

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

SEPTEMBER 10, 2012

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 a.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
MARCIE COHEN, Vice Chair
MICHAEL G. TURNBULL, FAIA,
Commissioner (OAC)
PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

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OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic
Preservation

JOEL LAWSON
MAXINE BROWN-ROBERTS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

The transcript constitutes the
minutes from the Regular meeting held on
September 10, 2012.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

FINAL ACTION

ZC CASE NO. 09-14 (Safeway, Inc. - Consolidated PUD & Related Map Amendment) .6
Vote to grant dismissal (4-0-1). . . .7

ZC CASE NO. 12-04 (Office of Planning - Map Amendment). 10
Vote to approve final action (4-0-1) 11

ZC CASE NO. 09-05A (United House of Prayer - PUD Modification) 10
Vote to approve final action (3-0-2) 11

ZC CASE NO. 10-30 (Jemal's Channing - Map Amendment 12
Vote to approve final action (3-0-2) 16

ZC CASE NO. 07-35C (Sheridan Terrace Redevelopment, LLC - PUD Modification . . 17
Vote to approve final action (4-0-1) 18

ZC CASE NO. 06-08C (Ft. Lincoln/Gateway Village, LLC - PUD Modification 19
Vote to approve final action (4-0-1) 19

PROPOSED ACTION

ZC Case No. 11-24 (Stanton-EastBanc, LLC - Consolidated PUD and Related Map Amendment at Square 901) 20
Vote to approve proposed action (4-0-1) 88

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CORRESPONDENCE

ZC CASE NO. 11-03A (Hoffman-Struever
Waterfront, LLC - 2nd Stage PUD 94

 Motion and Supplement from Gene Solon to
 Reopen the Record and Opposition to the
 Applicant's Request for Separate
 Deliberations and Orders 93
 Request denied 96
 Motion from Applicant re: Separate
 Deliberations/Votes and Orders . . . 97
 Vote to approve the motion . .100

 Letter from Councilmember Cheh re:
 Campus Plans101

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

6:51 p.m.

CHAIRMAN HOOD: Okay, we're going to begin the September 10, 2012, Zoning Commission meeting for the District of Columbia. My name is Anthony Hood. Joining me are Vice Chair Cohen, Commissioner May and Commissioner Turnbull, the Office of Zoning Ms. Sharon Schellin, the Office of the Attorney General Mr. Ritting, Office of Planning Ms. Steingasser, Mr. Lawson, and Ms. Brown-Roberts.

We do not take any public testimony at our meetings and we do not normally have anyone come forward. Also we're being recorded and webcast live. The issue with the webcast live tonight, I think, it crashed so we're being recorded. The Office of Zoning will put that recording up on the website as soon as possible.

Ms. Schellin, do we have any

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1 preliminary matters?

2

3 MS. SCHELLIN: No, sir.

4 CHAIRMAN HOOD: I have to be
5 really honest. We have so much paperwork up
6 here sometime and just lose things.

7 Okay. Under final action, we have
8 Zoning Commission Case No. 09-14. This is the
9 Safeway, Inc. - Consolidated PUD & Related Map
10 Amendment at Square 1672 - request for
11 dismissal without prejudice.

12 Ms. Schellin.

13 MS. SCHELLIN: Yes, sir. We did
14 receive a letter from the Applicant Safeway
15 asking that this case be -- I believe they
16 actually used the words dismissed without
17 prejudice.

18 This case was advertised for a
19 hearing initially March of 2011, I think. At
20 the Applicant's request that was taken off and
21 they've been working with the community. At
22 this time they are just not ready to go

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1 forward.

2 CHAIRMAN HOOD: Okay. Thank you,
3 Ms. Schellin.

4 I'm going to ask everyone to
5 indulge me for a moment. There it is.
6 There's my opening statement. Should I read
7 the opening statement? I guess I won't.

8 Okay. Thank you, Ms. Schellin.

9 Commissioners, let me open it up
10 for discussion. Is there any discussion on
11 this issue?

12 Vice-Chair Cohen.

13 VICE-CHAIR COHEN: No, Mr.
14 Chairman, but I would move dismiss without
15 prejudice Zoning Case No. 09-14, Safeway, Inc.
16 - Consolidated PUD & Related Map Amendment at
17 Square 1672. I would waive the requirement
18 for an order. Is there a second?

19 COMMISSIONER TURNBULL: Second.

20 CHAIRMAN HOOD: Okay. It's been
21 moved and properly seconded. Any further
22 discussion? Any further discussion? Are you

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1 ready for the question? All those in favor.

2 COMMISSIONERS: Aye.

3

4 CHAIRMAN HOOD: Not hearing any
5 opposition, Ms. Schellin, would you record the
6 vote?

7 Mr. Ritting, is that --

8 MR. RITTING: No, I don't anything
9 to add. Sorry to disturb you.

10 CHAIRMAN HOOD: Okay. Thank you.

11 Ms. Schellin, would you record the
12 vote.

13 MS. SCHELLIN: Yes. Was that
14 Commissioner May or Turnbull? Okay.

15 Staff records the vote four to
16 zero to one to grant the dismissal without
17 prejudice requested by the Applicant in Zoning
18 Commission Case No. 09-14. Commissioner Cohen
19 moving, Commissioner Turnbull seconding,
20 Commissioners Hood and May in support. The
21 third mayoral appointee position vacant and
22 not voting.

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1 CHAIRMAN HOOD: Thank you, Ms.
2 Schellin.

3 Let's move right on. Zoning
4 Commission Case 12-04, Office of Planning Map
5 Amendment at Ft. Stanton Recreation Center.

6 Ms. Schellin.

7 MS. SCHELLIN: Yes, sir. This
8 case -- sorry. Trying to find my notes. I
9 believe the Office of Planning, everything is
10 in order on this case although the Office of
11 Planning will provide us with a metes and
12 bounds description as listed in the order and
13 we should have that to finalize the order.

14 CHAIRMAN HOOD: They will provide
15 that at a later date?

16 MS. SCHELLIN: Yes, sir.

17 CHAIRMAN HOOD: Okay. With the
18 comments made by the secretary, Commissioners,
19 any other comments? We know that have a metes
20 and bounds being provided at a later date.
21 Any other comments?

22 I would move approval of Zoning

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1 Commission 12-04 and ask for a second.

2 VICE-CHAIR COHEN: Second.

3 CHAIRMAN HOOD: It's moved and
4 properly seconded. Any further discussion?
5 Are you ready for the question. All those in
6 favor aye.

7 COMMISSIONERS: Aye.

8 CHAIRMAN HOOD: Not hearing any
9 opposition, Ms. Schellin, would you record the
10 vote?

11 MS. SCHELLIN: Yes. Staff records
12 the vote four to zero to one to grant final
13 action in Zoning Commission Case No. 12-04.
14 Commissioner Hood moving, Commissioner Cohen
15 seconding, Commissioners May and Turnbull in
16 support. The third mayoral appointee position
17 vacant and not voting.

18 CHAIRMAN HOOD: Okay. Thank you.

19 Next Zoning Commission Case No.
20 09-05A, United House of Prayer - PUD
21 Modification at Square 442.

22 Ms. Schellin.

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1 MS. SCHELLIN: At Exhibit 22 the
2 Applicant provided a draft findings of fact
3 and conclusions of law for consideration by
4 the Commission.

5 CHAIRMAN HOOD: Okay. Let me open
6 it up. Any discussion? Would somebody like
7 to make a motion or are there any comments?

8 COMMISSIONER TURNBULL: If no one
9 has any comments, I'll make a motion. Mr.
10 Chair, I move that we approve Zoning Case No.
11 09-05A, United House of Prayer - PUD
12 Modification at Square 442 and look for a
13 second.

14 VICE-CHAIR COHEN: Second.

15 CHAIRMAN HOOD: Okay. It's been
16 moved and properly seconded. Any further
17 discussion? Are you ready for the question?
18 All those in favor aye.

19 COMMISSIONERS: Aye.

20 CHAIRMAN HOOD: Not hearing any
21 opposition, Ms. Schellin, would you record the
22 vote?

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1 MS. SCHELLIN: Yes. Staff records
2 the vote three to zero to two to approve final
3 action in Zoning Commission Case No. 09-05A.
4 Commissioner Turnbull moving, Commissioner
5 Cohen seconding, Commissioner Hood in support.
6 Commissioner May not voting having not
7 participated. Third mayoral appointee
8 position vacant and not voting.

9 CHAIRMAN HOOD: Okay. Next let's
10 go to Zoning Commission Case No. 10-30
11 (Jemal's Channing - Map Amendment at Square
12 3846.

13 Ms. Schellin.

14 MS. SCHELLIN: Yes. In this case
15 Exhibits 30 and 31 are draft orders provided
16 by the parties.

17 CHAIRMAN HOOD: Okay.
18 Commissioners, any comments?

19 I will say that I have a major
20 concern on this. During the hearing it was
21 mentioned -- I understand about the use and
22 the trolley being right close by in proximity.

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1 We are asking for a required buffer.

2 Then 10 years from now, 15 years
3 from now, the discussion, I believe, the
4 opposition said that when new people move in,
5 that they are going to find that as an adverse
6 use right next to their homes even though the
7 adverse use was there before.

8 I think the opposition brought up
9 a valid point as far as putting in some
10 protective measures to make sure that the
11 folks who just get there for two years don't
12 get into messes and get the use suspended long
13 before they even got there.

14 I thought, and if you look at the
15 order No. 16, it says, "In response to the
16 concerns raised by Trolley Tours, Mr.
17 Millstein testified that the Applicant is
18 fully aware of the Trolley Tours' use and
19 operations of the property.

20 Mr. Millstein also testified that
21 the Applicant will provide a notice in future
22 leases to occupants of the subject property

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1 disclosing Trolley Tours operation. Mr.
2 Millstein also testified that when the
3 Applicant begins to develop its subject
4 property, the Applicant will coordinate with
5 Trolley Tours to incorporate design features
6 and buffers between the respective properties
7 to minimize any adverse impacts.

8 The problem I have is that the
9 Applicant did not offer this as a commitment
10 as a condition. I just don't see the attempt
11 that was discussed in the order that we are
12 getting ready to vote on. I think that the
13 party in opposition has a very valid point.

14 I don't know if anyone else feels
15 that way or maybe we need to ask the Applicant
16 to require them to show us a little more
17 evidence that they are willing to do what they
18 said they would do variably but it's not in
19 their order.

