

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1105TH MEETING SESSION (11th OF 2000)

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MONDAY
NOVEMBER 13, 2000

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The Regular Meeting of the District of Columbia Zoning Commission convened at 12:00 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairperson
CAROL J. MITTEN	Vice Chairperson
HERBERT M. FRANKLIN	Commissioner
KWASI HOLMAN	Commissioner
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Alberto Bastida,	Secretary, ZC
Gerald Forsburg,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Andrew Altman, Director	Office of Planning
Ellen McCarthy,	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Marie Sansone, Esq.

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

2:01 p.m.

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the D.C. Zoning Commission, Monday, November 13, 2000, at 2:00 p.m.

I want to apologize to you for the lateness of us getting started. We are going to try to move this meeting as expeditiously as possible.

Joining me this afternoon are Commissioners Mitten, who serves as Vice Chair, Holman, Franklin, and Parsons.

Mr. Bastida, do we have any preliminary matters?

SECRETARY BASTIDA: The Office of Zoning has no preliminary matters.

CHAIRPERSON HOOD: I just have a few. I want to move the agenda. I'm going to ask that we put under Other Business Emergency Rulemarking Zoning Commission Case No. 00-28T, make that C under Final Action.

Also, under the Consent Calendar we having Zoning Commission Case No. 00-31TE, Time Extension of the Conference Center. We have a letter, colleagues, asking us to postpone that until our December meeting. If that's in agreement with everyone, we'll do that. So noted.

Mr. Bastida, am I missing anything else?

SECRETARY BASTIDA: No, Mr. Chairman, that I know of.

1 CHAIRPERSON HOOD: At least not yet. I wanted to try
2 to put that in front of things.

3 Moving right along with our agenda, colleagues, we
4 have the action on our minutes.

5 SECRETARY BASTIDA: The staff of the Office of Zoning
6 has provided you with the minutes of October 16 and request
7 approval of those minutes.

8 COMMISSIONER FRANKLIN: Mr. Chairman, I have a couple
9 corrections.

10 CHAIRPERSON HOOD: Okay.

11 COMMISSIONER FRANKLIN: On page 3, item C, having to
12 do with the set down on the eastern side of Connecticut Avenue, I
13 believe that should say by a vote of 5 to nothing since Mr.
14 Parsons voted to hear by proxy rather than 4 to nothing.

15 CHAIRPERSON HOOD: Okay.

16 COMMISSIONER FRANKLIN: And on page 4, Roman VII on
17 Proposed Action on Kennedy Warren, the first paragraph should be
18 stricken. Commissioner Mitten did not recuse herself from the
19 Kennedy Warren matter. That sentence should be added to the next
20 item on final action dealing with the solar building.

21 CHAIRPERSON HOOD: Okay. Commissioner Franklin, that
22 was taken care of. We had an additional minutes that were
23 provided to us.

24 COMMISSIONER FRANKLIN: Oh, really? Okay.

25 CHAIRPERSON HOOD: I know that second one was taken

1 care of. Was the first one taken care of?

2 SECRETARY BASTIDA: I believe so, Mr. Chairman.

3 CHAIRPERSON HOOD: Okay. If not, if we could correct
4 the minutes.

5 COMMISSIONER FRANKLIN: Fine.

6 CHAIRPERSON HOOD: Okay. With that, any other
7 corrections or changes? I would like to get a motion to approve
8 the minutes.

9 COMMISSIONER HOLMAN: So moved.

10 CHAIRPERSON HOOD: It's been moved. And second?

11 VICE CHAIRPERSON MITTEN: Second.

12 CHAIRPERSON HOOD: It has been moved and properly
13 seconded. All those in favor by using the sign of voting.

14 ALL: Aye.

15 CHAIRPERSON HOOD: Any opposition? So ordered.

16 Staff, will you record the vote.

17 SECRETARY BASTIDA: The staff will record the vote
18 five to zero to approve the minutes. Mr. Holman moving it and Ms.
19 Mitten seconded it. The rest of the commission voted in the
20 affirmative. Thank you.

21 CHAIRPERSON HOOD: Colleagues, we have next on our
22 agenda the status report. I want to ask Ms. McCarthy to be brief
23 but I'm going to ask us basically let it come from us if we have
24 any questions we can ask of Ms. McCarthy. With that, I will turn
25 it over to the Office of Planning, Ms. McCarthy.

1 MS. MCCARTHY: Since the Office of Planning has
2 submitted our calendar of activities or schedule, why don't I just
3 only comment if you've got any questions about the specific items
4 that are listed there.

5 COMMISSIONER FRANKLIN: I do have one, Mr. Chairman.

6 CHAIRPERSON HOOD: Commissioner Franklin.

7 COMMISSIONER FRANKLIN: On the project named
8 Friendship Heights Action, etc., awaiting metro decision. What
9 does that mean?

10 MS. MCCARTHY: There is a parcel that metro bus
11 garage, the western bus garage, that is out for bid right now by
12 metro. There are four potential bidders and each of the bidders
13 would require a planned unit development to go forward with their
14 design.

15 We know that at some point it will be coming to us so
16 we just put it on the schedule so we try to leave some resources
17 available when that occurs. That decision is supposed to take
18 place shortly.

19 COMMISSIONER FRANKLIN: Thank you.

20 CHAIRPERSON HOOD: Colleagues, any other questions of
21 the Office of Planning? Okay. No questions.

22 Thank you, Ms. McCarthy.

23 Next on our agenda we have Hearing Action, Zoning
24 Commission Case No. 00-22P, 1400 Block of Church Street, N.W..
25 Office of Planning.

1 MS. MCCARTHY: Mr. Chairman, why don't I just review
2 this very briefly. If you have more questions about details,
3 please feel free.

4 The bottom line is that the ANC had requested that the
5 Commission set down for public hearing a proposal to down zone a
6 portion of the uptown arts overlay that was centered around -- it
7 was written generally but it basically applied to church street
8 because of the width of that street, the north and south sides of
9 Church Street.

10 The Office of Planning, after reviewing that very
11 carefully and understanding the concerns of the ANC about making
12 sure that the heights of the buildings in the Church Street area
13 were appropriate to the historic buildings that were around there,
14 felt that we would recommend against set down of that and that we
15 would instead --

16 The reason that we were recommending against set down
17 was, No. 1, because when the Commission enacted the uptown arts
18 overlay it had specifically considered that request and had dealt
19 with it by requiring that any buildings that abutted a lower-scale
20 residential area should be set back at the 50-foot level to
21 provide light and air to those buildings so that, first of all,
22 the Commission really had considered this idea and had rejected it
23 in the past. Secondly, we worked closely with the
24 Historic Preservation Review Board staff and the board members.
25 At their most recent meeting the board in the staff report and as

1 dicta from the bench the board clearly established a provision
2 that they felt that 50 feet, which is what the ANC was asking for
3 in their overlay, that 50 feet be established essentially as the
4 limit for the northern side of Church Street which protects the
5 lower scale town houses that are on the Q Street of that area.

6
7 The last item that I think is relevant to mention is
8 that there has been considerable development activity along Church
9 Street. There are now three projects that have been approved by
10 the Historic Preservation Review Board all of them with support
11 from the community.

12 Our concern was if the board were to set this down for
13 a public hearing, it immediately freezes all of those projects
14 which had already been supported for approval and we felt would
15 have a really seriously untoward effect on what are some very
16 desirable development projects for the neighborhood. We are
17 recommending against set down on that proposal.

18 CHAIRPERSON HOOD: Colleagues, we've heard the report
19 of the Office of Planning. OP's report is recommending us not to
20 set this down. Any questions of OP or, colleagues, how would you
21 like to proceed? Any comments?

22 COMMISSIONER PARSONS: I concur with the Office of
23 Planning in this good evaluation that they provided for us,
24 especially the attachments of the Historic Preservation Review
25 Board. Things seem to be going well and we would just disrupt it.

1 I would move that we deny the petition.

2 COMMISSIONER HOLMAN: I would second that.

3 CHAIRPERSON HOOD: It's been moved and seconded. Is
4 there any further discussion? All in favor use the sign of
5 voting.

