this comes as a letter
22 by a former Commissioner asking us to review our decision made by
23 the Board of Zoning Adjustment, sua sponte review.

24 Now, to my understanding there have only been two

1 or three in so many years, so we have a challenge in front of us.

2 But what I will ask at this point is that we open this up for
3 discussion.

4 COMMISSIONER FRANKLIN: Just a point of
5 information, Mr. Chairman, are the two new Commissioners
6 participating in this? Have they read everything?

7 COMMISSIONER MITTEN: I have read all the
8 information that was provided to me.

9 COMMISSIONER FRANKLIN: Okay.

10 COMMISSIONER HOLMAN: As have I.

11 COMMISSIONER FRANKLIN: Good.

12 CHAIR HOOD: Okay. Yes, Commissioner Franklin,
13 they both have read the record and they will be participating.
14 I'm just going to open it up for discussion.

15 COMMISSIONER MITTEN: I'd be happy to start.

16 CHAIR HOOD: Sure, you can start us off.

17 COMMISSIONER MITTEN: I guess I would say I'm not
18 in favor of remanding this to the BZA because I don't see how,
19 given the rezoning that occurred, there could be a positive result
20 for the applicant on a variance or a special exception. But what
21 it does point up to me is that there's an inconsistency between
22 the rezoning that took place in 1996 rezoning 9 blocks including
23 the one where the property is located and a significant investment
24 on the part of the city in the inspection station down there.

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1 If the theme of the rezoning that took place was to
2 move this out of light industrial uses towards office and mixed
3 use, the investment that took place in the inspection station
4 pulls that back and does not enhance the area for the envisioned
5 redevelopment that the rezoning was meant to implement.

6 So my feeling is that I would be interested in
7 knowing, given what happened in 1996 in the rezoning and given the
8 capital investment that the city has made in the inspection
9 station, how would the Office of Planning take those facts and
10 make recommendations to us? And if the recommendation is that
11 everything is consistent, then there's no action that we would
12 need to take. But I think that we should at least consider
13 whether or not the zoning classifications that were put in place
14 in 1996 are entirely appropriate.

15 CHAIR HOOD: Okay. Commissioner, if I understand
16 you correctly, I believe you're asking for us to ask Office of
17 Planning to give us a report?

18 COMMISSIONER MITTEN: Yes.

19 CHAIR HOOD: Okay.

20 COMMISSIONER PARSONS: Well, I think we need to
21 chat about this.

22 Are you suggesting that the District reinvestment,
23 if you will, was in violation of our zoning or are you asking
24 Office of Planning whether our zoning is valid, or our 1996 zoning

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1 action is valid?

2 COMMISSIONER MITTEN: I'm not suggesting that it's
3 not valid. I'm just suggesting that the landscape in which the
4 rezoning took place has changed. Since that time I don't know how
5 much money was invested in upgrading the vehicle inspection
6 station right across from the property at issue here. So that
7 means that that particular use, the inspection station, is going
8 to be there for the foreseeable future.

9 COMMISSIONER PARSONS: Yes.

10 COMMISSIONER MITTEN: So in light of that, is the
11 zoning that we've initiated and the use restrictions that attend
12 it including not permitting automobile repair, does that make
13 sense now that the landscape has changed? I'd be interested in
14 their opinions about that.

15 COMMISSIONER FRANKLIN: Well, if I'm not mistaken,
16 the inspection station pre-existed.

17 COMMISSIONER PARSONS: It was operational at the
18 time.

19 COMMISSIONER FRANKLIN: It was operational at the
20 time of the zoning.

21 COMMISSIONER PARSONS: And then there was a little
22 bit of scandal with it and it was closed from an operational
23 standpoint. And then they decided to renovate it and it's now
24 open again.

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1 COMMISSIONER FRANKLIN: Right.

2 COMMISSIONER PARSONS: But I think the issue here
3 is allowing that kind of, not accessory use, but community --
4 certainly repair shops could open all around this. Our objective
5 is to enhance South Capital Street and this whole corridor to the
6 river and anything that would stand in the way of that would be
7 troublesome, as far as I'm concerned.

