

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

Monday

March 13, 2006

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The Regular Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:41 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

ZONING COMMISSION STAFF PRESENT:

SHARON S. SCHELLIN Acting Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON
STEVE COCHRAN
TRAVIS PARKER
KAREN THOMAS
JOHN MOORE
MAXINE BROWN-ROBERTS
ARTHUR ROGERS
SHYAM KANNAN

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.
JACOB RITTING, ESQ.

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from the regular meeting held on March 13, 2006.

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

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6:41 p.m.

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CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public meeting of the Zoning Commission of the District of Columbia for Monday, March 13, 2006. My name is Carol Mitten and joining me this evening are Vice-Chairman Anthony Hood and Commissioners Michael Turnbull and John Parsons.

I would like to remind everybody that if you would like to follow along there are copies of the agenda on the table by the door. I would also like to remind you that we do not take any public testimony at our meetings unless someone is specifically invited by the Commission to come forward.

We are being recorded by the court reporter and also being webcast live so I would ask you to remain from making any disruptive noises in the hearing room and I would ask you to turn off all cell phones so as not to disrupt the meeting. Thank you.

Mrs. Schellin, anything before we proceed with the agenda?

MS. SCHELLIN: No, ma'am.

CHAIRPERSON MITTEN: Okay. Then I have a few things. One is I would just like to -- this will

1 be published as well. We are changing the date for
2 our April meeting from April 10th, which would be the
3 regularly scheduled date, to Thursday, April 20 at
4 6:30. We have one change in the agenda which is that
5 the item under Consent is being moved to hearing
6 action as Item E. With that I will turn to the Office
7 of Planning for their status report.

8 MS. STEINGASSER: Madam Chair,
9 Commissioners, instead of our normal status report
10 this month Shyam Kannan of our office is going to go
11 through the industrial land use study that the
12 Commission has asked for over the last year through a
13 PowerPoint presentation.

14 CHAIRPERSON MITTEN: Great. We are
15 looking forward to this. Welcome to the Commission,
16 Shyam.

17 MR. KANNAN: Thank you, Madam Chair. You
18 have four different stacks of documents in front of
19 you. One is a repeat of the PowerPoint on the screen.
20 The other is a full text version of the report which
21 was commissioned. You have several stacks of maps.
22 I would ask you to take out the 11 by 17 maps that are
23 printed in full color. They are binder-clipped
24 behind. It will help us walk through this report.

25 So in taking a look at the industrial land

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1 use in the District of Columbia, we have titled this
2 report, "Production, Distribution, and Repair,"
3 primarily because the District, no longer an
4 industrial city, really contains these three functions
5 in its industrial cores. Production, the making of
6 things, distribution, the warehousing, shipping,
7 storage, and repair. This includes cars, vehicles,
8 and some of the building contractors such as HVAC and
9 building repair.

10 What we were asked to do is we were asked
11 to provide this Commission with guidance in addressing
12 zoning changes and future land use decisions regarding
13 industrially zoned land. In this report we have a set
14 of recommendations not only for these land use
15 decisions, but also recommendations for strategically
16 managing this land going forward.

17 It is essentially supply and demand study
18 that looks at the supply and demand for industrially
19 zoned land in the District and it provides the tools
20 necessary to make these decisions going forward. What
21 it does do, again, is it gives the Zoning Commission
22 these tools to make these decisions and it also sets
23 recommendations for better managing out supply of
24 industrially zoned land and stabilizing the market for
25 this land. It also dovetails completely with the

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1 comprehensive plan. The team that was hired to assist
2 us with this wrote this in tandem with the
3 comprehensive plan. This informs the comprehensive
4 plan and vice versa.

5 What it does not do it does not recommend
6 wholesale rezoning. It does not conduct large-scale
7 site selections for individual users, and it does not
8 attempt to do the task of completing numerous small-
9 scale plans for each of the industrial areas.

10 Before we begin with the actual content,
11 piece of terminology which is key again, we talked
12 about this earlier but production, distribution,
13 repair, or we've been calling it for the past seven
14 months PDR. Industry is an outdated term. It brings
15 to mind smokestacks and hoke smelters and automotive
16 manufacturers is not really what we have.

17 We really have heavy uses of land. These
18 include the construction related industries,
19 warehousing and transportation, machinery, equipment.
20 Also municipal functions that are critical to
21 conducting the business of government, waste hauling
22 and transfer street cleaning and plowing, road
23 constructions, sewer construction repair.

24 All of these require, let's say, land that
25 is heavy-use land.

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1 Just for a quick sense of, well, the
2 District has not always had a real industrial base.
3 However, when we look a look at who these users were,
4 we found out that they actually comprised a
5 surprisingly large component of the District economy.
6 In your stack of maps you have a map that says PDR
7 Cluster in the District of Columbia. It is the only
8 one that is in black and white only with the water
9 showing blue. That shows you roughly what we found as
10 far as agglomerations of these users in the District.

11 In summary, they constitute 10 percent of
12 the District jobs with an additional 11,000 in the
13 DOE's projections from 2002 to 2012. We found that
14 they are tightly linked to the District economy.
15 Those that were not really tightly linked have already
16 left the District but as the District economy grows,
17 so do these uses and the need for these uses.

18 For example, this building has janitorial
19 services, building maintenance, elevator service,
20 landscaping, repair, the need for new construction,
21 HVAC lighting, painting, logistics, all of which need
22 tight turnaround times, a close relationship to the
23 actual location in the District.

24 What we are finding is that people that
25 are providing these services are choosing to stay in

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1 the District, pay higher rents to be in the district,
2 and settle for lower-quality land. They are really
3 the survivors and the base of all of the industrial
4 users of land.

5 We also found that these companies their
6 employment base actually consist of at least 40
7 percent D.C. residents which is a fairly high number,
8 higher than District government, and certainly higher
9 than a lot of the different sectors of our economy.

10 We also found very briefly, and the report
11 goes into this in detail, between now and 2012 we
12 expect to see 65 percent of our employment growth in
13 professional, scientific and government lawyering,
14 etc., etc., and 25 percent of our job growth in sales.

15 However, at the same time, we see that we
16 have 24,000 unemployed residents in the District and
17 these jobs tend to provide union benefit jobs at
18 median salaries of about \$40,000 which compares to
19 about \$16,000 for actually the whole sales job. Top
20 level these are well-paid family-supporting jobs that
21 are going to District residents and we continue to
22 grow them as our economy grows.

23 The supply and demand analysis revealed
24 that our immediate supply of land for these type of
25 activities is exceeded by the demand for this. We

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1 forecasted a demand of almost 100 acres in the next
2 one to three years coming from both public sector and
3 private sector uses. When we parsed out the existing
4 supply of industrial land and found out exactly how
5 much vacant we had to develop, we found only 30 acres
6 of developable industrially zoned land in the
7 District.

8 Of this a majority of it is railroad right
9 of way, roads, landscaping, very small parcels that
10 doesn't represent 30 vast acres sitting around
11 somewhere that are easy to develop. These are highly
12 parselized pieces of land.

13 We also found our existing zoning
14 framework has contributed to the erosion of this land
15 and the degradation of this land because it's
16 inadequate to insulate these users from the
17 speculative real estate market. Real estate rents for
18 industrial typically go to \$10 to \$15 a square foot.

19 Whereas retail and commercial office rents
20 are much higher and residential much higher as well.
21 Because the existing zoning framework does not
22 prohibit retail and office uses from CM zones, these
23 industrial uses and PDR uses don't win the real estate
24 game and we are seeing that they are getting squeezed
25 out. The bulk standards are also a little bit

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1 outdated.

2 What we see modern industrial users
3 typically like one and two story buildings with large
4 lot coverage and the bulk centers that we have in our
5 current zoning framework really are 40, 60, 90 feet.
6 They don't resemble what is actually going on in
7 modern industrial market so, again, they are not
8 helping these users stay healthy and stay in the
9 District and conduct the businesses they need to do.

10 We also found that the users that are here
11 are struggling to remain in the District. We do get
12 a number of calls and we do get users that when we
13 surveyed them really want to be here. We found that
14 more than 65 percent of the existing industrial users
15 generate more than half of their sales from District-
16 based businesses and they want to be here for a reason
17 but they are getting forced out.

18 We examined the quality of this land and,
19 on one hand, we found there is a great need for it.
20 On the other hand, we found that there was also a lot
21 of it which for a variety of reasons cannot be used
22 for industrial purposes. Proximity to residential
23 fabric, shallow lot depths, the perception of real or
24 perceived contamination which makes acquisition
25 redevelopment difficult, poor access to how we

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1 infrastructure.

2 Some of the land, however, is very, very
3 healthy and is currently housing both municipal or
4 federal government or private sector users that are
5 using it as viable industrial cores. Then in the
6 middle there is land that is under-utilized, land that
7 could be much more intensely used but, again, because
8 of the pressures the private real estate market has
9 been allowed to degrade it prevents reinvestment in
10 these land bases.

11 Perhaps most startlingly we found that
12 when we looked at District government and how we
13 managed our own inventory, we found that most of the
14 District agencies could not adequately provide
15 currently land-use inventories or projections which
16 made it difficult to calculate our future needs.
17 However, we were able to come to at least a minimum
18 projection of what our short-term needs were.

19 We also found that without centralized
20 land use management a lot of our District government
21 agencies compete against each other in the open market
22 against the private sector, against our sister
23 agencies often driving up prices even further and
24 allowing land to go to the highest bidder or the first
25 shooter really rather than being allocated

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1 strategically.

2 The implications here are that there is
3 definitely a certain amount of healthy PDR land that
4 must be protected in certain areas. We have
5 identified what areas they are. We also found that
6 there are areas that are under performing and these
7 under performing areas in order to absorb the demand
8 must increase the amount of intensity that they are
9 handling.

10 We are landlocked. We have 69 acres. We
11 are not going to create new land but we have to use
12 what we do have more intensely. We also know without
13 centralized management the District is going to
14 continue to get squeezed out of its own market and
15 there is the potential for negative impact on our core
16 industries.

17 The construction trades are an interesting
18 example. We know that building costs, construction
19 costs, continue to rise. If we force the building
20 trades and construction trades to move further and
21 further from the District, we impact construction
22 costs at a time when there is a tenuous real estate
23 market.

24 The recommendations that came from this
25 then are in these categories. We came up with --

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1 after conducting land-use inventories, market studies,
2 surveys of businesses, surveys of the real estate
3 community, we convened a technical advisory committee
4 to analyze the District's needs, etc., etc., we were
5 able to come up with land use categories for land that
6 we need to keep, land that needs to be used more
7 intensely, areas where potential public uses may be
8 located if an opportunity arises, and also areas that
9 make sense for some sort of change of use.

10 We also made recommendations for this
11 Commission and the Office of Planning to examine for
12 modernizing its zoning framework. We made
13 recommendations for centralized land management and,
14 in some cases, areas where we may want to consider land
15 banking for municipal uses again if the opportunity
16 arises and the real estate market permits.

17 We also have recommendations for co-
18 location and efficiency improvements, technological
19 improvements, and also case studies of other cities
20 that have examined this issue, struggled with it, and
21 found a way to not only preserve necessary industrial
22 land but also conduct economic development objectives
23 at the same time.

24 The map in front of you that is -- you
25 have a series of maps in front of you. One says,

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1 "Industrial Areas Policy Map." It has four different
2 colors and it's mapped -- the maps are numbered 2.1,
3 2.2, 3.1. It is the last 11 by 17 map in your stack.

4 This summary map indicates the four land
5 use categories that this study revealed. The green
6 areas are areas that we cause retention and
7 reinforcement, areas that have healthy supplies
8 currently of well-used PDR land by healthy businesses
9 and/or municipal functions. There are areas coded in
10 yellow for evolution and intensification areas that
11 are under performing that have been either hit hard by
12 long periods of neglect and/or the real estate market,
13 and areas that need to be strengthened so they can
14 handle additional capacity.

15 There are areas where we have coded in
16 brown as strategic municipal use. What this means is
17 areas that should an opportunity arise we have
18 identified as being suitable for the siting of certain
19 municipal functions. This is really on a case-by-case
20 basis for certain needs in certain areas. I want to
21 caution you it does not indicate a takings or a land
22 grant. These are areas where we think we may be able
23 to find some location opportunities.

24 Areas in red which indicate land use
25 change. Land use change meaning areas that are

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1 suitable for some sort of other than industrial going
2 forward. What this reflects is our analysis of the
3 market, suitability for continued use, the existing
4 site conditions, efficiency of location as well as
5 actual opportunities if they do exist.

6 Very briefly, all of these different tasks
7 put together flow very neatly from a logical
8 framework. These decisions were not made in a vacuum
9 and we took a variety of sources to come up with,
10 first of all, our analysis from a land use perspective
11 of does it make sense for this land to be used for
12 industrial purposes going forward, meshing that with
13 what we know the economic and market demand is for
14 this land, and finally making recommendations and
15 using professional judgment what this land could be
16 used for going forward. Is it going to be used for
17 continued industrial purposes? If so, what purposes
18 might make sense.

19 We also made recommendations for a
20 modernized zoning framework, specifically a
21 strengthened M zone which would be retooled to be an
22 industry only District specifically permitting heavy
23 and intense industrial uses such as cement, asphalt
24 batching and waste transfer; a retooled CM zone that
25 would, No. 1, prohibit high impact uses, but also

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1 restrict certain community uses, restrict certain
2 office and retail, and perhaps in certain cases take
3 a second look at the bulk standards in these areas.