6 ALL: Aye.

7 CHAIRPERSON HOOD: Any opposition? So ordered.

8 Staff, would you record the vote.

9 SECRETARY BASTIDA: The staff would record the vote to
10 adopt the Office of Planning recommendation not to set it down for
11 a hearing. Mr. Parsons moved it and Mr. Holman seconded it. The
12 rest of the Commission has voted in the affirmative not to set it
13 down for a hearing.

14 CHAIRPERSON HOOD: Okay. Believe it or not, I made
15 one mistake. We were supposed to waive the Office of Planning's
16 report. I guess that's an order if we can do it now.

17 SECRETARY BASTIDA: Yes.

18 CHAIRPERSON HOOD: Okay. Colleagues, by general
19 consensus any problems? Okay. So waived. So noted.

20 SECRETARY BASTIDA: Thank you, Mr. Chairman.

21 CHAIRPERSON HOOD: Are we looking at Final Action, Mr.
22 Bastida?

23 SECRETARY BASTIDA: Yes. We have three final actions
24 as the Chair as moved. The first one is the minor clarification
25 regarding request for party status. The common period on the

1 proposed rulemaking has expired.

2 You have an order in front of you which addresses the
3 comments that the Office of Zoning had received. The Office of
4 Zoning requests that the Commission approve the final rulemaking.

5 CHAIRPERSON HOOD: Mr. Bastida, we have a letter from
6 Ms. Dianne L. Olson.

7 SECRETARY BASTIDA: Correct. That is addressed in the
8 proposed rulemaking -- proposed final rulemaking.

9 CHAIRPERSON HOOD: Okay. We turned that over to
10 corporation counsel, I believe. Right?

11 SECRETARY BASTIDA: Yes. If you want further
12 elaboration, corporation counsel will be glad to do so.

13 CHAIRPERSON HOOD: I would like for them to just put
14 something on the record.

15 SECRETARY BASTIDA: Marie, will you, please?

16 MS. SANSONE: Yes, Mr. Chairman. Ms. Olson raised
17 some concerns. As she read the Notice of Proposed Rulemaking, she
18 seemed to believe that we were changing the criteria or proposing
19 to change the criteria for granting party status.

20 The criteria remain exactly the same in the board's
21 rules and in the Commission's rules. That is, that the person
22 requesting party status has the burden of demonstrating that they
23 are more significantly uniquely or distinctively impacted than
24 other persons in the general public.

25 There was no change in the criteria as they remain.

1 To clarify that in this draft Notice of Final Rulemaking we've set
2 out the rule to show the portions that have been stricken out and
3 the portions that are being added.

4 You can see there is no substantive change in the rule
5 whatsoever. The only change is that persons requesting party
6 status will have to address that requirement in writing at the
7 time they put in their request for party status.

8 Ms. Olson also raised other concerns regarding the way
9 the party status rule works. Its impacts on neighborhood groups
10 or organizations attempting to represent the public interest or
11 represent vulnerable members of the community.

12 We thought that she made very good comments that would
13 be the subject for much more in depth study of the rule and the
14 requirements of standing.

15 Our office is recommending that you go ahead with this
16 rule at this time because we are not making any substantive
17 changes and this would make our procedures at the hearings more
18 efficient if people addressed these requirements ahead of time and
19 not have to consume so much time at the public hearings.

20 CHAIRPERSON HOOD: Okay. Colleagues, we've heard the
21 report from corp. counsel. We are aiming to make our hearings a
22 lot more efficient. With that, I'll open it up for any discussion
23 or for a motion.

24 VICE CHAIRPERSON MITTEN: I just wanted to make one
25 small clarification which is on page 2 in the second paragraph.

1 It makes reference to two sections of 11 DCMR and the second
2 reference which is 3106.4 I believe should be 3106.3. Other than
3 that I would move adoption of the Notice of Final Rulemaking and
4 Order No. 928.

5 CHAIRPERSON HOOD: Can I get a second?

6 COMMISSIONER FRANKLIN: I'll second it.

7 CHAIRPERSON HOOD: It's been moved and properly
8 seconded. All those in favor by using the sign of voting.

9 ALL: Aye.

10 CHAIRPERSON HOOD: Any opposition? So ordered.

11 Staff, would you record the vote.

12 SECRETARY BASTIDA: Yes, the staff will record the
13 vote at five to zero. Ms. Mitten moved it. Mr. Franklin seconded
14 it. All the rest of the Commission is voting in the affirmative.

15 Thank you, Mr. Chairman.

16 CHAIRPERSON HOOD: Next on our agenda we have item B
17 which is Rescind Zoning Commission Emergency Rulemaking on Zoning
18 Commission Case No. 00-26M.

19 Mr. Bastida, I'm going to turn it over to you. Also
20 we want to hear from corporation counsel.

21 SECRETARY BASTIDA: Right. You have received a
22 proposed emergency rulemaking to rescind the order and the
23 corporation counsel will elaborate on the legal aspects of it.

24 MR. BERGSTEIN: Thank you. The Commission may
25 remember at its last meeting it received an application to rezone

1 this area from unzoned to C2C and that the Commission voted to
2 adopt that zoning change as an emergency rule.

3 After the Zoning Commission took that action, the
4 applicant advised staff of the existence of a 1994 Zoning
5 Commission order which is Zoning Commission Order No. 766, Case
6 No. 94-9 dated December 12, 1994.

7 The order on its face in a contested case rezoned that
8 same lot and square to C2C based upon the transfer of that land
9 from the Federal Government to Columbia Hospital for Women.

10 Our office was asked to look at what the effect of
11 that order is if there is, in fact, a transfer of the land from
12 the Federal Government to in essence anybody. We gave you our
13 view which is that the effect of the order is that upon a transfer
14 of this land from the Federal Government to any entity, the zoning
15 map is amended to C2C from unzoned. However, we believe
16 that either the Zoning Commission should either indicate it
17 accepts or rejects that view. If it rejects that view, then we
18 would go forward with the rulemaking.

19 However, if it accepts that view, then there really is
20 no basis for an emergency rule since the previous order has the
21 effect of granting the relief. Therefore, there is no emergency
22 condition existing. In addition, we have a concern that
23 this type of map amendment is normally a contested case. In fact,
24 the applicant refers to itself as an applicant and not a
25 petitioner which is a nomenclature one would use if one were

1 requesting a relief which can only be granted by a contested case.

2
3 I do have a concern about using an emergency
4 rulemaking to grant relief that can only be granted in a contested
5 case. The Commission may want to consider that as well. We
6 certainly don't need to have both an order that accomplishes a map
7 amendment and a rule that accomplishes a map amendment.

8 For the sake of clarity, I would request the
9 Commission to either indicate that the order applies or the rule
10 should apply. That would give me guidance as to whether or not I
11 need to publish the Notice of Emergency Rulemaking.

12 CHAIRPERSON HOOD: Okay, colleagues, we have read the
13 order in front of us. I'm not sure which way to go first, whether
14 we need to -- I guess we need to decide whether this order that
15 was provided to us is sufficient before we rescind our emergency
16 rulemaking.

17 MR. BERGSTEIN: That's what I would ask you to do is
18 first determine whether or not you believe that the 1994 order has
19 the effect upon the transfer of this land to zone the land to C2C.

20
21 If it does have that effect, then I think that the
22 thing to do would be to vote to rescind the emergency rulemaking.

23 If you don't believe it has that effect, then I would proceed
24 with publication of the emergency rule.

25 COMMISSIONER FRANKLIN: Mr. Chairman, I would like to

1 move that we rescind our Emergency Rulemaking in Case No. 00-26M
2 on the ground that it was redundant and improvident in the light
3 of the intention of the Zoning Commission Order 766 dated December
4 12, 1994, which was intended to zone this land in the event that
5 it was no longer owned by the Federal Government.

6 COMMISSIONER PARSONS: Second.

7 CHAIRPERSON HOOD: It has been moved and properly
8 seconded. Any further discussion? All those in favor by using
9 the sign of voting.

10 ALL: Aye.

11 CHAIRPERSON HOOD: Any opposition? So ordered.

12 Staff, would you record the vote.

13 SECRETARY BASTIDA: Yes, Mr. Chairman. The staff will
14 record the vote five to zero to rescind the order. Mr. Franklin
15 moved it. Mr. Parsons seconded it. The rest of the Commission
16 voted in the affirmative to rescind.

