

GOVERNMENT OF THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC MEETING
1203TH MEETING SESSION (5TH OF 2006)

+ + + + +

MONDAY

FEBRUARY 13, 2006

The Special Public Meeting of the District of Columbia Zoning Commission convened in Room 220 South, at 441 4th Street, Northwest, Washington, D.C., 20001, at 6:30 p.m., Carol Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN	Acting Secretary (ZC)
-----------------	-----------------------

OFFICE OF PLANNING STAFF PRESENT:

ELLEN McCARTHY	Interim Director
MAXINE BROWN-ROBERTS	
STEVE COCHRAN	
TRAVIS PARKER	
JENNIFER STEINGASSER	
KAREN THOMAS	

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

OFFICE OF THE ATTORNEY GENERAL STAFF PRESENT:

ALAN BERGSTEIN, ESQ.

MARY NAGELHOUT, ESQ.

JACOB RITTIG, ESQ.

This transcript constitutes the minutes
from the public meeting held on February 13, 2006.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

AGENDA ITEMPAGECALL TO ORDER:

Carol Mitten 5

PRELIMINARY MATTERS:

Ms. Schellin (None) 5

CONSENT CALENDAR:

A. Z.C. Case No. 04-04A 6
 VOTE: 7
 B. Z.C. Case No. 03-26A 7
 VOTE: 10

HEARING ACTION:

A. Z.C. Case No. 06-06
 Travis Parker 10
 VOTE 39
 B. Z.C. Case No. 06-05
 Karen Thomas 39
 VOTE 43
 AMENDED VOTE 45
 C. Z.C. Case No. 06-07
 Steven Mordfin 45
 VOTE 59
 D. Z.C. Case No. 05-02
 Jennifer Steingasser 60

PROPOSED ACTION:

A. Z.C. Case No. 05-36 60
 B. Z.C. Case No. 05-18 89
 C. Z.C. Case No. 05-21 94
 VOTE 103
 D. Z.C. Case No. 05-24 104
 VOTE 127

FINAL ACTION:

A. Z.C. Case No. 05-12 128
 VOTE 128

 B. Z.C. Case No. 03-12A 129
 VOTE 133

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
 1323 RHODE ISLAND AVE., N.W.
 WASHINGTON, D.C. 20005-3701

CORRESPONDENCE :

A. Letter from ANC 2A	133
B. Letter from West End Citizens Association .	134
C. Letters from Councilmember Graham and the Gay and Lesbian Activists Alliance of Washington	134

OTHER BUSINESS:

A. Election of Officers VOTE	135
---	-----

ADJOURN:

Carol Mitten	136
------------------------	-----

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

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

6:30 p.m.

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

Copies of our agenda are on the table by the door. And I would just remind everyone that we don't take any public testimony at our public meetings unless we invite someone forward specifically.

I'm just going to change one thing on the order on the agenda this evening; which is, under Hearing Action, the first case will be what is currently lettered B, which is Case No. 06-06, and then the second case will be the case the case that's currently lettered A, which will be 06-05.

And I will just ask everyone to turn off their beepers and cell phones, so as not to disrupt the meeting. Thank you.

Is there anything else, Ms. Schellin, before we dive in?

MS. SCHELLIN: No, Ma'am.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON MITTEN: Okay. Then we'll
2 turn first to the Consent Calendar item. The first
3 case there is Case No. 04-04A. Ms. Schellin, is there
4 anything else we need to know, other than the
5 submission that we have?

6 MS. SCHELLIN: No, Ma'am.

7 CHAIRPERSON MITTEN: All right. What we
8 have is a submission from the Applicant requesting
9 that we modify condition no. 2 because of a problem
10 with the lender, in that circumstance that having the
11 degree of specificity that exists in condition no. 2
12 now is problematic and that the proposed revised
13 condition is on page 2 of the Applicant's letter.

14 What I would suggest is that -- I
15 understand that they don't want to restrict it
16 automatically, but what I would suggest is that we
17 add, relative to what the Applicant is suggesting,
18 because they're saying they can't rely on the HPAP
19 funding. So, what I was going to suggest we add at
20 the end is just to say that the Applicant shall seek
21 HPAP funding in order to achieve the following
22 affordability targets; and then list the affordability
23 targets that they've asked to be removed. So It
24 doesn't say they'll guarantee those. It just says
25 they'll ask for the financing to achieve that; which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I think is a fairly decent compromise.

2 COMMISSIONER TURNBULL: Is that a motion?

3 CHAIRPERSON MITTEN: I will move that.

4 COMMISSIONER PARSONS: Second.

5 CHAIRPERSON MITTEN: Any discussion? All
6 those in favor, please say aye. Aye.

7 ALL: Aye.

8 CHAIRPERSON MITTEN: Any opposed? Ms.
9 Schellin.

10 MS. SCHELLIN: Staff will record the vote
11 five to zero to zero to approve Zoning Commission Case
12 No. 04-04A, Commissioner Mitten moving; Commissioner
13 Parsons seconding; Commissioners Jeffries, Hood, and
14 Turnbull in favor.

15 CHAIRPERSON MITTEN: Thank you. And if
16 you need the amended language, I have it here.

17 Second is a request for a minor
18 modification that we had on our Consent Calendar at
19 our last meeting. And we asked for a little bit of
20 additional information. And I believe we got a letter
21 that just had some new calculations in it today. And
22 you'll see that the Applicant is proposing to take
23 what was supposed to be an incremental payment, of
24 which they've already made some; but they basically
25 want to close out their obligation and, in doing that,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 they're discounting the outstanding payments to a
2 current date with a percentage rate of six and one
3 half percent.

4 So the question is do we want to allow the
5 discounting to occur? Is six and one half percent the
6 appropriate rate?

7 VICE-CHAIRPERSON HOOD: Madam Chair, I
8 don't know if six and one half percent is the
9 appropriate rate. Maybe we could -- I don't know who
10 would be able to advise us on that. But I do think
11 maybe a discount is ordered. But the issue with me
12 is, is it six and one half percent.

13 CHAIRPERSON MITTEN: I think the notion
14 would be is what they're forgoing, in terms of what
15 they would -- if they kept that money in the bank,
16 they could earn interest on it. And so, from that
17 perspective, I think it's sort of commonly known that
18 one can't earn six and one half percent interest in
19 any kind of regular, safe, financial investment. So
20 I don't know if anybody else wants to jump in on this.

21 COMMISSIONER PARSONS: You mean, you're
22 suggesting four percent like more in line with what's
23 going on in the marketplace?

24 CHAIRPERSON MITTEN: Well, we could do
25 that or -- I mean, it's getting into some really fine

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 tuning of a proffer that is very small in the scheme
2 of things. So I would say that I wouldn't think it
3 was inappropriate to just say that they need to pay
4 the \$20,000, and not discount it. I understand the
5 principle behind it. But when you start getting into
6 what's the appropriate rate, I think you're getting
7 down into something that's -- the discount becomes
8 quite marginal. And they're not compelled to do it.
9 They're not compelled to pay it off. They're just
10 asking for the flexibility to pay it off.

11 VICE-CHAIRPERSON HOOD: I guess, what is
12 the question, Madam Chair? I guess, obviously, you're
13 not in agreement with the discount. So you're just
14 saying leave it as it is, and it's up to them to pay
15 it off then.

16 CHAIRPERSON MITTEN: Right. They can pay
17 it off. I guess I would be in favor of just denying
18 their request for a modification. They're certainly
19 free to pay it off in total amount now.

20 MR. BERGSTEIN: Madam Chair, I believe, as
21 I understand it, that this came to you because the
22 Zoning Administrator thought a modification was
23 necessary to allow an alternative lump sum. So --

24 CHAIRPERSON MITTEN: Okay.

25 MR. BERGSTEIN: -- what you could do is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 just strike the language that says discount to reflect
2 early payment. And then that would satisfy the Zoning
3 Administrator that they could, in the alternative, do
4 a lump sum payment.

5 CHAIRPERSON MITTEN: Okay. Well then I
6 would move that.

7 VICE-CHAIRPERSON HOOD: I'll second.

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

10 ALL: Aye.

11 CHAIRPERSON MITTEN: Those opposed, please
12 say no. Ms. Schellin?

13 MS. SCHELLIN: Staff will record the vote
14 five to zero to zero, to approve the modification as
15 discussed on the dias in Case No. 03-26A; Commissioner
16 Mitten moving; Commissioner Hood Seconding;
17 Commissioners Jeffries, Parsons, and Turnbull in
18 favor.

19 CHAIRPERSON MITTEN: Thank you. All right
20 then, the next up is Hearing Action. And, as I said,
21 we'll take up the Case No. 06-06 first; which is a
22 proposed emergency text amendment regarding public
23 schools. Mr. Parker?

24 MR. PARKER: Good evening, Madam Chair and
25 members of the Commission. My name is Travis Parker

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 with the Office of Planning.

2 As you are aware, the Congress has passed
3 the Public Charter School Act, which amended the
4 definition in the City Code of Public Schools to
5 include charter schools. As of this date, the Zoning
6 Regulations haven't been amended to reflect that
7 change and this amendment would -- would do just that;
8 change the Zoning Regulations to reflect charter
9 schools as public schools in the District.

10 Inherent with that change is also language
11 necessary to address the similarities and differences
12 between charters and traditional public schools. As
13 you are aware, traditional public schools go to the
14 City Council for approval. And guidelines for schools
15 have traditionally come through that process.

16 In equating public schools to charter
17 schools, it's necessary to delineate development
18 guidelines for schools in the residential zones that
19 would otherwise come from Council oversight.

20 Further, this amendment would expand the
21 public schools, including charter schools, throughout
22 the District to include the CR, W, and SP districts,
23 and add clarifying language that results from these
24 changes.

25 OP has worked with the D.C. public schools

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and stake holders from there throughout the city over
2 the past couple of months, to address these issues.
3 And now, I'll briefly go over the specific changes
4 requested.

5 The first is amendment of Section 199 to
6 specifically include schools chartered by the D.C.
7 Board of Education and the D.C. Public Charter School
8 Board in the definition of public schools.

9 Second, we would change the matter of
10 right uses in R-1, under public schools, to encourage
11 co-location of public schools with other uses and the
12 sharing of recreation space, including gymnasiums,
13 playgrounds, fields, and etc.

14 The third change that we're proposing is
15 reflected in page 3 of the report, in the chart, and
16 deals with several areas of development regulations
17 for public schools. The minimum lot area and minimum
18 lot width would be amended in Section 401. The R-1
19 districts would have a minimum lot area of 15,000
20 square feet and the R-2 through R-5 districts of 9,000
21 square feet.

22 The reason for the difference between the
23 two; the R-1 districts are currently the only
24 districts in the city that have no -- have no
25 possibility for side lot line joining or always have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 a side yard. Every district from the R-2 up, has
2 duplexes or row house options. And so those -- there
3 is an inherent difference there between the districts.

4 As you'll note in the charts in the back
5 of the report, we have information on every school
6 that we've been able to locate; both public school and
7 charter school in the District, in regards to lot
8 area.

9 Every single D.C. public school in
10 existence now is greater than half an acre in size and
11 every charter school that's located in a residential
12 district is greater than 9,000 square feet in size.
13 So the effects of this change on existing schools
14 should be nearly nothing, as far as making schools not
15 conforming.

16 The minimum lot width proposed in
17 residential districts is 120 feet. This is an attempt
18 to address the drop off and pick up of students at
19 these schools. We didn't feel it was appropriate to
20 require schools to have drop off and pick up onsite
21 because it's not always possible. But, by providing
22 a minimum lot width of 120 feet, there is space in the
23 front of schools for up to six cars to stop and have
24 a school drop off loading zone.

25 Section 403, later in the chart, addresses

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 maximum lot occupancy. Currently schools are limited
2 to 60 percent. All uses in the districts R-1 through
3 R-5B are limited to 60 percent, but schools are
4 granted extra leeway above that when they meet certain
5 requirements found in Section 403.

6 We're recommending to keep that for the R-
7 1 and the R-5 districts, but R-2, R-3, and R-4 would
8 cap that additional lot occupancy at 70 percent.

9 We're changing no -- nothing -- proposing
10 no changes to the FAR in Section 402 and only minor
11 changes to the maximum height in Section 400. You'll
12 note that currently schools are allowed greater
13 heights than the residential districts -- than the
14 residential uses in the districts in which they sit.
15 And, while they're allowed up to 60 in R-1 through R-
16 2, R-3 and R-4 are currently allowed 90 foot schools.

17 We're recommending that R-3 and R-4 be
18 lowered to a 60 foot maximum for public schools. It's
19 still higher than the 40 foot allowed for all other
20 buildings; and that the 90 foot and up be allowed for
21 R-5 Districts. You'll see in my report there that the
22 test for each of those changes is located below.

23 The fourth major change would change
24 Section 206 to allow any school that doesn't meet
25 those requirements to move forward as a special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 exception under similar standards as private schools
2 would. Therefore, lessening the requirements from a
3 variance and making it easier for schools to proceed
4 that don't meet all the guidelines of this section.

5 Section 5 addresses the C-1 district and
6 raises the FAR to 1.8. Currently, the C-1 district
7 has a 1.0 FAR with no exception for public schools.
8 You'll note that the R-5 and R-4 districts allow a
9 1.8, and the higher C districts allow higher. We felt
10 it was inappropriate for this district to step back
11 down to a 1.0 and we tried to bring it in line with
12 the R-4 and R-5 districts that tend to surround the C-
13 1 district.

14 Changes six, seven, and eight allow public
15 schools in SP, CR, and W districts. Currently, public
16 schools are not addressed in the text of those
17 districts and not allowed as a matter of right. This
18 text amendment would clean that -- clean up that
19 oversight and allow public schools in ever district in
20 the city.

21 The ninth proposed change is in the
22 Chapter 21, regarding parking. Currently, there are
23 no parking standards for pre-elementary schools. They
24 have traditionally fallen under the Child Development
25 Centers, but charter schools have not necessarily --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 do not necessarily fall under that definition. And
2 this would create a standard for pre-elementary
3 schools that would be in line with the standard for
4 elementary schools of two parking spaces for each
5 three students.

6 I don't know if you've received the
7 supplemental report, but the supplemental report calls
8 that a tenth change that would address split-zoned
9 lots. The lot area requirements, as you will note,
10 are for residential zones. We're proposing that any
11 existing lot that is split-zones, public schools be
12 allowed to follow the restrictions for the less
13 restrictive zone. So, if there's a commercial and a
14 residentially split zone, they would -- they would be
15 able to be a commercial lot for purposes of lot area
16 and lot width.

17 As I mentioned, we've worked closely with
18 the Department of Public -- D.C. Public Schools and
19 other community groups in outlining this. We feel that
20 we've created some standards that are -- are -- both
21 protect the residential neighborhoods and provide
22 flexibility in the development of schools in the
23 District.

24 And we recommend that this be -- this text
25 amendment be set down for emergency -- emergency

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 action. Currently, there are over 50 charter schools
2 in the District and seven more charters are granted
3 each year. This language is needed to specifically
4 and immediately equate charter schools to D.C. public
5 schools and clarify the guidelines for public school
6 buildings.

7 Further, the text amendment would
8 immediately open up some zones of the city that do not
9 currently allow public schools. Delaying the
10 effective date of this amendment until the final order
11 would leave this issues unresolved and the standards
12 and timing of projects that would happen in the next
13 year ambiguous. So we recommend that the -- this text
14 amendment be set down and we recommend it as an
15 emergency amendment.

16 CHAIRPERSON MITTEN: Thank you. I just
17 have a general question before we get to some more
18 specific questions; which is, what -- you gave us a
19 list of charter schools on the back page of your
20 summary of locations and site areas and so on. Do any
21 of these charter schools have Certificates of
22 Occupancy?

23 MR. PARKER: It is my belief that all of
24 these are currently active. So they should all have
25 Certificates of Occupancy.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: So, given that the
2 definition is one of the things that's at issue,
3 whatever -- whatever Certificate of Occupancy they
4 have is likely to be in error? Is that correct?

5 MR. PARKER: They were likely issued
6 Certificates of Occupancy as public schools. I've not
7 looked into the C of O's for these schools. If not,
8 they could -- when they made changes, they could be
9 issued C of O's as public schools.

10 CHAIRPERSON MITTEN: Okay. Mr. Bergstein,
11 do you see any issue that we need to be conscious of
12 when we act on this?

13 MR. BERGSTEIN: There's the procedural
14 question as to whether or not you would want this
15 emergency to apply to or not apply to persons which
16 have applied for building permits before DCRA, absent
17 some saving language.

18 CHAIRPERSON MITTEN: I'm actually focusing
19 on the existing charter schools and their Certificates
20 of Occupancy.

21 MR. BERGSTEIN: If -- if the -- there was
22 a case that came out about a year ago that's called
23 Chagnon, that said that if a use is defined, that the
24 Zoning Administrator doesn't have the authority to
25 issue C of O's for a use that's like that, unless it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 meets every part of the definition.

2 And indeed, the reason why the Zoning
3 Commission is taking up the question of adult daycare
4 is because the effect of that ruling was, in essence,
5 to invalidate all the existing C of O's for those
6 uses.

7 So there is an issue that, unless the
8 Zoning Commission creates a new definition for public
9 schools, the existing C of O's for any charter school
10 that has a public school -- particularly those that
11 were issued after Chagnon, would be suspect.

12 CHAIRPERSON MITTEN: So any charter school
13 that now has a Certificate of Occupancy for a public
14 school, this would actually make those correct, as
15 opposed to --

16 MR. BERGSTEIN: That is correct. The use
17 would then be correct.

18 CHAIRPERSON MITTEN: Okay. Thank you.
19 Questions for Mr. Parker? Mr. Hood?

20 VICE-CHAIRPERSON HOOD: Yes. Mr. Parker,
21 help me understand. And I notice in what's being
22 proposed, when it talks about the C-M-1 zone and
23 public charter schools, I think you were saying that
24 if it's in the C-M-1 zone and there's a proposal, then
25 it would go as a special exception?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. PARKER: No. Not at all.

2 VICE-CHAIRPERSON HOOD: Okay.

3 MR. PARKER: Schools are currently allowed
4 in C-M-1 zone, and would follow the restrictions of
5 that zone. And we're not proposing any change to
6 that.