20 Let me open it up. Does anyone
21 else feel that way? Hold on.

22 Ms. Schellin.

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1 MS. SCHELLIN: Chairman Hood, I'm
2 getting an indication from Mr. Freeman, who is
3 the attorney for the Applicant, that they are
4 willing to make that a condition of the order.

5 Is that correct, Mr. Freeman?

6 CHAIRMAN HOOD: You know, we
7 don't --

8 MS. SCHELLIN: Yes.

9 CHAIRMAN HOOD: He is? Okay.
10 Mr. Turnbull.

11 COMMISSIONER TURNBULL: I see him
12 sighing as he's nodding. I would be willing
13 to approve it based on the condition --

14 CHAIRMAN HOOD: A nod from the
15 audience. Okay. For the sake of efficiency
16 and effectiveness, unless my colleagues don't
17 agree with me, we won't have to hold this off
18 but we won't issue that order. It won't be
19 signed until this order is correct.

20 COMMISSIONER TURNBULL: Mr. Chair,
21 I'd make a motion then that we accept and we
22 approve Zoning Case No. 10-30, Jemal's

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1 Channing, map amendment at Square 4386 with
2 the condition that there will be a change as
3 noted by the Applicant's legal counsel as to
4 what we had said earlier.

5 CHAIRMAN HOOD: Okay. Can I get a
6 second?

7 VICE-CHAIR COHEN: I'll second
8 that.

9 CHAIRMAN HOOD: Moved and properly
10 seconded. Any further discussion? Is there
11 anything else anyone wants to add other than
12 that? Any further discussion? Are you ready
13 for the question? All those in favor, aye.

14 COMMISSIONERS: Aye.

15 CHAIRMAN HOOD: Any opposition?
16 Not hearing any, Ms. Schellin, would you
17 record the vote?

18 MS. SCHELLIN: Yes. Staff records
19 the vote three to zero to two to approve final
20 action in Zoning Commission Case No. 10-30.
21 Commissioner Turnbull moving, Commissioner
22 Cohen seconding, Commission Hood in support.

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1 Commission May not voting having not
2 participated and the third mayoral appointment
3 position vacant and not voting.

4 CHAIRMAN HOOD: Okay. Next Zoning
5 Commission Case No. 07-35C. This is Sheridan
6 Terrace Redevelopment, LLC - PUD Modification
7 at Squares 5869 and 5872.

8 Ms. Schellin.

9 MS. SCHELLIN: The staff has
10 nothing further to add for this case.

11 CHAIRMAN HOOD: Any discussion?
12 Anybody have any discussion? I'm not going to
13 beat a dead horse. I know from a legal stand
14 point where I am. I think all my issues were
15 discussed. Even though I know I voted in
16 favor of this, reading over it I have some
17 reservations but I'm not going to belabor the
18 point.

19 I think we are where we are and we
20 need to stay within the legal requirements.
21 I will be voting again in favor of the final
22 action so if somebody can make a motion.

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1 COMMISSIONER MAY: I would move
2 approval of Zoning Commission Case 97-35C,
3 Sheridan Terrace Redevelopment - PUD
4 Modification at Squares 5869 and 5872.

5 CHAIRMAN HOOD: Okay. It's been
6 moved. Can I get a second?

7 COMMISSIONER TURNBULL: Second.

8 CHAIRMAN HOOD: Moved and properly
9 seconded. Any further discussion? Are you
10 ready for the question? All those in favor
11 aye.

12 COMMISSIONERS: Aye.

13 CHAIRMAN HOOD: Not hearing any
14 opposition, Ms. Schellin, will you record the
15 vote.

16 MS. SCHELLIN: Staff records the
17 vote four to zero to one to approve final
18 action in Zoning Commission Case No. 07-35C.
19 Commissioner May moving, Commissioner Turnbull
20 seconding, Commissioners Cohen and Hood in
21 support. The third mayoral appointee position
22 vacant and not voting.

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1 CHAIRMAN HOOD: Okay. Next is
2 Zoning Commission Case No. 06-08C. This is
3 Ft. Lincoln/Gateway Village, LLC - PUD
4 Modification in Square 4325.

5 Ms. Schellin.

6 MS. SCHELLIN: Yes. At Exhibit 24
7 the Applicant provided draft findings of fact
8 and conclusions of law.

9 CHAIRMAN HOOD: Thank you, Ms.
10 Schellin.

11 Commissioners, I think we did not
12 -- okay. We did not take proposed action for
13 a reason. I think that's been resolved.
14 Okay. My comments then are outdated.

15 Anyway, let me open it up for
16 discussion. No discussion? Okay. I will
17 move approval of Zoning Commission Case No.
18 06-08C and ask for a second.

19 VICE-CHAIR COHEN: Second.

20 CHAIRMAN HOOD: It's been moved
21 and properly seconded. Any further
22 discussion? All those in favor aye.

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1 COMMISSIONERS: Aye.

2 CHAIRMAN HOOD: Any opposition?

3 So ordered.

4 Ms. Schellin, would you record the
5 vote.

6 MS. SCHELLIN: Staff records the
7 vote four to zero to one to approve final
8 action in Zoning Commission Case No. 06-08C.
9 Commissioner Hood moving, Commissioner Cohen
10 seconding, Commissioners May and Turnbull in
11 support. Third mayoral appointee position
12 vacant and not voting.

13 CHAIRMAN HOOD: Okay. What I
14 would like to do at this point is to -- I'll
15 tell you what. Let's just go with the order of
16 the agenda.

17 Proposed action Zoning Commission
18 Case No. 11-24. This is the Stanton-EastBanc,
19 LLC - Consolidated PUD and Related Map
20 Amendment at Square 901.

21 Ms. Schellin.

22 MS. SCHELLIN: Yes, sir. There

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1 were some post-hearing submissions that were
2 made at Exhibits 450, 452, 454 through 463.
3 The record was also reopened to accept Exhibit
4 465 which was a submission by the Hine School
5 North Neighbors. Thank you.

6 CHAIRMAN HOOD: Okay. Thank you,
7 Ms. Schellin.

8 Commissioners, I would like to
9 look at some of the proposed orders. Let me
10 just -- Exhibit 453, this is a letter from Ms.
11 Helen Oppen-Weiner. After consulting with
12 legal counsel I have been informed and I think
13 she has asked three different requests. I
14 want to sum it up like this.

15 The legal opinions at issue on a
16 number of occasions and throughout the city,
17 the Zoning Commission actually has no
18 authority and no intentions to ask the
19 Attorney General's Office to give legal
20 opinions that are privileged to the
21 attorney/client privileged information.

22 We will not be asking -- I don't

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1 want to use the word direct but we will not be
2 asking, and actually I don't think we have
3 authority anyway to ask. A lot of times this
4 is attorney/client information.

5 Anyone else have any concerns
6 about Exhibit 453, letter from Ms.Helen Oppen-
7 Weiner? Anymore comments?

8 COMMISSIONER MAY: Yes, I wanted
9 to say we certainly are not in a position
10 where we can say with certainty that 7th
11 Street will be closed between C Street and
12 Pennsylvania Avenue and we should make our
13 decision accordingly on the assumption that we
14 simply don't know what that is.

15 We know that there will be an
16 earnest effort to try to get that closed.
17 There may be concerns. It may be successful
18 or it may not but we need to make a decision
19 knowing that it is not a certainty that
20 portion of the street will be closed and would
21 be used for the flea market in the future.

22 CHAIRMAN HOOD: Okay. Any other

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1 comments or concerns? Anybody else want to
2 delve into the letter or are we okay? All
3 right. Let's open it up for discussion. Who
4 would like to start us off?

5 COMMISSIONER MAY: We have to get
6 our piles in order. Lots of piles.

7 CHAIRMAN HOOD: Let's take a
8 moment to do that.

9 COMMISSIONER MAY: I'm ready to go
10 ahead.

11 CHAIRMAN HOOD: Okay, Commissioner
12 May.

13 COMMISSIONER MAY: Where to begin?
14 There is a lot to say, I think, about this
15 project. I think, first of all, it's a very
16 complicated project and there are a lot of
17 different issues that are associated with it.

18 I think that there has been an
19 earnest effort on the part of the Applicant to
20 try to satisfy the concerns that were raised
21 by all the different members of the community
22 in a number of different forms and forums.

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1 In many ways this is really an
2 exceptional PUD. I know that for a lot of
3 people who are paying attention to this PUD
4 don't see all of the PUDs that we see and
5 there are a lot all the way across the city
6 and many of them deal with similarly complex
7 issues. I think in many ways this is an
8 exceptional case.

9 I have absolutely no doubt that
10 the buildings that are proposed here are going
11 to be very, very high quality in design and in
12 construction. Again, that, in many ways, is
13 exceptional for PUDs because we see a number
14 of PUDs that are good but not great. I think
15 that this has all the makings of a great
16 building.

17 There is much more than the
18 minimum in terms of affordable housing. That
19 is another reason why I think it's
20 exceptional. It is a very complicated
21 context. It is on top of the Metro and, yet,
22 it's in a relatively low-density neighborhood.

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1 Most of the surrounding development is
2 townhouses so putting a very tall building
3 here would be out of context.

4 At the same time, for the sake of
5 all of the good things that we want to do in
6 encouraging development in the right places,
7 we want to have more density close to Metro so
8 it's a difficult thing to strike the right
9 balance.

10 There is -- this brings a large
11 amount of apartment living to the Eastern
12 Market area and in close proximity to that
13 Metro and that's unusual. There are certainly
14 apartment buildings scattered throughout
15 Capitol Hill but this is probably going to be
16 the largest block of apartment-style living in
17 the vicinity. There is even the senior
18 component of this which is also, I think, a
19 special aspect of the project.

20 I think there has also been
21 extraordinary community involvement in a
22 community that is normally dealing with much

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1 smaller-scale projects. Certainly we have
2 seen representatives of the Capitol Hill
3 community come here on a regular basis for a
4 variety of things.

5 They report regularly to us
6 through various means on issues of zoning
7 regulation changes and things like that that
8 many people in the city do not pay attention
9 to but the Capitol Hill community is very
10 attentive to many of the things that we do.

11 Generally speaking, most of the
12 projects that have been seen, particularly in
13 this part of Capitol Hill, are just nowhere
14 near as big as this. It has really brought
15 out an extraordinary level of community
16 involvement.

17 I think also the efforts on the
18 part of many of the members of the community
19 both in support and in opposition to aspects
20 of the project are commendable in many, many
21 ways. I think the ANC, particularly with all
22 of the new blood that are on the ANC who, I

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1 think, jumped into this and really jumped into
2 the deep end when it comes to dealing with a
3 project like this.

