

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

SPECIAL MEETING

+ + + + +

MONDAY

JULY 24, 2006

+ + + + +

The Special Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 7:00 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
GREGORY JEFFRIES	Commissioner
JOHN PARSONS	Commissioner (NPS)
MICHAEL G. TURNBULL	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
--------------------	-----------

OFFICE OF PLANNING STAFF PRESENT:

ELLEN McCARTHY	JENNIFER STEINGASSER
JOEL LAWSON	
ARTHUR JACKSON	
MATT JESICK	
MAXINE BROWN-ROBERTS	
STEPHEN MORDFIN	

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

The transcript constitutes the minutes from the Special Meeting held on July 24, 2006.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

AGENDA ITEM:	PAGE
Call to Order, Carol J. Mitten .....	4
Case Number 05-38, Marina View Partners .....	5
Vote .....	17
Case Number 06-26 Rocky Gorge Development .....	17
Vote .....	34
Case Number 06-30 Pollin Memorial Community Development .....	34
Case Number 06-36 ANC 1A Map Amendment .....	45
Vote .....	56
Case Number 06-37 Office of Planning, Map Amendment .....	56
Vote .....	59
Case Number 94-01A 1331 L Street NW .....	59
Vote .....	70
Adjourn .....	70

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

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

7:13 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a special public meeting of the Zoning Commission of the District of Columbia for Monday, July 24<sup>th</sup>, 2006. My name is Carol Mitten and joining me this evening are Vice-Chairman, Anthony Hood and Commissioners Michael Turnbull, John Parsons and Greg Jeffries. Our meeting agenda, which has been revised a couple of times already, is available to you if you'd like to follow long. It's in the wall bin by the door. I'd just like to remind folks that we don't take any public testimony at our meetings unless the Commission specifically requests someone to come forward.

I'd like to also advise you that we are being recorded by the Court Reporter and we're also being web cast live, so we ask you to refrain from making any disruptive noises during our meeting and to that end, I'd ask you to turn off your beepers and cell phones right now.

Ms. Schellin, any preliminary matters before we get started?

SECRETARY SCHELLIN: No.

CHAIRPERSON MITTEN: Okay, great, then we'll just move to the first item on the agenda which is hearing

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 action and the first up is Zoning Commission Case Number  
2 05-38 which is Marina View Partners, LLC. Mr. Lawson,  
3 good evening.

4 MR. LAWSON: Good evening, Madam Chair, and  
5 once again, members of the Commission. For the record  
6 my name is still Joel Lawson for the DC Office of Planning  
7 and with me here is Jennifer Steingasser, also with the  
8 Office of Planning. The Commission is familiar with this  
9 site. At your March meeting you considered set-down for  
10 the original proposal which then included two new 123-foot  
11 tall towers on the existing site. The current amended  
12 application has reduced the height of the new towers to  
13 112 feet with a step-back above a height of 102 feet.

14 The south building would continue to include  
15 to ground floor retail space. The amended application  
16 also provides for a very different form for the new  
17 buildings, particularly the wave form of the facades to  
18 face inwards towards the existing buildings. Total onsite  
19 square footage would be about 600,000 square feet, about  
20 55,000 square feet less than the original proposal and  
21 the total number of units, including the existing  
22 buildings would be about 560 which is about 30 fewer than  
23 the original proposal.

24 Proposal lot occupancy would remain at around  
25 50 percent. In addition to the two -- in addition to those

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 two new residential towers, the amended proposal includes  
2 the retention and renovation of the two existing towers.

3 The Applicant has provided some additional information  
4 related to the extent and nature of the renovations which  
5 will include replacing the exterior glass walls and  
6 windows with insulated glass panels and similar windows,  
7 repairing the exposed concrete, expanding the lobbies,  
8 updating mechanical systems and construction of new  
9 rooftop equipment rooms and possibly residential  
10 penthouse suites. The Applicant has had preliminary  
11 discussions with historic preservation staff on these  
12 issues.

13 The proposal includes the construction of  
14 underground parking for 568 cars with access from 6<sup>th</sup> Street  
15 SW, restoration of the central recreation courtyard,  
16 interestingly using the same firm for the design who  
17 designed the original courtyard landscaping. It includes  
18 construction of an amenity building with recreation  
19 facilities for use by residents and by area residents with  
20 membership and construction of two mini-parks located  
21 between the existing and new residential buildings for  
22 use by residents.

23 In terms of zoning, the proposal includes  
24 a map amendment from R-5-D which is a medium to high density  
25 residential, to C-3-C which is a high density commercial

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 residential to achieve the desired heights, density and  
2 mix of units -- and mix of uses, sorry, because of the  
3 retail that's being proposed. There are also -- the  
4 Applicant is also requesting flexibility to allow more  
5 than one building on a single property and from loading  
6 requirements and OP has no concerns with those areas of  
7 relief at this time.

8 The amenity package, the current submission  
9 does not provide significant additional detail on the  
10 proposed package with the exception of additional detail  
11 regarding efforts to update or preserve the existing  
12 residential structures and courtyard. As proposed in the  
13 original application, the amenity package would include  
14 15 percent of the residential density gained being  
15 proffered as workforce housing. This would amount to about  
16 20,000 square feet. It also includes preservation  
17 upgrading of the existing residential towers and the  
18 courtyard space, the fitness center, retail along M Street  
19 SW and the public open space areas as well as commitments  
20 to participation in the First Source Employment Program  
21 to promote the hiring of DC residents and entering into  
22 an MOU to utilize local and small business enterprises  
23 in the project development.

24 OP has had preliminary discussions with the  
25 designers and developers of this site and the adjacent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Waterside Mall to discuss the relationship between the  
2 two developments. The Applicant advises that they've also  
3 had preliminary discussions and those discussions are  
4 going. OP intends to work jointly and cooperatively with  
5 both sets of owners and developers to insure a rational,  
6 harmonious relationship between the sites and the  
7 buildings proposed. This may involve some minor  
8 adjustments to the plan.

9 In summary, the amended proposal would  
10 replace surface parking lots with new residential units  
11 at what OP considers an appropriate height for this  
12 location. It would add a new retail and restore park space  
13 to the neighborhood and would generally be consistent with  
14 the goals and objectives outlined on the comprehensive  
15 plan. As such, OP recommends that this proposal be set  
16 down for a public hearing and we are available for  
17 questions. Thank you.

18 CHAIRPERSON MITTEN: Thank you, Mr. Lawson.

19 Questions, comments from the Commission? Mr. Parsons?

20 COMMISSIONER PARSONS: Well, I wanted to talk  
21 about the roof again. I'm looking at page 10 in the  
22 application and this -- it's not as complete, so help me.

23 Proposed residential with retail base, do you see that?

24 MR. LAWSON: Yes.

25 COMMISSIONER PARSONS: And on the right side

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of that building at the roof level is apparently a trellis  
2 device that comes over to meet an extension of the facade  
3 and I'm wondering what you feel about that.

4 MR. LAWSON: Well, I think that you're correct,  
5 that some additional detail on the roof scape in general  
6 would probably be necessary prior to the public hearing.

7 It's kind of normal that we would be asking for more  
8 information on elements such as this. I think that we  
9 would want to see how that relates to the rest of the  
10 building in somewhat more detail, in terms of view sheds  
11 down M Street in particular. So I guess I would say that  
12 right now our opinion would be a little bit open waiting  
13 a little bit more information on it.

14 COMMISSIONER PARSONS: I certainly don't want  
15 to do anything that extends the facade above the height  
16 level and tries to substitute our setbacks to penthouses  
17 with some architectural embellishment that is horizontal  
18 in nature. I should have said that I'm very pleased that  
19 the height has been reduced before I got into that. Thank  
20 you.

21 CHAIRPERSON MITTEN: Anyone else? Mr.  
22 Jeffries?

23 COMMISSIONER JEFFRIES: I have a question.  
24 The -- page 7 of your report, the top of the page, historic  
25 preservation and restoration of existing towers and parks.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       So these towers are not historic. I mean, do they have  
2 a designation or -- I guess I'm trying to understand what  
3 the proffer is here exactly.

4                   MR. LAWSON: The towers are not landmarked,  
5 landmark structures. They are considered to have at least  
6 some architectural merit, and they have been working, like  
7 I said, with the historic preservation office, discussing  
8 just what is the appropriate solution for these buildings.

9       The proffer would be in terms of retaining the existing  
10 buildings which has a heritage element as well as an  
11 environmental element, the retention of existing  
12 buildings usually being a more environmentally sound  
13 practice when possible, compared to tearing down and  
14 reconstruction. So there is -- but at the same time, they  
15 are by a noted architect, I.M. Pei, they do have some  
16 significance particularly in the southwest neighbor as  
17 contextual buildings, kind of in the context of the overall  
18 southwest area. And as I said, there are continuing  
19 discussions with HPO on how that process will be reviewed  
20 and go through their process.

21                   COMMISSIONER JEFFRIES:       So they're  
22 contributing buildings just by the nature of who the  
23 architect is or are there certain -- I mean, perhaps, we'll  
24 just get to that, you know, as we set this down tonight.

25       We'll --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LAWSON: I will just briefly note that  
2 they're not considered contributing buildings because  
3 they're not within a historic district right now.

4 COMMISSIONER JEFFRIES: Okay.

5 MR. LAWSON: To be considered, you know, it's  
6 kind of a term of art or a legal term, contributing  
7 buildings and because they're not currently in a historic  
8 district, we would not call them that. They just have  
9 -- we would simply say at this point that they have some  
10 historic merit, some architectural value.