17 CHAIRPERSON HOOD: Next under Final Action which we
18 moved is Emergency Rulemaking Zoning Commission Case No. 00-28T
19 which is Interim Procedures and Standards for Special Exceptions
20 of the cyber hotels. This is basically on our specific criteria.
21 Mr. Bastida.

22 SECRETARY BASTIDA: Mr. Sherman, the Office of Zoning,
23 has provided you with a proposed order and some criteria. The
24 Office of Planning has provided also you with some criteria on how
25 we would like to proceed.

1 CHAIRPERSON HOOD: Colleagues, I believe that we can
2 have a discussion if we've read through what we have here,
3 basically A through F. I know this is a learning experience, I
4 believe, for all, especially myself. I guess we need to make sure
5 we are all in agreement with what we have in front of us. At this
6 time I would just like to open it up for discussion.

7 MS. MCCARTHY: Mr. Chairman, I wonder if the Office of
8 Planning could just comment briefly on what we have submitted to
9 you.

10 CHAIRPERSON HOOD: Please do.

11 MS. MCCARTHY: Why don't I address the emergency
12 rulemaking that was provided by the Office of Zoning and just
13 suggest a few amendments to that based on what the Office of
14 Planning is just submitting, the amended version of the criteria
15 that we are submitting now.

16 That would be to take the page 1 as is with the
17 exception of at the bottom. After the third paragraph and before
18 Title 11 DCMR we would insert the first paragraph of what we had
19 included as temporary review criteria.

20 The purpose of the special exception review of EEF is
21 to ensure that the unique land use and architectural
22 characteristics of EEF have no adverse impact on neighboring
23 properties, do not preclude revitalization efforts, or restrict
24 the potential for a vibrant streetscape.

25 It is also the purpose to ensure that pedestrian

1 movement is not inhibited, that facilities do not concentrate
2 within such proximity to each other as they deplete street life
3 due to low employee presence, and that they do not undermine the
4 public investment in the metro rail system. I think that gives a
5 good set of purposes behind the regulations.

6 Then on page 2, I think, our proposal would be to
7 strike under D No. 1. Then you have No. 2, "Amend the first
8 paragraph of Subsection 743.4 to read as follows." Then number
9 743.1 I would just strike that entirely.

10 Then you have No. 3, "Amend Section 743 by adding a
11 new Subsection 743.6 to read as follows: An electronic equipment
12 facility not located completely below the ground floor level is
13 permitted if approved by the Zoning Commission under Section
14 3104."

15 Then I would strike that entire phrase, "Except that
16 no portion of the EEF may be located at the ground floor level."
17 That is a phrase that is repeated throughout the proposed orders.

18
19 I would just strike that every place that that appears
20 because while we have articulated that we want to see provisions
21 made for retail on a portion of the ground floor level, that
22 portion closest to the street, we should not totally prohibit EEF
23 uses at the ground floor level.

24 Then the Office of Planning would amend the criteria
25 below that A through J with the criteria that we have proposed to

1 you earlier today A through F. Those are fairly lengthy and you
2 have them before you. I guess I won't read those in
3 detail other than to suggest maybe B should be changed from the
4 positive to prohibition of the negative to maybe instead of, "The
5 use shall foster a vibrant streetscape," that it should be changed
6 to, "The use shall not inhibit a vibrant streetscape."

7 CHAIRPERSON HOOD: Mrs. McCarthy, on page 2 where you
8 said A through J, you're saying replace that with the submission
9 that was A through F?

10 MS. MCCARTHY: Yes.

11 SECRETARY BASTIDA: Mr. Chairman, the staff of the
12 Office of Zoning would like to have the latitude to look at it
13 calmly and make sure that in fact the intent of the Commission is
14 well expressed in that language and take that into account. We
15 are more concerned about legal sufficiency than anything else.

16 CHAIRPERSON HOOD: Okay.

17 SECRETARY BASTIDA: If you could consider that in your
18 approval, if you decide approval, I would be very appreciative.

19 CHAIRPERSON HOOD: If we decide to approve, I'll ask
20 that be done and that we also come up with a date of when that can
21 be provided for the public so that they can understand the
22 criteria before we move forward.

23 SECRETARY BASTIDA: The intent is to provide it to the
24 register by Wednesday. That means that a week from Friday would
25 be in the register published and it will have the criteria.

1 CHAIRPERSON HOOD: Before we move on with that, let's
2 see which way we're going with it, colleagues. I'm going to open
3 it up for discussion if there is any.

4 MS. MCCARTHY: I'm sorry, Mr. Chair. I left out the
5 last two paragraphs of what I had submitted to you which I think
6 we also would propose for your consideration.

7 One deals specifically with regard to parking for
8 existing warehouse or other industrial buildings being converted
9 for EEF use, that the Commission might also consider parking
10 requirement relief based on the practical difficulty of a sight
11 and meeting office space, parking standards through the special
12 exception review process.

13 Then lastly this is a suggestion which came out of our
14 forms with the industry where there was a concern to prevent
15 speculation or applicants, especially if there's going to be a
16 later spacing criteria. They didn't want to see applicants tie up
17 a use without a specific provider in mind.

18 We have proposed another provision which says a
19 special exception for any EEF use shall be vested for no more than
20 one year from the date of approval.

21 CHAIRPERSON HOOD: Colleagues, any questions for
22 either OP or the Office of Zoning in this joint effort?

23 COMMISSIONER FRANKLIN: I have a couple of questions,
24 Mr. Chairman.

25 CHAIRPERSON HOOD: Okay, Commissioner Franklin.

1 COMMISSIONER FRANKLIN: In your criterion E, "The
2 facility shall provide for safe and efficient pedestrian movement
3 along adjacent streets through streetscape and building design and
4 includes the extensive of any identified trails or pedestrian
5 paths." I don't quite grasp what that reference to identified
6 trails or pedestrian paths refers to.

7 MS. MCCARTHY: In some of the facilities which had
8 been to CS on a preliminary basis, one of the things that had
9 occasioned our concern about the security aspects of these
10 buildings and what that does to street life is that the
11 metropolitan branch trail, which goes through this area, and which
12 is considered by the Department of Public Works and by the Office
13 of Planning, to be a very important link to the eastern side of
14 the city, runs next to the railroad tracks in some instances.

15 One specific project that had been proposed for that
16 area felt that because of security concerns by the EEF it would
17 not be able to permit the path to go through its property which it
18 had initially agreed to.

19 We wanted to include some sort of requirement making
20 clear that security needs need to also take into account these
21 kinds of important city wide goals like identified trails or
22 pedestrian paths.

23 COMMISSIONER FRANKLIN: Is this path a prescriptive
24 easement? Is this something that cannot be terminated by an
25 owner?

1 MS. MCCARTHY: In this particular instance it had been
2 agreed to as part of the large track review process. Then the
3 facility was going to have to come in for a new or amended process
4 so we just thought it would be better to make it clear in the
5 criteria for adverse impact that a design which precluded bicycle
6 paths or pedestrian paths going in some proximity to the property
7 would be considered by the Office of Planning to be an adverse
8 impact.

9 COMMISSIONER FRANKLIN: Okay. In criterion F there's
10 reference to the proximity of the facility to an existing or
11 proposed metro rail station. The way it's phrased the reader may
12 have some difficulty in knowing whether proximity is desirable or
13 undesirable. Do you want to say the undo proximity? What's the
14 intent of that language?

15 MS. MCCARTHY: Right. That one actually we had taken
16 from the Office of Zoning language. We just rolled some of the
17 criteria that we had not modified into that last item.

18 Certainly that was our intent that we did not wish to
19 encourage them to be close to a metro station because of the
20 importance of the metro station serving the largest number of
21 perspective patrons.

22 Also because the metro rail station in the NOMA area
23 is one that is going to depend on the contributions of the
24 property owners in immediate proximity. Our sense was we were
25 less likely to be able to support that both with ridership and

1 with contributions if we had uses that didn't require metro
2 access.

3 COMMISSIONER FRANKLIN: So what you're saying is you
4 do intend it to say the undo proximity or some words to that
5 effect.