7 VICE-CHAIRPERSON HOOD: Okay. So schools
8 are currently allowed in the C-M-1 zone?

9 MR. PARKER: It's the CR, SP, and W zones
10 that don't currently allow schools. And this would
11 allow them in those zones subject to the requirements
12 of those zones. We're not proposing any changes to
13 the requirements of those zones.

14 VICE-CHAIRPERSON HOOD: Right. I
15 understand that. But I'm just trying to look back to,
16 like the Chair was talking about, some things that
17 already exist. Schools are already allowed -- I'm
18 trying to make sure I understand. Schools are already
19 allowed in the C-M-1 zone?

20 MR. PARKER: Yes.

21 VICE-CHAIRPERSON HOOD: I will go on
22 record to say we really need to revisit that. Because
23 when you have a school, whether it's public charter or
24 public school, and I'm not second guessing anyone,
25 next to a trash transfer station, there's a problem.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 There's a problem.

2 When I went to school, I didn't go to
3 school next to trash. I really didn't. And I think
4 -- I don't know if this is the proper time, but I'll
5 put it out there. We need to really revisit that.
6 And I'm looking at some of these schools that are in
7 the C-M zones. I know one in particular. I think
8 that it's a serious problem for this city to have
9 those kids going to school next to a trash transfer
10 station.

11 CHAIRPERSON MITTEN: Anyone else?
12 Questions for Mr. Parker? Mr. Parsons.

13 COMMISSIONER PARSONS: I'm not yet
14 convinced I understand the emergency here. You
15 mentioned that there was -- I think you mentioned
16 seven applications a year that are being dealt with.
17 What is the citywide emergency that causes us -- I
18 mean, we don't do emergencies very often. And we do
19 it in the context of something is wrong citywide here
20 and we need to declare an emergency.

21 MS. STEINGASSER: If I may, Mr. Parsons.
22 When we started to circulate these regulations we were
23 -- everyone who was involved with the public -- with
24 the public school charter process began to tell us of
25 one school after another that was going to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 adversely impacted; one school after another that was
2 in the process of either designing a school,
3 purchasing land, teaming up with another school to
4 purchase land; was under constructions; was getting
5 ready to file for permits.

6 We felt it was in the best interest of all
7 of those schools to know what the regulations were
8 going to be as soon as possible. So, if they needed
9 to get a special exception, they could immediately
10 begin to work in that direction.

11 If they needed to change course and look
12 at other land alternatives, they would know that as
13 soon as possible. And that they wouldn't be delayed
14 for the standard set down; four month public hearing;
15 proposed action; costing them what could reasonably be
16 presumed to be a full education year.

17 They would be -- if they got to the end of
18 the text amendment; they found out they needed a
19 special exception, then they'd have to get in line for
20 that.

21 So we felt it was in the best interest of
22 the schools and the education process to let that be
23 known as soon as possible.

24 MS. MCCARTHY: In addition, the whole
25 origin of the Office of Planning looking at this was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 an indication by the Zoning Administrator that he had
2 applications either before him or expected them and
3 felt that the definition as it was currently
4 constituted did not include charter schools as public
5 schools. So he wanted a determination made by the
6 Zoning Commission.

7 The Commission then asked the Office of
8 Planning to weigh in with a proposal. So, at this
9 point, the Zoning Administrator feels that the zoning
10 regulations would not permit him to consider charter
11 schools to be public schools, even though there's
12 clear legislative history that would indicates that
13 that was the intention. But until section -- until
14 the Section 199 definition is revised, charter schools
15 could not technically be approved. So we -- we felt
16 we needed to act quickly and not wait for the 60 day
17 period, basically, for a set down, in order for the
18 definitional issue to be resolved.

19 COMMISSIONER PARSONS: Thank you. That's
20 very helpful. Thank you.

21 CHAIRPERSON MITTEN: Anyone else? I just
22 had a couple of technical points. In 201.1K, where we
23 would potentially allow the schools that shared
24 certain recreation space to basically each count them
25 towards their minimum lot area, would that be if they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 were located on either the same lot or immediately
2 adjacent lots? Or -- what's the degree of proximity
3 required?

4 MR. PARKER: Well, that's the intent. I
5 think it's adjacency. And we could -- we could
6 certainly clarify that language.

7 CHAIRPERSON MITTEN: And then, in terms of
8 adjacency, just to follow through on that, in 401.8
9 you're suggesting that for public schools the minimum
10 lot area may include adjacent parcels under the same
11 ownership that are separated only by an alley. So
12 would shared facilities that were separated by an
13 alley also be counted towards the minimum lot area if
14 they weren't, in fact, in the same ownership?

15 MR. PARKER: Not by -- not by this
16 language, but yes, we could certainly --

17 CHAIRPERSON MITTEN: I'm just wondering
18 what you intended.

19 MR. PARKER: -- modify that. Well, the
20 intent for this was two parcels, for example the
21 school and, you know, the recreation facility on
22 opposite sides of an alley, under the ownership of the
23 school. But, we could certainly play with the
24 language to include shared facilities on opposite
25 sides of an alley.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: Okay. And then, just
2 because, you know, I think it's come up from time to
3 time when we're trying to measure something that maybe
4 is not -- I mean, I can measure a gymnasium fairly
5 easily because it's got four walls. I can't measure
6 a field quite so easily. I can't necessarily measure
7 a playground.

8 So anything you could add about how those
9 would be measured so that we don't just drift into the
10 landscaping and stuff I think would be helpful.

11 In 206.2, on your page 4; 206.2 deals with
12 a private school, whereas above you had introduced the
13 notion of a public school that doesn't meet the
14 requirements of Chapter 4, do you also want public
15 school added to 206.2?

16 MR. PARKER: You're right. We should put
17 public and private schools.

18 CHAIRPERSON MITTEN: Okay. And then I
19 just had sort of a general question, because it
20 occurred to me as I was reading the parking
21 requirements. When we talk about parking, we make the
22 distinctions for parking by the age groups of the
23 children that are attending the school. Everything
24 else is delineated on public/private.

25 So I didn't know if you guys had given any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 thought to is public/private really the proper
2 delineation? Because we don't do it for parking. Or
3 is it -- or should we be making -- slicing this a
4 different way?

5 MR. PARKER: In terms of 206?

6 CHAIRPERSON MITTEN: In terms of -- well,
7 just the way we handle schools everywhere except
8 Chapter 21. We handle them one way, by age groups,
9 for parking purposes. And we handle them by who runs
10 them for every other purpose. And I didn't know -- I
11 didn't know if you'd thought about it.

12 MR. PARKER: It hadn't really come up.

13 MS. STEINGASSER: Some of the comments we
14 have gotten back have asked us to revisit parking
15 standards for the schools, pointing out that, in many
16 cases high school kids can't actually drive to school
17 until they're 18, so there's not really -- the
18 standards may not be as applicable as they used to be.

19 So, we'll be happy to take a look at that
20 and look at it terms of -- of the use versus the age
21 group issue.

22 CHAIRPERSON MITTEN: And I just didn't
23 know if it was relevant in other context besides just
24 parking. Is the age of the student body relevant when
25 you're talking about, you know, lot occupancy and --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. STEINGASSER: Well, we tried -- we
2 tried to stay away from anything that actually got to
3 dictating program. And that's why we're silent on
4 whether there -- a school should have fields or a
5 gymnasium. Because, especially when we're bring the
6 charter and public -- traditional public schools
7 together under one definition, the charter schools by
8 their very nature are alternative education to the
9 public traditional system.

10 So, we tried to stay away from things that
11 would kind of require program dictation to the schools
12 themselves in how they're used. We went with this on
13 the parking standard because it is the standard format
14 that's in -- that's in the current regs. We didn't
15 look -- we looked to change as little as we could in
16 this case. And revisit as little as we could. But
17 we'll -- we'll be happy to look at that again.

18 Like I said, we have gotten comments from
19 others that the parking standards may be a bit
20 archaic.

21 CHAIRPERSON MITTEN: Okay. Anyone else?

22 MS. MCCARTHY: I could also see that part
23 of why we determined the lot width that we determined
24 was to allow car -- the appropriate widths for a car
25 drop off and pick up. And we know from experience

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with the private school special exceptions that it's
2 because pre-school and smaller children take a lot
3 more time to get out of the car seats and get their
4 lunch boxes and various things together, as opposed to
5 older children, that maybe we should look as well as
6 to whether we could provide differently for pick up
7 and drop off for older children and require less --
8 less space for that.

9 CHAIRPERSON MITTEN: Okay. Thank you.
10 Any other questions?

11 COMMISSIONER JEFFRIES: Yes. Madam Chair,
12 I'm just -- I think there's a lot of -- a lot to chew
13 on here. There's a lot of information. And I went
14 through it and, you know, I just felt like I need to
15 absorb it a little bit longer. You know, I'm
16 wondering if there's a place in between sort of set
17 down and emergency basis. I -- I -- and I don't know
18 if we can get there.

19 I mean, I understand that the dilemma
20 around, you know, the text amendments and your notice
21 and so forth and so on. But, you know, I mean, I just
22 feel that there's a number of issues here. And I'm
23 just trying to figure if there's some other way in
24 which we can do this without setting down and then,
25 right away, it becomes --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: There's -- I guess
2 there's a couple of -- there's a couple of thing
3 available to us. One is, we do it all as an emergency
4 and we -- which is the first request from the Office
5 of Planning. And the second request is that we
6 authorize the issuance of a Notice of Proposed Rule
7 Making, based on what's here, rather than having a
8 supplemental report written.

9 The -- so -- so, we can do that. We can
10 parse it -- you know, we can parcel it out. And, you
11 know, for instance, the definition is I would say the
12 most crucial part because of what's pending out there.
13 And we can marry that with an immediate advertisement,
14 which would then accomplish at least part of what Ms.
15 Steingasser was saying, which is we're putting people
16 on notice that these are going to be the rules.

17 It's not quite the same. It doesn't have
18 the same teeth as doing all of it as an emergency, but
19 it certainly puts everyone on notice and gives the
20 Zoning Administrator a clear indication of the
21 direction that we intend to go.

22 And the other would just be to set down
23 the case as a normal case and not do anything on an
24 emergency. Or we can immediately advertise. So,
25 there's like four versions -- four variations. Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Turnbull?

2 COMMISSIONER TURNBULL: I think I would --
3 I kind of like the idea of at least defining the
4 charter school. I think that's something that sounds
5 like it needs to be done, and to call it a public
6 school. And let's get that off the table. But -- and
7 then, again, revisit some of these other things or
8 spend some more time on them, or whatever.

9 But it sounds like that's something that
10 they're looking -- the Administrator's looking for us
11 to deal with. I would go along with that.

12 CHAIRPERSON MITTEN: Okay. Let me -- let
13 me say it. And then, if you want to move it, then --
14 so that we would -- we would act on an emergency basis
15 to adopt the definition that the Office of Planning
16 has -- has suggested. So we would amend Section 199.1
17 in the definition of public school. And then we would
18 issue a Notice of Proposed Rule Making for that
19 definition and the balance of the amendments proposed
20 by the Office of Planning. Would you move that?

21 COMMISSIONER TURNBULL: I would.

22 CHAIRPERSON MITTEN: Okay.

23 COMMISSIONER JEFFRIES: I'll second.

24 CHAIRPERSON MITTEN: Okay. Any further
25 discussion on that? And I just want to be clear that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we're adding in No. 10, which has to do with the split
2 zone lots.

3 VICE-CHAIRPERSON HOOD: Let me make sure
4 I understand. The only thing we're doing is the
5 definition. We're doing that as an emergency?

6 CHAIRPERSON MITTEN: Yes.

7 VICE-CHAIRPERSON HOOD: And everything
8 else we're doing comes upon our normal set down rules?

9 CHAIRPERSON MITTEN: Well, we wouldn't
10 wait for a supplemental report before the
11 advertisement.

12 VICE-CHAIRPERSON HOOD: But we will set it
13 down

14 CHAIRPERSON MITTEN: Yes.

15 VICE-CHAIRPERSON HOOD: But we're going to
16 set it down. So it's still --

17 CHAIRPERSON MITTEN: Correct.

18 VICE-CHAIRPERSON HOOD: -- everything will
19 still come up under the set down rules?

20 CHAIRPERSON MITTEN: Yes.

21 VICE-CHAIRPERSON HOOD: Okay.

22 CHAIRPERSON MITTEN: Although the set down
23 rule doesn't apply to a text amendment.

24 VICE-CHAIRPERSON HOOD: Okay. So, in
25 other words, this is still lingering on.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON MITTEN: Well it's -- they're
2 -- they're -- the -- the Zoning Administrator can only
3 enforce on the definition; not the balance of it --
4 not the balance of the amendments being proposed.

5 VICE-CHAIRPERSON HOOD: Okay. Because I
6 -- I think the initial request was that we set
7 everything down to the emergency. Right?

8 CHAIRPERSON MITTEN: Correct.

9 VICE-CHAIRPERSON HOOD: So, obviously,
10 unless I missed something; so -- so that initial
11 request has not won a waiver. But I think that the --
12 I'm just wondering what harm are we doing? Because I
13 do -- I do agree with my colleagues. Because I have
14 some issues with some stuff that's -- that's in --
15 that's probably been in here. But I'm just curious,
16 are we creating more of a problem by not putting that
17 in as an emergency? That's just a question.

18 CHAIRPERSON MITTEN: Well, we can ask the
19 Office of Planning.

20 VICE-CHAIRPERSON HOOD: Okay. Through you
21 to the Office of Planning.

22 CHAIRPERSON MITTEN: Okay.

23 MS. STEINGASSER: I'll venture out. The
24 proposal we've brought to you today is an attempt to
25 balance the rights of the public schools, whether

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 they're charter or traditional, with the potential
2 adverse impacts to neighborhoods. And, based on the
3 fact that some people -- half the group thinks we've
4 gone too far and the other half thinks we haven't gone
5 far enough, we think we've struck that balance.

6 The potential to setting down just the
7 definition as an emergency and leaving the rest of the
8 text in a standard rule making context is that all --
9 all the -- all schools now are a matter of right, with
10 no -- with the most minimal restrictions that are
11 currently on the zoning regs.

12 Where that's of concern to us is in the R-
13 2, R-3, and R-4 zone districts. Those allow buy right
14 adjoining buildings. So a -- somebody can build right
15 up to your property wall attached to your building and
16 operate a school of some sort with the most minimal --
17 and it's not even the most minimal.

18 Under the current regs, public schools of
19 any type have excessive lot occupancy. They can go up
20 to 100 percent lot occupancy in these zones, provided
21 that it's only two stories. They can -- they have an
22 excessive FAR and height that is not in character with
23 the residential zone of those three categories.

24 That's why we've focused on the R-2, R-3,
25 and R-4 zones. Those are zones that have the smallest

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 lots; the most minimal areas and street frontage, and
2 the greatest potential for adverse impact of
3 complimentary land uses. I mean, we agree that that's
4 -- you know, there's a density issue; schools need to
5 be where there's families. But, when you get into
6 lots that are only 4,000 square feet, that's two row
7 house lots. That's a pretty darn small lot.

8 And the impact of being able to have a 90
9 foot building in an R-4 zone where residents can only
10 be 50 feet, and you can double your FAR, it's -- it's
11 a potential for a very great neighborhood impact.

12 So, that's why we kind of focused our most
13 stringent regulations on that rule. So, if you move
14 forward with the motion, as you've written, you've
15 allowed the maximum buy right opportunities with the
16 least amount of restrictions. So it kind of -- the
17 balance is now a little bit --

18 CHAIRPERSON MITTEN: I think I have a --
19 I think I have a solution. We'll see if it -- if it
20 takes. Mr. Turnbull, would you accept this as
21 friendly amendment, which is just that we add -- we
22 just take two of the -- of the suggestions that -- the
23 suggested amendments. So, the first one would be the
24 definition. The second would be what is articulated
25 as Number 3, by the Office of Planning, which is amend

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 sections 400, 401, and 403 as noted in the chart. And
2 then the balance -- as in the chart and in the
3 subsequent text amendments that follow it for 400.10,
4 400.11, 401.8, and 403.1. And then we'll allow the
5 more housekeeping things to catch up. Would you
6 accept that as a friendly amendment?

7 COMMISSIONER TURNBULL: Yes. I think
8 you're key concern is the 120 foot width that you're
9 looking for in the future?

10 MS. STEINGASSER: I guess our key concern
11 is the fact that schools can be twice as dense as
12 their residential neighbors, and can attach to the
13 buildings.

14 COMMISSIONER TURNBULL: Okay.

15 MS. STEINGASSER: Yes. So it does -- it's
16 the lot size and the -- the street width and the
17 height. So that, it -- it's the physical structure
18 itself and the potential for that -- that impact on
19 the neighborhoods.

20 COMMISSIONER TURNBULL: I would -- I would
21 move to include that then.

22 CHAIRPERSON MITTEN: Okay. And who was
23 the second? Mr. Jeffries? Do you accept that?

24 COMMISSIONER JEFFRIES: Well, just a quick
25 question. So this is in terms of what you fear could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 happen in the R-1, R-2 zones. This is imminent? I
2 mean, we -- we can see this happening next month or
3 two?

4 MS. STEINGASSER: Imminent? I -- I don't
5 know if there's schools out there looking at this
6 category. But, under the proposed -- under the
7 original motion, it could be allowed as a matter of
8 right.

9 COMMISSIONER JEFFRIES: Okay. That's what
10 I'm -- yes. I guess what I'm saying in terms of the
11 window of time -- I mean, I -- I'm getting a sense,
12 based on emergency, that, you know, there's a line of
13 people sort of, you know, waiting; schools to go in
14 and build these -- monstrosities in R-1, R-2. And --
15 but you're -- am I missing something here? I mean --

16 MS. STEINGASSER: No. And I -- I wouldn't
17 call them monstrosities. It's -- it's just -- it's a
18 -- it's a scale difference.

19 COMMISSIONER JEFFRIES: Right. Right.
20 Right.

21 MS. STEINGASSER: I don't know where they
22 are. I know when we sent them out to the Association
23 for Public Charter Schools and -- and some other
24 charter groups, they responded that this is going to
25 impact a lot of schools that are out there; especially

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the smaller incubator schools that are looking at the
2 smaller pieces of land and the smaller -- because of
3 the -- because of the economics. And so that's our
4 concern is that they be given as much advance notice,
5 as well.