11 COMMISSIONER JEFFRIES: Okay, okay, thank  
12 you. If I could just maybe go a little bit further with  
13 that; I think the way it had been originally advanced to  
14 us was that this -- historic preservation wasn't  
15 articulated as a specific amenity. And if the building  
16 isn't historic, isn't designated historic, then how is  
17 it that we would be able -- how is it that we would  
18 characterize that and I don't know if that's in part what  
19 Mr. Jeffries was groping at.

20 COMMISSIONER JEFFRIES: Yes, effectively.  
21 I mean, I wasn't here for the first set-down, so this is  
22 the first time I've looked at it and so that's why I was  
23 sort of questioning, you know, exactly what this proffer  
24 was effectively.

25 CHAIRPERSON MITTEN: And then I would also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 want to add is that I think in large measure, what is being  
2 done in terms of the retention of the existing buildings  
3 and most of what's being replaced is really in the best  
4 economic interest of the applicant, it's not that they're  
5 doing something over and above what motivates them  
6 economically, so I think in order for us to accept this  
7 as an amenity as it's being proffered, we'd have to  
8 understand, you know, would they otherwise tear the  
9 buildings down or, you know, they're replacing glass  
10 because the glass needs to be insulated. So what is it  
11 about it that they're going over and above what they would  
12 otherwise be motivated to do?

13 And then also if you could explore what the  
14 Applicant, and advise us as to your opinion when we get  
15 to a hearing, if we set it down, how a recreation facility  
16 that requires membership is really -- should be considered  
17 an amenity.

18 COMMISSIONER JEFFRIES: Madam Chair, you're  
19 saying it's more project amenity rather than a public  
20 amenity.

21 CHAIRPERSON MITTEN: Right, right. I think  
22 we need to make sure we discern which is which. Mr.  
23 Turnbull?

24 COMMISSIONER TURNBULL: Thank you, Madam  
25 Chairman. I wanted just to carry on that same language

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on the two I.M. Pei buildings and maybe ask Mr. Lawson,  
2 on page 15 of the applicant's submittal, there's an  
3 elevation of the one building and it shows a significant  
4 penthouse. I mean, the existing buildings have just a  
5 small rooftop unit on it. This has a -- if you look on  
6 page 1 also, that shows the roof plan, this is more than  
7 a mechanical penthouse. This is suites, I think, although  
8 we don't really have a floor plan of that room plan. We  
9 simply have a block diagram showing some type of a  
10 penthouse structure, but it doesn't really show what's  
11 mechanical and what's -- but if you look in the elevation,  
12 it looks like there's a lot of glass and there's doors  
13 and it looks like it's a significant floor that's being  
14 added. It's not just a mechanical penthouse floor. Have  
15 you seen anything else on that floor yet?

16 MR. LAWSON: Not in the current package.  
17 The Applicant has indicated that they -- certainly it is  
18 their wish to expand the existing penthouse. They have  
19 discussed the possibility of adding some residential  
20 component on that floor that would conform to the height  
21 but as we note in our report, we have some concerns with  
22 that element as well and we would like to continue  
23 discussions with the Applicant on the appropriateness of  
24 that amount of addition on top of the existing building.

25 I think even more so, now that they're in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 discussions with the Historical Preservation Office, we'd  
2 be able to advise on whether an addition like this would  
3 be appropriate for these buildings, in character with  
4 these buildings. We'd be looking from advice from HPO  
5 as well.

6 COMMISSIONER TURNBULL: Okay, good. That  
7 was my thought. I thought that's a significant  
8 embellishment to the building. It really hasn't been  
9 discussed by them, per se, I mean, in what they've had  
10 before. This is really -- to me it's a rather significant  
11 feature. Thank you.

12 CHAIRPERSON MITTEN: And also just to follow  
13 up on that, on page 20 there's a chart that shows the areas  
14 of the various levels of the building and while it says  
15 new and existing buildings and I guess that's what's being  
16 -- I don't know if that's what's being added or if this  
17 is -- no, I guess this would be the total, but it's not  
18 clear that the 11<sup>th</sup> floor which I guess would be the  
19 penthouse floor on the existing buildings, whether that  
20 includes this area that would be the residential area that  
21 would be introduced into the new penthouses or any of the  
22 other uses that would be made beyond mechanical spaces  
23 and stuff. So just so we can get that all clear, too.

24 Mr. Hood?

25 VICE-CHAIRPERSON HOOD: Yes, Madam Chair,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 just for the Applicant to hear, I'm kind of curious what's  
2 going on at the -- I know that Commissioner Turnbull talked  
3 about the penthouse and I guess that's what's going on  
4 at the top of the proposed residential base. I guess they  
5 can explain that to me so I can understand what's going  
6 on there because I don't understand the significance of  
7 it. Also, the balconies, I've been trying to figure out  
8 if I've ever seen any balconies hanging that don't align  
9 up with the building. I guess there's some kind of an  
10 overhang. I don't know if that's the correct architectural  
11 terminology. But also, I was looking at that and that's  
12 just the comments for the Applicant.

13 But to the Office of Planning, I'm looking  
14 at this area. Even though they're down to like 100 feet,  
15 the building is 100 feet, I'm looking at the area. We  
16 approved Waterside Mall, which I think was 130 feet and  
17 I thought when we did the W zones and when you get close  
18 to water it was supposed to be like a step-down effect.

19 And I know these are the existing buildings but I want  
20 to make sure that we're just not going haywire within this  
21 area because Waterside Mall is 130 feet. This project  
22 is 100 feet and I'm not sure what those other complexes  
23 are and I'm just making sure that we're consistent with  
24 what we did wht the W Zone.

25 No need for comment now, but I thought when

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we did the W Zones, that we were doing a step-down effect  
2 so you can see to the water, but obviously, that's not  
3 the case here. You won't be able to see to the water.

4 I'd like an explanation of that and see exactly where  
5 we're going for future development, because when I look  
6 around I see R-3 Zones, R-3, R-5-B and then what's proposed  
7 for that surrounding area, as you set down to the W Zones.

8 Thank you, Madam Chair.

9 CHAIRPERSON MITTEN: Anyone else? Okay, well,  
10 we have a recommendation from the Office of Planning to  
11 set down Case Number 05-38 has been amended by the  
12 Applicant and I would so move.

13 COMMISSIONER JEFFRIES: Second.

14 CHAIRPERSON MITTEN: Is there any further  
15 discussion? Then all those in favor, please say "Aye".

16 (Aye)

17 CHAIRPERSON MITTEN: Those opposed please  
18 say, "No". Ms. Schellin?

19 SECRETARY SCHELLIN: The staff will record  
20 it as five to zero to zero to set down Zoning Commission  
21 Number 05-38; Commissioner Mitten moving, Commissioner  
22 Jeffries, seconding. Commissioners Hood, Parsons and  
23 Turnbull in favor and this would be set down as a contested  
24 case?

25 CHAIRPERSON MITTEN: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   Next is Case Number 06-26. This is Rocky  
2 Gorge Development LLC and I would just note that when the  
3 first case that Rocky Gorge had brought to the Commission,  
4 I had recused myself because the Office of Property  
5 Management was negotiating on a property adjacent. We're  
6 no long involved in that and so I'll be happy to sit on  
7 this case.

8                   MR. JACKSON: Madam Chair, Members of the  
9 Commission, my name is Arthur Jackson, DC Office of  
10 Planning and I will give you a brief summary of the OP  
11 report on this application. As you referred to this  
12 project, Phase 1 of the Rocky Gorge at Fort Totton Emerson  
13 Park Townhouse Develop PUD was approved in March 2005 and  
14 this proposal would involve some property that's really  
15 south of that development. It would also -- it's also  
16 involved with -- to the east are some matter of right  
17 townhouses that were also under the ownership of the  
18 current developer but have been transferred to another  
19 party.

20                   This proposal involves the development of  
21 35 units of attached dwellings with 77 parking spaces.

22                   Fifty feet of the units will -- with regard to -- I'm  
23 sorry, 55 parking spaces will be based in the garages which  
24 will have one or two spaces, and then 24 units would be  
25 distributed along the streets and alleys. The lot itself

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will not have immediate frontage on lots -- individual  
2 lots will not have immediate frontage on a street, so as  
3 such, the Applicant will be doing a theoretical  
4 subdivision of those lots in order to meet the requirements  
5 of the zoning regulations.

6 This lot -- this proposal does include a  
7 zoning map amendment, which would take the property from  
8 a mixed -- a split zone to an R-4 Zone. The application  
9 is very similar to the one that was presented back in 2005  
10 in that it seeks to take advantage of the proximity to  
11 Fort Totten and the comprehensive planned guidance with  
12 regard to revitalization of this area in the fact that  
13 they're in a housing opportunities area.

14 The amenities associated with this project  
15 are very similar too, in that it involves housing,  
16 affordable housing and that there will be two affordable  
17 units within the -- under the current proposal. The  
18 equitable use, equitable and efficient use of the site,  
19 of course, transportation access and pedestrian access.

20 And if you'll note on the aerial that was included in  
21 your map and contrast that with the actual plans, you'll  
22 note that the -- around the property is a wooded -- very  
23 wooded site on the perimeter. And those are also areas  
24 of steep slopes. The proposal, as presented, would retain  
25 the majority of those slopes and would actually use the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 existing foliage for screening purposes. The one  
2 exception, of course, would be that the 6<sup>th</sup> Street NE would  
3 continue north along the neck of this proposal and, in  
4 essence would continue the roadway all the way up to  
5 Emerson Street.

6 The Applicant has discussed some issue with  
7 the Office of Planning. They indicated in the application  
8 that they didn't need any flexibility but we will continue  
9 to discuss in more detail about this proposal and to see  
10 if any flexibility would be necessary based on a further  
11 review of their original design. But they also have met  
12 with the ANC, having an initial meeting with the North  
13 Michigan Park Civic Association on March 13<sup>th</sup> of this year.

