

OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER
JENNIFER STEINGASSER

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

This transcript constitutes the minutes
from the public hearing held on November 21, 2005.

A-G-E-N-D-A

PAGE

Call to Order 4

Presentation of Applicant's Case
 Robert Hall 7

Vote to set down Case No. 05-18 as a related map
 amendment with the PUD 29

Adjourn 30

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

6:48 p.m.

CHAIRPERSON MITTEN: I will call to order our November 21st, 2005 public hearing of the Zoning Commission of the District of Columbia.

Good evening. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Greg Jeffries, John Parsons and Michael Turnbull.

The subject of this evening's hearing is Zoning Commission Case No. 05-18. This is a request by Hope 7 Monroe Street, LP for approval of a consolidated planned unit development for property located at 1020 Monroe Street, N.W., which is Lot 820 in Square 2840.

Notice of today's hearing was published in the *D.C. Register* on October 7th, 2005 and copies of that hearing announcement are available to you on the table near the door.

This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3022, which are the rules of procedure for contested cases.

The order of procedure will be as follows. We'll take up any preliminary matters followed by the

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1 presentation of the applicant's case, the report by
2 the Office of Planning, report of any other Government
3 agencies, report by the affected Advisory Neighborhood
4 Commission, which in this case is ANC 1-A,
5 organizations and persons in support and organizations
6 and persons in opposition.

7 The following time constraints will be
8 maintained in this hearing. The applicant will have
9 an hour, organizations will have five minutes and
10 individuals will have three minutes.

11 The Commission intends to adhere to these
12 time limits as strictly as possible in order to hear
13 the case in a reasonable period of time. The
14 Commission reserves the right to change the time
15 limits for presentations if necessary and notes that
16 no time shall be ceded.

17 All persons appearing before the
18 Commission are to fill out two witness cards and those
19 cards are also on the table near the door. Upon
20 coming forward to speak to the Commission, please give
21 both cards to the reporter who's sitting to our right.

22 Please be advised that this hearing is
23 being recorded by the court reporter. Accordingly, we
24 ask you to refrain from making any disruptive noises
25 in the hearing room.

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1 When presenting information to the
2 Commission, we ask you to come forward and have a seat
3 the table and then turn on and speak into the
4 microphone, first stating your name and home address.
5 When you're finished speaking, please turn the
6 microphone off so that it's not picking up any
7 background noise.

8 The decision of the Commission in this
9 case must be based exclusively on the public record.
10 To avoid any appearance to the contrary, the
11 Commission requests that persons present not engage
12 the members of the Commission in conversation during
13 a recess or at any other time. If you have questions
14 during the hearing, you can address those to Mrs.
15 Schellin.

16 I'd ask everyone to turn off any beepers
17 and cell phones at this time so as not to disrupt the
18 proceedings.

19 At this time we'll take up any preliminary
20 matters. And I know that the big preliminary matter
21 that we have is the fact that we have a request for a
22 density that well exceeds the guidelines for PUDs in
23 the C-2-A zone district.

24 So I'm going to ask the applicant to come
25 forward because we need to discuss that.

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1 Would you just identify yourself for the
2 record please? Turn the microphone on. There you go.

3 MR. HALL: Good evening. Thanks. My name
4 is Rob Hall. I am the executive director of Hope 7,
5 Incorporated, which is the developer of this project.
6 And as you said or stated, we do have this preliminary
7 matter before us. The issue, I think, the crux of the
8 issue is that the reason why the FAR calculation
9 greatly exceeds what would normally be allowed in a
10 PUD is that our initial calculations did not include
11 the commercial space. At the time of set down, even
12 though we did show the size of our lot area and we did
13 show the amount of floor area that we wanted, no one
14 did the calculation essentially and we were set down.
15 And what we'd like to do tonight is to present our
16 case and we are addressing that issue within the
17 context of our presentation. So my request would be
18 that we'd be allowed to present, that the applicant e
19 allowed to present the case and that those issues be
20 addressed in light of that presentation.

21 CHAIRPERSON MITTEN: Well, let me ask you
22 a question. Is the manner in which you intend to
23 address it by asking us to grant the density that's
24 been shown and calculate it at 3.85 or that you've
25 reduced the density to something within the PUD

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1 guidelines?