4 With the ANC I think some of those
5 folks got more than they bargained for. It's
6 been, I think, an exceptional effort. The
7 fact that it was brought all the way through
8 to an agreement with the developer is a
9 testament to the hard work that they went
10 through. Frankly, the fact that it was a
11 split vote shows how difficult it is to come
12 to an agreement. Yet, they worked their way
13 all the way through it.

14 Many of the other groups that have
15 been involved in this, the Eastern Market
16 Community Advisory Commission -- Committee,
17 sorry, Capitol Restoration Society, Barracks
18 Row, Capitol Hill Village, Champs, a number of
19 community organizations that have come out on
20 this project.

21 I think that shows an exceptional
22 level of involvement and interest in the

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1 project. Frankly, the fact that there is
2 support from at least all of those groups that
3 I just mentioned, for the most part, obviously
4 with some concerns in some circumstances I
5 think makes it, again, an exceptional project.

6 This development is going to be a
7 profound change for the area around Eastern
8 Market. I think it's going to be a change
9 that in many ways is difficult to accept and
10 difficult to get comfortable with. Certainly
11 it's going to be very difficult for the couple
12 of years that it's under construction. Even
13 that it's going to be a very different
14 circumstance.

15 Now, I can't say that the parking
16 lot behind the Hine School or the Hine School
17 and its architecture in itself and the
18 environment in the immediate vicinity is a
19 great benefit to the community. I'm hoping
20 that whatever we approve to be built here is
21 going to be a substantial improvement but it
22 is going to be a significant change.

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1 Honestly, there are only a few
2 issues that I really have concern about on the
3 project. I was initially quite concerned
4 about height. I think that the ANC did a good
5 job of working with the developer to try to
6 push the height of the building down along 7th
7 Street.

8 I'm comfortable with the height
9 along 8th Street. It is taller than the
10 buildings across the street but we have
11 circumstances like that in many locations
12 around Capitol Hill. I think that the
13 designer has done a very good job of trying to
14 mitigate the height there and make a
15 comfortable relationship between the new
16 building and the houses that are across the
17 street.

18 The issue of parking, I know that
19 we are accustomed to DDOT coming in on every
20 project and saying there is way too much
21 parking as if parking is the sole driver of
22 traffic. In many cases perhaps it is but I

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1 believe that when the folks in the
2 neighborhood testified about how difficult the
3 parking is in the neighborhood and that it
4 would be hard to build too much parking here.

5 I think that the fact that the
6 levels of service on so many of the
7 surrounding streets are in the A, B, and C
8 level. Again, this is an exceptional thing.
9 We deal with PUDs all the time where the
10 applicant is fighting to keep things at a
11 level E or better and almost every
12 intersection in the vicinity is an A, B, or C.

13 The traffic is really not that bad
14 and I think they did a reasonably good job of
15 demonstrating that it's not going to be that
16 bad in the future. I think a lot of parking
17 isn't going to make it worse. In fact,
18 parking is going to make it better because
19 there will be less people circling the blocks
20 trying to find places to park because that is
21 a common thing.

22 I think some of the other issues

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1 that were raised, the fact that C Street is
2 going to be reopened but the private street,
3 to me it doesn't really matter that much who
4 has control over the street.

5 I think what is gained by having
6 it be a private street is a substantial
7 benefit to the community in the long run.
8 Having that level of control over what happens
9 without necessarily having to subject it to
10 the other normal bureaucratic processes of
11 doing temporary street closures and such.

12 And I'm also quite confident that
13 the folks in the neighborhood will exert
14 sufficient control over what the developer
15 does or what the owner does in the long run
16 because I know that they will continue to work
17 with the Applicant, or work on the Applicant
18 as the case may be, to try to get things
19 working the way they should for the sake of
20 the neighborhood. I'm confident that aspect
21 of it is going to work out.

22 The things that I am still a

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1 little bit troubled with, I think the parking
2 for -- I'm sorry, the loading for large trucks
3 is still an issue. I'm not sure how best to
4 decide that.

5 I think the idea of leaving it up
6 to DDOT and the Public Space Committee and
7 that process to try to figure out a way to
8 unload trucks on 7th Street in the middle of
9 the night just doesn't feel good. It doesn't
10 feel like it's going to work, particularly
11 with certain types of uses in the building.

12 I'm uncomfortable with that. I
13 don't know what the solution is but I'm just
14 uncomfortable with what's proposed, that we
15 simply put it off and let it work through some
16 other process.

17 The flea market circumstance I
18 think the Applicant has done a reasonable job
19 of trying to accommodate the flea market. The
20 truth about a flea market in a circumstance
21 like this is that it exist because the space
22 exist, or it exist as large as it is because

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1 there is that much space.

2 Certainly it has been very
3 successful and there is a symbiotic
4 relationship between the market itself and the
5 flea market. It's not the effort of any
6 single individual now. It's the effort of the
7 folks who kept the market going through all of
8 the down years, the folks who kept the arts
9 community engaged in flea market and flea
10 market sales and so on.

11 And the fact that there's been --
12 it has become a real destination for this
13 purpose I think is a result of the efforts of
14 many, many people. In the long run that
15 opportunity exist as long as that space is
16 there and there is no guarantee that parking
17 lot will be there forever.

18 There never was. The fact that it
19 has become so established is really quite
20 remarkable. I think that in the long run
21 there will still be a viable market even if
22 there is no guarantee that 7th Street will be

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1 closed south of C Street.

2 I think that the market will
3 survive. As I understand it, we've even
4 gotten some of indication of the flea market
5 operators now agreeing with the plan given
6 that they would have a chance to operate the
7 market in the event that the Eastern Market
8 Trust is not established immediately.

9 I think there are other issues.
10 The construction management agreement, I
11 think, frankly is as strong as what we usually
12 see if not stronger. There might be some
13 things to quibble about there but I just don't
14 see a really large issue there. I think there
15 are certainly a lot of people who are
16 concerned about the mere size of the
17 development and are urging things like keeping
18 it to C-2-A and R-4 as it is right now.

19 Frankly, in the greater service to
20 the city I think that it's not justified to
21 keep this site down to C-2-A exclusively.
22 Just going from C-2-A to C-2-B is not an

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1 extraordinary leap so I think that the density
2 is appropriate and in the long run it will be
3 a benefit to the neighborhood and the city as
4 a whole.

5 CHAIRMAN HOOD: Anyone else like
6 to comment?

7 Vice Chair?

8 VICE-CHAIR COHEN: First of all, I
9 would like to state that my colleague has
10 presented a very complete and thorough summary
11 of most of the positive things of this project
12 which I concur with. Again, I think that the
13 design of the project keeps in line with the
14 historic feel of the neighborhood. The
15 Applicant did bring down the height by one
16 story. I think that was movement.

17 Again, I think it's getting used
18 to something that is not there but does add to
19 the community, especially because it's facing
20 a much more highly traveled street which is
21 Pennsylvania Avenue.

22 I agree about the 46 units of

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1 affordable housing. I always prefer if I have
2 my druthers that it be in a mixed income
3 building but I understand about the financing
4 concerns.

5 Had it been designed today, it
6 might be a different project frankly, in my
7 opinion, because I think there are a lot of
8 investors that would be interested today in
9 this particular neighborhood. Be that as it
10 may, it's got 46 units that are necessary. We
11 have a severe crisis of affordability in this
12 city.

13 I think that, again, the parking,
14 I go along with there is extra parking but I
15 think in this particular neighborhood it will
16 just alleviate some of the congestion,
17 especially on the weekend and evenings.

18 I would have preferred to see some
19 kind of affordable units not offering market
20 rate. Parking but maybe give especially like
21 maybe a senior rate for the seniors. They get
22 it at the movies. Why not for parking.

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1 Again, I think with the affordable
2 housing there might be an opportunity for
3 somebody to own a car who needs to travel to
4 a job. They may be traveling to a job that
5 doesn't pay much and they can't afford market-
6 rate parking. I would like to see something
7 done there.

8 I really want to commend actually
9 the ANC for its negotiation of the agreement.
10 I admire -- I just admire all the time and
11 effort that volunteers put into the efforts.
12 I think that they did a terrific job in
13 negotiating.

14 Let me just go on because I think
15 it is a project that does provide many
16 benefits but here are my concerns. Again, I
17 think that the east/west alley that abuts the
18 north building, I think you could provide
19 noise attenuation with windows but there's a
20 lot of -- there will be a lot of traffic so I
21 would like the Applicant to take a look at
22 especially where the garbage pickup will be.

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1 If you could put it at one end,
2 the retail end. Maybe that is the case but I
3 kind of didn't catch it in my reading.

4 COMMISSIONER MAY: Can I ask a
5 question about that? I think the way the
6 trash pickup is right now it's a little bit
7 toward eight street as opposed to being more
8 toward the 7th Street side. It's opposite the
9 back yard of homes. Are you suggesting that
10 it would be more towards 7th Street where it
11 would be opposite the back yard of a business
12 along 7th Street?

13 VICE-CHAIR COHEN: Yes.

14 COMMISSIONER MAY: Okay. That
15 point was made in one of the later submissions
16 that we got.

17 VICE-CHAIR COHEN: Okay.

18 COMMISSIONER MAY: That is a
19 reasonable thing to look at.

20 VICE-CHAIR COHEN: I think I
21 mentioned already the parking discount for the
22 north building. Then I was confused about

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1 actually it almost seemed like a double
2 negotiation with the existing manager of the
3 market and then if the Eastern Market
4 consortium is becoming -- trust. I'm sorry,
5 the Eastern Market Trust comes into existence
6 and they get the first right to be the manager
7 and that was confusing to me.

8 It's also, I think, difficult to
9 see that half of the vendors may not have
10 spaces in this new market. At least it's
11 going to be returning and that is a positive
12 but I was just concerned that it was going to
13 be in a much reduced way. I don't know how
14 that can be resolved frankly. Those are my
15 comments.

16 CHAIRMAN HOOD: Okay. Any other
17 comments?

18 Mr. Turnbull.

19 COMMISSIONER TURNBULL: Thank you,
20 Mr. Chair.

21 I guess I'll start off going along
22 with agreeing with some of the comments that

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1 my colleagues have made. I think we did have
2 a very good architect on this project and I
3 applaud the Applicant for choosing the
4 distinguished Esocoff and Weinstein studio.
5 I think they are very accomplished architects.

6 We had some struggles, I know,
7 with the height. I would also applaud ANC-6B
8 for their monumental work in working on this
9 case. I think they really did an outstanding
10 job and I think they did a very good job of
11 explaining it the night they were here and
12 going through it and walking us through the
13 issues.