14 We think the application meets a number of  
15 criteria to be consider for a set-down and we think that  
16 it furthers a number of the themes within the comprehensive  
17 plan particularly with regard to providing housing in an  
18 area where we have industrial and it's being  
19 under-utilized. We think that -- the specifics of why  
20 we think the application meets those standards are  
21 outlined in the report. And based on this information,  
22 the Office of Planning concludes this PUD proposal does  
23 not appear inconsistent with the comprehensive plan and  
24 it supports more specific housing than those identified  
25 in the comprehensive plan. Therefore, OP recommends that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the project be scheduled for public hearing.

2 And OP will continue to work with the  
3 Applicant to help refine the amenities package and to  
4 encourage the Applicant to work with the community to  
5 prepare a package that addresses the most needs of the  
6 immediate communities that are on the site. With that,  
7 that concludes the brief summary of the Office of  
8 Planning's report and we'll be able to answer questions.

9 CHAIRPERSON MITTEN: Thank you, Mr. Jackson.  
10 Questions for Mr. Jackson? Mr. Turnbull?

11 COMMISSIONER TURNBULL: Yes, Mr. Jackson,  
12 I was just wondering, on the development, is 6<sup>th</sup> Street  
13 NE, does it -- as it goes by, as it goes on up, does it  
14 tie in to the other development, to the other side of that.

15 It looks like -- I guess it does. It looks like the trees  
16 -- I'm trying to read the plan. It looks --

17 MR. JACKSON: There is -- if you visit the  
18 site, there is a roadway that extends up to the site.  
19 It's unimproved beyond the proposed site in that the road  
20 ends up to where they're obviously, parking trucks off  
21 to -- on this current property, it turns into a dirt road.

22 On the submitted plans, that's just identified as a  
23 private road. What I recall during the previous PUD that  
24 that was known as -- that was a road that included some  
25 public utilities but was not in public hands, ownership.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER TURNBULL: Is that going to be  
2 worked out or will they work out a tie-in between the --

3 MR. JACKSON: Well, again, the Applicant,  
4 the developer of the PUD to the north is the same developer  
5 that we have here. So I don't think that's an issue and  
6 all indications are that they do plan to continue the road  
7 through.

8 COMMISSIONER TURNBULL: Okay, yes, I was just  
9 concerned because you see the lot line of the site and  
10 it sort of ends and then the road is there and then it's  
11 green on the other side and --

12 MR. JACKSON: Yes.

13 COMMISSIONER TURNBULL: -- and so you would  
14 imply that they're going to connect it up. I just wanted  
15 to make sure.

16 MR. JACKSON: Yes, sir, all indications are  
17 that they plan to continue the road.

18 COMMISSIONER TURNBULL: Thanks.

19 CHAIRPERSON MITTEN: I wanted to ask a  
20 follow-up question. The way the site -- because this was  
21 a site we have been interested in. I know a little bit  
22 more about it, where 6<sup>th</sup> Street sort of ends and the property  
23 begins, that was also providing at least one means of  
24 access to the site that has all the industrial buildings  
25 on it, too.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. JACKSON: Yes.

2 CHAIRPERSON MITTEN: Is 6<sup>th</sup> Street and then  
3 a section of private Street A going to continue to be used  
4 for access for I guess it's going to be the food bank?

5 MR. JACKSON: Well, yes.

6 CHAIRPERSON MITTEN: So that section or the  
7 access point for people from the south into this  
8 development, they will be sharing it with trucks at various  
9 times.

10 MR. JACKSON: Yes.

11 CHAIRPERSON MITTEN: I'm sure we'll have more  
12 conversation about that at the hearing. I also want to  
13 ask, I don't think you mentioned in your report what the  
14 industrial land use study had said about this particular  
15 area.

16 MS STEINGASSER: This particular area is  
17 being identified as an area for change which is consistent  
18 with the Fort Totten overlay which calls for it to also  
19 be an area for change.

20 CHAIRPERSON MITTEN: Okay, thank you. Anyone  
21 else?

22 VICE-CHAIRPERSON HOOD: Madam Chair, what's  
23 going on to the -- I think it's to the west of the site  
24 in the end zone here, not the site where Somerville is  
25 but to the west of that site? What's currently going on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 now to the west of the site?

2 MR. JACKSON: Are you referring to beyond  
3 the Somerville property?

4 VICE-CHAIRPERSON HOOD: Yes, to the west.  
5 Let me see, north and south is running -- I believe it's  
6 to the west, going towards the train tracks.

7 CHAIRPERSON MITTEN: This is part of the  
8 Somerville property. That's why he's having trouble  
9 understanding your question because --

10 VICE-CHAIRPERSON HOOD: Okay, but to the west  
11 of that, what's going on to the west of the Somerville  
12 property?

13 MR. JACKSON: On the opposite side of the  
14 train tracks.

15 VICE-CHAIRPERSON HOOD: So it's right up  
16 against the train tracks.

17 MR. JACKSON: Yes.

18 VICE-CHAIRPERSON HOOD: There's nothing in  
19 between what's being proposed and the train tracks.

20 MS STEINGASSER: There's the property, the  
21 rest of the Somerville property, the train tracks.

22 MR. JACKSON: Now, if you ride the train --  
23 I ride the train, as you ride the train north, the Red  
24 Line, you'll see the Somerville buildings but then you'll  
25 see what appears to be a big warehousing operation. It's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 open framed construction and they have spurs that run off  
2 into it. That's all part of the Somerville property.

3 VICE-CHAIRPERSON HOOD: Maybe I'm  
4 disoriented, but I'm very familiar with the area, trust  
5 me. I won't say what I used to do over there, but I'm  
6 very familiar with the area. My question is, okay, 6<sup>th</sup>  
7 Street, if you look at Exhibit 1 of your -- yes, of your  
8 report, July 6<sup>th</sup>, do you see where you have it marked in  
9 the green you have PUD site?

10 MR. JACKSON: Yes.

11 VICE-CHAIRPERSON HOOD: To the left of that,  
12 what's taking place, outside of that green area?

13 MR. JACKSON: That's the Somerville --

14 VICE-CHAIRPERSON HOOD: Somerville owns that,  
15 too?

16 MR. JACKSON: That is the Somerville building.

17

18 VICE-CHAIRPERSON HOOD: So that's just still  
19 vacant now? That's what's going on now, right?

20 MR. JACKSON: Those buildings, I wasn't aware  
21 of those -- well, some of those buildings are vacant, yes.

22 VICE-CHAIRPERSON HOOD: Yes, I don't think  
23 it's being -- if it is, it's very minus use.

24 MR. JACKSON: Now, to the east of there is  
25 where they're building the duplexes along 7<sup>th</sup> Street.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE-CHAIRPERSON HOOD: The one we approved,  
2 I understand.

3 MR. JACKSON: Well, no, that's a matter of  
4 right construction.

5 VICE-CHAIRPERSON HOOD: Oh, they're doing  
6 some more.

7 MR. JACKSON: Right, they're matter of right  
8 construction. As you look on the developer's plan, their  
9 site plan, I think sheet number C-3, they're showing pairs  
10 of duplexes along 7<sup>th</sup> Street.

11 VICE-CHAIRPERSON HOOD: Okay.

12 MR. JACKSON: That is under construction  
13 right now and that was originally discussed by the  
14 Applicant but it was a matter of right project. They also  
15 -- they own that property. They have since transferred  
16 it but they have submitted a plan to approve the PUD which  
17 is north of here and is shown on your map in a gray tone.

18 This would -- and it would be in effect like a puzzle.

19 It would fit directly into this project but it's a  
20 separate PUD but it has similar characteristics to the  
21 previous proposal.

22 VICE-CHAIRPERSON HOOD: Okay. Mr. Jackson,  
23 maybe I'm confused, but anyway, the site that we're talking  
24 in question now, this proposal in front of us now --

25 MR. JACKSON: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE-CHAIRPERSON HOOD: -- to the left of  
2 that, that's still Somerville's property also, right,  
3 which is not going to be rezoned, which is going to be  
4 Zone M.

5 MR. JACKSON: Yes.

6 VICE-CHAIRPERSON HOOD: Now, let's get to  
7 my question. What is -- what kind of buffer besides trees  
8 and what I saw in the landscape plan are we going to have  
9 between that residential neighborhood and that continued  
10 M Zone? I know it may be vacant or minimal use at this  
11 point, but there's an issue that's going to brew here and  
12 we're getting ready to create it.

13 MR. JACKSON: So you're asking about the  
14 buffer between this --

15 VICE-CHAIRPERSON HOOD: Not necessarily for  
16 you to answer tonight but I want to make sure that the  
17 Applicant, who is sitting in the audience, knows that we  
18 didn't know what kind of buffer -- we went out on a limb  
19 the first time, but we're getting closer and closer to  
20 the train tracks. And right now we still have existing  
21 this Zone M to the left of the site.

22 MR. JACKSON: Yes, okay.

23 VICE-CHAIRPERSON HOOD: And trees ain't going  
24 to cut it. And I'm sure that also the smell that comes  
25 from the transferring station, I'm sure that that's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 obviously a problem. I'm very familiar with the  
2 neighborhood. And also I'm hoping that what happened in  
3 the first PUD does not happen in this one, the one that's  
4 to the north.

5 MR. JACKSON: Yes, yes.

6 VICE-CHAIRPERSON HOOD: Okay, make sure that  
7 -- the Office of Planning can help with this, make sure  
8 that we educate the surrounding area as much as possible  
9 on the process of the PUD because I think we spent about  
10 two hours on the Zoning Commission educating the community  
11 because they were under false impressions that got out  
12 in that area which actually we're not sure -- even though  
13 it all worked out for Rocky Gorge, but still we want to  
14 make sure we do our jobs up front so maybe cut down our  
15 time down here by about 30 minutes.