8 So, if you're suggesting that maybe we revisit the
9 blocks immediately around it, I would have a problem with that.
10 But if you're suggesting we carve out this facility of the
11 District of the Columbia and put it into a different zone, is that
12 where you think this might go?

13 COMMISSIONER MITTEN: Well, since we're here, I'll
14 just ask you. How do you reconcile the inspection station, new
15 and improved and sure to be there for a while, with the idea of
16 promoting office development and so on in this location? How can
17 we reconcile those things?

18 COMMISSIONER PARSONS: Well, I would look at it as
19 a firehouse or a library, or any other kind of public facility;
20 that is, there's no to me obnoxious quality about this that would
21 stand in the way of office development. It's people queuing up to
22 go in and have their cars inspected, but it's like a more
23 obnoxious public purpose that could exist there.

24 So, what I'm worried about is uses that may

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1 assemble around that to feed off of it creating the problem as
2 opposed to the operation itself.

3 CHAIR HOOD: May I just interject.

4 COMMISSIONER PARSONS: An Office of Planning report
5 would be fine, I guess.

6 CHAIR HOOD: Let me just interject, that we also
7 have to keep in mind that on the corner of M Street, on that
8 corner, there's a repair facility for the fire trucks.

9 COMMISSIONER PARSONS: Yes.

10 CHAIR HOOD: So, you know, that whole area, and I
11 would have to say that we may need to go back to Office of
12 Planning because when the Zoning Commission set the zones earlier,
13 I'm sure that someone on the Commission had the foresight in
14 trying to make that area viable. And for us to start allowing
15 this if special exception or whichever way, I believe the next
16 person will come back for a special exception. You'll have one on
17 one side of the street, one down the street,

18 COMMISSIONER PARSONS: Sure.

19 CHAIR HOOD: And from a business perspective,
20 that's the ideal place because when you get rejected coming
21 through the inspection station, you just go right across the
22 street.

23 COMMISSIONER PARSONS: That's right.

24 CHAIR HOOD: See the repair shops. So I think we

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1 really need to look at that. I'm in consensus, personally going
2 with the Office of Planning. But in midstream, I don't know
3 whether we'll be holding this decision up, or does that operate.
4 But I want to hear from other Commissioners.

5 MS. KRESS: The decision is held up at this point.

6 Nothing will go ahead or be completed if you decide to wait to
7 allow time for an Office of Planning report.

8 CHAIR HOOD: Well, let me ask fellow Commissioner,
9 are we in agreeance with that? Everyone. Commissioner Franklin?

10 COMMISSIONER FRANKLIN: Well, I don't know whether
11 I was involved in that '96 decision or not, but I would be willing
12 to revisit it, frankly, because you're very close to the freeway
13 and I'm not all that convinced that C-3 is going to be very
14 realistic at that location. But, you know, that's a long process
15 and this applicant is not going to get much satisfaction out of
16 revisiting this because everything is held in obedience and it
17 could take many, many, many months for us. Unless the Office of
18 Planning comes back and basically says the zoning is right and
19 this is wrong, in which case I guess we'd have the basis for being
20 a little bit more clearheaded about what to do about this.

21 CHAIR HOOD: Any other discussion, Commissioners?

22 COMMISSIONER HOLMAN: I guess I would say that I'm
23 just not very optimistic given the current zoning that the
24 applicant's going to be successful period. So, short of looking

1 at a rezoning, I don't see any option except to reject it. That's
2 my dilemma.

3 CHAIR HOOD: Okay. So I guess what I'm hearing is
4 that we're going to Office of Planning to look at the area. But
5 before that, we still have the sua sponte review in front of us,
6 and I think we need to act on it one way or the other.

7 MS. KRESS: You can leave it. You can ask for an
8 Office of Planning report, which hopefully could be done in one
9 month, and postpone this to your next regular meeting, if you so
10 wish.

11 CHAIR HOOD: I think that would be the best way for
12 us to proceed. If we can get a report from the Office of Planning
13 and delay this until our next monthly meeting. Is that okay with
14 my fellow Commissioners?