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MR. HALL: We are asking that we are granted the 3.85 and we are citing specific authority that we believe is appropriate for that granting.

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CHAIRPERSON MITTEN: Before we move on I'm going to ask Mr. Bergstein to weigh in on this because it's my understanding that we do not have the authority to grant that level of density for a PUD in the C-2-A zone district.

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MR. BERGSTEIN: Yes, I believe that's correct. And I was advised; and I don't want to preempt the applicant, that they're going to rely on an earlier section of the PUD regulations that suggest that in particular cases the Zoning Commission can grant increases to bulk and to height greater than those that which are specified in particular districts. But there are two things that need to be said.

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First of all, what we're talking about here is density, not height, not bulk. Secondly, whenever there are provisions that seem to be in conflict, you have to harmonize them together into more specific governs. The far guidelines for PUDs not only specify an uppermost limit, but specify a

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1 very discreet instance where that limit can be
2 modified. And only by five percent and only based
3 upon a particular showing. And I think that you
4 simply have to read the two provisions together to
5 extend even applies to density as suggesting that's
6 what the Commission has done and that there is no
7 greater flexibility that can permitted other than five
8 percent above the guidelines and only where there's
9 that specific special merit or necessity within the
10 project itself. So I do not believe that you do have
11 the ability to grant greater than the max amount of
12 FAR that's allowed plus five percent, if that
13 showing's made.

14 CHAIRPERSON MITTEN: Okay. There's
15 actually two problems. There's the problem that Mr.
16 Bergstein just cited, which is that we don't have the
17 legal authority to exceed the guidelines by any more
18 than five percent and then only in certain
19 circumstances. But the other is that the density as
20 it's proposed is inconsistent with the generalized
21 land use map and therefore inconsistent with the
22 comprehensive plan as noted in the Office of Planning
23 report. So, there's two issues that you would have to
24 overcome.

25 MR. HALL: Well, we believe that we can do

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1 that in the presentation. If we're allowed to do
2 that, we'll cite the Comprehensive Plan itself and
3 show that it is consistent with the intentionality of
4 the Comprehensive Plan. But we'd like to have that
5 opportunity to present those arguments, as opposed to
6 making the arguments at this time out of context.

7 CHAIRPERSON MITTEN: Okay. I'd like to
8 hear from my colleagues.

9 I guess the concern that I would like to
10 just introduce in addition to what's already been said
11 is I would not have voted to set down the case had I
12 known what the density being proposed is. So, I'm
13 reluctant to go forward on this basis because I think
14 there are some serious issues that cannot be addressed
15 through argument, but must be addressed through
16 amending the proposal. So I'd ask my colleagues to
17 weigh in on that. Mr. Parsons?

18 COMMISSIONER PARSONS: I would agree,
19 Madam Chairman. We simply can't set a precedent like
20 this. To step outside our regulations and say well,
21 this is a good project, therefore we'll violate our
22 own regulations, is just ripe for litigation. And
23 it's unfortunate. I just hope they can modify the
24 project to make it work.

25 CHAIRPERSON MITTEN: Anyone else?

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1 Commissioner Jeffries?

2 COMMISSIONER JEFFRIES: I would concur.

3 CHAIRPERSON MITTEN: Okay.

4 COMMISSIONER JEFFRIES: Yes, I mean, this
5 is one of these situations that, you know, we
6 obviously cannot set a precedent for this kind of
7 procedure. It's very disappointing in that, you know,
8 I think there's a lot of merit to your project, but we
9 obviously have to in some way maintain the procedures
10 as it relates to this Commission. You know, else
11 there's no need to have them. So, you know, I think
12 we might want to sort of go back to the drawing board
13 and review this and come back sort of with a clean
14 slate.

15 MR. HALL: I don't know what the specific
16 rule or procedure is that we are violating here by
17 hearing the case after it's been set down.

18 CHAIRPERSON MITTEN: Mr. Hall, I'm just
19 going to ask you to hold your comments --

20 MR. HALL: I apologize.

21 CHAIRPERSON MITTEN: -- until the
22 Commission finishes deliberating.

23 MR. HALL: Okay.

24 CHAIRPERSON MITTEN: And then if they have
25 a question for you, we'll pose it.

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1 Mr. Hood?