6 MS. MCCARTHY: Right.

7 COMMISSIONER FRANKLIN: I have no further questions at
8 the moment, Mr. Chairman.

9 CHAIRPERSON HOOD: Commissioner Mitten.

10 VICE CHAIRPERSON MITTEN: Just to pick up in the same
11 general area where Mr. Franklin left off. Maybe along the same
12 line of making a modification to B to put it in the negative,
13 perhaps we could modify letter E to say, "The facility shall not
14 inhibit safe and efficient pedestrian movement along adjacent
15 streets," and so forth. That's one suggestion that I would make.

16 A question that I have for Ms. McCarthy is in C the
17 requirement to have at least 20 percent of the ground floor
18 retail. Given what we heard initially about the concern over a
19 lively streetscape and so on, is 20 percent of the ground floor
20 sufficient to accomplish that?

21 MS. MCCARTHY: Our sense was that it was because
22 generally 50 percent of the ground floor of most office buildings
23 is taken up by the lobby, the core delivery service functions. We
24 were talking about a maximum of 50 percent being available anyway
25 for uses.

1 We felt that as long as the retail use -- I mean, the
2 kind of retail uses we're talking about in that area, at least at
3 this point in time, are primarily convenience goods, delis. We
4 felt that as long as it was concentrated along the street
5 frontage, the 20 percent would be sufficient.

6 VICE CHAIRPERSON MITTEN: Could we maybe adapt it so
7 that since we're primarily focused on the pedestrian corridors and
8 we're also primarily focused on what's happening relative to the
9 street, could we make it something like 20 percent of, first of
10 all, the front footage and then maybe concentrate that front
11 footage on the pedestrian corridor so that we're putting it right
12 where we want it.

13 MS. MCCARTHY: That would be a good idea. That's
14 definitely where we would like to see it concentrated.

15 VICE CHAIRPERSON MITTEN: Okay. "Shall either provide
16 ground level retail occupying at least 20 percent of the front
17 footage of the ground floor." Would that be all right with you?

18 MS. MCCARTHY: Um-hum.

19 COMMISSIONER PARSONS: So that would result in a
20 building like the one we're in. That is, the retailers on the
21 front of the building.

22 VICE CHAIRPERSON MITTEN: Yes.

23 COMMISSIONER PARSONS: And what you get in the back is
24 what we get in the back.

25 VICE CHAIRPERSON MITTEN: Yes. Although, if we're

1 going to have 20 percent -- if we're only going to require a
2 minimum of 20 percent of the ground floor being retail, you want
3 to make sure that retail is going to be where it is most
4 desirable.

5 COMMISSIONER PARSONS: I'm wondering about the term
6 "front footage." That's the term you used.

7 VICE CHAIRPERSON MITTEN: Yes.

8 COMMISSIONER PARSONS: Does that do it for us? In a
9 building like this which has four streets, we want --

10 VICE CHAIRPERSON MITTEN: Primary street frontage?

11 CHAIRPERSON HOOD: She said primary.

12 VICE CHAIRPERSON MITTEN: Perhaps if we want to select
13 primary -- if we want to use the word primary street frontage,
14 then I would want to go to a higher percentage. If we're going to
15 pick a street and then say maybe 50 percent of that primary street
16 frontage would have to be retail. It wouldn't have to be deep
17 necessarily but it --

18 COMMISSIONER PARSONS: That's what I was trying to do.

19 VICE CHAIRPERSON MITTEN: Okay.

20 COMMISSIONER PARSONS: Make sure we get a building
21 like we've got here where the entrance is maybe 15 percent and the
22 rest is retail and not do this in such a way that you only get 20
23 percent of that footage.

24 VICE CHAIRPERSON MITTEN: Right.

25 COMMISSIONER PARSONS: Well, maybe the staff can help

1 with that.

2 VICE CHAIRPERSON MITTEN: Okay. I think that is a
3 great suggestion. That's the direction I was going so that's even
4 better.

5 COMMISSIONER FRANKLIN: Why doesn't criterion B
6 basically achieve the objectives that are being sought by C?

7 COMMISSIONER PARSONS: It does but it's not specific
8 enough.

9 COMMISSIONER FRANKLIN: Well, do we want it to be that
10 specific?

11 VICE CHAIRPERSON MITTEN: In B it says, "Shall not
12 inhibit potential for retail uses," as opposed that retail uses be
13 included or tell us why you really can't. I think it's a little
14 bit more -- C is a little bit more demanding.

15 COMMISSIONER FRANKLIN: Well, it's a little bit more
16 unusual for special exception purposes which is intended really to
17 avoid adverse impacts. I just raised the question as a stylistic
18 one as may be also more appropriate for special exception
19 language. Whereas C sounds a little bit different. I don't know
20 whether the corporation counsel has any view on that.

21 MR. BERGSTEIN: I share your observation. Special
22 exception is, in essence, when the Zoning Commission establishes a
23 special exception. It is a conditional grant of a use. It's
24 saying that this type of use could be allowed to find that certain
25 impacts don't occur.

1 When you establish certain conditions for use whether
2 it's a matter of right use or a special exception use and then
3 indicate that relief from that use can be given based upon certain
4 criteria being satisfied, and the language here is very much a
5 variance type language, practical difficulty language, it really
6 becomes less of a special exception and more of a variance.

7 I think that you might want to keep that in mind in
8 terms of keeping your processes simple and the analysis that you
9 have to undergo fairly simple to keep special exception type of
10 analysis consistent throughout these regulations, which is a
11 judging adverse impact and mitigating adverse impact as opposed to
12 establishing preconditions to a use and then granting relief from
13 those preconditions.

14 COMMISSIONER FRANKLIN: So what would you suggest?

15 MR. BERGSTEIN: My question is whether or not it's
16 possible to live without in the case of C, the last part. If it's
17 possible to require that they either provide for that amount of
18 retail or indicate how it would be -- indicate that either the
19 conditions aren't ripe for that retail to be established at this
20 point but how it could be accommodated.

21 Even then there's a sort of relief that is being given
22 here because you are first saying you have to have this unless (A)
23 you can show us that the conditions aren't ripe for that retail to
24 be established at this time, or (B) there's a practical difficulty
25 in doing that.

1 In fact, those two criteria might blend. I'm not sure
2 how you can do that in a special exception analysis. It would
3 have to be as if the absence of retail -- if the proposal has an
4 absence of retail, that would not have an adverse impact on the
5 vitality of the area.

6 You could, in essence, have two types of proposals.
7 One with this retail and, if no retail, there would have to be a
8 finding of no adverse impact. Not that they can do it
9 if they could show certain conditions exist but they can do it if
10 they show no adverse impact in terms of what you are trying to
11 accomplish for these areas. I don't know if that works for what
12 planning would like.

13 MS. MCCARTHY: The problem is -- I guess there are two
14 problems. One is that the area is so much in transition and
15 really what we've tried to do is preclude uses that will
16 themselves preclude that transition to some more lively uses.
17 That's why we had put in language about indicate how retail use
18 could be accommodated when demand is sufficient to support a
19 retail use.

20 In particular in that instance when a building is
21 being built from the ground up, we would like to see in the plans
22 how and when the retail market is ripe that retail can be
23 accommodated within the building, not that it has to be in there
24 at exactly this moment.

25 There's a very different situation for EEFs that are

1 new construction versus EEFs that are conversion of existing
2 warehouses since many of those warehouses have been built without
3 windows and without the -- I would suspect that many of the
4 conditions would preclude being able to easily transition into a
5 retail use at the ground level. Some of them are not located
6 along major pedestrian corridors so there would not likely be much
7 of an adverse impact from not having retail there.

8 I understand what you're saying, Mr. Bergstein,
9 because I know that exceptional practical difficulty is a variance
10 term, but we used it advisedly because we were saying here is what
11 we would normally expect as a way of mitigating that adverse
12 impact on street life which would be to put retail there and here
13 is what we would like to see.

14 We either want to see retail or we want to see a way
15 that you are going to accommodate retail when the demand exist.
16 But we recognize that in the case of some of these warehouses,
17 that just may not be practical.

18 If somebody can show the practical difficulty, then we
19 would consider that mitigating against the adverse impact of the
20 fact that no retail is being provided.

21 MR. BERGSTEIN: And you don't feel that you can, in
22 essence, grandfather out the warehouses for the purposes of this
23 retail condition.