6 COMMISSIONER JEFFRIES: Okay. I -- I'm
7 fine. I will second this. I just have a general
8 comment. You know, when I see the word emergency, you
9 know, I'd like to feel that there's an emergency. And
10 I'm not quite feeling it. But -- but I -- I'm willing
11 to move the evening along here.

12 CHAIRPERSON MITTEN: I think there's a
13 couple of things -- if I could, just on the notion of
14 emergency. One of the emergencies that I recall was
15 when we did electronic facility regulations. And that
16 was because all of a sudden there were -- there were
17 a whole bunch of these uses that we'd never even heard
18 of before and we had to learn about. And they were --
19 had the potential to change the character of the whole
20 district. And that was -- and that was one kind of
21 sort of -- there was one kind of adverse impact that
22 would have resulted from that.

23 I think this issue, because as we all well
24 know, these are -- these are very sensitive issues, so
25 it might not be the potential for, in terms of land

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 use potential, might not be there. But the potential
2 for impact to people, you know, and their lives is
3 great. It's a different kind of impact. But I don't
4 think it's any less than what we've experienced in
5 other cases.

6 COMMISSIONER JEFFRIES: Just -- we --we
7 dealt with, I believe, you know, occupancy issues
8 around Katrina and the students.

9 CHAIRPERSON MITTEN: Yes.

10 COMMISSIONER JEFFRIES: I mean, that what
11 clearly what I saw as an emergency. I clearly
12 understand the whole notion and the nuance of -- of,
13 you know, that in accumulation, something could, in
14 fact, be. But I -- I just, you know, I just don't
15 want to set a precedent that -- that, you know, we're
16 just constantly doing emergencies here.

17 CHAIRPERSON MITTEN: Right. Even though
18 we have two before us tonight. But, okay. So, just
19 to -- just to recap. We -- the motion is to take
20 emergency action with respect to the definition of
21 public school and the proposed amendments to Sections
22 400, 401, and 403. And then to set down the entire
23 text that the Office of Planning has proposed, with a
24 few little minor changes that we had suggested, and
25 authorize immediate publication of the Notice of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Proposed Rule Making and Notice of Public Hearing.
2 And we have a -- Mr. Turnbull made that motion. Mr
3 Jeffries seconded that motion. Is there any further
4 discussion?

5 All those in favor, please say aye.

6 ALL: Aye.

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

9 MS. SCHELLIN: Staff will record the vote
10 five to zero to zero to set down the emergency action
11 -- I'm sorry, to set down Case No. 06-06 and to take
12 emergency action as discussed. Commissioner Turnbull
13 making the motion; Commissioner Jeffries seconding;
14 Commissioners Mitten, Hood, and Parsons in favor.

15 CHAIRPERSON MITTEN: Thank you. Now we
16 will go to Case No. 06-05. And this is a text
17 amendment; a proposed text amendment to -- this is our
18 second emergency -- to Section 401; which is something
19 that has become near and dear to my heart. Ms.
20 Thomas.

21 MS. THOMAS: Good evening Madam Chairman
22 and members of the Commission. I'm Karen Thomas with
23 the Office of Planning. And we are requesting set
24 down on an emergency basis for the amendment of
25 Section 410 to address an inconsistency in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 language as it relates the R-4 Zone District.

2 Correction of this inconsistency, whether
3 derived as a result of a codification error or not, is
4 an effort to address a present land use threat to the
5 R-4 Zone District and to provide guidance in future
6 applications of Section 410.

7 This inconsistency has character
8 implications for the R-4 Zone District if the section
9 continues to be interpreted to allow the introduction
10 of multiple units in a single building, contrary to
11 the intent and purposes of the R-4 Zone District
12 prescribed in Section 330.

13 The Office of the Attorney General advised
14 that a memorandum will be provided to the Commission,
15 fully explaining the issue of the possible
16 codification error of Section 410. We are also
17 requesting that the Commission authorize the issuance
18 of a Notice of Proposed Rule Making for the text and
19 that the Commission allow the immediate advertisement
20 of the text without waiting for the submission of a
21 supplemental report. And this would allow for full
22 consideration of a proposed rule within the 120 day
23 length of the emergency.

24 If the Zoning Commission agrees to set
25 down the proposed text amendment, we would provide

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 further analysis in support of our amendment to 410,
2 that reflects the Commission's prior intent that the
3 R-4 District not be eligible for consideration under
4 Section 410. OP, in the second phase of this case,
5 would also be willing to include additional proposed
6 amendments to 410 to provide clarity to its
7 provisions.

8 Therefore, we would recommend removal of
9 references to the R-4 in the title of 410 in Section
10 410.12, as shown in our report. Thank you.

11 I'd just like to add one more thing. We
12 would also recommend that applications already filed
13 before the BZA not be included or affected by this
14 emergency.

15 CHAIRPERSON MITTEN: Okay. All right.
16 Well, just to get the conversation started, I will
17 move that we take emergency action to remove
18 references in Section 410 to the R-4 Zone District,
19 and then to set down the entire text for hearing and
20 to authorize immediate publication of the proposed
21 rule making and Notice of Public Hearing; for the
22 following reason.

23 I've sat on two BZA cases now that people
24 have sought to invoke this provision 410 for the R-4
25 District. And it just doesn't fit. It clearly wasn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 intended to -- to work.

2 Basically what the cases that I've sat on
3 have involved what would otherwise be lots that are --
4 lots with buildings that don't meet the -- don't meet
5 the requirements for individual dwelling lots, you
6 know, or either row houses or flats. But in the
7 aggregate, they do. But there's nothing stopping
8 someone later from going and then subdividing these
9 after the fact. And it just doesn't seem to be
10 consistent with whatever it was that was intended at
11 the time that R-4 was included.

12 Is there a second?

13 COMMISSIONER JEFFRIES: Second.

14 CHAIRPERSON MITTEN: Thank you. One thing
15 I'd also like to add, and I don't -- I don't intend
16 that this would be part of the emergency. But I would
17 like it, as part of what we set down for
18 consideration, is that the entire section be struck.
19 Because I frankly don't know what good it -- I don't
20 think it would yield good results, even in the R-5
21 Zones. So I'd like that advertised in the
22 alternative.

23 Anyone have questions, comments,
24 discussion? All right. Then we have a motion and a
25 second to take emergency action as it relates to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 R-4 language in Section 410, and to set down the
2 proposed amendments from the Office of Planning and,
3 in the alternative, to strike the entire section and
4 issue a Notice of Proposed Rule Making and Notice of
5 Public Hearing.

6 All those in favor, please say aye?

7 ALL: Aye.

8 CHAIRPERSON MITTEN: All those opposed,
9 please say no. Ms. Schellin.

10 MS. SCHELLIN: Staff would record the vote
11 as five to zero to zero to set down Case No. 06-05 to
12 take emergency action and to advertise the alternative
13 to strike the entire section; Commissioner Mitten
14 moving; Commissioner Jeffries seconding; Commissioners
15 Hood, Parsons, and Turnbull in favor.

16 CHAIRPERSON MITTEN: Okay. I just want to
17 make -- make it clear that we're -- the emergency only
18 applies to the R-4 language. Is that --

19 MR. BERGSTEIN: I understand. You didn't
20 address the -- the --

21 CHAIRPERSON MITTEN: Oh, I'm sorry.
22 You're right. You're right, we didn't. So the
23 question would be, would this apply to any cases that
24 were currently pending before the Board of Zoning
25 adjustment.

1 MR. BERGSTEIN: If I could just draw the
2 distinction between the case you've just heard and the
3 case you're now considering, in that case, because you
4 didn't put in saving clause, it would apply to persons
5 who have building permits applications before DCRA,
6 but the worst case scenario in that case is that they
7 would apply for a special exception if they didn't
8 meet the area requirements.

9 In this case, if you don't put in the
10 savings clause, anyone who has a BZA application would
11 be, at this point, summarily -- would not have that
12 relief available to them at all. There's no
13 alternative. So there is a distinction between the
14 two cases that I did want to point out to you.

15 CHAIRPERSON MITTEN: Thank you. So then,
16 I guess, just to add on to what I should have said in
17 the first place, I would move that we -- what's the
18 right word?

19 MR. BERGSTEIN: If you affirmatively want
20 to do it -- have a savings clause, you would say that
21 would not apply to any applicant with a BZA
22 application filed before today.

23 CHAIRPERSON MITTEN: Okay. So then I would
24 move that the emergency action that we just took not
25 apply to any BZA application that makes use of Section

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 401 in R-4 Zone District if the application was filed
2 by today.

3 COMMISSIONER JEFFRIES: Second, again.

4 CHAIRPERSON MITTEN: Is there any
5 discussion? All those in favor, please say aye.

6 ALL: Aye.

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

9 MS. SCHELLIN: Staff will record the vote
10 five to zero to zero to exempt current BZA
11 applications from the emergency if filed before today.
12 Commissioner Mitten moving; Commissioner Jeffries
13 seconding; Commissioners Hood, Parsons, and Turnbull
14 in favor.

15 CHAIRPERSON MITTEN: Thank you. Okay.
16 The next case is Case No. 06-07. And, to begin, we
17 have a request for a waiver of the late submittal of
18 this report, and that the request from the Office of
19 Planning. Is there any objection to granting the
20 waiver?

21 Okay. Without objection, then we'll turn
22 to Mr. Mordfin to tell us about Case No. 06-07.

23 MR. MORDFIN: Good evening Chair and
24 members of the Commission. I'm Steven Mordfin with
25 the Office of Planning. And, in this case, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 subject properties are all improved as row houses
2 fronting on either Ingraham Street, or Jefferson
3 Street.

4 They're located within the C-2-A Zone
5 District and both Ingraham and Jefferson Street on
6 Ingraham and Jefferson west of Georgia Avenue and are
7 recommended for the moderate density land use by the
8 Generalized Land Use Map of the Comprehensive Plan.
9 None of these properties have frontage on Georgia
10 Avenue.

11 Community members have expressed concern
12 that these existing row house slots which front on
13 either Ingraham or Jefferson could be converted to C-
14 2-A uses, resulting in the encroachment of C-2-A uses
15 and densities onto the residential side streets off of
16 Georgia.

17 The application proposes the R-3 Zone
18 District for the subject properties. The R-3 is
19 consistent with the Moderate Density Residential Land
20 Use designation of the Generalized Land Use Map. It
21 is also consistent with the existing zone district
22 immediately to the west of the subject properties that
23 are located between Ingraham and Jefferson.

24 Row houses are use permitted as a matter
25 of right within the R-3 Zone District. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Comprehensive Plan recommends the preservation,
2 protection, and stabilization of Ward 4's housing
3 stock and cites the encroachment of commercial and
4 other non-residential uses into residential areas;
5 particularly disturbing in the residential areas
6 abutting Georgia Avenue.

7 Therefore, the Office of Planning
8 recommends that the Commission set down the subject
9 application to change the zoning out of properties as
10 listed in the application from the C-2-A to the R-3
11 Zone District. Thank you.

12 CHAIRPERSON MITTEN: Thank you. Questions
13 for Mr. Mordfin?

14 COMMISSIONER JEFFRIES: I have a question.
15 So, right now we have C-2-A and we have one, two,
16 three, four lots. No, I'm sorry; seven lots either
17 facing Jefferson to the north or is it Ingram or --

18 MR. MORDFIN: Ingraham.

19 COMMISSIONER JEFFRIES: Ingraham. Okay.

20 CHAIRPERSON MITTEN: It depends on what
21 part of the country you're from.

22 COMMISSIONER JEFFRIES: And I guess what
23 I'm trying to get comfortable with is the -- what's
24 the intent of the -- of the Comp Plan as it relates to
25 Georgia Avenue being sort of a retain corridor?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Because, in terms of a footprint, I mean, some of the
2 newer retailers will need more square footage. You
3 know, to be along Georgia Avenue. At least, that's
4 what I'm assuming. Will -- will this obviously have
5 some impact? I mean, obviously it will. I mean, if
6 you're looking to -- to flip this up to an R-3.

7 So, what -- what will be the impact of
8 this changes as it relates to retail along Georgia
9 Avenue?

10 MS. STEINGASSER: Commissioner Jeffries,
11 I don't think it will have a direct impact on Georgia
12 Avenue. These lots, as you can see by the map
13 attached at the back of our report, are oriented
14 parallel to Georgia Avenue, as opposed to
15 perpendicular. They're part of the residential fabric
16 of the side streets and not necessarily the Georgia
17 Avenue streets.

18 As you look to the east site of Georgia
19 Avenue, the lots however are much deeper; they're
20 oriented towards Georgia Avenue; and they're clearly
21 designed to fit -- to front on the more commercial
22 street; whereas the lots in question that we've
23 proposed set down for are long narrow row house lots.
24 And they would -- what we believe, after looking at
25 the land use pattern out there, would actually kind of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 bring commercial into the neighborhood where it's not
2 wanted. It would almost, you know, unfocus it from
3 Georgia and start brining it back into the residential
4 neighborhoods.

5 COMMISSIONER JEFFRIES: Yes. But you would
6 still have frontage -- some frontage along Georgia
7 Avenue. It's just that it would go back, as you say,
8 into some of the residential.

9 Just what -- what's the square footage?
10 What's the footprint, let's say, of those parcels that
11 face Ingraham?

12 MR. MORDFIN: The ones that face --

13 COMMISSIONER JEFFRIES: I mean, if you
14 want -- what would be just the footprint there? Do
15 you know?

16 MR. MORDFIN: I have the square footage of
17 each individual lot.

18 COMMISSIONER JEFFRIES: Okay. Just --

19 MR. MORDFIN: 1204 is 2,946, and let's
20 see.

21 COMMISSIONER JEFFRIES: How -- how big?

22 MR. MORDFIN: It's almost 3,000.

23 COMMISSIONER JEFFRIES: Okay.

24 MR. MORDFIN: Let's see. Then -- but the
25 one next door is 1206, and that's also 2,946. On the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 north side of Ingraham, there's 1203, which is 2,578;
2 there's 1207 and 9, which have been combined into one
3 lot. And that is 5,156, although it does have two row
4 houses sitting on it. And the last one, 1205
5 Ingraham, is 2,578; which is the same as -- I believe
6 the two on Jefferson are also -- yes. The two on
7 Jefferson are also 2,578.

8 COMMISSIONER JEFFRIES: So if -- I mean,
9 I didn't do any adding here, but if you just looked at
10 the parcels that face on to Ingraham, I mean, you
11 might be able to get about what 10,000 square feet?
12 I mean, I don't know. With the separation of this
13 alley here? That's an alley? Yes.

14 MR. MORDFIN: Yes. There is an alley
15 between Ingraham and Jefferson.

16 COMMISSIONER JEFFRIES: Okay. So --

17 MS. STEINGASSER: But -- but I think, with
18 regard to your concern about whether it precludes
19 effective retail --

20 COMMISSIONER JEFFRIES: Yes. That's what
21 I'm trying to get to.

22 MS. MCCARTHY: I think you can draw a good
23 analogy to the retail districts in upper Connecticut
24 Avenue where, if you thing about the parking lot
25 behind the -- what was the Riggs Bank, and is now PNC

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Bank at Connecticut, between Morrison and Livingston
2 or the parking lot behind the CVS at McKinley and
3 Connecticut, those parking -- and -- and there are
4 also similarly located -- parking lots in similar
5 situations around the Nebraska Avenue and Van Ness
6 areas.

7 Those parking lots are residentially
8 zoned. They're permitted to be used for -- as
9 accessory parking for retail uses through a special
10 exception. The effect that that has is it allows
11 those retail uses to survive quite well, because they
12 have adequate parking in the rear.

13 It buffers the residential -- or the
14 commercial uses from the residential uses that
15 directly abut that. And it requires the owner of
16 those parking lots to come back to the BZA on a
17 periodic basis to make sure that those are operating
18 without adverse impact on the residential structures
19 that abut those commercial districts.

20 So, it's -- it actually, I think, could
21 end up working to the benefit of having -- you know,
22 it won't -- it won't get us a WalMart on Georgia
23 Avenue, but we probably don't want a WalMart on
24 Georgia Avenue at that point in time.

25 It will allow us to have neighborhood

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 serving retail like video stores and CVSs and banks
2 and dry cleaners with sufficient parking in the rear
3 and still not have an adverse impact on the
4 residential character of the neighborhood.

5 COMMISSIONER JEFFRIES: Yes. Yes, and --
6 thank you Ms. McCarthy. I -- I guess, you know, I
7 guess I'm from the school of -- of an anchor here and
8 there; some national retailer that, you know, really
9 helps draw to some of the neighborhood serving retail
10 and the Ma and Pa shops and so forth. And so, that's
11 the only concern I have about this. And I appreciate
12 your -- your comments about this. And I appreciate
13 your -- your comments about -- your comparisons to
14 Connecticut Avenue.

15 Well anyway, that's -- that's my concern.

16 CHAIRPERSON MITTEN: Can I just pick up on
17 that thread and maybe take it in a little bit
18 different direction, which is what is the land use
19 designation for the C-2-A zoning on Georgia Avenue in
20 the -- in the blocks 2930 and 2931 squares?

21 MR. MORDFIN: The land use designation on
22 the Generalized Land Use map?

23 CHAIRPERSON MITTEN: Yes.

24 MR. MORDFIN: It's for mixed use; a
25 combination of moderate density residential and low

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 density commercial.

2 CHAIRPERSON MITTEN: So, typically --

3 MR. MORDFIN: Are you sure? It's not?

4 CHAIRPERSON MITTEN: -- you guys give us
5 a -- a section of the map. So is -- so what you're
6 saying is that the lots in question that are proposed
7 for rezoning, those are moderate density residential
8 only, and then the C-2-A -- or, apart from those, the
9 C-2-A -- the remaining C-2-A would be mixed? Is that
10 what we've got?

11 MS. STEINGASSER: That's correct.

12 CHAIRPERSON MITTEN: And what about the --
13 what about the -- is that true in 2930 also? Is -- I
14 guess I'm wondering what's happening -- I understand
15 -- I -- I think I understand the picture in 2931. In
16 2930, we have the adjacent zoning is R-1-B.