4 There are two new zoning concepts again
5 that we want the Zoning Commission and the Office of
6 Planning to take a look at for potential future use.
7 One is the IP concept or In-Place Industrial Park.
8 This would be an industry only specific area much like
9 the M zone but permitting a lower level of intensity
10 uses that would benefit from tighter security, buffer
11 from surrounding residential and surrounding land uses
12 that would allow for joint marketing.

13 Other cities have experimented with these
14 things. You probably heard of them as manufacture and
15 development zones or planned manufacturing districts.
16 This, again, we feel will help stabilized the real
17 estate market in certain areas. And MXD which is
18 really a true mixed-use zone. Areas that are
19 indicated that may be right for a true mix of uses in
20 certain cases allowing residential in order to allow
21 these areas to evolve into something else.

22 We feel this will guide land use and land
23 use changes to targeted areas and protect areas that
24 we deem vital for the District's economy. We also
25 look at centralized land management and we recommend

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1 a much stronger role for OPM. We think that without
2 centralizing land management and continuing as is, we
3 essentially are allowing are District agencies to
4 continue to function inefficiently and compete against
5 each other in the open land market.

6 We've seen what the results of this can
7 provide. We think with coordinated and centralized
8 property management we can develop a comprehensive
9 property inventory. We can project future space
10 needs, coordinate uses, and pursue co-location.

11 We can advise on capital budgeting and
12 perhaps we can explore whether or not there exist the
13 authority to assemble and bank land for future
14 municipal functions. We also would allow a
15 centralized authority to implement efficiency and
16 environmental programs such as green building.

17 We also feel that after examining some of
18 the uses that were projected by the agencies that
19 fleet reduction is a goal that the District should
20 consider and possibly embrace. Right now many
21 agencies manage their own fleets, at least having them
22 within their control, although EPW really does the
23 lion's share of repair and maintenance of this fleet.

24 By consolidating fleet operations into one
25 organization, agencies would be relieved at the need

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1 to manage their own fleets. Resources could be
2 deployed where needed. New technologies could be
3 rolled out. The overall number of cars and vehicles,
4 light trucks and even heavy vehicles, could
5 potentially be reduced.

6 I mentioned land acquisition or land
7 banking. This is an inherently opportunistic affair.
8 It's more important than a policy statement. What it
9 is is the ability to recognize and seize opportunities
10 when they arise. Currently we are dealing with the
11 situation where there is land that we know has faced
12 significant real estate pressures and, in many cases,
13 has been zoned away and will never return to PDR or
14 industrial use.

15 It's important for us to get ahead of this
16 curve and plan for our future needs. With limited
17 land the District holds the responsibility of managing
18 it's land and managing it's scare resources, a
19 portfolio of assets. This would allow us to hedge
20 against future uncertainty.

21 Where opportunities exist this really
22 indicates targeting soft sites that are currently not
23 expensive in the real estate market and/or blighting
24 uses, perhaps setting aside portions of our larger
25 sites, and setting aside areas inside certain areas

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1 that may have interim uses including impalement or
2 fleet storage. This would apply to both nonindustrial
3 as well as currently industrial areas.

4 Obviously reducing overall demand for this
5 land is a long-term solution or long-term objective
6 that the study recommends. Within D.C. Government
7 sharing facilities for warehouse and record storage,
8 sharing fleet and fleet maintenance facilities,
9 marrying certain parks and/or recreational facilities
10 with existing DCPS facilities. One example which we
11 think might be the closest on the horizon but DPW's
12 planned facility at West Virginia Avenue which could
13 house more than DPW are examples of ways that we can
14 reduce the District's overall demand for industrial
15 land.

16 We also found through the process of
17 bringing on the GSA, National Park Service, and other
18 federal agencies there may be intergovernmental
19 opportunities or opportunities between the District
20 Government and our sister agencies. For example,
21 joint mail and drop screen for D.C. and federal
22 agencies, secure warehousing and storage, joint
23 facilities for landscaping and park maintenance. We
24 uncovered certain opportunities that may allow some of
25 our utilities to share facilities and reduce their

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1 overall demand for land.

2 We also looked at technological
3 innovations. As the District grows, these demands are
4 only going to continue to grow. The study points out
5 the linkage between our core industries and the fact
6 that as our core industries grow, they do grow the
7 demand for these heavy services. Municipal services
8 are the same. As we add households and jobs, this
9 only increases the extent to which the District is
10 responsible for providing street sweeping, snow
11 removal, trash hauling, waste transfers, etc.

12 There are technological innovations that are
13 on the horizon that we feel can reduce the overall
14 demand for industrial land going forward. The three
15 that are listed here are moving from compressed
16 natural gas buses to diesel gas hybrids. Reason
17 being that the garages required for diesel gas hybrid
18 buses may be stacked.

19 The fleet storage and the bus parking for
20 CNG buses may not be. Again when we are talking about
21 anywhere between 8 and a half to 14 acres for an urban
22 bus garage reducing this footprint by whatever it gets
23 reduced by when you stack that is significant gain in
24 land.

25 We have also explored preliminarily the

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1 concept of distributed generation which is moving
2 large single sources of power generation such as the
3 one at Benning Road to smaller generative capacities
4 that would feed into a central grid. San Francisco is
5 already moving towards implementing distributor
6 generation and large scale. We have had several
7 promising discussions just preliminarily with PEPCO to
8 explore whether or not this might reduce their overall
9 demand for this heavy land.

10 Finally, exploring green building and
11 green technologies definitely not only is a boon to
12 the environment but then also reduces the men on our
13 storm water management and water and waste management
14 infrastructure in general. We think that the plan in
15 NOMA is starting to really tackle this head on and
16 embrace this and the District would do well to follow
17 suit if it wants to reduce the overall amount of land
18 it needs for these heavy surfaces.

19 Finally, it emerged over the course of
20 this as we examined who the employees were and who the
21 businesses were that were struggling to remain in the
22 District and provide these services, that there is an
23 enormous opportunity for economic development by
24 preserving some PDR land.

25 Obviously when we stabilized the market

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1 for industrial land and we allow business owners to
2 invest in this land again and generate the jobs and
3 provide the jobs in the District that are being
4 generated by the growth in economy, we provide union-
5 level jobs with median wages that far out-pay the
6 entry-level jobs that we are creating in retail.

7 Other cities have taken a look at this
8 very question and instituted programs to address this.
9 Boston probably has the most well-known example in
10 their Backstreets program. We have incipient programs
11 that may be foundations to build on. Arch D.C.
12 operated out of Southeastern University and the Ace
13 Mentoring Program in the Building Industries Institute
14 are two examples of ways that programs seek to match
15 up entry level employment or vocational education
16 employment with employment opportunities in the
17 construction building trades.

18 Also, the number of 8A businesses to get
19 on the federal contracting or government contracting
20 angle is something that District government can pursue
21 aggressively. The single biggest barrier to small
22 businesses being included in the 8A schedule is
23 obviously the time it takes to market themselves to
24 the federal government.

25 The Small Business Administration has

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1 recently unveiled Sub Net which is their electronic
2 method of including local contractors in the schedule
3 and we think that the District Government may do well
4 to offer assistance to small businesses wanting to be
5 linked in with this.

6 Obviously attention paid to making sure
7 that we include LSDBE businesses, many of whom are
8 affiliated with building and contracting with food and
9 beverage distribution with mechanical trades in the
10 District, would be some way that the District can
11 provide economic impetus to the industries which its
12 economy is generating.

13 Finally, we know that the land that we
14 have indicated is rightful land use change. Obviously
15 there will be occasions when these properties are
16 going to come to the Zoning Commission for a rezoning
17 application. The Office of Planning is currently
18 working with a set of rezoning criteria that this
19 Commission and the Office of Planning can use going
20 forward to entertain these changes and to provide
21 specific criteria for what a land use change request,
22 what hurdle that would need to pass in order to
23 qualify for this change. This would apply to areas
24 that are indicated in red for land use change amounts.

25 Thank you. I'm happy to take any

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1 questions.

2 CHAIRPERSON MITTEN: Thank you very much.
3 My only regret about your report is that it's about 10
4 years too late for really getting out in front of
5 things but this is very comprehensive. Thank you.

6 MR. KANNAN: You're welcome.

7 CHAIRPERSON MITTEN: Questions from the
8 Commission? Mr. Hood.

9 VICE-CHAIRPERSON HOOD: Yes, Madam Chair.
10 I would agree with your comments. It's late but I
11 think it's better late than never.

12 Forgive me. Mr. Shyam is your name?

13 MR. KANNAN: Mr. Kannan. Call me Shyam.

14 VICE-CHAIRPERSON HOOD: Mr. who?

15 MR. KANNAN: Just call me Shyam.

16 MS. STEINGASSER: Shyam is his first name.

17 VICE-CHAIRPERSON HOOD: Okay. Your last
18 statement, everything in red, point me to that map you
19 were talking in terms of.

20 MR. KANNAN: Sure. You have a series of
21 numbered maps and the final map just says at the top,
22 "Industrial Areas Policy Map." That is a summary of
23 all the different categories. The numbered maps
24 simply break out each category on a separate map.

25 It makes it a little bit easier to see

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1 because the scale of the map is so large there are
2 areas that are difficult to see next to each other.
3 The map you want to look at to see the red areas would
4 be either the Industrial Areas Policy Map or the map
5 that has titled at the top, "Areas for Land Use
6 Change."

7 VICE-CHAIRPERSON HOOD: Okay. And you
8 said everything that is in red is, I believe,
9 signified by Areas for Land Use Change.

10 MR. KANNAN: That's correct.

11 VICE-CHAIRPERSON HOOD: Okay. Now, let's
12 go to map, I think, 3.1.

13 CHAIRPERSON MITTEN: While Mr. Hood is
14 turning to that map, are all of these maps in the
15 report available in the Office of Planning's Website
16 or can the general public access it?

17 MR. KANNAN: Not as of yet. We are in the
18 process of having it desktop published so that it's in
19 a more user-friendly format. There are some of the --
20 you have a series of maps and the best way to have
21 those is in user-friendly format, the big stack of
22 inventory maps that show exactly what we found in the
23 area. We anticipate having that on the website within
24 the next three weeks.

25 CHAIRPERSON MITTEN: Okay. Thank you.

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1 VICE-CHAIRPERSON HOOD: Some of my
2 questions may already be in here, this narrative that
3 you supplied, so I'm going to ask him briefly so I can
4 understand before I get to that enjoyable reading.
5 Most of the industrial areas -- I guess you said don't
6 call them industrial areas. You said PDR activity so
7 that's the new word.

8 MR. KANNAN: Yeah.

9 VICE-CHAIRPERSON HOOD: Most of your PDR
10 activity looks like it's basically concentrated in one
11 specific area of the city. Am I correct to say that?

12 MR. KANNAN: Well, moving from north to
13 south we can start in the area that looks like it says
14 CSX-1 Lamond Riggs and that would include the Takoma
15 Park Historic District which doesn't function right
16 now as an industrial area. It really functions as a
17 retail and commercial main street and it's proximity
18 to a metro with the already present residential
19 neighborhoods does not make it an area where we think
20 reintroducing heavy uses would bring us anything
21 except for noise complaints and nuisance complaints
22 from the existing neighborhood. Moving down you
23 probably can see the area around the Fort Totten metro
24 and around the Brookland metro.

25 VICE-CHAIRPERSON HOOD: So basically in

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1 Ward 5.

2 MR. KANNAN: Well, Lamond Riggs would be
3 Ward 4.

4 VICE-CHAIRPERSON HOOD: I know Lamond
5 Riggs. I'm talking about as we come down where you're
6 talking about Fort Lincoln, Bladensburg, and that
7 area. We are basically talking about most of -- from
8 what I see on the map it signifies that most of the
9 PDR use that is available is in the Ward 5, Ward 7,
10 possibly 8 area.

11 MR. KANNAN: Correct. Most of the
12 industrial land that historically existed in the
13 District was built around the rail core, the CSX
14 lines, the B&O lines. There was an amount in what is
15 now Georgetown that used to be beer distributing and
16 brewing area and warehousing district but that really
17 converted to nonindustrial uses quite a while ago.

18 What remains is really what emerged after
19 Union Station when all of a sudden the railroad based
20 freight warehouse and distribution services. Yeah,
21 you do see this concentration and they closely
22 parallel. In fact, they almost identically parallel
23 in some cases the existing rail core.

24 VICE-CHAIRPERSON HOOD: Let me ask you,
25 how do we get -- I'm looking at the things that

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1 identify the different pressures, the PDR and the
2 under-utilization and the friction. How do we get all
3 that so close together? It may be in the narrative so
4 forgive me but how do we get all the areas of
5 pressure, the areas of healthy PDR activity, areas of
6 under-utilization, the areas of friction all right
7 there together.

8 Like, for example, one case, I'm looking
9 here at, I guess, the northeast corner. Anyway, you
10 have an area of friction that looks like maybe right
11 across the street you have an area of healthy PDR. It
12 probably would be better if I read this but give me
13 the sound byte version.

14 MR. KANNAN: Poor land management has led
15 to the evolution of two simultaneous land development
16 patterns simultaneously. No. 1, increased growth in
17 these industries and at the same time lack of either
18 proper buffering. In some cases no buffer at all
19 means that you have these industries growing right up
20 against residential neighborhoods which are in and of
21 themselves healthy.

22 Now, we took a look at these areas and we
23 did indicate in the report where we found specific
24 areas where the existing concentration of industrial
25 businesses abuts healthy concentrations of residential

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1 fabric with as little as an alley or sometimes even
2 without an alley or a fence.