16 All right, thank you. Thank you, Madam Chair.

17

18 CHAIRPERSON MITTEN: Anyone else? Mr.  
19 Parsons.

20 COMMISSIONER PARSONS: The area to the east  
21 and the north of the site is -- I mean, within the site  
22 is very steep. It appears as though it's about a 30-foot  
23 drop from the proposed site of the townhouses and road  
24 to the residences below. And there doesn't seem to be  
25 any kind of a landscape plan that would deal with that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in the application as to how this 30-foot slope is going  
2 to be treated. Is that something that I'm missing? Is  
3 there --

4 MR. JACKSON: The last issue we can discuss  
5 with the Applicant about additional details with regard  
6 to how they want to deal with that but what their  
7 explanation was and what their plan was to try to preserve  
8 as much as possible all existing trees and -- significant  
9 trees and landscaping, but the issue of just how they would  
10 screen this property as well as dealing with storm water  
11 management and every thing, erosion, is not at issue we  
12 have pressed at this point but it is an issue that we will  
13 discuss further before the next filing.

14 COMMISSIONER PARSONS: All right, thank you.  
15 Now, the road from Somerville which goes through this  
16 property to the north, stops at the edge of the PUD. So  
17 --

18 MR. JACKSON: Well, that's --

19 COMMISSIONER PARSONS: And would link with  
20 the PUD we approved previously. What is the status of  
21 that road?

22 MR. JACKSON: That road -- there's a dirt  
23 road that goes -- that continues along the path projected  
24 for the road that would be made -- the paved road that  
25 would be part of the PUD, but as you --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER PARSONS: So they will pave it  
2 to the edge of their boundary and then what?

3 MR. JACKSON: Well, again, they own both parts.

4 So we anticipate that there will be a road all the way  
5 through. But we'll get more specific about that. Remember,  
6 I believe that before both PUDs, obviously, this was a  
7 route that was used by trucks to some extent. And then  
8 when they -- during the first submittal, there was  
9 discussion about how they might be -- that they would  
10 either manage or not allow trucks to go through there any  
11 more. So the road has existed prior to the original  
12 submittal. It's currently existing and at the point when  
13 I visited the site, there was a fence that would -- that  
14 had it closed off, so I couldn't go any further.

15 Whether -- their plan is to make this a  
16 continuous route and somehow manage the truck and traffic  
17 generated by the tenants, people who own properties in  
18 this area. So that is something that is an issue of more  
19 management. But their intent is to continue the road all  
20 the way through.

21 COMMISSIONER PARSONS: So the access to this  
22 site is from 6<sup>th</sup> Street to the south; is that correct?

23 MR. JACKSON: Principal access, yes.

24 COMMISSIONER PARSONS: And people will come  
25 up 6<sup>th</sup> Street which continues through the Somerville

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 property?

2 MR. JACKSON: Well, it continues -- it bears  
3 to the right and goes through the front of this PUD and  
4 beyond to Phase 1.

5 COMMISSIONER PARSONS: So that will be the  
6 access to this project, not from the north.

7 MR. JACKSON: They anticipate that the access  
8 -- their indication is that the access will primarily be  
9 from the south.

10 COMMISSIONER PARSONS: And the road to the  
11 north is then speculative. It's just unknown where that's  
12 going.

13 MR. JACKSON: No, they indicated it would  
14 go through, it would continue. It would be continuous  
15 both from the north of Phase 1 to the intersection of 6<sup>th</sup>  
16 Street is their current proposal. COMMISSIONER

17 PARSONS: But that junction isn't shown on any of the plans.  
18 Is that something that would be resolved prior to the  
19 hearing?

20 MR. JACKSON: Well, I believe it's on the  
21 --

22 COMMISSIONER PARSONS: Well, look at Sheet  
23 C-4, if you would, please.

24 MS. STEINGASSER: Commissioner Parsons, I  
25 understand the triangular grassy piece that's concerning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Commission. We will make sure that that circulation  
2 is detailed and the ownership pieces are well-defined and  
3 how they're going to be developed and maintained will be  
4 in the final pre-hearing statement. It is -- under the  
5 existing conditions of C-5, it does show the connection  
6 of that roadway from one lot to the other and you can see  
7 it's got water lines going through it so there is some  
8 kind of connection between them, but I understand what  
9 the Commission is getting and we'll make sure that that's  
10 addressed in detail.

11 COMMISSIONER PARSONS: So if that's completed,  
12 I assumed the preferred entrance to this would be from  
13 the north, wouldn't it, through a residential community.

14 MS. STEINGASSER: Well, 6<sup>th</sup> Street is an  
15 interesting street because on the east side it is a  
16 residential community. Only on the west side is the  
17 industrial.

18 COMMISSIONER PARSONS: Yes, all right.

19 MS. STEINGASSER: So, I'm not sure we're  
20 equipped at this point to say what's the preferred entry.

21  
22 COMMISSIONER PARSONS: All right, fine.  
23 We'll talk about that during the hearing.

24 CHAIRPERSON MITTEN: Anyone else? All right,  
25 we have an recommendation from the Office of Planning to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 set down Case Number 06-26 and I would so move.

2 VICE-CHAIRPERSON HOOD: I'll second.

3 CHAIRPERSON MITTEN: Thank you, Mr. Hood.  
4 Is there any further discussion? All those in favor please  
5 say "Aye".

6 (Aye)

7 CHAIRPERSON MITTEN: Those opposed, please  
8 say no. Ms. Schellin?

9 SECRETARY SCHELLIN: The staff will record  
10 the vote five to zero to zero to set down Zoning Commission  
11 Case Number 06-26. Commissioner Mitten moving,  
12 Commissioner Hood seconding, Commissioners Jeffries,  
13 Parsons and Turnbull in favor.

14 CHAIRPERSON MITTEN: Thank you.

15 SECRETARY SCHELLIN: As a contested case  
16 also.

17 CHAIRPERSON MITTEN: Yes. Next is Case Number  
18 06-30. This is Pollin Memorial Community Development  
19 Consolidated PUD and related map amendment. Mr. Jesick.

20 MR. JESICK: Thank you, Madam Chair and  
21 members of the Commission. My name is Matt Jesick with  
22 the Office of Planning. Before I get into the bulk of  
23 my presentation, I'd like to bring up one issue that has  
24 come to light recently. It has come to our attention that  
25 there is some question about the jurisdiction of this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 property and whose jurisdiction the property is under.

2 So while we will recommend set-down of the application,  
3 we further recommend that a public hearing not be scheduled  
4 until the question about the jurisdiction can be resolved.

5  
6 Now, the Applicant has submitted an  
7 application for a consolidated PUD and a zoning map  
8 amendment in order to develop 125 affordable and workforce  
9 rental and ownership units. The project is located in  
10 Ward 7 west of the Parkside Development and about a quarter  
11 mile west of the Minnesota Avenue Metro. In order to  
12 develop as proposed, the Applicant is seeking to apply  
13 the R-5-A zoning to parcels that are currently unzoned.

14 They are also seeking relief to lot area, side and rear  
15 yard and court requirements and the Office of Planning  
16 also believes that relief is required for lot occupancy  
17 and for lots not fronting on a public street.

18 Regarding the comprehensive plan, the  
19 development will further some of its major themes. It  
20 will replace an older public housing development with  
21 newer affordable housing. It will compliment existing  
22 and proposed development in the neighborhood. It will  
23 preserve approximately 43 percent of the site as an  
24 undeveloped natural area and it will promote enhanced  
25 public safety and provide for diversity in the community.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1  
2           The application will also further some  
3 specific objectives from the various elements of the  
4 comprehensive plan including the Ward 7 plan, and those  
5 objectives echo the major themes I just spoke of. The  
6 generalized land use map designates the eastern portion  
7 of this site, that is the portion east of Anacostia Avenue  
8 for mixed use, medium density residential and moderate  
9 density commercial. The western portion of the site, west  
10 of Anacostia Avenue, is designated for parks, recreation  
11 and open space uses. And this application is consistent  
12 with those designations as it provides park space and new  
13 low and moderate density housing.

14           The area east of Anacostia Avenue is zoned  
15 R-5-A but the parcels to the west of the avenue are  
16 currently unzoned and the Applicant wishes to apply the  
17 R-5-A zoning to those parcels. The Office of Planning  
18 has no objection to that map amendment. The surrounding  
19 properties are zoned R-5-A and that would be a logical  
20 extension of the zoning designation. Through the PUD  
21 process, as I mentioned earlier, the Applicant is seeking  
22 relief from a number of zoning regulations and the Office  
23 of Planning does not object to granting that relief.

24           While the relief would result in some small  
25 lots, there would still be a variety of lot and yard sizes

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 in the project. The relief would also allow a neighborhood  
2 with a traditional design and it also allows the  
3 preservation of a significant amount of open space.  
4 Regarding amenities for the community, the Applicant is  
5 citing a number of amenities and these include affordable  
6 housing, environmental benefits, urban design,  
7 infra-structure improvements and employment  
8 opportunities and the Office of Planning feels that the  
9 affordable housing would be the biggest benefit to the  
10 community.

11 The Office of Planning has requested more  
12 information about tree preservation, both during and after  
13 construction and we will also work with the Applicant and  
14 the Department of Health on environmental and flood plain  
15 issues but the Office of Planning feels that the overall  
16 direction of the amenity package is appropriate. Again,  
17 the application is not inconsistent with the goals of the  
18 comprehensive plan and while we recommend set-down of the  
19 application, we further recommend that it not be scheduled  
20 for a public hearing until the question of the jurisdiction  
21 can be completed resolved.