2 VICE-CHAIR HOOD: Madam Chair, I've heard
3 all my colleagues. I know that in these cases there
4 are some trade-offs, but first I'm just curious of how
5 it was missed, but I know we all make mistakes. How
6 did we miss the calculations? Was it the applicant,
7 or was it OP? Or how was it missed, because we did
8 set it down. How was it missed? And I'm not saying
9 we don't make mistakes, because I make a number of
10 them, believe it or not. I found that I was kind of
11 confused. I think we had a recommendation to set it
12 down and then turned around and we did not because of
13 the FAR. And I understand we make mistakes, but who
14 normally does that from a procedure standpoint?

15 CHAIRPERSON MITTEN: Mr. Parker, can you
16 answer that question?

17 MR. PARKER: Certainly. I'm Travis Parker
18 with the Office of Planning. We do review the project
19 for zoning compliance, but we don't necessarily go
20 through and calculate each floor. We did rely on the
21 applicant's numbers. And, as he said, there was a
22 mistake made as to what was included in the overall
23 calculations. So we relied on the applicant's numbers
24 for the overall FAR calculation of the building, which
25 was incorrect. We did check it before this hearing,

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1 but not prior to the set down.

2 COMMISSIONER JEFFRIES: How did you catch
3 it, as you say?

4 MR. PARKER: To be honest, there was a
5 discrepancy between the original filing and the second
6 filing and so we went through and tried to solve that
7 and discovered it. And I think it was the applicants
8 that were amending their own application to try and
9 reflect the actual situation.

10 COMMISSIONER JEFFRIES: Fellow
11 Commissioners, I mean I'm in total agreement with the
12 chair that we probably should not hear this case
13 tonight, but is there anything else that we could, you
14 know, offer the applicant going further in terms of,
15 you know, timing, if that is in fact an issue as
16 relates to their project?

17 VICE-CHAIR HOOD: I hadn't exactly
18 finished.

19 COMMISSIONER JEFFRIES: Oh, I'm sorry.
20 I'm sorry.

21 VICE-CHAIR HOOD: All I was going to say
22 was, you know, in closing I thought it was a pretty
23 good project; I know the area. I'm hoping they can
24 still make it work. I don't know what the lesser of
25 the FAR, I'm not sure if it's feasible or if it's

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1 doable, but I would hate to see this just be wiped off
2 the map and it doesn't come back to this Commission.
3 So, I don't know how much we can yield from a
4 precedent setting. There we go again, second week in
5 a row we're using that, but from a precedent
6 standpoint setting precedent, but I'm hoping that we
7 can work it out so this project would benefit that
8 community and that neighborhood because I'm very
9 familiar with that corner. Thank you, Madam Chair.

10 CHAIRPERSON MITTEN: I think we have a
11 couple of strategies. And I do want to just emphasize
12 that I think if we were to go forward and even
13 entertain an FAR that exceeds our guidelines based on
14 what Mr. Bergstein said; and, Mr. Bergstein, you can
15 disagree with me if you do disagree with me when I'm
16 done with this statement, but that would be sort of
17 like selectively amending the ordinance without a
18 proper hearing and on the fact that we would be
19 amending the ordinance and not just, you know, waiving
20 a rule that we have the authority to waive. Is that
21 accurate?

22 MR. BERGSTEIN: Yes, but there are some
23 instances and procedural aspects that you have the
24 ability through a contested case proceeding to in
25 essence not waive, but clarify, interpret your rule in

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1 a different way. Then it's expected that you explain
2 why you're deviating and then quickly do a rulemaking
3 thereafter.

4 CHAIRPERSON MITTEN: Yes.

5 MR. BERGSTEIN: But otherwise, I think
6 you're right.

7 The other thing, if you don't mind, I'd
8 like to point out both for your benefit and the
9 applicant's that if you decided to go forward and had
10 a hearing and then go on to take proposed action and
11 you were to deny this, then this case is over and they
12 would have to file a new application, all new fees.

13 CHAIRPERSON MITTEN: Yes.

14 MR. BERGSTEIN: But if you defer hearing
15 this case, then the case remains open and it remains
16 as a case that's prehearing.

17 CHAIRPERSON MITTEN: Yes.

18 MR. BERGSTEIN: And so the choice to go
19 forward on this record has that ultimate significance
20 of a denial written order and then this case is over.