3 What that doesn't indicate, though, that
4 does not indicate that those businesses are not
5 healthy or that the residences or the residential
6 fabric with the surrounding land use context might be
7 less than appropriate. There are a variety of
8 instances here that I can point to.

9 Some of them are actually up in Ward 4.
10 We found numerous areas where you had existing
11 industrial businesses and then maybe a chain-link
12 fence, maybe nothing, and then residential beginning.
13 Obviously those are the areas where we hear nuisance
14 complaints, where we hear noise complaints.

15 The two concerns are difficult ones to
16 make out because on one hand you have a very
17 successful business and right next door you have a
18 homeowner or resident that perhaps is less than
19 enthused about the activities that are taking place
20 right next door which are heavier uses. In some cases
21 they can be very good neighbors, though.

22 VICE-CHAIRPERSON HOOD: You also mentioned
23 in your presentation that the supply of healthy PDR
24 land must be protected in certain areas. Would one of
25 those areas be like between where I'm looking here on

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1 the map, map 3.1 between New York Avenue and Ivy City
2 to maybe Bladensburg/Fort Lincoln.

3 That is basically the thrust or the
4 majority of the PDR land is in that area so is that
5 the area you're talking about as far as handling with
6 care? And also when you mention in your presentation
7 protected in certain areas, is that the area you are
8 basically talking about?

9 MR. KANNAN: Not necessarily.

10 VICE-CHAIRPERSON HOOD: That's the wrong
11 answer.

12 MR. KANNAN: 3.1 really shows -- really is
13 the descriptor of what we were able to find on the
14 ground today. The map that says "Industrial Areas
15 Policy Map" takes all of the existing land use
16 findings. It takes the results of our industrial user
17 survey. It takes the result of our market analysis.

18 It takes the result of our economic
19 analysis. It converts all of these different bits of
20 pieces of analytical method into recommendations.
21 There may be areas where we have found under-utilized
22 PDR. You point specifically to the Bladensburg/Fort
23 Lincoln area on Bladensburg Road where we found some
24 auto service and auto related uses and then at least
25 four or five houses of worship along that stretch.

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1 Some uses that might be heavy uses but
2 definitely a number of uses that are really social
3 service uses when it's all said and done. Significant
4 under-utilization plus residential pressure
5 encroaching on both the north and south sides of that
6 street. We did not feel that was an area given the
7 residential concentration there that would make sense
8 for new investment.

9 There was limited areas to expand.
10 Additional investment in PDR in that particular area
11 is bound to generate noise and nuisance complaints.
12 The findings map 3.1 is what we found in the ground.
13 The Industrial Areas Policy Map are recommendations
14 taking out land use but combining with our market
15 analysis, our economic analysis, our interview, our
16 evaluation.

17 VICE-CHAIRPERSON HOOD: Okay. So maybe
18 I'm not understanding. I'm not going to belabor it,
19 Madam Chair. I'm going to cut this off because I'm
20 sure we will have more time at a later time to really
21 get into some of this. I'm just trying to understand
22 when it says in your presentation, "Supply of healthy
23 PDR land must be protected in certain areas," you're
24 telling me I need to look in Industrial Areas Policy
25 Map.

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1 MR. KANNAN: Correct.

2 VICE-CHAIRPERSON HOOD: What color do I
3 need to be looking at?

4 MR. KANNAN: There are four colors on the
5 Industrial Areas Policy Map.

6 VICE-CHAIRPERSON HOOD: I can see that.
7 So all four go with that statement?

8 MR. KANNAN: Everything but the red.

9 VICE-CHAIRPERSON HOOD: Okay. We're
10 making some headway. The other thing is -- good.
11 Thank you. The other thing is you mentioned -- this
12 is an issue. You mentioned about the District
13 government making better use of the land. I would
14 agree with that. You mentioned West Virginia Avenue
15 Department of Public Works. In your study did you
16 find that was already causing those complaints, noise,
17 traffic?

18 Right across I believe there is a
19 residential neighborhood and hopefully as time goes on
20 that is one of those areas that will be, I guess --
21 what is your term? -- protected. But, see, you're
22 also saying it should be more impact. You're saying
23 we should utilize more of the land because it's under-
24 utilized, but you also have more of an impact to this
25 specific neighborhood now which is already impacted.

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1 MR. KANNAN: There were no easy decisions
2 in this study. The reality is that we have only 4.3
3 percent of our land base zoned for this type of
4 activity. A majority of it is already occupied.
5 Other cities really range in the 10 to 20 percent of
6 the land base use for these types of activities.

7 In a city that is land locked with no land
8 left to create, there were areas that provided vital
9 government services that challenged us in trying to
10 find out, "Can we put it somewhere else? Can we cite
11 it somewhere else?" We explored that. Just
12 specifically in West Virginia I have no doubt there
13 are noise and nuisance complaints that emerge from
14 that area.

15 Simultaneously there are few, if any,
16 places elsewhere in the District that we could site
17 those particular activities. What we are saying is
18 that particular site probably needs a more significant
19 level of land planning and efficiency planning to make
20 sure that it is attractive and aesthetically pleasing
21 to the surrounding community.

22 It also can hold more than it is holding
23 right now. There are two plans for the build-up of
24 that property and we are suggesting that a centralized
25 property management agency take the lead in

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1 consolidating those planning efforts and planning it
2 in an efficient manner so that it can hold a lot more
3 than it's holding right now. Intensity of use refers
4 primarily to is it going to house one agency or can it
5 do double or even triple duty.

6 VICE-CHAIRPERSON HOOD: Have you also in
7 this study looked at maybe west of the park? I think
8 equal services are provided across the city so all of
9 us should share the same impact. For some reason it
10 has not worked out that way. Have you looked at some
11 of the land maybe west of the park and said maybe this
12 can go back to being PDR? Was that taken under
13 consideration in the study?

14 MR. KANNAN: We did. The challenge --
15 obviously the map shows very clearly that west of Rock
16 Creek Park and really in northwest there is little if
17 any of this land. At the same time servicing these
18 areas is critically important. We make a
19 recommendation in the text of the report that it is
20 very important over time to find pockets of land that
21 can be used for this type of activity.

22 You will notice that one of the areas that
23 is outlined there in brown as scattered site one, the
24 14th Street bus garage actually, we think it's very
25 important for the District to not lose the handle on

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1 this particular opportunity and make sure that the
2 remainder of that joint development be used for
3 District based municipal uses.

4 At the same point in time introducing
5 these heavy uses into established residential
6 communities is a very difficult proposition only
7 because it immediately engenders these noise and
8 nuisance complaints. We make a recommendation that it
9 is important over time for the District to start to
10 examine areas where an opportunity arises to
11 reintroduce and create these areas in under-served or
12 in areas that don't have enough of this land. We also
13 make recommendation for where the opportunity arises
14 now to keep it.

15 VICE-CHAIRPERSON HOOD: Okay. My last
16 question. Does it specify in here -- you mentioned
17 criteria when someone comes in for a rezoning that you
18 are going to recommend to the Zoning Commission. Can
19 I find that in here?

20 MR. KANNAN: I'll be forwarding that on to
21 the Zoning Commission very shortly. We are in the
22 process of taking our final cut at it. I have a
23 version that is probably at the 99 percent level but
24 I will forward that on as soon as it's done. I would
25 anticipate no more than 10 days.

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1 VICE-CHAIRPERSON HOOD: Thank you. I'm
2 looking forward to reading what you have in the
3 narrative. Thank you.

4 Thank you, Madam Chair.

5 CHAIRPERSON MITTEN: Thank you, Mr. Hood.
6 Mr. Turnbull.

7 MR. TURNBULL: I just have one question
8 for OP. On the Areas Policy Map the areas that you do
9 identify as yellow for evolution and
10 intensification --

11 MR. KANNAN: Correct.

12 MR. TURNBULL: -- do you consider that
13 almost a subset of the area of retention? I mean,
14 it's going to become green or it's still a PDR area
15 and it's either for lack of infrastructure or
16 something and it needs to be redeveloped to keep it
17 that way?

18 MR. KANNAN: We have specific -- the
19 primary difference is between areas that currently
20 function very well. They have relatively functional
21 infrastructure, let's say. We found that the roadways
22 and the access to all these areas were in primarily
23 poor condition and that these users are putting up
24 with poor infrastructure.

25 The areas in yellow denote areas that

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1 currently are facing significant pressure from the
2 real estate market or have already faced a significant
3 amount of pressure from the real estate market and
4 there are specific tools.

5 For example, some of the zoning tools that
6 we want the Commission to consider and the Office of
7 Planning to consider such as the IP zone or perhaps
8 planned manufacturing districts or perhaps initiating
9 some of these matching programs between buyer and
10 supplier, we think that areas in yellow are bound for
11 transition if not already transitioning and merit a
12 real close look today and the implementation of these
13 tools today in order to stabilize those markets.

14 Those are also areas that are from a land
15 use perspective under-performing meaning that the
16 amount of business that's conducted there could be
17 increased. It is difficult, for example, in the area
18 of B Street N.E. which falls into the New York
19 Avenue/Bladensburg subarea directly north of Route 50
20 heading out of the District north of the Washington
21 Times site, very healthy PDR location which houses a
22 variety of industries.

23 It's very difficult to intensify uses
24 there because of the amount of that land which is
25 already being used fairly intensely. There are areas,

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1 however, that either had significant amounts of
2 surface parking, under-utilized surface areas, or
3 where the parcelage prevents a landowner from actually
4 putting together something of size or scale to
5 actually hold a modern business. Or areas where there
6 may be real or perceived contamination.

7 These are the areas in yellow that are
8 under-performing and could hold a lot more than they
9 do. Obviously if we continue to grow this part of our
10 economy and hold these uses that are being displaced
11 from other areas of the District, they have to go
12 somewhere. These are areas that might be able to hold
13 more than they do right now.

14 MR. TURNBULL: So because of their
15 adjacencies to commercial or residential areas they
16 are feeling the pressure to change?

17 MR. KANNAN: Yeah, or adjacencies to
18 encroaching development. In some cases you have sites
19 that have been held in anticipation of a zoning change
20 for extended periods of time. In some cases you have
21 parcelage issues where numerous very small parcels
22 that may harken back to 10, 20, 30 years ago when real
23 estate markets functioned a little bit differently and
24 when the users of these properties function a little
25 bit differently, all of these things conspire to make

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1 these areas less than well performing.

2 We suggest some strategies for assisting
3 business owners and District government in helping
4 these areas perform better. I mentioned some of the
5 zoning tools but some of the other programmatic tools
6 that we would be smart to take on would be items such
7 as industrial business improvement districts and
8 industrial parks where business owners can contribute
9 to the overall maintenance and appearance of some of
10 the infrastructure, security, ingress and egress
11 issues that make these areas less than desirable for
12 these users.

13 MR. TURNBULL: Thank you.

14 CHAIRPERSON MITTEN: Thank you, Mr.
15 Turnbull.

16 Mr. Parsons, do you have any questions?

17 MR. PARSONS: You can tell from our
18 interest that this is long awaited. Very impressive
19 presentation.

20 I wanted to ask about areas for strategic
21 public use which is one of your categories because I'm
22 a little confused by it. For instance, the Maritime
23 Plaza and Poplar Point the Commission has already
24 rezoned those for different uses, whereas the Benning
25 Road power plant, PEPCO, and D.C. Village have not

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1 come on the radar screen, at least that we have seen.
2 What is it you mean about areas for strategic public
3 use?

4 MR. KANNAN: Each one is slightly
5 different. Speaking to Maritime Plaza in particular,
6 we found that the areas underneath the freeway
7 overpasses which are bound to be reconfigured at some
8 point in time, and I've seen the plans and sat down
9 with DDOT to talk to them about what that
10 reconfiguration might look like and when that might
11 happen.

12 In the short term they would be prime
13 places to store perhaps vehicle storage underneath the
14 overpasses. We suggest in the report that an interim
15 use could be there until the actual roadway
16 configuration takes place. The same is true for
17 Anacostia Poplar Point.

18 Obviously that has already been -- the
19 numerous development proposals for that area preclude
20 that from being used for some sort of municipal
21 service zone in the long term, but in the short term
22 when DCPS is trying to find a way to consolidate their
23 five school bus lots into one and there are various
24 agencies that have been pushed out of Buzzard Point
25 and scrambling to find a place to put their fleet.

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1 These represent opportunities that hopefully can guide
2 their efforts and help them find more creative
3 solutions.

4 Benning Road is an interesting case as is
5 -- Benning Road represents -- in our investigation we
6 found what many people already know, that Benning Road
7 as well as its counterpoint at Buzzard Point, is
8 primarily a peaking facility. It operates only 10 to
9 15 days per year. Benning Road is over 100 acres most
10 of which is used for PEPCO's fleet.

11 Now, should the opportunity arise in the
12 median term, or should we want to pursue this
13 discussion in the near term with PEPCO about either
14 some sort of joint use agreement or perhaps even
15 acquiring this property from them. There is an end
16 there which follows our technological improvements.
17 It would be a prime site to handle some of not only
18 community development priorities.

19 The Minnesota and Benning communities are
20 really taking off and some of that obviously could be
21 extraordinarily useful to that redevelopment
22 opportunity, but also housing municipal functions. It
23 is an extraordinarily large footprint to handle 10
24 days of power generation per year.

25 Another thing that we unearthed was an old

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1 proposal which put out the idea that PEPCO would be
2 able to consolidate it's operations with WASA at Blue
3 Plains. WASA's advanced waste water treatment
4 facility of Blue Plains generates off-gases. I
5 believe it's methane but I need to check. The
6 facility currently just flares that gas.