15 COMMISSIONER MITTEN: Yes.

16 COMMISSIONER FRANKLIN: Yes.

17 CHAIR HOOD: Okay. Do we need to take a motion or
18 can we do it on consensus? I think we'll do it on consensus.

19 COMMISSIONER PARSONS: Thank you. This is my first
20 time.

21 Okay. Moving along with the agenda, we'll now go
22 to final action 96-16 (Prevocational School Site). Ms. Kress?

23 MS. KRESS: That is in front of you in final form
24 with a final few typos, but it is pretty much ready for your

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1 decision and final action.

2 COMMISSIONER FRANKLIN: Are the typos relative to
3 the years?

4 CHAIR HOOD: We'll ask staff to take care of the
5 typos.

6 COMMISSIONER FRANKLIN: Well, it seems to me
7 they're quite crucial.

8 CHAIR HOOD: Right.

9 COMMISSIONER FRANKLIN: It seems to me that the
10 wrong years are stated in the order.

11 MS. BROWN: I will change the years also.

12 COMMISSIONER FRANKLIN: I take it that 1999 should
13 be 2001?

14 MS. BROWN: That's correct. Yes.

15 COMMISSIONER FRANKLIN: And the other one should be
16 2002 instead of 2000?

17 MS. BROWN: Yes.

18 MS. KRESS: There's also a sentence, and I'm sorry
19 I'm trying to find my copy here, that we wanted to leave out. We
20 discussed that, Commissioner Hood. Perhaps you can, I'm not
21 finding my copy.

22 CHAIR HOOD: In paragraph 4 on page 2 the last
23 line, we wanted to omit because normally you have 2 years to file
24 and 1 year to start work. Here I think we're giving more time

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1 than it should be the way it's worded. So we would like to --

2 MS. KRESS: Actually less. I'm sorry, I just found
3 my copy. Excuse me.

4 The way it's written right now it says 2 years and
5 then included in that is sufficient time to secure all required
6 government agency approvals. So that actually would be shorter
7 than what is stated in the third to last paragraph where you're
8 talking about 2 years that you have to file for a permit and then
9 another year after you've filed to start construction. So
10 actually, if you had to have all your government approvals,
11 meaning the permit in hand, that would be much less time
12 tentatively. But there seems to be a conflict between the 2
13 paragraphs, and so the suggestion is that in the fourth paragraph
14 the period is added right after "time to finalize its negotiations
15 to obtain sufficient project financing." And then the words "and
16 time to secure all required government agency approvals for the
17 project" is eliminated. It's extraneous anyway.

18 And then later it says in the sixth paragraph, it
19 mentions the 2 years the building permit and then the construction
20 a year later, which is our standard.

21 CHAIR HOOD: Okay. In keeping consistent what the
22 Zoning Commission has done in the past, I think we will make that
23 change. Also, the change that Commissioner Franklin on the date.

24 And also any other typos. There was one more I saw, I think.

1 Okay.

2 Any further discussion? Okay. With that, I'll
3 obtain motion of final action.

4 COMMISSIONER PARSONS: I move we adopt this as
5 edited here today.

6 COMMISSIONER FRANKLIN: Second.

7 CHAIR HOOD: It's been moved and properly seconded.

8 All those in favor by usual sign of voting.

9 (Whereupon, vote taken.)

10 CHAIR HOOD: Any opposition?

11 Staff can record the vote.

12 MR. ERONDU: Staff records the vote as 3 to zero to
13 adopt as corrected. Commissioner Parsons, Franklin, Commissioner
14 Hood approved. Thank you.

15 CHAIR HOOD: And also if Commissioners Mitten and
16 Holman can be recorded as not voting, not having participated.

17 MR. ERONDU: Yes.

18 CHAIR HOOD: Moving right along with our agenda,
19 consent calender. Ms. Kress?

20 MS. KRESS: We don't have anything on the consent
21 calender.

22 CHAIR HOOD: Okay. Our status report, Office of
23 Planning.

24 MS. KRESS: We did not have one in our package this

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1 month.

2 MR. COLBY: All right. I believe we prepared one,
3 but it may not have made it into the package.

4 MS. KRESS: Do you have it here today? We just --

5 MR. COLBY: No, I don't and the changes were fairly
6 minor so, it's not a big loss I think to the Commission. And we
7 will have one for December.