17 MS. STEINGASSER: Right. And the reason
18 we went with R-3 is that it was more -- more
19 compatible with the character of the structure. I
20 don't know the history of this -- of 2930 to know why
21 that block of row houses is zoned R-1-B.

22 CHAIRPERSON MITTEN: Yes.

23 MS. STEINGASSER: You know, we did a very
24 quick report. We felt -- we felt that, based on the
25 neighborhood's desire to set this -- to have this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 brought to the Commission as an emergency, we felt it
2 was necessary to get a report to the Commission, but
3 we have not had a lot of time to do a lot of research
4 on the zoning in the neighborhood.

5 We could find some -- a map back to 1966
6 that did have some of the measurements on it. The
7 Comp Plan does identify the western side of Georgia
8 for moderate density residential and the eastern side
9 for the mixed use, and south of the alley, there's
10 also mixed use.

11 But recognizing the pattern in the R-3, we
12 just went with the R-3, requesting a set down for the
13 R-3.

14 CHAIRPERSON MITTEN: Okay. I'm just --
15 I'm just a little uncomfortable. And maybe the way to
16 deal with it is to set down R-1-B in the alternative.
17 I'm just wondering like why would you shove R-3 in
18 there on that particular square?

19 MS. STEINGASSER: It's just that they're
20 not -- they're not -- they're nonconforming to the R-
21 1-B standards. But then the alternative is a fine
22 solution while we -- it gives us a chance to look at
23 that full square and do some research.

24 CHAIRPERSON MITTEN: Okay. Anyone else?
25 Mr. Turnbull.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER TURNBULL: I just had a
2 question on going back to their logic. On square
3 2931, if there had been an alley connecting 1206 to
4 1209 similar to what's on the other side of the
5 street, would that then -- would you have remained --
6 would that area have remained a C-2-A; those lots in
7 there?

8 MS. STEINGASSER: I don't know,
9 Commissioner Turnbull. I -- that's a -- that's a hard
10 hypothetical to answer.

11 COMMISSIONER TURNBULL: I mean, I -- I
12 sort of see a pattern that develops on the other
13 street; that if you don't have an alley that's
14 parallel to Georgia Avenue, that area sort of remains
15 C-2-A, and then the rest of it beyond the alley
16 becomes -- is either R-3 or R-4.

17 MS. STEINGASSER: Yes. You're correct on
18 that point.

19 COMMISSIONER TURNBULL: I mean, here you
20 have an alley going the other way. It's perpendicular
21 to Georgia and it sort of breaks up the street rather
22 strangely there and makes it clear that you either --
23 you're either on Ingraham or on -- or on Jefferson.
24 And, I mean, is that the way you're looking at it?

25 MS. STEINGASSER: Well, we looked at it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and then we -- the first thing OP does with any kind
2 of zoning text -- zoning map amendment is go to the
3 Comprehensive Plan and make sure that it -- that
4 there's the not inconsistency standard.

5 And in this case, because this portion was
6 identified for moderate density residential, it did
7 not include these -- these mixed use striping that
8 happens south of here, and then again north.

9 We felt it was not inconsistent but, like
10 I said, we -- we only had like two to three days to --
11 to get this together.

12 COMMISSIONER TURNBULL: Yes.

13 MS. STEINGASSER: So we will be looking at
14 that. But I do see the -- immediately, the pattern
15 you're describing on the west side is quite different
16 in how that zoning line is distinguished.

17 COMMISSIONER TURNBULL: Well, yes. And
18 you can sort of see it almost wanting to try to
19 develop on the other side too. And even on the block
20 square 2930, this somewhat bigger parking area there.
21 But you sort of see a pattern developing where the
22 commercial is sort of, then you've got an alley, and
23 then residential goes beyond that. And I don't know
24 if that's part of your logic or what you're looking
25 at.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. STEINGASSER: It will be. Yes. It
2 will be what we'll be looking at, is -- is how the --
3 what are the natural boundaries of the commercial
4 versus the residential in here.

5 COMMISSIONER TURNBULL: Okay

6 CHAIRPERSON MITTEN: Anyone else?

7 COMMISSIONER JEFFRIES: And the emergency
8 is?

9 MS. STEINGASSER: I believe the
10 application was filed as an emergency because they had
11 missed the time -- filing deadline for the Zoning
12 Commission. We're proposing just a set down; which
13 would -- which would have its normal testing.

14 MR. BERGSTEIN: I also think the
15 petitioner was unaware of the set down rule which
16 would immediately apply the more restrictive R-3
17 zoning. Or actually, you're going to have to -- if
18 you do do that in the alternative, then the R-1 would
19 be what would be the set down zoning, unless you
20 specifically state that R-3 would apply instead.

21 CHAIRPERSON MITTEN: Okay. Well then, I
22 would move that we set down Case No. 06-07; which
23 would be a map amendment for lots 48, 49, 77, 78, 79,
24 and 94 in square 2931 to R-3, and would be a map
25 amendment for lots 73 and 74 in square 2930 to R-3 or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 R-1-B in the alternative.

2 MR. BERGSTEIN: Sorry. Is it your intent
3 that, with respect to those lots, that the R-1-B be
4 the processing zone for --

5 CHAIRPERSON MITTEN: Yes. Is there a
6 second?

7 VICE-CHAIRPERSON HOOD: Yes. I'll second
8 it.

9 CHAIRPERSON MITTEN: Mr. Hood.

10 COMMISSIONER JEFFRIES: Excuse me. Mr.
11 Bergstein, when you said the processing, do you mean
12 that would be the one that would be published and then
13 R-3 would be the alternative?

14 MR. BERGSTEIN: No. It would mean that,
15 with respect to those lots, that R-1-B is in the
16 alternative. If anyone were to apply for a building
17 permit during the pendency of this proceeding, the
18 Zoning Administrator would consider that R-1-B would
19 be -- was the zone district in place.

20 Under the set down rule, once you decide
21 to set down a zone district for hearing, and it's more
22 restrictive than the current zone district, then as a
23 matter of processing, any building permit applications
24 that are filed after today would be processed in, of
25 course, the more restrictive zoning.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON MITTEN: Any more discussion?
2 All of those in favor, please say aye.

3 ALL: Aye.

4 CHAIRPERSON MITTEN: Those opposed, please
5 say no. Ms. Schellin.

6 MS. SCHELLIN: Staff will record the vote
7 five to zero to zero to set down Case No. 06-07 as
8 discussed. And, let's see, Commissioner Mitten moved;
9 Commissioner Hood seconded; Commissioners Jeffries,
10 Parsons, and Turnbull in favor. And I just want to
11 confirm that all three of the cases that we've taken
12 hearing action on are rule making cases.

13 CHAIRPERSON MITTEN: Is the map amendment
14 a rule making, Mr. Bergstein?

15 MR. BERGSTEIN: I think in this instance
16 it is.

17 CHAIRPERSON MITTEN: Okay.

18 MR. BERGSTEIN: I mean, it's your -- it's
19 -- it could be read as either, but a map amendment can
20 be either a rule making or a contested case. In this
21 case, it's not being brought by the property owner.
22 It's being brought by citizens, in order to achieve a
23 variety of goals. And I think it's more appropriate
24 for you -- you can I think legally find it to be a
25 rule making proceeding.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: Okay. Okay. Does
2 anyone object to that being a rule making? Okay.
3 Okay. All three are rule makings. Thank you for the
4 clarification.

5 And the last case was -- which was really
6 on here just for us to be reminded is Case No. 05-02;
7 which, if you recall, we had taken -- I guess we had
8 taken proposed action on the case and the Office of
9 Planning was going to come back to us and we had said
10 we were going to take it up in February. So, it's a
11 status call.

12 MS. STEINGASSER: It is a status call.
13 And we apologize. Between the emergencies, we -- we
14 just kind of ran out of -- we ran out of time for the
15 mundane. So we will be getting that to you in March.

16 CHAIRPERSON MITTEN: Okay. I really -- I
17 think -- I think we'll have to take it back up in
18 March if we don't -- if we don't hear -- just because
19 it -- you know, people are hanging out there. So
20 let's all be committed to that. Thank you.

21 Okay. Now we're ready for Proposed
22 Action. And the first case before us for proposed
23 action is Case No. 05-36. And this is the proposal
24 for 200 K Street N.E., which is a PUD and related map
25 amendment. And we have a number of additional

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 submissions that we received in response to our
2 requests at the hearing. And then we had a
3 supplemental report from the Office of Planning. And
4 then we had a response from the Applicant. And we
5 have a proposed order, as well.

6 COMMISSIONER PARSONS: Madam Chairman, I
7 was unfortunately unable to attend the hearing on this
8 case and the next two cases. So I will not be
9 participating in those.

10 CHAIRPERSON MITTEN: Okay. I'm sorry
11 about that. But, would you like time to read the
12 record? Just kidding.

13 Are there comments, or shall I dive in?
14 Okay. There are a variety of things that I think we
15 need to talk about. And I'll -- I'll try and take
16 them in -- in categories.

17 One has to do with the affordable housing
18 proffer. We have a proposed covenant from the
19 Applicant. And the covenant seems to embody a lot of
20 what was being proffered. But the order itself does
21 not. So I don't know -- I really don't know what was
22 intended.

23 I think we have to get clarification on
24 what precisely is being proffered in the context of
25 the order. Because, if you'll note on page 28,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 condition number 8, and page 30, condition number 17,
2 certain aspects of the affordable housing proffer are
3 captured, but not all aspects of the affordable
4 housing proffer are captured.

5 There's also what was, in terms of -- we
6 -- we discussed, if you recall, with the Applicant the
7 distribution of the units within the project and the
8 size of the units relative to the market rate units.

9 The Applicant is proffering the affordable
10 units only on the lower and middle floors; not on the
11 upper floors. And the units are similar, but not
12 identical in size and they are generally somewhat
13 smaller.

14 If you recall, we had a discussion, I
15 guess it was last week, on inclusionary zoning, about
16 what -- what degree of variability we wanted to see in
17 terms of sizes when we were looking for comparable
18 size.

19 And I think all of this becomes especially
20 important, depending on how we view the -- the use of
21 the bonus density to achieve the proffered amenity at
22 the level that it's being achieved.

23 I appreciated the Office of Planning sort
24 of really taking a hard look at what was my concern,
25 which was that I -- I definitely don't want to see

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 applicants using the five percent bonus density that's
2 available to justify proffers.

3 In this case, I think, with the guidance
4 from the Office of Planning, we have -- we have a
5 situation where the Applicant is going above and
6 beyond the minimum, using that bonus to have an
7 amenity that's especially notable and sizeable.

8 And it's sort of in that context that I'm
9 also thinking about the fact that whether or not we
10 want full distribution of the affordable units
11 throughout the project and things like that. Because
12 we are -- you know, they are sort of taking it above
13 and beyond, so let's be fair about the minimums that
14 we've tried to establish in terms of seeking
15 affordable housing. So -- so there's that aspect of
16 it.

17 There's -- there's a couple of things that
18 they walk through in -- well, let me deal with another
19 issue first. In the list of amenities that start on
20 page 50 -- I'm sorry, it starts on page 11. It's
21 number 50, I'm sorry. That's where they -- that's
22 where they -- the letter A is what they've proffered
23 to us in the case, and so on. But that proffer of
24 affordable housing doesn't translate into a condition.
25 I think we have to be clear that that was their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 intent.

2 We have, on letter -- well, there's the
3 daycare center; which is captured in condition no. 18.
4 We have the green roof; which is the letter C on page
5 12; which is captured in condition no. 21, and perhaps
6 elsewhere.

7 But one of the things that troubles me
8 about the green roof is that, if you look at -- this
9 is now on page 30, condition no. 21, letter B, they're
10 asking for flexibility as to the size of the green
11 roof. So, on the one hand, they're proffering a green
12 room of a certain size, then they're asking for
13 flexibility. That doesn't comfort me.

14 Then there's the ground floor retail
15 height. There's the landscape central plaza which I
16 think there are -- it's -- it's -- the plaza itself
17 and the guarantees of public access, which they
18 elaborate in one of their submissions is again not
19 captured in the conditions.

20 When you get down, in terms of the
21 proffered amenities to -- this is on page 12, to
22 letter G, they're suggesting that the interim surface
23 parking for phase one residents is an amenity.

24 I would argue that that is not an amenity;
25 that is -- that offsets potential adverse impacts from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 not having the parking in place until the entire
2 project is completed.

3 So those are -- again, I think one is just
4 my view of the interim parking. The other is we're --
5 we're not seeing the nexus between the proffer as it's
6 described in the findings of fact and the conditions
7 that are, in fact, being proposed to us.

8 And then there's a couple of -- of --
9 well, there's one issue, I guess, that I would like to
10 raise that the Office of Planning had recommended to
11 us that I think is worthwhile; which is in -- this is
12 in -- on page 18 in finding of fact 60. I'm sorry.
13 That's not right. Page 16, finding of fact 59, which
14 is that the Office of Planning had recommended that,
15 for the -- for the first stage PUD, that when they
16 come back for second stage, that they would study the
17 height issue and submit an alternative that shows a 90
18 foot building height along K Street with a setback at
19 40 feet.

20 And I'm -- that's actually something that
21 I'd be interested in. Because as you can see from our
22 additional submissions, you know, these buildings are
23 going to be quite high. And I think, especially along
24 K Street where it's facing single family dwellings to
25 the south, I know that the issue is not necessarily

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 shadows; I think it's just massing. But that is
2 something I'd like to have revisited. The Applicant
3 is suggesting that that's something that they don't
4 want to do. So those are just kind of a -- a dumping
5 of the issues that I -- that I saw as outstanding.

6 COMMISSIONER JEFFRIES: Yes. Madam Chair,
7 I had some difficulty getting through a lot of this
8 because it was just hard to -- there were certain
9 things in certain places and I couldn't get everything
10 sort of on that one page. And I think, you know, a
11 lot of what you've said is really captured that.

12 All right. I have a question for the
13 Office of Planning. Is the whole notion -- I'm trying
14 to -- and I don't have the -- their hearing statement.
15 But I'm trying to get a sense. What was the increased
16 -- what's the increased density that they're giving to
17 this PUD? What's the matter of right versus -- I'm
18 just trying to get the deal to.

19 MR. COCHRAN: Okay. The -- because
20 they're a split zone, the blended matter of right FAR
21 would be 5.4. And they're asking for 8.4. So they're
22 getting an additional three FAR, if you grant that.

23 COMMISSIONER JEFFRIES: Okay. Which
24 translates into what kind of FAR -- I mean square
25 footage?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. COCHRAN: Well, let's see. Matter of
2 right would be 540,700. They're looking at 849,338.

3 COMMISSIONER JEFFRIES: Okay.

4 MR. COCHRAN: So roughly 300,000 -- three
5 FAR and three and some change -- 300,000 and some
6 change in square footage.

7 COMMISSIONER JEFFRIES: What was -- what
8 was your concern about the height? What -- I mean --
9 sorry. What's -- what's your thoughts about what's
10 being proposed here in terms of height, at this 130?

11 MR. COCHRAN: We just --

12 COMMISSIONER JEFFRIES: Given the context
13 --

14 MR. COCHRAN: Do you mean what our
15 suggestion about the 90 foot along K Street?

16 COMMISSIONER JEFFRIES: Yes.

17 MR. COCHRAN: Okay. We understand that
18 the -- that the PUD has -- and, in it's previous PUD's
19 condition, had a long history of being approved at 130
20 feet along Second Street. However, we've listened to
21 the neighborhood. Although they haven't voted to say
22 anything about the height along K Street, there was
23 some concern about trying to step down from Second
24 Street to Third Street. That's also one of the
25 concerns about the -- the NoMA Plan that is now being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 developed.

2 So we were looking for something that
3 made, in effect, a genuflection to the idea of
4 continuing the step down. The 90 foot height would be
5 only to a 40 foot depth. Then it would go up
6 presumably, in what we were asking for, to 130 feet.
7 But there would at least be a uniform line maintained
8 with the 90 foot height that is part of the
9 consolidated PUD.

10 And we were simply asking the Applicant to
11 look at some sort of amassing study or design that
12 could do that. It's possible that the Applicant might
13 come back with something where there are bays at
14 certain parts of the design that maintain the 90 foot,
15 and then you have the wall rising behind it that goes
16 straight to 130 feet.

17 We didn't want to design the building for
18 them. We just wanted to see what the -- what it would
19 look like and what the impact would be on the project
20 if they tried to maintain a lower height for a certain
21 depth along K Street.

22 COMMISSIONER JEFFRIES: So, was the --

23 MR. COCHRAN: And not necessarily even all
24 of K Street.

25 COMMISSIONER JEFFRIES: Okay. So was the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 driver just really the recommendations of this step
2 back from the NoMA review? Or -- I mean, and -- and
3 when did that occur?

4 MR. COCHRAN: First, we heard certain
5 community opposition that didn't get formalized. But
6 we certainly got a -- you know, a few phone calls; a
7 few e-mails. And then, the other thing is just the
8 consideration that's been coming up through the --
9 through the NoMA study; which didn't really come about
10 until the Fall. Which that would have been towards
11 the end of the previous PUD process.

12 COMMISSIONER JEFFRIES: Okay. And let me
13 -- how does this -- how does the height and the bulk
14 -- the density of this project jive with the Senate
15 Square; the Abdow Project? First of all, how far is
16 that from this location?

17 MR. COCHRAN: One full block north of it.
18 There's a -- there's a square to the south that has a
19 small street that runs east/west. And those are
20 generally small row houses in there. And Senate
21 Square is a full square to the south of the
22 Applicant's site.

23 COMMISSIONER JEFFRIES: So, if you were to
24 do a bird's eye view, volumetric, and look at this
25 universe, between what's being proposed at 200 K and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Senate Square, I mean, does this -- this project look
2 out of line in terms of height?

3 MS. MCCARTHY: The maximum height on
4 Senate Square is 110 feet. Right? On the new
5 construction?

6 MR. COCHRAN: I'm not sure. I -- I didn't
7 bring those -- I did not bring those with me.

8 MS. MCCARTHY: I believe the maximum
9 height is 110 on the -- on the new construction. And
10 then there's historic buildings which are 50 or 60.