14 As has been said before, it's a
15 complicated project. It's a difficult
16 project. I think it has a lot of positive
17 aspects to it. I think there's a lot of
18 issues. Again, looking down the road 20 years
19 from now we'll probably look back and
20 hopefully feel a lot more comfortable.

21 I think a lot of the neighbors had
22 issues. I think it was a mixed bag going back

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1 and forth about the aspect. We saw the
2 Applicant go back and make some changes with
3 the ANC. Again, I want to applaud the ANC for
4 all their hard work in working on this.

5 But I still have some issues, some
6 feelings. I'm still concerned operationally
7 about the north building. I appreciate the
8 Applicant coming back with the revised
9 drawings and schemes on that. I think it's
10 been a great improvement. I think the pergola
11 at the entrance.

12 I think moving the community room
13 to the first floor was a big improvement. I
14 think it's little things like that that help
15 make this building feel more than -- I really
16 struggled when I thought this was going to be
17 an isolated building just standing by itself.

18 I didn't want it to get any stigma
19 attached with it so I felt very concerned that
20 we were creating this. I'm a little bit more
21 relieved but I'm still concerned operationally
22 there are issues. I think the alley is still

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1 an issue. I think Commissioner Cohen made an
2 observation about the loading dock and the
3 waste removal.

4 I think those are still an issue.
5 I'm not really sure how we do it. I think we
6 would like to see some work done on that. I
7 don't want to impose too much on the new
8 building but, again, I don't want to impose on
9 the neighborhood also. You've got a tough
10 alley there. People are going to be
11 unloading. There's going to be waste removal.

12 I'm not sure. I would like to see
13 some more work done on that. It's a nasty
14 little problem but I applaud them for all the
15 work they've done on the building making it
16 architecturally better looking.

17 I think and, again, I would agree
18 with Commissioner May. I think the large
19 trucks unloading for the south building is
20 still an issue and I don't know if that has
21 been totally resolved.

22 I think in the final order for

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1 this project, although we are not going to be
2 referencing the MOA with the ANC, there is a
3 lot of aspects in that MOA that needs to be in
4 the order. I think the Applicant has got to
5 make sure that those are well covered.

6 I'm going to be very careful in
7 going through that and looking at that order.
8 Construction management, we talked about that
9 it's a very good plan. I want to make sure
10 they have really covered everything and that
11 what they have proffered is really in there.

12 On C Street the vendors, the
13 parking for the vendors, all that stuff needs
14 to be very clearly called out in the order.
15 I'm not sure if they are proffering anything
16 on 7th Street. Again, it's out of our purview
17 if they are going to put anything that they
18 are going to work to try to do something for
19 vendors on 7th Street.

20 I'm not sure how that gets
21 handled. It's really not for us. I mean,
22 it's a bonus. I mean, the C Street plaza area

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1 is the flea market area and they've shown
2 several layouts on how they can accommodate
3 that.

4 That's a given. I think they need
5 to clearly address that and to proffer. But
6 7th Street is a bonus. I mean, that is
7 something that is kind of out of our hands.
8 We can't really do anything with that. Again,
9 I would like to see in the order all the items
10 that I think we talked about clearly called
11 out.

12 I think there is a lot of
13 community interest, a lot of community
14 concerns. Hopefully the order covers all of
15 those. I think this is going to be a good
16 project for the community as it goes forward.
17 Construction management is a key. It's going
18 to be a long project so there will be concerns
19 of construction, construction traffic, all of
20 that needs to be called out.

21 I think we had several nights of
22 hearings back and forth. We heard a lot of

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1 testimony, pro and against. I think in the
2 long run it does have -- I think the pluses
3 outweigh any of the negative. I think there
4 are so many good aspects for the development
5 of the community of this project. I just want
6 to make sure that everything is covered in the
7 order. In going forward that we've covered
8 everything.

9 CHAIRMAN HOOD: I just want to
10 read two or three things, parts of letters,
11 one or two letters.

12 "As someone who loves the Hill,
13 the idea that there will be affordable units
14 for seniors is very attractive. Walking
15 distance to the market is wonderful for a
16 senior."

17 Then someone came back and said,
18 "The silent majority within eight blocks of
19 the site are concerned about the size and
20 scale of the development."

21 This person says they do not want
22 to see Capitol Hill become like Dupont Circle

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1 up in Northwest with a lot of development.
2 The Commission was asked to require to develop
3 a setback and also to go down to the zone of
4 C-2-A.

5 Then we had another person who
6 says, "C-2-B with the PUD allowance of 65 feet
7 in height is a good compromise between this
8 and the historic district."

9 I wanted to open that up because,
10 as my colleagues have already said, we've had
11 a lot of testimony. These decisions are not
12 often easy. You have some that like and some
13 that don't like.

14 We try to weigh everything that is
15 testified to or given to us in the hearings to
16 the best of our ability to make the decision.
17 At the end of the day we are going to be
18 impacted also.

19 I wanted to run through a few
20 things before we start looking at some of the
21 findings of facts and conclusions of law that
22 were submitted by the different groups.

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1 Normally we finalize but I kind of
2 want to run through some of the other findings
3 of facts and conclusions of law that were
4 submitted to us. The reason being I wanted to
5 see if we feel so inclined to maybe have that
6 implemented so when we come back for our final
7 it will be a lot easier. Exactly what you
8 said, Mr. Turnbull.

9 I agree with everything I heard up
10 here. The question is to what magnitude. I
11 do know the issue about spot zoning. We have
12 been lectured on spot zoning over and over
13 again. I think the Applicant has addressed
14 that case so I'm not going to go down that
15 road.

16 No, this is not spot zoning. I
17 think we need a recalculation of the FAR
18 because I think the one we have -- I think
19 someone has already noted that. Didn't
20 somebody note that?

21 COMMISSIONER MAY: I did not but,
22 yeah, you're right we need a FAR calculation

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1 that's assuming the right-of-way of C Street
2 is not included.

3 CHAIRMAN HOOD: Okay. I will tell
4 you that Hine Neighbors North have submitted
5 some responses from their traffic consultant
6 Mr. Mehra. Then the Applicant responded. I
7 want to say they responded to that, I think.
8 I'm not sure. Hold on. Let me see. I
9 thought I saw two responses.

10 Anyway, let me ask this. Exhibit
11 458 and, I think, Exhibit 452. No, I'm sorry.
12 Yeah, 452. And it's responded to in 458. 456
13 is something different. Let's look at 452 and
14 458, Commissioners, if you have that in front
15 of you. There was a pack that was given to
16 us. I want to just go down and see if we have
17 any concerns.

18 I actually -- I know Mr. Mehra.
19 I've been around a while. I know so has
20 Symmetra Design but, for me, a lot of times I
21 know those points are argued back and forth
22 but, for me, what helps me out is to hear from

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1 the city subject matter expert which is DDOT
2 on these issues. When you get those in front
3 of you, let's just look at those and see if
4 anybody is compelled to move to answer.

5 I think, Commissioner May, you did
6 ask for loading for larger trucks. You asked
7 DDOT to look at that?

8 COMMISSIONER MAY: Just now?
9 Yeah, tonight. No, what I was asking actually
10 I would like to see the Applicant take another
11 look at whether it's possible to modify the
12 loading dock to allow 55-foot trucks to pull
13 in and unload. I know it's a difficult thing
14 to do but I just don't feel like that issue
15 has been exhausted.

16 I think that the alternative of
17 unloading those large trucks while parked on
18 7th Street is not a very good solution. Even
19 if DDOT were to agree to it under whatever
20 conditions I don't think it's a very good
21 solution.

22 As for the rest of it, I read

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1 through again carefully what Mr. Mehra had
2 testified to and what was submitted as a
3 follow-up and then Symmetra's response to it.

4 I think they did a fairly good job
5 of responding to it point by point and
6 addressing where if they had made the
7 corrections or the modifications in their
8 calculations along the lines of what he
9 suggested, that it would not have a
10 substantial impact on their calculation of
11 traffic impacts. I'm satisfied on that.

12 I mean, there is one outstanding
13 problems which is the level of service F at
14 8th and C that is predicted on weekends when
15 the market is closed but I'm not sure -- I'm
16 sorry, when the market closes the street but
17 I would think that -- I'm not sure there are
18 going to be ways to manage that with the
19 market managers so much as the fact that
20 people are going to get accustomed to the fact
21 that you can't go through there and they are
22 going to avoid the intersection.

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1 That is what happens right now.
2 With 7th Street closed between C and North
3 Carolina and the normal route to go from C
4 Street on the east to C Street west of the
5 market or to 7th Street is to go through the
6 alley and you can't go through the alley.

7 It's closed at the 7th Street sign
8 and people just know that and they don't
9 bother. I think that is probably what's going
10 to happen. I don't think we'll ever reach the
11 level of service F at 8th and C.

12 CHAIRMAN HOOD: Hine School North
13 Neighbors is Exhibit 452 and I just want to
14 see if it compels anyone.

15 "If the PUD is approved, the
16 traffic levels should be monitored after the
17 complex is 50 percent or so occupied and the
18 data should be compared with the traffic
19 report estimates. No further development or
20 occupancy should be permitted until the
21 Applicant meets the vehicle trip estimates
22 used in the analysis."

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1 I think there was a response to
2 that. Either way, I don't know if that moves
3 anyone but it didn't move me. I think for me
4 this whole traffic issue -- not just in this
5 case, we can sit here and deliberate all day
6 but your comments, all this stuff up here to
7 me is null and void when I'm sitting in
8 traffic and all this stuff is going on.

9 Yes, we do need to find a way. I
10 think, at least from my standpoint, and I'm
11 only speaking from one commissioner's
12 standpoint, I think the testimony that you
13 hear from people who are frustrated like I am.

14 I live in the city, too. When you
15 come in the traffic and then you come here in
16 front of the Zoning Commission and everybody
17 tells you most things are great. Actually
18 they don't say that here pretty much when I
19 look at the level of service.

20 Commissioner May just mentioned
21 the level of service of F. Is anybody
22 compelled to that particular statement? I'm

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1 putting that in the parking lot even though
2 it's full, but I'm putting that in the parking
3 lot for a reason. We don't have to deliberate
4 it whole heartedly but, I mean, this is
5 something we need to come back and maybe
6 address or deal with.

7 COMMISSIONER MAY: Are you talking
8 about the specific suggestion that the
9 occupancy be limited based on the monitoring
10 of traffic impacts?