8 MS. KRESS: All right.

9 CHAIR HOOD: We hope that next time that we will
10 have a Office of Planning report because without a plan sometimes
11 you can wind up going on long roads.

12 Let's move right along. Legislative report,
13 there's none.

14 Litigation, there's none.

15 Correspondence, there's none.

16 Report of Secretary, none.

17 Report of Director, Ms. Kress.

18 MS. KRESS: Basically, my report I gave as a part
19 of the preliminary matters. I would only add that also not
20 included in the package was the upcoming Zoning Commission
21 schedule. And I would only remind everyone, since only
22 Commissioner Hood was at the meeting last Thursday for the
23 postponements, that November 18th has preliminarily scheduled to
24 continue the L Street part of the zoning consistency case and

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1 January 6th has been scheduled as the continuation of the DOES and
2 the Woodies portions of the zoning consistency case. And I just
3 wanted to bring that to the Commissioners' attention so they could
4 double check their schedule and see if that was in line, because
5 that's what we did announce to the public on Thursday.

6 COMMISSIONER PARSONS: Mr. Chairman, I should
7 report I will not be here on the 18th.

8 COMMISSIONER FRANKLIN: The same with me.

9 CHAIR HOOD: Okay. We have two Commissioners who
10 are not going to be with us on the 18th.

11 COMMISSIONER HOLMAN: I have a conflict as well on
12 the 18th. I may be able to resolve it.

13 MS. KRESS: Well, perhaps we want to consider
14 another date. Basically Office of Planning requested all of these
15 extensions and the L Street portion of the case they requested 2
16 weeks. They did not request a specific date.

17 CHAIR HOOD: My concern is have we advertized
18 November the 18th?

19 MS. KRESS: Not advertized. Basically you stated
20 it on the podium and so, as you know, the room wasn't full of
21 people.

22 CHAIR HOOD: Standing room only.

23 MS. KRESS: So I think that we could get the
24 information around if we wanted to change that date to suit

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1 everyone's schedule.

2 CHAIR HOOD: Okay. All right. Do we need to look
3 for another date now?

4 MS. KRESS: I would suggest that while you everyone
5 here. Basically the request was 2 weeks from last Thursday, this
6 past Thursday.

7 CHAIR HOOD: Okay. Can we come up with some
8 tentative dates that we could throw out?

9 MS. KRESS: Well, 2 weeks from the 4th is the 18th,
10 but you could meet on the 22nd, the following Monday.

11 The 25th is not a good choice, because that's
12 Thanksgiving Day and I think most of us will be somewhere else.

13 The other possibility is then the 29th of November.
14 So it's the 22nd, the 29th and then you're into December 2nd,

15 COMMISSIONER PARSONS: Any of those would be all
16 right with me.

17 CHAIR HOOD: Keeping in tune with acquisitions
18 being said that we're not moving expeditiously, hopefully we can
19 move that date sooner than later. So, I would open it up to the
20 Commissioners.

21 MS. KRESS: Why don't you check the 22nd, then that
22 only be --

23 COMMISSIONER FRANKLIN: Is this something that
24 requires a hearing?

1 MS. KRESS: This is the zoning consistency case
2 that involved Woodies, the DOES and there's a portion of it that
3 the L Street --

4 COMMISSIONER FRANKLIN: Oh, I understand about that
5 Woodies. You set that for January 6th.

6 MS. KRESS: No. The L Street portion is what we're
7 talking about.

8 COMMISSIONER FRANKLIN: The L Street portion being
9 much less complicated.

10 MS. KRESS: Much less complicated, yes. Much less
11 complicated.

12 COMMISSIONER FRANKLIN: Does that require a
13 hearing?

14 MS. KRESS: I believe it requires a hearing to
15 allow the public to testify and for you to receive information.

16 COMMISSIONER FRANKLIN: Could we combine that with
17 a Monday meeting?

18 MS. KRESS: I just wanted to check our December.
19 Let me see our December meeting.

20 COMMISSIONER FRANKLIN: It seems to me, frankly,
21 it's a very thin hearing, I mean as I see the case. I'm not aware
22 of any opposition.