11 COMMISSIONER JEFFRIES: Why am I
12 remembering 118 with some roof -- with some roof
13 embellishments or something. I don't -- I don't
14 recall. Okay. But whether it's 110 or 130, I'm just
15 trying to get a sense of the height that is being
16 introduced in this area and with this project sort of
17 appear.

18 MR. COCHRAN: The 130 feet, obviously, is
19 congruent with the way that the case had been for so
20 long in it's previous iterations. It's also congruent
21 with what you can get just across the tracks in the C-
22 3-C zone.

23 COMMISSIONER JEFFRIES: Thank you.

24 CHAIRPERSON MITTEN: Anyone else? Mr.
25 Turnbull?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER TURNBULL: Madam Chairman, I
2 just had -- getting back to the height issue. In
3 looking at the recent drawings, my -- my concern, and
4 it depends on the latest, if I look at some other --
5 other elevations, actually reveal that the height
6 along Second Street almost to be about 143 feet.

7 And it looks like they're measuring back
8 from the Consolidated PUD grade, back on Second.
9 Which, to me, I think is disingenuous to what you're
10 trying -- to what you're actually looking at.

11 And I think it -- it really -- it really
12 speaks that it's really even a larger project. It's
13 got another floor -- we -- we thought we were going
14 lower and getting the 14 floors. It looks like that
15 that really hasn't gone away. That it's really there.
16 And it's still 15 floors.

17 So I -- I -- yes. But I mean, I don't
18 know if you've looked at the recent elevations. But
19 it's -- the measurement is not longer 130 feet from
20 grade, as it showed on the original submission. It's
21 130 feet from a point somewhere measured from --
22 either on Second Street or further down the road.

23 So you've really got another 14 foot,
24 three inches that you're adding on to the 130 feet.

25 MR. COCHRAN: Did you want me to address

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that?

2 COMMISSIONER TURNBULL: Yes.

3 MR. COCHRAN: Okay. With -- let me start
4 with what actually seems to be the easier part. And
5 let me also ask Jennifer -- Senate Square goes up to
6 100 and what feet? Do you remember? Okay. I'm
7 sorry.

8 With respect to the number of stories, you
9 -- you asked for the Applicant to -- to take the
10 building down to 14 stories. It's 110? Okay. Okay.
11 Yes. Senate Square's 110, so this would be taller
12 than Senate Square.

13 It does appear that, unless we're using
14 the European system of counting floors, where the
15 second floor is the premier eatage, it does appear
16 that the Applicant build -- Applicant's building would
17 count at 15 floors, if you were looking at it from
18 Third Street in the new drawings. Excuse me, from
19 Second Street in the new drawings.

20 The Applicant has taken the measuring
21 point of I think it's roughly 56 feet where they
22 measured the height over on Third Street and brought
23 that across the site to Second Street, and then said
24 there are 14 stories above that.

25 There is a full story plus a few feet.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 It's roughly, I think, 13 feet below that measuring
2 point that certainly to a typical person not trained
3 in all of the ins and outs of zoning would look like
4 a story.

5 Now, with respect -- so that's one thing.
6 Because stories are different that -- than height. If
7 you're actually measuring the height, there seem to be
8 a history. Certainly, we've gone back to a -- an --
9 a corporation counsel ruling back in 1950, where you
10 measure -- you can measure the zoning height at one
11 point, but then -- so that you establish a class of
12 buildings -- a class of height, rather than the
13 building goes into for Height Act purposes and for
14 Zoning Regulation purposes.

15 And then, there's another provision that
16 allows you to determine where you're actually going to
17 measure your height from. Section 5 of the Height Act
18 establishes this class of buildings that allows you to
19 get to 130 feet; and it defines it as being determined
20 by the width of the street, except -- unless something
21 isn't on a business street.

22 In this case, K Street is 147 feet wide;
23 which clearly indicates that a building could get into
24 the class of buildings that would be 130 feet. Then,
25 in Section 7, you get into well how is it going -- how

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 is that height actually going to be measured?

2 It says that you measure it from the
3 street that would give the greater height. In this
4 instance, the Applicant, it seems to us, is free to
5 choose which street would give the Applicant the
6 greater height; which would be Third Street. You take
7 the midpoint on Third Street and there you are at 56
8 in height.

9 We've seen this several times around the
10 city where you have different measuring points for
11 different purposes in the city. We can even go back
12 to the predecessor law to the 1910 Height Act; which
13 was one that was around in I believe it was 1899;
14 where they said you measure -- you can then, after
15 you've determined how high your building -- what class
16 of height your building's going to be in, then you can
17 go ahead and choose to measure it from wherever you
18 have the steepest grade. Which clearly indicates
19 they're giving the advantage to somebody to choose
20 different points for different purposes.

21 CHAIRPERSON MITTEN: Is there a -- do you
22 have any difference of opinion with the Applicant
23 about the -- about the manner in which they've
24 measured?

25 MR. COCHRAN: As far as height? No.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: Right.

2 MS. DICKENS: As far as stories, probably.

3 CHAIRPERSON MITTEN: Okay. So -- so we
4 don't have any difference -- we don't have any
5 difference of opinion about how the Height Act has
6 been interpreted?

7 MR. COCHRAN: Within the District
8 government, no we don't.

9 CHAIRPERSON MITTEN: Do you have any --
10 and do we --

11 MR. COCHRAN: And with the Applicant, we
12 don't.

13 CHAIRPERSON MITTEN: We don't? Okay. So
14 the issue then, I take your point about the number of
15 stories, is another matter -- or may be another
16 matter. But, technically speaking, they're within
17 their maximum.

18 Now the Zoning Commission is free to
19 reduce from maximum -- what's maximum permitted, in
20 the context of a PUD, if you have an issue with the
21 height overall.

22 COMMISSIONER TURNBULL: Oh. I guess -- I
23 guess I'm just hearing one thing, but I'm also hearing
24 that they have a concern on K Street with height. And
25 I'm wondering how that plays, looking at how they're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 measuring height from that standpoint to what your
2 concerns are on K Street and how you see 90 feet,
3 relating to --

4 MR. COCHRAN: The Office of Planning's
5 concern with height on K Street does not have anything
6 to do with the Height Act. It has to do with how does
7 the building fit in.

8 COMMISSIONER TURNBULL: I'm not worried
9 about the Height Act.

10 MR. COCHRAN: Okay.

11 COMMISSIONER TURNBULL: I'm talking about
12 your concern about height and how you see the height
13 of the building relating along K Street.

14 MR. COCHRAN: We would like to see more of
15 a transition from the 130 foot height on Second Street
16 over to the height that extends back within the
17 Consolidated PUD of 90 feet from the corner of Third
18 Street back in. So we would like to see the phase two
19 --

20 COMMISSIONER TURNBULL: So you're saying
21 the 90 feet as measured from Third Street, carried
22 along K Street elevation?

23 MR. COCHRAN: I'm sorry. I -- I didn't
24 understand your question.

25 COMMISSIONER TURNBULL: If the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Consolidated PUD that's right now on K Street and
2 Third is at 90 feet.

3 MR. COCHRAN: Yes.

4 COMMISSIONER TURNBULL: As measured from
5 that intersection; that corner -- wherever that is --

6 MR. COCHRAN: Yes.

7 COMMISSIONER TURNBULL: You'd see that
8 being carried all the way along K Street? That would
9 be your druthers?

10 MR. COCHRAN: We would -- no. We would
11 like to see a design study.

12 COMMISSIONER TURNBULL: Okay.

13 MR. COCHRAN: We don't feel that we have
14 enough information to actually make a firm
15 recommendation.

16 COMMISSIONER TURNBULL: Fine.

17 MR. COCHRAN: We would like to see it
18 explored.

19 COMMISSIONER TURNBULL: Thank you.

20 CHAIRPERSON MITTEN: Well, and just to
21 flesh that out, I think, to the extent that the
22 Commission feels that that's worth doing, I think it's
23 better to put the Applicant on notice in this context,
24 then to have them come back with a second stage
25 submissions. And then say it, after they're down the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 road. So, you know, that's why we need to decide if
2 that's something that's going to be included.

3 MR. COCHRAN: But I would like to
4 emphasize that it's not -- we're not even saying you
5 have to study it for anything more than the first 40
6 feet in depth.

7 CHAIRPERSON MITTEN: Correct.

8 MR. COCHRAN: Okay.

9 CHAIRPERSON MITTEN: Thank you. Well,
10 where I'm at is we need -- I don't know -- I don't
11 know how to approach it exactly. I think what we need
12 is -- based on what we have, the order that we have in
13 front of us, there -- we -- we're not getting the
14 connection between what's been articulated as the
15 proffer and what the Applicant is binding themselves
16 to through the condition.

17 We had -- when I had asked -- I think it
18 may -- it was -- perhaps it was me, in asking for the
19 covenant, I had asked for the mechanism by which they
20 would enforce the affordable housing restrictions, but
21 I didn't -- that wasn't a substitute for it. I just
22 wanted to be clear about that.

23 So, what I would suggest is, based on the
24 comments that we articulated, and I'd like to hear a
25 couple of other people about the distribution of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 affordable units and so on, is we need some
2 clarification, and we can take this up at a special
3 public meeting, but we need some clarification between
4 -- about the proffer that's related to the public
5 plaza and the functionality of that and whether it's
6 going to be gated or how it will be open to the public
7 an so on.

8 We need -- we need more specificity in the
9 conditions about the affordability restrictions; how
10 long they'll last, what degree of affordability is
11 being offered; the number of units, and so on.

12 I, for one, need -- now need some
13 clarification about what exactly the green roof
14 proffer is, because they're asking for flexibility on
15 size without any limitation as to how low it could be
16 reduced. And I certainly would want to push for the
17 inclusion of the design study that the Office of
18 Planning had suggested.

19 I don't know where other people are, but
20 that's where -- that's where I think we need to be.
21 Because, otherwise, we're imposing on the Applicant
22 things that perhaps they are not, in fact, proffering.

23 VICE-CHAIRPERSON HOOD: Madam Chair, I
24 think the -- when you mentioned about the affordable
25 housing component, you weren't necessarily asking for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a separate agreement, were you? Or it should have
2 been specified or talked about here in the order or
3 the decision.

4 CHAIRPERSON MITTEN: Well, among the
5 things that they need to articulate is if they're
6 proffering a covenant, it's that they need to say that
7 they will enter into a covenant, a copy of which is
8 attached, but they -- we need to have in our order the
9 number of units that will be affordable; the degree of
10 affordability that's being offered; how long the
11 affordability period will last; and then, the last
12 piece of that is and what's the mechanism for insuring
13 that the affordability remains in place during the --
14 the period that it's intended to apply.

15 VICE-CHAIRPERSON HOOD: The only other
16 thing. Thank you for clarifying. The only other
17 thing I'll mention that's in the order on page 13; it
18 talks about the plaza will be open to the public from
19 11:00 a.m. to 7:00 p.m.; and that's accessible through
20 a gate. But I'm wondering what are the hours for the
21 Union Place residents. Is it 24/7? You know, I don't
22 think that's spelled out. And I'm not sure if that
23 was even mentioned during the hearings.

24 I thought it was open from 11:00 a.m. to
25 7:00 p.m. for everybody. But obviously, the way it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 written here in the order, after 7:00 p.m., it's still
2 open to the residents. Which is okay, but I think we
3 need to narrow that scope down at some point. Is it
4 24 hours, or what?

5 CHAIRPERSON MITTEN: Well, and -- but, to
6 take -- your point's a good one. But also then,
7 what's -- that was what was articulated as what was
8 being proffered as what you just read from Page 13,
9 letter E. But that was not offered as a condition.

10 So, you know, we need to be clear. What
11 is it that the Applicant is intending to encumber
12 themselves with. So I think that your point could be
13 clarified if they -- if they expand on the conditions.

14 VICE-CHAIRPERSON HOOD: The conditions.
15 Okay.

16 COMMISSIONER JEFFRIES: Okay. So, I mean,
17 Madam Chair, what's -- I mean, we're dealing with some
18 process; some -- you know, we're trying to, you know,
19 have the delineated correct information so we're clear
20 about what's being proffered so that we can actually,
21 you know, make an opinion -- make a decision here.

22 CHAIRPERSON MITTEN: Yes. Right.

23 COMMISSIONER JEFFRIES: I guess what I --
24 I do want to, you know, make clear. I just want to
25 understand from the rest of the Commissioners, I mean,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 how do you feel about some of the more substantive
2 issues around, for example, height?

3 I mean, Madam Chair, I think I understand
4 where you are. But I would like to get a sense from
5 the other Commissioners about some of the larger
6 aspects of this. Because, I mean, I'd like to see
7 this thing get put to bed sooner or later. I know we
8 all do. And I haven't even been dealing with it as
9 long.

10 But I just want some clarity here. So I
11 just want to get a sense from, you know -- and I think
12 I perhaps know where Commissioner Turnbull is. But I
13 just -- some of the substantive issues tied to this
14 PUD I'd just like to hear from -- from you so that,
15 you know, the Applicant is here; they have something
16 to go with.

17 CHAIRPERSON MITTEN: Are you lacking in
18 clarity about how I feel about the height issue?

19 COMMISSIONER JEFFRIES: I am never lacking
20 in clarity from where you stand, Madam Chair.

21 CHAIRPERSON MITTEN: Okay. So, it's down
22 to you guys. He'd like to hear something from you.

23 COMMISSIONER TURNBULL: Well, I think
24 you've expressed a lot of the concerns that we've all
25 had. And I think we do need more information. And I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 would back the Chairman for asking for that
2 information so that we could make a better -- at least
3 understand more clearly, what -- what is being offered
4 and what we're -- what we're agreeing to.

5 VICE-CHAIRPERSON HOOD: The only think I
6 would add to that, and this may sound kind of
7 contradictory, but as far as the information that we
8 get, and I would like sound bite information, let's
9 get right to the point.

10 I'm not -- I mean, this is a lot of work
11 that went into the submittals. If we can get to that
12 point, that makes it a lot easier for the
13 Commissioner, since you asked.

14 Normally, nobody asks me for my opinion.
15 But since you asked, I would say to the Applicant,
16 from my standpoint, I mean, you're going to do what
17 you have to do to get your case across, but if you
18 making a sound bite information, this is well -- it's
19 well done and documented to a point. But it's -- it's
20 -- I'm not going to say it's all over the place.

21 But, for example, we talked about the
22 agreement about affordable housing. It could have
23 been in the order, as opposed to a separate agreement;
24 if I understand where the Chair is coming from. Then
25 that way I know to look in one place.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: Well, it doesn't bind
2 the Applicant if it's not in the order.

3 VICE-CHAIRPERSON HOOD: Not in the order.
4 Right.

5 CHAIRPERSON MITTEN: It's not in the
6 conditions of the order. It's one thing to put it in
7 a finding of fact. It's another thing to put it in
8 the conditions.

9 I think, by and large, what we're looking
10 for is a revised decision part. So pages -- page 26
11 and following, that's where we need additional work
12 done, by and large. We still have the issue about
13 doing the study on the height for the second stage --
14 the second stage component of the PUD. And we can
15 debate that further when we, you know, when we take a
16 final vote.

17 I think, just to -- just to put my own
18 views out there about the one other significant
19 substantive issue that I see; which is about the
20 distribution of the affordable units, and so on, is I
21 think, and I feel very strongly about this, especially
22 because they're using the bonus FAR to achieve this --
23 this amenity, is that we should have full distribution
24 of the affordable units throughout; and that we expect
25 that, consistent with what we voted on IZ last week,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that there be a sort of maximum degree of variability
2 in unit size of five percent -- no -- so the
3 affordable units can be no smaller than 95 percent of
4 the comparable market rate unit. So that we -- so
5 that we start to sort of establish these as baseline
6 standards for affordable housing proffers. That's
7 what I would like to encourage.

8 COMMISSIONER JEFFRIES: And my fellow
9 Commissioners, I mean, that's sort of what I was
10 trying to get to. I mean, I clearly -- I think we all
11 understand that there needs to be greater, you know,
12 clarity in terms of what's being proffered.

13 My questions was really around -- even
14 beyond that. I mean, as Madam Chair just spoke about,
15 you know, she's concerned about, you know, just how
16 the affordable units will be allocated within the
17 building. I mean, that's -- that's sort of a
18 substantive issue around this -- this application.

19 And that's what I was getting to. I mean,
20 I also understand the sense of height -- there's
21 concern of height. I was just trying to get some
22 sense about how you feel about the more substantive
23 issues of this application that perhaps the Applicant
24 can look at. So it's not just about the Applicant
25 going back and being very clear about what's being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 proffered, but they also have some sense about where
2 the Commission is moving in terms of this; the merits
3 of the application. That's all I was going for.

4 VICE-CHAIRPERSON HOOD: Well I will tell
5 you that I think the Chairperson early on, when she
6 first started her comments, I would have to associate
7 myself with her to a point.

8 I don't know if I necessarily agree right
9 yet on the distribution and I got to -- we've got to
10 revisit that. And I'm sure, at the proper time, we'll
11 discuss that. Especially, I want -- we want to be
12 consistent in what we're doing with the IZ and others.

13 But I don't know quite yet on this case if
14 I'm there with her yet on that. But I think she
15 expounded on a number of issues which -- which would
16 be good for acting on. And I really don't have a lot
17 of these. I just need to see it, from my standpoint,
18 in a specific area or place, if you follow me.

19 COMMISSIONER JEFFRIES: Well, let me add.
20 I -- for me, you know, I am absolutely, as many people
21 know, a strong supporter of as much housing as
22 possible in the District. And so, I am -- am not at
23 all bothered with the -- the 130 foot height.

24 I do think it would be a good exercise for
25 the Applicant to take a look and see what happens with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 90 feet along K Street. But given the -- from what I
2 gather, some of the proffers that are going to come
3 from -- from this application, once we get clarity on
4 that, I would be comfortable with the height.

5 I do share Madam Chair's concern about
6 disbursement of the affordable units. Again, I am
7 very concerned about segregating units within the
8 confines of the building. You know, I'd just like to
9 see -- and perhaps maybe different parts of the floor.