11 CHAIRMAN HOOD: I don't know if we
12 can go that far to the second part of the
13 sentence but, I mean, at least we might be
14 able to redraft it.

15 COMMISSIONER MAY: I mean, they
16 are proposing monitoring the traffic impacts.
17 I think that the plan for doing so is
18 reasonable. There is a requirement that they
19 basically keep monitoring.

20 If, in fact, they exceed 10
21 percent of the projected traffic impacts based
22 on actual counts done twice a year, that they

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1 come back and implement new TDM measures to
2 drive it back down and they don't get to stop
3 doing that until they get back down within 10
4 percent of the projected traffic impacts.

5 Ten percent of the projected
6 traffic impacts is not going to be -- it's not
7 going to drive any of those intersections into
8 failure. I think there is -- it's a pretty
9 strong performance monitoring and compliance
10 measure compared to other PUDs. I don't think
11 I've seen one recently that was anywhere close
12 to this. I think this is as strong as it
13 gets.

14 CHAIRMAN HOOD: Well, I understand
15 that they have some mitigation measures that
16 they are proposing to us. I think for me Mr.
17 Mehra's subject, and I probably still want to
18 discover to see how far we can go with this,
19 because he's saying that if the PUD is
20 approved, the traffic level should be
21 monitored after the complex is 50 percent or
22 so occupied.

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1 I think to me that's a difference
2 other than what we have in front of us. I'm
3 just throwing that out there. I would like to
4 put that in the parking lot.

5 COMMISSIONER MAY: I'm not sure --
6 I mean, can we keep it out of the parking lot
7 and try to talk about it right now and resolve
8 it? Because I don't think it's practical. I
9 think there is a real issue when we basically
10 say you can't continue to occupy the building
11 based on traffic impacts unless you fix that.

12 I think we are getting too deeply
13 into the developer's business. If they are
14 actually held up from occupying the building,
15 I would imagine that would have tremendous
16 negative impacts on their ability to finance
17 and complete the project.

18 CHAIRMAN HOOD: While I don't
19 disagree, I still think that this comment, and
20 the reason why I said I don't want to get --
21 I want to see how that is going to be
22 addressed when we go to the orders. I know

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1 what they are proposing now but I think that
2 this is something, at least in my reading,
3 something I would like to keep in the parking
4 lot because it may go away.

5 VICE-CHAIR COHEN: Mr. Chairman, I
6 think I agree with Commissioner May. I think
7 it's very impractical at that point. I
8 believe that will have a negative impact on
9 the possibility of moving ahead and have a
10 very negative economic impact if you can't
11 rent out the building.

12 What is their recourse? Basically
13 what can they do? Prohibit people from having
14 cars or driving between certain -- I don't
15 know how you can implement that 50 percent.

16 CHAIRMAN HOOD: And that is why I
17 asked for it to go in the parking lot because
18 I have to discuss some more thought. The
19 language may even change. I don't know.
20 That's why I need to -- I'm talking about the
21 idea or the concept. This is conceptual what
22 I'm talking about. Everything is proposed.

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1 Nothing is final.

2 I'm just trying to take some of
3 the concerns that have been addressed by the
4 community and put them in the parking lot.
5 I'm trying to decipher. We are here and I'm
6 trying to bring the issues here. That's why
7 I asked to bring it to the parking lot. What
8 I did, for the record, I had my hands wide
9 apart and what I just said was bring it closer
10 together for the record. That is what I'm
11 saying.

12 This is what people are really
13 living and they are asking us after something
14 -- yeah, there may be some financial
15 implications and, yeah, if I was to look at
16 the developer he's probably frowning up at me
17 but that's not what I'm doing. What I'm doing
18 is trying to find out and take some of what
19 the concerns are and deal with it. Yeah, we
20 can throw it out and say, "I think it's
21 impractical."

22 No, actually I don't think it is

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1 because I think at the end of the day the way
2 I see it is trying to strike a balance of
3 those who live there and who will endure than
4 those who live across town like myself. I'm
5 not saying this is the language, this is the
6 all-in-all.

7 What I'm saying, though, is this
8 is something I would like to put in the
9 parking lot. Right now this is the only car,
10 Commissioner May, that is in the parking lot.
11 The parking lot has 400 spaces in it.

12 COMMISSIONER MAY: We definitely
13 have too much parking.

14 COMMISSIONER TURNBULL: If I'm
15 reading you right, what you are looking for
16 then is really the Applicant and DDOT or the
17 ANC get together and to come up with some kind
18 of a proposal or language as to the parking
19 and the traffic that they could come back with
20 that would be in our order.

21 I mean, I know what your concern
22 is. You are concerned that we get 100 percent

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1 of the project done and we are finding that
2 the traffic study, the monitoring that DDOT is
3 going to do is going to go off the map and
4 we've got a real problem.

5 CHAIRMAN HOOD: It's a mess and
6 then when we're sitting over there -- I'm not
7 saying that I'm going with exactly the
8 language here. I don't know if I'm that far
9 yet, Mr. Turnbull.

10 COMMISSIONER TURNBULL: Okay.

11 CHAIRMAN HOOD: I'm not as far as
12 to go to the Applicant and ask the ANC. What
13 I'm trying to do is put this here as we get
14 down to those few issues that we are asking to
15 look for that this be one of them. That's it.

16 COMMISSIONER TURNBULL: Okay.

17 CHAIRMAN HOOD: No more, no less.
18 Actually, since it doesn't call for a vote,
19 I'm going to go ahead and still just put that
20 on there and move on. Not that I'm
21 disregarding any of my colleagues but we want
22 to move along.

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1 COMMISSIONER TURNBULL: This is
2 only proposed action and we're not deciding
3 anything yet.

4 CHAIRMAN HOOD: This is something
5 that I probably need more time on. I agree,
6 Commissioner and Vice Chair, but I still think
7 that while I may not agree with all the
8 verbiage or the language in here the way it
9 is, I still think there is some validity in
10 here. The question is how far does it go.

11 Okay. Anyone else? I want to go
12 through -- it's going to take a little time
13 because I want to go through everything has
14 submitted for the most part if that's not a
15 problem. I might not go verbatim. I would
16 just ask everyone to look at --

17 COMMISSIONER TURNBULL: As long as
18 we can get everybody out of here by 11:45 to
19 get the Metro.

20 CHAIRMAN HOOD: I don't think it's
21 going to take us that long but, anyway, let's
22 go ahead.

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1 Okay. I will again say that some
2 of the responses to the Hine School North
3 Neighbors were responded to by Symmetra Design
4 and they put Mr. Mehra's concerns and they had
5 the responses. If we could look at just those
6 two, that was my concern.

7 Does anyone else have any concerns
8 in those two documents? Anything else that
9 comes to mind? Let's just take a moment and
10 look at it. I want to make sure we address
11 everything.

12 Okay. If not, let's move on. Can
13 we go to -- there's no order I have. Can we
14 go to 456? Again, this is Hine School North
15 Neighbors, August 22, 2012. They talk about
16 the north building, the challenges with the
17 site, quality of materials and elevation,
18 location of the trash room.

19 COMMISSIONER MAY: I think we
20 share that concern.

21 CHAIRMAN HOOD: Okay. Let me ask
22 this. Okay. Building amenities. They

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1 actually applaud the relocation of the social
2 room.

3 Okay. Anything else in this
4 submission? I think people worked hard to do
5 this and we should take time to go through it
6 and revisit it because I know it's hard to
7 remember a lot of this stuff over and over and
8 over.

9 Mr. May, in your loading dock
10 review are you kind of -- let me just see if
11 you are synonymous with Hine Neighbors. They
12 are asking is the zoning order direct the
13 Applicant. Prior to that Applicant revised
14 the loading plan to eliminate all deliveries
15 from either end of the alley. Are you going
16 down that line?

17 COMMISSIONER MAY: No.

18 CHAIRMAN HOOD: Okay. I'm just
19 skimming through. We have already dealt with
20 the street closure issue more or less. That's
21 on page 5.

22 VICE-CHAIR COHEN: Mr. Chairman,

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1 on page 8 they are asking that the Applicant
2 be directed to expand the coverage of the
3 mitigation fund to all homes on the 200 block
4 of H Street. I saw the list and there were
5 just two omitted. I don't know why but I
6 think they did and if they didn't, they should
7 explain why.

8 CHAIRMAN HOOD: Okay. Can we put
9 that in the parking lot?

10 VICE-CHAIR COHEN: Yes.

11 CHAIRMAN HOOD: Okay. So we have
12 two cars in the parking lot.

13 Ms. Schellin, is somebody helping
14 us to make sure we keep what we are asking
15 for, or we may potentially ask for?

16 MS. SCHELLIN: Yes.

17 CHAIRMAN HOOD: Okay. Let's go to
18 Exhibit 450. This is from the Applicant. It
19 says, "It has come to our attention that two
20 slides show alternate layouts which were shown
21 and described to the Commission on July 11.
22 Attached are the two PowerPoint slides."

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1 This is where I kind of had an
2 issue. It seems like the neighborhood really
3 advocated for the flea market and space for
4 the flea market. At least that's the way I
5 understood it.

6 It looks like on August 22nd there
7 is an agreement between the operator -- unless
8 I have this confused but there is an agreement
9 between the flea market at Eastern Market and
10 the Applicant dated August 22nd. Does
11 everybody see that exhibit?

12 Okay. So all my questions go out
13 the window. There is an agreement here. All
14 my concerns go out the window because I
15 thought in the testimony a lot of the
16 neighbors' concerns were that the flea market
17 would go away. Maybe one or two might have
18 said it would be all right to go away but I
19 think the majority would like to see it fully
20 operable. That flea market has been going on
21 for years.

22 Vice Chair.

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1 VICE-CHAIR COHEN: Thank you, Mr.
2 Chair. I think the only question that I had
3 was, again, there seemed to be a conflict
4 between the fact that Diverse Market is going
5 to be negotiating with the developer. But
6 also if the Eastern Market Trust is created,
7 they also will be negotiating for the
8 management contract and I just needed to
9 understand that better.

10 COMMISSIONER MAY: I think what is
11 in the letter of intent is that in the event
12 there is no Eastern Market Trust created by
13 the council, then they would negotiate
14 specifically with Diverse Market management
15 and also Washington Arts Antiques and Crafts
16 and Collectibles Associates.

17 The two groups that operate the
18 flea markets, because there are two different
19 ones, would be first in line if there is no
20 Eastern Market Trust established.

21 CHAIRMAN HOOD: Okay. Exhibit
22 459, EMMCA, Eastern Market Metro Community

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1 Association. They basically expound on
2 different things from the Applicant. I don't
3 think I had anything on this.