22 CHAIRPERSON MITTEN: Thank you. Mr. Parsons.

23  
24 COMMISSIONER PARSONS: Madam Chairman, we  
25 have a circumstance here that I find very awkward and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       troublesome. The National Park Service -- upon receiving  
2       this package last Thursday, we, in the National Park  
3       Service became aware that this was a proposal.  
4       Unfortunately, the National Park Service has jurisdiction  
5       over everything from Anacostia Avenue to the north or  
6       northeast, northwest, excuse me. Northeast. This was  
7       transferred to the Park Service in 1950 and apparently  
8       it was acquired by the District of Columbia so the District  
9       has title to the underlying ground.

10               We presume -- it was transferred to us for  
11       park purposes. We presume it has to do with the fact and  
12       as shown on the last page of the report of the Office of  
13       Planning that it was in the 100-year flood plain but  
14       regardless of why it was transferred, we are troubled that  
15       the proposal then would ask the Zoning Commission to decide  
16       from a land use standpoint that this is no longer valuable  
17       for park purposes and should be converted to housing, or  
18       a portion of it should be converted to housing. So the  
19       decision about that really rests with the City Council  
20       and the National Capital Planning Commission. That is  
21       this is a change in the comprehensive plan from park to  
22       other purposes.

23               The Zoning Commission could proceed to make  
24       a decision but my point is that it seems to us that a  
25       decision about its disposition as whether it's park or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 not is not under the jurisdiction of this commission at  
2 all. And for that reason, I would suggest that we defer  
3 this until we can pick up the pieces, we collectively,  
4 the District of Columbia, the National Park Service, the  
5 Planning Commission and others, to determine if this is  
6 a wise land use.

7 I note in the comprehensive plan it is called  
8 for as open space, park use. It is not identified in the  
9 current draft that's circulating that there's a change  
10 proposed here. So we were startled and continue to be  
11 startled as to what we should do in what I see is an  
12 unprecedented circumstance, not one in which the Park  
13 Service is not willing to cooperate but just caught in  
14 a procedural nightmare.

15 CHAIRPERSON MITTEN: Could you just help us  
16 understand. Let's just say, just so we get a sense of  
17 timing, that the Park Service decided that they wanted  
18 to do everything they could to facilitate this development  
19 going forward and the changes that are necessary would  
20 be sought, all the various approvals of NCPC and the City  
21 Council and whatever Park Service would have to do, what  
22 kind of a time frame are we talking about?

23 COMMISSIONER PARSONS: Well, first, it's  
24 unprecedented, so we're making it up as we go along.

25 CHAIRPERSON MITTEN: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   COMMISSIONER PARSONS: That is, the Park  
2 Service doesn't often say, "Hey, this is a park. It should  
3 be housing or it should be some other purpose". We do  
4 it with small pieces of land for transportation purposes  
5 where the District is trying to improve a road, that kind  
6 of thing or we transfer for school purposes where a  
7 schoolyard is to be expanded, those kinds of public uses.

8                   So the trouble is, making it up on the fly is not good.

9                   CHAIRPERSON MITTEN: Uh-huh.

10                  COMMISSIONER PARSONS: But I'm presuming an  
11 environmental assessment would have to be done to satisfy  
12 the Planning Commission, which would go to this use. So  
13 why are we converting it, well, we would have to do some  
14 kind of a documentation. How would it effect the 100-year  
15 flood plain, those kinds of things. Proceed through the  
16 Planning Commission, the City Council, to return back here  
17 as to what the decision is and I have no way to put a time  
18 frame on that.

19                  CHAIRPERSON MITTEN: But it doesn't sound  
20 like it happens quickly.

21                  COMMISSIONER PARSONS: No.

22                  CHAIRPERSON MITTEN: Okay. Okay.

23                  COMMISSIONER PARSONS: So the only mechanism  
24 I have is to suggest is a deferral until the other  
25 administrative remedies can be taken care of.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: Let me ask the Office  
2 of Planning a question. Is there any dispute about whether  
3 or not the Park Service has jurisdiction or is that  
4 accepted by all the people involved as a fact?

5 MS. STEINGASSER: We were provided documents  
6 Friday and based on what was saw, it seems undisputed that  
7 it is Park Service jurisdiction. We've not had a chance  
8 to forward those to OAG for their interpretation.

9 CHAIRPERSON MITTEN: Okay, and I'm not  
10 suggesting that I doubt Mr. Parsons. I just want to know  
11 exactly what's on the table here to, you know, to argue  
12 about. Well, I had another question that bear on -- maybe  
13 bears on what the -- well, it bears on the issue that Mr.  
14 Parsons raised about why, perhaps, this was -- that  
15 jurisdiction was given back to the Park Service is that  
16 at least part of the site that's within the control of  
17 the Park Service is in flood plain and it looks like some  
18 of the houses are proposed to be built in the 100-year  
19 flood plain.

20 MR. JESICK: Correct.

21 CHAIRPERSON MITTEN: I know that in other  
22 jurisdictions that I'm familiar with their zoning  
23 ordinances, that they have outright prohibitions on  
24 building in flood plain. I don't think we have anything  
25 like that. Well, I know we don't have it in the zoning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ordinance. I don't know if we have it in other agency  
2 regulations but do you have a position about building in  
3 the flood plain?

4 MS. STEINGASSER: We also noticed immediately  
5 that many of these houses were in the 100-year flood plain.

6 We have asked the Applicant to coordinate very closely  
7 with the Department of Health, Environmental Health  
8 Division, to make sure that they are compliant with all  
9 the flood hazard area regulations. I don't know off the  
10 top of my head what they are, they're not in our zoning  
11 regs. They are addressed in the building code.

12 CHAIRPERSON MITTEN: Okay.

13 MS. STEINGASSER: There's a chapter called  
14 "Flood Hazard Area".

15 CHAIRPERSON MITTEN: Okay. Anyone else have  
16 questions or comments that they want to make?

17 COMMISSIONER PARSONS: I would note that  
18 almost one-half of this project has nothing to do with  
19 the dispute I'm telling you about. I don't know if it  
20 would be of any merit to proceeding with that portion which  
21 is on the other side of Anacostia Avenue, but that would  
22 be the Applicant's choice.

23 CHAIRPERSON MITTEN: Right.

24 COMMISSIONER PARSONS: I mean, we're  
25 considering this whole Parkside Development which is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 directly adjacent. I mean, its timing is good.

2 CHAIRPERSON MITTEN: Uh-huh.

3 COMMISSIONER PARSONS: I'm not sure that's  
4 an option.

5 CHAIRPERSON MITTEN: Well, I think, you know,  
6 not withstanding Mr. Jesick's suggestion about setting  
7 this down and then not scheduling the hearing until these  
8 issues are resolved, I think that some of the issues are  
9 very germane to the Commission's decision to set this down,  
10 particularly the issue about the flood plain. I mean,  
11 I don't want to approve something for the flood plain and  
12 then somebody way down the road when you pull a permit  
13 -- I mean, I think we need to understand that right up  
14 front because it does -- I mean, the project, it would  
15 be a totally different project without it.

16 And, you know, the reason we set things down  
17 is that they're ready for hearing, and this is far from  
18 ready. Now, I know everybody got this -- this issue just  
19 came up, you know, when Mr. Parsons got his packet and  
20 not everybody had had a chance to process this information  
21 fully. I think for now what I'd like to recommend for  
22 the Commission is that we don't take any action on the  
23 set-down one way or the other. If there's additional  
24 information when we have our September hearing or whenever  
25 that makes us reconsider that, makes us think the problem

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 isn't what it appears to be now, if the Applicant wants  
2 to move forward, as Mr. Parsons suggested, with a section  
3 of it and come back later or however, I just don't think  
4 this is quite ready for us to take any action at the moment.

5 And I'd like the other Commissioners' --

6 VICE-CHAIRPERSON HOOD: I'll second it. Was  
7 that a motion?

8 CHAIRPERSON MITTEN: No, I don't want to take  
9 any actions. I just want to -- I would like to take no  
10 action at the moment and just hold this aside for another  
11 session.

12 COMMISSIONER TURNBULL: I would agree with  
13 that. I would have some serious reservations about even  
14 if they're not governed by regulations, some concerns  
15 about allowing housing in a flood plain.

16 CHAIRPERSON MITTEN: Yes. Mr. Jeffries?

17 COMMISSIONER JEFFRIES: I'm fine. I'll go  
18 along with the Commission.

19 CHAIRPERSON MITTEN: Okay. Okay, so we'll  
20 set this aside and we'll ask you to -- Office of Planning  
21 to work with the parties involved and if there's any  
22 updates you'd like to bring to us in September, or whenever,  
23 you know, we'd be happy to receive that at that time.

24 Okay, next up is Case Number 06-36, which  
25 is a map amendment brought to us by ANC-1A. Ms. Brown

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Roberts.

2 MS. BROWN ROBERTS: Good evening, Madam  
3 Chairman and members of the Commission. I'm Maxine Brown  
4 Roberts from the Office of Planning. Advisory  
5 Neighborhood Commission 1-A has requested that the Zoning  
6 Commission rezone row house properties within the area  
7 generally bounded by 14<sup>th</sup> Street NW to the east, Monroe  
8 Street to the south, 16<sup>th</sup> Street to the west and Spring  
9 Road to the north from the R-5-B zone to the R-4 zone to  
10 be consistent with the recommendations of the  
11 comprehensive plan.

12 The area is developed with a mixture of row  
13 houses, apartments and condominiums. The request for the  
14 rezoning is based on the need to counter development  
15 pressures to convert row houses to condominium units.  
16 The effect of these conversions is that the character of  
17 these blocks has been eroded and the architectural quality  
18 of row house streets is being lost because of the  
19 continuity and integrity of the original row house  
20 architecture are interrupted and degraded by adding floors,  
21 changing roof lines and other adverse architectural  
22 changes.