10 I don't know how to do this. And I
11 clearly understand the economic issues, but I -- I
12 don't want it to be understood in the building that,
13 you know, the affordable -- the affordables live on
14 floors one through five. I mean, I -- I don't think
15 that really is in the spirit of what we're trying to
16 do.

17 And then also my other issue is this park
18 and I really need to understand, with clarity, as to,
19 you know, how this is going to be a proffer to the
20 overall community. The general context of this
21 project as well as the -- the actual residents. I
22 just need clarity on that piece.

23 And that's because I think that's a very,
24 very important proffer. I mean, given all of the
25 density that's going up and so forth, I think it would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 be wonderful to have a very nice green space, but I
2 need to be very clear that -- I need to understand
3 sort of, you know, how that is being -- how that
4 benefit is going to be shared; not only for the
5 residents, but those outside.

6 So that's my input.

7 CHAIRPERSON MITTEN: Thank you, Mr.
8 Jeffries. Anyone else? What I'd like to suggest that
9 we do then is -- and we may have a couple of cases to
10 put on, but that we schedule a special public meeting
11 for the 23rd before our hearing; which is ten days
12 from now, is our next hearing night. And then, if the
13 Applicant has made additional submissions by then we
14 could take this up and anything else that might carry
15 over.

16 So I know that they were -- there was some
17 sense of urgency related to this case. So we could
18 just keep things moving and not lose any significant
19 amount of momentum.

20 VICE-CHAIRPERSON HOOD: Madam Chair, I'm
21 looking here at the title. This is the first -- we're
22 in the first stage with this?

23 CHAIRPERSON MITTEN: There's a
24 consolidated portion and a first stage portion.

25 VICE-CHAIRPERSON HOOD: First state. Now

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the height issue's on the -- that's the first stage?

2 CHAIRPERSON MITTEN: The height issue is
3 on the first -- I mean they both have --

4 VICE-CHAIRPERSON HOOD: So we can revisit
5 that --

6 CHAIRPERSON MITTEN: Correct.

7 VICE-CHAIRPERSON HOOD: At a later time.

8 CHAIRPERSON MITTEN: And that was the
9 point of debate was the Office of Planning was sort of
10 suggesting that we require a study when they make
11 their second stage submission to show us what's 130
12 feet look like, as they have shown us and what does
13 130 feet look like with a 90 feet set back up to, you
14 know, 40 feet of depth? What does that look like? So
15 that we could compare those at that time.

16 VICE-CHAIRPERSON HOOD: All right. Thank
17 you.

18 CHAIRPERSON MITTEN: Okay. So we'll defer
19 this pending some additional information from the
20 Applicant until the 23rd at 6:00 p.m.

21 The next case is Case No. 05-18, which is
22 the Hope 7 Monroe Street limited partnership.

23 COMMISSIONER JEFFRIES: Madam Chair, I
24 won't be participating in this one.

25 CHAIRPERSON MITTEN: Okay. Oh, that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 right. Okay. If you want to go keep Mr. Parsons
2 company, I'm sure he'd appreciate it.

3 Okay. This is -- if you'll recall, this
4 is for a planned unit development at 1020 Monroe
5 Street. It's called the Sage.

6 The challenge here is a little bit
7 different than the challenge in the last case; which
8 is, it's certainly in an Applicant's prerogative not
9 to submit a proposed order. But we don't have draft
10 proposed conditions, so that we don't have -- we don't
11 have a formal statement from the Applicant about what
12 their amenities are and then the conditions that would
13 bind the Applicant.

14 So we're going to need that. Otherwise,
15 we'll have to make them up. And it's not our -- it's
16 not our job to make up what the proffer is. So we're
17 going to need an additional submission from this
18 Applicant also before we can take this up.

19 Did you want to say something, Mr. Hood?

20 VICE-CHAIRPERSON HOOD: Can we encourage
21 them to maybe give us a proposed order. I mean, just
22 encourage them, if possible. I think we did that in
23 the past.

24 CHAIRPERSON MITTEN: Well, it would
25 certainly expedite getting the order published if they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 -- if they do that.

2 VICE-CHAIRPERSON HOOD: Yes. You may want
3 to do that to speed it along.

4 CHAIRPERSON MITTEN: Yes. I just wanted
5 to comment on a couple of things. One is that I -- I
6 tried to read this carefully so if it's -- if it -- if
7 it's articulated in this agreement and I just don't
8 see it, then somebody should just point it out to me.
9 And I don't know if the Office of Planning has any --
10 any information on this.

11 But I read what they had -- they had said
12 that the agreement with the Tenants' Association was
13 what bound them to this affordability requirement.
14 And I don't see that in the agreement. But, as I
15 said, I would be happy to have it pointed out to me.
16 But I tried to read it carefully.

17 So that remains an outstanding question,
18 at least in my mind. And then the other thing that I
19 guess I would caution them about when they -- when
20 they proffer whatever the amenities are is, because I
21 remember that we were -- that we discussed that they
22 were suggesting that offering office space to the ANC
23 was going to be an amenity.

24 But the proposed terms that they've
25 suggested at \$30.00 per square foot, triple net, don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 strike me as any kind of bargain. So I'd just be
2 curious about why that's considered to be an amenity.
3 But, primarily what we need to see from them is a
4 written list of what are their stated amenities and
5 what are the conditions that they're proposing for the
6 order.

7 And if there's any -- any other issues
8 that anyone would like to point out? Any other?
9 Okay. So we'll put that on. If they can get us a
10 response, we'll put that on for the 23rd as well, at
11 6:00 o'clock.

12 MS. SCHELLIN: You haven't set any kind of
13 deadline for the filing, so are we going to set any?

14 CHAIRPERSON MITTEN: That's a good point.

15 MS. SCHELLIN: Because usually the
16 packages go out on Wednesday, which is in two days for
17 anything the following week. So -- otherwise, you're
18 not going to get it until the night of.

19 CHAIRPERSON MITTEN: Yes. We need it
20 earlier than the night of, but I don't expect we're
21 going to be getting a lot of information. So why
22 don't we say it would have to be in by Monday, the --

23 MS. SCHELLIN: That's a holiday.

24 CHAIRPERSON MITTEN: Oh, that's a holiday.
25 Okay. Then how about Tuesday? It would give us two

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 days to read.

2 MS. SCHELLIN: Okay.

3 COMMISSIONER JEFFRIES: Madam Chair, if I
4 can just say this. After this, I was looking here
5 again. I remember seeing a reference of the upgrade to
6 the school; the electrical upgrade. It just says --
7 or what he submitted, unless I missed it, electrical
8 upgrade for the school building.

9 I just think it needs to be -- even though
10 it says it up here at the top, Harriet Tubman, but
11 electrical upgrade to the school building is just left
12 like that. And I'm just saying that so you can kind
13 of understand where we need to be more specific and in
14 tune to -- electrical upgrade for Harriet Tubman
15 School building, even though it's up here at the top,
16 I think it should be in that sentence if he's going to
17 bring it back in.

18 CHAIRPERSON MITTEN: Yes. Either that or
19 we'll have to convert it to explicit text. But it
20 would be better if we're not supposing what they mean
21 and they just write it out.

22 MS. SCHELLIN: Madam Chair, can we just
23 make the filing deadline 12:00 on Tuesday. The reason
24 is because if we -- we have to allow time for the
25 courier to get it to others to allow you two days to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 review.

2 CHAIRPERSON MITTEN: That sounds okay.

3 MS. SCHELLIN: So 12:00 o'clock noon.

4 CHAIRPERSON MITTEN: 12:00 on Tuesday, the
5 21st. Yes.

6 MS. SCHELLIN: The 21st.

7 CHAIRPERSON MITTEN: Okay. Dog Boarding,
8 which is Case No. 05-21. Oh, Mr. Jeffries should
9 probably come back, I think. He's not on Dog
10 Boarding.

11 I don't know if I said it already, but
12 this is Case No. 05-21. I would like to thank Andrea
13 Doughty, Chris Stone, Linda Welch, and Joan Ferraris
14 for giving us a very -- what I think is a really good
15 refinement of the text that we had asked them to help
16 us with at the -- during the hearing because there
17 were issues that they were raising that were sort of
18 things that hadn't really been, I think, fully
19 considered.

20 So, what I'd like to do is rather than use
21 the -- well, I guess we have to use both. We'll have
22 to use the public hearing notice, but also I'd like to
23 make reference to their suggested language for certain
24 sections; which would be Section 735 and 736; which is
25 attached to their December 5, 2005 letter to us.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Because it -- I think it just kind of -- it -- it --
2 as I said, refines some of the things that we were
3 trying to deal with in terms of noise and odor and so
4 on.

5 So, what I would like to suggest is let's
6 just start with the public hearing notice and we'll
7 kind of work back and forth.

8 So the first thing in the public hearing
9 notice was the definition of animal boarding. We had
10 advertised dog boarding. And I just don't know what
11 folks feel about what's been suggested by the group
12 that I just mentioned in their December 5th
13 submission.

14 They basically -- there's a couple of
15 important differences. One is that we were making a
16 distinction between animal boarding and these other
17 animal related uses, which were veterinary hospital,
18 pet shot, and animal grooming or pet grooming
19 establishment. And we're going to have another case
20 that deals with those, right Mr. Mordfin?

21 MR. MORDFIN: Yes.

22 CHAIRPERSON MITTEN: Okay. So, they
23 extracted that out and were dealing with that in this
24 -- in this letter; which I'm just going to suggest we
25 set aside the definition of animal grooming and then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the section that they had proposed, we'll set that
2 aside to have the discussion in a new case.

3 But, in defining animal boarding, they
4 suggested that it would be any premises other than a
5 veterinary hospital or pet shop; and then they go on
6 to say animal. They have a separate definition for
7 animal grooming.

8 We had originally advertised any premises
9 other than a veterinary hospital, pet shop, or animal
10 grooming establishment; which I think we need to
11 retain. I think we need to retain that language.

12 Then, at the end, they had added animal
13 boarding includes any animal grooming premises at
14 which ten or more animals are on the premises at any
15 time. I think the notion being that you can only
16 groom so many animals and sort of -- it's getting into
17 sort of more of a care taking establishment.

18 I don't know how you feel about that --
19 about including that at this point. Or if you want to
20 take that up again when we have the -- have we set
21 down the other case? I can't remember.

22 MR. MORDFIN: The --

23 MS. STEINGASSER: It was set down last
24 month.

25 MR. MORDFIN: Yes. Yes. It was set down.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. STEINGASSER: It hasn't been scheduled
2 yet. But it has been set down.

3 CHAIRPERSON MITTEN: Okay. So I don't
4 know how people feel about adding that language about
5 ten or more animals on the premises.

6 COMMISSIONER JEFFRIES: I don't -- I --
7 I'm supportive of that. I mean, I do think that so
8 many of these establishments, you know, taking on
9 three or four different uses under the guise of one.
10 So, to the extent that we can just limit the number so
11 that that prevents them from, you know, again using it
12 as like doggie daycare.

13 CHAIRPERSON MITTEN: Okay. What do you
14 guys thing about that?

15 VICE-CHAIRPERSON HOOD: I'm not too
16 familiar with that. But are we put -- are
17 handicapping -- I guess, not holding the dog over
18 animals. I don't know. But are we handicapping these
19 establishments with saying that? I guess that's where
20 I would have a pause. I don't know.

21 CHAIRPERSON MITTEN: Well, keep in mind
22 this is proposed action. It's going to be advertised
23 again for people to comment.

24 VICE-CHAIRPERSON HOOD: Okay.

25 CHAIRPERSON MITTEN: It's probably better

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to put it in, you know, to the extent we're
2 entertaining it and see.

3 VICE-CHAIRPERSON HOOD: Put in anyway.

4 CHAIRPERSON MITTEN: Okay. So, what would
5 happen then is, relative to what we advertise, the
6 second sentence of what we advertised would be
7 replaced with animal boarding includes any animal
8 grooming premises at which ten or more animals are on
9 the premises at any time.

10 VICE-CHAIRPERSON HOOD: So Madam Chair,
11 let me be sure I understand. Instead of saying dog
12 boarding, which was advertised, we're going to look at
13 going back and saying animal boarding?

14 CHAIRPERSON MITTEN: Right. That was one
15 of the things that came out of the hearing was just to
16 be more generic about it. I don't know what kind of
17 other animals we might include, but it's probably a
18 good idea.

19 VICE-CHAIRPERSON HOOD: That's -- that's
20 what I'm thinking about. But anyway, we'll see the
21 comments.

22 COMMISSIONER JEFFRIES: And I'm thinking
23 ferrets.

24 VICE-CHAIRPERSON HOOD: You'd be
25 surprised.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: Yes. Those ferrets
2 need to be combed frequently.

3 VICE-CHAIRPERSON HOOD: We can be very
4 creative.

5 CHAIRPERSON MITTEN: Curried? What was
6 it? Curried? Curried ferret; that's what we want.
7 Okay. It's late. Okay. Okay. So, to the public
8 hearing notice we had new sections. And keep in mind,
9 we had done this -- I -- I think, was this one of our
10 emergencies? When we put this in place, originally?
11 I can't remember.

12 MR. MORDFIN: This was an emergency.

13 CHAIRPERSON MITTEN: It was an emergency.
14 Okay. So, we had to advertise new Section 721.7,
15 721.8, and 721.9. And 721.9 had been included because
16 it was an emergency and we wanted to accommodate
17 anybody who was sort of caught in the in betwixt or
18 between.

19 Now 721.9 is basically moot. So I would
20 move -- I would suggest that we just delete that from
21 what we would approve tonight.

22 Then, as it relates to Section 735, I
23 would just adopt in total what the group, in their
24 December 5th letter, had suggested by way of every --
25 every section in 735. I just think -- I think it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 well written and it captures what we were going for.

2 COMMISSIONER JEFFRIES: And I -- and I
3 think they -- they know.

4 CHAIRPERSON MITTEN: They know. They
5 know.

6 COMMISSIONER JEFFRIES: They clearly
7 understand those guys.

8 CHAIRPERSON MITTEN: Yes.

9 COMMISSIONER JEFFRIES: Yes. I would
10 agree.

11 CHAIRPERSON MITTEN: Okay. Any -- okay.
12 Then to Section 736. There -- there were just a
13 couple of things that -- and they -- they trained me
14 to -- to pick up on this.

15 In 736. -- I would adopt everything that
16 they have except 736.4. At the end, I would say --
17 instead of dogs, I would say animals. And then in
18 736.5, there's the two places where it says dogs. I
19 would say animals. Okay? Is that okay with
20 everybody? Okay.

21 Then, to the public hearing notice, there
22 was -- we were going to amend the language of 761.1,
23 using the phrase a dog boarding use shall be
24 prohibited and -- and instead, we should say an animal
25 boarding use shall be prohibited, and everything else

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would remain as was advertised.

2 And then in -- we had also advertised,
3 relative to the industrial zones, several new
4 sections. And those sections can remain as they are,
5 as they had been advertised, except that every place
6 that it says dog, it should say animal.

7 COMMISSIONER TURNBULL: Okay.

8 CHAIRPERSON MITTEN: Now, the one
9 outstanding issue is the request that we had received
10 from Ms. Bisguyer, who runs Dogma; the facility over
11 on the Hill, related to the external -- exterior yard.
12 And she had -- she had requested -- I guess she
13 requested being dealt with separately. And I've lost
14 my note about -- it was basically she said that she
15 requested either that she be grandfathered; that
16 external yards not be prohibited; or that we basically
17 -- she basically be given the special exception at it
18 -- in the context of this.

19 I think, you know, we certainly have a lot
20 of information in the record about this particular
21 establishment. I just want to be clear, and I'm in
22 support of whatever -- whatever would basically amount
23 to a grandfathering.

24 I just want to make it clear that we only
25 have the authority to grandfather what's in -- what's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 on the private property. And I -- I don't what to --
2 I don't want to suggest that I understand the extent
3 to which this might -- the yard itself might be in
4 public space, and I don't want to -- oh, here's my
5 note. And I don't want to make -- I don't want to
6 mislead anybody into thinking we're grandfathering
7 something that we don't have jurisdiction over.

8 So, I don't know exactly how to phrase the
9 -- the specific exception that we would -- or the
10 grandfathering provision that we would craft for this
11 establishment. But, I don't know. Can you help me
12 with that, Mr. Rittig? Or can that be done after the
13 fact, if I just say it?

14 MR. RITTIG: I don't have any particular
15 language in mind. I'll just have to write a proposal
16 in the Notice of Proposed Rule Making and then you'll
17 have an opportunity to comment then.

18 CHAIRPERSON MITTEN: Okay.

19 MR. RITTIG: I really just -- I can't
20 articulate it right now.

21 CHAIRPERSON MITTEN: Okay. But you -- but
22 you understand what we're driving at?

23 MR. RITTIG: I understand the consequence.

24 CHAIRPERSON MITTEN: Okay. So then I --
25 I -- so, I would move approval of the text amendments

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as we -- as we had sort of amended them on the fly
2 here, with the good language that's been proposed by
3 the group that -- in their December 5th letter and our
4 further amendments. And that would include a grant,
5 grandfathering the existing exterior yard for Dogma,
6 as it exists on private property.

7 COMMISSIONER JEFFRIES: Second.

8 COMMISSIONER TURNBULL: Are you looking
9 for a survey that -- I mean, we have a survey, but it
10 doesn't really show the building and the yards and the
11 set back. Are you looking for more definition on --

12 CHAIRPERSON MITTEN: Not anymore. I mean,
13 I tried. I tried really hard to get something and so
14 I'm just -- I'm just trying to articulate now that our
15 ability to grandfather that use only applies to
16 private property; not public space. If, in fact, some
17 of it is in public space, which I think it may be.

18 COMMISSIONER TURNBULL: Oh, okay. Which
19 we cannot address.

20 CHAIRPERSON MITTEN: Correct. We don't
21 have jurisdiction over it.

22 COMMISSIONER TURNBULL: Okay.

23 CHAIRPERSON MITTEN: Okay. So we have a
24 motion and a second to approve Case No. 05-21. Is
25 there any further discussion? All those in favor,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 please say aye.