24 MS. MCCARTHY: It wasn't so much that we felt we
25 couldn't is that the inspiration did not strike with language to

1 do that. If the Commission or the corp. counsel or Office of
2 Zoning staff could come up with that language, that would be fine.

3 MR. BERGSTEIN: In other words, what you would have
4 for all new construction that either a retail use would have to be
5 established, or show that it could be accommodated. Then for
6 existing construction, or even naming warehouses, that condition
7 would not apply.

8 MS. MCCARTHY: Well, I guess my feeling -- our concern
9 was that it really should be looked at case by case because there
10 may be existing warehouse buildings that, in fact, could easily
11 accommodate retail on the ground floor if they were constructed
12 with windows or if there's going to be some glass or some frontage
13 anyway. That would just be a matter of demonstrating within the
14 application why they could or could not accommodate retail.

15 COMMISSIONER HOLMAN: Can I follow up just for a
16 second? I think Ms. McCarthy was mentioning major pedestrian
17 corridors. Is that a term that we need to flesh out a little
18 more?

19 MS. MCCARTHY: I'm sorry, Mr. Holman. Is that
20 question to me --

21 COMMISSIONER HOLMAN: Yes.

22 MS. MCCARTHY: -- or to the Commission?

23 COMMISSIONER HOLMAN: Yes, to you.

24 MS. MCCARTHY: The reason that we phrased it this way
25 was because we felt that it was clear that North Capitol First and

1 New York were such corridors but, again, because of the way that
2 the area is developing and not knowing for sure what kind of other
3 activity generators might be locating there, it's hard to tell for
4 sure whether some other streets might not also become major
5 pedestrian corridors.

6 My guess would be the roads leading to the metro
7 station and the main entrance to the metro station would be
8 primary generators or would be areas where there's a lot of
9 pedestrian activity.

10 Some of those may end up being more major corridors
11 than others depending on the uses that are there and the density
12 of demand generators and how they has deplored around the metro
13 station. That's why it was let a little bit loose.

14 COMMISSIONER PARSONS: But in the short-term emergency
15 these are the three streets you're talking about?

16 MS. MCCARTHY: Yes, that's true. That's a good point,
17 Mr. Parsons, because we are just talking about something in the
18 very short term to be replaced by more specific regs after this.

19 COMMISSIONER PARSONS: So what if we had "along North
20 Capitol Street, First Street, and New York Avenue" instead of
21 "such as" or "for instance?"

22 MS. MCCARTHY: Sure.

23 COMMISSIONER FRANKLIN: Then you want to also
24 characterize them as pedestrian corridors because from my
25 experience I don't see New York Avenue being a major pedestrian

1 corridor along its entire stretch unless people have flat tires.

2 Why not just say for projects located along major
3 pedestrian corridors and not cite the specific streets? And
4 certainly, North Capitol Street. Along long stretches of North
5 Capitol Street you would not consider that street a major
6 pedestrian corridor.

7 VICE CHAIRPERSON MITTEN: I actually thought the
8 direction you were going to go into was to say for projects
9 located along North Capitol Street, First Street, and New York
10 Avenue because I think that the idea is not necessarily what they
11 are but what they are intended to become.

12 COMMISSIONER FRANKLIN: Right. Within the next 10
13 years.

14 VICE CHAIRPERSON MITTEN: Yes. So I would be happier
15 taking out "pedestrian corridors such as."

16 CHAIRPERSON HOOD: Let me just ask. Mr. Bastida, are
17 we taking comments down from the Commission?

18 SECRETARY BASTIDA: Yes, Mr. Chairman. We will be
19 able to frame them and put it on the traditional BZA criteria as
20 well as with legal sufficiencies so it is determined as a special
21 exception.

22 CHAIRPERSON HOOD: Colleagues, if I may ask, if we
23 could give staff the latitude to be able to incorporate some of
24 this. Then we will follow up with it later. In other words, give
25 the staff the latitude.

1 SECRETARY BASTIDA: Okay. Yes. Sure. I will be glad
2 to share it with the Commission prior to publication into the
3 register.

4 VICE CHAIRPERSON MITTEN: I wanted to make another
5 suggestion to the first page of the draft that was given to us by
6 the Office of Zoning. In the second paragraph there's a number of
7 items checked off about why we are taking the action.

8 No. 4, I think, should be amended to say rather than
9 the contradiction of this land use with the redevelopment
10 objectives, I think it should say the potential incompatibility of
11 this land use. I don't think it is inherently at odds. I think
12 it just has the potential to be at odds and that's what we are
13 trying to address.

14 SECRETARY BASTIDA: I think that is an excellent idea.
15 Thank you, Ms. Mitten.

16 COMMISSIONER PARSONS: I want to take a minute to talk
17 about A. A through E all deals with pedestrian activity along the
18 street. That's what this is about. But A seems to say that an
19 undo concentration of similar uses would result in a lack of
20 pedestrian activity.

21 The implication, if you read on, means if you do nice
22 architectural treatment, landscape design, you put in retail, you
23 have good security, that A will go away. I don't think that's the
24 point.

25 I'm thinking of adding something to the end of it

1 which says, "Due to a lack of employees in such a facility."
2 Isn't that what A means? Not only it may be a disaster at the
3 ground floor for others walking by, but it generates not a
4 substantial amount of employees.

5 I didn't want A to be read in the context of B through
6 E and have somebody come up and testify, "I put in benches and I'm
7 going to put in nice landscaping and phony windows. It will look
8 like people are in there and, therefore, A doesn't apply and I
9 want to build five on this street."

10 I was trying to get some criteria around undo
11 concentration. I want to add to the end, "Due to a lack of
12 employees in such a facility." That's pretty crude and rude, too.

13 Could somebody help me?

14 SECRETARY BASTIDA: Mr. Parsons, the staff will be
15 glad if the Commissioners decide to go that way to craft the
16 language to reflect what you just have stated.

17 VICE CHAIRPERSON MITTEN: If I could maybe just
18 elaborate on it a little bit.

19 SECRETARY BASTIDA: Sure.

20 VICE CHAIRPERSON MITTEN: We have the one thought that
21 has been captured about pedestrians which is "such that normal
22 street life and pedestrian activity is substantially impaired."
23 Then something like "and such that the lack of employees does not
24 provide -- I'm going to pick up a notion from --

25 SECRETARY BASTIDA: Will not have a deleterious

1 impact?

2 VICE CHAIRPERSON MITTEN: No, no. "The lack of
3 employees undermines the public investment in infrastructure," or
4 something. In the introduction it specifically related to metro,
5 but the idea is we just don't want to have these large pockets of
6 an area that really don't have very many people in them. That's
7 because there is an investment in infrastructure there.

8 SECRETARY BASTIDA: Ms. Mitten -- I'm sorry.

9 VICE CHAIRPERSON MITTEN: Mr. Parsons, is that getting
10 closer to what you were looking for?

11 COMMISSIONER PARSONS: I'm sorry. I guess I missed
12 your point. Are you down in E?

13 VICE CHAIRPERSON MITTEN: No, I was adding something
14 to A.

15 COMMISSIONER PARSONS: Oh, sorry. Yes.

16 VICE CHAIRPERSON MITTEN: The idea of the lack of
17 employees goes beyond pedestrian activity and is really about the
18 fact that we are not taking full advantage of the infrastructure
19 investment.

20 COMMISSIONER FRANKLIN: I think the language also,
21 getting back to a point made earlier, some of these facilities may
22 be proposed for areas that now do not have significant street
23 life. So what you're concerned about is the future.

24 To say that normal street life and pedestrian activity
25 is substantially impaired has an implication that it has to exist.

1 When you recast the language, I think you have to look at it in
2 future terms.

3 SECRETARY BASTIDA: I have a little concern about the
4 wording infrastructure because water and sewer is infrastructure
5 and so are you really relating more to metro or you are talking
6 generally about anything that is considered infrastructure.

7 VICE CHAIRPERSON MITTEN: Well, I think that these
8 facilities actually make quite a lot of use of the utility
9 infrastructure to the extent that it's there. I think really it's
10 more streets and metro.