21 CHAIRPERSON MITTEN: Okay. That's
22 important to note too.

23 I think the strategies are these; and if
24 anybody else has other strategies, then please suggest
25 them. If you want to stay in the same posture that

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1 you're in now, which is to have a PUD in the zone
2 district as it exists, the C-2-A, we're constrained by
3 the guidelines. So it's as the Office of Planning
4 articulated in their report, which is you're bound by
5 the maximum of three plus the five percent, so you'd
6 be bound by 3.1.5. And, you know, that's going to be
7 a significant change in your project in order to
8 comply with that.

9 The other strategy, and I'm not advocating
10 this, I'm just suggesting it's another strategy, would
11 be to come in with a PUD-related map amendment which
12 would basically change the zone and then it would
13 change the guideline that you'd be governed by. Now
14 that doesn't overcome the challenge of how do you make
15 that density not inconsistent with the Comprehensive
16 Plan, but right now you have two problems and it would
17 whittle them down to one. So, I don't know if anyone
18 else has any other ideas, but those are the two
19 alternatives that I can see.

20 COMMISSIONER JEFFRIES: I have a question
21 for the Office of Planning. So, how did the
22 conversations go once it was discovered that they were
23 well over the FAR requirement per the PUD district?

24 MR. HALL: We recommended the two courses
25 of action that have just been articulated. The

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1 applicant wanted to have a public hearing on the case
2 and has presented to me several arguments why they
3 should be able to move forward and obviously don't
4 have the authority to tell them that they can't come
5 to the Zoning Commission.

6 COMMISSIONER JEFFRIES: Okay. But the
7 issue around sort of the PUD plus a map amendment was
8 something that you put in front of them.

9 MR. HALL: Correct.

10 COMMISSIONER JEFFRIES: Okay.

11 CHAIRPERSON MITTEN: So I think where we
12 are, Mr. Hall, is that the Commission is unwilling to
13 go forward tonight because we don't feel that we could
14 approve what's before us under any circumstance no
15 matter how compelling your arguments might be. And as
16 Mr. Bergstein pointed out, it wouldn't be in your best
17 interest necessarily to do that because then if we did
18 take the facts as they are and we already at the
19 commencement, even though there's a lot of merit to
20 the project, we're constrained by the zoning
21 ordinance, we're constrained by the zone that's in
22 place and we're constrained by the Comprehensive Plan.

23 So, we've given you a couple of strategies
24 that you can pursue and rather than do anything that
25 would basically stop this case; which would mean if

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1 you wanted to go forward and pursue other alternatives
2 you'd have to refile and pay new fees, we're trying to
3 figure out a way and work with you so that you can
4 keep this alive but amend it.

5 MR. HALL: If I might?

6 CHAIRPERSON MITTEN: Yes.

7 MR. HALL: We had conversations with the
8 Office of Planning about the map amendment and we did
9 go before the Advisory Neighborhood Commission who
10 unanimously supported a map amendment to a C-2-B for
11 this site and for this case. And our understanding
12 was that the authority of the Commission was that you
13 could modify whatever we present, whether it be within
14 the context of forcing us to go to a lower FAR -- even
15 if we were at a 3.15 proposed, we could still be
16 forced to a 3 or a 2.8, that you had that authority.
17 And so our understanding was that we'd be able to at
18 least, having paid our fees and having been
19 unanimously set down, present our case and then we
20 could always continue the case or make other
21 modifications and come back. But we are a non-profit
22 developer attempting to deliver a high-volume of
23 affordability where it's desperately needed. We don't
24 have the time, we don't have the capital and this case
25 will probably end tonight anyway if we're not allowed

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1 to make our case. And I don't understand why we can't
2 simply be allowed to make the case and then
3 subsequently come back with the modifications as they
4 were, even if it does say that we are granted the PUD,
5 but we have to have a less FAR. We'd be governed by
6 the PUD covenant which is something that would come
7 off this bench presumably after our presentation.

8 CHAIRPERSON MITTEN: Well, Mr. Hall, I
9 just want to clarify one point for you.

10 MR. HALL: Yes.

11 CHAIRPERSON MITTEN: We do have the
12 authority, after we've advertised something, to
13 approve something that's more restrictive. But the
14 one thing that we couldn't do without advertising it
15 is we couldn't change the zone. There couldn't be a
16 zoning-related map amendment to C-2-B that would just
17 be generated by the Commission if we hadn't advertised
18 it because it's more liberal.