4 Vice Chair.

5 VICE-CHAIR COHEN: Thank you, Mr.
6 Chair. I think that the Eastern Market Metro
7 Community Association had an issue with the
8 55-foot trucks that was raised by Commissioner
9 May.

10 I believe that their concern was
11 also with the D Street retail but I believe
12 that has been taken care of by including in
13 its order that retail would front Pennsylvania
14 Avenue, 7th Street, and part of C Street.

15 Again, I thought the Applicant
16 agreed that they would have -- they wouldn't
17 have a window facing D Street. That was a
18 retail window. I think that is taken care of.

19 COMMISSIONER MAY: I think EMMCA
20 wanted to go further than that. They didn't
21 just want no windows. They really didn't want
22 to have any retail. I think they were looking

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1 for further statements about what -- right now
2 what is acceptable as retail in that portion
3 of the building I think at this moment is just
4 the daycare center.

5 VICE-CHAIR COHEN: Right. I think
6 so.

7 COMMISSIONER MAY: In an ideal
8 world it winds up being a daycare center and
9 it doesn't have any windows on 8th Street and
10 EMMCA is happy. But if it works out
11 differently and there is some other retail
12 along that section of D Street, that would not
13 satisfy them. Frankly, I think what is
14 proposed by the Applicant at this point is a
15 reasonable compromise.

16 COMMISSIONER TURNBULL: You mean
17 the childcare center?

18 COMMISSIONER MAY: Childcare
19 center or something of similar intensity. I'm
20 not sure what the words were that they used
21 but it was something to that effect.

22 COMMISSIONER TURNBULL: Not a

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1 full-out retail outlet.

2 COMMISSIONER MAY: Right. It's
3 not going to be a Starbucks or something like
4 that, even though there is one across the
5 street, across Pennsylvania Avenue, but I
6 guess that is far enough in Starbucks terms to
7 have another one.

8 One other issue that they made was
9 the same issue that we put in the parking lot
10 before about the mitigation fund for all homes
11 on the 200 block of 8th Street, \$35,000 would
12 be available to mitigate impacts to the
13 construction.

14 CHAIRMAN HOOD: While I'm thinking
15 about it, I saw somewhere, maybe in the
16 Applicant's submission, they said they won't
17 give us a signed deal as per the CBE agreement
18 before final. I guess they must think we're
19 going to do something proposed.

20 For me, regardless, I would like
21 to see page either 11 or 12. I'm not sure
22 what page it is. That needs to be filled out

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1 because if it's not filled out, my
2 understanding is there is not a plan. If that
3 page is not filled out, we don't have a plan.

4 I think it was submitted after
5 final it will be provided if we get the final
6 but as soon as possible you need to provide
7 that page 11 or 12 or whatever that page is
8 with the plan filled out.

9 Exhibit 455, Commissioners. I
10 probably should have done that one before I
11 did the responses. This is from the Applicant
12 for things that we have asked for. Again,
13 going back to the north building which kind of
14 coincides with the Hine Neighbors. Any
15 issues?

16 COMMISSIONER TURNBULL: No. I
17 think I expressed my concerns about the north
18 building.

19 COMMISSIONER MAY: You know, one
20 of the issues that was raised, and I think I
21 saw it in more than one submission, was the
22 issue of the ability to gain financing for a

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1 mixed-income building in the north building.

2 There was a statement made in one
3 of these submissions -- two of the submissions
4 that there were three -- the Applicant had
5 three letters from would-be funders indicating
6 that they would not be willing to finance
7 something unless it was not mixed income, just
8 100 percent affordable.

9 What we received instead were two
10 emails, relatively recent emails it seems,
11 June 20th, so after the hearings had begun.
12 I'm not sure when the initial statement was
13 made about three letters. So the question is
14 raised are these, in fact, are the three
15 letters actually two emails or is there other
16 support for this contention on the part of the
17 Applicant?

18 I mean, frankly, I'm not sure how
19 many letters we actually need and I don't
20 honestly think this is as big an issue as it
21 might be in a different physical circumstance.
22 I think that this is -- we've seen a number of

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1 projects where we have an affordable component
2 that is an independent building for senior
3 housing.

4 It's a single isolated building
5 separated from everything else. It's not a
6 mixed-income building on its own. I'm not
7 surprised to see something like this and this,
8 frankly, integrates better with the rest of
9 the development. Even though it's across the
10 street, it's across this plaza which I view as
11 a connecting element, not a separating
12 element.

13 CHAIRMAN HOOD: Commissioner May,
14 let me just ask in the last page we talked
15 about the loading for the large trucks. The
16 response from Symmetra, "The Applicant will
17 continue to coordinate with DDOT regarding the
18 loading scheme and deliveries scheduled to
19 accommodate 55 plus trucks. The details will
20 be determined as part of the public scheme."
21 I think you eluded to that. You wanted to see
22 more on that prior to that. Am I correct?

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1 COMMISSIONER MAY: I'm not
2 satisfied that they can work out a scheme that
3 involves trucks loading just parked on 7th
4 Street. I would like the Applicant to take
5 another shot at trying to work it out within
6 the existing loading dock or expand it just a
7 little bit so they can turn the trucks around
8 inside.

9 It's not really that different
10 from the configuration of the loading dock in
11 this building which I believe accommodates 55-
12 foot trucks. It's a T shape.

13 CHAIRMAN HOOD: Okay. I
14 think --

15 COMMISSIONER TURNBULL: Mr. Chair,
16 I'll go along with that request, too.

17 CHAIRMAN HOOD: Okay. I think it
18 was already in the parking lot but I wanted to
19 make sure that what was said addressed this
20 issue before we over park the site.

21 Exhibit 454. I'm not sure who
22 asked for this, the market analysis, but that

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1 was provided.

2 All right. Do we have any other
3 submissions other than something I may have
4 missed other than the findings of facts and
5 conclusions of law?

6 VICE-CHAIR COHEN: Mr. Chairman, I
7 believe there was one letter in support of the
8 project.

9 CHAIRMAN HOOD: Okay. I know in
10 the proposed MOU statute that the ANC worked
11 out it does mention in the order, as was
12 stated -- I think, Mr. Turnbull, you mentioned
13 the conditions of that. Hopefully we will get
14 as much of that in the order as possible for
15 the final order.

16 The only other note I would like
17 to make is that Exhibit, I think, 464. Do we
18 need to do a motion, Ms. Schellin, to accept
19 the errata sheet to add to the facts and
20 conclusions that the Hine --

21 MS. SCHELLIN: No. That was
22 already done.

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1 CHAIRMAN HOOD: That was already
2 done?

3 MS. SCHELLIN: Right. You already
4 opened the record for that.

5 CHAIRMAN HOOD: Oh, I did that?

6 MS. SCHELLIN: You did.

7 CHAIRMAN HOOD: Oh. Okay. I have
8 three sets in front of me. Does anyone -- do
9 we want to go through this? I'll tell you
10 what. I don't want to -- let's go through
11 Exhibit 461 first, EMMCA. Let's look through
12 that and see if anything raises our attention
13 that we would like to see.

14 If I missed anyone's findings of
15 facts, I might have put them in my other
16 stack. If I did, forgive me. I will notify
17 Ms. Schellin before final. I will go back
18 through it.

19 I see what they have on page 1.
20 We've already been through that, the height
21 and design. It seems like very few -- from my
22 remembering of the hearings very few comments

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1 on the height and density. I don't think we
2 have a whole lot -- I mean, I can't remember.
3 I don't think there's a whole lot. Am I
4 correct? We only have one case every six
5 months.

6 COMMISSIONER MAY: I think there
7 was a fair amount of comment about the height
8 and density but there was substantial support
9 in testimony and in letters in support of that
10 density.

11 CHAIRMAN HOOD: I just remembering
12 asking someone. Maybe it was just that one
13 person and they told me they were not
14 concerned about the height and density and
15 that stuck with me. Maybe it was the question
16 I asked.

17 COMMISSIONER MAY: I mean, there
18 were a couple of things about it. One is the
19 density and how it relates to things like
20 traffic impacts and so on. Then there is also
21 the question of the building kind of casting
22 shadows over the neighborhood and so on.

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1 Undoubtedly it will have some
2 affect on the neighbors on 8th Street to the
3 east but I don't think -- I don't think that
4 really is exceptionally problematic and it's
5 certainly not casting long shadows far into
6 the neighborhood or anything like that as we
7 might see with a much taller building.

8 I think the way the building is --
9 the way the density or the height is
10 positioned on the site kind of minimizes the
11 sunlight impacts except in some small
12 circumstances.

13 VICE-CHAIR COHEN: And just to
14 further explain, I think the shadow study was
15 provided as of right and then as built now and
16 it was not that much of a great difference so
17 I agree with you, Commissioner May.

18 CHAIRMAN HOOD: Anybody else want
19 to bring up anything?

20 COMMISSIONER MAY: You're asking
21 specifically about EMMCA's findings of facts,
22 right? That's where we are?

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1 CHAIRMAN HOOD: Yes, EMMCA.
2 Anything it points out?

3 VICE-CHAIR COHEN: Well, one of
4 the things that EMMCA pointed out and
5 highlighted is the public benefits and project
6 amenities proffered by the Applicant using
7 another case that we had feeling that they are
8 not comparable.

9 CHAIRMAN HOOD: What page?

10 VICE-CHAIR COHEN: Page 7. It's
11 at the top of the page. There are some
12 amenities that are hard to put a price on
13 specifically but I just wanted to point that
14 out that they were concerned about the
15 disproportionate amount of public benefits
16 that they believe this project should provide
17 for the community, that most of the benefits
18 are going to the impending tenants of building
19 and not the community.

20 CHAIRMAN HOOD: They actually
21 cited a case which I think we just approved.

22 VICE-CHAIR COHEN: Yes.

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1 CHAIRMAN HOOD: So let me ask is
2 that something we want to revisit,
3 Commissioners?

4 COMMISSIONER MAY: Well, it's very
5 unusual for us to try to do a cross comparison
6 between PUD projects. Each one is an
7 individual case and we have to consider the
8 amount of relief that is requested and who
9 benefits from that relief.

10 I think that some of the less
11 easily quantified benefits aren't necessarily
12 going to show up unless we ask the Applicant
13 to do kind of detailed calculations on the
14 value of the public plaza or the affordable
15 housing components and things like that. We
16 don't always get those.