7 There was a proposal on the table, I think
8 six years ago, to install some sort of technology
9 there to capture the combustion of that off-gassing
10 and convert it into fuel. If we can work with our
11 sister agencies and the utilities to actually make
12 that vision a reality, it would eliminate or
13 potentially eliminate the need for these uses.

14 There are some caveats with that
15 recommendation. However, we do feel it is something
16 that we need to be aware of and thinking about and
17 perhaps pursuing.

18 MR. PARSONS: And I assume -- you don't
19 have to get into the details of D.C. Village but there
20 are proposals for D.C. Village that I have seen in the
21 last five years to make it residential. I mean, there
22 are people out there that would look at the PEPCO
23 plant in a much different way.

24 What then can we do or your report do or
25 the Office of Planning to do is to say, "Time out.

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1 There is a moratorium here. We are thinking about
2 acquiring this." Is that the kind of recommendation
3 you imagined would come out of this as opposed to wait
4 for a zoning application to come in to convert it to
5 residential?

6 MR. KANNAN: The areas in brown are calls
7 to the District government to be very proactive in
8 thinking about its future needs and not actually
9 worrying about loss of land once it's already gone.
10 D.C. Village represents perhaps the most significant
11 opportunity to provide space for municipal functions
12 and perhaps even consolidate certain functions.
13 Obviously there are existing users there but we found
14 that the land there is used in a manner which is very
15 low intensity.

16 MR. PARSONS: A carefully put term. Yes,
17 that was very well done.

18 MR. KANNAN: As we continue to face this
19 land crunch, we need to be looking at these large
20 areas which can be master planned and should be master
21 planned to house a variety of functions to make sure
22 that we don't find ourselves asking this question five
23 years from now. It is almost a pause button in the
24 development cycle and it is a call to suggest that the
25 District government needs to take a look at this area

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1 as an area which serves a use that is critical to the
2 functioning of the municipal government.

3 MR. PARSONS: Okay. Did I understand you
4 to say that we only need 100 acres zoned in this
5 fashion in the city?

6 MR. KANNAN: In the next one to three
7 years we are projecting the need for 100 acres of
8 developable industrial land. The projections further
9 out were challenging to create because most District
10 agencies were unable to provide or create detailed
11 land inventory so it's difficult to project what they
12 needed if they were unable to understand what they
13 currently held.

14 MR. PARSONS: So the 100 acres is only for
15 public?

16 MR. KANNAN: It's a combination.
17 Approximately 70 of that -- at least 66 of that comes
18 from municipal uses including Womata, including WASA,
19 including some of our sister agencies in the federal
20 government as well. Thirty-three acres of that is our
21 projected space needs from private sector growth.
22 These are the companies that as our economy grows they
23 will grow with it. For a variety of reasons need
24 short turnaround times and need to be close to the
25 District.

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1 We looked at the regional economy as well
2 to see could some of these things leave the District
3 and what we found is that most of the users could
4 leave the District already have. Land is cheaper,
5 space is cheaper, spaces are bigger and more modern,
6 the leases are much less prohibitive.

7 Those still here are paying higher rents
8 to be here because they serve either the building
9 trade, the hospitality trades, government, and they
10 need to be able to serve as a building in, let's say,
11 a day or an hour or half an hour. For example, a
12 concrete batching or asphalt batching needs to be
13 worked within 60 minutes so delivery times need to be
14 within 30 minutes.

15 Siting a concrete batching plant -- I'm
16 sorry, asphalt batching plant, the next closest space
17 would be down south of Landmark Mall at the Eisenhower
18 Avenue Metro Station. There is a batch industrial
19 property there suitable for that, although that is
20 heavily occupied.

21 Beyond that a lot of the industrials are
22 basically moving out beyond the beltway which makes it
23 prohibitive to pour asphalt here in the District.
24 Long answer to your question of the divisions. About
25 66 to 70 acres public, 33 acres private.

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1 MR. PARSONS: Thank you. It seems like we
2 need to have a roundtable or something. We could
3 probably chew up the evening and get an audience that
4 is not here for this. It's my suggestion that we get
5 the final report or the final draft and schedule
6 something. Maybe that is where you were already
7 going.

8 CHAIRPERSON MITTEN: No. I don't know
9 what in particular we are going to do next. I don't
10 know if Ms. McCarthy has a plan for how the Office of
11 Planning would like to proceed but we have a series of
12 recommendations that we then have to either embrace or
13 not that will lead to action by the Commission. I
14 don't know what you had planned about how we should
15 proceed from this point.

16 MS. MCCARTHY: At this point the report
17 and the recommendations for the report were more
18 general and aimed at given these conclusions about
19 industrial land what are a set of next steps. We knew
20 that you wanted to see this in March so what we
21 haven't done is specifically look at the report in
22 terms of further recommendations specifically with
23 regard to what zoning might be.

24 We could either do that and come back in
25 a month or so and have a roundtable, as Mr. Parsons

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1 suggested, specifically on the topic divorced from any
2 other case, or we could just submit a further report
3 or a memo to the Commission for your consideration,
4 whatever your pleasure would be.

5 CHAIRPERSON MITTEN: Why don't we read the
6 report and then we'll decide how is best to proceed
7 after we digest it all. It is terrific information.
8 Thank you.

9 MR. KANNAN: Thank you.

10 CHAIRPERSON MITTEN: Okay. Are we ready
11 to move on then? Okay. Thank you. Then we're ready
12 for the first item under Hearing Action which is
13 Zoning Commission Case No. 05-38 which is Marina View
14 Partners LLC. I can tell by the fact that Mr. Lawson
15 has joined us on the dias that he is going to be
16 presenting this case.

17 MR. LAWSON: Thank you, Madam Chair. My
18 apologies. You caught me flatfooted there. My name
19 is Joel Lawson. I'm with the D.C. Office of Planning.

20 Zoning Commission Case 05-38 is for a map
21 amendment and consolidated PUD application for 1100
22 6th Street, S.W., the Southview Marina -- sorry, the
23 Marina View apartment site. The site is located in
24 Ward 6 at the intersection of M Street, S.W., and 6th
25 Street, S.W., within square 499. Directly to the west

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1 is Arena Stage scheduled to undergo a major renovation
2 and expansion. Directly to the east is a service
3 alley and Waterside Mall.

4 The subject property currently contains
5 two 90-foot towers constructed in the 1960s with a
6 total of 260 residential units, two service parking
7 lots, and a central courtyard. The proposed
8 development includes the following: two new
9 residential towers, one on M Street to a height of 123
10 feet with street level retail, and the second on K
11 Street, S.W., to a height of 120 feet.

12 The top most story of each building would
13 provide a one-to-one setback.

14 OP has some concern with the proposed
15 height which is greater than the existing buildings
16 and other residential buildings in the area. The
17 development also includes retention or renovation of
18 the two existing IMP towers including replacing the
19 external skin, updating the mechanical systems, and
20 construction of new rooftop equipment rooms and
21 possibly residential penthouse suites.

22 Construction of underground parking for
23 486 cars, restoration of the central courtyard,
24 addition of a new amenity building with recreation
25 facilities for use by all residents and by area

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1 residents by membership, and construction of two mini
2 parks for use by residents.

3 Total onsite square footage would be
4 slightly greater than 660,000 square feet. To achieve
5 the desired height, density, and the addition of
6 retail along M Street, the applicant is requesting a
7 map amendment from R-5-D, median to high-density
8 residential, to C-3-C, high-density commercial
9 residential.

10 The proposed development would be within
11 the density permitted by C-3-C and within the height
12 permitted by C-3-C PUD. The C-3-C also permits the
13 retail development along M Street as proposed by the
14 applicant.

15 The applicant has requested zoning
16 flexibility to allow more than one building on a site
17 and from loading requirements. Additional flexibility
18 for percentage of small car parking spaces also
19 appears to be required.

20 The amenity package proffered by the
21 applicant is considered by OP to be adequate for set-
22 down. Amenity package evaluation is normally based on
23 an assessment of the additional development gained
24 through the application process which in this case is
25 approximately 188,000 square feet.

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1 The amenity package proposed by the
2 applicant includes the following. No. 1, the
3 provision of affordable housing equal to 15 percent of
4 the residential density gained through the PUD
5 rezoning process, or just under 27,600 square feet.
6 This would be as workforce housing.

7 OP is supportive of this amenity item in
8 concept and will work with the applicant to provide
9 additional detail prior to a public hearing.

10 No. 2, preservation and upgrading of the
11 existing residential towers as well as improving the
12 publicly accessible central courtyard space as well as
13 the provision of new historic signage in the
14 neighborhood. Again, additional detail is required
15 and will be provided before the public hearing.

16 No. 3, provision of a new fitness center
17 accessible to residents of the complex and available
18 by membership to other area residents, as well as
19 retail along M Street and the new publicly accessible
20 open space at the center of the site.

21 No. 4, participation in the First Service
22 Employment Program to promote the hiring of D.C.
23 residents. Finally, No. 5, a commitment to enter into
24 a memorandum of understanding to utilize the local
25 business enterprises in the project development.

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1 In summary, the proposal furthers many
2 comprehensive plan objectives, particularly ones
3 related to housing and historic preservation. The
4 comp plan generalized land use map shows the site as
5 having a median density commercial designation,
6 although this does not correspond well to the existing
7 residential use on the subject site.

8 All commercial zones, however, permit
9 residential development and most zones promote
10 residential development through the FAR incentives.
11 The proposal is also consistent with the Anacostia
12 Waterfront Initiative goals and objectives and, as
13 such, OP recommends that this application be set down
14 for public hearing at this time.

15 That concludes my report and we are
16 available for questions. Thank you.

17 CHAIRPERSON MITTEN: Thank you, Mr.
18 Lawson.

19 Questions, comments for Mr. Lawson? Mr.
20 Parsons.

21 MR. PARSONS: Very quickly, I am very
22 concerned about the height of these buildings. The
23 120 foot which ends up at 136 something just seems to
24 be, to me, out of scale. Not only with the buildings
25 that are there now but, more importantly, the Arena

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1 Stage project which is so close to this and whether
2 you have any views on that or not.

3 It just seems to be out of scale. They
4 are, I guess, in scale with the previous PUD that we
5 have approved to the east but not, to me, in scale
6 with what is going on on the waterfront and adjacent
7 to it.

8 MR. LAWSON: We agree that height is a
9 critical issue with this application. We feel that
10 one additional discussion is necessary. It would be
11 in scale with the development to the east, the
12 Waterside Mall redevelopment site.

13 The applicant has stated that they feel
14 that the additional height also helps to kind of
15 anchor this intersection, this critical intersection,
16 which kind of is the interface between the new
17 Waterside development, which potentially may have some
18 buildings approaching this kind of height, and the
19 Southwest development on the west and the Waterside
20 Mall development to the east.

21 We are happy to continue those discussions
22 with the applicant and see if there are ways that we
23 can kind of clarify these kind of scale issues before
24 the public hearing.

25 MR. PARSONS: I don't want to be

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1 misunderstood. I think these buildings are too big.
2 You know, 90 to 110 feels better but 90 is where we
3 come down on this because I just -- well, enough of
4 that. I just think they are too tall.

5 CHAIRPERSON MITTEN: Anything else?
6 Anything else, Mr. Parsons?

7 MR. PARSONS: No.

8 CHAIRPERSON MITTEN: Okay.

9 MR. PARSONS: Thank you.

10 CHAIRPERSON MITTEN: Mr. Turnbull.

11 MR. TURNBULL: I would just ask Mr.
12 Lawson, I'm looking at the presentation by the
13 applicant and I see these section or this elevation of
14 the whole on page 25. It has this wonderful bluish
15 cast to everything. I don't know if that is supposed
16 to make us feel good that it's near the water.

17 I guess I'm concerned that the pay
18 buildings now have this same bluish cast and that the
19 penthouse there is no what looks like a glass
20 structure on the roof of the pay buildings. I thought
21 we were talking about preservation and now it looks
22 like there's -- I just have this funny feeling that
23 things are changing and not being preserved and the
24 character seems to be changing.

25 MR. LAWSON: Again, we can certainly work

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1 with the Historic Preservation Office to discuss ways
2 to ensure that the character of the existing buildings
3 is being maintained. I suspect that the renderings
4 aren't fully accurate how the buildings will look.

5 MR. TURNBULL: I'm being a little bit
6 facetious in my comments.

7 MR. LAWSON: Yes, I understand.

8 MR. TURNBULL: I guess the only thing, I
9 would reiterate Mr. Parsons' concern that the
10 proximity to the pay buildings and the scale at first
11 glance seems a little overwhelming. Thank you.

12 CHAIRPERSON MITTEN: Thank you.

13 Mr. Hood.

14 VICE-CHAIRPERSON HOOD: Madam Chair, also
15 I would agree with both my colleagues who have
16 mentioned about the height and just let the applicant
17 know I do have a concern with the height being as high
18 as it is. Then the Waterside Mall piece and then, as
19 Mr. Parsons mentioned, Arena State to the west. I,
20 too, have the same concern.

21 CHAIRPERSON MITTEN: I'll make it
22 unanimous on the height issue.

23 Mr. Lawson, can you tell us what exactly
24 is the historic status of the existing buildings
25 because that wasn't clear to me. Have they been

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1 designated or not?

2 MR. LAWSON: I don't believe they have
3 been designated. Is the Landmark application pending?
4 I'm trying to remember.

5 CHAIRPERSON MITTEN: That is what is
6 confusing to me is there is all this talk of historic
7 preservation and then there is talk of reskinning the
8 buildings. What are we doing exactly?