23 MS. KRESS: I would just say that the attorneys
24 that are representing the folks affected by the L Street portion

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1 were very disappointed that it was extended. They did not wish it
2 extended. They went along with it because of Office of Planning's
3 request.

4 Essentially, if we put it off to December 13th,
5 which is our next Zoning Commission meeting, that's basically
6 almost a month. So, I would just say that for your information.

7 CHAIR HOOD: I believe that we want to try to
8 dispose of this or deal with this as early, again, sooner better
9 than later so we can start setting the trend that we are trying to
10 take care of the business at hand.

11 The 22nd of November? Commissioner Franklin?

12 COMMISSIONER FRANKLIN: Yes, I'm available.

13 CHAIR HOOD: Commissioner Mitten?

14 COMMISSIONER MITTEN: I'll probably be out of town
15 if it's an evening meeting. That's an evening meeting, right?

16 COMMISSIONER PARSONS: That's an evening, yes.

17 COMMISSIONER MITTEN: Yes, I'm out of town.

18 CHAIR HOOD: Okay. And I'm trying to accommodate
19 so we all could be here. What if we move it to -- what is the
20 next date, the 29th, I believe?

21 MS. KRESS: Yes.

22 COMMISSIONER MITTEN: Could I ask what might be a
23 naive question, but are we allowed to use other days of the week
24 besides Monday and Thursday?

1 MS. KRESS: Yes, it's just that traditionally it
2 has been Monday evenings and Thursday evenings have been
3 concerning Commission meetings, but certainly you can make any
4 evening.

5 COMMISSIONER MITTEN: I mean, I'm just thinking if
6 we're having trouble the Mondays and Thursday, maybe we could try
7 something else.

8 CHAIR HOOD: I will be frankly honest. I'm sure a
9 number of other Commissioners wear different hats and when I took
10 on this challenge Mondays and Thursdays I made sure were open and
11 Tuesdays, Wednesday and Thursday I know myself personally I'm
12 involved in a lot of other things in the city. And Mondays and
13 Thursdays I have set aside for the Zoning Commission.

14 I mean, we could try to find one that's comfortable
15 for all of us. I'm willing and open for anything.

16 COMMISSIONER HOLMAN: Did we try the 29th?

17 CHAIR HOOD: The 29th?

18 COMMISSIONER MITTEN: The 29th works for me. The
19 29th works for me.

20 CHAIR HOOD: The 29th works for you. Okay. All
21 right. So we're in agreement.

22 So we will deal with the DOES site on 13th and L
23 Street site on the 29th of November at 7:00 p.m. here in the
24 Hearing Room.

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1 MS. KRESS: And we probably would ask that one of
2 the Commissioners is available on the 18th I think we'll have to do
3 the formal continuance, because we did announce that. So, one
4 Commissioner needs to be available on that Thursday night to
5 officially postpone it.

6 CHAIR HOOD: Okay. I will come down on the 18th and
7 officially postpone, unless one of the other Commissioners would
8 like to do that. It's standing room only.

9 Okay. Moving right along with our agenda, so we
10 have it set for the L Street on November the 29th at 7:00 p.m. and
11 we will do a continuance of the hearing. I will come down on
12 November the 18th and continue it.

13 MS. KRESS: Thank you.

14 CHAIR HOOD: Other business?

15 The only thing that I wanted to bring up was due
16 the changes in the Zoning Commission we have to eventually do a
17 formal election. I wanted to know whether or not, and I'm going
18 to open this up for discussion, whether we wanted to deal with it
19 today or postpone it and deal with it in executive session, or
20 deal with it at the next monthly meeting.

21 COMMISSIONER PARSONS: I would think the next
22 monthly meeting would be appropriate.

23 CHAIR HOOD: Okay.

24 COMMISSIONER HOLMAN: I concur.

1 CHAIR HOOD: Okay. We will deal with that at the
2 next monthly meeting.

3 Is there anything else that should be before us?
4 If everything is in order, I would adjourn this meeting.

5 (Whereupon, the meeting was adjourned at 2:34 p.m.)
6