23 The properties are not within a historic  
24 district that could help preserve the architecture and  
25 low density character of these areas. This situation was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 identified by the community in the comprehensive plan and  
2 specifically in the Ward 1 plan in 1999 which recommended  
3 the rezoning of the properties to prevent intensive  
4 subdivision of row house units. The comprehensive plan  
5 has counted on the going review and this concern has again  
6 been expressed as a policy in the draft 2006 plan to  
7 recognize the value and importance of row house  
8 neighborhoods as an essential part of the fabric of the  
9 local community.

10 The comprehensive plan recommends that  
11 zoning designations for these neighborhoods should  
12 reflect the desire to retain the row house pattern and  
13 land use control should discourage the subdivision of  
14 single family row houses into multi-unit apartment  
15 buildings. The plan further outlines actions to be taken  
16 to bring about a better match between zoning and existing  
17 land uses with particular focus on blocks that consist  
18 primarily of row houses that are zoned R-5-B or higher  
19 and recommends pursuing rezoning to appropriate densities  
20 to protect the predominant architectural craft and scale  
21 of the neighborhood.

22 The implementation section of the  
23 comprehensive plan recommends that this rezoning action  
24 be undertaken in 2008. However, the ANC's concern that  
25 waiting until 2008 will lead to further degradation due

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to development pressures which is likely to be accelerated  
2 prior to the time and therefore, immediate rezoning is  
3 necessary. The proposal is not inconsistent with the land  
4 use elements of the comprehensive plan to protect  
5 residential neighborhoods and the Ward 1 actions to  
6 implement the land use objectives that specifically call  
7 for amending the zoning regulations, rezoning these  
8 properties to help prevent intensive unit subdivision.

9  
10 The generalized land use map describes the  
11 area for moderate density where row housing and garden  
12 apartments are the predominant uses. The Office of  
13 Planning finds that the proposed map amendment is not  
14 inconsistent with the comprehensive plan. The Office of  
15 Planning also notes that there are houses along Meridian  
16 Place that is in the C-2-A district. These properties  
17 are similar to the row houses in the area and are oriented  
18 to Meridian Place and not towards the commercially zoned  
19 14<sup>th</sup> Street. The Office of Planning believes that it may  
20 be appropriate to rezone these properties to the R-4  
21 District.

22 As part of our further analysis, the Office  
23 of Planning will work with the ANC to consider including  
24 these properties in the r-4 district. The Office of  
25 Planning finds that the proposed map amendment is not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 inconsistent with the comprehensive plan and recommends  
2 that the Zoning Commission set down the proposed amendment  
3 to change the zoning from the R-5-B district to the R-4  
4 district on the properties outlined in the submitted map  
5 and that properties along Meridian Place in C-2-A be  
6 considered for rezoning to the R-4 district. Thank you,  
7 Madam Chairman.

8 CHAIRPERSON MITTEN: Thank you, Ms. Brown  
9 Roberts. Questions, comments? Commissioner Turnbull/

10 COMMISSIONER TURNBULL: Yes, I wonder if I  
11 could just ask the Office of Planning, when you talked  
12 about on Meridian Place --

13 MS. BROWN ROBERTS: Yes.

14 COMMISSIONER TURNBULL: -- only part of the  
15 block there where the row houses are becomes -- is going  
16 to change to R-4. The rest of it, sort of the end of the  
17 block stays R-4-B and on the other side of the street stays  
18 R-4-B; is --

19 MS. BROWN ROBERTS: Along Meridian Place on  
20 the southern side, most of those buildings are apartments  
21 and they're in the R-5-B zone. The row houses, again on  
22 the southern portion are in the C-2-A zone. Those units  
23 are oriented towards Meridian Place which has a  
24 residential character.

25 COMMISSIONER TURNBULL: Do we have -- has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the ANC gone through and got a fairly good consensus from  
2 all of the people in these homes?

3 MS. BROWN ROBERTS: Regarding just this  
4 specific -- the C-2-A portion?

5 COMMISSIONER TURNBULL: Right.

6 MS. BROWN ROBERTS: No, we have not and that's  
7 why we just ask that it's something that we notice and  
8 we will talk to the ANC about it, but no, we haven't taken  
9 any action.

10 COMMISSIONER TURNBULL: Okay, thank you.

11 CHAIRPERSON MITTEN: Anyone else, Mr.  
12 Jeffries?

13 COMMISSIONER JEFFRIES: And so there's  
14 considerable pressure. So there's lots of evidence that  
15 we're seeing these row houses convert to condominiums.  
16 Do we have numbers or does the ANC?

17 MS. BROWN ROBERTS: No, we don't have any  
18 numbers but just visually because I walked all the streets  
19 and currently there are a number of the townhouses that  
20 are being converted. That's something that I think as  
21 -- you know, in preparation for the public hearing we can  
22 find out, you know, how many has been converted over the  
23 hears.

24 COMMISSIONER JEFFRIES: And there is not a  
25 particular development that's taking place and that the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ANC is moving towards that particular development? This  
2 is just a general sense that the -- you know, the nature  
3 of this community is changing in terms of the type of the  
4 buildings.

5 MS. BROWN ROBERTS: Yes, and again, I also  
6 outlined in our report that this has been something that  
7 the Committee has identified for some time, because, you  
8 know, it was specifically identified in the ward plan in  
9 1999. So this is something that I think the Committee  
10 has noticed has been going on for some time.

11 COMMISSIONER JEFFRIES: This is the one --  
12 and this is just a statement on my part. I'm -- these  
13 consistency cases just always make my hair stand on end.

14 They just simply do. And I understand that in 2008 based  
15 on the comprehensive plan, that there was going to be a  
16 review of this. It's just this whole notion of  
17 predictability and people purchasing expecting to have  
18 a certain envelope that gets reduced, but at least on this  
19 case, it appears to be just a general sense of trying to  
20 sort of revisit and address some general concerns about  
21 the character of the neighborhood and that's fine. I mean,  
22 this is a set-down, so I'll be looking forward to hearing  
23 the residents that live in some of these buildings and  
24 get their sense about their thoughts on this neighborhood,  
25 so thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MS. STEINGASSER: Mr. Jeffries, if I might  
2 add, many of the people in this neighborhood follow the  
3 Georgia Avenue case and the Capitol Hill case and they  
4 saw the conflict that came up and they were -- I think  
5 they, themselves, didn't want to be in that position and  
6 they did go through the comprehensive plan, saw that  
7 language and brought it forward to avoid that very  
8 circumstance that you're concerned about as well.

9 COMMISSIONER JEFFRIES: Yes, I'm familiar  
10 with this neighborhood and I live just south of it, so  
11 I understand some of the issues and so forth, but it's  
12 just sort of the whole issue of sort of changing in  
13 midstream, but again, I would definitely be in favor of  
14 going forward for a hearing.

15 CHAIRPERSON MITTEN: Thank you, Commissioner  
16 Jeffries. I just wanted to take a minute to maybe digress  
17 but I think it's related. I sat on an appeal recently  
18 at the BZA and one of the issues, which is very similar  
19 to what's here with -- the general issue is similar, which  
20 is the issue in the appeal case was some very specific  
21 language that's in our ordinance about when there's a  
22 conversion in R-4, not R-5-B but in R-4 to multi-family  
23 -- well, it's actually to apartments, very important.  
24 I'll tell you guys all about it some time.

25 But that you have to have -- when you do a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 conversion that you have to have 900 square feet of land  
2 per unit. But then the interpretation that was made by  
3 -- a longstanding interpretation made by zoning  
4 administrators of the past, not supported by the current  
5 Zoning Administrator, was that if the property is already  
6 multi-family so that it's not being converted, but it's  
7 being -- the density, the internal density number of units  
8 is being increased, that that 900 square foot of land  
9 limitation does not apply.

10 And that's what's happening -- generically,  
11 that's what's happening here, too, which is if you're an  
12 R-5-B but you have these existing dwellings and maybe  
13 people expand them or maybe they don't, but it's without  
14 a control on number of units or you know, just density  
15 of human beings living in one place, that's in part what  
16 the issue is here, there's -- it's unchecked and you are  
17 changing the character. So I'm using the opportunity to  
18 say, I would like the Office of Planning to look at that  
19 appeal case and I would like to see and have a public  
20 hearing on making the language clear so that any time you  
21 increase the number of multi-family units in R-4 that we  
22 have some kind of control, not that -- I don't agree with  
23 the BZA's decision in the appeal case, I was standing by  
24 myself on that one, but I'd like to correct it going forward,  
25 if we could.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   So, I'm very -- I understand this and I  
2                   suspect that this pressure exists in other neighborhoods.

3                   I lived in a house on Capitol Hill that was zoned R-5  
4                   but the whole row was row houses, so, you know, there's  
5                   pressure everywhere for more intense uses. So there may  
6                   be other places that you'll either be approached or you  
7                   might want to take a look at. And I would just note that  
8                   even though we've been asked to take emergency action,  
9                   if we set this case down, the set-down rule will be in  
10                  place which is that the more restrictive zone will apply  
11                  from the date of the set-down until the disposition of  
12                  the case.

13                  Anybody else? Mr. Parsons?

14                  COMMISSIONER PARSONS: I'm a little confused  
15                  about your report on the ANC, because we have a resolution  
16                  for ANC-1A that apparently supports this emergency  
17                  set-down that's attached to your report but your comments  
18                  imply that maybe you hadn't visited with the ANC. So is  
19                  there something further that needs to be done?