11 SECRETARY BASTIDA: Okay. Thank you.

12 COMMISSIONER PARSONS: Transportation infrastructure.

13 VICE CHAIRPERSON MITTEN: Transportation
14 infrastructure. Yes.

15 SECRETARY BASTIDA: Okay. Thank you.

16 CHAIRPERSON HOOD: Okay, colleagues. Any other
17 comments or things we would like to see in this one be presented?

18 COMMISSIONER HOLMAN: Well, Ms. McCarthy, have you
19 done any community briefings and, if so, what's been the general
20 reaction to these regulations as they have been proposed?

21 MS. MCCARTHY: To the broader emergency regulations?

22 COMMISSIONER HOLMAN: Yes.

23 MS. MCCARTHY: Primarily we've had three forums that
24 we have sponsored either on our own or one with the D.C. Building
25 Industry Association. Tomorrow we are meeting with the D.C. Tech

1 Counsel.

2 The general thrust of those forums has been soliciting
3 input on the longer term regulations and the permanent regulations
4 and trying to get some specific input on clustering, on where the
5 local loop five is located and, therefore, where there's going to
6 be the demand for the greatest clustering of these. But
7 we have discussed the rationale and we have discussed issues of
8 parking and retail. That's why we began to -- why we wanted to
9 clarify for you that there is a different situation for existing
10 warehouse conversion versus construction of new buildings.

11 COMMISSIONER HOLMAN: What has been the reaction
12 regarding the idea of putting these facilities underground?

13 MS. MCCARTHY: Other than the developer who came to us
14 proposing that specifically, there generally has been a feeling on
15 the part of the attendees at the forum that is not desirable
16 because of water table and because of a feeling that's not
17 sufficient to just have underground.

18 COMMISSIONER HOLMAN: Any comments about the use of
19 these facilities? I'm just thinking back to a situation that I
20 was aware of where people unfortunately because of equipment
21 breaking down were in and out of these facilities almost 24 hours
22 a day. Have any comments about the usage of the structures come
23 into the office?

24 MS. MCCARTHY: The amount of traffic in and out you
25 mean?

1 COMMISSIONER HOLMAN: Yes.

2 MS. MCCARTHY: Certainly everybody has been clear
3 about the fact that it's not when you talk about people they are
4 maintaining the equipment. It's not what you would typically
5 think of as building maintenance, a couple of janitors pushing a
6 broom.

7 We are talking about not only staff that are there
8 maintaining the equipment because of the absolute importance of
9 unbroken operation or constant operation. There's a staff on site
10 doing that.

11 In addition, depending on the type of cyber hotel that
12 you have, the type of EEF that you have, some provide managed
13 services. Some provide co-location. Different kinds of users
14 have different amounts of visitation with people coming and
15 upgrading their servers or checking on their servers, installing
16 things.

17 It's not that it's without traffic. It's just not at
18 the same level of visitation that you would have if you had an
19 office building or a residential building on the site.

20 COMMISSIONER HOLMAN: And had you given consideration
21 to exempting warehouses? I notice that's not provided for. What
22 is the rationale in that regard?

23 MS. MCCARTHY: The major rationale in that regard was
24 the sense that this is an area that official city policy comp plan
25 are about to be completed. NOMA plan, the downtown action plan,

1 was looking to encourage a change in land uses there, a
2 revitalization of the area from the warehouse district that is
3 there now to something more intensive.

4 There was a sense that we did not want to just
5 grandfather in warehouses because we don't want to lock in an
6 under utilization of those sites if otherwise there would be
7 redevelopment either for loft housing or the warehouses being torn
8 down and turned into office buildings. We really want to see a
9 change of land uses there and we're not really looking for uses
10 that would encourage the persistence of warehouses.

11 We want to balance that against making sure that we
12 are able to provide sufficient amounts of these kinds of
13 facilities so we do provide the access to broad band capability
14 that will then locate other businesses to be -- will encourage
15 other businesses to locate close by.

16 The most difficult thing in the forums has been to try
17 to get a handle on just how much other use is catalyzed by these
18 facilities. There's anecdotal evidence but there is nothing clear
19 cut about how much web content companies or other kinds of
20 companies might be encourage to locate close by because of the
21 access to the broad band.

22 COMMISSIONER HOLMAN: So, in other words, you're
23 saying that from what you have been able to discern there's no
24 particular advantage to having close proximity to these facilities
25 for internet based companies?

1 MS. MCCARTHY: There is definitely an advantage to
2 proximity and the issue is how proximate does that have to be.
3 The key determinant is the existence of fiber. Not the long haul
4 fiber that goes along the tracks but the local serving fiber. It
5 seems to be a very fiber rich area.

6 For purposes of the permanent regulations, we are
7 working with the Department of Public Works in trying to get
8 access to as much information as possible about where that fiber
9 is located so we can tell just how far away from the trunk lines
10 can people locate and still get access to the fiber that they need
11 to benefit from the broad band capability.

12 COMMISSIONER HOLMAN: Does DPW indicate that they have
13 access to that level of information?

14 MS. MCCARTHY: Well, they were the permitting agency
15 for that fiber to be installed so through the forums we were able
16 to at least identify who the primary contact person at DPW was
17 which had been hard for us up until that point.

18 I've got a staff person now who is working with DPW to
19 research that and to see. There's a great deal of concern in the
20 industry about keeping that information proprietary for security
21 purposes and for competitive purposes so we may not be able to
22 share a lot of that publicly but we at least want to know for
23 ourselves just how constrained an area.

24 It's particularly relevant because obviously it seems
25 like it would be beneficial for us to encourage as a matter of

1 right these facilities to locate in the M zones that are further
2 up, further away from, say, North Capitol and K and up toward the
3 railroad tracks and New York Avenue and beyond New York Avenue.
4 We are still trying to do some basic homework to know just how
5 feasible that's going to be.

6 COMMISSIONER HOLMAN: I guess my final question is so
7 you perceive that there may be a possibility that there might be
8 some areas where these facilities could locate as a matter of
9 right?

10 MS. MCCARTHY: That is definitely our hope in the
11 final regulations to be able to outline a number of areas where we
12 would encourage these facilities to locate and where presumably
13 they could locate by matter of right.

14 COMMISSIONER HOLMAN: Thank you, Mr. Chairman.

15 COMMISSIONER FRANKLIN: Could I follow that up, Mr.
16 Chairman?

17 CHAIRPERSON HOOD: Yes.

18 COMMISSIONER FRANKLIN: Ms. McCarthy, are you saying
19 that you're not aware of any existing warehouse in an existing M
20 zone that out of the comp plan is going to remain industrial? Is
21 the comp plan in your view going to basically do away with all of
22 the M zoning in the District of Columbia?

23 MS. MCCARTHY: I think that the city's recent
24 experiences with economic development in the K-Mart site and
25 others, for example, where we now have to relocate salt domes and

1 asphalt milling facilities and impoundment lots and others has
2 shown, and this is one thing we discussed at one of the forum
3 sessions, has really shown the importance of the Office of
4 Planning taking another look at industrial uses in the city.

5 Where they are currently located, what kind of
6 forecast there is for continued need for industrial use. In the
7 next round of comp plan amendments before that time we would
8 definitely hope to have some better information on that.

9 We don't want it to be just on a case-by-case basis of
10 let's find a parcel and let's see if a use would be appropriate
11 here. We would like to be able to provide some overall guidance
12 for how much industrial space we see remaining in the city and
13 where that should be located.

14 COMMISSIONER FRANKLIN: What I'm having difficulty in
15 understanding is suppose there's an existing warehouse building in
16 an existing industrially zoned area. It's empty now and somebody
17 wants to acquire it and store some kind of equipment or commodity
18 or what have you. As a matter of right, they would be able to do
19 that. Correct?

20 MS. MCCARTHY: That's right.

21 COMMISSIONER FRANKLIN: So why are we saying that
22 somebody can't install an EEF in that kind of structure?
23 Certainly the other storage of dead commodities is not going to
24 create the kind of vibrant street life that we're talking about
25 here. Why do we distinguish between an EEF and some other use of

1 that warehouse?

2 MS. MCCARTHY: The reason we are distinguishing is
3 because of the type of investment that is required. The kind of
4 investment that is required for these sorts of facilities is
5 massive in terms of very sophisticated air conditioning, power,
6 and then the equipment itself that is installed in there.