9 MR. LAWSON: I think it's recognized these
10 are significant buildings by a significant architect
11 and that preserving the buildings is important to the
12 character of the area as a whole. These are somewhat
13 ironic to the southwest neighborhood as a whole and
14 the whole southwest neighborhood redevelopment program
15 of the '60s and '70s. Preservation of the existing
16 buildings is considered an important goal from a
17 neighborhood character standpoint. That is one of the
18 things that the applicant is proffering that these
19 buildings will be maintained and they will be upgraded
20 so that they can be retained as residential buildings.

21 CHAIRPERSON MITTEN: I guess then one of
22 the things for the hearing that would need to be
23 developed to a greater degree is I'll just confess
24 that I don't like every building that is in this town
25 by a famous architect but I do appreciate the fact

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1 that they are supposed to be -- if we are going to
2 preserve it, you have to preserve it in with all if
3 its character whether I happen to like it or not.

4 Often that means the existing building
5 materials. If the only thing we are going to end up
6 preserving is the box that is the building, then I
7 don't find that very compelling but perhaps someone
8 will be able to explain to me at the hearing how
9 reskinning a building maintains the character as
10 designed by the original architect that maybe I can't
11 appreciate at first glance. The issues that you
12 pointed out that need to be more fully developed I
13 agree with those as well and look forward to getting
14 more information at the public hearing.

15 I guess we have a little bit of a problem
16 at the moment which is we have a Zoning Commission
17 that has a shared view that the buildings are too
18 high. We have a recommendation from the Office of
19 Planning that they share that view, too, but they are
20 also recommending that we set this down. Can I just
21 get some feedback about the sense on set-down rather
22 than take a vote at the moment.

23 MR. PARSONS: I'm not prepared to set it
24 down. The coloration, the historic preservation
25 issue, and the height to me it's not ready to arrive

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1 at a hearing and find out, "It was too hard to comply
2 with your concerns but let's move forward."

3 CHAIRPERSON MITTEN: Okay. The concern is
4 shared. What I would do rather than vote to deny set-
5 down is to give the applicant a chance to take our
6 concerns into consideration and at their option come
7 back and make an additional submission. I would ask
8 Mr. Lawson to help facilitate that for us.

9 MR. LAWSON: I would be happy to. Thank
10 you.

11 CHAIRPERSON MITTEN: Thank you. All
12 right. So we'll put that off for a future time.

13 Next is Case No. 06-01 which is the
14 Steuart-H Street LLC PUD and related map amendment.

15 MS. STEINGASSER: Madam Chair, I'll go
16 through the staff report. The project manager had to
17 leave this evening.

18 The Office of Planning is recommending
19 this case be set down for a public hearing. It is a
20 consolidated PUD with a map amendment to C-2-B for
21 that portion of the property that is currently zoned
22 C-2-A. The property was rezoned to C-2-B for its
23 principle portion as part of the H Street Overlay
24 zoning case.

25 The drawings before you identify the

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1 heights of the buildings having a total maximum height
2 of 90 feet. The property steps down along H Street
3 towards 4th Street as well as it heads north towards
4 the rowhouse district. It would provide about 220 to
5 250 residential units which would be built on top of
6 a two-story grocery store that would have -- a two-
7 floor height.

8 It would be a one story grocery store
9 that would front along H Street. The lower wing of
10 the building would also as it fronts on H Street
11 heading towards 4th would also have ground-level
12 retail for neighborhood serving uses.

13 The project is consistent with the H
14 Street Overlay as well as the H Street revival plan
15 which was recently adopted. It identifies this part
16 of the H Street area as a residential core. The
17 project would, as I said, consist of between 210 and
18 250 residential units.

19 The project has been vetted with the
20 neighborhood on several occasions. There are several
21 community concerns about the appropriateness of the
22 rezoning of the C-2-A portion of the property and
23 additional detail on stepping back and sensitivity
24 towards the surrounding rowhouses. OP will continue
25 to work with both the developer and the community on

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1 these issues prior to the public hearing but we do
2 recommend set down.

3 CHAIRPERSON MITTEN: Thank you. Questions
4 or comments for Ms. Steingasser? Okay. I have a few.
5 These are just things to be clarified. I always have
6 this question so maybe you could just put this into
7 the mix of things that you will ask on my behalf going
8 forward.

9 We often have people coming and saying
10 that they are going to do neighborhood serving retail
11 and I always ask are they proposing to limit the use
12 of that to some specific list or is that really just
13 retail use that they hope will be neighborhood serving
14 so if we could have that clarified for the hearing.

15 The applicant mentions that the 6,900
16 square feet of potential neighborhood serving retail
17 might also include 2,700 square foot in a mezzanine.
18 I think we just want to have that clarified to see
19 whether that is included in the overall FAR that is
20 being requested.

21 I think as the Office of Planning has
22 pointed out in other cases, and I just don't recall if
23 you pointed it out in this one, the affordability
24 period and the mechanism for enforcement of the
25 affordable housing.

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1 In the traffic study the traffic expert is
2 projecting that 50 percent of all residential site-
3 generated person trips, that 50 percent of the
4 residential and 65 percent of the retail and grocery
5 store site-generated person trips will be made by
6 metro or some non-auto mode.

7 I would really like to see -- I can
8 appreciate the 50 percent. We have had testimony in
9 other cases about that. The 65 percent I find a
10 little hard to imagine. If it's true, then there
11 seems to be a great deal of parking for people that
12 are not expected to come so if that could be
13 clarified, that would be helpful.

14 Then I think I have -- oh, I do have one
15 or two things on the drawings. On the ground floor
16 what is not clear to me is you have the loading for
17 the neighbor-serving retail and the residential comes
18 in from 4th Street and it's not clear to me what is
19 intended to happen with the trucks once they come in.
20 How do they get out?

21 It doesn't look like they can turn around
22 very easily depending on the size of the vehicle. I
23 don't know if the intent is that they would make their
24 way through the alley system and come out on I Street
25 so a circulation plan that shows those kind of

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1 movements would be helpful.

2 I know there was a problem with the new
3 Giant up on 14th Street and Columbia Heights about a
4 parcel pickup so I would like some representation
5 about how parcel pickup will be handled. Then I would
6 also just like to point out that on the ramps and the
7 garage they exceed the amount of slope that is
8 permitted under the rules.

9 Those are the comments that I have. On
10 the whole it's a great opportunity as we learned when
11 we took on the H Street Overlay to be able to bring a
12 grocery store to the neighborhood. I'm in support of
13 the set down. I just have some questions that need to
14 be resolved.

15 Anyone else? Mr. Parsons.

16 MR. PARSONS: Maybe I wasn't paying
17 attention, Ms. Steingasser, when you were making the
18 presentation but why is it that this little pocket of
19 C-2-A remained in our deliberations on H Street?

20 MS. STEINGASSER: I'm not exactly sure.

21 MR. PARSONS: Oh, I'm sorry.

22 MS. STEINGASSER: I can take a guess.

23 MR. PARSONS: Neither am I.

24 MS. STEINGASSER: I would rather review
25 the transcript.

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1 MR. PARSONS: It seemed so obvious now
2 that we have this project. I can see those who live
3 adjacent to it are going to say this is too
4 overwhelming and C-2-A would be a better companion.

5 MS. STEINGASSER: That may be the
6 rationale. That would be my guess to the rationale
7 but I would have to check the transcripts to recall
8 the exact conversation on that parcel.

9 MR. PARSONS: So there is nothing in the
10 reports and all that effort on H Street that
11 enlightens us. Should we anticipate request from --

12 MS. MCCARTHY: I think there probably is
13 in the reports. I think what Ms. Steingasser is just
14 indicating is the person that wrote the report isn't
15 here tonight and we just weren't as familiar with the
16 H Street report specifically as it applied to that but
17 we would be happy to go back and make sure we present
18 that at the public hearing.

19 MR. PARSONS: I wonder if we should
20 anticipate people asking us for shadow studies because
21 we have done others on the north side of H Street as
22 we have gone along to show the impact on the adjacent
23 residential. Given the height of the building I'm not
24 sure they would do much but paint a grim picture. I
25 don't know. I hate to ask for something --

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1 MS. STEINGASSER: I think it would be very
2 helpful, especially as we analyze the C-2-A to C-2-B
3 portion because that is where the height does begin to
4 extend into the residential.

5 MR. PARSONS: Okay.

6 MS. STEINGASSER: I think that would be
7 helpful.

8 MR. PARSONS: That's all I have. Thank
9 you.

10 CHAIRPERSON MITTEN: Thank you. Anyone
11 else? All right then. We have a recommendation from
12 the Office of Planning to set down Case No. 06-01 and
13 I would so move.

14 MR. PARSONS: Second.

15 CHAIRPERSON MITTEN: Thank you, Mr.
16 Parsons. Is there any further discussion? All those
17 in favor, please say aye.

18 ALL: Aye.

19 CHAIRPERSON MITTEN: Mrs. Schellin, it's
20 unanimous.

21 MS. SCHELLIN: The staff will report the
22 vote four to zero to one to set down Zoning Commission
23 Case No. 06-01. Commissioner Mitten moving,
24 Commissioner Parsons seconding, Commissioners Hood and
25 Turnbull in favor, Commissioner Jeffries not present

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1 and not voting.

2 CHAIRPERSON MITTEN: Thank you.

3 Next is Case No. 05-02 and this is the
4 Residential Recreation Space Text Amendment. I'll
5 call it the revised proposal from the Office of
6 Planning. Who is going to present this one? Mr.
7 Lawson.

8 MR. LAWSON: It's me again. Thank you,
9 Madam Chair. I'll make this pretty brief because I
10 think we are all well aware of recreation space at
11 this point. At its March 14, 2005, public meeting the
12 Zoning Commission sat down a series of amendments to
13 the recreation space zoning requirements to establish
14 a special exception process for review of relief
15 request and to clarify and simplify requirements.

16 A public hearing was held in June of 2005
17 at which some limited support for the changes that
18 were expressed is being somewhat better than the
19 existing situation, but there were also calls for the
20 elimination of the regulation or the standardization
21 of requirements. In November of 2005 the Commission
22 decided to not take proposed action on the OP proposed
23 amendment.

24 Instead, the Office of Planning was to
25 submit an additional report examining the correlation

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1 between the additional residential space achieved
2 through the potential reduction or elimination of the
3 recreation space requirement and the inclusionary
4 zoning program currently under consideration by the
5 Commission. The elimination of recreation space
6 requirements could in many cases result in
7 opportunities for additional market rate housing and
8 individual developments.

9 The OP report under consideration tonight
10 for set down recommends the following. No. 1,
11 elimination of the residential recreation space
12 requirement for developments which are both within one
13 of the applicable zones and also mapped within the IZ
14 Overlay District. This is intended to help ensure a
15 successful IZ program in mixed-use zoned areas.

16 No. 2, permitting a reduction or
17 elimination of the residential recreation space
18 requirement in developments which are within one of
19 the applicable zones but are not mapped within the IZ
20 Overlay district if affordable housing is provided in
21 an amount equivalent to 25 percent of the total
22 minimum required recreation space amount.

23 The overall impact would be to eliminate
24 or reduce the amount of recreation space provided and
25 to increase the amount of housing, market rate within

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1 mapped IZ areas in both affordable and market rate
2 outside of mapped areas.

3 Outside the mapped areas the developer
4 would have the option of providing some or all of the
5 required recreation space instead of the combination
6 of market and affordable housing.

7 In addition to these changes, OP is
8 proposing the following minor amendments in cases
9 where the recreation space is to be provided. No. 1,
10 reducing rooftop recreation dimension requirements
11 from 25 feet to eight feet. No. 2, permitting
12 penthouses for storage and washrooms for all forms of
13 rooftop recreation space, not just swimming pools as
14 is currently the case. And, 3, minor wording and
15 ordering changes for consistency or clarity. All of
16 these follow through from the original OP proposal.

17 OP feels that this more flexible approach
18 will better serve overall District objectives
19 pertaining to the revision of housing, affordable
20 housing, and any amenity recreation space considered
21 by the developer to dual sites.

22 As such, OP recommends that the Zoning
23 Commission set down for public hearing this proposed
24 text amendment to the zoning regulations for
25 recreation space requirements. Additional refinement

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1 of the proposal along with discussions with members of
2 the development community who wish to discuss this
3 with OP are anticipated prior to the hearing.

4 This concludes my comments and OP is,
5 again, available for questions. Thank you.

6 CHAIRPERSON MITTEN: Thank you, Mr.
7 Lawson. Any questions or comments? I think given
8 where the collective mind of the Commission was when
9 we last visited the residential recreation space
10 requirement, which was basically to have a hearing --
11 advertise for a hearing the elimination of the
12 requirement.

13 I think it's worthwhile to have this
14 discussion all at the same time because we are going
15 to have to have a hearing on the elimination of the
16 requirement. I think what we need to keep in mind is
17 that we have to address ourselves to the merits of
18 retaining the requirement first and then to the extent
19 that we think it's worth retaining, then entertain the
20 alternative proposal from the Office of Planning.

21 While we can hear from everybody at the
22 same time, I think we will have to have sequential
23 decision making. Whether we do it overtly or
24 implicitly, we will because that's the nature of what
25 is in front of us. I just wanted to make that clear.

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1 MR. PARSONS: Are you suggesting a two-
2 step hearing process?

3 CHAIRPERSON MITTEN: No. I'm --

4 MR. PARSONS: Two hearings in one night?

5 CHAIRPERSON MITTEN: Yeah. We'll hear --
6 well, I will -- I support the set-down of this but
7 when we take it up for decision making we have to
8 address whether or not we should have a residential
9 recreation space requirement at all first and then to
10 the extent that we think it's worth retaining, then
11 entertain the alternative proposal from the Office of
12 Planning.