19 So, what we're suggesting is, I think for
20 us to just, without your guidance and your thought
21 about whether or not a 3.15 FAR can make this project
22 work, for us to just have this hearing and arbitrarily
23 discuss what lopping off an entire floor and some of
24 another floor which would require us to look at
25 revised drawings and so on, I don't think that's in

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1 your best interest. And if you would like us to
2 consider a PUD-related map amendment to C-2-B, then
3 that's something that we can entertain setting down
4 right now and then that could be advertised and you
5 could come back with a revised application for that.

6 So we can at least move the process along
7 tonight and set that down, or consider setting it down
8 if that's in fact an alternative that you'd like to
9 pursue.

10 MR. HALL: If I might, in the inclusionary
11 zoning document that was proffered from the Office of
12 Planning, they asked this Commission to waive three
13 things. The Office of Planning can also represent
14 that the Attorney General believes that the Commission
15 has the authority to do this. It says here OP, with
16 the concurrence of the petitioner requests the
17 Commission indicate that the set down rule not apply.

18 Further, in the next paragraph, the
19 posting requirement pursuant to 11 DCMR Section
20 3014.3, clearly this would be unduly burdensome for
21 this particular applicant. For this reason, OP, on
22 behalf of the petitioner, requests a waiver of the
23 rule.

24 And then the advertising. Once again,
25 they ask for that waiver. OP agrees with the

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1 petitioner that time is of the essence with respect to
2 this initiative and therefore requests that this rule
3 be waived to permit the Office of Zoning to
4 immediately advertise this case, but to also permit
5 the petitioner to file supplemental materials no later
6 than 20 days prior to the hearing date.

7 But the point is that these waivers have
8 been supported for the inclusionary zoning that does
9 exactly expressly the same thing we're attempting to
10 do tonight and those waivers have been --

11 CHAIRPERSON MITTEN: Mr. Hall.

12 MR. HALL: I'm sorry.

13 CHAIRPERSON MITTEN: Mr. Hall.

14 MR. HALL: Those waivers been delivered
15 and we're asking that waivers similar, because time is
16 of the essence here as well.

17 CHAIRPERSON MITTEN: Okay.

18 MR. HALL: That these type of waivers be
19 granted to us and by the same authority.

20 CHAIRPERSON MITTEN: Okay. Mr. Hall, my
21 turn now.

22 MR. HALL: That the Commission obviously
23 has.

24 CHAIRPERSON MITTEN: My turn now.

25 MR. HALL: Sure.

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1 CHAIRPERSON MITTEN: You don't understand
2 what the set down rule is. And so what does clearly
3 apply is that we cannot grant something that's more
4 liberal than advertised without advertising it and
5 giving an opportunity for public hearing. The set
6 down rule that is discussed there is completely
7 different. It has to do with more restrictive zoning
8 being in place while something is being advertised and
9 heard. It doesn't apply to what is before us here.
10 The waiver on the post-hearing requirements and so on
11 had to do with the fact that there was such a broad
12 area involved. So, that doesn't apply here.

13 So, I don't want to debate your
14 alternatives any more. I'm asking you which
15 alternative you'd like to pursue.

16 MR. HALL: Well, I understand, that those
17 circumstances, those mitigating circumstances don't
18 apply here, but there are other mitigating
19 circumstances that do apply, like the fact that we
20 paid our fees and we were set down unanimously and --

21 CHAIRPERSON MITTEN: Mr. Hall.

22 MR. HALL: -- we're here --

23 CHAIRPERSON MITTEN: Mr. Hall. Mr. Hall.

24 MR. HALL: -- so I'd like to --

25 CHAIRPERSON MITTEN: I want you to listen

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1 to me.

2 MR. HALL: -- what I'd like to do is move
3 forward.

4 CHAIRPERSON MITTEN: I want you to take
5 the -- Mr. Hall, I'm asking you to take the guidance
6 of the Chair. We're not going to debate this any more
7 and I'm giving you an opportunity that I don't need to
8 give you. We can just say we're not going to go
9 forward tonight and leave this open. I'm trying to
10 give you an opportunity to advance the ball a little
11 bit farther down the field and you're arguing with the
12 Commission.