7 If you have something that is a warehouse now that is
8 an existing facility and all you have to do is decide whether
9 you're putting furs in there or boxes of school supplies, it's
10 very easy at some point at which you determine, okay, it looks
11 like the market is good enough now for an office building or an
12 apartment building so we are just going to move those school
13 supplies out, demolish this building, and change to a higher use.

14
15 You're in a very different kind of situation than if
16 you have made hundreds of millions of dollars worth of investment
17 in that facility to sure up the floors and put in air conditioning
18 equipment and do all of those other kinds of investment that are
19 necessary to make an EEF working.

20 COMMISSIONER FRANKLIN: But I was positing a situation
21 where the comp plan was not going to change the zoning for that
22 industrial area so that if an EEF came in, it would be still in
23 accordance with the comp plan and the zoning.

24 MS. MCCARTHY: Right. Well --

25 COMMISSIONER FRANKLIN: Are you saying that basically

1 these are such capital intensive investments that once they're
2 made the possibilities of change 25, 30, 35 years down the road
3 becomes totally improbable?

4 MS. MCCARTHY: I think we are trying to focus on areas
5 where we are talking about use changes more like in the 10-year
6 range. That is one reason we have to look much more carefully at
7 this for the permanent regulations.

8 We have some of these facilities now that are going
9 into areas that are zoned C3C, areas that were determined a while
10 ago by the Office of Planning and by the Zoning Commission to be
11 places where we wanted to encourage a change in uses.

12 Then there are other areas that are north of what has
13 been rezoned and our NOMA study looked at those and said we should
14 be worrying about changing the character of the area but how far
15 up that goes, you know.

16 That's why I said we do want to look more at the
17 industrial uses in the city and how much industrial area we need
18 to keep and why it seems very likely that in those areas where we
19 do want to keep industrial zoning, why an EEF should be permitted
20 to locate as a matter of right. If we're not looking to change
21 those uses, why not encourage EEFs to locate there.

22 COMMISSIONER FRANKLIN: Well, are you saying also that
23 that study that you referred to will be completed by the time the
24 permanent regulations are to be enacted?

25 MS. MCCARTHY: Actually, our North Massachusetts

1 Avenue study is virtually complete.

2 DIRECTOR ALTMAN: Shortly. A few changes.

3 MS. MCCARTHY: Right. It's in the final stages of
4 editing. That will be available to help guide the permanent
5 regulations.

6 The longer term study of industrial facilities not,
7 but we can make some judgments about how far we think the land use
8 is likely to be changing sometime in the near term, put that into
9 the regulations, and if we need to amend it later based on a
10 longer term industrial policy, we can do that at that point in
11 time.

12 COMMISSIONER FRANKLIN: Well, let me ask that when you
13 do come back, and we are considering the permanent regulations,
14 that you really be able to inform us as to whether there is any M
15 zone property that you think could not be as a matter of right
16 developed for an EEF, because you believe that 10 or 15 years down
17 the road that zone will be appropriate for some other use. In
18 other words, is there any above-grade facility that as a matter of
19 right could proceed in the District of Columbia?

20 MS. MCCARTHY: Certainly.

21 CHAIRPERSON HOOD: Colleagues, I'm going to ask that
22 we have a hearing this coming Thursday at 7:00 p.m. I'm going to
23 ask that we pull all this together OP, Office of Zoning, pull
24 everything together with corp counsel and let's come back with
25 something final for us to look at so hopefully we can proceed with

1 this this coming Thursday.

2 Again, sorry for any inconvenience to anyone who was
3 waiting for a final decision today and final criteria, but I think
4 with all the discussion that we've heard so we can make sure that
5 we send a straightforward message of the criteria that we're going
6 to be looking for.

7 We want to make sure we're all on the same page. I'm
8 going to ask that we deal with this, colleagues, on this coming
9 Thursday at 6:40 if that's okay with my colleagues. Silence is
10 golden so I guess that's okay.

11 I do want to ask OP did they receive the letter from
12 Mr. Stephen Gell, I believe is his name.

13 MS. MCCARTHY: Yes, we received it this morning.

14 CHAIRPERSON HOOD: Okay. Colleagues, have you all had
15 time to read what we are being asked to do here? We are being
16 asked emergency relief to permit the subject property to be leased
17 for a cyber hotel. This is asking for emergency action.

18 From the little bit that I read of it, I believe he's
19 saying that was overlooked by the Office of Planning at the time.

20 Have we had time? If not, I can ask -- I do want to consider it
21 because everything else has come down here for emergency we have
22 dealt with.

23 Is Mr. Gell in the audience? Okay. I would like for
24 him, if it's okay with my colleagues, even though we have a short
25 amount of time, if he would come forward.

1 We can give you maybe three minutes if you don't mind,
2 Mr. Gell. We do have your submittal. Mr. Gell, may I just ask
3 that -- I'm sorry to just give you three minutes but we have
4 something else that we need to move into. I assure you that we
5 will consider your letter.

6 MR. GELL: Thank you very much, Mr. Chairman, members
7 of the Commission. I don't have the document in front of me so
8 this is from memory. However, I'm representing the owner of a
9 building on Patterson Street which was built as a warehouse with
10 very high security. It was built for a storage warehouse. It has
11 no windows.

12 It's a one-story building. There's no below ground
13 that we could put a cyber facility in. The first owner went out
14 of business because he couldn't continue to use it for its use.
15 The current owners have not been able to use it for any warehouse
16 use for the last year.

17 They had a lot of expressions of interest for turning
18 this into a cyber hotel. We think this is the kind of property
19 that you would want to exempt from the reaches of this emergency
20 regulation. So we drafted some language which we thought might be
21 useful to you which I think probably excludes most properties
22 except this one and would probably service.

23 In the meantime, in reading the Office of Planning's
24 recommendations for regulation, we noticed that, in fact, in the
25 C3C zone that you could not get a special for this kind of a

1 property to be used for a cyber hotel. It would need a variance.

2
3 However, their statement of what they were proposing
4 to do very clearly said that in the CEC zone they wanted to permit
5 these properties to get a special exception if they met all the
6 other criteria.

7 We simply pointed that out as what we thought was a
8 mistake that needed correcting. I was not privy to the discussion
9 and perhaps the final regulations that you are going to be
10 considering will take care of this. There was a disparity between
11 the intent and the language that you were shown.

12 This, however, was really a fall back. What we really
13 need is this emergency regulation to exempt this property from the
14 reaches of the regulation. That's basically it.

15 CHAIRPERSON HOOD: Thank you, Mr. Gell. Colleagues,
16 any questions?

17 COMMISSIONER HOLMAN: Yes. Mr. Gell, are you saying
18 that -- describe the area on Patterson Street where this facility
19 is located. I wouldn't presume that it's an area that has high
20 pedestrian traffic currently. Or is it?

21 MR. GELL: It's in the mid-block. It's not on the
22 corner. Patterson Street, at least when I've been there, does not
23 appear to have had much pedestrian traffic at all.

24 This is Mr. J. Helman who is also representing the
25 owners of the building. It's very, very low use right now.

1 Frankly, I think the location was chosen for this kind of use for
2 that purpose. The building was built with very high security and,
3 as I say, has no windows and a great deal of air conditioning and
4 other security devices.

5 COMMISSIONER HOLMAN: Right. In other words, without
6 putting words in your mouth, it's almost ideal for this type of
7 facility?

8 MR. GELL: Yes. Those are my words exactly.

9 COMMISSIONER HOLMAN: Okay. So that being said, it
10 appears from your comments that the owner doesn't have any current
11 intent to demolish the facility and replace it with another kind
12 of use.

13 MR. GELL: It's only 10 years old. It was a very
14 expensive facility to build when it was built. It was built well.
15 It would be expensive to demolish it at this point.

16 No, the owner does not have any other -- can't see any
17 other use that it could make of this property right now. It's not
18 on a major street. It doesn't have that kind of visibility that a
19 major office building would need.

20 COMMISSIONER HOLMAN: Without asking you to be
21 specific, how far would you guess that it is from the proposed
22 metro site along the avenue?