17 It really is a question of do we
18 have the right combination of stuff. I'm
19 comfortable with what has been proposed and I
20 don't see a need to get into a specific
21 dollar-for-dollar comparison to another
22 project which faced its own unique

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1 circumstances. I can't even verify that this
2 number is really representative of the same
3 sorts of things. Once we decide them, I can't
4 recall details like that.

5 CHAIRMAN HOOD: I guess my
6 question was not necessarily more or less the
7 dollar amount. We are requiring our
8 regulations to balance it. I wanted to make
9 sure that we thought it was balanced. I
10 wasn't necessarily concerned about the dollar
11 amount.

12 As you said, Commissioner May, the
13 relief that is being requested and what we're
14 doing as a PUD action balances out to the
15 amenities and benefits for that community.
16 That is kind of where I was going.

17 Do you think we need to revisit
18 it? We have said from the dias that it looks
19 a little light. Are we at that point or are
20 we okay? That's kind of what my question was.
21 Obviously I think from what I've heard we're
22 okay. I'm fine with it when I look at what is

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1 being asked.

2 Anything else? I really like the
3 space for the ANC. I think it's a big plus.
4 Most neighborhoods have problems with space in
5 this city.

6 All right. Are we ready to move
7 on? Let's look at -- we didn't do Hine School
8 North Neighbors findings of facts. We did the
9 supplemental. This is Exhibit -- I think it's
10 462. This was the correction of the record
11 that I already opened.

12 This is the correction that goes
13 with that that we spoke about earlier that I
14 opened the record for. I want to thank Ms.
15 Schellin for reminding me because I went right
16 past it. That was Exhibit 465. Do you see
17 anything pop out? I didn't mark anything on
18 mine. Does anybody have anything? Okay.
19 Take your time.

20 Forgive us for moving along a
21 little slowly. We're trying to capture as
22 much as possible. Some cases we deal with

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1 people have years. We don't have as much
2 time.

3 VICE-CHAIR COHEN: Mr. Chairman, I
4 think we dealt with paragraph 6 about the C-2-
5 B zoning. I think Commissioner May discussed
6 the C-2-B zoning even though they state there
7 is not another one half a mile away.

8 I also think we have dealt with
9 asking for a new FAR taking into account C
10 Street. I do believe we dealt with some of
11 the issues on traffic and deliveries which is
12 paragraph 17 of their memo.

13 CHAIRMAN HOOD: Again, their
14 proposed order recommends that we deny this
15 case. The comments I heard I don't think
16 anyone up here feels that we denied. I think
17 we feel maybe we tweaked them. A few things
18 are in the parking lot but other than that I'm
19 not sure if we are going towards the denial
20 status. You know what? Let me take that
21 back. I never know what is going to happen.

22 COMMISSIONER MAY: Mr. Chairman, I

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1 just want to say on the subject of C-2-B
2 versus C-2-A, I mean, just in terms of the
3 consistency with the comprehensive plan, there
4 is no question in my mind C-2-B is not
5 inconsistent with the comp plan, as would the
6 C-3-A, or C-2-A. However, what is proposed
7 here is C-2-B and it seems perfectly
8 reasonable. It's not inconsistent.

9 I think it is conceivable that one
10 could design a project under C-2-B or C-3-A
11 that because of the design does not fit well
12 and it might be -- that might be grounds to
13 not approve it. But the mere fact of C-2-B
14 versus C-2-A on its face the zone is
15 consistent.

16 COMMISSIONER TURNBULL: I think
17 the other comment we should add is that you
18 really can't look at any PUD that we grant as
19 precedent setting. We look at each one
20 individually. We don't look at one site and
21 say, "Well, now you can do it over here."

22 Each one is unique. That is the

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1 whole point of a PUD. We look at each one
2 very carefully and we decide it on its own
3 merits. I think the one argument that is
4 saying this is going to be precedent setting
5 doesn't hold water because we have never had
6 that in the past. This body is very judicious
7 on how it deals with PUDs. Hopefully we can
8 alleviate anybody in the community feeling
9 that this is in anyway precedent setting.

10 CHAIRMAN HOOD: One of the things
11 that I do want to ask which is still in the
12 back of my mind is I know that Mr. Mehra
13 submitted some contradictions to the
14 Applicant's traffic report. I know Symmetra's
15 design commented on it and whatever happened
16 after that.

17 I would ask DDOT to look at both
18 of those. I don't know if we did or not in
19 this case but I would like for them to look at
20 both of those, those two-page or four-page
21 submissions that came in.

22 I would like to just get a

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1 paragraph or two of what they feel about it.
2 Where do they fall on this? Do they think
3 there is some validity to what Mr. Mehra is
4 saying? Do we need to tweak some of it? What
5 are some of the mitigations?

6 I would just like to hear from
7 them, Ms. Schellin. If you could put that in
8 the parking lot for me, that would be helpful.

9 Okay. Anything else? I think we
10 covered it because I think towards the end
11 Commissioner May commented on the C-2-A, C-2-B
12 issue. I am purposely not going -- unless you
13 all would like to review this, the Applicant's
14 proposal, I'm hoping that some of the things
15 that we have mentioned may show up, or not
16 show up depending upon some of the things.

17 The only things that we are asking
18 for are in the parking lot and nothing else
19 because the record is closed. Please don't
20 send us anything else other than what we have
21 already asked for.

22 MS. SCHELLIN: Do you want to set

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1 dates for that because we have to allow the
2 parties an opportunity to file a response to
3 whatever the Applicant may submit.

4 CHAIRMAN HOOD: Okay.

5 Commissioners, let me ask are we ready to
6 -- is that all we are looking for for final or
7 do we want to just come back at our next
8 meeting in two weeks if possible and do the
9 proposal at that time or are we ready to do
10 something now?

11 Is all the information we asked
12 for sufficient enough for us to move forward
13 and we can deal with it final or not move
14 forward because there is some unreadiness?

15 COMMISSIONER MAY: Mr. Chairman,
16 all of the sorts of things that we've talked
17 about wanting from the Applicant are the sort
18 of things that in the past we have accepted
19 before file making a final decision. But if
20 anybody has any concern about any of these
21 that is so strong that you're not ready to
22 vote for a proposed action, I'm happy to wait

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1 for a submission.

2 CHAIRMAN HOOD: For me final
3 action doesn't mean I won't vote against it.
4 So far this looks like I'll move forward. I
5 don't know if there is anything compelling
6 unless something shows up before final. I
7 think this Commission, and I want to make it
8 known -- people say, "Oh, they will vote
9 opposed. Forget it."

10 You never know what is going to
11 happen up here. Yeah, the likely chance is,
12 yeah, possibly but there have been times that
13 things went on and went on until we waived to
14 get them resolved. I don't want anybody to
15 think that is a foregone conclusion that it's
16 a done deal because it's never like that.

17 We tweak it and we put in our
18 comments. I'm not sure from what I've heard
19 if anything is going to come back
20 substantially depending upon how we move
21 tonight, but I would rather let my colleagues
22 make a motion.

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1 I am actually in favor of voting
2 tonight but I want to know also if anyone as
3 Commissioner May have a pause for the things
4 we ask for that we should normally hold it up.
5 Typically he's right. We usually ask for
6 these things before final as someone, whoever,
7 in our submission has stated.

8 Okay. Anything else? Any other
9 comments? Any unreadiness?

10 COMMISSIONER TURNBULL: No, but at
11 some point we need to go over our parking lot
12 list and items that we want the Applicant to
13 submit.

14 CHAIRMAN HOOD: I wanted to find
15 that out. I want to see if anybody has any
16 unreadiness because I want us to vote first
17 and then we'll go to Ms. Schellin who has the
18 parking lot list. There shouldn't be more
19 than seven or eight cars for final and then we
20 move from that point forward.

21 Can somebody make a motion in this
22 case?

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1 COMMISSIONER TURNBULL: Everybody
2 is looking at me. Mr. Chair, I will move that
3 we approve for proposed action Zoning Case No.
4 11-24, Stanton EastBanc, LLC consolidated PUD
5 and related map amendment at Square 901 and
6 look for a second.

7 COMMISSIONER MAY: Second.

8 CHAIRMAN HOOD: Okay, it's been
9 moved and properly seconded. Any further
10 discussion? Are you ready for the question?
11 All those in favor aye.

12 COMMISSIONERS: Aye.

13 CHAIRMAN HOOD: Any opposition?

14 Ms. Schellin, would you record the
15 vote?

16 MS. SCHELLIN: Yes, sir. Staff
17 records the vote four to zero to one to
18 approve proposed action in Zoning Commission
19 Case No. 11-24. Commissioner Turnbull moving,
20 Commissioner May seconding, Commissioners
21 Cohen and Hood in support. Third mayoral
22 appointee position vacant and not voting.

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1 Before I go into the parking lot
2 list, if the representatives of the parties in
3 this would come forward I have their names on
4 a procedural order that has some due dates for
5 them to abide by the BAFO process.

6 As far as the parking lot list, I
7 didn't have seven or eight cars. I have less
8 than that. I have from Commissioner May and,
9 I believe, Commissioner Turnbull also, would
10 like for the Applicant to try to accommodate
11 the 55-foot truck. I wasn't sure which
12 building but I think the Applicant knows.

13 COMMISSIONER TURNBULL: South
14 building. They know.

15 MS. SCHELLIN: South building.
16 Okay. Then I believe Commissioner Hood,
17 Chairman Hood, asked that they relook at the
18 traffic issue that Mr. Mehra brought up where
19 at 50 percent completion they would re-
20 evaluate their situation.

21 CHAIRMAN HOOD: The monitoring
22 issue.

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1 MS. SCHELLIN: Monitor. Okay.

2 CHAIRMAN HOOD: If they could just
3 look at that phrase. It's in one of the
4 proponent's -- opponent's submissions. I
5 forgot what it was. If I need to get it, I
6 will.

7 MS. SCHELLIN: Exhibit 456 made
8 reference to expand the coverage of the
9 mitigation fund to all homes on the 200 block
10 of 8th Street. We need a signed DOES and DBE
11 agreement.

12 CHAIRMAN HOOD: With the plan
13 filled out.

14 MS. SCHELLIN: Correct. Of
15 course.

16 CHAIRMAN HOOD: Last time I asked
17 for that it was blank so hopefully -- not from
18 this Applicant but from another one so
19 hopefully it's filled out.

20 MS. SCHELLIN: Okay. In order to
21 go forward with final action at the October
22 meeting --

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1 CHAIRMAN HOOD: We have one more
2 thing.