20                  MS. BROWN ROBERTS: Pardon me, I didn't hear  
21                  the middle part of your --

22                  COMMISSIONER PARSONS: I thought you said  
23                  that you needed to visit with the ANC to understand their  
24                  position on this.

25                  MS. BROWN ROBERTS: The position on the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 portion that the C-2-A zoned properties that --

2 COMMISSIONER PARSONS: Only that portion,  
3 okay.

4 MS. BROWN ROBERTS: Only that portion, that's  
5 correct.

6 COMMISSIONER PARSONS: Now, we have been very  
7 selective about the word "emergency". And emergencies  
8 are generally considered to be city-wide emergencies and  
9 there's certainly no city-wide emergency here. But as  
10 you pointed out, Madam Chair, if we set it down, the  
11 set-down rule applies, so --

12 CHAIRPERSON MITTEN: I just wanted to clarify  
13 that.

14 COMMISSIONER PARSONS: -- so you're not  
15 supporting the word "emergency".

16 CHAIRPERSON MITTEN: No, I'm not.

17 COMMISSIONER PARSONS: Good, neither am I.  
18 Thank you.

19 CHAIRPERSON MITTEN: Anyone else? Mr. Hood?

20 VICE-CHAIRPERSON HOOD: Madam Chair, I would  
21 move as appropriate that we set down Case 06-36 not in  
22 the emergency that was requested but a regular normal  
23 set-down 06-36 and I would so move.

24 CHAIRPERSON MITTEN: Thank you, Mr. Hood.

25 COMMISSIONER TURNBULL: Second.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: Thank you, Mr. Turnbull.  
2 Any further discussion?

3 COMMISSIONER JEFFRIES: Just one thing; I  
4 just want to make certain that when this hearing comes  
5 forward that, you know, there is tangible outright  
6 evidence that we're seeing these conversions. I mean,  
7 something, permits, I don't know, but something that  
8 indicates that this is, in fact, happening. Thank you.  
9 Just something antidotal, yes, thank you.

10 CHAIRPERSON MITTEN: Right, anyone else?  
11 And I'd ask for all those in favor, please say "Aye".

12 (Aye)

13 CHAIRPERSON MITTEN: Those opposed, please  
14 say no. Ms. Schellin?

15 SECRETARY SCHELLIN: The staff will record  
16 it as five to zero to zero to set down Zoning Commission  
17 Case Number 06-36. Commissioner Hood moving, Commissioner  
18 Turnbull seconding, Commissioners Jeffries, Mitten and  
19 Parsons in favor and this, I believe will be a rulemaking  
20 case?

21 CHAIRPERSON MITTEN: Thank you. Two things;  
22 one is we're losing Commissioner Jeffries, just for the  
23 rest of the evening. And for the next case, the last case  
24 under hearing action, Mr. Hood will be handling it because  
25 I have a conflict with my day job.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE-CHAIRPERSON HOOD: Zoning Commission  
2 Case Number 06-37, Office of Planning map amendment of  
3 Square 1765. I guess, Mr. Mordfin, did I get that right?

4 MR. MORDFIN: Yes.

5 VICE-CHAIRPERSON HOOD: Okay.

6 MR. MORDFIN: Good evening.

7 VICE-CHAIRPERSON HOOD: Good evening.

8 MR. MORDFIN: I'm Stephen Mordfin with the  
9 Office of Planning. And the subject property is owned  
10 by the District of Columbia and is currently unzoned.  
11 Department of Public Works proposes to locate offices for  
12 the Street and Alley Cleaning Division within the building.  
13 However, in order for DPW to obtain permits for the  
14 renovation and occupancy of the building it must be located  
15 within a zoned district.

16 The Office of Planning recommends the subject  
17 property be located within the C-1 zone district. The  
18 C-1 is the least intense commercial zone district and  
19 permits offices as a matter of right. Therefore, it is  
20 the most appropriate zone district for the site. The  
21 Office of Planning recommends that the Commission set down  
22 the map amendment to include Lots 1, 2, 3, 4, 5, 6, 7,  
23 29, 28 and 27, Square 1765 within the C-1 zone district.

24 Thank you.

25 VICE-CHAIRPERSON HOOD: Thank you, Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Mordfin. Gentlemen, any questions of Mr. Mordfin? Mr.  
2 Parsons.

3 COMMISSIONER PARSONS: Only to say I move  
4 we set this matter down for public hearing.

5 VICE-CHAIRPERSON HOOD: It's been moved.  
6 Can I get a second?

7 MALE PARTICIPANT: Second.

8 VICE-CHAIRPERSON HOOD: It's been moved and  
9 properly seconded. Any discussion?

10 VICE-CHAIRPERSON HOOD: Yes, I do have a  
11 comment. Mr. Mordphin, in your report, you mentioned that  
12 we were doing this to provide services within Ward 3.  
13 Do we do that in other wards? I understand where we're  
14 going but do we -- you know, do we have this kind of thing  
15 in other wards where we provide, you know, like Ward 5,  
16 Ward 1, that kind of -- or is it just that we'll provide  
17 these services, just for Ward 3?

18 MR. MORDFIN: Yes, well what the DPW informed  
19 me was that they have a lack of space for providing services  
20 within Ward 3, that Ward 3 has a deficit and that's one  
21 of the reasons why they wanted to use this space for that.

22 VICE-CHAIRPERSON HOOD: Are we looking at  
23 carrying that deficit all the way around or just in this  
24 case? I think that's something we may want to eventually  
25 look at. Hopefully, I'll bring that forward.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MORDFIN: I think DPW could probably  
2 answer that question better.

3 VICE-CHAIRPERSON HOOD: Good, we'll ask them  
4 at the hearing. It's been moved and properly seconded.  
5 All those in favor, "Aye". Any opposition? So ordered.  
6 Staff would you record the vote and the proxy?

7 SECRETARY SCHELLIN: Actually, we don't have  
8 a proxy for this case. He left one for the last one.  
9 So we'll record the vote three to zero to two to approve  
10 set-down in Zoning Commission Case Number 06-37.  
11 Commissioner Parsons moving, Commissioner Turnbull  
12 seconding, Commissioner Hood in favor, Commissioner  
13 Jeffries not present, not voting. Commissioner Mitten,  
14 not voting having recused herself and this too will be  
15 a rulemaking case.

16 VICE-CHAIRPERSON HOOD: I turn it back over  
17 to the Chair.

18 CHAIRPERSON MITTEN: Thank you, Mr. Hood.  
19 You dispatched with that quickly. Okay, last item is under  
20 final action and it's Zoning Commission Case Number 94-01A,  
21 one of the most talked about rooftop embellishments that  
22 we've had in awhile. Maybe I'll just take a minute and  
23 if the Office of Planning, if you wanted to say anything  
24 about your report, don't feel compelled to.

25 MS. STEINGASSER: Just very briefly, the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 purpose of the report was just to simply provide a little  
2 bit of background and precedent on similar cases. Now  
3 that you've given me the opportunity, I would like to  
4 correct my chart on the back. On the old Children's Museum,  
5 the Zoning Commission has not approved the roof plan and  
6 they have -- you have specifically asked that the roof  
7 plan come back to you and the issue of the trellis as a  
8 Height Act issue was raised on March 24<sup>th</sup> during final  
9 action, so that's still pending. NCPC, however, found  
10 no conflict or federal interest raise by the Height Act  
11 and voted to approve the PUD.

12 And then as I stated in my coordination, we've  
13 talked to the NCPC attorneys and we've talked with our  
14 Zoning Administrator and regardless of how the Commission  
15 acts on this particular case, we're all of like mind that  
16 we feel it's very important to have one unified approach  
17 to this particular issue as we move forward with additional  
18 cases, so we are trying to get together and come up with  
19 at least a consistent interpretation going forward.

20 CHAIRPERSON MITTEN: I think that as everyone  
21 works through that, I think it's important to remember  
22 that the Zoning Administrator is the ultimate arbiter of  
23 the Height Act and not the Commission, so, you know, make  
24 sure that if you're going to have uniformity, that the  
25 Zoning Administrator is on board.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MS. STEINGASSER: Oh, I'm sorry, I thought  
2 I mentioned --

3 CHAIRPERSON MITTEN: You may have. I just  
4 wanted to clarify that even if we were to approve something  
5 that the Zoning Administrator disagreed about our  
6 interpretation of the Height Act, he can overrule us on  
7 that particular item.

8 MS. STEINGASSER: Yes.

9 CHAIRPERSON MITTEN: Notwithstanding a BZA  
10 order to the contrary I understand. Okay. We have all  
11 of the submissions before us from NCPC and Office of  
12 Planning and the Applicant and I'd ask for your thoughts.  
13 Mr. Parsons?

14 COMMISSIONER PARSONS: I thought I might have  
15 a comment.

16 CHAIRPERSON MITTEN: I thought you might  
17 also.

18 COMMISSIONER PARSONS: Although the Zoning  
19 Administrator, as you said correctly, is the one who is  
20 the arbiter of this, it's quite obvious to me and  
21 apparently to the Planning Commission, that the Heights  
22 of Building Act talks about vertical elements, not  
23 horizontal ones and that is what this is about. That's  
24 what it's been about on this case and other cases that  
25 have come before us with this new phenomenon of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 architectural design which is not only in this city but  
2 elsewhere in the country to add horizontal embellishments  
3 and call them what you will. So what the Planning  
4 Commission is suggesting is that we push this back to  
5 respect the set-backs that we have for such structures  
6 on a one-to-one setback so as to avoid the potential for  
7 this being set aside later by others as violating the  
8 Height Act.

9 So that's what's before us, as I understand  
10 it is, can this structure, whatever it is, be set back  
11 on a one-to-one setback away from the facade to remedy  
12 the circumstance so that that's my summary of where we  
13 are, which I would support but I'll open that up for  
14 discussion.