13 MR. PARSONS: I agree. I just wondered if
14 we are going to do that in one setting.

15 CHAIRPERSON MITTEN: Yes, we will do that
16 all together.

17 MR. PARSONS: Because we could at the end
18 of the first hearing change our mind and say we're not
19 going forward with the second.

20 CHAIRPERSON MITTEN: If it were more
21 complicated I would say -- you know, if we thought we
22 would have hours of testimony on one and hours of
23 testimony on another but, as you know, in some other
24 hearings that we've had. It's very difficult to get
25 people to sort out, you know, "Hold your testimony for

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1 the other part," so we'll just hear it all and sort it
2 out when we decide.

3 I don't think it's going to be a lengthy
4 hearing anyway. With that, I would move that we set
5 down Case No. 05-02 which is the alternative language
6 for the residential recreation space requirement and
7 that we have a joint hearing with the prior proposal
8 that I think we set down regarding the elimination of
9 the requirement entirely. I don't know if it's the
10 same case number or not. It is? Okay.

11 MR. PARSONS: Second.

12 CHAIRPERSON MITTEN: Thank you. Any
13 further comment or discussion? All those in favor,
14 please say aye.

15 ALL: Aye.

16 MS. SCHELLIN: Staff will record the vote
17 four to zero to one to set down Zoning Commission case
18 No. 05-02. Commissioner Mitten moving, Commissioner
19 Parsons seconding, Commissioners Hood and Turnbull in
20 favor, Commissioner Jeffries not present and not
21 voting.

22 CHAIRPERSON MITTEN: Thank you. Now Mr.
23 Hood will take over for the next case which is 05-05
24 because emergency shelters or something --

25 MS. SCHELLIN: I'm sorry. Chairman

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1 Mitten, before we move on, I just want to confirm that
2 the prior case that we set down, 06-01, is a contested
3 case?

4 CHAIRPERSON MITTEN: Yes.

5 MS. SCHELLIN: And 05-02, of course, is
6 rulemaking.

7 CHAIRPERSON MITTEN: Yes. Thank you.

8 VICE-CHAIRPERSON HOOD: Okay. Thank you,
9 Madam Chair.

10 Zoning Commission Case No. 05-05,
11 Emergency Shelters in the Commercial-Light
12 Manufacturing Districts - Text Amendments. Mrs.
13 Brown-Roberts.

14 MS. BROWN-ROBERTS: Good evening, Mr.
15 Chairman and members of the Commission. I am Maxine
16 Brown-Roberts in the Office of Planning. The Office
17 of Planning proposed a text amendment to the Zoning
18 Regulations to permit emergency shelters as a special
19 exception in the commercial-light manufacturing
20 districts, and specifically in the CM-1 and CM-2
21 districts.

22 The District government has embarked on a
23 homeless no more initiative that seeks to end
24 homelessness in Washington, D.C. by the year 2014.
25 The directive of the plan is to address social and

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1 economic problems of homelessness through increasing
2 homeless prevention efforts using both local and
3 federal resources, providing access to substantial
4 more affordable housing, and coordination of social
5 services for homeless residents.

6 The plan recognizes that homelessness will
7 not be completely eliminated and, therefore, a system
8 needs to be in place by which residents will not
9 become stuck in homelessness but will be rehoused.

10 On September 23, 2004, the Zoning
11 Commission held a public round table to hear the
12 public's view on allowing emergency shelters and also
13 adult rehabilitation homes in the CM zoned district.
14 Some of the issues identified we are trying to locate
15 in zoned districts where they are currently permitted
16 includes the economic feasibility of small facilities,
17 community opposition, and the price of real estate.

18 Both public and private providers are
19 experiencing difficulties in locating sites for
20 emergency shelters throughout the city. Obstacles
21 include the fact that real estate cost is prohibitive
22 in many areas where emergency shelters are permitted.
23 The restricted number of residents that they can
24 accommodate is usually not sufficient to house a
25 number of persons who need shelter and community

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1 opposition.

2 Providers testify that amending the zoning
3 regulation to allow emergency shelters in the CM
4 district will offer additional location choices as
5 they will be able to access buildings and land that is
6 more affordable and can accommodate a larger number of
7 residents. The new locations would be outside of
8 residential areas and some of the perceived negative
9 impacts on neighborhoods will be minimized and may,
10 therefore, cause less community opposition.

11 On February 24, 2005, the Office of
12 Planning submitted a proposal to the Zoning Commission
13 to consider allowing emergency shelters in the CM
14 districts. The Commission had concerns regarding
15 location next to noxious uses, the size of shelters,
16 and distribution throughout the wards.

17 As part of the proposed amendment the
18 Office of Planning proposes that emergency shelters
19 not be placed within 1,000 feet of a square containing
20 a switch plant, a waste treatment facility, a waste
21 transfer station, or any documented contaminated site.

22 Further, in order to address the issue of
23 colonies of emergency shelters that may emerge in some
24 areas, OP recommends that no emergency shelter or
25 other CBRF be within the same square or within 1,000

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1 feet.

2 Regarding the size of facilities, it is
3 necessary that they be of a size that will provide the
4 necessary and required social services as well as
5 shelter. Therefore, the economies of skill are
6 necessary to be achieved between the cost of having
7 centralized services and the number of persons in the
8 shelter. Therefore, we recommend the shelters house
9 a maximum of 150 persons.

10 The Zoning Commission also expressed
11 concerns about the unequal distribution of emergency
12 shelters around the city. In 1981 the Commission
13 addressed the issue in Zoning Commission case No. 347
14 in which it outlined zones within which emergency
15 shelters are permitted as a matter of right or as
16 special exceptions.

17 It is the goal of the Office of Planning
18 to improve the geographic dispensation of these
19 facilities but the location of emergency shelters is
20 both a function of zoning and market economies.
21 Therefore, this proposal is to allow the possibility
22 that some emergency shelters are allowed to locate
23 within the CM district.

24 Earlier tonight the Zoning Commission was
25 briefed on industrial area studies. Generally the

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1 studies is cautious about the location of emergency
2 shelters within industrial areas. However, there are
3 some industrial areas that are adjacent to residential
4 or commercial areas which may be suitable for
5 emergency shelters.

6 The proposal is not inconsistent with the
7 comprehensive plan and meets the objective and
8 policies of the plan provide options to accommodate
9 homeless persons and provide the necessary services to
10 improve their health and well being.

11 The Office of Planning recommends that the
12 application for the proposed text amendment be set
13 down for public hearing.

14 Thank you, Mr. Chairman, and I can take
15 any questions.

16 VICE-CHAIRPERSON HOOD: Thank you, Ms.
17 Brown-Roberts. I will tell you about 45 minutes ago
18 now we just had a great briefing on industrial --
19 well, no. Let me -- it's a new term, PDR use. Is
20 that the new term, PDR use? I also understood there
21 was some criteria that was going to be coming forward
22 to us for how we utilize that land.

23 Forty-five minutes later we are saying
24 that even though you alluded to it in your comments,
25 we are now saying this is fine and let's still

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1 proceed. I just think that we need to put stuff in
2 perspective and in order. I would like to see us deal
3 with that first as opposed to pushing it. I'm not
4 sure if my colleagues are but I'm in tune with it.

5 Unless there is some urgency here, then I
6 think the way I look at it there is not a whole lot of
7 PDR land still available and now we are talking about
8 making sure -- I like the idea about putting the
9 criteria in place and the criteria is not in place yet
10 and I don't know what impact it would have on this
11 particular case, or has that been looked at? I know
12 you alluded to it but has it really been looked at?
13 I am sure you all have some sign of what the criteria
14 may be.

15 MS. STEINGASSER: The issue has been
16 looked at. Part of the emergency shelter issue is
17 considered within the municipal uses. It was one of
18 the issues we did look at in its compatibility to the
19 industrial land uses and how it would weigh in to this
20 particular hearing.

21 We actually held it a month so it would
22 coincide with the industrial land use study so you
23 would have them together to look at instead of having
24 one coming ahead or behind the other. It was
25 considered one of the type of municipal uses that

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1 could be efficiently used in certain parts of the
2 city.

3 VICE-CHAIRPERSON HOOD: We had that
4 criteria first before we even delved into this. He
5 mentioned a criteria in his report.

6 MS. STEINGASSER: He mentioned criteria
7 for land use change, for changes where you would leave
8 the industrial zone and rezone to commercial or rezone
9 to residential or do an SP zone. This is amending the
10 CM zone to allow this particular use.

11 MS. MCCARTHY: And the answer to your
12 question about timing and whether we needed to go
13 forward, in fact, there are some emergency shelters
14 who have moved into these zones already as hypothermia
15 centers which have a broader range of permitted
16 locations because as hypothermia centers they are
17 technically operating only during cold water and as a
18 temporary use the zones they are permitted in are less
19 restrictive but now that the hypothermia season is
20 getting over with, these uses will become illegal but
21 there aren't any alternative locations for the people
22 who are in those shelters currently.

23 VICE-CHAIRPERSON HOOD: So something that
24 already has taken place. So there is no big project
25 later on down the road where people are going to say,

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1 "Oh, the Zoning Commission zoned it and they didn't
2 even look at it."

3 This is why you have this big piece of --
4 well, you all know how it goes. I saw you on
5 Saturday. "The Zoning Commission did it and this is
6 why you have all this influx right across the street
7 from the houses." So there is nothing in the pipeline
8 that there is going to be this mass emergency shelter
9 right across from people's homes?

10 MS. BROWN-ROBERTS: Not that we know.

11 MS. MCCARTHY: No one has talked to the
12 Office of Planning, at least.

13 VICE-CHAIRPERSON HOOD: Let me ask you.
14 We're talking -- this is -- we're talking about -- let
15 me ask this first. I looked on the matter of right
16 chart on page 4 of your report. I didn't understand
17 C-3, C-4, C-5. We have matter of right, no limit,
18 special exception NA.

19 Why didn't we look there first before we
20 went to the next zone? I'm sure there's an answer.
21 Why didn't we try to include it there? There's no
22 limit. C-3, C-4, C-5, no limit, special exception NA.
23 Am I missing something because we went right to the
24 CM-1 and CM-2 zones.

25 MS. MCCARTHY: I'm not sure if I'm getting

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1 you right but are you saying that -- they are
2 permitted in the CM-3, CM-4, and CM-5 zones.

3 VICE-CHAIRPERSON HOOD: So C-3, C-4, C-5
4 says matter of right no limit so actually right now
5 the way it exist if you have 91 days or whatever the
6 case is it's already permitted as a matter of right.

7 MS. MCCARTHY: That's correct.

8 VICE-CHAIRPERSON HOOD: Okay. So special
9 exception you say NA. That means it doesn't apply.

10 MS. MCCARTHY: That's correct.

11 VICE-CHAIRPERSON HOOD: I'm a little slow
12 sometimes so forgive me.

13 MS. MCCARTHY: But that's where we get
14 into the other obstacle that Ms. Brown-Roberts
15 mentioned that in the C-3, C-4, and C-5 zones the land
16 costs tend to be prohibitive and too expensive for the
17 city being able to purchase facilities there for
18 homeless shelters.

19 VICE-CHAIRPERSON HOOD: Now, they are
20 going to be residing in a CM-1 and CM-2 and I remember
21 other cases where we said there's no residential
22 living in a CM-1 and CM-2 so isn't that contradictory?

23 MS. BROWN-ROBERTS: I think maybe to a
24 certain extent it is but as was demonstrated in the
25 industrial zone there are already occurring in close

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1 proximity some residential use, some mixed uses. I
2 think those are the areas we would be looking at and
3 not in areas where we have other noxious uses.

4 MS. MCCARTHY: But I think in addition,
5 Ms. Brown-Roberts pointed out in her report hotel uses
6 are permitted as a matter of right in those CM zones
7 and these facilities because they are transient living
8 situations, they are not permanent residential
9 facilities or they are not permanent residents in
10 those shelters, are somewhat analogous to a hotel use.

11 VICE-CHAIRPERSON HOOD: I think you know
12 what my concern is again. CM-1 and CM-2 is going to
13 be an area -- while I'm all for people having shelter
14 and stuff because I never know when I may need it but
15 it's also an issue about proper land use and making
16 sure equal distribution because it looks like as
17 opposed to the land use study it's going to basically
18 be an influx in one place if people decide to start
19 expounding and adding to the emergency shelters.

20 From what I'm hearing, they already exist
21 and they are already operating. I'm not saying they
22 are operating completely or making it right but they
23 are there. Anyway, any questions for the Office of
24 Planning?

25 MR. TURNBULL: I guess i just have one

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1 question. It's a concern about how accessible these
2 facilities become to people to get to them if they
3 need them. If these are areas that are not that
4 desirable from a land value standpoint, do these
5 become an issue for their safety to get to these
6 areas? Accessibility. I'm just concerned about we
7 are putting them up in an area that we can put a
8 facility because we can afford to do it but are we
9 concerned about their safety there?

10 MS. BROWN-ROBERTS: I think that -- I
11 mean, that is one of the things that the providers
12 would address. From what we have heard so far, you
13 know, they usually like to have the shelters close by
14 to a metro station or something like that. I think
15 that is a decision that providers would make when they
16 are looking at places to locate.

17 MR. TURNBULL: Is that in the agreement,
18 I mean, when these places are established? Is there
19 something other that specifies this?