23 MR. GELL: We think it's between two and three long
24 blocks.

25 COMMISSIONER HOLMAN: Beg your pardon?

1 MR. GELL: Between two and three long blocks.

2 COMMISSIONER HOLMAN: Okay. Are you aware of the
3 Office of Planning criteria in regard to proximity?

4 MR. GELL: Yes.

5 COMMISSIONER HOLMAN: Would you say it's within that
6 zone or outside that zone?

7 MR. GELL: My guess was that it was within the zone.

8 COMMISSIONER HOLMAN: Okay. And have you had any
9 conversations with the Office of Planning regarding this facility?

10 MR. GELL: We've not had the opportunity to do that.
11 I was really brought into this a couple of days ago so there was
12 not an opportunity to talk to them about it.

13 COMMISSIONER HOLMAN: Okay.

14 Thank you, Mr. Chair.

15 CHAIRPERSON HOOD: Let me say this. I've been advised
16 that I did something incorrectly. I only did that for the simple
17 reason that whenever we have emergency rulemaking we always let
18 people requesting to come to the table. We don't want to get into
19 a hearing so, Mr. Gell, I want to thank you.

20 MR. GELL: Thank you very much for the opportunity.

21 CHAIRPERSON HOOD: Thank you. Also, I would like to
22 ask the Office of Planning. I don't know if you are ready to
23 respond to this now. Can we take this up, colleagues, if it's
24 okay on Thursday or are you ready to respond it?

25 MS. MCCARTHY: I think the proposal that we made today

1 to strike that portion of 743.6 and the similar language for the
2 other sections that says "except that no portion of the EEF may be
3 located at the ground floor level," takes care of the problem.

4 COMMISSIONER PARSONS: I didn't understand what she
5 just said.

6 CHAIRPERSON HOOD: Ms. McCarthy, would you repeat
7 that?

8 MS. MCCARTHY: The proposed regulations had said
9 "Electronic equipment facility not located -- this is from the
10 Office of Zoning version. "An electronic equipment facility not
11 located completely below the ground floor level is permitted if
12 approved by the Zoning Commission under Section 31.4 except that
13 no portion of the EEF may be located at the ground floor level."

14 What I had proposed today is that we strike that so it
15 basically says that, "Any EEF that is not located below ground is
16 permitted if approved by the Zoning Commission as a special
17 exception." That's why you then go into how does it do when you
18 apply the standards, the A through F standards that we were
19 talking about.

20 It clarifies the wording that Mr. Gell was referring
21 to. It says you are not absolutely prohibited to be on the ground
22 floor level. It's just that you either -- it's just that you've
23 got to meet the adverse impact criteria.

24 If this is completely isolated, if you can't
25 accommodate retail but, on the other hand, it's not on a major

1 street and yet it can contribute to the streetscape, blah, blah,
2 blah, meet the other criteria that we were talking about, then it
3 could conceivably qualify under the special exception and they
4 could go ahead and apply for a special exception and the
5 Commission could hear them. That would be my interpretation.

6 COMMISSIONER PARSONS: Wasn't he trying to seek a
7 regulation here that would give them a matter of right to go
8 ahead? It really doesn't take care of his problem. It brings him
9 before us as a special exception.

10 MS. MCCARTHY: I know. We had requests from a number
11 of people who were considering EEFs on their sights to change the
12 emergency regulations this way or that way to exempt them.

13 We felt what we really ought to be doing was primarily
14 putting our attention into what the permanent regs should say but
15 providing through the special exception process a way that people
16 could deal with individual circumstances.

17 I think what I heard Mr. Gell's primary concern being
18 that if the prohibition against having any part of it on the
19 ground floor persisted, then he would need a variance and not a
20 special exception. Then provisions hadn't been provided for that.

21 Since it can be heard as a special exception, we could take care
22 of that issue.

23 CHAIRPERSON HOOD: Okay. Let's just proceed on
24 Thursday as we planned at 6:40. We're making our final decision
25 on the criteria on Thursday, November 16th.

1 Is the Office of Planning finished? Okay. I would
2 like to move the agenda to the Consent Calendar, Mr. Bastida. I
3 would ask that we kind of move expeditiously because we do have
4 something that is supposed to take place in this room at, 3:25
5 actually, but 3:30.

6 SECRETARY BASTIDA: You have in front of you Zoning
7 Commission Case No. 00-32M. That is minor modification to 1001
8 New York Avenue, N.W. The Office of Zoning has provided you with
9 all the material submitted by the applicant. Also with a letter
10 from the director of the office considering this minor
11 modification. It is in front of you for your disposal.

12 CHAIRPERSON HOOD: We also, colleagues, I believe,
13 have a letter from Office of Planning asking us -- let me ask the
14 Office of Planning if you could describe the letter that you
15 presented to us.

16 MS. MCCARTHY: What we suggested was since this
17 request raised issues about there was no detail in the letter
18 about the level of contribution that was involved in this housing.
19 It also raised issues of this proposed housing being distant from
20 the project which somewhat flies in the face of the tightening up
21 of the PUD regulations which the board made.

22 And the fact that this wasn't even dated until October
23 31st and wasn't received until later than that. We were simply
24 proposing that the board take that up at its meeting next month
25 and that the Office of Planning would provide an analysis of those

1 issues for the board before that time.

2 CHAIRPERSON HOOD: Commissioner, thank you.

3 VICE CHAIRPERSON MITTEN: I would be happy to make a
4 motion that we defer this until the December meeting. I would
5 also like to add something that I would like to have clarified by
6 the time we take that up again, which is on the second page of the
7 letter requesting the minor modification, it seems to indicate
8 that the building permit was applied for and construction
9 commenced on the site which seemed to vest the office building
10 alternative of the PUD.

11 Yet, the revised housing amenity was really provided for when
12 there was a modification to allow a hotel.

13 I would like to know what effect, if any, vesting the
14 office building alternative of the PUD has on us taking up this
15 alternative because the revision to the housing seemed to be, at
16 least the orders were written, contingent on the hotel alternative
17 so if that could be included. I move that we postpone
18 consideration of this request for minor modification until our
19 December meeting.

20 CHAIRPERSON HOOD: It's been moved. Can I get a
21 second?

22 COMMISSIONER HOLMAN: Second.

23 CHAIRPERSON HOOD: Moved and properly seconded. Any
24 further discussion? All those in favor by using the sign of
25 voting.

1 ALL: Aye.

2 CHAIRPERSON HOOD: Any opposition? So ordered.

3 Staff, would you record the vote.

4 SECRETARY BASTIDA: The staff would record the vote of
5 five to zero to postpone. Ms. Mitten moved it. Mr. Holman
6 seconded it. The rest of the Commission voted in the affirmative.

7 CHAIRPERSON HOOD: Let me just move right along with
8 the agenda. All the correspondence received was case related so
9 we don't need to do that.

10 Colleagues, I'll remind you to bring your reminder
11 schedule with you on Thursday so we can plan for our December
12 Board of Zoning Adjustment hearings. Item B I would
13 turn over to Mr. Bastida. Then we will adjourn out meeting.

14 SECRETARY BASTIDA: Mr. Chairman, under Dr. Lewis when
15 he was Chairman of the Commission, there was not a record of one
16 hearing for different cases were set up. Accordingly, an order to
17 hear was written and signed by the Director and it was never
18 published and becomes part of the orders that we keep in this
19 office.

20 That is no longer the case since the notice of hearing
21 goes to the register and becomes a public notice and part of the
22 public record. Accordingly, I would like to stop writing those
23 Zoning Commission Orders to here since it is duplicitous and time
24 consuming.

25 CHAIRPERSON HOOD: Colleagues, we've heard the report

1 of Mr. Bastida. He just needs authority not to be redundant, I
2 believe, he said.

3 SECRETARY BASTIDA: Correct.

4 CHAIRPERSON HOOD: Can we do that by general consensus
5 or do we have to vote on that?

6 SECRETARY BASTIDA: At your pleasure.

7 CHAIRPERSON HOOD: Okay. Colleagues, we've heard the
8 report of Mr. Bastida. If everything is okay, we'll just give him
9 general consensus so he won't have to do things twice. Okay.
10 Good. That's fine.

11 SECRETARY BASTIDA: Thank you. I will record that the
12 Commission by consensus decided five to zero to stop the practice.

13 Thank you.

14 CHAIRPERSON HOOD: With that, we will adjourn. We'll
15 ask those who are here they can join us for the presentation
16 coming up at 3:30. If everything is in order, this meeting is
17 adjourned.

18 (Whereupon, at 3:23 p.m. the meeting was adjourned.)

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