15 CHAIRPERSON MITTEN: Okay. Comments, Mr.  
16 Turnbull?

17 COMMISSIONER TURNBULL: Thank you, Madam,  
18 Chair. I would agree with Mr. Parsons. I think -- and  
19 I know when we've looked at this originally, I think I  
20 went along and voted for on this particular case, but I  
21 think after reading the NCPC comments, I think we really  
22 do need something to guide us as far as when we talked  
23 about embellishments, and we talked about whether the  
24 single solitary element. And we are getting to a point  
25 where we're having horizontal elements where it's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 beginning to look like another floor. And I think when  
2 it begins to look like another floor, we've really  
3 stretched it maybe a little bit too far and I would --  
4 I would concur with Mr. Parsons' comment.

5 I would only add that -- I would just like  
6 to correct something on the Office of Planning's first  
7 page where I think one of -- where it says on the first  
8 line, "Staff newly interrupted the Act", I don't think  
9 they mean interrupted the Act. I mean, they interpreted  
10 that Act.

11 MS. STEINGASSER: That is correct, that is  
12 a typo.

13 COMMISSIONER TURNBULL: And by that Act, I  
14 mean, the regulated height of buildings.

15 MS. STEINGASSER: That's correct, that's a  
16 typo, spell check doesn't correct grammar.

17 CHAIRPERSON MITTEN: Did you -- all right.

18 MR. RITTING: Excuse me, Madam Chair, while  
19 the Commission is looking through the materials, I just  
20 wanted to bring to your attention some language that's  
21 in Section 5 of the Height Act and regarding setting back  
22 of roof structures. The section that allows certain  
23 enumerator roof structures to exceed the Height Act  
24 provides that penthouses, ventilation shafts and tanks  
25 shall be set back from the exterior walls, distances equal

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to their respective heights, but it doesn't mention towers  
2 or other of the enumerated structures that are listed in  
3 the earlier section.

4 CHAIRPERSON MITTEN: I think -- I take your  
5 point. I think Mr. Parsons' point is we've entered a new  
6 realm of embellishments that are not specifically  
7 articulated in the Height Act and the embellishments that  
8 were specifically articulated that don't -- that don't  
9 have controls on them were all vertical. And so now we  
10 have a horizontal element. And so he's trying to sort  
11 of match that up with one category of embellishment or  
12 another and that's why we're -- I mean, we understand that  
13 it's not dealt with strictly.

14 Mr. Hood, would you like to say something?

15 VICE-CHAIRPERSON HOOD: Yes, well, I got a  
16 quick education. I want to make sure, though, Madam Chair,  
17 you mentioned that the Zoning Administrator, I guess had  
18 the final say-so. I guess will we be sending him a  
19 direction or -- well, if he has the final say-so, we won't  
20 be sending him a direction. I'm not clear. What are we  
21 doing? Why are we even dealing with it?

22 CHAIRPERSON MITTEN: Okay, there's -- well,  
23 because there's a modification before us and we have to  
24 pass on it. So what we -- one alternative is that we approve  
25 the design as proposed by the Applicant and to the extent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that the Zoning Administrator thinks that this violates  
2 the Height Act, then he can reject it and say, "No, this  
3 violates the Height Act", at which point they'd have to  
4 come back to us. Mr. Parsons' suggestion is, while we  
5 -- what we do is we say we just -- we don't want to endorse  
6 this, period, for Height Act reason, basically maybe not  
7 as much on technical point but in the spirit of the Height  
8 Act, and so we should not approve this, not let the Zoning  
9 Administrator be the decider of whether or not this design  
10 goes forward but ask them to set back this element and  
11 then the Zoning Administrator would decide that issue.

12

13 VICE-CHAIRPERSON HOOD: I think at the  
14 hearing, Madam Chair, I kind of like that design. I'm  
15 just sorry that it has some issues with the Height Act.

16 I don't know, I guess looking at NCPC, I guess I'd better  
17 yield to the experience. But let me hear from you, Madam  
18 Chair.

19 CHAIRPERSON MITTEN: Okay.

20 VICE-CHAIRPERSON HOOD: And see where we are.

21 CHAIRPERSON MITTEN: Well, I'm -- I don't  
22 think this is going to work set back. It's integrated  
23 into the tower element in a way that setting it back, I  
24 don't think will present in the same way and I just don't  
25 think it's going to work. And I would like -- while I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fully support all the efforts to try and get clarity and  
2 maybe once clarity is obtained, this wouldn't be approved,  
3 but I like this, I like this, too, and I understand the  
4 fear about where this could lead us. I understand that,  
5 but the fact is, is that if this weren't a PUD, they would  
6 go forward, one could go forward with this particular  
7 design on a non-PUD building and the decision would be  
8 in the hands of the Zoning Administrator.

9 So, because I don't find this design  
10 inherently offensive on a PUD project and I think we should  
11 let this go to the Zoning Administrator to decide like  
12 any matter for this particular element like he would for  
13 any matter of right building, decide whether that's a  
14 Height Act violation or not. And -- but I do support the  
15 fact that we need more clarity. There's been -- it's been  
16 long overdue to clarify certain elements of the Height  
17 Act, including clarifying what's an architectural  
18 embellishment in the first place, because we've talked  
19 about that, too. So I would support going forward and  
20 letting the Zoning Administrator have the final say about  
21 that.

22 COMMISSIONER PARSONS: So if you had an ugly  
23 one before you --

24 CHAIRPERSON MITTEN: I might feel  
25 differently.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 COMMISSIONER PARSONS: -- you might feel  
2 differently but you might want to rely on the Heights of  
3 Buildings Act as a reason to reject it.

4 CHAIRPERSON MITTEN: But in a PUD we can just  
5 say it's ugly and we don't have to approve it, that's the  
6 beauty of a PUD.

7 COMMISSIONER PARSONS: But we've been through  
8 three of these and it hasn't happened and that's my concern.  
9 I mean, what we're doing is encouraging by our decisions,  
10 the Zoning Administrator to say, "Well, the Zoning  
11 Commission agrees with me. It sounds fine. I don't know  
12 who NCBC thinks they are. This is a local decision", and  
13 I don't know where this leads us, an amendment to the  
14 Heights and Buildings Act or what, but I'd hate for this  
15 Commission to encourage horizontal elements being  
16 construed to be architectural embellishments.

17 VICE-CHAIRPERSON HOOD: Madam Chair, I think  
18 at the hearing, if I remember correctly, we had seen a  
19 number of these, and I think the question, I'm not sure  
20 who asked it but the question was, is this the new way,  
21 and was this --

22 COMMISSIONER PARSONS: That was my question.

23 VICE-CHAIRPERSON HOOD: That was your  
24 question? I'm not sure what the response was but I know  
25 it's been mentioned on more than one occasion.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   COMMISSIONER PARSONS: Right, we've got three  
2 or four examples, the one on Connecticut Avenue that we  
3 set down recently which has got a similar element to it  
4 at Connecticut and K. There's a matter of right buildings  
5 going on. I have some exhibits here but I won't share  
6 them with you, of buildings that are being approved that  
7 have these things and --

8                   VICE-CHAIRPERSON HOOD: So, I don't want to  
9 put you on the witness stand but is that the new way?  
10 I mean --

11                   COMMISSIONER PARSONS: It is because you look  
12 at architectural magazines and this is what's happening  
13 in Miami, Chicago, Cleveland and St. Louis, whatever.  
14 It's the new thing, architecture focusing on the roof  
15 rather than the street facades apparently. The Tower  
16 Period we went through, which was in the `90s, seemed to  
17 me to fit with the definition of architectural  
18 embellishments but these do not.

19                   CHAIRPERSON MITTEN: Well, you know, we have  
20 sort of put our foot down, I think. I don't remember which  
21 case it was. I don't know if it's the Connecticut Avenue  
22 case where -- but it was what you noted tonight in the  
23 Marina View case, where things -- where it's almost like  
24 the facade is literally being carried up higher.

25                   COMMISSIONER PARSONS: Right, yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: I think -- you know,  
2 I mean, I reject that. I don't like that, but this doesn't  
3 bother me, although I --

4 COMMISSIONER PARSONS: I noticed.

5 CHAIRPERSON MITTEN: So anyway, let's go.  
6 Are you ready to -- all right, then, I'll move approval  
7 of Case Number 94-01A. I guess it's reaffirming our  
8 approval because NCPC recommended that we alter our --  
9 I guess, no, we never took final action. Okay, great,  
10 that we approve Case Number 94-01A, the modification.

11 VICE-CHAIRPERSON HOOD: I'll second it.

12 CHAIRPERSON MITTEN: Thank you, Mr. Hood.  
13 Any further discussion? Then I'll ask for all those in  
14 favor, please say "Aye".

15 (Aye)

16 CHAIRPERSON MITTEN: Those opposed, please  
17 say, "No".

18 COMMISSIONER PARSONS: No.

19 COMMISSIONER TURNBULL: No.

20 CHAIRPERSON MITTEN: Ms. Schellin, we have  
21 two and two.

22 SECRETARY SCHELLIN: Yes, staff will record  
23 the vote, three to two to zero to approve final action  
24 of Zoning Commission Case Number 94.01A. Commissioner  
25 Mitten moving, Commissioner Hood seconding, Commissioner

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Jeffries to approve by absentee ballot, Commissioners  
2 Parsons and Turnbull opposed.

3 CHAIRPERSON MITTEN: Thank you. And I think  
4 we've now earned our little break for August and I thank  
5 you all for participating this evening and we are now  
6 adjourned.

7 (Whereupon, at 8:36 p.m. the above-entitled  
8 matter concluded.)

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701