20 MS. BROWN-ROBERTS: No, I don't think we
21 have anything specific regarding that but in the
22 proposal that we have for the special exception, we
23 could add something about that, about access, you
24 know, transportation in there also.

25 MR. TURNBULL: I guess I'm just foreseeing

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1 that, God forbid, we have something that happened in
2 New Orleans up here where we suddenly had a lot of
3 people displaced and had to set up huge amounts of
4 shelters. I mean, obviously that comes a special
5 case.

6 That becomes a special case and we are
7 looking at something obviously on a lot smaller scale
8 here. I just wanted to have at least some reasonable
9 feelings in my own mind that we are not simply putting
10 or allowing facilities off in the middle of nowhere
11 and just leaving it there.

12 MS. STEINGASSER: It's also important to
13 point out, Commissioner Turnbull, that many of these
14 facilities are operated by nonprofits or religious
15 groups who will offer bus service, who use small
16 buses. They collect people at a certain known place
17 and they provide only overnight shelter, food, and
18 some training.

19 Then there are also the more elaborate
20 ones that the city is proposing where they have the
21 training facility and the reeducation and get people
22 back on their feet. Several of those also offer bus
23 services. The city is not big enough to have that
24 many remote dangerous places. Most of these places
25 people work during the day. Because they are

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1 industrial people just aren't there at night. They
2 are not particularly anymore danger.

3 MS. MCCARTHY: In addition to the
4 industrial land use study, these M and CM zones tend
5 to be along the railroad tracks which in many cases
6 means they are also along metro lines because metro is
7 using those same rights of way.

8 MR. TURNBULL: Thank you.

9 VICE-CHAIRPERSON HOOD: Commissioner
10 Parsons.

11 MR. PARSONS: I share Mr. Turnbull's
12 concern. I'll vote to set this down but I don't like
13 it. I think the facilities are too big. I think a
14 maximum of 150 is too many but I want to learn about
15 that. I think they are much too remote. I mean, the
16 whole idea when we did the CBRF so long ago was to
17 mainstream these people, put them back on their feet.
18 I know these are emergency shelters. They are not
19 homes. It seems like we are institutionalizing. Is
20 the shelter one block away here, an emergency shelter?
21 You know the mean, over --

22 MS. MCCARTHY: The CCNV shelter?

23 MR. PARSONS: Yes.

24 MS. MCCARTHY: Yes, that is an emergency
25 shelter.

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1 MR. PARSONS: And I really find it hard to
2 believe that this is going to be over eight years.

3 MS. MCCARTHY: You've got to believe,
4 Commissioner Parsons.

5 MR. PARSONS: Somebody has declared 2014
6 as the end but are we really talking about a temporary
7 need here? That makes more sense to me to just take
8 industrial land and use it for this purpose. To say
9 this an eight-year phenomenon and it's over and it
10 will be put back in industrial use, is that real?

11 MS. BROWN-ROBERTS: I think that is
12 something that they are working towards. As I said,
13 they are looking now -- the facilities that we have
14 are the larger facilities. Under the new plans that
15 they have is to really make some of these facilities
16 a little smaller. Hopefully they can be more
17 dispersed over the city since they would be smaller
18 facilities.

19 MR. PARSONS: I hope so.

20 VICE-CHAIRPERSON HOOD: I want to thank
21 the Office of Planning. When we first dealt with this
22 you took a lot of our concerns and tried to address
23 them and craft some language that would accommodate a
24 lot of concerns that I know I had and I want to thank
25 you for that.

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1 Okay. I think everything is in order. We
2 have a request for set down for Zoning Commission Case
3 No. 05-05, proposed text amendment to permit emergency
4 shelters in the commercial-light manufactured CM-1 and
5 CM-2 district. I so move.

6 MR. TURNBULL: Second.

7 VICE-CHAIRPERSON HOOD: So moved and
8 properly seconded. All those in favor?

9 ALL: Aye.

10 VICE-CHAIRPERSON HOOD: Any opposition?
11 None. Staff, will you record the vote.

12 MS. SCHELLIN: Staff will record the vote
13 three to zero to two to set down Zoning Commission
14 Case No. 05-05. Commissioner Hood moving,
15 Commissioner Turnbull seconding, Commissioner Parsons
16 in favor, Commissioner Jeffries not present and not
17 voting, Commissioner Mission not voting having recused
18 herself. Just to confirm, this too is a rulemaking
19 case.

20 CHAIRPERSON MITTEN: Thank you, Mr. Hood.

21 Next is Case No. 94-01A. This started out
22 as a request for a minor modification for 1331 L
23 Street and it was taken off consent so I'll turn to
24 Ms. Steingasser for a little summary. Thank you.

25 MS. STEINGASSER: The case was originally

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1 requesting a minor modification to come back to the
2 Commission for a design change and materials change
3 from the original PUD. The case was extended in
4 December of 1999 for a 10-year period expiring at the
5 end of December 2010 so there is no extension related
6 to this particular modification.

7 The Office of Planning is very supportive
8 of the project and is very happy to see it moving
9 forward and getting to a point of construction in this
10 block. The modification is a redesign from a more
11 traditional design to a modern more contemporary type
12 of architecture and the materials would reflect that.

13 Office of Planning was concerned that the
14 design modification was substantial and did not meet
15 the definition of minor. However, we feel it is a
16 very high-quality project and we do support it being
17 set down. We find it is still consistent with the
18 conditions of its conclusions of law and finding of
19 fact in the original order.

20 It is consistent with the comprehensive
21 plan amendments, especially those regarding downtown
22 as well as private office land use. The amenity
23 package as originally proffered has been completed.
24 We do recommend that the case we set down for hearing
25 and would support the earliest hearing available.

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1 CHAIRPERSON MITTEN: Thank you, Ms.
2 Steingasser.

3 Questions or comments from the Commission?
4 Mr. Parsons.

5 MR. PARSONS: Well, it might not surprise
6 you to hear that I prefer the prior building to this
7 one so I want to express concern about our continuing
8 tower period and how this might be illuminated.

9 I'm overreacting to the building on 16th
10 Street that towers over the White House.

11 I know this is not in that location but I
12 see a tower here that could be illuminated as a beacon
13 on the landscape or on the horizon of Washington and
14 I don't think it should be. I'm concerned about an
15 illuminated trellis which was called last week a
16 cornice on another project but I had the same concern
17 about it. So those are my two concerns. What is this
18 tower, what is its function, and why is it necessary?

19 CHAIRPERSON MITTEN: Thank you.

20 Anyone else? Mr. Turnbull.

21 MR. TURNBULL: I would follow along on Mr.
22 Parsons' line of questioning. We once again have the
23 large trellis feature, a large rooftop feature on the
24 roof. One of the elevations the view from the
25 southwest in the applicant's package obviously shows

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1 it has a glass railing at the top.

2 We don't have a roof plan but it looks
3 like this has become a rather large feature up there
4 which we don't know anything about. I am just
5 concerned that on the other plan that we also saw
6 washrooms being included into a penthouse and a
7 feature of the building that we didn't really know
8 that much about. Once again I think we are not being
9 shown the full picture here of what is happening with
10 this structure and I would share Mr. Parsons' concern
11 about the root top development angle.

12 CHAIRPERSON MITTEN: So in addition you
13 would like to say roof plan?

14 MR. TURNBULL: Absolutely.

15 CHAIRPERSON MITTEN: Okay. Anyone else?

16 VICE-CHAIRPERSON HOOD: Madam Chair, I
17 thought I liked it but I can tell you that I do agree
18 with the -- what is this called? It's not canopy.
19 What is the other word from last week? Anyway,
20 whatever it was called last week I have a concern
21 about that and need more information on that.

22 I don't really have anything to compare it
23 to, what was previously done, because the new
24 submission has color and Mr. Parsons referred to
25 lighting in the last one. Unfortunately I am not that

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1 astute on architecture so black and white doesn't
2 really do anything for me so if anyone has a picture
3 of the one that was done that was approved previously,
4 that would be very helpful for me. Thank you.

5 CHAIRPERSON MITTEN: Mrs. Schellin or
6 somebody from OP, do you think you can help us get
7 some color renderings of the prior?

8 MS. STEINGASSER: If they are available.
9 We will definitely as the architect.

10 CHAIRPERSON MITTEN: Okay.

11 MS. MCCARTHY: I believe the applicant is
12 indicating they are not available. Right?

13 CHAIRPERSON MITTEN: Okay.

14 MR. PARSONS: Just last week I destroyed
15 my files from 1989.

16 CHAIRPERSON MITTEN: Are you kidding me?

17 MR. PARSONS: Yes.

18 CHAIRPERSON MITTEN: Okay. Any other
19 submissions that you would like to see to clarify
20 anything? Okay. With that then I would move that we
21 set down Case No. -- the modification in Case No. 94-
22 01A for public hearing.

23 VICE-CHAIRPERSON HOOD: Second.

24 CHAIRPERSON MITTEN: Any further
25 discussion? All those in favor, please say aye.

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1 ALL: Aye.

2 CHAIRPERSON MITTEN: Those opposed please
3 say no.

4 Mrs. Schellin.

5 MS. SCHELLIN: Staff would record the vote
6 four to zero to one to set down Zoning Commission Case
7 No. 94-01A. Commissioner Mitten moving, Commissioner
8 Hood seconding, Commissioners Parsons and Turnbull in
9 favor, Commissioner Jeffries not present and not
10 voting. This would be set down as a contested case.

11 CHAIRPERSON MITTEN: Yes. Thank you.
12 Okay. Next is Case No. 05-19. This is for proposed
13 action, Neighborhood Development Company LLC. If you
14 recall, we had asked -- this is at 4100 Georgia Avenue
15 and we asked for a number of things to be addressed by
16 the applicant which they have attempted to do in their
17 February 24th submission to the Commission.

18 The issue that I want to start with is
19 kind of a discrete issue which is that -- this had
20 come up at the hearing and the applicant, I guess, at
21 some point had intended to ask for the fee waiver
22 which, as you all know, is done at set down because
23 that's prior to the time that they would have to pay
24 the fees for the hearing.

25 In this case the applicant did not do

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1 that. This is addressed on page five of their
2 February 24th letter to us. The applicant paid the
3 hearing fee which is how they got the hearing in the
4 first place. We had the hearing so now it's sort of
5 a retroactive request.

6 The fact is that trying to get a refund --
7 the Commission doesn't have the authority to grant a
8 refund of fees that have already been paid. We could
9 simply waive our rules and no longer require that the
10 fee is due to us but trying to get a refund out of the
11 Government I can attest is quite a challenge.

12 I think the rules are pretty clear about
13 the timing for the request. I don't think that the
14 hearing fee in this case is excessively burdensome to
15 the applicant and I think they would actually probably
16 end up regretting trying to go to the effort of
17 getting the refund. I would not be in favor of
18 retroactively granting the waiver.

19 MR. PARSONS: I agree.

20 CHAIRPERSON MITTEN: Anyone else?

21 VICE-CHAIRPERSON HOOD: Sounds like it's
22 hard to get anyway. Right?

23 CHAIRPERSON MITTEN: It is hard to get.
24 It would be hard to get. Okay. Fine. Okay. So then
25 we are back to the broader issues which are the things

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1 that we had asked the applicant to address which they
2 did and we have additional submissions on the subject
3 including revised drawings.

4 I would ask for comments to see if the
5 Commissioners are satisfied with the revised design.
6 If you recall, we had tried to guide them to some
7 extent about what we were looking for, particularly on
8 the Georgia Avenue facade.

9 Mr. Turnbull.

10 MR. TURNBULL: Yes, Madam Chair. I think
11 they have addressed a lot of the issues we talked
12 about. It is a lot better, I think, than the last
13 solution. Obviously we have seen improvements all the
14 way along from the very first submissions. I mean,
15 you could go on forever nit picking things but I think
16 there is a significant amount of changes that I feel
17 are better than what we saw before.

18 CHAIRPERSON MITTEN: Anyone else? I guess
19 I can relate to the way you phrased your comment. I
20 guess the way I would say it is I like it better than
21 what we saw before so it has improved and I am
22 satisfied that I think we have taken them as far as we
23 can and/or should try.

24 I did have a couple -- are there any other
25 general comments because I wanted to make a couple of

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1 comments on the order itself if I could put my hand
2 back on it.

3 MR. PARSONS: I wanted to focus on the
4 color. The perspective view on the cover of our new
5 submission has significantly toned down the colors
6 from the prior one. Then we get to page 21 which
7 shows a yellow hard-coat stucco which is a much more
8 muted color in the perspective and I'm not sure which
9 one we are asked to consider. Maybe a computer color
10 error or whatever but I prefer the perspective.

11 CHAIRPERSON MITTEN: I don't know that --
12 I don't have the other submission with the materials.

13 MR. PARSONS: Here it is.

14 CHAIRPERSON MITTEN: Oh, you have it?
15 Okay.

16 MR. PARSONS: It appears, you know, that
17 the hard-coat stucco that is shown on the perspective
18 is what they intend to do.

19 CHAIRPERSON MITTEN: Yes.

20 MR. PARSONS: I just want to make sure
21 that drawing No. 21 does not represent what we
22 understand the color of the building to be.

23 CHAIRPERSON MITTEN: Okay. We'll just
24 clarify that in the order.

25 MR. PARSONS: I'm disappointed in the

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1 roof. It's a product of how many air conditioners you
2 need, I guess. It's a little more imaginative than
3 last time but still not a very pleasant place to be
4 because of the air conditioning units and I don't know
5 what to suggest so I won't.