2 ALL: Aye.

3 CHAIRPERSON MITTEN: Ms. Schellin, I'm
4 pretty sure we have none opposed.

5 MS. SCHELLIN: Right. Staff will record
6 the vote four to zero to one to approve Case No. 05-
7 21, as amended for proposed action; Commissioner
8 Mitten moving; Commissioner Jeffries seconding;
9 Commissioners Hood and Turnbull in favor; Commissioner
10 Parsons not voting, having not participated.

11 CHAIRPERSON MITTEN: Thank you. Now, if
12 someone could go get Mr. Parsons. I think we're ready
13 to bring him back.

14 Okay. The last case for proposed action
15 carried over from I think it was a special public
16 meeting that we had; this is Case No. 05-24. This is
17 the Eastgate Family Housing PUD. And we have a
18 submission that addresses the concerns that we had
19 raised about phasing; about the completion of the
20 urban tree park. We certainly got a submission about
21 fences and various other things.

22 Does anyone have any comments on the
23 additional submissions? Mr. Jeffries.

24 COMMISSIONER JEFFRIES: Sometimes, be
25 careful what you wish for or what you ask for. And I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 -- you know, my assumption is that, you know, the
2 Applicant submitted all these -- these wood stockade
3 fences just to let us -- just to scare us to death.
4 And it worked.

5 However, the six foot high privacy fence
6 -- it still leaves something to be desired. You know,
7 I just -- I'm just having some difficulty with -- with
8 -- with, you know, how people will use the space in
9 between. And, you know, I'm just not clear as to
10 really how it works. I mean, it -- it seems like a
11 green, like a -- and, you know, I'm just not certain
12 about how this works.

13 I am appreciative. I will say this though
14 that, in terms of their submission, that they gave us
15 a date of delivery for their urban park. They -- and
16 -- and I appreciate that; which they say will be
17 completed August 2008. But I'm just at a loss as to,
18 you know, how -- how this -- this area between these
19 building, how it operates.

20 Perhaps --

21 CHAIRPERSON MITTEN: Well, I will -- I
22 actually wanted to ask the Office of Planning some
23 questions. Because we have a whole bunch of different
24 versions of what the fences could look like. Do you
25 happen to know, is the Applicant asking for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 flexibility to do any one of -- any one of these
2 combinations of four foot high fences; three rail
3 fences; board on board fences.

4 MS. BROWN-ROBERTS: It was my
5 understanding -- this is Maxine Brown-Roberts from the
6 Office of Planning. It was my understanding from the
7 Applicant that these were just samples of what is
8 possible. But they were leaning towards this -- the
9 last version that you got with the six foot stockade
10 fence, and then if property owners -- if home owners
11 wanted to add the fencing like this out there, then
12 they had that option.

13 COMMISSIONER JEFFRIES: Okay. But what --
14 I'm sorry. So, what will be governing sort of how
15 this is -- I guess there'll be an association that
16 will say you can only plant, you know, shrubberies so
17 high or you can only put this kind of tree in this
18 location. I mean, all of that's going to be
19 delineated? I mean, because this is a -- a wide open
20 space. And, by the way, what's the dimension between
21 these buildings? What's the -- do we know what the --

22 MS. BROWN-ROBERTS: No. I haven't been
23 given that information.

24 COMMISSIONER JEFFRIES: It looks like it
25 could be -- so, anyway, but my question really goes

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 back to, you know, this is a lot of green space. I
2 mean, can some people put a fence up and then other
3 ones won't put a fence up? Do some people --

4 MS. BROWN-ROBERTS: I think --

5 COMMISSIONER JEFFRIES: So, this could be
6 a very sort of helter skelter haphazard situation.
7 Unless, of course, it's governed that there is --
8 there is documents, I assume, that will -- will really
9 talk about how one could go forward and -- and -- and,
10 you know, landscape or put in paving or something.

11 It just seems like it needs to have much
12 more of a unifying theme running throughout this that
13 brings the scale down a bit. I mean, you know, and
14 again, I know it's an illustration and it's -- it's
15 sort of, you know, it's just for informational
16 purposes and it's not sort of real. But it does
17 really, you know, make me pause a little bit. And
18 it's unfortunate because I think, in many ways, the
19 project -- I mean, obviously, it's a great project in
20 terms of what it's -- it's -- it's doing. But, in
21 terms of, you know, housing and so forth, but I'm --
22 I'm just, you know, again I'd like to hear what my
23 fellow Commissioners have to say.

24 COMMISSIONER PARSONS: Well, I -- I think
25 the only thing that makes sense here to me is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 privacy fence. The six foot high privacy fence that's
2 been extended off the back of the buildings; which, to
3 me in this kind of environment, is kind of essential,
4 just for peace of mind and living with your neighbors.

5 The -- the other -- of course, computers
6 are great until they try to do something like this.
7 And it looks like, you know, the cattle yards of
8 Chicago used to look.

9 COMMISSIONER JEFFRIES: Woah, woah, woah.
10 Be careful.

11 COMMISSIONER PARSONS: I'm sorry. I would
12 hope that these spaces will be defined by landscaping,
13 by the owners; modest as it may be. That they will
14 stake out their corners and add forsythia and other
15 things, rather than this -- this kind of device.

16 So, that's where I would come down. And
17 I didn't get a sketch. Everybody else did. I feel
18 discriminated against.

19 CHAIRPERSON MITTEN: Here.

20 COMMISSIONER PARSONS: Called six foot
21 high privacy fence; which seemed to be in a -- came
22 out of a different printer. I guess you have that.
23 But that seemed to make more sense to me than any of
24 the others. And -- and -- it's -- it's shown as board
25 on board. And I guess I won't fight whether it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 stockade or board on board. But it's a -- it's a
2 different fence than we asked for. But potentially,
3 board on board is a better companion to this
4 architecture, anyway.

5 CHAIRPERSON MITTEN: I would -- oh, did
6 you want to say something?

7 MS. BROWN-ROBERTS: I was just going to
8 say that it still doesn't address if a property owner
9 wants to extend the fencing all the way to the -- to
10 the walkway.

11 COMMISSIONER PARSONS: And get an
12 appearance like this, I'm holding up the six foot high
13 board on board fence.

14 CHAIRPERSON MITTEN: Right.

15 MS. BROWN-ROBERTS: Would we want to then
16 include --

17 COMMISSIONER PARSONS: No. I'm not --

18 MS. BROWN-ROBERTS: -- the fencing at all?

19 COMMISSIONER PARSONS: -- I'm trying to
20 discourage that.

21 CHAIRPERSON MITTEN: Yes. I -- I have to
22 side with Mr. Parsons on this one. I think the one
23 that shows that there's a uniform kind of fence that
24 goes back just, I don't know what, ten feet or
25 something and ends, and that's it. Because, unless --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I don't like the -- I don't like the uniform options
2 that look like, you know, everybody's been -- yard has
3 been combined. I don't like that. And then the
4 thought of having some one way and some another way is
5 even worse.

6 So, I mean, I -- the -- the option with
7 the six foot high privacy fence that extends back only
8 about ten feet on everyone's property is -- is what I
9 would support. And that no other fencing be
10 permitted.

11 COMMISSIONER PARSONS: That's probably
12 sixteen. They come in eight foot lengths.

13 CHAIRPERSON MITTEN: Okay.

14 VICE-CHAIRPERSON HOOD: But I just -- my
15 question is, is that doable? I mean, you know, if all
16 of us had one of those houses, you wouldn't want me to
17 come over to your yard and take something off your
18 grill or something. Because this is so accessible.
19 I'm just saying, people walk through your yard. I
20 mean, come on now; let's be realistic here.

21 CHAIRPERSON MITTEN: If you wanted what
22 was on my grill, you could just open the fence and
23 come it.

24 VICE-CHAIRPERSON HOOD: But I'm just
25 saying -- I mean, I understand about the six foot high

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and I like the uniformity. But I also associate
2 myself with the comments of Commissioner Jeffries when
3 he said helter skelter, somebody did in Chicago?
4 Okay.

5 But anyway, what I'm saying is it's no
6 uniformity and I think that the six foot high privacy
7 fence, it looks good. But is that what really people
8 really want. I think you're going to have people down
9 here trying to extend the fence, basically for a
10 privacy issue.

11 So I don't know. I mean, we have too many
12 options in front of us. I mean, I -- I have too many
13 options here.

14 COMMISSIONER PARSONS: If it's truly a
15 matter of privacy, I think they could connect the
16 sixteen foot fence along the back parallel to their
17 property. I mean, to keep their personal belongings
18 contained. But to extend all the way out to the
19 walkway, I just think is -- it's just too much.

20 VICE-CHAIRPERSON HOOD: But those
21 residents, I'm just trying to think of how people
22 would think when they, you know, if that's their land
23 -- is that their -- that's their land, right? Once we
24 get this --

25 COMMISSIONER PARSONS: Yes. It's pretty

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 simple.

2 VICE-CHAIRPERSON HOOD: Why would I -- why
3 would I want my yard cut short at 16 feet or whatever,
4 when I can extend and get more for the back? I mean,
5 this is the way I think. I'm being realistic. That's
6 the way I would see it.

7 COMMISSIONER PARSONS: No. You know -- you
8 know what you sold me last week? You said, you know,
9 one neighbor's going to mow them all. Remember that?

10 VICE-CHAIRPERSON HOOD: Yes. I did tell
11 you that last week. But that doesn't happen all the
12 time.

13 COMMISSIONER PARSONS: I bought that
14 argument.

15 VICE-CHAIRPERSON HOOD: That doesn't
16 happen all the time. I'm -- I'm not --

17 COMMISSIONER PARSONS: So I thought you
18 were for an open landscape here.

19 VICE-CHAIRPERSON HOOD: Leave it open so
20 somebody can come by and mow the whole thing? Okay.
21 Well, I don't know. I'm just throwing it out. Maybe
22 we have too many options here. I don't know.

23 This looks good. I think this looks good.
24 But in reality, I don't think it will last.

25 COMMISSIONER PARSONS: Well I think the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 only result could be a connection right across the
2 back of there connecting those fences. If they wanted
3 to store bicycles for fear they were going to be
4 stolen or something.

5 COMMISSIONER JEFFRIES: My concern is
6 around just the uniformity of the overall area. I
7 mean, in terms of making certain that there's -- and
8 I'm hoping that the Applicant can set forth at some
9 time sort of, you know, this will be what will be
10 allowed within this green space. These are the things
11 that will make up this green area.

12 Because it just seems rather long and --
13 and vacuous. And I do realize it's computer generated
14 and so forth. Again, I was hoping that we could get
15 a couple of more landscaping; some paving or something
16 that sort of breaks this space down somewhat and still
17 sort of creates some privacy here. And whether these
18 -- these little fins that come out. And I don't know
19 if I should call them fins.

20 But I -- I -- I'm just concerned about
21 really understanding before we move forward with this
22 particular project, you know, how these open green
23 spaces will be delineated; how they will be operated.
24 I mean how -- what will be permitted as it relates to
25 the landscape? And I just need to get some clarity on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that one. So, maybe I've already made that clear.
2 But I just, you know.

3 CHAIRPERSON MITTEN: I think where we are
4 is, as I said at one point in the hearing; which is,
5 any structure is -- is only what -- any structure that
6 we've permitted is only in the context of this PUD.
7 So that's where we got all the talk about the fencing.

8 Now we've seen what it looks like or could
9 look like, and I, for one, don't like what it could
10 look like. So I -- I'm inclined -- not inclined to
11 allow any kind of fencing apart from the six foot high
12 privacy fence, if extends back 16 feet.

13 And beyond that, I mean, you can have your
14 gas grill and you can have your whatever. But, you
15 know, they're not going to be building little sheds;
16 little -- you know, they're not going to be able to
17 build a shed to put the bicycles in or the lawn mower.
18 That's not going to be permitted.

19 COMMISSIONER JEFFRIES: Office of
20 Planning, can you speak a little bit on -- on just
21 this space? I mean, what are your thoughts in terms
22 of how this could be, you know, handled? I mean, is
23 it -- is it acceptable? I mean --

24 MS. BROWN-ROBERTS: I have a concern with
25 Ms. Mitten's proposal. I think it looks good. But I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 -- I think that people are going to be inclined, just
2 from my experience, that they're going to want to put
3 up -- to fence their yard in.

4 COMMISSIONER JEFFRIES: Here we go.

5 MS. BROWN-ROBERTS: And the problem is
6 that there will be some that is fenced and there will
7 be some that is not. And I think that's the problem.

8 But I don't know if maybe we have -- maybe
9 we permit a fence that is shorter than this six feet,
10 if that will help.

11 MS. STEINGASSER: You know, I guess I
12 would back up Maxine on that. If -- I think the issue
13 of privacy and security of property is very valid out
14 here; and especially in the areas that are catering to
15 families where you've got small children and you want
16 to be able to let them play in a secured area and free
17 of burger theft, which might happen from your
18 neighbor.

19 But they -- you know, the ability to let
20 your child in the back yard and to -- in a secured
21 environment where he's not going to meander off
22 aimlessly, I think, is very valid one and one that
23 this kind of neighborhood is kind of encouraging.

24 We're trying to get family places in the
25 city. So, if the Commission has a concern about, it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 seems not -- not about the fencing of the yards, but
2 the remnant space that's left, the five foot; maybe we
3 just set that back and say there has to be a five foot
4 -- the fences cannot go within five feet of the
5 property line. That'll guarantee a 15 foot, more
6 standard -- in this case, it's pedestrian.

7 But that's a more standard alley
8 placement. And that would allow for -- the purpose of
9 the side alley was to allow people to get to their
10 back yards, to bring things in and out and not have to
11 drag stuff through the house.

12 So I -- you know, maybe -- maybe just
13 letting the fences go within five feet of that, so
14 we'd have more of a 15 foot space would create a more
15 common space that we're used to seeing.

16 COMMISSIONER JEFFRIES: So, Ms.
17 Steingasser, so are you saying -- I mean, this is like
18 six feet, in terms of the fence that is in the -- oh,
19 I'm sorry. Where's the other one? Anyway, in terms
20 of privacy, it seems to me that what you're saying is
21 that there should be a -- sort of a privacy yard of
22 some size that people can build a fence; maybe so many
23 -- how many feet, perhaps?

24 MS. STEINGASSER: I'd say let them go all
25 the way to five feet from the back property line; from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that -- they've got a five foot wide sidewalk, for
2 lack of a better word --

3 COMMISSIONER JEFFRIES: Because this is
4 all theirs.

5 MS. STEINGASSER: -- that goes up the back
6 of that spine.

7 COMMISSIONER JEFFRIES: Right.

8 MS. STEINGASSER: If you want to create
9 that as a more hospitable safe space, then have the
10 fences set back from that, rather than from the back
11 of the house.

12 COMMISSIONER JEFFRIES: Yes. See, and I'm
13 sort of of the school that I would just like to, you
14 know, I would agree with Vice Chair Hood that, you
15 know, you really will have to let people, if they
16 want, build a privacy fence and yard for their unit.
17 I would agree with that.

18 I guess I just wouldn't take it out as far
19 as what you're proposing. I mean, I wouldn't -- and
20 again, I -- you know, we can't design this. I
21 recognize it. But --

22 CHAIRPERSON MITTEN: Can I get in here?

23 COMMISSIONER JEFFRIES: I'm sorry.

24 CHAIRPERSON MITTEN: No. That's fine.
25 That's fine. Let me just see if we can get three

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 people to care in the same way about the fences. So
2 we have -- we have Mr. Hood and Mr. Jeffries who are
3 wanting to allow fences. And you have -- oh, I don't
4 know. Where are you, at this point, Mr. Parsons?

5 COMMISSIONER PARSONS: Privacy fences.

6 CHAIRPERSON MITTEN: This one?

7 COMMISSIONER PARSONS: Yes.

8 CHAIRPERSON MITTEN: Okay. So we have two
9 votes for -- for the six foot privacy fence extending
10 back sixteen feet. We have two votes for a greater
11 degree of flexibility to allow fences to basically
12 fence in your back yard so your little children don't
13 wander off and so burger thieves have a tougher time.

14 So, where are you, Mr. Turnbull?

15 COMMISSIONER TURNBULL: Can I have a
16 Shetland pony or a pig?

17 CHAIRPERSON MITTEN: As long as it doesn't
18 constitute animal boarding, we would consider it.

19 COMMISSIONER TURNBULL: I mean, I like,
20 you know, I guess I see -- I -- I see the
21 possibilities. I see where fences are going -- where
22 people are going to want a fence.

23 CHAIRPERSON MITTEN: Okay.

24 COMMISSIONER TURNBULL: And you don't want
25 to have a cyclone fence go up. You don't want to have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a lot of -- or you're going to have a suburban
2 development.

3 CHAIRPERSON MITTEN: Okay.

4 COMMISSIONER TURNBULL: I mean,
5 unfortunately, with the lower fence in this depiction,
6 the three foot high fence is the right size.
7 Unfortunately, this looks like Loudoun County or it's
8 the Chicago Stock Yards.

9 CHAIRPERSON MITTEN: Yes.

10 COMMISSIONER TURNBULL: But that size
11 scale begins to read more to lower scale and it begins
12 to open it up more. And I don't know if it's a -- I
13 mean, there's no gates showing on this. I mean, I'm
14 assuming there are gates that would come in off of
15 this if you did do it.

16 But I think you need something on a lower
17 scale that would allow you to fence it in without
18 being -- I mean, I think what was disturbing is some
19 of these other renderings showed this Salvadore Dali
20 dreamlike alley that goes down there that goes on
21 forever. We could have nightmares. And I -- it --
22 that's scary.

23 But what I think something lower would be
24 is, is more in keeping with that residential quality.

25 CHAIRPERSON MITTEN: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER TURNBULL: Okay.

2 CHAIRPERSON MITTEN: Okay. Hold that
3 thought now. Do you guys want -- you fence people, do
4 you want -- do you want to control the kind of fence?

5 COMMISSIONER JEFFRIES: I -- I would only
6 argue that the fence should go out, I don't know, 15-
7 20 feet from the back of the building. And that's as
8 far as the yard can go. And then the rest of this, I
9 mean, it -- you know, there could be something that
10 talks about some sort of, you know, landscaping or
11 something that can go, that somehow deals with this --
12 this middle spine. I mean that's --

13 CHAIRPERSON MITTEN: Okay. I think -- I
14 think you're getting a little tiny bit micromanaging.

15 COMMISSIONER JEFFRIES: I know, I am.

16 CHAIRPERSON MITTEN: How about just
17 controlling the type of fence? Because Mr. Turnbull
18 was suggesting this lower kind of fence was probably
19 a little bit -- had a different feel than having a
20 tall fence. Can we just agree on the kind of fence?