13 So you have two alternatives. One is, you
14 can take your application back and you can make the
15 modifications that will bring it into compliance with
16 the guidelines of the Planned Unit Development so
17 you'd be at 3.15 FAR or lower. Or, we could agree
18 tonight or we could consider tonight setting down a
19 PUD-related map amendment for C-2-B in the alternative
20 to C-2-A and then we could advertise that and you can
21 have a hearing on essentially the same project or a
22 similar project; you have to work with the Office of
23 Planning on any modifications and we could set that
24 down tonight and you can move forward towards another
25 hearing.

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1 Now those are your two alternatives and
2 that's the only thing that I want to discuss with you
3 now.

4 MR. HALL: How quickly can we move forward
5 to a map amendment?

6 CHAIRPERSON MITTEN: We'd have to have
7 another hearing. It would have to be advertised and
8 we'd have to have another hearing. So I can ask Mrs.
9 Schellin for an approximate time of a hearing that we
10 could schedule.

11 MS. SCHELLIN: If they could get us the
12 application this week, then we could possibly have it
13 January 23rd, but that would be only if they could
14 actually provide the application and they would also
15 have to pay the difference, the hearing fee for the
16 map amendment portion. They've already paid the rest
17 of it, but they would have to pay the map amendment
18 and the filing fee, hearing and filing fee.

19 CHAIRPERSON MITTEN: Okay. Let me ask the
20 Office of Planning. Since you did have the discussion
21 with the applicant about alternatives including a PUD-
22 related map amendment, would you be in support of at
23 least a set down for a PUD-related map amendment to C-
24 2-B with this project as proposed, or had you
25 discussed other modifications in that context?

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1 MR. PARKER: We had discussed the map
2 amendment alternative with the applicant. We did
3 advise the applicant that we would be hesitant to
4 recommend in favor of a map amendment in light of the
5 zoning in the neighborhood and the Comprehensive Plan
6 in this area.

7 As far as recommending a set down for a
8 public hearing, in light of keeping the project
9 moving, I don't think we'd have a problem with having
10 it set down for a public hearing.

11 CHAIRPERSON MITTEN: Okay. So, Mr.
12 Bergstein, can we just do it in the alternative to
13 keep our options open? I guess our options would be
14 open anyway, right?

15 MR. BERGSTEIN: What would be the
16 alternative?

17 CHAIRPERSON MITTEN: Keep the base zone at
18 C-2-A. Because what it sounds like, if I'm listening
19 carefully enough, that the Office of Planning, even if
20 they would support a PUD-related map amendment, the
21 overall density of the project has to come down.

22 MR. PARKER: I think our only issue would
23 be with a chance to C-2-B in this area. It's a zone
24 that is normally associated with a higher density than
25 the moderate density that the entire neighborhood is

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1 zoned.

2 CHAIRPERSON MITTEN: What's the aggregate
3 density that's permitted in C-2-B?

4 MR. PARKER: Up to six in a PUD.

5 CHAIRPERSON MITTEN: What about a C-3-A?

6 MR. PARKER: I'm not aware.

7 MS. STEINGASSER: I think C-3-A is 4.5.

8 MR. BERGSTEIN: That's correct. It's 4.5
9 and a maximum of 3 non-residential.

10 CHAIRPERSON MITTEN: And that's in the
11 PUD?

12 MR. BERGSTEIN: Yes, I'm looking at the
13 PUD standards.

14 CHAIRPERSON MITTEN: Okay. So what about
15 C-3-A?

16 MS. STEINGASSER: I believe we'd be more
17 comfortable with a C-3-A because it is mapped over on
18 14th Street at least. The area itself is solely
19 identified as moderate density residential and this
20 particular C-2-A is a three-block strip that sits in
21 the C of R-4. So introducing C-2-B was very
22 uncomfortable for us.

23 CHAIRPERSON MITTEN: Okay.

24 MS. STEINGASSER: But a C-3-A is a little
25 bit closer to that moderate density.

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1 CHAIRPERSON MITTEN: Okay. Is there any
2 reason why you rejected C-3-A, or did you reject C-3-
3 A?

4 MR. HALL: Well essentially, whether it be
5 C-3-A or C-2-B, we were going to stick with the number
6 that we had. We wouldn't be looking to max out either
7 one. We really would have more than we need at either
8 of those designations.