6 Also, getting to the order, as you
7 mentioned, I don't think we are requiring these
8 stacked automobile parking. I think the word require
9 is in that draft order. They offered them, we didn't
10 require them. We will permit them possibly.

11 CHAIRPERSON MITTEN: Okay. I think I can
12 help with that.

13 MR. PARSONS: All right.

14 CHAIRPERSON MITTEN: Okay. So just to
15 clarify, in No. 1 under decision it be clear that the
16 materials are as depicted on page 29 of the February
17 24 submission of drawings. To Mr. Parsons point on
18 No. 3 I would suggest that it read, "There will be a
19 minimum of 54 parking spaces comprised of a minimum of
20 37 parking spaces on the surface of the property and
21 then underground..." No, that's not right. I don't
22 want that. Let me start over.

23 Let's do this. "There will be a minimum
24 of 54 parking spaces provided on site. The use of
25 spacesaver or spacesaver-like parking spaces as

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1 described in this order shall be permitted so that
2 they can use those as they see fit," because they are
3 asking for flexibility on the garage design later in
4 condition No. 8 so that may change.

5 Condition No. 4 needs to be made
6 consistent with the testimony as represented in
7 finding of fact No. 33 as it relates to housing and
8 affordable housing. And also consistent with the
9 cover letter to the February 24 submission. I think
10 as we had discussed with the applicant previously is
11 that there will be a 40-year affordability period and
12 that needs to be integrated into condition No. 4.

13 Anything else? Any other comments or
14 substantive changes to the order? Okay. I move
15 approval with the changes to the order as we just
16 discussed of Case No. 05-19.

17 MR. PARSONS: Second.

18 VICE-CHAIRPERSON HOOD: Thank you, Mr.
19 Parsons. Any further discussion? All those in favor,
20 please say aye.

21 ALL: Aye.

22 CHAIRPERSON MITTEN: We have none opposed.

23 MS. SCHELLIN: Staff will record the vote
24 four to zero to one to approve proposed action in Case
25 No. 05-19. Commissioner Mitten moving, Commissioner

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1 Parsons seconding, Commissioners Hood and Turnbull in
2 favor, Commissioner Jeffries not present and not
3 voting.

4 CHAIRPERSON MITTEN: Thank you. I just
5 have to put my papers back together again. All right.
6 Then last but not least is Case No. 05-01 which is the
7 case that Mr. Parsons actually initiated with us
8 because of a Board of Zoning Adjustment case that
9 dealt with an adult day treatment center and that use
10 was not specifically articulated in the zoning
11 ordinance. I guess the case went to the Court of
12 Appeals and was remanded to the BZA because of the
13 manner in which they had dealt with this so it showed
14 that there was a void in the zoning regulations.

15 Mr. Bergstein, did you want to tell us
16 about your memo or would you like me to characterize
17 it? I would be happy to let you do it if you want.

18 MR. BERGSTEIN: All right. My concern is
19 that because of the way this proceeding began as a way
20 of allowing for adult development centers to be part
21 of the child elderly use, and that was the original
22 proposal, that it has evolved into something else
23 where the adult use will not be permitted under the
24 same circumstances as the child/elderly use.

25 The difficulty I see is that when you

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1 examine the record the only distinction in terms of
2 the two groups of uses is that the adult development
3 use involves a person with disabilities. Absent some
4 other distinguishing factor, if the concerns expressed
5 on the record also involve or are relevant to adult
6 and elderly care facilities, the solution is not to
7 treat the adult development centers differently, but
8 add additional controls to the adult and elderly
9 centers.

10 So I think unless the Commission can
11 articulate a distinction between the adult development
12 center use and the child elderly use that would
13 warrant a difference in treatment, it needs to treat
14 the uses the same either by allowing the adult use
15 under the same circumstances as the child elderly use
16 in terms of what is now permitted, or doing a new
17 proceeding that would restrict the adult elderly use
18 in a manner that is being proposed for the adult use.

19 CHAIRPERSON MITTEN: Thank you. So the
20 action that we could take tonight would be to strike
21 those two offending sections from the proposed
22 rulemaking which would be the addition of Section
23 601.2(d) and the amendment that would add Section
24 802.20. Is that correct?

25 MR. BERGSTEIN: I would also need to add

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1 provisions that would permit the uses special
2 exception and permit as matter of right in the
3 residence zones under the same circumstances as the
4 adult elderly use which I believe -- I didn't actually
5 bring it with me but I believe it is permitted by
6 special exception up to the R-4 zone and has been as
7 a matter of right beginning in the R-4 zone through C-
8 1, I think continuing on.

9 CHAIRPERSON MITTEN: In order to correct
10 that since we didn't advertise that, do we have to
11 have another hearing?

12 MR. BERGSTEIN: No, because the original
13 hearing advertisement was for that.

14 CHAIRPERSON MITTEN: Oh, it was? Okay.

15 MR. BERGSTEIN: We proposed it and made it
16 more restrictive. That is part of my concern, the
17 evolution of this.

18 CHAIRPERSON MITTEN: I gotcha. Sorry. I
19 missed that part. Okay. And then should the Office
20 of Planning desire to come back with another proposed
21 rulemaking to have some of the restrictions that they
22 thought had been appropriate for adult daycare also
23 apply to child and elderly daycare, they can do that
24 at some future point?

25 MR. BERGSTEIN: Yes, except the radius

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1 restriction which cannot be done for facilities that
2 are for disabled persons.

3 CHAIRPERSON MITTEN: Okay. Very good.
4 Then I would propose that we approve Case No. 05-01 by
5 restoring the matter of right provisions in the
6 resident zones for the adult daycare. We eliminate
7 the new section 601.2(d) and new section 802.20.

8 MR. PARSONS: Second.

9 VICE-CHAIRPERSON HOOD: Question.

10 CHAIRPERSON MITTEN: Mr. Hood.

11 VICE-CHAIRPERSON HOOD: I'm trying to
12 understand what's going on. I know that we have to
13 have it conform to what it spells with the child
14 development center as opposed to -- we can't single
15 out adult development center. I understand that part.
16 Could we -- is there an issue with child development
17 centers that may be right across in the CM zone right
18 across from a residential like the case earlier today
19 looking at the land use study.

20 We had an R-5-A and right across the
21 street there was a CM zone. I'm just wondering does
22 the BZA have a problem whether we can synchronize them
23 both as opposed to just deleting it. We could get
24 some type of review process or special exception so it
25 will match up so we won't single one out and not have

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1 another. Maybe Office of Planning can go back and
2 revisit and work something like that if my colleagues
3 would agree.

4 CHAIRPERSON MITTEN: Well, I think if we
5 remove Section 802.20, then they will not be permitted
6 at all.

7 MR. BERGSTEIN: They will because they are
8 commercial use. All commercial uses that are --

9 CHAIRPERSON MITTEN: That's right.

10 MR. BERGSTEIN: It just carries right
11 over. That's what I'm saying. If you wanted to, and
12 based on what you heard today about industrial zones,
13 I mean, the issue of whether or not these types of
14 uses should be permitted in industrial zones that
15 really don't meet that DPR description might warrant
16 for that reason alone not to permit adult elderly
17 child centers in CM but that would take -- or by
18 special exception, but that would take a new
19 rulemaking to do.

20 I think that is the suggestion that you
21 made for OP to go back and then decide looking at
22 those uses given the testimony hearing that resident
23 cells were being overburdened by like facilities to go
24 back and look and see if the restrictions should apply
25 to that whole category of use.

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1 CHAIRPERSON MITTEN: Thank you, Mr.
2 Bergstein.

3 I think your point is well taken, Mr.
4 Hood, and I think that is one of many things that the
5 Office of Planning will have to take into
6 consideration when they come back to us to propose
7 whatever we can do to (a) strengthen the industrial
8 zones, and (b) improve sort of the relationship that
9 they have between residential neighbors when they are
10 up against each other.

11 What Mr. Bergstein is helping us through
12 tonight is aligning the -- based on the record
13 aligning the adult daycare centers with the child and
14 elderly daycare centers because there wasn't any
15 testimony that warranted a distinction.

16 VICE-CHAIRPERSON HOOD: Okay. I
17 understand, Madam Chairman. I will tell you I'll be
18 voting against this because in the last hour and 15
19 minutes I just heard an intense well-done land use
20 study and shortly after that we just tore it right
21 apart. I think I would rather for them to go back and
22 see if we can include the child development center.

23 We have contradicted ourselves for the
24 last hour and a half. Either I'm not understanding it
25 but it appears to me that during the land use study

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1 this new criteria was a good idea and how we can look
2 at it and revisit some of these issues. It seems like
3 we've had two or three cases since that presentation
4 that totally contradict the whole thing. What I'm
5 going to do is be voting against this. Maybe it's
6 just because I just don't understand.

7 CHAIRPERSON MITTEN: Can I just take one
8 stab at trying to --

9 VICE-CHAIRPERSON HOOD: Don't stab me,
10 Madam Chair.

11 CHAIRPERSON MITTEN: No, I won't. I'll
12 make one attempt to try and clarify. The reason that
13 this is important that we pass something tonight is
14 because this use has not existed and there was one BZA
15 case where the BZA, I guess, treated the facility as
16 if it were a child or elderly facility and then it was
17 determined -- and then that was appealed and then it
18 was determined by the court that, no, in fact, child
19 is different, child daycare center is different.
20 Elderly daycare center is different so there is this
21 void in the ordinance that persist.

22 MR. BERGSTEIN: What they specifically
23 ruled was that because the child elderly use was
24 defined and only included the very young and the very
25 old, the zoning administrator could not issue a C of

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1 0 for the middle group. When you have a defined term
2 you can only issue a C of 0 that meets the exact
3 specification.

4 That is the same issue with charter
5 schools because they weren't operated and maintained
6 by the District of Columbia. They couldn't be
7 considered public schools. The BZA had held that
8 there was no difference in impact and characterization
9 between child and elderly and adult, but that didn't
10 want basically a change in the definition and that's
11 what the Court of Appeals held, that only the Zoning
12 Commission could change the definition to put that age
13 group in and that is how you got to where you are.

14 CHAIRPERSON MITTEN: Okay. So to the
15 extent that the zoning administrator is faced with
16 someone coming saying, "I'm an adult daycare center,"
17 or adult day treatment center, he doesn't have a tool
18 right now to use to issue them a certificate of
19 occupancy so that makes them vulnerable to appeal if
20 he were to try to give them a certificate of
21 occupancy.

22 We are trying to put something in place to
23 fill that void. What you're raising is, I think,
24 actually a larger issue which is what about all of
25 these child/adult/elderly when they are in industrial

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1 zones and when those zones might be approximate to
2 residential uses. What I am suggesting based on the
3 fact that, as Mr. Bergstein has advised us, that we
4 can't make a distinction right now. We can't single
5 out adult.

6 We don't have any reason in a record to
7 single out adult from child and elderly and we let
8 child and elderly go into the residential zones as a
9 matter of right so they could be sitting across from
10 the industrial zone just like -- they could be in the
11 residential zone across from the industrial zone just
12 like putting one in an industrial zone can be across
13 the street from a residence.

14 They could be next to the residence or
15 across the street from the residence. That is the way
16 the ordinance is written, or will be written if we at
17 least put the tool in place. Now, what you're
18 suggesting is maybe we need to think about these
19 things again and we can do that but I think it would
20 be better if we did that incrementally and that this
21 would be the first step and then we can revisit it
22 with the Office of Planning.

23 VICE-CHAIRPERSON HOOD: Thank you for your
24 attempt, Madam Chair, but I still think that the
25 review process is not in place and I would rather for

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1 us to ask the Office of Planning to go back and
2 revisit both. I just think that when we start taking
3 the review process out with those residential areas
4 that are right across the street from CM zones, I
5 think we are making a mistake.

6 CHAIRPERSON MITTEN: Okay. Thank you.
7 Okay. So we have a motion and a second to approve
8 Case No. 05-01 with the changes as I had suggested.
9 Is there any further discussion? All those in favor,
10 please say aye.

11 MEMBERS: Aye.

12 CHAIRPERSON MITTEN: Those opposed, please
13 say no.

14 VICE-CHAIRPERSON HOOD: Opposed. No.

15 CHAIRPERSON MITTEN: Thank you. Mrs.
16 Schellin.

17 MS. SCHELLIN: Staff will record the vote
18 three to one to one to approve final action in Case
19 No. 05-01 as discussed. Commissioner Mitten moving,
20 Commissioner Parsons seconding, Commissioner Turnbull
21 in favor, Commissioner Hood opposed, Commissioner
22 Jeffries not present and not voting.

23 CHAIRPERSON MITTEN: Okay. So in
24 deference to my colleague, I would ask the Office of
25 Planning to revisit the issue about allowing these

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1 facilities, child/adult/elderly daycare centers in, I
2 think, really the residential zones as well as the
3 industrial zones without some kind of review process.
4 We await further report. Is that fair, Mr. Hood?

5 VICE-CHAIRPERSON HOOD: Sure.

6 CHAIRPERSON MITTEN: Okay.

7 VICE-CHAIRPERSON HOOD: Well, I don't know
8 if it's fair. The vote is already --

9 CHAIRPERSON MITTEN: Well, I'm advocating
10 for something on your behalf and I just want to make
11 sure I've done it to --

12 VICE-CHAIRPERSON HOOD: Thank you, Madam
13 Chair. Even though it's after the fact thank you.

14 CHAIRPERSON MITTEN: Yes. Well, okay.

15 I don't think we have any other business
16 before us tonight so I thank everyone for their
17 attention and we are now adjourned.

18 (Whereupon, at 8:52 p.m. the meeting was
19 adjourned.)
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