21 COMMISSIONER JEFFRIES: I mean, I -- I'm
22 fine with the six foot.

23 CHAIRPERSON MITTEN: You want six foot,
24 but Mr. Turnbull, you're third vote over here, was
25 wanting a lower fence, like a four foot high.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER HOOD: I would agree we need
2 to stay with the six, and I'll tell you why. At three
3 feet, we might as well go back to what Mr. Parsons and
4 you have on. And that's just my opinion, Mr.
5 Turnbull.

6 COMMISSIONER TURNBULL: Yes.

7 CHAIRPERSON MITTEN: Don't alienate your
8 third vote, there.

9 COMMISSIONER HOOD: Well, he's not on yet.
10 He's -- he's -- we need three more feet. So anyway, I
11 think that -- but I think that we're -- it's going
12 back to this privacy issue and we're not getting that
13 with the four feet or three feet.

14 COMMISSIONER JEFFRIES: Commissioner
15 Turnbull, I mean, just -- just imagine how you would
16 live. I mean, you know, I mean, just you coming out
17 your back door and, I mean, you know, well, you know,
18 you might not live like this.

19 I mean, I'm in a row house and so,
20 clearly, you know, it would be a problem, you know,
21 for me to come out of my house and then I have a three
22 foot fence here. I mean, what's -- all that's doing
23 is just showing that, you know, I'm here and you're
24 there, but I've got to see you.

25 COMMISSIONER TURNBULL: I know, but the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 problem is you don't want to see me? You don't want
2 to see me? Boy, you're a hostile neighbor.

3 COMMISSIONER JEFFRIES: Don't take it
4 personally. I'm just saying that people will really
5 obviously, with something this dense, and everyone's
6 just -- it's a fairly dense project. I mean, they're
7 going to want some -- some privacy. And I think six
8 foot does it. I think three feet is -- is not really
9 given them that.

10 COMMISSIONER TURNBULL: Well, I feel
11 insulted. I think I look pretty good in my shorts in
12 the summer. I don't know. I think I -- I try to keep
13 --

14 CHAIRPERSON MITTEN: Come on. We've got to
15 get some closure on this.

16 COMMISSIONER TURNBULL: I guess -- but
17 you're talking about a higher fence, just between the
18 units and not at the end. Are you talking six foot
19 all the way around?

20 CHAIRPERSON MITTEN: No. He's talking all
21 the way around.

22 COMMISSIONER JEFFRIES: I'm -- I was
23 talking all around, but I might be able to -- it would
24 seem like it should be all around. I'd probably say
25 all around.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER TURNBULL: Make a motion.

2 CHAIRPERSON MITTEN: Okay. Make a motion.

3 One of the fence people needs to make a motion.

4 COMMISSIONER JEFFRIES: Okay. I make a
5 motion -- woah, woah, wait. Where's the case here?
6 05-24, is it?

7 CHAIRPERSON MITTEN: Yes.

8 COMMISSIONER JEFFRIES: I make a motion
9 that we approve Case No. 05-24.

10 CHAIRPERSON MITTEN: And to allow?

11 COMMISSIONER JEFFRIES: Oh, right. And to
12 -- wait a minute, where's -- See, this is the first
13 time I'm making a motion here, so you have to --

14 CHAIRPERSON MITTEN: Would you like me to
15 --

16 COMMISSIONER TURNBULL: Make a motion
17 about the fence. The staff will take care of the
18 rest.

19 COMMISSIONER JEFFRIES: Oh, okay. I'm
20 making a motion about the fence?

21 CHAIRPERSON MITTEN: Yes.

22 COMMISSIONER JEFFRIES: Oh.

23 CHAIRPERSON MITTEN: Let me say that Mr.
24 Jeffries would like to move that we approve Case No.
25 04-24, and among other things, we allow a wood fence

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of the type depicted on the Applicant's submission
2 that would include a six foot high privacy fence
3 extending around the perimeter of the rear yard, for
4 any given property if -- if an owner so chose; that we
5 would eliminate the Condition No. 9 that requires
6 phasing of the project, based on the Applicant's
7 February 10th letter to the Commission, that it will
8 be made clear in Condition No. 8 that the urban tree
9 park will be delivered concurrently with the
10 completion of the balance of the project; and that we
11 would incorporate the new Exhibit A to show the
12 surface of the walking trail.

13 VICE-CHAIRPERSON HOOD: I'll second that.

14 COMMISSIONER JEFFRIES: Madam Chair, I
15 would like to set this back a bit. I'm not in favor
16 of a six foot high fence being built around the entire
17 fee simple of each town home.

18 CHAIRPERSON MITTEN: Okay.

19 COMMISSIONER JEFFRIES: I guess what I'm
20 saying is that I wanted a certain -- probably maybe
21 half of what's the rear yard to be able to be enclosed
22 with a six foot fence.

23 CHAIRPERSON MITTEN: You're going to have
24 to -- you're going to have to stand off the five foot
25 access easement or something. Because saying half way

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 back is not going work.

2 COMMISSIONER JEFFRIES: Okay.

3 CHAIRPERSON MITTEN: You could say within
4 X feet of the five foot access easement.

5 COMMISSIONER JEFFRIES: Within ten feet.

6 CHAIRPERSON MITTEN: Within ten feet?
7 Okay. So that someone could -- could extend a -- a
8 six foot privacy fence around the perimeter of their
9 yard, but to -- but not to within ten feet of the rear
10 access easement. Does that sound like what you wanted
11 to say?

12 COMMISSIONER JEFFRIES: Yes. I mean, Vice
13 Chair, are you fine with that?

14 VICE-CHAIRPERSON HOOD: Not actually, but
15 let me just ask. Okay, the pathway's already what,
16 five feet?

17 CHAIRPERSON MITTEN: Five feet.

18 VICE-CHAIRPERSON HOOD: Right. So that
19 ten feet is added on to that, or the total sum of that
20 is ten feet?

21 COMMISSIONER JEFFRIES: This -- this would
22 be moved back ten feet.

23 CHAIRPERSON MITTEN: So the total, if they
24 --

25 VICE-CHAIRPERSON HOOD: So the total is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ten feet. So it's just an additional five feet on one
2 side?

3 CHAIRPERSON MITTEN: No. It would be ten
4 feet on one side; five feet for the access easement
5 and ten feet on the other side.

6 VICE-CHAIRPERSON HOOD: So it's a total of
7 15 feet?

8 COMMISSIONER PARSONS: 25.

9 CHAIRPERSON MITTEN: It would be 25. If
10 two people put fences up.

11 COMMISSIONER JEFFRIES: So -- so what I'm
12 saying, Vice Chair, is that I'm just -- I'm basically
13 saying that this -- this bowling alley effect, I'm
14 trying to get away from. And I'm trying to say that
15 we can give each of the tenants a privacy yard --
16 decent sized yard, but give a little bit more space in
17 the middle where, off of this five foot, you can have
18 some landscaping and so forth.

19 VICE-CHAIRPERSON HOOD: Okay. I can go
20 with that. Now that you've described it, Mr. Parsons
21 can come by and cut the grass or anything that's back
22 there, I can go with that.

23 CHAIRPERSON MITTEN: Okay. So is that the
24 motion you intended to make?

25 COMMISSIONER JEFFRIES: Yes. That's the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 motion I intended to make.

2 CHAIRPERSON MITTEN: Good, because I
3 didn't want to make that for you. Okay so Mr.
4 Jeffries?

5 COMMISSIONER JEFFRIES: I'll second that.

6 CHAIRPERSON MITTEN: Okay. And you've got
7 Mr. Hood. Okay. I'm not going to vote against the
8 motion. I just wanted to be, you know -- I just
9 wanted maintain my lack of favor for the whole fence
10 scheme. But we'll get past it. Is there any further
11 discussion?

12 All those in favor, please say aye.

13 ALL: Aye.

14 CHAIRPERSON MITTEN: Those opposed, please
15 say no.

16 COMMISSIONER PARSONS: No.

17 CHAIRPERSON MITTEN: Ms. Schellin.

18 MS. SCHELLIN: Staff will record the vote
19 four to one to zero to approve Zoning Commission Case
20 No. 05-24, as stated; Commissioner Jeffries moving;
21 Commissioner Hood seconding; Commissioners Mitten and
22 Turnbull in favor; Commissioner Parsons against.

23 CHAIRPERSON MITTEN: Thank you. Okay,
24 we've wrestled that to the ground. Now we're ready
25 for final action.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The first case is 05-12, which is
2 Hostelling International USA. If you'll remember, we
3 had a text amendment that would basically allow them
4 to expand in their current site downtown and not have
5 to meet the requirements of the housing priority area
6 to provide housing. And we had a proposed order.

7 And I just had some editorial changes to
8 suggest, so I would move approval of the order for
9 Case No. 05-12.

10 VICE-CHAIRPERSON HOOD: Second.

11 COMMISSIONER JEFFRIES: Madam Chair, I'm
12 not participating in this case.

13 CHAIRPERSON MITTEN: Okay. Thank you. Is
14 there any discussion? All those in favor, please say
15 aye.

16 ALL: Aye.

17 CHAIRPERSON MITTEN: Those opposed, please
18 say no. Ms. Schellin.

19 MS. SCHELLIN: Staff will record the vote
20 as four to zero to one to approve Zoning Commission
21 Case No. 05-12; Commissioner Mitten moving;
22 Commissioner Hood seconding; Commissioners Parsons and
23 Turnbull in favor; Commissioner --

24 CHAIRPERSON MITTEN: I'm going to have to
25 -- I'm just going to have to interrupt here. If -- if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the draft order's right, Mr. Hildebrand voted on that.

2 MS. SCHELLIN: Okay. So that's what we
3 were trying to figure out. Okay.

4 CHAIRPERSON MITTEN: Yes.

5 MS. SCHELLIN: So then we would record the
6 vote three to zero to two to approve Zoning Commission
7 Case No. 05-12; Commissioner Mitten moving;
8 Commissioner Hood seconding; Commissioner Parsons in
9 favor; Commissioner Jeffries not voting, having not
10 participated; Commissioner Hildebrand not present, not
11 voting.

12 CHAIRPERSON MITTEN: Thank you. Okay.
13 Next is Case No. 03-12A/03-13A; which is the
14 Capper/Carrollsborg Hope Six second stage PUD, and
15 then we had some modifications to the consolidated PUD
16 and the preliminary PUD. There's a whole lot in
17 there.

18 We had the proposed order on that. I think
19 we just need to clarify one or two things. One is, on
20 Condition No. 7 of page 16. It's about two thirds of
21 the way down. It says applications for final approval
22 of phases two through four of the development must be
23 filed by October 2008. We need to specify whether
24 that's October 1st or 21st or 31st. I would say 31st
25 if no one object.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And, Mr. Rittig, I don't remember ever
2 seeing a condition like this before. But I don't
3 remember us discussing it either. Which is on the
4 following page, page 17. The Condition No. 15, an
5 individual applicant shall be responsible for carrying
6 out those conditions of this order that are applicable
7 to each specific property and shall not be responsible
8 for the obligations or requirements of the other
9 applicants.

10 I don't know that -- well, first of all,
11 I've never -- I don't recall seeing that. But I don't
12 know that we have delineated sufficiently who's
13 responsible for what to approve that.

14 MS. NAGELHOUT: Actually, this one is
15 mine.

16 CHAIRPERSON MITTEN: Oh, sorry.

17 MS. NAGELHOUT: Yes. I don't -- I don't
18 recall seeing a condition like that either. It's a
19 phrase we see often in -- in covenants. And I -- I'm
20 -- I didn't see any discussion in the transcript about
21 it either. But I know there are multiple applicants
22 here and so I thought they were -- they had worked out
23 among themselves who was doing what.

24 CHAIRPERSON MITTEN: I guess I'm just
25 thinking about enforcement. If they all start -- if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 something doesn't happen and they all start pointing
2 at eachother and we -- and the Zoning Administrator
3 can't pin down who's responsible for what; then that
4 would be problematic.

5 MS. NAGELHOUT: Yes. If it's not spelled
6 out, that would be problematic. Who's doing what?
7 The only thing I can think of off the top of my head
8 is about the Van Ness Elementary School. They made
9 clear that that was not part of -- or whatever's
10 happening at Van Ness was not going to be done by the
11 parties in this case.

12 CHAIRPERSON MITTEN: Right. But I think
13 -- I think -- I just think we need to have that
14 clarified before we -- this is final action. I think
15 we need to understand that better. If that's the only
16 thing, then that's not -- then, we can -- we can just
17 make that clear. But there were --

18 MS. NAGELHOUT: I don't think that refers
19 to Van Ness. I think that was -- that was something.
20 I think it's this order that says clearly that these
21 parties are not doing the Van Ness project and that
22 that would be going on its own schedule.

23 CHAIRPERSON MITTEN: Right.

24 MS. NAGELHOUT: So I don't know what
25 specifically that refers to.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON MITTEN: Well, I mean, just as
2 a for instance, it says -- well the two applicants; we
3 have Capper/Carrollsborg Venture LLC and the Housing
4 Authority.

5 MS. NAGELHOUT: And Capper/Carrollsborg,
6 I think, is itself two separate --

7 CHAIRPERSON MITTEN: Correct. So I think
8 we just need to get that clarified before we can put
9 that particular condition in place. We can do -- I
10 guess we can do one of two things; I'll let you
11 recommend which one would be easier.

12 One is we can take it out and then hear
13 from them and then, I guess amend it. Or, we can hold
14 off and fix it before we vote on it.

15 MS. NAGELHOUT: I think you could do it
16 either way. If they -- if they felt strongly about
17 it, they should have spelled it out for you, other
18 than putting it in the draft order.

19 CHAIRPERSON MITTEN: Okay. Then we'll
20 take it out and they can come back if they want. So
21 I would -- I would delete Condition No. 15. And I
22 would move approval of the order in Case No. 03-
23 12A/03-13A, with Condition 15 removed.

24 COMMISSIONER JEFFRIES: Second.

25 CHAIRPERSON MITTEN: Thank you. Any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 discussion?

2 COMMISSIONER PARSONS: Just to let you
3 know, I didn't participate in the hearing, so I won't
4 be in on this.

5 CHAIRPERSON MITTEN: Oh, okay. Anyone
6 else? All those in favor, please say aye.

7 ALL: Aye.

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

10 MS. SCHELLIN: Staff will record the vote
11 four to zero to one to approve final action in Case
12 No. 03-12A/03-13A; Commissioner Mitten moving;
13 Commissioner Jeffries seconding; Commissioners
14 Turnbull and Hood in favor; Commissioner Parsons not
15 voting having not participated.

16 CHAIRPERSON MITTEN: Thank you. We have
17 a couple pieces of correspondence and I just wanted to
18 say a word or two about one or two of them.

19 First is, we have a piece of
20 correspondence from ANC 2A that attaches a resolution.
21 And one of the things that is in the resolution is an
22 assertion that -- that the George Washington
23 University is not in compliance with their campus plan
24 as it relates to student head count. And I was
25 wondering, Ms. Schellin, has the Office of Zoning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 received a request for like -- I don't know exactly
2 how it comes through, but for compliance
3 investigation?

4 MS. SCHELLIN: We have not received any
5 complaint for non-compliance on this issue.

6 CHAIRPERSON MITTEN: Okay.

7 MS. MCCARTHY: But Madam Chair, we
8 received a copy of a letter that had been sent to the
9 Mayor today, asking -- asking why a previous letter to
10 the Mayor hadn't been responded to on this subject. So
11 we sent back and indicated that it was not the Office
12 of Planning's job to do enforcement and that they
13 ought to contact either the Office of Zoning
14 Enforcement Officer or the Department of Consumer and
15 Regulatory Affairs Zoning Administrator.

16 CHAIRPERSON MITTEN: Okay.

17 MS. MCCARTHY: So Ms. Schellin may be
18 getting a request soon.

19 CHAIRPERSON MITTEN: Okay. Then we have
20 a letter from the West End Citizens' Association
21 regarding GW's intent to file a PUD and map amendment.
22 And they are asking us to return that filing, which is
23 not our prerogative to do. I just want to say that.

24 And then we also have correspondence about
25 a text amendment to grant flexibility to relocate some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of the clubs that are on or near the proposed baseball
2 site. And, at the moment, we don't have an Applicant,
3 so we'll look forward to having a submission if
4 someone cares to make one in the future.

5 We need to adjourn now, for just a couple
6 of minutes. And anyone who would like to stay. And
7 we'll be back in just a few minutes. Thank you.

8 (Whereupon, off the record from 9:41 p.m.
9 until 9:53 p.m.)

10 CHAIRPERSON MITTEN: Okay. We're back.
11 So we have one final item of business, which is the
12 election of officers. And --

13 VICE-CHAIRPERSON HOOD: Madam Chair, I
14 would move that, unless anybody else want's to step
15 up, I would move that we keep it in the order in which
16 we've had it this past year.

17 CHAIRPERSON MITTEN: I can't give this job
18 away.

19 COMMISSIONER JEFFRIES: I second.

20 CHAIRPERSON MITTEN: Okay. All those in
21 favor, please say aye.

22 ALL: Aye.

23 CHAIRPERSON MITTEN: Ms. Schellin, I think
24 it's unanimous.

25 MS. SCHELLIN: Yes. Staff will record the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 vote five to zero to zero to elect Chairman -- or
2 present Chairman Mitten to continue as the Chairman
3 for the next year; Commissioner Hood moving;
4 Commissioner Jeffries seconding; Commissioners
5 Parsons, Turnbull, and Mitten in favor.

6 CHAIRPERSON MITTEN: And Mr. Hood
7 continuing as Vice-Chair.

8 MS. SCHELLIN: Exactly.

9 CHAIRPERSON MITTEN: I think we have
10 nothing else. So we're adjourned. Thanks.

11 (Whereupon, the Public Meeting was
12 adjourned at 9:54 p.m.)
13
14
15
16
17
18
19
20
21
22
23
24
25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com