3 MS. SCHELLIN: I'm sorry.

4 CHAIRMAN HOOD: I asked DDOT to
5 look --

6 MS. SCHELLIN: Right, for DDOT to
7 look. I'm sorry. I didn't include them
8 because they are not a party so there is no --
9 it's just their submission so I wasn't
10 going --

11 CHAIRMAN HOOD: I'm requesting but
12 they still will be asked.

13 MS. SCHELLIN: They still will be
14 asked to look at the opposing --

15 CHAIRMAN HOOD: Opposition as well
16 as --

17 MS. SCHELLIN: Opposition
18 supplemental and also Symmetra's response
19 thereto and ask whether there's any validity
20 to what Mr. Mehra is suggesting.

21 VICE-CHAIR COHEN: Ms. Schellin,
22 they were going to take a look at the

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1 east/west alley and see where they can make
2 adjustments for the garbage pickup.

3 MS. SCHELLIN: Okay. To move
4 forward with -- is that it?

5 CHAIRMAN HOOD: Didn't somebody
6 mention, or didn't I mention, the ANC's
7 conditions?

8 MS. SCHELLIN: That was something
9 that I think OAG will take care of putting
10 some of the conditions from the MOU as
11 conditions in the order.

12 CHAIRMAN HOOD: I think early on
13 Mr. Turnbull wanted to make sure.

14 COMMISSIONER TURNBULL: I said
15 that we can include the MOA per se.

16 MS. SCHELLIN: We can include it.
17 Right.

18 COMMISSIONER TURNBULL: But there
19 is a lot of very well-honed little gems that
20 are in that MOA that should be part of the --

21 MS. SCHELLIN: So you want the
22 Applicant to provide a list and the language

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1 for the order?

2 MR. RITTING: Part of the
3 procedural order that Ms. Schellin handed out
4 outlines a structured way that the proffered
5 benefits and amenities will be incorporated
6 into the conditions. The deadlines will allow
7 that process to play out before you take final
8 action.

9 COMMISSIONER TURNBULL: Okay.

10 MR. RITTING: Of course, we'd
11 welcome any input you have after we've
12 submitted the ultimate product of that
13 structured process at final action. There is
14 sort of a way to deal with that issue that
15 we've incorporated into that procedural order.

16 COMMISSIONER TURNBULL: Okay.

17 Good.

18 VICE-CHAIR COHEN: Ms. Schellin,
19 one last thing. The revised FAR calculation.

20 MS. SCHELLIN: That's excluding C
21 Street if I remember correctly. Anything
22 else? Every time I close the list someone

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1 adds.

2 CHAIRMAN HOOD: Okay. I think
3 we're all straight.

4 MS. SCHELLIN: Is that it? Okay.
5 If we could have the Applicant's submission
6 and I will ask DDOT also to respond by 9/24
7 3:00 p.m. Parties would then have until
8 October 1st, 3:00 p.m. to provide responses to
9 the submissions only. Then we would take this
10 up at our October 15th meeting for final
11 action consideration at that time.

12 CHAIRMAN HOOD: Okay. Are we all
13 straight on this case? Are we all on the same
14 page?

15 MS. SCHELLIN: Make sure or find
16 out if there is a representative from Champs
17 or ANC-6B here. The ANC I see is here.

18 CHAIRMAN HOOD: See Ms. Schellin.
19 She has something for you.

20 Okay. I want to thank everyone's
21 indulgence on that. I just wanted to go
22 through as much as possible.

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1 Okay. Let's go to correspondence.

2 Ms. Schellin.

3 MS. SCHELLIN: Yes, sir. At
4 Exhibits 211 and 212 we have a request from
5 the Applicant to decide this case in four
6 separate deliberations and issue four separate
7 orders.

8 At Exhibit 222 we have a request
9 from Gene Solon to reopen the record which
10 also includes within that request his
11 opposition to the Applicant's request to have
12 separate deliberations and orders.

13 At Exhibit 223 Mr. Solon provided
14 a supplement to his request. At Exhibit 229
15 Mr. Solon provided a second supplement to his
16 request.

17 At Exhibit 230 we have a letter
18 from the Applicant opposing Mr. Solon's
19 request. In addition today we received a
20 document from Mr. Solon entitled "Rebuttal to
21 Applicant's Opposition to Motion to Reopen the
22 Record" and would ask the Commission to advise

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1 staff how it should handle this document as
2 the regs do not allow for responses to
3 opposition. Thank you.

4 CHAIRMAN HOOD: Okay. Thank you,
5 Ms. Schellin.

6 Commissioners, we have two
7 requests. I want to handle the motion to
8 reopen the record by Mr. Solon first.

9 Under Section 3020.1, as you all
10 know, the Chair rules on procedural questions
11 such as this and I have made a ruling. First,
12 I would like to ask -- first I had asked OZ to
13 return Mr. Solon's rebuttal to the Applicant's
14 opposition to the request. The rules do not
15 authorize responses to opposition. Ms.
16 Schellin has already alluded to that.

17 As to Mr. Solon's request to
18 reopen the record, unless a Commissioner up
19 here believes otherwise, I intend to deny the
20 request. Does any other Commissioner disagree
21 with my previous action in the way I moved in
22 the Chair's capacity? Any objections?

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1 Therefore, as I have already
2 stated, the request is denied. Since the
3 request is denied, no further request to
4 reopen the record will be accepted from any
5 party in this case. No request the way the
6 rules will be accepted. That's my ruling.

7 Okay. Is that sufficient,
8 Commissioners? Are we straight? Any problems
9 from my colleagues?

10 VICE-CHAIR COHEN: No.

11 CHAIRMAN HOOD: Okay. Moving on.
12 We have a request from the Applicant to
13 deliberate and decide the case in four
14 separate actions which is consistent with how
15 we had our hearings.

16 The Applicant states that doing so
17 will follow the structure established by the
18 Commission. Commissioners, if we remember,
19 the Applicant broke the cases up into four
20 different topics, one for each hearing night.
21 Then we decided party status for each of those
22 topics and had the post-hearing submissions

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1 broken up the same way so we've been
2 consistent all the way through this process.

3 The parties would have an
4 opportunity to respond to the submissions for
5 the topic they were granted party status for.
6 Again, staying consistent. I am in favor. We
7 have a submission from Mr. Solon included with
8 his request to reopen the record opposing the
9 Applicant's request.

10 Again, Commissioners, I am in
11 favor of taking four separate votes in this
12 case and then issue four separate orders as we
13 have done throughout this process. I do agree
14 with the Applicant that this would follow the
15 structure established by the Commission prior
16 and that's the way we've been handling this
17 all the way through.

18 I would like to hear from my
19 colleagues, or if someone would like to make
20 a motion that we consistently continue in the
21 way we have already heard this case and in the
22 fashion that we've heard it.

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1 COMMISSIONER TURNBULL: I would
2 agree with you that we should continue in the
3 manner that we've been hearing this particular
4 case. My only one concern is that there are
5 infrastructure issues that go across the whole
6 property. I think that needs to be tied in in
7 the separate orders for this. That would be
8 my only concern that we address that it just
9 needs to be tied in.

10 CHAIRMAN HOOD: Okay. I think in
11 our first case we kind of did that.

12 COMMISSIONER TURNBULL: I think it
13 did. I think it did. It sort of talked about
14 the --

15 CHAIRMAN HOOD: We can allude to
16 it.

17 COMMISSIONER TURNBULL: I think it
18 needs to be tied in somehow.

19 CHAIRMAN HOOD: We can do that.

20 COMMISSIONER TURNBULL: I think
21 it's a minor point as we go through.

22 CHAIRMAN HOOD: But it's a good

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1 point.

2 COMMISSIONER TURNBULL: I think it
3 ought to be addressed.

4 CHAIRMAN HOOD: We can deal with
5 that. Just like I didn't know what the
6 outcome was going to be as we proceeded. I
7 think we can deal with that as we go along.

8 Anyone else? I would move that we
9 continue the action with this case 11-03A in
10 the format which we have done from day one
11 from the hearing, four different cases, and
12 that we have four different votes and four
13 different orders in that fashion as we have
14 already approved. I ask for a second.

15 VICE-CHAIR COHEN: I'll second.

16 CHAIRMAN HOOD: It's been moved
17 and properly seconded. Any further
18 discussion? Are you ready for the question?
19 All those in favor aye.

20 COMMISSIONERS: Aye.

21 CHAIRMAN HOOD: Any opposition?

22 So ordered.

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1 Staff, would you record the vote.

2 MS. SCHELLIN: Yes. Staff records
3 the vote four to zero to one to proceed with
4 four separate deliberations in this case which
5 will result in four separate orders.
6 Commissioner Hood moving, Commissioner Cohen
7 seconding, Commissioners May and Turnbull in
8 support. Third mayoral appointee position
9 vacant and not voting.

10 CHAIRMAN HOOD: Okay. We have one
11 more issue which was provided by Councilmember
12 Cheh. Councilmember Cheh is hopefully
13 watching. He obviously didn't like my
14 response so what I would like to do is, again,
15 her issue we are going to be dealing with this
16 through the ZRR process.

17 Ms. Steingasser, am I correct?

18 MS. STEINGASSER: Yes.

19 CHAIRMAN HOOD: Could I ask the
20 Office of Planning to formulate maybe another
21 letter not as extensive? I do want to respond
22 to the Councilmember. What we will do is make

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1 sure that we ask her when we get to that point
2 -- we are going to let her know when we get to
3 that point so she can either send something to
4 us or come down herself.

5 I know she likes to come and
6 testify in front of us. I just don't want her
7 to think that we have forgotten this issue.
8 Let her know this issue is actually hot on the
9 radar screen. At least for myself and I think
10 others, and I know Office of Planning. If you
11 all could help me form a response to her I
12 would really appreciate it.

13 In the letter let her know we
14 appreciate the interest because we are
15 interested also. I want to thank the Office of
16 Planning and the Office of Zoning for helping
17 us out with that. Hopefully she's watching.
18 Oh, that's right. It's down.

19 MS. SCHELLIN: As far as we know,
20 it may be up by now but if not, it will be on
21 the web by tomorrow.

22 CHAIRMAN HOOD: Send a recording

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1 with a smile on it.

2 Okay. Ms. Schellin, do we have
3 anything else?

4 MS. SCHELLIN: No, sir.

5 CHAIRMAN HOOD: Office of
6 Planning, did you have anything on that?

7 MS. STEINGASSER: No, sir.

8 CHAIRMAN HOOD: With that I want
9 to thank everyone for their attention tonight
10 and this meeting is adjourned.

11 (Whereupon, at 8:38 p.m. the
12 meeting was adjourned.)

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