9 CHAIRPERSON MITTEN: Okay.

10 MR. HALL: We chose C-2-B because the
11 definition that was proffered in the zoning documents
12 that we read seemed more consistent with the nature of
13 the project itself.

14 CHAIRPERSON MITTEN: Okay.

15 MR. HALL: The use that we have here
16 seemed more consistent with C-2-B.

17 CHAIRPERSON MITTEN: Okay. Well then I
18 would move that we modify the set down in this case
19 and that we advertise a PUD-related map amendment for
20 C-3-A. And provided the applicant can get the amended
21 application submitted this week, we can have a hearing
22 date in January, and that's pretty much the best we
23 can do for you.

24 COMMISSIONER PARSONS: Madam Chair, did
25 you mention that this is in the alternative?

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1 CHAIRPERSON MITTEN: I did originally, but
2 now that we, I think -- when I made the motion, I did
3 not.

4 COMMISSIONER PARSONS: Then I would not
5 agree.

6 MR. BERGSTEIN: Well, it's always, I
7 think as the Chair said, in the alternative in the
8 sense that you can deny it.

9 CHAIRPERSON MITTEN: Well, and it's also
10 in our prerogative to, as Mr. Hall pointed out, make
11 things more restrictive. But if in order to move
12 forward we advertise it in the alternative, that's
13 fine. I amend my motion to advertise the C-3-A in the
14 alternative.

15 COMMISSIONER PARSONS: Second.

16 CHAIRPERSON MITTEN: Okay. There's a
17 little bit of a legal thing that Mr. Bergstein has to
18 point out.

19 MR. BERGSTEIN: Well, again, advertising
20 in the alternative. This would be a PUD-related map
21 amendment. So the underlying zoning would always stay
22 in place. The question would be whether or not to
23 grant or deny this PUD-related map amendment. That is
24 the alternative that is before you. So any hearing
25 notice that says we have before us an application for

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1 this zone designation, either you would grant it or
2 deny it. It's not the alternative that would be the
3 PUD-related map amendment or the underlying zone
4 because the underlying zone is always in place, will
5 never change with a PUD-related map amendment unless
6 there's an actual request to permanently rezone not
7 just for the PUD, but for all purposes. But that is
8 not my understanding what is being posed. So, I would
9 just ask Mr. Parsons to understand that to advertise
10 this in the alternative, it's already being done by
11 the fact we're just posing it as a PUD-related map
12 amendment that is up for you to decide whether or not
13 to grant or deny. And that's my legal problem.

14 CHAIRPERSON MITTEN: Are you comfortable
15 with that?

16 COMMISSIONER PARSONS: Yes.

17 CHAIRPERSON MITTEN: Okay.

18 COMMISSIONER PARSONS: Thank you.

19 CHAIRPERSON MITTEN: Is there any further
20 discussion? Any further discussion?

21 (No audible response.)

22 CHAIRPERSON MITTEN: All those in favor,
23 please say aye. Aye.

24 VICE-CHAIR HOOD: Aye.

25 COMMISSIONER JEFFRIES: Aye.

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1 COMMISSIONER PARSONS: Aye.

2 COMMISSIONER TURNBULL: Aye.

3 CHAIRPERSON MITTEN: Mrs. Schellin, I
4 believe none opposed.

5 MS. SCHELLIN: Yes, Staff would record the
6 vote 5 to 0 to 0 to set down Case No. 05-18 as a
7 related map amendment with the PUD. Commissioner
8 Mitten moving. Commissioner Parsons seconding.
9 Commissioners Jeffries, Hood and Turnbull in favor.

10 CHAIRPERSON MITTEN: Thank you. So, Mr.
11 Hall, I would encourage you to work with the Office of
12 Zoning staff to get your materials in on time so you
13 can get that January hearing date locked in.

14 MR. HALL: For the 23rd for the hearing?

15 CHAIRPERSON MITTEN: Yes.

16 MR. PARKER: Thank you.

17 CHAIRPERSON MITTEN: Yes. And thanks to
18 everyone for coming out tonight. And I'm sorry we
19 can't move forward, but I think we've given the
20 applicant an opportunity to be successful and look
21 forward to seeing you on the 23rd, if we're able to
22 get that scheduled.

23 We're adjourned.

24 (The hearing was adjourned at 7:20 p.m.)

25

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